

**CITY OF MARION  
GENERAL COUNCIL MEETING  
12 DECEMBER 2017**

**CONFIDENTIAL REPORT**

**Originating Officer:** James O'Hanlon, Unit Manager Sport & Recreation  
**Manager:** Carol Hampton, Manager City Property  
**General Manager:** Abby Dickson, General Manager City Development  
**Subject:** Interim Management for Edwardstown Soldiers  
Memorial Recreation Grounds  
**Report Reference:** GC121217F01

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



**Adrian Skull**  
Chief Executive Officer

**RECOMMENDATION:**

That pursuant to Section 90(2) and (3)(b) 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; Vincent Mifsud, General Manager Corporate Governance; Abby Dickson, General Manager City Development; Tony Lines, General Manager City Services; Kate McKenzie, Manager Corporate Governance; Craig Clarke, Unit Manager Communications; Carol Hampton, Manager City Property; James O'Hanlon, Unit Manager Sport & Recreation Facilities and Victoria Moritz, Governance Officer be excluded from the meeting as the Council receives and considers information relating to Edwardstown Oval Interim Management Model, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to legal advice and commercial information the disclosure of which could prejudice the commercial position of Council and would on balance be contrary to the public interest.

## REPORT OBJECTIVE & EXECUTIVE SUMMARY

The purpose of this report is to update Council on the proposed interim management arrangements for the Edwardstown Soldiers Memorial Recreation Grounds (ESMRG) in lieu of there currently being no governing body. At the Annual General Meeting (AGM) of the Edwardstown Soldiers Memorial Community Club (ESMCC) held on 27 November 2017 they failed to form a Board.

Legal advice has been obtained on a way forward to manage the facility until a new Board can be established. As the current ESMCC lease is in holding over, notice can be provided to terminate the lease with ESMCC, enabling Council to enter into agreements with the affiliates to enable them to continue to occupy the site.

Administration over the coming months will seek to facilitate the reformation of a skills based Board through proactive promotion to the local community and relevant stakeholders.

### RECOMMENDATION

### DUE DATES

#### That Council:

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| 1. | Notes the report  | 12 December 2017 |
| 2. | Authorises Administration to commence the process involved in terminating the lease with the Edwardstown Soldiers Memorial Community Club Inc.  | 12 December 2017 |
| 3. | Authorises Administration to enter into licenses with the affiliate clubs of the Edwardstown Soldiers Memorial Recreation Grounds.  | 12 December 2017 |
| 4. | Authorises Administration to undertake the operational management duties of the Edwardstown Soldiers Memorial Recreation Grounds left vacant by the Edwardstown Soldiers Memorial Community Club Inc. not having a board.   | 12 December 2017 |
| 5. | In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(b) and (h) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until resolutions two, three and four above are completed. Unless revoked prior, this confidentiality order will be reviewed at the General Council meeting in December 2018. | December 2018    |

## BACKGROUND

In November 2016 at the AGM for the ESMCC a new Board was elected with a new endorsed constitution that was established to assist the ESMCC in relation to effective governance surrounding the upcoming redevelopment of the ESMRG. Assistance was

provided by Administration to form this Board, to seek nominations to meet the minimum criteria required to form a Board under the new constitution, and also to ensure the aim to establish a skills based board was achieved with relevant skillsets to support effective governance.

Throughout the twelve months leading up to the 2017 AGM, the ESMCC and other stakeholders met on a regular basis with Council staff in relation to the design of the building. It also met regularly with Council staff and established suitable financial and management model for the site. Engagement has occurred with affiliates regarding the new management model and there is a good level of acceptance of the new model.

Over the last 12 months two Board members resigned leaving two vacant positions (of the 8 person Board) for most of the 12 months. Attempts were made to secure additional nominations for these vacated positions however this was unsuccessful leaving the Board to operate for the majority of the 12 months as a six member board.

At the 2017 ESMCC AGM held on 27 November 2017 resignation letters were received from the remaining six board members. Calls for nominations were undertaken with no nominations received leaving the ESMCC with the inability to form a Board as per their Constitutions rules.

It was noted in the Chairperson's report that the situation was not due to any lack of confidence in the project but brought about by a change of circumstances for the members which would prevent them from continuing on and fulfilling the role. These ranged from changes in personal circumstances and obligations to new work commitments.

