

**CITY OF MARION  
GENERAL COUNCIL MEETING  
27 JANUARY 2015**

**CONFIDENTIAL REPORT**

**Originating Officer:** Heather Michell, Land Asset Officer  
**Corporate Manager:** Peter Patterson, Manager Open Space & Facilities  
**Director:** Heather Montgomerie  
**Subject:** Marion Leisure & Fitness Centre  
Lease to CASA Leisure Pty Ltd  
**Reference No:** GC270115F01

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.



**Mark Searle**  
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: Mark Searle, Kathy Jarrett, Heather Montgomerie, Peter Patterson, Mark Gibson, Heather Michell, Kate McKenzie, Ray Barnwell and 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.

## **DISCUSSION:**

The purpose of this report is to provide an update to Council in relation to Marion Leisure and Fitness Centre.

Briefly, the lease to CASA was terminated on 22 January 2015 due to default.

The following is a summary of actions in response to Council's resolutions of 9 December 2014:

**1. Council gives 14 days notice of breach to CASA to remedy the current default provisions of the lease.**

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. No payments were received by 16 January 2015. Rather, CASA offered a payment plan of \$5,000 per month on a lesser debt total. This offer did not remedy the breach.

**2. Should such default not be remedied, that Council moves to terminate the lease with CASA for breach and non-payment of rent and outgoings, subject to lease and legislative requirements.**

Given the breach was not remedied, 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 or such other date as Council may stipulate by further notice.

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

Discussions have been held with CASA, and an agreement has been reached to work towards an orderly transition of business. Options to manage the facility whilst market testing and tendering is progressed are being developed by both CASA and Council. This will ensure that the adopted approach delivers the best outcome for the Centre's patrons and Council.

A communication plan has been developed, and CASA have agreed to a joint approach.

**4. Further, that in terminating the lease, Council takes appropriate legal action to recoup monies owing to Council.**

Discussions are currently progressing with CASA further to their proposed repayment plan and disputed balance owing.

For Council's information, the amount owing by CASA as at the date the Notice of Breach was issued was \$82,395.16. The amount claimed by CASA as owing is \$34,592.64.

Based on the outcome of these discussions, appropriate debt recovery approaches will be taken having regard to both CASA's ability to repay the debt, and Council's financial objectives.

**5. Conducts a market review of the facility which includes identifying potential users and management options and models for the medium and long term.**

Two prospective contractors have been identified to assist with this work, and a briefing will be held accordingly following the 27 January 2015 Council meeting. In order to facilitate this, Council's resolution to authorise the CEO to release relevant information is necessary.

**6. Receive a report detailing the findings of this review which will include future options for the facility and management models.**

A report will be prepared for Council consideration upon completion of the market review.

**7. That in the interim, monthly updates be provided to Council on progress associated with this matter.**

Monthly reports will continue to be provided.

**RECOMMENDATIONS: (2)**

**DUE DATES**

**That Council:**

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| <b>1. Notes this report</b>  | <b>27 January 15</b> |
| <b>2. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Marion Leisure and Fitness Centre, Lease to CASA Licence Pty Ltd and the Minutes arising from this report having been considered in confidence under Section 90(2) and (3)(d) 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.</b> | <b>27 January 15</b> |
| <b>3. The CEO is authorised to release this information and any other information necessary to persons assisting Council with market review actions.</b>   | <b>27 January 15</b> |