

His Worship the Mayor
Councillors
CITY OF MARION



**NOTICE OF
GENERAL COUNCIL MEETING**

Notice is hereby given pursuant to the provisions under Section 83 of the Local Government Act 1999 that a General Council meeting will be held

Tuesday 24 November 2015

Commencing at 7.00 p.m.

In the Council Chamber

Council Administration Centre

245 Sturt Road, Sturt

A copy of the Agenda for this meeting is attached in accordance with Section 83 of the Act.

Meetings of the Council are open to the public and interested members of this community are welcome to attend. Access to the Council Chamber is via the main entrance to the Administration building on Sturt Road, Sturt.

A handwritten signature in black ink, appearing to read "Adrian Skull", with a horizontal line underneath.

Adrian Skull
CHIEF EXECUTIVE OFFICER

19 November 2015

**CITY OF MARION
GENERAL COUNCIL AGENDA
FOR MEETING TO BE HELD ON
TUESDAY 24 NOVEMBER 2015
COMMENCING AT 7.00PM**



1. OPEN MEETING

2. KAURNA ACKNOWLEDGEMENT

We acknowledge the Kurna people, the traditional custodians of this land and pay our respects to their elders past and present.

3. DISCLOSURE

All persons in attendance are advised that the audio of this General Council meeting will be recorded and will be made available on the City of Marion website.

4. ELECTED MEMBER'S DECLARATION OF INTEREST (if any)

5. CONFIRMATION OF MINUTES

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7. YOUTH ADVISORY COMMITTEE (YAC) UPDATE

Nil

8. DEPUTATIONS

Mr Des Hutson – Marion Leisure & Fitness – Review of Decision
GC241115D0127

9. PETITIONS

Nil

10. COMMITTEE RECOMMENDATIONS

Nil

11. WORKSHOP / PRESENTATION ITEMS

Nil

12. ADJOURNED ITEMS

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MATTERS RAISED BY MEMBERS

15. Questions with Notice

Residential Rubbish Bins
GC101115Q01219

16. Motions with Notice

Edwardstown Rotary Club donation to the Jervois Street Reserve
GC241115M01221

17. Questions without Notice

18. Motions without Notice

19. CONFIDENTIAL ITEMS

Marion Leisure & Fitness Centre Future Directions
GC241115F02227

20. LATE ITEMS

21. MEETING CLOSURE

Council shall conclude on or before 10.00pm unless there is a specific motion adopted at the meeting to continue beyond that time.

PRESENT

His Worship the Mayor Kris Hanna

Councillors

Coastal Ward

Ian Crossland
Tim Gard

Mullawirra Ward

Jerome Appleby
Jason Veliskou

Southern Hills

Nick Westwood
Janet Byram

Warracowie Ward

Bruce Hull
Nathan Prior

Warriparinga Ward

Luke Hutchinson

Woodlands Ward

Tim Pfeiffer
Nick Kerry

In Attendance

Mr Adrian Skull
Ms Abby Dickson
Mr Vincent Mifsud
Ms Kate McKenzie
Ms Deborah Horton

Chief Executive Officer
Acting General Manager City Development
General Manager Corporate Services
Manager Corporate Governance
Acting Unit Manager Council Support

COMMENCEMENT

The meeting commenced at 7.00pm.

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kaurna people, the traditional custodians of this land and pay our respects to their elders past and present.

DISCLOSURE

All persons in attendance are advised that the audio of this General Council meeting will be recorded and will be made available on the City of Marion website.

MEMBERS DECLARATION OF INTEREST

The Chair asked if any Member wished to disclose an interest in relation to any item being considered at the meeting and the following declarations were made:

- Councillor Prior wished to declare a conflict of interest in the item 'Former Hallett Cove Library and Youth Services Building (GC101115F01)'.

- Councillors Appleby, Kerry and Westwood wished to declare a conflict of interest in the item 'Telecommunication Tower Kellett Reserve' (CG101115R09).
- Councillor Veliskou sought and was granted leave to formally acknowledge his involvement in the Telecommunication Tower Kellett Reserve decision in the course of undertaking his duties as an Elected Member. As the report (GC101115R09) seeks Council's instruction regarding the management of a Section 270 review process, Council Veliskou accepted the advice of the Governance Manager that there is no conflict of interest at this point in time.
- Councillors Byram and Crossland wished to declared an interest in the 'Section 270 – Reserve Street Reserve Dog Park (GC101115R10) Report' and 'Code of Conduct' (GC101115F03) Report.
- Councillor Kerry wished to declare a conflict of interest for the 'Code of Conduct' (GC101115F02).

CONFIRMATION OF MINUTES

7.04pm General Council meeting held on 27 October 2015

Moved Councillor Prior, Seconded Councillor Pfeiffer that the minutes of the General Council meeting held on 27 October 2015 be taken as read and confirmed.

Carried Unanimously

ADJOURNED ITEMS

7.06pm Elected Member Code of Conduct Procedure for Investigating Complaints
Report Reference: GC271015R13

Moved Councillor Hull, Seconded Councillor Pfeiffer that Council adopt the Elected Member Code of Conduct Procedure as attached in Appendix 1 to this Report.

Carried Unanimously

YOUTH ADVISORY COMMITTEE (YAC) UPDATE

Nil

DEPUTATIONS

Nil

PETITIONS

Nil

COMMITTEE RECOMMENDATIONS

Nil

CORPORATE REPORTS FOR DECISION

7.14pm Main South Road / Darlington Area Development Plan Amendment by the Minister Report Reference: GC101115R02

Moved Councillor Hutchinson, Seconded Councillor Crossland that Council:

1. Endorse the correspondence generally supporting the proposed policy intentions and seeking a briefing from DPTI as contained in Appendix II to be signed by Mayor Hanna.

Carried Unanimously

7.23pm Planning, Development and Infrastructure Bill 2015 Report Reference: GC101115R03

Moved Councillor Crossland, Seconded Councillor Byram that Council:

1. Approves the submission on the Planning, Development and Infrastructure Bill 2015 and forwards the submission to the Minister for Planning, the Shadow Minister for Planning and other Members of Parliament as determined by Council.

Carried Unanimously

7.24pm Dogs By-Law Amendment Report Reference: GC101115R04

Moved Councillor Hutchinson, Seconded Councillor Crossland that:

1. Council endorses Option 2 “Expansion of nominated dog on leash areas with all other areas being designated as dog exercise (dog off leash).”
2. Council endorse the allocation of up to \$31,250 to fund the implementation of Option 2.
3. Funding options be identified and brought back to Council within three months.
4. That Council reconsider this regime in twelve months time.

Carried

7.42pm Annual Review of the Schedule of Delegations Reference No:GC101115R05

Moved Councillor Bryam, Seconded Councillor Westwood that Council:

That having conducted its annual review of the Council’s Delegations Register in accordance with Section 44(6) of the Local Government Act 1999, the Council:

1. Revocations

- 1.1 Hereby revokes its previous delegations to the Chief Executive Officer of those powers and functions under the following:
 - 1.1.1 Development Regulations 2008
 - 1.1.2 Local Government Act 1999
 - 1.1.3 Road Traffic Act 1961 (SA), Road Traffic (Miscellaneous) Regulations 1999 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999
 - 1.1.4 South Australian Public Health Act 2011 along with the South Australian Public Health (Legionella) Regulations 2013 and the South Australian Public Health (Wastewater) Regulations 2013
 - 1.1.5 Supported Residential Facilities Act 1992
 - 1.1.6 Real Property Act 1886

2. Delegations made under Local Government Act 1999

- 2.1 In exercise of the power contained in Section 44 of the Local Government Act 1999 the powers and functions under the following Acts and specified in the proposed Instruments of Delegation contained in Appendices 1-6 (each of which is individually identified as indicated below) are hereby delegated this 10th day of November 2015 to the person occupying the office of Chief Executive Officer subject to the conditions and or limitations specified herein or in the Schedule of Conditions in each such proposed Instrument of Delegation.
 - 2.1.1 Local Government Act 1999 (Appendix 1)
 - 2.1.2 South Australian Public Health Act 2011 along with the South Australian Public Health (Legionella) Regulations 2013 and the South Australian Public Health (Wastewater) Regulations 2013 (Appendix 2)
 - 2.1.3 Real Property Act 1886 (Appendix 3)
 - 2.1.4 Road Traffic Act 1961 (SA), Road Traffic (Miscellaneous) Regulations 1999 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999 (Appendix 4)
- 2.2 Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Sections 44 and 101 of the Local Government Act 1999 as the Chief Executive Officer sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in each such proposed Instrument of Delegation.

3. Authorisations and Subdelegation under the Road Traffic Act 1961

- 3.1 In accordance with the Instrument of General Approval and Delegation to Council dated 22 August 2013 from the Minister for Transport and Infrastructure (the 'Instrument') the Council authorises the following person(s) pursuant to Clause A.7 of

the Instrument to endorse Traffic Impact Statements for the purposes of Clause A of the Instrument provided that such person(s) shall take into account the matters specified in Clause A.7 of the Instrument in respect of Traffic Impact Statements:

Clause A.1 – Unit Manager Engineering Services;

Clause B.1 – Unit Manager Civil Services;

Clause C.1 – Unit Manager Civil Services;

Clause D.1 – Unit Manager Engineering Services;

Clause E.1 – Unit Manager Civil Services;

- 3.2 In accordance with Clause A.7 of the Instrument, the Council is of the opinion that the following person(s) is/are experienced traffic engineering practitioner(s) for the purposes of preparing a Traffic Impact Statement as required by Clause A.7 of the Instrument:

Unit Manager Engineering Services

- 3.3 In exercise of the power contained in, and in accordance with, Clause G.1 of the Instrument, the power contained in Section 33(1) of the Road Traffic Act 1961 and delegated to the Council pursuant to Clause G of the Instrument and contained in the proposed Instrument of Subdelegation (Appendix 4) is hereby sub-delegated this 10th day of November 2015 to the person occupying the office of Chief Executive Officer of the Council subject to:

- (i) the conditions contained in the Instrument; and
- (ii) any conditions contained in this Resolution or in the Instrument of Subdelegation.; and
- (iii) the creation of a separate instrument in writing reflecting such subdelegation under the Instrument and this Resolution.

- 3.4 In accordance with Clause E.2 of the Instrument, the Council is of the opinion that the following person(s) has (have) an appropriate level of knowledge and expertise in the preparation of traffic management Plans:

Unit Manager Engineering Services

4. Delegations made under Development Act 1993

- 4.1 In exercise of the powers contained in Section 20 and 34(23) of the Development Act 1993, the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the proposed Instrument of Delegation (Appendix 5) are hereby delegated this 10th day of November 2015 to the person occupying the office of Chief Executive Officer subject to the conditions or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 4.2 Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.
- 4.3 In exercise of the powers contained in Section 20 and 34(23) of the Development Act 1993 the powers and functions under the Development Act 1993 and the Development Regulations 2008 contained in the proposed Instrument of Delegation (Appendix 5) and which are specified below are hereby delegated to the Council's Development Assessment Panel, subject to any conditions specified herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Development Act 1993.

Ref DA/DAP – 119 (Sections a – f)

5. Delegations under Supported Residential Facilities Act 1992

- 5.1 In exercise of the power contained in Section 9 of the Supported Residential Facilities Act 1992, the powers and functions under the Supported Residential Facilities Act 1992 contained in the proposed Instrument of Delegation (Appendix 6) are hereby delegated this 10th day of November 2015 to the person occupying the office of Chief Executive Officer subject to the conditions or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Supported Residential Facilities Act 1992.
- 5.2 Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the Supported Residential Facilities Act 1992.

Carried Unanimously

7.48 pm Appointment of Date, Time and Place of Council Meetings **Report Reference: GC101115R06**

Moved Councillor Hutchinson, Seconded Councillor Gard that Council:

1. Adopt the following meeting cycle to facilitate open, responsive and accountable government as well as the timely conduct of Council's business:
 - i. General Council Meeting to be held on Tuesday, 19 January 2016;

- ii. General Council meetings to be held on the 2nd and 4th Tuesday of the months in February, April, June, August October 2016:
 - iii. General Council meeting to be held the 4th Tuesday of the month in March, May, July, September and November 2016
 - iv. General Council meeting to be held on Tuesday, 13th December 2016.
 - v. General Council meetings will be held in the Chamber, at the City of Marion Administration Centre, 245 Sturt Road, Sturt commencing at 6.30pm.
2. Adopts the schedule of meeting dates for 2016 provided at Appendix A to the report.
 3. Publish the schedule of meetings for 2016 in the Guardian Messenger the week commencing Monday 30 November 2015.

Moved Councillor Crossland, Seconded Councillor Westwood that the motion be put.

Carried
The motion was immediately put and **Carried**

7.48pm Code of Practice, Procedures at Meetings 2015
Report Reference: GC101115R07

Moved Councillor Veliskou Seconded Councillor Westwood that the meeting procedures be suspended for a period sufficient to facilitate informal discussion in relation to the Code of Practice, Meeting Procedures at Meetings.

Carried

7:53pm Meeting procedures suspended.

Moved Councillor Veliskou, Seconded Councillor Pfeiffer that formal meeting procedures be resumed.

8:09pm Meeting procedures resumed.

Moved Councillor Veliskou, Seconded Councillor Byram that Council adopts the 'Code of Practice – Procedures at Council Meetings 2015' provided at Appendix 1 to this report, subject to the inclusion of identified changes;

- a. That each Elected Member has the right to speak for up to three minutes in the second meeting of Council during the months of February, April, June, August, October and the single December meeting.
- b. That the closing time of each Council meeting be 9:30pm.

Carried

8.12pm 2014 Elections Review - Submission

Report Reference: GC101115R08

Moved Councillor Veliskou, Seconded Councillor Gard that Council endorse the submission provided in Appendix 2 'City of Marion submission regarding 2014 Elections Review' and forward to the Local Government Association and Office of Local Government.

AMENDMENT

Moved Councillor Hull, Seconded Councillor Hutchinson that Council endorse the submission provided in Appendix 2 'City of Marion submission regarding 2014 Elections Review' and forward to the Local Government Association and Office of Local Government, subject to the following amendments:

- a) Under Voter Participation, paragraph two, be replaced with;
'The City of Marion supports compulsory voting in Local Government Elections.'

That the amendment became the motion **Carried**
The motion was put and was **Carried**

8.26pm Section 270 Review – Telecommunication Tower Kellett Reserve
Report Reference: GC101115R09

8:26pm Councillor Appleby, Councillor Kerry and Councillor Westwood declared a conflict of interest in the item 'Telecommunication Tower Kellett Reserve (GC101115R09)' due to their positions on the Development Assessment Panel and left the meeting.

8:27pm Councillor Hutchinson and Councillor Crossland declared a conflict of interest in the item 'Telecommunication Tower Kellett Reserve (GC101115R09)' due to their upcoming positions on the Development Assessment Panel and left the meeting.

Moved Councillor Hull, Seconded Councillor Gard that Council:

1. Notes the process regarding the Section 270 review for the Council decision regarding the telecommunications tower at Kellett Reserve.
2. Authorises the CEO to appoint an independent person to undertake the Section 270 Review for the location of the Telecommunication Tower on Kellett Reserve.

Carried Unanimously

8:40pm Councillor Appleby, Councillor Kerry, Councillor Hutchinson and Councillor Westwood returned to the meeting.

8:41pm Councillor Byram and Crossland declared a potential conflict of interest due to their involvement in the Reserve Street, Dog Park in the course of undertaking their duties as an Elected Member and left the meeting.

8:42pm Councillor Prior left the meeting.

8.42pm Section 270 Review – Reserve Street, Dog Park
Report Reference: GC101115R10

Moved Councillor Hull , Seconded Councillor Pfeiffer that Council:

1. Notes the process regarding the Section 270 review for the Council decision regarding the Reserve Street, Dog Park.
2. Authorises the CEO to appoint an independent person to undertake the Section 270 Review for the Reserve Street, Dog Park.

Carried Unanimously

8:43pm Councillor Prior returned to the meeting.

8:51pm Councillor Bryam and Crossland returned to the meeting.

12. CORPORATE REPORTS FOR INFORMATION/NOTING

Nil

MATTERS RAISED BY MEMBERS

13. Questions with Notice

Nil

14. Motions with Notice

8.51pm Legal Fees
Reference No: GC101115M01

Moved Councillor Appleby, Seconded Councillor Hull that administration provide a report on the engagement of lawyers and their fees and include:

- Which law firms/ lawyers are used for different issues? Eg. planning, employment etc.
- What is the hourly rate or retainer in each case?
- How were the lawyers chosen? To what extent are lawyers selected on the basis of who staff feel comfortable consulting?
- What is the breakdown of lawyers selected from the panel relative to those who are not?
- Is there a database in any sense of legal advice received?

- Are there budgets ever imposed for legal matters? Is there a threshold legal expenditure figure at which matters are referred to the elected body?
- Evaluation of the practicality and value of sharing legal opinions (or extracts) with other councils on common issues, including at least the G6.
- Evaluation of the value of employing one or more lawyers, not necessarily fulltime.

Carried Unanimously

8.52pm Oaklands Estate Reserve Toilet Block
Reference No: GC10115M02

Moved Councillor Hull, Seconded Councillor Prior that Council:

1. That the old brick toilet block in the grounds of the Oaklands Estate Reserve be condemned and closed immediately, that the Asset Sustainability Reserve be used to fund temporary toilets being made available for the visiting public until such time as a more suitable permanent toilet block is built on the site.

The motion was **Withdrawn**

15. Questions without Notice

Nil

16. Motions without Notice

17. CONFIDENTIAL ITEMS

9:14pm Councillor Prior declared a conflict of interest in the item 'Former Hallett Cove Library and Youth Services Building (GC101115F01)' due to a personal relationship and left the meeting.

9:14pm Councillor Veliskou left the meeting.

9.14pm Former Hallett Cove Library and Youth Services Building
Reference No: GC101115F01

Moved Councillor Crossland, Seconded Councillor Pfeiffer that Council:

1. That pursuant to Section 90(2) and (3)(b) and (d) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull Chief Executive Officer, Vincent Mifsud General Manager Corporate Services, Abby Dickson Acting General Manager City Development, Kate McKenzie Manager Corporate Governance, John Valentine Manager Strategic Projects, Craig Clarke Unit Manager Communications and Deborah Horton Acting Unit Manager Council Support, be excluded from the meeting as the Council receives and considers information relating to the disposal of the former Hallett Cove Library (and Youth Services) building, and the appointment of commercial agent, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given

the information relates to a matter that could confer a commercial advantage to a third party and is of a commercial nature.

Carried Unanimously

9.15pm the meeting went into confidence.
9.16pm Councillor Veliskou returned to the meeting.
9.16pm Councillor Pfeiffer left the meeting.
9.17pm Councillor Kerry left the meeting.
9.20pm Councillor Kerry returned to the meeting.
9.22pm Councillor Pfeiffer returned to the meeting.

Moved Councillor Hutchinson, Seconded Councillor Appleby that the item be adjourned to the next meeting of Council.

Carried

9:27pm the meeting came out of confidence.

9.28pm Code of Conduct
Reference No: GC101115F02

9:28pm Councillor Hutchinson left the meeting.
9:28pm Councillor Hutchinson and Councillor Prior returned to the meeting.

Moved Councillor Westwood, Seconded Councillor Veliskou that Council:

1. Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following [Adrian Skull, Chief Executive Officer; Vincent Mifsud General Manager Corporate Services; Abby Dickson Acting General Manager City Development; Kate McKenzie, Manager Governance; Craig Clark, Unit Manager Communications; and Deborah Horton, Acting Unit Manager Council Support], be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider information pertaining to Code of Conduct for Council Members issues.

Carried

9.30pm the meeting went into confidence.

9:31pm Councillor Kerry sought and was granted leave of the meeting to make a personal explanation in relation to this item.

9:32 pm Councillor Kerry declared a conflict in the matter and left the meeting.

Moved Councillor Westwood, Seconded Councillor Gard that Councillor Kerry be requested to offer an apology in writing for any offence caused to Ms Newman and Mr Smith (with a copy of such letters to be sent to the Mayor).

The motion was **Tied**
The Mayor with casting vote, voted in the **Negative**
The motion was **lost**

EXTENSION OF TIME

Moved Councillor Pfeiffer, Seconded Councillor Prior that the meeting be extended to enable the current report and remaining confidential items on the Council agenda to be considered.

Carried Unanimously

Moved Councillor Hull, Seconded Councillor Crossland that:

1. Councillor Kerry be censured by the Mayor in writing for the specific allegation number six (an improper comment made to another member of the Development Assessment Panel).
2. Councillor Kerry be required to offer an apology in writing for any offence caused to Ms Newman and Mr Smith (with a copy of such letters to be sent to the Mayor).

Carried

10:15pm the meeting came out of confidence.

10:16pm Councillor Kerry returned to the meeting.

10.16pm Code of Conduct

Reference No: GC101115F03

Moved Councillor Pfeiffer, Seconded Councillor Hutchinson that Council:

1. Pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following [Adrian Skull, Chief Executive Officer; Vincent Mifsud General Manager Corporate Services; Abby Dickson Acting General Manager City Development; Kate McKenzie, Manager Corporate Governance; Craig Clark, Unit Manager Communications; and Deborah Horton, Acting Unit Manager Council Support], be excluded from the meeting as the Council considers that the requirement for the meeting to be conducted in a place open to the public has been outweighed in circumstances where the Council will receive and consider information pertaining to Code of Conduct for Council Members issues.

Carried Unanimously

10.17pm the meeting went into confidence.

10:17pm Councillor Byram and Councillor Crossland declared a conflict of interest and left the meeting.