During General Business the Chairperson announced that he and the Treasurer/Public Officer would facilitate a handover with Council who they presumed would now oversee the management of the facility and associated operations left vacant by the Board's dissolution.

## DISCUSSION

At the General Council meeting on 28 November 2017 (GC281117F05) Council was advised that the ESMCC failed to appoint a board and it was resolved that Council:

*"Notes that on 27 November 2017 the Edwardstown Oval Board did not reform at their AGM and that a report will be brought to Council on 12 December 2017 to account for interim arrangements until a new board forms".*

Legal advice has been sought on this matter, to understand the status of the board and to enable the affiliates to continue to occupy the facility. The management of the lease and continued occupancy of the affiliates can be easily managed. The issue of no board and the position of the Public Officer is more complex.

The current lease with ESMCC is in holding over so notice can be provided to terminate the lease. This then enables Council to enter into agreements with the affiliates to continue to operate from the site and for Council to manage the operations of the site including bookings, invoicing and operational matters made vacant by the ESMCC dissolution.

As indicated the Chairperson and Treasurer (also holding the position of Public Officer) have agreed to facilitate arrangements with Council. The following approach is proposed:

- Council will write to ESMCC providing 30 days' notice to terminate their lease
- ESMCC Public Officer will advise the affiliates that the lease is being terminated and Council will enter into arrangements directly with them to enable them to continue to occupy the facility. At the same time administration staff will contact the affiliates to advise them of the situation and process.
- Council will write to the affiliates providing a letter of offer which will set out the terms and conditions
- Administration will have all utilities and outgoings redirected from ESMCC to Council

A meeting will be arranged with the Chairperson, Treasurer / Public Officer and administration staff to work through any other operational matters eg; bookings, risk registers and any outstanding business.

The arrangements and subsequent licenses with the affiliates will ensure that Council has the option once a new Board is formed and the building completed to establish a lease over the whole site with the new Board.

This situation has highlighted that provision should be made in the Constitution to enable Council to step in should a committee fail to establish a board. This advice will be provided to the new Board when it is formed.

Also, it is proposed to make some minor changes to the new lease template in the event of future Board dissolutions or incapacities to support business continuity.

The Secretary of the ESMCC also holds the position of Public Officer for the association however he has clearly indicated his desire to vacate this role as soon as possible. Once a Public Officer notifies the Corporate Affairs Commission (CAC) that they have vacated the position the Association has 30 days to appoint a Public Officer, if this does not occur the Association will need to wind up and fines could be incurred if they do not take these steps. The ESMCC Constitution identifies that only a member of the Association can hold the position of Public Officer. Discussions with the Secretary indicates that no other member is likely to take on this role either.

Should the Association be required to wind up the terms of the Constitution take effect in relation to the distribution of surplus assets. The Associations constitution states:

*"If after winding up of the club that there are "surplus assets" shall be distributed to any organization which has its primary objective of benefitting war veterans or participants in organized sport or recreational activities in the City of Marion and has rules which prohibit the distribution of assets and income to its members"*

This can be interpreted to reference any of the existing sporting clubs including RSL's within the City of Marion which contain this non distribution to members clause, this would exclude the City of Marion acting as 'caretaker' of the surplus assets to be distributed. This does not enable assets to be transferred to Council.

The aim would be for the Association not to wind up and to have a new board appointed within the next six months. At the time of writing this report discussions were continuing with the Chairperson, Treasurer and Council's lawyers to work through how this can be achieved as well as the timing.

Council has agreed to fund a Facility Manager (GC080817R05) to be recruited in March 2018 it is proposed that Council will employ this person, the period is yet to be determined. It is anticipated a new board would be incorporated and established and consideration to be given to having the new Association employing the Facility Manager directly.

The next steps are to clarify the position of the Public Officer and the Association and consider the timing and facilitation of establishing a new skills based board, through promoting to the local community and relevant stakeholders.

## **CONCLUSION**

The information contained within this report allows for a continuation of operations and management of the facilities for the Edwardstown Soldiers Memorial Recreation Grounds affiliates.

An update on the position of the Public Officer and impacts on the Association and potential winding up and treatment of their obligations and assets is provided.