

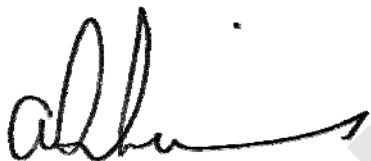
**CITY OF MARION
SPECIAL GENERAL COUNCIL MEETING
1 AUGUST 2016**

ADJOURNED ITEM

CONFIDENTIAL REPORT

Corporate Manager: Kate McKenzie, Manager Corporate Governance
General Manager: Vincent Mifsud, General Manager Corporate Services
A/Chief Executive Officer: Tony Lines, Acting CEO
Subject: Local Government Association Membership
Reference No: SGC010816F01

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(d) and (h) of the *Local Government Act 1999* on the grounds that the report contains information relating to commercial information of a confidential nature and legal advice.



Tony Lines
Acting Chief Executive Officer

RECOMMENDATION:

1. That pursuant to Section 90(2) and (3)(d) and (h) 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; Tony Lines, General Manager Operations; Vincent Mifsud, General Manager Corporate Services; Abby Dickson, General Manager City Development; Kate McKenzie, Manager Corporate Governance; Jaimie Thwaites, Unit Manager Governance and Records, Craig Clarke, Unit Manager Communications, be excluded from the meeting as the Council receives and considers information relating to Local Government Association Membership, 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 confidential nature and legal advice.

BACKGROUND:

The item 'Local Government Association Membership GC260716F02 (attached as Appendix 1) was adjourned at the 26 July 2016 General Council meeting to provide members with further time to consider the report and seek clarity on a number of matters.

Pursuant to Regulation 19 of the Local Government (Procedures at Meetings) Regulations, the debate on the matter must continue from the point it was adjourned. No members have spoken on the matter.

Due to the complexity of the matter, it is recommended that standing orders be suspended to allow for open questions and discussion, before a recommendation is moved.

DISCUSSION:

Matters that have been raised for further clarification include:

1. A summary of the meeting with LGA on Friday 22 July 2016.

The LGA prepared the document '*The Value Proposition from Membership*', designed to calculate the value of LGA services by comparing the costs paid by councils to comparable alternative costs. This report was tabled and endorsed by the LGA Board at its meeting on 21 July 2016, and the LGA invited CoM to meet and discuss the report.

The meeting was held on Friday 22 July 2016, with Mayor Kris Hanna and Acting CEO Tony Lines and the LGA's President Dave Burgess, CEO Matt Pinnegar and Strategic Advisor Chris Russell present. The LGA had provided the report to CoM the previous evening. The LGA reiterated its desire to retain Marion's membership, and its position that full membership makes for a stronger and more able association. The LGA advised that it would remain as CoM's agent for the One Card system, the Unity website platform, and SAPN negotiations, provided that CoM requested it to.

CoM received the information, provided some feedback on report figures that needed correcting, but could not commit further to CoM's position.

2. Clarity on the role of Council and the Local Government Association

Schedule 1, part 1 of the Local Government Act 1999 recognises the LGA as follows:

- (1) *The Local Government Association of South Australia continues in existence.*
- (2) *The LGA—*
 - (a) *continues to be a body corporate with perpetual succession and a common seal; and*
 - (b) *is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property; and*
 - (c) *is capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name.*
- (3) *The LGA is constituted as a public authority for the purpose of promoting and advancing the interests of local government and has the objects prescribed by its constitution.*
- (4) *The constitution and rules of the LGA cannot be altered or revoked without the approval of the Minister.*
- (5) *The Subordinate Legislation Act 1978 does not apply to the constitution or rules of the LGA.*

The objectives of the LGA are defined in clause 8 of its constitution and states:

1. Provide leadership and encourage and promote an efficient and effective autonomous, democratic system of local government
2. Promote and protect the interests of local government and constituents
3. Encourage and help local government to determine and respond to the needs of the community
4. Develop and maintain consultation and co-operations between local government and between all spheres of governments and their agencies
5. Develop and maintain the financial and economic well-being and advancement of local government and to undertake any business such as schemes of indemnity of self-insurance and other schemes or the like that may be established which the LGA consider necessary
6. Act as an advocate for Constituents and local government generally
7. Facilitate consultations by and between Constituents as to their common interests
8. Encourage, assist, promote and foster the achievement and maintenance of the highest levels of integrity, justice, competence, effectiveness and efficiency of local government
9. Undertake or promote any activity which the Board determines to be for the benefit and/or interest of Constituents and local government in South Australia

3. LGA Deliverables for 2016/17

Further correspondence has been received from the LGA (Appendix 2) noting their key deliverables from their 2016/17 work program.

4. Other Councils in South Australia and LGA Membership

The Salisbury Council first considered leaving the LGA after the LGA AGM in October 2015. The Council considered a report on 26 April 2016 and voted 4 for / 9 against leaving the LGA for an initial period of 12 months. The discussion on the withdrawal was linked to the Salisbury Council not having representation on the Board of the LGA.

Tea Tree Gully Council Mayor Kevin Knight said in June 2016 that reported claims in the Advertiser Newspaper that Tea Tree Gully would most likely leave the LGA if Salisbury Council withdrew were incorrect. He advised that TTG has not considered plans to withdraw from the LGA.

A Mitcham Councillor gave notice of intention to move at their 12 July 2016 meeting that a report be prepared outlining: (1) The costs to Council of Mitcham's participation in the Local Government Association; (2) The services provided to Council by the Association (and whether the Association has maintained the Council Legal Service); and providing options for Council to either remain or withdraw from the Local Government Association. However, this motion was withdrawn by the Councillor prior to being debated.

5. Website

The Unity Content Management System (CMS) is a customised system created and owned by Deloitte Digital (who own the intellectual property - IP) and purchased by the Local Government Association via contract.

Unity enables words, images and files to be uploaded, displayed and updated on the City of Marion website.

Content can be uploaded by an unlimited number of users and is displayed 'live' on the website after an appropriate approval process has been completed.

Unity pushes content to the LGA's My Local Services app, and provides information for other websites, including Libraries SA and the LGA's careers pages.

Unity is also used to upload and display secure content for the Elected Members' extranet.

The corporate website, Elected Member extranet and My Local Services app are supported by the Unity CMS that also enables the following information to be provided on the City of Marion website:

- Latest news articles
- Council minutes and agendas function
- Business listings
- Google maps
- Event listings and calendar
- Park listings
- Artist register listings

The following table summarises the current known CMS platforms being used by the 18 Adelaide metropolitan council's and includes some estimated upfront design and implementation costs for a potential new CMS platform:

CMS Platforms currently used by Adelaide Metropolitan Council's					
CMS Platform	No. of Council's	Potential Up-Front Costs	Ongoing Annual Costs	Ongoing Maint/Support	Comments
Unity	9	N/A	N/A	\$10,699	Annual fee is current CoM cost
Seamless	5	\$70,000	N/A	\$70,000	Enterprise grade system
Kentiko	1	\$85,000	\$6,000	Unknown	Enterprise grade system (Unley)
Sprout (Karmabunny)	1	\$40,000	\$3,000	Unknown	Small proprietary CMS (N, P and St P)
ExpressionEngine	1	Unknown	Unknown	Unknown	LG + Private Enterprise (ACC)
Microsoft Sharepoint	1	Unknown	Unknown	Unknown	Expensive and not effective
	18				

Notes:

1. It is understood that the vast majority of SA Regional Council's use Unity.
2. The above up-front costs do not include the staff costs that would be incurred for management, migration, training and tendering, or the cost of re-linking Bpoint, if CoM chose to change its CMS platform - these costs are estimated at \$24,000.

6. Interstate Comparison

Victoria

Victoria has two organisations representing local government. The first is the Municipal Association of Victoria (MAV). Formed in 1879, it is the legislated peak body for local government in Victoria. Its role is to advocate local government interests, build the capacity of Victorian councils, initiate policy development and advice, and promote the role of local government. It does this through specialist advice and information, insurance protection including risk, legal and claims advice, governance support, and group procurement.

The Victorian Auditor-General released a damning report in 2015 accusing the MAV of lacking proper accountability and being unable to show it makes a difference. Frankston Council recently suspended its membership amid governance concerns, and two other Councils (Melbourne and Boroondara) considered withdrawing before warning that significant progress and reforms must be made. 78 of the 79 councils are currently members.

The second organisation is the Victorian Local Governance Association (VLGA). The VLGA is unique in Australia, being a peak body that has local government, community organisations and individuals making up its membership. It was established in 1994 as a community and local government response to forced amalgamations by the Kennett State Government. 43 of the 79 Victorian councils are members.

New South Wales

Local Government NSW (LGNSW) is the peak industry association that represents the interests of NSW general purpose councils, 12 special purpose councils and the NSW Aboriginal Land Council.

LGNSW's objective is to strengthen and protect an effective, democratic system of Local Government across NSW by supporting and advocating on behalf of member councils and delivering a range of relevant, quality services.

The association was formed in 1819, and up till 2016 every local council in NSW was a member. Following amalgamations in May 2016, 19 amalgamated councils are now run by administrators to manage the Councils until local elections are held in September 2017. Of these, two councils are considering their future with the association.

Queensland

The Local Government Association of Queensland (LGAQ) was formed in 1896 to give local government a united voice. It is the peak body representing local government in its dealings with other governments, unions, business and the community.

Its objectives are to promote the interests, rights and entitlements of Members; improve the efficient performance of local government in Queensland; advise and Council Members in matters of doubt or difficulty; monitor and take action in relation to any legislation affecting Members; and undertake and promote actions which are in the interest of local government in Queensland.

Membership is voluntary. All 77 Councils in QLD are members, although with varying degrees of service. Fees are paid based on population and services.

Western Australia

As the peak industry body, Western Australian Local Government Association (WALGA) was formed in 2001 and advocates on behalf of 139 WA Local Governments and negotiates service agreements for the sector. Prior to 2001 a number of membership-based representative structures existed to represent Local Government in WA.

138 of the 139 local councils are members. The City of Nedlands (population 21,000, situated 7 km from Perth CBD) pulled out of the WALGA in 2013 citing council amalgamation concerns.

7. Relationship with the Office of Local Government

Contact has been made with the Office of Local Government and the following points were verbally discussed:

- The Minister has made no public statement regarding the City of Marion leaving the LGA but considers the LGA to be a member based organisation, meaning it is up to the members to decide if the organisation provides value for money.
- The CoM can liaise direct with the Office of Local Government on legislative amendments that are produced through them. This can occur via their website or the 'your say' State Government consultation website.
- The Office will be consulting only with the LGA in the early draft/initiative phases of new legislation and hence CoM will lose the opportunity to influence the early stages of legislative development, but will still be consulted once bills are in draft.
- The LGA is the link for the various legislative teams within all state government agencies and CoM would need to liaise with other agencies to establish and determine relationships and consultation requirements moving forward (e.g. DPTI, EPA, etc). As highlighted in the adjourned report, this will require additional resources to manage.
- The Minister would appreciate a formal notification from Council of its decision.

8. How much of the reports is confidential?

This report and Appendix 1 have both been provided as Confidential Reports.

Should Council wish to release any information, the only material that should not be released is the legal advice and the commercial information from suppliers.

RECOMMENDATION:

That Council:

1. Notes the report and the information contained therein.

1 August 2016

Option 1 (Maintain resignation from the LGA)

2. Authorises the Mayor to write to the Local Government Association disputing their letter of 1 July 2016 and maintaining that the City of Marion has resigned from the Local Government Association effective from 29 June 2016 and that the City of Marion wishes to continue to negotiate its exit from the Local Government Association, and identifying which services the Local Government Association will cease to provide to the Council as a non member. This letter is to be reviewed by Mr Stephen McDonald.

1 August 2016

3. Authorises the Mayor to write to the Local Government Association authorising it to continue to act as Council's agent in respect to the One Card Network (library system), the Unity website content management system, and negotiations with SA Power Networks.

1 August 2016

4. Authorises the Mayor to write to the Minister of Local Government advising of Council's withdrawal from the Local Government Association and requesting that consultation on proposed new or amended legislation be made directly with the City of Marion in the future.

1 August 2016

5. In accordance with s 91(7) and (9) of the *Local Government Act 1999*, orders that this report and Appendix 1 (*Local Government Association Membership GC260716F02*) to this report, having been considered in confidence under s 90(2) and (3)(g) and (h) of the Act, be kept confidential and not made 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 2016.

December 2016

Or

Option 2 (Retain Membership with the LGA)

2. Pursuant to Reg 21 of the *Local Government (Procedures at Meeting) Regulations*, revokes the decision from the 28 June 2016 General Council Meeting stating: *"The City of Marion withdraws from membership with the Local Government Association (LGA) for the 2016/17 period. A report be presented to Council in March 2017 as to any progress of negotiating a more acceptable membership fee."*

1 August 2016

3. Notes the City of Marion (via the Chief Executive Officer) gave formal notice to the Local Government Association on 29 June 2016 to resign its membership, but that the Local Government Association has disputed that the notice was effective to cause the City of Marion to resign from the Local Government Association.

1 August 2016

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| <p>4. Wishes to revoke its resignation and remain an ordinary member of the Local Government Association for the period of 2016/17.</p> | <p>1 August 2016</p> |
| <p>5. Authorises the Mayor to write to the Local Government Association advising that Council:</p> <ul style="list-style-type: none"> a. has revoked its previous decision of 28 June 2016 and wishes to revoke its resignation and remain a member of the Local Government Association. b. is seeking assurance that the Local Government Association will accept that the City of Marion remains a member of the Local Government Association and that an application for membership pursuant to cl 12 of the Constitution of the Local Government Association is not required. c. wishes to work with the Local Government Association to seek better outcomes for the City of Marion residents and expects to be notified of changes to the subscription formula based on Council population by April 2017. | <p>1 August 2016</p> |
| <p>6. Requests a further report be presented to Council in April 2017 to determine its Local Government Association Membership for 2017/18 and beyond.</p> | <p>1 August 2016</p> |
| <p>7. In accordance with s 91(7) and (9) of the <i>Local Government Act 1999</i>, orders that this report and Appendix 1 (<i>Local Government Association Membership</i> GC260716F02) to this report, having been considered in confidence under s 90(2) and (3)(g) and (h) of the Act, be kept confidential and not made 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 2016.</p> | <p>December 2016</p> |

CONFIDENTIAL REPORT

Corporate Manager: Kate McKenzie, Manager Corporate Governance
General Manager: Vincent Mifsud, General Manager Corporate Services
A/Chief Executive Officer: Tony Lines, Acting CEO
Subject: Local Government Association Membership
Reference No: GC260716F02

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(d) and (h) of the *Local Government Act 1999* on the grounds that the report contains information relating to commercial information of a confidential nature and legal advice.

Tony Lines
Acting Chief Executive Officer

RECOMMENDATION:

1. That pursuant to Section 90(2) and (3)(d) and (h) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Tony Lines, Acting Chief Executive Officer; Vincent Mifsud, General Manager Corporate Services; Abby Dickson, General Manager City Development; Kate McKenzie, Manager Corporate Governance; Craig Clarke, Unit Manager Communications, be excluded from the meeting as the Council receives and considers information relating to Local Government Association Membership, 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 confidential nature and legal advice.

REPORT OBJECTIVES:

The purpose of this report is to provide Council with the following information:

- A copy of the letter received from the Local Government Association (LGA) dated 1 July 2016 that questions the validity of the decision of Council to withdraw from the LGA (**Appendix 1**)
- Legal opinion from Stephen McDonald (Hanson Chambers) (**Appendix 2**)
- Legal opinion from Steven Churches (Elliott Johnston Chambers) (**Appendix 3 and 3a**)
- A copy of the letter received from the LGA dated 11 July 2016 listing the impact on LGA-provided services (**Appendix 4**)
- List of services provided to the City of Marion from the LGA, including a risk assessment of the impact on losing services and any financial considerations (**Appendix 5**)
- CoM's Risk Management Framework – Risk Criteria and Matrix (**Appendix 6**)
- A copy of the report received from the LGA *The Value Proposition from Membership* dated July 2016 (**Appendix 7**)
- A copy of the letter received from the LGA dated 22 July 2016 regarding the LGA as Council's agent (**Appendix 8**)
- Legal opinion from Phillip Page (Mellor Olsson) regarding contractual requirements for the One Card Network (library system) and the Unity Website Content Management System (**Appendix 9**)

Council is required to consider the advice provided and make an informed decision on how to progress forward on the matter.

EXECUTIVE SUMMARY

This report provides the most up to date advice regarding the impact and risks to Council associated with resigning from the LGA. The key risks include the loss of the Unity Content Management System which hosts the Council website and My Local Services Application. The cost to replace the website is estimated for 2016/17 at around \$94 k.

Other medium to high risks include the Library One Card System, the loss of the circulars, impact on various governance functions such as delegations and legislative amendments, lost opportunity to liaise with the sector and training and development.

The total cost to date includes approximately \$15 k in legal fees and \$9.2 k in staff time. The LGA membership invoice has been received for 2016/17 for \$94,382 (exclusive of GST).

RECOMMENDATIONS**DUE DATES****That Council:**

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| 1. Notes the report and the information contained therein. | 26 July 2016 |
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Option 1

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| 2. Maintains its position to resign from the Local Government Association. | 26 July 2016 |
| 3. Authorises the Mayor to write to the Local Government Association disputing their letter of 1 July 2016 and maintaining that the City of Marion has resigned from the Local Government Association effective from 29 June 2016 and that City of Marion wishes to continue to negotiate its exit from the Local Government Association and verifying services that will not be provided to non-members. That this letter be reviewed by Mr Stephen McDonald. | 26 July 2016 |
| 4. Authorises the Mayor to write to the Local Government Association authorising it to continue to act as Council's agent in respect to the One Card Network (library system), the Unity website content management system, and negotiations with SA Power Networks. | 26 July 2016 |
| 5. Authorises the Mayor to write to the Minister advising of Council's withdrawal from the Local Government Association and requesting that consultation on proposed new or amended legislation is made direct with the City of Marion in the future. | 26 July 2016 |
| 6. In accordance with Section 91(7) and (9) of the Local Government Act 1999 orders that this report and appendices 1 – 9 arising from this report having been considered in confidence under Section 90(2) and (3)(g) and (h) 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 2016. | December 2016 |

Or**Option 2**

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| 2. Pursuant to Regulation 21 of the Local Government (Procedures at Meeting) Regulations, revokes the decision from the 28 June 2016 General Council Meeting stating: <i>"The City of Marion withdraws from membership with the Local Government Association (LGA) for the 2016/17 period. A report be presented to Council in March 2017 as to any progress of negotiating a more acceptable membership fee."</i> | 26 July 2016 |
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| 3. Remains a member of the Local Government Association for the period of 2016/17. | 26 July 2016 |
| 4. Authorises the Mayor to write to the Local Government Association advising that Council has revoked its previous decision of 28 June 2016 and wishes to remain a member of the Local Government Association. This letter is to also state that the City of Marion wishes to work with the Local Government Association to seek better outcomes for City of Marion residents and expects to be notified of changes to the subscription formula based on Council population by April 2017. | 26 July 2016 |
| 5. Requests a further report be presented to Council in April 2017 to determine its Local Government Association Membership for 2017/18 and beyond. | April 2017 |
| 6. In accordance with Section 91(7) and (9) of the Local Government Act 1999 orders that this report and appendices 1 – 9 arising from this report having been considered in confidence under Section 90(2) and (3)(g) and (h) 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 2016. | December 2016 |

BACKGROUND:

Council has been discussing its membership of the LGA since March 2015 with various information provided to Elected Members via email and through council reporting.

The first resolution occurred on 28 April 2015 (GC280415M02) where Council considered a motion on notice and resolved:

1. *Advise the Local Government Association of South Australia (LGA) that the annual membership fee of \$96 000 is excessive, that the City of Marion is only prepared to pay a reduced / revised membership fee for the 2015/2016 financial year. If this revised membership fee is not acceptable to Council, the City of Marion will consider terminating its membership of the LGA.*
2. *Request a refund for the previous years over payment.*

Council considered a further motion on notice at its meeting of 11 August 2015 (GC110815M03) and resolved:

1. *The City of Marion suspends its membership until a report is received from the new CEO of the Local Government Association regarding the value provided by the LGA to member Councils as well as the mathematical formula by which membership fees are calculated.*

Following the Finance and Audit Committee meeting on 18 August 2015, a Risk Assessment was drafted as recommended by the Committee as a prudent measure in the event that services provided by the LGA were no longer available to the City of Marion. The risks in this Risk Assessment have been included within the impact assessment in Appendix 5.

Council considered a report at its meeting of 13 October 2015 (GC131015R02) and resolved:

1. *Notes the correspondence received from the Local Government Association highlighting the governance/structure review and the formula review with any changes intended to apply from 2016/17 financial year.*
2. *Confirm its membership with the LGA for 2015/16 financial year and pay the current invoice.*
3. *Re-assess its position in April 2016 with the expectation that the LGA has completed the governance and formula reviews.*
4. *Authorise the Mayor to have discussions with other councils about setting up an alternative association.*

Council considered a report at its meeting of 12 April 2016 (GC120416R01) and resolved:

1. *Note the progress report from Mr Matt Pinnegar, Chief Executive Officer of the Local Government Association.*
2. *Confirm its membership with the Local Government Association.*

At its meeting of 28 June 2016, via a motion without notice, Council resolved the following:

1. *The City of Marion withdraws from membership with the Local Government Association (LGA) for the 2016/17 period.*
2. *A report be presented to Council in March 2017 as to any progress of negotiating a more acceptable membership fee.*

The vote was tied (5/5) and the Mayor used his casting vote to vote in support of the motion, meaning the motion was carried.

The LGA was formally advised of CoM's decision via email from the Chief Executive Officer the following day. Staff from the respective organisations met on Thursday 30 June 2016 to discuss the exit strategy for CoM's withdrawal.

On Friday, 1 July 2016 a letter was received from the LGA (**Appendix 1**), seeking clarification regarding the decision-making process that occurred, specifically querying if council had complied with Regulation 4 and 12 of the *Local Government (Procedures at Meetings) Regulations*. The LGA had received advice that the decision of CoM to withdraw its membership from the LGA is void and hence it currently remains a member.

The LGA Board resolved on 21 July 2016 (**Appendix 7**) to "support the Secretariat removing services from non-member councils as soon as practicable".

Further work has progressed to understand the impact (including costs) to Council.

DISCUSSION

The invoice from the LGA for 2016/17 was received on 12 July 2016 for \$94,382 (GST exclusive).

Impact to Services

Correspondence was received from the LGA on 11 July 2016 outlining services that would be impacted. Details of these services and an assessment of the impact to CoM has been included in **Appendix 4**.

Using CoM's Risk Management Framework – Risk Criteria and Matrix (**Appendix 6**), Risk ratings have been applied (**Appendix 5**) and those items identified with a likely direct cost to CoM are included in the table below.

Item number	Description	Risk Rating	Additional Annual Costs
Item 1	Support in developing Public Health Plans	Medium	\$3 k on going
Item 2	Co-ordination of One Card Library Management System	Medium	\$0*
Item 5	Unity website platform and My Local Services application	High	\$83 k in year 1 \$59 k on going **
Item 8	Consultation with Councils on proposed Government Legislation. Provision of Circulars	High	\$25 k on going
Item 11	Education and Training	High	\$25 k on going
Item 12	Media monitoring and Communications, including election campaign advertising material	High	\$3 k on going (Plus \$12 k for election promotional costs every 4 years)
Item 16	Delegations and templates, required to be reviewed annually	High	\$6 k on going
Item 19 and 20	Insurances and LGFA	Medium	
Total			Year 1 cost \$145 k On-going cost \$121 k pa

* LGA has advised that it can continue to act as Council's agent until 2022

** LGA has advised that it can continue to act as Council's agent for 1 year

Risks to Council

Withdrawal from the LGA will result in the following additional risks to the City of Marion:

- Sector advocacy provided by LGA would be lost
- Organisational advancement may be adversely impacted through not participating in sector-wide research and development funds / projects
- Relationships with other governments at local, state and national level may be adversely impacted
- Compliance with legislation may be adversely impacted through not having LGA provided weekly Circulars
- Public Health Plans may be adversely impacted through not having LGA provided training and support
- Training and development of staff may be adversely impacted by the loss of sector-specific courses, including LG Communicators
- Sector and best-practice awareness may be adversely impacted by not attending conferences, forums and the Local Government Showcase
- The robustness of Delegation schedules may be adversely impacted through procuring non-LGA templates
- Elected Member development opportunities through involvement in sector wide boards and committees would be lost

- Loss of One Card Library Management System (deemed secure until 2022) would reduce resident library items from 3.7 million to 112,000.

Legal Advice

To seek clarification on the matter, legal advice was sought and is provided in **Appendix 2, 3 and 3a**. The most recent advice received from Mr McDonald in **Appendix 2** applies the legal argument that the decision of the 28th June 2016 was a valid decision on the basis that Regulation 12(3) of the Local Government (Procedures at Meetings) Regulations was not engaged and was not contravened. However, there is real uncertainty about this conclusion and a real risk that, if it were tested, a court might reach a different conclusion.

Regulations 12 (3) states:

A motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council must be brought by written notice of motion.

The advice then follows (para 10.5.4) that even if the decision of Council did not comply with regulation 12(3) in the process that led to the resolution of 28 June 2016 it should be held not to have affected the validity of the effectiveness of the notice to the LGA for the purposes of resigning.

Preliminary legal advice has also been sought regarding the two major contracts being:

- The Unity contract for Councils Content Management System
- The Library One Card System.

The advice received on these contracts is included in **Appendix 9** and states:

1. Unity contract for Councils Content Management System

"If Council leaves the LGA, and if Council's website is currently hosted and maintained through the LGA, it is inevitable that Council will need to enter into new, separate website hosting and maintenance arrangements with another provider. This will incur costs and a degree of disruption.

It is likely that Council would no longer be able to provide the 'My Local Services' mobile application through Council's website, unless a new licence agreement can be negotiated direct with Deloitte with respect that that application"

2. The Library One Card System

"Council ceasing to be a member of the LGA would not, of itself, terminate the Service Agreement with LGCS.

"Departure from the LGA should not directly affect Council's access to services through Public Library Services or to state government funding. Despite that, the LGA is in a strong position of control by virtue of its representation on the Libraries Boards and its MOA with the Minister. Council could, therefore, be disadvantaged if it is excluded from submissions made by the LGA on behalf of council libraries."

Legal fees incurred to date are approximately \$15 k.

Staff Time:

To date, approximately 139 hours have been spent by various senior staff and the costs are estimated at \$9,240.

OPTIONS:

After considering the information within the report, Council has two options to consider in moving forward:

Option 1 – maintain its position to resign from the LGA

If Council determines to remain with its current position and resign from the LGA, based on the advice from Mr McDonald, Council should write to the LGA at the earliest possible opportunity maintaining that it has resigned its membership by notice in accordance with clause 13 of the LGA constitution and that it wishes not to receive whatever services the LGA says it will continue to provide. This should be undertaken so that it cannot later be suggested that the Council has acquiesced in the continued provision of services from the LGA. To ensure Council's legal position is maintained, it would be useful for Mr McDonald to review this correspondence. Recommendations for option 1 are listed at the beginning of the report under recommendations.

Option 2 – determine to remain in the LGA for 2016/17

If Council determines to remain a member of the LGA based on the information contained within the report and the legal advice from Mr McDonald, Council will need to revoke the decision of the 28th June 2016. Recommendations for option 2 are listed at the beginning of the report under recommendations.

CONCLUSION

This report provides the most up to date information and advice, including a detailed risk assessment, regarding the impact to Council if it determines to maintain its position and resign from the LGA.



Local Government Association
of South Australia

The **Voice**
of Local
Government

In reply please quote our reference: ECM 640196 MP:JK

1 July 2016

Mr Tony Lines
Acting Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

via email: tony.lines@marion.sa.gov.au

Dear Tony

City of Marion Membership of the Local Government Association

I refer to the letter from CEO Adrian Skull of 29 June 2016 in which he advises that the City of Marion has resolved not to renew its membership of the LGA SA for the 2016/17 financial year. I speak for the membership in expressing my deep disappointment in this decision as the LGA and the sector has enjoyed decades of cooperation with the City of Marion.

The LGA has considered the circumstances in which this decision was made at the Council's meeting on Tuesday 28 June 2016 and we are seeking clarification about the process that was followed.

