

**CITY OF MARION  
SPECIAL GENERAL COUNCIL MEETING  
19 February 2015**

**CONFIDENTIAL REPORT**

**Originating Officer:** Mark Searle, Chief Executive Officer

**Subject:** Marion Leisure & Fitness Centre  
Lease to CASA Leisure Pty Ltd

**Reference No:** SGC190215F01

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If the Council so determines, this matter may be considered in confidence under Section 90(3)(h) of the Local Government Act 1999 on the grounds that the report contains information relating to legal advice.



**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 legal advice.

## REPORT OBJECTIVE:

In accordance with Section 21 of the Local Government (Procedures at Meetings) Regulations 2013 the purpose of this report is to recommend the Council revokes the confidential order passed at 27 January 2015 General Council meeting in relation to 'Marion Leisure & Fitness Centre Lease to CASA Leisure Pty Ltd' (GC270115F01).

## RECOMMENDATIONS: (3)

## DUE DATES

1. That Council revokes the following resolution made at the 27 January 2015 General Council meeting:

*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)(b) of the Act be kept confidential and not available for public inspection until no later than 20 February 2015.*

19 Feb 15

If this rescission motion is successful, the following alternative motion be considered:

19 Feb 15

2. *That Council in accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the report, 'Marion Leisure and Fitness Centre, Lease to CASA Leisure Pty Ltd' (Report Reference GC270115F01) and the Minutes arising from this report having been considered in confidence be kept confidential under Sections 90(2), (3)(b), (3)(i) and (3)(k) of the Act and not be available for public inspection for a period of 12 months from the date of this meeting or until such time as the tender process regarding the provision of future services and works in respect of the Centre is complete. This confidentiality order will be reviewed at the General Council Meeting in December 2015.*
3. *That Council 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 Leisure Pty Ltd (Report Reference SGC190215F01) and the Minutes arising from this report having been considered in confidence under Section 90(2) and (3)(h) of the Act be kept confidential and not available for public inspection until no later than 20 February 2015.*

## BACKGROUND:

At the 27 January 2015 General Council Meeting Council considered the report 'Marion Leisure & Fitness Centre Lease to CASA Leisure Pty Ltd' (GC270115F01) and passed the following resolution:

1. *Notes this report*
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)(b) of the Act be kept confidential and not available for public inspection until no later than 20 February 2015.*

3. *The CEO is authorised to release this information to any party for the purpose of minimising the financial loss to the Council.*
4. *Requires all former sub-tenants of CASA to pay their current rent obligations directly to the City of Marion.*
5. *CASA be requested to:*
  - a) *provide their membership list including the status of memberships to the City of Marion*
  - b) *refrain from taking any new memberships for the Marion Leisure and Fitness Centre*

As Council is aware, the progress on the CASA matter has resulted in the City of Marion entering into an agreement with YMCA for the Marion Leisure & Fitness Centre. Further information regarding the details of the Agreement will be provided at the 24 February General Council meeting. The Management Agreement will be flexible in terms of tenure, up to 16 months to allow for the market testing.

#### **DISCUSSION:**

As this approach was being work through, the previous Council resolution was reviewed, and further advice from Philip Page, Mellor Olsson Lawyers regarding the possible impact on Council's future processes of releasing information about the Casa lease termination was sought.

The request for and subsequent advice provided is included below:

#### Request:

*My key questions regarding the release of this information is:*

1. *To date our negotiations with CASA have been made in good faith and so far, they have been reasonably amicable. By releasing the detailed information about the breach and the termination will it:*
  - a. *prejudice our position to attract a future operator to the MF&L?*
  - b. *impact on our ability to recover outstanding debt from CASA?*
  - c. *Impact on CASA's reputation and what is Council's obligations in this regard?*
2. *What is the public interest test in this matter?*
3. *Are there any other consideration to note in this matter?*
4. *How would you recommend to release this information taking into consideration section 90 of the LG Act and the resolution to release the 27 Jan 2015 report and minutes this Friday (20/2)?*

#### Advice:

*I consider that the public release of Council reports setting out information regarding past breaches of the Lease by CASA, CASA's debt to Council and CASA's financial*

*position as former operator of the Centre could reasonably be expected to confer a commercial advantage on YMCA and other tenderers for the position of long-term operator of the Centre. This kind of material qualifies for confidentiality under Section 90 (3)(b)(i) of the Local Government Act.*

*In addition, the information may relate to potential litigation between Council and CASA regarding the amount owed by CASA to Council. Section 90 (3)(i) could therefore apply.*

*Further, the information contained in those Council reports may be relevant to the tender process regarding the provision of future services and works in respect of the Centre. See Section 90 (3)(k).*

*The “public interest” test under some parts of Section 90 does not relate to what may be of interest to the public. It concerns what is in the best interests of the public. In the current situation, in my view, the best interests of the public in the City of Marion are not likely to be served by releasing material that could give the impression that:*

- CASA was a bad operator of the Centre; or*
- the Centre is not commercially viable; or*
- operation of the Centre is an unattractive business proposition for potential operators.*

*Based on the above considerations, I maintain the view that it would be inappropriate, at this time, to release publicly information regarding the termination of the CASA Lease, CASA’s past breaches of the Lease or CASA’s past financial performance.*

Therefore, based on the above advice and under Section 21 of the Local Government (Procedures at Meetings) Regulations 2013, this report recommends that the original resolution to maintain confidence passed at the 27 January 2015 General Council Meeting be rescinded and a new order to retain confidence for a period of 12 months be made.

## **CONCLUSION:**

Retaining the confidentiality of the Marion Leisure & Fitness Centre Lease to CASA Leisure Pty Ltd’ (GC270115F01) is important to ensure that Council does not prejudice the commercial or confidential position of Council.