Moved Councillor Gard , Seconded Councillor Westwood that Council:

1. Informs Ms Dyer and Mr Cutting that Council deeply regrets in particular the misunderstanding which arose from Councillor Byram's text message in July regarding the design of the reserve street dog park.
2. Recognises the disappointment of the complainants as to Council's decision on the location of the dog park.
3. Resolves to take no further action with regard to the code of conduct complaints against Councillor Byram and Councillor Crossland.

4. Notes that a section 270 review of Council's decision regarding the reserve street dog park will be undertaken and trusts that this will address the broader concerns of the complainants.

Carried

10:34 pm the meeting came out of confidence.

19. LATE ITEMS

NIL

20. MEETING CLOSURE

CLOSURE - Meeting Declared Closed at 10.35pm

CONFIRMED THIS 10 NOVEMBER 2015

.....
CHAIRPERSON

**MINUTES OF THE SPECIAL GENERAL COUNCIL MEETING
HELD AT THE CITY OF MITCHAM CIVIC CENTRE
131 BELAIR ROAD, TORRENS PARK
ON MONDAY 9 NOVEMBER 2015**



PRESENT

His Worship the Mayor Kris Hanna

Councillors

Coastal Ward

Ian Crossland
Tim Gard

Mullawirra Ward

Jerome Appleby
Jason Veliskou

Southern Hills

Janet Byram
Nick Westwood

Warracowie Ward

Bruce Hull
Nathan Prior

Warriparinga Ward

Woodlands Ward

Nick Kerry
Tim Pfeiffer

In Attendance

Mr Adrian Skull
Ms Kate McKenzie

CEO
Manager Governance

OPEN MEETING

The meeting commenced at 6:25 pm.

KAURNA ACKNOWLEDGEMENT

We begin by acknowledging the Kurna people, the traditional custodians of this land and pay our respects to their elders past and present.

ELECTED MEMBER'S DECLARATION OF INTEREST

The Chair asked if any Member wished to disclose an interest in relation to any item being considered at the meeting. No interests were disclosed.

CORPORATE REPORTS FOR DECISION

Darlington Upgrade Project

Report Reference: GC091115R01

The Mayor sought leave and the meeting agreed to include public comments from Transport Minister Stephen Mullighan about the Darlington project in response to the Councils' call for greater connectivity, as Appendix 1 to the minutes of the special meeting of Council.

Moved Councillor Veliskou, Seconded Councillor Hull that Council resolves that:

1. The City of Marion supports the upgrade of South Road at Darlington
2. The Mayor, in conjunction with the Mayor of Mitcham, is to communicate to the State and Federal Government that our Councils are willing to work with other levels of Government to achieve the following objectives for the upgrade of South Road at Darlington:
 - a. Improve the provision for local traffic movements and improve the local amenity, to address concerns raised by residents;
 - b. Enhance transit between Flinders University and Flinders Medical Centre, on the one hand, and Tonsley and the City of Marion on the other hand, to drive jobs growth in the Southern region;
 - c. Promote non-car transportation, including increased public transport and cycling, sufficient to address existing car parking problems in the surrounding precinct and to improve access from one side of South Road to the other;
 - d. Minimise the loss of trees in construction of the Upgrade;
 - e. Maximise the opportunities and employment for local businesses and residents.

Carried Unanimously

CLOSURE - Meeting Declared Closed at 6:35 pm

CONFIRMED THIS 24 NOVEMBER 2015

.....
CHAIRPERSON / /2015

Appendix 1 Transport Minister comments over Darlington

Transport Minister Stephen Mullighan has spoken on several occasions over the past few days about the Darlington project in response to the Councils' call for greater connectivity between the communities.

The Minister's comments were made in:

1. A radio interview on 5AA on Thursday, November 5.
2. An interview in The Advertiser on Saturday, November 7.

1 Exerts from the 5AA radio interview (Nov 5)

Minister Mullighan

"So certainly in the initial design, what we call the 'reference design', a new additional road connection is being provided ... some of your listeners might be familiar with the big intersection that is part of South Road which is South Road and Sturt Road, but there's also a road which comes down from the Flinders Medical Centre which is called Flinders Drive and that connects up to South Road, but traffic can't travel across South Road from Flinders Drive so we're adding in a new road connection so that you'll be able to travel across from Kris' constituency in Marion to head up towards Flinders University and there'll be better connections for traffic coming off South Road down the hill and also from the Southern Expressway to get to the medical centre."

Back to Mayor Hanna

(Byner: So Kris Hanna are you happy with that?) "Well I'm very glad to hear it, but I think we can go even further with the connection point."

Back to Minister Mullighan

"Well that's right and it doesn't stop there Leon. I should also make it clear that there's an additional connection point which we're putting into the scheme which is directly designed to connect the Tonsley campus itself up to the Flinders University campus ... part of the difficulty is the two campuses aren't just separated by road, there's also a very large industrial facility there, the Monroe's shock absorber site, so we've got to make sure that we've got a good connection for all traffic, whether it's cars or cyclists or pedestrians to get up there and then of course we also want to make sure that in the future, if an when we've got the money for it, we can extend that newly electrified Tonsley train line from the Tonsley campus, which is the last stop on that line, to have one more stop up at the Flinders Medical Centre ... that extension of the train line itself isn't part of the project that we're going to be delivering but we are leaving sufficient room and engineering the project so that that can be added in at a later date with much less cost than if we were approaching it afresh. So instead of just one new connection two new road connections and providing for a future light rail connection, sorry I should say electrified train connection ... then of course the other part of it is both the councils and Flinders are very attracted to the idea of being able to develop more commercial space and also some more residential stock very close to the road..."

2 Quote from The Advertiser (Nov 7)

"Regardless of which design is favoured by the tenderers, the Darlington Project will include additional road connections between both Council areas as well as Flinders University and the Tonsley precinct."

Elected Member Communication Reports

Date of Council Meeting:

24 November 2015

Name of Elected Member:

Mayor Kris Hanna

Date	Event	Comment
23 October 15	ERBA – Hallett Cove Business Breakfast	Attended
25 October 15	Hallett Cove Baptist Church Community Breakfast	Attended
25 October 15	The Cove Family Fair Day	Attended and Opened the Event
25 October 15	Marion Football Club AGM	Attended
25 October 15	Meeting with Darryl Gray, Club Marion	Attended
26 October 15	Meeting with Employers Mutual SA	Attended
26 October 15	Victim Support Service AGM	Attended
26 October 15	Oaklands Estate Residents' Association AGM	Attended
26 October 15	Hallett Cove School Year 12 Graduation Evening	Attended
27 October 15	Meeting with Andrew Southcott re CCTV Cameras	Attended
3 November 15	Meeting with Richard McLachlan, Renewal SA and CEO, Adrian Skull	Attended
4 November 15	Ceremonial Council Meeting in recognition of the Inaugural Meeting of Adelaide City Council	Attended
4 November 15	Seaview High School Annual Art Exhibition	Attended
5 November 15	Discussions re Basketball / Indoor Stadium with Basketball SA	Attended
5 November 15	Sister City relationship with Kokubunji in Japan Meeting	Attended
6 November 15	Hope Church Meeting	Attended
6 November 15	Minister for Roads, Paul Fletcher, and Minister for Transport, Stephen Mulligan re Darlington Project	Attended
6 November 15	Farewell for Kathy Jarrett	Attended
8 November 15	Hallett Cove School Fair	Attended
8 November 15	Hindu Society of SA – Celebration of Dewali Funtation	Attended
9 November 15	Meeting with Ms Nat Cook MP	Attended
11 November 15	2015 EPA Board Forum	Attended
11 November 15	The Cove Football Club AGM	Attended
14 November 15	Warradale Meals on Wheels 25 th Anniversary and Awards Presentation Dinner	Attended

Elected Member Communication Reports

continued...

15 November 15	Park Holme / Plympton Park Arts Group	Attended and officially opened exhibition
17 November 15	National Seniors Aust - Brighton Branch meeting	Attended
17 November 15	Meeting with Mayor s Rosenberg, Spear and Patterson	Attended
18 November 15	Glandore Laneways Community 'drop in' session	Attended
18 November 15	2015 Seaview High School Year 12 Graduation and Presentation of Awards Ceremony	Attended
In addition the Mayor has met with residents and also with the CEO and Council staff regarding various issues.		

Elected Member Communication Reports

Date of Council Meeting:

24 November 2015

Name of Elected Member:

Deputy Mayor Luke Hutchinson

Date	Event	Comment
29 September 15	Meeting with Hope Church Committee	Attended
1 November 15	Marion Life Church 30 th Anniversary	Attended
3 November 15	SAJC Melbourne Cup Function	Attended
3 November 15	Warriparinga Ward Tour	Attended
5 November 15	Streetscaping Working Part Meeting	Attended
10 November 15	People & Culture Committee Meeting	Attended
11 November 15	Australian of the Year Awards	Attended
22 November 15	Marion Inclusive Place Space Opening	Attended
23 November 15	Mayors Multicultural Forum	Attended

CEO and Executive Report

Date of Council Meeting:

24 November 2015

Date	Activity	Attended by	Comments
23 September	Meeting with Auditor General Officers	Adrian Skull	
24 September	Meeting with LGA Leadership Team	Adrian Skull	
25 September	Meeting with Richard McLachlan, Renewal SA (Project Director Tonsley)	Adrian Skull	
06 October	Introduction to Laurie Kozlovic , General Manager Veolia and Joe Borrelli, Chief Executive IWS Group	Adrian Skull	
10 October	Attended opening of Oaklands Skate Park	Adrian Skull	
12 October	Met with DPTI and City of Mitcham regarding the Darlington DPA	Adrian Skull	
12 October	Meeting with Rick Cairney, Business SA	Adrian Skull	
14 October	Meeting between City of Marion and City of Mitcham – Tonsley Precinct and Darlington Update	Adrian Skull	
15 October	Meeting with Graham Brown, CEO Junction Australia	Adrian Skull	
17 October	Citizenship Ceremony	Adrian Skull	
26 October	Council Solutions Meeting	Vincent Mifsud	
Adrian Skull, CEO on leave from 20 – 28 October 2015			
27 October	Attended joint Council meeting discussion with the City of Mitcham	Kathy Jarrett	
27 October	Attended meeting with Mayor Hanna and Andrew Southcott MP	Abby Dickson	
29 October	Participated in a Darlington	Adrian Skull	

CEO and Executive Report

	Workshop		
02 November	Southern Region Waste Resource Authority (SRWRA) Board Meeting	Vincent Mifsud	
02 November	Attended meeting with Cove Sports	Abby Dickson	
03 November	Meeting with Richard McLachlan, Renewal SA and Mayor Hanna	Adrian Skull	
03 November	Meeting with AWU	Kathy Jarrett	
03 November	Attended meeting with ASU re service reviews	Abby Dickson	
04 November	Attended Local Government CEO Dinner	Adrian Skull	
05 November	Attended Renewal SA presentation - Renewing our Streets & Suburbs (ROSAS)	Adrian Skull	
05 November	Attended meeting with Basketball SA regarding Basketball / Indoor Stadium	Adrian Skull	
05 November	Opened the Community Centres SA Conference	Abby Dickson	
05 November	Attended the Official Opening of the Drew Court Community Room – Social Housing	Abby Dickson	
06 November	Attended DPTI meeting regarding the Darlington Upgrade - Project Update	Adrian Skull	
06 November	Attended Darlington discussions with Ministers Fletcher and Mullighan / Cities of Mitcham and Marion and Flinders University	Adrian Skull	
11 November	Attended Metropolitan Local Government Group (MLGG) meeting	Adrian Skull	
13 November	Lorenzin Site - Meeting with Proponents about progressing the Development Plan Amendment	Adrian Skull	

CEO and Executive Report

	(DPA)		
13 November	Attended the Hallett Cove BioBlitz event	Adrian Skull	
16 November	Meeting with KPMG Internal Audit	Adrian Skull Vincent Mifsud	
16 November	Attended Council Solutions Board Planning Day	Adrian Skull Vincent Mifsud	
Abby Dickson, Acting General Manager City Development on leave 16 – 20 November			
19 November	Attended Trott Park Neighbourhood Centre International Men's Day Lunch	Adrian Skull	

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Victoria Moritz, Governance Officer
Manager: Kate McKenzie, Manager Governance
General Manager: Vincent Mifsud, Corporate Services
Subject: Deputation: Mr Des Huston – Marion Leisure & Fitness
Centre Review of Decision
Ref No: GC241115D01

SPEAKERS:

Mr Des Huston

ORGANISATION/GROUP REPRESENTED BY SPEAKERS:

Users of Spa / Sauna Facility at Marion Leisure & Fitness Centre

COMMENTS:

Mr Huston has requested to give a deputation to Council in relation to the Marion Leisure & Fitness Centre, Review of Decision.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

CONFIDENTIAL REPORT

Adjourned Item

Originating Officer: John Valentine, Manager Strategic Projects
Manager: John Valentine, Manager Strategic Projects
General Manager: Vincent Mifsud
Subject: Former Hallett Cove Library and Youth Services Building
Reference No: GC241115F01
File No: 13.60.1.1

If the Council so determines, this matter may be considered in confidence under Section 90(3)(b) and (d) of the *Local Government Act 1999* on the grounds that the report contains information relating to a matter that could confer a commercial advantage to a third party and is of a commercial nature.



**Adrian Skull
Chief Executive Officer**

RECOMMENDATION:

1. That pursuant to Section 90(2) and (3)(b) and (d) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Vincent Mifsud, Abby Dickson, Kate McKenzie, Victoria Moritz, John Valentine and Craig Clarke be excluded from the meeting as the Council receives and considers information relating to the disposal of the former Hallett Cove Library (and Youth Services) building, and the appointment of commercial agent, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to a matter that could confer a commercial advantage to a third party and is of a commercial nature.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Kate McKenzie, Corporate Governance
General Manager: Abby Dickson, City Development (Acting)
Subject: Section 270 Review, Closure of Wet Areas at Marion Leisure and Fitness
Report Reference: GC241115R01

REPORT OBJECTIVES:

To seek Councils direction regarding the review of the decision to close the wet areas of Marion Leisure and Fitness Centre.

EXECUTIVE SUMMARY:

Section 270(1a)(b) of the *Local Government Act 1999* requires that Council must develop and maintain policies, practices and procedures for dealing with complaints about the actions of the council, employees of the council, or other persons acting on behalf of the council. To comply with this section Council has adopted the Complaints and Grievance Policy which is available on the City of Marion website (www.marion.sa.gov.au).

A complaint has been received regarding the decision to close the wet areas of Marion Leisure and Fitness. This matter has been reviewed via the provisions of section 270 of the Local Government Act 1999.

This report provides an overview of the complaint to date, a copy of the final section 270 review and options for Council to consider regarding how to progress.

RECOMMENDATIONS (1)

DUE DATES

That Council adopts:

- **Option 1 – Confirm that the wet area is to remain closed.**
- **Option 2 – That Council accept the risk and operate the wet area without a lifeguard present.**
- **Option 3 – Seek a further report outlining the options to re-open the wet area with a life guard including financial analysis and budget implications.**
- **Option 4 – Seek a further report outlining the option to re-open the wet area with a life guard and seek additional contributions from those who use the wet area to cover the costs.**

**November
2015**

BACKGROUND:

In May 2015, the YMCA wrote to Council indicating that the spa, plunge pool and sauna did not comply with the Royal Life Saving Society Guidelines that require a qualified lifeguard to be in the wet area at all times and the YMCA sought Council's advice on how to progress.

After consultation with council's insurer (LGA Mutual Liability Scheme), it was confirmed that the area was a unique set up for a council facility and the Royal Life Saving Society guidelines was best practice risk management. The Scheme concurred that a life guard was warranted. The LGA Mutual Liability Scheme provided options for consideration to keep the wet areas open.

The options to operate the wet areas were then based on the requirement to have life guard present. The YMCA provided Council with options for full or limited use of lifeguards at a cost ranging from \$34k to \$88k per annum. It was determined to close the wet areas of Marion Leisure and Fitness.

Photo 1 – Spa



Photo 2 – Plunge pool



Correspondence was received by the Mayor on the 29th May 2015 (**Attachment 1**) and also the 30 June 2015 (**Attachment 1a**) regarding the decision to close the wet areas at Marion Leisure and Fitness centre. The complainant expressed concern over the decision and that the information Council has received from the YMCA and Council's Insurer (LGA Mutual Liability Scheme) was flawed as the application of the Royal Life Saving Guideline had been applied incorrectly.

The complainant was notified via correspondence dated 14 July 2015, that this matter would be reviewed under the provisions of section 270 of the Local Government Act 1999.

In accordance with the procedure, an internal review panel was established to review the decision to close the wet areas of Marion Leisure and Fitness. The review took approximately one month and a preliminary report was produced by the Panel and provided to the complainant to ensure procedural fairness. Comments were received by the complainant and taken into consideration before finalising the report. A final report was produced and sent to the complainant on 22 October 2015 (**Attachment 2**).

The complainant is not satisfied with the outcomes of the review and has requested, through the Mayor, that the matter be brought to Council for further consideration. The matters raised by the complainant include:

- The Royal Life Saving Guidelines have no legitimacy at present and they guidelines must be ignored in respect of the spa/sauna facility
- The guidelines are used to self-regulate the aquatic centre industry and the wet area of Marion Leisure and Fitness is not an aquatic centre.

- The advice from Minter Ellison Lawyers compromises the independence of the review panel.
- The description of the location in the report is incorrect.
- The risk assessment is flawed.

The complainant has requested (and been granted) a deputation for the 24th November Council Meeting.

The matter has also been referred to the Ombudsman, who has informally notified Council and is undertaken some preliminary enquiries.

ANALYSIS:

It is acknowledged that the floor plan provided in Appendix 2 of Attachment 2 is an old floor plan of the centre. The wet areas are located behind the reception area and access is through a door behind the reception area. It is noted that staff would still require some time to access the wet area in the case of an emergency and an immediate response would not be achievable.

The report in Attachment 2 outlines the position of the review panel which is based on the advice from the YMCA, LGA Mutual Liability Scheme and Minter Ellison. The report confirms that the decision to close the wet areas of Marion Leisure and Fitness was reasonable based on:

- The decision followed a process based on risk and compliance.
- The determination that the Royal Life Saving Society of SA Guidelines were applied appropriately in the lack of legislation or regulations.
- The advice that the Guidelines would likely be accepted by a court.
- Other options were canvassed but not deemed suitable.

It is important for Council to note the following indemnity provision is included within the agreement between the YMCA and the Council. This indemnity states that the Council will be indemnified for any liability caused or contributed to by the YMCA.

“The YMCA SA (with respect to the management and operation of the MLFS hereby indemnified and keeps the Council indemnified against all claims, demands, expenses, loss or damage to any property, or death of or personal injury to a person, caused or contributed to (but only to the extent contributed to) by the YMCA SA, a breach by the YMCA SA of any of the terms of the LOI, a wilful, unlawful or negligent act or omission of the YMCA SA and any claim, action or proceeding by a third party against the Council caused or contributed to by the YMCA SA”.

If Council determines to re-open the wet areas without of life guard present, it should be noted that it is unlikely the above indemnity will apply. Council will also be required to notify to the LGA Mutual Liability Scheme as they have indicated to operate the spa with no public safety supervision is not an acceptable option.

If a drowning or serious injury was to occur and liability was established against the Council, a compensation claim could be large.

The options for Council to consider are outlined below:

Option 1 – Confirm that the wet area is to remain closed.

Option 2 – The Council accept the risk and operate the wet area without a lifeguard present.

Option 3 – Open the wet area with a life guard and provide the appropriate budget to do so.

Option 4 – Open the wet area with a life guard and seek additional contributions from those who use the wet area to cover the costs.

If Council resolves either option 3 or 4, a further report with operational requirements and budget implications would need to be considered by Council.

CONCLUSION:

This matter has been thoroughly investigated and a decision of Council regarding how to progress will conclude the matter.



Kris Hanna

Mayor of Marion

CC Kathy Jarrett

Reference: Marion Leisure & Fitness Centre: Change of Management.

Since the YMCA took over the role of Caretaker managers, there have been constant problems with spa being closed too often by "James Lomax" with latest closure having lasted now three weeks and there is no information on when it will re-open.

If the so called YMCA experts had left the control system alone, it probably would be still working, as before they arrived we had no problems, with the water tested daily and the council checking it regularly, the spa was working perfectly.

When the spa had not been working previously, CASA simply put a sign across the safety rails at the entrance, and members were able to continue to use the sauna, but James closes off both facilities.

Not long after YMCA took over and without any consultation, James changed the spa opening hours (including the sauna) from the normal 6.00am each day to 8.00am weekdays and on weekends restricted to 8.00am to 11.30am. This has angered many members particularly those who attend early morning classes at 6.00am and then had a spa/sauna before proceeding to work.

On weekends I have been usually having a spa on Sat/Sun afternoons which has now been stopped. Many others have also been inconvenienced.

We have been used to the professionalism of CASA with their transparency and connection with members. James and his cohorts are amateurs by contrast. In the gym there used to be a vibrant atmosphere, now it's morbid with much less numbers at any time. I understand over 100 members have left and if this saga with the spa (and sauna) is not resolved quickly, there may be many more.

It's unfortunate that James is not prepared to be honest with members, the attached memo he issued is garbage and just rhetoric with no substance. I sent him a response (copy attached), suggesting the action he should take.

////2

SCANNED

....2....

I am aware a number of members have verbally complained to the Council, we are all hoping this issue will not escalate into the same as fixing the spa leak that the council took 3 ½ months to complete last year.

It is suggested that the Council now become involved in this issue to resolve quickly.

Members would like to know that, as YMCA has a contract for a caretaker period, what is the extent of their involvement and role during this period because their behaviour and changes being made, suggest a long term period.

I have a number of other concerns, but these will be the subject of a separate submission.