Given the significant implications of the motion to withdraw as a member of the LGA, we query whether the decision to accept the motion without notice did not adhere to regulation 12 of the LG Procedures at Meetings Regulations, and also the guiding principles to be observed by a Council in accordance with Regulation 4 concerning open transparent and informed decision making and encouraging community participation.

We are also concerned that a motion to withdraw from membership of the LGA was considered without first rescinding the motion passed on 12 April to remain in the LGA.

The advice we have received is that the decision to withdraw from the LGA is void and that the City of Marion currently remains as a member of the Local Government Association. Accordingly, we will continue to provide services to council in accordance with the LGA's constitution.

Respectfully we ask that the City of Marion clarifies its position in relation to the validity of the decisions made at the 28 June Council meeting and any further steps that you will be taking to address this matter. We would appreciate your response in time for this to be discussed at the next LGA Board meeting on 21 July 2016.

As you are aware, the Local Government Association provides a broad range of services to councils. Our desire is for all councils to continue to access the value and savings that LGA services such as the schemes, Unity platform, LGAP and model guides and templates provide. However as a membership organisation, we need to ensure that these benefits are only provided to members and the Secretariat is currently preparing a report for the LGA Board outlining options for quarantining all LGA services for members' use only.

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We understand that the City of Marion's decision to withdraw from the Association is based on dissatisfaction with the current member subscriptions structure and the outcomes of the recent review. I would like to reinforce that the LGA has resolved that further research and modelling be done on using alternative population bands for the tiering of the flat component of the subscription fee including the bands used by the Remuneration Tribunal.

As you would be aware, removing access to LGA services would have a significant financial impact on the Marion council and community. We would be pleased to provide further information should this be required on the breadth of these services and the impacts of removing access to them.

The LGA's most significant achievements have come from the sector working together. The collaboration of councils to establish the highly successful schemes has been game changing for the sector. More recently the success of the pensioner concessions campaign, which protected benefits to some of your most vulnerable community members, is another excellent example of what we can achieve when we stand together and speak with one voice.

I would appreciate your response to the queries raised in this letter, and am happy to provide you with any information you need to inform the next steps in relation to the City of Marion's membership of the LGA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matt Pinnegar', with a stylized flourish at the end.

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20 July 2016

Kaye Smith
EMA Legal
Level 8, 50 Grenfell Street
ADELAIDE SA 5000

Dear Madam

Re: City of Marion — resolution to withdraw from Local Government Association

Introduction

1. I refer to your letter dated 14 July 2016 and the accompanying brief.
2. You act for the City of Marion ("**the Council**"). You seek my opinion as to the lawfulness and effectiveness of a decision of the Council, made by resolution of the Council on 28 June 2016, to withdraw from the Local Government Association ("**the LGA**") for the 2016/17 year.
3. The Council has been considering withdrawal from the LGA since March 2015. Between March 2015 and June 2016, the Council considered various motions on notice relating to action to be taken by the Council in its dealings with the LGA and the possible withdrawal of the Council from the LGA. Resolutions of the Council relating to its continuing membership of the LGA were recorded on each of 28 April 2015, 11 August 2015, 13 October 2015 and 12 April 2016. In particular, on 12 April 2016 the Council considered a motion that the Council "confirm its membership with the Local Government Association". (More detailed consideration is given to these motions and resolutions in [67]-[89] below.)
4. At its meeting on 28 June 2016, on a motion without notice, Council resolved:
 1. The City of Marion withdraws from membership with the Local Government Association for the 2016/17 period.
 2. A report be presented to Council in March 2017 as to any progress of negotiating a more acceptable membership fee.
5. The vote on the motion was tied, 5:5. The Mayor used his casting vote in support of the motion so that the motion was carried.

6. The LGA was advised of the Council's decision by email from the Chief Executive Officer of the Council on 29 June 2016. The Council and the LGA appear to have treated this email as constituting "written notice" to the LGA of the kind required by cl 13 of the Constitution of the LGA ("**the LGA Constitution**"). (This issue is returned to briefly in [108]-[110] below.) Staff from the Council and the LGA met on 30 June 2016 to discuss the exit of the Council from the LGA.
7. By letter dated 1 July 2016 and received by the Council by email on that day, the LGA sought clarification of the decision making process leading to the resolution of 28 June 2016. The LGA queried whether the Council had complied with regs 4 and 12 of the *Local Government (Procedures at Meetings) Regulations 2013* (SA) ("**the Regulations**"). The LGA asserted that it had received advice that the decision of the Council to withdraw its membership from the LGA was "void" and that, consequently, it remained a member.
8. You have provided me with copies of an opinion of Dr Steven Churches dated 10 July 2016 and a supplementary opinion of Dr Churches dated 11 July 2016. My advice is quite different from Dr Churches' and in what follows I have identified some instances of disagreement with specific aspects of Dr Churches' advice.
9. You seek my opinion on the following specific questions (paraphrased):
 - 9.1. Does the resolution of Council made on 28 June 2016 comply with regs 4 and 12 of the Regulations?
 - 9.2. Was a rescission motion required in respect of the decision of 12 April 2016?
 - 9.3. Should the motion without notice of 28 June 2016 have been accepted by the Mayor?
 - 9.4. If the decision was made otherwise than in compliance with the Regulations, can it be argued that a procedural irregularity has occurred and has no consequence, or is the decision void, as suggested by the LGA?
 - 9.5. Given that the Chief Executive Officer of the Council has given written notice to the LGA of the Council's intent to resign its membership of the LGA for the 2016/17 financial year in accordance with the requirements of the LGA Constitution, does the process leading up to, or the legality or validity of, the Council's decision matter in any event?
 - 9.6. Are there any other matters which the Council may need to consider in its future decision-making?

Summary of advice

10. I apologise for the length of my advice. In my view the situation that has arisen raises complex issues, which I have attempted to address satisfactorily in the relatively short time available to me. In brief summary, my advice is as follows:
 - 10.1. Regulation 4 contains non-binding guidelines, so that a decision made following a process that might be argued to be inconsistent with the guidelines is not unlawful. [14]-[15]
 - 10.2. Regulations 12(5) and (6) confer discretions on the presiding officer to decline to accept motions for debate. Failure to refuse to accept a motion does not itself

result in any resolution resulting from the motion being unlawful.[22]-[24], [30]-[37]

10.3. A formal “rescission motion” is not required, even where reg 12(3) applies so as to require particular business to be brought by notice of motion. [38]-[39]

10.4. As to the applicability of reg 12(3):

10.4.1. The term “resolution”, as used in the Act and Regulations, simply refers to a decision effected by the passing of a motion by a meeting, and the passage of the motion of 12 April 2016 was a “resolution” of the Council. Note that my conclusion on this issue differs from that reached by Dr Churches. [45]-[66]

10.4.2. The effect of the resolution of 12 April 2016 that the Council “confirm its membership of the LGA” is not entirely clear, but in my view, on balance, the better view is that the resolution should be construed as meaning only that the Council was confirming that it would remain a member of the LGA for the time being. [67]-[89]

10.4.3. So construed, the better view is that the motion passed on 28 June 2016 did *not* have the effect of revoking or amending the resolution made on 12 April 2016. [90]-[95], [98]

10.4.4. It follows that, on balance, I think the better view is that reg 12(3) was not engaged and was not contravened. However, there is real uncertainty about this conclusion and there is a real risk that, if it were tested, a court might reach a different conclusion. [96]-[97]

10.5. If reg 12(3) was applicable, it is plain that it was not complied with. In that case:

10.5.1. It may perhaps be arguable that the form of the email, as a notice under cl 13 of, was defective in form. However, this point does not seem to have been raised and the LGA appears to be proceeding on the basis that, apart from the question of the legality of the Council’s decision, the notice sufficiently complied with the requirements of cl 13. [109]-[11020]

10.5.2. A question arises as to whether the email of the Chief Executive Officer to the LGA, advising of the Council’s resignation as a member of the LGA, was effective despite any non-compliance with reg 12(3) in bringing the motion before the Council. In my view, this raises a question as to whether the provision of notice by the Chief Executive Officer is to be attributed as an act of the Council. [111]-[115]

10.5.3. A court might consider this question by reference to the provisions of the LGA Constitution or as a matter of statutory construction (or both). These two approaches are considered at length in [119]-[128] and [129]-[158] respectively.

10.5.4. It is extremely difficult to predict how a court might decide this issue, but the Council has, at least, a reasonable argument to the effect that any non-compliance with reg 12(3) in the process that led to the resolution of 28 June 2016 should be held not to have affected the

validity of the resolution itself and/or the effectiveness of the notice for the purposes of cl 13 of the LGA Constitution. [159]

- 10.6. Assuming the Council wishes to adhere to the decision to resign from the LGA, it should write to the LGA, as soon as possible, indicating clearly that it does not accept that its decision to resign its membership of the LGA is “void”, that it maintains that it has resigned its membership by notice in accordance with cl 13 of the LGA Constitution, and that it wishes not to receive whatever services the LGA proposes to continue to provide. [161]
- 10.7. It is possible that the Council could ratify the notice given by the Chief Executive Officer, by further resolution made on a motion on notice. However, it is far from clear that this would be effective and there are risks associated with this course, so I would not advise it. [162]
- 10.8. It would be prejudicial to the interests of the Council to disclose the content or conclusions of its legal advice to the LGA at this time. [163]

Relevant provisions of the *Local Government Act* and the Regulations

11. The Council is established by a proclamation made under s 9 of the *Local Government Act 1999* (SA) (“**the Act**”). The Council is a body corporate with perpetual succession by virtue of s 35 of the Act. By s 36(1) it has the legal capacity of a natural person. Section 37 is entitled “Provision relating to contracts and transactions”, but appears to deal only with contracting. It provides as follows:

A council contracts as follows—

- (a) a contract may be entered into under the common seal of the council; or
 - (b) a contract may be entered into by an officer, employee or agent authorised by the council to enter into the contract on its behalf.
12. By s 38 of the Act, the common seal of a council “must not be affixed to a document except to give effect to a resolution of the council” and “must be attested by the principal member of the council and the chief executive officer”.
 13. The Regulations are made pursuant to s 86(8)(a) of the Act. That provision states that, subject to the Act, “the procedure to be observed at a meeting of a council will be ... as prescribed by regulation”.
 14. Regulation 4 of the Regulations provides:

The following principles (the “Guiding Principles”) should be applied with respect to the procedures to be observed at a meeting of a council or a council committee:

- (a) procedures should be fair and contribute to open, transparent and informed decision-making;
- (b) procedures should encourage appropriate community participation in the affairs of the council;
- (c) procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting;

- (d) procedures should be sufficiently certain to give the community and decision-makers confidence in the deliberations undertaken at the meeting.
15. In my view it is fairly clear that, as a matter of construction, “non-compliance” with the Guiding Principles contained in reg 4 will not itself result in a decision being made unlawfully. The description of the principles as “principles” rather than rules or requirements, and the use of the epithet “guiding”, the use of the expression “should be applied”, rather than (say) “must be applied”, and the use of the passive voice, all suggest that the principles are not binding. Further, the Guiding Principles themselves are expressed in broad and fairly subjective terms, not apt to create a clear criteria for validity. Further again, other provisions found in the Regulations themselves indicate that the use to be made of the Guiding Principles is as considerations relevant to guiding the exercise of discretionary decision-making functions: see, eg, regs 6(4) and 12(6). In the case of some decisions, it may be a requirement of validity that the decision-maker *have regard to* the Guiding Principles, but not that he or she “comply with” the Guiding Principles.
16. Regulation 12 of the Regulations, is entitled “Motions”. Insofar as it is presently relevant, it provides (with emphasis added):
- (1) A member may bring forward any business in the form of a written notice of motion.
 - (2) The notice of motion must be given to the chief executive officer at least 5 clear days before the date of the meeting at which the motion is to be moved.
 - (3) A motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council must be brought by written notice of motion.
 - (4) If a motion under subregulation (3) is lost, a motion to the same effect cannot be brought—
 - (a) until after the expiration of 12 months; or
 - (b) until after the next general election,
 whichever is the sooner.
 - (5) Subject to the Act and these regulations, a member may also bring forward any business by way of a motion without notice.
 - (6) The presiding member may refuse to accept a motion without notice if, after taking into account the Guiding Principles, he or she considers that the motion should be dealt with by way of a written notice of motion.
 - (7) The presiding member may refuse to accept a motion if the subject matter is, in his or her opinion, beyond the power of the council or council committee (as the case may be).
- ...
- (21) Subregulations (9), (10) and (11) may be varied at the discretion of the council pursuant to regulation 6.
17. I make the following general observations about these provisions.

18. The use of the word “must” in reg 12(3) indicates that, in the case of “[a] motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council”, the motion can *only* be brought by the “written notice of motion” procedure identified in regs 12(1) and (2). The fact that reg 12(21) empowers a council to vary regs 12(9), (10) and (11) — but not, for example, reg 12(3) — confirms the imperative nature of the requirement in reg 12(3).
19. Regulation 12(5) is permissive, and allows a member to bring forward business by way of a motion without notice. However, reg 12(5) is expressed to be “subject to” the Act and the Regulations — including reg 12(3). It follows that the entitlement of a member to bring forward business by way of a motion without notice does *not* extend to a motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election.
20. It is to be recalled that regs 12(1)-(7) are concerned with the procedures for bringing business before the Council for debate and decision. On their face, regs 12(6) and (7) confer on the presiding member *discretions* to refuse to “accept” motions in certain circumstances. The discretion to refuse to accept a motion under reg 12(6) applies only to motions without notice, whereas the discretion to refuse to accept a motion under reg 12(7) applies to all motions.
21. “Acceptance” of a motion in this context plainly refers to accepting it as a proper subject for debate and decision, not accepting that the motion should be passed.
22. On its face, the discretion in reg 12(7) is directed only to a case where the presiding member considers that “the subject matter” of a motion is beyond the power of the Council. That expression does not seem apt to address a situation where a motion without notice is made, relating to a subject matter which the Council undoubtedly has power to address, but where the motion has been brought without notice and a doubt arises as to whether it is a motion that can be brought only by written notice of motion. It is possible that reg 12(7) should be construed as enabling the presiding member to refuse to accept a motion in those circumstances, but that would involve quite a stretch of the language actually used.
23. In any case, it does not appear to me that the presiding member is *bound* to refuse to “accept” a motion, *even* if he or she is of the view that the subject matter is beyond the power of the Council. If the presiding officer refuses to accept a motion, the effect is that it cannot be debated. There may well be cases where the presiding member is concerned that the passage of a particular motion may be beyond the power of the Council (or may even hold an opinion to that effect) but may consider that that (ie, whether passing the motion is within the power of the Council) is itself a proper matter for discussion or debate by the Council. In such a case, the presiding member might quite properly decline to exercise the discretion in s 12(7) and “accept” the motion.
24. Of course, the fact that the presiding member might not exercise his or her discretion in favour of refusing to accept a motion under 12(7) cannot itself demonstrate or determine that the council has power to pass the motion, that it was a motion that could lawfully be brought without written notice of motion, or that any resolution or decision resulting from the motion will necessarily be lawful or valid.

The issues raised in the LGA’s letter of 1 July 2016

25. In its letter dated 1 July 2016, the LGA suggests that “the decision to accept the motion without notice” did not adhere to reg 12. I am not sure exactly what is being suggested. Unfortunately the letter does not identify which sub-regulation or sub-regulations of reg

12 was contravened. The focus upon “the decision to accept the motion without notice” appears to direct attention to reg 12(6) or, perhaps (if it is given a broad construction), reg 12(7). Those are the powers of the presiding member to refuse to “accept” a motion.

26. The LGA’s letter also asserts that the LGA is “concerned that a motion to withdraw from membership of the LGA was considered without first rescinding the motion passed on 12 April [2016] to remain in the LGA”.
27. Although it is not entirely clear, from its letter, it appears likely that the LGA also intended to suggest that the decision or resolution dated 28 June 2016 could not properly be made by the council on a “motion without notice” by reason of s 12(3), because the effect of the motion, if passed, would be “to revoke or amend” the resolution of 12 April 2016.
28. The LGA’s letter thus appears to give rise to the following questions:
 - 28.1. Was the decision of the Mayor to “accept” the motion without notice contrary to requirements of reg 4 or reg 12 of the Regulations?
 - 28.2. Was there a need for the council to pass a motion “first rescinding the motion passed on 12 April [2016] to remain in the LGA”?
 - 28.3. Was the decision or resolution made on 28 June 2016 made in non-compliance with procedural requirements found in or derived from regs 4 or 12 of the Regulations?
29. It is convenient to address the questions in that order.

Should the motion without notice of 28 June 2016 have been accepted by the Mayor?

30. As indicated above, regs 12(6) and (7) confer discretions on the presiding member (in this case, the Mayor) to refuse to “accept” a motion if particular conditions are met.
31. Given that the Mayor actually voted in favour of the motion, it seems clear that he did not in fact form the view that it was beyond the power of the Council. But in my view the Mayor was not bound to refuse to “accept” the motion even if he had been of the view that “the subject matter” of the motion was beyond the power of the Council. If the Mayor had formed that opinion then he would have been *empowered*, but not required, to refuse to accept the motion in the exercise of his discretion.¹ (Of course, the fact that the Mayor either does not form the opinion that the subject matter of a motion is beyond the power of the council, or decides to accept the motion even though he does form that opinion, does not mean that any resolution or decision resulting from such a motion is necessarily within power or lawful.)
32. The decision of the Mayor to accept the motion as a motion without notice was communicated, and to some extent explained, in his email to the Council Members dated 27 June 2016 at 7:40:43pm. The email does not purport to be an exhaustive statement of the Mayor’s reasons but does state: “I will accept the motion due to the

¹ The language of regs 12(6) and (7) of the Regulations may be contrasted with the language of reg 19(3) of the former *Local Government (Proceedings of Councils) Regulations 1984* (SA), which provided: “The chairman shall refuse to accept a motion when the subject matter of such motion in his opinion is ultra vires.” (Emphasis added.)

urgency- if a decision is not made tomorrow evening we become committed on 1/7/16 to paying over \$100,000 for 2016/17 fees.”

33. I do not consider that the Mayor was bound, as a matter of law, to refuse to accept the notice of motion of 28 June 2016.
34. First, regs 12(6) and (7) identify cases where, exceptionally, the presiding officer is not obliged to “accept” a motion. There is no express indication in either provision that the presiding officer is obliged, in every case or in any particular case, to consider the exercise of the discretion to decline to “accept” a motion. I think the better view is that regs 12(6) and (7) provide a procedural option to the presiding member, but do not impose upon him a duty to consider the exercise of that option, even in circumstances where regs 12(6) or (7) might potentially be applied. In its terms, the requirement to take into account the Guiding Principles is expressed only as a *precondition* to a decision *in favour of* requiring a written notice of motion, not as an imperative duty that arises whenever a motion without notice is brought. In any event, it is clear that in the case of the motion passed on 28 June 2016, the Mayor *did* consider the exercise of the discretion conferred by reg 12(6) at least, and he declined to exercise it.
35. Secondly, even if there were an implied duty on the presiding member to consider the exercise of the discretion, it should be concluded, as a matter of construction, that it was not intended that failure of the presiding officer to consider or exercise the discretion in either reg 12(6) or reg 12(7) with respect to a particular motion should result in any decision on that motion being invalid.
36. Thirdly, given the language of reg 12(6), it is hard to see how it could be successfully argued that the Mayor was subject to any obligation to “comply” with reg 4(1). The express terms of reg 12(6) required only that he *take into account* the Guiding Principles.
37. Whether it was advisable for the Mayor to accept the motion involves a question of judgment. The reason identified by the Mayor for accepting it — the need for urgency due to the proximity of the end of the financial year — was a cogent reason in favour of accepting the motion. The fact that the general subject matter of the motion had been the subject of public debate by the Council over a period of more than 12 months might also have been regarded as a relevant factor in favour of accepting the motion. It is possible that the LGA, or others critical of the Mayor’s decision, might argue that the decision to accept the motion was not consistent with the tenor of the Guiding Principles. The better view is that that kind of argument would not go to the lawfulness or the validity of the Mayor’s decision, or of any decision ultimately made by the Council on a motion which the Mayor accepted for consideration.

Was a rescission motion required in respect of the decision of 12 April 2016?

38. Regulation 12 does not, so far as I can see, make any reference to “rescission” or “rescinding” motions. In particular, reg 12 does not appear to impose any requirement that a motion earlier passed be formally “rescinded” (or formally “revoked”) by a separate “rescinding motion”, before another motion on the same subject matter is passed (*even if* the later motion is inconsistent with, or would in effect “vary or revoke”, the earlier). In terms, reg 12(3) speaks of a motion having the “effect” of revoking or amending a resolution passed since the last general election of the council. This language rather suggests that no formal “rescission” (or revocation) of motions is required.

39. It may be that the reference to the need for a “rescission motion” was intended simply as a shorthand for a motion on notice in circumstances where reg 12(3) required that business be brought by motion on notice. In the next part of my advice I shall consider whether the motion passed on 28 June 2016 was one which was required by reg 12(3) to be made on notice.

Does the resolution of Council made on 28 June 2016 comply with regs 4 and 12 of the Regulations?

40. For the reasons explained in [15] above, I doubt whether it can be said that reg 4 has any binding legal effect (except as guidelines required to be taken into account in making certain decisions). Regulation 4 does not in my view place a legal limitation on the powers of the Council. For that reason it is probably not helpful to inquire whether a resolution of the Council “complies” with reg 4.
41. On the other hand, reg 12 plainly does impose certain imperative legal requirements in relation to the forms and processes by which the Council comes to consider business and make decisions. In particular, reg 12(3) limits the entitlement of a Member of Council to bring forward a motion without notice when the conditions identified by its terms are met.
42. The *legal consequences* of non-compliance with the requirement of reg 12(3) — eg, as to the validity of a resolution or decision reached, or the effect on transactions between the Council and a third party — are potentially quite different and separate questions from the question of whether the requirements have been complied with in the first place. Those issues are addressed further below. This part of my opinion addresses only the initial question of whether the requirements of reg 12(3) have been complied with.
43. As I see it, the issue of whether the Council complied with reg 12(3) in passing the resolution of 28 June 2016 appears to raise three questions:
- 43.1. Was the passage of the motion on 12 April 2016 a “resolution”, such that reg 12(3) potentially had application?
- 43.2. If so, what (if anything) was the effect of the Council’s decision on 12 April 2016 to “confirm” the Council’s membership of the LGA?
- 43.3. Was the effect of the motion that was passed on 28 June 2016 “to revoke or amend” the resolution made on 12 April 2016?
44. I shall address these questions in turn. Before doing so, however, I shall briefly say something about the advice of Dr Churches in relation to this issue.

Consideration of an approach suggested by Dr Churches’ advice

45. In his advice dated 10 July 2016, Dr Churches has focused upon the questions of what is meant by a “resolution”, and whether the Council’s decision of 12 April 2016 constituted a “resolution” within the meaning of reg 12(3). As I understand his advice, Dr Churches suggests that the decision of 12 April 2016 was not a “resolution”. He reasons that the expression “resolution” in reg 12 does not cover “every decision made by a Council”. Rather, Dr Churches suggests, a decision will only be a “resolution” if it is a decision of a kind “that require[s] the protection of reg 12(3)”.² I understand this to

² Dr Churches’ advice at [17].

mean, in essence, that a decision of the Council is to be regarded as a “resolution” within the meaning of reg 12(3) if, but only if, the mischief to which reg 12(3) is addressed would tend to arise in the circumstances of the particular case if it is not so regarded.

46. Dr Churches suggests that the purpose of reg 12(3) is “to provide notice of any motion having as its aim a revocation or amendment of a matter resolved since the Council election”, so as to “ensure that a prior resolution of the Council is not overturned by an ambush”. Accepting that that is a purpose of reg 12(3), it certainly does not follow that the question of whether a particular decision of the Council is a “resolution” can be dictated by whether, in the circumstances of a particular case, the decision overturning it can be described as having been achieved by an “ambush”.
47. Possibly the purpose of reg 12(3) may have relevance in informing the precise meaning to be given to the word “resolution” as it appears in that provision. Of course, the word “resolution” is also used elsewhere in the Act and in the Regulations. It should generally be given a consistent interpretation in each instance and so any conclusion about exactly what is meant by “resolution” may need to take account of the purposes of several provisions, not just reg 12(3) itself.
48. However, Dr Churches’ approach appears to me to assign no fixed meaning to “resolution” at all. Rather, it would seem to require a court (or whoever may be considering the matter) to weigh up all the circumstances and decide whether, as a matter of policy, it is desirable that reg 12(3) should have application. If the court (or whoever) considers that the “safeguard” of reg 12(3) should apply, then the earlier decision is to be regarded as a “resolution”; otherwise, it is not.
49. This seems a radical and surprising conclusion. It would seem to mean, for example, that the conclusion as to whether a particular decision is a “resolution” might depend upon the nature and period of notice given to Council Members in relation to a motion to reverse it. It appears to have led Dr Churches into an examination of whether it could reasonably be expected that the decision of 28 June 2016 might have been different had it been made on a “notice of motion” rather than being made on a “motion without notice”. I think that question is irrelevant.
50. Whatever the precise meaning of “resolution”, I find it extremely difficult to accept that the attitude or likely voting pattern of any Council Member (whether present for the vote on 28 June 2016 or not) can possibly affect the answer to the question of whether the resolution of 28 June 2016 complied with the requirements of reg 12. Contrary to the apparent view of Dr Churches,³ I think it extremely unlikely that a court would have regard to the voting intentions of councillors in determining whether the decision of 28 June 2016 was lawfully made.

Was the passage of the motion on 12 April 2016 a “resolution” within the meaning of reg 12(3)?

51. Regulation 12(3) in its terms applies only where a motion, if passed, would have the effect of revoking or amending a “resolution” previously passed by the Council. The question therefore arises as to what constitutes a “resolution” and whether there may be decisions made by the Council that are not “resolutions” for the purposes of reg 12(3).

³ Dr Churches’ advice of 11 July 2016 at [1].

52. For the reasons that follow, I think the better view is that all decisions of the Council which are made by the Council Members voting at meetings by passing “motions” are “resolutions” for the purposes of reg 12(3).⁴
53. The word “resolution” is used, but not defined, in the Act and the Regulations. Ordinarily, if a term used in legislation is not defined, it will bear its “ordinary and natural meaning”.⁵ Of course, most words have a range of ordinary meanings and the meaning to be attributed to a particular word depends very much upon the context in which it appears and the purpose sought to be achieved by the provisions in which it is used.⁶ Usually it will be appropriate to assume that a term is used consistently throughout a single piece of legislation⁷ (though this is readily rebutted where the context requires otherwise) and so the meaning to be adopted should take into account all the contexts in which the word appears.
54. The relevant definition of the word “resolution” in the *Macquarie Dictionary*⁸ is “a formal determination, or expression of opinion, of a deliberative assembly or other body of persons”. The word “resolve” is similarly defined to mean “to settle, determine, or state formally in a vote or resolution, as of a deliberative assembly”. In my view this is, in the context of provisions relating to a deliberative body such as a council, the “ordinary meaning” of the word “resolution”.
55. The “formality” involved lies in the voting and recording of the matter the subject of the resolution. The reference to “formality” does not, in my view, suggest any minimum level of importance for a decision to be a “resolution”. Indeed, as the word “formal” suggests, the *form* of a decision, rather than its subject matter or its importance, is more essential in determining whether a decision of a council is a “resolution”. The formality of putting the motion to a vote and ascertaining whether it is carried or lost is the kind of formality contemplated by the concept of a resolution, and any motion that is carried in this way becomes, and is in my view properly described as, a “resolution”.
56. A number of provisions of the Act make it plain that a council may make decisions or exercise powers by way of “resolution”: see, eg, ss 38, 83, 87, 193, 194, 208, 234A, 235, 249-253. The provisions of the Act are, in my view, consistent with a meaning of “resolution” that encompasses all decisions made by the Council Members of a council (or of a council committee) voting so as to pass a motion.
57. These provisions appear to contemplate decision-making by councils by way of “resolution” for a wide variety of purposes. I do not think it can be said that there is any general theme in these provisions that would suggest that decisions made by “resolution” are confined to decisions which are, for example, especially momentous. The decisions referred to include, for example, purely procedural decisions such as the fixing of times for ordinary meetings of the council (s 81) or a council committee (s 87).

