

His Worship the Mayor
Councillors
CITY OF MARION

NOTICE OF GENERAL COUNCIL MEETING

Council Chamber, Council Administration Centre
245 Sturt Road, Sturt

Tuesday, 27 April 2021 at 06:30 PM

The CEO hereby gives Notice pursuant to the provisions under Section 83 of the Local Government Act 1999 that a General Council meeting will be held.

A copy of the Agenda for this meeting is attached in accordance with Section 83 of the Act.

Meetings of the Council are open to the public and interested members of this community are welcome to attend. Access to the Council Chamber is via the main entrance to the Administration Centre on Sturt Road, Sturt.



Sorana Dinmore
Acting Chief Executive Officer



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OPEN MEETING

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kurna people, the traditional custodians of this land and pay our respects to their elders past and present.

DISCLOSURE

All persons in attendance are advised that the audio of this General Council meeting will be recorded and will be made available on the City of Marion website.

ELECTED MEMBER'S DECLARATION OF INTEREST (if any)

CONFIRMATION OF MINUTES

Confirmation of the minutes for the General Council Meeting held on 23 March 2021 and Special General Council Meeting 8 April 2021

Originating Officer Governance Officer - Angela Porter

Corporate Manager Manager Corporate Governance - Kate McKenzie

Report Reference: GC210427R01

RECOMMENDATION:

That the minutes of the General Council Meeting held on 23 March 2021 and Special General Council Meeting held on 8 April 2021 be taken as read and confirmed.

ATTACHMENTS:

#	Attachment
1	GC210323 - Final Minutes
2	SGC210408 - Final Minutes

MINUTES OF THE GC210323 - GENERAL COUNCIL MEETING

Tuesday, 23 March 2021 at 06:30 PM

Council Administration Centre, 245 Sturt Road, Sturt



PRESENT

His Worship the Mayor Kris Hanna

Councillor - Ian Crossland

Councillor - Maggie Duncan

Councillor - Luke Hutchinson

Councillor - Bruce Hull

Councillor - Kendra Clancy

Councillor - Joseph Masika

Councillor - Tim Gard

Councillor - Matthew Shilling

Councillor - Raelene Telfer

Councillor - Nathan Prior

Councillor - Jason Veliskou

Councillor - Sasha Mason

In Attendance

Chief Executive Officer - Adrian Skull (until 6:34pm)

General Manager Corporate Services – Sorana Dinmore (Acting Chief Executive Officer from 6:34pm)

General Manager City Services - Tony Lines

General Manager City Development - Ilia Houridis

Manager Corporate Governance - Kate McKenzie

Governance Administration Officer - Angela Porter

OPEN MEETING

The Mayor opened the meeting at 06:30 PM

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kaurna people, the traditional custodians of this land and pay our respects to their elders past and present.

DISCLOSURE

All persons in attendance are advised that the audio of this General Council meeting will be recorded and will be made available on the City of Marion website.

ELECTED MEMBER'S DECLARATION OF INTEREST (if any)

The Chair asked if any Member wished to disclose an interest in relation to any item being considered at the meeting.

Nil interests were disclosed.

CONFIRMATION OF MINUTES**Confirmation of the minutes for the General Council Meeting held on 9 March 2021****Report Reference:** GC210321R01**Moved Councillor – Joseph Masika****Seconded Councillor – Sasha Mason**

That the minutes of the General Council Meeting held on 9 March 2021 be taken as read and confirmed.

Carried Unanimously**COMMUNICATIONS****Moved Councillor – Tim Gard****Seconded Councillor – Maggie Duncan**

That the Communications Reports be moved en bloc.

Carried Unanimously**Mayoral Communication Report****Name of Elected Member:** Mayor - Kris Hanna**Report Reference:** GC210323R02**Details**

Date	Event	Comments
22/2/21	Marion Mallwalkers 20th Birthday Celebrations	
22/2/21	Meeting with YMCA	
23/2/21	Urgent citizenship ceremony	
26/2/21	Painting Auction for Kangaroo Island Bushfire relief	Acted as MC
27/2/21	Meeting with Telugu Association of SA President	
27/2/21	BMX/Soccer Project Ground-breaking	
3/3/21	Southern Business Connections Breakfast	
5/3/21	Meeting with Mayor of Mitcham	
6/3/21	Funeral service for Irene Whennan, former Councillor	

8/3/21	Adelaide Cup Day at Morphettville Race Course	
11/3/21	Club Marion Committee meeting	Council liaison
13/3/21	South Road Cricket club- Whites Night	

Moved Councillor – Tim Gard**Seconded Councillor – Maggie Duncan**

That Council receives and notes the Mayoral Communication report.

Carried Unanimously**Deputy Mayor Communication Report****Name of Elected Member:** Councillor - Nathan Prior**Report Reference:** GC210323R03**Details**

Date	Event	Comments
30/1/21	EM Planning Day	
27/2/21	Launch of Sports in Reserves Program	
27/2/21	BMX/Soccer event	
8/3/21	Adelaide Cup Day at Morphettville Racecourse	

Moved Councillor – Tim Gard**Seconded Councillor – Maggie Duncan**

That Council receives and notes the Deputy Mayor Communication report.

Carried Unanimously**Elected Member Communication Report****Name of Elected Member:** Councillor – Raelene Telfer**Details**

Date	Event	Comments
25/2/21	Coast FM	Presented journal news with Dave Hearn
27/2/21	BMX/Soccer Ground breaking	Attended event
1/3/21	Plan SA	Using SAPPA
1/3/21	Tarnham Rd Reserve	Report feedback on site

2/3/21	Planning & Development	Committee meeting
5/3/21	International Women's Day	Marion View Club celebration
9/3/21	Warraparinga Ward	Briefing with staff via zoom
9/3/21	PDI Refresher Training	Led by Norman Waterhouse
12/3/21	International Women's Day	Cove Panel of Speakers attended
17/3/21	Seaview High School	Governing Council AGM
20/3/21	Mitchell Pk Netball Club	Awards night, plus presented Mayor's donation
21/3/21	Citizenship Ceremony	Attended

CEO and Executive Communications Report

Report Reference: GC210323R04

Details

Date	Activity	Attended By
24 February 2021	Zoom meeting Peter Auhl (EQI Consulting) Sorana Dinmore - CS Team Day presentation planning	Sorana Dinmore
25 February 2021	Event Local Transformation Amidst Global Uncertainty SA KPMG Adelaide	Sorana Dinmore
25 February 2021	Meeting Adam Thompson (Thompson Organisations) Sorana Dinmore - CS Team Day facilitation planning	Sorana Dinmore
27 February 2021	Event Sam Willoughby BMX and Southern Soccer Facility Sod turning	Adrian Skull Tony Lines Ilia Houridis
1 March 2021	Meeting Planning & Development Briefing - Mayors & CEOs	Ilia Houridis
1 March 2021	1st Coaching Session - Judith Sellick (Sellick Consulting) Sorana Dinmore	Sorana Dinmore
2 March 2021	CoM GigCity Briefing - DIS Sabrenet CoM	Sorana Dinmore
4 March 2021	Meeting Adrian Skull, Ray Barnwell, John Stewart, Davin Lambert and Natasha Grigg (LGFA)	Adrian Skull

Minutes of the General Council Meeting held on 23 March 2021

4 March 2021	Meeting Adrian Skull, Iliia Houridis, Sascha Frost (City of Marion), Shaun Skipper and Eddie Chilcoyt (Vicinity Centres)	Adrian Skull Iliia Houridis
4 March 2021	Meeting AWU Enterprise Agreement	Tony Lines
4 March 2021	Meeting Cross Council Collaboration - Asset Management with Cities of Marion, Charles Sturt and Pt Adelaide Enfield	Tony Lines
4 March 2021	Meeting Tonsley Project Steering Group	Tony Lines
4 March 2021	Meeting - CoM Satalyst	Sorana Dinmore
5 March 2021	Meeting Western Adelaide Consultative Group	Tony Lines
5 March 2021	Meeting Southern Cultural Immersion and PwC re LKCC	Tony Lines
5 March 2021	Meeting Adrian Skull and Mat Kesting (Adelaide Film Festival)	Adrian Skull
5 March 2021	Meeting Corey Wingard MP and Adrian Skull	Adrian Skull
5 March 2021	LG Professionals SA General Managers/Directors Network Forum - Fatigue: Managing ourselves and others	Sorana Dinmore
5 March 2021	Zoom meeting - UoA and City of Marion Internship Discussion	Sorana Dinmore
9 March 2021	Payroll & HRIS - Presentation by Aurion (Kick Off Slides) CoM Aurion (Duncan Cross	Sorana Dinmore
10 March 2021	Zoom event: Nathan Petrus of LGA about cyber security collaboration opportunities across the sector	Sorana Dinmore
10 March 2021	Enrite (Darren Russ) CoM Integration Meeting	Sorana Dinmore
11 March 2021	Meeting Lunch with Shadow Minister for Cities and Urban Infrastructure re urban development and City Deals in the leadup to the next federal election	Iliia Houridis
12 March 2021	Meeting Adrian Skull and Steve Murray MP	Adrian Skull

12 March 2021	Meeting Adrian Skull and Matt Pinnegar (LGA)	Adrian Skull
12 March 2021	Meeting Adrian Skull and Jayne Stinson MP	Adrian Skull
12 March 2021	Cross Council Collaborative ICT Program Board Meeting - City Of Marion City of Port Adelaide Enfield City of Charles Sturt	Sorana Dinmore
12 March 2021	Meeting Adam Thompson (Thompson Organisations) Sorana Dinmore - CS Team Day facilitation planning (final)	Sorana Dinmore
15 March 2021	Meeting Southern Cultural Immersion and PwC re LKCC	Tony Lines
15 March 2021	Meeting City of Salisbury & City of Marion re Animal Pound	Ilia Houridis
15 March 2021	SMRF JV Committee Meeting at SRWRA, Seaford Heights	Sorana Dinmore
16 March 2021	Corporate Services Team Day 2 x external guests (1 presenter Peter Auhl and 1 facilitator Adam Thompson)	Sorana Dinmore
17 March 2021	Meeting Housing Renewal Australia re Oaklands Green Recycle Water Delivery	Tony Lines
18 March 2021	Meeting AWU Enterprise Agreement	Tony Lines
18 March 2021	Meeting: Ryan McMahon (City of Tea Tree Gully) Sorana Dinmore (City of Marion)	Sorana Dinmore
22 March 2021	360 Debrief Session - Judith Sellick (Sellick Consulting) Sorana Dinmore	Sorana Dinmore

Moved Councillor – Tim Gard

Seconded Councillor – Maggie Duncan

That Council receives and notes the CEO and Executive Communications report.

Carried Unanimously

ADJOURNED ITEMS - Nil

DEPUTATIONS - Nil

PETITIONS - Nil

COMMITTEE RECOMMENDATIONS**Moved Councillor – Sasha Mason****Seconded Councillor – Joseph Masika**

That the following reports be moved en bloc:

- Confirmation of the minutes for the Finance and Audit Committee Meeting held on 23 February 2021
- Confirmation of the minutes for the Planning and Development Committee Meeting held on 2 March 2021

Carried Unanimously**Confirmation of the minutes for the Finance and Audit Committee Meeting held on 23 February 2021****Report Reference:** GC210309R05**Moved Councillor – Sasha Mason****Seconded Councillor – Joseph Masika**

That Council:

1. Receives and notes the minutes of the Finance and Audit Committee meeting held on 23 February 2021.
2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Finance and Audit Committee.

Carried Unanimously**Confirmation of the minutes for the Planning & Development Committee meeting held on 2 March 2021****Report Reference:** GC210323R06**Moved Councillor – Sasha Mason****Seconded Councillor – Joseph Masika**

That Council:

1. Receives and notes the minutes of the Planning & Development Committee meeting held on 2 March 2021.
2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Planning & Development Committee.

Carried Unanimously

Procedural Motion

The Mayor sought and was granted leave of the meeting to consider a Motion Without Notice next on the agenda.

MOTION WITHOUT NOTICE

Moved Councillor – Jason Veliskou

Seconded Councillor – Tim Gard

That Council thank Mr Skull for his contribution and service for the past 5 and a half years to the community and the City of Marion.

Carried Unanimously

CONFIDENTIAL ITEMS

Moved Councillor – Maggie Duncan

Seconded Councillor – Raelene Telfer

That the Cover Reports for the Confirmation of the confidential minutes for the Finance and Audit Committee meeting held on 23 February 2021 and Internal Audit Contract be moved en bloc.

Carried Unanimously

Cover Report - Confirmation of the confidential minutes for the Finance and Audit Committee meeting held on 23 February 2021

Report Reference: GC210323F01

Moved Councillor – Maggie Duncan

Seconded Councillor – Raelene Telfer

That pursuant to Section 90(2) and (3)(a) and (d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Services, General Manager Corporate Services, General Manager City Development, Manager Corporate Governance, Unit Manager Governance and Council Support, Unit Manager Communications and Governance Administration Officer be excluded from the meeting as the Council receives and considers information relating to the Confirmation of the confidential minutes of the Finance and Audit Committee meeting held on 23 February 2021, 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 personnel information and commercial information relating to the management of a contract.

Carried Unanimously

6.35pm the meeting went into confidence

Moved Councillor – Maggie Duncan**Seconded Councillor – Raelene Telfer**

That Council:

1. Receives and notes the confidential minutes from the Finance and Audit Committee meeting held on 23 February 2021.
2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Finance and Audit Committee.
3. In accordance with Section 91(7) and (9) of the Local Government Act 1999, orders that the attachments to this report having been considered in confidence under Section 90 (2) and (3) and (d)(i) and (ii) 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 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 2021.

Carried Unanimously

6.36pm the meeting came out of confidence

Cover Report - Internal Audit Contract**Report Reference:** GC210323F02**Moved Councillor – Maggie Duncan****Seconded Councillor – Raelene Telfer**

That pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Acting Unit Manager Governance and Council Support, Unit Manager Communications, Governance Administration Officer, be excluded from the meeting as the Council receives and considers information relating to the Internal Audit Contract, 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 the management of the contract.

Carried Unanimously

6.35pm the meeting went into confidence

Moved Councillor – Maggie Duncan**Seconded Councillor – Raelene Telfer**

In accordance with Section 91(7) and (9) of the Local Government Act 1999, the Council orders that this report, and any minutes arising from this report, having been considered in confidence under Section 90 (2) and (3)(b)(i)(ii) 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 for a period of 12 months from the date of this meeting or until the new contract has been executed. This confidentiality order will be reviewed at the General Council Meeting in December 2021.

Carried Unanimously

6.36pm the meeting came out of confidence

Cover Report - Confidential Questions Taken on Notice Register

Report Reference: GC210323F03

Moved Councillor – Jason Veliskou

Seconded Councillor – Sasha Mason

That pursuant to Section 90(2) and (3)(d) (i) and (ii) and (g) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Services, General Manager Corporate Services, General Manager City Development, Manager Corporate Governance, Unit Manager Governance and Council Support, Unit Manager Communications, Project Director Urban Renewal and Governance Administration Officer be excluded from the meeting as the Council receives and considers information relating to the Confidential Questions Taken on Notice Register, 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 agenda items held in confidence.

Carried Unanimously

6.40pm the meeting went into confidence

Moved Councillor – Matthew Shilling

Seconded Councillor - Joseph Masika

That Council:

1. Notes the report 'Confidential Questions Taken on Notice Register'.
2. In accordance with Section 91(7) and (9) of the Local Government Act 1999, orders that the attachments to this report having been considered in confidence under Section 90 (2) and (3) (d)(i) and (ii) and (g) 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 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 2021.

Carried

6.45pm the meeting came out of confidence

Cover Report - Marion Cultural Centre Plaza**Report Reference:** GC210323F04**Moved Councillor – Tim Gard****Seconded Councillor – Ian Crossland**

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, City Activation Senior Advisor, Manager Finance, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Administration Officer, be excluded from the meeting as the Council receives and considers information relating to Marion Cultural Centre Plaza, 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 confidential commercial information including information regarding professional services for design development and financial figures.

Carried Unanimously

6.46pm the meeting went into confidence

Moved Councillor – Ian Crossland**Seconded Councillor – Nathan Prior**

That this item be deferred until the General Council Meeting to be held on 27 April 2021

Carried Unanimously

7.01pm the meeting came out of confidence

Cover Report - Edwardstown Soldiers Memorial Recreation Ground (ESMRG) 100 Percent Profit Share Model**Report Reference:** GC210323F05**Moved Councillor – Joseph Masika****Seconded Councillor – Jason Veliskou**

That pursuant to Section 90(2) and (3)(b)(i) and (ii) and (3)(g) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Property, Unit Manager Sport and Recreational Community Facilities, Unit Manager Land & Property, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating

to Edwardstown Soldiers Memorial Recreation Ground 100% Profit Share 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 a profit share model and a current confidential order is in place over previous reports, attachments and minutes to which this report relates.

Carried Unanimously

7.02pm the meeting went into confidence

7.24pm Cr Veliskou left the meeting

7.27pm Cr Veliskou re-entered the meeting

Moved Councillor – Joseph Masika

Seconded Councillor – Sasha Mason

In accordance with Section 91(7) and (9) of the Local Government Act 1999, orders that the report, attachments and any minutes arising from this report having been considered in confidence under Section 90 (2) and (3) (b)(i) and (ii) and (g) 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 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 2021.

Carried Unanimously

7.35pm the meeting came out of confidence

CORPORATE REPORTS FOR DECISION

Tree Management

Report Reference: GC210323R07

Moved Councillor – Ian Crossland

Seconded Councillor – Matthew Shilling

That Council:

1. Considers, as part of the 2021/22 Annual Business Planning process, increasing the annual street tree planting program from 3,000 to 3,500 trees per annum with an associated increase in funding of \$176,500 (indexed) per annum.
2. Adopts the 7 year tree planting program, based on planting 3,500 trees per annum as detailed in Attachment 1.
3. Considers, as part of the 2021/22 Annual Business Planning process, funding of up to \$370,000 to purchase two additional 9,000 L water tankers, which will enable weekly

watering to be implemented in years one and two of the three year watering program, instead of the current ten day watering program. This will significantly decrease tree mortality.

4. Considers, as part of the 2021/22 Annual Business Planning process, the funding and recruitment in 2021/22 of an additional ongoing 1FTE water tanker operator at a cost of \$76,281 per annum (including on costs); and a casual water tanker operator for the 30 week watering program at a cost of \$42,980 per annum.
5. Considers, as part of the 2021/22 Annual Business Planning process, the recruitment of a second qualified Arborist at a cost of \$103,000 per annum (including on costs) offset by annual consultant fee and casual labours savings (\$41,000 p.a.) and a once off reserve tree audit cost saving (\$41,000).
6. Considers, as part of the 2021/22 Annual Business Planning process, increasing the tree escaping budget by \$45,000 per annum (indexed) to increase the size of 400 trees to be planted in this program from approximately 2m to 3m tall thus reducing the risk of vandalism and providing greater instant amenity value.
7. Considers, as part of the 2021/22 Annual Business Planning process, an allocation of \$20,000 to develop and pilot a regulated and significant tree incentive fund, with a report back to be provided to Council in May 2021 with specific details of the proposed fund.
8. Supports the development of a formalised tree maintenance volunteer program.
9. Notes Administration will investigate opportunities to develop a pilot streetscape watering program.

Carried Unanimously

LGA Submission - Behavioural Management Framework

Report Reference: GC210323R08

Meeting Suspension

Moved Councillor – Ian Crossland

Seconded Councillor – Tim Gard

That formal meeting procedures be suspended to enable discussion on the item.

Carried Unanimously

7.53pm formal meeting procedures suspended

8.00pm formal meeting procedures resumed

Moved Councillor – Luke Hutchinson**Seconded Councillor – Jason Veliskou**

That Council:

1. Endorses the submission to the Local Government Association (LGA) provided in Attachment2 regarding a response to the LGA Behavioural Management Framework, subject to the following changes:
 - a. Page 81 remove the first dot point relating to section 6

Amendment**Moved Councillor – Ian Crossland****Seconded Councillor - Raelene Telfer**

That Council:

1. Endorses the submission to the Local Government Association (LGA) provided in Attachment2 regarding a response to the LGA Behavioural Management Framework, subject to the following changes:
 - Page 81 - remove the first dot point relating to section 6 (If a council member is convicted of an offence which occurs during the election process, they should no longer be able to serve on council.)
 - Page 79 - remove second and third dot points relating to section 1 (Must ensure that their use of social media and other forms of communication complies with the code and must only publish material that is factually correct.
And Must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government.)

The amendment became the motion was Carried
The amended motion was Carried

Glandore Oval Cricket Training Facilities**Report Reference:** GC201208R09**Moved Councillor – Joseph Masika****Seconded Councillor – Sasha Mason**

That Council:

1. Acknowledges the \$160,000 of funding provided by Nicolle Flint MP, Member for Boothby and the \$170,000 commitment from Council in the 2020/2021 budget.

2. Approves the development of a new cricket training facility at Glandore Oval and removal of the Rose Garden to create a new open space lawn area.
3. Approves the relocation of the RAAF Officer Ian Stoeckel Memorial to the Edwardstown Soldiers Memorial Recreation Ground in consultation with the Plympton Glenelg RSL.
4. Endorses additional funding of up to \$20,000 to complete the project, to be funded from savings identified in the third budget review in 2020/21.
5. Approves the process to inform the community of the project.

Carried Unanimously**Review of Public Open Space Irrigation****Report Reference:** GC210323R10**Moved Councillor – Matthew Shilling****Seconded Councillor – Ian Crossland**

That Council:

1. Notes the review of the Irrigation Management Plan.
2. Resolves to maintain the irrigation score of 12 and/or a public value score of 4.

Carried Unanimously**CORPORATE REPORTS FOR INFORMATION/NOTING****Moved Councillor – Kendra Clancy****Seconded Councillor – Matthew Shilling**

That the following items be moved en bloc:

- Museum/ Exhibition Space – Community Consultation Report
- Work Health & Safety – Monthly Performance Report – February 2021
- Questions Taken on Notice Register
- Finance Report – February 2021

Carried Unanimously**Museum/Exhibition Space - Community Consultation Report****Report Reference:** GC210323R11

Moved Councillor – Kendra Clancy**Seconded Councillor – Matthew Shilling**

That Council

1. Notes the report.

Carried Unanimously**Work Health & Safety - Monthly Performance Report - February 2021****Report Reference:** GC210323R12**Moved Councillor – Kendra Clancy****Seconded Councillor – Matthew Shilling**

That Council:

1. Notes the report and statistical data contained therein.

Carried Unanimously**Questions Taken on Notice Register****Report Reference:** GC210323R13**Moved Councillor – Kendra Clancy****Seconded Councillor – Matthew Shilling**

That Council:

1. Notes the report 'Questions Taken on Notice Register'.

Carried Unanimously**Finance Report - February 2021****Report Reference:** GC210323R14**Moved Councillor – Kendra Clancy****Seconded Councillor – Matthew Shilling**

That Council:

1. Receives the report “Finance Report – February 2021”

Carried Unanimously

WORKSHOP / PRESENTATION ITEMS - Nil**MOTIONS WITH NOTICE****ALGA 2021 Notice of Motion - Minimum Requirements for Home Carports and Garages****Report Reference:** GC210323M01**Moved Councillor – Bruce Hull****Seconded Councillor – Sasha Mason**

That Council:

1. Submits the following motion for consideration at the ALGA 2021 National General Assembly of Local Government to be held on 20-23 June 2021:

That the National General Assembly Lobby for a change to the Australian Standards to make the minimum width of a home car port or garage increased from 3 metres to 3.5 metres and a minimum length of 6 metres, so as to ensure that a reasonable size family car can have both the driver's and passenger's side doors open whilst garaged.

2. On submitting the Notices of Motions to the Australian Local Government Association, the Chief Executive Officer be authorised to amend the wording (without changing the meaning or purpose of the motion) if required.

Carried**Warracowie Way and Plaza - Submission re Historical Aspects****Report Reference:** GC210323M02**Moved Councillor – Raelene Telfer****Seconded Councillor – Luke Hutchinson**

1. That the heritage art installations of the three wells in the pavement on the forecourt of the Marion Cultural Centre remain near the site of the original Warracowie homestead, now the site of the Marion Cultural Centre.

Carried Unanimously**QUESTIONS WITH NOTICE****Waste from City of Marion skips and bins****Elected Member:** Councillor Bruce Hull**Report Reference:** GC210323Q01

Question:

What tonnage of putrescible and recyclables are being incinerated from Marion Council skips and bins that are under the care and control of the City of Marion, be it in house or contracted?

Supporting Information:

Nil.

Response Received From:

Senior Procurement Specialist - Colin Heath

Staff Comments:

The City of Marion currently has a bulk bin service provided by Cleanaway. Bin sizes range from 660 litres to 3000 litres (compared to the standard 140/240 litre kerbside recycling bin sizes) and collect various waste streams (general waste, co-mingled recycling, and cardboard recycling).

The City of Marion currently has 10 co-mingled recycling bulk bins collecting recycling product from the Tonsley residential precinct (6 bins) and Council operated buildings (4 bins).

Cleanaway have advised:

1. the City of Marion's bulk bin comingled recycling is disposed as "dry waste" at SUEZ Resource-Co. The dry waste process is summarised below:
 - SUEZ-Resource-Co sorts materials for higher use (eg. Metals, cardboard etc) and the remaining is converted into Processed Engineered Fuel (PEF)
 - Processed Engineered Fuel (PEF) is used as an alternate to fossil fuels at Adelaide Brighton Cement (ABC) and burnt
2. SUEZ-ResourceCo's capability to receive the material is quite unstable based on the operational requirements of ABC and from time to time, SUEZ-ResourceCo are unable to receive the material. This can change daily and where Cleanaway is unable to dispose of the material at SUEZ-ResourceCo, the material is disposed at the Cleanaway Wingfield Transfer Station for processing, with residual material going to landfill. Unfortunately at this time Cleanaway is unable to dispose of Bulk Comingled Recycling at a dedicated MRF (ie. Visy) as they only process loads which are only from residential sources.

We estimate 20-23 tonnes of co-mingled recycling material is collected annually through these bins (based on estimated weights per collection), and processed as either PEF or sent to landfill in accordance with Cleanaway's advice above.

Cardboard Recycling is treated as a separate stream and disposed at OPAL (Previously Orora) for recycling.

General Waste is disposed at a landfill site.

QUESTIONS WITHOUT NOTICE - Nil**OTHER BUSINESS - Nil****MEETING CLOSURE**

Council shall conclude on or before 9.00pm unless there is a specific motion adopted at the meeting to continue beyond that time.

MEETING CLOSURE - Meeting Declared Closed at 08:48 PM

CONFIRMED THIS 27TH DAY OF APRIL 2021

.....

CHAIRPERSON

MINUTES OF THE SGC210408 - SPECIAL GENERAL COUNCIL MEETING

Thursday, 08 April 2021 at 09:30 PM 262 Sturt Road, Sturt



PRESENT

His Worship the Mayor Kris Hanna

Councillor - Ian Crossland
Councillor - Maggie Duncan
Councillor - Luke Hutchinson
Councillor - Bruce Hull
Councillor - Kendra Clancy
Councillor - Joseph Masika

Councillor - Tim Gard
Councillor - Matthew Shilling
Councillor - Raelene Telfer
Councillor - Nathan Prior
Councillor - Jason Veliskou
Councillor - Sasha Mason

In Attendance

Management was not in attendance.

OPEN MEETING

The Mayor opened the meeting at 09:49 PM

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kaurna people, the traditional custodians of this land and pay our respects to their elders past and present.

DISCLOSURE

All persons in attendance are advised that the audio of this General Council meeting will be recorded and will be made available on the City of Marion website.

ELECTED MEMBER'S DECLARATION OF INTEREST - Nil**CONFIRMATION OF MINUTES**

Confirmation of the minutes for the Special General Council Meeting held on 23 March 2021

Report Reference: SGC210408R01

Moved Councillor Masika

Seconded Councillor Gard

That the minutes of the Special General Council Meeting held on 23 March 2021 be taken as read and confirmed.

Carried Unanimously

COMMITTEE RECOMMENDATIONS - Nil

CONFIDENTIAL ITEMS**Cover Report - CEO Recruitment****Report Reference:** SGC210408F01**Moved Councillor Veliskou****Seconded Councillor Clancy**

That pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999, the Council orders that all persons present be excluded from the meeting as the Council receives and considers information relating to CEO Recruitment, 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 the recruitment of a Chief Executive Officer.

Carried Unanimously

9.51pm pm the meeting went into confidence

Suspension of meeting procedures**Moved Councillor Masika****Seconded Councillor Prior**

That meeting proceedings are suspended to allow for discussion on the CEO recruitment.

Carried Unanimously

10.28 pm meeting procedures resumed.

Moved Councillor Shilling**Seconded Councillor Gard**

In accordance with Section 91(7) and (9) of the Local Government Act 1999, the Council orders that this report, 'Chief Executive Officer Recruitment Process', any information relating to this item distributed at or prior to the meeting and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act be kept confidential, except for Manager Governance and Manager People and Culture and not available for public inspection for a period of 12 months from the date of this meeting. The name of the successful candidate (outlined in resolution 4) to remain confidential until the employment contract has been executed. This confidentiality order will be reviewed at the General Council Meeting in December 2021.

Carried

10.35 pm the meeting came out of confidence.

OTHER BUSINESS**MEETING CLOSURE** - Meeting Declared Closed at 10:35 PM**CONFIRMED THIS 27TH DAY OF APRIL 2021**

.....
CHAIRPERSON

ELECTED MEMBER VERBAL COMMUNICATIONS

In accordance with the *Code of Practice - Procedures at Council Meeting 2017/18* an Elected Member has the right to speak for up to two minutes in the second meeting of Council every second month from February (with the exception of caretaker period).

COMMUNICATIONS

Mayoral Communication Report

Date of Council Meeting 27 April 2021

Name of Elected Member Mayor - Kris Hanna

Report Reference GC210427R02

Details

Date	Event	Comments
11 March 2021	Club Marion Committee meeting	
13 March 2021	South Road Cricket Club- "Whites Night"	
20 March 2021	Ganesha Temple Harmony Week Celebrations	
20 March 2021	Migrant Resource Centre Nowruz (New Year) Event	
20 March 2021	Mitchell Park Netball Club	Presented cheque for Mayor's donation to the Club
21 March 2021	Citizenship ceremonies (x3)	
25 March 2021	CoastFM radio interview	
26 March 2021	Plympton Glenelg RSL Luncheon	
27 March 2021	Central Avenue Reserve Opening	
27 March 2021	5MBS Strategic Planning Day	
27 March 2021	Warradale Park Tennis Club Presentations	
28 March 2021	Glenelg Rebels Softball Club Presentation Night	
29 March 2021	Special Citizenship Ceremony	
29 March 2021	Multicultural Event for the Business Community	
30 March 2021	Industry Briefing- Tourism	
31 March 2021	Southern Waste Resource Authority Recycling Facility Event with Prime Minister	
31 March 2021	Headspace Marion Facility Opening	
31 March 2021	Woodend Primary School Annual General Meeting	
8 April 2021	Meeting with Police Credit Union employees Amanda Woodroffe, Branch Manager and Ben Gibson, Regional Manager SA+NT	
11 April 2021	Oaklands Estate Residents Association Annual Barbecue	

12 April 2021	Roundtable discussion with Edwardstown Football and Bowls Clubs' Committee Members	
14 April 2021	LGA Sector Briefing with Premier Marshall, the Attorney- General and Minister for Environment and Water	
15 April 2021	Community Leadership Program Launch	
16 April 2021	Morphettville Residential Stables Rezoning Discussion with trainers, the SA Jockey Club and SA Racing	
16 April 2021	Rotary District 9510 Conference	Gave welcoming speech
20 April 2021	Meeting with Graeme Botting, Hallett Cove Lions	
21 April 2021	Marion Historical Society AGM	
In addition, the Mayor has met with Members of the Legislative Council, the CEO and Council staff regarding various issues.		

Deputy Mayor Communication Report

Date of Council Meeting 27 April 2021

Name of Elected Member Councillor - Nathan Prior

Report Reference GC210427R03

Details

Date	Event	Comments
19 March 2021	Digital Space Expo at Cove Business Hub	Opened event
24 March 2021	Meeting with Adam Luscombe, Councillor Hull and Ilia Houridis at Marion Aquatic Centre	
15 April 2021	Community Leadership Program Launch	Attended

CEO and Executive Communications Report

Date of Council Meeting 27 April 2021

Report Reference GC210427R04

Details

Date	Activity	Attended By
24 March 2021	Meeting Council Ready Governance Group	Tony Lines
25 March 2021	AMIS RFP - Assetic Australia Demonstration	Sorana Dinmore Ray Barnwell Tony Lines
25 March 2021	AMIS RFP - Infor Demonstration	Sorana Dinmore Ray Barnwell Tony Lines
25 March 2021	LG CEO's - Rating of Universities & New State Govt Developments Claire Mockler - City Of Adelaide held in CEO's Office, Adelaide Town Hall	Sorana Dinmore
26 March 2021	SMRF (SRWRA) JV Committee - Construction Project Meeting	Sorana Dinmore
26 March 2021	Harrison McMillan Big BBQ invited by Alison Surjan - HM Executive	Sorana Dinmore
29 March 2021	Mayor's Multicultural Event for the Business Community	Ilia Houridis
29 March 2021	LGA and Dog & Cat Management Forum - 29 March Melissa Dahmen LGA held in LGA Boardrooms Adelaide	Sorana Dinmore
29 March 2021	Finance System Demo - Agilyx	Sorana Dinmore Ray Barnwell
29 March 2021	Satalyst Roadmap Discovery kick off meeting Tiodd Elliott (Satalyst) CoM Project team	Sorana Dinmore
30 March 2021	Meeting Renewal SA re Tonsley WSUD review	Tony Lines
30 March 2021	Industry Board Room Lunch Meeting Tourism & Visitor Economy	Ilia Houridis
30 March 2021	Finance System Demo - Dialog	Sorana Dinmore Ray Barnwell
31 March 2021	Budgeting Demo - Agilyx	Sorana Dinmore Ray Barnwell
31 March 2021	SRWRA Event with Nicolle Flint MP Held at SRWRA	Sorana Dinmore Ray Barnwell
1 April 2021	AWU EA Meeting	Tony Lines
1 April 2021	SRC JV Advisory Committee Meeting SRWRA Held at IWS Wingfield	Sorana Dinmore
7 April 2021	Meeting Asset Management Cross Council Collaboration -	Tony Lines

	Cities of Marion, Charles Sturt and Pt Adelaide Enfield	
7 April 2021	Field River Taskforce Inspection Minister David Speirs Hallett Cove Boatshed	Sorana Dinmore
7 April 2021	Meeting Satalyst (Todd Elliott) CoM	Sorana Dinmore
8 April 2021	Meeting with Minister Speirs re BMX/Soccer	Ilia Houridis Sorana Dinmore
8 April 2021	CRM Project: WS018 High Level System Design and Integration Workshop CoM IT Vision Ennovative City of Charles Sturt	Sorana Dinmore
8 April 2021	SRWRA Board Meeting	Sorana Dinmore Ray Barnwell
9 April 2021	Meeting DTP Overview Nicolle Rantanen (Public Trustee) Sorana Dinmore	Sorana Dinmore
12 April 2021	Meeting re: Governance Review: Peter Auhl (EQI Consulting) Sorana Dinmore	Sorana Dinmore
12 April 2021	Infor Reference Check - Whitehorse City Council: Jonathan Merrett (Whitehorse City Council) CoM Project Panel	Sorana Dinmore Ray Barnwell
12 April 2021	Infor Reference Check - City of Port Adelaide Enfield: Simon Davis (City of PAE) CoM Project Panel	Sorana Dinmore Ray Barnwell
12 April 2021	Assetic Reference Check - City of Tea Tree Gully: Rhyss Cook (CoTTG) CoM Project Panel	Sorana Dinmore Ray Barnwell
12 April 2021	Coaching Session: Judith Sellick Sorana Dinmore	Sorana Dinmore
13 April 2021	Internal Audit Plan Stakeholder meeting - David Castine (KPMG) Sorana Dinmore (CoM)	Sorana Dinmore
13 April 2021	Meeting: Alison Surjan (Harrison McMillan Recruitment) Sorana Dinmore (CoM)	Sorana Dinmore
13 April 2021	Field River Linear Park "Taskforce: Meeting 2	Sorana Dinmore
14 April 2021	Meeting Adrian Skull, Sorana Dinmore and Judith Sellick re: 360 degree feedback	Sorana Dinmore
14 April 2021	LGA Briefing with Premier Steven Marshall, Attorney General Vickie Chapman and Minister David Speirs	Sorana Dinmore
15 April 2021	Meeting: ICT Strategy - Julianne Cirson (Director Corp Services Dept for Energy and Mining) Sorana Dinmore (CoM)	Sorana Dinmore
16 April 2021	Assetic Reference Checks: City Of Adelaide (Nishant Maingi & Jean-Pierre Koekemoer)	Sorana Dinmore Ray Barnwell
16 April 2021	Cross Council Collaborative ICT Program Board Meeting Cites of Port Adelaide Enfield, Charles Sturt and Marion	Sorana Dinmore

16 April 2021	Management Framework with Toni Prior: Abby Dickson (City of Port Adelaide Enfield) Donna Dunbar (City of Charles Sturt) Sorana Dinmore (City of Marion)	Sorana Dinmore
16 April 2021	SCRMG meeting - Third and final phase of state-wide changes to the planning system will commence (EPA Boardroom)	Sorana Dinmore
20 April 2021	Event Greater strategic impact and alignment through modern team collaboration practices held at Allied Health Building, Lot 14, North Terrace, Adelaide	Sorana Dinmore
20 April 2021	KPMG Asset Management close out meeting	Tony Lines
20 April 2021	Meeting Living Kaurna Cultural Centre Management with PwC and Southern Cultural Immersion	Tony Lines
21 April 2021	Meeting: Todd Elliott (Satalyst) Sorana Dinmore (CoM)	Sorana Dinmore
21 April 2021	Meeting to discuss CX Mgr recruitment: Nicole Metcalfe (Harrison McMillan Recruitment) Sorana Dinmore	Sorana Dinmore
21 April 2021	Local Government Reform Implementation CEO Forum	Sorana Dinmore
22 April 2021	Local Government Information Framework (LGIF) - Reference Group	Sorana Dinmore
23 April 2021	SMRF JV Committee - Construction Project Meeting	Sorana Dinmore
27 April 2021	Meeting: Yasmine Johnston (EGM Partners) Sorana Sinmore (CoM)	Sorana Dinmore

ADJOURNED ITEMS

Cover Report - Adjourned Item - Marion Cultural Centre Plaza

Originating Officer City Activation Senior Advisor - Brett Grimm

Corporate Manager N/A

General Manager Acting General Manager City Development - Greg Salmon

Report Reference GC210427F01

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, City Activation Senior Advisor, Manager Finance, Unit Manager Communications and Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to Adjourned Item - Marion Cultural Centre Plaza, 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 confidential commercial information including information regarding professional services for design development and financial figures.

Confidential - Adjourned Item - Marion Cultural Centre Plaza**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(d) (i) and (ii) : commercial information of a confidential nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

Adjourned Item - Draft City Limits and Publications Policies

Originating Officer Unit Manager Communications - Craig Clarke

Corporate Manager Manager Customer Experience - Karen Cocks

General Manager Acting General Manager Corporate Services - Ray Barnwell

Report Reference GC210427R05

Confidential ☐

REPORT OBJECTIVE

The item 'Draft City Limits and Publications Policies' GC210309R07 (Attachment 1) was adjourned at the 9 March 2021 General Council Meeting until the General Council Meeting to be held on 27 April 2021.

EXECUTIVE SUMMARY

In accordance with the Local Government (Procedures at Meetings) Regulations, the debate on an adjourned item will resume and continue at the point it was adjourned. The amended motion for this item was Moved by Councillor Tim Gard and Seconded by Councillor Maggie Duncan.

RECOMMENDATION

The amended motion as Moved and Seconded is below.

That Council:

1. Adopts the City Limits Publications Policy subject to the following amendment:
 - fifth dot point under "*articles that promote*" to read "Financial products or services that promote loans and investments".
2. Adopts the Publications Policy.

Attachment

#	Attachment
1	Attachment 1 - GC210309R07 - Draft City Limits and Publications Policies - Adjourned Item

Draft City Limits and Publications Policies

Originating Officer	Unit Manager Communications - Craig Clarke
Corporate Manager	Manager Customer Experience - Karen Cocks
General Manager	General Manager Corporate Services - Sorana Dinmore
Report Reference	GC210309R07

REPORT OBJECTIVE

The purpose of this report is to present the draft City Limits Publications Policy and the draft Publications Policy for Elected Members' consideration.

EXECUTIVE SUMMARY

The City Limits Publications Policy and the Publications Policy have been redrafted to reflect changes with how the City of Marion produces its publications.

City Limits is now 12 pages and produced six times a year. The Publications Policy aims to make the standard around publications clearer for Elected Members and, for the first time, staff.

RECOMMENDATION

That Council:

- 1. Adopts the City Limits Publications Policy.**
- 2. Adopts the Publications Policy.**

DISCUSSION

The City Limits Publications Policy and the Publications Policy guide how publications are produced at the City of Marion. Due to significant changes in the policies, both the previous policies and the proposed new policies have been included without track changes in the agenda.

City Limits Publications Policy

Council adopted a new format for the City Limits magazine (GC201208R11) with the first edition published in February this year. The following changes have been made to the City Limits Publications Policy to reflect the magazine's new look:

- The number of pages has been reduced from 24 to 12.
- The frequency has been increased from three editions a year to six.
- With the exception of a Mayoral column, no Elected Member columns will be included but Members' comments will be incorporated into stories.
- Contact details of all Elected Members will be published in each edition except during the caretaker period for local government elections.
- The community can submit news and sport stories for consideration.

Publications Policy

The Elected Members' Publications Policy has been replaced with a draft Publications Policy.



The proposed new policy covers the same areas that were in the previous document, however, it has been modernised to reflect the digital communications tools available. In addition, the draft policy has been broadened to include Administration at the City of Marion.

The areas covered include:

- The general principles that publications must adhere to: being accurate, compliant with all laws and not exposing Council to legal action.
- Elected Member publications and the adherence to the policy.
- Use of City of Marion logo and letterheads.
- Copyright protection for City of Marion publications.
- Electoral material

The policy also outlines that Administration will be required to obtain written consent to use a person's image in a Council publication, social media or the website. Elected Members are not bound by this requirement.

Attachment

#	Attachment	Type
1	Appendix A - Draft City Limits Publications Policy	PDF File
2	Appendix B - City Limits Publications-Policy	PDF File
3	Appendix C - Draft Publications Policy	PDF File
4	Appendix D - Elected-Members Publications Policy	PDF File

City Limits Publications Policy

1. RATIONALE

To communicate with residents and stakeholders to reinforce and promote the directions and strategies of the six themes within the *Community Vision – Towards 2040*.

2. POLICY STATEMENT

This policy provides guidance of the content, including articles, that will be published in *City Limits*.

3. OBJECTIVES

The primary objective of the policy is to ensure the community is provided with accurate and timely information in *City Limits*, that it is consistent with the strategies of the *Community Vision Towards 2040*, and adheres to the Publications Policy.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This policy applies to the *City Limits* publication. All staff and Council Members must comply with this policy.

Implementation

4.1. City Limits

General principles

City Limits **MUST**:

- Adhere to the Publications Policy

City Limits **MUST** contain information and statements that:

- comply with all applicable laws and Council policy and procedure
- are factually correct and accurate
- are free from copyright infringement
- are consistent with contemporary community standards and attitudes.

City Limits **MUST NOT** contain:

- an official announcement on behalf of the City or Marion unless authorised to do so
- confidential information or information subject to legal or professional privilege
- information or statements that may defame any person or group or expose the City of Marion to any potential legal action, including breach of privacy or copyright infringement.

Policy Ref/Security Classification:

Category: Public

Owner: Unit Manager Communications

Authorisation Date: xx/xx/xx

Review Date: xx/xx/xx

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City of Marion

245 Sturt Road, Sturt SA 5047

PO Box 21, Oaklands Park SA 5046

T 08 8375 6600

www.marion.sa.gov.au

The online version of this document is the current version. This document is 'Uncontrolled if PRINTED'.

City Limits Publications Policy

City Limits **MUST NOT** contain:

- Articles that promote:
 - Alcoholic drinks
 - Betting or gambling
 - Tobacco products or manufactures of tobacco products
 - Products of services of an intimate nature including adult stores, or sexual websites
 - Financial products or services that promote loans
 - Illegal activities or anti-social behaviour including use of illicit drugs or reckless driving
 - Violence

City Limits **MUST NOT**

- Portray people or depict material that discriminates against or vilifies a person or community group based on race, ethnicity, sex, age, sexual orientation, religion, disability or political belief

Branding and styling

City Limits complies with City of Marion branding and style guidelines to ensure a consistent brand.

Copyright

The City of Marion retains the intellectual property rights to any original material contained in City Limits (including but not limited to text, images, videos, graphics, drawings, plans, manuals). Written permission must be obtained from the Chief Executive Officer (or delegate) to use or reproduce any copyright material.

Permission to use personal images

Council will obtain a person's written consent prior to using any photographs or video footage containing their personal image. Images of people aged under 18 will require the consent of a parent or guardian. A person may revoke their consent in writing by requesting that Council cease using the images. Council will comply with the request.

Development of articles and content

<i>Criteria</i>	<ul style="list-style-type: none"> • Supports the <i>Community Vision – Towards 2040</i> • Newsworthiness of decisions arising from Council, new initiatives, events, consultations, announcements and educational stories • Community news, including business, sport, local residents, schools and community groups (groups are welcome to submit stories for potential publication)

City Limits Publications Policy

- Topicality
- Photographic opportunity
- Balance of subject matter
- Content of previous editions
- Adheres to the Publications Policy
- Articles do not promote:
 - Alcoholic drinks
 - Betting or gambling
 - Tobacco products or manufactures of tobacco products
 - Products of services of an intimate nature including adult stores, or sexual websites
 - Financial products or services that promote loans
 - Illegal activities or anti-social behaviour including use of illicit drugs or reckless driving
 - Violence

Articles must not:

- Portray people or depict material that discriminates against or vilifies a person or community group based on race, ethnicity, sex, age, sexual orientation, religion, disability or political belief

Council Member contributions

- Space will be reserved for a 200-word column from the Mayor in each edition
- The Mayor's column must adhere to the Publications Policy
- No columns will be published from other Council Members
- Comments from Council Members will be incorporated into stories where possible
- Council Member comments must adhere to the Publications Policy
- Comments from Council Members will not be published during a caretaker period for Local Government elections
- Contact details of all Council Members will be published in each edition except during a caretaker period for Local Government elections

City Limits Publications Policy

<i>Advertising</i>	<ul style="list-style-type: none"> - Does not contain paid advertising - May include adverts promoting Council events, services or initiatives at the discretion of the City of Marion where it is considered this will be a more effective approach than articles
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Format

<i>Pages</i>	- 12-pages
<i>Size</i>	- A4 size
<i>Appearance</i>	- Full- colour publication

Distribution

<i>Delivery and availability</i>	<ul style="list-style-type: none"> - Distributed free via letterbox drop six times per year - Available on the City of Marion website - Available at City of Marion venues, including the Administration Building, neighbourhood centres and libraries - Mailed to stakeholders outside the Council area
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5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
<i>Adult store</i>	Premises that sells products or services of a sexual nature.
<i>Alcoholic drink</i>	<i>Any beer, wine, sprits or cider or other drinks of an intoxicating nature.</i>
<i>Article</i>	<i>Non-fictional journalistic account of events.</i>
<i>Community Vision – Towards 2040</i>	<i>City of Marion Strategic document that espouses six themes that represents the shared values and aspirations that will guide how our city develops.</i>

City Limits Publications Policy

<i>Term</i>	<i>Definition</i>
Copyright	Material including any photograph, graphic design, plan, chart, video or audio file commissioned by Council and used digitally or non-digitally (including in print)
Illicit drugs	Unlawful drugs and substances
Paid advertising	Attracting public attention to a product, service or business by purchasing paid space in the magazine.

6. ROLES AND RESPONSIBILITIES

<i>Team/person</i>	<i>Responsibility</i>
Communications Team	<ul style="list-style-type: none"> - Sourcing, writing, editing articles - Managing photography, production and distribution
Council Members	<ul style="list-style-type: none"> - Providing comment for articles they nominate of interest that adhere to the Publications Policy.
Mayor	<ul style="list-style-type: none"> - Providing 200-word column for each edition that adheres to the Publications Policy.

7. REFERENCES

City of Marion

- Publications Policy
- Caretaker Policy
- Elected Member Code of Conduct
- Privacy Policy
- Social Media Policy

Other

- Copyright Act 1968
- Defamation Act 2005
- Local Government Act 1999
- Local Government (Elections) Act 1999

8. REVIEW AND EVALUATION

The Unit Manager Communications reviews this Policy once during a term of Council (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

City Limits Publications Policy

1. RATIONALE

To communicate with residents and stakeholders to reinforce and promote the directions and strategies of the six themes within the *Community Vision – Towards 2040* and not include information that is contradictory.

2. POLICY STATEMENT

This policy provides guidance of the content of advertising and the types of articles published in *City Limits*.

3. PRINCIPLES

In producing and publishing *City Limits*, the following principles are considered and applied:

City Limits:

- 3.1 Promotes the directions and themes of the *Community Vision – Towards 2040* and provides information to the community.
- 3.2 Aims to be free of discriminatory or defamatory content.
- 3.3 Articles should not expose Council to legal action.
- 3.4 Reporting and commentary should adhere to the highest standard of accuracy.
- 3.5 Is produced in accordance with the City of Marion Style Guide.
- 3.6 Adheres to the Publications Policy (Elected Members).
- 3.7 Is produced and distributed three times a year.
- 3.8 Articles should not portray people or depict material that discriminates against or vilifies a person or community group based on race, ethnicity, sex, age, sexual-orientation, religion, disability or political belief.
- 3.9 Articles will not promote:
 - 3.9.1 Alcoholic drinks
 - 3.9.2 Betting or gambling
 - 3.9.3 Tobacco products or manufacturers of tobacco products
 - 3.9.4 Products or services of an intimate nature including adult stores, or sexual websites
 - 3.9.5 Financial products or services that promote loans
 - 3.9.6 Illegal activities or anti-social behaviour including use of illicit drugs or reckless driving
 - 3.9.7 Violence

Development of Articles:

- 3.10 The selection criteria for articles includes:
 - 3.10.1 Supports the *Community Vision – Towards 2040*
 - 3.10.2 Newsworthiness

City Limits Publications Policy

- 3.10.3 Topicality
- 3.10.4 Photographic opportunity
- 3.10.5 Balance of subject matter
- 3.10.6 Content of previous editions

Format:

- 3.11 City Limits is a 24 page, A4 size full colour publication distributed three times a year.
- 3.12 Technical standards including font and layout will adhere to the City of Marion Style Guide.

Elected Member Contributions:

- 3.13 Space will be reserved for one column from the Mayor in each edition.
- 3.14 Space will be reserved for a column from every Ward Councillor in each edition.
- 3.15 Contributions will appear in ward alphabetical order (Coastal, Mullawirra, Southern Hills, Warracowie, Warriparinga, Woodlands).
- 3.16 Ward Councillor contributions will appear with their photograph and contact details.
- 3.17 Space will be reserved for 200 words for each Ward Councillor column.
- 3.18 A photograph relevant to content may be inserted in each Ward Councillor's column.
- 3.19 Ward Councillor contributions will not be published during a caretaker period for Local Government Elections.
- 3.20 Contributions must adhere to the Publications Policy (Elected Members).

Advertising:

- 3.21 *City Limits* does not include paid advertising.
- 3.22 Adverts promoting Council events, services or initiatives may be included at the discretion of the City of Marion where it is considered that this will be a more effective approach than articles.

Distribution:

- 3.23 *City Limits* is free.
- 3.24 Distribution of *City Limits* is via:
 - 3.24.1 Letterbox drop
 - 3.24.2 Made available at City of Marion facilities including the Administration Building, Libraries and neighbourhood centres
 - 3.24.3 Council's website.
 - 3.24.4 Mailed to stakeholders outside the Council area

City Limits Publications Policy

4. POLICY SCOPE AND IMPLEMENTATION

This policy applies to the City of Marion.

5. DEFINITIONS

The following terms apply to this policy;

Adult store	<i>A shop that provides services or products of a sexual nature.</i>
Advertising	<i>Attracting public attention to a product, service or business by purchasing paid space in the magazine.</i>
Alcoholic drinks	<i>Any beer, wine, spirits or cider or other drinks of an intoxicating nature.</i>
Article	<i>Non-fictional journalistic account of events.</i>
Community Vision – Towards 2040	<i>City of Marion Strategic document that espouses six themes that represents the shared values and aspirations that will guide how our city develops.</i>
Illicit drugs	<i>Unlawful drugs and substances.</i>

6. ROLES AND RESPONSIBILITIES

The Communications Team is responsible for the implementation and management of this policy.

7. REFERENCES

- Publications Policy (Elected Members)
- City of Marion *Community Vision – Towards 2040*

8. REVIEW AND EVALUATION

This policy will be reviewed once during a term of Council. Its review will be initiated by the Governance Department.

Publications Policy

1. RATIONALE

Council uses digital and non-digital publications to keep its community and stakeholders informed of policies, initiatives, activities, and news impacting the City of Marion. The community and stakeholders rely upon information in Council publications. It is vital that Council publications are of a consistently high quality and standard.

2. POLICY STATEMENT

Publications to the community and stakeholders contain information and statements that are accurate and appropriate; comply with applicable law; and reflect contemporary community standards and attitudes. Publications are of a consistently high quality and standard.

3. OBJECTIVES

The primary objective of the policy is to ensure the accuracy, quality, and consistency of all publications to the community and stakeholders.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This policy applies to all publications to the community and stakeholders, including electoral material. All Council Staff and Council Members must comply with this Policy.

Implementation

4.1. Council publications

General principles

Council Publications **MUST** contain information and statements that:

- comply with all applicable laws and Council policy and procedure
- are factually correct and accurate
- are free from copyright infringement
- are consistent with contemporary community standards and attitudes.

Council Publications **MUST NOT** contain:

- an official announcement on behalf of the City or Marion unless authorised to do so
- confidential information or information subject to legal or professional privilege
- information or statements that may defame any person or group or expose the City of Marion to any potential legal action, including breach of privacy or copyright infringement.

Publications Policy

Use of the City of Marion logo and Council letterhead

The City of Marion logo and Council letterhead are used for official Council business only. Council Staff and Council Members are not permitted to use the logo or Council letterhead for personal communications (e.g. emails or correspondence containing personal views or opinions).

Council branding and styling

Council Publications comply with City of Marion branding and style guidelines. Approved document templates are used (where available) to ensure a consistent brand, overall look, and quality to Council publications.

Copyright

The City of Marion retains the intellectual property rights to any original material contained in Council Publications (including but not limited to text, images, videos, graphics, drawings, plans, manuals). Written permission must be obtained from the Chief Executive Officer (or delegate) to use or reproduce any copyright material.

Permission to use personal images

Council uses its best endeavours to obtain a person's written consent prior to using any photographs or video footage containing their personal image in Council publications. A person may revoke their consent in writing by requesting that Council cease using photographs or video footage containing their personal image. Council will comply with the request.

4.2. Council Member publications

Council Members may produce publications containing information about Council services, facilities, and initiatives, as well as the work of individual Council Members in representing their Wards.

Council Member publications must comply with the requirements of the General Principles in Section 4.1 of this Policy as well as the *Elected Members Code of Conduct*. Council Members are not permitted to use the City of Marion logo in their publications.

Content submitted to City of Marion Council publications may be edited if, in the opinion of the Chief Executive Officer, it does not comply with the requirements of this Policy. Council will consult with the Council Member about any proposed edits and/or provide the Council Member with an opportunity to resubmit content prior to publication.

Council Members must clearly state any personal views in any Council and member publications.

4.3. Electoral material

The publication of electoral material occurs in accordance with the *Local Government (Elections) Act 1999* and associated regulations.

Publications Policy

Caretaker period

Council and Council Members comply with the requirements of the *Caretaker Policy* when producing publications.

Election comments

The Chief Executive Officer is responsible for any comments about local, state, and federal government elections that are made in Council Publications. An authorisation statement to this effect must be included in the relevant Council Publication.

5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
<i>Council image</i>	Any photograph, video, audio file, graphic design, plan, sign, or chart produced or commissioned by the Council and used digitally or non-digitally.
<i>Council member publication</i>	Any publication that displays the name of a Member and is used for Council business is deemed to be a Council Member publication.
<i>Council publication</i>	Any publication (in digital or non-digital form) that exhibits the Council logo in any form is deemed to be a Council publication. Examples include but are not limited to: policies and procedures; manuals; letters; emails; magazines; flyers and newsletters; marketing and promotional material; website content; social media.
<i>Electoral material</i>	An advertisement, notice, statement, or representation calculated to affect the results of an election or poll.

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
<i>Chief Executive Officer</i>	<ul style="list-style-type: none"> Review and accept ultimate responsibility for election comments in Council Publications. Approve edits to Council Member Publications to ensure they comply with this Policy. Provide approval for a person or group to use or reproduce City of Marion copyright material.
<i>Council Members</i>	<ul style="list-style-type: none"> Ensure all Council Member publications comply with the requirements of this Policy and are submitted to the Chief Executive Officer for review prior to publication. Not use the City of Marion logo on their publications.

Publications Policy

<i>Role</i>	<i>Responsibility</i>
	<ul style="list-style-type: none">• Use Council letterhead for official business only.• Obtain permission from the Chief Executive Officer prior to using any City of Marion copyright material.
<i>Council Staff</i>	<ul style="list-style-type: none">• Ensure all Council publications comply with the requirements of this Policy.• Obtain a person's written consent prior to using any photographs or video footage containing their personal image.• Use Council letterhead for official business only.

7. REFERENCES

City of Marion

- *Caretaker Policy*
- *City Limits Publications Policy*
- *Elected Member Code of Conduct*
- *Privacy Policy*
- *Social Media Policy*

Other

- *Copyright Act 1968*
- *Defamation Act 2005*
- *Local Government Act 1999*
- *Local Government (Elections) Act 1999*

8. REVIEW AND EVALUATION

The Unit Manager Communications reviews this Policy once during a term of Council (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

POLICY STATEMENT

The City of Marion ("the Council") strives to keep its stakeholders informed through various publications, including City Limits, the Annual Report, specialist brochures, etc. These, and other Publications, provide the organisation, the community and other stakeholders with information relating to Council, its services and products, corporate performance, community awareness, community initiatives and facilitates community consultation.