Regards,



Des Huston

28 May 2015

SCANNED

James,

Re Memo Spa Operations dated 22 May 2015.

Instead of the garbage you put in the memo, why not be transparent and tell the truth which is what the members want to know.

You have dispute with the council over who is responsible to pay for repairs to the spa control system which is delaying completion of repair work.

If you have the same lease agreement as CASA, responsibility rests with the lessee to pay for all repairs. The precedent is that CASA previously paid for all repairs and upgrades to the system.

Replacement of a burnt out pump motor was normally completed within 3 working days.

While the spa was out of operation, a notice was attached to the safety rails on the pool and the sauna room was continued to be used by members.

There appears to be no logical reason why the sauna cannot be continued to be used while the spa is being fixed.

In place of those hollow statements, and if you want to match the excellent customer service provided by CASA, you will arrange for the repairs to be carried out urgently and then argue the merits of payment responsibility afterwards.

The spa has not been available now for nearly 3 weeks, you initially estimated it would be closed for one week. Why are repairs taking so long, it suggests incompetence on your part?

I am aware complaints have been lodged with the council and I will be sending an email shortly to convey my displeasure.

The system was operating perfectly before you arrived; it was checked daily by staff and regularly by the council, with member's satisfaction for tempt and water condition. It all changed when you interfered with it. If you had left it alone to operate in the same manner, it may be working today and those repairs unnecessary.

I am still checking standards and guidelines for spas and the mandatory requirements by law, plus the legal implications

SCANNED



22nd May 2015

Re: Spa Operations

Dear Member,

As you are aware, the spa and sauna facilities are currently unavailable. The closure is due to maintenance requirements and the need to review safety operational requirements. We appreciate the inconvenience caused to customers. This matter is being reviewed as a matter of priority and we will be able to provide customers with an update as soon as these matters are resolved.

The safety of our customers is of the highest priority and we appreciate your understanding as we work through this matter through. We will contact you once the matter is fully resolved.

These changes do not affect any other services currently offered at the Centre.

Yours Sincerely

J Lomax

James Lomax
Centre /Area Manager

YMCA South Australia
Marion Leisure & Fitness Centre
Corner Oaklands Road
& Rosedale Avenue
Morphettville, SA 5043
08 8294 6488
james.lomax@ymca.org.au

RECEIVED

The Mayor,
City of Marion
242 Sturt Road,
STURT SA 5047

RECEIVED CITY OF MARION INFORMATION MANAGEMENT	
30 JUN 2015	
File No: 16-67-2-1	Original Fwd: <input type="checkbox"/>
2 5 6 7 8 10 P	



Attention: Kathy Jarrett

Reference : Marion Leisure & Fitness Centre.

With reference to your letter dated 17 June 2015, I have concerns in respect of the content of your letter, the following comments and observations are provided:

- 1 In the first weeks of YMCA taking over there was chaos with no checks if persons using the gymnasium were members, no clear direction on how the transition was being implemented, and confusion at why there was a need to sign new agreement forms with YMCA. The initial reason given was the banks would not accept their direct debit requests. I argued that those members that paid direct, the previous forms could simply be assigned. The reason being the YMCA conditions were very legalistic and staff were not able to provide or advise on the schedules included in the conditions, so how were members expected to sign a document that was not fully understood. When staff insisted the new forms must be signed, it was decided that as YMCA were only caretakers for a short period of approximately 6 months, we signed their form.

I doubt that the closing of the spa/sauna area could be included as "some changes" expected when a caretaker is installed. Similarly the comments in the "City Limits" issue 48 that the changes were an opportunity to improve the centre have not materialised.

- 2 I would suggest that the review of the facilities was flawed in that the YMCA and your Insurers are not experts in the application of the Royal Life Saving guidelines outside of an aquatic facility for which they were intended. Both SU1 & SU11 under item 3 "PURPOSE" stipulate that they provide guidance for users within an aquatic centre and isolated areas within those facilities. The unilateral application of the guidelines to other areas is not defined and therefore are not relevant to the Marion Centre given that it is a different type of facility and the spa/sauna area is within a small confined space that can only be accessed by mature adult members through the issue of individual keys on the surrender of their membership card

The insurers are self interest in that they will agree to any measures that will reduce their risk liability. The LGAMLC as part of the assessment should have been made aware that over the past 20 years there has never been an incident, injury or claim resulting in a nil risk level

SCANNED

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I wonder if any consideration was given to the determination of an acceptable risk level for the area given the past record and any projected future risk level.

I would suggest that the Royal Life Saving Society Australia be contacted to obtain their opinion of the relevance, if any, of their guidelines to the Marion Centre facility. Their SA branch phone number is 08 82104500.

- 3 Prior to the YMCA taking over, the spa was working perfectly, with the automatic chlorine dosing machine maintaining the required level. The water quality was checked once a day with the Council checking it regularly. There were no problems until James Lomax and his so called experts arrived and interfered with the control equipment, adding extra acid and continually recalibrating the dosing machine. In all probability it also resulted in a burnt out pump motor. At the same time he tried to introduce some guidelines for the "Operation of Swimming Pools and Spa Pools in SA" put out by the Department of Human Services in which he claimed the water must be tested before use and every 4 hours, and as a result introduced restricted spa/sauna hours that angered many members.

In the weeks before closure, he continued to indicate that the spa /sauna would be reopened as soon as possible which simply means he lied to the members. In addition he refused to keep the sauna open.

- 4 Not being privy to Lomax's submission, I can only assumed you were ill advised on using a "lifeguard" to supervise the area given that he must be positioned not only to have line of sight for the surface of the pool but also the floor of the pool. In addition, the guidelines call for areas such as change rooms and toilets to be checked and inspected at minimum of 30 to 60 minutes at random intervals.

In practical terms, with the lifeguard seated almost adjacent and overlooking the spa, can you visualize and appreciate the concerns of anyone in the spa as to how stupid it would appear.

It is beyond belief that normal responsible persons could make use of such pedantry for a small spa/sauna area. Given its design, layout and controlled entry, the safety of users must be carefully considered having regard to the type of persons who regularly use the facility.

A survey of members who regularly use the facility has revealed not one person would use the spa if you deployed a "lifeguard" to watch over them. Most were extremely angry given that some have been using the facility for over 20 years, and the majority are in the over 50 year old age group.

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SCANNED

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Comments received on the need for a lifeguard can be summarised as totally wrong, totally stupid, totally ridiculous and totally unwarranted with some individual criticism as follows:

Too embarrassing to be constantly watched
Discrimination against older persons
Too intimidating with lifeguard so close
Do not like being treated like a child
Utterly ridiculous, felt safe before
Why now, never any problems in the past
Kick out YMCA & bring back CASA
I don't want any pervert looking at my body.

The area manager seems not to understand. Older members who not only used the facility for the therapeutic benefits, but also to relieve suffering from back aches, arthritis and other pains, now continue to suffer due to the closure of the spa.

Example of members who used the facility,

two members who every day for many years arrived at 6.00am, had an hour sauna, a shower and then went home.

An elderly woman for many years caught 2 buses from Norwood, did a class and used the sauna/spa.

Many members have been using the facility for over 10 years.

5 I believe that there needs to be an investigation into why the Council did not negotiate an extension to CASA's contract This is based on the following

Was a cost benefit analysis undertaken to determine the most cost effective option to cover the caretaker period?

Was the previous Centre Managers performance taken into account and ability to cover a further short extension?

Was the cost to taxpayers a determining factor?

My experience in this area indicates that unless you have non performance issues, it would be the most cost effective option and less disruptive to the operation of the centre, to have extend the existing contract.

Most believe the Council acted irresponsibly in not extending CASA's contract which would have avoided the turmoil, closure of the spa/sauna, and dissatisfaction that continues to exist. Since YMCA took over 250 members have left, possibly another 30-40 members will go after the decision to close the spa/sauna and I am aware of the possibility a further 100 members may be leaving.

SCANNED

...4...

- 6 I am not just disappointed, I am angry that the Council closed a wonderful refurbished facility that benefits many older users. When I joined over 10 years ago, the spa/sauna area was dilapidated, old, unhygienic and in need of attention. Over the next 7 years, it deteriorated so much, I could not understand why OH&S committee had not condemned it or it was not subject to your annual building maintenance inspections. It became so bad, management were embarrassed to show prospective members through it. I had phoned the Council many times to complain about its condition. Then about 3 years ago CASA upgraded both wet areas over an 18 months period and at last we had a great facility including the spa being retiled and the timber walls in the sauna being replaced. We had an excellent facility, but it was closed last August for the Council to fix a leaking pipe to the spa that, due to the Council's incompetence in holding up completion, it was 3 1/2 months before it was reopened. So you may understand member's frustration in it now being closed for what members consider no legitimate reason.

For my part, the entire gymnasium spa's I have used over 55 years did not have supervision nor did it warrant it. And I don't believe it is necessary at the Marion centre; if you use common sense in determining the OH&S requirements, the level of safety can be easily determined. YMCA interest in having the facility closed is purely a cost saving measure without any regard for the member's needs or the benefits to the Centre.

- 7 When you say past practices are not relevant, you are in fact saying those that were in place in February this year, acceptable to the Council, Centre manager and their insurers, are now not acceptable a month later. This I find difficult to accept when you realise nothing has changed.

While I accept that your Council cannot ignore safety advice, it is the quality of the advice that must be analysed to determine relevance and appropriate to its application.

It may be appropriate to ask the spa users their opinion on the safety requirements instead of imposing on them inappropriate measures that in practice does nothing to improve safety measures.

The only additional measure that has been discussed was putting an alarm button such as those installed in hospital toilets/showers, to alert reception staff that help was required. It was rejected as not necessary by users, but may now be worthy of consideration.

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SCANNED

8 Rumours going around the Centre are:

YMCA have been given a lease free period which would complicate 5 above.

Membership fees will rise to \$600 as from 1 July 2015

9 In a recent discussion with James Lomax, he indicated that if instructed by the Council the spa/sauna facility would be reopened which he suggested could be done in a short period of time.

10 In summary, I request on behalf of the facility users and with the support of other gymnasium members that Council takes immediate action to reopen the spa/sauna facility as soon as possible to help the older members and prevent further loss of members.

We believe an acceptable solution can be found to the safety issue if the needs of users are addressed.

I look forward to meeting with you on Wednesday,

Yours Faithfully,



Des Huston

29/06/2015

SCANNED

22 October 2015



Mr Des Hutson

PO Box 21, Oaklands Park
South Australia 5046

245 Sturt Road, Sturt
South Australia 5047

T (08) 8375 6600

F (08) 8375 6699

E council@marion.sa.gov.au

Dear Mr Hutson,

Thank you for your further correspondence of 29 September 2015 in relation to the preliminary report forwarded to you on 16 September 2015. Your comments have been noted and some amendments have been made to the final report attached to this correspondence.

In regards to the specific matters you have raised, the following response is provided:

1. Application of the RLSSA guidelines

As the relevance of these guidelines differs between yourself and Council, a legal opinion has been sought from Minter Ellison Lawyers on this matter. In summary, the advice obtained by Minter Ellison states *"although the Guidelines have no statutory or regulatory 'standing' such that the Council (or the current Centre manager) is bound or otherwise compelled to comply with them, it's our view that the Guidelines would likely be accepted by the Courts as applicable to the Centre. We have not been able to identify any other legislative or regulatory standard, code or guideline that would or could otherwise be applied to the management of the Centre"*. A copy of legal advice is attached to the report.

2. Definitions

The legal advice also addresses the issues of definitions raised within your correspondence.

3. Risk Advice

The risk assessment provided by the YMCA has been reviewed by the Panel and comments are provided within the report. The contributing factors to consider with the risk assessment are the age of members and other medical conditions of the users of the wet area. If a member was to faint, slip or commence cardiac arrest within the spa, the risk of drowning would be high.

4. Alternative options

The City of Marion is a public authority and hence must apply the appropriate duty of care prescribed pursuant to the *Civil Liabilities Act 1936*. Section 31 of this Act states *"For determining whether a person (the defendant) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose."*

With the advice received from the YMCA, Local Government Association Mutual Liability Scheme and Minter Ellison, the City of Marion cannot accept the risk to re-open the wet areas of the Marion Leisure and Fitness Centre without the presence of a trained supervisor.

The City of Marion acknowledges it is part of Kaurna land and recognises the Kaurna people as the traditional and continuing custodians of the land.

Appeal Process

The City of Marion takes all complaints seriously as they provide the Council with an opportunity to review how we administer services and interact with our residents. If you are not satisfied with this review, you are entitled to raise your concerns with the Ombudsman's Office should you wish to pursue the matter further.

The Ombudsman's contact details are:

SA Ombudsman
PO Box 3651
Rundle Mall SA 5000

Phone: 82268699

Email: ombudsman@ombudsman.sa.gov.au

As this now concludes this review, I thank you for raising your concerns with the City of Marion.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'McKenzie', is written over the typed name.

Kate McKenzie
Manager Governance



City of Marion Section 270 Review of Decision Marion Leisure and Fitness Centre Closure of Wet Areas

Date of Report: 20 October 2015

1. BACKGROUND

Marion Leisure and Fitness is a Council owned building and currently managed by the YMCA. This management agreement was formalised within a letter of intent (LOI) dated 13 March 2015 for the YMCA to operate and manage the Centre due to the conclusion of the previous lease and management agreement.

On 11 May 2015, the YMCA wrote to the City of Marion indicating that the spa, plunge pool and sauna did not comply with Royal Life Saving Society Guidelines that required qualified lifeguards to be in the wet area at all times and sought Council's advice.

The City of Marion sought advice from the Local Government Mutual Liability Scheme (LGA MLS), who provide public liability insurance to the City of Marion, regarding the relevance and application of the Royal Life Saving Society Guidelines. The LGA MLS confirmed that the application of the Royal Life Saving Society Guidelines is best practice risk management and concurred that a life guard was warranted.

The LGA MLS did provide Council with options to operate the spa and sauna facility, on the basis that a lifeguard was required to be in attendance. The YMCA provided Council with options for full and limited use of lifeguards at a cost ranging from \$34,000 to \$88,000 a year.

The YMCA in consultation with the City of Marion decided to permanently close the spa, plunge pool and sauna effective from 22 May 2015. Both the YMCA and the City of Marion received a number of complaints from members whom regularly utilized the facilities under the previous management, hence the catalyst for this review.

2. SCOPE OF THE REVIEW

The purpose of a section 270 review is to consider whether the process and merit of a decision is fair, reasonable and lawful and to determine if the process effected the decision unreasonably or unfairly.

The scope of this review includes;

1. The process that led to the decision to close the wet areas.
2. Assessment against industry standards.
3. Identify other options that may have been overlooked in the original decision.

This review applies to the processes undertaken by the City of Marion decision only.

A copy of this report will also be forwarded to the YMCA.

3. METHODOLOGY AND PROCESS

In accordance with Section 270 of the *Local Government Act 1999* (SA) and the City of Marion "*Complaints and Grievance Policy*", a panel comprising of the following members was established to review the decisions of the City of Marion in managing complaints:

- Fiona Harvey Manager Strategy
- Ray Barnwell Manager Finance

- Con Theodoroulakes Development Engineer
- Craig Clarke Unit Manager Communications
- Deborah Horton Unit Manager Executive Support

Members of the panel have not previously had involvement with any decisions in relation to the closure of the wet areas in relation to this section 270 review.

In conducting the review, the panel considered a range of documents, including legislation, guidelines, delegations, authorisations and advice from relevant external bodies.

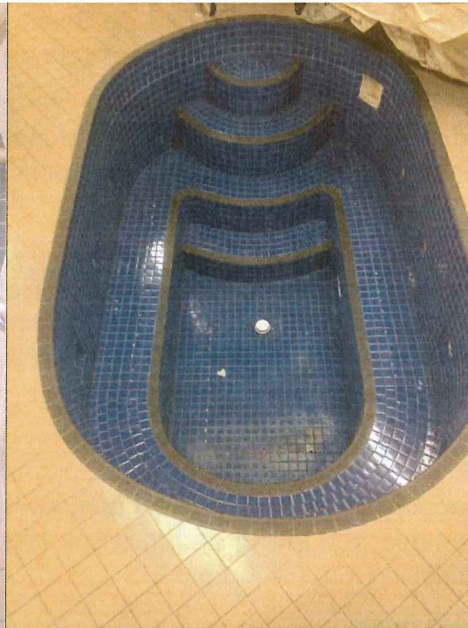
4. MARION LEISURE AND FITNESS CENTRE

It is estimated by the YMCA that approximately 2% of the 750 members at the center use the wet areas. The wet areas (see photo) at Marion Leisure and Fitness is located at the rear of the property (see floor plan in **Appendix 2**) and is considered to be an isolated area. Access to the wet areas, is through the men's and women's change rooms. If an emergency was to occur and immediate action taken, the time from the reception to the wet areas is approximately 30 seconds.

Plunge Pool



Spa



5. LEGISLATIVE AND SUBORDINATE REGULATIONS

South Australian legislation, regulations and standards all provide information regarding pools, spas and saunas, however the primary focus of the legislation is in regard to public health due to water quality and technical aspects of the manufacture and installation of equipment.

All legislation and regulations identified were consistent in terms of safety notices that are required to be visible during the use / operation of the particular pool.

It should be noted that legislation takes precedence over any regulations or industry guidelines that may be applicable.

A list of identified legislation, regulations and guidelines that could be applied in this matter is included within **Appendix 1**. The table below summarizes the legislation and its relevance:

Legislation/Regulation	Relevance
Swimming Pools (Safety) Act 1972	Legislation Repealed
Development Act 1993	Not Applicable
South Australian Public Health Act 2011 (SA) and South Australian Public Health (General)	Not Applicable
Standard for the Operation of Swimming Pools and Spa Pools in South Australia Code – South Australian Health Commission	Whilst this code applies there are no direct statements regarding safety measures between the use of lifeguards and staff available to assist.
Australian Standards - SA 2610.1-2007 Part 1:Public spas,	Whilst this code applies there are no direct statements regarding safety measures between the use of lifeguards and staff available to assist.
Guidelines - Royal Life Saving Society Australia (RLSSA)	Industry standard (recreational and aquatic industry) in the absence of specific legislation. <u>SU1: Bather Supervision</u> <u>SU11: Supervision of Isolated Areas, 14 November 2005</u>

6. RELEVANCE OF THE ROYAL LIFE SAVING SOCIETY AUSTRALIA GUIDELINES TO THE MARION LEISURE CENTRE

The assessment has determined that Guidelines produced from the Royal Life Saving Society Australia is the most applicable to this matter as they provide specific guidance for bather supervision (SU1) and supervision of isolated areas (SU11). All other legislation and/or regulations did not provide information or guidance regarding safety measures between the use of lifeguards and public safety risk.

These guidelines were provided by the YMCA to Council on the 5 May 2015 and again on the 11 May 2015 as being the industry standard (recreational and aquatic industry) in the absence of specific legislation. It was recommended by the YMCA to Council that these guidelines should be adhered to in managing any risk of a serious incident or drowning occurring at the facility.

Council's public liability insurer (LGA MLS) also provided advice through the decision making which stated:

"The spa and plunge pool which are open to the public meet the criteria for complying with the Royal Life Saving Safety Standards. In the event someone is injured/drowns while using the facilities and the manager (YMCA/Council) have failed to comply with the safety requirements as set out in the guidelines, any public inquiry would focus on this aspect and the manager could be found liable."

Further comment was sought from the LGA MLS during the course of this review which confirmed:

"The option to do nothing and allow the spa to operate with no public safety supervision is not an acceptable option".

This advice was taken into consideration providing significant weight with regard to the closure given the safety of patrons is of high concern to Council.

Advice was also sought directly from the Royal Life Saving SA (RLSSA) who provided the following advice:

"I can confirm that the Royal Life Saving Guidelines for Safe Pool Operation (GSPO) would apply to the Spa pool located at the recreation centre. I refer specifically to the GSPO section SU 1. In particular the following sections which apply to a spa pool.

Definition - This Guideline refers to all bodies of water into which pool users may enter. This includes (but is not limited to) pools used for lap swimming of whatever size, leisure pools, toddlers pools,

learn to swim pools, hydrotherapy pools, spa pools, dive pools (when dive tower/boards are closed), wave pools (when waves are not in action) and running rivers (when not in motion).

Description 5.2 (a) A minimum of one qualified lifeguard should be supervising, facing and watching the people in the water at all times.”

As you may be aware, there are other sections of the GSPO which would apply to the Spa pool if it were remain open which need to be considered if it were to be opened and operated to meet compliance. The Royal Life Saving Society recommends that the spa pool be closed if it not being supervised by a qualified lifeguard.”

In addition to the above, further legal advice has been obtained which is provided in **Appendix 3** to this report. In summary, the advice states:

“Although the Guidelines have no statutory or regulatory ‘standing’ such that the Council (or the current Centre manager) is bound or otherwise compelled to comply with them, it’s our view that the Guidelines would likely be accepted by the Courts as applicable to the Centre.

We have not been able to identify any other legislative or regulatory standard, code or guideline that would or could otherwise be applied to the management of the Centre.

We have not been provided with a copy of the original report to Council regarding the closure of the spa and sauna but it appears that Council has considered the most relevant of issues for the purposes of making its decision. Importantly this includes obtaining the advice of the Mutual Liability Scheme.”

7. RISK ASSESSMENT SERVICES – ROYAL LIFE SAVING SOCIETY SOUTH AUSTRALIA

In 2014, the Royal Life Saving Society Australia produced a National Drowning Report. This report outlines that the risk factors that can increase a persons chance of drowning include age, gender, socio-economic status, presence of underlying medications, skill level and agent factors such as the consumption of alcohol. These factors have been taken into consideration in the risk assessment completed by the YMCA.