⁴ I note that this appears to accord with the view of the authors of M Goode and D Williams, *Council Meetings in South Australia* (1992), p 100 [7.1]

⁵ *The Commonwealth v Baume* (1905) 2 CLR 405 at 414; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 382 [71]. See also D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (7th ed, 2011), pp 122-3 [4.8].

⁶ *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408.

⁷ See D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (7th ed, 2011), pp 119-22 [4.6]-[4.7].

⁸ *Macquarie Dictionary* (revised 3rd ed, 2001), p 1608.

58. At least some of the provisions appear to proceed on the footing that the decision-making of a council, acting through its Council Members, will generally be done by resolution. For example, s 253 addresses the saving of certain “resolutions” made by a council pursuant to council by-laws when those by-laws are revoked. There is no obvious reason, in that context, to save “resolutions” but not to save other decisions made by the Council passing a motion but which for some reason might be argued not to constitute a “resolution”. The fact that only “resolutions” are saved suggests that the word “resolution” is intended to cover all decisions made formally and deliberatively by councils. To take another example, s 87(1) provides that ordinary meetings of council committees will be held at times and places “appointed by the council ... or the council committee” (ie, no express reference to a “resolution”). But s 87(3) provides that a “resolution” appointing a time and place for holding an ordinary meeting of a committee does not operate after the conclusion of the next general election. It would be surprising if decisions could be made otherwise than by “resolution” and could continue to operate, while decisions made by “resolution” did not. Section 87(3) was surely intended to apply in relation to all decisions of the council or a committee “appointing” times and places for meetings, not only a subset of such decisions which were made by “resolution”.
59. Section 285 is an evidential provision that provides that a notice in the Gazette that a resolution was passed is conclusive evidence of various matters. It does not require that all resolutions be published in the Gazette; it simply prescribes a legal effect for those resolutions that are so published. References in the Act to “orders” made by a council appear to be to orders pursuant to Part 2 of Ch 12 of the Act, requiring action of the particular persons to whom they are addressed. I would not read the reference to “orders” in s 285 as suggesting the existence of a category of decisions reached by a motion being carried but which is not a “resolution”. The word “proposition” appears to be used only in s 285 itself. I do not regard s 285 as any indication that only certain kinds of decision are “resolutions”.
60. As Dr Churches has pointed out in his advice of 10 July 2016, some provisions of the Act make reference (in the same provision) to both “resolutions” and “decisions” of the Council being made at council meetings: see, in particular, ss 83(9) and 87(14), which empower the District Court to “annul a resolution or decision passed or made at [a] meeting”. I agree that this may tend to suggest that the word “resolution” does not include every “decision” “passed or made” by the Council. However, it does not follow, from statutory references to “resolutions or decisions” of councils, that the Act requires a distinction to be drawn between *motions before the Council the passage of which create “resolutions”* and *motions before the Council the passage of which does not create resolutions*.
61. First, the use of the expression “passed or made” in each of ss 83(9) and 87(14) rather suggests that resolutions are “passed” while decisions are “made”. This is consistent with the view that all decisions that result from the “passing” of a motion are “resolutions” while other decisions, not involving the passing of a motion, are simply “made”.
62. Secondly, as the definitions referred to above make clear, a “resolution” is a positive act of the Council. A “motion” is, in my view, simply a proposal for a resolution and, when carried, a “resolution” of the Council is thereby made in the terms of the motion that was carried. A decision by the Council *not* to pass a motion creates no “resolution”. That is, a failed motion is not a resolution, even though the failure of a motion involves a “decision” of the Council (ie, a decision *not* to make the proposed resolution). But for the reference to “decisions ... made”, the District Court would be empowered only to

annul a vote that resulted in the *passing* of a resolution. Given that the *failure* to pass a motion may have consequences (for example, for whether the motion can again be voted upon by the Council) it is possible to imagine circumstances where the District Court is warranted in annulling a decision *not* to pass a motion. This is, in my view, a sufficient explanation of the expression “resolution or decision” as it appears in ss 83(9) and 87(14), and demonstrates that those provisions do not require any departure from what would otherwise be regarded as the ordinary meaning of “resolution”.

63. I note that the minutes of the Council meetings themselves do not appear to use the terms “resolution” or “resolve”. The minutes simply set out the terms of relevant motions, identify who moved or seconded them, and record the result as “carried” or “lost”. There is, then, nothing in the minutes that indicates whether or not a particular motion is regarded as resulting in a “resolution” as opposed to some other kind of decision. However, in correspondence from the Mayor and other officers of the Council, the decisions of the Council, or the terms of motions which are carried, are frequently referred to as “resolutions” or matters “resolved” by the Council.⁹ This usage is consistent with the conclusion that I have reached about the meaning of “resolution” in reg 12(3). Having said that, it is difficult to see how the use of the word “resolution” or “resolve” to describe a decision of Council could demonstrate that the decision was indeed a “resolution”, unless it is posited that a council is able to decide for itself, at will, whether its act should be regarded as a “resolution” or as something else. In the end I think the usage adopted by the Mayor and officers of the Council in correspondence should be treated as entirely neutral, and certainly not as controlling the construction of the term “resolution” in the Act and the Regulations.
64. Finally, although it cannot control the meaning to be given to the word “resolution” as used in the Act, I note that regs 28(5) and (7) of the Regulations appear to contemplate that a “motion”, if successful, will lead to a “resolution”. Regulation 28(5) refers only to a “motion” being moved and reg 28(7) seems to imply that if the motion passes then a “resolution” will have been passed.
65. Consistently with the above analysis, I consider that the better view is that the decision recorded in the minutes of the General Council meeting on 12 April 2016 is a “resolution” for the purposes of reg 12(3). Upon being passed, the amended motion that was under consideration became a “resolution” of the Council.
66. In particular, I would not draw a distinction between decisions “requiring the protection of” reg 12(3) of the Regulations and those that might be adjudged (by some means) not to require that protection. While I accept that one cannot be too strict in applying the general rule that words in delegated legislation bear the same meaning as they bear in the principal legislation, I can see no basis to suppose that reg 12(3) uses the expression “resolution” in any different or more limited sense than the Act itself.

What (if anything) was the effect of the Council’s decision on 12 April 2016 to “confirm” the Council’s membership of the LGA?

67. In order to understand whether the decision on 28 June 2016 had the effect of revoking or amending the motion passed on 12 April 2016, it is necessary to ascertain what exactly was the effect of passing the motion on 12 April 2016. That necessitates consideration of the history of Council deliberation concerning membership of the LGA and the context in which the 12 April 2016 motion was passed.

⁹ See, eg, the letter from the Mayor to the LGA dated 18 August 2015, and the email from the Chief Executive Officer of the Council to the Chief Executive Officer of the LGA dated 29 June 2016.

68. On 28 April 2015, the Council passed an amended motion in the following terms:

... that Council:

1. Advises [the LGA] that the annual membership fee of \$96 000 is excessive, that the City of Marion is only prepared to pay a reduced / revised membership fee for the 2015/2016 financial year. If this revised membership fee is not acceptable to Council the City of Marion will consider terminating its membership of the LGA.
2. Request a refund for the previous years [sic] overpayment.

69. The reference to the previous years' overpayment related to an error in a spreadsheet used by the LGA which had resulted in the formula for LGA membership fees being misapplied in relation to the years between 2005/06 and 2014/15 inclusive.

70. By letter from the Mayor dated 5 May 2015, the LGA was advised that the 28 April 2015 motion had been carried.

71. On 11 August 2015 the Council appears to have considered a motion on notice brought by Cr Hull in the following terms:

That Council advises [the LGA] that the annual membership fee of \$96 000 is excessive, that the City of Marion is only prepared to pay a membership fee of \$70 000 for the 2015/16 financial year. If this revised membership fee is not accepted by the LGA, the City of Marion will terminate its membership of the LGA.

72. It is to be noted that Cr Hull's motion referred to the membership fee payable for the 2015/16 year, which was the then-current financial year. Although the motion made reference to the Council terminating its membership of the LGA, no proposed effective date for termination was identified in the motion. The Members of Council were provided with a memorandum including a comment of Cr Hull in support of the motion, and discussion by Kate McKenzie, the Council's Manager Governance. Ms McKenzie pointed out that there were a number of factors and complex issues to be considered by Council in making a decision either to request a reduced LGA membership fee or to withdraw its membership from the LGA, and recommended that the Council consider an alternative motion in the following terms:

That Council seek further information from the incoming President of [the LGA] and Senior Staff to address the concerns at the Elected Member Forum to be held on Tuesday, 19 May 2015.

73. The minutes of the General Council meeting on 11 August 2015 indicate that Cr Hull's original motion was not put in the terms of which notice was provided. Instead, the minutes record Cr Hull as having moved a motion that "City of Marion withdraws its membership of the Local Government Association forthwith". The material available to me does not explain the change. In any event, that motion was not carried but an amended motion was carried in the following terms:

The City of Marion suspends its membership until a report is received from the new CEO of [the LGA] regarding the value provided by the LGA to member Councils as well as the mathematical formula by which membership fees are calculated.

74. The 11 August 2015 minutes contain no explanation of the intent behind the amended motion. I note that the LGA Constitution does not appear to contemplate "suspension" of membership and it is far from clear what the Council understood it was doing by

“suspending” its membership of the LGA. What does seem clear is that this decision did not involve the Council “resigning” its membership of the LGA.

75. The terms of the decision made at the 11 August 2015 meeting were conveyed to the LGA by letter from the Mayor dated 18 August 2015. Consistently with the terms of the amended motion, that letter requested provision of a report from the new Chief Executive Officer of the LGA “addressing the matters raised in the resolution”.
76. On 13 October 2015 the Council again considered its membership of the LGA. It appears that the Chief Executive Officer of the LGA, Mr Matt Pinnegar, attended the meeting and the minutes record a summary of “the key points raised” by him. The “key points” recorded, *inter alia*, that Mr Pinnegar “noted that he would be available to return to the City of Marion in April 2016 to assist Council in the reassessment of its LGA membership by then providing an update on the outcomes of the governance and formula reviews undertaken”.
77. An amended motion was then carried, in the following terms:
 - ... that Council:
 1. Notes the correspondence received from [the LGA] highlighting the governance/structure review and the formula review with any changes intended to apply from the 2016/17 financial year.
 2. Confirm its membership with the LGA for the 2015/16 financial year and pay the current invoice.
 3. Re-assess its position in April 2016 with the expectation that the LGA has completed the governance and formula reviews.
 4. Authorise the Mayor to have discussions with other councils about setting up an alternative association.
78. It appears that the intent behind the expression “confirm its membership with the LGA” may have been to lift or cancel the “suspension” of membership which had been resolved at the 11 August 2015 meeting, or perhaps simply to confirm that the Council remained a member of the LGA and intended to continue to do so for the remainder of the 2015/16 year. It seems clear that the resolution of 13 October 2015, insofar as it “confirmed” the Council’s membership of the LGA, involved no commitment or decision to remain a member of the LGA beyond the end of the 2015/16 financial year.
79. In advance of the ordinary meeting of the Council on 12 April 2016, a Report was provided to Council Members, the objective of which was described as being “[t]o seek direction from Council regarding its membership with [the LGA]”. The Report recited the information provided by Mr Pinnegar at the 13 October 2015, and noted that he had confirmed that he would attend the meeting on 12 April 2015. An annexure to the Report identified some four possible options for calculating LGA membership subscriptions in the future. The Report contained the following recommendations:

RECOMMENDATIONS (3)

DUE DATES

That Council:

- | | |
|--|---------------|
| <ol style="list-style-type: none"> 1. Note the progress report from Mr Matt Pingear [<i>sic</i>], Chief Executive Officer of [the LGA]. | 12 April 2016 |
|--|---------------|

2. Confirm its membership with [the LGA]. 12 April 2016
 3. Advise the LGA that Subscription Formula Option X is preferred by the City of Marion based on:
 -
 -29 April 2016
80. The Report does not explain why these recommendations were made. Nor does it contain any explanation about the intended meaning or effect of the recommendation that the Council “[c]onfirm its membership with” the LGA.
81. The minutes record that, at the meeting on 12 April 2016, the Council passed a motion in the following terms:
- ... that Council:
1. Note the progress report from Mr Matt Pingear [sic], Chief Executive Officer of [the LGA].
 2. Confirm its membership with [the LGA].
82. Additionally, the Council proceeded to pass a further motion in the following terms:
- that Council:
1. Advise the LGA that Subscription Formula Option 2 is preferred by the City of Marion based on:
 - a. Equitable processes of Council to consider smaller Councils in this state.
 - b. Encouragement of efficient use of subscriptions.
 - c. Being three population and revenue bands using three year average for operating revenue with no upper caps applied.
83. It is to be noted that, in contrast with the resolution passed on 13 October 2015, the resolution that the Council “[c]onfirm its membership with the Local Government Association” passed on 12 April 2016 was not expressed to relate to any specific timeframe (eg, the 2015/16 financial year or the 2016/17 financial year).
84. The meaning and intention of the resolution that the Council “[c]onfirm its membership with the Local Government Association” is not entirely clear. The wording of the resolution appears to have been derived from recommendation in the Report to Council Members which preceded the 12 April 2016 meeting. That Report contained no explanation as to what it was thought the resolution would achieve or why a resolution in those terms was desirable. The Report appears to have taken the wording of the resolution from the 13 October 2015 resolution, but with the omission of the words “for the 2015/16 financial year”. Given the earlier purported “suspension” of the Council’s membership, it made sense for the meeting of 13 October 2015 to resolve to “confirm” its membership, but since that had already occurred at the meeting of 13 October 2015, the repeated “confirmation” on 12 April 2016 cannot readily be understood in the same way.
85. Having regard to its language, it seems to me that the resolution of 12 April 2016 could conceivably bear any of the following general meanings:

- 85.1. Confirm that the Council, as at 12 April 2016, remains a member of the LGA (leaving open the possibility of again considering in the future whether the Council should remain a member beyond 30 June 2016).
 - 85.2. Confirm that the Council will remain a member of the LGA for the remainder of the 2015/16 year (again, leaving open for future consideration of whether the Council should remain a member beyond 30 June 2016).
 - 85.3. Confirm that the Council will be a member of the LGA for (the whole of) the 2016/17 year.
 - 85.4. Confirm that the Council's would remain a member of the LGA for (at least) the time being (ie, at least some way into the future).
86. The absence of any express mention of a time period in the resolution means that the first meaning is textually plausible. However, it is not apparent what point there would be in the Council simply affirming that it was, as at 12 April 2016, a member of the LGA. It seems obvious that it was then a member, particularly in light of the resolution passed on 13 October 2015.
87. As to the second possible meaning, there seems little point in passing a resolution in April 2016 confirming the Council's membership for only the 2015/16 year. It is not obvious why the Council would wish to do this so late in the financial year, and it seems pointless given the clear resolution to that effect that was made on 13 October 2015. The apparently deliberate omission of the words "for the 2015/16 financial year", which had appeared in the 13 October 2015 resolution, further suggests that this was not the intention of the 12 April 2016 resolution.
88. Given the proximity of the end of the 2015/16 year, the third meaning has some contextual plausibility. However, the absence of any express reference to the 2015/16 financial year suggests to my mind that the resolution was more general in nature and was not specifically committing the Council to the 2015/16 financial year.
89. On balance, I consider that the fourth meaning is the most likely meaning of the resolution of 12 April 2016. I think the resolution is properly to be understood as meaning that the Council was resolving that it would remain a member into the future. Within that general meaning, though, there is the potential for further nuance of meaning which may be important. This is considered below.

Did the resolution made on 28 June 2016 "revoke or amend" the resolution made on 12 April 2016?

90. The question whether the resolution made on 28 June 2016 had the effect of "revoking or amending" the resolution made on 12 April 2016 depends upon the meaning of the resolution. As I have indicated above, the answer to that question is not clear, but I tend to think it is more likely to be construed as meaning that the Council was expressing its intention to remain a member of the LGA for the time being.
91. If the resolution of 12 April 2016 was only declaratory of the Council's membership at a point in time (ie, on 12 April 2016), then a new resolution on 28 June 2016, to the effect that the Council resign its membership of the LGA, was not inconsistent with the declaratory resolution. Similarly, if the resolution of 12 April 2016 were understood merely as confirming the Council's membership of the LGA for the 2015/16 financial year, a resolution on 28 June 2016 plainly was not inconsistent with the 12 April 2016

resolution. In either of these cases, I would not regard the 28 June 2016 resolution as having the effect of revoking or amending the 12 April 2016 resolution.

92. On the other hand, if the 12 April 2016 resolution is properly to be understood as a resolution that the Council remain a member of the LGA for the 2016/17 financial year, then a resolution to the effect that the Council withdraw from the LGA for the 2016/17 year would seem necessarily to effect a revocation or amendment of the 12 April 2016 resolution.
93. The final possible meaning of the 12 April 2016 resolution presents the most difficulty in the application of reg 12(3) of the Regulations. Does a resolution of the Council to resign its membership of the LGA as and from 1 July 2016 have the effect of “revok[ing] or amend[ing]” a resolution generally confirming the Council’s membership of the LGA into the future?
94. An incident of membership of the LGA is a council’s entitlement to resign. There is nothing strictly inconsistent between the Council deciding to remain a member for the time being in April 2016 but then, in June 2016, making a decision to resign its membership from that date forward: continuation of membership one day is not inconsistent with resignation of membership the next (in fact membership is a necessary precondition for resignation). Given the lack of any specific date in the resolution of 12 April 2016, I incline to the view that the 12 April 2016 resolution did not need to be “revoked” or “amended” in order that the Council might resign its membership of the LGA at some time in the future; that is, that a decision to resign its membership from 1 July 2016 involved no revocation or amendment of a decision to remain a member as at 12 April 2016.¹⁰
95. Plainly the effect of the resolution of 28 June 2016, when put into effect, would alter *the Council’s LGA membership status*. But I am not sure that alteration of that status can or should necessarily be equated with “amendment” or “revocation” of *the resolution* of 12 April 2016; that depends upon the precise meaning attributed to that resolution.
96. I think it is possible, though, that if the matter were tested a court may take the view that the 12 April 2016 resolution meant more than merely that the Council would remain a member of the LGA for the time being: a court might ask whether it is to be discerned, as a matter of construction of the 12 April 2016 resolution, that the Council intended that the Council was committing to membership for some particular period into the future, or that *the 12 April 2016 resolution* should have to be amended or revoked before the Council might vary its LGA membership status in the future. I think there is a degree of circularity in approaching the resolution in this way, but I think there is some risk that a court might find that the resolution conveyed that the Council should remain a member of the LGA *and that that decision was not to be departed from unless and until the Council revoked or amended the resolution of 12 April 2016*.
97. It must be accepted that this is all somewhat impressionistic, because the purpose of or reason behind the 12 April 2016 resolution is far from clear. It is difficult to predict what a court would conclude. At the very least, the Council has a reasonable argument to

¹⁰ This seems consistent with decisions holding that alteration of a position by resolution does not necessarily involve any revocation or amendment of a position taken in an earlier resolution: see, eg, *Ross v Town of Victoria Park* [2000] WASCA 299 at [55]. See also the following cases involving the repeal of by-laws, which may bear on the issue but are inconclusive: *R v Shire of Huntley*; *Ex parte Tootell* (1887) 13 VLR 606 at 609 per A’Beckett J; *Barry v City of Melbourne* [1922] VLR 577 at 591-2 per McArthur J (Irvine CJ agreeing); *Robinson v City of Springvale* (1970) 22 LGRA 166 at 171 per Adam J.

the effect that the 28 June 2016 resolution did not have the effect of revoking or varying the 2016 resolution.

98. On balance, I think the better view is that the 28 June 2016 resolution did not have the effect of “revok[ing] or amend[ing]” the 12 April 2016 resolution.
99. If this issue were to be tested in litigation, a question would arise as to what evidence might be admissible, beyond the minutes themselves, to establish the meaning and intent of the 12 April 2016 resolution. That is an issue that may require further consideration in the event that litigation appears likely.

Effect of non-compliance with the Regulations and effect of Council’s written notice to the LGA

Introduction

100. For the reasons explained above, I think the Council has at least a reasonable argument that the resolution of 28 June 2016 did *not* have the effect of revoking or amending the resolution of 12 April 2016. If that is correct then the requirement in reg 12(3) was not engaged. If that is accepted then the Chief Executive Officer sent the email of 29 June 2016 in accordance with and pursuant to a lawfully made resolution of the Council. If that is so then there can be no doubt that the act of the Chief Executive Officer in sending the email is an act to be attributed to the Council for the purpose of cl 13 of the LGA Constitution. Whatever other kinds of act it might extend to, it seems clear that a notice in writing provided by the Chief Executive Officer of a council in accordance with a lawful resolution made at a general council meeting of that council, and made in compliance with all the requirements of the Act and the Regulations, is within the concept of notice contemplated by cl 13.
101. There is, as I have indicated, a risk that a court would take a different view as to whether reg 12(3) was engaged. It is therefore necessary to consider the following question: on the assumption that the resolution of 28 June 2016 was made following a contravention of reg 12(3) of the Regulations, what (if anything) was the legal consequence of that non-compliance on the effectiveness of the notice given by the Chief Executive Officer to the LGA?
102. I will return to this issue after making reference to some relevant provisions of the LGA Constitution and the content of the email that was sent by the Chief Executive Officer of the Council on 29 June 2016.

Relevant provisions of the LGA Constitution

103. The LGA is established as a body corporate by cl 1(2) of Schedule 1 to the Act.
104. The relationship between the Council, as a “Constituent” of the LGA (at least until 30 June 2016), and the LGA is relevantly governed by the LGA Constitution. Clause 1.1 acknowledges that the LGA Constitution is to become effective upon the Minister giving approval to it under cl 1(4) of Schedule 1 to the Act. Clause 1.2 recites that the LGA Constitution is binding “as between the LGA and each Constituent”.
105. Clause 11 establishes two classes of members, Ordinary Members and Associate Members. In cl 3 “Constituent” is defined to mean “at any time either or both an Ordinary Member and an Associate Member”. Clause 12 provides for the admission of members (ie, Constituents). Clause 13 provides for resignation by members, and is in the following terms:

Resignation by members

A Constituent may resign from the LGA upon giving written notice to the LGA. A resignation may be stated to be effective immediately or at a later date. A resignation takes effect subject to clause 132.2

106. Clause 132.2 provides that any person who ceases to be a Constituent “during a financial year” remains liable to pay any unpaid annual subscriptions and levies and service charges.
107. It is to be observed that the passing of a motion of the Council, to the effect that the Council is to withdraw from the LGA, would not itself be effective, as between the Council and the LGA, to cause the Council, as a Constituent, to resign from the LGA. Resignation takes effect only upon the provision of written notice in accordance with cl 13 of the LGA Constitution.

The email notifying the LGA of the Council's resignation of its membership of the LGA

108. On 29 June 2016, the Chief Executive Officer of the Council sent an email to Mr Pinnegar of the LGA in the following terms:

Dear Matt

I wish to formally advise the LGA of South Australia that at Council's General Council meeting held last night, Tuesday 28 July 2016, it was resolved that Council withdraw its membership from the LGA of SA for the 2016/17 financial year with a review to be undertaken in March 2017.

As you are aware, Tony Lines, General Manager Operations, Vincent Mifsud, GM Corporate Services and Kate McKenzie, Manager Governance have arranged to meeting [sic] with you at 8.45am Thursday 30 June to discuss an exit strategy.

109. The LGA's letter of 1 July 2016 does not raise any issue as to whether the letter satisfies the requirements of cl 13 of the LGA Constitution. That suggests that, subject to the issue which it raises concerning the validity of the Council's decision, the LGA regards the letter as sufficient to effect the Council's resignation as a member of the LGA with effect from the end of the 2015/16 financial year.
110. I note that cl 13 of the LGA Constitution appears to contemplate a notice of “resignation”, stating either that the resignation is to be “effective immediately” or at a later date (and, implicitly, in the case of a resignation effective from a later date, identifying the date). The CEO's email of 29 June 2016 probably can be seen as achieving this in substance though perhaps not in form. In form it does not purport to give “notice” of “resignation” at all, and does not state a date on which the resignation is to take effect, but rather “to formally advise” the LGA of a resolution made by the Council to “withdraw its membership from the LGA of SA for the 2016/17 financial year”. I think a court would likely regard the email as a sufficiently clear indication of an intention by the Council to resign its membership of the LGA with effect from the end of the 2015/16 financial year, and thus as sufficient to engage the operation of cl 13, though the contrary might be arguable. In any case, despite any niceties of form, it appears that the LGA has understood the purport of the letter this way and both parties have acted on the assumption that it is a notice under cl 13 of the LGA Constitution. This might not prevent the issue of whether the email of 29 June 2016 constituted a notice under cl 13 from being raised at a later stage.

A question of attribution

111. Subject to the issue raised in [109]-[110] above, there can be no doubt that *the Chief Executive Officer of the Council*, by the email of 29 June 2016, provided written notice that the Council was resigning its membership of the LGA.
112. Clause 13 of the LGA Constitution requires not merely that written notice to that effect be received by the LGA, but that it be given *by the Council*. The question of whether the sending of the email by the Chief Executive Officer was effective to constitute a notice under cl 13 of the LGA Constitution thus raises a question of *attribution*: is the sending of the email by the Chief Executive Officer of the Council an act which is to be *attributed to the Council* for the purposes of cl 13?¹¹ If it is, then the notice was effective to cause the Council to resign as a member of the LGA. If the act of the Chief Executive Officer is *not* to be attributed to the Council then no notice has been provided by the Council in accordance with cl 13 and it would follow that the Council remains a member of the LGA, as the LGA asserts.
113. The issue may be elucidated a little further by identifying some possible views as to what cl 13 requires:
 - 113.1. Is the provision of *any* notice by the Chief Executive Officer of a council, purporting to act on behalf of that council, a notice “given by the Council” for the purposes of cl 13?
 - 113.2. Is a notice given by the Chief Executive Officer of a council, in accordance with anything that *purports to be a resolution of the Council*, a notice for the purposes of cl 13?
 - 113.3. Is a notice given by the Chief Executive Officer of a council, in accordance with a resolution *in fact passed* by that council (whether or not the motion for the resolution came before the council in accordance with reg 12(3) of the Regulations or was otherwise reached by a process that complied with the procedural requirements applicable to council meetings), a notice for the purposes of cl 13?
 - 113.4. Is the act of giving a notice only to be attributed to a council for the purposes of cl 13 if it was given in accordance with a resolution of the council that was reached in full compliance with all of the requirements of reg 12 of the Regulations (or, at least, with the requirements of reg 12(3))?
114. There may, perhaps, be other possibilities.
115. In my view this question of attribution depends ultimately upon the construction of cl 13 of the LGA Constitution. That is, it depends upon what is contemplated *by cl 13 itself* when it speaks of “[a] Constituent ... giving written notice to the LGA”.¹²
116. Clause 13 might have explicitly spelt out what would constitute notice and, in particular, whether a notice given in accordance with a resolution in fact made by the Council, but reached via a procedure that did not fully comply with the requirements of the

¹¹ See generally *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 506-12.

¹² This seems to me to be consistent with observations, albeit in a very different context, made by Gummow, Callinan and Heydon JJ in *Griffith University v Tang* (2005) 221 CLR 99 at 128-9 [81]-[82].

Regulations (and reg 12(3) in particular) was to count as a notice. Unfortunately, but unsurprisingly, that question is not directly addressed by the terms of cl 13. The issue falls to be determined as a matter of inference. The question is what is the best inference to be drawn as to what is required for the act of giving a notice to be attributed to the Council?

117. There are, it seems to me, two general sources from which the relevant inference may be drawn. The first is the LGA Constitution itself. The other provisions of the LGA Constitution may shed some light on what is to count as an act of the Council for the purposes of the LGA Constitution generally. I consider this below under the heading “Approaching the issue as a question of construction of the LGA Constitution”.
118. The second source that may inform the inference as to what will constitute notice by a Constituent for the purpose of cl 13 of the LGA Constitution is the general law (in which I include the Act, the Regulations and general principles of statutory construction). To the extent that the LGA Constitution does not itself clearly identify the relevant rule of attribution for cl 13, it might be said that the LGA Constitution should be seen as adopting a rule of attribution that is consistent with inferences to be drawn, as a matter of statutory construction, about the effect of non-compliance by a council with procedural requirements in the Regulations. I consider this below under the heading “Approaching the issue as a question of construction of the Regulations”.