Council Publications include any publication developed by, or on behalf of the Council and may be in the form of:

- any written material (such as the text of brochures, documents policy, Council agendas, letters on Council letterhead, catalogues, directories, lists, instruction manuals, newspapers and text on a website);
- Council images (eg photographs, drawings, graphs, charts, building plans), audio recordings, films, computer programs

All Council Publications aim to be free of any discriminatory, defamatory or potentially discriminatory or defamatory content.

The Council expects that comments made in Council Publications will not expose the Council to legal action. Any person making a contribution to a Council Publication must not include or will not be permitted (in accordance with this Policy) to include comments in any Council Publications that may in the opinion of the Chief Executive Officer (after taking legal advice) result in a potential for legal action against the Council.

DEFINITIONS

Council Publication - includes, but is not limited to, any publication developed by, or on behalf of, the Council and may be in the form of any written material (such as the text of brochures, documents policy, Council agendas, letters on Council letterhead, catalogues, directories, lists, instruction manuals, newspapers and text on a website); Council images (eg photographs, drawings, graphs, charts, building plans), audio recordings, films, and computer programs that are used to promote, consult, advise on Council services, products and/or community information.

Copyright - means the exclusive right of a creator/author to reproduce, publish, broadcast, communicate, adapt, distribute, perform, assign or license his or her work pursuant to the Copyright Act (Cth) 1968.

Electoral Material - includes any advertisement, notice, statement or representation calculated to affect the result of an election or poll (as defined by the Local Government (Elections) Act 1999).

Defamatory Content - means information that defames or has the potential to defame any person (natural or corporate) in the opinion of the Chief Executive Officer (after taking legal advice).

Stakeholders - means the groups and individuals who have an interest in the City of Marion region, including but not limited to, Marion residents and ratepayers, State and Federal Government Departments, Local Members of Parliament, local businesses, retail industry, community and sporting associations, visitors and tourists, other Local Councils, other agencies and Council members and employees.

INTERPRETATION

The manner in which this Policy is interpreted and applied in relation to any particular set of circumstances will be consistent with the provisions of the Local Government Act 1999, the role of the Council, the functions and duties of elected members, the roles and responsibilities of the Chief Executive Officer, and any other relevant legislation. Further, this Policy is subject to any express disclaimers that appear in relation to Council Publications.

PRINCIPLES

Council Publications

Publications are developed by the Council to provide its Stakeholders with information about and/or which identifies with the Council.

Any Publication that exhibits the Council logo (in any form, such as name only, name and design, design only) is deemed to be a Council Publication. A Council Publication will not contain the personal view of any Elected Member or officer unless authorised by the Council where that personal view may involve a breach of a Council or administrative policy, Code or decision or which otherwise places the Council at risk of legal action (eg defamation).

Information provided by Elected Members for inclusion in a Council Publication must be accurate and truthful.

The Council will endeavour to obtain a person's consent, in the first instance, to take a person(s) photograph and/or write an article which refers to that person(s). The Council will endeavour to only republish photographs and/or information that is relevant to the context in which they are used and with the consent of the copyright owner.

Privacy

The Council is not bound by the Privacy Act 1988 (Cth), the National Privacy Principles and the Information Privacy Principles, nor the Information Privacy Principles Instruction (Cabinet Administrative Instruction No 1 of 1989).

However, the Council recognises the importance of protecting the privacy of stakeholders and their personal information and is committed to a culture that protects privacy. The Council will endeavour to protect the personal information it collects, stores, discloses and uses in accordance with the standards set by the National Privacy Principles (or if the Council chooses, the Information Privacy Principles) and any Privacy Policy developed and adopted by the Council.

Copyright

Any original written material (such as the text of brochures, catalogues, instruction manuals, newspapers and text on a website), Council images (eg photographs, drawings, graphs, charts, building plans) developed by, or on behalf of the Council, is protected by Copyright laws. The Council retains all intellectual property rights subsisting in any Council Publication.

The production of City Limits is guided by the City Limits Publications Policy which details the objectives and principles of the magazine and includes guidelines for the development of articles, advertising, format, Elected Member contributions and distribution.

Written permission will be required from the Chief Executive of the Council if any person(s) or entity wants to use, reproduce or otherwise deal with all, or any substantial part, of a Council Publication.

Publication of Electoral Material

Any Publications may from time to time include information concerning the profiles of elected members and their achievements as a member of the current Council. However, in the Caretaker Period for a periodic election and from the close of nominations in a supplementary election the inclusion of any such information about individual Elected Members or articles written by Elected Members will be scrutinized by the Manager Governance in accordance with the requirements of the Local Government (Elections) Act and any relevant Regulations and be subject to Council's Elections Caretaker Policy.

Prior to the publication of any electoral material to be posted, affixed or erected on property under the care and control of Council, ETSA Utilities or Transport SA (TSA) for the purposes of candidate promotion in Federal, State or Local Government Elections, approval must be obtained from Council and is subject to Council's Control of Election Signs Policy.

Use of Council Letterhead

Council letterhead is only to be used for the specific purpose of conveying and transacting official Council business. A Council elected member must not use Council letterhead, the Council logos or any other related corporate logos or emblems for personal purposes, eg personal letters stating a personal viewpoint. Any elected member using Council letterhead for other than Council business may breach Council's Code of Conduct for Elected Members and this Policy.

REFERENCES

STRATEGIC PLAN

EG4.4

Managing and presenting information to Council, the community and other stakeholders in a manner that is transparent, balanced and adds value to decision-making.

PROCEDURE REFERENCE:

GP-23: Control of Election Signs

Code of Conduct for Elected Members

COUNCIL AGENDA REFERENCE:

GC 131211.

OTHER RELATED REFERENCES:

Local Governments & Copyright - A Practical Guide, Australian Copyright Council, March 2003

Endorsed by Council 23/3/04.

OWNER

Executive Officer, Council Business, Unit Manager Communications

DEPUTATIONS - Nil**PETITIONS - Nil****COMMITTEE RECOMMENDATIONS****Confirmation of the minutes for the Asset and Sustainability Committee meeting held on 6 April 2021**

Originating Officer Governance Officer - Angela Porter

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R06

Confidential ☐

REPORT OBJECTIVE

The purpose of this report is to facilitate the receiving and noting of the minutes from the Asset and Sustainability Committee Meeting held on 6 April 2021.

EXECUTIVE SUMMARY

A summary of items considered by Committee Members is noted below:

Workshop / Presentation Items

- SRWRA Progress Update

Business Arising

- Business Arising Statement Action items

Reports for Discussion

- Residential Hard Waste and Dumped Rubbish Services
- Waste and Recycling Update

RECOMMENDATION

That Council:

- 1. Receives and notes the minutes of the Asset and Sustainability Committee Meeting held on 6 April 2021.**
- 2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Asset and Sustainability Committee.**

Attachment

#	Attachment
1	ASC210406 - Final Minutes

MINUTES OF THE ASC210406 - ASSET AND SUSTAINABILITY COMMITTEEMEETING

Tuesday, 06 April 2021 at 06:30 PM

Council Administration Centre, 245 Sturt Road, Sturt



PRESENT

Councillors Matthew Shilling, Nathan Prior, Ian Crossland and Bruce Hull (from 6.34pm)

In Attendance

Councillor - Kendra Clancy

Acting Chief Executive Officer – Sorana Dinmore

General Manager City Services - Tony Lines

Acting General Manager Corporate Services – Ray Barnwell

Manager Operations – Fiona Harvey

Manager Engineering, Assets & Environment – Mathew Allen

Unit Manager Operational Support – Roger Belding

Unit Manager Environment and Sustainability – Ann Gibbons

Executive Officer to the General Manager City Development – Louise Herdegen

Governance Administration Officer – Angela Porter

Chair Southern Region Waste Resource Authority - Mark Booth

Unit Manager Community Health and Safety – Sharon Perin

Team Leader Community Safety - Caroline Corston

OPEN MEETING

The Chair opened the meeting at 06:31 PM

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kaurna people, the traditional custodians of this land and pay our respects to their elders past and present.

ELECTED MEMBER'S DECLARATION (if any)

The Chair asked if any Member wished to disclose an interest in relation to any item being considered at the meeting.

Nil interests disclosed.

WORKSHOP / PRESENTATION ITEMS**SRWRA Progress Update**

Report Reference: ASC210406R01

Mr Mark Booth, Chair of the Southern Region Waste Resource Authority (SRWRA) gave a presentation as a progress update on the new MRF facility which is expected to be operational by end June 2021.

The following discussion points were noted:

- SRWRA has formally entered into an agreement with Re.Group for a joint venture operation of the site.
- \$5.35m Federal Government grant already received and a further application for \$6m from State Government has been applied for through GISA Recycling Modernisation Fund.
- The MRF facility has the ability to process up to 60,000 tonnes via extended shifts (12 hours). There is also possibility to run two 8 hour shifts but there are better maintenance opportunities through 12 hour shifts.
- The facility enables a 40% diversion of red bin waste from landfill. This figure should be closer to 60% over the next few months. A trommel and magnets enable

removal of organics, metal, batteries, etc. with the remainder to be sorted into two streams – one part becomes landfill cover, one part goes to landfill.

- Organic caddies to be rolled out to all residents across the City of Marion in a few months time. This will have better environmental outcomes but no expected material difference in the end products produced by the site.
- Types of products to be produced by the facility will evolve and the potential to use these products for local projects is dependent on the type and amount of plastics produced by the facility and requirements for the projects. Mr Booth to provide City of Marion with a list of available products.
- SRWRA has entered into a maintenance agreement with SAGE Automation. Through the joint venture, Re.Group are responsible for maintenance of the site.
- The joint venture has implemented a gate fee policy with reasonable financial return to replenish cash reserves from the investment.
- There is an opportunity for a larger energy capture solar farm at the site with potential for the City of Marion to invest. Concentrated solar is not being investigated currently. LMS Energy has already looked to put solar on the whole site to be supplemented by landfill gas. Mr Booth to provide details of potential output and size of site to see how many businesses this could accommodate. The idea to be revisited after the first year of operation.
- Batteries for energy storage are still a way off being commercially viable but adequate site area has been set aside for further opportunities.
- SRWRA has made a strategic purchase of land as buffer from Seaford Heights housing development and conversations around the impact of the South Road extension are to resume now that the impacts are known.

CONFIRMATION OF MINUTES

Confirmation of the minutes for the Asset and Sustainability Committee Meeting held on 2 February 2021

Report Reference: ASC210406R02

Moved Councillor – Ian Crossland

Seconded Councillor – Bruce Hull

That the minutes of the Asset and Sustainability Committee Meeting held on 2 February 2021 be taken as read and confirmed.

Carried Unanimously

BUSINESS ARISING

Review of the Business Arising from previous meetings of the Asset and Sustainability Committee.

Business Arising Statement - Action Items

Report Reference: ASC210406R03

Moved Councillor – Ian Crossland

Seconded Councillor - Nathan Prior

That the Asset and Sustainability Committee:

1. Notes the business arising statement, meeting schedule and upcoming items.

Carried Unanimously

CONFIDENTIAL ITEMS - Nil**REPORTS FOR DISCUSSION****Residential Hard Waste and Dumped Rubbish Services****Report Reference:** ASC210406R04

7.09pm Councillor Prior left the meeting

7.09pm Councillor Prior re-entered the meeting

The Manager Operations and the Unit Manager Operational Support gave a presentation about the current model and future options for the provision of City of Marion's Residential Hard Waste Collection services and the provisions in place for managing dumped rubbish.

The PowerBI Dashboard was demonstrated showing an overview of hard rubbish and dumped rubbish statistics from 2014 to present.

The following discussion points were noted:

Hard Rubbish

- The hard rubbish team has over 19,000 service collections including 4,000 mattress collections this year. The demand and cost have increased significantly with further increases expected.
- Over 200 people responded to a customer satisfaction survey with results indicating a high level of satisfaction with the current service. The preferred method of service is two 1m cubed collections per year and the preference for disposal is for waste to be diverted from landfill. 13-14% of survey respondents are dissatisfied with the current service which is likely due to waiting times and the amount of waste allowed for collection.
- Future options to manage the service were discussed. The compactor truck model is the most cost effective option but does not meet customer expectations or Council's environmental objectives. A compactor truck does not allow for waste to be sorted as it all goes to landfill. No electrical items or metals can be collected using this method. Options for this to be taken to the new SRWRA facility for sorting can be explored.
- The majority of comparable Councils outsource the service. City of Marion has a low wait time in comparison. Target collection time is 2-4 weeks, this KPI was adopted by Council in 2019 (reducing target from 6 weeks). The average wait time this financial year is 2.5 weeks. Less than 1% of collections are missed, this is usually due to waste not being put out for collection.
- More detailed information and figures are to be provided in the report to Council including investigation of a fee for service model to assist in recovery of the cost of the EPA levy.
- Sticker provided to residents shows neighbours that this is not dumped rubbish. When something is added it is considered illegally dumped.
- Information is not easily located on the website. There is an opportunity to re-organise the web pages for quicker access to information.
- Pick up schedule is not public information as it could lead to dumped rubbish at those properties or hard rubbish collections being scattered across footpaths and roads as people sort through them.
- Process is currently hard copy, following the Digital Transformation Project the hard rubbish team will be able to check if a second collection is available to collect any items

over the allowed amount i.e. use both collection allowances at once.

- Further comparison and statistics for hard rubbish to be included in the report to Council including cost comparison (current contractor costs, overheads, leave cover (Randstad), etc), WHS stats, use of service (once, twice or not at all), cost breakdown for mattress collections.

Dumped Rubbish

- Illegal dumping is reasonably static with approx. 1,200 customer events reported per year with January, February and March seeing higher amounts of illegal dumping.
- The City of Marion does not offer collection of hard rubbish from commercial properties which may lead to instances of illegal dumping in commercial hot spot areas.
- Skips are provided to multi-unit dwellings (MUD) in residential hotspot areas in partnership with Housing SA. Communication/education sessions have been held for MUD residents with discussions around the skip bin process, availability of hard waste collections, reporting of dumped rubbish, and shopping trolleys. More information on the cost of this project and if it has reduced dumping in these areas to be provided in the report to Council.
- Dumping is scattered across the City of Marion and due to the significant cost of high quality CCTV cameras they are being used as a deterrent in some hot spot reserves in conjunction with signage.
- We work with Repay SA for general inspection and collection of litter and dumped rubbish focusing on hotspot areas (Edwardstown).
- The hard waste team manages the tape up and notification process, looking for any identifying materials, photographing the site and taping up the area as 'under investigation'. A letter drop is conducted with a 42% waste recovery rate. If proof of illegal dumping is obtained, the event is referred to the Community Safety Inspector (CSI) team for investigation.
- The process which takes between 2 and 4 weeks is working well with 138 customer events referred to CSI's in 2019 and 2020. Verbal warnings have been issued with no infringements. There is a 90% collection rate following referral to the CSI's.
- Dumped rubbish reports are cross checked against hard rubbish bookings before investigation is undertaken.
- Legally we cannot recover a shopping trolley if it is in a safe location.
- Further information to be provided to Council through the CSI 6 monthly report including number of complaints received (including breakdown of how many are reported internally), investigations referred to CSI's, warnings and expiations issued in regards to litter and dumped rubbish and how many events are not witnessed.
- Dumped rubbish and littering is the responsibility of Council with the exception of large pollutants.

Moved Councillor – Nathan Prior

Seconded Councillor – Bruce Hull

That the Asset and Sustainability Committee:

1. Notes the current services City of Marion provides relating to Hard Waste Collection and Illegal Dumping.
2. Provides feedback on potential models for the future Hard Waste Collection services.
3. Based on the Committee's feedback supports a report being presented to Council to seek the resources (funding, fleet and staffing) required to deliver Hard Waste Collection and Illegal Dumping services into the future.

Carried Unanimously**Waste and Recycling Update****Report Reference:** ASC210406R05

The Manager Engineering, Assets & Sustainability and the Unit Manager Environment & Sustainability gave a presentation on waste management and recycling activities within Council operations. Samples of products using recyclable materials were on display.

Key discussion points noted below:

- LGA is running a pilot project on circular procurement. We are not taking part but information sessions will take place later in the year which staff will attend.
- Toberite recycled plastic has been trialed in concrete driveway crossovers at Quick Road and Sturt Road.
- Fibre Reinforced Plastics and wood plastic composites will be used in the Coastal Walkway Upgrade.
- A 'Green Pipe' made of recycled plastics is planned to be used next year as a trial for drainage works at Cadell Street, Seaview Downs. Updates will be provided to Members. Opportunity for SRWRA to manufacture the stormwater pipes will be explored.
- A Waste and Recycling Audit was undertaken at Admin and City Services in November 2020 with further site audits to take place in 2021. New initiatives will be implemented with lunchtime education and awareness sessions to encourage staff to use waste and recycling bins more effectively. We have received a GISA grant to assist with process.
- The Chamber Kitchen renovation has begun and a new bin system will be implemented with provision of four enclosed bins for recycling, cans and bottles, organics and landfill.
- We have received a GISA grant to roll out new kitchen caddies to every household from August 2021. The new caddies are 100% recycled plastic sourced from Australia. A community survey will be undertaken to help understand the barriers to using the caddies and education sessions will be run at the Neighbourhood Centres. FAQ's will be created for Elected Members and a draft will be distributed to Members for input.
- Compostable liner bags to be distributed with caddies. Further distribution will take place in the second year, with a view for residents to use compostable grocery food bags or source their own bags in future. Cleanaway to be educated on compostable bags (Foodland bags are a different colour to other grocery chains).
- There has been a push for traction around circular economy, workshops have been offered to businesses with low engagement.
- City of Holdfast Bay is currently running an opt-in trial of 800 households for weekly green and fortnightly landfill collections.
- Options for managing emerging tricky waste streams (i.e. solar panels, batteries, clothing and textiles) to be explored. A new facility for solar panel recycling has received approval to be developed in Lonsdale.
- Waste at Tonsley is collected in skip bins and incinerated. More information to be provided via a Question With Notice to be presented to General Council.

Procedural Motion**Moved Councillor – Ian Crossland****Seconded Councillor - Nathan Prior**

That the meeting be extended to the end of discussion of the Waste and Recycling Update item.

Carried Unanimously

Meeting Extended at 9.29 PM

Moved Councillor – Ian Crossland

Seconded Councillor – Nathan Prior

That the Asset and Sustainability Committee:

1. Notes the presentation.

Carried Unanimously

REPORTS FOR NOTING - Nil

OTHER BUSINESS

MEETING CLOSURE - Meeting Declared Closed at 09:39 PM

CONFIRMED THIS 1ST DAY OF JUNE 2021

.....**CHAIRPERSON**

Confirmation of the minutes for the Special Finance and Audit Committee Meeting held on 13 April 2021

Originating Officer Manager Corporate Governance - Kate McKenzie

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R07

Confidential ☐

REPORT OBJECTIVE

The purpose of this report is to facilitate the receiving and noting of the minutes from the Special Finance and Audit Committee Meeting held on 13 April 2021.

EXECUTIVE SUMMARY

A summary of items considered by Committee Members is noted below.

Confidential Items

- Edwardstown Urban Renewal Project - Prudential Report

RECOMMENDATION

That Council:

- 1. Receives and notes the minutes of the Special Finance and Audit Committee Meeting held on 13 April 2021.**
- 2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Finance and Audit Committee.**

Attachment

#	Attachment
1	SFAC210413 - Draft Minutes



SFAC210413 - SPECIAL FINANCE AND AUDIT COMMITTEE MEETING

Tuesday, 13 April 2021 at 03:00 PM

Council Administration Centre, 245 Sturt Road, Sturt



PRESENT

Emma Hinchey, David Papa, Nicolle Rantanen (via zoom)

In Attendance

Acting Chief Executive Officer – Sorana Dinmore
 General Manager City Development – Ilia Houridis (via zoom)
 Acting General Manager City Development – Greg Salmon
 Acting General Manager Corporate Services – Ray Barnwell
 Manager Corporate Governance – Kate McKenzie
 Project Director Urban Renewal – Sascha Frost
 Unit Manager Statutory Finance & Payroll - Andrew Doyle
 BRM Advisory - Michael Richardson
 Councillor Bruce Hull

OPEN MEETING

The Chair opened the meeting at 03:00 PM

KAURNA ACKNOWLEDGEMENT

We acknowledge the Kaurna people, the traditional custodians of this land and pay our respects to their elders past and present.

COMMITTEE MEMBERS DECLARATION (if any)

The Chair asked if any Member wished to disclose an interest in relation to any item being considered at the meeting.

Nil interests were disclosed.

CONFIDENTIAL ITEMS**Cover Report -- Edwardstown Urban Renewal Project -- Prudential Report**

Report Reference: SFAC210413

Moved Mr. Papa

Seconded Ms. Rantanen

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Committee orders that all persons present, with the exception of the following persons: Acting Chief Executive Officer, General Manager City Development, Acting General Manager City Development, Acting General Manager Corporate Services, Manager Corporate Governance, Project Director Urban Renewal, Unit Manager Statutory Finance and Payroll, Michael Richardson - BRM Advisory, be excluded from the meeting as the Committee receives and considers information relating to Edwardstown Urban Renewal Project -- Prudential Report, upon the basis that the Committee 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 confidential commercial information including preliminary concept plans and financial figures.

Carried Unanimously

3.02 pm the meeting went into confidence.

Moved Ms. Rantanen

Seconded Mr. Papa

In accordance with Section 91(7) and (9) of the Local Government Act 1999, orders that this report, the attachments to this report and any minutes arising from this report having been considered in confidence under Section 90 (2) and (3) (d)(i) and (ii) 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 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 2021.

Carried Unanimously

4.26 pm the meeting came out of confidence.

OTHER BUSINESS – Nil

MEETING CLOSURE - Meeting Declared Closed at 04.26pm

CONFIRMED THIS 18TH DAY OF MAY 2021

.....
CHAIRPERSON

CONFIDENTIAL ITEMS

Cover Report - Confirmation of the confidential minutes for the Special General Council Meeting held on 8 April 2021

Originating Officer Manager Corporate Governance - Kate McKenzie

Corporate Manager Manager People and Culture - Steph Roberts

General Manager N/A

Report Reference GC210427F02

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(a) of the Local Government Act 1999, the Council orders that all persons present be excluded from the meeting as the Council receives and considers information relating to CEO Recruitment, 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 the recruitment of a Chief Executive Officer.

Confirmation of the confidential minutes for the Special General Council Meeting held on 8 April 2021**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(a): information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

Cover Report - Confirmation of the confidential minutes for the Special Finance and Audit Committee Meeting held on 13 April 2021

Originating Officer Manager Corporate Governance - Kate McKenzie

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager General Manager City Services - Tony Lines

Report Reference GC210427F03

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Acting General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, Project Director Urban Renewal, Manager Finance, Acting Unit Manager Communications and Acting Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to Confirmation of confidential minutes of the Special Finance and Audit Committee Meeting held on 13 April 2021, 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 minutes of a committee meeting held in confidence.

Confirmation of the confidential minutes for the Special Finance and Audit Committee Meeting held on 13 April 2021

CONFIDENTIAL

Reason For Passing This Resolution

Local Government Act (SA) 1999 S 90 (2) 3(d) (i) and (ii) : commercial information of a confidential nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

Cover Report - Edwardstown Urban Renewal Project - Prudential Report

Originating Officer Project Director, Urban Renewal - Sascha Frost

Corporate Manager N/A

General Manager Acting General Manager City Development - Greg Salmon

Report Reference GC210427F04

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Acting General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, Project Director Urban Renewal, Manager Finance, Unit Manager Statutory Finance and Payroll, Unit Manager Communications and Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to Edwardstown Urban Renewal Project - Prudential Report, 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 confidential commercial information including preliminary concept plans and financial figures.

Confidential - Edwardstown Urban Renewal Project - Prudential Report**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(d) (i) and (ii) : commercial information of a confidential nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

Cover Report - Question with Notice - Edwardstown Urban Renewal Project

Originating Officer Project Director, Urban Renewal - Sascha Frost

Corporate Manager N/A

General Manager Acting General Manager City Development - Greg Salmon

Report Reference GC210427Q01

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(d)(i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Activation, Project Director Urban Renewal, Manager Finance, Unit Manager Statutory Finance and Payroll, Unit Manager Communications and Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to Edwardstown Urban Renewal Project, 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 confidential commercial information including preliminary concept plans and financial figures.

Confidential - Question with Notice - Edwardstown Urban Renewal Project**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(d) (i) and (ii) : commercial information of a confidential nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

Cover Report - LKCC Management Model - SCI Submission

Originating Officer General Manager City Services - Tony Lines

Corporate Manager N/A

General Manager General Manager City Services - Tony Lines

Report Reference GC210427F05

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(d) (i) and (ii) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager City Property, Manager City Activation, Manager Corporate Governance, Manager Strategic Procurement Services, Unit Manager Land and Property, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Officer be excluded from the meeting as the Council receives and considers information relating to LKCC 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 the current EOI process for the management of the Living Kurna Cultural Centre.

LKCC Management Model - SCI Submission**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(d) (i) and (ii) : commercial information of a confidential nature (not being a trade secret) the disclosure of which (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest.

Cover Report - Edwardstown Soldiers Memorial Recreation Ground (ESMRG) 100 Percent Profit Share Model Revision

Originating Officer Acting Chief Executive Officer - Sorana Dinmore

Corporate Manager Manager City Property - Thuyen Vi-Alternetti

General Manager General Manager City Development - Ilia Houridis

Report Reference GC210427F06

Confidential ☐

RECOMMENDATION

That pursuant to Section 90(2) and (3)(b)(i) and (ii) and (3)(g) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Corporate Governance, Manager City Property, Unit Manager Sport and Recreational Community Facilities, Unit Manager Land & Property, Unit Manager Communications, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Edwardstown Soldiers Memorial Recreation Ground 100% Profit Share 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 a profit share model and a current confidential order is in place over previous reports, attachments and minutes to which this report relates.

Edwardstown Soldiers Memorial Recreation Ground (ESMRG) 100 Percent Profit Share Model Revision**CONFIDENTIAL****Reason For Passing This Resolution**

Local Government Act (SA) 1999 S 90 (2) 3(g) : matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

Local Government Act (SA) 1999 S 90 (2) 3(b) (i) and (ii): information the disclosure of which (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance, be contrary to the public interest.

CORPORATE REPORTS FOR DECISION

Draft Annual Business Plan 2021-22 and Long Term Financial Plan for Public Consultation

Originating Officer Unit Manager Statutory Finance and Payroll - Andrew Doyle

Corporate Manager Manager Finance - Ray Barnwell

General Manager General Manager Corporate Services - Sorana Dinmore

Report Reference GC210427R08

Confidential ☐

REPORT OBJECTIVE

The purpose of this report is to present the City of Marion Draft Annual Business Plan 2021-22 (ABP 2021-22) and Draft Long Term Financial Plan (LTFP) for Council's consideration and endorsement for public consultation, subject to any changes proposed by Council.

EXECUTIVE SUMMARY

The development of the Draft ABP 2021-22 and LTFP is an iterative process that continues through to the adoption of the ABP at the end of June. This draft has been developed for the purpose of community consultation and, with any amendments arising from the consultation process, will be considered for adoption by Council at the 22 June 2021 General Council meeting.

The Draft ABP is Council's statement of its intended programs and outcomes for the 2021-22 year. It connects our long-term planning, as set out in the Strategic Plan 2019 – 2029 and supports the delivery of the third year of the 4 Year Business Plan 2019-2023 (4YBP) with the allocation of resources in the 2021-22 Annual Budget. It also outlines the Corporate KPIs as the basis for review of Council's performance over the year.

The Draft ABP 2021-22 and LTFP have been developed using a proposed average rate increase of 1% for 2021-22 plus forecast annual growth of 1%. The average rate increase of 1% is forecast to be maintained for 2022-23, year two of the LTFP, with the remaining eight years of the LTFP gradually moving from a forecast average rate increase of 1.5% in year three down to a 1.3% average rate increase in years 8 to 10.

The draft ABP 2021-22 currently forecasts a deficit of \$0.613m following the inclusion of a number of new initiatives and service improvements outlined in this report. All remaining years of the LTFP are forecasting a surplus position ensuring Council is meeting its core 'Financial Sustainability' target maintaining, on average, a break-even or better funding (cash) position over the LTFP. The net surplus position for the 10 years of the LTFP is \$5.821m.

Community consultation will be undertaken during April/ May 2021. This consultation period provides an opportunity for the community to provide feedback online and/or make submissions via Council's website or alternatively by post. Included within this period is an opportunity for public representation to Council at the 11 May 2021 General Council meeting.

RECOMMENDATION

That Council:

1. **Endorses the Framework and Key Assumptions noted in this report which have formed the basis for the development of the Draft 2021-22 Annual Business Plan and Draft Long Term Financial Plan.**
2. **Endorses for inclusion in the Draft Annual Business Plan 2021-22 and Draft Long Term Financial Plan for public consultation the 2021-22 new initiatives noted in this report, including the use reserve funds totalling \$750k to fund council's contribution to the State Heritage Coach House Restoration project, subject to any changes proposed at this meeting.**
3. **Endorses the City of Marion Draft Annual Business Plan 2021-22 and Draft Long Term Financial Plan (Attachment 1) to proceed for public consultation, subject to any changes proposed at this meeting.**

DISCUSSION

Annual Business Plan 2021-22

Council is required by the *Local Government Act 1999* to prepare and adopt an ABP each year, and in doing so, determine the key strategic priorities for the ensuing 12 months in the context of Council's Strategic Plans. The ABP and LTFP form an integral part of Council's suite of Strategic Management Plans. It connects the long term planning, as set out in the Strategic Plan 2019-2029 and supports the delivery of the third year of the 4YBP 2019-2023 with the allocation of resources in the 2021-22 Annual Budget. It also establishes the basis for review of the Council's performance over the year published in its annual report.

The Draft ABP 2021-22 and Draft LTFP have been prepared in accordance with the guidelines stated in the *Local Government Act 1999*, S122. The plan includes appropriate information pertaining to rates and charges that Council intends to levy, as well as a range of key information required by the Local Government (Financial Management) Regulations. The adopted budget will include statutory statements being the Income Statement, Statement of Financial position, Statement of Changes in Equity, and Statement of Cashflows. In addition to these statements, a 'Funding Statement' will be provided which details the funding sources and a net overall funding position.

In the development of the Draft ABP 2021-22, consideration has been given to Council's strategic management framework, financial parameters and key issues identified through the environmental scanning process, as well as the relevant Commonwealth, State and Regional strategies and plans.

Key observations regarding the Draft ABP 2021-22 and Draft LTFP include:

Proposed Average Rate Increase for 2021-22

The Draft ABP 2021-22 and LTFP have been developed using a proposed average rate increase of 1% for 2021-22 plus forecast annual growth of 1%. Applying an average increase in rates of 1% in 2021/22 continues Council's commitment to keeping rates low following on from a zero percent average rate increase last year to support our community and businesses through COVID-19.

The proposed 1% average rate increase ensures that services will not only be maintained but improved and that a sufficient capital expenditure program is planned to maintain council's assets. The mix of loan funding, reserve funding in addition to rate funding ensures the achievement of financial sustainability is met by supporting intergenerational equity in addition to minimising the impact of rate increases on our community.

The average rate increase of 1% is forecast to be maintained for 2022-23, year two of the LTFP, with the remaining eight years of the LTFP gradually moving from a forecast average rate increase of 1.5% in year three down to a 1.3% average rate increase in years 8 to 10.

The draft ABP 2021-22 currently forecasts a deficit of \$0.613m following the inclusion of a number of new initiatives and service improvements. All remaining years of the LTFP are forecasting a surplus position ensuring Council is meeting its core 'Financial Sustainability' target maintaining, on average, a break-even or better funding (cash) position over the LTFP. The net surplus position for the 10 years of the LTFP is \$5.821m.

New initiatives incorporated into the Draft ABP 2021-22 and LTFP

The Draft ABP 2021-22 incorporates the financial impact of some new proposed initiatives.

The table below shows the new 2021-22 initiatives currently incorporated into the Draft ABP 2021-22 and the source of funding for these new initiatives, being, either through rates, loan funding, grant funding or the utilisation of available funds from Council's Asset Sustainability Reserve.

Initiative	Funding Source	2021/22	LTFP	Resolved
Operating				
Revitalisation Edwardstown Employment Precinct	Rates	277,500	once off	GC210309R03
Tree Management - Operating & Maintenance	Rates	317,661	ongoing	GC210323R07
Total Operating Initiatives Loaded		595,161		
Capital				
Tree Management - Water Trucks	Rates	370,000	once off	GC210323R07
Marion Golf Club	Grant/Loan	1,500,000	\$1.35m loan in 2022/23	\$3.35m total project, subject to additional Grant Funding of \$1.5m
State Heritage Coach House Restoration	Grant/Reserve	1,500,000	once off	
Total Capital Initiatives Loaded		3,370,000		
Total Initiatives Loaded		3,965,161		
Funded from Reserves		750,000		
Funded from Grants		2,250,000		
Funded from Rates		965,161		

The table above includes funding in 2021-22 of \$1.5m for the State Heritage Coach House restoration project. Council has been successful in attracting \$0.75m matching funding through the Local Government Infrastructure Partnership Program (LGIPP). It is proposed that Council's contribution of \$0.75m should be allocated from available cash reserves in Council's Asset Sustainability reserve for this project.

Key Projects – Funded in ABP 2021-22 and LTFP

The ABP 2021-22 will fund the completion, progression of key projects including :

- Completion of Mitchell Park Sports and Community Centre Redevelopment
- Completion of BMX and Soccer Facilities on Majors Road
- Completion of Skate Park and playground at Capella Reserve
- Progress the rebuild of the Coastal Walkway
- Progress the redevelopment of Tennis, Netball Courts and open space at Tarnham Road
- Commencement of multi-year project at Marion Golf Club (Subject to grant funding outcomes)

Movement in Council's Accounting Reserves

Councils 2020-21 budget forecasts the use of \$8.206m from Reserves. Further allocation of reserve funds proposed in the 2021-22 ABP will reduce Council's Reserves by \$5.112m from a Reserve Balance of \$16.098m down to \$10.986m

Forecast Transfers from Reserves - 2021-22

The draft 2021-22 ABP includes the impact of a number of Council Resolutions with planned **transfers from** Reserves for the following projects:

Coastal Walking Trail	\$1.247m	GC191126R07
Soccer in the South	\$3.070m	SGC191125F01
Destination Playground Contribution	\$1.000m	(remaining 50% of \$2m contribution)
Other	\$0.080m	
Total Transfers from Reserves	\$5.397m	

Beyond 2021-22 Council has **committed funds** for the following key projects:

Coastal Walking Trail	\$1.053m	(GC191126R07)
MCC Plaza (subject to grant funding)	\$1.200m	(GC200623R16)
Alternative water supply (subject to grant funding)	\$1.795m	(GC201124F01)
Capella Reserve	\$0.716m	(GC210223F01)
	\$4.764m	

Forecast remaining balances available in Council's Reserves for future projects are:

Asset Sustainability Reserve	\$1.210m (excl \$2m set aside for Major Infrastructure Failure)
CFPP	\$0.577m
Water Supply Business	\$0.019m
Open Space Reserve	\$2.103m
Total Reserves - 2021-22	\$3.909m

It is proposed that Council's contribution of \$0.750m to the State Heritage Coach House restoration project should be allocated from available cash reserves in Council's Asset Sustainability reserve for this project. This will further reduce the available balance in Asset Sustainability reserve to \$0.460m and reduce the total reserves available for future projects to \$3.159m.

Basis of Preparation of Draft ABP 2021-22 and LTFP

The LTFP is an on-going iterative process and the framework and assumptions are updated annually based upon the most current data and information prevailing at the time. The Draft ABP 2021-22 and Draft LTFP have been prepared under the framework and assumptions listed below.

Framework

- Support the achievement of the City of Marion's Strategic Directions.
- Address issues arising and opportunities identified from internal audit reviews, service reviews and business excellence assessments.
- Maintain, on average, a break-even or better funding (cash) position over the Long Term Financial Plan.

- Continue to improve the maintenance of assets in accordance with Council's Asset Management Plans, with a priority on maintenance before renewal, and renewal before new when it is cost effective to do so.
- Review existing services and assets to ensure they meet prioritised community needs.
- Council only approve new Major Projects where it has the identified funding capacity to do so.
- Maintain Council's position for an average residential rate that remains among the lower rating metropolitan councils.

Key Assumptions

In developing the Draft LTFP and Draft ABP 2021-22, the following key assumptions and variables have been applied:

Service Levels - Where changes to service delivery have been prioritised and approved by Council subject to financial capacity, these have been incorporated into the ABP and LTFP. Where no other endorsement exists, service delivery levels are maintained at current levels.

Indexation - The 2021-22 ABP has been based off historical actuals adjusted where appropriate by Adelaide CPI (currently - 1%). From the year 2022/23 indexation is set at 1.5% increasing by increments of 0.5% per annum to 2.5% applied in 2024/25 and continuing at this rate for the remainder of the LTFP in line with the Reserve Bank's targeted CPI. This indexation is applied to operating income and expenditure amounts, with the following exceptions:

- **Rates** – the first two years of the LTFP are based on a 1% average rate increase plus growth of 1% with the remaining 8 years of the LTFP gradually moving from a forecast average rate increase of 1.5% in year 3, down to a 1.3% average rate increase in years 8 to 10 of the LTFP. This assumption will continue to be monitored in light of global economic forecasts and the financial impact that those circumstances may have on Marion ratepayers and their capacity to pay.
- **Employee Costs** – increases applied to employee costs are aligned to council's existing Enterprise Agreement provisions. In addition any costs relating to approved staff resources for Council endorsed initiatives will be incorporated into the LTFP. The scheduled change in the Superannuation Guarantee still proposed to commence on 1 July 2021 - with five annual increases of 0.5% is also currently incorporated into the Draft LTFP.
- **Interest expenses** - are directly related to Council borrowings and cash flows.
- **Interest revenue** - is directly related to Council investments and cash flows and will be carefully monitored in line with interest rate movements, currently at record lows.
- **Non recurrent Costs/ Revenues** - An adjustments schedule has been developed to account for any future variations in operating activities (e.g. an adjustment is made for election expenses to reflect that they only occur once every 4 years).
- **Capital Grants, subsidies and monetary contributions** - reflect tied monies received in relation to the purchase/construction of new assets and are budgeted in accordance with information known at the time of preparing this document.

Corporate Key Performance Indicators

The Corporate Key Performance Indicators (KPIs) for 2021-22 are consistent with feedback provided by members at the January planning day. The additional KPI's are:

- **Missed bin collections** - The core target to be 'Missed bin collections no greater than 0.1% of the total volume.' This target is consistent with commercial arrangements with the vendor. There is no recommended stretch target for this KPI.

- Asset Utilisation Sports and Community venues -The core is suggested to be 75% utilisation of all sports venues/common spaces/community venues (measured through the booking system)

The Asset Sustainability KPI is replaced with the wording 'Asset Renewal Funding ratio' which is consistent with the wording endorsed for the Asset management strategy and Asset Management Plans. The core target asset renewal funding ratio between 90% and 110% allows for expenditure fluctuations in this range which are consistent with maintaining the stretch target of 100% over the asset management plan and long term financial plan. Page 16 of the plan outlines the Corporate KPI's for 2021/22.

Annual Business Plan 2021-22, and LTFP Process

The key remaining steps for the ABP and LTFP process are as follows.

Please note that these key dates may be subject to alteration.

KEY STAGES	DATE	MEETING
Adopt Draft ABP 2021-22, and LTFP for public consultation	27 April 2021	General Council
Public consultation period	30 April- 21 May 2021	Written submissions and feedback via Making Marion
Community representations to Council	11 May 2021	General Council
Review and feedback on Draft ABP 2021-22, LTFP, and updated suite of KPIs	18 May 2021	Finance & Audit Committee
Draft ABP 2021-22 and LTFP for endorsement	8 June 2021	General Council
ABP 2021/22 and LTFP for adoption	22 June 2021	General Council

Public consultation

Public consultation on the Draft ABP 2021-22 and LTFP will be undertaken for the period 30 April to 21 May 2021. This meets the requirements of s122 of the *Local Government Act 1999*. Draft Plans and opportunity for comment will be available on the 'Making Marion' website (www.makingmarion.com.au) Notices will also be placed in community and business newsletters directing readers to Council's website.

Consultation on the ABP also meets requirements in the South Australian Public Health Act 2011, S51.

The 11 May 2021 General Council meeting will include an allowance of one hour for public representations where members of the public can be invited to make verbal submissions.

Any feedback from the community consultation process will be considered and will inform the draft ABP 2021-22 and LTFP to be presented for Council's consideration and adoption at the General Council meeting to be held on 22 June 2021.

CONCLUSION

The City of Marion Community Vision - Towards 2040 sets out the aspirations of the community and, along with the 10 year Strategic Plan 2019-2029 and the 4 Year Business Plan 2019-2023 provides the basis for the Draft ABP 2021-22 and Draft LTFP for public consultation. This Annual Business Plan 2021-22 has been developed to guide Council's activities over the coming year and is presented to Council to endorse for public consultation, subject to any proposed changes. Projects and initiatives outlined for delivery in the third



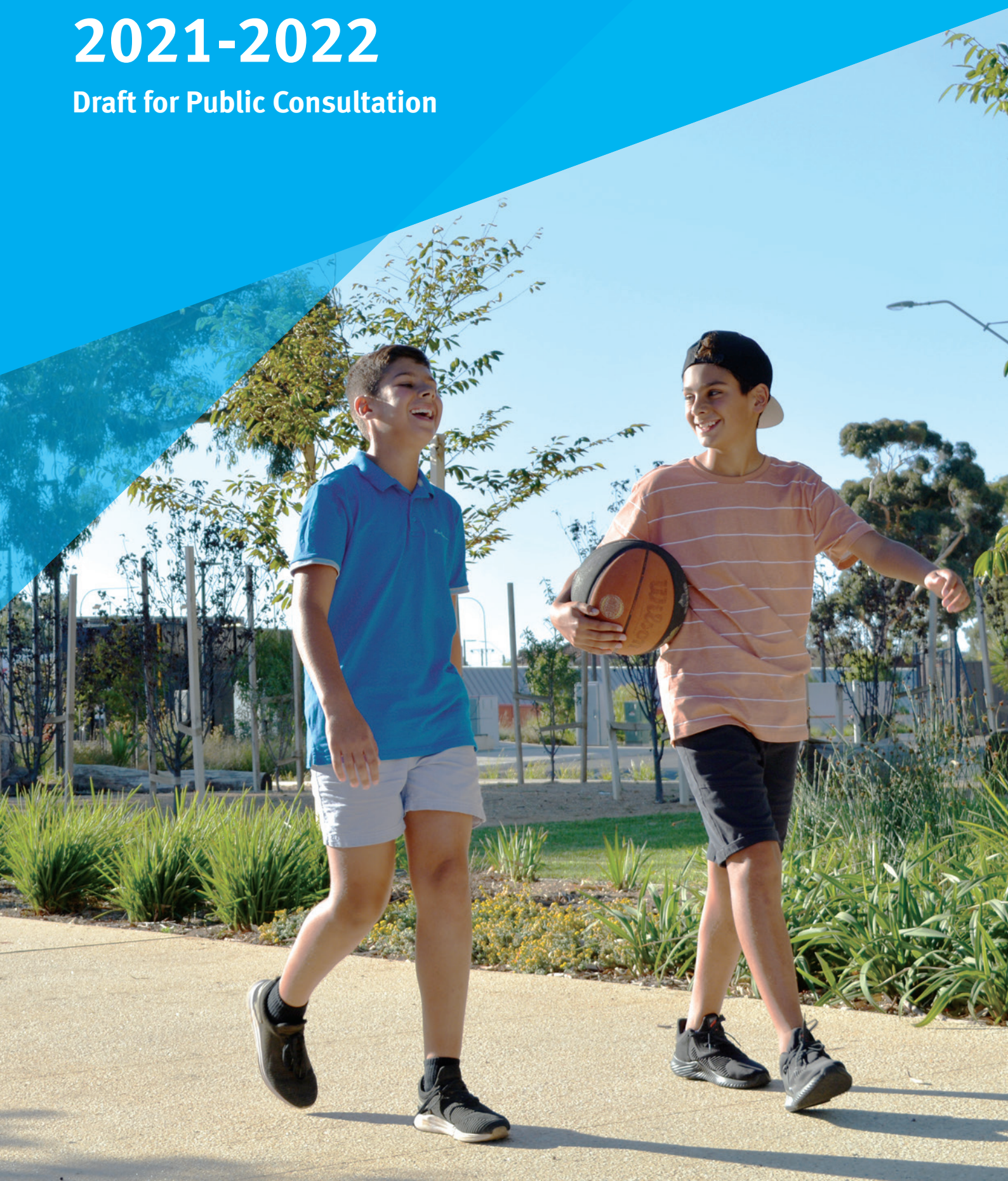
year of the 4-Year Business Plan provide the basis for the Draft Annual Business Plan 2021-22, and inform the Draft LTFP for public consultation.

Attachment

#	Attachment
1	Attachment 1 - Draft Annual Business Plan 2021-2022 for Public Consultation

City of Marion Annual Business Plan 2021-2022

Draft for Public Consultation



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YOUR VOICE

The City of Marion is seeking your input and feedback regarding the Draft Annual Business Plan 2021-2022. This process provides you with the opportunity to have your say on the level of service and activities undertaken by the Council before the final budget is adopted.

Community consultation closes at 5:00pm on 21 May 2021.

Online submission forms are available on Council's community engagement website makingmarion.com.au

Written submissions are welcomed addressed to the following:

City of Marion
PO BOX 21
Oaklands Park SA 5046

Or

council@marion.sa.gov.au

Verbal submissions may be made at the 11 May 2021 General Council meeting, which begins at 6:30pm.

At this meeting, members of the public may ask questions and make submissions in relation to the Draft Annual Business Plan for a period of one hour. Each speaker will be allocated a maximum of five minutes to make their submission.

If you wish to make a verbal submission to General Council, please contact:

Kate McKenzie
Manager Governance
Telephone: 08 8375 6600

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ACKNOWLEDGEMENT OF COUNTRY

We acknowledge we are part of Kurna land and recognise the Kurna people as the traditional and continuing custodians of the land.

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WELCOME

Welcome to the City of Marion's Draft Annual Business Plan 2021-2022.

This plan shows how Council proposes to spend its budget for the coming year, including maintaining more than \$1 billion of infrastructure.

We now invite you to provide feedback on this draft plan, including the projects and services it will provide. Your views will be considered by Council before it is finalised.

Council is proposing a 1 per cent average rate increase for the coming year (there will be a fluctuation due to changing property values that are outside of Council's control).

This continues our commitment to keeping rates low and follows a zero percent average rate increase last year to support our community and businesses through COVID-19.

Key projects the plan will deliver include:

- Completing the \$16.25m rebuild of Mitchell Park Sports and Community Centre
- Completing the \$13.05m BMX and soccer facility at Majors Road
- Completing the \$2.78m skate park and playground at Capella Reserve, Hallett Cove
- Starting the \$1.5m restoration of the historic Coach house and Pedestrian bridge replacement at Warriparinga
- Investing a further \$688,000 to support tree management initiatives
- Investing \$277,000 in revitalising the Edwardstown business precinct

Council has a number of projects submitted for consideration to the State Government that are currently awaiting grant outcomes, including the Tarnham Road Tennis and Netball facility, Hugh Johnson Reserve playground, Marion Golf Club and the Marion Cultural Centre Plaza.

Council welcomes your feedback during the community consultation process. We look forward to considering your comments at our General Council meeting on 8 June.

Yours faithfully,

KRIS HANNA

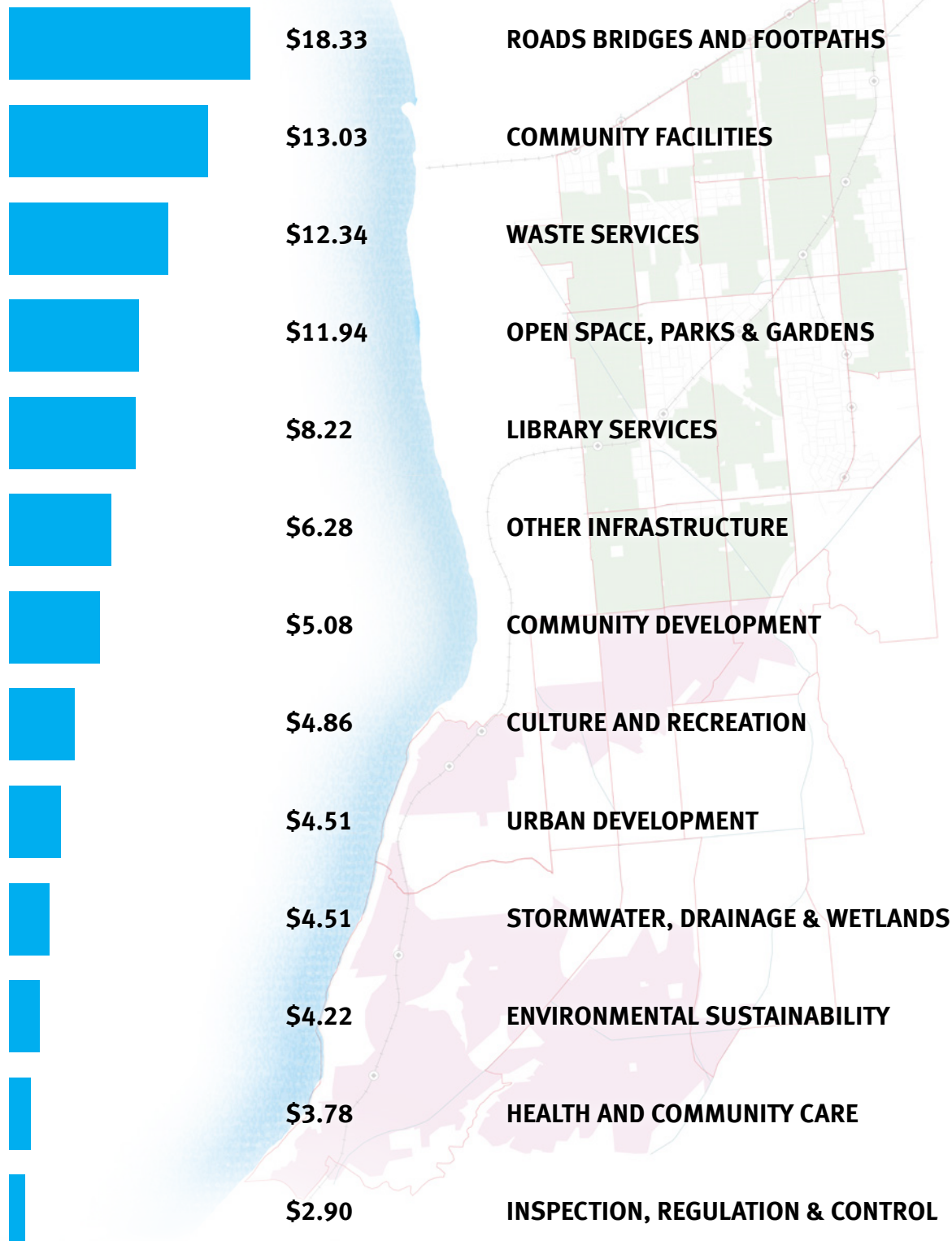
Kris Hanna
Mayor



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YOUR RATES AT A GLANCE

AMOUNTS SPENT PER ONE HUNDRED DOLLARS (\$100)



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OVERVIEW

The Annual Business Plan 2021-2022 outlines the strategic projects, services and programs that we will aim to deliver in the coming financial year. Council has determined to undertake strategic initiatives outlined in the Four-Year Business Plan 2019-2023 to progress the community's aspirations in the City of Marion Community Vision - 'Towards 2040' and the goals in the 10-Year Strategic Plan 2019-2029.

Council is committed to delivering value to our ratepayers. Through a focus on prudent financial management and decision making, Council will continue to identify on-going savings. Funding secured from both the State and Federal Governments supports the delivery of new infrastructure. A strong efficiency focus has enabled us to support our community with a proposed 1% increase in the average rate for 2021-2022.

During 2021-2022, the City will continue to be improved through investment in the following initiatives:



Commissioned street art at Edwardstown, by Senman Creations.



IMPROVING OUR STREETS

Council will invest \$2.8m to improve the character and functionality of streets, including new initiatives for tree management. Works include extra tree planting, investment in two water trucks and street upgrades.

Additional Federal funding of \$1.5m will also deliver a further two street upgrade projects along Sturt and Morphett roads.



MITCHELL PARK SPORTS & COMMUNITY CENTRE REDEVELOPMENT

The \$16.25m redevelopment of the Mitchell Park Sports and Community Centre, which began in early 2021, is scheduled to be completed and opened in the first half of 2022. This redevelopment is supported with a \$5m grant from the Federal Government.

The new facility will include indoor and outdoor multipurpose sports courts, clubrooms, a neighbourhood centre and dog club.



COASTAL WALKWAY

Council will continue to progress the rebuild of sections of the walkway. Construction of the boardwalk connecting Heron Way Reserve to the Field River mouth is scheduled to start in June 2021.

Council has committed \$2.44m with matched funding by the State Government to rebuild the sections over the next three years.



EDWARDSTOWN EMPLOYMENT PRECINCT

Council is continuing to revitalise the Edwardstown business district to create jobs and attract investment. Work will include planting additional street trees to enhance the amenity, create public artwork and improve access and car parking.

Council has committed \$277,000 to the project.

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CAPELLA RESERVE

Construction will continue on the \$2.78m upgrade of Capella Reserve. The Federal Government has committed \$1.29m toward the project.

The new precinct will include a youth plaza area, basketball court, new skate park, playground, BBQ and toilet facilities.



NEW SOCCER & BMX FACILITIES

Work is well underway to construct the Sam Willoughby International BMX track and the Southern Soccer Facility in Glenthorne National Park. It is anticipated these will be completed by late 2021.

The Southern Soccer Facility includes three turf pitches, floodlighting, fencing, clubrooms, and car parking for over 200 vehicles. The Sam Willoughby International BMX track includes a UCI standard track, clubrooms, landscaping, entrance lane and car parking.

The combined projects total \$13.05m with the City of Marion contributing \$6.25m and the State Government \$6.05m. The City of Onkaparinga is also contributing \$0.75m towards the BMX track.



REDEVELOP TENNIS & NETBALL COURTS - OPEN SPACE AT TARNHAM ROAD RESERVE

Council will replace four ageing tennis courts with four new courts that can be used for tennis and netball.

A shelter, toilet, and play equipment will also be installed. Work will cost approximately \$2m and is expected to commence in October 2021. (Subject to grant funding)



LIVING KAURNA CULTURAL CENTRE COACH HOUSE RESTORATION

Significant restoration work will commence on the state heritage listed Coach House so that it can be used by the community as a venue and hall facility and further compliment the educational opportunities of the area's history. Two key pedestrian bridges within the Warriparinga area will also be replaced and integrate with the Sturt River Linear Park shared use path.

The \$1.5m project is jointly funded by the City of Marion and the State Government.



MARION CULTURAL CENTRE PLAZA

Council plans to revitalise the civic space outside the Marion Cultural Centre library to create a destination place for the community to enjoy social, cultural and economic activities.

The \$3.4m project is subject to State Government Funding with Council seeking a jointly funded partnership. Funding announcements are expected in June 2021.



LIGHTING UPGRADES

Council secured \$774,000 in Federal Government funding to upgrade lighting at Marion and Glandore ovals along with the Marion RSL bowls and tennis club.

The lighting will feature energy-efficient globes to reduce costs and carbon emissions.

Council will audit its sporting and community facilities to identify opportunities for further improvements.

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OUR PURPOSE, VISION AND VALUES

OUR PURPOSE To improve our residents' quality of life; continuously, smartly and efficiently
(Why we exist)

OUR COMMUNITY VISION A community that is Liveable, Valuing Nature, Engaged, Prosperous, Innovative and Connected
(What we want to become)

OUR VALUES With the community and safety at the forefront of everything we do, we value:

Respect - Treating everyone as we want to be treated, where all contributions are valued

Integrity - Fostering trust and honesty in all of our interactions

Achievement - Enhancing our knowledge and performance to reach our shared goals, while being dedicated to supporting one another

Innovation - Encouraging new ideas, and learning from our experience to do things better



The six themes of our Community Vision represent the shared values and aspirations guiding how our city develops, towards 2040. These outcomes are important for this community now and into the future:

LIVEABLE

By 2040 our city will be well planned, safe and welcoming, with high quality and environmentally sensitive housing, and where cultural diversity, arts, heritage and healthy lifestyles are celebrated.

VALUING NATURE

By 2040 our city will be deeply connected with nature to enhance people's lives, while minimising the impact on the climate, and protecting the natural environment.

ENGAGED

By 2040 our city will be a community where people are engaged, empowered to make decisions, and work together to build strong neighbourhoods.

INNOVATIVE

By 2040 our city will be a leader in embracing and developing new ideas and technology to create a vibrant community with opportunities for all.

PROSPEROUS

By 2040 our city will be a diverse and clean economy that attracts investment and jobs, and creates exports in sustainable business precincts while providing access to education and skills development.

CONNECTED

By 2040 our city will be linked by a quality road, footpath and public transport network that brings people together socially, and harnesses technology to enable them to access services and facilities.

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STRATEGIC MANAGEMENT FRAMEWORK

This Annual Business Plan 2021-2022 is an integral part of Council's Strategic Management Framework that will enable strategic and operational plans, management systems and processes to work together to effectively deliver the Community Vision.



STRATEGIC MANAGEMENT FRAMEWORK

30 YEAR COMMUNITY VISION TOWARDS 2040

LIVEABLE VALUING NATURE INNOVATIVE
PROSPEROUS CONNECTED ENGAGED

A shared Community Vision

Innovating a future for the city and its residents

STRATEGIC PLANS

STRATEGIC PLAN
WORKFORCE PLAN
DEVELOPMENT PLAN
ASSET MANAGEMENT PLAN
LONG TERM FINANCIAL PLAN
HEALTH, SAFETY & ENVIRONMENT PLAN

A suite of plans that focus Council's contributions to the Community Vision

BUSINESS PLAN JULY 2019–JUNE 2023

Council's delivery program over its term

WORK AREA PLANS

Team level planning to ensure community and Council's priorities are delivered

ANNUAL BUSINESS PLAN

Identifies how Council's work is resourced and paid for each year

PERFORMANCE DEVELOPMENT PLANS

Individual delivery and development plans

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SIGNIFICANT INFLUENCES

In the development of the Annual Business Plan we undertake a review of our internal environment and broader external environment that includes political, economic, environmental, social and technological influences. This identifies key issues that help provide the context for the development of this plan.