In line with the guidelines, the RLSSA has a risk assessment service to assist with the interpretation and implementation of the ‘Guidelines for Water Safety’ as drafted by the RLSSA. The service includes;

- The identification of risk and safety concerns,
- A compliance assessment,
- Recommendations to improve the safety and compliance.

A risk assessment was completed by the YMCA and provided to Council on 3 September 2015. Key factors such as age and underlying medical conditions have been taken into consideration during the risk assessment. Five risks were identified and assessed as follows:

Risk	Residual Risk Rating
Drowning	Medium Risk
Diving in and causing injury	Medium Risk
Slip, trip or fall	Medium Risk
Heart attack or stroke	Medium Risk
Rough conduct/drug/alcohol use	Low risk

These risks have been reviewed by the Panel in conjunction with the City of Marion’s Risk Management Framework and it is considered that the risks have been rated cautiously. For example, the worst case scenario of a drowning would be death and hence categorized as severe. Using the matrix below, if the likelihood was rare or unlikely, the risk of drowning would be rated as high.

Likelihood Ratings	Consequence Ratings				
	Insignificant	Minor	Moderate	Major	Severe
Almost Certain	MEDIUM	HIGH	HIGH	EXTREME	EXTREME
Likely	LOW	MEDIUM	HIGH	HIGH	EXTREME
Possible	LOW	MEDIUM	MEDIUM	HIGH	HIGH
Unlikely	LOW	LOW	MEDIUM	MEDIUM	HIGH
Rare	LOW	LOW	LOW	MEDIUM	HIGH

8. YMCA PROPOSAL FOR MANAGEMENT OF MARION LEISURE AND FITNESS CENTRE AND YMCA INTERNAL POLICY/PROCEDURE REGARDING SAFETY STANDARDS

In the YMCA proposal to the City of Marion (which was received February 2015), various references to safe management practices were included. It concludes with the City of Marion being guaranteed of 'industry best practice systems'.

It is assumed by the panel that the RLSSA guidelines are adopted by the YMCA as 'industry best practice systems' as there is no other industry benchmark or legislation, nor other policy direction provided by the YMCA.

9. RECREATION SOUTH AUSTRALIA – (AQUATIC INDUSTRY ADVISORY WORKGROUP)

At the time of writing this report, this industry representative body is seeking interested persons to convene a working group that will look to create a code that can be utilized by the recreation industry in the absence of legislation.

10. ALTERNATIVE OPTIONS

Advice was sought from the LGA MLS about the use of alternative options such as an emergency button or CCTV to monitor the wet area to manage the risk of injury or drowning. The advice received was if a major incident was to occur, an immediate response would be required. The use of an emergency button would not be effective if the individual was alone and unconscious. CCTV may be an option but would require monitoring at all times and therefore would need a dedicated resource to monitor and respond to the system.

11. FACTS AND TIMELINE

- The YMCA has the authority to make operational decisions regarding the fixtures and fittings for the safety of staff and patrons of the Marion Leisure and Fitness Centre.
- The Public Liability Insurance for the Marion Leisure and Fitness Centre is provided by the LGA MLS.
- The YMCA advised the City of Marion of various options available to keep various wet areas of the plunge pool, spa and sauna operating however all options required a trained supervisor and therefore recommended for the closure of the wet areas as their preferred option.
- The City of Marion delegations provide the CEO has sub delegated to the role of Director the authority to; '*... do anything necessary, expedient or incidental but within any policy or budgetary constraints set by the Council to perform or discharge the Council's functions or duties or to achieve the Councils' objectives.*' The decision of the Director to endorse the YMCA proposal and proceed with such on the basis of

receiving advice from Mutual Liability Scheme advice is satisfied in consideration of this delegation.

- The City of Marion considers the safety of staff and patrons are (and continues to be) the highest priority and principle factor in closing the wet areas.
- A risk assessment undertaken by the YMCA indicates that the risk to the centre was medium to low risk. All identified risks required mitigating actions.
- It was noted that the facility has operated for the past 20 years with no known or reported prior injury or insurance claim to the City of Marion or previous lease arrangements that the panel is aware of regarding the use of the wet areas. Although there is no known previous incidents, the risk is still assessed as a medium (or under Councils Risk Management Framework, high) and therefore requires mitigation.
- Consideration should also be given to the RLSSA Guidelines requiring trained staff (via the RLSSA) to be supervising bather safety in pools, spas and sauna areas at the Marion Leisure and Fitness Centre.

12. PROCESS APPLIED IN THE DECISION MAKING:

From the information obtained, it is evident that a decision making process was applied as follows:

- An issue regarding safety was raised by the YMCA and brought to the Council's attention.
- Independent advice was sought from the MLS regarding the application of the RLSSA Guidelines and potential liability exposures to Council.
- Risk assessments of the site occurred.
- Options were considered.
- A decision was made based on the information obtained.
- Members of the Centre were notified and the wet areas were closed.
- During the section 270 review period, further legal advice was obtained regarding the application of the RLSSA Guidelines.

13. BENCHMARK THE DECISION AGAINST INDUSTRY STANDARDS

At the time, City of Marion officers relied upon the advice received from the YMCA and the MLS as having the relevant expertise in order to make a decision. There was no further reference to benchmark this decision against other Council facilities at the time. This was considered fair and reasonable.

The panel has since ascertained that the Revive Centre on Marion Road recently closed its spa/sauna facilities on 5 July 2015 due to limited users and the supervisory costs involved.

14. IDENTIFY OTHER OPTIONS THAT MAY HAVE BEEN OVERLOOKED IN THE ORIGINAL DECISION

Council wrote to the Mutual Liability Scheme (MLS) seeking a risk assessment for the facility to continue to operate part of the wet areas at the Marion Leisure and Fitness Centre. This included the closure of the plunge pool given its depth, but to retain the spa and sauna. In doing so, the following would be complied with:

- The Australian Standards
- The South Australian Health Commission Code

- RSSLA – SU11 but not SU1

The following options have been supplied by the MLS retrospective to the wet area permanent closure on 22 May 2015;

- **Reopen the operation of ALL wet areas** (spa, pool and Sauna) on the basis that a suitably qualified supervisor is available when the wet areas are open to ensure SU1 is complied with. The wet areas could be opened at all times or specified times. The matter regarding the cost of the qualified supervisor could be further explored with the members of the centre who use the wet areas. Members may agree to pay an additional membership fee to cover the costs.
- **Access is provided to the sauna only** on the basis that showers are available in the facility for the purpose of cooling after the use of the sauna and that the sauna will be regularly surveyed (every 20 minutes) which according to the MLS has been the practice. This will include decommissioning the plunge pool and spa permanently (including any access).

15. DELEGATION/AUTHORISATION

The City of Marion delegations allow for expedient decision making in the interest of Council in accordance with the Local Government Act 1999 (SA).

16. PANEL FINDINGS

The panel concludes;

1. The process that the City of Marion undertook to determine the closure of the wet areas of the Marion Leisure and Fitness Centre is found to be reasonable, lawful and fair.
2. The City of Marion has explored all legislation, regulations, standards and guidelines as appropriately applied the RLSSA Guidelines.
3. Records available demonstrate that the City of Marion gathered sufficient advice from external parties and in doing so acted reasonably and did not act unlawfully or unfairly in the processes of upholding the decision to close the wet areas of the Marion Leisure and Fitness Centre.
4. Further options have been identified and explored through the process.

17. RECOMMENDATIONS OF THE PANEL

1. Based on the information obtained during this review, the decision to close the wet areas of the Marion Leisure and Fitness was reasonable based on:
 - The decision followed a process based on risk and compliance.
 - The determination that the RLSSA guidelines were applied appropriately in the lack of legislation or regulations to guide the decision.
 - Other options were canvassed but deemed not suitable.
2. That Council writes to Mr Huston advising of the results of this review.
3. That Council writes to the YMCA Centre Management advising of the results of this review.

Appendix 1 – Legislation and Regulations framework assessed

Swimming Pools (Safety) Act 1972 (SA)

This Act provides for fencing and other safety measures for pools that have a water surface area over five square meters, depths of more than 0.3mtrs and not made available to the general public whether admitted via payment of money or otherwise. This legislation has been repealed as therefore no longer operational or applicable.

Development Act 1993 (SA) and Development Regulations 2008 (SA)

The Act and subordinate regulations provide for swimming and spa pool construction in a residential development context. This legislation and regulations are therefore not relevant.

South Australian Public Health Act 2011 (SA) and South Australian Public Health (General) Regulations 2013 (SA)

This Act provides for the protection of the public's health to reduce the incidents of preventable illnesses, injury and disability. The Act is silent with regard to user safety of plunge pools, spas or saunas rather it provides for general public health in terms of utilising public areas.

The regulations provide the detail silent in the statute. Whilst the regulations identify spa and swimming pools, the focus is regarding the water quality requirements and maintenance levels but not user safety requirements.

Therefore, the legislation listed above and their subordinate regulations are not relevant.

Standard for the Operation of Swimming Pools and Spa Pools in South Australia Code – South Australian Health Commission

This code was developed to assist local councils in the administration of public swimming pools, spa pools, waterslides and hydrotherapy pools as a State Government initiative. The standard informs agencies responsible for the administration and operation of public swimming and spa pools with particular reference to water quality. Bather warning notices are however identified to be positioned in a prominent position immediately adjacent to the spa where it can be read by bathers intending to enter the spa as a safety feature in the standard which include;

- DO NOT put your head under the water.
- DO NOT use the spa while under the influence of drugs or alcohol.
- DO NOT use the spa for more than 20 minutes at a time.
- DO NOT allow children to use the spa unsupervised.
- DO NOT swallow spa water.
- DO NOT use the spa if you have an open wound, feel unwell or are pregnant.

Whilst this code applies there is no direct correlation regarding safety measures between the use of lifeguards and staff available to assist.

Australian Standards - SA 2610.1-2007 Part 1:Public spas,

The safety requirements for patrons in utilising a public spa are included to ensure safety to patrons using spa areas, including depth areas, points of entry and exit, surfaces and protrusions and safety notices.

As with the South Australian Code, operators of the spa pool should ensure that spa pool safety notices are displayed.

Again, whilst this code applies there is no direct correlation regarding safety measures between the use of lifeguards and staff available to assist.

Guidelines - Royal Life Saving Society Australia (RLSSA)

The Royal Life Saving Society provide comprehensive written guidelines for the effective management of public pools, spas and saunas. A summary of the two relevant guidelines are provided below:

SU1: Bather Supervision, 14 November 2005

The guideline provides supervision ratio quotas of areas in aquatic facilities that have bodies of water during operating times and recreational swimming times. This guideline establishes;

- That it applies to '*bodies of water into which pool users may enter*'
- One qualified life guard be available at all times in swimming/wet areas to be capable of supervising the water
- One qualified person with a Level 2 (Senior) First Aid qualification
- Reference to further guidelines LP1 – low patronage
- Risk assessment should be completed by facility operators prior to establishing lifeguard ratios, with a reference to 'G07 Risk Management'
- Facility operator should consider a range of factors such as: anticipated attendance, average attendance, capabilities, special needs of individuals and groups, etc

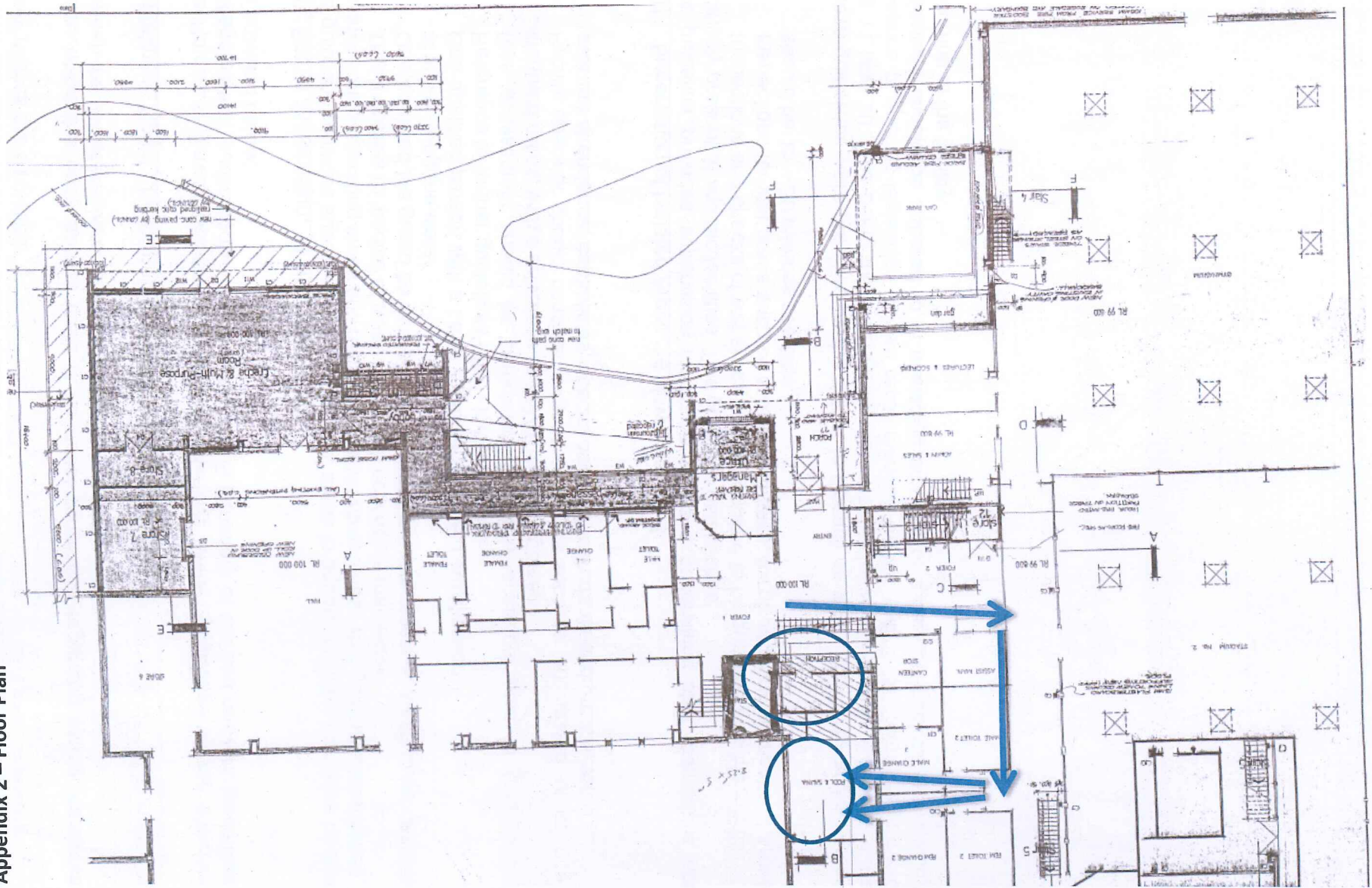
SU11: Supervision of Isolated Areas, 14 November 2005

The guideline provides supervision standards where a supervising staff member is not ordinarily present at aquatic facilities. This guideline establishes;

- Inspections and checks of wet areas are not required to be qualified pool lifeguards
- Inspections for wet areas such as saunas and spas, that frequency of checks of areas should be 15 – 30 minutes at a time.

These guidelines were provided by the YMCA to Council on the 5 May 2015 and again on the 11 May 2015 as being the industry standard (recreational and aquatic industry) in the absence of specific legislation. It was recommended by the YMCA to Council that these guidelines should be adhered to in managing any risk of a serious incident or drowning occurring at the facility.

Appendix 2 – Floor Plan



MinterEllison

20 October 2015

BY EMAIL: kate.mckenzie@marion.sa.gov.au

Ms Kate McKenzie
Manager, Governance
City of Marion
245 Sturt Road
STURT SA 5047

Dear Kate

S270: Marion Leisure Centre

I refer to your recent email regarding the closure of the Marion Leisure Centre's spa, sauna and plunge pool and the subsequent section 270 internal review in relation to the matter. I confirm you have sought specific advice on the following aspects of the decision:

1. The application of the Royal Life Saving Guidelines (**Guidelines**) but in particular whether a court with apply the guidelines if an incident was to occur; and
2. Is there any other legislation, regulation or standard that could apply (to the Centre's facilities); and
3. Are there any other issues for consideration.

Summary of Advice

- Although the Guidelines have no statutory or regulatory 'standing' such that the Council (or the current Centre manager) is bound or otherwise compelled to comply with them, it's our view that the Guidelines would likely be accepted by the Courts as applicable to the Centre.
- We have not been able to identify any other legislative or regulatory standard, code or guideline that would or could otherwise be applied to the management of the Centre.
- We have not been provided with a copy of the original report to Council regarding the closure of the spa and sauna but it appears that Council has considered the most relevant of issues for the purposes of making its decision. Importantly this includes obtaining the advice of the Mutual Liability Scheme.

1. Application of the Guidelines – consideration by a court

I do not intend to comment on the functions or duties of Council that give rise to an obligation to provide lifeguards and supervision in the wet areas of the Centre. This position and requirement is not in contention. This advice is limited therefore to whether



the application and consideration of the Guidelines by the Council would be considered appropriate by a court.

As you know, the Guidelines are just that, guidelines. The application and compliance by Council with them is entirely voluntary.

We are of the view however that a court, having competent jurisdiction, would likely deem it appropriate but more likely necessary, for the Council to consider and apply the Guidelines in the current circumstances.

Our reasoning's are as follows:

- In a 1981 decision of the Federal Court of Australia, Sean Investments Pty Ltd v MacKellar, amongst other things, the court made the following observation:

"...where relevant considerations are not specified, it is largely for the decision-maker, in the light of matters placed before him by the parties, to determine which matters he regards as relevant and the comparative importance to be accorded to matters which he so regards."

Applied to the current situation, the above statement means that if there is an absence of prescriptive factors set out in any applicable statutory provisions, the Council can and needs to determine what matters will be relevant for consideration and what weight should be given to them.

- Presently, there is an absence of statutory or regulatory provisions that prescribe what factors or matters the Council (or the manager of the Centre) must comply with in these circumstances, i.e. the supervision of the wet areas in the Centre. (I refer to further comments below).
- It appears from our reading that the Guidelines are considered as the generally accepted industry practice on matters pertaining to the supervision of activities in aquatic facilities and for bodies of water. Indeed, the Royal Life Saving Society website states that the guidelines have been "*primarily designed for application in municipal owned public facilities*".
- Although Guidelines SU1 and SU11 do not define 'aquatic facilities', it appears that the spa and plunge pool would clearly be encompassed by the general definition provided in clause 4 of SU1.

2. **Other Appropriate Standards/Guidelines**

As part of considering whether there are any other statutory, regulatory or other standards of codes that may be applicable, I have considered the *Swimming Pools (Safety) Act 1972* mentioned in the Report. That Act was repealed on 1 October 2008 and is therefore no longer operational or applicable. Further, the Development Act 1993, in relation to pools, creates requirements for the development of swimming pools but does not provide any relevant requirements for the safe operation and supervision of established pools. The *Standard for the Operation of Swimming Pools and Spa Pools in South Australia Code* by the South Australian Health Commission and *Australian Standards AS 2610.1-2007*

relate to water quality, pump standards and structural design requirements for pool safety but do not provide any appropriate guidance for the supervision requirements of pools.

Noting the materials referred to in 'appendix 1' of the Report, I have not located any further legislation, regulations or standards, other than that mentioned within this advice, that would provide any other appropriate guidance to the Council in this matter.

3. Other matters for consideration

As mentioned above, although I have not been provided with the original report to Council upon which the decision to close the pool was made, or any other materials relevant to the decision – I am of the view that Council considered issues of a material nature including applying the Guidelines.

Should you have any questions in relation to this advice, please do not hesitate to contact me.

Yours sincerely



Susie Inat
Special Counsel

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OUR REF: 25653/230046 | AJYH | SMI

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Mark Griffin, Unit Manager Engineering
General Manager: Vincent Mifsud, Corporate Services
Subject: Advertising on Bus Shelters
Reference No: GC241115R02

REPORT OBJECTIVES:

The purpose of this report is to provide Council with information in relation to advertising on bus shelters within the City of Marion.

REPORT OBJECTIVE AND EXECUTIVE SUMMARY:

At its meeting dated 22 September 2015 (GC220915M02), Council resolved that;

“Council be provided a report on how Council can prevent junk food advertising on bus shelters in immediate proximity to schools and kindergartens in the Marion Council area.

That this report identify:

- The owners of the bus shelters;
- The providers of the advertising;
- The types of advertising currently in place;
- The shelters with City of Marion branding of any sort; and
- Options available to regulate advertising in the different bus shelter arrangements within the Marion Council area”

RECOMMENDATIONS (3)

DUE DATES

That:

- | | |
|---|-----------------|
| 1. Council note the report. | Nov 2015 |
| 2. Advertising companies be advised of Council’s intention to consider the inclusion of a restriction on junk food advertising on bus shelters within immediate proximity (200m) of schools and kindergartens, as part of the next re-negotiation of their existing contracts. | Dec 2015 |
| 3. Council look at the opportunity to provide positive lifestyle choices advertising within bus shelters, such as walking and cycling initiatives and benefits. | Mar 2016 |

BACKGROUND:

There are 503 bus stops within the City of Marion and of these a total of 374 stops have bus shelters, with 28 being advertising shelters.

Due to advertising requirements to achieve commercial viability, all advertising shelters are located on arterial roads (such as, Main South Road and Marion Road).

DISCUSSION:

The various matters in the resolution have been discussed below.

The owners of the bus shelters

Within the City of Marion there are 4 owners of bus shelters, being:

- Council;
- Department of Planning, Transport and Infrastructure (DPTI);
- Adshel; and
- Bam Outdoor.