Approaching the issue as a question of construction of the LGA Constitution

119. The following provisions of the LGA Constitution may be thought to be indirectly relevant to the issue of construction that arises in relation to cl 13.
 - 119.1. Clause 15 enables the LGA to “give written notice (attention to the chief executive officer of the Constituent) to the Constituent”. This might suggest that dealings between the LGA and Constituents are generally to occur at the level of the chief executive officer. It might be thought that, if notice to the Constituent from the LGA is achieved by giving notice directed to the attention of its Chief Executive Officer only (and not, for example, upon the notice being tabled in a meeting of the council), then it may suffice to count as notice *from* a Constituent that it was given by the Chief Executive Officer of that Constituent.
 - 119.2. Clause 23.3 enables the LGA to call a special meeting “on written request from at least 10 Ordinary Members (which request is signed by the principal member of chief executive officer ... of each Ordinary Member making the request”. This is another instance of the LGA Constitution appearing to accept, as an act of a Constituent, an act done by the chief executive officer (or principal member) of that Constituent. Given the fairly careful description of what is required (eg, the requirement that the request be signed) it seems doubtful that the capacity of the LGA to call a meeting was intended to depend *further* upon whether each of the principal officers or chief executive officers of the 10 Ordinary Members were duly authorised by lawfully passed resolutions of their respective councils to make the request. Again, this might be seen as an indication that, generally speaking, conduct of a chief executive officer (or principal member) of a Constituent in relation to the LGA is to be attributed to that Constituent.
 - 119.3. Clause 24 provides for the giving of notice of general meetings of the LGA and cl 24.4 requires that notice “be given individually” to each Constituent, but does not expressly indicate what will constitute the giving of notice to a Constituent.

- 119.4. Clause 25 enables Ordinary Members to give the LGA notice of a motion it proposes to move at a general meeting. Among other requirements, cl 25 expressly requires that the notice be signed by the principal member or chief executive officer of the Ordinary Member. In this respect cl 25 is similar to cl 23.3, and similar inferences might be drawn.
- 119.5. Clause 35.1.2 provides that at a general meeting an Ordinary Member is entitled to be represented by one Elected Representative “as nominated in writing by the chief executive officer of the Ordinary Member”. Again, this might be taken as suggesting that generally the dealings of Constituents with the LGA may be expected to occur through the chief executive officer.
- 119.6. Clauses 36 and 37 provide for the appointment of Delegates, Deputy Delegates and Representatives of Ordinary Members. Clause 37.1 provides that, to be valid, an appointment must be in writing “signed by the chief executive officer of the appointer”. This is another instance of actions of a chief executive officer apparently being by the LGA Constitution accepted as acts to be attributed to a Constituent. Again, it seems unlikely, given the express reference to the formal requirement of signing, that any further requirement such as the existence of a lawful resolution of a council authorising the chief executive officer to sign an appointment, is required.
- 119.7. Clause 57 addresses nominations for election to offices in the LGA. Only Elected Members of Ordinary Members of the LGA are eligible for election to such offices. In order for a nomination to be “valid”, cl 57.3 requires that notice in writing signed by the candidate be given to the LGA, and also:

a letter from the Ordinary Member of which the candidate is an Elected Representative, proposing the candidate for election and signed by the chief executive officer of that Ordinary Member with the prior sanction of a resolution of that Ordinary Member.

It seems to me that the express reference in this clause to the need for “the prior sanction of a resolution of that Ordinary Member” provides some indication that, where reference is made to an Ordinary Member or a Constituent giving a notice *elsewhere* in the LGA Constitution, the “prior sanction of a resolution” is *not* a requirement for an act to be attributed to a Constituent. That is, where a resolution is required as a condition of something taking effect under the LGA Constitution, this is provided for expressly, so that the absence of an express requirement suggests that there is no requirement to that effect. On the other hand, it might be said that there are some decisions (such as resigning from the LGA) which would ordinarily be made by resolution, so that it is simply not necessary expressly to state that requirement, whereas the nomination of an individual Elected Member as a candidate for election to an office within the LGA is not a decision of that kind.

- 119.8. Clause 64.1.3 and 65 provide for postal voting by Constituents. They require that “to cast a valid vote”, an elector must give the LGA either “a copy of the minutes of the meeting held by the elector (as a council) in relation to the election duly certified by the chief executive officer of the elector or a person acting in the position of chief executive officer” or “a certified copy of a decision of a delegate”, clearly indicating the order of preference of the candidates for whom the elector is voting. The setting out of fairly elaborate requirements for casting “a valid vote”, including the provision of the minutes of a council meeting (presumably so that the LGA can verify that the votes as communicated do

indeed reflect a resolution of the council), may suggest that “valid” action for the purposes of other clause of the LGA Constitution requires no more than notice from the chief executive officer.

- 119.9. I note the existence of cl 144 of the LGA Constitution, entitled “Irregularities at meetings”, which provides that “proceedings” under the LGA Constitution are not invalidated because of any procedural irregularity. “Procedural irregularity” is defined to include “a defect, irregularity or deficiency of notice or time”. “Proceedings” is not defined but, having regard to the title of cl 144, it does not appear that the clause was intended to apply to the giving of a notice under cl 13. Beyond noting that cl 144 involves an implicit recognition that not all acts done following a failure to comply with procedural requirements will be invalid or ineffective, I doubt it has much relevance.
120. In general, I think it can be argued that the provisions of the LGA Constitution suggest — at least faintly— that Constituents may, in their dealings with the LGA, act through their chief executive officers, and that the conduct of the chief executive officer of a Constituent is generally attributed, without more, to the Constituent itself. Where additional formal requirements are required in order that an act qualify as an act of the Constituent for the purposes of particular provisions, these are expressly stated in those provisions.
121. The express and detailed reference, in cl 57.3, in particular, to the need for certain conduct to be approved by resolution of the Constituent before it is effective for the purpose of that clause suggests, to my mind, that the absence of any similar requirement in cl 13 means that all that is required for the act of giving a notice under that clause to be attributed to a Constituent is that it be given by the chief executive officer of the constituent. I acknowledge that it might be possible to draw a contrary inference — for example, that the LGA Constitution recognises the need for Constituents to act through officers but also that those officers be duly authorised by resolutions made in general council meetings — or to treat this as entirely neutral. However, I think perhaps the stronger inference is in favour of the conclusion that conduct of a Constituent’s chief executive generally will be attributed to the Constituent without more.
122. There are some more general considerations that may also be thought to point in that general direction.
123. First, to the extent that the effectiveness of a notice under cl 13 of the LGA Constitution (ie, its attribution as an act of the Constituent) depends upon matters that are not readily ascertainable from the face of the notice, uncertainty arises. If the effectiveness of a notice under cl 13 of the LGA Constitution is open to question on the basis of non-compliance with procedures applicable to the Constituent (eg the Regulations) even though it appears on its face to have been given by the chief executive officer of the Constituent acting in their capacity as such, then there must always be uncertainty surrounding the effectiveness of any notice at least until substantial inquiries have been made as to the internal workings of the Constituent concerned and the manner in which it reached the decision to resign its membership. The complexity of determining whether there has been non-compliance with the regulations in the present case demonstrates the inconvenience that may result if attribution of a notice to a Constituent requires that kind of inquiry. While the issue is being investigated and resolved (including potentially through mediation or litigation, which could take some time), both the Constituent in question and the LGA may remain uncertain as to the liability of the Constituent to pay subscriptions (and thus the financial position of the LGA) and the liability of the LGA to provide services to the Constituent.

124. To my mind this is a reason why, in general terms, a more certain criterion for the attribution of notices under cl 13 to Constituents is to be preferred. It is noteworthy that one apparent purpose of cl 132 of the LGA Constitution (requiring a person who ceases to be a Constituent during a financial year to nevertheless pay the full year's annual subscription) is to enable the LGA to plan with respect to its finances over the course of a financial year: that purpose may well be undermined to the extent that the attribution of a notice of resignation is doubtful or debatable.
125. Secondly, should a Constituent resign as a member of the LGA and then it later be discovered that, for any reason, the giving of the notice which had that effect was not authorised, the former Constituent can be permitted to rejoin the LGA as a member pursuant to cl 12.1 of the LGA Constitution, without any great practical disadvantage. On the other hand, if a notice of resignation is given to the LGA but the attribution of that notice to the Constituent is open to question (and depends upon contestable issues), there is a prospect that (as has occurred here) a new financial year will have begun before the alleged ineffectiveness is identified or brought to the attention of the Constituent. The effect of cl 132.2 of the LGA Constitution in that case will be to require the Constituent to pay its full annual subscription for the next financial year: the practical effect is that the Constituent will have to remain a member of the LGA for the next financial year. I do not suggest that this is a particularly weighty consideration, but it might be thought relevant.
126. Thirdly, the functions of a chief executive officer of a council are defined by s 99(1) of the Act. The LGA can be taken to be aware of those functions and the LGA Constitution can be taken to have been drafted in the knowledge of them. The functions of a chief executive officer include "to ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner". This might be regarded as a consideration suggesting that the chief executive officer of a council would ordinarily have authority to bind the council in the exercise of contractual rights pursuant to decisions of the council, and thus making it more likely that the provision of notice by the chief executive officer of a Constituent, purporting to act as such, would be effective to cause the Constituent to resign its membership of the LGA. On the other hand, it might be argued that the inclusion of the word "lawful" places a limit on the apparent authority of a chief executive officer and directs attention to whether the decision in question was "lawful". In the end, I think s 99 is neutral.
127. Taking into account all of the matters discussed above, I incline to the view that a consideration of the terms of the LGA Constitution as a whole tends to suggest that, if anything, cl 13 should be construed such that the giving of a notice by the chief executive officer of a Constituent to the LGA is, without more, sufficient to warrant attribution of the act of giving notice to the Constituent.
128. However, I do not think this conclusion emerges unequivocally from the LGA Constitution. In those circumstances, the terms of the LGA Constitution might well be seen as merely relying upon the general law to determine the question of attribution.

Approaching the issue as a question of construction of the Regulations

129. Often, the consequence of a failure to comply with a legislative requirement relating to decision-making falls to be determined as a matter of statutory construction. The principles to be applied are established by *Project Blue Sky Inc v Australian Broadcasting Authority*.¹³ In that case, in the context of a statutory power of the

¹³ (1998) 194 CLR 355.

Australian Broadcasting Authority to make Australian content standards, a majority of the High Court discussed the proper approach to determining whether a failure to comply with such a legislative requirement will result in a decision being held invalid. Their Honours said:¹⁴

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment. The cases show various factors that have proved decisive in various contexts, but they do no more than provide guidance in analogous circumstances. There is no decisive rule that can be applied; there is not even a ranking of relevant factors or categories to give guidance on the issue.

130. They concluded:¹⁵

A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. ... In determining the question of purpose, regard must be had to “the language of the relevant provision and the scope and object of the whole statute”.

131. In *Project Blue Sky*, the majority held that the legislation in question did not evince an intention that a content standard made in breach of the legislative requirements relating to the making of such standards should be “invalid”, in the sense of legally ineffective¹⁶ — even though it might properly be described as “unlawful”.¹⁷

132. The procedures to be followed in relation to Council decision-making are, of course, prescribed in some detail by the Regulations. When the Council makes a decision pursuant to statute, it makes sense to ask whether, as a matter of statutory construction, it should be regarded as a purpose of the Regulations (or of the Act, insofar as it contemplates the prescription by regulation of procedural requirements to be applied at council meetings) that a decision “in fact” made by the Council, but following a procedure which did not comply in all respects with the procedural requirements, is to be effective, either generally or for particular purposes.

133. Many of the decisions which a council may make — including the present decision to resign as a member of the LGA — do not involve the exercise of statutory powers in the usual sense. Rather, the decision in question is a decision as to how the Council ought to exercise a “capacity” which it has by virtue of its corporate personality and s 35 of the Act, and by virtue of its membership of the LGA and the mode prescribed by the LGA Constitution for a Constituent to resign its membership of the LGA.

134. Despite this, it may still be useful to ask the question posed by *Project Blue Sky*. And that question might be asked at two levels:

134.1. First, was it a purpose of the Act that a resolution in fact passed by the Council but in circumstances where the procedural requirements prescribed by

¹⁴ (1998) 194 CLR 355 at 388-9 [91] per McHugh, Gummow, Kirby and Hayne JJ.

¹⁵ (1998) 194 CLR 355 at 390-1 [93] per McHugh, Gummow, Kirby and Hayne JJ.

¹⁶ (1998) 194 CLR 355 at 391-3 [94]-[99] per McHugh, Gummow, Kirby and Hayne JJ.

¹⁷ (1998) 194 CLR 355 at 3903 [100] per McHugh, Gummow, Kirby and Hayne JJ.

regulation were not fully complied with should be legally ineffective to confer authority on an officer of a council to exercise a “capacity” on behalf of the council?

- 134.2. Secondly, was it a purpose of the Regulations that a resolution in fact passed following a procedure that did not comply with reg 12(3) should be legally ineffective to confer authority on an officer of a council to exercise a “capacity” on behalf of the council?
135. If the resolution were held “invalid” (ie, legally ineffective), then it might still be asked further whether the act of the Chief Executive itself was, although not authorised by a “valid” resolution of the Council, nevertheless effective to bind the Council as a resignation from the LGA. That is, in terms of the *Project Blue Sky* question, it might be asked whether it was a purpose of the Act or the Regulations to invalidate conduct done by an officer of the Council in apparent reliance on, and in accordance with, a resolution that was made in non-compliance with reg 12(3) of the Regulations.
136. I acknowledge that there is authority which suggests that procedural provisions in regulations applying to council meetings, requiring a motion on notice in order to revoke or amend a previous resolution, are “mandatory” — that is, that non-compliance with them leads to a resolution being “invalid”.¹⁸ However, that authority related to an earlier regulatory regime, it pre-dates *Project Blue Sky* (which is regarded as altering the approach applicable to such issues), and no reasons were provided for that conclusion.
137. There are several authorities which have considered the validity or effectiveness of contractual conduct of statutory corporations in circumstances where there has been non-compliance with statutory provisions governing the manner in which those corporations are to make particular decisions.
138. In *Australian Broadcasting Corporation v Redmore Pty Ltd*,¹⁹ the Australian Broadcasting Corporation (“the ABC”) had purportedly entered into a contract under which it was required to pay an amount exceeding \$500,000, without obtaining prior Ministerial approval. Section 70(1) of the *Australian Broadcasting Corporation Act 1983* (Cth) relevantly provided:

The Corporation shall not, without the approval of the Minister —

- (a) enter into a contract under which the Corporation is to pay or receive an amount exceeding \$500,000 ...

The ABC sought to avoid its obligations under the contract by contending that the contract was invalid due to the failure to obtain Ministerial approval. The High Court, by majority, held that failure to comply with this requirement did not invalidate the contract.

139. The issue was framed (in the pre-*Project Blue Sky* language of “mandatory/directory”) as being:²⁰

whether s 70(1) of the Act is ... merely directory (to the ABC) in character or whether it operates to confine the actual powers of the ABC or to render illegal or unenforceable

¹⁸ *Corporation of the City of Burnside v Municipal Officers’ Association of Australia* (1985) 10 IR 313 at 314 per Keely J (Federal Court of Australia).

¹⁹ (1989) 166 CLR 454.

²⁰ (1989) 166 CLR 454 at 456-7 per Mason CJ, Deane and Gaudron JJ.

any contract of the type to which it refers which is entered into by the ABC otherwise than in accordance with its terms.

140. The majority regarded the issue as “finely balanced”. Their Honours said:²¹

The words of the sub-section are not compelling either way. In strict terms, they are directory. They speak of the exercise (“shall not ... enter into a contract”), rather than the existence, of power. Their direction is to the ABC, and not to an innocent outsider having contractual dealings with the ABC, who would be likely to act on the basis that the ABC would have complied with any statutory duty to obtain the approval of its responsible Minister before purporting to enter into a contract of a kind which required such approval.

141. Some of these considerations apply, though in somewhat different ways, in relation to the present situation.

142. The “power” of the Council relevant to the present case would seem to be that found in s 35 of the Act — the provision conferring upon councils the “legal capacity” of a natural person. That must include the capacity to act, through agents, so as to exercise contractual and quasi-contractual entitlements (such as the entitlement of a Constituent of the LGA to resign its membership in accordance with cl 13 of the LGA Constitution) and to provide the notices necessary to exercise such entitlements. Regulation 12 is a provision that is directed to the *exercise* of the power (or capacity), not its existence (and indeed, this is true of the Regulations generally). The consideration that the provision “regulate[d] the exercise of functions already conferred” was also regarded in *Project Blue Sky Inc v Australian Broadcasting Authority* as “strongly indicat[ing]” that it was not a purpose of the Act to invalidate an act done in breach of the provision.²²

143. As in *Redmore*, it can be argued that, although the Council is a public body and there is plainly a public interest in its being required to comply with the procedures for decision-making that are laid down in the Regulations, reg 12 is directed to the “internal” procedures of the Council. It might be said rhetorically that it is no business of the LGA to inquire into whether a resolution of the Council was reached in accordance with its internal procedures.

144. Unlike in *Redmore*, the Council in the present situation has not purported to *enter into a contract* in accordance with a procedure that is contrary to a procedural requirement. In that circumstance, the consideration that a third party contracting with the council ought to be able to rely upon may perhaps be less directly and obviously important. However, two points can be made about this. First, the exercise of contractual or quasi-contractual rights is closely allied to (and would seem to be a natural and necessary incident of) the capacity to contract. Secondly, the capacity of a council to contract is presumably among the “capacities” conferred by s 35, albeit the mode of contracting is specifically regulated by s 36 of the Act.²³ One might expect that the same consequences as to “validity” would follow for all exercises of the Council’s “capacities”: that is, if a contract entered into by an officer of the Council, relying upon a resolution which was “in fact” passed but which was reached in accordance with a procedure that did not comply with reg 12(3) of the Regulations, would be valid, then it is hard to see how, as a matter of construction, a different conclusion would follow in relation to the

²¹ (1989) 166 CLR 454 at 457

²² (1998) 194 CLR 355 at 391 [94] per McHugh, Gummow, Kirby and Hayne JJ.

²³ However, the express provision in s 36(b) of the Act referring to “an officer, employee or agent *authorised* by the council to enter into the contract on its behalf” might provide a further basis for arguing that a contract entered into on behalf of the council in the purported exercise of its “capacity” is not valid in the absence of actual authorisation.

effectiveness of an act purporting to exercise a capacity in accordance with an existing contract.

145. In *Redmore*, the ABC effectively sought to rely upon its own non-compliance with procedural requirements in order to avoid a contract. It might be said that in those circumstances it did not lie easily in the mouth of the ABC to assert that the contract was invalid. However, there is nothing in the judgment of the majority in *Redmore* that suggests that the conclusion would have been any different had it been the counterparty to the contract that had sought to rely upon the non-compliance with s 70(1) to assert the invalidity of a contract.
146. A difference between *Redmore* and the present case is that in the case of a decision of a council there will be a written record of at least some kind kept which ought to assist in indicating whether a motion was made on notice or not and whether the requirements of the Regulations were complied with, whereas in *Redmore* the fact that there was no requirement for the Minister to give approval in writing was a relevant factor supporting the majority's conclusion. However, despite the availability of minutes, as the analysis earlier in this opinion demonstrates, there is the potential for questions of compliance with the Regulations to be complex and/or unclear.
147. The decision in *Redmore* was recently followed by the Supreme Court of South Australia in *Acquista Investments Pty Ltd v Urban Renewal Authority*.²⁴ In that case, the Authority had entered into a contract granting options to purchase certain land. The trial Judge held that the decision was legally unreasonable²⁵ and that the Authority was required, by s 11 of the *Public Corporations Act 1993* (SA), to have regard to prudent commercial principles in the performance of its commercial operations, and that it had not done so.²⁶ Nevertheless, it was held that despite the unlawfulness of the decision to enter into it, the contract itself was valid and there was no basis to restrain the parties from performing it.²⁷ This aspect of the trial Judge's decision was upheld on appeal to the Full Court of the Supreme Court (by majority), the majority referring to *Redmore*.²⁸ Special leave to appeal to the High Court against the decision of the Full Court was granted but the matter settled before the appeal was heard and determined by the High Court. There is some risk that the High Court might in the future hold that *Acquista* was wrongly decided.
148. The decisions in *Redmore* and *Acquista* are consistent with the observation of Nicholas Sneddon that "broadly, legislative provisions embodying internal rules for the making of contracts or the spending of money are directory while legislative rules governing dealings with the outside world are more likely to be mandatory".²⁹ The Regulations are, I think, fairly characterised as "embodying internal rules". The particular rule imposed by reg 12(3) appears to be directed to preventing the reversal of decisions without notice to Council Members, in circumstances where the Council Members present at a particular meeting may be different than those who were present when the

²⁴ [2014] SASC 206 (Blue J), affirmed on appeal: (2015) 123 SASR 147 (Vanstone and Lovell JJ; DeBelle AJ dissenting).

²⁵ [2014] SASC 206 at [549]-[552].

²⁶ [2014] SASC 206 at [572]-[578].

²⁷ [2014] SASC 206 at [473]-[475] and [610]-[626].

²⁸ (2015) 123 SASR 147 at 161-2 [50]-[53].

²⁹ N Sneddon, *Government Contracts: Federal State and Local* (5th ed, 2013), p 461 [8.18]. Dr Sneddon does not appear to address the issue of non-compliance with procedures governing decisions to exercise powers arising *under* contracts, as opposed to the power to enter *into* contracts.

earlier resolution was passed. While that obviously serves an important democratic objective, this does not deny that it is essentially an “internal rule”. Further, the fact that the Regulations apply to all decision-making of the Council — whether resulting in the exercise of statutory powers or the authorisation of officers to act in the exercise of the Council’s personal “capacities”, or having no legal effect — may be a further indication that invalidity of all such decisions was not intended to follow from non-compliance with any aspect of procedure (or the requirement of reg 12(3) in particular).

149. In *Tonkin v Coona-Monaro Shire Council*,³⁰ the New South Wales Court of Appeal considered a case of contracting by a local council. It was held that failure of the council to comply with provisions of the *Local Government Act 1993* (NSW) requiring the council to seek tenders before entering into a contract did not result in the contract being invalid. I would have thought that *Tonkin* presented a stronger case for invalidity than the circumstances of the present case: the requirement to seek tenders was specific to the power to contract (rather than a general requirement applicable to decisions of all kinds, as in reg 12(3)), and an apparent purpose of those requirements (as well as relating to good administration) was to provide fairness to third parties contracting with the council. Significantly, in holding that failure to comply with the tender requirement did not invalidate the contract, Ipp JA (with whom Handley and Tobias JJA agreed) observed:³¹

The many detailed provisions contained in the Regulation give wide scope for potential contravention by a council. ... Breaches may be of many kinds, some material and some trifling.

In these circumstances, it is difficult to imagine that Parliament intended that any breach of the Regulation, amounting in turn to a breach of s 55(2) of the Act, would lead to a contract, entered into after such breaches had been committed, being illegal or unenforceable.

Similar observations could be made with some force with respect to the Regulations and the prospect of every decision made following the adoption of a procedure not complying completely with their detailed provisions resulting in resolutions, and subsequent action, having no legal effect.

150. In applying the *Project Blue Sky* approach to non-contractual decision-making (albeit almost exclusively in the context of statutory decisions rather than exercises of personal capacities), the courts have identified certain considerations as potentially relevant to the question of statutory purpose.³²
151. I have already referred to the fact that the Regulations appear in their terms to regulate decision-making in respect of powers “already conferred”. This is a fairly strong indicator that breach was not intended to result in invalidity.
152. The public inconvenience which would result from a declaration of the invalidity of the act in question is a pertinent consideration, with a statutory purpose to cause such inconvenience generally being considered to be unlikely. It may be that, in the case of an exercise of the Council’s personal “capacity” to give a notice under the LGA Constitution, these questions are more properly directed to the consequences of holding invalid *all* exercises of the Council’s capacities in reliance on decisions reached

³⁰ [2006] NSWCA 50.

³¹ [2006] NSWCA 50 at [84]-[85].

³² See generally *Helbers v Registrar of Motor Vehicles* (2012) 114 SASR 258 at 283-4 per White J. The actual decision was reversed on appeal but this collection of factors remains useful.

via processes that do not comply with the Regulations (or with reg 12(3)). If that is how this factor is to be approached, there would be the potential for considerable inconvenience, depending upon the nature of the decision in issue.

153. Finally, I should refer to certain provisions of the Act which may be thought to bear on this issue.
154. Section 37 of the Act has been set out at [11] above. I doubt that s 37(b) of the Act assists much in determining whether it is a purpose of the Act or the Regulations that a resolution passed in non-compliance with reg 12(3) is invalid. First, s 37 relates only to contracting, not exercising powers under a contract. Secondly, while s 37 appears to indicate that an officer or agent of a council may contract on behalf of the council only if “authorised” by the council, that nevertheless still leaves the question of whether a resolution, passed in fact by the council, but not brought before the council in the manner required by reg 12(3), is to have the effect of “authorising” an officer to contract. That is the very issue to which the *Project Blue Sky* inquiry is directed.
155. I note s 40 of the Act, entitled “Saving provision”, which provides:

No act or proceeding of a council is invalid by reason of—

- (a) a vacancy or vacancies in the membership of the council; or
- (b) a defect in the election or appointment of a member or members of the council; or
- (c) the fact that the election of a member or members of the council is subsequently declared void by a court of competent jurisdiction.

Similar provision is made in s 41 of the Act with respect to the saving of acts of council committees. It might, perhaps, be suggested that the existence of s 40 gives rise to a negative inference to the effect that acts and proceedings affected by procedural irregularities *are* thereby invalid. However, ss 40 and 41 are directed to the very particular issue of a council or committee that is, or might be thought to be, wrongly constituted. It is well established that procedural requirements for decision making may be “mandatory” or “directory”, and that in the absence of an express provision identifying the effect of non-compliance with a particular requirement, the question remains one of statutory construction in accordance with the *Project Blue Sky* principles. So in my view the presence of s 40 and s 41 provides, at least, an extremely weak indication, and should probably be given no weight at all.

156. There is, in my view, at least a reasonable basis to argue that, as a matter of statutory construction, either:
 - 156.1. it was not a purpose of the Act and the Regulations that a resolution reached in non-compliance with reg 12(3) (or alternatively the Regulations generally) should result in the resolutions themselves being “invalid”; or
 - 156.2. further or alternatively, it was not a purpose of the Act and the Regulations that an act done by an officer of the Council in accordance with a resolution in fact made, albeit following a procedure that did not comply with reg 12(3), should be regarded as other than an act of the Council.

157. Again, it is necessary to acknowledge that apparent contrary authority exists.³³ It is arguable that that authority can be distinguished (as relating to an earlier and different regulatory regime) or should not be followed given more recent developments in this area of the law (particularly the revised approach to construction required by *Project Blue Sky*).
158. There is plainly a real risk that a court would come to the conclusion that any non-compliance with reg 12(3) does have the effect of invalidating both a resolution resulting from an improperly brought motion and any legal effect that might otherwise follow from conduct of an officer of the council taken in reliance on such a resolution.

Conclusions

159. It is extremely difficult to predict exactly how a court might see fit to approach the question of whether the email notice given by the Chief Executive Officer of the Council to the LGA was notice given “by the Council” for the purposes of cl 13 of the LGA Constitution, in the event that it found that reg 12(3) applied to the motion passed on 28 June 2016. There are many variables. In my view the Council would have a respectable argument to the effect that any non-compliance with reg 12(3) should not be taken to affect the attribution to the Council of the Chief Executive Officer’s act of giving notice of resignation to the LGA.
160. It should perhaps be noted that, if reg 12(3) did apply to the motion passed on 28 June 2016, and if the consequence of non-compliance with reg 12(3) was that the notice given by the Chief Executive Officer by email on 29 June 2016 was not effective to cause the Council to resign from the LGA, then the Council has not so resigned. That is so independently of whether a court has made a declaration to that effect or an order quashing the resolution of 28 June 2016.³⁴

Other matters which the Council may wish to consider

161. The letter from the LGA dated 1 July 2016 states that the LGA has received advice to the effect that “the decision to withdraw from the LGA is void”, that the Council currently remains a member, and that the LGA “will continue to provide services to the council as in accordance with the LGA’s constitution”. Assuming the Council wishes to maintain the position that it has resigned its membership of the LGA, the Council should, in my view make it clear to the LGA in writing, as soon as possible, that it does not accept that its decision to resign its membership of the LGA is “void”, that it maintains that it has resigned its membership by notice in accordance with cl 13 of the LGA Constitution, and that it wishes not to receive whatever services the LGA says it will continue to provide. This should be done so that it cannot later be suggested that the Council has acquiesced in the continued provision of services from the LGA.
162. One possible step which the Council might potentially take, assuming it wishes to maintain the position that it has resigned its membership of the LGA, would be to *ratify* the conduct of the Chief Executive in sending the notice, by way of a resolution made on notice. I do not advise the Council to take this step, as it is far from clear whether ratification would be effective to confirm the resignation of the Council as a member of the LGA with effect from the end of the 2015/16 financial year. (There may be a risk that ratification would simply be ineffective, or that the Council’s resignation as a

³³ *Corporation of the City of Burnside v Municipal Officers’ Association of Australia* (1985) 10 IR 313 at 314 per Keely J.

