

**CITY OF MARION
FINANCE AND AUDIT COMMITTEE MEETING
10 OCTOBER 2017**

CONFIDENTIAL REPORT

Originating Officers: Robert Tokley, Team Leader Planning
Craig Clarke, Unit Manager Communications
Sherie Walczak, Unit Manager Risk

General Manager: Abby Dickson, General Manager City Development
Vincent Mifsud, General Manager Corporate Services

Chief Executive Officer: Adrian Skull, CEO

Subject: 73 Cove Road, Marino

Reference No: FAC101017F8.15

If the Finance and Audit Committee so determines, this matter may be considered in confidence under Section 90(2) and 3(a) and (3)(h)(i) of the *Local Government Act 1999* on the grounds that the report contains;

- Information the disclosure of which would involve the unreasonable disclosure of information concerning the person affairs of any person (living or dead);
- Information relating to actual litigation, or litigation that the Finance and Audit Committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.

Adrian Skull
Chief Executive Officer

RECOMMENDATION:

That pursuant to Section 90(2) and 3(a) and (3)(h)(i) of the *Local Government Act 1999*, the Finance and Audit Committee orders that all persons present, with the exception of the following persons: Adrian Skull, Chief Executive Officer; Abby Dickson, General Manager City Development; Vincent Mifsud, General Manager Corporate Services; Mathew Allen, Acting General Manager City Services; Kate McKenzie, Manager Corporate Governance; Robert Tokley, Team Leader Planning; Craig Clarke, Unit Manager Communications; Sherie Walczak, Unit Manager Risk; Deborah Horton, Quality Governance Coordinator be excluded from the meeting as the Finance & Audit Committee receives and considers information relating to 73 Cove Road Marino, upon the basis that it 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 information the disclosure of which would involve the unreasonable disclosure of information concerning the person affairs of any person (living or dead); and information relating to actual litigation, or litigation that the Finance and Audit Committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.

EXECUTIVE SUMMARY

The purpose of this report is to provide an overview of ongoing dealings with various parties relating to a planning application at 73 Cove Road, Marino by Mr/Ms Fleetwood. There are three key matters to bring to the Finance and Audit Committee's attention for consideration and discussion including;

- Current and ongoing planning assessment, including the appeal by the applicants against Council's Development Assessment Panel (DAP) decision to refuse planning consent,
- Public reputational risk and media management,
- Potential liability exposure to the City of Marion resulting in the claim submitted by the applicants.

BACKGROUND

This matter has a long and complex court history which commenced in 2011. It involves two adjoining land owners on a sloping coastal site. Both landowners reside upon their allotments, with one party seeking to divide their allotment and redevelop their residential dwelling. The other landowner has since 2012, opposed all development.

The details provided below relate to a development application to redesign the residential dwelling at 73 Cove Road from January 2017 to date.

DISCUSSION

Mr/Ms Fleetwood development application: 100/2017/408

- In January 2017, the Environment, Resources and Development Court (ERD) considered a previous consent issued by Council's DAP should not have been granted. The Court therefore quashed the consent.
- In March 2017, Mr/Ms Fleetwood lodged a development application (100/2017/408) to alter the existing building, including removal of balcony, demolition of a portion of the dwelling (ground floor rumpus room), re-orienting the roof to slope down east-to-west (previously west-to-east) and providing privacy treatments to all west-facing windows.
- On 6 September 2017 the application was presented to the DAP whom resolved to refuse development plan consent.
- Mr/Ms Fleetwood have lodged an appeal with the Environment, Resources and Development Court (17-201) against the refusal.
- A third party, have sought to join that appeal (Mr/Ms Paor). A hearing is set for 11 October 2017.
- Council will not object to Mr/Ms Paor joining the appeal.
- Mr/Ms Fleetwood have advised that it is likely there will be modifications to the previous plans, which, in due course will be submitted to the Council Assessment Panel (CAP) for consideration.

Section 85 proceedings

- Following the ERD Court decision in January 2017 to quash the most recent application, Mr/Ms Paor sought to amend the orders under Section 85 of the *Development Act 1993* (SA), to include an order for demolition of Mr/Ms Fleetwoods residential dwelling.

- At a hearing in late August 2017, the ERD Court hearing was adjourned to Wednesday 27 September 2017, pending the outcome of the DAP decision.
- Mr/Ms Fleetwood have advised the Court has adjourned the matter pending resolution of the appeal lodged against the DAP refusal.

Public reputation risk

News coverage of the matter has, and will continue to be, sporadic as the case navigates the courts, planning and compensation systems.

Since Council's DAP refused planning consent in September 2017, media coverage has extended mainly to 5AA talkback, the Sunday Mail and The Advertiser by the same journalist. Social media discussion has been mainly limited to 5AA's sites.

As a result of the media coverage thus far Council has suffered reputational damage and will continue to do so until matters are fully resolved.

From a journalist (ergo newsworthy) perspective, the 'story' is significant in many ways given the implications to all parties involved including (but not limited to);

- Conflict and exploiting emotive interaction between neighbours,
- Government and development 'bureaucracy' – misinformation and misconceptions regarding planning approvals and technicalities of complex legislation,
- Legal consequences of court interpretation of matters to property owners and development legislation, potential property discussion, costs involved (monetary, emotive, etc).

Media management

The 'story' is complex to manage in that the newsworthy elements are not in Council's control such as multiple court cases initiated by third parties and compensation claims embargoing information. In addition, once misinformation has been published damage has been done.

Council's strategy to communicating with the media on this matter has (and will continue to) included that;

- All media requests are managed (monitoring and notification systems) by the Communications Unit with input/collaboration with Executive Leadership Team and key stakeholders from across the organisation
- Mayor Hanna spokesperson on behalf of Council
- All media statements issued as being factual and updated as/when needed
- Council abides within legislative parameters and codes of conduct (for example pending compensation claims limits the information that can be made public)
- Inaccuracies published are corrected in writing – generally via the same mode of communication.

The strategy above is being closely monitored and adjusted as required to proactively manage the issue.

Liability exposure

The City of Marion is provided with comprehensive public liability and professional indemnity cover by the Local Government Association Mutual Liability Scheme (LGAMLS). LGAMLS provides the

most extensive public liability protection in Australia, supported by the Treasurers Indemnity, which attracts an excess of \$3,750 for each claim.

The claim lodged by Mr/Ms Fleetwood is an insurable risk and has been submitted to the LGAMLS who have appointed legal counsel. The claim, at present, is unquantifiable until the matter has been resolved in the ERD Court.

RECOMMENDATIONS:

DUE DATES

That the Finance and Audit Committee:

- 1. Note the report in relation to the matter.**

10 October 17