The following broad trends impacting our city include:



LOCAL GOVERNMENT REFORM

The Statutes Amendment (Local Government Review) Bill was introduced to Parliament in June 2020.

The reforms contained in the Bill include a new conduct management framework, an expansion of expert, and independent advice to councils on a range of critical financial and governance matters; modern approach to public consultation; and a range of improvements to regulation to reduce councils' costs.

The Bill is expected to pass in Parliament in April 2021.



ENVIRONMENT

Council has set a target of becoming Carbon Neutral by 2030 for its own operations. Actions will include making its major events carbon neutral, switching to renewable energy and transitioning towards a zero emissions fleet.

Council will plant more trees in urban heat hot spots to cool the streets and improve the area for locals, visitors and investors.

Educational activities will seek to help residents, businesses build resilience and adapt to impacts of a changing climate. The Resilient South Regional Climate Partnership will continue.



HEALTH, WELLBEING & SOCIAL ISOLATION

Reported public health data for the City of Marion highlights key lifestyle challenges including increased sedentary lifestyles, and insufficient levels of physical activity and participation. Almost one third of our city residents live alone, indicating the potential for social isolation (ABS data).

Council's focus on facilities and services that promote healthy lifestyles, community participation and well-being will positively impact our community.



POPULATION CHANGES

The City of Marion population is forecast to grow by 10% over the next 10 years. Currently our population includes a higher number of residents aged over 60 compared to Greater Adelaide. To facilitate growth and changes in our community it is important to invest in our infrastructure to meet the needs of our community. A significant part of Council's annual spend is devoted to the repair, maintenance and upgrade of community assets.

Our endorsed Asset Management Plans ensure we continue to deliver agreed levels of service to our community.

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ELECTIONS

State and Federal elections will occur in the 2021-2022 financial year. Council takes a proactive approach in lobbying and advocating support for projects that align with the vision for our community.

Council has a number of strategic objectives in the 4 Year Business Plan 2019-2023 that will be a focus for discussion with Government's as the election campaign commences.



PLANNING SYSTEM REFORMS

The State Government has introduced the biggest changes to development laws in the past 25 years.

The change impacts how applications are lodged and assessed, and how development policy is formed and amended.

Council provided extensive feedback to the State Planning Commission during public consultations. Council acknowledged many positive elements.

Twice Council fought- unsuccessfully- for the plan to take account of resident's concerns. Council sought to protect the north of the city from the worst impacts of urban infill, to allow appropriate development in the hilly and coastal areas, and improve design standards generally.



NORTH-SOUTH CORRIDOR

The Torrens to Darlington (T2D) section is the final piece of the North-South Corridor that will complete a 78km continuous traffic- light free connection between Gawler and Old Noarlunga, with links to the greater north freeways, Port Adelaide and airport precincts.

The T2D comprises of 10.5km of motorway from the River Torrens through to Darlington. A combination of tunnels, lowered and ground- level motorways, bridges and underpasses at key intersections will be built.

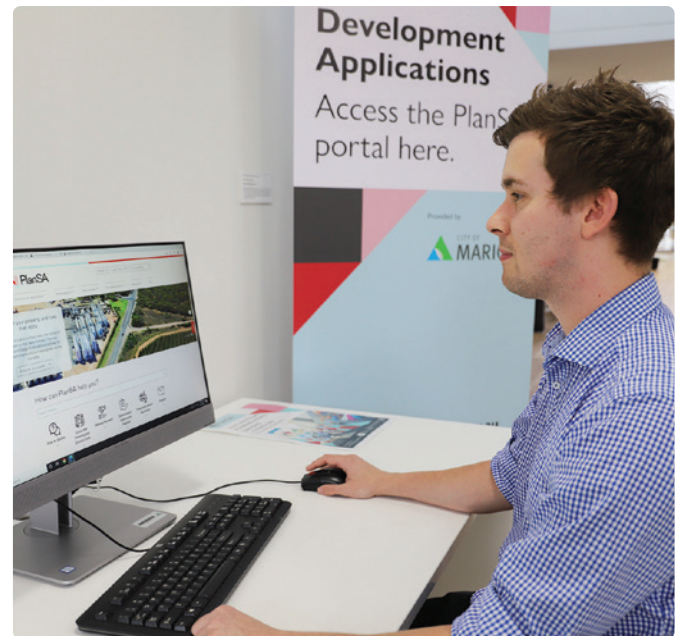
The State Government is leading key stakeholder engagement with community, business and technical design groups. Council will remain active in conversations with the State Government.



COVID-19 RECOVERY

Council remains responsive to the latest guidance by SA Health and any restrictions imposed in order to help manage public health risk posed by COVID-19.

Additionally, it will support the roll out of vaccinations as required. Council has plans in place to continue delivering services should COVID-19 restrictions change.



PROJECT DELIVERY IMPACTS

Economic stimulus grants offered by the Federal and State Government has resulted in significant demand in the construction sector. The sector is currently facing a shortage of trades to deliver on work, increased pricing and shortages of materials through the supply chain that is resulting in delayed time frames.

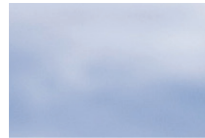
Council is not immune to these impacts and will be proactive in engaging with suppliers and contractors, however it is expected that there may be impacts to the projected costs of projects and delivery schedules.

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FRAMEWORK OF THE ANNUAL BUSINESS PLAN

The Annual Business Plan 2021-2022 has been prepared on the basis of a framework that aims to inform the community and hold the City of Marion accountable to its stakeholders. The key items in this framework are as follows:

- **SUPPORT THE ACHIEVEMENT OF THE CITY OF MARION'S STRATEGIC DIRECTIONS**



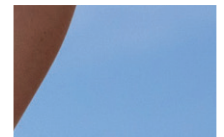
This Annual Business Plan has been reviewed against the Community Vision – Towards 2040 to ensure that Council's activities over the next 12 months make the best possible progress towards achieving the community's vision for the future City of Marion.

- **ADDRESS ISSUES ARISING AND OPPORTUNITIES IDENTIFIED FROM INTERNAL AUDIT REVIEWS, AND BUSINESS EXCELLENCE ASSESSMENTS**



Every year the Council undertakes a number of internal audits. These reviews and assessments have identified a number of key opportunities or requirements for the Council to improve its operations. This document includes the necessary resources to continue Council's independent review process and implement recommendations accordingly.

- **MAINTAIN, ON AVERAGE, A BREAK-EVEN OR POSITIVE FUNDING (CASH) POSITION OVER THE LONG TERM FINANCIAL PLAN**



With a primary focus on cash flow and ensuring the Council's asset renewal and upgrades are fully funded, this target is currently being met. To ensure ongoing financial sustainability, the Council monitors and reviews all its financial indicators together.

- **CONTINUE TO IMPROVE THE MAINTENANCE OF ASSETS IN ACCORDANCE WITH COUNCIL'S ASSET MANAGEMENT PLANS, WITH A PRIORITY ON MAINTENANCE BEFORE RENEWAL, AND RENEWAL BEFORE NEW WHEN IT IS COST EFFECTIVE TO DO SO**



The Annual Business Plan has been prepared taking into consideration individual Asset Management Plan requirements and outcomes of recent infrastructure audits. The City of Marion has a target of 90-110% for the annual Asset Renewal Ratio.

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- **REVIEW EXISTING SERVICES AND ASSETS TO ENSURE THEY MEET PRIORITISED COMMUNITY NEEDS**



The Council continues its rolling process of service reviews, aimed at maximising community value through continuously improving its operating efficiency and service performance to the community. This Annual Business Plan has been prepared based on continuing existing services, noting that a rolling program of review is being implemented.

Collaboration with other councils will continue to assist capacity building for shared strategic opportunities, Innovation and cost efficiencies and enables the ability to align processes and reduce duplication.

- **COUNCIL ONLY APPROVE NEW MAJOR PROJECTS WHERE IT HAS THE IDENTIFIED FUNDING CAPACITY TO DO SO**



Council debt is forecast to increase from \$4.6m to \$14.7m between 30 June 2021 and 30 June 2022. With consideration given to key financial indicators, Council has retained the funding capacity to consider additional strategic Major Projects and is currently investigating partnerships to aid the development of several initiatives.

These additional forecast borrowings in 2021-2022 relate to Council's contribution towards the Mitchell Park Sports & Community Centre and are anticipated to reach its maximum of \$14.7m just prior to 30 June 2022 following the completion of this project. Any changes to the timing and scope of the capital projects may impact the funding required, and in turn the total requirement for borrowings currently factored into the 2021-2022 Annual Business Plan.

- **MAINTAIN COUNCIL'S POSITION FOR AN AVERAGE RESIDENTIAL RATE WHICH REMAINS AMONG THE LOWER RATING METROPOLITAN COUNCILS**



Comparative 2020-2021 data shows that Council's average residential rate continues to remain among the lower rating metropolitan councils, with its current position ranking being the 5th lowest of 18 metropolitan councils.



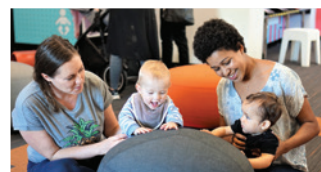
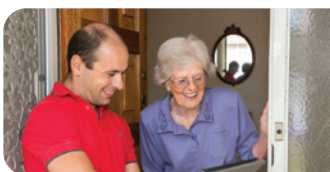
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CONTINUING AND IMPROVING SERVICE DELIVERY

All councils have responsibilities under the *Local Government Act 1999* and other relevant legislation to deliver services for the community. Council is committed to maintaining all services including, but not limited to:

ONGOING SERVICES	
Land use and development planning	Arts and cultural promotion and support
Development and building assessments	Library services
Facilitation of urban developments	Sports and recreation promotion and support
Local Government searches	Community capacity building and development
Business support services	Inspection, regulation and control
Environmental planning and leadership	Emergency planning and response
Biodiversity management	Community care
Waste services	Immunisation services
Water management	Public health planning
Infrastructure management	Urban activation & renewal
Community facilities management	Customer Experience
Reserves, parks and gardens management	Increased levels of tree planting annually
Community Transport	

ENABLING SERVICES	
Strategic management	Communications and marketing
Organisational excellence and innovation	Human resources and workforce planning
Strategic asset management	ICT & knowledge management
Financial management	Operational support
Governance support	Strategic Procurement



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PROJECT PRIORITIES

In 2021-2022 the Council plans to commence or continue working on the following strategic initiatives, as outlined in our 4 Year 2019-2023 Business Plan, or through Council resolutions:

CONTINUING INITIATIVES

CONTINUING INITIATIVES FROM PRIOR YEARS	KEY STRATEGIC THEME
Deliver the Southern Soccer Facility	Liveable
Continue to progress the redevelopment of four multi-purpose courts and open space at Tarnham Road Reserve	Liveable
Continue to expand the streetscape program to include arterial roads	Liveable
Deliver a UCI standard BMX facility in partnership with State Government and the City of Onkaparinga	Liveable
Continue to develop the City Property Strategic Asset Management Plan to meet community, sport and recreation needs	Liveable
Deliver the Mitchell Park Sport and Community facility	Liveable
Deliver Capella Reserve playground	Liveable
Review options for the Cove Sports and Community Club facilities	Liveable
Continue to identify options for recreational facilities at 262 Sturt Road	Liveable
Continue to progress the Marion Cultural Centre Plaza upgrade	Liveable
Implement the Coastal Climate Change Adaptation Plan	Valuing Nature
Implement the Energy Efficiency and Renewable Energy Plan	Valuing Nature
Continue the Coastal Walkway	Valuing Nature
Continue the roll out of the transformation of our business enterprise systems	Innovative
Implement the Social Media Strategy 2019-2023	Innovative
Continue to develop an on-line one-stop-shop for customers to enable easy access to information and transactions for council services, rates, registrations and events	Innovative
Continue to deliver the Disability Access and Inclusion Plan	Engaged
Continue to implement the 2019-2023 Reconciliation Action Plan	Engaged
Continue work to activate the Edwardstown Employment Precinct	Prosperous
Improve Marino Hall and surrounds	Connected

NEW PROJECTS COMMENCING IN 2021-2022

2021-2022 INITIATIVES	KEY STRATEGIC THEME
Restoration of the Living Kaurna Cultural Centre Coach House and Bridges	Liveable
Lighting upgrades at Marion & Glandore Ovals, Marion RSL Bowling Club & Marion Tennis Club	Liveable
Marion Golf Club (subject to Grant Funding)	Liveable
Tree Management Initiatives	Valuing Nature
Marion Central Streetscapes Project- Diagonal and Sturt Roads	Connected

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ASSET MANAGEMENT

The City of Marion's Asset Management vision is:

'To maintain the City of Marion's assets to agreed levels of service which maximise community value throughout an asset's life.'

A significant portion of Council's annual spend is devoted to the operation, maintenance and renewal of public assets which deliver safe and sustainable services to the community. Council will continue to optimise our spending on these through better asset management to deliver current service levels in the most affordable and efficient way.

Council recognises that climate change is likely to affect asset life and functionality. We are exploring what we can do to build asset resilience in response to climate impacts.

WE OWN AND MANAGE OVER \$1 BILLION OF ASSETS



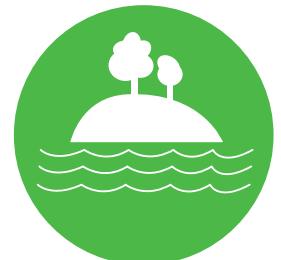
Buildings and
Structures



Transport



Stormwater



Water Treatment
and Resources



Open Space



Coastal Walkway



Fleet, Plant and
Equipment



Artworks, Culture
and Heritage

Our assets enable the provision of services to the community and businesses for current and future generations. Assets plays a vital role in the local economy and on residents' quality of life.

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MEASURING OUR SUCCESS

Monitoring performance is a critical element of strategic management. It is the mechanism for critically ensuring that the Council is contributing to the achievement of its objectives in both the Strategic Plan and the 4-Year Business Plan 2019-2023. Our Key Performance Indicator (KPI) dashboard for 2021-2022 (provided in the table below) takes account of these objectives.

KEY PERFORMANCE INDICATOR	CORE TARGET	STRETCH TARGET
Financial Sustainability	Council maintains, on average, a break-even or better funding (cash) position over the Long Term Financial Plan.	Council maintains a break-even or positive cash funding position in delivering its Annual Budget.
Delivery of agreed projects identified in the Annual Business Plan and the third year targets in the 4 year Plan	Greater than or equal to 95%	No stretch target
Percentage of missed bin collections	Missed bin collections no greater than 0.1% of the total volume	No stretch target
Total employee costs (including agency staff)	Less than or equal to 3% increase in actual employee costs (including agency staff) against prior year's actual costs – adjusted for Council endorsed changes to meet resourcing requirements	Less than or equal to 2% increase in actual employee costs (including agency staff) against prior year's actual costs – adjusted for Council endorsed changes to meet resourcing requirements
Overall satisfaction with Council's performance	Greater than or equal to 75% rated as satisfied or above	Greater than or equal to 85% rated as satisfied or above
Asset Renewal Funding Ratio (A measure to assess that we are renewing or replacing non-financial assets in accordance with our future Asset Management renewal requirements)	Asset Renewal Funding Ratio between 90 and 110%	Asset Renewal Funding Ratio greater than or equal to 100%
Delivery of Council's capital works program	Greater than or equal to 85% delivery of Council's planned capital works program (adjusted for extraordinary items)	Greater than or equal to 90% delivery of Council's planned capital works program (adjusted for extraordinary items)
Staff engagement	Achievement of an overall employee pulse survey result of 75%, based on 9 metrics (including Community, Values, Safety, Expectations, Valued, Empowerment, Development, Recognition, Happiness)	Achievement of an overall employee pulse survey result of 80%
Community engagement/communications	Project specific communications to the public should be timely and accurate	100%
Carbon Neutrality - carbon emissions footprint, measured against Council's endorsed Carbon Neutral Plan (applicable 2021/22 onwards)	Actual annual emissions less than the plan's annual target emissions	Actual annual emissions 5% less than the plan's annual target emissions
Asset utilisation of Sports and Community venues	70-80% utilisation across venues (through the booking system)	Greater than 80% across venues (through the booking system)

We will report on our progress against our 2021-2022 KPI's quarterly at Council meetings and in our 2021-2022 Annual Report.

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FUNDING THE ANNUAL BUSINESS PLAN

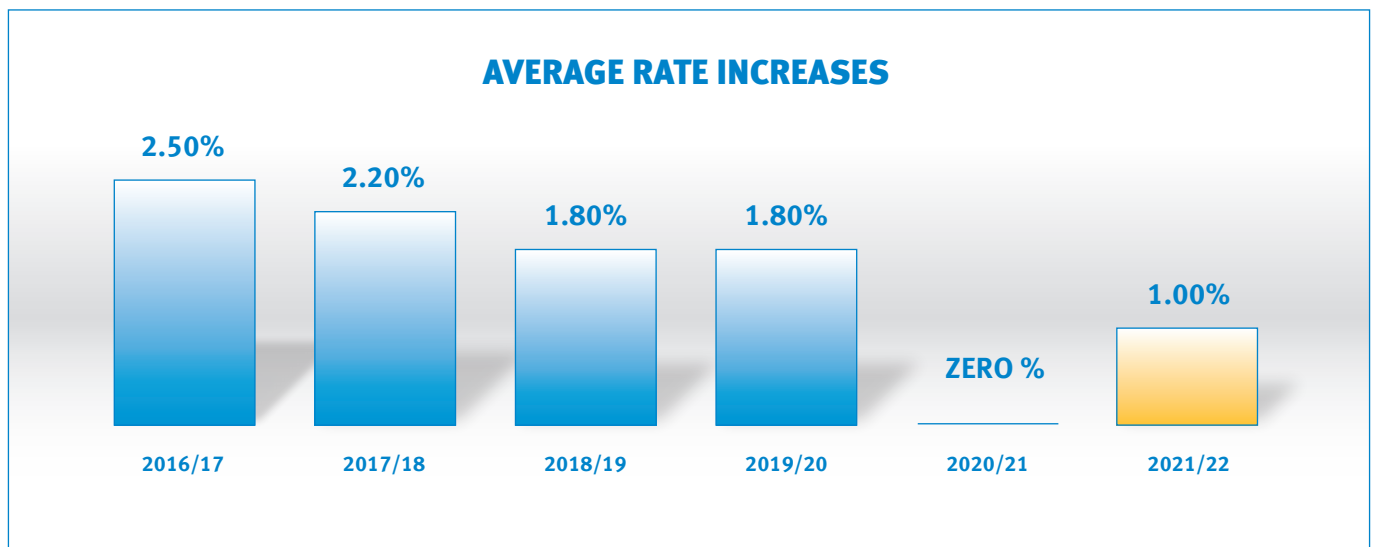
YOUR RATES IN 2021-2022

The Annual Business Plan is based on a one percent increase in the average rate for the coming year. In setting rates for 2021-2022, Council has forecast the revenue required to meet the costs of delivering the services and projects that will be provided to the community in 2021-2022.

Rates account for 83% percent of Council's operating revenue with other sources including fees, charges and grants. These revenues contribute to the necessary funding for planned capital renewal programs in 2021-2022.

While the average rate increase is one percent, it is to be noted that actual rates payable by a rate payer will vary according to individual property valuations, the attributed land use, and whether there has been any new development or capital improvement at the land.

Your feedback is valued, and Council is aware of the impact rate increases have on the community. We are continually looking for opportunities that allow this cost to be minimised, support our community during uncertain times and maintain the fiscal responsibility required of Council. On the back of a zero rate increase in 2020-2021 in consideration of COVID-19, Council has set a one per cent increase in the average rate for 2021-2022 as the most equitable position to achieve these requirements.

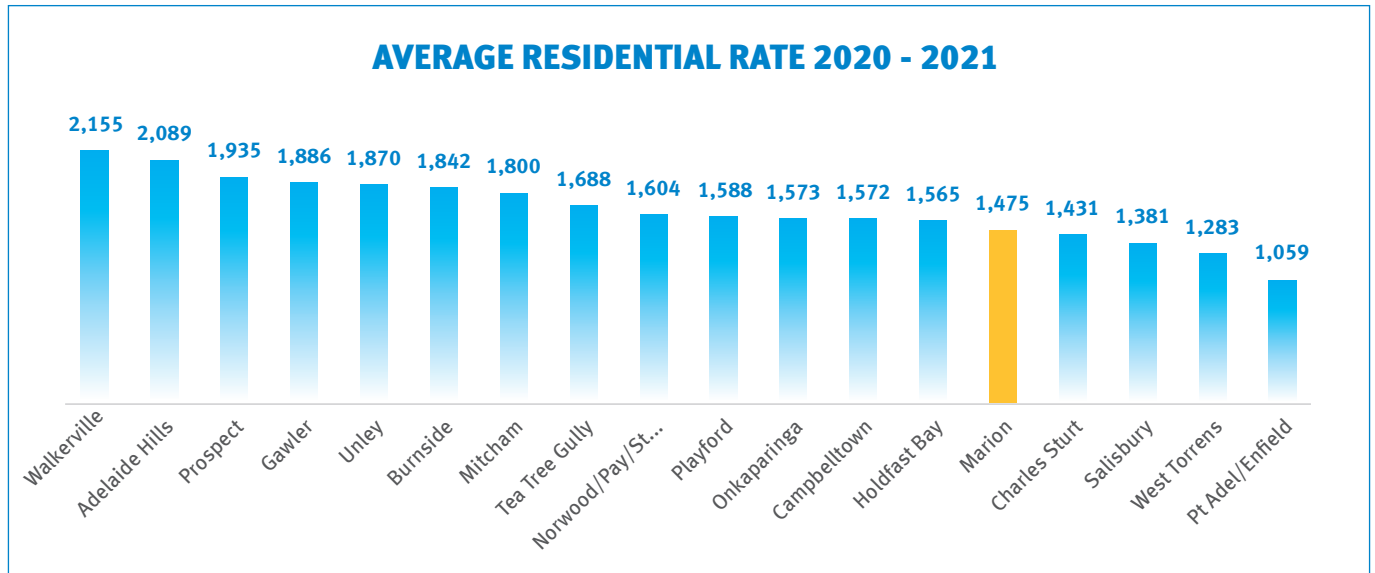


With changing community needs and other external influences impacting on the community, there is a need for Council to consider how to plan more effectively, both for the longer term and for an immediate community benefit. The rate increase is set at a level that provides confidence that services will be maintained and that a sufficient capital expenditure program is planned to maintain Council's assets.

The outcomes of the community consultation, as well as a balance between achieving the strategic directions, maintaining services and assets, ensuring financial and environmental sustainability, supporting intergenerational equity and making provision for those in the community who are experiencing hardship, have been considered in setting the rate increase for the Annual Business Plan.

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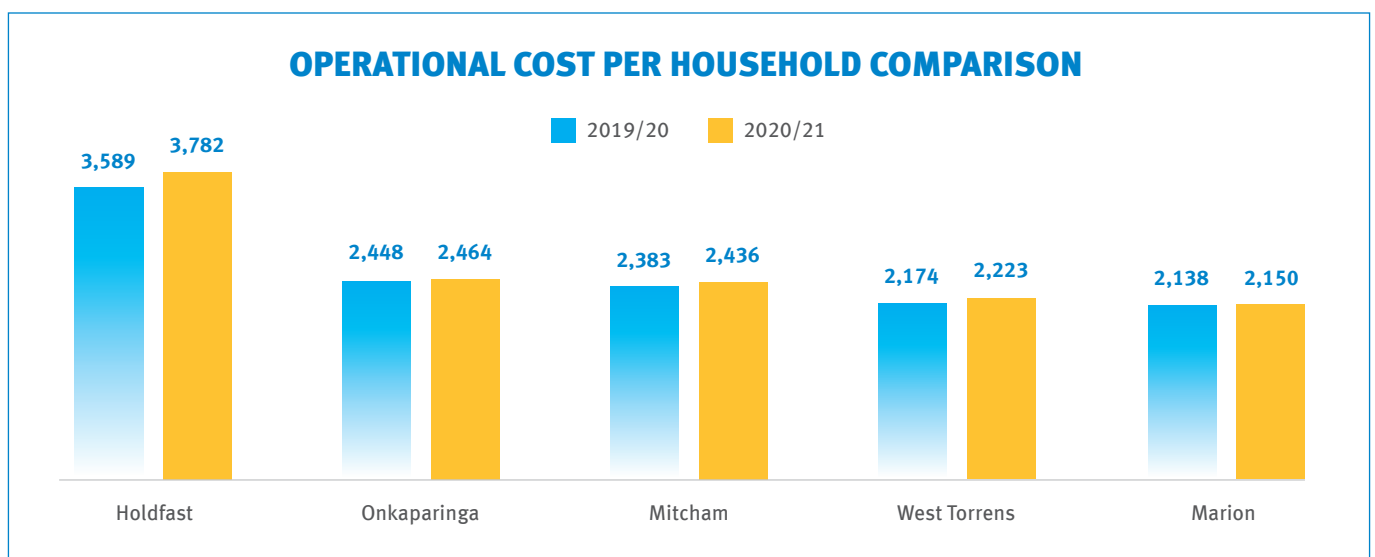
COMPARATIVE RATING DATA



With a one percent increase, the City of Marion's average residential rate is in line with Council's ABP framework and set to remain among the lower rating metropolitan councils. In 2020-21 Council had the 5th lowest average metropolitan residential rate.

OPERATIONAL COST PER HOUSEHOLD

Council's primary benchmark is to compare its average residential rate against other metropolitan councils as shown in the 'Average Residential Rate 2020-2021' table above. The table below illustrates that Council's operational costs per household compare favourably against those of our neighbouring councils. It should be noted that this does not take into account different councils' service levels, infrastructure renewal requirements not reflected in operational costs, different sources of revenue including grants and user charges which may vary from council to council.



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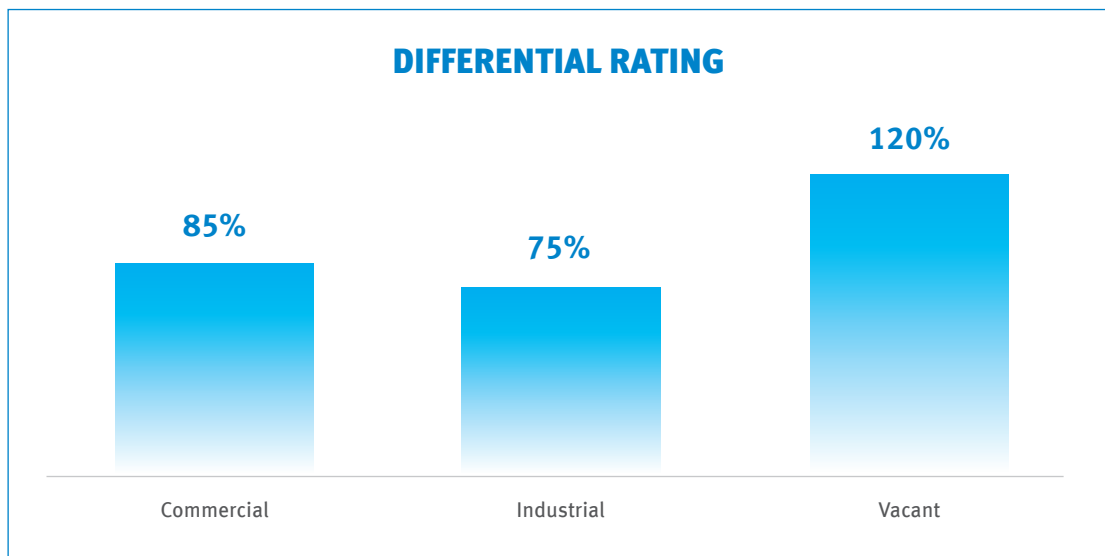
DIFFERENTIAL RATING

Council currently derives 18% (2020-21: 18%) of its rate revenue from the Commercial (17%) and Industrial (1%) sectors. Commercial and Industrial users consume a greater proportion of Council resources than residential properties, particularly in regard to the use of roads, footpaths, traffic, parking, storm water drainage, public health and environment.

Council uses a differential rating system to raise revenue based on its Land Use to ensure a fair and equitable distribution of rates within the City of Marion.

The differential rate is charged in addition to the normal rate. In applying this approach, Council will take into consideration all prevailing economic conditions and changes and adjust its differential rates accordingly, to ensure an appropriate and fair equalisation of rates across all land use categories.

Differential rates to apply to land use are as follows:



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BUDGETED INCOME STATEMENT

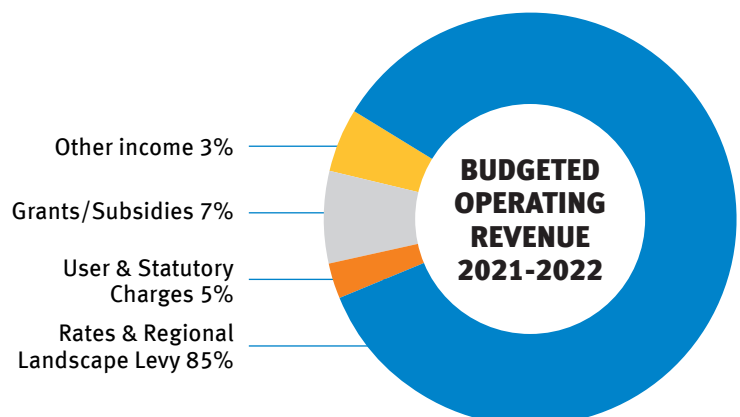
An operating surplus of \$5.414m before capital revenues is forecast for 2021-2022. The operating surplus is required to fund the renewal of existing infrastructure in accordance with Council's asset management plans and to fund construction of new assets to deliver services.

Budgeted Income Statement	2nd Review	Budget	Variance
	2020 – 2021 \$'000	2021 – 2022 \$'000	
Operating Revenue			
Rates - General	78,108	79,673	1,565
<i>Rates - Regional Landscape Levy *</i>	2,024	2,020	(4)
Statutory Charges	2,168	2,106	(62)
User Charges	2,556	2,827	271
Grants/Subsidies	8,011	6,726	(1,285)
Investment Income	504	347	(157)
Reimbursements	1,263	1,222	(41)
Other Revenue	1,520	538	(982)
Share of Profit/(Loss) Regional Subsidiaries	365	365	-
Total Operating Revenue	96,519	95,824	(695)
Operating Expenditure			
Employee Costs	37,973	39,213	1,240
Contractor Services	27,775	21,468	(6,307)
Materials	5,474	4,935	(539)
Finance Charges	322	254	(68)
Depreciation	15,708	16,000	292
Other Expenses	9,037	8,540	(497)
Total Operating Expenditure	96,289	90,410	(5,879)
Operating Surplus/(Deficit) before Capital Revenues	230	5,414	5,184
Capital Grants and Contributions	5,871	1,500	(4,371)
Net Surplus/(Deficit)	6,101	6,914	813

* Note: The Regional Landscape Levy is collected by Council on behalf of the Green Adelaide Board.

OPERATING REVENUE

The main source of income for Council is rate revenue; making up just over 83% (85% including Regional Landscape Levy) of total revenue in 2021-2022, with other sources being government regulated fees for statutory services, diminishing levels of untied federal grant monies, as well as other grants from the State and Federal government.



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GENERAL RATES

Council's revenue in 2021-2022 includes \$79.673m to be raised in general rates. The budget has been developed on the basis of a one percent average rate increase (excluding new developments and capital improvements). In setting rates for 2021-2022, Council has forecast the revenue required to meet the costs of delivering the services and projects to be provided to the community in 2021-2022.

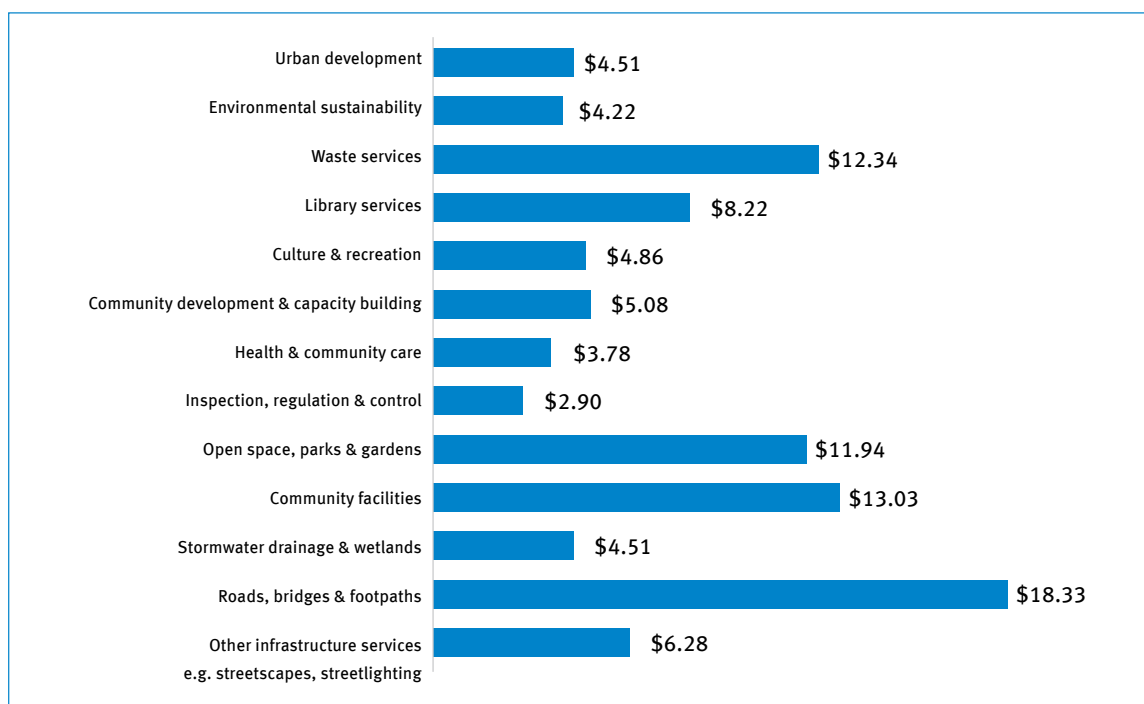
Growth for new developments and capital improvements is forecast at 1% for 2021-2022. This predominantly is the result of new housing in Marion and property improvements, as reported by the Valuer General. The revenue created by this growth will cover the increased costs of servicing a growing community, which includes the requirement to maintain and provide for the replacement of infrastructure such as stormwater drainage and transport networks.

OTHER SOURCES OF REVENUE

- User Charges set by Council – Relate mainly to the recovery of service delivery costs through the charging of fees to users of Council's services. These include charges for the use of Council's community facilities, swimming pool admission and the like.
- Statutory Charges set by State Government – Relate mainly to fees and fines levied in accordance with legislation and include development application fees, health act registrations and parking fines.
- Grants and Subsidies – Grants include all monies received from State and Federal sources for the purpose of funding the delivery of Council's services to ratepayers and for the funding of the capital works program.

OPERATING EXPENDITURE

Council's operating expenses are forecast to decrease to \$90.41m in 2021-2022. The following graph shows a breakdown of operating expenditure across Council services for every \$100 spent:



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EMPLOYEE COSTS

Employees are responsible for the provision of Council's key services, including the ongoing maintenance of open space areas, libraries, neighbourhood centres, the Marion Outdoor Pool, urban development, health and community care. Employees are either directly employed by Council, or indirectly through an employment agency (i.e. agency staff) where temporary workforce requirements have arisen through seasonal demand or short-term vacancies of existing positions.

Employee costs are forecast to increase by \$1.24m primarily because of increases stemming from existing Enterprise Agreements provisions, increases to the Superannuation Guarantee Contribution, additional staffing resources for Councils endorsed initiatives including Urban Renewal, Edwardstown Activation and Tree Management initiatives.

A reduction of \$0.5m has been incorporated into the budget to allow for positions that may be temporarily vacant during the year.

CONTRACTOR SERVICES

Contractor services relate mainly to the provision of Council services by external providers. Council uses contractors to assist in the provision of major services such as waste collection, and also where specialist services or advice is required, where it is not warranted for Council to have permanent in-house resources. A decrease of \$6.3m (22.7%) is forecast in the 2021-2022 budget which relates to project expenditure in 2020-2021 including 'Digital Transformation', 'Footpath Blitz' and multiple grant funded projects.

MATERIALS

Council's Materials budget includes utilities, products utilised in the delivery of community services and maintenance of Council's infrastructure, open space, and other assets, as well as fuel for the fleet of vehicles used to deliver services. A decrease of \$0.539m (9.8%) in materials is forecast in the 2021-2022 budget. This relates primarily to a \$0.330m reduction in minor digital equipment purchases.

OTHER EXPENSES

Other Expenses have decreased by \$0.497m (5.4%) stemming primarily from the once off contribution towards the proposed Destination Playground in 2020-2021.

CAPITAL REVENUE

CAPITAL GRANTS AND CONTRIBUTIONS

Council has incorporated \$1.5m in capital grants and contributions towards new capital works planned in 2021-2022 being sought to assist funding the Marion Golf Club upgrades.

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BUDGETED CAPITAL EXPENDITURE

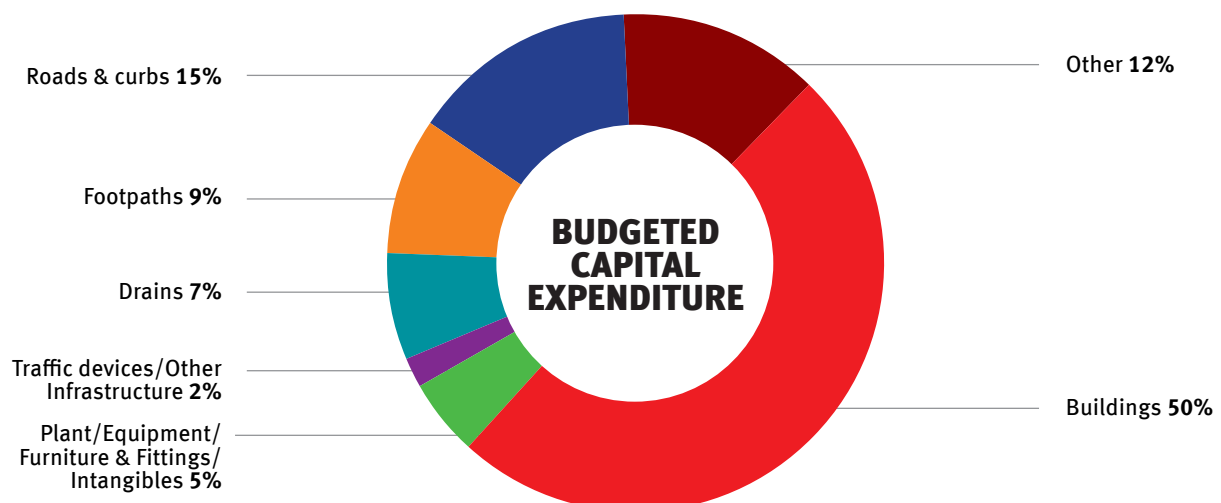
The 2021-22 Budgeted Statement of Capital Expenditure forecasts total capital expenditure of \$40.312m including \$19.783m renewal and \$20.529m new and upgrade.

The following table summarises Council's planned Capital Works Program for 2021-2022:

Capital Expenditure	2nd Review	Budget
	2020 – 2021 \$'000	2021 – 2022 \$'000
Land	-	-
Buildings	23,199	20,258
Infrastructure:		
Roads & Kerbs	8,211	5,935
Drains	1,424	2,900
Footpaths	2,183	3,470
Traffic Control Devices	544	645
Other Infrastructure	4,398	2,947
Plant and Equipment	1,178	1,721
Furniture and Fittings	202	208
Other	7,815	2,228
Intangibles	41	-
Total Capital expenditure	49,195	40,312
Represented By:		
Capital Expenditure		
Assets - Renewal	11,373	19,783
Assets - New	37,822	20,529
	49,195	40,312

Funding for key capital projects included in the 2021-2022 budget includes Mitchell Park Sport and Community Club (11.0m), Southern Region Soccer Facility (\$3.07m), Coastal Walking Trail (\$2.4m) and the State Heritage Coach House and Bridge (\$1.5m).

The reduction in Other Capital Expenditure relates to the Sam Willoughby UCI BMX Track nearing completion.



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FINANCING THE BUDGET

Financing the budget refers to the use of borrowings or available cash balances to meet any shortfall between expenditure (both operating and capital) and revenue

Net Lending/(Borrowing)	2nd Review	Budget
	2020 – 2021 \$'000	2021 – 2022 \$'000
Operating Surplus/Deficit before Capital Amounts	230	5,414
less: Net Outlay on Existing Assets		
Capital expenditure on asset renewal/replacement	19,204	19,782
less Depreciation/Ammortisation	(15,708)	(16,000)
	3,496	3,782
less: Net Outlay on New/Upgrade Assets		
Capital expenditure on New & Upgrade Assets	27,993	20,529
less Capital Grants	(5,871)	(1,500)
	22,122	19,029
Adjustments		
(Gain)/loss on disposal of assets	-	-
Share of Equity - Regional Subsidiaries	(365)	(365)
	(365)	(365)
Net funding increase/(decrease)	(25,753)	(17,762)

The table above identifies the Council's net funding result. Council's budget for 2021-2022 is expected to result in a net decrease in funding of \$17.762m.

Financing transactions associated with accommodating the expected net lending result in 2021-2022 are as follows:

Financing Transactions	2nd Review	Budget
	2020 – 2021 \$'000	2021 – 2022 \$'000
New Borrowings	-	10,920
less: Repayment of Principal on Borrowings	(1,245)	(827)
less: Increase/(Decrease) in Cash & Investments		
Transfers from/(to) Reserves	27,047	7,056
Cash Drawdowns/(Investment)	(49)	613
Equals: Financing Transactions	25,753	17,762

Council's Long Term Financial Plan includes an allowance for borrowings of up to \$10.92m for the Mitchell Park Sporting and Community Centre. Council's borrowings are projected to peak at \$14.7 m in 2021-2022, with its Debt Servicing Ratio peaking at 2.5% in 2023-2024 against a maximum target of 5.0% and its Net Financial Liabilities ratio reaching 17.5% in 2021-2022 against a target of up to 50%.

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FINANCIAL RATIOS

To assist Council in meeting its objective of financial sustainability a series of financial indicators endorsed by the Local Government Association are provided. Where a Council target has not been adopted, the recommended Local Government Association (LGA) target has been used. The following table details these financial indicators and whether or not the prescribed target has been achieved over the three years up to the end of 2021-2022.

Ratio	Council Target	2021-2022 Budget	3 Year Average
Operating Surplus	0% - 10%	5.65%	6.23%
Asset Sustainability/Renewal	90% - 110%	100%	90.87%
Asset Consumption	80% - 100%	80.71%	81.52%
Net Financial Liabilities	0% - 50%	13.52%	-18.80%
Debt Servicing	0% - 5%	1.13%	1.45%

All key financial ratios are forecast to be within their targeted ranges for the 2021-2022 year.

The Asset Consumption Ratio remains relatively constant with the level of asset renewal expenditure forecast in 2021-2022.

With the consumption of cash on significant capital works and major projects in 2021 and 2022 along with loan funding forecast to increase during 2021-2022, the Net Financial Liabilities Ratio is projected to come within Council's target range in 2021-2022.

The Debt Servicing Ratio is anticipated to increase slightly with the new loan repayments in 2021-2022 but remains in the lower end of the targeted bandwidth for this ratio.

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APPENDIX 1. CAPITAL WORKS PROGRAM

STREETSCAPE PROGRAM 2021/22		
Road Name	Suburb	Ward
Diagonal Road	Oaklands Park	Warracowie
Sturt Road	Seacombe Gardens	Warracowie
Alawoona Avenue	Mitchell Park	Warriparinga
Messines Avenue	Edwardstown	Woodlands
* Please note capital works programs are subject to change		

OPEN SPACE & RECREATION WORKS PROGRAM 2021/22			
Location	Suburb	Ward	Description
Playground Implementation Program			
McConnell Avenue Reserve (East)	Marino	Coastal	Irrigation works
Nimboya Road Reserve	Marino	Coastal	Drink fountain and scooter track
Westcliff Court Reserve	Marino	Coastal	Bench seat
Cowra Crescent Reserve	Parkholme	Mullawirra	Irrigation works
Hendrie Street Reserve	Parkholme	Mullawirra	Irrigation works
Hume Street Reserve	Seaview Downs	Southern Hills	Minor reserve upgrade
Eurelia Road Reserve	Sheidow Park	Southern Hills	Drink fountain
Hallett Close Reserve	Sheidow Park	Southern Hills	Irrigation works
Hugh Johnson Reserve	Sheidow Park	Southern Hills	Playground, reserve and irrigation works (subject to grant funding)
Lander Road Reserve	Sheidow Park	Southern Hills	Minor reserve upgrade including pathway
Barton Drive Reserve	Trott Park	Southern Hills	Drink fountain
Wistow Crescent Reserve	Trott Park	Southern Hills	Playground, reserve and irrigation works
Oaklands Recreation Plaza	Oaklands Park	Warracowie	Minor works
Ramsay Avenue Reserve	Seacombe Gardens	Warracowie	Reserve and Irrigation works
Oakleigh Road Reserve	Marion	Warriparinga	Minor reserve upgrade including nature play elements
Mitchell Park Oval/Reserve	Mitchell Park	Warriparinga	Irrigation works
Peterson Avenue Reserve	Mitchell Park	Warriparinga	Playground, reserve and irrigation
Brolga Place Reserve	Sturt	Warriparinga	Minor reserve works including court upgrade and barbeque
Yapinga Street Reserve	South Plympton	Woodlands	Minor playground works
Tennis & Netball Courts			
Council is currently finalising the program of works for 2021-2022			
* Please note capital works programs are subject to change			

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PROPERTY/BUILDING WORKS PROGRAM 2021/22

Location	Suburb	Ward	Description
Capella Oval	Hallett Cove	Coastal	Cricket Matting
Hallett Cove Beach Tennis Club	Hallett Cove	Coastal	Replace pergola
Perry Barr Farm Shearing Shed	Hallett Cove	Coastal	Replace roof & flooring
Koorana Gym	Morphettville	Mullawirra	External toilet and air conditioning to gym
Marion Leisure & Fitness	Morphettville	Mullawirra	Upgrade kitchen and storage, redesign entrance and toilet
Morphettville Park Football Club	Morphettville	Mullawirra	Netting & fencing along boundary
Marion Outdoor Pool	Park Holme	Mullawirra	Switchboard upgrade, rubber softfall around fitness equipment
Park Holme Library	Park Holme	Mullawirra	Render external walls
Plympton Sports Club	Plympton Park	Mullawirra	Stormwater, car parking and fencing
Cove Netball Club	Hallett Cove	Southern Hills	Toilet refurbishment, external painting, bridge between courts
Cove Soccer	O'Halloran Hill	Southern Hills	Storage Shed
Trott Park Neighbourhood Centre	Trott Park	Southern Hills	Upgrade entrance and reception
Marion Community House	Warradale	Warracowie	Toilet and kitchen upgrade
Cooinda	Sturt	Warriparinga	Upgrade entrance and reception
Council Administration Building	Sturt	Warriparinga	Accommodation refit
Marion Bowling Club	Marion	Warriparinga	Roof and wall repairs, toilet upgrade designs
Marion RSL	Marion	Warriparinga	Carpet & ceiling renewal
Marion Tennis Club	Marion	Warriparinga	Redevelop courts
Cosgrove Hall	Clovelly Park	Woodlands	Resurface court
Glandore Oval	Glandore	Woodlands	Memorial gardens relocation and netting
Glandore Neighbourhood Centre	Glandore	Woodlands	Community gardens kitchen and disability toilet upgrade
Glandore Neighbourhood Centre Naldera Building	Glandore	Woodlands	Air conditioning
Various	Various	Various	CCTV renewal of cameras across Council building

* Please note capital works programs are subject to change

TRAFFIC DEVICES PROGRAM 2021/22

Location	Suburb	Ward	Description
River Parade	Hallett Cove	Coastal	Indented parking bay
29 The Esplanade	Hallett Cove	Coastal	Entrance and path
Mitchell Street	Glengowrie	Mullawirra	Paved parking bays
Park Terrace	Plympton Park	Mullawirra	Parking bay
Park Terrace	Plympton Park	Mullawirra	Parking bay
Lander Road & Young Street	Sheidow Park	Southern Hills	Junction upgrade
Railway Terrace	Warradale	Warracowie	Audit treatments
Seacombe Road	Seacombe Heights	Warriparinga	Indented bus bay
Marion Road	Sturt	Warriparinga	Pedestrian walk
Collins Avenue	Ascot Park	Woodlands	Indented parking bay

* Please note capital works programs are subject to change

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ROAD RESEAL PROGRAM 2021/22

Road Name	Suburb	Ward	From	To
Columbia Crescent	Hallett Cove	Coastal	Grand Central Avenue	Mayflower Crescent
The Cove Road	Hallett Cove	Coastal	Barossa Crescent Nth	South Ave
The Cove Road	Hallett Cove	Coastal	Kurnabinna Terrace	Pindee Street
The Cove Road	Marino	Coastal	Allen St	Jervois Terrace
High Street	Seacliff Park	Coastal	Arthur Street	Hill Street
Cliff Street	Glengowrie	Mullawirra	Gillespie Street	City Boundary Hb
Agars Avenue	Morphettville	Mullawirra	Bray Street	Austral Terrace
Quinn Street	Morphettville	Mullawirra	Regan Avenue	Cobham Avenue
Regan Avenue	Morphettville	Mullawirra	Dpti Split	Quinn Street
Rosedale Avenue	Morphettville	Mullawirra	Oaklands Road	Radstock Street
Bowaka Street	Park Holme	Mullawirra	Cungena Avenue	Condada Avenue
Hill Street	Plympton Park	Mullawirra	Bray Street	Aldridge Avenue
Ralli Street	Plympton Park	Mullawirra	Bray Street	Aldridge Avenue
Tarranna Avenue	Plympton Park	Mullawirra	Ross Street	Mulcra Avenue
Basten Avenue	Seaview Downs	Southern Hills	Penong Street	Davenport Terrace
Eyre Street	Seaview Downs	Southern Hills	Seacombe Road	Gawler Street
Wangary Terrace	Seaview Downs	Southern Hills	Seacombe Road	Cadell Street
Warunda Avenue	Seaview Downs	Southern Hills	Seacombe Road	Cadell Street
Hutt Close	Sheidow Park	Southern Hills	Lonsdale Road	End
Railway Court	Sheidow Park	Southern Hills	William Webb Drive	End
Scullin Crescent	Sheidow Park	Southern Hills	Barton Drive	Cul-De-Sac
William Webb Drive	Sheidow Park	Southern Hills	Railway Court	Steamranger Drive
Adams Road	Trott Park	Southern Hills	Whiteley Drive West	Dickerson Crescent
Adams Road	Trott Park	Southern Hills	Scarvel Avenue	Cassab Court
Chifley Crescent	Trott Park	Southern Hills	Barton Drive	End
Hele Court	Trott Park	Southern Hills	Heysen Drive	Strutt Court
Albany Crescent	Oaklands Park	Warracowie	Johnstone Road	Crew Street
Boyle Street	Oaklands Park	Warracowie	Finniss Street	George Street
Johnstone Road	Oaklands Park	Warracowie	Masters Avenue	Perrin Street
Gerogeri Street	Seacombe Gardens	Warracowie	Seacombe Road	White Crescent
Russell Avenue	Seacombe Gardens	Warracowie	Ramsay Avenue	Wilga Street
Russell Court	Seacombe Gardens	Warracowie	Russell Avenue	End
Buckingham Avenue	Warradale	Warracowie	Oaklands Road	Cedar Avenue
Lindley Avenue	Warradale	Warracowie	Balmoral Avenue	Bowker Street
Pine Avenue	Warradale	Warracowie	Diagonal Road	Morphett Road
Celtic Avenue	Clovelly Park	Warriparinga	Walker Avenue	Winsor Avenue
Mimosa Terrace	Clovelly Park	Warriparinga	Dit South Road	Ash Avenue
Bassi Street	Marion	Warriparinga	Pethick Terrace	Minchinbury Terrace
Finniss Street	Marion	Warriparinga	Richman Street	Sturt Road
The Parade	Marion	Warriparinga	Tait Avenue	Dead End
Moreland Avenue	Mitchell Park	Warriparinga	Quick Road	Waterman Terrace
Walter Avenue	Mitchell Park	Warriparinga	Daws Road	Thirza Avenue
Waterman Terrace	Mitchell Park	Warriparinga	Marion Road	Sampson Road
Waterman Terrace	Mitchell Park	Warriparinga	Geraldine Avenue	Dead End
Woodland Road	Mitchell Park	Warriparinga	Bradley Grove Southern End	Handley Avenue
Braeside Avenue	Seacombe Heights	Warriparinga	Seacombe Road	Truscott Avenue
Glen Street	Seacombe Heights	Warriparinga	Braeside Avenue	Crystal Street
Miller Street	Sturt	Warriparinga	Seacombe Road	Vardon Street
Birch Crescent	Tonsley	Warriparinga	Sturt Road	Ash Avenue
De Laine Avenue	Edwardstown	Woodlands	Railway Terrace	Macklin Street
Messines Avenue	Edwardstown	Woodlands	South Road	Castle Street
Towers Terrace	Edwardstown	Woodlands	Wheaton Street	Castle Street
Woodlands Terrace	Edwardstown	Woodlands	Kenilworth Avenue	Adelaide Terrace
Chitral Terrace	South Plympton	Woodlands	Cross Road	Castle Street
Pleasant Avenue	South Plympton	Woodlands	Winifred Avenue	Brinkworth Street

* Please note capital works programs are subject to change

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KERB & WATER TABLE PROGRAM 2021/22

Road Name	Suburb	Ward	From	To
Antonia Circuit	Hallett Cove	Coastal	Aroona Road	End
California Avenue	Hallett Cove	Coastal	Falcon Street	Medway Street
Camille Street	Hallett Cove	Coastal	Gingko Street	Apollo Drive
Columbia Crescent	Hallett Cove	Coastal	Mayflower Crescent	End
Koomooloo Crescent	Hallett Cove	Coastal	Caprice Street North	Caprice Street South
Lorita Crescent	Hallett Cove	Coastal	Apollo Drive	Gingko Street
Marie Close	Hallett Cove	Coastal	Lorita Crescent	End
Medway Street	Hallett Cove	Coastal	Pavana Avenue	Serica Street
Third Street	Hallett Cove	Coastal	South Avenue	Central Avenue
Tornado Avenue	Hallett Cove	Coastal	Dutchman Drive	Cul-de-sac
Vim Street	Hallett Cove	Coastal	Columbia Crescent	Mayflower Crescent
Newland Avenue	Marino	Coastal	Bakewell Crescent	Frank Street
Elder Terrace	Glengowrie	Mullawirra	Maxwell Terrace	Fisk Avenue
Dennis Avenue	Morphettville	Mullawirra	Dennis Avenue	Cobham Avenue
Don Terrace	Morphettville	Mullawirra	Bray Street	Austral Terrace
Wallage Avenue	Morphettville	Mullawirra	Clifton Avenue	Dennis Terrace
Weroona Avenue	Park Holme	Mullawirra	Marion Road	Mulcra Avenue
Hawker Avenue	Plympton Park	Mullawirra	Blackler Avenue	Park Terrace
Swinburne Avenue	Plympton Park	Mullawirra	Milton Avenue	Shakespeare Avenue
Kiah Crescent	Sheidow Park	Southern Hills	Westall Way	Amaroo Road
Grieve Court	Trott Park	Southern Hills	Hele Court	Cul-de-sac
Strutt Court	Trott Park	Southern Hills	Hele Court	Cul-de-sac
Bessie Street	Dover Gardens	Warracowie	Laurence Street	Vinall Street
Hope Street	Dover Gardens	Warracowie	Scarborough Terrace	Branksome Terrace
Doreen Street	Oaklands Park	Warracowie	Milton Street	End
Jewell Street	Oaklands Park	Warracowie	Milton Street	Barry Road
Cedar Avenue	Warradale	Warracowie	Diagonal Road	Soho Street
Gardiner Avenue	Warradale	Warracowie	Lincoln Avenue	Struan Avenue
Railway Terrace	Warradale	Warracowie	Diagonal Road	First Avenue
Railway Terrace	Warradale	Warracowie	Third Avenue	Sixth Avenue
Abbeville Terrace	Marion	Warriparinga	Beauford Avenue	Tait Avenue
Abbeville Terrace	Marion	Warriparinga	Bassi Street	Fiscom Street
Bassi Street	Marion	Warriparinga	Pethick Terrace	Abbeville Terrace
Moreland Avenue	Mitchell Park	Warriparinga	Quick Road	Waterman Terrace
Waterman Terrace	Mitchell Park	Warriparinga	Lodge Street	Geraldine Avenue
Alpine Road	Seacombe Heights	Warriparinga	Cul-de-sac North	Denton Street
Dorian Avenue	Seacombe Heights	Warriparinga	Seacombe Crescent	End
Darlington Street	Sturt	Warriparinga	Diagonal Road	Moss Street
Duncan Street	Sturt	Warriparinga	Tay Road	Carlow Street
Myer Road	Sturt	Warriparinga	Tay Road	Cul-de-sac
Miller Street	Sturt	Warriparinga	Vardon Street	Diagonal Road
Albert Street	Ascot Park	Woodlands	Charles Street	West Street
Fifth Avenue	Ascot Park	Woodlands	Aroona Road	End
Coongie Avenue	Edwardstown	Woodlands	Conmurra Avenue	Konando Street
Furness Avenue	Edwardstown	Woodlands	South Road	Russell Terrace
Hyman Avenue	Edwardstown	Woodlands	Towers Terrace	Railway Terrace
Waverley Avenue	Edwardstown	Woodlands	Dunorlan Road	Woodland Avenue
Victoria Street	Glandore	Woodlands	Churchill Avenue	Malwa Street
John Street	South Plympton	Woodlands	Vincent Street	Fourth Avenue
William Street	South Plympton	Woodlands	Marion Road	Laurence Street

* Please note capital works programs are subject to change

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RESIDENTIAL FOOTPATH PROGRAM 2021/22

Road Name	Suburb	Ward
Proactive footpath works	Various	Various
Fryer Street	Hallett Cove	Coastal
South Avenue	Hallett Cove	Coastal
Oval Road	Hallett Cove	Coastal
Pavana Court	Hallett Cove	Coastal
Sheidow Place	Hallett Cove	Coastal
Stern Close	Hallett Cove	Coastal
Second Avenue	Hallett Cove	Coastal
Third Avenue	Hallett Cove	Coastal
Esplanade	Marino	Coastal
Newland Avenue	Marino	Coastal
Kappler Court	Glengowrie	Mullawirra
Majors Road	O'Halloran Hill	Southern Hills
Keen Avenue	Seaview Downs	Southern Hills
Spode Court	Trott Park	Southern Hills
Calauria Crescent	Trott Park	Southern Hills
Walkley Avenue	Warradale	Warracowie
Quick Road	Mitchell Park	Warriparinga
Crystal Street	Seacombe Heights	Warriparinga
The Parkway	Sturt	Warriparinga

* Please note capital works programs are subject to change

STORMWATER DRAINAGE PROGRAM 2021/22

Road Name	Suburb	Ward
Santana Court	Hallett Cove	Coastal
Lucretia Way Dam	Hallett Cove	Coastal
Cadell Street	Seaview Downs	Southern Hills
Berrima Street	Sheidow Park	Southern Hills
English Avenue	Clovelly Park	Warriparinga
Shetland Avenue	Marion	Warriparinga
Coolah Terrace	Marion	Warriparinga

* Please note capital works programs are subject to change

OTHER INFRASTRUCTURE PROGRAM 2021/22

Details	Suburb	Ward
Bus Shelters	Various	Various
DDA Kerb Ramp upgrades	Various	Various
Signage	Various	Various
Lighting	Various	Various

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APPENDIX 2. RATING POLICY

RATING

(1) VALUATION METHODOLOGY AND ADOPTION

Council uses Capital Value as the basis for valuing land within the Council area. Capital Value is the value of the land and all of the improvements on the land. The Council also continues to adopt the capital valuations distributed by the Valuer-General.