³⁴ I mention this because I apprehend that it is contrary to the position stated in Dr Churches’ advice of 11 July 2016 at [2].

member of the LGA would be taken to take effect from the date of the ratification, rather than the date on which the notice was given, thus committing the Council to payment of LGA subscriptions fees for the 2016/17 financial year while disentitling it to the benefits of membership for most of that financial year.) I note that *ex post facto* ratification of conduct of council officers is *not* a concept that appears to be contemplated by the Act or the Regulations. If the Council does decide to pass a resolution ratifying the notice of resignation, the Council should make it clear that it does not accept that the decision to resign was void or ineffective, and that the ratification is done only out of an abundance of caution.

163. In its future correspondence or discussions with the LGA, the Council may (though it need not) refer to the *fact* that it has taken legal advice, and may of course assert a position that is consistent with the advice that it has received, but the Council should be careful *not* to refer to the content of the advice or the conclusions reached. If it does so it will risk waiving privilege over the advice,³⁵ which would not, in my view, be at all in the interests of the Council at this time. To avoid any doubt, individual Council Members should *not* provide a copy of this advice (or other legal advice received) to the LGA.

Yours faithfully



S A McDONALD

³⁵ See generally, eg, *British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing* (2011) 195 FCR 123 at 134-8 [41]-[47] per Keane CJ, Downes and Besanko JJ.

ADVICE**CITY OF MARION and THE LOCAL GOVERNMENT ASSOCIATION:****VALIDITY OF MOTION PASSED 28 JUNE 2016 WITHDRAWING MEMBERSHIP
FROM THE ASSOCIATION**

EMA Legal
Solicitors

Attn: Ms Kaye Smith

1. You have sought my opinion on a raft of issues (I refer to your letter of 7 July 2016), but the critical issue at the heart of your concern is whether the Motion passed at the meeting of City of Marion (COM) on 28 June 2016, purporting to withdraw COM from the Local Government Association (LGA) will withstand challenge in litigation.
2. I intend to deal with that issue first, and then turn to the subsidiary matters on which you have asked advice.
3. The motion to withdraw from the LGA (TAB 22 of the folder of materials sent to me) is dated 28 June 2016 ("*the withdrawal motion*"), and appears in the Minutes as:

Motions without Notice**8.48pm Local Government Association (LGA) Membership**

[Moved and seconded]

1. The City of Marion withdraws from membership with the Local Government Association (LGA) for the 2016/17 period.

....

The vote was **Tied**

The Mayor gave a casting vote and voted in favour of the motion

Carried

4. The attack on the withdrawal motion rests principally on the **Local Government (Procedures at Meetings) Regulations 2013** ("*LGPM Regulations*", Regulation 12(3), pursuant to which a motion which would have the effect of revoking or

amending a resolution passed since the last general election of the Council, may only be brought by written notice of motion.

5. It is said that the withdrawal motion effects a revocation of a (purported) resolution passed on 12 April 2016 (TAB 19 of the folder). The Minutes for 12 April 2016 record (*"the April 2016 confirmation"*):

CORPORATE REPORTS FOR DECISION

6.44pm Local Government Association Membership

Report Reference: GC120416R01

Mr Matt Pinnegar, Chief Executive Officer of the Local Government Association (LGA) provided an update regarding the progress of the LGA.

Moved Councillor Westwood, Seconded Councillor Hutchinson that Council:

1. Note the progress report from Mr Matt Pinnegar, Chief Executive Officer of the Local Government Association.
 2. Confirm its membership with the Local Government Association.
6. The question then becomes: was the April 2016 confirmation a resolution for the purposes of LGPM Regulation 12(3)? LGPM Regulation 12 relevantly provides:

12—Motions

- (1) A member may bring forward any business in the form of a written notice of motion.
- (2) The notice of motion must be given to the chief executive officer at least 5 clear days before the date of the meeting at which the motion is to be moved.
- (3) **A motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council must be brought by written notice of motion.** (emphasis added)
- (4) If a motion under subregulation (3) is lost, a motion to the same effect cannot be brought—
 - (a) until after the expiration of 12 months; or
 - (b) until after the next general election,

whichever is the sooner.

(5) Subject to the Act and these regulations, a member may also bring forward any business by way of a motion without notice.

(6) The presiding member may refuse to accept a motion without notice if, after taking into account the Guiding Principles, he or she considers that the motion should be dealt with by way of a written notice of motion. (emphasis added)

LGPM Regulation 3 relevantly provides:

"written notice" includes a notice given in a manner or form determined by the council.

(2) In the calculation of "clear days" in relation to the giving of notice before a meeting—

(a) the day on which the notice is given, and the day on which the meeting occurs, will not be taken into account; and

(b) Saturdays, Sundays and public holidays will be taken into account.

(3) For the purposes of the calculation of "clear days" under subregulation (2), if a notice is given after 5 p.m. on a day, the notice will be taken to have been given on the next day.

(4) For the purposes of these regulations, a vote on whether leave of the meeting is granted may be conducted by a show of hands (but nothing in this subregulation prevents a division from being called in relation to the vote).

7. The actual behaviour evidenced by the April 2016 confirmation appears to have been a statement for the benefit of Mr Pinnegar, the CEO of the LGA, reciprocating for his progress report on the LGA's attempts to amend the fee scale that was unfair to COM. The confirmation was, by its very nature, and in the light of COM's then membership of the LGA, not a resolution going to entry into the LGA as a member. The confirmation in no way altered the status quo as matters then stood. It merely stated the then position.

8. The withdrawal motion is unquestionably contradictory of the content of the April 2016 confirmation, but the concepts of "revocation" and "amendment" in

Regulation 12(3) would only be apt if that which was contradicted constituted a resolution. One would not speak of revoking or amending a statement of historical record.

9. The question, even more precisely condensed, is whether any motion passed by a Council constitutes a “resolution” for the purposes of Regulation 12(3)? If the answer is “yes”, then COM is caught by the April 2016 confirmation standing as a resolution, in respect of which the withdrawal motion stands as a revocation. For the reasons below, I am of the opinion that the April 2016 confirmation was not a “resolution” for the purposes of Regulation 12(3).
10. The search for the meaning of the word “resolution” begins with examination of its use in the Act under which LGPM Regulation 12 was made, the **Local Government Act 1999** (“LG Act”): **Acts Interpretation Act 1915** s14, pursuant to which the meaning of a word, in this case “resolution”, will carry the same meaning in the Regulations as it does in the head Act.
11. The word “resolution” is used at six points within the LG Act:
 - (A) The Council seal is to be used only to give effect to a resolution of Council (s38);
 - (B) Sub-sections 83(9) and 87(14) refer to “a resolution or decision passed or made” ie resolutions may be distinguished from decisions;
 - (C) Council decisions involving land classification require “resolutions” (sub-ss 193(5) and (6) and 194(3);
 - (D) Council decisions involving public roads require “resolutions” (ss208(4) and (5) and 234A);
 - (E) The generation of by-laws by a Council requires “resolutions” (ss249-253)
 - (F) Section 285 deals with the evidence of resolutions passed, or orders made, or propositions adopted or affirmed ie the Act distinguishes resolutions from orders or propositions. That is in the context of the section providing that gazettal of Council resolutions is to be conclusive proof of such resolution.
12. By reference to the LG Act itself, I would suggest that the April 2016 confirmation most closely identifies with a proposition affirmed, as referred to in

s285. The April 2016 confirmation was very far from being a “resolution” that required gazettal. The subject matter of the April 2016 confirmation was also far from the road and land classifications, or making of by-laws, that require resolution under the LG Act.

13. Pursuant to s3A of the **Acts Interpretation Act 1915**, which provides that the terms of that Act will apply to legislation and statutory instruments (embracing the LGPM Regulations) alike, s22 of the **Acts Interpretation Act** may be relevant. That section provides:

22—Construction that would promote purpose or object of an Act to be preferred

(1) ... [W]here a provision of an Act is reasonably open to more than one construction, a construction that would promote the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) must be preferred to a construction that would not promote that purpose or object.

14. Since this advice rests on the indeterminate, or limited nature of the word “resolution” in Regulation 12(3), s22 of the **Acts Interpretation Act** must come into play. The purpose of Regulation 12(3) appears to be to provide for advance notice of any motion having as its aim a revocation or amendment of a matter resolved since the last Council election.
15. The purpose of advance notice (five clear days’ written notice: see Regulations 12(2), and 3(2) regarding the definition of “clear days”) is to ensure that a prior resolution of Council is not overturned by an ambush, so that, for example, Councillors pro the prior resolution will have advance notice that an attempt will be made to revoke or amend at the next meeting, so that they are on notice that they will need to be present if they want to defend the prior resolution.
16. The purpose of advance notice of a revoking motion illustrates the limitation on the concept of the “resolution” that is protected by Regulation 12(3). Such a resolution must have been passed since the last general election for the Council, from which it may be inferred that the protection is intended for a “political” decision of Council, one that might have been the subject of voting

preferences among the Council electorate. But the April 2016 confirmation consisted of a motion for the status quo, devoid of political content. Furthermore, the protective aspect of Regulation 12(3) falls away on inspection of the voting for the withdrawal motion. A similar withdrawal motion had been the subject of voting within Council on 28 April 2015, with a decision only to “consider” withdrawal as the final result (see TAB 2). Every one of the ten Councillors listed at the immediate aftermath of the withdrawal motion on 28 June 2016 (the call for a division: see TAB 22 of folder) had been present on 28 April 2015 when the earlier consideration had been given to withdrawal. They all knew what the matter was about.

17. It follows that it is appropriate to interpret the word “resolution” in Regulation 12(3) as limited in scope, to match the purpose of Regulation 12(3). The word “resolution” in that context does not embrace every decision taken by Council, but only those that require the protection of Regulation 12(3).

18. While the interpretation of subordinate legislation is generally intended to match that of principal legislation, there is one exception, which might be entitled “the practical considerations” exception. This anomaly arises from what was said by Lord Reid in **Gill v Donald Humberstone & Co Ltd** [1963] 1 WLR 929 at 934, where his Lordship said of safety regulations directed to preventing accidents, that they

ought to be construed in the light of practical considerations, rather than by a meticulous comparison of the language of their various provisions, such as might be appropriate in construing sections of an Act of Parliament. ... difficulties cannot always be foreseen, and it may happen that in a particular case the requirements of a regulation are unreasonable or impracticable; but, if the language is capable of more than one interpretation, we ought to disregard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result.

This approach has been much taken up in Australian case law, so that a practical interpretation of a regulation is to be preferred. I suggest that this is merely an application of the concept that words are to be read in statutory context from the commencement of interpretation: see **CIC Insurance Ltd v Bankstown Football Club Ltd** (1997) 187 CLR 384 at 408, examined at

Pearce and Geddes Statutory Interpretation in Australia 8th ed, 2014 (*Pearce & Geddes*) p93 [3.7]. Furthermore, given the uses to which the word “resolution” was put in the **LG Act** itself (see [11] above), the plainly restrictive use of “resolution”, indicating the recording of decisions or motions of special import, that statutory context is relevant to construing the meaning of “resolution” in Regulation 12(3): see Pearce and Argument Delegated Legislation in Australia 4th ed, 2012 (*Pearce & Argument*) at pp 464-5 [30.7].

19. Context is also provided from within the Regulations themselves, by Regulation 4, “Guiding Principles”, to “be applied with respect to the procedures to be observed at a meeting of a council ...”. These Principles read as follows:

- (a) procedures should be fair and contribute to open, transparent and informed decision-making;
- (b) procedures should encourage appropriate community participation in the affairs of the council;
- (c) procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting;
- (d) procedures should be sufficiently certain to give the community and decision-makers confidence in the deliberations undertaken at the meeting.

The claim for written notice of the proposed withdrawal motion gains little support from “open” and “transparent” in (a), but it may be argued that the Councillors would have been better informed if they had had written notice. See my reference above (at [16]) to all those present on 28 June 2016 having knowledge of this matter. They did not need to be better informed (but see my caveat in [24] below). Of the other paras in Regulation 4, (b) and (d) appear irrelevant to this argument, or the “confidence” aspect of (d) may be subsumed into the “appropriate formality” aspect of (c). The most pressing argument against the propriety of the withdrawal motion is that it dealt with a matter of such importance (para (c) requires a relative assessment, looking to the matter being dealt with, here leaving the LGA) that the formality of written notice was “appropriate” to the motion’s content, and that such formality would buttress

confidence amongst both the community and the Councillors as to the decision making.

20. I regard the reference to Regulation 4 as the high water mark of the argument against the validity of the withdrawal motion. The antidote to this bane is that the Councillors present knew what the matter involved: there was no sudden springing of a trap. However, the answer to my query in [24] below may be crucial. I will revise my views on obtaining your answer.
21. Lord Reid's approach in *Gill* has been adopted in the High Court (*Driscoll v J Scott Pty Ltd* (1975) 8 ALR 593 at 597-8) and the Full Court of the South Australian Supreme Court: *District Council of Kingscote v Kangaroo Island Eco Action Inc* (1996) 67 SASR 410 at 419-21 per Debelle J, Doyle CJ and Duggan J concurring. Stone J in *Australian Tea Tree Oil Research Institute v Industry Research and Development Board* (2002) 124 FCR 316 at 328-30 provides an example of the selection of meaning of a word in subordinate legislation according to context and in reliance on the *Gill* approach of a practical solution.
22. The *Gill* approach has been much used in planning disputes (going to the meaning of planning instruments) in the NSW Land and Environment Court and the Court of Appeal. In that latter court, most recently, Leeming JA referred to the imprecision in the wording of a Local Environment Plan, and the necessary recourse to the approach of Lord Reid to find appropriate meaning for particular words: see *Tovir Investments Pty Ltd v Waverley Council* [2014] NSWCA 379 at [54], referred to by Pain J in *Morton v Shaulhaven City Council* [2016] NSWLEC 67 (9 June 2016) at [16], [17]. The imprecision, or at least limited ambit of the word "resolution" in the context of the **LG Act 1999** and its subordinate legislation is apparent from the many uses made of it in that Act (see [11] above).
23. The *Gill* approach to practical interpretation of subordinate legislation is analysed in Pearce & Geddes at pp 167-8 [4.21], repeated at Pearce & Argument at p462-3 [30.3].

24. In conclusion on the general analysis, I am of opinion that the April 2016 confirmation did not constitute a “resolution” for the purposes of Regulation 12(3), with the result that there was no requirement for notice in writing before the putting and passing of the withdrawal motion. My only caveat on that opinion is that if there were Council members not present on 28 June 2016, it will be said that they would have been notified of this apparently important motion, and might have made themselves present for a vote. In other words, my reference to the ten Councillors actually present being well versed in the matter might fall away on this aspect of practicality. Enquiry should be made of the Mayor of COM in this aspect.

25. I turn to the matters raised in your letter at [13].

(a) Does the withdrawal motion comply with LGPM Regulation 4 and Regulation 12?

My advice above deals with Regulations 4 and 12: with the caveat at [24], I am of opinion that the withdrawal motion complies with Regulation 12, but acknowledge that Regulation 4 provides at least some context for understanding Regulation 12(3), and that an argument can be made that Regulation 4 goes to encouraging a view that any motion on a matter of such import as leaving the LGA would require written notice, but against that the wording of Regulation 12(3) is directed to the matters of weight in the LG Act covered by reference to the word “resolution”. Regulation 12(3) does not just say that important matters require written notice prior to a motion being put. That would be far too subjective as a basis for enforcement. Rather, Regulation 12(3) has pronounced that where a motion is proposed to revoke a prior resolution, then there must be written notice, and the word “resolution” has specific and limited use in the context of the LG Act. I note at this juncture that the “practical interpretation” argument, referred to above (at [18] to [23]) might be used as a sword against COM, where I have contemplated its use as a shield. The antagonists might say that the word “resolution” in Regulation 12(3) is not to be read only by reference to its use in the LG Act, but must be read so as to give it flexible utility in the Regulation dealing with informing Councillors in advance of contentious motions to be put.

(b) Was a rescission motion required for the April 2016 confirmation?

The previous motions passed by COM (your letter uses the word “resolved”) referred to in your letter at [6], [7] and [8] raise the issue of whether the fire proposed by the antagonists for the goose of the withdrawal motion might be turned on the gander of the previous motions, rendering them vulnerable to any extent that the withdrawal motion is vulnerable. Most importantly, the motion of 11 August 2015 purported to “suspend” COM’s membership of the LGA, conditional on receiving a report from the LGA. It seems that this report was received in October, as on 13 October 2015, COM confirmed its membership of the LGA for the 2015/16 financial year, determining to re-assess its position in April 2016 with a further condition, expressed as an expectation, that the LGA would have completed the governance and formula reviews.

None of these motions form a perfect analogy with the April 2016 confirmation and the withdrawal motion, although I maintain my view that the April 2016 confirmation is far from being a resolution, but merely a statement of the status quo. Nonetheless, the antagonistic view gains some strength from the toing and froing in 2015: COM was plainly mulling over its relationship with the LGA, and setting conditions on membership, which conditions appear to have been met, leading to a “motion of confidence” in April 2016.

I do not see that any of the 2015 motions, even if dressed as resolutions, were of a wording that the April 2016 confirmation revoked or amended them.

(c) Should the withdrawal motion have been accepted by the Mayor?

The answer lies in whether my arguments as to the non-application of Regulations 4 and 12(3) to the withdrawal motion are accepted by a court. Unless a court finds those Regulations governing of the withdrawal motion, the Mayor had the capacity to accept the withdrawal motion.

(d) If the withdrawal motion does not comply with the Regulations

(i) Can it be argued that a procedural irregularity occurred which was of no material consequence; or

(ii) Does it make the withdrawal motion void as suggested by the LGA?

- (i) If the withdrawal motion is non-compliant, it is plainly for a procedural irregularity. The concept of “irregularity” is extremely vague, and really goes to what a judge with jurisdiction would find actionable. For example, irregularities may be found to be fundamental or non-fundamental. In **Edwards v Hills Shire Council** [2010] NSWLEC 190, Biscoe J said (at [42], [43]):

“Irregularity” or “irregularly” are not defined in the CPA or the UCPR. The following cases are illustrative of what is an irregularity. In *Roach v B & W Steel Pty Ltd* (1991) 23 NSWLR 110 the irregularity was that proper notice of an application by the plaintiff was not given to the defendant. The irregularity resulted in the non-appearance by the defendant at the hearing. Similarly, in *Double Bay Newspapers v The Fitness Lounge* [2006] NSWSC 226 at [31] the defendant failed to appear because of an agreement reached with the plaintiff. White J drew a distinction between fundamental and non-fundamental irregularities: at [29] – [31]. In *Miltonbrook Pty Ltd v Westbury Holdings Kiama Pty Ltd* [2008] NSWCA 38, 71 NSWLR 262 failure of the respondent to disclose material facts to the court when the court ordered reinstatement of the previously deregistered respondent company was found to be an irregularity.

The irregularity for which the council contends is that Mr Wong was the real party hiding behind Mr Edwards to obtain development consent for Mr Wong’s preferred use. Although the parties are unable to refer to a similar case, I accept that the 2009 costs order was made irregularly if the council’s “real party” contention is correct.

A recent NSW Supreme Court decision, **Bull v Australian Quarter Horse Association** [2014] NSWSC 1665 (Hallen J) surveys at length the concept of irregularity in the context of the **Corporations Act**. The upshot of this very long judgment is that irregularity will be assessed by reference to unfairness, and unfairness will be assessed objectively.

Bull concerned alteration to a company constitution in defiance of a requirement that 21 days written notice be given of such proposed change to a fundamental aspect of the constitution. The change would have financial repercussions for some members of the company. The court viewed the failure of adherence to the company’s constitutional

requirement, in the context of financial impact, as actionable irregularity. However, there is difficulty in drawing analogy from the corporations law field to that of the activities of Councils. In a case such as **Bull**, the operative concept is that of oppression to members. The facts regarding the withdrawal motion and COM do not go to financial loss by members, but only the rather less tangible issue of whether a different vote might have emerged, going to membership of COM in another body.

My view is that a court will look to the practical consequences of a lack of written notice in determining whether the irregularity was fundamental or not. If we can establish that all Councillors were present on 28 June 2016 then the need for notice in writing falls away. If not all Councillors were present, a last ditch stand would involve affidavit evidence from those not present that they would have voted to leave the LGA.

- (ii) If a court determines that the irregularity involved in a lack of written notice is of material consequence, then I am of opinion that it will find the withdrawal motion void, and quash it.

(e) Is the withdrawal motion even relevant to the notice of withdrawal given to the LGA?

The answer to that lies in how COM speaks to the world: its utterances must have validity to lead to legal effect. The argument that so long as a purportedly, on its face valid withdrawal is delivered to the LGA, it must have effect, rests on an extreme view of the de facto officer rule or the company law doctrines going to presumed regularity expressed in cases such as **Re Duomatic Ltd** [1969] 2 Ch 365 or **Re Compaction Systems** [1976] 2 NSWLR 477. It would not be adequate to sustain the withdrawal from the LGA, in the event that a court determines that the withdrawal motion passed as a result of material irregularity, to say that the Mayor sent it off to the LGA after its (defective) passage. The law supports defective decision making where a requirement is waived by all relevant parties (here, all COM's Councillors) on the basis of knowledge of the defect, and third parties not being disadvantaged. The LGA already asserts that it has been disadvantaged.

While the LGA may have difficulty in establishing standing to attack the withdrawal motion, it is apparent that some COM Councillors will be prepared to do so, and will say that they did not waive the requirement for notice in writing, and a court will not find their voting on the withdrawal motion to constitute an estoppel. Suit by a Councillor not present on 28 June 2016 asserting that he/she received no written notice of this important motion would be disastrous for the COM majority.

(f) Any other relevant matters?

Enquiry as to whether all Councillors were present on 28 June 2016 is critical. If any were missing, then enquiry must be made (delicately) as to whether they would have voted for the withdrawal motion.

26. Conclusion

The preliminary examination of whether the Regulations in question bound the COM decision making process on 28 June 2016, is something which in the first 24 paras of this advice has been explored as a matter of statutory interpretation. I remain of the view that there is a sound argument that the Regulations may not have bound the decision making process, but that a broader view, such as might be taken by a court, may take the view that the decision to leave the LGA is of such importance, that adherence to manner and form is critical, and the interpretive approach to fending off the impact of the Regulations may fail: in that case the word "resolution" in Regulation 12(3) would be read broadly rather than narrowly, so as to embrace the decision on 28 June 2016. Practical effect, reflected in the absence or otherwise of Councillors, is likely to be crucial.

26. I am available for further enquiry. I will be in Perth on 21 and 22 July 2016, but otherwise am in Adelaide.

10 July 2016

Dr SC Churches
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CONFIDENTIAL

SUPPLEMENTARY ADVICE**(FURTHER TO ADVICE OF 10 JULY 2016)****CITY OF MARION and THE LOCAL GOVERNMENT ASSOCIATION:****VALIDITY OF MOTION PASSED 28 JUNE 2016 WITHDRAWING MEMBERSHIP
FROM THE ASSOCIATION**

EMA Legal
Solicitors

Attn: Ms Kaye Smith

1. You have sought my further opinion on the matter of the withdrawal motion's validity, in the light of your answer to my query in [24] of the Advice of 10 July 2016. There were two Councillors absent from the 28 June 2016 meeting (Crs Hutchinson and Kerry). I note that at the April 2016 confirmation (TAB 19 in folder), Hutchinson was the seconder of the motion that COM remain in the LGA, and Kerry seconded the amendment, which was merely window dressing to the original. It is a fair guess that both these Councillors would have voted to remain in the LGA, and certainly that possibility would be pointed out to a court. On the arguments set out in the Advice, the antagonists would not need affidavit evidence from these two men as to their voting intentions: the mere fact that they were not informed by notice in writing of the proposed withdrawal motion may be fatal to its validity.
2. You have sought my further advice as to the effect that a rescission motion would have on the withdrawal motion. I note that, despite my now apparent concerns as to the validity of that motion, it remains valid until legal order quashes it or other process in Council works to that effect. My point is that a motion to revoke the withdrawal motion would require the written notice procedure.
3. Assuming that there is a motion to rescind, and it is preceded by the correct written notice procedure, it seems likely that, in the light of the previous voting patterns of Crs Hutchinson and Kerry, that it would succeed. That may be preferable to the question of the withdrawal motion's validity being tested in the Supreme Court, but that is a "political" question for the Councillors involved.
4. If such a rescission motion were put, but failed to be carried, I am not of the opinion that that would validate the withdrawal motion ie it would not, in my opinion, proof the

withdrawal motion from attack in the Supreme Court. A failed rescission motion is not to be equated with a separate motion ratifying that which was irregular. Irregularity may be validated by subsequent ratification (**Re Australian Koyo Ltd** (1984) 8 ACLR 928 at 930, and **Re Elemental Minerals** [2010] FCA 687). There will be a limit on such ratification where a third party is involved, as here the LGA is: see **Hughes v NM Superannuation Pty Ltd** (1993) 29 NSWLR 653 referring to the “indoor management” rule. It is a nice point as to whether a ratifying motion would require written notice. Since it would strictly be neither revoking nor amending, it could be argued that written notice would not be required, but prudence would seem to dictate that the full notice be given. I note that all the common law cases dealing with ratification emerge from company law, but given that the courts seem determined that the **Corporations Act** should be read flexibly as to irregularities, and hence have general application beyond the statute under which they arise, reliance on these cases seems reasonable.

5. The breach of the procedural requirement for written notice before the withdrawal motion may be waived by parties for whom the procedure existed as protection (**Re A Frost & Co Pty Ltd** [1993] 1 Qd R 1 at 8-9), presumably here all the Councillors opposed to the withdrawal motion, plus the two absentees. A person entitled to procedural protection may waive that protection (**Re Neokratine Safety Explosive Co of New South Wales Ltd** (1891) 12 LR (NSW) Eq 269; **Re Oxted Motor Co Ltd** [1921] 3 KB 32), but I see no likelihood at this juncture of the antagonists waiving their (probable) right to written notice prior to the withdrawal motion.
6. In summary, I see no prospect of a ratifying motion getting up, nor of the affected parties waiving the irregularity in the withdrawal motion. In the light of the knowledge of two Councillors having been absent from the 28 June 2016 meeting, I have grave doubts as to whether the withdrawal motion would withstand a legal challenge. It then becomes a “political” decision for the proponents of that motion as to whether they agree to a rescission motion, or make no contest to a challenge in the Supreme Court. My advice is that the most cost effective approach should be adopted, and a rescission motion would seem to answer that description.

11 July 2016

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CONFIDENTIAL

In reply please quote our reference: ECM 640497 LT/DB

11 July 2016

Mr Tony Lines
Acting Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5064

via email: tony.lines@marion.sa.gov.au

Dear Tony

City of Marion – LGA Membership

I refer to recent discussions about the City of Marion's membership of the LGA. We advised you that the LGA considers the Council resolution to be void and that Council remains a member of the LGA.

Accordingly, subscription fees for 2016/17 are now being invoiced as outlined in the LGA Constitution.

The City of Marion has the option of bringing a formal motion with notice to a future Council meeting to give lawful effect to their resolution to withdraw for the 2016/17 financial year. To ensure good governance practice is followed, the cost and resourcing impacts of taking this course of action should be carefully considered by the Council and should be transparently reported to ratepayers.