The table below outlines shelter ownership, number of shelters owned and how many are within immediate proximity of schools and kindergartens (200m distance was deemed to be a reasonable distance as a result of discussions to the Public Transport Division of DPTI. That Authority indicated that the majority of bus stops generally utilised by school children accessing public transport are within that distance).

Owner	Number of shelters	Shelters within proximity of schools and kindergartens
City of Marion	226	78
DPTI	72	24
Adshel Pty Ltd	43	17
BAM Outdoor	33	11
TOTAL	374	130 (28 advertising shelters)

The providers of the advertising

Adshel and Bam Outdoor are the only providers that have advertising on their shelters. As depicted in the above table there are 28 advertising bus shelters within 200m of schools and kindergartens.

The contracts with these companies are similar and stipulate the following in relation to advertising:

- The company shall use its best endeavours to display on bus shelters only advertisements which comply with Commonwealth and State Government

legislation and all voluntary codes of conduct established by the Advertising Industry, and that exhibit high quality graphic designs and finish.

- In particular the company shall not display:
 - Any advertisements which is political, religious, pornographic in nature, or that is likely to be considered offensive;
 - Any advertisement depicting smoking or for a tobacco product; or
 - Any advertisement which resembles in shape, size or colour any traffic signs, or which has the appearance of giving instructions or other directions to traffic, or which flashes or contains any moving parts glary or luminous.
 - Comply with the Alcohol Advertising Pre-Vetting System (AAPS) developed by the Outdoor Advertising Association of Australia, including display of the relevant AAPS approval on all advertisements for alcohol.

Bam Outdoor also have a stipulation, unless otherwise agreed with Council, that they must only display local advertising content on their bus shelters.

The types of advertising currently in place

The current advertising material displayed within the Adshel and Bam Outdoor bus shelters at the beginning of October 2015 has been obtained and is categorised as follows:

Advertisement Category	No. of advertisements displayed
Alcohol	8
Automotive	11
Food (other)	37
Health	22
Junk food	14
Manufacturing	8
Real estate	8
Retail	86
School/Community	19
Sport	5

The shelters with City of Marion branding of any sort

The City of Marion does not have any branding or Council endorsement placed on any of its bus shelters.

Options available to regulate advertising displayed in bus shelters within City of Marion

Other than the advertising restrictions within the current contracts as listed above, Council would need to re-negotiate the existing contracts with both Adshel and Bam Outdoor to include further restrictions in relation to junk food advertising within a 200m distance of schools and kindergartens.

Alternatively if providers are not willing to include these advertising restrictions within their current contract, Council would need to provide suitable location(s) to relocate the relevant portion of the 28 bus shelters away from schools and or kindergartens whilst still providing like for like advertising visibility. These relocations would be a shared cost, in that, the shelters would be at the cost of the provider while the

associated infrastructure (bus stop pole, level standing area and tactiles) would be the responsibility of Council. For Council this is estimated at \$2,000 per site.

It should be noted that the City of Marion has entered into a financial arrangement with Adshel, resulting in Council receiving a share of revenue generated by advertising in their bus shelters. At this stage there is no such arrangement with Bam Outdoor.

ANALYSIS:

Additional Considerations

The investigation of this matter has raised a number of additional issues, these are discussed below.

Junk Food - The term junk food would need to be clearly defined to better categorise what food and drink is considered to be “junk food”. Generally, organisations such as the Heart Foundation, Nutrition Australia and OPAL consider high contents of sugar, fat or salt are not essential for health and taken in excess can be harmful. Such a definition may influence or effect advertising of not only “fast food” outlets but drink advertising and local businesses such as bakeries.

A definition for junk food –

The Collins Dictionary defines ‘junk food’ as, food that is low in nutritional value, often highly processed or ready-prepared, and eaten instead of or in addition to well-balanced meals

The Oxford Dictionary defines ‘junk food’ as, food that is quick and easy to prepare and eat but that is thought to be bad for your health

Contracts with Advertisers – The existing contracts, stipulating the advertising requirements (as mentioned above), are in place and there is no legal obligation for the Advertising companies to re-negotiate prior to the conclusion dates of their current contracts. The existing contracts expire as follows:

- Adshel – 30 June 2020
- Bam Outdoor – 28 February 2017 (although it has been discussed with Bam to extend the existing contract to 2020 to align with the other contract)

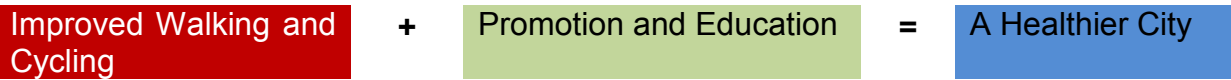
Loss of Income to Advertisers - Any ban or restriction on advertising may result in a loss of income to the companies involved. As a consequence it is reasonable to expect that they may seek some form of compensation from Council and/or look to reduce the revenue share component within the current arrangement.

Indirect Advertising - On occasions some fast food companies promote their brand or logo directing people to their establishment, which in itself may indirectly promote the intake of junk food.

Consistent Messages - Council may need to demonstrate consistency in relation to any decision restricting junk food advertising. That is, other forms of advertising

within the City may need to be considered, for example privately owned billboards and print media (City Limits publication).

Positive Promotion - The promotion of the benefits of walking and cycling are listed within the City of Marion's Walking & Cycling Strategy.



Therefore it may be appropriate to utilise some bus shelter advertising spaces to promote a healthier lifestyle. This would only be the cost of the posters within the Bam Outdoor advertising shelters (refer to the below stakeholder feedback) and can be financed as an element of the funds held for the development of projects that are a part of the Walking and Cycling Strategy (as endorsed by Council at its meeting dated 8 September 2015 – GC080915R03).

External Stakeholder Feedback

Bam Outdoor

Due to their local advertising context (stipulated within their contract) Bam Outdoor do not consider that their business would be adversely affected by any additional advertising restrictions related to “junk food”. Nevertheless, Bam Outdoor did indicate that they did have two food businesses currently advertising on their shelters. These companies were both local bakeries.

Bam have also indicated that they are willing to provide the advertising spaces within their bus shelters (which are not being utilised) to Council for community advertising for the cost of the poster only, estimated at \$150 each.

Adshel

Adshel have indicated that the Out-Of-Home outdoor advertising sector (which they are a part) self-regulates against the Australian Association of National Advertisers (AANA) Code of Ethics. The sector's approach to food and non-alcoholic beverages has the following key points:

- Advertising or marketing communications for food or non-alcoholic beverage products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets;
- Advertising should not encourage what would reasonably be considered as excess consumption through the representation of products or portion sizes disproportionate to that regarded as contrary to prevailing community standards;
- Advertising or marketing communications to children for food or non-alcoholic beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits;
- Advertising to children shall not improperly exploit children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those children to consume what would be considered as excessive quantities;
- Advertising or marketing communications to children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices;

- Advertising to children shall not include any appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular children's food or non-alcoholic beverage products for them.

With the food and non-alcoholic beverage sector spending sufficiently in the Out-Of-Home market, this category is considered a Class A category for Adshel. Therefore any ban or restriction on this advertising would have a financial impact on Adshel's business model and its ability to be competitive in the market.

Adshel considers that the advertising guidelines in relation to food and non-alcoholic beverage are extensively covered by the AANA code; nevertheless they acknowledge the need to review and evolve the advertising codes as community needs change. However, this has to be done in a manner that does not disadvantage a single media, or should be undertaken as a national approach.

Community responsibility is taken seriously by Adshel and as such they adhere to processes that support compliance with regulatory codes.

Adshel have also indicated that they would welcome an opportunity to discuss this matter further.

CONCLUSION:

The implementation of a restriction on junk food advertising within bus shelters requires the following considerations:

- The advertising companies consider that they already comply with an extensive Code of Ethics and take their community responsibility seriously, and any additional restrictions are not required;
- The existing advertising contracts would need to be re-negotiated to include any further restrictions. There is no obligation for the advertising companies to re-negotiate until these existing contracts expire;
 - Adshel's contract expires on 30 June 2020
 - Bam Outdoor's contract expires on 28 February 2017
- The definition for junk food and the type of advertising to be involved with the restrictions would need to be agreed;
- Any loss of income by advertisers may have an effect on Council's revenue share arrangements.

Therefore in view of the above, it is recommended that the Advertising companies should be advised that Council intends to consider the inclusion of a possible restriction on junk food advertising on bus shelters within immediate proximity (200m) of schools and kindergartens, at the next re-negotiation of their contracts.

Furthermore, the opportunity for the provision of positive advertising messages in regards to a healthy lifestyle (particular walking and cycling) should also be considered as part of the funds held for the development of projects within the Walking and Cycling Strategy, previously endorsed by Council at its meeting dated 8 Sept 2015.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: David Barrett, Unit Manager Cultural Facilities and Liz Byrne,
Acting Manager Community & Cultural Services

General Manager: Abby Dickson, City Development (Acting)

Subject: Marion Cultural Centre Plaza – Amenity Improvements

Report Reference: GC241115R03

REPORT OBJECTIVES:

This report provides Council with an opportunity to refer a funding request to the 2016/17 Annual Business Plan and Budget Process (ABP&BP) for further consideration and prioritisation, for the delivery of improvements to the amenity of the Marion Cultural Centre (MCC) Plaza.

EXECUTIVE SUMMARY:

At the 8 April 2014 General Council Meeting Council endorsed the Master Plan Design Development Package for the Marion Cultural Centre Plaza (GC080415R04). The Design Development Package provided Council with detailed design, costs and staging options for redevelopment of the MCC Plaza, integration with the South Australian Aquatic and Leisure Centre (SAALC) Plaza and enhanced roadway entrance statement on Diagonal Road. The entire redevelopment has been estimated to cost approximately \$7,075,000 (excl GST) with the opportunity to stage the redevelopment over 4 stages.

Council has indicated that they wish to consider alternate options to improve the amenity of the MCC Plaza through the introduction of greening elements, seating and shade. These amenity improvements should provide increased footfall to the MCC and assist with building Signatures Café as a sustainable business. In order to deliver amenity improvements to the MCC Plaza, Council needs to prioritise the project and refer the required funds to deliver the project to the 2016/17 ABP&B for further consideration.

RECOMMENDATIONS (3)**DUE DATES****That Council:**

- | | |
|---|------------------|
| 1. Refers the allocation of up to \$40,000 for improving the amenity of the Marion Cultural Centre Plaza to the 2016/17 Annual Business Plan and Budget Process, for further consideration and prioritisation. | 24 November 2015 |
| 2. Refers the allocation of \$40,000 for programming to the 2016/17 Annual Business Plan and Budget Process, for further consideration and prioritisation, as well as embedding it as a recurrent annual operational expense within the Long Term Financial Plan. | 24 November 2015 |
| 3. Requests that a report be brought back to Council in April 2016 outlining the final design and whole of life costs to deliver the capital works required to improve the amenity of the Marion Cultural Centre Plaza. | 24 November 2015 |

BACKGROUND

For over 20 years the City of Marion has been pursuing an integrated Regional Centre serving the principal public, community, cultural, retail and recreational space of Marion, southern Adelaide and the region. The opening of the SAALC and GP Plus has changed the operating environment of the MCC. The co-location of major cultural, recreation, health and retail facilities in a regional centre supported by significant public transport infrastructure presents a unique setting for the MCC.

At the General Council meeting on 26 June 2012 Council approved funds of \$75,000 to undertake a design by competition process and to develop concept plans and estimated costs for the redevelopment of the MCC Plaza (GC260612R04). At the 26 March 2013 General Council Meeting Council referred up to \$250,000 to the 2013-14 ABP&B process to undertake further design work and costing analysis in 2013-14 (GC260313R03). At the 14 May 2013 General Council Meeting Council endorsed the approach to be undertaken to develop the design of the MCC Plaza (GC140513R05) with the objective being to provide the community with a vibrant public realm. At the 8 April 2014 General Council Meeting Council endorsed the Master Plan Design Development Package for the MCC Plaza (GC080414R04)

There is currently no funding available in the long term financial plan (LTFP) for the construction or whole of life costs for this project. Any allocation of funds towards the construction of the master plan design will require Council's consideration and approval of a Section 48 prudential management report and would be subject to Council's strategic and LTFP. The project will also require a grant attraction strategy to seek partnership funding.

Council has indicated that they wish to consider alternate options for improving the amenity of the MCC Plaza through the introduction of greening elements, seating and shade. These amenity improvements should provide increased footfall to the MCC and assist with building Signatures Café as a sustainable business. This report provides Council with an opportunity to refer funds to the 2016/17 ABP&B for further consideration and prioritisation, for the delivery of these minor improvements to the amenity of the MCC Plaza.

ANALYSIS

The MCC is a high use facility providing a place to meet, relax and enjoy social, cultural and economic activities. It is an important part of the City's cultural and social infrastructure increasing people's physical, mental and spiritual wellbeing, providing opportunities for happiness, inspiration and cohesion. Well-designed public facilities enhance liveability within cities as well as providing opportunities for community engagement through both formal and informal cultural expression. The inclusion of quality public spaces adjacent to these facilities provide opportunities for programming that will attract people to the area and give them the option to linger, thereby creating greater economic benefits to local businesses.

By investing in capital improvements to the amenity of the Plaza which provide shade, seating and greening of the space, Council will be directly contributing to the delivery of its vision to being a liveable, biophilic, prosperous and connected city. Whilst the level of investment may be less than would be required to deliver on the previously endorsed Plaza redevelopment, new improvements can deliver an activated and welcoming Plaza that provides for entertainment, relaxation, hospitality and leisure.

Capital improvements, however, only offer part of the solution for improving the amenity of the Plaza and delivering enhanced community outcomes. Ongoing funding should also be provided to support programming as this will attract people to the space. Research shows that programmed events and activities entice people to visit and linger in the space which adds to the vibrancy of the Plaza and the public realm. Such events and activities also provide improved economic outcomes

for local businesses as is evidenced by the increased turnover experienced by Signatures Café when MCC programs occur on the Plaza, within the Domain Theatre and within the Café itself.

Type of Program/Event	Open Mic within Signatures Café	Mingle within Signatures Café	Evening Performance in Domain Theatre	Plaza Event eg Marion Mega Market
Gross Revenue as a direct result of the event	Approximately \$400 revenue increase per event	Approximately \$450 revenue increase per event	Approximately \$800 revenue increase per event	Approximately \$600 revenue increase per event

Tony Hoffert, operator of Signatures Café, has been consulted regarding his preference for improving the amenity on the Plaza. He indicated that greening and softening of the space was the priority. The addition of natural shade and other greening elements should make the Plaza a more attractive space for outdoor dining. He said that fake grass was not an ideal solution as this provides the same heat effect as the existing paving so any greening must be natural thereby providing the desired cooling effect.

APPROACH

Capital Improvements

As the funding is neither available to deliver the entire \$7 million Plaza redevelopment nor construction of stand-alone, lower staged elements of this masterplan ranging from approximately \$400,000 to \$3 million, a new approach for improving the amenity of the Plaza will need to be considered.

The focus of the new plan would be delivering Council's request for the introduction of greening, seating and shade elements to soften the Plaza. These elements would be permanent fixtures, delivering a high standard of amenity in keeping with the architectural significance of the MCC building, limiting ongoing operational and maintenance costs and fitting within the endorsed budget.

Financial Implications - Amenity

One semi-mature, approximately 3 metre tall, 100 litre tree in a suitable planter box will cost up to \$2,500. Low level mature natural plantings, 200 millilitre pots in planter boxes will cost up to \$60 per square metre. As the Plaza is an expansive space it is recommended to provide an allocation of up to \$20,000 for semi-mature trees and other mature low-level natural plantings in planter boxes to deliver the desired greening and shading elements.

A standard picnic table costs approximately \$4,000 and a standard bench seat costs approximately \$2,000. In order to deliver a high standard of amenity that is in keeping with the architectural significance of the MCC it is recommended that an additional allocation of up to \$20,000 be provided for permanent seating and tables on the plaza.

Consultation

Improving the amenity of the MCC Plaza will contribute positively to a number of local businesses as well as internal business units. The following stakeholders will be further consulted during the project:

Key Internal Stakeholders

Strategic Projects
Libraries
Open Space Planning
Economic Development
Finance
Environmental Sustainability
Arts and Cultural Development
Elected Members

Key External Stakeholders

Red House Group (Gallery M)
SAALC
GP Plus
Hoffwood Pty Ltd (Signatures Café)

A report will be brought back to Council in April 2016 outlining the final design and whole of life costs to deliver the capital works required to improve the amenity of the MCC Plaza.

Financial Implications - Programming

Current operational budgets only allow for small scale, ad hoc events on the Plaza, such as the Outdoor Movies over summer. An allocation of ongoing programming funds will support events such as live music, circus, busking, markets, large scale board games, temporary public art interventions, community arts events, etc to be regularly occurring on the Plaza, throughout the year. This in turn will create the Plaza as a destination within the City contributing to Council's long term activation vision for the Domain.

As discussed above, programming provides economic benefits to local businesses by attracting people to the area and giving them a reason to linger in the space. Programming also provides social benefits and enhances liveability by providing opportunities for formal and informal cultural expression, community arts and engagement.

An allocation of \$40,000 to programming for events and activities to be held on the MCC Plaza should be made to fully realise the potential of an improved public space. Consideration should be given to embedding this funding as a recurrent budget within the LTFP to provide ongoing community benefit and space activation.

Financial Implications - Summary

It is recommended that the following funding requests be referred to the 2016/17 ABP&B process for further consideration and prioritisation:-

1. Amenity (capital improvements) – funding of up to \$40,000
2. Programming – ongoing funding of \$40,000 per year

CONCLUSION

The MCC is a significant cultural facility both within the City of Marion and metropolitan Adelaide. Improving the amenity of the MCC Plaza will contribute positively to the public space and realm, express local identity, meet local needs and support Council's strategic objectives of a liveable, prosperous, biophilic and engaged city.

The approach outlined in this report will deliver on Council's desire to improve the amenity of the MCC Plaza through the introduction of greening elements, seating and shade. Allocating additional funds to ongoing programming will ensure the space is activated through events and activities held on the Plaza which will draw people to the space to participate and linger which should in turn deliver improved economic outcomes for businesses within the area.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Mark Gibson, Team Leader Land & Property
General Manager: Abby Dickson, City Development (Acting)
Subject: South Park Holme Tennis Club Outstanding Debt
Report Reference: GC241115R04

REPORT OBJECTIVES:

To provide Council with an update and further consideration on the South Park Holme Tennis Club's:

- Outstanding debt
- Occupation of the facility
- Writing-off the debt owing to Council.

EXECUTIVE SUMMARY:

The South Park Holme Tennis Club's Licence expired on 30 June 2011 following the completion of a 10 year term. The club continues to occupy the facility on a monthly tenancy which concludes on 09 December 2015.

The Club has advised that they were not prepared to enter into a new Licence until maintenance issues were resolved. Council staff have met and corresponded with the Club over a number of years, however as an agreement could not be reached the Licence has not been renewed. The Club has been issued with one month's notice to vacate the premises.

Council has invoiced the Club for Building Insurance, Emergency Service Levy and repairs to the light towers and followed-up on the outstanding payments. The Club continued to deny responsibility based on the premise that they did not have a Licence even though they were occupying the facility on a monthly tenancy. The Club has incurred a debt of \$15,894.74 and it is recommended that this is written off.

RECOMMENDATIONS (2)

That Council:

DUE DATES

- | | |
|--|----------------------|
| 1. authorises the Chief Executive Officer to write off the amount of \$15,894.74 comprising amounts owed by the Park Holme Tennis Club for Building Insurance, Emergency Service Levy and repairs to lighting towers. | November 2015 |
| 2. notes the interim arrangements that have been put in place for the Morphettville Tennis Club to have access to the courts until 30 June 2016. | November 2015 |

BACKGROUND

The South Park Holme Tennis Club has occupied this facility for a number of years. In 2001, the club agreed a 10 year licence agreement expiring on 30 June 2011. On 10 February 2011, Council wrote to the Club seeking advice on the Club's intention regarding renewal of the Licence. On 10 March 2011, the Club responded to Council stating that they did not intend to renew the Licence on the same terms and conditions. The Club alleged that Council had failed to carry out its maintenance responsibilities under the Licence.

Correspondence and communications have continued between Council and the Club from 2011 until 2014 in relation to renewal of the Licence and maintenance matters. Attempts to resolve these issues with the club became increasingly challenging and no mutually-agreeable agreement could be reached.

Council continued to raise invoices for charges for Building Insurance and Emergency Service Levy and the Club advised that they would not make any payments as they did not recognise the existence of a lease agreement even though they had entered into a monthly tenancy.

In 2013 Council corresponded with the Club in relation to the condition of light towers and the need to make repairs. As the Club did not take action to repair, Council advised that it would repair the light towers and charge back the cost to the Club. The Club denied responsibility and refused to pay for the cost of repairs.

REPORT

The South Park Holme Tennis Club has occupied the building under a licence agreement since 2001 and has continued to use the facility since July 2011 under a monthly tenancy. The club were making regular payments prior to 2011, however since this time the club has accumulated \$15,894.74 in debts.

In June 2014, Tennis SA advised Council that the club's membership had been falling over a number of years. In 2011/12 the club had 46 memberships, falling to 39 in 2012/13 and in 2013/14 they had no memberships recorded. This decrease in membership has ultimately had an impact on the club's capacity to manage the facility and meet its financial obligations.

Tennis SA have also advised that they have been subsidising the club's public liability insurance through their affiliation fees since 2014.