(SEE ANNEXURE 1)

(2) DIFFERENTIAL GENERAL RATES

All land within a council area, except for land specifically exempt under section 147 (2) of the Act is rateable. The Act provides for a council to raise revenue through a general rate, which applies to all rateable land, or through differential general rates, which differentially apply to classes of rateable land. Council uses a differential rating system to raise revenue based upon Land Use to ensure a fair and equitable distribution of rates within the City of Marion. In applying this approach Council will take into consideration all prevailing economic conditions and changes and adjust its differential rates accordingly, to ensure an appropriate and fair equalisation of rates across all land use categories.

The differential general rate Land Use categories are as follows:

- Category 1 Residential
- Category 2 Commercial – Shop
- Category 3 Commercial – Office
- Category 4 Commercial – Other
- Category 5 Industrial – Light
- Category 6 Industrial – Other
- Category 7 Primary Production
- Category 8 Vacant
- Category 9 Other

These differential rates will be used to determine the rates in the dollar for all properties within the City of Marion area for the financial year. These rates will be specified in Council's rate declaration for each financial year.

(SEE ANNEXURE 1)

(3) MINIMUM RATE

A minimum amount payable by way of general rates is determined to apply to the whole of an allotment (including land under a separate lease or licence) and only one minimum amount is payable in respect of two or more pieces of adjoining land (whether intercepted by a road or not) if they are owned by the same owner and occupied by the same occupier.

The Minimum Rate to apply to properties within the City of Marion will be detailed in Council's rate declaration for each financial year.

(SEE ANNEXURE 1)

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(4) SERVICE CHARGE

The Council has decided not to impose any service charges for this financial year.

(5) REGIONAL LANDSCAPE LEVY (FORMERLY NATURAL RESOURCES MANAGEMENT LEVY)

The Council, under the Landscape South Australia Act 2019, is required to collect this levy. It does so by imposing a separate rate for all rateable properties within the Council area.

For each financial year, the levy for each property will be determined by the total capital valuation within the City of Marion. The calculation is as follows;

- Total Capital Value divided by the Total Amount Required, (set for the financial year by the Green Adelaide Board) determines an appropriate rate in the dollar, this rate in the dollar will then be adopted to each property.

(SEE ANNEXURE 1)

(6) PAYMENT OF RATES

The Council has determined that payment of rates for the 2021-2022 financial year will be by four instalments, due on 1 September 2021, 1 December 2021, 1 March 2022 and 1 June 2022. However, the total amount of rates may be paid in full at any time.

Council has determined that rates may be paid by the following methods;

- Australia Post – Post Office, Telephone or Internet
- Bpay – Telephone or internet payments
- Centrepay – Deductions directly from Centrelink deductions
- Direct Debit – Direct from either a Cheque or Savings account
- Eservices – Direct through the Council's Internet system
- In person - At Council Offices
- By Mail - Locked Bag 1 Oaklands Park SA 5046

(7) LATE PAYMENT OF RATES

Council imposes an initial penalty (a fine) of 2% as prescribed under the Act on any instalment that is received late. A prescribed interest rate (which includes the amount of any previous unpaid fine and interest) will apply on the expiration of each month that a balance remains unpaid.

When the Council receives a payment in respect of overdue rates, the money received is applied in the order set out below, in accordance with Section 183 of the Act,

- First – to satisfy any costs awarded in connection with court proceedings;
- Second – to satisfy any interest costs;
- Third – in payment of any fines imposed;
- Fourth – in payment of rates, in chronological order (starting with the oldest account first).

(SEE ANNEXURE 1)

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(8) REBATES AND POSTPONEMENT OF RATES

(8.1) RATE REBATE POLICY

Refer to the Rate Rebate Policy attached.

(8.2) RATE CAPPING

Section 166 (1) (l) (ii) of the Act provides for the discretionary rebate of rates where, among other things, there has been a rapid change in valuations.

Council will provide relief against a substantial increase in rates payable on residential land due to large increases in capital value by applying a rebate (capping) of general rates to eligible ratepayers.

For the current financial year, the rate cap is set at 12% with a \$20 minimum and a \$200 maximum (excluding new or improved properties) for ratepayers who meet the Qualifying Criteria set out below:

Qualifying Criteria:

- The property is the owner's principal place of residence.
- The property has not had more than \$20,000 of improvements.
- The property value has not increased due to zoning changes.
- The land use for rating purposes has not changed since 1st July of the previous financial year.
- The property has not sold since the 1st January of the previous financial year.

Rate capping will be applied automatically to properties that can be readily identified as being eligible. Where this rebate is not applied automatically, ratepayers who consider they could be eligible for rate capping may apply in writing to Council. Applications will be assessed against the eligible criteria. Only applications for the current financial year will be accepted and must be received in the current financial year.

(8.3) RESIDENTIAL CONSTRUCTION ON VACANT LAND

Under Section 166 (1) (a) of the Act, and for the purpose of securing the proper development of the area, a discretionary rebate of general rates for the 2021-2022 financial year will be granted in respect of an assessment classed as vacant land by the Council, where:

- The principal ratepayer of the assessment applies to the Council for the rebate prior to 30 June 2022, and
- The footings have been poured on the property by 30 June 2022

The amount of the rebate will be the difference between the general rate in the dollar applicable to Vacant land, and the general rate in the dollar applicable to Residential land. This is calculated by the number of days remaining between 1 July 2021 and 30 June 2022 from the date footings are poured for a residence on the land. Minimum Rate is still applicable.

(8.4) POSTPONEMENT OF RATES – HARDSHIP

Section 182 of The Act permits the Council, on the application of the ratepayer, to partially or wholly remit rates or to postpone rates, on the basis of hardship. Where a ratepayer is suffering hardship in paying rates they may submit an application in writing to the Council's Team Leader Rating Services. The Council treats such inquiries confidentially.

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COVID-19 PROVISION

Ratepayers experiencing financial difficulties and are unable to meet standard payment arrangements due to COVID-19 can contact Council to discuss alternative payment options.

(8.5) POSTPONEMENT OF RATES – SENIORS

An application may be made to Council by ratepayers who meet the criteria required for qualification for the postponement under Section 182A of The Act. (see Annexure 1 for criteria)

(9) SALE OF LAND FOR NON-PAYMENT OF RATES

The Act provides that a council may sell any property where the rates have been in arrears for three years or more. Council is required to notify the owner of the land of its intention to sell the land, provide the owners with details of the outstanding amounts, and advise the owner of its intention to sell the land if payment of the outstanding amount is not received within one month. Except in extraordinary circumstances, the Council enforces the sale of land for arrears of rates.

(10) CONCESSIONS COST OF LIVING CONCESSION

Pensioners, low-income earners and self-funded retirees holding a Commonwealth Seniors Health Card can receive up to \$200 per year. Eligibility includes pensioners and low-income earners who are tenants.

For further information contact the Concessions Hotline on 1800 307 758.

RATE REBATES

(1) POLICY STATEMENT

Council has decided to adopt a Rate Rebate Policy for all rateable land within the Council's area which is applied in accordance with Sections 159 to 166 of the Act. This Policy will assist the Council as a decision making function and is intended to provide guidance to the community as to the matters that the Council will take into account in deciding an application for a rebate.

The Policy also sets out the type of land use for which the Council must grant a mandatory rebate of rates and the percentage amount applicable, and those types of land use where the Council has the ability to grant a discretionary rebate of rates. Rebates will only be available when the applicant satisfies the requirements under both the Act and, where appropriate, the requirements of this Policy.

(2) MANDATORY REBATES

Mandatory rate rebates will be granted by Council at the prescribed rate in accordance with Sections 159 to 165 of The Act.

- S160 – Health Services 100% Rebate
- S161 – Community Services (Including Housing Associations) 75% Rebate
- S162 – Religious Purposes 100% Rebate
- S163 – Public Cemeteries 100% Rebate
- S164 – Royal Zoological Society of SA 100% Rebate
- S165 – Educational Purposes 75% Rebate

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Where the Council is satisfied from its own records, or from other sources, that a person or body meets the necessary criteria for a mandatory rate rebate, the Council will grant the rebate accordingly. Where the Council is not satisfied based on the information in its possession or otherwise does not hold relevant information, it will require the person or body to lodge an application in accordance with this Policy.

Where a person or body is entitled to mandatory rate rebate of 75% only, the Council may increase the rebate up to a further 25%. The Council may grant this further 25% rebate on application.

Where an application is made to the Council for a rebate of up to a further 25%, the application will be determined and written notice will be provided to the applicant of its determination of that application.

(3) DISCRETIONARY REBATES

A discretionary rate rebate may be granted by the Council, at its absolute discretion, up to and including 100% relief to any cases pursuant to Section 166 of the Act.

Any persons or bodies seeking a discretionary rebate, will be required to submit an application form to the Council and provide to the Council such information as stipulated on the application form and any other information that the Council may reasonably require.

(4) APPLICATION

The council will inform the community of the provisions for rate rebate under the Act by the inclusion of an advert in the local newspaper each year.

Application forms may be obtained from the Council office located at 245 Sturt Road, Sturt.

The Council will advise an applicant for a rebate of its determination of that application in due course, after receiving the application and receiving all information requested by the Council. The advice will state –

- if the application has been granted, the amount of the rebate; or
- if the application has not been granted, the reasons why.

(5) IN REGARDS TO PRESCRIBED DISCRETIONARY RATE REBATES THE COUNCIL WILL TAKE INTO ACCOUNT, IN ACCORDANCE WITH SECTION 166(1A) OF THE ACT, THE FOLLOWING MATTERS –

- The nature and extent of Council services provided in respect of the land for which the rebate is sought, in comparison to similar services provided elsewhere in the Council area;
- The community need that is being met by activities carried out on the land for which the rebate is sought; and the extent to which activities carried out on the land, for which the rebate is sought, provides assistance or relief to disadvantaged persons; and
- Such other matters as the Council considers relevant.

(6) THE COUNCIL MAY TAKE INTO ACCOUNT OTHER MATTERS CONSIDERED RELEVANT BY THE COUNCIL INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING–

- Why there is a need for financial assistance through a rebate;
- The level of rebate (percentage and dollar amount) being sought and why it is appropriate;
- The extent of financial assistance, if any, being provided to the applicant and/or in respect of the land by Commonwealth or State agencies;
- Whether the applicant has made/intends to make applications to another Council;
- Whether, and if so to what extent, the applicant is or will be providing a service within the Council area;

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- Whether the applicant is a public sector body, a private not for profit body or a private for profit body;
- Whether there are any relevant historical considerations that may be relevant for all or any part of the current Council term;
- The desirability of granting a rebate for more than one year;
- Consideration of the full financial consequences of the rebate for the Council;
- The time the application is received;
- The availability of any community grant to the person or body making the application;
- Whether the applicant is in receipt of a community grant; and
- Any other matters and policies of the Council, which the Council considers relevant.

All persons or bodies wishing to apply to the Council for a discretionary rebate of rates must do so on or before 1 May in that financial year for which the rebate is sought.

- The Council may grant a rebate of rates on such conditions as the Council thinks fit.
- The Council may, for proper cause, determine that an entitlement to a rebate of rates under the Act no longer applies.
- Where an entitlement to a rebate of rates ceases or no longer applies during the course of a financial year, the Council is entitled to recover rates, or rates at the increased level (as the case may be), proportionate to the remaining part of the financial year.

It is an offence for a person or body to make a false or misleading statement or representation in an application, or to provide false or misleading information or evidence in support of an application made (or purporting to be made) under the Act.

The maximum penalty for this offence is \$5,000.

If a person or body has the benefit of a rebate of rates and the grounds on which the rebate has been granted cease to exist, the person or body must immediately inform the Council of that fact and (whether or not the Council is so informed) the entitlement to a rebate ceases. If a person or body fails to do so that person or body is guilty of an offence.

The maximum penalty for this offence is \$5,000.

(7) DELEGATION

The Council has delegated its power, pursuant to Section 44 of the Act to determine applications and to grant a discretionary rebate of rates, to the Chief Executive Officer on the condition that the discretionary rebate is not more than \$5,000.

The Council has delegated its power, pursuant to Section 44 of the Act to determine applications and to grant a discretionary rebate of rates, to the Chief Executive Officer subject to the following condition:

- Where the discretionary rate is not more than \$5,000.

(8) REVIEW OF REBATE

A person or a body aggrieved by a determination of the Council in respect of an application for a rebate may, within 14 days of the date of the notice of determination, seek a review of that decision in accordance with the Council's Internal Review of Council Decisions Policy.

(9) COMMUNITY GRANTS

If an application for a rebate is unsuccessful, the Council has an absolute discretion to then treat the application as one for a community grant and to determine it in accordance with the Council's Community Grants Policy.

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(10) AVAILABILITY OF POLICY DOCUMENTS

Policy documents are available for inspection at the Council offices and on the website at www.marion.sa.gov.au. Persons may obtain a copy of any Policy document upon payment of the fee set by the Council.

DISCLAIMER

A rate cannot be challenged on the basis of non-compliance with this Policy and must be paid in accordance with the required payment provisions.

Where a ratepayer believes that the Council has failed to properly apply this Policy they should raise the matter with the Council. In the first instance contact the Council's Team Leader – Rating Services on 8375 6617 to discuss the matter. If, after this initial contact, a ratepayer is still dissatisfied they should write to the Chief Executive Officer, City of Marion, PO Box 21, Oaklands Park, SA 5046

ANNEXURE 1

1. VALUATION METHODOLOGY AND ADOPTION

Under the Act, the Council may adopt one of three valuation methodologies to value the properties in its area. They are:

- Capital Value – the value of the land and all of the improvements on the land.
- Site Value – the value of the land and any improvements which permanently affect the amenity of use of the land, such as drainage works, but excluding the value of buildings and other improvements.
- Annual Value – a valuation of the rental potential of the property.

The Council considers that the Capital Value method of valuing land provides the fairest method of distributing the rate burden across all ratepayers on the following basis:

- The equity principle of taxation requires that ratepayers of similar wealth pay similar taxes and ratepayers of greater wealth pay more tax than ratepayers of lesser wealth;
- Property value is a relatively good indicator of wealth and capital value, which closely approximates the market value of a property, provides the best indicator of overall property value;
- The distribution of property values throughout the Council area is such that few residential ratepayers will pay significantly more than the average rate per property.

Any ratepayer dissatisfied with the valuation made by the Valuer General may object in writing to the Valuer General within 60 days of receiving a rate notice, explaining the basis for the objection. This is provided that ratepayer has not:

- (a) previously received a notice of this valuation under the Act, in which case the objection period is 60 days from the receipt of the first notice; or
- (b) previously raised an objection to that valuation.

The 60 day objection period may be extended by the Valuer-General where it can be shown there is reasonable cause to do so.

It is important to note that the lodgement of an objection does not change the payment of rates or the due date.



2. DIFFERENTIAL GENERAL RATES

All land within a council area, except for land specifically exempt (e.g. crown land, council occupied land and other land prescribed under the Act – refer to Section 147), is rateable. The Act provides for a council to raise revenue for the broad purposes of the Council through the imposition of a single general rate or through differential general rates that apply to all rateable properties within the council area.

Following a review of rating options available under the Act during the 2002/2003 financial year, the Council consulted extensively with the community on this issue and concluded that a differential rating system would improve the equity in rate distribution across the community. The review included a comparison of rating methods and rates by land use within the Adelaide metropolitan area.

Differential general rates are based on Land Use as determined in the Local Government (General) Regulations 2013 under the Act. If a ratepayer believes that a particular property has been wrongly classified by the Council as to its land use, then they may object (to the Council) to that land use within 60 days of being notified. A ratepayer may discuss the matter with a Rates Officer, on 8375 6600 in the first instance. The Council will provide, on request, a copy of Section 156 of the Act which sets out the rights and obligations of ratepayers in respect of objections to a land use.

An objection to the land use:

- Must be in writing
- Must set out-
 - The grounds of the objection; and
 - The land use (being a land use being used by the Council as a differentiating factor) that should, in the objector's opinion, have been attributed to the land; and
- Must be made within 60 days after the objector receives notice of the particular land use to which the objection relates.
- This 60 day objection period may be extended where it can be shown there is reasonable cause to do so.

The Council may then decide the objection as it sees fit and notify the ratepayer. A ratepayer also has the right to appeal against the Council's decision to the Land and Valuation Court. It is important to note that the lodgement of an objection does not change payment of rates or the due date.

3. MINIMUM RATE

The reasons for imposing a minimum amount payable by way of general rates are:

- The Council considers it appropriate that all rateable properties make a contribution to the cost of administering the Council's activities;
- The Council considers it appropriate that all rateable properties make a contribution to the cost of creating and maintaining the physical infrastructure that supports each property.

No more than 35% of properties will be subject to the minimum amount.

4. REGIONAL LANDSCAPE LEVY (FORMERLY THE NATURAL RESOURCE MANAGEMENT LEVY)

It is important to note that Council is required to collect this levy under the Landscape South Australia Act 2019 and operates as a revenue collector for the Green Adelaide Board in this regard. It does not retain this revenue or determine how the revenue is spent.

For further information visit <https://landscape.sa.gov.au/>

5. LATE PAYMENT OF RATES

Under the Act, the Council applies penalties (fines and interest) to arrears of rates (i.e. rates which are not paid on or before the due date). The Council issues a final notice for payment of rates when rates are overdue i.e. unpaid by the due date. If rates remain unpaid more than 21 days after the issue of the final notice then the Council may refer the debt to a debt collection agency for collection. This may result in legal proceedings with costs on-charged to the ratepayer.

The Council has adopted a policy to assist ratepayers experiencing difficulty in making their rate payment by the due date. The Council will consider approving extended payment provisions or, in circumstances where hardship can be demonstrated, deferring the payment of rates.

The Council may be prepared to remit penalties (fines and interest) for late payment of rates where ratepayers can demonstrate hardship or sufficient other reason for late payment.

All applications for remissions must be in writing, addressed to: Rating Services Section, City of Marion, PO Box 21, Oaklands Park, SA 5046.

6. DISCRETIONARY REBATE

The Act requires the Council to rebate the rates payable on certain land ('mandatory rebates'). The Act, at section 166, also empowers the Council to grant discretionary rebates of rates of up to 100% of the rates and/or charges payable. The Council, in considering discretionary rebates, must balance the benefits of providing rebates, with the impact that such rebates have on its overall income (and hence upon the general ratepayer base). To promote the transparency of this process the Council has adopted a Rate Rebate Policy. A copy of this Policy is available at the Council offices or on Council's website at www.marion.sa.gov.au.

7. POSTPONEMENT OF RATES – SENIORS

The following criteria must be satisfied before the postponement is granted.

- The person is a prescribed ratepayer, or the spouse of a prescribed ratepayer;
- A prescribed ratepayer means the holder of a current State Seniors Card or a person eligible to hold such a card who has applied but is yet to be issued with a card.
- Rates are payable on the principal place of residence.
- The land is owned by the prescribed ratepayer, or the prescribed ratepayer and his or her spouse, and no other person has an interest, as owner, in the land.
- Any current mortgage over the property which was registered prior to 25 January 2007 will be no more than 50% of the Valuer-General's capital value of the property.

An application must be made in the prescribed manner and form and be accompanied by such information as the Council may require. Any rates which are postponed will become due and payable when:

- The title to the land is transferred to another person; or
- There is failure to comply with a condition of postponement. A minimum amount of \$500 of the annual rates must be paid.

An entitlement to a remission will be applied to the proportion of the rates that has not been postponed, unless notice to the contrary is received in writing from the owner.

Interest will accrue on the amount postponed at the prescribed rate per month, under the Act until the amount is paid.

Should the entitlement to a postponement cease to exist, the owner of the land must inform the Council in writing, unless the rates and any interest have been paid in full.

APPENDIX 3. LONG TERM FINANCIAL PLAN

City of Marion 10 Year Financial Plan for the Years ending 30 June 2031 BUDGET SUMMARY - GENERAL FUND Scenario: LTFP 2021-2031 Draft ABP Model												
	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31		
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000		
Rates Indexation	1.00%	1.00%	1.50%	1.50%	1.40%	1.40%	1.40%	1.30%	1.30%	1.30%		
INCOME												
Rates	81,693	83,337	85,420	87,556	89,659	91,813	94,019	96,186	98,403	100,672		
Statutory Charges	2,106	2,138	2,180	2,235	2,291	2,348	2,407	2,467	2,528	2,592		
User Charges	2,827	2,869	2,926	3,000	3,075	3,152	3,230	3,311	3,394	3,479		
Grants, Subsidies and Contributions	6,726	6,013	6,133	6,287	6,444	6,605	6,770	6,939	7,113	7,290		
Investment Income	347	376	383	400	434	443	527	588	684	754		
Reimbursements	1,222	1,172	1,195	1,225	1,256	1,287	1,319	1,352	1,386	1,421		
Other Income	538	541	544	549	553	558	562	567	572	577		
Net gain - equity accounted Council businesses	365	-	-	-	-	-	-	-	-	-		
TOTAL INCOME	95,824	96,445	98,783	101,251	103,712	106,205	108,835	111,410	114,080	116,784		
EXPENSES												
Employee Costs	39,213	40,101	41,173	42,173	43,315	44,311	45,330	46,373	47,440	48,531		
Materials, Contracts & Other Expenses	34,943	35,324	34,911	35,647	36,536	38,092	38,381	39,136	40,060	41,061		
Depreciation, Amortisation & Impairment	16,000	16,640	17,306	17,998	18,718	19,466	20,245	21,055	21,897	22,773		
Finance Costs	254	493	449	373	322	269	214	157	104	68		
TOTAL EXPENSES	90,410	92,558	93,839	96,191	98,891	102,140	104,171	106,721	109,501	112,433		
Operating Surplus	5,414	3,888	4,944	5,060	4,821	4,065	4,664	4,689	4,579	4,351		
Operating Surplus Ratio	5.65%	4.03%	5.01%	5.00%	4.65%	3.83%	4.29%	4.21%	4.01%	3.73%		
Amounts Received Specifically for New or Upgraded Assets	1,500	-	-	-	-	-	-	-	-	-		
Net Surplus / (Deficit) for the Year	6,914	3,888	4,944	5,060	4,821	4,065	4,664	4,689	4,579	4,351		
CAPITAL (Balance Sheet) and Reserve Movements												
Capital Expenditure	(40,312)	(20,243)	(19,133)	(20,209)	(21,530)	(21,247)	(22,404)	(23,058)	(23,736)	(24,230)		
Loan Repayments (External)	(827)	(1,841)	(2,040)	(1,450)	(1,501)	(1,554)	(1,609)	(1,666)	(1,304)	(1,340)		
New Loan Borrowings (External)	10,920	1,350	-	-	-	-	-	-	-	-		
Net Transfers (to)/from Reserves	7,056	580	(383)	(383)	(383)	(283)	(283)	(283)	(283)	(283)		
TOTAL CAPITAL (Balance Sheet) and Reserve Movements	(23,162)	(20,154)	(21,556)	(22,042)	(23,413)	(23,083)	(24,295)	(25,007)	(25,323)	(25,852)		
Net Result (including Depreciation & Other non-cash items)	(16,248)	(16,267)	(16,611)	(16,982)	(18,593)	(19,018)	(19,632)	(20,317)	(20,744)	(21,501)		
Add back Depreciation Expense (non-cash)	16,000	16,640	17,306	17,998	18,718	19,466	20,245	21,055	21,897	22,773		
Less Other Income (non-cash)	(365)	-	-	-	-	-	-	-	-	-		
Cash Budget Surplus	(613)	373	694	1,016	125	449	614	738	1,153	1,272		

Heritage Interpretation signage proposal

Originating Officer Manager Community Connections - Liz Byrne

Corporate Manager Manager Community Connections - Liz Byrne

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R09

Confidential ☐

REPORT OBJECTIVE

To provide Council with the outcomes of a costed solution for heritage signs across the 26 sites as identified in the consultant's report about the museum/exhibition space concept presented to Council in January 2021. This includes the 25 satellite sites plus the proposed Red House extension.

EXECUTIVE SUMMARY

At the January 2021 General Council meeting (GC210127R07), Council resolved to receive a report about a costed solution for the 25 sites including the interpretative themes identified in the consultant's report about the museum/exhibition space extension of the Marion Heritage Research Centre (MHRC, aka Red House).

Architectural firm Grieve Gillett Andersen (GGA) was engaged to undertake a preliminary scoping and costing report about the museum/exhibition space. The report was tabled to Council on 27 January 2021 and outlined a number of interpretative options for both the Red House and satellite sites across the city. The satellite sites have been identified as being of local cultural significance in Marion.

To further progress the interpretative signage component of this project, Administration engaged with consultant, Listening to the Past (LTP), who has provided a costed solution to implement a staged approach of heritage interpretation (signs) at pilot sites. LTP has also developed an interpretative sign style guide for the City of Marion that can be used as a basis for any interpretative signage at the remaining sites.

Council may wish to undertake a pilot project in 2021/2022 or alternatively revisit this proposal in 12 month's time aligning any decision about the interpretative heritage signage component of this project when considering the museum/exhibition space as part of unfunded priorities in the next financial year.

RECOMMENDATION

That Council:

1. **Proceed with a pilot project of three sites of local cultural heritage significance for interpretative signs including up to \$100k in the 2021/2022 budget to undertake this work, including**
 - a. XXXX (please nominate site from Attachment 1)
 - b. XXXX (please nominate site from Attachment 1)
 - c. XXXX (please nominate site from Attachment 1)

OR

2. **Proceed with a pilot project of one site of local significance, at Glandore Community Centre, for interpretative signs including up to \$30k in the 2021/2022 budget to undertake this work.**

OR

3. **Defer a decision about the heritage interpretative signs for 12 months and align this component of the project with any decision about the museum/exhibition space as part of unfunded initiatives in the next financial year (April 2022).**

Liveable: Neighbourhoods that reflect local character, heritage and create and sense of belonging.

Prosperous: A welcoming city offering residents and visitors a wide range of leisure and cultural experiences.

DISCUSSION

Administration engaged with consultant Listening to the Past (LTTP) <http://listeningtothepast.com.au/> to develop heritage interpretation at three pilot sites and undertake a conceptual design of a suite of signage (Attachment 2).

The City of Marion has a rich cultural and natural heritage that was grouped into eight interpretative themes. These themes underpin the design, landscaping and exhibitions in the proposed exhibition space extension at the Marion Heritage Research Centre and the interpretation of additional significant cultural sites in the council area.

The eight themes include:

- **Warriparri natural environment** - the natural environment of Warriparri (Sturt River and environs that attracted the Kaurna people to live here and later the Europeans who developed farms, market gardens, vineyards and orchards).
- **Children** - children's learning, work, play and daily experiences.
- **Ancient history** - ancient history of the land and its minerals has provided opportunities for scientific discoveries and industry.
- **Industry and technology** - industry, technology and innovation in Marion have changed through time.
- **Community Life** - the changing face of community life in Marion.
- **Farms and villages to city** - Marion has changed from farms to a city.
- **Military** - Marion has a history of supporting the military.
- **Art and culture** - the district has a rich history of art, culture and creativity.

25 satellite sites (Attachment 1) were initially identified; 13 of these were identified as primary interpretative sites; of these primary sites three are proposed as pilot project sites. These three sites are distributed across the council region from north to south and collectively cover the eight main interpretative themes. These sites attract a range of visitors, from community members, retirees and older people, to school and university groups, former residents, environmental interest groups and former students of the Edwardstown Industrial School and related institutions.

The suggested three pilot sites include the Glandore Community Centre, Marion Historic Village Museum & Walk and the Hallett Cove Conservation Park.

Administration undertook further engagement with committee members from the Marion Historic Village Museum (MHVM) and personnel from the Department of Environment & Water (DEW).

DEW indicated that they are working on a proposal for some interpretative signs to be installed in the Hallett Cove Conservation Park and the boardwalk as part of the refurbishment project, and at the time of writing this report we are still awaiting further details.

Likewise the MHVM committee members wish to have significant involvement with any additional/replacement signage within the Village precinct. Previous experience with the MHVM group in relation to the Light Square signs added considerable time to the project implementation of up to 12 months.

Other options for delivering a three site interpretative signage project include:

- Marion Coastal Walk
- Oaklands Wetlands
- Perry Barr House
- Edwardstown Precinct

Heritage interpretative signage that has recently been installed at Light Square and Oaklands Wetlands has been very well received by the public.

The following three options are provided for Council consideration:

Option 1 - proceed with a pilot project in 2021/2022 of three sites, as chosen by Council, and include up to \$100,000 in the 2021/2022 financial year to enable this work to be undertaken.

Option 2 - proceed with a pilot project in 2021/2022 at one site e.g. Glandore Community Centre and include up to \$30,000 in the financial year to enable this work to be undertaken

Option 3 - postpone a decision about the heritage interpretative signs for 12 months and align this component of the project with any decision about the museum/exhibition space as part of unfunded priorities in the next financial year.

Attachment

#	Attachment
1	Attachment 1 - sites for heritage interpretative signs
2	Attachment 2 - City of Marion interpretative proposal March 2021

ATTACHMENT 1

SATELLITE SITES FOR HERTIAGE INTERPRETATIVE SIGNS								
THEMES AND SITES								
SITE/THEME	WARRIPARI NATURAL ENVIRONMENT	CHILDREN	ANCIENT HISTORY	INDUSTRY AND TECH	COMMUNITY LIFE	FARMS & VILLAGES TO CITY	MILITARY	ART & CULTURE
New city of Marion Museum/Exhibition Space (introduction to each theme with encouragement to visit sites listed for more immersive experiences)	X	X	X	X	X	X	X	X
Clovelly Park Community Garden	X				X			
Edwardstown Precinct		X		X	X	X		
Ewell (Marion) Vineyard	X							
Fairford House and Coach House	X			X		X		
Glade Crescent Wetland, Hallett Cove	X							
Glandore Community Centre incl Community Garden	X	X			X		X	
Glenthorne Farm	X			X		X	X	
Hallett Cove Geological Area and Conservation Park	X	X	X					X
Living Kurna Cultural Centre and Warriparinga Wetlands incl Community Garden	X	X			X			X
Marino Community Garden	X				X			
Marino Conservation Park	X	X	X		X			X
Marion Coastal Walk	X		X	X	X			X
Marion Cultural Centre								X
Marion Historic Village Precinct and Museum		X		X	X	X	X	X
MarionLife Community Garden, Mitchell Park	X				X			
Morphettville Racecourse	X				X		X	
Oaklands Reserve and Oaklands Community Garden	X	X			X			X
Oliphant Avenue reserve and Oaklands Community Garden	X				X		X	
O'Halloran Hill Recreation Park		X						
Perry Barr House	X				X	X		
Sturt River Linear Park	X					X		
Tonsley Precinct				X		X		
Trott Park Community Garden	X				X			
Watiparinga Creek	X							
Worthing Mine and Field River Valley	X	X		X	X			



City of Marion
Heritage Interpretation Proposal:
Implementation of Signage at Three Pilot Sites

22 March 2021

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quentin gore

City of Marion Heritage Interpretation: implementation of signage at three pilot sites

Objective

The City of Marion wishes to develop heritage interpretation at the sites identified in report GC210127R07. The present document proposes a costed approach for implementing a first stage of heritage interpretation at three sites, using interpretive signs, whilst simultaneously developing an interpretive sign style guide that can be used as a basis for interpretive signage at the remaining sites.

Background and context to proposal

Council engaged Grieve Gillett Anderson (GGA) and Dr Sally Stephenson to undertake a preliminary scoping and costing report for a custom museum space at the Marion Heritage Research Centre (MHRC). The report (GC210127R07) proposed a range of interpretative options for the MHRC, as the heritage hub, and at a number of satellite heritage sites throughout the council district. These sites were classified as primary, secondary and tertiary sites for interpretation. Final design proposals and costing for implementation of the interpretive options was beyond the scope of the project.

This report provides a costed approach to implementing a first stage of interpretive signage at three of the primary sites. It also proposes developing an interpretive sign style guide that can be used at the remaining sites, thereby reducing future costs since design of the signage does not have to begin from scratch.



Glandore Community Centre grounds, 2021.

Cover image: The Sugarloaf, Hallett Cove Conservation Park.

Interpreting the heritage of the City of Marion

The rich cultural and natural heritage of the City of Marion was distilled it into eight interpretive themes (Report GC210127R07), listed below.

These themes underpin the design, landscaping and exhibitions in the new City of Marion Museum and Heritage Hub at the Marion Heritage Research Centre, and the interpretation of additional significant cultural sites in the council area.

The eight interpretive themes for the City of Marion are:

1. Warriparri natural environment

The natural environment of Warriparri (Sturt River) and environs attracted the Kaurna people to live here, and later, Europeans who developed farms, market gardens, vineyards, and orchards.

2. Children

Children's learning, work, play, and daily experiences: continuity and change.

3. Ancient history

The ancient history of the land and its minerals has provided opportunities for scientific discoveries and industry.

4. Industry and technology

Industry, technology, and innovation in Marion have changed through time.

5. Community life

The changing face of community life in Marion.

6. Farms and villages to city

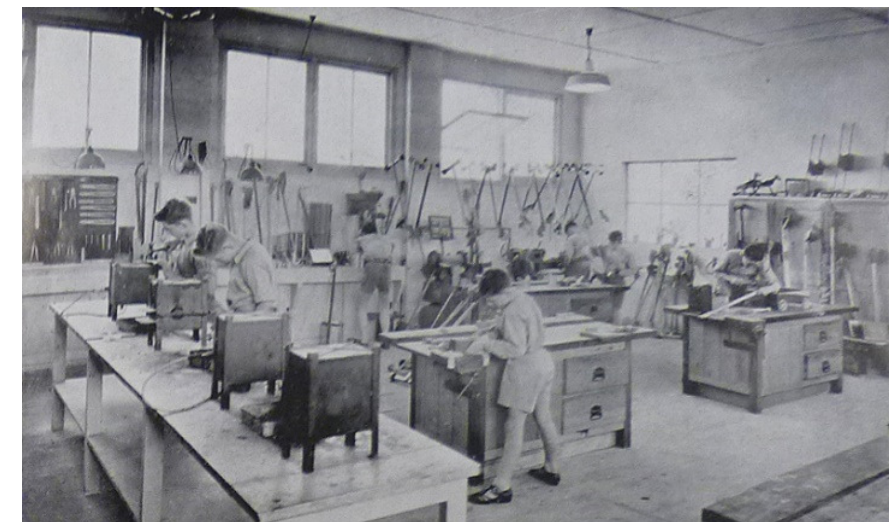
Marion has changed from farms and villages to a city.

7. Military

Marion has a history of supporting the military.

8. Art and culture

The district has a rich history of art, culture, and creativity.



Manual arts room at the Edwardstown Industrial School, c1946. From the Annual Report of the Children's Welfare and Public Relief Board, 1946.

Sites for stage 1 implementation

Thirteen sites were identified as primary interpretive sites in the previous report (GC210127R07). Three of these have been selected for the first stage of interpretive signage. These sites are distributed across the council region from north to south, and collectively cover the eight main interpretive themes. These sites together attract a range of visitors, from community members, retirees and older people, to school and university groups, former residents, environmental interest groups, and former students of the Edwardstown Industrial School and related institutions.

The sites are:

1. Glandore Community Centre Precinct
2. Marion Historic Village Museum and Walk
3. Hallett Cove Conservation Park

Interpretation at these sites is also able to address topics that tend to be under-represented in heritage interpretation, including indigenous culture, children's experiences, and women's experiences.

Site 1: Glandore Community Centre precinct

The themes represented in this precinct are:

- Theme 1: Warriparri natural environment
- Theme 2: Children
- Theme 5: Community life
- Theme 7: Military

The proposal allows for 10 signs at this site (including a trailhead sign giving an overall introduction to the site, and with a map showing the location of the other signs).

This site would also lend itself to some interpretive paving, that could be incorporated into the landscape design and play areas.

An indicative guide to possible topics for each of the interpretive signs is:

- Trailhead sign – overall introduction to uses of the site and stages. Map of sign locations
- Slade building – children's work and activities
- Malwa building – why there are bars
- Naldera building – story of one of the children
- Gundy building – superintendents esp. Jim Slade
- Clark building – war contributions, Corcoran story
- Glandore building – industrial school and workshops
- Community centre grounds – previous uses of land
- Warriappendi Aboriginal school
- Community garden – link to market gardening and farming in the area
- Playground – in paving, silhouettes of children undertaking work; short emotive text on children's experiences.



Possible location of interpretive signs at the Glandore Community Centre precinct, with trailhead indicated by orange marker with black border.

Site 2: Marion Historic Village Museum and walk

The themes represented in this precinct are:

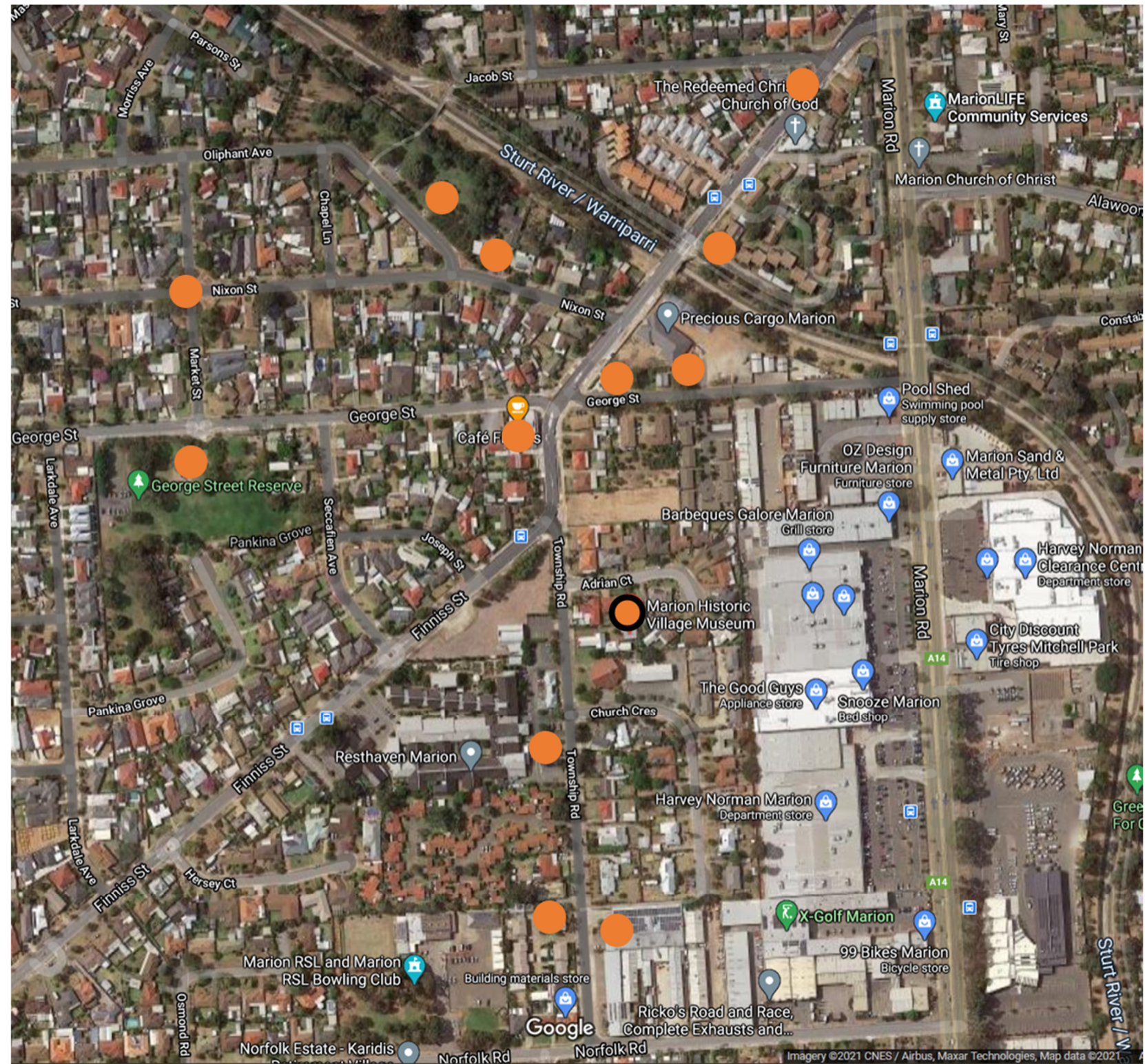
- Theme 1: Warriparri natural environment
- Theme 2: Children
- Theme 4: Industry and technology
- Theme 5: Community life
- Theme 6: Farms and villages to city
- Theme 8: Art and culture

The proposal allows for 14 signs at this site (including a trailhead sign giving an overall introduction to historic village, and with a map showing the location of the other signs).

There are currently 24 stops on the Marion Village Heritage Walk, some of which describe buildings that are no longer standing. Some stops relate to two adjacent buildings that could be described on a single interpretive sign. The number of stops can therefore probably be rationalised to 14.

An indicative guide to possible topics for each of the interpretive signs is:

- Trailhead at museum (Heritage walk stop no. 22a). Map to show location of signs and also public art – *Little Marion*
- Wesleyan Methodist Chapel (22)
- Annie Doolan's cottage – schooling, children (1)
- St Ann's Chapel and bell (2, 3)
- Original Marion Inn (10)
- Sturt River, natural history and Kauria perspective (11)
- 38 Nixon Street – Laurel Cottage and General Store, post office (12)
- Almond Grove, Oliphant Avenue (13). Info on park facilities and use.
- Light Square – township design (14)
- George Street Reserve – brickmaking (15). Info on park facilities and use.
- Hersey Workmen's cottages – local bricks (18)
- Thredgold's birthing house – women's history (19)
- Charlesworth Nuts and factory shop (20)
- Shops and former police station (23, 24)



Possible location of interpretive signs on the Marion Historic Village walk, with trailhead indicated by orange marker with black border.

Site 3: Hallett Cove Conservation Park

The themes represented in this precinct are:

- Theme 1: Warriparri natural environment
- Theme 2: Children
- Theme 3: Ancient history
- Theme 8: Art and culture

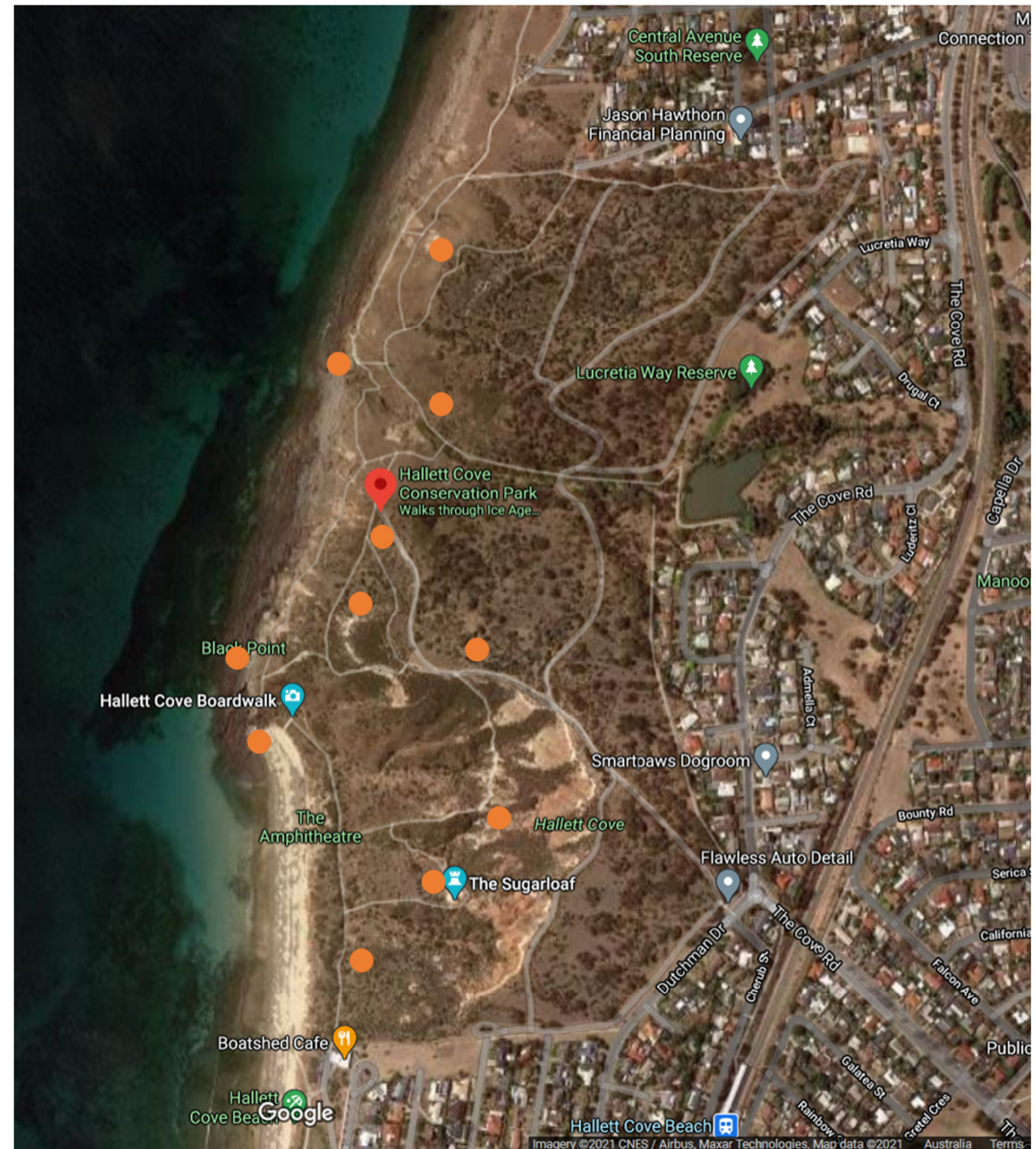
The proposal allows for 21 signs at this site (including two trailhead signs).

An indicative guide to possible topics for each of the interpretive signs is:

- Trailhead (same trailhead installed at northern and southern entrances, with identical text but appropriate map)
- 11 geological stops (based on geology brochure)
- Birds x 2
- Flora
- Reptiles and invertebrates
- Indigenous history x 2
- Scientific discovery and citizen science
- Recreation and having fun



Shore platform, Hallett Cove Conservation Park.



Hallett Cove Conservation Park, with orange markers show possible locations of 11 of the signs, to highlight geological features. The location of the other nine suggested signs needs to be determined.

Approach/methodology

We propose the following steps to develop engaging interpretive signage at the three locations.

Stage 1A: Conceptual design of generic signage suite

- 1.1. Develop two concepts for a suite of signs using the three case study sites as test sites. Suite will explore materials and colours.
- 1.2. Develop basic icon set and guide to the use of the City Brand.
- 1.3. Present concepts to stakeholders, with feedback and selection of preferred concept.

Stage 1B: Design development of preferred concept and preliminary costings

- 1.4. Design development and detailing of approved preferred concept, and preliminary costings.
- 1.5. Presentation of the developed design to stakeholders with feedback and minor revisions.
- 1.6. Preparation of generic City of Marion signage suite design guidelines document (Deliverable 1).

Stage 2: Interpretive strategy

- 2.1. Site visits to confirm the number, location and size of signs, and identify whether any existing signs should be retained or replaced (depending on their state of repair, location, ease of reading, and suitability of current content) in collaboration with client.
- 2.2. Develop overall interpretive strategy and walking routes, and plot sign locations on site map in collaboration with client
- 2.3. Workshop will be delivered by Sally Stephenson to staff and volunteers at MHRC on how to use the interpretive themes developed in the masterplan report (GC210127R07) to research suitable content for the interpretive signs, including researching written documents, audio, newspaper and images. The workshop will also identify the key stories to be told on each of the signs in each site.



Little Marion gateway, Marion Historic Village.

Stage 3: Interpretive content

- 3.1. Research background information, oral histories and visual material for interpretive signs: to be undertaken by staff and volunteers at MHRC. This step may also require checking images and archives at the State Library of South Australia and State Records. Client provides the research findings and materials to Sally Stephenson, organised in folders according to site and sign (for step 3.2 option A).
- 3.2. Write the text, select images, and write captions for interpretive signs, using material identified in 3.1. The signage style and size for each location needs to be agreed before this stage, as it determines the amount of text and number of images per sign.
 - Option A – Sally Stephenson writes all the content, including captions, using material provided by the client.
 - Option B – staff at MHRC write the content for the signs and provide it to Sally Stephenson to edit for consistency of style, interpretive impact and clarity.
- 3.3. Prepare coloured site map with walking route for trailhead / brochure / online.
- 3.4. Prepare concept document and draft layouts for each sign type and location in collaboration with client (Deliverable 2).
- 3.5. Presentation to client and minor revisions.
- 3.6. The signs will have QR codes to link to additional material, which could be photographs, old newspaper items, additional personal stories (e.g. stories of people who were at the Glandore Industrial School) and/or excerpts from oral history interviews. This material prepared as follows:
 - Sally edits audio from oral history interviews to produce short (e.g. 3 min) extracts and prepares corresponding transcript (Deliverable 3a).
 - Sally writes short text to provide context to the uploaded resources (Deliverable 3b).
 - Client provides visual material including photographs, scans of documents or newspaper items.
 - Client to identify a suitable website and pages for the material and upload it, providing corresponding web addresses so that correct QR codes can be added to corresponding interpretive signs.
- 1.7. Additional QR code-linked material uploaded to website (Client).

Stage 4: Signage design, manufacture and installation

- 4.1. Prepare print ready artwork for each sign type using interpretive content approved in Stage 3.
- 4.2. Seek firm quotes for production and installation of signage.
- 4.3. Manage sign production and installation.



Early cottage, 1870. SLSA B 23410.

Key deliverables

1. Style guide for signage including approximate costs for each size and type of sign (see a simplified example of style guide in Appendix A)
2. Report for each location (see example in Appendix B) giving details of:
 - a. Location of each sign, including directional signs
 - b. Sign content, print ready
 - c. Map suitable for use on signs
3. Additional material for uploading to website and accessing via QR code arranged by site and sign:
 - a. Audio excerpts (approx. 3 min duration) from oral history interviews, with accompanying transcript,
 - b. Brief text to provide context for images being uploaded,
4. Print-ready artwork.
5. Signage manufacture and installation.

Additional points to consider

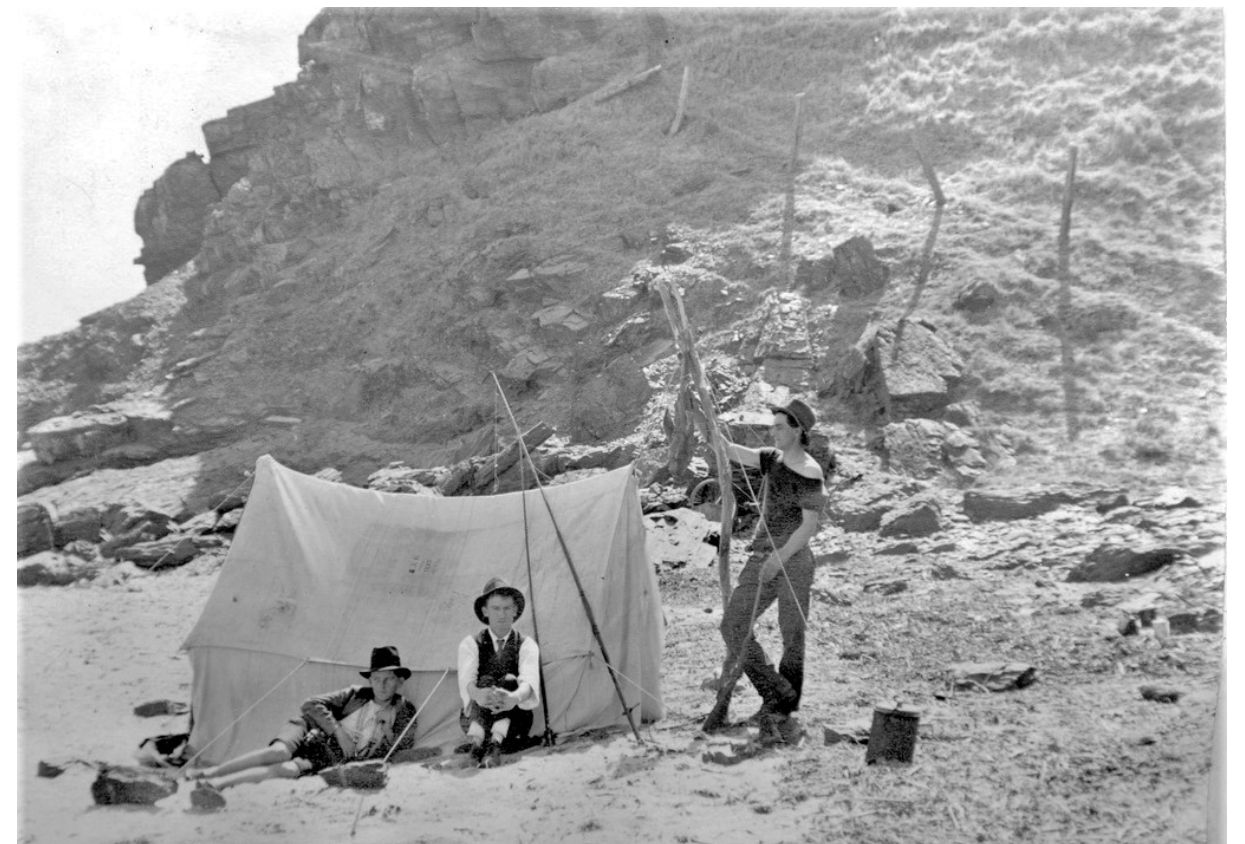
1. A professional illustrator could be engaged to provide illustrations for interpretive signs where suitable photographs are not available. For example, there are no known photographs of the Glandore site from 1890 – 1898 when it was a girls' reformatory, nor of the girls who resided there.
2. Interpretive material developed for the signs could be repurposed for use on the council website. The present quote does not include time for repurposing the material.



Glandore Industrial School, 1950s. State Records GRG29/136 - Picture 76.



Glandore community garden, 2021.



Young men camping at Hallett Cove, c1918. SLA PRG 280/1/17/213.

Quote

The indicative cost for developing signage, using the methodology outlined above and assuming the number of signs suggested above.

The quotes are for option A, in which Sally writes the content for the signs. In Option B, Sally edits written content provided by the client; the reduction in cost for this option is provided below each of the main quotes.

The cost of manufacturing and installing the interpretive signs is provided as a guide only. Costs are based on type 2 and type 4 signs produced for the Rural City of Murray Bridge (see Appendix A for each sign type, and for the costs of other size signs). Furthermore, the costs are based on one-off signs, so if the signs are manufactured and installed in batches, the cost would be less. The cost of directional or other signs is not included.

All three sites (44 signs)

Stage 1: Design of generic signage suite	\$12 080
Stage 2: Interpretive strategy	\$7 830
Stage 3: Interpretive content	\$14 080
Stage 4: Signage design	\$7 000
Sign manufacture and installation (4 Type 4 single-sided signs; 41 Type 2 single-sided signs)	\$63 200
Total (option A)	\$97 190 Excl GST

Option B: subtract \$5 280

Glandore Community Centre Precinct only (10 signs)

Stage 1: Design of generic signage suite	\$12 080
Stage 2: Interpretive strategy	\$2 960
Stage 3: Interpretive content	\$6 688
Stage 4: Signage design	\$2 000
Sign manufacture and installation (1 Type 4 single-sided sign; 9 Type 2 single-sided signs)	\$14 800
Total (option A)	\$24 448 Excl GST

Option B: subtract \$1 200

Marion Historic Village precinct only (14 signs)

Stage 1: Design of generic signage suite	\$12 080
Stage 2: Interpretive strategy	\$3 120
Stage 3: Interpretive content	\$8 579
Stage 4: Signage design	\$2 400
Sign manufacture and installation (1 Type 4 single-sided sign; 13 Type 2 single-sided signs)	\$19 200
Total (option A)	\$30 899 Excl GST

Option B: subtract \$1 680

Hallett Cove Conservation Park only (21 signs)

Stage 1: Design of generic signage suite	\$12 080
Stage 2: Interpretive strategy	\$3 590
Stage 3: Interpretive content	\$11 416
Stage 4: Signage design	\$3 000
Sign manufacture and installation (2 Type 4 single-sided signs; 19 Type 2 single-sided signs)	\$29 600
Total (option A)	\$43 176 Excl GST

Option B: subtract \$2 400

Exclusions

Direct community consultation with stakeholder groups other than Council is not included. Any direct community consultation would be charged at \$260/hour excluding GST.

Preparation of illustrations, if required.

Purchase of photography, if required.

Engineering of signage, if required.

Other

We recommend adding a 10% contingency to cover potential cost variations that arise.