As you are aware, the LGA is in the process of detailing and quantifying the value it provides to member councils. The LGA has seconded a business analyst from LGA Queensland to re-confirm and independently verify our value proposition. The result of this work will be provided to the next LGA Board meeting on 21 July 2016 and with their permission, will be forwarded to you in time for your next Council meeting on 26 July 2016.

In the meantime, you have asked me to outline the services that the LGA would be willing to provide to non-members for a fee. Ultimately, this will be a decision of the Board, however, the recommendation will be to quarantine all services for members and not provide fee-for-service options to non-member councils.

Attached for your information is a list of services that the LGA currently provides to members. This list is now under review with the intent to cease providing services to the City of Marion as soon as practical should Council withdraw membership of the LGA.

In addition to better defining our value proposition, the LGA has adopted a strong focus on improving our systems of governance and adopting continuous improvement processes. Since October 2015, this has included the Board pursuing a number of key initiatives including:

- Establishment of an LGA Audit Committee
- Schemes Review
- LGA Board Governance Review
- Subscriptions Review

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Each of these initiatives seeks to better align our processes and services with the expectations of members. Upon recommendation by the Audit Committee, the scope of the governance review has been expanded to specifically include the value provided to members. This will be captured by the next stage of the review, following decisions about representation and the structure of the LGA.

Both the LGA Board and the Secretariat are committed to continuous improvement and this is reflected in my KPI's as the LGA CEO, which include:

- More satisfied members, including more satisfied Board Members, Elected Members and CEOs;
- Annual work plans with delivery against the strategic plan; and
- An annual member survey.

To this end, we have also adopted a new LGA strategic plan 2016-20 and annual business plan 2016-17 which provides for a direct line of sight between the priorities of the sector and activity of the LGA Secretariat.

A Communications Plan is being finalised that will incorporate strategies for better connecting and communicating with the sector including elected members, ratepayers and communities.

The LGA Board has also endorsed funding for a business analytics position which will examine a broader range of services to provide benefits for members. This will include introducing a sector-wide benchmarking program to encourage innovation and efficiency across local government.

Another key service that the LGA is introducing is an employee (industrial) relations role to engage with stakeholders and prepare a business case with recommendations for industrial reform. A positive sector-wide outcome in industrial relations will provide significant benefits to member councils.

Our initial analysis has shown the value of LGA services is beyond doubt but the LGA is continuing to define and expand its value.

I have attached your annual subscription tax invoice. Your Council's 2016/17 LGA membership subscription has been calculated at \$94,382 (excluding GST), to be paid by 1 August 2016 in accordance with the LGA Constitution.

The proposed 2016/17 membership subscription for the City of Marion will represent only 0.126% of total council expenditure this financial year. Of note:

- costs of councils ongoing membership to LGA SA have continued to fall in comparative terms year-on-year;
- the proposed FY16/17 Membership levy for the City of Marion when compared to the previous 4 years is more cost-effective now than it has ever been;
- whereas SA Local Governments aggregated costs have grown by 11% over the last 5 years, the Associations' membership fees have only grown by 8%;
- over the same 5 year time period the City of Marion has collected 19% more in rate revenue. Council has thus increased its revenue take at a rate that is more than 2.3 greater than that undertaken by the Association;
- the proposed membership increase for City of Marion this financial year is 2.5% which is less than councils' published rate increase for rate-payers of 2.9%; and
- membership costs that continue to abate in comparative terms combined with access to expanding services, support and representation cannot but equal a strengthening of the value-for-money proposition.

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Annual LGA subscriptions are determined via a population and revenue formula. As mentioned above, a review of the formula was undertaken in the first half of 2016, with the Board resolving to adopt a new formula for the 2017/18 year. Before application however, the Board has requested further research on the population bands to ensure an appropriate differentiation between councils of varying sizes. This will be completed and consulted upon well before the next financial year.

Accordingly the formula applied in past years has been adopted for the 2016/17 year. With this formula, two caps are applied; one to ensure no Council pays more than three times the average subscription and the second to limit any annual growth to a maximum of five percent (5%). The invoices have been raised based on data received from the Grants Commission. The LGA has been advised that this data is provisional, and will not be confirmed for some weeks. We have further been advised that it is unlikely to change. Given this, and in the interests of ensuring your invoice is issued in a timely manner, we have proceeded to use this data to calculate your 2016/17 subscription fee. Any alterations will be advised accordingly, if they should occur.

If you have any queries please do not hesitate to contact me, or the President, Mayor Dave Burgess on 8224 2022, or a member of the LGA Board.

The LGA remains committed to its purpose to represent and provide leadership and support to member councils for the benefit of the South Australian community.

Yours sincerely



Matt Pinnegar
Chief Executive Officer

Telephone: 8224 2022

Email: matt.pinnegar@lga.sa.gov.au

Attach: Invoice
LGA Services to Councils

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
1.	Supporting councils to develop public health plans	Via an agreement with SA Health, LGA members are provided with training, resources and support to meet their obligations under the Public Health Act.	Minor (Business Continuity / Organisational)	Likely	<p>Medium</p> <p>Council will no longer have access to the following:</p> <ul style="list-style-type: none"> • Participation in LGA training forums and workshops through the development of Public Health Plans. • Provision of public health data by Adelaide University and Department of Health - which has been coordinated by LGA • Participation on working groups which are jointly auspiced by the Department of Health and LGA. • Support from a public health officer in LGA who provides support to the sector in relation to policies, strategies, guidelines, programs and planning regarding public health. <p>Estimated annual financial impact: Training - \$500-\$1,000 Public Health Data updates - \$700 Access to public health advice - \$1,400</p>
2.	Co-ordination of One Card Library Management System	<p>The SIRsi Dynix contract is held by LGCS/LGAP. This is the platform on which the entire one card system operates.</p> <p>The LGA is reviewing the contractual arrangements for access to this system.</p>	Major (Business Continuity / Organisational) (Reputation)	Unlikely	<p>Medium</p> <p>CoM entered into a service agreement with LGCS in March 2012. This agreement is governed by a 10 year Head Agreement between LGCS and the software provider Sirsi Dynix.</p> <p>Council's review of the LGCS/CoM Service Agreement and has identified:</p> <ul style="list-style-type: none"> • there appears no contractual basis for termination of the agreement by LGCS, unless the Head Agreement (between LGCS/Sirsidynix) is varied or terminated (which is considered unlikely) • Council's review of the LGCS/ Sirsidynix Head Agreement has identified Sirsidynix may be unable to offer their system to council direct until 08/2017 (being 5 years from the "Date of Acceptance of the System • The Library Board of SA appears to have authority over decision making with respect to the public library network, not the LGA

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<ul style="list-style-type: none"> The Libraries Act 1982 requires the Libraries Board to support collaboration across the public library network and this is not dependent on LGA membership Legal advice obtained regarding this matter indicates Council in ceasing to be a member of the LGA would not in itself terminate the Service agreement with the LGCS. The LGA have advised via correspondence 22 July 2016 that the LGA board has resolved <i>“that the LGA Board endorse the Secretariat, seeking confirmation of the City of Marion’s continued authority for the LGA to act on the City of Marion’s behalf for the provision of the One Card Library System”.</i> <p>In the unlikely event that the One Card System contract was terminated the potential impact would be significant and includes:</p> <ul style="list-style-type: none"> Costs of a library management system being provided through a Software as a Service agreement is estimated in the order of \$118,000 per annum Significant changes to library workflows, systems and processes would be required Major data migration and extraction work would be required Significant impact to customer service where the number of library items customers have access to will reduce from 3.7 million to 112,000 Longer turnaround time of materials made available to customers. Sourcing items through an antiquated inter library loan system instead of searchable online catalogue. Access to state-wide procurement and processing of library materials no longer available An estimated 40% increase in material costs due to loss of state-wide purchasing equating to approximately \$75,000 pa

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
2a	Management and distribution of State Government Public Library funds and services via the Memorandum of Agreement) between the Minister for the Arts and the President of the Local Government Association.		Major (Business Continuity / Organisational) (Reputation)	Unlikely	<p>Medium</p> <ul style="list-style-type: none"> Staffing efficiencies will be lost in collection management, equating to \$86,000 per annum <p>Memorandum of Agreement (MOA) exists between the Minister for the Arts and the President of the Local Government Association regarding the funding of Public Libraries. The MOA provides the basis for the funding that the State Government makes available to support the operations of public libraries. The grant is administered via Public Library Services (PLS) which is a unit of the Libraries Board.</p> <p>Legal advice has been sought on this matter and concludes that CoM's departure from the LGA should not directly affect Council's access to services through Public Library Services or to state government funding.</p> <p>In the unlikely event that Council was unable to access services through Public Library Services the potential impact would be significant and would include:</p> <ul style="list-style-type: none"> WiFi and Internet for the Public would no longer be sourced via Public Library Services, and an additional \$96,000 would be required to provide customers free access to services. Currently Marion Library Service via state government funding contributes \$34,000 for access to Online Databases and eBooks. To subscribe independently through individual online providers, the Cost will be an additional \$18,000 pa Community Languages material (Languages other than English) (2700 items at Marion) are selected, catalogued and supplied centrally by PLS. These items would have to be returned as these are the property of PLS. These items would have to be locally purchased and processed which could be up to an additional \$100 per item.

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<ul style="list-style-type: none"> CoM currently receiving 50,000 barcodes from PLS at no cost however if grants are no longer available hence an additional \$3,000 Currently PLS offers the network Professional Development Opportunities, which is estimated by PLS at \$25,000 per annum Significant changes to library workflows, systems and processes would be required Service levels may reduce through reduced collaboration within the SA Public Library network
3.	Managing nominations of local government representatives	<p>This process is under review as part of the LGA Governance Review.</p> <p>The LGA may choose not to accept nominations from the CoM for future appointments.</p> <p>The LGA may ask the State Government to un-appoint CoM members of boards/committees.</p>	Minor (Reputation and Public Administration)	Likely	<p>Medium</p> <p>Will limit Elected Member professional development opportunities and involvement in sector wide boards and committees.</p> <p>It is possibly that an Elected Member who is an LGA appointed representative to a state government board could be "unappointed" if the LGA progress with this statement. The ultimate decision would rest with board/committee (particularly if it is operated by the state government).</p>
4.	Procurement contract savings	<p>The LGA will review current / pending contracts in terms of non-member participation.</p> <p>LGAP model documents will be moved to a secure site for members only and the LGA could invoke copyright on any breaches.</p>	Minor (Financial)	Almost Certain	<p>High</p> <p>Council contracting is predominantly undertaken in its own right or via Council Solutions (G6) arrangements. We anticipate this would continue.</p> <p>There are 24 LGA Procurement contracts in place that can be accessed by SA Councils. CoM currently access 7 of these contracts, with purchasing for the remaining 17 being conducted via either Council Solutions (G6) arrangements or direct CoM contracts.</p> <p>The seven LGA procurement contracts used by CoM include Electricity (x3), Telecommunications, After Hours Emergency Telephone Response, Microsoft licensing and Dog Registration Disks. CoM has also negotiated directly with Optus re our Telecommunications contract and in so doing has negotiated more favourable rates in</p>

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<p>regards to calls from/to mobiles within CoM mobile fleet, as well as voicemail deposits and retrievals.</p> <p>Exposure exists in council's ability to participate in two future electricity contracts led by LGA procurement, however options exist to participate in other joint procurement arrangements (e.g. Procurement Australia, Council Solutions).</p>
5.	Unity platform and My Local Services Application	<p>Unity is the content management system underpinning the CoM website and associated MyLocalServices app. The LGA is reviewing the contractual arrangements for access to this platform</p>	<p>Minor (Financial) (Business Continuity / Organisational)</p>	Almost Certain	<p>High</p> <p>It is almost certain that CoM will be excluded from the Unity Content Management System (CMS). The LGA have advised via correspondence 22 July 2016 that the LGA board has resolved <i>"that the LGA Board endorse the Secretariat, seeking confirmation of the City of Marion's continued authority for the LGA to act on the City of Marion's behalf for the provision of the Unity System for the next 12 months."</i></p> <p>Legal advice has been sought that states if CoM leaves the LGA, and Council website is currently hosted and maintained through the LGA, it is inevitable that Council will need to enter into new, separate website hosting and maintenance arrangements with another provider.</p> <p>The current annual fee for Unity and its components is \$11 k. The cost to establish a new CMS platform is estimated to be \$94 k in year 1 plus ongoing annual costs of \$70 k. As the LGA has indicated a 12-month transition period on this matter, this will allow time for an appropriate tender process to occur and a planned transition/migration to a new platform.</p>
6.	SA Tenders	<p>The LGA will disable access for non-LGA members to SA Tenders service.</p>	<p>Insignificant (Financial)</p>	Unlikely	<p>Low</p> <p>Verbal advice from an SA Tenders representative suggests CoM would be able to deal direct with SA Tenders to continue to use this service.</p> <p>While the figures vary, we would average close to 30 online tenders per annum. This is likely to increase slightly with the use of the electronic receipt of tenders now also being used for vehicle/fleet acquisition.</p>
7.	Research and Development Fund	<p>There is no requirement for the LGA Board to offer grants to any external organisation</p>	<p>Minor (Reputation and Public Administration)</p>	Almost Certain	<p>High</p> <p>In 2015/16 CoM was a party to one Research and Development Grant for Evaluating Urban Trees. This was a joint application by Cities of Charles Sturt, Pt Adelaide, Marion, Campbelltown for \$29,400. This is</p>

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<p>currently in progress. CoM may be required to withdraw from this group.</p> <p>In past years Council has also received and been a part of the following grants:</p> <ul style="list-style-type: none"> • Railway Terrace Solar Innovation Fund (Grants of \$22 k and \$11 k) • Cultural Indicators Grant / Pilot project (Grants of \$66 k and \$16.5 k) • Sustainable Management of Community Recreation Facilities (Grants of \$66 k and \$30.8 k) • SA regional level recreation and sport facilities planning framework (\$55 k grant) • Transition to safe and Sustainable Lighting in South Australia (\$27.5 k grant) <p>CoM may no longer be privy to receive a grant of this nature.</p>
8.	Consultation with councils on proposed Government Legislation	The LGA will inform Ministers and agencies that we will not be consulting with CoM. The LGA circular alerts will be moved to a secure website	Moderate (Business Continuity / Organisational) (Reputation)	Possible	<p>Medium</p> <p>CoM should write to the Minister seeking assurance that CoM will still be informed and consulted with regarding proposals for new or amended legislation.</p> <p>There is a risk that CoM's opportunity to influence legislative change will reduce.</p> <p>CoM has previously relied on this service being monitored by the LGA and hence there will be a resource impact with staff needing to monitor requests for feedback from State/Federal Government as a separate task.</p> <p>A recent example includes the LGA coordination of the sector response to State Government Boundary reforms.</p>
8a.	Circulars	Circulars (or data links contained within) will be moved to a secure site. The LGA will delete all CoM subscriptions to Circulars.	Moderate (Business Continuity / Organisational) (Reputation)	Almost Certain	<p>High</p> <p>The circulars are provided to CoM on a weekly basis. The types of matters included within circulars include:</p> <ul style="list-style-type: none"> • notification of various grants programs • notification of events (such as Nature Play Festival) • notification of new or changing legislation • information on various local government activities

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment	
		The LGA will exercise its copyright			<ul style="list-style-type: none">notification of upcoming award nominationsreminder of legislative due dates and requirements (i.e. Annual Report requirements)nominations and vacancies on board and committeesup-coming training and developmentsector report such as the rate capping enquiry. <p>An additional resource will be required to pick up the work required to monitor this. It cannot be absorbed within the current governance FTE. It is estimated at a 0.2 FTE at an approximate cost of \$20 - \$25 k per annum.</p>	
9.	HR/IR Panel advisory service to councils	The LGA may request the provider of services to remove access to all non-members and monitor future access requests.	Insignificant (Business Continuity / Organisational)	Possible	Low	CoM has not accessed this service.
10.	Industrial representation	This relates to the SA Industrial Commission – State Wage Cases and Awards. Non-member councils will need to represent themselves if they wish.	Insignificant (Business Continuity / Organisational)	Possible	Low	CoM has not accessed this service.
11.	Education and training	The LGA runs a wide range of training courses for both council members and LG employees including on-line programs. CoM is due to receive an invoice for online training site license for 2016/17. Access to the online training site	Minor (Business Continuity / Organisational) (Financial)	Almost Certain	High	<p>In 2015/16 a total of 134 staff attended various training through the LGA. This was a total cost of \$11,576.</p> <p>Some training was provided for free. For example, 65 staff attended Injury Management Training through the LGA at no cost to Council.</p> <p>Often it is either 2 or 3 staff that may require training. If this was to be procured/source from alternative providers, the costs are likely to be more.</p> <p>Efficiencies will be lost in having to source training from other sources and will have a resource impact.</p> <p>Council may be disadvantage in not being able to access training tailored to SA Local Government.</p>

	LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
		license is now being reviewed.				Convenience of online training lost. It is estimated if training provided by the LGA is lost, Council may incur an additional \$25 k pa.
12.	Media monitoring and response on issues which affect the local government sector, as well as provision of support for council media, events, communications and online staff	Non-members will be denied access to media monitoring and media co-ordination from the LGA as well as access to the LG Communicators, Events & Online Networks and sector wide campaigns.	Minor (Business Continuity / Organisational) (Financial)	Almost Certain	High	<p>Media monitoring Nil impact. CoM deals directly with iSentia and undertakes its own monitoring of print, online and broadcast.</p> <p>Media coordination Minimal impact. CoM occasionally feeds comments into a centrally coordinated media response on a particular issue. The advantage is knowing and hearing what other councils are saying on a particular matter. The changes will mean that CoM will have to respond itself in isolation from the sector.</p> <p>Access to LG Communicators, events and online networks These supplement the professional training and development of the communications team as well as building relationships with counterparts at other Councils. The Communicators network is free training. Without access, it will mean that alternative training will need to be sought and opportunities to identify best practice local government communications could be lost.</p> <p>Sector wide campaigns An example of a sector wide campaign that CoM may be excluded from is the elections. As a large metro Council, CoM directly received free of charge, access to 2014 LG election campaign material. If CoM had to produce that itself, the estimated cost is \$8,160 (provided the design was completed in-house). CoM may benefit from any LGA general advertising in print/radio/TV to promote voting as it would be statewide and not council specific. However, Council may wish to allocate money for print advertising to encourage people to vote and to register to vote. A 1/2 page in Messenger is \$2,200 while a 1/4 page is \$1,108. It would be prudent to consider another \$4,500 for advertising.</p> <p>Other campaigns</p>

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment	
					From time to time, the LGA runs campaign over sector wide issues e.g. rate capping or federal roads funding. We have received shell media releases, fact sheets and social media posts and banners. The cost of reproducing that is staff time, the cost of which depends on the complexity of the issue. Staff will no longer take part in LGA PR working group.	
13.	Developing model policies and templates to assist councils to meet their legislated governance obligations	Policies and templates will be transferred to a secure site with the LGA invoking copyright for any breaches.	Insignificant (Business Continuity / Organisational) (Financial)	Almost Certain	Medium	CoM will need to develop its own templates and this is achievable within existing resources.
14.	Managing the Local Government Governance Panel to assist councils with code of conduct complaints	The LGA will no longer facilitate any approach by non-members to access the LGGP.	Insignificant (Business Continuity / Organisational)	Almost Certain	Medium	CoM has never accessed the LGA Governance Panel to deal with Code of Conduct complaints. The Elected Member Code of Conduct Procedure will need to be amended to reflect this.
15.	Local Government Showcase Ordinary General Meeting Annual General Meeting and Conference Roads and Works conference	Non-Council members will be excluded from attending.	Moderate (Reputation and Public Administration)	Almost Certain	High	Loss of opportunity to have input into sector and liaise with other Councils. AGMs and OGM are opportunities for CoM to express views and request reforms e.g. bikes on footpaths. Staff attend Roads and Works Conferences. CoM will be excluded from the Local Government showcase where different Councils promote/showcase their best practice models.
16.	Delegations	These will be placed on secure site with the LGA invoking copyright for any breaches	Minor (Business Continuity / Organisational) (Financial)	Almost Certain	High	The delegations schedule must be reviewed annually under the Local Government Act. Our process currently relies on the template documents (includes all new legislation and legislative amendments) that are provide by the LGA. The LGA procures these on behalf of the sector from a legal firm. Without access to these documents, CoM would be required to prepare our own templates. It is highly recommended that this be

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<p>outsourced. An informal quote has been requested from Cimon Burke at Kelledy Jones and it is estimated that an annual review would cost between \$6 - \$8 k (depending on the level of work required).</p> <p>It should be noted that a significant amount of work will be required on the delegations within the next few months with the introduction of the Local Nuisance Bill. There are a number of amendments to other Acts due to this bill being introduced. To produce new Local Nuisance & Litter Control Act and Dog and Cat Management Act delegations, Kelledy Jones has informally quoted this at \$5 k.</p> <p>Once off impact: Approximately \$5 k (but if other new legislation is enacted, other once off fees could occur). Annual impact: \$6 - \$8 k.</p>
17.	Special local roads program	Continued access by a non-member council is currently under review.	Insignificant (Financial)	Almost Certain	<p>Medium</p> <p>The Special Local Roads Program (SLRP) facilitates funding of significant and strategic works throughout the State. Applications are assessed on Influencing Factors (Regional Significance - Economic) and Fit for Purpose (Freight, Tourism and Social). It appears to favour lengths of road in rural areas - undertaking shoulder sealing and / or road reconstructions. In 2015/16 a total of 38 projects received funding. Of these 30 were in rural / rural-type councils (e.g. Adelaide Hills) with 8 in Metro councils.</p> <p>CoM made one funding application in around 2009/10 for the Young Street upgrade, but was not successful. In 2014 CoM considered applying for funding for construction of Ragamuffin Drive, however the road did not align with the funding guidelines.</p>
18.	Public Lighting	Non-members would be required to undertake own negotiations with SAPN	Minor (Financial)	Almost Certain	<p>High</p> <p>While CoM would theoretically lose the sector-wide bargaining position, it has a cooperative relationship with SAPN and is already working with other Councils on the changeover to LED lighting and the associated tariffs.</p> <p>The LGA has been dealing with SAPN maintenance issues and is in negotiations and presenting agreements on behalf of councils to the Australian Energy Regulator. CoM would still receive any resultant benefit as accounts are with SAPN and not the LGA.</p>

	LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
19.	Schemes	The impact of non-member council(s) remaining a member of the schemes on other councils is currently being reviewed	Moderate (Business Continuity / Organisational) (Financial)	Possible	Medium	<p>The insurance renewal period commenced in April 2016 and all invoices for 2016/17 have now been received (but not yet paid).</p> <p>The list below provides an overview of the insurances. If CoM was required to tender for these services, it is highly likely that the insurance costs for the organisation would significantly increase if like-for-like cover was obtained. Also an additional 0.5 FTE would be required if Council was to no longer have access to discretionary funds to administer the insurance accordingly.</p> <p>Local Government Association Mutual Liability Scheme provides the most extensive civil liability protection in Australia, backed by the Treasurers Indemnity. Council is provided with unlimited protection without exclusions, despite the changing nature and demands on Council risk profiles. As a discretionary scheme, unlike commercial providers, CoM is not required to list all ad-hoc services, activities and events individually which provides peace of mind as a large Council that CoM will receive comprehensive coverage with the only exception being if we prejudice our position in relation to a claim.</p> <p>Local Government Association Workers Compensation Scheme provides Councils with a self-insurance system and claims management program. The program includes funding for the provision of WHS Programs such as annual systems audits, tailored implementation plans and hazard management programs (such as skin screening and health assessment programs) with the aim to reduce harm to workers and to assist Council meet compliance with its WHS legislation obligations.</p> <p>Local Government Association Asset Mutual Fund provides a unique, tailored protection program for Council assets including buildings, site improvements, infrastructure, computers, machinery, motor vehicles in addition to cyber/data security and business interruption protection. It also provides subsidised business continuity programs as well as Council property surveys and thermo-scanning</p>

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
					<p>programs designed to reduce the risk profile of Council assets.</p> <p>Local Government Income Protection Fund offers discretionary indemnity and claims management services to its members for employees in respect of loss to income resulting from a non-work related injury or illness. The protection and benefits provided to Council employees are beyond other commercial alternatives including 100% actual gross weekly wages and 104-week benefit period with low waiting periods and no age restrictions. This is not a Council expense as it is on-charged to employees who choose to take up coverage. AWU workers access this coverage at a rate of 1.7888% of their annual income and ASU workers access this coverage at a rate of 1.2312% of their annual income.</p> <p>Employee Journey Insurance provides Council with Journey insurance, underwritten by QBE, which covers employees from any accident during a private journey. The gross contribution for 2016/17 is \$15,040 and is calculated based on numbers of employees with and without Income Protection insurance.</p> <p>Personal Accident Insurance provides Council with Personal Accident insurance, underwritten by QBE, which covers specific people including (but not exhaustive) the Mayor, Elected Members, Committee Members and Volunteers. The gross contribution for 2016/17 is \$5,400 and provides benefits including (but not exhaustive) capital, modification, rehabilitation, weekly, temporary partial disablement, injury assistance and non-Medicare out of pocket expenses.</p>
20.	LGFA	<p>LGFA board policy determines special distributions.</p> <p>The LGA Board may consider requesting that LGFA special distributions by non-</p>	Minor (Financial)	Possible	<p>Medium</p> <p>The LGFA is a body corporate that was established in January 1984 under the Local Government Finance Authority Act, 1983 and is administered by a Board of Trustees.</p> <p>The 2015 LGFA Annual Report disclosed that the annual bonus distributed to SA councils was \$2 million. When the LGFA distributes the annual bonus, allocations to councils are calculated in relation to the average</p>

LGA Service	LGA Considerations	Consequence	Likelihood	Risk Rating	Comments/assessment
		member councils be reviewed. CoM bonuses for the past 5 years are: 2014/15 \$108,783.03 2013/14 \$85,917.78 2012/13 \$87,219.38 2011/12 \$62,800.75 2010/11 \$44,712.47			individual deposit and loan levels held with the Authority during the course of the previous financial year.
21.	Impact on Kaurua Native Title Claim Negotiations	No comment received from the LGA regarding this service	Minor (Financial) (Business Continuity / Organisational)	Possible	Medium The LGA co-ordinate the approach for the Indigenous Land Use Agreement as the method to resolve the Native Title Claim with Kaurua. CoM will need to seek further clarity from the LGA on this matter as it has not been mentioned in any of their correspondence. As CoM currently pays a separate fee for this service, it is possible that it will not be impacted.



BRIEFING NOTE

SUBJECT: Corporate website, EM extranet, My Local Services app

BACKGROUND

The corporate website, Elected Member extranet and My Local Services app are supported by the Unity Content Management System. Unity Content Management System (CMS) is a customised system created and owned by Deloitte Digital, purchased by the Local Government Association via contract. In 2015/16 the CoM paid an annual fee of \$10,699 (GST exclusive) to the LGA for Unity products. This was broken down in the following components:

- Unity website hosting/license fee \$ 4,000 (GST exclusive)
- LGA support fee \$ 600 (GST exclusive)
- Hardware/software renewal \$ 4,599 (GST exclusive)
- My Local Services App \$ 1,500 (GST exclusive)

Total \$10,699 (GST exclusive)

The invoices for 2016/17 have not been received and would usually arrive around October each year.

KEY POINTS

The contract for Unity is between Deloitte Digital and the Local Government Association.

The contract states that the *"the intellectual property rights in material developed by Deloitte in performing the Services will vest with Deloitte (Clause 8.1)"*. Notwithstanding this, Deloitte have confirmed in writing that:

- 1) Unity is a product exclusive to the LGA
- 2) There is no option for Deloitte Digital to deal directly with the City of Marion to continue using Unity.

Legal advice has been obtained on this point and states XXXXX

Website

Initial investigations into an alternative CMS to Unity have found Seamless offers a product with comparable features with a basic 'out of the box' product for local councils.

