

CONFIDENTIAL REPORT

General Council Meeting
25 August 2015

Originating Officer: Geoff Whitbread, Acting Chief Executive Officer
Subject: Marion Leisure and Fitness Centre
Reference No: GC250815F03

If the Council so determines, this matter may be considered in confidence under Section 90(3)(d) of the *Local Government Act 1999* on the grounds that the report contains information relating to commercial information of a commercial nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of a person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.



Geoff Whitbread
Acting Chief Executive Officer

RECOMMENDATION:

1. That pursuant to Section 90 (2) and (3)(d) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Geoff Whitbread, Kathy Jarrett, Abby Dickson, Kate McKenzie, Jaimie Thwaites, Craig Clarke be excluded from the meeting as the Council receives and considers information relating to the Marion Leisure Fitness Centre Lease to CASA Leisure Pty Ltd, 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 information of a commercial nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of a person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

REPORT OBJECTIVE:

The purpose of this report is to brief Council on the following:

1. The Deed of Settlement negotiated with CASA;
2. The performance of the YMCA in the management of MLFC and projected budget;
3. The review to be undertaken on the future directions of the MLFC, and
4. Land & Property work area review.

EXECUTIVE SUMMARY:

At the 9 December 2014 General Council meeting Council resolved to terminate the lease held with CASA Pty Ltd (CASA) for the operations of the Marion Leisure Fitness Centre (MLFC).

This triggered the requirement to:

- Implement an interim management model for the MLFC to continue services to the community;
- Reach a settlement position with CASA, and
- Commence a review to identify future options for the MLFC.

The matter has been complex and has involved extensive resources to resolve. This report updates Council on the outcomes of the Deed of Settlement where Council will pay CASA a settlement sum of \$52,000 which includes the transfer of Plant and Equipment to Council ownership.

The YMCA South Australia has been managing MLFC operations since 20 February 2015 with their contract with Council continuing until 28 February 2016. The Centre on average receives 9,000 visitors per month. The end of year 2014-15 financial reports have been received from the YMCA enabling more accurate projection of costs up until 28 February 2016. The projected total cost to Council to operate the MLFC from 20 February 2015 to 28 February 2016 is in the order of \$200k including the management fee paid to the YMCA. This cost is higher than was first projected and is predominantly due a reduction in projected revenue as a result of the inheritance of hire arrangements which are well below market rates. This loss in income could not have been reasonably foreseen by Council or the YMCA.

Prior to the conclusion of the current interim management agreement with the YMCA Council will be required to make a decision on the future of the MLFC. To support Council in this decision a review has commenced of the future options for the Centre. The results of this review are expected to be presented to Council in early November 2015. This report also provides Council with an outline of the scope of this review.

The MLFC matter has highlighted a range of issues which are currently being addressed as a matter of priority. The settlement of the prior lease held with CASA and the transfer of plant and equipment has enabled Council to maintain services for an interim period with no service disruption.

RECOMMENDATIONS

- 1. The report be received and the contents noted.**
- 2. Endorse the actions of the Acting CEO outlined in the report namely to:**
 - 2.1 Execute a Deed of Settlement with CASA Pty Ltd;**
 - 2.2 Implement a review of the future directions of MLFC, and**
 - 2.3 Implement a review of the Land and Property work area in the Administration.**
- 3. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(d) of the Act shall, except when required to effect or comply with Council's resolution(s) regarding this matter, 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**

Introduction

At the 9 December 2014 General Council meeting Council resolved to terminate the lease held with CASA Ltd Pty (CASA) for the operations of the Marion Leisure Fitness Centre (MLFC).

The Notice of Breach for non-payment of rent and outgoings was posted to CASA on 24 December 2014. The notice was officially served on 2 January 2015, providing 14 days for the breach to be remedied.

CASA failed to remedy the breach. A Notice of Termination was served on CASA on 22 January 2015. The termination took effect immediately upon service and provided that the facility be vacated by CASA and handed over to Council on or before 20 February 2015.

This triggered the requirement to:

- Implement an interim management model for the MLFC to continue services to the community;
- Reach a settlement position with CASA;
- Commence a review to identify future options for the MLFC.

The matter has been complex and has involved extensive resources to resolve. This report updates Council on the following key aspects:

1. The Deed of Settlement negotiated with CASA
2. The performance of the YMCA in the management of MLFC and projected budget
3. The review to be undertaken on the future directions of the MLFC
4. Land & Property work area review

1. The Deed of Settlement negotiated with CASA

At the 12 May 2015 General Council meeting Council delegated authority to the Acting CEO to reach a settlement with CASA and execute a Deed of Settlement.

The principles to pursue this matter were established as follows:

- deliver a fair and reasonable outcome acceptable to the parties;
- exercise prudent diligence in the expenditure of public funds;
- achieve a commercially sound result given the circumstance; and
- maintain community services delivered from the MLFC for the interim period.