Proposed schedule

	week number																							
	wk 1	wk 2	wk 3	wk 4	wk 5	wk 6	wk 7	wk 8	wk 9	wk 10	wk 11	wk 12	wk 13	wk 14	wk 15	wk 16	wk17	wk 18	wk 19	wk 20	wk 21	wk 22	wk 23	wk 24
Start-up meeting.																								
Stage 1A - conceptual design of generic signage suite																								
1.1. Develop two concepts for a suite of signs using the three case study sites as test sites. Suite will explore materials and colours.																								
1.2. Develop basic way-finding icon set and guide to the use of the City Brand.																								
1.3. Present concepts to stakeholders, with feedback and selection of preferred concept.																								
Stage 1B - design development of preferred concept & preliminary costings.																								
1.4. Design development and detailing of approved preferred concept, and preliminary costings.																								
1.5. Presentation of the developed design to stakeholders with feedback and minor revisions.																								
1.6. Preparation of generic City of Marion signage suite design guidelines document (Deliverable 1).																								
Stage 2: Interpretive strategy																								
2.1. Site visits.																								
2.2. Develop overall wayfinding and interpretive strategy, plot sign locations on site map.																								
2.3. Workshop on interpretive content for signs (Sally, to MHRC staff and volunteers).																								
Stage 3: Interpretive content																								
3.1. Research background information to be used in developing interpretive content (Client). Research for each site undertaken separately and provided to Sally so that writing of material for site 1 can commence whilst reseach for sites 2 and 3 is undertaken.																								
3.2. Write interpretive content (Sally or Client).																								
3.3. Prepare coloured way-finding site map for trailhead / brochure / online.																								
3.4. Prepare concept document and draft layouts for each sign type and location in collaboration with client (Deliverable 2).																								
3.5. Presentation to client and minor revisions.																								
3.6.1. Prepare audio material and transcript to be placed on website and linked to sign via QR code (Sally).																								
3.6.2. Prepare additional text to put the images and audio on website in context (Sally).																								
3.6.3. Obtain high resolution scans of images to be used, and prepare photographs and images of newspaper cuttings to be placed on website and linked to sign via QR code (Client).																								
3.6.4. Confirm website to be used for QR code-linked material (Client).																								
3.7. Additional QR code-linked material uploaded to website (Client).																								
Stage 4: Signage design, manufacture and installation																								
4.1. Prepare print ready artwork for each sign type using interpretive content approved in Stage 3 (Deliverable 4).																								
4.2. Seek firm quotes for production and installation of signage.																								
4.3. Manage sign production and installation (Deliverable 5).																								

Note: allow approximately 4-6 weeks for signs to be manufactured.

Appendix A: Example signage suite, Quentin Gore Design

SIGNAGE SUITE FUNCTIONS



Various sign sizes can be designed and configured to perform various functions including :

- Type D - Directional Sign
- Type P - Park name Sign
- Type G - City and Township Gateway Sign
- Type F - Facility Name Sign
- Type C - Carpark Sign
- Type I - Interpretive Sign
- Type M - Map Directory Sign
- Type T - Trail Marker
- Type R - Regulatory Sign

Sign Code Rationale ; Type D3

D = Directional

3 = Sign Size, 1500H X 350W

Graphic design guidelines for each sign function are setout on the following pages



Costs of manufacturing and installing the sample signage suite (as one-off signs)

Sign type	Single- or double-sided	height	cost of manufacture	cost of install
1	double	1m	300	150
2	single	1m	600	400
2	double	1m	800	400
3	single	1.5m	1800	1500
3	double	1.5m	2100	1500
4	single	2m	2300	1500
4	double	2m	3000	1500
5	single	2.5m	3000	1500
5	double	2.5m	3400	1500
6	single	3m	4000	1800
6	double	3m	5000	1800
7	single	3.5m	5000	2500
7	double	3.5m	6000	2500
8	single	4m	7000	2500
8	double	4m	8000	2500

[Appendix B: Example location report attached separately \(Casuarina Walk Concepts\)](#)

By-law Review

Originating Officer	Unit Manager Community Health and Safety - Sharon Perin
Corporate Manager	Manager Development and Regulatory Services - Warwick Deller-Coombs
General Manager	Acting General Manager City Development - Greg Salmon
Report Reference	GC210427R10

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REPORT OBJECTIVE

To seek endorsement for Council's existing by-laws to be reviewed and re-made (with or without amendments and additions) and to create additional by-laws to manage:

- noisy birds (e.g. rooster, goose, pheasant or peacock etc.)
- nuisance shopping trolleys in the community

EXECUTIVE SUMMARY

Under Section 246 of the *Local Government Act 1999*, councils have the general power to make by-laws for the good rule and government of the area, and for the convenience, comfort and safety of their community. Councils can also make by-laws to deal with specific matters relevant to the local area.

The City of Marion currently has 6 by-laws which were endorsed by Council on 26 August 2014 (GC260814R07) and which expire on 1 January 2022:

- By-law No. 1 Permits and Penalties 2014
- By-law No. 2 Moveable Signs 2014
- By-law No. 3 Local Government Land 2014
- By-law No. 4 Dogs 2014
- By-law No. 5 Roads 2014
- By-law No. 6 Cats 2014

A copy of the by-laws are available on Council's website: [By-laws](#) | [About Council](#) | [City of Marion](#)

The by-laws must be re-made, as opposed to being extended.

The opportunity exists for Council to modify the existing by-laws and also to create new by-laws.

RECOMMENDATION

That Council:

1. Notes that the current By-Laws expire on 1 January 2022 and each By-law must be remade.
2. Commence the review of the six (6) current by-laws and with the following changes:
 1. By-law No. 1 Permits and Penalties 2014
 - a) No proposed changes
 2. By-law No. 2 Moveable Signs 2014
 - a) No substantive changes; and any other changes will be subject to the review process
 3. By-law No. 3 Local Government Land 2014
 - a) Amend the advertising provisions to include the display of election signs on Local Government land; and any other changes will be subject to the review process
 4. By-law No. 4 Dogs 2014

a) **No substantive changes but minor changes to reflect updates to Dog and Cat Management Act**

5. By-law No. 5 Roads 2014

a) **Amend the advertising provisions to include the display of election signs on structures on a road; and any other changes will be subject to the review process**

6. By-law No. 6 Cats 2014

a) **Create options for a cat curfew in the cat by-law (based on the City of Mount Barker By-law), and**
 b) **Minor changes to reflect updates to Dog and Cat Management Act.**

3. Draft a by-law to primarily deal with noisy birds (e.g. roosters) by preventing or limiting the number of relevant animals that can be kept per property, noting that different options will be presented to Council.

4. Draft a new by-law to prevent and manage nuisance caused by shopping trolleys abandoned in the community, pending a response to the Mayor's email to the Premier on the matter.

Liveable:	By-laws enable management of particular matters which assist to create a safe, welcoming and aesthetically pleasing city.
Engaged:	Under the Local Government Act 1999, Councils must consult with the community for a minimum of 21 days regarding draft by-laws.
Organisational Excellence:	By-laws enable the good rule and government of the local community.
Risk Management:	Council will not be able to administer and enforce its current by-laws after 1 January 2022 and the by-laws need to be re-made.
Legal / Legislative / Policy:	The Local Government Act 1999 gives Councils the general power to make by-laws for the good rule and government of the area, and for the convenience, comfort and safety of its community; and sets out the legal process for creating by-laws.
Current Budget Allocation	The review of existing by-laws will be conducted within Council's existing resources.

DISCUSSION

Expiry of By-laws

Under Section 251 of the *Local Government Act 1999* (the Act) a by-law, including all subsequent by-laws altering that by-law, expires on 1 January following the 7th anniversary of the day on which the by-law was made.

As a by-law automatically expires unless it has previously been revoked, a new by-law is required to be made, as opposed to an existing by-law being extended.

An existing by-law is revoked on the day on which the new by-law comes into operation.

Setting Expiation Fees and Penalties for a By-law

Under the Act, a Council can fix:

- a minimum, as well as a maximum penalty for any breach of a by-law, or a maximum penalty only, or a general maximum penalty applicable to several by-laws, provided that the maximum penalty does not exceed \$750;
- in the case of a continuing offence, a further penalty not exceeding \$50 for every day on which the offence or breach of the by-law continues;

- an expiation fee set which cannot exceed 25% of the maximum fine for the offence to which it relates.

The enforcement provision of the current by-laws is set at the maximum penalty allowed under the Act. Through Council's annual Fees and Charges setting process, Council has set the maximum expiation fee allowed which is \$187.50.

As presented in the Elected Member Forum (EMF210316R03), enforcing the by-laws is primarily through permit systems and there is a high-level of compliance from the community with our by-laws.

The Community Safety Team enforces other legislation which results in expiations (such as parking which is enforced under the Australian Road Rules). A further explanation of this (including statistics) will be provided to Council in a future report.

Process for Making a By-law

There is a legislated process in the Act for making a by-law, including the requirement to undertake community consultation and that by-laws relating to dogs or cats must be submitted to the Dog and Cat Management Board for its approval.

An outline of the process for making a by-law was attached to the Elected Member Forum report (EMF210316).

Feedback from Elected Members

A report was presented to Council at the Elected Member Forum on 16 March 2021, which included information about statistics regarding complaints and enforcement of Council's current by-laws (EMF210316).

Elected Members provided feedback regarding the re-making of the by-laws and this feedback has been included in the consideration of re-making the current by-laws and creating additional by-laws.

Re-making the Existing By-laws

It is recommended that Administration re-make the existing 6 by-laws by drafting new by-laws, incorporating the feedback from Elected Members.

All by-laws will be reviewed and re-made so they are not in contradiction with any other legislation. This will include removing areas in the dog and the cat by-laws that have been superseded by amendments to the *Dog and Cat Management Act 1995*; and removing littering provisions from any by-law, as litter is now dealt with under the *Local Nuisance and Litter Control Act 2016*.

It has been confirmed that Council does not have power to adopt a by-law that would regulate the parking of trailers and caravans on roads and road-related areas, as this would duplicate or create inconsistencies with the Road Traffic Act 1961 and the Australian Road Rules, legislation that exclusively regulates the movement of vehicles, including trailers and caravans, on roads and road-related areas in South Australia. Regulating the stopping and parking of camping vehicles and trailers can be achieved through signage and this will be investigated through Council's Traffic and Parking Team.

It has been determined that Council does not have power to restrict the number or location of electoral corflute signs displayed by a candidate in the whole of the Council area, including on private property or, during the prescribed election periods, on a road. This is because section 226 of the Local Government Act 1999, expressly allows such signs to be displayed on a road. As Council's by-law relates to moveable signs on roads, Council cannot operate to restrict the display of moveable election signs on a road during the relevant election periods, as this would also be contrary to the Local Government Act. Council can restrict the number of signs that may be displayed on a particular structure on a road or on Local Government land that is not a road, through amending the advertising provisions in the Roads and Local Government land by-laws so it includes election signs.

The following table provides information regarding Council's current by-laws, together with a recommendation for re-making the by-laws:

By-law	Benefits of By-law	Re-making to include
By-law No. 1 Permits and Penalties 2014	Required so Council's by-laws can be enforced and so Council can issue permits for identified actions and activities.	No changes.
By-law No. 2 Moveable Signs 2014	Balances the need of retailers and other members of the community being able to advertise while maintaining a safe	No substantive changes; and any changes will be subject to the review process.

	environment for pedestrians and motorists.	
By-law No. 3 Local Government Land 2014	<p>Provides a framework for, and limitation of, what can occur on Council land.</p> <p>Includes permission for special events to be held on Council land.</p>	<p>Review to ensure no contradiction with any other Act including the Local Nuisance and Litter Control Act 2016 regarding noise, nuisance, and litter.</p> <p>Amend the advertising provisions to include the display of election signs on Local Government land.</p>
By-law No. 4 Dogs 2014	Assists with preventing nuisance caused by dogs by limiting the number of dogs that can be kept per property; and aims to reduce the chance of dogs wandering at large.	<p>Amend to remove areas that have been superseded by amendments to the Dog and Cat Management Act 1995.</p> <p>Retain a limit on the number of dogs that can be kept per property, with the ability for a resident to be given a permit to keep additional dogs.</p>
By-law No. 5 Roads 2014	Limits activities on roadways to ensure safety while balancing the need of motorists and residents, eg residential parking permits and permits for industrial bins.	Amend the advertising provisions to include the display of election signs on structures on roads.
By-law No. 6 Cats 2014	Assists with preventing nuisance caused by cats by limiting the number of cats that can be kept per property.	<p>Amend to remove areas that have been superseded by amendments to the Dog and Cat Management Act.</p> <p>Retain a limit on the number of cats that can be kept per property, with the ability for a resident to be given a permit to keep additional cats.</p> <p>Create a curfew of 8.00pm - 7.00am each day for when cats must be confined to their premises, modelling this and other requirements on the District Council of Mount Barker's Cat By-law - (including taking into account daylight savings hours).</p>

Consideration of Creating New By-laws

Council has the opportunity to create new by-laws. It is recommended that two new by-laws be created to deal with:

- shopping trolleys
- noisy birds.

Shopping Trolley By-law

It is recommended that Council endeavour to create a new by-law to prevent shopping trolleys being abandoned in the community and to deal with shopping trolleys that have been abandoned.

Council recently wrote to the Premier seeking clarification on his position on a shopping trolley by-law for the City of Marion. It is recommended to wait for a response to this before drafting a new by-law.

Noisy Bird By-law



It is recommended that Council create a by-law to manage noisy birds either by limiting or prohibiting the keeping of certain animals (excluding dogs and cats which are covered by other by-laws).

It is recommended that the keeping of roosters be prohibited without a permit and the number of birds including poultry, be limited per property to assist with preventing nuisance to others regarding noise and odour caused by animals and birds.

This would assist to create a comfortable and enjoyable environment for all residents, while at the same time recognising the benefit to some residents of keeping such animals and birds as pets.

Any new by-laws will be drafted so they are not in contradiction with any other legislation.

Next Steps and Time-frame for Making the By-laws

Council has engaged Kelledy Jones Lawyers to assist in the review and drafting of by-laws.

An outline of the next steps and time-frame for making the by-laws is attached as Attachment 1 to this report.

Attachment

#	Attachment
1	Timeline for making By-laws

Timeline for making By-laws

Key Actions	Dates
Options for by-laws presented to Council	27 April 2021
Council endorsement of draft by-laws; and endorsement to undertake community consultation re draft By-laws (minimum of 21 days)	8 June 2021
Notice given to Dog and Cat Management Board	9 June 2021
Consideration of outcome and feedback of community consultation	July 2021
Council undertakes the following: obtain a Certificate of Validity; develop a report re the affect upon the National Competition Policy; report to State Parliament's Legislative Review Committee	July 2021
By-laws presented to Council for final endorsement	24 August 2021
Gazettal of By-laws; and by-laws published in "The Advertiser" newspaper	By 31 August 2021
Commencement of By-law	4 months from the date of gazettal of the By-laws

Community Bus - additional vehicle

Originating Officer Acting Unit Manager Community Wellbeing - Jaimie Thwaites

Team Leader Positive Ageing & Inclusion - Rima Sallis

Corporate Manager Manager Community Connections - Liz Byrne

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R11

Confidential ☐

REPORT OBJECTIVE

This report reviews the trial of a third bus in the Community Bus Program and provides options in relation to the Community Bus Program for 2021/22 and beyond.

EXECUTIVE SUMMARY

The City of Marion Community Bus Program currently provides a door to door transport service for residents who are frail, aged and/or living with a disability. In August 2019 a third bus was introduced into the program via a hire arrangement.

The community bus service assists residents to remain living independently, attend to their daily activities, and to continue to be active members of the community. This improves their quality of life and enriches the community.

The Community Bus Program was significantly impacted as a result of COVID-19 and has taken some time to build back up to the same level previously demanded and provided.

This report seeks Council direction on the Community Bus Program for 2021/22 and beyond. Options include continuing the trial of 3 buses with a hire bus or purchasing an additional diesel fuelled bus.

RECOMMENDATION

That Council:

- 1. Notes the impact of COVID-19 during 2020 on the Community Bus Program.**
- 2. Implements Option X for 2021/22 and includes the cost of \$X into the 2021/22 annual budget process.**

BACKGROUND

It was resolved at the 26 February 2019 General Council Meeting (GC190226R06) that Council:

- 4. Hires an additional community bus for two years 2019/20 and 2020/21, to further facilitate attendance at Neighbourhood Centre programs and other facilities and activities.*
- 5. Notes the hire fee for an additional bus, like for like, is approximately \$30,000 per annum, and refers this to the 2019/20 annual budget process for further consideration.*
- 6. Re-evaluates the need and possible purchase of a Community Bus to be introduced in July 2021, considering a hydrogen powered bus when this type of vehicle is readily available in the marketplace.*

A third bus was hired and utilised from August 2019.

GENERAL ANALYSIS



2016 ABS data indicates that 28% of Marion's population live in single person households and therefore are at risk of experiencing social isolation.

As people age and/or retire from jobs, they can lose friends and/or spouse and stimulation, which in turn has a direct impact on an individual's mental and physical health. Social interaction helps older adults to build and maintain interpersonal relationships. Such relationships are important to physical and mental health along with cognitive function and abilities.

The benefits to residents who are socially isolated, transport disadvantaged and are at risk of developing mental or physical health issues and premature entry to residential care is evident in residents who currently use the Community Bus Program. Residents have noticed the difference and regularly comment about the positive impact this service has made to the quality of their life.

A summary of the transport options available and the services delivered is provided at attachment 1.

Liveable:	Our services, facilities and open spaces will be more accessible.
Engaged:	The experience, skills and interests of older people will be harnessed.
Connected:	A variety of options for social interaction will be provided
Proposed Future Budget Allocation:	Hire of an appropriate bus, like-for-like, will cost approximately \$33,000 per annum. Note a hire bus is not wheelchair accessible. Purchasing an additional bus would cost approximately \$92,000.

DISCUSSION

Marion currently has three community buses, each capable of carrying 10 residents and two provide wheelchair access. Two of the buses are owned and maintained by Council (i.e. not covered by any grant funding) and the third bus is hired. The hired bus does not cater for people with mobility issues.

The third bus was introduced in August 2019 via a hire arrangement. Community consultation was undertaken in October 2019 seeking feedback on suitable destinations and attempted to gain an understanding of demographics of bus users.

As a result of feedback a 'new look' timetable with updated routes and additional destinations was introduced in December 2019. The new timetable was operational until COVID-19 struck and transport of passengers ceased March 2020. Community passenger transport recommenced in September 2020 in a limited capacity and has gradually increased in line with State Government health directives.

COVID-19 Impacts

The World Health Organisation (WHO) declared COVID-19 a global pandemic on 12 March 2020. The City of Marion made unprecedented decisions, as a response to Federal Government recommendations, to limit the spread of COVID-19. A number of City of Marion services including libraries, community centres and the Marion Outdoor Pool had operations temporarily suspended in order to mitigate the risk of infection across the community.

The number one priority was to respond to the direction provided by the Federal & State Governments to ensure that the safety of our community remains a priority.

In particular, in relation to the Community Bus Program, COVID-19 had the following impacts:

- Community bus ceased transporting passengers in week commencing Monday, 23 March 2020.
- Delivery of frozen meals commenced on Thursday, 9 April 2020 (3 buses utilised for meal deliveries every Thursday – ongoing).
- Delivery of activity packs to vulnerable members of the community commenced on 8 April 2020 (usually Fridays).
- Field staff used buses to transport staff to external locations whilst the social distancing in council vehicles was in place.
- Community bus progressively resumed service the week commencing Monday, 21 September 2020 (use of face masks and limited seating for 4 passengers).
- The number of volunteers assisting the Community Bus Program reduced and has not returned to the same numbers pre-COVID-19.

Options Moving Forward

Option 1 - Continue Trial of a Third Community Bus

COVID-19 had a significant impact on the Community Bus Program and therefore Council may wish to extend the trial for an additional 2 years.

The current hire arrangement for the 3rd community bus could be extended to enable a more accurate assessment of COVID-19 impacts and recovery to pre-COVID-19 status. This would also allow for updated survey data and information to be collected.

Hire cost for the 2-year period is approx \$67,000.

It should be noted that the hire bus does not cater for people with mobility issues.

In addition, the two City of Marion community buses are due for replacement in 2025. Should the trial be extended, the replacement program could incorporate a third bus if the need was substantiated during the extended trial.

Option 2 - Purchase 3rd Diesel Fuelled Bus

Purchase a Mercedes vehicle (like for like), providing a more sustainable and cost-effective alternative to the hire arrangement.

Alternative types of buses to purchase (e.g. electric or hydrogen powered) could be re-assessed when the current 2 buses are due to be exchanged.

Purchase of like for like vehicle will ensure service continuity when current Mercedes vehicles are due for replacement in 2025. Estimate cost \$92,000 plus fitting of accessible and inclusive modification.

Option 3 - Purchase Electric Bus

From desktop research there is not adequate information or data on the efficiencies or satisfaction in using electric buses.

Currently larger electric buses (greater than 50 seats) are being implemented by State Governments around Australia, however the availability of smaller buses (i.e. around under 13 seats) appears to be more limited.

Option 4 - Cease trial and retain two Community Buses

Although this option of ceasing the third Community bus would have a reduced cost it would also reduce the level of service provided to the community.

Compared to other Councils the number of community buses per number of residents is very conservative even with three buses.

A review of the number of buses used by other Councils has shown the following:

Council	Population	Residents over 65 years	Number of community buses	Residents over 65 per bus
City of Charles Sturt	112,000	21,224	4	5,306
City of Holdfast Bay	36,000	8,459	4	2,100
City of Marion	89,000	15,431	2 (+ 1 trial)	7,700
City of Mitcham	65,000	12,664	2	6,300
City of Onkaparinga	167,000	28,896	4	7,224
City of Playford	91,000	10,926	12	910
City of Tea Tree Gully	98,000	17,797	5	3,559
City of Unley	38,000	7,224	3	2,400
City of West Torrens	61,086	11,005	2	5,502

Refer to Attachment 2, Community Bus Survey for additional information.

The option of purchasing a hydrogen powered bus was also considered however it was determined that there are still very limited options available in the Australian market at this point in time. Recommend investigating again when the existing buses are due to be replaced.

Marion's existing buses do not require a specific bus licence to drive them. An LR class licence is required for motor vehicles with a GVM greater than 4.5 tonne but not greater than 8 tonne - e.g. trucks, vans, tippers, special purpose vehicles, and buses designed to carry 13 or more seated persons.

Attachment

#	Attachment
1	Attachment 1 - Community Transport Options & Summary of Services
2	Attachment 2 - Community Bus Comparison Data

Community Transport Options

The City of Marion offers a number of transport options for those who are frail, elderly, living with a disability, socially isolated and those who are transport disadvantaged. Transport options include:

- the **Community Bus Program**.
- the **Community Passenger Network (CPN)** - *Inner Southern Metro CPN* for those living in the Marion, Holdfast Bay and Mitcham local government areas and provides a coordinated approach to help people reach their destination. Funded by Commonwealth and State governments; currently we broker taxis for this program as it has been difficult to recruit volunteers.
- **Neighbourhood Centre transport** - a subsidised taxi fare is provided to individuals who are over 65 years of age to travel to and from City of Marion programs held at our four neighbourhood centres. These individuals are unable to use the community bus either due to availability of the bus or personal health reasons. Funded by the Commonwealth Government.
- **Social Support Individual** - provided for people who are over 65 years and need someone to stand beside them. This service is provided by a volunteer who will pick up, transport and remain with the person at appointments, activities, shopping, banking, lunch or coffee etc. Funded by the Commonwealth Government.

Summary of services

Pre COVID-19 background

Two community buses provided a door to door transport service for residents who are frail, aged and/or living with a disability. On average the buses support 325 people to attend 12,570 round trips each year and each travels approximately 45,000 kilometres per year. This service provided transport five days Monday to Friday on routes around the city (including destinations of Coomera, Westfield, Castle Plaza, Park Holme Shops, Active Elders, Mitchell Park Senior Citizens, Park Holme Library, Hallett Cove Shopping Centre and Cove Civic Centre, and the Marion Cultural Centre).

The demand for social trips had exceeded the capacity that the 2 community buses could provide. Hire buses were used to meet the demand and reduce the wait lists which on average had 13-14 people for each social outing (or enough passengers for another bus), with more popular social destinations attracting 25 plus people. A Council report was tabled requesting the purchase of a third bus to alleviate the need for hire and meeting community need.

Council granted a two-year trial period of hiring a bus to assess the feasibility prior to a final decision on the purchase of a third bus.

During COVID-19

The trial period has been hindered by the pandemic outbreak with several project milestones being deferred or not achieved during that environment.

Actions achieved:

- Successful tender for a two-year hire contract
- Modification and fit out of the hire bus
- Branding of hire bus
- Community survey and collation of unmet need

ATTACHMENT 1

Actions deferred:

- Recruitment of Volunteer drivers suspended
- Implementation of identified destinations for social trips
- Use of all three buses for their intended use suspended

During COVID-19 the three community buses were used to initially transport City of Marion field staff to and from sites until the need arose to deliver essential items to residents.

Current

Delivering essential items to residents on the three community buses continues one day per week. Door to door transport service resumed conservatively in September 2020 four days per week, this has now been increased to full seating capacity. The demand is increasing as more vulnerable people are encouraged to participate in community life and their confidence builds. The pre-COVID-19 shopping destinations have been resumed and as more neighbourhood centre programs are reintroduced the trips will be factored into the daily route of the community buses.

Social trips will resume by end of April. Residents have been requesting the resumption of the social trips as they are feeling isolated, lonely, and hope to reconnect with others.

Recruitment drive has commenced to replace volunteers that have chosen to cease their service after COVID-19, some have experienced personal health issues or have lost confidence especially as active members in a group situation.

ATTACHMENT 2

Community Bus Survey													
Council	Number of Community Buses	Make of Vehicle	Wheelchair Access	Funding	Vehicle Capacity - Passenger Seats	Special Licence Required	Are all Drivers Volunteers	Eligibility Criteria	Do you provide home pick up and drop at set destination	Which destinations are most popular	Do your residents contribute	Do you hire your vehicles to external agencies / organisations	How far from your boundaries do you travel
Marion	2 (+ 1 trial)	2 x Mercedes Vans converted to buses 1x Toyota HiAce converted to bus (introduced July 2019)	Yes x 2	100% council	10 Passenger seats in each bus	No	Yes	Transport disadvantaged - must be able to get on/off bus independently be independent at destination	Yes	Westfield Marion, Mitchell Park and Cooinda Neighbourhood Centres Increasingly asked for more social outings as opposed to shopping and library visits	\$5 round trip, or \$2.50 each way.	No	Social trips to Campbelltown, Port Adelaide, Adelaide Hills and McLaren Vale. Local LGA for day to day shopping trips
Campbelltown	1	Mitsubishi ROSA	Yes	100% council	22 Passenger seats or 20 passenger seats and 1 wheelchair	LR	Yes	Available to all residents. Must be independent at destination and be able to get on / off the bus independently	Yes	Target Newton, Kmart Firlie and Newton Shopping Centre	Door to Door - No Charge Community Booking varies	Yes	Anywhere in SA. Usual day trips are to Victor Harbour, McLaren Vale, Moonta and Tanunda
Holdfast	4	2 x Toyota Coasters 2 x Toyota HiAce	Toyota Coasters only	20 % council 80% Commonwealth	Coasters = 12 passengers Hi-Ace = 9 Passengers	LR/C	Yes	Any resident most are CHSP. Must be independent at destination and able to get on/off bus independently	Yes	Glenelg, Brighton and Marion Shops	\$4 round trip	Yes	Adelaide Hills, Victor Harbour and Virginia Nursery
Mitcham	2	Mitsubishi Fuso Buses	1 vehicle	75% council 25% funded	Vehicle 1-16 Passengers Vehicle 2 - 20 Passengers or 16 passengers and 4 seats that can be removed for wheelchairs/walkers	LR	Yes	Transport disadvantaged - must be able to get on/off bus independently	Yes	Shopping Centres, Libraries and Bus Hire local attractions e.g. Dolphin Cruise Port Adelaide	\$4 for round trip for shopping and library	Yes, only during regular business hour and NOT weekends	All Bus hire restricted to no further than 1 hour away
Onkaparinga	4	1 x Mercedes 3 x Rosa Currently looking to purchase new buses (April 2021)	Yes	100% council	Mercedes 12 Rosa's 17 - 20	LR Rosa	Yes	Transport disadvantaged - must be able to get on/off bus independently	Yes	Shopping centres, community centres	Gold Coin pre COVID. Client contribution on hold since COVID	Yes	No more than 100km roundtrip from depot
Playford	12	6 Buses: -4 Renaults -2 Toyotas 2 Imax People Movers 4 cars	2 Renaults	100% grant	2 Renaults with wheelchair access are 10 seaters Remaining buses are 12 People Movers are 7 seaters	No	Yes	HACC or CHSP eligibility	Yes	Majority of transport is centre based, shopping and medical. Medical appointments mostly done by cars.	\$5 round trip	No	Social trips as far as Waikerie to Victor Harbour. Northern Metro CPN provides medical transport outside council boundaries
Port Adelaide Enfield	5 Home Support vans + medical car, 3 passengers + wheelchair CHSP	4 Toyota Commuters 1 Mercedes Sprinter	3 of vans	Purchase 100% council and Com Govt for running	Van A, B, C, D & E, 8 Passengers Van and wheelchair lifter	No	Yes	CHSP eligibility	Yes	Shopping and social outings	\$5 round trip Review of cost 2021/22	No	Note: PAE also has 3 large community buses which are run by the Community Development team which do fixed circuits and charters. These buses are fully funded by council and no charges apply to fixed circuit users. Vehicles are also available for hire, \$14.50 per hour or \$1.50per km
Salisbury	2 Buses 3 cars - operated as Home and Community Services Transport Services	Toyota 12- seater Mitsubishi Imax 8-seater 3 Holden Station Wagons	No	CHSP, SA HACC and council	Toyota 10 passengers Imax 7 passengers	No	Yes	HACC or CHSP eligibility	Yes	Medical appointments, shopping, local support groups and centres	\$3-\$15 depending on distance	No	Medical no further than RAH, TQEH, Modbury Social visits outside boundary Victor Harbour, Sedan, McLaren Vale and Barossa

ATTACHMENT 2

Tea Tree Gully	3 Buses 1 Van 1 Minivan	1x Mercedes Sprinter 3x Mitsubishi buses 1 x Hyundai Imax	2 buses and 1 van have lifters	Part council and part grant funding	Buses = 19 passengers Van = 10 passenger seats Minivan = 6 passengers	LR for bus	Yes	CHSP eligibility OR for community bus routes no eligibility but must be able to embark and disembark the vehicle independently.	Yes, for HACC or CHSP clients. Community Buses do loop routes and passengers "hail" the bus	Major shopping centres in the area and social programs	Community Bus \$1.50 per trip. CHSP Shopping \$6 return. CHSP Library \$4 return. CHSP social programs \$6	Yes	No more than 150km radius from Depot
Unley	3	2 Mercedes 1 Toyota	1 Mercedes and Toyota	100% council	Normal runs 8 passengers and 4 walkers - can take more passengers at times but keep to a max of 4 walkers	LR for 2 of the buses	Yes	Service intended for those in the City of Unley who are transport disadvantaged, frail aged or with a disability. No age restriction. Must be able to board and alight the bus independently and be able to carry their own shopping bags	Yes	Library, banks local and bordering shopping centres and community centres. Also have Out and About tours	\$3 round trip Out & About \$5 round trip	Yes	Out and About tours go to McLaren Vale, Botanic Gardens, Mt Barker, Adelaide Hills etc
Charles Sturt	4	2 x Toyota Coaster 2 x Mercedes Sprinter	1 Coaster	CHSP, SA HACC and council	Sprinter – 9 Coaster 1 - 17 Coaster 2 - 13 +2 Wheelchair	Sprinter - Car, Coaster - LR	Yes	CHSP/SA HACC	Yes, door to door	West lakes Shopping Centre	Shopping Transport and social groups Social Outings \$10 per trip	Yes	100 Kms of Adelaide city for Charters, Shopping and social groups are within Boundaries

Note: Blue cells contain information updated in April 2021. White cells contain information pre-covid (awaiting updated responses).

Youth Collective Committee (YCC) - update

Originating Officer Team Leader - Vibrant Communities - Jacqui Clark

Corporate Manager Manager Community Connections - Liz Byrne

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R12

Confidential ☐

REPORT OBJECTIVE

This report provides Council with an update on the Youth Collective Committee's (YCC) achievements within their first ten months of operation between July 2020 and April 2021. The report also presents options for Council to consider regarding the future of the YCC beyond 30 June 2021.

EXECUTIVE SUMMARY

The YCC commenced in July 2020 and consists of nine young people aged 13 – 23 years who meet fortnightly to work towards the following goals set by the Collective:

- Prioritise the Commissioner for Children and Young People 'Community Conversations' partnership project
- Reach a more diverse range of young people and meet them where they are at by getting an Instagram page
- Advocate, inform and engage in the Environmental Space within the City of Marion (CoM)
- Be engaged in developments within the CoM and bring forward the youth voice
- Collaborate with libraries and bring a youthful element to projects and engagement practices
- Create meaningful change

Currently the YCC is coordinated by a 0.3 FTE (YCC officer) until June 2021.

The YCC has had a number of significant achievements since it commenced. It is recommended that the allocated FTE be maintained or increased to 0.6 to continue with its success and build on the opportunities relevant to young people in the City of Marion.

RECOMMENDATION

That Council:

1. **Notes the Youth Collective Committee Progress Report April 2021.**
2. **Endorses the Youth Collective Committee continuing from July 2021 to June 2024, including a 0.3 FTE coordinator on a contract basis at a cost of \$26,735 per annum.**

OR

2. **Endorses the Youth Collective Committee continuing from July 2021 to June 2024, including a 0.6 FTE coordinator on a contract basis at a cost of \$53,470 per annum.**
3. **Requests an annual report of the Youth Collective Committee be presented to Council each year.**

Opportunities: Numerous internal, external and cross Council opportunities that the YCC has, may partner with or implement have been identified to continue for the benefit of the City of Marion's young people.

Organisational Excellence: City of Marion is viewed as a leader in the model of engagement of young people through the YCC. CoM is committed to valuing the evidence based feedback, opinions

and voices of our young people, evident throughout the CoM YEC Report 2019-2023

Risk Management:	Ceasing the YCC would risk losing traction and the 'progress made to date' with the engagement of young people and the relationship with their local Council.
Timeline	Current timeline of YCC pilot project and YCC Officer role concludes on 30 June 2021. It is proposed to extend the project for another 3 years.
Current Budget Allocation	\$26,735 for 0.3 FTE (1.5 days per week)
Proposed Future Budget Allocation:	Approx \$53,470 for 0.6 FTE (3 days per week) subject to annual increases.

BACKGROUND

In 2019, the CoM engaged in a city-wide consultation with young people which in turn informed the Youth Engagement and Consultation Report 2019-2023. One of the key findings identified was young people wanting to be involved in issues that affect them and to have a voice within Council (GC190924R07).

At the 25 November 2019 Special General Council meeting (SGC191125M03), it was resolved that Council:

3. *Endorses an 18 month trial of a Youth Collective Committee from January 2020 to June 2021, to be coordinated by a 0.3 FTE employed on a contract basis.*

A progress report of the Youth Collective Committee was also requested to be presented to Council In April 2021 .

DISCUSSION

The YCC consists of nine young people ranging in ages from 12 – 23 years who live in the CoM. The YCC members were selected by a panel consisting of the YCC Officer, Youth Development Officer, Vibrant Communities Team Leader and Councillor Matthew Shilling.

The first YCC meeting took place on 1 July 2020. The committee decided on their own structure, vision and goals for their term.

YCC Vision

"We aim to work with teams and departments across the Council on issues, topics and concerns that are important to our young people. Our vision is to work on issues such as safety and security, mental health, the environment, arts and music, education and technology relevant to young people in our Council area. We also work to provide a unique perspective on Council issues, whilst also gaining important skills, learning about local government and youth specific issues."

The YCC is run using an asset-based community development approach and a collective impact approach. An asset based approach focuses on what is successful in the community, where passion already lies and building on it. A collective impact approach is a collaboration framework that engages across sectors and groups who share a common interest to address a social issue within a community.

The five key elements of the approach are:

1. A common social agenda.
2. A shared measurement framework.
3. A shared plan of action for mutually reinforcing activities.
4. Open communication fostering genuine collaboration.
5. A backbone organisation with the skills and resources to keep everyone on track.

In less than a year a number of achievements have been accomplished:

- YCC Partnership project with the Commissioner for Children and Young People working together on the Community Conversations Project.
- Invited to represent their city in a conversation with Shadow Minister for Youth Amanda Rishworth.
- Represented the views of young people in a COVID-19 recovery conversation with Senator Penny Wong and feed into State legislation with the Youth Affairs Coalition of South Australia.

- YCC partnership with City of Holdfast Bay, Legacy Esports and Meta High School Esports to deliver the inaugural Esports Rocket League Tournament.
- Internal and external engagement and consultation with Libraries, Environment Team, YEP (NHC youth group), Headspace, Youth Affairs Council of SA (YACSA).
- Engagement with the Mayor and Councillors, Executive Leadership Team, Senior Leadership Team and other Council team leaders.
- Consultation with teams across Council and providing a youth 'Voice' to various aspects and projects within Council e.g.: Hallett Cove Skate Park, Capella Reserve upgrade project, Hugh Johnson Reserve upgrade, City Limits Magazine.
- YCC members participation in Youth Parliament.
- Focus on "R U OK" day.
- Development of marketing and promotion material, media platforms and branding design including the launch of the YCC Instagram page.
- Eighteen YCC meetings held within the period.

By providing an opportunity to genuinely engage young people with meaningful and relevant participation, the YCC has enabled its members the opportunity to develop skills, confidence, become representatives and contributors to their community. The Committee has also provided support in a safe environment for our young people to voice their ideas and bring those ideas to fruition either in partnership with the community, Council, businesses and organisations, or implemented as a team.

Testimonials of the YCC members in Attachment 1 confirms the passion of our young people's commitment to the CoM and the YCC vision.

Given the successful trial, it is recommended that the YCC continues and consideration be given to increasing the role of the YCC Officer from 0.3 FTE (1.5 days per week) to 0.6FTE (3 days per week).

The YCC Officer's role is to coordinate the opportunities and provide overarching support to the YCC in all operations, events, activities and projects. At a 0.3FTE equating to 1.5 days per week, this amount of limited resourcing has proved challenging and a number of additional personal hours have been contributed to ensure it's success.

Summary of the different resource options is as follows:

<u>Option 1 Increase the resourcing to 0.6FTE</u>	Opportunities	Barriers
This option would ensure a sustainable YCC model and enable additional opportunities to be pursued.	<ul style="list-style-type: none"> • Continue, progress and increase current projects and activities being actioned by the YCC. • Increase collaborations across Council and Cross-Council. • Address future planning and opportunities as highlighted in Attachment 1 and introduce new events, activities and projects relevant to young people, e.g.: <ul style="list-style-type: none"> • YCC collaboration with the Duke of Edinburgh Award - will benefit young people in our city by recognising the work they already do outside of school, increasing their employability and providing beneficial life skills and opportunities. • Representation at the Statewide Youth Advisory Forum - This would promote cross-council collaboration, provide opportunity to feed into state and federal government and meet with key leaders to magnify the voice of young people and local interests. • Southern Esports League Development - Esports is very popular and the creative industry is one of the largest employers of young people. We can expect a large amount of growth occurring in the industry here in South Australia. • Events and workshops - The YCC offers a unique perspective when it comes to knowing what young people want and how 	<ul style="list-style-type: none"> • Will still require prioritising time and ensure activities are youth led with support from the YCC officer and broader council. • Increased cost to council.

	<p>to connect with them. The YCC have the ability to consolidate and direct youth directed events and school holiday workshops if more time was allocated to the project model.</p> <ul style="list-style-type: none"> Increased job security and a more attractive role for the employee to continue at 3 days per week as opposed to 1 and a half days per week (noting the role would remain a contract position). Expansion of the YCC officer to further support and govern the Committee. 	
<p><u>Option 2</u> <u>Status Quo</u></p> <p>This option will continue with the current resourcing and YCC model.</p>	<p>Opportunities</p> <ul style="list-style-type: none"> Continue with the Staus Quo - young people will continue to receive a commitment from Council. 	<p>Barriers</p> <ul style="list-style-type: none"> No opportunity for growth or the expansion of new ideas. Limits the City of Marion's investment in our young people and minimises the recognition of their efforts to implement and grow the YCC from its conception. Risk of employee loss (for more sustainable employment and job security).

Attachment

#	Attachment
1	Attachment 1 YCC Update April 2021



Youth Collective Committee
Progress Report
April 2021



Contents:

• YCC Vision	3
• YCC Overview	3
• YCC Goals	3
• Partnerships and Engagement	4
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• Future Planning and Opportunities	7
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YCC Vision

“We aim to work with teams and departments across the Council on issues, topics and concerns that are important to our young people. Our vision is to work on issues such as safety and security, mental health, the environment, arts and music, education and technology relevant to young people in our local Council area. We also work to provide a unique perspective on Council issues, whilst also gaining important skills, learning about local government and youth specific issues.”

Overview

The Youth Collective Committee (YCC) commenced in July 2020 and have solidified their vision and purpose. 2020 was a challenging year but it also provided the YCC with a unique opportunity to embrace a changing landscape in the youth engagement space and work towards addressing projects and needs that are current. The YCC consists of 9 young people aged 13 – 23, all members have remained actively engaged. The YCC meet fortnightly, once in person and once via zoom.

Goals

- Prioritise the Commissioner for Children and Young People ‘Community Conversations’ partnership project
- Reach a more diverse range of young people and meet them where they are at by getting an Instagram page
- Advocate, inform and engage in the Environmental Space within the City of Marion
- Be engaged in developments within the CoM and bring forward the youth voice
- Collaborate with libraries and bring a youthful element to projects and engagement practices.
- Create meaningful change



Partnerships and Engagement

YCC and the Commissioner for Children and Young People - Community Conversations Project

The YCC have been invited to engage with Seaview High School. We will be engaging with them to deliver our CCYP Safe Spaces Project.

The Marion Youth Collective Committee is looking to create a peer led resource for young people on how you can be a safe space, and how to create a safe space in collaboration with the Commissioner for Children and Young People.

This tool that we develop will be informed by young people's experience as well as experts in the mental health profession. This tool could be used to learn how to be there for your friend when they are going through a hard time, or how to look after yourself and create a safe space for when going through tough times. This ties in with our passion for supporting young people, raising awareness about mental health and creating resources for young people, by young people.

Originally planned to take place in the first week of December 2020, pushed back to term 2 of 2021 due to the Covid circuit breaker, the YCC will be engaging over 50 year 8, 9 and 10's in the process of creating their own peer led resource to be delivered in a school context to start conversations about mental health, supporting friends and knowing how to seek support.

The project will be informed by Headspace to ensure Best Practice and the best interest of the child. This will be delivered over multiple days; the Commissioner will be present for the final presentations from the students. We will collect data via a feedback survey from the students and use this experience to populate the final report for the Commissioner. The resource itself will continue to be used by the Seaview Chaplaincy program and we would aim to share it with other schools.



We have also been invited to engage with a class of year 9 girls from Brighton High that are running a Wellbeing Day at the Living Kurna Cultural Centre in early May to deliver the resource.

The YCC has been in contact with Whitelion (youth mental health support service) who have also offered to collaborate on the resource in conjunction with the young people engaged with their FLO (flexible learning option) program.

(pictured, a graphic created by Anita, our YCC Member)

Internal Open Space projects - Open Space team have requested ongoing engagement with the YCC after initial consultations held in early November relevant to the new Hallett Cove Skate Park and Reserve redevelopment. The YCC have also been engaged from the initial stages re: the Hugh Johnson Reserve Upgrade.

Gap Year Program – The committee have invited the CoM Gap Year students to attend YCC meetings as a way of closing the loop when it comes to young people's presence across Council. We believe this would be mutually beneficial.

Sports in Reserves - The YCC was invited to engage in the initial stages of the youth sports program and has continued to support the program's planning and development stages.

Social Media – The YCC has launched an Instagram page as feedback indicated this as one of the top preferences for youth engagement. The YCC share relevant content and promotion and are currently working on a campaign entitled 'The Local Laydown' sharing information and facts relevant to 'things you might not know about Council'.

Environment team – The YCC have been invited to collaborate on the information campaign for kitchen caddy's as environmental issues are a major issue of interest for the YCC and the broader population of our young people.

YACSA – One of our YCC members was invited to serve on the Youth Affairs Council of South Australia's 'Open your Mind' panel. Lachlan represented the YCC and was able to advocate at a state level for what young people think about the post COVID response for young people. He has since been invited to join future meetings in 2021.

Headspace – Headspace is a national not for profit organisation that provides support to young people who are experiencing mental health, physical and sexual health, alcohol and drug support and work or study support. Headspace offices are moving into a new base here in the City of Marion (rear of Administration) and has been in regular contact with our YCC.

Headspace are consulting on the peer led resource being created for our Commissioner's project, the YCC have also been invited to consult on what they would like the new office space to look like with potential collaboration on developing a more welcoming outdoor space or a working bee in the future. This engagement will continue on an ongoing basis.

Libraries – The City of Marion Libraries are supporting our Esports Tournament and have been involved in the promotion and planning of parts of the event.

Rocket League Tournament

The City of Holdfast Bay and The City of Marion have partnered to deliver a Rocket League Tournament and a DIY PC Building workshop for young people.

This event is an opportunity to bring together the Youth Collective Committee with the City of Holdfast Bay's 'HoldUp' youth committee to develop skills and work collaboratively with their counterparts.

Rocket League is a popular game enjoyed by thousands of people internationally. This event will be run with the support of Meta High School Esports who operate under the umbrella of Legacy Esports, a gaming team owned by the Adelaide Football Club.

The Holdup Youth Committee and the Marion Youth Collective Committee teamed up to address a key interest in the community. The challenges of 2020 highlighted that the way young people communicate has changed, a lot of social gathering and key interest group centre around technology and gaming is a large portion of that. Esports is a healthy, challenging and fun activity that can play a formative role in building life skills. Resilience, communication, teamwork and discipline are critical to Esport success.



In April 2021, the PC Building workshop will be held at the Brighton Lacrosse Club, Toby Fogarty, teacher for gaming, film and animation at Northern Adelaide Senior College take students through the fundamentals of building a good PC. Also in April, following two days of online qualifiers, the Rocket League Tournament will take place at the Marion Cultural Centre.

A gaming and Esport Q&A for the community will also take place on the day with Nick McArdle, General Manager Strategy and Projects for the Adelaide Football Club (owner of Legacy Esports and META High School Esports), and Eliza "Alishiera" Allen, gaming streamer, content creator, and cosplayer for Legacy Esports, with others to be confirmed. The project attracted sponsors in MSI and Mwave, two tech companies, who have donated large prizes for the tournament.

This is the first year we are running this event, however we hope for this to be an annual occurrence, as we know that Esports is very popular and the creative industry is one of the largest employers of young people. We can expect a large amount of growth occurring in the industry here in South Australia.

Holdfast Bay Youth Partnership – The City of Marion and Holdfast Bay have partnered to deliver our Esports Tournament and DIY PC Building workshops.



Pictured: HoldUp & the YCC touring the Marion Cultural centre in preparation for their tournament

Barriers and Challenges:

Resourcing - One of the continual barriers of the YCC is the time available for the projects, especially as things are starting to gain traction. The young people are all busy, and while they're dedicated, they require a lot of support in achieving their deliverables which can be quite time consuming. We plan to continue to look into upskilling opportunities to aid with the development of the YCC and ensure they are well equipped for the projects they take on board. Additional personal time has been allocated have been put into the youth collective committee, this was in part due to more free time being available during lockdown and to ensure success, however additional resourcing is needed in order to ensure sustainability of the Youth Collective Committee at current capacity.

Support – Supporting young people with complex needs can sometimes be a challenge. One of the side effects of having a phenomenally diverse and representative group of young people is that they're all quite individual and come with their own needs. We acknowledge that these young people are capable but still require support. Resources dedicated to leading the group from a youth work perspective continues to be important going forward.

Future Planning and Opportunities

Duke of Edinburgh Award

Currently investigating delivering the Duke of Edinburgh award within the YCC in 2021.

The International Duke of Edinburgh Award is a leading structured (non-formal education) youth development program, empowering all young Australians aged 14-24 to explore their full potential and find their purpose, passion and place in the world, regardless of their location or circumstance. As well as developing skills, leadership and increasing employability the Duke of Edinburgh award is a recognised by the SACE Board as a community development program.

The Duke of Edinburgh program will benefit young people in our city by recognising the work they already do outside of school, increasing their employability and providing beneficial life skills and opportunities to young people who might be considered 'at risk'. Currently the City of Salisbury and the City of Onkaparinga deliver the award and the City of Holdfast Bay are piloting the program in 2021.

Southern Esports League

The Esports League we are running in partnership with the City of Holdfast Bay has gathered a significant amount of attention. The City of Onkaparinga and the City of Unley have expressed interest in collaborating to create a Southern Esports League. The introduction of a gaming club would also aim to facilitate the success of the league. The Australian Maths and Science school have expressed interest in this. Formal conversations are occurring with the City of Marion Libraries around this possibility however current capacity is a barrier.

State-wide Youth Advisory Forum

There has been a revitalisation of youth reference groups engaged within Councils across the state. At the Youth Affairs Coalition of South Australia's networking event several youth development officers expressed interest in a bi-annual gathering of all reference groups. This would promote cross Council collaboration, provide opportunity to feed into state and federal government and meet with key leaders to magnify the voice of young people and local interests.

Events and workshops

The YCC offers a unique perspective when it comes to knowing what young people want and how to connect with them. It would be fantastic if the YCC could consolidate and direct youth directed events and school holiday workshops.

Committee Member Testimonials

Jacinta - I am a member of the Youth Collective Committee. I have really enjoyed being a part of the Youth Collective Committee, being a part of the YCC has given me something positive to focus on and look forward to each time. It has also helped me gain confidence out in the community, prior to being on the YCC I would be too anxious to talk to people I didn't know and that I had not seen before, now I feel more confident to do this. A few years ago I was diagnosed with Autism Spectrum Disorder. When I got this diagnosis, I was so scared and ashamed of it. I didn't even know what autism was and all the things I knew about it where the not so good stereotypes. I am now confident and proud of being on the Autism Spectrum, I feel comfortable with the YCC group and have been able to share my experience of what it's like to be on the Autism Spectrum. Being an active member of the YCC has helped me to grow into a stronger and more independent individual. The Youth Collective Committee needs to stay I have developed so many new skills, the YCC has helped me be a part of the community. I hope that the Youth Collective Committee is going to be here in the long term.



Tess - I am former physical member of the YCC and current external member. The YCC is not only extremely vital and important for those who are a part of the committee, but to those youth in the Marion City Council area who are represented and supported by our voice. I believe it is adamant that the Marion City Council continue to support those who support the community, with the continuation of funding and resource capacity to the YCC for another year. This support does not go unnoticed, with this great appreciation continually voiced at our meetings and to our special guests and Marion City Council members. It has been an extremely successful year for the emergence of the YCC group, whilst managing the complexity of COVID-19 constraints. We have been consistent with our determination surrounding our procedures and practice and the ways in which we can deliver the best outcomes to our local community. We currently have many projects underway that are extremely exciting and that we have put lots of time and effort into. These projects also have their own processes and timelines that need to continue to be supported so we are able to deliver the best outcomes, for example our relationship with Seaview High School. This is a relationship that we have only just built that we want

to expand on in the future, which ultimately can only be done with the renewal and continuation of the YCC. During my time at YCC I thoroughly enjoyed myself through finding my voice for the youth in the community, I truly could not have become as passionate and driven about the importance of young people in my local area without the support and constant team work and collaboration from the rest of the amazing committee, especially Shannon who puts her heart and soul into the committee. I had the opportunity to work cohesively with this tight nit group to work through projects, tasks and ideas. My position as liaison officer also gave me the opportunity to branch out and work with external stakeholders, which is something I believe assisted me in receiving my current full time job. I currently work for the Department for Child Protection and have been enlightened at different angle to the importance of community support and togetherness for the growth and sense of belonging of youth in these communities. I am extremely happy and proud to have been a part of the YCC and look forward to the continuation of the group and working with them in the future.



Kirsty - As the chair of the YCC I am excited to work alongside my other committee members on a number of projects we have recently started. For myself this is an important group as it is just one-way young people can have a say in the City of Marion community. For the community I believe the YCC can benefit it in multiple ways including making people feel safer in their community. As well as increasing the understanding of how to reduce waste, an example of this is more education around what people can put in their green bins. This is one small step into making their City of Marion a more environmentally friendly council. For young people this gives us a platform where we feel valued for our views and opinions as well as being able to put forward our own ideas to improve our community that we live or work in. So far, I have thoroughly enjoyed being involved and am very excited for what is ahead for the YCC. I also know that the rest of the committee is also excited for what is ahead for us. We look forward to the future of the committee. The YCC in their first year have started the foundation to make every year from here better. We have developed ourselves not only in a professional context but have helped to close the gap between council and young people in the city of

Marion. Continuing to close the gap between young people and council is important in keeping young people engaged in the community. Young people will be the next to step up to table but if they lose engagement then who will step up? The YCC is just one way to keep them engaged and make positive changes in the community.

Anita - The YCC has been an excellent opportunity for myself both personally and professionally and I have so far really enjoyed my time on the committee. I've been able to get to know other young people in my area and work together to create opportunities for more young people. We've actually been able to have a say in decisions that affect us - particularly around skill development workshops and event planning for young people, as well as give ideas to council planning and design. Since joining the YCC I have gained so much knowledge about local government and advocacy. The YCC should definitely continue because there are more young people in our area that would benefit from this opportunity, in developing skills and meeting others, and the council too would benefit. We've engaged with so many different arms of the Marion council, libraries, parks, events and more and our meetings have been packed with people wanting to get our advice. It's clear there is a need and want for young people's advice in our area, and through the YCC we've been able to have a meaningful impact.



"The time I've spent in the YCC since its inception has been enriching with knowledge and experience of leadership, local government, and the broader youth community in Marion. I think the YCC should continue into the future, as it is important to hear the voices of tomorrow's leaders and is beneficial to both the council and the community."

James

Funding support for City of Unley litigation

Originating Officer	Executive Assistant to CEO - Dana Bartlett
Corporate Manager	Manager Corporate Governance - Kate McKenzie
General Manager	Acting Chief Executive Officer - Sorana Dinmore
Report Reference	GC210427R13

Confidential ☐

REPORT OBJECTIVE

The purpose of this report is to provide Council with the opportunity to formally respond to a request from the Local Government Association (LGA) request to provide support for the City of Unley litigation.

EXECUTIVE SUMMARY

On 13 February 2020 the LGA wrote to Mr Adrian Skull, CEO City of Marion, seeking a voluntary contribution, under the LGA's *Legal Assist Policy*, of \$1,707.00 + GST to support legal action between the City of Unley and a contractor engaged by residents who had allegedly damaged regulated trees. (Attachment 1).

At the Elected Member Forum on 18 February 2020, the CEO discussed the request with Elected Members and there was unanimous support for funding the Unley litigation, as it has the potential to impact all Councils.

On 8 April 2021 the LGA sent additional correspondence advising that the matter has been finalised and that the case was lost (Attachment 2). The decision however does provide future guidance on the meaning of 'tree-damaging activity' and the extent of damage required for the offence to be made out.

Importantly the City of Unley was successful in arguing about the onus of proof in relation to the 30% pruning exception. In the Environment, Resources and Development Court, the Judge held that the Council carried the onus of proof beyond reasonable doubt as to whether more than 30% of the crown of the tree had been pruned. This was however overturned by the Supreme Court and as a result the burden of proof now sits with a defendant to prove on the balance of probabilities that pruning of a tree comes within the 30% exception. This is a significant outcome given the difficulty that often exists in establishing what a regulated tree looked like prior to its pruning.

Council is required to confirm its formal support so that financial settlement can be made. This will be covered from within existing budgets.

RECOMMENDATION

That Council

1. Approves the request to support \$1,707.00 + GST to the LGA for the City of Unley litigation and authorises that a letter be sent by the Chief Executive Officer advising them of the decision.

Attachment

#	Attachment
1	Attachment 1 Funding support for City of Unley litigation_Feb 2020
2	Attachment 2 Funding support for City of Unley litigation - City of MarionMarch 2021

In reply please quote our reference: ECM 699814 AS/AL

13 February 2020

Mr Adrian Skull
Chief Executive Officer
City of Marion
PO Box 21
Oaklands Park SA 5046
Emailed: adrian.skull@marion.sa.gov.au

Dear Mr Skull

Funding support for City of Unley litigation

The LGA's *Legal Assist Policy* (Policy) enables a member council to apply to the LGA to seek voluntary contributions from other councils to assist with its legal costs where the council is involved in litigation that may erode an important local government principle if the legal matter is not pursued.

All applications by member councils are considered by the LGA Board of Directors for consistency with the Policy. The Board does not undertake an assessment of the legal merits of the matter and is confined by the Policy to considering whether the application involves litigation that may erode an important local government principle if the legal matter is not pursued.

Where the Board determines that an application is consistent with the Policy, the LGA will facilitate a request for voluntary contributions from councils and, once the legal matter is finalised, collect contributions from participating councils and remit the total amount received to the lead council. A decision by a council to provide a voluntary contribution toward the costs of a matter does not make that council a party to the matter.

At its meeting of 6 February 2020, the LGA Board of Directors considered an application from the City of Unley regarding its intended appeal to the Supreme Court of a recent decision by the Environment, Resources and Development Court (ERD Court) in the matter of *The Corporation of the City of Unley v Crichton & Ors* and agreed to facilitate a request to councils on behalf of the City of Unley for contributions toward the costs of that appeal.

According to the City of Unley, if left unchallenged the decision has implications not only for matters relating to complaints of tree-damaging activity pursuant to the Development Act 1993 but also more broadly to the ability of a council to rely on retrospective expert advice to prove beyond reasonable doubt that an unauthorised development activity has occurred. The City of Unley will shortly write to all councils with further explanation of the legal matter that will assist you in your decision making.

If your council decides that this is an important local government principle and chooses to make a voluntary contribution towards the City of Unley's legal costs; your council's contribution would be \$1,707. This figure has been calculated in accordance with the Policy, that contributions from councils be based on the proportion of the LGA membership subscriptions paid and upon the estimate of costs submitted with the application, which in this matter is \$50,000. The proportion attributed to each council is not impacted by the decisions of other councils and will not exceed the figure above. If the actual costs are less than the estimated \$50,000 your contribution would be reduced accordingly.

Please let me know by **30 March 2020** whether your council wishes to contribute to the City of Unley's legal costs. If you agree to contribute, the LGA will issue an invoice to facilitate your payment once the matter is finalised and costs settled.