Seamless has provided the following indicative advice about building a new website using their CMS platform:

- 1) Costs
 - Annual subscription fee based on council population is \$70,000 for an 'out of the box' product. Council population is used to set the fee schedule to determine the amount of use of the website. This includes initial design, hosting, build and setup, as well as ongoing support, future upgrades, training for the Digital Communications Coordinator, and an unlimited number of users.
 - Premium services, such as online community consultations, would add an extra \$5,000 to \$10,000 per year.
- 2) Timeframe: Design and development of website – estimated one month
Migration of data from existing website – estimated two weeks

BRIEFING NOTE

- 3) Security: Appropriate firewalls will need to be tested to ensure they provide adequate security, which can be resourced internally without additional cost.

It would be necessary to undertake an appropriate detailed procurement investigation with a range of potential suppliers to develop more accurate cost estimates and an understanding of different CMS capabilities. A project scope would also need to be created. It is estimated that this process would take about 6 to 8 weeks.

Impact on resources

The City of Marion (CoM) website contains 386 'live' pages and about 6,000 content files which would need to be migrated from Unity to any new CMS.

An estimate of staff time required to manage the development and migration of the new website is estimated to be a minimum of \$8,888 based on a total of 200 hours. This includes 130 hours to migrate 386 'live' web pages at 20 minutes per page and 70 hours for liaising with CoM staff, the CMS provider and for reviewing and validating content.

The Digital Communications Coordinator (DCC) would conduct the majority of the migration work and therefore their day-to-day duties of managing digital media would need to be outsourced to cover these 200 hours.

CoM currently has 75 staff who are trained Unity users who would need to be retrained in the new system, with each needing to attend a training session of approximately 2 hours (150 hours in total). Training would be provided by the DCC and take an estimated 30 hours of their time to facilitate group training sessions plus some one on one time where needed. The total costs of all staff time to be retrained is estimated to be around \$7,999 based on the total of 200 required training hours.

Pre-training would also need to occur for the DCC in the first instance, as the system administrator, which is estimated to be approximately 3 days (20 hours) at a cost of \$889.

Development of user guides for staff would also need to be developed and it is estimated that this would require about 10 hours work at a cost of \$444.

In summary the estimated costs for data migration and staff training to develop and implement a new CMS system would be in the order of \$18,220+.

The total time to establish a new website, including development, planning, and migrating data from Unity to Seamless, would be about 6 to 8 weeks.

In addition, conducting an appropriate tender process to procure a new CMS system will require in the order of a 3 to 4 month timeframe and will involve an estimated staff cost of \$3,407 based on 75 hours of work required for development of tender specifications and documentation, tender evaluation and tender assessment.

Elected Member extranet

If there is a shift from Unity, the extranet would need to be rebuilt for additional cost and include specific features such as password protection. The cost would be dependent on the functionality required of any new CMS and this cost is therefore currently unknown.

The extranet contains 57 'live' pages and about 2,000 content files which would need to be migrated. Based on a requirement of 20 minutes per page it is estimated that this would require approximately 19 hours of work at a cost of about \$844.

There is an alternative option to the current Elected Member extranet to be investigated as from October, the organisation is moving to the new Microsoft system. This is not in the current

BRIEFING NOTE

scope of the new system and would require further work to determine business requirements, costs and timelines.

Online payments

Online payment of rates, fines and other fees shifted in May 2016 from Bizgate under the LGA to Bpoint which is managed by the Commonwealth Bank. The cost associated with the Bpoint payment system being re-linked to a new CMS website has an estimated cost of \$2,000.

My Local Services App

My Local Services is an interactive app that delivers information about local parks and playgrounds, bin collection reminders and a reporting function for graffiti, damage and illegal dumping.

Content is pulled from Unity and can be accessed by anyone using the app, regardless of their council area.

The City of Marion pays an annual fee of \$1,500 to the LGA to use the app.

If the City of Marion is excluded from the program, people will see a message explaining Council is not connected to the app. Only contact details and a feature which enables users to report for graffiti, damage and illegal dumping will be displayed.

If Council desired, detailed investigations would be required to calculate the cost of developing an app specifically for the City of Marion that would provide the same functionality.

Digital signage

The digital screens at the Administration Building, City Services, Neighbourhood Centres and Libraries display promotions for events, programs and latest news using stills and video.

The system pulls content from Unity via a system called OneLan (the software required for digital display screens across the organisation).

Continuing to pull information from a new CMS would require the system to be rebuilt as a custom project. The costs would be dependent on the functionality of any new CMS.

Alternatively, content can be input directly into OneLan which would require additional resources, staff time and costs.

BRIEFING NOTE

Estimated costs

Detailed investigations would be required to develop accurate cost estimates.

A summary of first year costs associated with migrating the City of Marion corporate website and extranet from Unity to Seamless is estimated at a best case scenario of:

• Annual Seamless subscription fee (excluding enhanced features)	\$70,000
• Staff time for management, migration and training for website	\$18,220
• Staff time for tender process for new CMS website	\$ 3,407
• Staff time for management and migration for extranet	\$ 844
• Relinking online payments (Bpoint)	\$ 2,000
• My Local Services app	unknown
• Digital Signage	<u>unknown</u>

Total estimated first year costs

\$94,471

In addition, it is estimated that ongoing annual costs for a new CMS system could be in the order of \$70,000+ (based on the Seamless solution) compared to a current annual cost for the existing Unity system of \$10,699.

Risk Management Framework

Appendix 2 – Risk Criteria & Matrix



Consequence Criteria

	People / OHS	Social/Cultural	Financial*	Environmental	Business Continuity / Organisational	Reputation & Public Administration
Insignificant	Physical or other injury requiring First Aid. No impact on wellbeing*. Minor local workforce disruption. Loss of continuity of staff knowledge.	Resident (household) experiences minor wellbeing* impact, disempowered, inconvenience or disadvantage. Household impact <\$50.	CoM – Financial impact, loss and/or penalty up to \$10,000. Project – up to 5% of original project budget.*	Minor adverse environmental impacts that are short term and/or reversible.	Insignificant impact on Council's ability to achieve strategic outcomes. Minor impact on local Business Unit plan. Project – Nil impact on achievement of key project objectives or project duration extended up to 10% of original project timeframe.	A slight but manageable increase in the number of adverse resident/ stakeholder complaints. No media enquiry.
Minor	Physical or other injury resulting in time lost (1 day) or requiring medical attention. Minor temporary impact on wellbeing*. Local and temporary poor morale. Temporary loss of some staff of an individual Unit's workforce. Loss of staff continuity requiring recruitment.	A group of residents within a suburb or identified cultural or community group experiences ongoing minor wellbeing* impact or are disempowered, inconvenienced or disadvantaged. Household financial impact <\$200.	CoM – Financial impact, loss and/or penalty between \$10,000 - \$100,000. Project – between 5-10% of original project budget.*	Isolated instances of environmental damage requiring minor effort to reverse / remediate.	Minor impact on a small number of Business Unit plans. Some impact on strategic initiatives but only minor aspects impacted. Overall strategic intent still achievable. Project – Some impact on isolated key project objectives. Additional minor effort required to ensure all objectives are met. Project duration extended by 10-20% of original project timeframe.	An increase in the number of resident/stakeholder complaints requiring direct effort to resolve / attend to. Media enquiry, isolated media mention (social or mainstream media). Elected Member dissatisfied, complaint.
Moderate	Physical or other injury resulting in brief hospitalization / medical treatment (1 day). Significant/medium term wellbeing* impact or a whole CoM worksite affected. Widespread morale issues. Temporary loss of staff across a number of Units. Loss of key staff with specific knowledge and skills. Impact on recruitment capacity as an Employer of Choice.	A number of neighbourhoods (up to 25% of residents) or cultural groups experience wellbeing* impact, are disempowered, inconvenienced or disadvantaged. Household financial impact <\$1,000.	CoM – Financial impact, loss and/or penalty between \$100,001 - \$1M. Project – between 10-20% of original project budget.*	Isolated but significant instances of environmental damage / implications requiring concentrated effort to reverse / remediate.	Some key components of the strategic plan could not be achieved as a result of risk event. Additional funding / resources required to rectify. Project – Impacts numerous key project objectives. Considerable effort required including some change in project scope to achieve required outcomes. Project duration extended by 21-35% of original project timeframe.	Campaign of adverse social media coverage supported by Local mainstream media agency for a period up to 3 days. A high volume of resident / stakeholder complaints. Majority of Elected Members dissatisfied, Council motion affecting CEO/Administration. CoM under severe pressure on numerous fronts. Ombudsman or Office of Public Integrity involvement. Complaint from partner organization resolved within portfolio.
Major	Serious injury requiring hospitalisation (2 days or more or re-admission)/ extensive rehabilitation. Long term wellbeing* impact or more than one CoM worksite affected. Entrenched severe morale problems. Inability to recruit with necessary skills. High employee turnover.	Up to 50% of residents are disadvantaged, inconvenienced, disempowered or may experience wellbeing* harm. Cultural group or community offended, unable to practice recognised traditions. Household financial impact <\$10,000.	CoM – Financial impact, loss and/or penalty between \$1M and \$4M. Project – between 20-35% of original project budget.*	Severe and/or widespread environmental damage and / or loss of environmental aspect. Extensive effort and support required to reverse / remediate. Danger of continuing environmental damage / losses.	Council unable to deliver on numerous key strategic initiatives without additional funding / resources. Major review of strategic plan required. Project – Significant portion of key project objectives impacted. Major changes to project scope and work necessary to achieve required outcomes. Project duration extended by 36-50% of original project timeframe.	Campaign of adverse social and mainstream media coverage at State and Local level for a period of up to one week. Publicised adverse resident comments and/or complaints. Forced resignation of General Manager/s. Ombudsman or Office of Public Integrity involvement. Relationship with partner organization harmed, requiring CEO involvement.
Severe	Death or critical injury. Wellbeing* of majority of workforce affected. Loss of a majority of the workforce. Inability to replace critical services.	Majority of CoM residents are disadvantaged, inconvenienced, disempowered or may experience wellbeing* harm. Household financial impact >\$10,000.	CoM – Financial impact, loss and / or penalty in excess of \$4M or higher impact on sustainability. Project – >35% of original project budget.*	Major widespread loss of environmental aspect and progressive irrecoverable environmental damage.	Majority of initiatives and / or key initiative within the Council's strategic plan unattainable. Project – Failure of project to meet all required objectives. Project duration extended by >50% of original project timeframe.	National / State campaign of adverse media coverage for a period greater than 1 week. Widely publicised adverse resident / stakeholder comments and / or complaints. Forced resignation of CEO / Mayor. Council stood down. Minister intervention required.

*Wellbeing – defined here as physical, mental and spiritual health and wellbeing
 * Projects will adopt the higher of the CoM or Project ratings

Likelihood Criteria

Rating	Likelihood of Occurrence *For Projects – Likelihood of occurrence during the Project period only
Rare	The event will only occur in exceptional circumstances. (Probability close to 0)
Unlikely	The event is unlikely to occur. (Probability 1 - < 25%)
Possible	The event may possibly occur. (Probability 25 - < 50%)
Likely	The event is likely to occur. (Probability 50- <75%)
Almost Certain	The event is occurring now or is almost certain to occur. (Probability >75%)

Risk Assessment Matrix

LIKELIHOOD RATING	CONSEQUENCE RATING				
	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	MEDIUM

Risk Tolerance

Control Effectiveness

Ineffective	Absence of existing controls to address the risk cause/source or to reduce the impact of the risk if it occurred. No reliable controls are in place or available.
Undecided	The controls have been subject to major change or are in the process of being implemented and effectiveness cannot be confirmed.
Requires Improvement	The controls work in most instances with regard to managing the risk, however additional improvements are required to improve the effectiveness. Some controls are not well designed, as they do not treat the risk cause/source or there is too great a reliance on reactive (Detective/Corrective) controls.
Good	The control works well. Some improvement opportunities have been identified but not yet actioned.
Effective	Risk is being managed effectively. The controls are well designed and address the risk cause/source. The controls are regularly monitored and reviewed to verify their effectiveness.

Risk Evaluation – Required Actions based on Level of Risk Rating

Extreme Risk	Detailed risk treatment plan to be implemented and risk ownership to be assigned to Senior Leadership Team (SLT) member to monitor progress in consultation with the Risk Unit and relevant Senior Leader. Reported to Finance & Audit Committee and Risk Working Group. Control effectiveness to be closely monitored at work area level on an ongoing basis, in consultation with the Risk Unit.
High Risk	Risk treatment to be implemented by risk owner in consultation with Risk Unit. Relevant General Manager to determine appropriate risk owner and report risk to the Risk Working Group. Reported to Finance & Audit Committee. Control effectiveness to be closely monitored at work area level on an ongoing basis.
Medium Risk	Risk treatment to be assigned if controls are not 'Effective'. Risk owner assigned at Unit Manager or Senior Leader level. Risk reviewed quarterly by risk owner and reported to relevant General Manager.
Low Risk	Managed by Unit Manager at work area level via standard operating procedures and reviewed on an annual basis and reported to relevant General Manager.



Local Government Association
of South Australia

The voice of local government.

**Price is what you pay.
Value is what you get.**

Warren Buffet

**The value
proposition from
membership**
of the
**Local Government Association
of South Australia**

July 2016

Introduction

Of benefit in any business is an understanding of the value of services or products provided to customers. In this respect the LGA is no different.

LGA Queensland has undertaken significant work in this area. Mr Glen Beckett, General Manager Assist, has provided assistance in the valuation of LGA services based on his 15 years with LGAQ. Mr Beckett has an MBA and has worked in senior management roles in hospitality, corporate training and information technology industries. He has also lectured at Griffith University.

Mr Beckett has assisted the LGA to calculate the value of LGA services primarily by comparing the costs paid by Councils to comparable alternative costs. Where external comparisons are not available a realistic estimate of benefits is provided.

This report identifies nine key service areas rather than seeking to assess every service provided by the LGA. These include the schemes directly established by the LGA along with the Local Government Finance Authority (which resulted from a business case prepared by the LGA, a resolution of an LGA General Meeting and successful advocacy to the Government & Parliament), along with other services, advocacy and support.

Value is calculated for an "average" council and in aggregate for the sector. In addition, value is divided as a proportion of council population in a table attached (see appendices 1 & 2).

The LGA would like to acknowledge the assistance of the LGAQ and Mr Beckett in particular.

Working Together

All councils benefit from working together.

When local governments in South Australia come together to solve problems, tackle challenges and collaborate, great things happen.

Communities benefit, issues get resolved and councils save money. It all starts by having a strong and united voice.

LGA SA exists so that all opportunities for advancement can be pursued.

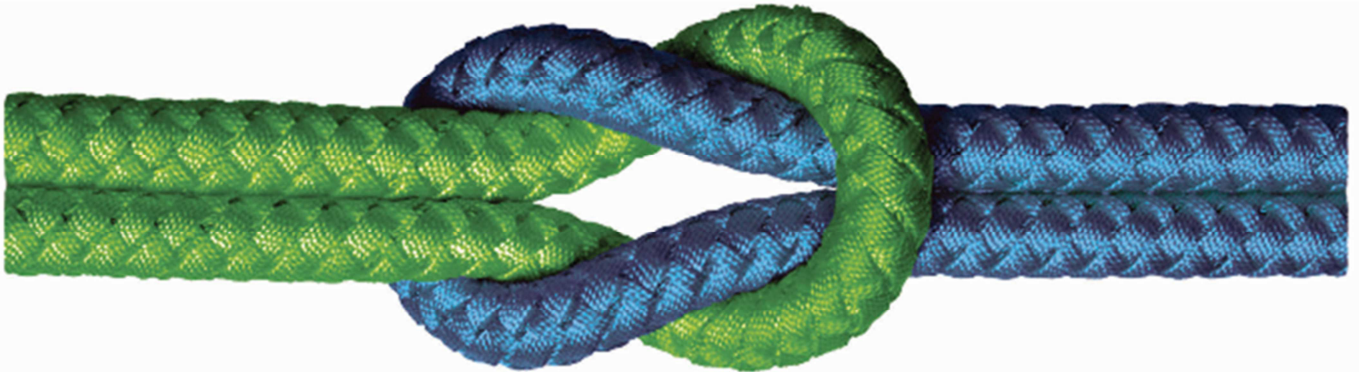
LGA SA does three important things for its members:

1. Advocacy: Influencing state and federal government policy, legislation and funding.
2. Aggregation: Bringing councils together to pursue worthwhile opportunities.
3. Advancement: Assisting with the business of council, its operations and efficiency.

Not all of these activities result in an identifiable saving or cost offset, but many do.

We have mapped these financial benefits across all of our activities, and the impact is significant.

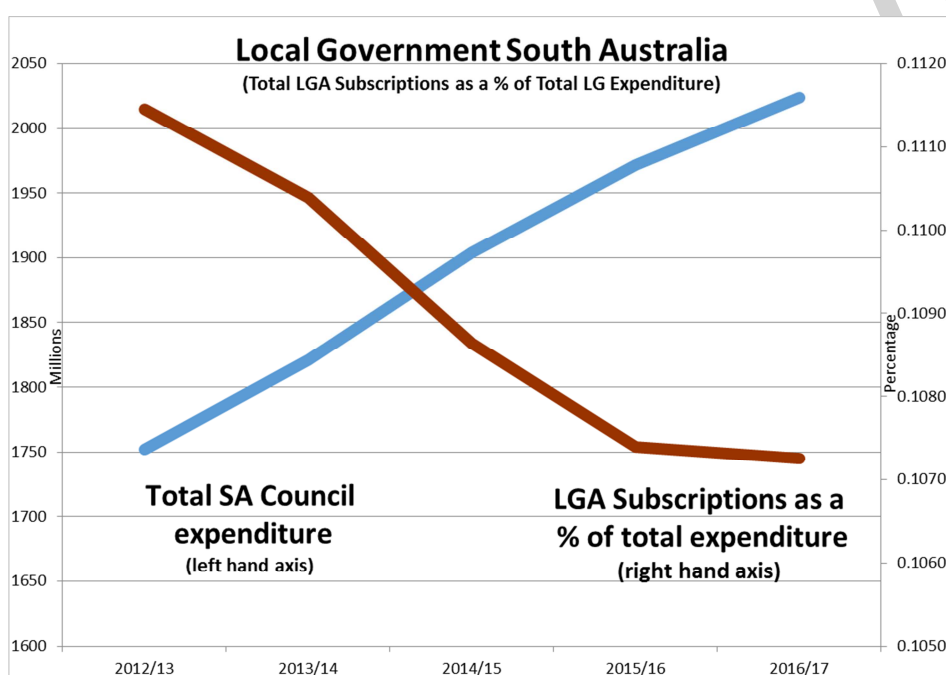
However, just as important are the non-cash benefits. These also deserve full and fair consideration.



Fast Facts

LGA subscriptions paid by Councils:

- total \$2.16 million for 2016/17, representing 0.1% of local government's \$2.1 billion aggregated annual budget
- account for only 32 % of LGA annual expenditure of around \$6.10 million; a 68 % discount
- over the past 5 years represent around half the amount of the special distributions to councils from the LGA schemes (\$20.9m)
- have continued to fall over time, relative to the size of local government



LGASA delivers over 50 services to councils along with strong daily representation. What value do they deliver?

We've looked at nine key service areas. We've calculated that each year those nine service areas deliver **\$52,360,000** in value to councils.

If we add grant programs secured or preserved by LGASA or ALGA advocacy or formal agreements, that adds a further **\$137,930,000** in value to councils.

So in total, LGASA delivers **\$190,300,000** in value to South Australian councils each year; that's on average \$2.8 million per council.

(Our methodology is appended, together with a table dividing the total value by councils on a population basis)

There is value in Advocacy

Real outcomes require real effort. Every day we engage with government on behalf of members to pursue issues of concern.

We influence government policy, we help make good legislation better and we work hard to stop poor legislation from seeing the light of day.

Recent wins include:

- Retention of pensioner concessions worth \$28m per year for our seniors.
- Avoiding the introduction of rate capping which would play havoc with Council budgets and push infrastructure costs onto the next generation.
- Securing additional road funding providing access to \$93.8m this financial year.

There is value in Aggregation

Together we do achieve more.

South Australian councils have profited through their willingness to work together. The Association has been the critically important pre-requisite necessary for the identification and delivery of state-wide cost-saving initiatives.

Material savings have been realised through:

- Group Insurance not only saving \$10m every year, but actively protecting our communities, our workers and our assets.
- Access to cheaper money via LGFA with \$9.2m saved this year alone.
- Access to bulk electricity contracts saving millions each year.

There is value in Member Services

Every day elected members, chief executive officers and officers seek out our experts for information, advice, guidance and support.

We help all councils with matters of concern or difficulty.

Much of what we do, we do without specific charges. Yet, there is real value in what we do, for example:

- Governance resources, legal advice & insights saving every council \$100k per year.
- \$1.3m invested annually in targeted research and development.
- Access to unique training solutions & professional development unavailable elsewhere.



BENEFITS

Value to Communities

Efficient councils means reduced pressure on councils rates. Because we save the sector \$190m per year, that \$190m does not need to be paid by ratepayers.

Working together means better services for residents. Library services, digital services, funding for local roads, local services and local infrastructure.

Issues of collective concern can also be pursued with purpose and passion.

No council acting alone can replicate the benefits of working together.

Value to Councils

Removing duplication means councils can get on with core business. It is inefficient for 68 councils to generate 68 solutions for the same problem. Doing it once for everyone, is clearly a smart alternative.

Identifying, promoting and supporting best practice encourages councils to improve.

Shared effort also means lower risk. Much of what we do is about ensuring councils interests are protected and exposure to future liabilities reduced.

Shared experience results in valuable learnings.

Value to Councillors

From the candidates website to insuring councillors and their companions whilst travelling on council business, there is much that is gained through LGA Services.

Without access to these services councils would be required to meet higher costs, and councillors would be individually more exposed.

Personal support, advice, resources and protection adds up to smart outcomes.

What if the LGA did not exist?

Without an LGA councils would need to find an extra \$190m per year.

They would need to go and duplicate a raft of documents, resources & tools.

They would need to employ more staff to manage insurance, governance, intergovernmental relations and procurement amongst many others.

They would need to spend more on electricity, telecommunications, training, insurance, finance costs, legal advice ... and more.

And, they would be less successful in securing critical government funding and effective legislation.



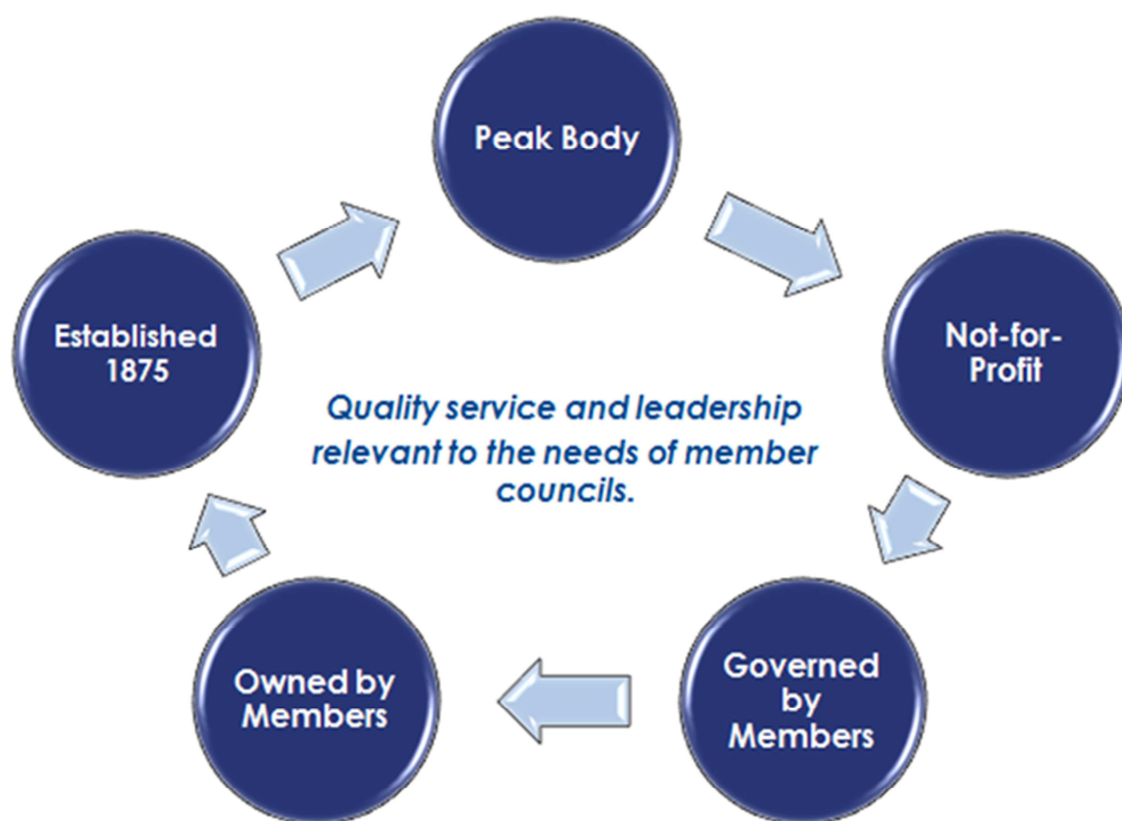
In summary

We are stronger together.

There are compelling reasons to maintain membership.

Few suppliers could offer a 68% discount, then go and generate 95 times the value while helping you make a positive difference for you and your community.

Price is what you pay. Value is what you get.



Appendix 1 - Value of LGA to average council

Appendix 2 - Apportionment of value on a population basis

Appendix 1 – Value of LGA to average council

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Value of LGA to Members

Total (Average Council)		\$ 2,798,468
Service areas		
* Changes in assumptions will change the calculation of value		
Insurance		\$146,991
Workers Compensation	Calculated average of per council annual premium savings - compared to RTWSA local government rate	\$133,820
Insurance: Mutual	Calculated average of annual premium savings - as measured against savings over time	\$6,294
Insurance: Assets	Calculated average of annual premium savings - as measured against savings over time	\$8,824
	Complemented by additional cover provided at no additional cost (eg Cyber protection)	\$1,200
Non Cash Benefits:		
	State government guarantee - insurer of last resort	
	Reduction in risk. Historical reduction in claims due to continuing improvements in risk management	
	Worker Claims have reduced from 1:3 to 1:18, while employee numbers have increased	
	Access to regional risk coordinators available to assist members better identify and manage risk	
	Protection of local governments' interests - fair but firm	
	Coordination in defence of claims with state government when required	
	Risk management, systems, tools & resources	
	Insurance support & rehabilitation expertise	
	Access to broad based insurance solutions - including community cover (casual hirers liability etc)	
	Award winning healthy lifestyle programs	
LGFA		\$136,263
Financing Access	Difference in LGFA rate to available commercial lending rate (annualised) averaged across all councils	\$68,263
	Fee-free access to banking services	\$68,000
Non Cash Benefits:		
	State Government Guarantee on deposits	
Procurement		\$78,344
Tendering costs	Avoidance of local tendering costs	\$53,598
Model Contracts	Use of model contracts and tendering documents	\$10,000
Group Purchasing	Nominal discount rounded across full purchase cost	\$11,363
Advertising	Access to discounted advertising rates	\$3,382
Online Advertising	Access to common online tender placement	
Non Cash Benefits:		
	Advertising on SA Tenders & Contracts portal provides tenderers a "1-stop shop" for State and Local tenders	
	Most LGAP contracts have a direct Council account manager/contact	

Value of LGA to Members

Governance		\$73,870
Governance Resources	48 Model Policies, Guidelines, Standard Operating Procedures (excl. EM relevant guides)	\$14,400
Governance Helpdesk	On call governance support (telephone or email)	\$1,470
	Additional LG Acts legal spend per annum (yearly average)	\$42,000
Delegations Register	Independent establishment costs	\$2,000
	Maintenance costs	\$14,000
Non Cash Benefits:		
	Avoidance of risks, lower potential for legal or other claims to be made against council	
	Opportunity cost of assisting officers to proceed with confidence, minimising administrative delays	
	Access to the Local Government Governance Panel to assist with code-of-conduct issues	
Workforce		\$26,087
Industrial Relations	Availability of pre-qualified panel for IR & HR advice	\$-
Training	Provision of free or subsidised training	\$70
	50% of training offered is unique	\$2,625
	Accessibility to online training	\$500
Careers in LG	Employment promotional kits	\$100
	Promotion of local government as a career of choice (less R&D contribution)	\$2,205
	Traineeships - wage subsidy for regional trainees for 2 years (63 regionally based trainees)	\$16,176
Conferences & Events	Discounted conference attendance compared to full commercial rates	\$4,412
Non Cash Benefits		
	Networking opportunities and professional development	
Online Services		\$100,000
Website	Additional costs to use a commercially available service	\$50,000
Intranet	Additional costs to use a commercially available service	\$20,000
My Local Services App	Additional costs to use a commercially available service	\$20,000
Candidates' Website	Additional costs to use a commercially available service	\$10,000
Non Cash Benefits		
	Shared databases, templates and infrastructure	
	Avoidance of costs and risks through joint development & operations	

Value of LGA to Members

Research Scheme		\$19,970
R&D Scheme	Equal annual share in distributions as averaged over 10 years/68 councils	\$19,970
Non Cash Benefits: Access to best practice and innovation		
Advocacy		\$2,194,974
Cash / Cash Equivalents		
Community Level		
Pensioner Concessions	Annual distribution to pensioners (successful lobbying effort)	\$410,723
CWMS	Community Wastewater Management Scheme (unavailable to councils unless pursued by LGA)	\$60,294
Public Health Plans	5 year service agreement	\$2,147
Road Funding (R2R)	Additional road funding secured	\$1,379,411
Public Library Grants	Public library materials and operating grants	\$175,808
Operational Level		
Public Lighting Charges	SAPN	\$32,353
Library Services	Library Central Services	\$88,235
One Card Network	\$1.75m in savings assumed	\$25,735
LG Networks	Facilitated access to professional peer networks	\$-
i-Responda	Access to externally funded system training (annual allocation)	\$1,911
Emergency Management	Federal support for implementation of emergency management	\$1,441
Climate Change	Climate change adaptation \$500,000 over 4 years	\$1,838
Non Cash Benefits Opportunity realisation, ability to seek out and pursue beneficial opportunities on behalf of members		
Media		
Print/Online	Equivalent 200 1/8th page articles for year, shared across 68 councils	\$1,840
Broadcast	Equivalent 300 120-second broadcast spots, shared across 68 councils	\$13,235
Non Cash Benefits: Positive promotion of local government		
17 key amendments to the Planning Bill to benefit councils		
Election promotion and co-ordination with ECSA		

Value of LGA to Members

Councillor		\$21,967
Model Policy:	Allowances & Benefits for Council Members	\$1,500
Model Policy:	Caretaker Policy	\$1,500
Guide:	Choosing a Chairperson, Deputy Mayor & Deputy Chair Person	\$1,500
Guide:	Conflicts of Interest Guidelines	\$1,500
Guide:	Council Committee Members	\$1,500
Advice:	Council Member Allowances - Taxation Implications	\$1,500
Guide:	Council Members Guide	\$1,500
Guide:	Meeting Procedures Handbook	\$1,500
Advice:	Primary & Ordinary Returns for Council Members (Part A)	\$1,500
Advice:	Primary & Ordinary Returns for Council Members (Part B)	\$1,500
Guide:	Training & Development Plan for Council Members	\$1,500
Insurance	Personal Accident Cover + personal property (whilst on council business)	\$5,060
Insurance	Accident cover for members and travelling companions (while on council business)	\$253
Insurance	Professional Indemnity (transfers back to council)	\$8,404
Non Cash Benefits	Online & face to face elected member training (council member essentials)	
Ends.		