A full financial analysis was undertaken to determine the amounts owed by CASA. This included the seeking of legal advice as to whether Council was in a position to claim outstanding rent arrears, council rates and building insurance post 1 October 2015.

It was confirmed by Council's legal advisors that it was highly contestable whether Council was in a position to claim amounts owed post 1 October 2014 due to Administration not clearly rejecting the revised terms of the lease proposed by CASA. This advice was provided by EMA Legal in the Section 270 decision review undertaken and also provided by Council's legal advisors engaged to assist with the termination and settlement of the lease.

It was established that CASA owed a total of \$98,600 to Council, with \$57,000 of this amount being the membership liability to be paid to the YMCA. A full breakdown of the amounts CASA owed to Council is provided in table 1 of this report.

Consideration was undertaken of pursuing the amounts owed by CASA via litigation. This option was not pursued due to the legal advice received that if Council pursued litigation there could be unrecoverable costs in the range of \$50,000-\$80,000.

Plant & Equipment

A key factor in negotiating a position of settlement with CASA was the treatment of plant and equipment. The plant and equipment was required to continue the centre operations and provide a service to the 750 plus Health and Fitness members, stadium hirers and the sub-tenants Gym SA and Koorana.

CASA were initially claiming \$240,000 for plant and equipment. Quotes were sourced on the cost for Council to rent plant and equipment from an alternative supplier and this was estimated at \$95,000 with no recoup value. Sourcing equipment from an alternative supplier would also involve delivery delays of up to 12 weeks causing likely significant disruption to services and a loss of revenue.

Final settlement position

A final settlement sum of \$52,000 to be paid by Council to CASA was negotiated which included the transfer of the CASA owned plant and equipment to Council. Council at the end of the interim management agreement could expect to re-coup an estimated \$59,000 from the disposal of the equipment, should it choose to cease the operations of the MLFC.

The following table provides a breakdown of the financials underpinning the settlement sum.

Marion Lesiure & Fitness Centre - Settlement Summary		
All Figures Exclude GST		
Amounts owed to City of Marion		
		\$
Rent	16,500	
Insurance 2013/14 final instalment	2,497	
Insurance Interest 2013/14 final instalment	25	
Insurance 2014/15 Qtr to 30.09.14	5,859	
Emergency Services Levy 2014/15 to 30.09.14	708	
SA Water (April to June 2014)	4,675	
SA Water Quarterly Acct July - Sept 2014	3,623	
Outstanding Rent, Insurance, Water & ESL Charges to 30.09.14		30,807
Council Rates to 30.09.14		4,382
Pre-paid Membership Liability		57,107
Swim Centre Admissions - January School Holiday Program		3,875
Koorana Gymnastics Pre-paid contribution (21 Feb - 31 Mar 2015)		3,989
SA Water charges (Jan 2015 to 20 Feb 2015)		5,246
		105,355
Payments Since Received		
Feb-15	-4,792	
Mar-15	-4,587	-9,380
Amounts outstanding from CASA related to MLFC operations and the Lease		95,976
Further Costs On Settlement		
50% of Settlement Deed briefing and drawing up of Deed legal costs		1,224
50% of MFS Valuation		1,400
		98,600
Sub total of CASA Outstandings payable to CoM	A	98,600
Amounts owed By City of Marion		
Written down Aircon and Spa capital works		-12,579
Purchase of Plant and Equipment (before other settlement and operational costs)		-138,021
		-150,600
Sub total of Amounts Outstanding to CASA by CoM	B	-150,600
		-52,000
Total Settlement Payable to CASA	(B-A)	-52,000

2. Management Agreement with the YMCA

At the 27 January 2015 General Council meeting Council resolved the following:

That in terminating the lease, Council implements such strategies to ensure that appropriate arrangements for current patrons are made.

An assessment of potential management models was undertaken which included assessment of engaging an external provider for an interim period via a management agreement or Council managing Centre operations in-house. The analysis indicated that an external operator was the most cost effective management model.

The YMCA was engaged to manage the Centre and took over operations on 20 February 2015 when CASA vacated the premises. The YMCA are contracted for a minimum term to 28 February 2016 and thereafter ongoing (subject to termination by either party with 60 days' notice in writing to the other party from 30 December 2015 onwards). Termination prior to 28 February 2016 is subject to agreement by both parties.

There is no implied representation by Council that this Agreement will be renewed or extended following expiry of the initial term providing Council with flexibility in the future use of the facility.

The terms of the interim agreement include:

- Council pays a 10% management fee on agreed turnover;
- Council assumes full responsibility for the net performance of the Centre benefiting 100% from any surplus and funding 100% of any net operating deficit;
- provision of monthly reporting by the YMCA on the operational and financial performance of the MLFC, and
- transparent, joint setting of the budget.