Please contact the LGAs Director Governance and Legislation, Alicia Stewart, if you have any questions or concerns at alicia.stewart@lga.sa.gov.au or 08 8224 2037.

Yours sincerely



Matt Pinnegar
Chief Executive Officer

Telephone: (08) 8224 2039

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

Attach: ECM 622826 — LGA Legal Assist Policy
ECM 699823 — EDR judgement *The Corporation of City of Unley vs Crichton & Ors*

GP09 Legal Assist Policy

First Issue/ Approved	July 2015
Last Reviewed	June 2019 - approved by LGA Board of Directors at the meeting held 20/06/2019
Next Review	February 2023
LGA File Reference	ECM 622826
Responsible Officer	Director Corporate Services
Related Documents	LGA Constitution

1. Purpose

From time to time a council may wish to pursue a legal matter through the courts. In certain circumstances it may be appropriate for such council to seek financial support for the court action from the local government sector. This policy sets out the criteria against which the LGA will assess the request for legal assistance.

2. Scope

This policy applies to all written requests received from members for assistance with legal costs associated with litigation and the principle in the matter involves an important local government principle which may be eroded if the matter is not pursued.

3. Principle

A council may apply to the Local Government Association (LGA) to seek contributions from all councils to assist with its legal costs, where that council is involved in litigation and the principle in the matter involves an important local government principle which may be eroded if the matter is not pursued.

4. Policy Statement

Applications will be considered and dealt with on the following basis:

1. The LGA Board will be the sole decision-maker on whether or not an application for legal assistance will be supported. The decision will be based on the general application of the principle involved in the case to all councils.
2. Assistance under these guidelines will be granted in respect of matters in the District Court or the Supreme Court of SA or the High Court of Australia.
3. Assistance will not be available to fund litigation in a tribunal of initial jurisdiction, such as the South Australian Civil and Administrative Tribunal (SACAT), unless the LGA is satisfied that special and exceptional reasons exist for doing so (this may include a 'test case' where the matter will affect all councils).
4. Assistance will not be available for matters which do not involve immediate court action (for example matters involving mediation or for seeking advice on available courses of action).
5. Assistance will not be available in relation to matters which arise as a consequence of any entrepreneurial activities which may have been initiated or undertaken by the council concerned in the matter.
6. Assistance will not normally be available in appeals against penalties imposed on a council in a prosecution action by another authority unless there are exceptional grounds for granting it,



such as the imposition of a penalty which is significantly inconsistent with penalties imposed in other matters having essentially similar facts and the matter has significance for the whole of local government.

7. Requests for assistance will be considered only if submitted to the LGA prior to the commencement of the proceedings in the appellate court, unless the council is involved as a respondent to an appeal. In that event, the request must be submitted as soon as possible after the council becomes aware that an appeal has been or is to be lodged.
8. Support will not be available where the estimated or final legal costs are less than \$10,000.
9. All applications should include the following details:
 - a brief statement of the facts of the matter;
 - a clear indication of the principle involved which makes the outcome of the case of relevance to all councils;
 - an estimate of the costs involved; and
 - advice from counsel or the representative solicitor as to the prospects of success.

When submitting a request for assistance, councils should ensure, as far as possible, that all necessary information is included in the initial application. A request cannot be considered until all information has been supplied. Failure to do so may lead to unnecessary correspondence and delays. If there is information which cannot be supplied when the request is submitted, that fact should be stated and an indication given as to when it will be available.

10. Where the LGA agrees to support a request for assistance, contributions will be sought from Councils calculated on a *pro rata* basis according to the proportion of the basic membership subscription assessed against each council and based upon the estimate of costs submitted with the initial request (unless an updated figure has been submitted in the meantime). Requests for commitments to make a contribution will be circulated as soon as possible after approval is given to seek contributions in the matter.
11. Contributions are entirely voluntary and no council is under any obligation to make a contribution in any instance.
12. The LGA may, if it considers it appropriate, seek contributions for an amount which is less than the estimated costs involved in the matter.
13. The LGA will pay to the council involved in the matter, the lower of:
 - the total amount collected by the LGA through the contribution process; or
 - the residual amount of costs remaining liable upon the council involved in the matter, after any costs are recovered from, or ordered by the court to be paid by, the other parties to the action.

These funds will be provided to the council only after the court has made final orders in the matter, including any orders for costs.

14. The LGA will provide the funds when it receives an invoice from the council involved in the litigation, which clearly accounts for the manner in which the funds will or have been spent.
15. Where the council to which support has been given recovers costs from another party after the LGA has paid contributions to it, the council must account for, and repay to the LGA, these amounts not previously taken into consideration. That is, no council is entitled to make a profit from receiving assistance.



16. Where a council has received support in respect of an appeal to one court suffers an adverse verdict in that court and wishes to appeal to a higher court, for example to have an adverse verdict of the District Court tested in the Supreme Court, a fresh application for assistance must be submitted. Each application will be considered on its merits. The fact that assistance was given in the lower court will not guarantee that assistance will be available for a further appeal.
17. The LGA will provide the names of any participating councils to the applicant council, which will be responsible for providing information and updates to all participating councils on the progress of the matter that has been approved under this policy.

5. Policy Review

This policy will be reviewed every four years or as required to improve its effectiveness.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment. The onus remains on any person using material in the judgment to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court in which it was generated.

THE CORPORATION OF THE CITY OF UNLEY v CRICHTON & ORS (No 2)

[2019] SAERDC 43

Reasons for Decision of His Honour Judge Costello

13 December 2019

ENVIRONMENT AND PLANNING - TREES AND VEGETATION

ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING - PLANNING AND DEVELOPMENT PROSECUTIONS

Complaint in relation to alleged tree-damaging activity ('TDA'), pursuant to the Development Act 1993 ('the Act') by the defendants - complainant alleged that Mr Crichton, an owner of land adjoining land upon which there were two Regulated trees, had caused TDA by entering into an arrangement with another defendant, Tempest Trees and Gardens Pty Ltd ('Tempest Trees'), pursuant to which Tempest Trees severed branches and limbs of the two trees and that in so doing Tempest Trees had also undertaken TDA - furthermore the complainant asserted that Mr Tempest, the sole director of Tempest Trees had failed, without reasonable excuse, to produce documents sought and answer questions asked, by an authorised officer under the Act - consideration as to whether complainant was required to prove TDA in relation to both trees or only one - consideration of the meanings of 'cause', 'crown' of a tree and 'TDA' - consideration of onus of proving TDA generally and reasonable excuse in particular.

HELD:

Mr Crichton not guilty on count 1.

Complainant: THE CORPORATION OF THE CITY OF UNLEY **Counsel:** MR A CROCKER - **Solicitor:** NORMAN WATERHOUSE

First Defendant: TIMOTHY JAMES HANNAM CRICHTON **Counsel:** MR M RODER QC - **Solicitor:** HILDITCH LAWYERS

Second Defendant: ZBIGNIEW BENDYK **Counsel:** MR T GAME - **Solicitor:** BOTTEN LEVINSON

Third Defendants: TEMPEST TREES AND GARDENS PTY LTD **Counsel:** MRS M SHAW QC - **Solicitor:** CALDICOTT LAWYERS

Fourth Defendant: DYLAN GARETH HUGH TEMPEST **Counsel:** MRS M SHAW QC - **Solicitor:** CALDICOTT LAWYERS

Hearing Date/s: 01/04/2019 to 05/04/2019, 23/05/2019 to 24/05/2019, 15/10/2019 to 16/10/2019, 29/10/2019

File No/s: ERD-17-72

B

Tempest Trees and Gardens Pty Ltd not guilty on count 3.

Mr Tempest guilty on counts 4 and 5.

Development Act 1993 ss 4, 18, 19, 32, 44, 105; *Development Regulations 2008* reg 6A; *Environment Resources and Development Court Act 1993* s 7(3a); *Summary Procedure Act* s 56(2); *Broadcasting and Television Act 1942 (Cth)* ss 100(5A), 100(10); *Planning Act 1982* s 4, referred to.

R v Bonython (1984) 38 SASR 45; *R v Bjordal* (2005) 93 SASR 237; *Corporation of the City of Adelaide v BFR Pty Ltd & Anor* [2014] SAERDC 37; *Overland Corner Station Pty Ltd & Anor v Gould* (2010) 106 SASR 428; *Wollongong City Council v Eusile Pty Ltd* (2008) 71 NSWLR 563; *Director of Public Prosecutions v United Telecasters Sydney Ltd* (1990) 168 CLR 594; *R v Hunt* (1987) 1 AC 352; *Brinkworth v Dendy* (2007) 97 SASR 416; *Hutchison 3G Australia Pty Ltd v City of Mitcham* (2006) 225 ALR 615; *R v Marion City Corporation* (1984) 37 SASR 415; *Burton v Samuels* (1973) 5 SASR 201; *The Corporation of the City of Unley v Crichton & Ors* [2018] SAERDC 13, considered.

**THE CORPORATION OF THE CITY OF UNLEY v CRICHTON &
ORS (No 2)
[2019] SAERDC 43**

Introduction

- 1 The first defendant, Timothy James Hannam Crichton ('Crichton') has been charged with the following offence:

First Offence

1. On or around 2 October 2015 at Hyde Park in the State of South Australia, the First Defendant undertook development, namely, tree-damaging activity in relation to two regulated trees (hereafter called '**the Trees**'), where that development was not an approved development under the *Development Act 1993* (hereafter called '**the Act**'), CONTRARY TO Section 44(1) of the Act.

PARTICULARS

- 1.1 The Trees are situated on land commonly known as 28 Commercial Road, Hyde Park as comprised and described as Certificate of Title Volume 5731 Folio 361 (hereafter called '**the Land**').
- 1.2 The Land was and is owned by Amy Alice Simons.
- 1.3 The Land is within the area of the Complainant.
- 1.4 The First Defendant is a joint owner of land adjacent to the Land, namely Unit 1, 7 Charra Street, Hyde Park.
- 1.5 The Trees are both of the species '*Eucalyptus Camaldulensis*', commonly known as River Red Gum.
- 1.6 Each of the Trees:
 - 1.6.1 had a single trunk with a circumference in excess of 2.0 metres, measured 1 metre above natural ground level; and
 - 1.6.2 were 'regulated trees' within the meaning of section 4(1) of the Act and regulation 6A of the *Development Regulations 2008*.
- 1.7 On or around 2 October 2015 the First Defendant caused branches, limbs and the trunk of each of the Trees to be severed ('**the Severing**').
- 1.8 The Severing was physically performed by or on behalf of the Third Defendant pursuant to an arrangement between the First, Second and the Third Defendants to prune the Trees.
- 1.9 The Severing constituted 'tree-damaging activity', and therefore, 'development' within the meaning of section 4(1) of the Act.
- 1.10 The Severing was not an approved development under Division 1 of Part 4 of the Act.

- 2 The second offence charged a second defendant, Zbienie Bendyk ('Bendyk') with undertaking development, namely tree-damaging activity. Mr Bendyk has pleaded guilty to this offence.
- 3 The third defendant, Tempest Trees and Gardens Pty Ltd (ACN 119 727 249) ('Tempest Trees') has been charged with the following offence:

Third Offence

3. On or around 2 October 2015 at Hyde Park in the State of South Australia, the Third Defendant undertook development, namely, tree-damaging activity in relation to two regulated Trees, where that development was not an approved development under the Act, CONTRARY TO Section 44(1) of the Act

PARTICULARS

- 3.1 The Particulars at paragraphs 1.1 – 1.3, 1.5, 1.6, 1.8 – 1.10 are repeated.
- 3.2 The Third Defendant was engaged to undertake pruning works in relation to the Trees.
- 3.3 On or around 2 October 2015 the Third Defendant caused the severing of the branches, limbs, and the trunk of the Trees.
- 4 The fourth defendant, Dylan Gareth Hugh Tempest ('Tempest') has been charged with the following offences:

Fourth Offence

4. On or around 26 September 2016 in South Australia, the Fourth Defendant without reasonable excuse, failed to obey a requirement or direction of an authorised officer under the Act CONTRARY TO Section 19(7)(c) of the Act.

PARTICULARS

- 4.1 Paul Weymouth is a person authorised under Section 18(1)(a) of the Act to be an authorised officer for the purposes of the Act.
- 4.2 In exercise of his powers under Section 19(1)(c) and 19(1)(h) of the Act, by written notice dated 16 August 2016, Mr Weymouth required the Fourth Defendant to produce copies of certain documents.
- 4.3 Despite knowing that Mr Weymouth was exercising his powers, the Fourth Defendant failed to obey that direction.

Fifth Offence

5. On or around 26 September 2016 in South Australia, the Fourth Defendant without reasonable excuse, failed to answer, to the best of the Fourth Defendant's knowledge, information and belief, a question by an authorised officer, CONTRARY TO Section 19(7)(d) of the Act.

PARTICULARS

- 5.1 The particulars at paragraph 4.1 are repeated.
- 5.2 In exercising his powers under Section (19)(1)(g) of the Act, Mr Weymouth asked the Fourth Defendant questions concerning works undertaken on the Land.
- 5.3 Despite knowing Mr Weymouth was exercising his powers, the Fourth Defendant did not answer certain questions to the best of his knowledge, information and belief.

- 5 Each of the first, third and fourth defendants pleaded not guilty to the respective charges.
- 6 As may be seen, the offences with which the defendants have been charged all involve alleged contraventions of the *Development Act 1993* ('the Act'). It is therefore convenient to set out the statutory scheme pursuant to which the alleged offences fall to be considered.

The Relevant Legislative Scheme

Development Act 1993

- 7 The Act relevantly provides:

4—Interpretation

...

development means—

...

(fa) in relation to a regulated tree—any tree-damaging activity; or ...

regulated tree means—

...

(b) a tree declared to be a significant tree, or a tree within a stand of trees declared to be significant trees, by a Development Plan (whether or not the tree is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees, by the regulations);

...

significant tree means—

(a) a tree declared to be a significant tree, or a tree within a stand of trees declared to be significant trees, by a Development Plan (whether or not the tree is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees, by the regulations); or

...

tree-damaging activity means—

...

- (c) the severing of branches, limbs, stems or trunk of a tree; or

...

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition;

to undertake development means to commence or proceed with development or to cause, suffer or permit development to be commenced or to proceed.

...

Part 2—Administration

...

Division 2—Authorised officers

18—Appointment of authorised officers

- (1) The Minister or a council—

- (a) may appoint a person to be an authorised officer for the purposes of this Act; and

...

19—Powers of authorised officers to inspect and obtain information

- (1) An authorised officer may—

...

- (c) require any person to produce any documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) as reasonably required in connection with the administration or enforcement of this Act;

...

- (g) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;

- (h) give any directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration or enforcement of this Act.

...

(7) Subject to subsection (8), a person who—

...

- (c) without reasonable excuse, fails to obey a requirement or direction of an authorised officer under this Act; or
- (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or

...

Part 4 – Development assessment

Division 1 – General scheme

Subdivision 1 – Approvals

32 – Development must be approved under this Act

Subject to this Act, no development may be undertaken unless the development is an approved development.

...

44 – General offences

(1) A person must not undertake development contrary to this Division.

Maximum penalty: \$120 000.

Additional penalty.

Default penalty: \$500.

...

Development Regulations 2008

8 The *Development Regulations 2008* ('the Regulations') relevantly provides:

Part 2—Development

...

6A – Regulated and significant trees

- (1) Subject to this regulation, the following are declared to constitute classes of regulated trees for the purposes of paragraph (a) of the definition of ***regulated tree*** in section 4(1) of the Act, namely trees within the designated area under subregulation (3) that have a trunk with a circumference of 2 metres or more or, in the case of trees with multiple trunks, that have trunks with a total circumference of 2 metres or more and an average circumference of 625 millimetres or more, measured at a point 1 metre above natural ground level.

...

(3) For the purposes of subregulation (1), the designated area will be constituted by—

(a) the whole of Metropolitan Adelaide, other than—

...

(8) For the purposes of the definition of ***tree damaging activity*** in section 4(1) of the Act, pruning—

(a) that does not remove more than 30% of the crown of the tree; and

(b) that is required to remove—

(i) dead or diseased wood; or

(ii) branches that pose a material risk to a building; or

(iii) branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people,

is excluded from the ambit of that definition.

Complainant's Case in Overview

- 9 The land, which is the subject of this Complaint, and where the two trees are located, is situated at 28 Commercial Road, Hyde Park ('the subject land'). The first defendant, Mr Crichton owns land at Unit 1/7 Charra Street, Hyde Park. The subject land, in its north-western corner, adjoins the south-eastern portion of Mr Crichton's land. In that corner it also shares a common boundary with Mr Bendyk's land (at 9 Charra Street, Hyde Park) to the west. As a result, Mr Bendyk's eastern fence forms part of the western fence of the subject land.
- 10 The subject land also adjoins the southern boundary of the land at Unit 3/7 Charra Street, in the south-western corner of which was at one time situated a very large '*Eucalyptus Camaldulensis*' or River Red Gum.
- 11 I propose to call the two trees, which are the subject of this complaint, 'T1' and 'T2' respectively. The tree on Unit 3/7 Charra Street I will call 'T3'. T1 is situated 2 metres south of the Crichton boundary and 1.5 metres east of the Bendyk boundary. T2 is situated 4.5 metres south of the Crichton boundary and 3 metres east of the Bendyk boundary.
- 12 In late 2004 Mr Back, the owner of 3/7 Charra Street, was desirous of having T3 removed, due to his concerns with respect to falling branches, particularly in high winds. To that end he engaged an arborist, Dr Nicolle who prepared a report opining *inter alia* on the fact that T3 represented a moderate to high risk to the safety of persons in the vicinity of the tree. On the basis of his report Mr Back

applied to have T3 removed, but at that time the Corporation of the City of Unley ('the Council') refused his application.

- 13 Some considerable time later, in February 2015, Mr Back made another application to remove T3. On this occasion, he enlisted the aid of both an engineer and an arborist, the latter on this occasion, in the person of Mr Lawson, both of whom supported the removal of the tree. Upon receiving approval to remove T3 from the Council, Mr Back engaged Tempest Trees to remove T3. On 16 September 2015, T3 was removed.
- 14 In 2015, Messrs Crichton & Bendyk had discussions about limbs falling from T1 and T2 onto their respective properties. Consequent upon their discussions, Mr Crichton contacted Tempest Trees. In September 2015, Mr Tempest attended at Charra Street and provided a quotation to Messrs Crichton and Bendyk for work to be done on T1 and T2, which, in terms of the quotation that he supplied, was expressed to be for pruning the trees back to the fence lines, of their respective properties, with the subject land.
- 15 On or about 2 October 2015 Tempest Trees carried out work on T1 and T2. The work which was undertaken was carried out without the knowledge or approval of Ms Simons, the owner of 28 Commercial Road. On 2 October 2015, Ms Simons was absent from the subject land. Upon returning and seeing the work that had been done on T1 and T2 without her approval, Ms Simons complained to the Council.
- 16 By letter dated 16 December 2015, Mr Weymouth, the Council's Manager of Development, wrote to Mr Crichton regarding alleged tree-damaging work ('TDA') having been undertaken on T1 and T2, which work he asserted had been done in breach of the Act.
- 17 In his letter, Mr Weymouth also sought information regarding the identities of both the contractor who had undertaken the work and the person who had authorised the contractor to carry out the work.
- 18 Mr Crichton contacted Mr Weymouth a couple of days later and, (according to Mr Weymouth) told him that he and Mr Bendyk had engaged Tempest Trees and that he had 'left it up' to Tempest Trees, as the arborist, to determine what work had to be done and the manner in which it would be carried out.
- 19 In February 2016, the Council requested an interview with Mr Crichton concerning the matter generally. He responded by reiterating that he and Mr Bendyk had engaged Tempest Trees to 'review' and manage the trees where appropriate, and that in response to the Council's queries, he had contacted Mr Tempest who, in turn, had told him that he was happy to speak to the Council.
- 20 On 31 March 2016, the Council wrote to Mr Tempest and asked whether he would be prepared to attend for an interview. Then, on 23 May 2016, the Council sought,

from Mr Tempest, a series of documents relating to the works carried out on T1 and T2. The documents which it sought included copies of quotes, invoices, and payment records, as well as any written notes concerning the work that had been done.

- 21 In June 2016, Mr Tempest responded by providing the Council with the quotation which he had prepared (for the work to be undertaken) under cover of a letter, wherein he said that the work involved pruning out several large dead branch sections, together with a small amount of live tissue, stopping at the known fence line.
- 22 In August 2016, the Council issued Mr Tempest with a written notice, pursuant to s 19 of the Act, requiring him to produce specified documents and to answer specified questions. Thereafter, the Council's solicitors and Mr Tempest's solicitors exchanged various pieces of correspondence, but Mr Tempest did not answer any questions, and nor did he provide any other documents apart from the written quotation, which had been provided to the Council in June 2016.
- 23 In these circumstances, the Complainant asserted that:
 - 1 Mr Crichton undertook development without approval by causing branches, limbs and the trunk of each of T1 and T2 to be severed;
 - 2 Tempest Trees undertook development without approval by causing branches, limbs and the trunk of each of T1 and T2 to be severed;
 - 3 Mr Tempest failed, without reasonable excuse, to obey a Requirement or Direction of an authorised officer to produce documents; and
 - 4 Mr Tempest failed, without reasonable excuse, to answer, to the best of his knowledge information and belief, a question put by an authorised officer.
- 24 Prior to considering the evidence in the trial, I record that I have reminded myself of the basic directions that are generally given in trials involving criminal offences, where a judge is sitting with a jury.

Legal Issues

- 1 The complainant bears the burden of proving each particular charge beyond reasonable doubt and this requirement extends to proof beyond reasonable doubt of each and every element of each offence.
- 2 Subject to a qualification to which I will refer to in a moment, the defendants do not carry any onus of proof and to the extent that each of them has put forward a defence, he (or 'it' where it applies to Tempest Trees) does not have to prove it.

- 3 It is not sufficient for the complainant to show suspicion of guilt or even to demonstrate probable guilt. Only proof beyond reasonable doubt can give rise to a conviction. If I am left with a reasonable doubt as to the establishment of any element of a charge, then I must give that defendant the benefit of that doubt and find that defendant not guilty of that charge.
- 4 Each of the counts on the Complaint concerns a separate offence. I must treat each separately and consider only the evidence relevant to that charge. If I were to find a defendant guilty of one of the charges, on the evidence relevant to that charge alone, I must not use that evidence nor the fact of that finding to conclude that the defendant is therefore guilty of any of the other charges. Nevertheless, such evidence may be relevant to the background or circumstances surrounding the events said by the complainant to give rise to another of the offences charged.
- 5 The charges do not stand or fall together. If I were to be satisfied beyond reasonable doubt that a defendant committed one of the offences charged, it does not follow that the defendant also should be found guilty of any other offence charged. Depending on my findings on the evidence, I may find a defendant guilty or not guilty of an offence or offences or guilty on one of the offences and not guilty on the other.

Evaluating the Witness Evidence Generally

- 6 As I have indicated already, subject to the qualification mentioned, the defendants carry no onus. They were not obliged to give evidence but they chose to do so. Their evidence is to be considered alongside the other evidence in this case. I have given them credit for adopting a course which they were not obliged to adopt. In assessing their evidence and the weight to be given to it, I have approached that task in exactly the same way as with any other witness.
- 7 I have considered how much weight I can place on the evidence of various witnesses who have been called. In assessing the reliability or truthfulness of each, I have had regard to demeanour and, in particular, to my impressions of each witness gathered by watching and listening to that person in the witness box, the likelihood or unlikelihood of what that person has said, any bias or motive for lying that person may have, how the evidence was given, how it stood up to cross-examination and how it fitted with other evidence that I find I accept.

I have taken account of the ordinary differences and the capacities of each of the witnesses to remember or give a faithful account of observation. I have been guided by those factors and have kept in mind that witnesses may be truthful and reliable about some matters and not about others and that a witness may be attempting to tell the truth, but

may be mistaken. Therefore, I may accept some parts of what a witness says and not others.

8 In this case, evidence was received from two persons whom, I accept, had expertise in the field of arboriculture and who proffered opinions on matters within that field of expertise. In considering that evidence, I have assessed it in the same manner as I would assess the evidence of any other witness, but in doing so have had regard to their respective qualifications and experience in their field and, as well, the extent to which I accepted the various factual matters relied upon by each of them in reaching his opinion.

9 Finally, I remind myself that I must determine whether or not the prosecution has proved the elements of each charge considered separately and beyond reasonable doubt. If I am unable to say where the truth lays in respect of a charge, then it necessarily means that the prosecution has failed in respect of that charge.

The Trial

Complainant's Case

25 In addition to witnesses who gave oral evidence, the complainant tendered a range of documents, together with a witness statement from Mr Bendyk.

26 The complainant called the following witnesses:

Ms Simons

27 Ms Simons, who was at the material time, the owner of the subject land.

28 She said that, from 1 October 2015 to 4 October 2015, she and her family had been away in Normanville. Upon her return she noticed that extensive work had been done on T1 and T2. She said that she was angry with what she saw and subsequently contacted the Council to complain. By reference to photographs in Exhibit P2 she described the condition of T1 and T2 before the work was done, and approximately how far each of the trees projected into the properties owned by Messrs Crichton and Bendyk. She said that no persons had been given permission to carry out work on T1 or T2.

Assessment of Witness

Ms Simons

29 I am satisfied that in giving her evidence, Ms Simons was both truthful and reliable. In particular, I accept her evidence that prior to going away on the October long weekend, neither Mr Crichton nor Mr Bendyk had spoken to her about doing

any work on T1 and T2 and that she had not given any permission to anyone to carry out any work on those trees.

Mr Weymouth

- 30 Mr Weymouth is the Development Manager at the Council. The correspondence and other documentation in Exhibits P7 and P8 were tendered through him.
- 31 In cross-examination by Mr Roder SC, he agreed that Mr Crichton had expressed concerns for the safety of his young children, when he had addressed the Council in support of the removal of T3. He conceded that Mr Crichton might have said that he believed development approval was not required during a telephone call with him on 18 December 2015.

Assessment of Witness

Mr Weymouth

- 32 I am satisfied that Mr Weymouth was a truthful witness. I also accept that he was a generally reliable witness. However, where his evidence differs from that of Mr Crichton as to their communications, on 18 December 2015, I prefer the evidence of Mr Crichton. I have done so, in part, because, during cross-examination, Mr Weymouth very properly conceded that not every part of their conversation was detailed in his notes and that although he had tried to record the conversation accurately, Mr Crichton may have been correct in his assertion that he had said to him that he believed development approval was not required, rather than him expressing a belief that he believed he didn't think it was required.

Dr Nicolle

- 33 Dr Nicolle is a consulting arborist, botanist and ecologist. In July 2016, he inspected and measured T1 and T2 and noted that, at 1 metre above natural ground level, the circumferences of T1 and T2 were 2.57 metres and 2.53 metres respectively. He said that each tree satisfied the requirements, in the Act and the Regulations, to qualify as Regulated Trees.
- 34 He was asked to assume that T1 and T2 had been pruned in October 2015. He said that, based on that assumption, the structures of both T1 and T2 had been 'highly modified'. On the further assumption, that the cuts to T1 and T2 which he observed had been made to the trees in the previous October, he concluded that at that time both T1 and T2 would have been fully healthy and leafy.
- 35 He confirmed that, in his view, between 95% and 99% of the crown of T1 had been removed and between 45% and 65% of the crown of T2 had been removed.
- 36 He reached his opinion by comparing *'the [circumference of] the final cuts in T1 with the circumference of the remaining branches with leaves on them and*

*[looking] at that as a ratio or a percentage’.*¹ He conducted a similar exercise with respect to T2.

- 37 He was also asked to assume that each tree had been cut to a point which aligned with the boundary fences and to opine what percentage of crown would have been removed if the cuts had stopped at those points. He said that in the case of T1, it would have been at least 95% of the crown and for T2 between 40% and 60%.²
- 38 In cross-examination by Mrs Shaw QC, he said that he did not physically measure the diameter of the pruning cuts but rather determined the diameter by making a visual estimate from ground level. The cuts, to which he was referring, had been made at various points between 5.5 metres and 12 metres above ground level.
- 39 He was unable to name any scientific article or text where the methodology, which he had adopted for evaluating the amount of crown that had been removed, was referenced. He said that he could not provide any record of any tests where this methodology had been used or any textbook that said this was a permissible method for estimating the amount of tree crown that had been removed.
- 40 He reiterated that he was unaware of any research where his methodology had been used or of any peer reviewed papers or texts where such a methodology had been adopted. In the absence of any such material, he relied on his knowledge of general biology with respect, for example, to circumstances where a tree splits into two trunks. In such cases, he said that the size of the trunk is proportional to the amount of live foliage on that part of the tree.
- 41 He did not agree with the use of the terms ‘dominant’ and ‘sub-dominant’ for trees T1, T2 and T3. Such terminology could however be appropriate where one was considering trees in a plantation setting which this was not.
- 42 He conceded that he did not know whether, in October 2015, any of the branches on T1 or T2 were dead or cracked prior to their being pruned. He also accepted that he could not say whether either tree was structurally flawed before being pruned.
- 43 He said that Mistletoe was well known to occur in this species of tree, but that it was not very common in such trees in metropolitan Adelaide. He was unable to say whether, in October 2015, there would have been Mistletoe on T1 and T2. Generally, in his opinion, Mistletoe would not adversely impact the health of a large tree unless there was a significant amount of Mistletoe present. He did not agree that Mistletoe ‘mimics’ this species or that, for an arborist, it was difficult to identify.

¹ T131.

² Exhibit P5 – Addendum Report of Dr Nicolle p 3.

- 44 He said that if there had been Mistletoe in T1 and T2 to such an extent as to detrimentally affect their health, he would have expected to have seen evidence of it in the form of reduced growth rates and thinner bark relative to the amounts of heartwood.
- 45 He accepted that he had not pruned Mistletoe on a commercial basis, but he had removed it from trees in his own Eucalypt arboretum. He said that he had not recommended removing Mistletoe in the past, but accepted that other arborists may well have done.
- 46 He disagreed that, in Adelaide, Mistletoe is seen as a pest. He accepted that in certain circumstances when Mistletoe progresses, it can lead to a point where little or no host foliage remains on the tree.
- 47 He confirmed that his opinions were formed without having seen T1 and T2 prior to pruning, and that they were based ‘on assumptions provided to [him] and what [he] could observe in the trees from [his] site visit and [his] experience of the species’.
- 48 When certain propositions, as to the bowing of trees, from the publication, ‘*Tree Risk Assessment Manual*’, were put to him, he said that they applied to conifers and winter deciduous trees, rather than eucalypts.
- 49 He said that the presence of cracks in a tree did not necessarily mean that there was anything structurally unsound about the tree.
- 50 In re-examination, he said that although the species is a very long lived species, T1 and T2 were relatively young trees. He said that when looking at some of the photos in Exhibit P2, he could not see any evidence of Mistletoe in T1 and T2. He said that if Mistletoe was present he would have expected to have been able to detect it from looking at the photos.

Assessment of Witness

Dr Nicolle

- 51 Dr Nicolle presented as a highly skilled expert in his field. He gave his evidence in a truthful manner. I accept his evidence as to the manner in which the nature and extent of the ‘crown’ of a tree is determined, namely by reference to the branches in the tree that have live foliage. I also accept his evidence that T1 and T2 were 2.57 metres and 2.53 metres respectively in circumference when measured 1 metre above natural ground level.
- 52 However, I do not accept the opinion proffered by him in his oral evidence, with respect to the percentage of tree crown which was removed during the process of these works. I do not accept his opinion because I am not persuaded that his approach or methodology, for the ascertainment of the extent of crown which has been removed, is a matter in relation to which expert testimony can be given.

- 53 Matters of general biology to one side, he could offer no scientific support for the opinions he proffered. In the absence of any such material, I am not satisfied that the subject matter of the opinion he expressed *‘forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court’*.³
- 54 Moreover, Dr Nicolle said that he did not examine T1 and T2 prior to the pruning work being undertaken. As a result, he conceded that he was not in a position to determine whether Mistletoe was present on T1 and T2 prior to them being pruned.⁴ Nor was he able to gainsay, other than in the most general of terms, that each of the trees contained dead, diseased or cracked branches.
- 55 Accordingly, although I accept his general expertise, where his evidence differs from the evidence of Mr Tempest, and particularly for reasons I will refer to later, Mr Cook, as to the existence of a significant infestation of Mistletoe and/or dead, diseased or cracked branches in T1 and T2, prior to the trees being pruned, I prefer their evidence.

First Defendant’s Case

Mr Crichton

- 56 Mr Crichton was, at the material time, the owner of Unit 1/7 Charra Street, Hyde Park, which he purchased in 2011.
- 57 During the time when he was occupying this property, of particular concern to him were two branches from T1 which projected over the patio and outdoor play areas. He said in the period 2011-2015 leaves and branches from T1 regularly fell on his property, which resulted in the clearing of his roof and yard becoming a routine occurrence. As a consequence, he felt that it was unsafe for his children to play outside in the yard.
- 58 He said that he obtained Mr Tempest’s details from Mr Back and first contacted Mr Tempest on 14 September 2015. At that time, he and his family were no longer residing at Unit 1/7 Charra Street, having moved at the end of August 2015. At this time, he was looking to lease the property.
- 59 At or about this time, he had also spoken to Mr Bendyk. He and Mr Tempest viewed T1 and T2 from his property and then from Mr Bendyk’s property. He said that he told Mr Tempest that he and Mr Bendyk wanted work done on the trees because of their respective concerns for family and property. He said that he told Mr Tempest that the work was to be performed within the limits of the law and that the fence line was at no point in time to be crossed. He said that he was sure

³ See *R v Bonython* (1984) 38 SASR 45 at 46-47; also see *R v Bjordal* (2005) 93 SASR 237 at [26]-[31].

⁴ T198.

about this last statement because he had a handbook entitled '*Trees and the Law*' with him at the time of the conversation. He also said that in their discussions reference was made to T1 and T2 being Regulated or Significant trees.

- 60 He said that he did not instruct Mr Tempest as to the particular branches which were to be pruned, or how they were to be pruned, but left those matters for him to determine. In short, he said that he relied on Mr Tempest's expertise. Finally, he said that during their conversation he had a vague recollection of Mr Tempest mentioning 'dead branches'.
- 61 After the meeting with Mr Tempest, his expectation was that there would be 'a thinning of the trees and branches on his side – a pruning – more minor work'.
- 62 He said that he was not present on 2 October 2015 during the time when the work on T1 and T2 was carried out and, furthermore, that he had not inspected the results of the work by the time he paid for the job on 6 October 2015. Nor had he seen the state of T1 and T2 post the work at the time when he sent a text to Mr Bendyk on 13 October 2015. Finally, he said he had still not seen the work by 16 December 2015 when the Council's letter was sent to him.
- 63 On receipt of that letter he said that he had tried to call the Council. He then contacted Mr Tempest who reassured him that the work done by his team was within the limits of the law and suggested that he give the Council his details so that he could speak with them directly.
- 64 In terms of the work being within the '*allowed limits*' as referred to in his letter to Council of 18 December 2015,⁵ by this phrase he meant not going over the fence line and not removing more than 30% of the crown of T1 and T2.
- 65 In his telephone call with Mr Weymouth, in December 2015, he said that he would have told him that the work did not require development approval. He said that he did not go to look at T1 and T2 after receipt of the Council's letter in December 2015 because he had contacted Mr Tempest and had been reassured by him that whatever may have been the state of the trees, he, Mr Crichton, had done nothing wrong. However, after he was charged, he said that he went to inspect the work. He said that the work was not the work that he had either expected or intended to have been undertaken.
- 66 In cross-examination by Mrs Shaw, he accepted that he had no idea what 30% of the canopy actually comprised and that his expectation of what he would see in terms of 30% of canopy was only a layman's expectation.
- 67 He said that he understood from Mr Tempest that he would do the work within the limits of the law. He said he did not specifically recall Mr Tempest referring to doing the work in accordance with the Australian Standard, but would not have been surprised if he did. He vaguely recalled Mr Tempest referring to dead portions

⁵ Exhibit D1.

of the trees. He agreed that Mr Tempest may possibly have said that the trees were structurally defective and that he could have used the word ‘disease’ in connection with the trees.

- 68 In cross-examination by Mr Crocker, he said that the branch that initially went west and then north over his fence-line extended about 5 metres into his property. The smaller limb, which travelled north over the Simons/Crichton boundary extended about 3 metres into his property. He said that the quotation, for the work which he had signed, did not represent all of the conversation between himself, Mr Bendyk and Mr Tempest. He disagreed that the option for the trees that he expressly commissioned, was one where all the timber above his land was to be removed. Rather, he said that he had sought and relied upon the expertise of the arborist.
- 69 He said that his understanding of ‘crown’ in relation to a tree was ‘the area at the top of the trunk that has branches and leaves’.
- 70 He said that, although his letter to Mr Weymouth did not expressly refer to the issue of 30% of the crown being removed, it was never intended to be an exhaustive summary of facts relating to what had happened.
- 71 He rejected the suggestion that his evidence, as to a figure of about 30% of the crown being mentioned in the conversation between himself and Mr Tempest on 15 September 2015, was a reconstruction. He said he did not inspect the trees until after being charged because of the reassurances he received from Mr Tempest.
- 72 On seeing T1 and T2 in March 2017, he said he was surprised and that their condition was ‘not what [he] was expecting’.
- 73 He said that he did not recall any discussion concerning Mistletoe on 15 September 2015. He said that the instruction, in relation to T2, was ‘*pruning less than 30% ... and not passing the fence line of [number] 9*’.⁶ Finally he said that he did not remember reading the quotation before signing it.
- 74 In re-examination, he said by ‘*lopping*’ he meant cutting large or very large branches whereas ‘*pruning*’ was cutting smaller branches and leaves. He said that the quotation would have more accurately recorded their conversation if it had said ‘*prune to the fence line as per instructions or less than 30%*’.
- 75 He confirmed that he did not speak to Mr Tempest post-receipt of the Summons and that his omission so to do was based upon legal advice.

⁶ T428.

Assessment of Witness

Mr Crichton

- 76 I am satisfied that Mr Crichton was a truthful and reliable witness. In particular, I accept his version of the conversation that he had with Mr Weymouth. I also accept his evidence that his instruction to Mr Tempest was for the work to be performed within the limits of the law and that at no time was the fence line to be crossed. I was reinforced, in the assessment that I made of him as a witness, because (as Mr Roder submitted) he did not at any point attempt to embellish his case. He did not, for example, attempt to suggest that Mr Tempest had mentioned the word ‘Mistletoe’, although he agreed that in his conversations with him there may have been a reference to ‘disease’.
- 77 In summary, I found Mr Crichton to be an impressive witness.

Third and Fourth Defendants’ Case

Mr Tempest

- 78 Mr Tempest is a director of the third defendant, a company which operates a business involving the provision of arborist services.
- 79 He holds a Certificate III in arboriculture which he obtained in 2013. He is currently studying for a level 5 Diploma in Arboriculture.
- 80 In September 2015, his understanding of the Act and Regulations, in the context of pruning Regulated trees, was that one could not prune any more than 30% of live crown without requiring approval. Dead, diseased branches and branches, posing a material risk to property and people, were also excluded from the definition of TDA. He said that he understood the term ‘*live crown*’ to mean the branches on a tree that contain live leaves. In essence, he agreed with Dr Nicolle’s definition of the meaning of the word ‘*crown*’ as it related to trees.
- 81 He said that on 15 September 2015 he made a visual assessment of T1 and T2. As to T1, his assessment, on that day, was that it was:
- A suppressed, sub-dominant tree which had
 - Poor taper;
 - Over-extending branches;
 - A longitudinal radial crack in the hotspot of the stem;
 - A hazard-beam crack in the second branch over the Crichton home; and
 - A heavy infestation of Mistletoe

- 82 When describing it as a suppressed, sub-dominant tree he meant that it was deficient in water and mineral-nutrient supply.
- 83 The significant cracks in T1 meant, in his opinion, that there was a higher likelihood of failure, particularly with its history of ‘branch failures’ and in the context of the pending removal of T3.
- 84 His assessment of T2 was that it was a sub-dominant tree with:
- Elongated branches
 - Poor taper
 - A radial crack in the highest branch to the west; and
 - Mistletoe infestation, particularly in the lowest two branches to the west
- 85 He said that T2 was suppressed due to it having received less water and fewer mineral nutrients and reduced sunlight by reason of the presence of T3. He described ‘*Mistletoe*’ as a tree-killing parasite and said that its form mimics Eucalyptus leaves.
- 86 His opinion, as to the health of T1 and T2, was informed by a series of publications including the following:
- *Tree Risk Assessment Manual*;
 - *Principles of Tree Hazard Assessment*; and
 - *Management and Disease and Pathogens of Eucalyptus*.
- 87 He said that, in relation to the pruning work which was undertaken on T1 and T2, he and Mr Cook had relied upon, and conducted the work, in accordance with Australian Standard AS4373-2007 for pruning trees.
- 88 He produced photographs of trees on Shepherds Hill Road in Bellevue Heights to demonstrate how Mistletoe can mimic the shape and colour of Eucalyptus leaves. On 15 September 2015 he said that he informed Mr Back that there was Mistletoe in T1 and T2 and that the branches, on those trees with Mistletoe, were ‘as good as dead’.⁷
- 89 He said that shortly thereafter he had a conversation with Messers Crichton and Bendyk wherein he told them that T1 and T2 were heavily diseased, structurally defective, had branches which were as good as dead and which were a risk to

⁷ T492 – cf Back at 760-761.

people and property. He said that he told them that he could remedially prune both trees to the fence line and that the work would be lawful.

- 90 In terms of Mistletoe, he said that, from his observations, T1 had 90% Mistletoe and T2 had about 20% Mistletoe. He could clearly see the Mistletoe based on his experience as an arborist. He said that he employed Brian Cook to carry out the work and that at the time of carrying out the work, Mr Cook had a Level III Certificate as an arborist.
- 91 On 2 October 2015, he said that he informed Mr Cook as to the location of the job. He told him that the trees were full of Mistletoe, structurally defective and with cracks. He said that at the time he was quite confident that less than 30% of live crown would be pruned because there were very few Eucalyptus leaves in the areas to be pruned.
- 92 In December 2015, he received a call from Mr Crichton, during which call he assured him that all the works were legal. He explained that, in his response to the Council in June 2016, the dead branches to which he referred were those branches heavily infested with Mistletoe.
- 93 In relation to the Council's request for information and documents, he said that he did not provide information or documents because he was receiving legal advice and acting upon that legal advice.
- 94 In cross-examination by Mr Roder, he said he agreed with Dr Nicolle's approach as to the way in which the 'crown' should be defined.
- 95 He agreed, as between Mr Crichton and himself, that Mr Crichton instructed him to prune within the limits of the law. He conceded that it was possible that the 30% figure, in relation to the 'crown', was mentioned. He said that he told Messrs Crichton and Bendyk that he would be pruning to the Australian Standard and that he would be providing remedial, restorative pruning.
- 96 He agreed that his arrangement with them was that the pruning work was to stop at the fence line and that there was no authorisation to do any work on the other sides of the fence lines, in relation to either T1 or T2.
- 97 He agreed that Mr Crichton made it clear that the work had to be performed within the limits of the law. However, within those constraints on his authority, the arrangement was that he was to exercise his judgement as an arborist as to what pruning would occur, how the Mistletoe could be pruned out, which branches were to be removed and which were to be pruned.
- 98 He agreed that while the work which was actually done went beyond his expectations, it was ultimately left to Mr Cook to exercise his judgment as an arborist when carrying out the work.

- 99 In cross-examination by Mr Crocker, he said that his expectation was that, after the work was completed, there would be no branches north of the Crichton/Simons boundary fence and that this was because of the degree of Mistletoe infestation and the significant crack in one of the branches.⁸ His expectation was, however, that any part of T1, on the western side of the Bendyk/Simons boundary south of the Crichton fence, would remain.⁹
- 100 In relation to T2, his expectation was that there would not have been any part of it west of the Bendyk boundary and that the final cuts would be in line with the fences.¹⁰ From his observation, he estimated that some 20% of the tree contained Mistletoe. After that was removed, his expectation was that about 20% of the live tissue in the crown was also to be removed.¹¹
- 101 He inspected the site after Mr Crichton's phone call and could see T2 was in accordance with his expectations. He said that he did not co-operate with the Council's request for an interview because he felt that they were being '*adversarial*'. He said that, upon being asked in May 2016 for various documents, he sent the Council a copy of the quotation. He did not even bother to check to see whether his office had raised an invoice because he believed that a copy of the quotation was sufficient.¹² He agreed that his business issued invoices and receipts and had payment records, but that he did not check to see whether any such documents existed for this work because the quotation was, in his mind, sufficient. He said that the '*record*' of Mr Bendyk paying was the notation on the quote '*Ben to pay 1/2*'. Finally, and somewhat belatedly he conceded that nowhere on the quotation did it record that Mr Bendyk paid for the work.¹³
- 102 He stated that the finished product was what he expected, save for the fact that the cuts had proceeded past the respective fence lines. He denied that the suggestion, that T1 was heavily infested with Mistletoe, was a recent invention. He accepted that he did not use the term Mistletoe to Mr Crichton. However, he said that he told him that the trees were heavily diseased and that many of the branches were 'as good as dead'. He said that the reason why Mistletoe was not evident in photographs 1 and 2 in Exhibit P2 was because of the poor quality of these photographs.
- 103 He said that his work had improved the health of the trees.¹⁴ He strongly disagreed that his work involved TDA. He conceded that the pruning of the larger limb on T1 should have stopped at the Crichton/Simons boundary.

⁸ T538-539.

⁹ T540-541.

¹⁰ T541.

¹¹ T543.

¹² T560.

¹³ T569.

¹⁴ T620.

- 104 He disagreed that he was trying to make himself appear to be ‘*clever*’ in some of the scientific answers he gave. He again denied that his evidence, as to the presence of Mistletoe, structural defects in the trees and of branches being as good as dead, was ‘made up for the purpose of the trial’. He disagreed that the timber in photographs 23 and 28 in Exhibit P2 was suggestive of a tree that is ‘very healthy’. He also disagreed that Mistletoe does not ever infest limbs of the diameter shown in the photographs of T1 in Exhibit P2.
- 105 In terms of the questions in the s 19 Notice, he said that after 1 June 2016, he was waiting on legal advice from his solicitor. He said that he did not recall Mr Caldicott telling him that he was obliged to answer the questions in the Notice.
- 106 He said that during August and September 2016, Mr Caldicott was continuing to seek clarification on certain matters, and that he, Mr Tempest, was waiting on his advice with respect to the material being sought by the Council.
- 107 He conceded that Mr Caldicott may have asked him to look for the sorts of documents requested in the Notice, and that he may have told him that he was endeavouring to look for such documents. However, he said that his ‘vague recollection’ was that he never did obtain any such documents.¹⁵ Nor could he recall even looking for such documents.¹⁶
- 108 In regard to answering the questions in the s 19 Notice, he did not believe that he provided Mr Caldicott with any information to answer those questions.¹⁷ He could not say whether Mr Caldicott asked him a question in terms of ‘*what were the full names of the persons who paid for the work*’.
- 109 He agreed that in ‘his office’ there may have been documents which could ‘respond’ to the Notice, such as an email to Mr Crichton, invoices to Messrs Crichton or Bendyk, receipts from them, EFT records of their payments, and/or records of their credit card payments.¹⁸ He also agreed that he was in possession of information to answer the questions posed in the Notice, but that ‘*it all [came] back to [him] waiting for advice from my lawyer*’.
- 110 He accepted that he must have told Mr Caldicott that the only relevant document he had was the quotation.¹⁹ He said that he did not recall asking his staff to search for any such documents. In response to a question that, after 16 August 2016 he never caused any search to be made for any such documents, he said ‘*it appears so*’.²⁰

¹⁵ T671.

¹⁶ T672.

¹⁷ T676.

¹⁸ T682.

¹⁹ T687.

²⁰ T694.

- 111 Finally, he reiterated his view that, even at the time of giving evidence, his view was the quotation was a sufficient response to Council's requests.²¹ He also said that he did not recall asking Mr Caldicott as to what he should do about the Council's Directions in the s 19 Notice.

Assessment of Witness

Mr Tempest

- 112 I found Mr Tempest to be a somewhat unsatisfactory witness. Although I am prepared to accept parts of his evidence, I am only prepared to do so where that evidence is corroborated by other witnesses such as Mr Back or Mr Cook, whose assessment as witnesses I will come to in a moment.
- 113 On regular occasions, I found Mr Tempest to be evasive and/or disingenuous. In the result, I am not prepared to accept his explanations for not responding to the s 19 Notice, namely that he thought the written quotation he forwarded to the Council in June 2016 was a sufficient response and/or that prior to responding he was really waiting on further advice from his solicitors.
- 114 Of course, in making these observations, I repeat that it is not for Mr Tempest, or indeed any of the defendants, to prove anything. The onus of proving the case on each count remains throughout on the complainant.
- 115 With these qualifications, and in particular when his evidence is considered in conjunction with the evidence of Messrs Back and Cook, I accept those parts of his evidence which referred to the existence of Mistletoe, as well as the dead branches and cracks in T1 and T2, prior to pruning work being undertaken on T1 and T2 in 2015.

Mr Back

- 116 Mr Back is the owner of the premises at Unit 3/7 Charra Street. He spoke to Mr Tempest on 15 September 2015 when Mr Tempest came to his premises to brief him on the removal of T3.
- 117 He said that, in the course of a conversation that they had had in his front yard, Mr Tempest had told him that the removal of T3 would have a 'knock-on' effect on the other trees in the group, namely T1 and T2.
- 118 He said that Mr Tempest also told him that T1 and T2 were lop-sided; that they looked strangled by disease, that there was Mistletoe in those trees, which was probably strangling them and that it would probably kill the trees.²² He said Mr Tempest told him that the Mistletoe had infested 'virtually all' of the trees and that he went into some detail to describe how the action of Mistletoe mimicked the

²¹ T730.

²² T760.

action of Eucalypt leaves. He said that Mr Tempest told him that Mistletoe strangles the growth of a tree and that it takes over and deprives that tree of nutrients. He said that Mr Tempest used the expression '*parasite*' to describe its effect on a tree. He said that Mr Tempest described the health of T1 and T2 as being '*very poor*'.

119 He said that he, Mr Back, had seen branches from T1 and T2 dropping into the yards of Messrs Crichton and Bendyk on numerous occasions over the years, and that Mr Crichton had expressed his concerns to him for the safety of his family during the course of several conversations.

120 In cross-examination by Mr Crocker, he said he did not discuss with Mr Tempest the fact that another arborist, Mr Lawson did not consider that there would be any 'knock-on' effect from the removal of T3.

121 He said that he didn't think to contact the owner of 28 Commercial Road concerning the possible knock-on effects to T1 and T2. He believed that he had spoken to Mr Crichton and conveyed what Mr Tempest had said to him as to the poor health of T1 and T2. He believed that Mr Crichton told him that Mr Tempest was going to carry out remedial works on T1 and T2.²³ He said that Mr Tempest told him on 15 September 2015 that the state of T1 and T2 was such that they would probably die as a result of the Mistletoe.

Assessment of Witness

Mr Back

122 Mr Back was an impressive witness. I accept his evidence as being both truthful and reliable. In particular, I accept his evidence that Mr Tempest told him in 2015 that the removal of T3 would have a 'knock-on' effect on T1 and T2. I also accept him when he said that Mr Tempest told him that T1 and T2 were infested with Mistletoe and that it would probably kill the trees.

Mr Cook

123 Mr Cook was employed in September 2015 as a tree climber and supervisor with Tempest Trees. At that time, he had worked for the company for some three years. By September 2015, he had completed a Certificate III as an arborist.

124 In September 2015, while working on the removal of T3, he said that he had made observations of what he described as two smaller sub-dominant trees (T1 and T2) and noted Mistletoe in one tree and evidence of what looked like a crack.²⁴

125 In October 2015, he attended to carry out work on T1 and T2. His understanding of the job was that he was to remove foliage as well as dead, decayed, damaged or unsafe branches to the fence line 'within the guidelines of the *Tree Act* and the

²³ T794.

²⁴ T803.

guidelines of the quote'.²⁵ He intended to '*prune*' the trees which he understood would have the effect of making the trees '*healthy*'.

126 His initial assessment of T1 was that it had Mistletoe, dead branches and a crack he could see from the ground.²⁶ T2, he said, had some Mistletoe and twists and splits in the bark of some of the branches.²⁷

127 He then climbed into T1. He said it felt '*very unsafe*'. There was a large split in one section of the timber, which he could put some fingers into and a '*fair bit*' of Mistletoe. There were also dead branches which they had to remove to make the tree safe.²⁸

128 His practice (which he observed on this occasion) was to remove up to 20% of live foliage from such a tree.²⁹

129 In relation to T2, he observed there to be Mistletoe, but less than T1, small twists in the tree with small stress twists in the bark. Again, his approach had been to remove up to 20% of the tree's live foliage.

130 He explained how Mistletoe threatens the life of a tree and how it mimics the leaves of the host tree in terms of shape and colour. It was detectable by him as an arborist, given the smell that it emits.³⁰

131 When pruning a tree in these situations, his practice was to prune 'to the nearest growth point'. In this case, the nearest growth point to where there was existing damage was back at the main trunk. In this way, he said that the operator would not leave stubs which could lead to epicormic or unstable growth.³¹

132 In cross-examination by Mr Roder, he said he did not know whether it was Mr Crichton or a tenant of the property to whom he spoke when onsite in October 2015. Prior to attending the work site, he had a conversation about the quotation with Mr Tempest. He said that he was not told that he was not to go past the fence line, but that, in any event, he had done so because, in his view, '*under the guidelines it was best for the tree*'.³² He said that it was not until he was in the tree that he could make an assessment (as to what needed to be removed) which was 100% certain.³³ He agreed that the assessment as to what was to be removed was left to his judgment as an arborist. He said that in this case, unless he had been able

²⁵ T809.

²⁶ T812.

²⁷ T814.

²⁸ T813.

²⁹ T814.

³⁰ T815-816.

³¹ T819.

³² T823.

³³ T825.

to remove branches which went beyond the fence line, in his opinion, he would have had to leave *‘large chunks of timber with splits in them [on the Crichton and Bendyk sides of the fence line which, in his judgement], would not have been professional’*.³⁴

133 In cross-examination by Mr Crocker, he said he had worked for Mr Tempest since about 2011. He remembered the work on T1 and T2 because there was some *‘potentially life-threatening risk in it to remove some of the sections’*.³⁵ He said that he took the quotation with him to the job.

134 He said that, prior to climbing into the tree, his aim was not to remove as much as he ultimately did.³⁶ Prior to seeing the cracks, the Mistletoe and the dead branches, he envisaged that it may have been possible to leave part of the larger limb on T1 north of the Crichton-Simons fence line.³⁷

135 He said that he removed all the Mistletoe from both T1 and T2. His belief, in October 2015, was that he could prune up to 20% of live foliage from a Significant tree. He believed the law permitted more, but that this was the percentage he worked on.³⁸

136 He was unable to explain the difference between Significant and Regulated Trees. It was not his role (rather he suggested it was Mr Tempest’s) to assess whether a tree was Significant or Regulated. His practice was not to count Mistletoe, dead foliage or dead branches as part of the tree canopy (the crown) for pruning purposes.

137 On this particular job he was always working on pruning up to 20% because that was his practice. He did not believe that after finishing the work he told Mr Tempest that he had gone past the fence lines, and nor did he feel that it was necessary to do so because he and Mr Tempest had good trust in each other and he knew Mr Tempest trusted his judgment to do a professional job.³⁹ He said that he didn’t contact the people at 28 Commercial Road on the day in question because, in the course of doing the work, he never felt that he was in their property.

138 He disagreed that photograph 28 in Exhibit P2 showed healthy timber. He said that it showed that it had cracks in it.⁴⁰ He said that photograph 36 in Exhibit P2 depicted the live foliage on T1 after his work and that it depicted 80% of the live foliage that was in T1 prior to the work being done.

139 In re-examination, he said his aim was to prune up to 20%, but within that parameter to *‘leave as much as we could’*. He also said that leaving chunks of

³⁴ T826.

³⁵ T839.

³⁶ T852.

³⁷ T856.

³⁸ T858.

³⁹ T870.

⁴⁰ T875.

timber was unprofessional because it could promote bugs or disease or decay and further damage the tree.⁴¹

Assessment of Witness

Mr Cook

140 I considered Mr Cook to be an honest and forthright witness who gave truthful and reliable evidence.

141 In particular, I accept his evidence as to the amount of ‘crown’ he removed, and as to the existence of Mistletoe and dead and cracked branches in T1 and T2. I also accept his explanations as to why he proceeded to cut beyond the respective fence lines, namely because, in his view, to do otherwise would have resulted in an unsightly and unprofessional job.

Preliminary Issues

The Onus of Proof

142 Prior to addressing the issues which arise for consideration in this trial, it is necessary to deal with a preliminary matter which relates to the question of the onus of proof with respect to counts 3, 4 and 5.

Count 3

143 In the *Corporation of the City of Adelaide v BFR Pty Ltd & Anor*⁴² I had occasion to consider the question of the onus of proof in a prosecution alleging that the defendant had undertaken development, namely TDA, without approval contrary to ss 32 and 44(1) of the Act.

144 In considering this question I said:

The provisions of s 105 of the Act make it clear that offences constituted by the Act lie within the criminal jurisdiction of this Court.⁴³ In an alleged summary offence such as this, the *Environment Resources and Development Court Act 1993*⁴⁴ requires this Court to deal with the charge in the same way as would the Magistrates Court and in so doing to apply the relevant provisions of the *Summary Procedure Act 1921*.

Section 56 of the *Summary Procedure Act 1921* relevantly provides:

56—Exceptions or exemptions need not be specified or disproved by the complainant

- (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the

⁴¹ T892.

⁴² [2014] SAERDC 37 at [7]-[13].

⁴³ *Development Act 1993* s 105(4).

⁴⁴ s 7(3a).

Special Act or other document creating the offence) need be specified or negated in the complaint.

- (2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

In *Overland Corner Station Pty Ltd & Anor v Gould*⁴⁵ White J had occasion to consider the provisions of s 26(1) of the *Native Vegetation Act* ('NVA'), which provided that:

A person must not clear native vegetation unless the clearance is in accordance with this part. (my emphasis)

Section 27 of the NVA specified the circumstances in which clearance of native vegetation may be cleared without contravening s 26 of the NVA. A question arose as to whether the words 'unless the clearance is in accordance with this part' constituted an 'exception, exemption, proviso or qualification' to which s 56(2) of the *Summary Procedure Act* referred with effect that it was not a matter upon which the prosecution bore the onus of proof, but rather a matter where the onus was on the defendants to bring themselves within the exception. White J identified the following propositions as being discernible in the authorities concerning the application of s 56:⁴⁶

The following propositions are discernible in the authorities concerning the application of s 56 and its equivalents.