Appendix 2 – Apportionment of value on a population basis

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Councils List

Members	Population	Relative Size	Total Nominal Individual Value \$	Nominal Individual Value Excluding Grants \$	LGA Subscriptions 2016/17 \$
Adelaide	23,169	1.37%	2,606,628	717,237	94,382
Adelaide Hills	40,031	2.37%	4,503,688	1,239,230	50,284
Alexandrina	25,449	1.50%	2,863,140	787,819	43,374
Barossa	23,104	1.37%	2,599,315	715,225	38,441
Barunga West	2,434	0.14%	273,837	75,349	7,129
Berri Barmera	10,419	0.62%	1,172,189	322,539	20,951
Burnside	45,034	2.66%	5,066,550	1,394,107	54,576
Campbelltown	51,889	3.07%	5,837,772	1,606,316	59,494
Ceduna	3,716	0.22%	418,068	115,035	10,738
Charles Sturt	114,209	6.75%	12,849,085	3,535,541	94,382
Clare & Gilbert Valleys	9,057	0.54%	1,018,957	280,375	16,995
Cleve	1,795	0.11%	201,946	55,567	6,697
Coober Pedy	1,801	0.11%	202,621	55,753	12,437
Coorong	5,556	0.33%	625,077	171,996	13,682
Copper Coast	14,114	0.83%	1,587,895	436,924	27,264
Elliston	1,066	0.06%	119,930	33,000	5,975
Flinders Ranges	1,608	0.10%	180,908	49,778	6,342
Franklin Harbour	1,234	0.07%	138,831	38,201	5,413
Gawler	22,618	1.34%	2,544,638	700,180	32,075
Goyder	4,232	0.25%	476,121	131,009	11,272
Grant	8,235	0.49%	926,478	254,929	15,370
Holdfast Bay	37,263	2.20%	4,192,274	1,153,542	59,883
Kangaroo Island	4,611	0.27%	518,760	142,742	13,902
Karoonda East Murray	1,014	0.06%	114,080	31,390	5,746
Kimba	1,097	0.06%	123,418	33,960	5,739
Kingston	2,363	0.14%	265,849	73,151	7,468
Light	14,841	0.88%	1,669,686	459,429	24,334
Lower Eyre Peninsula	5,087	0.30%	572,313	157,477	11,759
Loxton Waikerie	11,462	0.68%	1,289,532	354,826	24,901
Mallala	8,750	0.52%	984,418	270,872	13,629
Marion	88,983	5.26%	10,011,033	2,754,626	94,382
Mid Murray	8,243	0.49%	927,378	255,177	19,635
Mitcham	66,347	3.92%	7,464,370	2,053,889	76,093
Mount Barker	32,558	1.92%	3,662,938	1,007,890	46,304
Mount Gambier	26,348	1.56%	2,964,282	815,649	35,040
Mount Remarkable	2,773	0.16%	311,976	85,843	8,477
Murray Bridge	20,971	1.24%	2,359,342	649,194	37,278
Naracoorte Lucindale	8,390	0.50%	943,917	259,727	18,681
Northern Areas	4,488	0.27%	504,922	138,934	11,395

Councils List

Members	Population	Relative Size	Total Nominal Individual Value \$	Nominal Individual Value Excluding Grants \$	LGA Subscriptions 2016/17 \$
Norwood, Payneham & St Peters	37,350	2.21%	4,202,062	1,156,235	49,539
Onkaparinga	168,798	9.98%	18,990,621	5,225,440	94,382
Orroroo Carrieton	852	0.05%	95,854	26,375	5,253
Peterborough	1,673	0.10%	188,220	51,791	6,678
Playford	88,222	5.22%	9,925,417	2,731,068	94,382
Port Adelaide Enfield	123,754	7.32%	13,922,945	3,831,024	94,382
Port Augusta	14,522	0.86%	1,633,797	449,554	35,849
Port Lincoln	14,984	0.89%	1,685,775	463,856	24,124
Port Pirie	17,540	1.04%	1,973,337	542,982	28,870
Prospect	21,416	1.27%	2,409,407	662,970	29,573
Renmark Paringa	9,230	0.55%	1,038,421	285,731	15,332
Robe	1,428	0.08%	160,657	44,206	7,539
Roxby Downs	5,078	0.30%	571,300	157,198	13,819
Salisbury	138,535	8.19%	15,585,882	4,288,596	94,382
Southern Mallee	2,058	0.12%	231,535	63,709	7,903
Streaky Bay	2,249	0.13%	253,023	69,622	8,856
Tatiara	6,631	0.39%	746,020	205,274	15,856
Tea Tree Gully	98,861	5.84%	11,122,358	3,060,417	94,382
Tumby Bay	2,668	0.16%	300,163	82,593	7,939
Unley	39,324	2.32%	4,424,147	1,217,344	52,701
Victor Harbor	15,169	0.90%	1,706,588	469,583	27,479
Wakefield	6,886	0.41%	774,709	213,168	14,147
Walkerville	7,673	0.45%	863,250	237,531	11,909
Wattle Range	11,460	0.68%	1,289,307	354,765	25,842
West Torrens	58,964	3.49%	6,633,745	1,825,335	78,629
Whyalla	22,759	1.35%	2,560,501	704,545	35,729
Wudinna	1,282	0.08%	144,231	39,687	6,085
Yankalilla	4,700	0.28%	528,773	145,497	13,377
Yorke Peninsula	11,018	0.65%	1,239,580	341,082	28,189
	1,691,443	100.00%	190,295,820	52,361,608	2,165,046*

*Excludes Anangu Pitjantjatjara Yunkunytjara, and associate members OCA & Centennial Park



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In reply please quote our reference: ECM 640944 MP:JK

22 July 2016

Mr Tony Lines
Acting Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

via email: tony.lines@marion.sa.gov.au

Dear Tony

Thank you for meeting with Mayor Dave Burgess (LGA President), Chris Russell (Strategic Adviser) and me along with Mayor Hanna today. I committed during the meeting to convey the formal decision of the LGA Board at its meeting yesterday.

The formal resolution of the Board was as follows:

"that the LGA Board:

- 1. supports the Secretariat removing services from non-member councils as soon as practicable;*
- 2. endorses the Secretariat, seeking confirmation of the City of Marion's continued authority for the LGA to act on the City of Marion's behalf for the provision of the One Card Library System, the Unity System for the next 12 months, and negotiations with SA Power Networks; and*
- 3. endorses the distribution to all councils a copy of the LGA SA member value calculations as provided at Appendix 1 (ECM 640879) to the report 'LGA Membership – City of Marion Resolution'."*

The Board holds a strong view that the sector is strongest with 100% membership and its objective is to continue to promote and advance the interests of local government. Your re-commitment to the LGA would be greatly valued by the LGA and the sector.

Your Council's resolution seeking to revoke membership of the LGA calls into question the LGA's authority to act as the Council's agent. I seek written confirmation from your Council that the LGA is currently authorised to act as the Council's agent in relation to the One Card Network (library system), the Unity website content management system, and negotiations with SA Power Networks, and in any other identified area.

Should your Council wish to proceed to withdraw from the LGA I would ask you to confirm in writing whether or not you wish the LGA to continue to act as the Council's agent in respect of the arrangements described above. The LGA will consider this request, but reserves its ability to cease acting as an agent of the Council (either in relation to specific arrangements or generally) by providing written notice of this to the Council. The LGA reserves the right to identify and alert you to other areas in which we may be agent on your behalf.

.../2

- 2 -

I appreciate your initial comments on our value document and attach an amended copy for your information. I understand that Council is keen to understand the implications and costs of a withdrawal from the LGA and the range of services we provide in various ways to the City of Marion and I appreciate your commitment to forward this to all council members.

As mentioned in previous correspondence the Board has resolved to adopt a new subscriptions formula for the 2017/18 year. Before application however, the Board has requested further research on the population bands to ensure an appropriate differentiation between councils of varying sizes. This was a direct result of concerns raised by Councils including yours. It will be completed and consulted upon well before the next financial year.

I would be delighted to present to all council members on our value proposition and to answer further questions. I or Mr Russell will separately respond to your specific questions regarding the road funding and Special Local Roads Program arrangements and with a full list of LGAP contracts noting those which the City of Marion currently uses.

If you have any further questions do not hesitate to contact the LGA.

Yours sincerely

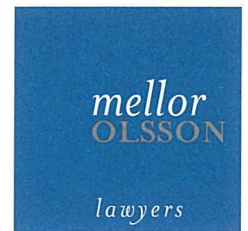


Matt Pinnegar
Chief Executive Officer

Telephone: 8224 2022

Email: matt.pinnegar@lga.sa.gov.au

Attach: The value proposition from membership of the LGA of SA



Our Ref: PP:M161781

25 July 2016

Ms Kate McKenzie
Manager Corporate Governance
City of Marion
PO Box 21
OAKLANDS PARK SA 5047

Dear Kate

LGA ISSUES – THE “UNITY” WEBSITE SYSTEM

Background

I refer to your e-mails of 21 and 23 July 2016 and the documents attached to those e-mails. You have asked me to provide preliminary advice in relation to several issues relating to Council's potential withdrawal from the Local Government Association (“LGA”).

You have provided me with the following:

1. a copy of a “Deloitte Master Services Agreement” dated 16 September 2015 between Deloitte Touche Tohmatsu Limited (“Deloitte”) and the LGA (“the Agreement”); and
2. a copy of a letter dated 22 July 2016 from the CEO of the LGA to the Acting CEO of Council (“the LGA Letter”).

The Agreement

Under the Agreement, Deloitte agrees to provide a range of services to the LGA, including website support, hosting and maintenance services, specifically in relation to “Unity DCW Edition” and the “My Local Services” mobile application.

Under Clause 2.1, the term of the Agreement is an initial period of one year beginning on the “Starting Date” of 1 July 2015, followed by one further term of one year, unless the Agreement has previously been terminated by written notice given by one party to the other in accordance with Clause 2.2.

Under Clause 8 of the Agreement, Deloitte retains all intellectual property rights in material developed by Deloitte in performing the services under the Agreement, but grants the LGA an annual, non-exclusive licence to use those materials.

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25 July 2016

Whilst the only parties to the Agreement are Deloitte and the LGA, Schedule 1 of the Agreement contemplates that the services will be provided to websites for local councils and related government entities that are "housed" on the LGA's infrastructure.

Schedule 1 includes the following provision:

"Should a participating Council or Government entity wish to discontinue their use of the Unity DCW Edition and related services (hosting, infrastructure and support) a refund will be provided where there is no less than 90 days notice provided to Deloitte."

Arrangements between the LGA and Council

You have instructed me that there is no formal licence or other written agreement between Council and the LGA regarding the provision of Deloitte's services to Council, but that those services are provided to Council and are invoiced to Council annually by the LGA.

I note that Council's website does not appear to include any identifier indicating Deloitte's authorship. Instead, the website is linked to the "Simple" marketing agency. Council's website does, however, include a link to the "My Local Services" mobile application, which is clearly a Deloitte product.

It is, therefore, not entirely clear to me to what extent Council's website operation is dependent on hosting and support from Deloitte (through the LGA) and to what extent it is managed elsewhere.

I assume that Council's website is hosted by the LGA. Please let me know if that is not the case.

The LGA Letter

The LGA Letter informs Council of the terms of a formal resolution of the Board of the LGA on 21 July 2016. As I mentioned in my letter to you in relation to the "One Card" Library Network, the meaning and effect of that resolution are not clear. I refer you to my comments in that letter.

The LGA Letter suggests that the LGA is seeking confirmation from Council that Council authorises the LGA to continue to act on Council's behalf for the provision of the "Unity System" for the next 12 months.

It seems likely that the LGA has not given notice of termination to Deloitte under Clause 2.2 of the Agreement and that, accordingly, the Agreement between LGA and Deloitte has automatically been extended for a year until 30 June 2017. This would not prevent the LGA being able to give 90 days notice to Deloitte, in accordance with Schedule 1 of the Agreement, of Marion Council's wish to discontinue use of the services. The LGA would then be entitled to receive a refund from Deloitte calculated in accordance with that Schedule.

Preliminary Advice

1. Council ceasing to be a member of the LGA could terminate the informal arrangements between Council and the LGA regarding provision of the "Unity" website hosting, maintenance and support services provided by Deloitte through the LGA. If Council wishes to continue to use those services, at least in the short term after exiting the LGA, Council would need to enter into a specific, clear



25 July 2016

agreement with the LGA for the continuation of those services for a fixed period. The suggestion in the LGA Letter that the LGA reserves its ability to cease acting as an agent of Council at any time by providing written notice to Council would not be acceptable.

2. If Council leaves the LGA, and if Council's website is currently hosted and maintained through the LGA, it is inevitable that Council will need to enter into new, separate website hosting and maintenance arrangements with another provider. This will incur cost and a degree of disruption. It may also result in a reduction in compatibility and harmonisation with other council websites.
3. To the extent that Council's current website uses intellectual property owned by Deloitte, Council would either need to attempt to enter into a separate licence agreement directly with Deloitte or enter into a completely new licence agreement with a different provider.
4. It is likely that Council would no longer be able to provide the "My Local Services" mobile application through Council's website, unless a new licence agreement can be negotiated directly with Deloitte with respect to that application.

Please do not hesitate to contact me if you have any further questions at this stage.

Yours faithfully
MELLOR OLSSON



PHILIP H PAGE
Partner

Direct Email: ppage@mellorolsson.com.au
Phone: 8414 3441 (Adelaide)

Our Ref: PP:M161781

25 July 2016

Ms Kate McKenzie
 Manager Corporate Governance
 City of Marion
 PO Box 21
 OAKLANDS PARK SA 5047

Dear Kate

LGA ISSUES – THE “ONE CARD” LIBRARY NETWORK

Background

I refer to your e-mails of 21 and 23 July 2016 and the documents attached to those e-mails. You have asked me to provide preliminary advice in relation to several issues relating to Council's potential withdrawal from the Local Government Association (“LGA”).

You have provided me with the following:

1. the *Libraries Act 1982* (SA) (“the Act”);
2. an undated, unsigned copy of a Memorandum of Agreement between the Minister Assisting the Premier in the Arts and the President of the LGA (“the MOA”);
3. a copy of the South Australian One Library Management System Service Agreement between LGCS Pty Ltd and The Corporation of the City of Marion, executed on behalf of Council on 16 March 2012 and on behalf of LGCS Pty Ltd on 16 April 2012 (“the Service Agreement”);
4. an undated, unsigned copy of a Software Licence, Support and Hosting Services Agreement between SirsiDynix Pty Ltd and LGCS Pty Ltd (“the Head Agreement”); and
5. a copy of a letter dated 22 July 2016 from the CEO of the LGA to the Acting CEO of Council (“the LGA Letter”).

I will assume that the MOA and the Head Agreement were executed by the parties in the form of the documents I have received and that they are currently in operation.

The Act

I note that the objectives of the Act, as set out in Section 7 (1), include:

- “(a) to achieve and maintain a co-ordinated system of libraries and library services that adequately meets the needs of the whole community;” and
- “(b) to promote and facilitate the establishment and maintenance of libraries and library services by councils and other appropriate bodies”.

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McLaren Vale Nuriootpa
Phone: 1300 414 414
Fax: (08) 8414 3444



The Libraries Board of South Australia ("the Board") is established under the Act and is to comprise not more than 8 members, 3 of whom are to be nominated by the LGA.

Under Section 14 of the Act, the functions of the Board include:

- "(d) to establish and maintain such other public libraries [other than the State Library] and public library services as may best conduce to the public interest; and
- (e) to promote, encourage and assist in the establishment, operation and expansion of public libraries and public library services by councils and others".

Under Section 21 (1) of the Act:

"the Minister may, on the recommendation of the Board, pay such subsidies, or grant such other assistance, as the Minister thinks fit for the establishment, maintenance, and extension of public libraries, public library services and community information services"

The MOA

Against the legislative background set out in the Act, the Minister entered into the MOA with the President of the LGA.

Whilst Clause 1 of the MOA states that the Agreement "is not intended to create legally binding relations between the parties or between the State Government and local Councils", it also states that the MOA "sets out a framework for the allocation of State Government funding to support the [public library] network and public libraries, complementing the funding allocated by individual Councils to public library services".

Under Clause 3.2, one of the intended outcomes of the MOA is expressed to be:

"access to public library services across Council boundaries".

Under Clause 4.2:

"The total amount of the funds provided under this Agreement will be provided to the Libraries Board for allocation to PLS [Public Library Services] and public libraries consistent with this Agreement and the *Libraries Act 1982*. The Board will ensure the efficient and effective use of the funds."

The MOA specifically requires consultation and liaison with the LGA in relation to matters relating to public libraries. Under Clause 4.7:

"The Local Government Association will apply its best endeavours to ensure all local councils participate in the achievement of the outcomes outlined in this Agreement ..."

The Service Agreement

The Service Agreement was entered into by Council with LGCS Pty Ltd ("LGCS") as representative of the LGA. The purpose of the Service Agreement was to give Council access to an integrated library management system ("the System") supplied by SirsiDynix Pty Ltd ("the Supplier") as part of a project for implementing the system for use by libraries and councils throughout the state.

Under the Service Agreement, Council appointed LGCS as its agent to enter into an agreement with the Supplier to purchase the System and associated software and to manage the ongoing relationship between councils and the Supplier.

Importantly, under Clause 3.2 of the Service Agreement, Council agreed not to enter into any agreements directly with the Supplier in relation to purchase or management of the System during the "Term" of the Service Agreement, "unless directed otherwise by LGCS".

Under Clause 4.1 of the Service Agreement, Council agreed to “make every effort” to facilitate use of the System to enable library customers to use a single library patron card to access services of other participating libraries and councils.

Under Clause 2, the “Term” of the Service Agreement is to continue until terminated in accordance with the Agreement. Under Clause 10.1.1, Council can terminate the Service Agreement “by giving at least six months written notice prior to the anniversary of the commencement date of the Head Agreement”.

There are two particular difficulties in relation to this right to terminate the Service Agreement, namely:

1. the uncertainty as to what is the “commencement date” of the Head Agreement (although it may be possible to ascertain that date); and
2. the uncertainty as to the meaning of the words “prior to the anniversary” of that date. Does it mean prior to the **first** anniversary, or prior to **any** anniversary of that date?

LGCS has no equivalent right to terminate the Service Agreement “without cause”. Any termination of the Service Agreement by LGCS would have to be based upon an “Event of Default” on the part of Council. The expression “Event of Default” is defined in Clause 1.1.

The Head Agreement

The Head Agreement deals with the supply of the One Library Management System by the Supplier to LGCS, on behalf of the LGA. The main points to note about the Head Agreement are:

1. Council is not a party to the Head Agreement and has no direct contractual relationship with the Supplier. Council’s dealings with the Supplier are through LGCS under the Service Agreement.
2. There is some uncertainty regarding the commencement date of the Head Agreement (as mentioned above).

The LGA Letter

The LGA Letter informs Council of the terms of a formal resolution of the Board of the LGA on 21 July 2016. The meaning of that resolution is not entirely clear. At the outset, the Board:

“supports the Secretariat removing services from non-member councils as soon as practicable”.

However, in addition, the Board:

“endorses the Secretariat, seeking confirmation of the City of Marion’s continued authority for the LGA to act on the City of Marion’s behalf for the provision of the One Card Library System, the Unity System for the next 12 months, and negotiations with SA Power Networks ...”

Aspects of the resolution that are unclear include the following:

1. It appears that the fundamental principle of the resolution is that LGA services should be removed from non-member councils as soon as possible. Why, then, does the LGA seek Council’s authority to continue to act on Council’s behalf? Is that authority to continue if Council becomes a “non-member”?
2. The inclusion in the resolution of the words “for the next 12 months” is ambiguous in the following ways:
 - a) Does that period of 12 months continue to apply if Council ceases to be a member of the LGA?



25 July 2016

- b) Does the period of 12 months relate only to the Unity System and not to the One Card Library System or to the negotiations with SA Power Networks?
- c) How is the reference to a period of 12 months to be reconciled with the passage later in the LGA Letter in which the LGA “reserves its ability to cease acting as an agent of the Council (either in relation to specific arrangements or generally)” should Council proceed to withdraw from the LGA?

Preliminary Advice

1. Council ceasing to be a member of the LGA would not, of itself, terminate the Service Agreement with LGCS. Council may have the right to terminate that agreement “without cause” by giving written notice to LGCS. It is, however, arguable that Council’s right to terminate “without cause” was only available during the first 6 months after the commencement of the Head Agreement and has now expired. LGCS has no equivalent right to terminate “without cause”.
2. Departure from the LGA should not directly affect Council’s access to services though Public Library Services or to state government funding. Despite that, the LGA is in a strong position of control by virtue of its representation on the Libraries Board and its MOA with the Minister. Council could, therefore, be disadvantaged if it is excluded from submissions made by the LGA on behalf of council libraries.
3. The Libraries Board and Public Library Services would still have an obligation under the Act to deliver services and funding to Council despite Council’s departure from the LGA. However, as indicated above, Council’s position may be weakened by lack of representation through the LGA and Council may need to take steps to formulate its own independent submissions for funding and services.
4. Clarification is required in relation to the LGA Letter, particularly as to the following:
 - a) Why is the LGA requesting authority to act on Council’s behalf in relation to the One Card Library System when Council’s Service Agreement is with LGCS, not the LGA, and Council may choose not to terminate the Service Agreement (or may be unable to do so) even if Council leaves the LGA?
 - b) Is the LGA proposing to act as Council’s “agent” in relation to the One Card Library System:
 - i. only until Council’s exit from the LGA takes effect?; or
 - ii. for a fixed period of 12 months?; or
 - iii. until the LGA decides to cease acting as Council’s agent?
5. Termination of the Service Agreement, whether by Council or by LGCS, would appear to disadvantage residents of the City of Marion by excluding them from the benefits of the state-wide One Card Library System, unless Council was able to negotiate a separate agreement directly with the Supplier, SirsiDynix Pty Ltd.

Please do not hesitate to contact me if you have any further questions at this stage.



25 July 2016

Yours faithfully
MELLOR OLSSON



PHILIP H PAGE
Partner

Direct Email: ppage@mellorolsson.com.au
Phone: 8414 3441 (Adelaide)

CONFIDENTIAL

Office of the President

In reply please quote our reference: ECM 641550 MP/LT

28 July 2016

Mayor Kris Hanna
City of Marion
PO Box 21
OAKLANDS PARK SA 5064

via email: kris.hanna@marion.sa.gov.au

Dear Mayor Hanna

I am writing to follow up on the LGA's letter dated 22 July 2016 advising of the Board's decisions of 21 July 2016 and providing a copy of the LGA value proposition. The LGA has also provided additional information about the estimates savings achieved through LGAP electricity contracts. I trust the City of Marion has found this information useful in giving further consideration to its membership of the LGA.

The comprehensive exercise was overdue and we appreciate your patience.

Guided by our new Strategic Plan, the Board and CEO are committed to setting the Association and the sector on a path of continuous improvement through leading reform, improving governance and benchmarking.

Key deliverables from the LGA's 2016/17 work program are summarised below.

- Enhancing the transparency and accountability of the sector by introducing sector-wide benchmarking. This will involve consultation with councils, government, opposition and other stakeholders to develop a series of comparable data sets to measure performance in various areas of council operations and service delivery.
- Implementing a more streamlined, transparent and evidence-based process for assessing and achieving boundary adjustments and consolidation that will deliver measurable benefits to communities.
- Working with councils to investigate new governance and decision making frameworks to facilitate regional collaboration, planning and shared services. The LGA has established a low cost Advisory Service to assist councils that would like to pilot new regional approaches.
- Engagement of an Employee Relations Specialist to initially focus on investigating and developing a strategy to achieve a better industrial relations framework across the sector.
- Proactively pursuing the recovery of public lighting costs that have been overcharged by SAPN. The LGA is developing a plan including costs and risks to the sector to take this matter to the Australian Energy Regulator.
- Achieving savings for councils in future public lighting cost by developing a business case to maximise the financial and sustainability benefits of transitioning to LED lighting. A specialist Public Lighting Manager has been appointed to prioritise this work.
- Improving local government procurement practices with the view to delivering efficiency gains and risk mitigation options for councils.
- Continuing a public campaign to raise community awareness about the services delivered by councils and the value that is delivered from council rates.
- Completion of the LGA Governance Review, which will include further research and modelling of the population bands used in the LGA subscriptions formula.

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We will be measuring our success in these priority areas through a series of Key Performance Indicators, including the additional value created and the satisfaction of our members. With a sophisticated methodology now in place, we will periodically measure and review the value of LGA membership and we will also be undertaking an annual member satisfaction survey.

Our forward work plan is ambitious and the LGA is committed to providing a leadership role to the sector. We need a united and courageous local government sector to drive its own reform agenda and avoid the poor outcomes for councils and communities that have been delivered through recent state-led reforms in NSW and Victoria. I sincerely hope that the City of Marion will remain with the LGA and work with us and other councils to shape the future of local government.

I understand that Council will be meeting on Monday night to further discuss LGA membership. If you have any questions prior to this meeting, please don't hesitate to contact Matt Pinnegar.

Yours sincerely



Mayor Dave Burgess
LGA President

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Copy to: Tony Lines, Acting Chief Executive Officer, City of Marion.