The following invoices have been raised against the Club:

23/01/2012	21689	Building Insurance 2011/12	\$2,279.93
04/10/2012	22857	Building Insurance 2012/13	\$2,335.13
15/04/2013	23784	Emergency Services Levy 2012/13	\$ 232.00
26/09/2013	24644	Emergency Services Levy 2013/14	\$ 232.00
31/10/2013	24847	Building Insurance 2013/14	\$2,380.28
07/11/2014	26468	Repairs to light towers	\$5,058.93
09/12/2014	26573	Building Insurance 2014/15	\$2,402.86
25/5/2015	27384	Emergency Service Levy 2014/15	\$ 973.61
Total			\$15,894.74

Should Council choose to pursue South Park Holme Tennis club, it could do so via its debt collection agency. There would be an initial fee and Council would be liable for on-going costs until the monies are recovered. Should these proceeding be successful these fees

would also be included in the amount to be received from South Park Holme Tennis Club. Should these proceedings prove unsuccessful the cost of the failed debt collection will be incurred by Council.

NEXT STEPS

On 9 November 2015 Council served a one month notice to the club requesting them to vacate the premises.

The Morphetville Tennis Club currently uses up to 2 courts on a Saturday and pays the South Park Holme Club \$10 per court. The Club has advised that they would like to continue to have access to the tennis courts. The Land and Property team are arranging for the Morphetville Club to have a Licence until 30 June 2016 to enable them to continue to use the courts while the future use of the facility is determined. Payment for the use of the courts will be direct to Council. In addition, during the unoccupied periods the courts will be open for public use.

The current review of Council-wide tennis facilities provides an overview on the asset, community value, strategic considerations and club management. The report proposes a number of opportunities:

- Consider future directions for tennis in the region to address membership, improving resources and sustainable directions
- Courts could be used by a stronger club or netball and be opened for community use to improve access to open space in the area

The longer-term use of this facility can be considered as part of the above process.

PROCESS IMPROVEMENTS

The Park Holme Tennis Club debt could have been avoided if more proactive contract management had been applied to this process. As part of the review of the Land and Property team the management of debts under the Sundry Debtors – Debt Recovery Procedure has been reviewed and a number of changes have been implemented:

1. *Debts are now being monitored on a monthly basis by both Land and Property and Finance to monitor outstanding debts and to ensure that action is taken to manage debts and where applicable a payment plan has been put in place to ensure that it is being adhered to.*
2. *Any agreements reached with clubs and community groups regarding variations to lease provisions and / or debt payment plans will be clearly documented in writing.*
3. *If a lessee is not prepared to reach reasonable and fair agreements in regards to payment responsibilities then dispute resolution and/or termination provisions will be applied.*

CONCLUSION

The South Park Holme Tennis Club has incurred a debt of \$15,894.74 which may be considered for write-off.

The South Park Holme Tennis Club has been issued with 30 days' notice to vacate the premises.

Arrangements have been put in place to enable the Morphetville Tennis Club to continue its arrangement to use the courts on a Saturday until the 30 June 2016.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Ann Gibbons, Environmental Sustainability Manager
Neil McNish, Economic Development Manager

General Manager: Abby Dickson, City Development (Acting)

Subject: Community Energy Opportunities

Report Reference: GC241115R05

REPORT OBJECTIVES:

The purpose of this report is to propose next steps to progressing community energy projects in Marion.

EXECUTIVE SUMMARY and DISCUSSION:

A facilitated discussion on community energy opportunities for Marion was held at the 17 November Elected Members' Forum. The discussion elicited a number of options for further investigation, aligned with the prioritised objectives agreed at the 2 June 2015 Strategic Directions Committee meeting.

These objectives were:

1. Increase energy efficiency
2. Make money for Marion
3. Reduce energy consumption
4. Reduce Consumption
5. Save ratepayers money

The two potential renewable energy opportunities identified during the Forum for further investigation are:

- A solar farm at a site to be determined;
- A 'virtual' power station through installation of solar PV on Council buildings.

The following attributes for a successful renewable energy project were identified in the meeting (ranked in order of importance based on Elected Members' scoring in the meeting):

1. Leverages investment from others
2. Minimises Council's exposure to financial and market risks
3. Is cost effective
4. Involves manageable administration effort
5. Engages the community
6. Contributes to Tonsley reaching its full potential
7. Minimises Council's exposure to technology risks
8. Fosters innovation and can be linked to research and development opportunities
9. Contributes to economic development within the City of Marion

These attributes will be considered as part of the feasibility investigations should Council resolve to progress this project.

The next step is to conduct a high level feasibility investigation that includes consideration of the agreed objectives and success attributes along with estimated project costs and market,

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: Steve Hooper, Development & Regulatory Service
General Manager: Abby Dickson, City Development (Acting)
Subject: Appointment of Public Officer to the DAP
Report Reference: GC241115R06

REPORT OBJECTIVES:

The purpose of this report is to appoint a Public Officer for the Development Assessment Panel (DAP).

EXECUTIVE SUMMARY/DISCUSSION:

Section 56(22) of the Development Act 1993 prescribes that a Council must have a Public Officer appointed by the Council, who is not a member of the Panel.

The position has become vacant as a result of the resignation of Ms Kathy Jarrett and accordingly, to meet legislative requirements, a new Public Officer for the City of Marion Development Assessment Panel must be appointed. The Public Officer must be appointed to an individual and not a position.

The primary function of the public officer as prescribed under Section 56(24) of the Development Act is to ensure the proper investigations of complaints about the conduct of a member of the Panel. In practice, the position has little involvement in the day to day operations of the Panel.

Given the role of the Public Officer, most Local Government Authorities have appointed either the Chief Executive Officer or a Director (or equivalent) to the position of Public Officer.

Historically, the City of Marion has appointed the Director (General Manager) responsible for Development Services (Development & Regulatory Services) to the position.

In line with current accountabilities, Abby Dickson is the current General Manager responsible for Development and Regulatory Services. It is therefore considered appropriate that Abby Dickson is appointed as the Public Officer for the DAP until such time as the position is permanently filled.

Section 56(23) of the Development Act, 1993 requires the Public Officers name and contact details to be published in the Government Gazette.

RECOMMENDATION: (1)

Due Date

- 1. That Council appoints Ms Abby Dickson to the position of Public Officer pursuant to Section 56(22) of the Development Act, 1993.**

24 Nov 15

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Originating Officer: David Harman, Financial Accountant
Manager: Ray Barnwell, Finance
General Manager: Vincent Mifsud, Corporate Services
Subject: Finance Report – October 2015
Report Reference: GC241115R07

REPORT OBJECTIVES AND EXECUTIVE SUMMARY:

This report provides Council with information relating to the management of financial resources under its control as at October 2015. This report is one of a series of reports designed to assist Council in achieving and maintaining a financially sustainable position. Other reports assisting in this process include the Quarterly Budget Reviews and the Long Term Financial Plan.

It is considered appropriate that financial information regarding Major Projects be presented on a monthly basis in this report. Financial information regarding Major Projects will also be summarised in the quarterly Major Project reports. The principles used for assessment of reportable projects are according to the following criteria:

- Council has agreed to proceed with the project and approved a Section 48 Prudential Report.
- The Whole Of Life Cost is greater than \$4 million dollars (including grant assisted projects).
- Has a project life of more than 12 months.

According to the above criteria, the Cove Civic Centre and the City Services Redevelopment projects qualify and are included in Section 2 of this report.

RECOMMENDATIONS (1)

DUE DATES

That Council:

- 1. Receive the report “Finance Report – October 2015”.**

24 November 2015

BACKGROUND

This report is presented on a monthly basis to provide Elected Members with key financial information to assist in monitoring Council's financial performance.

DISCUSSION:

Appendix 1 contains a financial report to identify Council's performance against budget utilising a "Funding Statement". It provides a review against all of the elements contained within the Statement of Comprehensive Income and Statement of Financial Position that are adopted as part of the Annual Budget Report.

The following reports are included:

(1) Major Projects

Section 48 approved Projects

- (a) Cove Civic Centre (CCC)
- (b) City Services Redevelopment

(2) Funding Statement – Actual versus Budget (Appendix 1)

(3) Debtors Reports for Sundry Debtors and Rates Debtors (Appendix 2)

(1) Major Projects**(a) Cove Civic Centre**

	2015/16 Actual + Committ YTD 31/10/2015	2015/16 Budget	Project Cost At Completion
Income			
Federal Budget Grant 2011-12 Contribution			3,400,000
Total Income			3,400,000
Expenditure			
Operating	-	-	-
Capital Construction	(571,313)	(2,128,622)	(13,400,000)
Total Expenditure	(571,313)	(2,128,622)	(13,400,000)
Project Result Surplus/(Deficit)	(571,313)	(2,128,622)	(10,000,000)

The net deficit forecast will be funded in the following manner:

Funded By : (Over Project Life)	\$
Fixed Term Loan	10,000,000
	<u>10,000,000</u>

Construction of the Cove Civic Centre was originally forecast to commence in 2010/11. At the 13 November 2012 Council Meeting, a Section 48 Prudential report (GC131112R01) was considered and adopted by Council.

Following Councils support of a design-led approach which provided greater certainty regarding design and project costs construction commenced in late October 2013. With construction completed in late July 2015 the Centre was officially opened on 1 August 2015.

The Federal Government provided \$3.4 million which was received in June 2012 as a contribution to the Cove Civic Centre Budget with the balance being funded through fixed term loan funding.

(b) City Services Redevelopment

	2015/16 Actual + Committ YTD 31/10/2015	2015/16 Budget	Project Cost At Completion
Income			
Total Income			-
Expenditure			
Operating	-	-	-
Capital Construction	(2,703,107)	(5,388,133)	(14,332,000)
Total Expenditure	(2,703,107)	(5,388,133)	(14,332,000)
Project Result Surplus/(Deficit)	(2,703,107)	(5,388,133)	(14,332,000)

The net deficit forecast will be funded in the following manner:

Funded By : (Over Project Life)	\$
Operating Revenue	1,732,000
Fixed Term Loan	12,600,000
	<u>14,332,000</u>

The City Services Redevelopment design work commenced in 2011/12, with tendering for the project commencing in March 2014. Following the completion of the tender process, Council unanimously approved the awarding of the construction contract for the redevelopment to Badge Constructions (SGC190814F01). The building was officially opened in September 2015 with site works expected to be completed during late 2015.

On the 11 February 2014 (GC110214R04) Council approved the change in allocated funding for this project of up to \$14.332m.

On the 25 March 2014 (GC250314R01) Council approved loan funding of up to \$12.6m to be taken out for this project. Council has also agreed that it will consider a report on the timing and methodology for disposal of any surplus land following completion of the project.

INTERNAL ANALYSIS

Financial Implications:

This report is an information report only and has no direct financial implications.

CONCLUSION:

The main monthly reporting focus is to report the “Actual versus Budget” position to enable regular monitoring of Council’s financial performance. Major Projects require regular reporting and monitoring by Council to ensure prudent financial management is maintained.

Appendix 1: Funding Statement & Graphs – Actual versus Budget.

Appendix 2: Sundry Debtors & Rates Debtors Report

(2) Funding Statement – Actual versus Budget

The Funding Statement provides a view of Council's financial performance against the approved budget and is consistent with the information provided at budget reviews. It provides a review against all of the elements contained within the Statement of Comprehensive Income and the Statement of Financial Position that are adopted as part of the Annual Budget Report. It details Council's:

Statement of Comprehensive Income -

The operating result is recognised as one of Council's key financial indicators. The budget framework includes a commitment to maintaining a Category 3 Financial Sustainability rating, on average over each five year period, which for 2015/16 means a targeted operating surplus of between \$0 and \$3.424m.

Comment: Council currently has a net operating surplus result of \$4.013m before capital revenues, against a year to date forecast budget of \$2.310m surplus. This position is detailed in the attached Funding Statement and variation notes.

Capital Budget -

The Capital Budget is linked to Council's key financial indicator – "Asset Sustainability Ratio" and an actual to budget comparison reflects Council's progress in achieving its Capital program.

Comment: The actual to budget position reveals that 91.23% of the year to date Capital Renewal Budget has been spent or committed.

The actual progress to date of Council's full Capital New and Renewal Expenditure program is detailed by asset class in the attached graphs, with the exception of major projects which have previously been detailed in this report.

Loans -

The loans component of the Funding Statement identifies any new proposed loan receipts or principal payments. Council's borrowings are included in Council's key financial indicator – "Net Financial Liabilities" which reflects Council's total indebtedness.

Comment: New borrowings of up to \$7.370m are included in the 2015/16 budget as part of the funding for Council's Major Projects. Principal repayments of \$2.314m mean that the overall loan liability balance is forecast to increase by \$5.056m.

Reserves & Cash -

Various fund movements such as surplus budget review results, unspent grants and carryover projects at year end are reflected as transfers to reserves, whilst utilisation of reserve funds are recognised as transfers from reserves.

Cash may be utilised to fund expenditure within the context of Treasury Management to ensure loans are not drawn down where temporary cash holdings are available.

Comment: Major movements in Net Transfers from Reserve of \$7.608m include the following:

Transfers to Reserve

Urban Tree Fund	\$	10k
Asset Sustainability Reserve	\$	5,609k

Transfers from Reserve

Grants and Carryovers Reserve	(\$	13,227k)
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A balanced funding position is forecast to occur in 2015/16.

Funding Statement

As at 31 October 2015

Original Adopted Budget \$'000		YTD Actual + Committ \$'000	YTD Budget \$'000	YTD Variance \$'000		Annual Budget \$'000	Note
	Operating Revenue						
70,058	Rates	23,704	23,759	(55)	U	70,058	
1,630	Statutory Charges	875	530	345	F	1,630	A
1,633	User Charges	423	375	48	F	1,633	
6,024	Operating Grants & Subsidies	1,844	1,591	253	F	4,887	B
270	Investment Income	238	68	170	F	270	C
770	Reimbursements	156	260	(104)	U	770	D
536	Other	179	135	44	F	536	
315	Net gain - SRWRA	-	-	-	-	315	
81,236		27,419	26,718	701	F	80,099	
	Operating Expenses						
32,139	Employee Costs	9,324	9,684	360	F	32,139	E
14,561	Contractual Services	6,040	5,863	(177)	U	16,183	F
4,668	Materials	1,390	1,585	195	F	4,675	G
1,343	Finance Charges	29	57	28	F	1,343	
13,821	Depreciation	4,607	4,607	-	-	13,821	
6,104	Other	2,016	2,612	596	F	6,160	H
72,636		23,406	24,408	1,002	F	74,321	
8,600	Operating Surplus/(Deficit) before Capital Revenues	4,013	2,310	1,703	F	5,778	
	Capital Revenue						
-	Capital Grants & Subsidies	-	-	-	U	-	
1,500	Contributed Assets	-	-	-	U	1,500	
-	Gain/(Loss) on Asset Disposal	(240)	-	(240)	U	-	
1,500		(240)	-	(240)	U	1,500	
10,100	Net Surplus/(Deficit) resulting from operations	3,773	2,310	1,463	F	7,278	
13,821	add Depreciation	4,607	4,607	-		13,821	
(315)	less Share of Profit SRWRA (excluding dividend)	-	-	-		(315)	
23,606	Funding available for Capital Investment	8,380	6,917	1,463	F	20,784	
	Capital						
13,057	less Capital Expenditure - Renewal	5,466	5,991	525	F	17,077	I
6,504	less Capital Expenditure - New	5,289	6,601	1,312	F	14,871	J
1,500	less Capital - contributed assets	-	-	-	U	1,500	
2,545	Net Overall lending/(borrowing)	(2,375)	(5,675)	3,300	F	(12,664)	

Original Adopted Budget \$'000		YTD Actual + Committ \$'000	YTD Budget \$'000	YTD Variance \$'000		Annual Budget \$'000	Note
Funded by							
Loans							
5,388	Loan Principal Receipts (Net)	-	-	-	-	7,370	
2,314	less Loan Principal Repayments	155	155	-	-	2,314	
<u>3,074</u>	Loan Funding (Net)	<u>(155)</u>	<u>(155)</u>	<u>-</u>	<u>-</u>	<u>5,056</u>	
Movement in level of cash, investments and accruals							
Cash Surplus/(Deficit) funding requirements							
-		5,100	1,800	3,300		-	
(5,619)	less Reserves (Net)	7,630	7,630	-		7,608	
<u>5,619</u>	Cash/Investments/Accruals Funding	<u>(2,530)</u>	<u>(5,830)</u>	<u>3,300</u>		<u>(7,608)</u>	
<u>(2,545)</u>	Funding Transactions	<u>2,375</u>	<u>5,675</u>	<u>(3,300)</u>	F	<u>12,664</u>	K

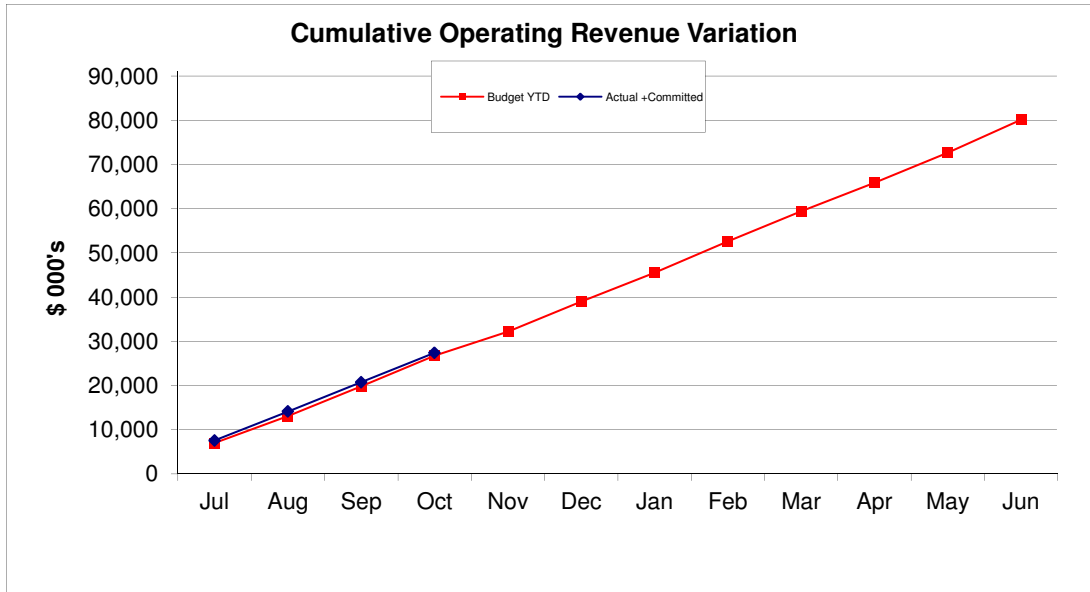
Variation Notes

A	Statutory Charges	Favourable \$345k	Predominantly reflects budgeted timing variations in relation to Dog Registration fees (\$258k) and higher than budgeted Parking Fines (\$51k).
B	Operating Grants & Subsidies	Favourable \$253k	Reflects budget timing variations with regards to grants received for the Grants Commission Financial Assistance Grants.
C	Investment Income	Favourable \$170k	Reflects greater than budgeted interest income – to be adjusted as part of the first budget review.
D	Reimbursements	Unfavourable \$104k	Predominantly reflects budget timing variations in relation to a number of areas, none of which are individually significant.
E	Employee Costs	Favourable \$360k	Predominantly reflects savings from temporarily vacant positions.
F	Contractual Services	Unfavourable \$177k	Predominantly reflects budget timing variations with regards to Cleaning and Maintenance agreements.
G	Materials	Favourable \$195k	Predominantly reflects budget timing variations with regards to Electricity and Water (\$180k)
H	Other Expenses	Favourable \$596k	Reflects budget timing variations with regards to Insurance Premiums (\$348k) and a number of other variances which are individually insignificant.
I	Capital Expenditure (Renewal)	Favourable \$525k	Predominantly reflects budget timing variations in regards to vehicle replacement.
J	Capital Expenditure (New)	Favourable \$1,312k	Reflects budget timing variations with regards to the completion of the Cove Civic Centre.
K	Funding Transactions	Favourable \$3,300k	The variance in cash/investments/accruals funding is attributable to the corresponding net overall lending/(borrowing) position.

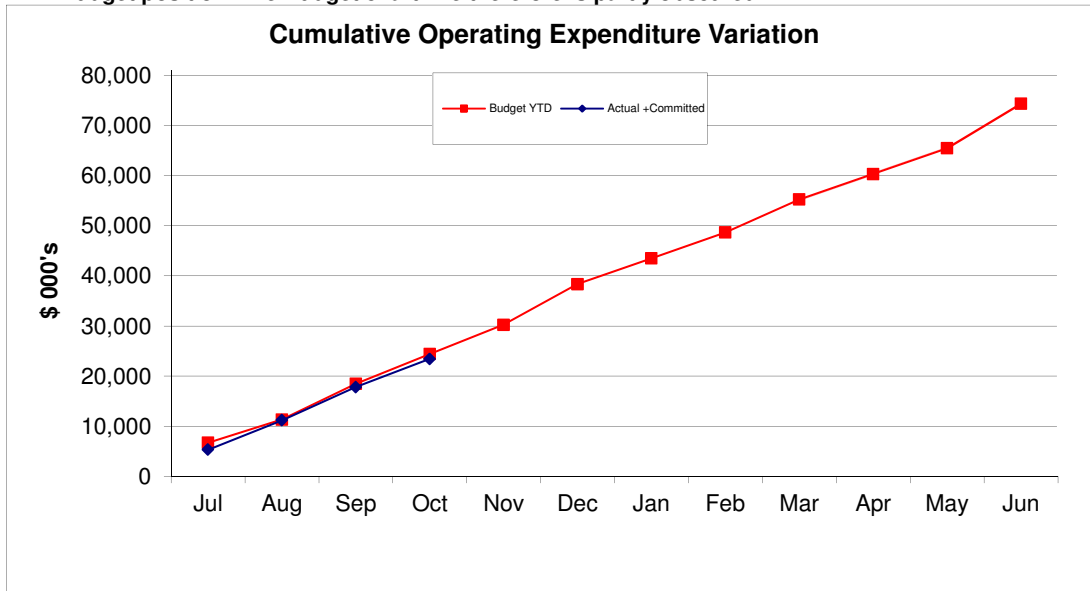
The above comments referring to budget timing variations are where some monthly budget estimates are not reflective of the actual expenditure patterns as at the reporting date.

