



## **REPORT OBJECTIVES and EXECUTIVE SUMMARY**

To receive a report on the recommended negotiated settlement with Mossop Constructions and Interiors (MC+I) to finalise claims made by MC+I for delays and other costs associated with the Cove Civic Centre development.

### **RECOMMENDATIONS (5)**

- 1. That Council receive and note report GC220915F01 on the negotiated settlement with Mossop Constructions and Interiors into their claims for costs over the construction of the Cove Civic Centre and associated works.***
  - 2. That Council endorse the negotiated settlement with Mossop Constructions and Interiors and authorise a payment of \$██████ as final payment and settlement of all extension of time and mitigation cost claims made by Mossop Constructions and Interiors upon execution of a Deed of Settlement and Release and upon receipt of an appropriate tax invoice.***
  - 3. That Council delegates to the Chief Executive Officer authority to administer the balance of the outstanding matters identified in this report, and***
  - 4. That Council authorise the Mayor and Chief Executive Officer to execute a Deed of Settlement and Release under seal.***
  - 5. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Cove Civic Centre and the minutes arising from this report having been considered in confidence under Section 90(3)(b)(i)(ii) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2015***
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## **BACKGROUND**

Attached is a report from the former Acting Chief Executive Officer (Mr Geoff Whitbread) who has been retained by Council to pursue the settlement of matters relating to the Cove Civic Centre and claims made by MC+I in relation to extension of time and mitigation costs.

## **CONCLUSION**

Mr Whitbread has negotiated a very favourable settlement (for Council) with MC+I and the terms of the settlement, as expressed in the attached report, are strongly recommended to Council.

**Report to:** City of Marion

**From:** Mr Geoff Whitbread

**Subject:** Cove Civic Centre, settlement of claims

**Date:** 21 September 2015

At its meeting held on 25 August 2015 (ref: GC250815FO2) Council received a report on:

1. The handover status of the Cove Civic Centre (CCC) from the builder MC+I, and
2. The status of the negotiations with MC+I on the final project cost and the financial claims made by MC+I for delays and other costs.

Members will recall that the above report and advice at the Council meeting that the meeting scheduled with MC+I to continue negotiations had not been held due to the unavailability of MC+I and was rescheduled. The then Acting Chief Executive Officer (Geoff Whitbread) was appointed to continue the negotiations with MC+I and to seek an acceptable financial solution to recommend to Council. This meeting was held on 4 September 2015. Geoff Whitbread represented the City of Marion and also attending was Mark Utting, Regional Director of Turner Townsend Thinc (Project Superintendent) and Neil and Aaron Mossop of MC+I. In essence the claims made by MC+I on the principal (City of Marion) amounted to \$ [REDACTED] (approx.) and the Principal had offered \$ [REDACTED] (approx.).

#### **THE STATUS OF NEGOTIATIONS WITH MC+I**

A preliminary Superintendent Report (previously requested by the then Acting CEO) formed the focus of the 4 September 2015 negotiation (noting several previous attempts to finalise or come to a shared understanding on the matter had failed).

There were 3 possible avenues to bring the dispute to resolution. First, to negotiate a settlement figure that could be justified (the cheapest, quickest and most expeditious option); secondly, settle the dispute by arbitration (expensive, lengthy and time consuming with no certainty of outcome); alternatively submit to the courts (very expensive, time consuming, would not be listed for some considerable time and no certainty of outcome). There is no specialty judicial bench for such matters in South Australia. Both parties interest are best served by a negotiated settlement.

The following was eventually agreed at negotiation:

- o that the City of Marion will make a settlement payment in the order of \$ [REDACTED] subject to the Superintendent being able to appropriately justify same in the final report;
- o the settlement amount being supported by the Council of the COM, and
- o outstanding variations would be processed quickly in accord with the Construction Contract.

It was also agreed the above outcomes would be expedited as quickly as possible.

The Superintendent has now issued his final determination and was served on both parties on 11 September 2015. The report concludes that the following is compensable:

1. Extension of time and prolongation costs [REDACTED]
  2. Mitigation costs [REDACTED]
- TOTAL** \$ [REDACTED] previously paid

A Deed of Settlement and Release summarising the rights and obligations of both parties relating to the proposed settlement has been prepared by Crawford Legal (Recommendation 3).

### OUTSTANDING MATTERS

The following matters will remain outstanding:

- o The approval of outstanding consultant fees under the contract and during the defects liability period if a particular consultant is required;
- o The administration of any outstanding variations as per the Contract;
- o Any additional works required by Marion (eg omissions that become apparent during day to day use)
- o The Defects Liability Period that expires on 18 June 2016 (1 year after Practical Completion) [REDACTED].

### BUDGET

The approved budget for delivering the CCC is as follows:

#### *Approved Budget / Funding*

Construction budget	\$ [REDACTED]
Ragamuffin Drive	\$ 0.783m
Stormwater upgrade	\$ 0.262m
Arts SA	\$ 0.1m
<b>Total</b>	<b>\$ [REDACTED] (\$14.768m)*</b>

#### *Estimated Costs at start of project*

Mossop contract	\$ [REDACTED]
Contingency	\$ [REDACTED]
Works by Marion	\$ 1.397m
External site services	\$ 0.453m
Professional fees	\$ 1.574m
<b>Sub-total</b>	<b>\$ [REDACTED]</b>
Tender saving	\$ [REDACTED]
<b>Total</b>	<b>\$ [REDACTED]</b>

\* \$0.223m in interest earned on federal funding that is required to be spent on the project.

<sup>1</sup> Refer footnote 1. This figure (\$ [REDACTED]) is to be reduced by \$ [REDACTED].

## Estimated Project Cost

As at 21 September 2015 the estimated project cost is shown below. The final project cost will be reported to Council once all final costs have been reconciled.

Mossop contract	\$ [REDACTED]
Contingency	Fully expended
Works by Marion	\$ 1.391m
External site services	\$ 0.487m
Professional fees	\$ 1.931m
<b>Sub-total</b>	<b>\$ [REDACTED]</b>
Tender saving	\$ [REDACTED]
<b>Total</b>	<b>\$ [REDACTED]</b>

## CONCLUSION:

The outcome of the negotiated settlement with MC+I is a very satisfactory result.