A business and quality assurance plan containing results areas has been developed.

Community Impact

The centre is a well-used facility receiving approximately 9,000 visitations per month. There are approximately 750 Health and Fitness members.

The facility also has the following organisations operating from the Centre:

- Gym SA state office and high performance facility operating from the Centre since 1981, and
- Koorana – approx. 350 members, operating from Centre since it opened in 1978

A summary of the monthly attendances for March to June 2015 is provided below:

TOTAL CENTRE ATTENDANCES CATEGORY	MAR	APR	MAY	JUN
Member Visits	2,228	4,793	5,077	4,943
Casuals	51	119	125	148
Group Fitness	1,089	2,700	3,616	3,082
YMCA Sports Programs	717	838	875	925
TOTAL	4,085	8,450	9,693	9098

The YMCA has managed the takeover of operations well with limited services impact within extremely tight timeframes in which they were required to work within. Service disruptions have been minimal and patronage of the Centre has steadily increased.

Financial Impact

The actual results to 30 June 2015 reported a loss in operations of \$127k (including the YMCA management fee of \$33k). The projected cost of running the MLFC for 2015/16 has been revised based on the activity and actual results since the YMCA took over operations. The revised projected cost of running the MLFC from 1 July 2015 until the 28 February 2016 (end date of the interim management agreement with the YMCA) is \$74k (including the agreed management fee of \$75k). Further projections for the remainder of 2015/16 (Mar to Jun 2016) indicate an expected profit of \$6k after the YMCA management fee of \$38k for that period.

The following table summarises the projected cost of running the MLFC from the time the YMCA took over operations through to 30 June 2016. It should be noted if Council resolves to continue the interim agreement to 30 June 2016 then the projected deficit is slightly lower as revenue grows.

Centre Operation Costs to 30 June 2015 (agreed for interim management including once off setup costs)	-127,507
Further Projected Centre Operation Costs to July 2015 to 29 February 2016 (agreed budget for interim management)	-73,608
Total Projected Cost from Centre Operations to 29 February 2016	-201,115
Further Projected Centre Operation Costs March 16 to 30 June 2016	6,427
Total Projected Cost from Centre Operations to 30 June 2016	-194,688

The projected operating deficit is attributed to the following:

- Stadium hire income has been \$33,550 below the projected income until 30 June 2015 due to non-market charging schedule utilised by the previous tenant CASA. The YMCA is gradually introducing market rates for stadium hire however this can only be introduced as existing agreements are renewed. The reduced stadium income could not have been foreseen by Council or the YMCA before taking over Centre operations.
- There were also once off business transition costs within the first 4 months of operations:
 - Mobilisation costs
 - Staff resignation and associated payout of entitlements
 - Maintenance costs (including roofing, court resealing and globe replacement throughout whole complex).

The above table demonstrates that as time progresses the cost to Council reduces as the start up once off costs are offset by growth in income.

3. Future Directions of the MLFC

The MLFC forms a significant part of Council's community infrastructure and is located in a precinct which includes the Oakland's Wetlands, the Marion Outdoor Pool and the Sturt Creek linear track.

The facility was built in 1978 and was independently valued at \$7,558,020 in 2013 by Maloney Field Services. The facility is located on community land.

A review is currently underway which will consider and recommend the future directions of the Centre for Council's consideration. The review will involve analysis of the following:

- Centre performance with current service model;
- high level market need analysis for Health and Fitness services within the City of Marion / catchment locale;
- current MLFC membership profile and usage data;
- likely future directions in the health ,fitness and recreational sector;
- potential management and service models including, potential partnering with other services within the City;
- alternative uses of the building;

- high level cost benefit analysis of asset renewal requirements or disposal. Including consideration of potential income from the facility, required maintenance costs and capital works;
- Community and stakeholder impact including sub tenants, and
- the review will include engagement with key stakeholders within the Centre including the YMCA, Gym SA, Koorana and MLFC members.

The review will be completed in October 2015 and a report will be brought to Council in November. The report will support Council to make an informed decision on the future use of the facility.

The review and additional resources will be funded within existing operational budget with funds being sourced through current staffing vacancies.

4. Review of Land and Property Work Area

Clearly the management of the land and property assets of the City of Marion needs serious review. The following have been put in place:

- a temporary (experienced and external) staff resource placed within the Land and Property work area to review and implement systems and processes to support proactive lease and licence management, and
- a management review is being undertaken of the Land and Property work area to identify the on-going skills, resources and structure required to better manage Council's land and property assets.

CONCLUSION:

The MLFC has been a complex matter which has highlighted a range of management issues which are being addressed. The settlement of the prior lease held with CASA and transfer of Plant and Equipment has enabled Council to maintain services for an interim period with limited service disruption. This provides Council with the stability and the time to undertake a review of the facility to determine future directions.