Note: The progress to date of Capital Expenditure programs (New and Renewal) is detailed in the attached graphs, noting that where no budget exists in the initial months this is primarily due to certain types of capital works that cannot be carried out during periods of inclement weather.

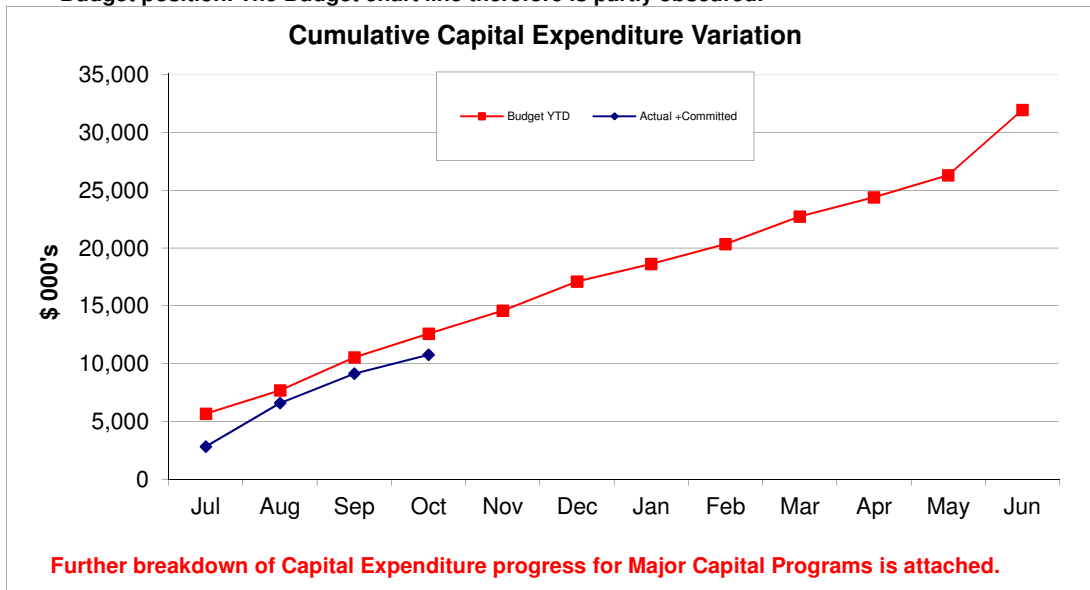
Funding Statement Cumulative Position - 2015/16



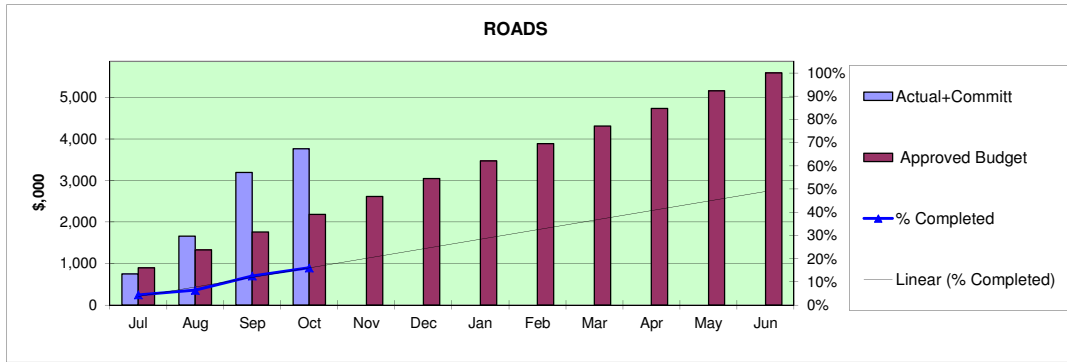
Note - The Year to Date Actual + Committed position result is accurately aligned to the Year to Date Budget position. The Budget chart line therefore is partly obscured.



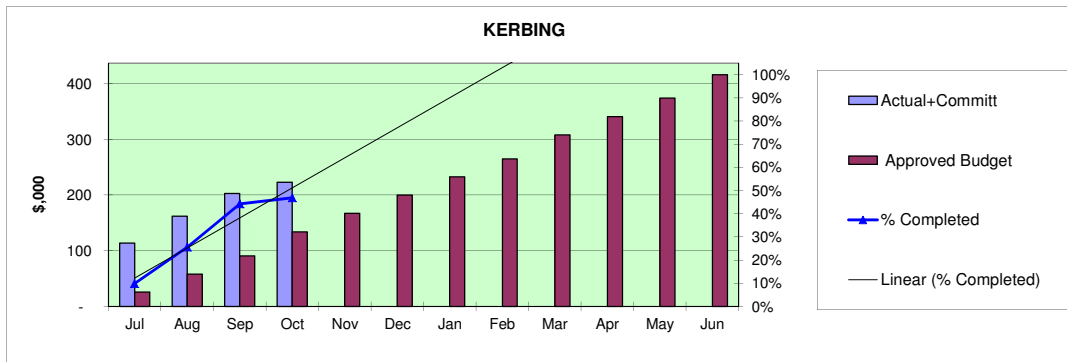
Note - The Year to Date Actual + Committed position result is accurately aligned to the Year to Date Budget position. The Budget chart line therefore is partly obscured.



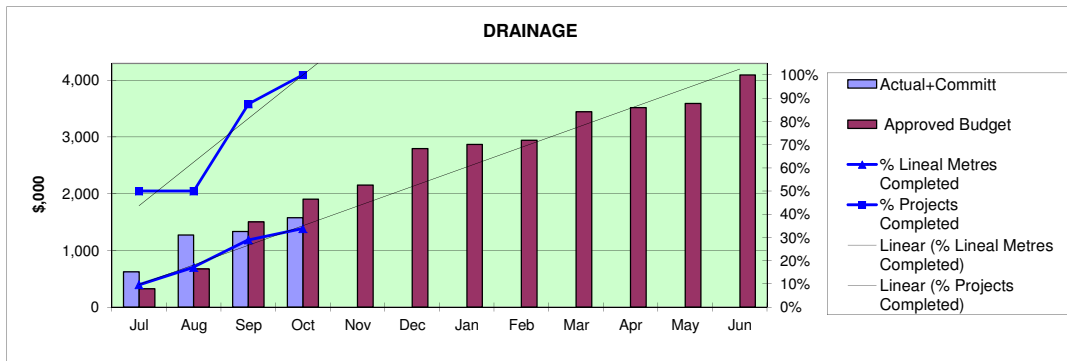
Further breakdown of Capital Expenditure progress for Major Capital Programs is attached.



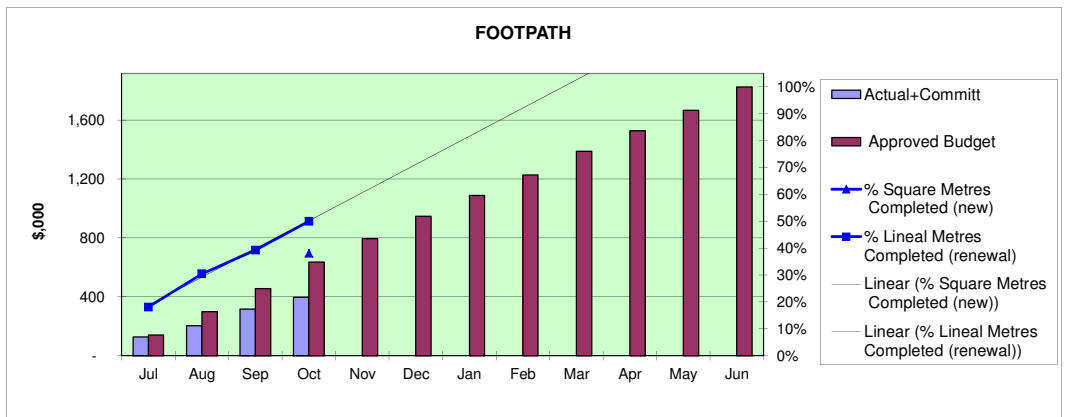
Program commenced, 16% complete.
 • The Actual+Commit for October includes a substantial commitment relating to purchase orders being raised for works yet to be carried out.



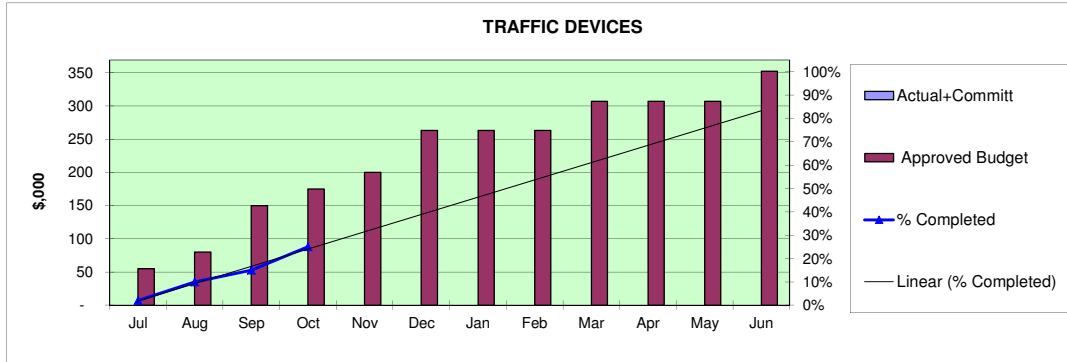
Program commenced, 47% complete.



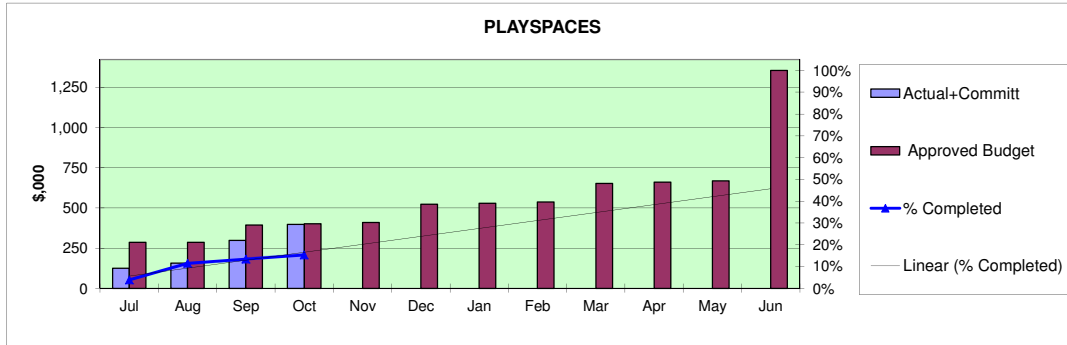
Program commenced, 34% complete.
 2 of 2 projects completed.
 • West Street, Nannagai Drive and Coolah Terrace completed.
 • Farnie Terrace, First Street, Maxwell Terrace, Towers Terrace, Coolah Terrace, Pantan/Whiteleaf Crescent, Radstock Avenue Stage 2
 Newland Avenue/Jervois Terrace, Brigalow/Mulga and Crozier Terrace in progress.



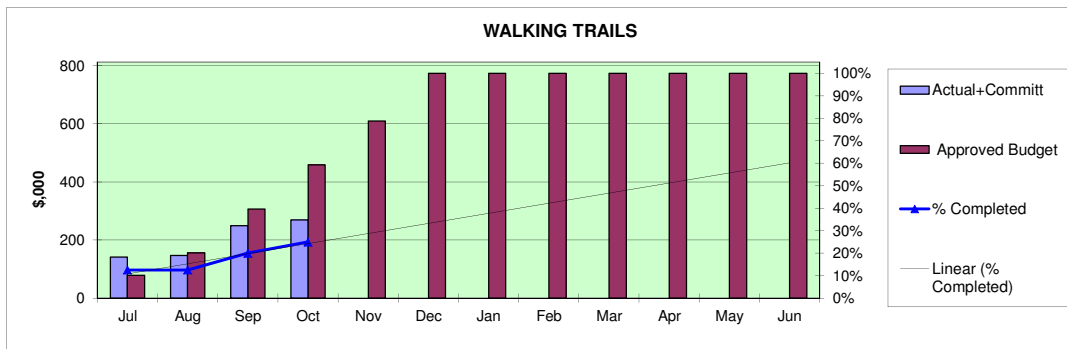
Footpath construction in progress, 38% complete.
 Proactive program commenced, 50% complete.



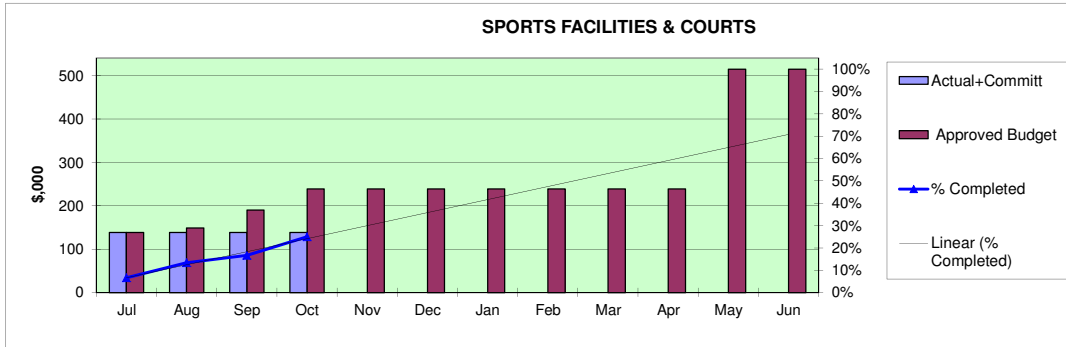
Program commenced, 25% complete.
 • Design work commenced for George Street/Dwyer Road treatments.
 • Tender awarded for Quailo Avenue path.



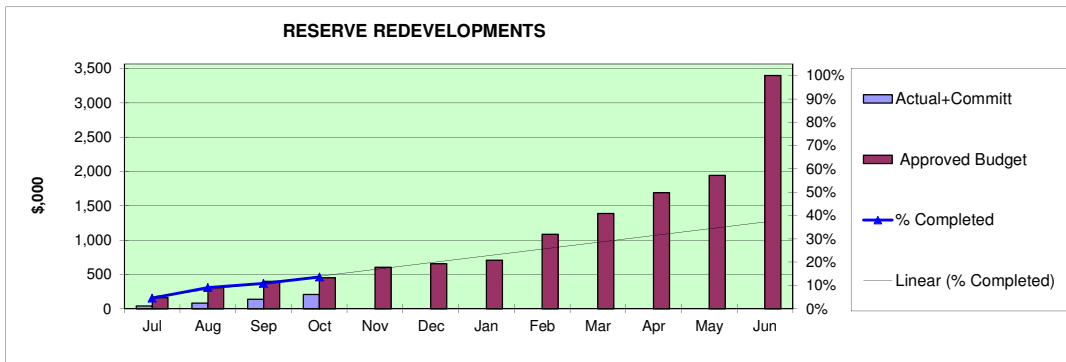
Program commenced, 15% complete.
 • Plympton Oval completed.
 • Construction underway for Edwardstown Oval.
 • Draft Concept Plan in design development for consultation throughout November/December 2015 for Inclusive Playspace (Touched by Olivia Foundation).



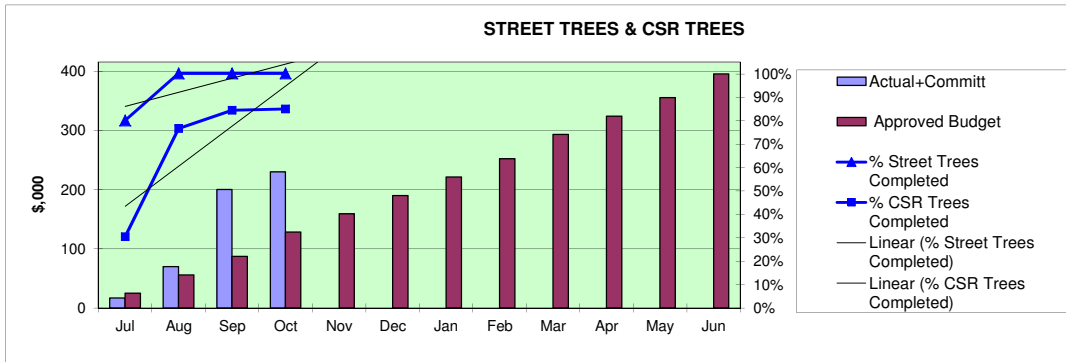
Program commenced, 20% complete.
 • Integrated Path Hallett Cove, Railway Tce in progress.



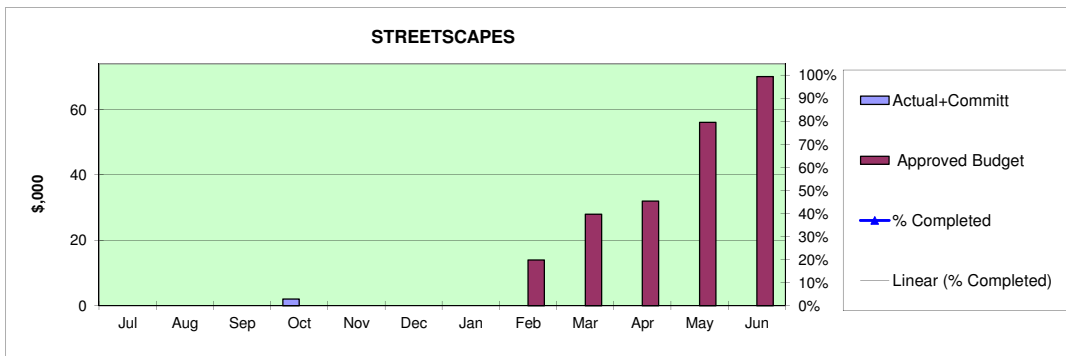
Program commenced, 25% complete.
 • Edwardstown Oval courts construction in progress.



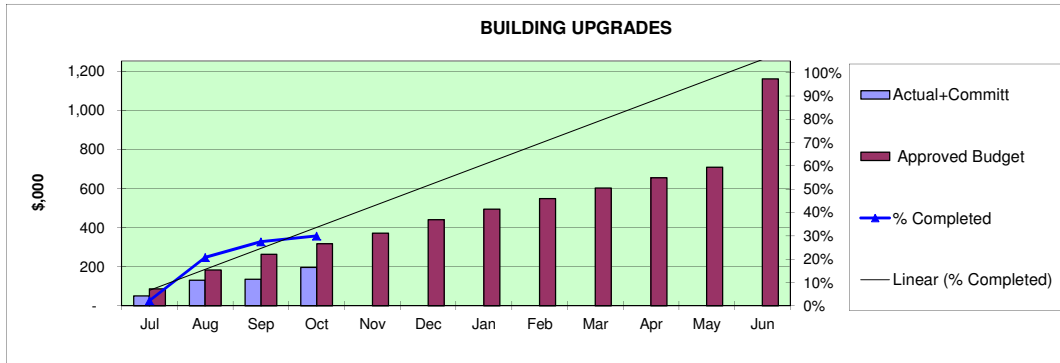
Program commenced, 14% complete.
 • Trott Park Dog Park, Jervois Street Reserve, Oaklands Recreation Park, Mitchell Park Fitness Trail in progress.



Program commenced, Street tree plantings 100%, CSR plantings 85% complete.
 • Target plantings, Street trees 1,400, CSR trees 400, total 1,800.
 • Significant plantings, including tube stock, has been carried out to reduce Nursery stock holdings.



Works are scheduled to commence on this program in February.



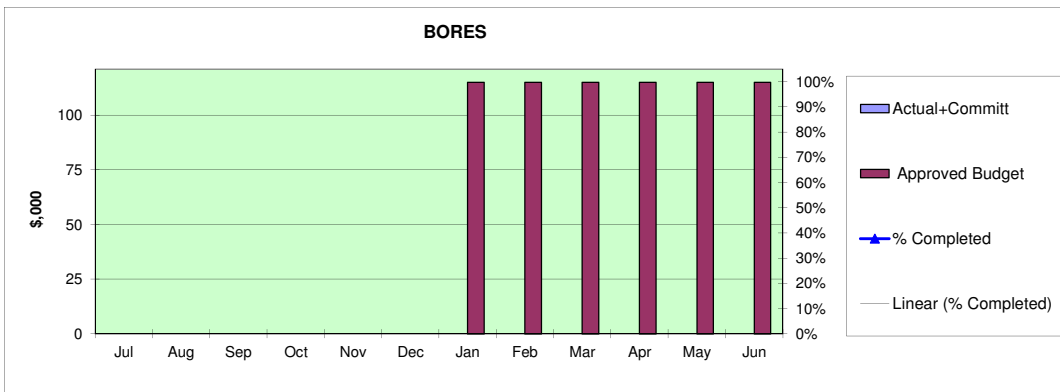
Program commenced, 30% complete.