- (i) The question of whether an enactment contains a provision in the nature of an exemption or proviso for the purposes of s 56(2) is to be resolved by the construction of the statute under which the charge is laid. When some matter is said to be an exception to an offence, the question is whether there is to be discerned a legislative intention 'to impose upon the accused the ultimate burden of bringing himself within it'.
- (ii) The focus on the process of statutory construction should be on the substance ('the essence or thrust'), rather than the form, of the statutory provision in question. However, that does not mean that the form of the statutory provision is irrelevant as the way in which a section is set out may be a useful guide to the intention of Parliament with respect to any postulated exception or proviso.
- (iii) A qualification or exception which assumes the existence of facts upon which the general rule of liability is based and which depends on additional facts of a special kind is, depending on issues of substance, more likely to be a qualification or exception to which s 56(2) applies, or, as it was put by Dawson, Toohey and Gaudron JJ in *Chugg v Pacific Dunlop*:

'One indication that a matter may be a matter of exception rather than part of the statement of a general rule is that it sets up some new or different matter from the subject matter of the rule. '

- (iv) If a matter accompanies the description of an offence, then it will ordinarily be construed as an element of the offence which the prosecution must prove, unless there is something in the form of the language used or in the nature of the subject

⁴⁵ (2010) 106 SASR 428.

⁴⁶ Ibid at [28].

matter to suggest that it is an exception upon which the defendant bears the onus of proof.

- (iv) There are many authorities indicating that the fact that defendants are likely to have peculiar knowledge bearing upon the application of the exemption or proviso, or enabling them to prove the positive of any negative averment is immaterial in the process of construction involved. However, the circumstance that a relevant fact would be difficult for the prosecution to establish and easy for a defendant to establish might well dispose the legislature to make the proof of that fact an exception within the meaning of s 56. In this respect Dawson, Toohey and Gaudron JJ in *Chugg v Pacific Dunlop* said:

‘If the new matter is a matter peculiarly within the knowledge of the defendant, then that may provide a strong indication that it is a matter of exception upon which the defendant bears the onus of proof.’

- (v) Ultimately, the application of s 56 depends upon a postulated legislative intention which is to be determined by reference to all of the relevant circumstances. This makes it difficult to state any general rule on the subject and can limit the utility of comparison of one case with another.

[Footnotes omitted]

Applying the foregoing to the provisions under consideration here, it is possible to regard the combined effect of ss 32 and 44(1), in the context of tree-damaging activity, as establishing a norm that there should not be unauthorised severing of branches, limbs or stems whilst at the same time contemplating that there may be some limited or exceptional circumstances where such activity will be acceptable. That, in my opinion, is the ‘essence or thrust’ of the provisions under consideration here.⁴⁷

Understood in this way, I am satisfied that the provisions of s 56(2) apply to a prosecution for this alleged offence such that it is for the defendants to bring themselves within one or more of the exceptions outlined in the Act or Regulations.

I am equally satisfied that the defendants bear an onus to do so on the balance of probabilities.⁴⁸

145 In this trial Mr Crichton and Tempest Trees submitted that *BFR* was incorrectly decided. It was submitted that in *BFR* the defendant was unrepresented and, furthermore, that in *BFR* the Court did not have regard to a number of relevant authorities on the issue of onus in cases such as this.

146 Put simply, the defendants submitted that the reasoning in *Overland* was distinguishable. In *Overland*, so it was submitted, native vegetation could be cleared in certain circumstances, for example, with consent. Accordingly, if a defendant could show that he had prior consent, and therefore bring himself within

⁴⁷ See *Overland Corner Station* at [31].

⁴⁸ *Wollongong City Council v Eusile Pty Ltd* (2008) 71 NSWLR 563 [20].

one of the exceptions (the onus of proving which lay on the defendant), the clearance would be lawful.

147 However, under the Act, there is no reference to TDA being able to be undertaken in certain circumstances. There is, therefore, no exception within which a defendant may bring himself. Rather, the wording of reg 6A(8) simply provides that TDA does not include certain things, one of which is the pruning of less than 30% of the tree crown.

148 So understood, reg 6A(8) may be seen as a provision which ‘cuts down’ the scope of activities which would otherwise constitute TDA.

149 In those circumstances, the observations of the High Court in *Director of Public Prosecutions v United Telecasters Sydney Ltd*,⁴⁹ are apposite.

150 In *United Telecasters*, a segment displayed during the course of the television broadcast, there under consideration, had led to the respondent being convicted for an offence under s 100(5A) of the *Broadcasting and Television Act 1942* (Cth) (‘Cth Act’). Section 100(5A) relevantly provided that:

A licensee shall not broadcast or televise an advertisement for, or for the smoking of, cigarettes or cigarette tobacco ...

151 However, s 100(10) of the Cth Act exempted, from the prohibition in subs 5A, the televising of matters of an advertising character which were ‘*an accidental or incidental accompaniment of the broadcasting or televising of other matter ... which the licensee does not receive payment or other valuable consideration for broadcasting or televising the advertising matter*’.

152 In the plurality judgment of Brennan, Dawson and Gaudron JJ, their Honours said:⁵⁰

Whilst sub-so (10) cuts down the scope of sub-so (5A) it does so by way of definition rather than by way of proviso, exception or saving and there is no reason to suppose that in so limiting sub-so (5A) the legislature intended that the sub-section should operate without limitation unless an accused brought himself within the terms of sub-so (10). (my emphasis)

153 In my view, the circumstances and reasoning in *United Telecasters* are applicable to this case. In this instance, as I said, reg 6A(8) cuts down the scope of s 4 of the Act by way of definition rather than exception.

154 I am satisfied that it does so in a way which does not mean that the severing of branches, limbs and trunks will be TDA, unless and until a defendant can prove that (for the purposes of this case) the pruning has not resulted in more than 30% of the crown being removed.

⁴⁹ (1990) 168 CLR 594.

⁵⁰ Ibid at 601.

155 In the result, I am satisfied that the onus of proving that the defendants have undertaken TDA remains on the prosecution.

156 Accordingly, I decline to follow what I said on the issue of onus in *BFR*.

157 The issue of which party bears the onus of proof also arises in relation to counts 4 and 5 with respect to the issue of reasonable excuse.

Counts 4 and 5 – Onus of Proof on Reasonable Excuse

158 In addition to the matters identified in *Overland* and by the High Court in *Chugg*, the principles which determine where the onus should lie, in cases such as this, were further elucidated by the House of Lords in *R v Hunt*⁵¹ (a decision cited with approval by the High Court in *United Telecasters*) where their Lordships said that:

- The burden of proving the guilt of an accused is on the prosecution, subject to any statutory exception;
- Such exception might be expressed or implied;
- The burden can be on the defendant whether the exception appear[s] in the same clause of the instrument or in a subsequent proviso. The burden on the defendant in those circumstances is on the balance of probabilities;
- Where the words of the Act do not indicate clearly where the onus lies, the court should look to considerations to determine Parliament's intention such as the ease or difficulty for the respective parties of discharging the onus and the mischief to which the provision is aimed.

159 Applying the principles enunciated in cases such as *Hunt*, *Overland* and *Chugg*, I am of the view that the onus of showing a reasonable excuse is on Mr Tempest. In this case, the matters relating to reasonable excuse 'depend on additional facts which are of a special kind' and are facts which are clearly easier for the defendant to establish.

160 Consequently, in my opinion, in the event that Mr Tempest did fail to comply with the directions in the s 19 Notice, to obey the Requirements to produce documents and/or answer questions, then it would be incumbent upon him to prove that, for any such failure, there was a reasonable excuse.

⁵¹ (1987) 1 AC 352.

Issues for Consideration and Determination

161 Against this legal and factual background, the following issues arise for consideration and determination.

- 1 Is the complainant required to prove TDA with respect to both T1 and T2, or is it sufficient to prove TDA to only one of the trees?
- 2 What constitutes the ‘*crown*’ of the tree?
- 3 What is TDA?
- 4 Did Mr Crichton cause TDA to be undertaken?
- 5 Are the dates alleged in counts 4 and 5 essential ingredients of the Complaint?

1. Is the complainant required to prove TDA with respect to both T1 and T2, or is it sufficient to prove TDA with respect to only one of the trees?

162 On this issue, in counts 1 and 3, the Complaint relevantly provides that:

... the ... Defendant undertook development, namely, tree-damaging activity in relation to two regulated trees ... (my emphasis)

163 This is to be contrasted with count 2 where the Complaint alleges that the second defendant undertook development, namely TDA in relation to a regulated tree.

164 Unaided by authority, I would have been content to accept that an essential element of the offence alleged in counts 1 and 3 is that TDA was undertaken in relation to both T1 and T2. In other words, in my view, the Complaint would not have been proved if the evidence demonstrated, e.g. TDA to only T1, but not T2 or vice versa.

165 However, Mr Crocker relied upon the decision in *Brinkworth v Dendy*⁵² in support of his submission that the Complaint would be made out if the complainant could prove TDA to only one of the two trees.

166 I am not persuaded that *Brinkworth* provides support for the complainant’s position. In *Brinkworth*, the Complaint alleged that the appellant/defendant had unlawfully cleared native vegetation.

167 On the appeal, the appellant alleged that, the Complaint was bad for duplicity. The duplicity was said to have arisen from the fact that each count in the Complaint stated, by way of particular, that native vegetation had been cleared from a number of separate areas in the land in question.

⁵² (2007) 97 SASR 416.

168 In dealing with this argument, Doyle CJ said:⁵³

The nature of the activity with which s 26 deals suggests that often it will not be possible to identify individually the plants that have been cleared. They might be too numerous to be so identified. Or, even though relatively few in number, the prosecution might be able to prove no more than that native vegetation (described in general terms) was present on the land and that after the relevant activity the native vegetation had gone. The vegetation might have been burned or removed.

Practical considerations suggest that while the prohibited act is the clearance of plants, it should be possible to charge an offence that consists of the clearance of an unspecified number of plants, and that it should be permissible to lay the charge in a form that identifies the place or area where the plants were before they were cleared. Unless this is so, in many situations the prohibition in s 26(1) will be unenforceable.

That in turn suggests that a charge of clearing native vegetation from or on a specified area of land must be a permissible form of charge.

In fact, Mr Peek concedes as much. But once that concession is made, it becomes apparent that Mr Peek's submission relies on the fact that although the charge alleges that clearance of native vegetation from an identified area of land (called "the subject land"), the particulars indicate that the native vegetation in question was at 27 separate locations on that land. But, of itself, that is of no significance. There might have been only 27 plants on the land, or 27 groups of plants, or 270 groups of plants. The fact remains that the charge is a charge of having cleared native vegetation from the subject land, and the particulars indicate that the subject land contained 27 stands or collections or groups of native vegetation. The evidence will disclose the size of those stands or collections or groups, the area they occupy, the relationship between each of the areas, and their relationship to the subject land as a whole. But the charge itself relates to the area referred to as the subject land. I can see no reason why the complaint should be treated as duplicitous because the particulars disclose that the cleared native vegetation was not scattered uniformly across the land, but was in 27 stands or collections or groups.

In short, once it is accepted (as it must be) that a charge of clearing native vegetation can be laid alleging the clearance of an area containing native vegetation (and not identifying individual plants), it must follow that a charge in that form is not on its face bad for duplicity merely because the particulars disclose that the native vegetation was not scattered across the whole of the area, but was found in a number of separate locations within the area.

169 In my view, the situation here is very different from that which applied in *Dendy*. Unlike the current situation, the Complaint in *Dendy* alleged the clearance of native vegetation from a specified area, namely the subject land. Thereafter, the Particulars of the charge detailed some 27 separate locations on that land where unlawful clearance had taken place.

170 Unlike *Dendy* the charge here does not specify TDA on the subject land and then, in the Particulars, identify two trees as being the subject of that TDA. On the contrary, as I earlier indicated, one of the ingredients expressly specified in counts

⁵³ Ibid at [34]-[38].

1 and 3 is an allegation of TDA in relation to both T1 and T2. In short, it is in the charge itself (not the Particulars) that a reference to two trees is to be found.

171 It is therefore incumbent on the complainant, if it is to make out the Complaint, to prove all of the elements in those charges which allege TDA to both T1 and T2.

2. What Constitutes the ‘crown’ of a Tree?

172 The word ‘crown’ is not defined in either the Act or the Regulations.

173 In fact, the only reference to ‘crown’ in this context is in reg 6A(8) which states that, for the purposes of the definition of TDA in s 4(1), ‘pruning, that does not remove more than 30% of the crown of the tree, is not tree-damaging activity’.

174 In terms of expert evidence as to the meaning of ‘crown’, in his expert report, Dr Nicolle expressed an opinion in the following terms:⁵⁴

I have defined the crown as the total of all branches in the tree that have live foliage. In estimating the percentage of the crown that has been removed by the pruning in each of the two trees, I have estimated what percentage of the pre-pruning live foliage was removed at the time of the pruning. In estimating this percentage, I have not considered how far down the branches or trunk the pruning occurred, nor the actual weight of the foliage/branches/wood removed, nor the reduction in aerially-assessed canopy coverage. Thus, if half of the foliage (the live leaves) are removed by a pruning event, I would consider that such pruning has removed 50% of the total tree crown, regardless how far down the branches or trunk the pruning occurred, the actual weight of the material removed, the canopy area removed, or any other factors.

175 Mr Tempest agreed with this view.⁵⁵ There is, in that sense, no contest on the evidence. However, in its final submission, the complainant submitted that in determining the meaning of the phrase ‘*crown of the tree*’, reg 6A(8)(b) should be construed in the following way:⁵⁶

35 It is submitted that the correct construction of the regulation is reached by the following analysis:

35.1. The ‘crown of the tree’ is not comprised solely of ‘foliage’. It is comprised of ‘dead or diseased wood’ (that is dead or diseased branches) and ‘branches’ (that is healthy wood).

35.2. Depending upon the season, species of the tree or health of the tree, there may or may not be foliage on the branches.

35.3. If the tree has no foliage, it still has a crown, comprised of:

35.3.1. dead or diseased branches, and/or

35.3.2. healthy branches

⁵⁴ Exhibit P5 p 10.

⁵⁵ T509-510.

⁵⁶ Outline of Submissions on behalf of the Complainant at [35].

35.4. If a tree has foliage, its crown is comprised of three elements, namely:

35.4.1. the foliage, and/or

35.4.2. dead or diseased branches, and/or

35.4.3. healthy branches.

176 I am not persuaded that the foregoing analysis of r 6A(8) necessarily reveals the true meaning of the word ‘crown’ for the purposes of the Act and Regulations.

177 This analysis would accord to the word, something in the nature of a term of art and certainly, a meaning different from the way in which it is used in common parlance. In the Macquarie Dictionary ‘crown’ is defined as ‘*the leaves and living branches of the tree*’. In the Shorter Oxford Dictionary it is defined as ‘*the leafy head of a tree*’.

178 I am not persuaded that it should have anything other than the meaning used in common parlance, which, in turn, has been given expression in the aforementioned dictionaries.⁵⁷ In this sense, it may be understood to be a protean word. In the context in which it appears in the Regulations, I take it to mean the live leaves and branches of (in this case) ‘*Eucalyptus Camaldulensis*’.

179 Understood in this way, the word would not include Mistletoe and nor would it include the dead/dying or otherwise diseased leaves or branches.

3. What is TDA?

180 Applying the meaning I have identified to ‘crown’ of a tree, the defendants will have caused TDA if I am satisfied that, of the live leaves and branches in each of T1 and T2 as at 2 October 2015, more than 30% has been removed.

4. Did Mr Crichton cause TDA to be undertaken?

181 In *Hutchison 3G Australia Pty Ltd v City of Mitcham*⁵⁸ the High Court had occasion to consider *inter alia* whether *Hutchison 3G* had caused a development to be undertaken as that word was used in the definition of the phrase ‘to undertake development’ in s 4 of the then *Planning Act 1982*. The wording in s 4 was not relevantly different from the wording used in the section under consideration here.

182 In *Hutchison 3G*, the Court said:⁵⁹

Nor can it be said that Hutchison caused or permitted a development to be commenced or to proceed. In *R v Hindmarsh Corporation* ... the Supreme Court of South Australia (King

⁵⁷ It is not without significance that this meaning is also one which, in general terms, appears to have been adopted by the experts who gave evidence.

⁵⁸ (2006) 225 ALR 615.

⁵⁹ *Ibid* at [79].

CJ, Millhouse and Prior JJ) considered the definition of the phrase ‘to undertake’ development, as it appeared in s 4 of the *Planning Act 1982* (SA). That definition was in terms similar to that which now appears in the *Development Act*. Though he was the dissident in the outcome of the decision in *Hindmarsh*, King CJ attracted the agreement of Prior J to the proposition that the content of the word ‘cause’ in the definition was best understood by reference to what was said by this Court (in a different context) in *O’Sullivan v Truth and Sportsman Ltd* ... In that case, Dixon CJ, Williams, Webb and Fullagar JJ said:

...

No doubt before [an] end may be said to be ‘caused’ within the meaning of s 35(1) [of the *Police Offences Act 1953* (SA)], it must appear that it was contemplated or desired. But preliminary or antecedent acts done in such contemplation or out of such a desire do not necessarily amount to a ‘causing’... [The provision] should be interpreted as confined to cases where the prohibited act is done on the actual authority, express or implied, of the party said to have caused it or in consequence of his exerting some capacity which he possesses in fact or law to control or influence the acts of the other.

Kitto J spoke to similar effect. His Honour said: ...

[O]ne person cannot be said to cause another’s act unless not only does the former express it as his will that the act shall be done by the latter but the latter’s decision to do it is a submission to the former’s will, that is to say a decision to make himself the instrument of the former for the effectuation of his will.

- 183 These observations effectively endorsed and confirmed comments previously made by the Full Court, in *R v Marion City Corporation*,⁶⁰ per Millhouse J, where his Honour, quoting Walters J in *Burton v Samuels*,⁶¹ said:⁶²

The word ‘cause’ has a variety of meanings and applications but ... I think the word must be taken to mean to bring about or procure the act which is forbidden with some intentional or conscious production of the effect ... where it is made an offence for one person to cause another to do an act prohibited by statute, this must be interpreted as confined to cases where the prohibited act is done on the actual authority, express or implied, of the party said to have caused it or in consequence of his exerting some capacity which he possesses in fact or law to control or influence the acts of the other. He must moreover contemplate or desire that the prohibited act would ensue.

- 184 Elsewhere, the word ‘*cause*’ has been expressed to be, having the power to order and the knowledge of what is being ordered, with an intention that the order will be carried into effect.

- 185 In context under consideration here, I am of the view that in order to prove its case that Mr Crichton ‘*caused*’ the TDA alleged in count 1, the complainant would need to show that Mr Crichton:

- Had the authority to direct Tempest Trees to undertake the work that was done on T1 and T2;

⁶⁰ (1984) 37 SASR 415.

⁶¹ (1973) 5 SASR 201.

⁶² (1984) 37 SASR 415, 429.

- Knew that the work that was undertaken on T1 and T2 would be undertaken; and
- Intended that the work which was undertaken would be undertaken.

5. *Are the dates alleged in counts 4 and 5 essential ingredients of the Complaint?*

186 In relation to counts 4 and 5, I adhere to the views I expressed on this issue in my earlier decision in March 2018.⁶³ I am therefore satisfied that the obligation to comply with the requirements of the s 19 Notice was a continuing one.

187 With these considerations in mind, I turn now to set out my findings in relation to each of the counts.

Findings

Count 1

188 I am satisfied beyond reasonable doubt that on or about 2 October 2015:

- 1 T1 and T2 were situated on land commonly known as 28 Commercial Road, Hyde Park ('the subject land').
- 2 The subject land was owned by Amy Alice Simons.
- 3 The subject land was in the area of the complainant.
- 4 Mr Crichton was a joint owner of land adjacent to the subject land at Unit 1/7 Charra Street, Hyde Park.
- 5 T1 and T2 are both of the species '*Eucalyptus Camaldulensis*', commonly known as River Red Gum.
- 6 Both T1 and T2 had single trunks with circumferences in excess of 2 metres, measured 1 metre above the ground.
- 7 T1 and T2 were regulated trees.
- 8 T1 and T2 were significantly infested with Mistletoe.
- 9 T1 and T2 also contained branches which were variously dead, cracked or structurally unsound.
- 10 On or around 15 September 2015 Mr Crichton (together with Mr Bendyk) entered into an arrangement with Tempest Trees whereby

⁶³ *The Corporation of the City of Unley v Crichton & Ors* [2018] SAERDC 13.

Tempest Trees was engaged to perform work on T1 and T2, which work involved the pruning of T1 and T2.

- 11 The terms of the arrangement required that:
 - a) T1 and T2 be pruned;
 - b) The pruning work be carried out in accordance with the law; and
 - c) The pruning work cease at the respective Crichton/Simons and Bendyk/Simons boundary fences.
- 12 The manner in which the pruning work was to be undertaken (including the particular branches/limbs to be removed) was left to the exercise of the independent judgement of the arborist undertaking the work.
- 13 Tempest Trees, in the guise of Mr Cook, carried out pruning work (which involved the severing of live leaves branches and limbs) to no more than 20% of the crown (as I have determined it to mean) of each of T1 and T2. The pruning work actually carried out by Mr Cook exceeded the work authorised by Mr Crichton in that it proceeded past the respective fence lines.
- 14 Nevertheless, the pruning work undertaken by Mr Cook, which extended beyond the respective fence lines, was undertaken in a professional manner and undertaken in order to obviate any potential for unsightliness and/or disease, which may have arisen from cuts stopping at the fence lines.
- 15 The degree of Mistletoe infestation and the extent of dead, diseased or cracked branches and limbs was such that a much greater degree of leaves and branches of T1 and T2, than Mr Crichton had anticipated were to be removed, were in fact removed.

189 It follows from these findings that I am quite unable to assess, with any degree of certainty, what was the percentage of total crown⁶⁴ which was in fact removed. However, I accept that it was likely to have been considerably more than 30% of the total crown.

Count 3

190 I repeat the findings I have made in relation to count 1.

⁶⁴ By the phrase 'total crown' I intend to mean, in addition to the live leaves and branches, the leaves and branches of the trees with Mistletoe, together with the dead, cracked or otherwise diseased wood.

191 In addition to those findings, I am satisfied that in or about September and October 2015, no permission to carry out the pruning work was sought by, or on behalf of, Tempest Trees from Ms Simons.

192 I am also satisfied that on 2 October 2015, Mr Tempest did not tell Mr Cook that he was not to ‘cross’ the fence line when severing limbs.

193 I repeat that whilst I am satisfied that although no more than 20% of what I have determined to be the crown was removed during the work by Tempest Trees, I am quite unable to say what was the percentage of total crown that was removed.

Count 4

194 In relation to count 4, I am satisfied beyond reasonable doubt that:

- 1 In August 2016 Mr Weymouth was an authorised officer for the purposes of s 18(1)(a) of the Act.
- 2 In the exercise of his powers as an authorised officer, Mr Weymouth wrote to Mr Tempest and gave him Notice, pursuant to s 19 of the Act, directing him to produce copies of certain documents.
- 3 The documents identified by Mr Weymouth were as follows:
 - All written payment records which show who the payees were, the amounts paid and the dates on which payments were made if payments were made by electronic funds transfer (EFT) or credit card; and
 - All receipts issued to those person(s) who made payment for the Works if payments were made by cash or cheque.
- 4 Subsequent to receipt of the Notice, Mr Tempest and/or his solicitor, communicated with the Council and/or its solicitors in the course of which there were a series of requests for information.
- 5 The Council, through its solicitors, responded to these requests for information in a timely and reasonable manner.
- 6 The documents provided by Mr Tempest, and/or his solicitors, in response to the Notice, comprised a copy of the quotation (with various notations and endorsements) dated 15 September 2015.
- 7 Mr Tempest could have, but did not, make any attempt to locate and then produce any other documents of the nature sought in the Council’s Notice.

- 8 The reasons advanced by Mr Tempest, and/or his counsel, for not complying with the requirements in the Notice were:
 - i. his belief that the information in the quotation was a satisfactory response; and
 - ii. that he was acting in reliance upon and/or awaiting advice from his lawyers.
- 9 By letter dated 18 January 2017, Mr Tempest's solicitors confirmed that:
 - The '*necessary documentation*' had been forward [to the Council] by Mr Tempest;
 - This documentation was the only documentation that he had; and
 - Sought advice as to whether any 'additional information' was required.

Count 5

195 In relation to count 5, I repeat the findings that I have made in relation to count 4. I make the following additional findings:

- 1 The questions identified by Mr Weymouth were as follows:
 - i. What are the full names of the person(s) who paid for the Works?
 - ii. What amounts were paid by each of the person(s) who made payments(s) for the Works?
 - iii. On what date were payment(s) for the Works made?
- 2 Subsequent to the receipt of the Notice, Mr Tempest did not answer any of the questions.

Conclusions

Count 1

196 I am not satisfied beyond reasonable doubt that the work actually undertaken by Tempest Trees on T1 and T2 constituted TDA.

197 Furthermore, and in any event, the authorisation provided by Mr Crichton to Tempest Trees was to undertake work which was specified to be lawful and for work which was less than that actually carried out by Tempest Trees.

198 As a result, Mr Crichton did not cause TDA to either T1 or T2.

Count 3

199 I am not satisfied beyond reasonable doubt that the work actually undertaken on T1 and T2 constituted TDA.

Count 4

200 I am satisfied beyond reasonable doubt that the Direction to comply with a Requirement of an authorised officer was a Requirement which continued after the period of 14 days referred to in the Notice, and constituted a continuing obligation to comply with the requirements in the Notice.

201 I am satisfied beyond reasonable doubt that, in providing only the quotation in response to the requirements in the s 19 Notice, Mr Tempest failed to comply with a requirement of the authorised officer, Mr Weymouth.

202 I accept that it was reasonable for Mr Tempest to seek legal advice and to refrain from responding to the Notice pending receipt of such advice.

203 However, I am satisfied beyond reasonable doubt that it was not reasonable for Mr Tempest to continue not to comply with the requirement after 26 September 2016.

204 In the result, I am satisfied beyond reasonable doubt that Mr Tempest failed to comply with the requirement to supply the documents sought and that his failure to do so was without reasonable excuse.

Count 5

205 I am satisfied beyond reasonable doubt that Mr Tempest did not comply with the requirement to answer questions.

206 I accept that initially his failure to comply was justified upon the basis that he was seeking legal advice. However, after 26 September 2016, I am satisfied beyond reasonable doubt that his continued failure to comply was without reasonable excuse.

Formal Findings

207 Count 1 – I find Mr Crichton not guilty.

208 Count 3 – I find Tempest Trees & Gardens Pty Ltd not guilty.

209 Count 4 – I find Mr Tempest guilty.

210 Count 5 – I find Mr Tempest guilty.

In reply please quote our reference: ECM 734835 AJL/AL

8 April 2021

Mr Sorana Dinmore
Acting Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046
Emailed: sorana.dinmore@marion.sa.gov.au

Dear Ms Dinmore

Funding support for City of Unley litigation

On 13 February 2020, I wrote to councils regarding voluntary contributions to support the legal action between the City of Unley and a contractor engaged by residents who had allegedly damaged regulated trees.

At that time, your council agreed to make a voluntary contribution to the cost of that action.

This matter has now been finalised in the Court and unfortunately, the case was lost on appeal. Whilst this is disappointing for the City of Unley and the sector, the decision does provide future guidance on the meaning of 'tree-damaging activity' and the extent of damage required for the offence⁹ to be made out. A copy of the decision¹⁰ is attached.

Importantly the City of Unley was successful in arguing about the onus of proof in relation to the 30% pruning exception. In the Environment, Resources and Development Court, the Judge held that the Council carried the onus of proof beyond reasonable doubt as to whether more than 30% of the crown of the tree had been pruned. This was however overturned by the Supreme Court and as a result the burden of proof now sits with a defendant to prove on the balance of probabilities that pruning of a tree comes within the 30% exception. This is a significant outcome given the difficulty that often exists in establishing what a regulated tree looked like prior to its pruning.

The LGA is advised that our legal partners, Norman Waterhouse lawyers will shortly publish general advice on the decision and its implications for the sector.

Contributions are made in accordance with the LGA's Legal Assist Policy (the LAP Policy). This policy provides that once the legal matter is finalised, the LGA will collect contributions from participating councils and remit the total amount received to the lead council.

In my letter of February 2020, I indicated that total costs faced by the City of Unley were expected to be in the range of \$50,000. In the end, total costs came to \$69,281.99.

Whilst total costs were slightly higher than anticipated, this does not impact upon the amounts expected from councils pursuant to the LAP Policy.

⁹ Section 44(1) of the Planning Act. From 19 March 2021, this section will be replaced by an identical section (s215(1)) of the Planning, Development and Infrastructure Act 2016.

¹⁰ The Corporation of the City of Unley v Crichton & Ors [2019] SAERDC 43

Your council agreed to contribute \$1707.00 plus GST, calculated in accordance with the LAP Policy.

Unless I am advised otherwise by 16 April 2021, an invoice will be issued for payment of your agreed contribution.

Thank you for your support in defending this important legal principle for the local government sector.

Yours sincerely



Matt Pinnegar
Chief Executive Officer

Telephone: (08) 8224 2039

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

Attach – 734932 – City of Unley vs Crighton

SUPREME COURT OF SOUTH AUSTRALIA

(Appeal to a Single Judge)

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment. The onus remains on any person using material in the judgment to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court in which it was generated.

THE CORPORATION OF THE CITY OF UNLEY v CRICHTON & ANOR

[2021] SASC 17

Judgment of the Honourable Justice Nicholson

26 February 2021

**CRIMINAL LAW - APPEAL AND NEW TRIAL - APPEAL AGAINST
ACQUITTAL**

**ENVIRONMENT AND PLANNING - TREES, VEGETATION AND HABITAT
PROTECTION**

**ENVIRONMENT AND PLANNING - ENVIRONMENTAL PLANNING -
DEVELOPMENT CONTROL - WHEN CONSENT REQUIRED - MEANING OF
DEVELOPMENT**

Appeal against findings of not guilty by a Judge of the Environment, Resources and Development Court.

On or about 2 October 2015, two significant regulated trees, T1 and T2, were the subject of pruning by the second respondent, Tempest Trees and Gardens, upon the request of the first respondent, Mr Crichton. The appellant was notified of the damage to both trees and subsequently charged the respondents with undertaking unapproved development contrary to section 44(1) of the *Development Act 1993* (SA). Following a trial before a Judge of the Environment, Resources and Development Court, the Judge found each of the respondents not guilty.

On appeal, the appellant complained that the Judge erred in: the interpretation of what is “tree-damaging activity”, the application of section 56 of the *Criminal Procedure Act 1921* (SA) in relation to the onus of proving whether tree-damaging activity had occurred, the finding that certain aspects of Dr Nicolle’s evidence were not admissible as an expert opinion, the finding that no more than 20 per cent of the crown of each tree had been removed, and in finding that the respondents had not engaged in tree-damaging activity. The respondents maintained that the Judge was correct in his findings.

On Appeal from ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA (HIS HONOUR JUDGE COSTELLO) [2019] SAERDC 43

**Appellant: THE CORPORATION OF THE CITY OF UNLEY Counsel: MR I ROBERTSON SC
WITH MR A CROCKER - Solicitor: NORMAN WATERHOUSE LAWYERS**

**First Respondent: TIMOTHY JAMES HANNAM CRICHTON Counsel: MR M RODER QC WITH
MR D BILLINGTON - Solicitor: HILDITCH LAWYERS**

**Second Respondent: TEMPEST TREES AND GARDENS PTY LTD Counsel: MRS M SHAW QC
WITH MS E COUSINS - Solicitor: CALDICOTT LAWYERS**

Hearing Date/s: 23/06/2020, 25/06/2020

File No/s: SCCIV-20-17

A

Held per Nicholson J, dismissing the appeal:

1. The work done on T1 and T2 did not constitute tree-damaging activity.
2. The Judge was correct to adopt the ordinary meaning of “crown of the tree” where that phrase occurs in paragraph (a) of subregulation 6A(8) of the *Development Regulations 2008* (SA), namely, the living branches and foliage of a tree.
3. The respondents carried the onus of proving, on a balance of probabilities, that the work performed on T1 and T2 fell within the exception provided for by subregulation 6A(8).
4. The estimations of the amount of the crowns removed provided by Dr Nicolle do not have a sufficient basis or support from within Dr Nicolle’s field of expertise to qualify as expert opinion.
5. It was open to the Judge on the evidence to accept the evidence of Mr Cook. The Judge’s findings that he removed no more than 20 per cent of the crowns of T1 and T2 should not be interfered with.

Development Act 1993 (SA) ss 4, 32, 44; *Development Regulations 2008* (SA) reg 6A, Sch 3; *Criminal Procedure Act 1921* (SA) s 56; *Summary Procedure Act 1921* (SA) s 56; *Supreme Court Criminal Rules 2014* (SA) r 104X, referred to.

R v Bonython (1984) 38 SASR 45; *R v Bjordal* (2005) 93 SASR 237; *Corporation of the City of Adelaide v BFR Pty Ltd & Anor* [2014] SAERDC 37; *Overland Corner Station Pty Ltd & Anor v Gould* (2010) 106 SASR 428; *Director of Public Prosecutions v United Telecasters Sydney Ltd* (1990) 168 CLR 594; *R v Hunt* (1987) 1 AC 352; *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249; *Lloyd-Grocock v Police* (2008) 102 SASR 465; *Makita (Aust) Pty Ltd v Sprowles* (2001) 52 NSWLR 705; *The Queen v Duke* (1979) 22 SASR 46; *Fox v Percy* (2003) 214 CLR 118, considered.

**THE CORPORATION OF THE CITY OF UNLEY v CRICHTON &
ANOR
[2021] SASC 17**

Appeal to a Single Judge: Criminal

NICHOLSON J.

Introduction

1 The first respondent, Timothy Crichton, engaged the second respondent, Tempest Trees and Gardens Pty Ltd (ACN 119 727 249) (Tempest Trees),¹ to prune two trees, “T1” and “T2”. Both trees are regulated trees within the meaning of the relevant legislation and situated on the property of Amy Simons. Limbs from both trees were encroaching on Mr Crichton’s neighbouring property.

2 Ms Simons was away when the work was done. On her return she discovered the damage to the trees and reported it to the relevant council, the appellant. By letter dated 16 December 2015, the Council contacted Mr Crichton alleging tree-damaging activity. After further contact back and forth between the appellant and the respondents, both respondents (Mr Crichton as first defendant and Tempest Trees as third defendant) were charged on complaint with offences under the *Development Act 1993* (SA). The relevant counts are as follows.²

First Offence

1. On or around 2 October 2015 at Hyde Park in the State of South Australia, the First Defendant undertook development, namely, tree-damaging activity in relation to two regulated trees (hereafter called ‘**the Trees**’), where that development was not an approved development under the *Development Act 1993* (hereafter called ‘**the Act**’), CONTRARY TO Section 44(1) of the Act.

PARTICULARS

- 1.1 The Trees are situated on land commonly known as 28 Commercial Road, Hyde Park as comprised and described as Certificate of Title Volume 5731 Folio 361 (hereafter called ‘**the Land**’).
- 1.2 The Land was and is owned by Amy Alice Simons.
- 1.3 The Land is within the area of the Complainant.
- 1.4 The First Defendant is a joint owner of land adjacent to the Land, namely Unit 1, 7 Charra Street, Hyde Park.

¹ Trading as Tempest Arborist Service (ABN 28 119 727 249).

² In addition to the first and second respondents, a second defendant, Mr Bendyk was charged on complaint and pleaded guilty to undertaking tree-damaging activity (count 2 of the complaint). A fourth defendant, Mr Tempest, was charged with document related offences and pleaded guilty to those charges (counts 4 and 5 of the complaint). Neither has appealed.

- 1.5 The Trees are both of the species '*Eucalyptus Camaldulensis*', commonly known as River Red Gum.
- 1.6 Each of the Trees:
 - 1.6.1 had a single trunk with a circumference in excess of 2.0 metres, measured 1 metre above natural ground level; and
 - 1.6.2 were 'regulated trees' within the meaning of section 4(1) of the Act and regulation 6A of the *Development Regulations 2008*.
- 1.7 On or around 2 October 2015 the First Defendant caused branches, limbs and the trunk of each of the Trees to be severed ('**the Severing**').
- 1.8 The Severing was physically performed by or on behalf of the Third Defendant pursuant to an arrangement between the First, Second and the Third Defendants to prune the Trees.
- 1.9 The Severing constituted 'tree-damaging activity', and therefore, 'development' within the meaning of section 4(1) of the Act.
- 1.10 The Severing was not an approved development under Division 1 of Part 4 of the Act.

Third Offence

3. On or around 2 October 2015 at Hyde Park in the State of South Australia, the Third Defendant undertook development, namely, tree-damaging activity in relation to two regulated Trees, where that development was not an approved development under the Act, CONTRARY TO Section 44(1) of the Act

PARTICULARS

- 3.1 The Particulars at paragraphs 1.1 – 1.3, 1.5, 1.6, 1.8 – 1.10 are repeated.
- 3.2 The Third Defendant was engaged to undertake pruning works in relation to the Trees.
- 3.3 On or around 2 October 2015 the Third Defendant caused the severing of the branches, limbs, and the trunk of the Trees.

- 3 On 13 December 2019, a Judge of the Environment, Resources and Development Court found the first respondent not guilty of count 1 and the second respondent not guilty of count 3.³ On 24 December 2019, the Judge made a costs order in favour of the second respondent in the amount of \$36,000 with respect to count 3, and an order for party and party costs on the District Court scale in favour of the first respondent with respect to count 1.⁴ The appellant has appealed against all orders, although the appellant only seeks a reconsideration of the costs orders in the event it were to succeed with its substantive appeal concerning the two acquittals.

³ *The Corporation of the City of Unley v Crichton & Ors (No 2)* [2019] SAERDC 43 (trial judgment).

⁴ *The Corporation of the City of Unley v Crichton & Ors (No 3)* [2019] SAERDC 47.

Factual summary

4 T1 and T2 are two large *Eucalyptus Camaldulensis*, or River Red Gum, trees with a circumference measured at one metre above ground level of 2.57 metres and 2.53 metres respectively. Both trees are located on Ms Simons' land at 28 Commercial Road, Hyde Park within the local government boundary of the appellant. Ms Simons' property runs north-south with her front yard and southern boundary fronting onto Commercial Road. Behind and adjacent to the northern boundary of Ms Simons' property is 3/7 Charra Street, then occupied by a Mr Back. Adjacent to the western boundary of Ms Simons' property is 30 Commercial Road at the southern (Commercial Road) end of that western boundary and 9 Charra Street at the northern end of that western boundary. The property at 9 Charra Street was occupied by Mr Bendyk. Also adjacent to Ms Simons' property, at the north-western corner is 1/7 Charra Street, occupied by Mr Crichton.

5 T1 is located 2 metres south of Mr Crichton's boundary and 1.5 metres east of Mr Bendyk's boundary. T2 is located 4.5 metres south of Mr Crichton's boundary and 3 metres east of Mr Bendyk's boundary. There is no dispute that both were regulated trees within the meaning of subsection 4(1) of the *Development Act 1993* (SA) (the Act) and regulation 6A of the *Development Regulations 2008* (SA) (the Regulations).

6 In 2015, Mr Crichton had discussions with Mr Bendyk about limbs falling from T1 and T2 onto both their properties, after which Mr Crichton contacted Tempest Trees. On 15 September 2015, Mr Tempest, a director of Tempest Trees, attended at Charra Street and provided a quote for pruning services in relation to T1 and T2. The quote recorded the client as "Tim Crichton" of "U1/7 Charra St" and referred to job 24249 which was comprised of two jobs: job 1 and job 2. Job 1 appeared to relate more directly to Mr Crichton's property and job 2 appeared to relate to Mr Bendyk's property. The quote contained the following.

(1)

- * Right of the house prune the *Eucalyptus Camaldulensis* to the fence line
- * Remove the waste

\$2100 – inc gst

(2)

- * As above for 1 more *Eucalyptus Camaldulensis* growing over the rear fence line of #9.

\$1800 inc gst

- * Remove the waste

7 The total quote for both jobs 1 and 2 was \$3,900 half of which, being \$1,950, is recorded as having been paid by Mr Crichton.⁵ The start date for both jobs is listed as 2 October 2015. Mr Bendyk was also charged in the same terms as Mr Crichton. However, he pleaded guilty on the day of trial. It was accepted by Mr Bendyk that the quote reflected a joint endeavour by both himself and Mr Crichton to commission the works in relation to T1 and T2.

8 On or about 2 October 2015, just prior to the October long weekend, Tempest Trees carried out the work on T1 and T2. The work was undertaken by Mr Tempest and a Mr Cook, a tree climber, and without the knowledge of Ms Simons. It is not disputed that several branches or limbs of T1 and T2 were removed. Access to each tree was gained through Mr Crichton's and Mr Bendyk's properties and by climbing into the relevant tree so as to occupy the air space above Ms Simons' property. The severed limbs were brought down into Mr Bendyk's and Ms Simons' properties and removed.

9 Ms Simons returned to her property after the long weekend, on or about 4 October 2015. Not surprisingly, she noticed the work which had been done to T1 and T2. Ms Simons described her initial realisation that the trees had been altered as follows:

Q. When you returned to the property, did you notice any change of anything on the property.

A. Yes. As soon as I turned into my driveway, I could see, or rather not see, my trees at the back of my garden.

10 Ms Simons reported the matter to the appellant Council. On 16 December 2015, Mr Weymouth from the appellant wrote to Mr Crichton and raised the issue of unlawful tree-damaging activity. Mr Crichton advised Mr Weymouth that both he and Mr Bendyk had engaged Tempest Trees and "left it up" to Tempest Trees, as the arborist, to determine what work had to be done and the manner in which it would be carried out. The parties engaged in various communications and the appellant sought the provision of relevant documentation.

11 On 1 June 2016, Dylan Tempest for Tempest Trees wrote to Mr Weymouth in the following terms.

Dear Mr Weymouth

Here is a copy of job 24249 as per your request. Tempest's Arborist Service pruned out several large dead branch sections from the mentioned trees being the majority of works carried out. Tempest's Arborist Service also pruned off a small amount of live tissue stopping at the known fence line to complete the works. The idea of pruning out some live tissue was to invigorate the trees. During my daily duties I have on occasion driven

⁵ It was accepted by the Judge that the other half was to be paid by Mr Bendyk, trial judgment at [101].

past the site and have noticed this working as new growth has formed and appears to be growing well.

Dead branches are able to be removed from trees without council approval. Considering the overwhelming majority of works carried out was removing large dead branches, your claim of tree damaging activity is indeed incorrect.

Kind regards

Dylan Tempest

Director/Senior Arborist

In due course, both respondents were charged.

Legislative scheme

12 Section 32 of the Act provides that no development may be undertaken, unless the development is an approved development. A person who undertakes development without an approval commits an offence and is liable to a maximum penalty of \$120,000.⁶

13 The meaning of “development” is found in subsection 4(1) of the Act and includes, relevant to this appeal, the following.

development means—

...

(fa) in relation to a regulated tree—any tree-damaging activity; or ...

to undertake development means to commence or proceed with development or to cause, suffer or permit development to be commenced or to proceed.

14 The meaning of “regulated tree” is also to be found in subsection 4(1) of the Act and as supplemented by regulation 6A. As earlier noted, it is common ground that both T1 and T2 are regulated trees. It is also common ground that the pruning work to T1 and T2 had not been council approved.

15 The meaning of “tree-damaging activity” is also provided for in subsection 4(1) of the Act.

tree-damaging activity means—

(a) the killing or destruction of a tree; or

(b) the removal of a tree; or

(c) the severing of branches, limbs, stems or trunk of a tree; or

(d) the ringbarking, topping or lopping of a tree; or

⁶ Section 44(1) of the Act.

(e) any other substantial damage to a tree,

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition;

16 However, tree-damaging activity is further qualified by subregulation 6A(8) as follows.

(8) For the purposes of the definition of *tree-damaging activity* in section 4(1) of the Act, pruning—

(a) that does not remove more than 30% of the crown of the tree; and

(b) that is required to remove—

(i) dead or diseased wood; or

(ii) branches that pose a material risk to a building; or

(iii) branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people,

is excluded from the ambit of that definition.

17 In short, if the work done on T1 and T2 comprised tree-damaging activity such would constitute unapproved development and give rise to an offence under section 44 of the Act.

The Judge's essential conclusions

18 The following conclusions by the Judge, as summarised, bear directly on the appellant's grounds of appeal.

19 The Judge accepted that the appellant's expert arborist, Dr Dean Nicolle, is a highly skilled expert in his field and gave his evidence in a truthful manner. However, his Honour did not accept the opinion expressed in Dr Nicolle's oral evidence with respect to the percentage of the "crown"⁷ of T1 and T2 that had been removed.⁸

I am not persuaded that his approach or methodology, for the assessment of the extent of the crown which has been removed, is a matter in relation to which expert testimony can be given.

20 Further, Dr Nicolle did not examine the site until after the work had been undertaken, the various prunings removed and the site cleaned up. The Judge expressed a preference for the evidence of Mr Tempest and the second respondent's tree climber, Mr Cook (also a qualified arborist and whose evidence

⁷ A central issue on the appeal was the question of what constitutes the crown of the tree.

⁸ Trial judgment at [52].

the Judge accepted) with respect to matters they had observed, where that evidence conflicted with that of Dr Nicolle.⁹

21 The Judge found Mr Crichton to be a truthful and reliable witness. His Honour accepted that he had instructed Mr Tempest to perform the work within the limits of the law and that at no time was the fence line to be crossed.¹⁰

22 Mr Tempest is also a qualified arborist. The Judge found Mr Tempest to be “a somewhat unsatisfactory witness”¹¹ and, at times, “evasive and/or disingenuous”.¹² However, his Honour accepted aspects of Mr Tempest’s observational evidence where that evidence was “corroborated” by other witnesses such as Mr Back and Mr Cook. His Honour concluded his assessment of Mr Tempest in the following terms.¹³

With these qualifications, and in particular when his evidence is considered in conjunction with the evidence of Messrs Back and Cook, I accept those parts of his evidence which referred to the existence of Mistletoe, as well as the dead branches and cracks in T1 and T2, prior to pruning work being undertaken on T1 and T2 in 2015.

23 Mr Tempest made a visual assessment of T1 and T2 prior to the work.¹⁴ He observed the foliage of T1 to be 90 per cent mistletoe and the foliage of T2 to be 20 per cent mistletoe. He described mistletoe as a tree killing parasite and that its form mimics eucalyptus leaves. In his opinion the branches on T1 and T2 which contained mistletoe were “as good as dead”. He told Mr Crichton and Mr Bendyk that T1 and T2 were heavily diseased, structurally defective and a risk to people and property.

24 The Judge found Mr Back to be an impressive witness. His Honour accepted that, in the context of an earlier discussion about the removal of a nearby third tree, Mr Tempest told Mr Back that T1 and T2 were infested with mistletoe and that it would probably kill the trees.

25 Mr Cook was a very important witness whom the Judge found to be honest, forthright, truthful and reliable. The Judge accepted his evidence as to the amount of “crown” removed from each of T1 and T2 and as to the existence of mistletoe and dead and cracked branches in T1 and T2.¹⁵

26 As at September 2015, Mr Cook was employed by Tempest Trees as a tree climber. He had completed a Certificate III as an arborist. He gave this evidence.¹⁶

⁹ Trial judgment at [54]-[55].

¹⁰ Trial judgment at [76].

¹¹ Trial judgment at [112].

¹² Trial judgment at [113].

¹³ Trial judgment at [115].

¹⁴ See generally, trial judgment at [81].

¹⁵ Trial judgment at [140]-[141].

¹⁶ Trial judgment at [126]-[132], [135].

His initial assessment of T1 was that it had Mistletoe, dead branches and a crack he could see from the ground.¹⁷ T2, he said, had some Mistletoe and twists and splits in the bark of some of the branches.¹⁸

He then climbed into T1. He said it felt ‘*very unsafe*’. There was a large split in one section of the timber, which he could put some fingers into and a ‘*fair bit*’ of Mistletoe. There were also dead branches which they had to remove to make the tree safe.¹⁹

His practice (which he observed on this occasion) was to remove up to 20% of live foliage from such a tree.²⁰

In relation to T2, he observed there to be Mistletoe, but less than T1, small twists in the tree with small stress twists in the bark. Again, his approach had been to remove up to 20% of the tree’s live foliage.

He explained how Mistletoe threatens the life of a tree and how it mimics the leaves of the host tree in terms of shape and colour. It was detectable by him as an arborist, given the smell that it emits.²¹

When pruning a tree in these situations, his practice was to prune ‘to the nearest growth point’. In this case, the nearest growth point to where there was existing damage was back at the main trunk. In this way, he said that the operator would not leave stubs which could lead to epicormic or unstable growth.²²

In cross-examination by Mr Roder, he said he did not know whether it was Mr Crichton or a tenant of the property to whom he spoke when onsite in October 2015. Prior to attending the work site, he had a conversation about the quotation with Mr Tempest. He said that he was not told that he was not to go past the fence line, but that, in any event, he had done so because, in his view, ‘*under the guidelines it was best for the tree*’.²³ He said that it was not until he was in the tree that he could make an assessment (as to what needed to be removed) which was 100% certain.²⁴ He agreed that the assessment as to what was to be removed was left to his judgment as an arborist. He said that in this case, unless he had been able to remove branches which went beyond the fence line, in his opinion, he would have had to leave ‘*large chunks of timber with splits in them [on the Crichton and Bendyk sides of the fence line which, in his judgement], would not have been professional*’.²⁵

¹⁷ T812

¹⁸ T814.

¹⁹ T813.

²⁰ T814.

²¹ T815-816.

²² T819.

²³ T823.

²⁴ T825.

²⁵ T826.

He said that he removed all the Mistletoe from both T1 and T2. His belief, in October 2015, was that he could prune up to 20% of live foliage from a Significant tree. He believed the law permitted more, but that this was the percentage he worked on.²⁶

(Underlining and italics in the original)
(Footnotes in the original)

27 The Judge reviewed his earlier decision in *Corporation of the City of Adelaide v BFR Pty Ltd & Anor*²⁷ in which his Honour held that subsection 56(2) of the (then) *Summary Procedure Act 1921* (SA) had the effect that when prosecuted for an offence under section 44 of the Act for having undertaken tree-damaging activity a defendant bore the onus to bring themselves within any exception to the notion of tree-damaging activity provided for by the Act or the Regulations. However, in the present case, his Honour acceded to the respondents' submissions that *BFR* had been wrongly decided in this respect. His Honour held that the onus to prove the offence charged in count 3 beyond reasonable doubt rested with the prosecution throughout.²⁸

28 The Judge found on the basis of the manner in which the complaint was drawn that the prosecution had to establish tree-damaging activity to both T1 and T2 in order to make out counts 1 and 3.²⁹

29 An important aspect of the defences was the respondents' assertion that Mr Cook pruned less than 30 per cent of the crown of each of T1 and T2 so as to fall within the exception to the definition of tree-damaging activity provided for by subregulation 6A(8). It was necessary for the Judge to construe the meaning of "crown" as used in subregulation 6A(8) in circumstances where this term is not defined in the Act or Regulations or used elsewhere in the Act or Regulations in a relevant context. The Judge adopted the meaning of crown as used in "common parlance" and as indicated by dictionary definitions – "the leaves and living branches of the tree"³⁰; "the leafy head of a tree".³¹ His Honour found as follows.³²

I am not persuaded that it should have anything other than the meaning used in common parlance, which, in turn, has been given expression in the aforementioned dictionaries.³³ In this sense, it may be understood to be a protean word. In the context in which it appears in the Regulations, I take it to mean the live leaves and branches of (in this case) '*Eucalyptus Camaldulensis*'.

Understood in this way, the word would not include Mistletoe and nor would it include the dead/dying or otherwise diseased leaves or branches.

²⁶ T858.

²⁷ [2014] SAERDC 37 at [7]-[13].

²⁸ Trial judgment at [143]-[157].

²⁹ Trial judgment at [162]-[171].

³⁰ Macquarie Dictionary.

³¹ The Shorter Oxford Dictionary.

³² Trial judgment at [178]-[179].

³³ It is not without significance that this meaning is also one which, in general terms, appears to have been adopted by the experts who gave evidence.

(Footnote in the original)

30 The approach adopted by the Judge accorded with that as understood by Dr Nicolle, “I have defined the crown as the total of all branches in the tree that have live foliage”, and with that as understood by both Mr Cook and Mr Tempest. However, in final submissions at trial the appellant departed from the position of its arborist, Dr Nicolle, and contended that, as used in subregulation 6A(8), the word crown had an expanded meaning and included, *inter alia*, dead branches and diseased (including mistletoe infested) branches. The Judge’s rejection of this contention is the subject of appeal ground 1.

31 As far as count 1 is concerned, the Judge’s findings insofar as material to the appeal were as follows.³⁴

I am satisfied beyond reasonable doubt that on or about 2 October 2015:

...

8 T1 and T2 were significantly infested with Mistletoe.

9 T1 and T2 also contained branches which were variously dead, cracked or structurally unsound.

10 On or around 15 September 2015 Mr Crichton (together with Mr Bendyk) entered into an arrangement with Tempest Trees whereby Tempest Trees was engaged to perform work on T1 and T2, which work involved the pruning of T1 and T2.

11 The terms of the arrangement required that:

a) T1 and T2 be pruned;

b) The pruning work be carried out in accordance with the law; and

c) The pruning work cease at the respective Crichton/Simons and Bendyk/Simons boundary fences.

12 The manner in which the pruning work was to be undertaken (including the particular branches/limbs to be removed) was left to the exercise of the independent judgement of the arborist undertaking the work.

13 Tempest Trees, in the guise of Mr Cook, carried out pruning work (which involved the severing of live leaves branches and limbs) to no more than 20% of the crown (as I have determined it to mean) of each of T1 and T2. The pruning work actually carried out by Mr Cook exceeded the work authorised by Mr Crichton in that it proceeded past the respective fence lines.

14 Nevertheless, the pruning work undertaken by Mr Cook, which extended beyond the respective fence lines, was undertaken in a professional manner and undertaken in order to obviate any potential for unsightliness and/or disease, which may have arisen from cuts stopping at the fence lines.

³⁴ Trial judgment at [188]-[189].

15 The degree of Mistletoe infestation and the extent of dead, diseased or cracked branches and limbs was such that a much greater degree of leaves and branches of T1 and T2, than Mr Crichton had anticipated were to be removed, were in fact removed.

It follows from these findings that I am quite unable to assess, with any degree of certainty, what was the percentage of total crown³⁵ which was in fact removed. However, I accept that it was likely to have been considerably more than 30% of the total crown.

(Footnote and underlining in the original)

32 As far as count 3 is concerned, the Judge's findings insofar as material to the appeal were as follows.³⁶

I repeat the findings I have made in relation to count 1.

In addition to those findings, I am satisfied that in or about September and October 2015, no permission to carry out the pruning work was sought by, or on behalf of, Tempest Trees from Ms Simons.

I am also satisfied that on 2 October 2015, Mr Tempest did not tell Mr Cook that he was not to 'cross' the fence line when severing limbs.

I repeat that whilst I am satisfied that although no more than 20% of what I have determined to be the crown was removed during the work by Tempest Trees, I am quite unable to say what was the percentage of total crown that was removed.

33 The Judge concluded with respect to counts 1 and 3 as follows.³⁷

I am not satisfied beyond reasonable doubt that the work actually undertaken by Tempest Trees on T1 and T2 constituted TDA.

Furthermore, and in any event, the authorisation provided by Mr Crichton to Tempest Trees was to undertake work which was specified to be lawful and for work which was less than that actually carried out by Tempest Trees.

As a result, Mr Crichton did not cause TDA to either T1 or T2.

Count 3

I am not satisfied beyond reasonable doubt that the work actually undertaken on T1 and T2 constituted TDA.

(Underlining in the original)

³⁵ By the phrase 'total crown' I intend to mean, in addition to the live leaves and branches, the leaves and branches of the trees with Mistletoe, together with the dead, cracked or otherwise diseased wood.

³⁶ Trial judgment at [190]-[193].

³⁷ Trial judgment at [196]-[199].

Appeal grounds and notice of contention

34 The appellant has raised seven grounds of appeal which can be summarised as follows.³⁸

1. The Judge erred in the interpretation of what is “tree-damaging activity”; in particular the interpretation of subregulation 6A(8).
2. The Judge erred in his application of section 56 of the *Criminal Procedure Act 1921* (SA)³⁹ in finding that the appellant carried the onus to prove that the respondents had pruned more than 30 per cent of the crown of a regulated tree;
3. The Judge erred in finding that aspects of Dr Nicolle’s evidence was not admissible as an expert opinion;
4. The Judge erred in finding that no more than 20 per cent of the crown of each tree had been removed;
5. The Judge erred in finding that Mr Crichton had not caused tree-damaging activity to be undertaken.
6. The Judge erred in finding that Tempest Trees had not undertaken tree-damaging activity.
7. The Judge erred in finding that the Mr Crichton had not caused tree-damaging activity to be undertaken by Tempest Trees.

35 The first respondent filed a notice of contention complaining of what the first respondent characterised as an alternative case pressed by the appellant at trial which it proposed to reagitate on appeal. The first respondent contended that to give consideration to the alternative case would give rise to material procedural unfairness.

Appeal ground 1

36 The appellant contends that the Judge erred in law when interpreting the term “tree-damaging activity”. In particular, the Judge incorrectly confined the meaning of “crown” as used in subregulation 6A(8). It will be of assistance to reproduce in full the provisions that make up the definition of tree-damaging activity. By subsection 4(1) of the Act:

tree-damaging activity means—

- (a) the killing or destruction of a tree; or
- (b) the removal of a tree; or

³⁸ Various sub-grounds have been omitted from the summary.

³⁹ Formerly, the *Summary Procedure Act 1921* (SA)

- (c) the severing of branches, limbs, stems or trunk of a tree; or
- (d) the ringbarking, topping or lopping of a tree; or
- (e) any other substantial damage to a tree,

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition;

Subregulation 6A(8) provides as follows.

- (8) For the purposes of the definition of **tree-damaging activity** in section 4(1) of the Act, pruning—
 - (a) that does not remove more than 30% of the crown of the tree; and
 - (b) that is required to remove—
 - (i) dead or diseased wood; or
 - (ii) branches that pose a material risk to a building; or
 - (iii) branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people,

is excluded from the ambit of that definition.