Completed

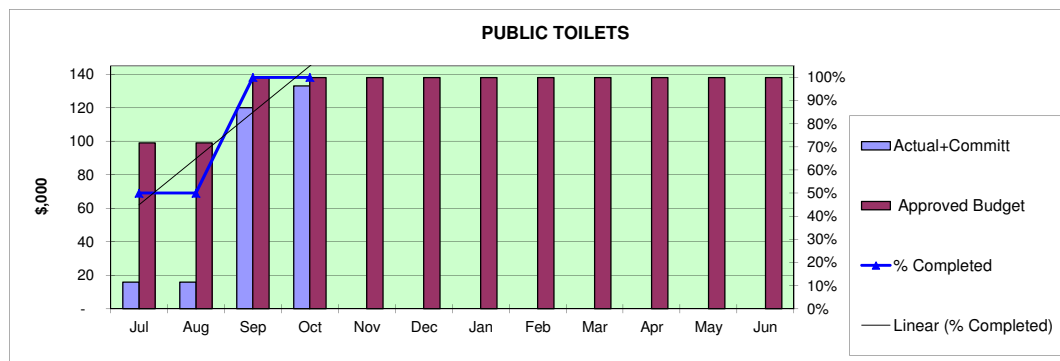
- Marion Swimming Pool filtration pipe and compressor baffles.
- MCC office fitout.
- MCC furniture.

In Progress

- Harcourt Gardens DDA.
- Warradale Tennis Club DDA and kitchen replacement.
- Glandore Community Centre fascia replacement.
- Asbestos removal at 17 Margaret Street Glandore.
- Active Elders toilet upgrade.
- Marion Bowling Club roof replacement.



Bore audit commenced, programmed works are dependant upon outcome and due to commence in January.



Program completed.

- Southbank Boulevard Exceloo installed and opened to public 1 October 2015.

Debtor	Total Balance	Current	30 Days	60 Days	90 Days	90+ Days	Percentage of total 90+ day balance	Comments for 90+ Day balances
General Total	15,823.51	1,443.20	1,842.06	.00	.00	12,538.25	7%	Predominantly relates to one debtor on an ongoing payment regarding illegal tree removal. New payment plan has been negotiated and \$2,587.50 has been since paid in November.
Hire of Council Facilities Total	17,113.10	7,940.40	1,520.00	875.00	.00	6,777.70	4%	Made up of 12 out of 26 debtors in this category, with none individually significant. \$680.00 has been since paid in November.
Land Clearing Total	290.20	.00	.00	.00	.00	290.20	0%	Made up of 1 debtor - final letter has been sent.
Sporting Clubs & Other Leases Total	79,545.19	25,000.45	4,896.23	725.93	1,756.56	47,166.02	26%	Made up of 7 out of 23 debtors in this category with one debtor accounting for \$15,895. Includes amounts of \$15,404 relating to Emergency Services Levy amounts for which council is currently seeking exemption. Two accounts (totalling \$9,703) are on payment plans. \$1,323.56 since paid in November.
Extra Works Total	39,289.95	11,600.00	2,100.00	7,157.45	4,910.00	13,522.50	8%	Made up of 8 out of 17 debtors in this category. Largest individual debtor accounting for \$4,200.00 is on payment plan which is currently being met.
Swim Centre Debtors Total	2,279.40	1,275.00	.00	.00	.00	1,004.40	1%	Made up of 3 out of 4 debtors with none individually significant.
Grants & Subsidies Total	125,323.91	38,131.11	.00	.00	.00	87,192.80	49%	\$86,780 relates to one specific debtor - related work will not commence until grant funding is received in full from the club.
Environmental Health Total	10,277.60	1,983.20	916.20	410.00	328.00	6,640.20	4%	Made up of 50 out of 78 debtors in this category, with none individually significant. \$460.20 since paid in November.
Impoundment	135.00	.00	.00	.00	.00	135.00	0%	Made up of one debtor.
Tree Funds Total	3,493.84	474.00	.00	220.00	.00	2,799.84	2%	Made up of 10 out of 13 debtors in this category, with none individually significant. \$246.00 since paid in November.
Living Kaurna Cultural Centre	5,700.90	4,038.90	1,662.00	.00	.00	.00	0%	
Marion Cultural Centre Total	6,625.85	6,625.85	.00	.00	.00	.00	0%	
Total	305,898.45	98,512.11	12,936.49	9,388.38	6,994.56	178,066.91		
Total Aging Profile		32%	4%	3%	2%	58%		

Category	Description
General	Anything that does not fit into one of the below categories.
Hire of Council Facilities	For hire of rooms in Neighbourhood Centres, etc - usually charged out at an hourly rate. Also includes cultural workshops and tours.
Land Clearing	Relates to the clearing of vacant land
Sporting Clubs & Other Leases	Rent, electricity, water, maintenance, etc charged out to lessees.
Extra Works	For repairs or modifications to infrastructure (footpaths, kerbs, driveway inverts). Can be at resident request.
Swim Centre Debtors	Outdoor Swimming Centre - used for lane hire, school visits, etc
Grants & Subsidies	Government grants and subsidies
Environmental Health	Food Inspection fees
Impoundment	Used for Vehicle Impoundment fees.
Tree Funds	Includes contribution from residents and/or developers for the removal and/or replacement of Council Street Trees and significant trees.
Living Kaurna Cultural Centre	Relates to programs run through the LKCC
Marion Cultural Centre	For invoices relating to the Marion Cultural Centre

Rates Report - Collection of Rates to 31 October 2015

ANALYSIS OF OUTSTANDING RATES AS AT 31 OCTOBER 2015

	<u>Note</u>		% of Total Annual Rates
CURRENT	1	\$ 45,280,756	64.6%
OVERDUE	2	\$ 627,739	0.9%
ARREARS	3	\$ 1,216,858	1.7%
POSTPONED	4	\$ 104,607	0.1%
LEGALS	5	\$ 18,905	0.0%
		\$ 47,248,865	67.4%
TOTAL ANNUAL RATES FOR 2015/16		\$ 70,058,000	

Note 1: Current

Current rates represent the total amount of rates levied in the current financial year that are not yet due for payment. For example at 1st January this represents Quarter 3 & Quarter 4 rates unpaid.

Note 2: Overdue

Overdue rates represent rates levied in the current financial year that remain unpaid past their due payment date. For example on 1st January, this represents rates from Quarter 1 and Quarter 2 that remain unpaid.

Note 3: Arrears

Rates in arrears represent rates and charges levied in previous financial years that remain unpaid .

Note 4: Postponed

Postponed rates represent any rates amount due by seniors that have been granted a deferral, until the eventual sale of their property, as allowable under the Local Government Act. Interest is charged on these deferred rates and is recoverable when the property is sold.

Note 5: Legals

Legals represent any legal fees, court costs that have been incurred by Council in the collection of rates in the current financial year. These amounts represent costs that have been on-charged to the defaulting ratepayers and are currently outstanding.

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Question Received from: Councillor Jason Veliskou

Subject: Residential Bins

Ref No: GC241115Q01

File No: 9.33.3.17

QUESTION:

What is the process for residents wishing to replace a damaged residential bin within the City of Marion?

What are the criteria under which a residential bin is considered damaged enough to replace?

How many bin replacements have taken place over the last 2 years and are there any trends that direct future replacement schedules?

What has the City of Marion being doing to date to maintain the condition of the residential bin stock?

What else could be done to increase resident knowledge of the processes and the circumstances under which residential bins are replaced?

COMMENTS: Colin Heath, Manager Contracts

The City of Marion's ("COM") kerbside waste collection contractor Solo Resource Recovery ("Solo") is responsible for the supply and repair/replacement of all damaged residential bins, at their cost, within 2 workings days of a request by residents.

Residents are asked to contact Solo on (08) 8295 5077 or email adelaideops@solo.com.au to request the repair of damaged bins. Solo will assess the damage, and replace the bin where the damage is deemed to make the bin 'unserviceable'.

Factors considered in this assessment include whether the damage:

- represents a physical risk to residents/public
- enables vermin to access waste
- increases the risk of spilling material/liquids (location of splits impacts this for example)

Bins with major graffiti are also generally replaced (minor is not).

COM has in the order of 110,000-120,000 bins which were collected 3.2 million times during the 2014/15 financial year.

Solo has replaced

- 2,818 bins in 2013/14 and 2,259 in 2014/15
- an average of approx. 2,000 per annum over the past 5 financial years, or 1.7% of the estimated number of total bins.

Current strategies adopted to maintain the condition of the residential bin stock include:

- promoting bin replacement processes via:
 - the annual distribution of Bin Collection Calendar and Waste Recycling Guide's to all households
 - COM website
 - COM's customer call centre scripts
- Waste Administration Officer and other staff being observant while moving through our council boundaries and identifying damaged bins and proactively requesting replacement bins on behalf of residents (including while undertaking regular bin audits)
- Partnering with Solo management to emphasize the importance of their driver's ability to proactively identify and replace damaged bins
- ad-hoc Elected Member promotion/focus to residents eg. articles in City Limits

Additional strategies that could potentially be considered include:

- using photographs on COM's website to better demonstrate circumstances under which residential bins are replaced
- promotional stories within City Limits and COM's social media channels

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Notice Received from: Councillor Tim Pfeiffer

Subject: Edwardstown Rotary Club donation to the Jervois Street Reserve

Ref No: GC241115M01

File No: 9.24.1.4 & 9.33.3.22

MOTION:

That the Council:

1. Acknowledge and formally thank the Edwardstown Rotary Club for their generous donation to Council of \$50,000 towards the development of the Jervois Street Reserve,
2. Use the donation for a specific element of the Jervois Street Reserve design and appropriately acknowledge the Edwardstown Rotary Club in a permanent manner on site (through a plaque or similar).

COMMENTS: Councillor Pfeiffer

The Edwardstown Rotary Club is a great service club that has put a lot into the City of Marion Community over many decades. Over the decades, the club has built community buildings and developed playgrounds.

The Club ran the secondhand bookshop on Sturt Road, opposite Westfield Marion for many years. Faced with the prospect of a lease coming to an end, the club approached Council a few years ago with a proposal to move the bookshop to the derelict former Harcourt Gardens Kindergarten on Towers Terrace, Edwardstown.

It was a long and challenging process, wrapped in red tape, to get all of the necessary approvals in place to secure the premises for the bookshop.

In the last two years that the 'Edwardstown Rotary Book Exchange and Community Centre' has been running, it has not only been a successful not-for-profit business, but it has become a focal point for the local community. Everyone talks about it, everyone goes there. People stop, spend time, talk and use the free internet service. It has become a community centre that is actually managed by the community. The Edwardstown Rotary Club has taken an overgrown, derelict and ugly Council-owned facility and turned it into a busy, attractive and vibrant local destination.

Edwardstown Rotary Club uses the revenue it generates to support many local and international projects. Local projects include, Clean Up Australia Day events, installing bird

boxes at Warraparinga, local revegetation projects, our ANZAC Day youth vigil and supplying Meals On Wheels drivers on a weekly basis. They also support a number of local sporting clubs in a variety of ways.

In addition to local projects, they also support the bigger international projects, including the Rotary international Polio program, which in the last 30 years has immunised 2 billion children in 122 countries against polio. Both the United Nations and Bill and Melinda Gates foundation have become partners in Rotary's Polio program, because it is so successful. Their work has reduced incidences of Polio by 99% and has been credited with eradicating the disease in all but two countries on the planet.

The Edwardstown Rotary Club is immensely grateful for the hard yards that Council put in to assisting in establishing them in the new premises. It has allowed them to continue funding their great work locally and internationally. The club has been keenly following our progress on the Jervois Street Reserve for a long time. They have recently and unexpectedly decided to make a generous donation of \$50,000 towards the development costs (see attached letter).

This kind of donation from a community group to Council is not only unexpected, but it is unprecedented.

The intent of this motion is to sincerely thank the Edwardstown Rotary Club for their generous donation, to ensure that the donation is used to fund a specific element of the project and to acknowledge the club's contribution onsite.

COMMENTS: Fiona Harvey, Manager Innovation and Strategy

Background

The Jervois Street Reserve development is being undertaken within the 2015/16 capital works program with detail design in final stages, and a development application lodged in preparation for tender and onground delivery commencing early 2016.

This follows Council consideration of this project over the course of the last three years from land acquisition (GC250613F01) through to the endorsement of the concept plan and proceeding to detail design, development approval, procurement and construction (GC140715R06).

At the General Council meeting held on 24 March 2015 (GC240315R02), Council resolved to:

- 1. Provide in principle endorsement of the Jervois Street Reserve draft concept design for consultation.*
- 2. Receive a further report following consultation detailing a final concept plan for endorsement.*
- 3. Endorse the use of up to \$650,000 from the Open Space Reserve in order to enable the completion of Stages 2 and 3.*

At the General Council meeting held on 14 July 2015 (GC140715R06), Council resolved to:

1. *Provide endorsement of the final concept design for the Jervois Street Reserve development.*
2. *Provide endorsement to proceed to detailed design, development approval, procurement and construction.*
3. *Note the additional \$35,934 annual operating and maintenance costs to be incorporated into the Long Term Financial Plan from 2016/17.*

At the General Council meeting held on 9 December 2014 (GC091214R02), Council resolved to:

1. *Enter into a funding agreement with the Department of Planning Transport and Infrastructure to utilise the \$300,000 grant funding for Stage 1 Implementation of Jervois Street reserve development.*

Funding for Construction of the Reserve

Throughout 2014 and with significant community consultation, a concept plan for the reserve was developed with an estimated \$940,000 capital construction cost.

On 15th February 2015, Council entered into a funding agreement with the Minister for Planning for which \$300,000 of state government funding is to be utilised for the reserve development. The funding agreement states:

“To implement the first stages of the Jervois Street Reserve Concept Plan to establish the site as a neighbourhood reserve”.

The funding agreement outlines that the project needs to be completed by 30 June 2016

On the 24th March 2015, Council resolved to:

“3. Endorse the use of up to \$650,000 from the Open Space Reserve in order to enable the completion of Stages 2 and 3.”

Edwardstown Rotary Club Offer of Donation

The Edwardstown Rotary Club has offered to contribute \$50,000 towards the reserve development. See attached letter (Appendix A)

Over the course of the last few months, staff have attended two Rotary Club meetings to provide an overview of the project, the development of the concept plan and outline the facilities within the endorsed Concept Plan.

The Edwardstown Rotary Club has indicated they would like their donation to be attributed to the family facilities area (Refer Appendix B) which would include:

- 1 x Large Shelter (4 x 10m)
- 1 x Double Plate BBQ and electrical connection
- 2 x Picnic Tables and Bench Seats
- 1 x Drinking Fountain (including dog bowl)
- 1 x Bike Stand
- 2 x Bins enclosures with dog bag dispensers

In addition it is proposed that the contribution is recognised with a boulder and plaque that would be funded with the donation.

Funding Balance

It is projected (at this time) the project is fully funded by way of State Government Grant funding and Council funds of up to \$650,000 from the open space reserve. It is possible with this donation from the Edwardstown Rotary Club that Council may only need to fund up to \$600,000.

It is recommended that the donation from the Edwardstown Rotary Club is accepted and is directed towards the 'family facilities' area and more specifically the abovementioned items. Should the additional \$50,000 donation to the project result in funds remaining at the conclusion of the reserve development, these will be returned to the open space reserve fund for the fund's intended purposes.

Conclusion

The Edwardstown Rotary Clubs \$50,000 donation is an excellent example of the community contributing financially to the development of a community facility for community use into the future.

Following liaison with the club, it is recommended the donation be utilised for the family facility area and items outlined in Appendix B.

The motion of acknowledgement and formally thanking the Rotary Club for this donation is supported. An appropriate letter formally thanking the club and acknowledging the donation will be sent to the Edwardstown Rotary Club.

SCANNED



**Be a gift
to the world**

16 September 2015

Mayor Kris Hanna
CEO Adrian Skull
PO Box 21
Oaklands Park SA 5046

RECEIVED
CITY OF MARION
INFORMATION MANAGEMENT

22 SEP 2015 Original Fwd:

File No: 238-3-1
2 5 8 7 8 10 P
2-38-32

Dear Sirs,

I write to you on behalf of the Rotary Club of Edwardstown to advise that at our August Board meeting it was agreed to donate \$50,000 to the Marion Council for use on the Jervis Street Reserve Project.

I understand that Elected Members have already agreed to attend our Rotary Meeting on Tuesday 20 October to show case ways to utilise our \$50,000 donation and I would like to extend an invitation to both of you to attend this meeting also.

We meet at the Marion Hotel on Marion Road at 6pm and I envisage Council's presentation to commence at 7pm after dinner.

Regards,

Clair Gasson
President of Edwardstown Rotary Club
PO Box 22
Park Holme SA 5043



1x 4x10m Picnic Shelter
• Treated Pine LOSP
• Custom Orb roof sheeting



1x Double Standalone Electric BBQ & electrical connection
• 304 Stainless



2x 2.5m Picnic Settings, DDA accessible
• Powdercoated frames
• Jarrah oiled battens



1x Drinking Fountain & dog bowl inc water connection
• Powdercoated body
• Stainless Steel drinking and dog bowl



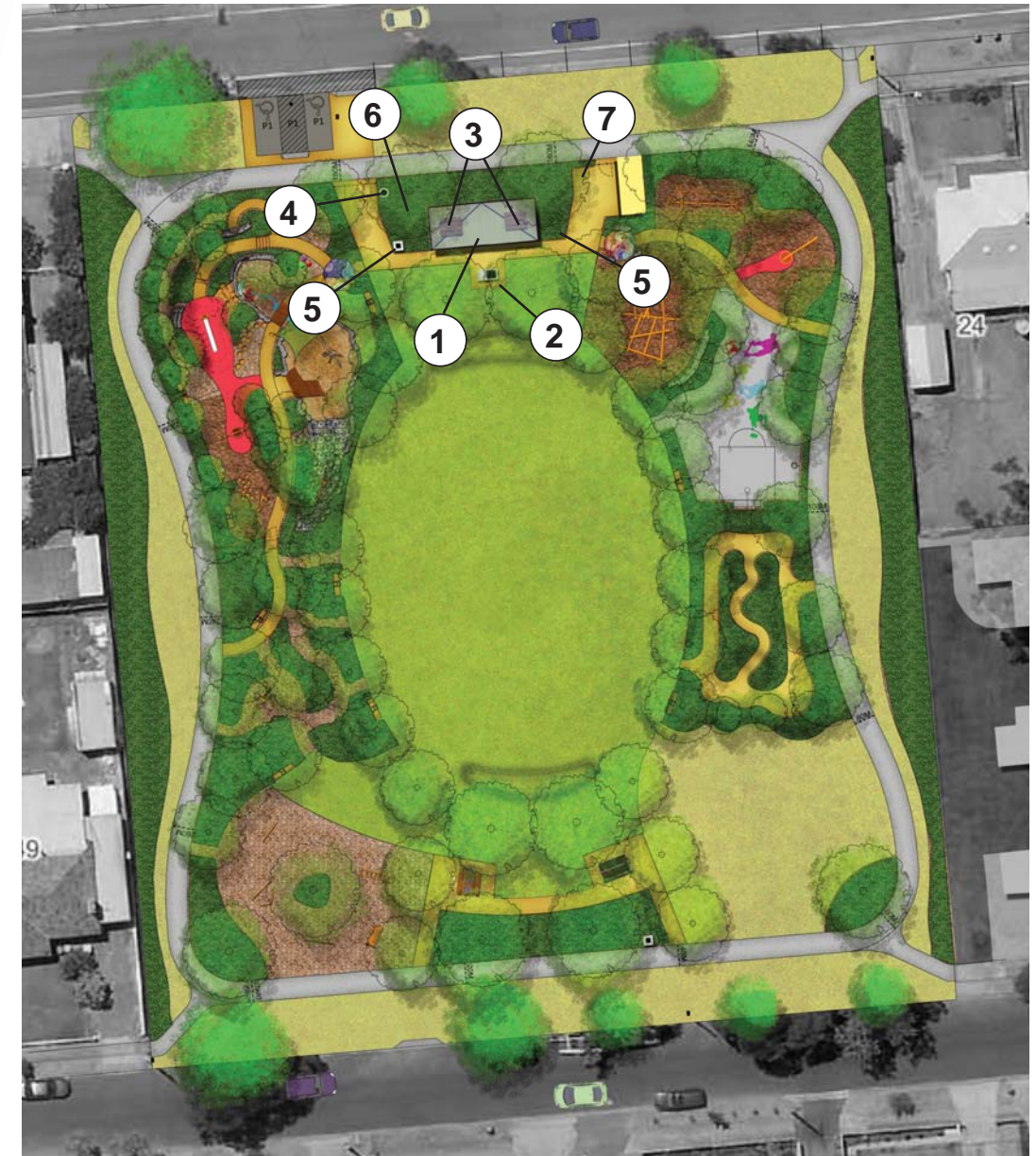
2x 240L Bins with dog bag dispensers
• Powdercoated Satin Black



Contribution Boulder
Black Granite & engraving TBC



1x Bike stand, accommodates 5 Bikes
• Powdercoated



Note: Prices are estimates of supply and install and is subject to a tender process

**CITY OF MARION
GENERAL COUNCIL MEETING
24 November 2015**

Confidential Report

Originating Officer: David Barrett, Unit Manager Cultural Facilities
General Manager: Abby Dickson, City Development (Acting)
Subject: Marion Leisure & Fitness Centre: Future Options Review
Report Reference: GC241115F02

If the Council so determines, this matter may be considered in confidence under Sections 90(3)(b) of the Local Government Act 1999 on the grounds that it relates to matters that may prejudice Council's commercial position



Adrian Skull
Chief Executive Officer

1. That pursuant to Section 90 (3)(b) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Chief Executive Officer; Acting General Manager; Abby Dickson, Kate McKenzie, Manager Governance; David Barrett, Unit Manager Cultural Facilities; Victoria Moritz, Governance Officer; Craig Clarke, Unit Manager Communications, be excluded from the meeting as the Council receives and considers information relating to Marion Leisure & Fitness Centre upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to commercial operations of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of Council