37 A fundamental issue, raised late in the trial and the subject of ground 1 of the appeal, concerned the meaning to be given to the “crown of the tree” as used in paragraph (a) of subregulation 6A(8). The “crown of the tree” is not defined within the Act or the Regulations. The Judge had regard to both the expert evidence and the ordinary meaning of the term in finding that the “crown” of the tree is that which contains the live leaves and branches of the tree in question.⁴⁰ His Honour expressly rejected the appellant’s submissions as to the proper construction of subregulation 6A(8), namely that the meaning of crown, as used in paragraph (a) was informed by paragraph (b) and also included dead or diseased wood (including mistletoe infestation).⁴¹

Appeal submissions

38 On appeal, the appellant contended that excluded from the definition of tree-damaging activity were two kinds of “maintenance pruning”; that which was not likely to adversely affect the general health and appearance of the tree and that excluded by regulation. The definition was said to capture the severing of branches or limbs of a regulated tree unless that severing constituted maintenance pruning of either type. The appellant’s primary contention focused on the activity which falls within what it argued was the second kind of maintenance

⁴⁰ Trial judgment at [178].

⁴¹ Trial judgment at [176], [179].

pruning within subregulation 6A(8).⁴² Counsel submitted that the Judge made three errors when construing “crown of the tree”.

- (a) His Honour applied an incorrect or incomplete gloss to the terms of the regulation;
- (b) His Honour incorrectly found “crown” in paragraph (a) of subregulation 6A(8) to be restricted to live foliage belonging to the tree; and
- (c) His Honour treated the word “crown” as a matter of evidence and not law.

39 The contentions in (a) and (c) add nothing to that in (b). Whether or not the Judge engaged in (a) or (c), the question on appeal remains the question of law – what does the “crown of the tree” as used in paragraph (a) of the exception comprise?

40 The appellant submitted that the primary definition in the Act does not limit tree-damaging activity by reference to the health or strength of the branch or limb severed. As such, the “maintenance pruning” exception does not apply only to live foliage. Furthermore, the “crown of the tree” in paragraph (a) is to be seen as a “term of art”, that is, having a specific meaning to be derived solely from the terms of the regulation itself. The appellant relied heavily on the use of the word “and” at the end of paragraph (a). It submitted that it would have no proper grammatic value unless “crown of the tree” were to include all of the three aspects referred to in paragraph (b). Once it were to be accepted that those parts of the tree referred to in paragraph (b) including dead or diseased wood all form part of the crown, the evidence of Mr Cook that he removed 20 per cent or less of the crown of each of T1 and T2, as he understood the meaning of the term, would cease to be of relevance.

41 If the crown of each of T1 and T2 were to comprise the live branches and foliage, dead or diseased wood and mistletoe, so as to have been, in fact, considerably larger than as understood by Mr Cook and Mr Tempest and as found by the Judge, there would be no reliable evidence on which to ascertain how much of the crown of each tree had in fact been removed. What would be likely is that Mr Cook by also removing dead and diseased branches and large quantities of mistletoe, would have removed considerably more than 20 per cent of the (new) crown.

42 Were Dr Nicolle’s evidence to be accepted as reliable, it might be inferred that on any definition more than 30 per cent had been removed. In the absence of Dr Nicolle’s evidence and on the assumption that the appellant’s meaning of “crown of the tree” were to be accepted, the dispute over whether or not more than 30 per cent of the (new) crown had been removed would turn on whether or

⁴² It was not contended by the respondents that the work done to T1 and T2 fell within “maintenance pruning that is not likely to affect adversely the general health and appearance” of T1 and T2.

not the respondents carried the onus to prove on balance that the pruning work fell within the subregulation 6A(8) exception.

43 The first respondent contended that the Judge was correct in his finding that the term was to be construed according to its ordinary meaning. This was said to be consistent with the appellant's case at trial, until the construction now proposed by the appellant was first raised after the closing of evidence and during final submissions before the Judge.

44 According to both respondents, the approach taken by the Judge was consistent with ordinary principles of statutory interpretation, the manner in which the trial had been conducted and with the evidence of the three arborists. They contended that each of subparagraphs (a) and (b) in subregulation 6A(8) is independent of the other: one is aimed at how much may be removed, and the other constrains the lawful purpose for removal. Context supports this, given that it is unlikely that the legislature would have been concerned with the removal of dead branches, although it was acknowledged that some live foliage may need to be removed in the process.

Consideration

45 It is an offence to undertake development that is not an approved development (sections 32 and 44 of the Act). It is common ground that the work on T1 and T2 undertaken by Tempest Trees had not been approved such, that if it comprised "development", an offence will have been committed.

46 The meaning to be given to "development" in subsection 4(1) of the Act includes, according to paragraph (fa), "in relation to a regulated tree – any tree-damaging activity".

47 T1 and T2 are both regulated trees. Subsection 4(1) of the Act also sets out the meaning to be given to "tree-damaging activity". It includes paragraph (c) being that aspect of the statutory meaning relied on by the appellant. When paragraph (c), the concluding words of the subsection (4)(1) definition and subregulation 6A(8) are considered together, the definition of "tree-damaging activity", insofar as is material to the appeal, reads as follows:

the severing of branches, limbs, stems or trunk of a tree but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is ...

pruning –

- (a) that does not remove more than 30% of the crown of the tree; and
- (b) that is required to remove –
 - (i) dead or diseased wood; or
 - (ii) branches that pose a material risk to a building; or

- (iii) branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people.

48 Schedule 3 to the Regulations provides for a number of acts or activities that are excluded from the definition of development. Clause 17 of Schedule 3 lists a number of exclusions that by implication would otherwise be tree-damaging activity including, sub-clause 17(1)(e):

- (1) A tree-damaging activity in relation to a regulated tree ... if –
 - (e) the tree is dead.

49 An initial question arising is whether or not the composite exclusion created by the definition in subsection 4(1) and subregulation 6A(8) identifies two types of “maintenance pruning” or maintenance pruning as described and qualified by the language in subsection 4(1) and “pruning” as described and qualified by the language in subregulation 6A(8). It may not ultimately matter, for this appeal, which construction is adopted. What is clear is that two types of “pruning” are excluded from the definition of tree-damaging activity.

50 The construction of the second type of pruning (subregulation 6A(8)) must be considered in the context of the primary definition of tree-damaging activity in subsection 4(1) and subregulation 6A(8) as a whole. Paragraphs (a) to (e) of the primary definition when considered together with subclause 17(1)(e) of Schedule 3 to the Regulations, can only relate to a living tree. Thus the two “pruning” exclusions and, in particular, that in subregulation 6A(8) also only relate to a living tree (albeit one that may contain dead or diseased wood).

51 Paragraphs (a) and (b) of subregulation 6A(8) provide for two limbs of or requirements for the exception. Both must be satisfied; so much is evident from the conjunction “and” linking the two requirements in (a) and (b).⁴³ However, I do not accept the appellant’s contention that paragraph (b) also informs the meaning of “crown of the tree” in paragraph (a). Paragraph (b) provides for three alternative situations where removal of part of a (live) regulated tree will be permitted, as a matter of legislative policy. As far as placitum (i) is concerned, dead or diseased wood can be any or all of: unnecessary to the health and proper appearance of the tree, at risk of failing and falling and therefore dangerous and, in the case of diseased wood, potentially damaging to other healthy parts of the tree. Placita (ii) and (iii) of paragraph (b) speak for themselves as prudent policy considerations. In any of the three situations, pruning of the live tree will be permitted provided paragraph (a) is also satisfied. As far as placitum (i) is concerned, diseased wood, *ex hypothesi*, remains alive and part of the living tree; dead wood, *ex hypothesi*, is not alive nor part of the living tree.

⁴³ It was accepted by the appellant during the appeal that one or more of the purposes in paragraph (b) of subregulation 6A(8) had been satisfied. The issue at the appeal was only whether or not the respondents’ conduct fell within paragraph (a).

52 The fact that dead wood is specifically dealt with and that the definition of tree-damaging activity is otherwise only concerned with a living tree indicates that the exclusions in placita (ii) and (iii) relate to living branches of the requisite character. It follows that pruning which satisfies placita (ii) or (iii) or concerns diseased wood in placitum (i) will, on either of the definitions contended for, fall within the “crown of the tree” as used in paragraph (a) such that the 30 per cent cap will need to be satisfied.

53 The appellant contends that dead branches and any parasitic plant that invaded and caused branches of the tree to become diseased, such as (and relevant to the appeal) mistletoe, is also to be understood as part of the crown. I disagree. There is no good reason to treat dead branches as part of the crown of a living tree. A diseased branch or diseased branches will remain part of the tree but not the foreign plant and its foliage (the mistletoe) and notwithstanding that mistletoe foliage can mimic the foliage of particular trees and have the appearance of being part of the crown of the tree.

54 There is nothing in paragraphs (a) and (b) to indicate that the subject matter of placita (i), (ii) and (iii) of paragraph (b) is, in any given case, to constitute or form part of the crown of the tree in question simply by virtue of the fact that these “components” are referred to in paragraph (b). As already mentioned, the branches in placita (ii) and (iii) and diseased wood in placitum (i) being alive, will by that fact alone form part of the crown on either party’s contention. To hold otherwise would admit of a highly unusual manner for the legislature to define a term which is in common use and when the legislature has provided (in the conventional way) specific definitions of important concepts to be used in this context.

55 I accept that the fact that “dead” wood as used in placitum (i) might seem to have been unnecessary. If it is not to be treated as part of the crown, why include it at all as a potential purpose to engage the exception? On my preferred construction, unlimited dead wood can be removed without engaging the requirement in paragraph (a). Having said that, any such pruning exercise still would have to satisfy the 30 per cent requirement. But if *only* dead wood were to be removed the requirement, *ipso facto* would be satisfied.

56 The inclusion of dead wood is unnecessary to the exception in subregulation 6A(8) as the Judge and I would construe it. This may be because the construction contended for by the appellant was never in contemplation when the subregulation was drafted and promulgated (likely, in my view) such that the potential inconsistency was not adverted to. Alternatively, dead wood may have been included, superfluously, but in order to render clear the position that dead wood could be removed, without restriction.

57 The Judge was correct to adopt the ordinary meaning of “crown of the tree” where that phrase occurs in paragraph (a). Namely, the living branches and foliage of a tree. In the circumstances, the second respondent when pruning T1

and T2 was entitled to remove unlimited dead wood. It was also entitled to remove diseased (but still live) wood and live branches and foliage that fell within placita (i), (ii) or (iii) of paragraph (b) provided that, in combination the live branches and foliage removed did not exceed 30 per cent of each crown.

58 As far as parasitical material, in this case mistletoe, is concerned, the second respondent was entitled to remove all or as much as it chose without it being treated as part of the crowns of T1 and T2 for the purpose of paragraph (a). Whilst the mistletoe was alive and physically intermixed with and, because of its parasitical nature, might appear to have formed part of, the crowns of T1 and T2, it was not part of the crown of either tree. No doubt this may, on occasion, present difficulty for an arborist. The removal of mistletoe might only be possible by the removal of the branches of the host tree to which the mistletoe is attached. If any of those branches are still alive, albeit diseased because of the parasitical mistletoe, those branches will have to be taken into account for the purpose of satisfying paragraph (a). If it were to be the case that more than 30 per cent of the crown would have to be removed, even though consisting of diseased and dying branches, in order to remove the mistletoe and, ultimately, save the tree, development approval will need to be obtained.

59 I reject appeal ground 1.

Appeal ground 2

60 The second ground contends that the Judge erred in finding that the appellant, as complainant, carried the onus of proof in relation to whether the respondents had pruned more than 30 per cent of the crown of each tree. The appellant submitted that subregulation 6A(8) is adjectival to the elements of the offence and that in order to be established additional facts had to be made out. Thus, in order to take advantage of this exclusion the respondents were obliged to prove on balance that they fell within the exclusion. The appellant contended that the Judge erred in finding that it carried the onus of excluding (beyond reasonable doubt) that the exclusion in subregulation 6A(8) applied. The Judge should have found that section 56 of the *Summary Procedure Act 1921* (SA) (as it then was) applied. Section 56 provided as follows.

56—Exceptions or exemptions need not be specified or disproved by the complainant

- (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negated in the complaint.
- (2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

61 The Judge found that subregulation 6A(8) had the effect of cutting down the scope of “tree-damaging activity” in subsection 4(1), by way of definition rather than exception; thus the onus of proving tree-damaging activity remained throughout with the appellant.⁴⁴

62 In an earlier decision, *Corporation of the City of Adelaide v BFR Pty Ltd*,⁴⁵ the Judge held that it was for a defendant to bring themselves within the maintenance pruning exceptions of tree-damaging activity on the balance of probabilities. However, in the present matter, the Judge in reliance on the reasoning in *Director of Public Prosecutions v United Telecasters Sydney Ltd*⁴⁶ declined to follow his earlier decision.

Appeal submissions

63 The appellant contended that the Judge incorrectly applied *United Telecasters* and that *BFR* had been correctly decided. In *BFR*, the Judge had regard to the various considerations recorded by White J in *Overland Corner Station Pty Ltd v Gould*,⁴⁷ as relevant to the proper application of section 56.

64 Ultimately, it was submitted by the appellant that if *BFR* were to be followed, and taking into account the proper meaning of the term “crown of the tree”, the evidence supported a finding that the qualification in paragraph (a) of subregulation 6A(8) had not been met by the respondents.

65 The respondents contended that the Judge had been correct when applying the reasoning in *United Telecasters*⁴⁸ and in finding that subregulation 6A(8) formed part of the definition of tree-damaging activity. *Overland Corner*,⁴⁹ properly applied, did not have the effect of rendering subregulation 6A(8) an exception. The onus to prove the respondents’ guilt remained with the appellant, as complainant, throughout.

Consideration

66 Section 56 is directed to that aspect of statutory language establishing a criminal offence that is properly to be characterised as an “exception, exemption, proviso, excuse or qualification” (hereafter, compendiously, “an exception”). Where such an exception, properly characterised, is present, subsection 56(1) provides that it need not be specified or negated in the complaint and subsection 56(2) provides, *inter alia*, that no proof thereof shall be required on the part of the complainant.

⁴⁴ Trial judgment at [153]-[155].

⁴⁵ [2014] SAERDC 37.

⁴⁶ [1990] HCA 5; (1990) 168 CLR 594.

⁴⁷ [2010] SASC 61; (2010) 106 SASR 428.

⁴⁸ *Director of Public Prosecutions v United Telecasters Sydney Ltd* [1990] HCA 5; (1990) 168 CLR 594.

⁴⁹ *Overland Corner Station Pty Ltd v Gould* [2010] SASC 61; (2010) 106 SASR 428.

67 The effect of section 56, for present purposes, is that if subregulation 6A(8) gives rise to an exception within the purview of section 56, and whilst the appellant, as complainant, remains obliged to prove each element of the offence in question beyond reasonable doubt, it would not be obliged to negative or disprove the exception beyond reasonable doubt. Rather, the respondents, if they wished to bring themselves within the subregulation 6A(8) exception would bear the onus of establishing the necessary factual basis on a balance of probabilities.

68 The natural predilection of the common law is against an accused bearing any onus of proof when defending a criminal charge. This has led to a body of jurisprudence which draws a distinction between legislative provisions which provide defences by way of an exception to otherwise illegal conduct, where a provision such as section 56 can operate to shift the onus of proof, and defences which, properly construed, only cut down by way of definition the element or elements of the offence to be proved, in which case the onus of proving each element (as defined) remains with the complainant. Section 56 has no role to play in the latter situation. The distinction, whilst relatively easy to state, is enigmatic upon contemplation and can be very difficult to apply.

69 A relatively clear example of the distinction can be found in *Director of Public Prosecutions v United Telecasters Sydney Limited*.⁵⁰ A segment of a television broadcast led to the respondent being convicted under section 100(5A) of the *Broadcasting and Television Act 1942* (Cth) which relevantly provided:

A licensee shall not broadcast or televise an advertisement for, or for the smoking of, cigarettes or cigarette tobacco ...

However, subsection 100(10) of that Act, set out in the extract below, provided for a form of defence. Brennan, Dawson and Gaudron JJ explained the correct approach to the question of onus of proof.⁵¹

The rule laid down in *Woolmington v. The Director of Public Prosecutions*, that the burden of proving every element of an offence charged rests at all times upon the prosecution, was expressed to be “subject to ... the defence of insanity and subject also to any statutory exception”. It is made clear in *Reg. v. Edwards* and *Reg. v. Hunt* that the statutory exceptions referred to are not confined to those which expressly cast the burden of proof upon the accused (see, for example, *Crimes Act 1900* (N.S.W.), s.417), but extend to cases in which an intention to do so is necessarily implied. Such cases will ordinarily occur where an offence created by statute is subjected to a proviso or exception which, by reason of the manner in which it is expressed or its subject matter, discloses a legislative intention to impose upon the accused the ultimate burden of bringing himself within it. That burden may, of course, be discharged upon the balance of probabilities. Whilst it is convenient to speak in terms of provisos or exceptions, the legislative intent cannot be ascertained as a mere matter of form. The Court of Appeal in *Reg. v. Edwards* at p 40, viewed the statutory exceptions as limited to:

⁵⁰ [1990] HCA 5; (1990) 168 CLR 594.

⁵¹ *Director of Public Prosecutions v United Telecasters Sydney Limited* [1990] HCA 5; (1990) 168 CLR 594 at [12]-[13], 600-601.

“offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities.”

In *Reg. v. Hunt*, at p 375, even this formulation was said by the House of Lords not to be exhaustive. Each case must turn upon the construction of the particular enactment.

But it is clear that in this case the exemption contained in s.100(10) of the *Broadcasting and Television Act* was not intended to cast any burden upon an accused charged under s.100(5A). Sub-section (10), as it then was, reads:

“A reference in sub-section ... (5A) ... to the ... televising of ... an advertisement shall be read as not including a reference to the ... televising of matter of an advertising character as an accidental or incidental accompaniment of the ... televising of other matter ...”

Whilst sub-s.(10) cuts down the scope of sub-s.(5A) it does so by way of definition rather than by way of proviso, exception or saving and there is no reason to suppose that in so limiting sub-s.(5A) the legislature intended that the sub-section should operate without limitation unless an accused brought himself within the terms of sub-s.(10).

(Citations omitted)

⁷⁰ In *Chugg v Pacific Dunlop Ltd*,⁵² decided shortly after *United Telecasters*, the plurality in the High Court⁵³ reaffirmed the approach explained in *United Telecasters*.

The primary issue raised by the informant’s appeal is whether, in a prosecution under s.21 of the Act, the informant or the defendant bears the onus of proof on the question of practicability. It was unanimously held by the Full Court that the onus is on the informant. The issue upon which Ormiston J. reached his dissenting decision, namely, the relevance of reasonable foreseeability to liability under s.21 of the Act, will be dealt with later.

The Act is silent as to the onus of proof in relation to the offence created by s.21. That is not unusual for the rule as to the onus of proof in a criminal proceeding is clear, namely, that “it is the duty of the prosecution to prove (a defendant’s) guilt subject ... to the defence of insanity and subject also to any statutory exception”: *Woolmington v. Director of Public Prosecutions*. The question thus raised by the informant’s appeal is whether the words “so far as is practicable”, as used in s.21(1) and (2) of the Act, constitute a statutory exception.

For the purpose of assigning the onus of proof, a distinction is made between a requirement which forms part of the statement of a general rule and a statement of some matter of answer, whether by way of exception, exemption, excuse, qualification, exculpation or otherwise (called an “exception”), which serves to take a person outside the operation of a general rule. The distinction does not depend on the rules of formal logic. Rather, the categorization of a provision as part of the statement of a general rule or as a statement of exception reflects its meaning as ascertained by the process of statutory construction. Where some matter is said to be an exception to an offence, the question is

⁵² [1990] HCA 41; (1990) 170 CLR 249.

⁵³ *Chugg v Pacific Dunlop Ltd* [1990] HCA 41; (1990) 170 CLR 249 at [7]-[13], 256-259 (Dawson, Toohey and Gaudron JJ).

whether there is to be discerned a legislative intention “to impose upon the accused the ultimate burden of bringing himself within it”. The intention may be discerned from express words or by implication.

To some extent the question whether there is a legislative intention to impose the onus of proof of some particular matter on a defendant is answered by provisions such as s.168 of the *Magistrates (Summary Proceedings) Act 1975* (Vict.) which provides:

- “(1) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in the Act, order, by-law, regulation, or other document creating the offence, may be proved by the defendant but need not be specified or negated in the information.
- (2) Whether an exception, exemption, proviso, excuse, or qualification is specified or negated or not no proof in relation thereto shall be required on the part of the informant.”

Section 168 of the *Magistrates (Summary Proceedings) Act* and like legislative provisions leave the question whether the matter in issue is an exception to be answered by the ordinary process of statutory construction. See the discussion of s.14 of the *Crimes Act 1914* (Cth) in *Dowling v. Bowie*, at p 145. And, despite the language of s.168 and like legislative provisions, if a matter accompanies the description of an offence, then it will ordinarily be construed as an element of the offence which the prosecution must prove, unless there is something in the form of the language used or in the nature of the subject matter to suggest that it is an exception upon which the defendant bears the onus of proof.

Although the form of language may provide assistance, ultimately the question whether some particular matter is a matter of exception is to be determined “upon considerations of substance and not of form”: *Dowling v. Bowie*, at p 140. And, of course, the necessity to have regard to substantive and not merely formal considerations is emphasized by the words of s.168(1) of the *Magistrates (Summary Proceedings) Act* and like legislative provisions which make it clear that a matter may be classified as a statutory exception “whether it does or does not accompany the description of the offence”.

One indication that a matter may be a matter of exception rather than part of the statement of a general rule is that it sets up some new or different matter from the subject matter of the rule. Such is ordinarily the case where, in the terms used in *Reg. v. Edwards*, at p 40, there is a prohibition on the doing of an act “save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities”. See *Reg. v. Hunt*, at p 375, where Lord Griffiths considered the statement from *Reg. v. Edwards* “an excellent guide to construction”. If the new matter is a matter peculiarly within the knowledge of the defendant, then that may provide a strong indication that it is a matter of exception upon which the defendant bears the onus of proof.

(Citations omitted)

Section 168 of the *Magistrates (Summary Proceedings) Act 1975* (Vic) was the Victorian equivalent, in all material respects of section 56 of the *Summary Procedure Act 1921* (SA).

71 In *Overland Corner Station Pty Ltd & Anor v Gould*,⁵⁴ White J had to consider the potential application of section 56 in the context of the offence provided for by subsection 26(1) of the *Native Vegetation Act 1991* (SA) which provided:

A person must not clear native vegetation unless the clearance is in accordance with this part.

A question before his Honour was whether the words “unless ... this part” constituted an exception such that, by virtue of subsection 56(2) of the *Summary Procedure Act*, it was not a matter upon which the prosecution bore the onus. His Honour found that subsection 56(2) did apply such that it was for the first defendant to bring itself within the exception relied on.

72 Justice White adopted a review of relevant authorities which had then recently been undertaken by Doyle CJ in *Lloyd-Grocock v Police*,⁵⁵ including *Chugg* and the reaffirmation therein by the plurality in *United Telecasters*. Justice White provided the following summary of relevant propositions concerning the application of section 56 with which I respectfully agree and which I adopt.⁵⁶

The following propositions are discernible in the authorities concerning the application of s 56 and its equivalents.

- (i) The question of whether an enactment contains a provision in the nature of an exemption or proviso for the purposes of s 56(2) is to be resolved by the construction of the statute under which the charge is laid.⁵⁷ When some matter is said to be an exception to an offence, the question is whether there is to be discerned a legislative intention “to impose upon the accused the ultimate burden of bringing himself within it”.⁵⁸
- (ii) The focus on the process of statutory construction should be on the substance (“the essence or thrust”), rather than the form, of the statutory provision in question.⁵⁹ However, that does not mean that the form of the statutory provision is irrelevant as the way in which a section is set out may be a useful guide to the intention of Parliament with respect to any postulated exception or proviso.⁶⁰
- (iii) A qualification or exception which assumes the existence of facts upon which the general rule of liability is based and which depends on additional facts of a special kind is, depending on issues of substance, more likely to be a qualification or

⁵⁴ [2010] SASC 61; (2010) 106 SASR 428.

⁵⁵ [2008] SASC 313 at [35]-[42]; (2008) 102 SASR 465 at 471-474.

⁵⁶ *Overland Corner Station Pty Ltd & Anor v Gould* [2010] SASC 61; (2010) 106 SASR 428 at [28].

⁵⁷ *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 257; *R v Edwards* [1975] 1 QB 27 at 39-40; *Rowbottom v Nicolitsi* (1986) 41 SASR 576 at 580.

⁵⁸ *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 257.

⁵⁹ *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 258; *Daire v O'Malley* (1986) 41 SASR 583 at 586-587.

⁶⁰ *Rowbottom v Nicolitsi* (1986) 41 SASR 576 at 580.

exception to which s 56(2) applies,⁶¹ or, as it was put by Dawson, Toohey and Gaudron JJ in *Chugg v Pacific Dunlop*,

One indication that a matter may be a matter of exception rather than part of the statement of a general rule is that it sets up some new or different matter from the subject matter of the rule.⁶²

- (iv) If a matter accompanies the description of an offence, then it will ordinarily be construed as an element of the offence which the prosecution must prove, unless there is something in the form of the language used or in the nature of the subject matter to suggest that it is an exception upon which the defendant bears the onus of proof.⁶³
- (v) There are many authorities indicating that the fact that defendants are likely to have peculiar knowledge bearing upon the application of the exemption or proviso, or enabling them to prove the positive of any negative averment is immaterial in the process of construction involved.⁶⁴ However, the circumstance that a relevant fact would be difficult for the prosecution to establish and easy for a defendant to establish might well dispose the legislature to make the proof of that fact an exception within the meaning of s 56.⁶⁵ In this respect Dawson, Toohey and Gaudron JJ in *Chugg v Pacific Dunlop* said:

If the new matter is a matter peculiarly within the knowledge of the defendant, then that may provide a strong indication that it is a matter of exception upon which the defendant bears the onus of proof.⁶⁶

- (vi) Ultimately, the application of s 56 depends upon a postulated legislative intention which is to be determined by reference to all of the relevant circumstances. This makes it difficult to state any general rule on the subject and can limit the utility of comparison of one case with another.⁶⁷

(Footnotes in original)

73 As the authorities make plain, ultimately, it is a question of the proper construction of the statute under which the charge is laid. The primary contention of the respondents, as accepted by the Judge, is that properly construed subregulation 6A(8) is definitional only and does not provide for an exception to otherwise criminal conduct.

74 In order to properly appreciate this contention it is necessary to identify the provisions making up the offences in question. According to the respondents the offences derive from section 32 and subsection 44(1) – the rest is definitional.

Subject to this Act, no development may be undertaken unless the development is an approved development. (section 32)

⁶¹ *Dowling v Bowie* (1952) 86 CLR 136 at 139-140.

⁶² *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 258.

⁶³ *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 258.

⁶⁴ *R v Edwards* [1975] 1 QB 27 at 39-40.

⁶⁵ *Rowbottom v Nicolitsi* (1986) 41 SASR 576 at 580.

⁶⁶ (1990) 170 CLR 249 at 258-9.

⁶⁷ *Lloyd-Grocock v Police* (2008) 102 SASR 465 at [42].

A person must not undertake development contrary to this Division.
Maximum penalty ... (subsection 44(1)).

75 As I understand the argument, the offence to be established by a complainant is the “undertaking of development” without approved.

76 The respondents contend that an element of the offences charged is the undertaking of development as to which the appellant bears the onus of proof. The provisions which provide for the meaning of “development” (paragraph (fa) of the definition in subsection 4(1) which incorporates the meaning of “tree-damaging activity” as defined in subsection 4(1) which itself incorporates subsection 6A(8)) do no more than define or set out the parameters of the term “development”. In particular, the “exception” in subregulation 6A(8) is a carve out from the notion of “tree-damaging activity” and not an exception to the offence of undertaking development (without approval).⁶⁸

77 The submission has its attraction, although it relies very much on a literal construction and the form of the relevant provisions. The question that arises is whether this is the correct construction as a matter of substance and whether it properly reflects the intention of the legislature as to where the onus of proof should lie.

78 A description of the offence of undertaking development, in the manner relied on by the appellant in this matter, expanded by incorporating relevant parts of the definitions, and which does not do undue violence to the interlocking provisions, is as follows.

A person must not without approval undertake ... the severing of branches, limbs, stems or trunk of a [regulated] tree ... [except where] ... the severing of branches (etc) is required to remove dead or diseased wood or branches that pose a material risk to a building or branches ... [that] pose a material risk to ... people and [which] does not remove more than 30 per cent of the crown of the tree.

79 When this form of the offence is considered, the language is that of a general prohibition with a subset of that general prohibition being characterised as an exception. Considered in this form, an intention by the legislature to require a defendant to bring themselves within the qualification can more readily be discerned.

80 The basic policy underlying the inclusion of tree-damaging activity in the offence of undertaking development without approval is to ensure that no pruning (severing of branches, limbs, stems or trunk) of regulated trees in the council area (without approval) occurs unless the pruning is of a particular type (“maintenance pruning” or subregulation 6A(8) type pruning). This is the “essence or thrust” of the prohibition. In other words, the legislature intends that

⁶⁸ A question might arise as to whether or not this requirement of approval is, itself, an exception to which section 56 might apply. However, this issue is not before the Court as it is common ground that no approval was obtained.

unapproved pruning of regulated trees should be prohibited whilst recognising that there will be circumstances where it would be permissible without the need to obtain approval. The substance of the prohibition points to subregulation 6A(8) being intended to operate as an exception to rather than as part of the definition of the offence.

81 There are other factors which lend support to such a conclusion.

82 The wording of the qualification is not to be found in the statutory provision constituting the offence itself, but is separately and distinctly provided for in the regulations. Whilst this itself might be simply a matter of form and on its own would carry little weight, it is a fact potentially indicative of the legislative intention.

83 Further, the qualification in this case is one that assumes the existence of the facts necessary to making out the primary prohibition (“pruning”) but depends upon the finding of additional facts of a special kind – the establishment of one or more of the requirements in placita (i), (ii) or (iii) in paragraph (b) of subregulation 6A(8) and that no more than 30 per cent of the crown of the tree has been removed. In this respect, some “new or different matter from the subject matter of the rule”⁶⁹ has been set up (the purposes of the pruning and the quantity of the pruning). Related to this consideration is the fact that the additional facts are of a nature such that it typically would be very difficult for the prosecution to garner material evidence but relatively easy for a defendant to do so.

84 In a case such as the present, the council as complainant is likely to know nothing about the state of any trees in question at the time the pruning work was contemplated and performed. Usually, the council would be presented with the finished product – the pruned trees with the area tidied up and prunings removed. Faced with such a situation, the task of “reconstructing” the tree or trees in order to determine and obtain independent⁷⁰ evidence concerning whether or not diseased wood had been removed, whether or not any aspect of the tree or trees had posed a material risk to buildings or people and what percentage of the crown had been removed (which, in effect, was what Dr Nicolle attempted) would be very difficult and, on occasion, not possible.

85 By way of contrast, the pruner – be they arborist or owner – is in the best position to be able to explain what was done and why and to keep notes supplemented with photographs in support. That they, acting prudently, ought do so or run the risk of failing to satisfy the onus is not unreasonable. The requirements of subregulation 6A(8) should be well within the knowledge and control of the pruner. If they are acting within subregulation 6A(8) they should readily be able to establish this on a balance of probabilities basis.

⁶⁹ *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 259 (Dawson, Toohey and Gaudron JJ).

⁷⁰ That is, evidence from sources other than those with an interest in having the trees pruned.

Whereas the prospect of a complainant council being able to disprove beyond reasonable doubt the requirements that would satisfy subregulation 6A(8) typically would be very slim.

86 For the above reasons, I am satisfied that subsection 56(2) applied and that the Judge was correct in so finding in his earlier decision in *BFR* but erred in this respect in the present matter. The respondents carried the onus of proving, on a balance of probabilities, that the work performed on T1 and T2 fell within the exception provided for by subregulation 6A(8).

87 Appeal ground 2 has been made out.

Appeal ground 3

88 This ground concerned a challenge to the Judge's refusal to accept Dr Nicolle's evidence as to the percentage of the crowns of T1 and T2 that had been removed. The appellant contended that Dr Nicolle's evidence lent support to the conclusion that on either of the contended for meanings to be given to "crown of the tree", tree-damaging activity had been undertaken by the second respondent and caused by the first respondent.

89 The Judge summarised Dr Nicolle's opinion evidence on this topic and the basis offered for the opinion in the following terms.⁷¹

He was asked to assume that T1 and T2 had been pruned in October 2015. He said that, based on that assumption, the structures of both T1 and T2 had been 'highly modified'. On the further assumption, that the cuts to T1 and T2 which he observed had been made to the trees in the previous October, he concluded that at that time both T1 and T2 would have been fully healthy and leafy.

He confirmed that, in his view, between 95% and 99% of the crown of T1 had been removed and between 45% and 65% of the crown of T2 had been removed.

He reached his opinion by comparing '*the [circumference of] the final cuts in T1 with the circumference of the remaining branches with leaves on them and [looking] at that as a ratio or a percentage*'. He conducted a similar exercise with respect to T2.

He was also asked to assume that each tree had been cut to a point which aligned with the boundary fences and to opine what percentage of crown would have been removed if the cuts had stopped at those points. He said that in the case of T1, it would have been at least 95% of the crown and for T2 between 40% and 60%.

In cross-examination by Mrs Shaw QC, he said that he did not physically measure the diameter of the pruning cuts but rather determined the diameter by making a visual estimate from ground level. The cuts, to which he was referring, had been made at various points between 5.5 metres and 12 metres above ground level.

He was unable to name any scientific article or text where the methodology, which he had adopted for evaluating the amount of crown that had been removed, was referenced. He said that he could not provide any record of any tests where this methodology had been

⁷¹ Trial judgment at [34]-[50].

used or any textbook that said this was a permissible method for estimating the amount of tree crown that had been removed.

He reiterated that he was unaware of any research where his methodology had been used or of any peer reviewed papers or texts where such a methodology had been adopted. In the absence of any such material, he relied on his knowledge of general biology with respect, for example, to circumstances where a tree splits into two trunks. In such cases, he said that the size of the trunk is proportional to the amount of live foliage on that part of the tree.

He did not agree with the use of the terms ‘dominant’ and ‘sub-dominant’ for trees T1, T2 and T3. Such terminology could however be appropriate where one was considering trees in a plantation setting which this was not.

He conceded that he did not know whether, in October 2015, any of the branches on T1 or T2 were dead or cracked prior to their being pruned. He also accepted that he could not say whether either tree was structurally flawed before being pruned.

He said that Mistletoe was well known to occur in this species of tree, but that it was not very common in such trees in metropolitan Adelaide. He was unable to say whether, in October 2015, there would have been Mistletoe on T1 and T2. Generally, in his opinion, Mistletoe would not adversely impact the health of a large tree unless there was a significant amount of Mistletoe present. He did not agree that Mistletoe ‘mimics’ this species or that, for an arborist, it was difficult to identify.

He said that if there had been Mistletoe in T1 and T2 to such an extent as to detrimentally affect their health, he would have expected to have seen evidence of it in the form of reduced growth rates and thinner bark relative to the amounts of heartwood.

He accepted that he had not pruned Mistletoe on a commercial basis, but he had removed it from trees in his own Eucalypt arboretum. He said that he had not recommended removing Mistletoe in the past, but accepted that other arborists may well have done.

He disagreed that, in Adelaide, Mistletoe is seen as a pest. He accepted that in certain circumstances when Mistletoe progresses, it can lead to a point where little or no host foliage remains on the tree.

He confirmed that his opinions were formed without having seen T1 and T2 prior to pruning, and that they were based ‘on assumptions provided to [him] and what [he] could observe in the trees from [his] site visit and [his] experience of the species’.

When certain propositions, as to the bowing of trees, from the publication, ‘*Tree Risk Assessment Manual*’, were put to him, he said that they applied to conifers and winter deciduous trees, rather than eucalypts.

He said that the presence of cracks in a tree did not necessarily mean that there was anything structurally unsound about the tree.

In re-examination, he said that although the species is a very long lived species, T1 and T2 were relatively young trees. He said that when looking at some of the photos in Exhibit P2, he could not see any evidence of Mistletoe in T1 and T2. He said that if Mistletoe was present he would have expected to have been able to detect it from looking at the photos.

(Underlining and emphasis in original)

(Footnotes omitted)

- 90 In refusing to admit into evidence Dr Nicolle's opinion as to the percentage of the crowns removed, the Judge explained as follows.⁷²

However, I do not accept the opinion proffered by him in his oral evidence, with respect to the percentage of tree crown which was removed during the process of these works. I do not accept his opinion because I am not persuaded that his approach or methodology, for the ascertainment of the extent of crown which has been removed, is a matter in relation to which expert testimony can be given.

Matters of general biology to one side, he could offer no scientific support for the opinions he proffered. In the absence of any such material, I am not satisfied that the subject matter of the opinion he expressed '*forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court*'.

Moreover, Dr Nicolle said that he did not examine T1 and T2 prior to the pruning work being undertaken. As a result, he conceded that he was not in a position to determine whether Mistletoe was present on T1 and T2 prior to them being pruned. Nor was he able to gainsay, other than in the most general of terms, that each of the trees contained dead, diseased or cracked branches.

Accordingly, although I accept his general expertise, where his evidence differs from the evidence of Mr Tempest, and particularly for reasons I will refer to later, Mr Cook, as to the existence of a significant infestation of Mistletoe and/or dead, diseased or cracked branches in T1 and T2, prior to the trees being pruned, I prefer their evidence.

(Emphasis in original)
(Footnotes omitted)

Appeal submissions

- 91 The appellant contended that the evidence was rejected on the basis that there was no scientific support for Dr Nicolle's opinions; a matter which it further contended went to weight rather than admissibility. According to the appellant,

The question was whether the accepted expert, Dr Nicolle, was capable of expressing the opinions as to the amount of the crown that had been removed. That is a question of fact, tested against a recognised legal standard. Here, the basis, method of calculation and Dr Nicolle's reasoning process were disclosed. Applying his expertise he made an assessment. There was no threshold to its acceptance that it must be documented in a journal or text. No evidence was led to show the assessment was not acceptable to arborists, botanists or ecologists. The trial judge did not identify any scientific principle that the prosecution relied upon which was beyond the expertise of the witness. The appellant submits that there was no basis for its exclusion.

- 92 The second respondent contended that the Judge's finding that he could not rely upon the opinion of Dr Nicolle as to the percentage of the crowns removed

⁷² Trial judgment at [52]-[55].

was correct. It was submitted that Dr Nicolle was not in a position to estimate the amount removed. No foundation or scientific method was put in support of his methodology, nor were any measurements taken.

- 93 Various other submissions were put by the parties concerning the import of Dr Nicolle's evidence were it to be accepted. However, they were put in the context of the appellant's contended for meaning of "crown of the tree" and/or on the assumption that the appellant carried the onus of proof to exclude the operation of subregulation 6A(8). Given my conclusions with respect to appeal grounds 1 and 2, it is unnecessary to consider these arguments.

Consideration

- 94 It is difficult to see how success with appeal ground 3 might assist the appellant. Even if the opinion evidence of Dr Nicolle concerning how much of the crowns of T1 and T2 had been removed were to be admitted, it could only carry very little weight for the reasons his Honour gave.

- 95 In *R v Bjordal*,⁷³ DeBelle J summarised the relevant principles governing the admissibility of expert evidence. In so doing, his Honour adopted the approach of King CJ in the erstwhile leading case in this State, *R v Bonython*⁷⁴ and the principles enunciated by Heydon JA in *Makita (Aust) Pty Ltd v Sprowles*.⁷⁵ It is only necessary to set out a short portion of DeBelle J's summary.⁷⁶

The conditions governing the admissibility of evidence tendered as expert opinion were expressed by Heydon JA in *Makita (Aust) Pty Ltd v Sprowles* in these terms:

In short, if evidence tendered as expert opinion evidence is to be admissible, it must be agreed or demonstrated that there is a field of "specialised knowledge"; there must be an identified aspect of that field in which the witness demonstrates that by reason of specified training, study or experience, the witness has become an expert; the opinion proffered must be "wholly or substantially based on the witness's expert knowledge"; so far as the opinion is based on facts "observed" by the expert, they must be identified and admissibly proved by the expert, and so far as the opinion is based on "assumed" or "accepted" facts, they must be identified and proved in some other way; it must be established that the facts on which the opinion is based form a proper foundation for it; and the opinion of an expert requires demonstration or examination of the scientific or other intellectual basis of the conclusions reached: that is, the expert's evidence must explain how the field of "specialised knowledge" in which the witness is expert by reason of

"training, study or experience", and on which the opinion is "wholly or substantially based", applies to the facts assumed or observed so as to produce the opinion propounded. If all these matters are not made explicit, it is not possible to be sure whether the opinion is based wholly or substantially on the expert's specialised knowledge. If the court cannot be sure of that, the evidence is strictly speaking not admissible, and, so far as it

⁷³ [2005] SASC 422; (2005) 93 SASR 237 at [26]-[31].

⁷⁴ (1984) 38 SASR 45.

⁷⁵ [2001] NSWCA 305; (2001) 52 NSWLR 705 at [85].

⁷⁶ *R v Bjordal* [2005] SASC 422; (2005) 93 SASR 237 at [26]-[27].

is admissible, of diminished weight. And an attempt to make the basis of the opinion explicit may reveal that it is not based on specialised expert knowledge, but, to use Gleeson CJ's characterisation of the evidence in *HG v The Queen* (at 428 [41]), on "a combination of speculation, inference, personal and second-hand views as to the credibility of the complainant, and a process of reasoning which went well beyond the field of expertise".

The decision in *Makita* has been consistently followed since. In *Sydneywide Distributors Pty Ltd v Red Bull Australia Pty Ltd*, Branson J commented that the approach of Heydon JA seemed a counsel of perfection. However, as the Court of Criminal Appeal noted in *R v Howard* (at 13) when her Honour elaborated her reservations, she noted that the existence of a field of specialised knowledge was something which might be assumed in cases where evidence is adduced without objection. That is not the position here.

The passage quoted from *Makita* identifies several conditions. For present purposes it is sufficient to refer to the following:

1. there must be a field of specialised knowledge;
2. there must be an identified aspect of that field in which the witness has demonstrated an expertise;
3. the opinion must be based on the expert knowledge of the witness;
4. so far as opinion is based on facts observed or assumed, those facts must be identified and proved; and
5. it must be established that the facts on which the opinion is based form a proper foundation for it.

I turn to examine the application of those conditions to the issues in this case.

(Citations omitted)

96 I accept for present purposes that properly trained and experienced arborists, such as Dr Nicolle, possess a field of specialised knowledge. However, it does not follow that every opinion expressed by such an expert is necessarily one that derives from that field of specialised knowledge. It is this truism that underpins Heydon J's second requirement – there must be an identified aspect of that field in which the witness demonstrates that by reason of specified training, study or experiences, the witness has become an expert. It was this, as I apprehend, that was the Judge's principal concern as to admissibility.

97 Dr Nicolle purported to have expertise in being able to assess the quantity of the crowns of T1 and T2, what those crowns were comprised of and whether or not or the extent to which, mistletoe existed throughout the crowns by simply reviewing from the ground the remaining stubs of the pruned limbs and estimating from the ground the diameters of those pruned stubs. Whilst this was a common practice of Dr Nicolle's he did not offer anything, nor did the complainant on his behalf, to support a finding that this practice of Dr Nicolle's represented an identified aspect of the field of expertise (the practise of

arboriculture) of which Dr Nicolle was an exponent. Dr Nicolle, in effect, performed a mathematical calculation based on his observations of the pruned eucalyptus taken by way of estimation from the ground and on his experience of how healthy eucalyptus of the age in question might have been expected to develop. There was simply no capacity to test the accuracy of Dr Nicolle's estimations on this occasion, nor, importantly, on any previous occasions when he may have performed a similar exercise. For all that is known, he might have been repeatedly in error on any such previous occasions. I mean no disrespect to Dr Nicolle in any way whatsoever. As the Judge found, he clearly is a very competent, credentialed and experienced arborist. Such estimations may be of use in other contexts. However, for the reasons given, I am not satisfied that they have a sufficient basis or support from within Dr Nicolle's field of expertise to qualify as expert opinion.

98 There are other considerations which, in my view, render Dr Nicolle's opinion as to the amount of the crowns removed of little weight, even if they were to be strictly admissible.⁷⁷ Dr Nicolle only examined the trees after the event, he accepted that he had not been in a position to determine whether mistletoe had been present and he was unable to opine, except generally, as to the extent of any dead, diseased or cracked branches. Further, Dr Nicolle estimated the circumferences of various limbs (at the location of the pruning cuts) and compared these to estimates of the circumferences of remaining branches. The pruning cuts were at various points between 5.5 metres and 12 metres above the ground on which Dr Nicolle was standing.

99 I reject appeal ground 3. If I were to be in error on the question of admissibility, I would give the opinions as to the extent to which the crowns had been pruned little weight.

Ground 4

100 The fourth ground contends that the Judge erred in finding that no more than 20 per cent of the crown of either T1 or T2 had been removed. On the basis of the meaning of "crown of the tree" as contended for by the respondents and found to be correct by the Judge and by me (appeal ground 1) this finding is sufficient to show that the appellants satisfied the onus upon them (appeal ground 2) and for the appeal to be dismissed.

101 The Judge's reasoning on this issue was governed by or articulated in the context of his finding that an onus to exclude the qualification in subregulation 6A(8) beyond reasonable doubt rested with the appellant. Given my finding to the contrary (appeal ground 2), it would serve no purpose to review the Judge's reasoning or a number of the parties' respective submissions under this ground. However, of importance is the Judge's finding that Mr Cook gave truthful and

⁷⁷ Leaving aside questions of discretionary exclusion in criminal cases, the question of admissibility is to be kept separate from the question of weight. The former is a matter for the Judge and the latter is a matter for the trier of fact, *The Queen v Duke* (1979) 22 SASR 46.

reliable evidence both generally and as to the amounts of the crowns which he said he removed, which the Judge accepted. Whilst there is a challenge to this evidence, the challenge was based essentially on Dr Nicolle's (unaccepted) evidence.

102 In reviewing the Judge's acceptance of the evidence given by Mr Cook, I must exercise appellate restraint, as explained by the plurality in *Fox v Percy*.⁷⁸

Consideration

103 Mr Cook was the only tree climber who pruned T1 and T2. He was repeatedly questioned during his examination in chief and cross-examination concerning his understanding of the term the crown of a tree and as to how much of each crown he removed. His evidence was consistent throughout. The Judge's summary of his evidence has been set out earlier.

104 In relation to T1, the following exchange occurred during evidence in chief.

Q. How would you describe its relative infestation.

A. There was quite a fair bit in there.

Q. You have mentioned that your instruction was to prune that tree. What did that involve in relation to the mistletoe.

A. Well, the mistletoe was coming out in the section of the tree that we were removing, so, yeah, within the scopes of the job that we were able to remove that section of mistletoe out of it.

Q. You have mentioned that there were dead and cracked branches on this tree.

A. That's correct.

Q. As far as pruning is concerned, what is your goal in that respect.

A. Well, obviously, we want to remove the dead branches out of there before they become a hazard and they could fall off, yeah, making the tree safe.

Q. You mentioned the need to prune the tree within the confines of what you call the Tree Act or the regulations that apply. What was your understanding or what premise did you apply to your approach to pruning and the removal of live foliage.

A. I always removed up to 20% and if I could, less of the live foliage.

Q. In that sense, was that your approach on this particular job.

A. That is correct.

Q. Did you do that in relation to tree No.1.

A. Yes.

⁷⁸ [2003] HCA 22; (2003) 214 CLR 118 at [23], [25]-[29], [41] (Gleeson CJ, Gummow and Kirby JJ).

105 In relation to T2, the following exchange occurred during evidence in chief.

Q. Then coming to tree No.2, if I can ask you what your assessment of that tree was, what you saw in that tree.

A. So there was some mistletoe in some sections and I could see some small twists in the tree with some stress in the bark, so small splits in the cambium layer in the bark.

Q. Again, did you climb into that tree.

A. I did climb into that tree.

Q. Once you climbed into it, did that assist your assessment further.

A. Correct.

Q. How did that assist it.

A. Just identifying things clearer, to make an assessment of what I would remove and what I didn't need to remove.

Q. Are you able to recall the extent of the mistletoe in that tree.

A. I couldn't give you a real percentage, but there was mistletoe in it. I couldn't give you an exact amount. Probably less than tree 1.

Q. Again, insofar as your task of pruning that tree was concerned, what was your approach.

A. To remove up - in my opinion, up to 20%, and if I can, I did less.

Q. Of what.

A. Of live growth.

Q. When you're referring to 'growth', you're referring to -

A. The actual live - the leaves, basically.

Q. What about the mistletoe.

A. Well, that's not included in my evaluation of live growth, so -

Q. What is the purpose of removing the mistletoe.

A. To save the tree's life, in my opinion.

Q. On your training and your approach, how does mistletoe threaten a tree's life.

A. It basically chokes the tree to death.

Q. Is there a name for it in that context that you use; what sort of botanical thing.

A. I couldn't give you the exact botanical name of what the particular mistletoe was, but, yeah, it basically mimics the host tree.

Q. Did you prune tree No.2.

A. I did prune tree No.2.

Q. Again, insofar as your approach to how much of light (*scil*: live) foliage you were to remove, what was it.

A. Up to 20%.

Q. Did you complete the job adopting that approach in relation to tree No.2.

A. Yes.

106 During cross-examination by counsel for the appellant, Mr Cook confirmed that to the best of his knowledge he removed all of the mistletoe that was in T1 and T2 and that with any tree he followed his general practice of pruning “up to 20 per cent of the overall live growth in the canopy of the tree”. In this latter respect, the following exchange occurred.

Q. Now, when you say 'Live growth' what do you mean by that.

A. The actual live, healthy leaves in the overall canopy of the tree.

Q. What if you found a branch that was full of dead leaves, leaves that were part of the tree but they had died.

A. Well they're not counted with it because it's not live growth.

Q. So where do you get the understanding that you don't count dead leaves.

A. Where do I get it from?

Q. Yes.

A. In training from years ago.

Q. Do you count dead branches as part of the canopy.

A. No, because it's not live growth.

Q. Do you count Mistletoe.

A. Again no, because it's not live growth.

Later in the cross-examination, Mr Cook confirmed that for T1 he removed close to 20 per cent of live foliage, mistletoe and dead and decaying branches and that he removed mistletoe and twisted timber from T2.

107 I have reviewed the evidence at trial including in particular that of Mr Tempest,⁷⁹ Mr Cook and Dr Nicolle and the photographic evidence relied on by the appellant. The Judge had the well accepted advantage of seeing and hearing Mr Cook give his evidence as to which he was extensively cross-examined. The appellant has not been able to point to any incontrovertible facts or uncontested testimony that would serve to contradict the evidence of Mr Cook. Nor can his testimony be seen as contrary to compelling inferences available from other evidence in the case.⁸⁰ It was open to the Judge on the evidence to accept the evidence of Mr Cook. There is no basis on which the Judge's acceptance of Mr Cook's evidence might be interfered with.

108 His Honour's findings number 13 and 15,⁸¹ applicable to both T1 and T2, were open on the evidence and should not be interfered with. Those findings have been set out earlier. Appeal ground 4 has not been made out.

109 Notwithstanding the onus of proof advantage which, on my findings, was available to the appellant, I am satisfied on balance, that the work performed on T1 and T2 fell within the subregulation 6A(8) exception. As a consequence of the conclusions I have reached to this point, the Judge's overall conclusions⁸² that the work actually done on T1 and T2 did not constitute tree-damaging activity must be upheld and the appeal with respect to both respondents dismissed.

Conclusion

110 It is not necessary to determine the causation issues raised by appeal grounds 5 to 7, nor the first respondent's notice of contention. The appeal is dismissed.

111 At the outset of the hearing of the appeal,⁸³ counsel for the first respondent made an application under sub-rule 104X(4) of the *Supreme Court Criminal Rules 2014* (SA). All parties agreed that the matter was of sufficient importance and complexity such that the costs of the appeal should be assessed in the ordinary way rather than as limited by the terms of sub-rule 104X(2). I make a direction to that effect. I will hear the parties further on the question of the costs of the appeal.

⁷⁹ As regards those aspects accepted by the Judge such as, in particular, his observations of the presence of mistletoe.

⁸⁰ *Fox v Percy* [2003] HCA 22; (2003) 214 CLR 118 at [23], [25]-[29], [41] (Gleeson CJ, Gummow and Kirby JJ).

⁸¹ Trial judgement at [188].

⁸² Trial judgement at [196].

⁸³ In accordance with rule 104X(5) of the *Supreme Court Criminal Rules 2014*.

Funding of Driveway Crossovers

Originating Officer Unit Manager Civil Services - Colin Natt

Corporate Manager Manager Operations - Fiona Harvey

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R14

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REPORT OBJECTIVE

To provide Council with an update on the funding of driveway crossovers as part of Council's streetscape and footpath upgrade programs.

EXECUTIVE SUMMARY

Council's streetscape and footpath upgrade programs provide high quality infrastructure that improves accessibility, connectivity, amenity and safety for the City of Marion community. Driveway crossovers form a critical part of this infrastructure and it is important that crossovers are carefully considered as part of each streetscape and footpath upgrade project.

Over the past 12 months, driveway crossover infrastructure has been replaced in many streetcape and footpath projects as part of the construction works. In most cases council has fully funded these replacements with the exception of two crossover replacements constructed as part of the footpath blitz campaign, where landowners contributed 50% towards the costs.

Given competing priorities the incentive opportunity was not implemented fully as part of the new/upgrade footpath program, and hence it is recommended that this opportunity is continued as part of the 2021-22 footpath program to better understand the take up of the program and associated resourcing and cost impacts.

It is also recommended that under some circumstances council continues to 100% fund some driveway crossover replacements to ensure driveway crossovers are constructed to council's standards, designs, levels and materials.

RECOMMENDATION

That Council:

1. **Continues to fund 50% of the crossover replacement cost when a landowner requests a new crossover as part of the scheduled/budgeted footpath replacement program, subject to landowners paying the other 50% of the crossover cost.**
2. **Funds 100% of driveway crossover replacements in scheduled/budgeted footpath programs where Council deems a replacement is required as part of the construction program.**
3. **Notes that the funding of these crossover replacements will be managed within existing annual capital works program budgets.**

4. **Notes that a report will be presented to Council in April 2022 to provide the outcomes of the fully implemented crossover incentive opportunity as part of the 2021/22 new/upgraded footpath program.**

Liveable: Replacing driveway crossovers as part of the footpath upgrade and streetscape programs improves the amenity, safety and accessibility of the City's streets.

Risk Management: The partial or full funding of driveway crossovers contributes to reducing risks associated with tripping hazards and supporting improved accessibility.

Proposed Future Budget Allocation: Ongoing funding for driveway crossover replacement can be managed through annual capital works budgets.

DISCUSSION

At its meeting on 10 March 2020, Council considered two Motions on Notice (GC200310M01 and M02) relating to driveway crossovers with the following resolutions:

Streetscape Initiative - Council Funded Crossovers

1. *That as a Council-wide streetscape initiative to commence in the 2020/21 financial year, Council will fully fund crossover replacements for Streetscape projects, unless there are exceptional circumstances (e.g. new driveway up to 3 years old, owner's preference to retain the existing driveway, or existing heavy duty driveway access).*

Crossover Funding Incentive

1. *That as a Council-wide streetscape initiative for 2020/21, Council will as an incentive, fund 50% of the crossover replacements cost when scheduled/budgeted footpath replacement programs occur subject to landowners paying the other 50% of the crossover cost.*
2. *At the completion of the 2020/21 capital works program, a report be presented to Council that identifies the take up of crossover replacements additional cost and any other observations, allowing Council to decide whether to continue with the program.*

The report is being presented to the April 2021 General Meeting of Council in lieu of completion of the 2020/21 capital works program to allow Council the opportunity to discuss the outcomes of the program to date, whether they wish to continue with the Crossover Funding Incentive program and if an allowance needs to be factored into future budgets.

Crossover replacements

During the period April 2020 - April 2021 three programs were relevant to crossover replacements and the incentive program:

- Streetscape upgrade program
- Footpath Blitz program
- New and upgrade footpath program

Streetscape upgrade program

The most recent streetscape upgrade projects have included the replacement (or pending replacement) of 109 residential driveways in total:

New Residential Driveways (Streetscapes 19/20)		
	Quick Road, Mitchell Park (Between Marion Road and Bradley Grove)	Sturt Road, Mitchell Park (Between Marion Road and Maple Avenue)
Northern Side	2	18
Southern Side	35	2
Total	37	20

New Residential Driveways (Streetscape 20/21)			
	Sturt Road, Sturt (Between Diagonal Rd and Marion Rd)		Birch Crescent, Clovelly Park (Between Sturt Road and Ash Avenue)
Northern Side	16	Eastern Side	16
Southern Side	20	Western Side	Nil
Total	36	Total	16

The replacement of these driveways has resulted in the consistent presentation of the whole streetscape, improving amenity and importantly safety. The replacement of the residential driveways has ensured that materials and levels of the footpath and driveway crossovers can be accurately matched, reducing tripping hazards and improving accessibility.

Using an estimate of \$2,000 per driveway, the cost of replacing the 109 driveways within the four streetscape upgrade projects is approximately \$218,000. This equates to less than 5% of the total cost of the four projects (\$5.1m).

Footpath Blitz program

The Footpath Blitz campaign sought feedback from residents on the worst footpaths in their neighbourhoods, with a commitment from Council to fix those footpaths that were cracked, broken, unsafe and unsightly. Council also made a commitment that, in streets where the footpath was being fixed either side of a driveway, residents could take up the opportunity to fix their driveway crossover with a 50% contribution from Council.

The Blitz campaign ran for four weeks in May 2020 and resulted in over 350 customer requests being received to fix footpaths across almost all suburbs in City of Marion. During the program to repair footpaths a small number of requests were received to seek Council's contribution to replacement of a landowners driveway, with two driveway crossovers meeting the criteria and subsequently being replaced, with a 50% contribution from Council.

New and upgrade footpath program

The 2020-21 capital works program includes a program to construct new footpaths on roads where there is no footpath, and upgrade footpaths on priority roads.

An important outcome of this program is to provide safe, accessible footpaths to support people of all abilities to be actively mobile throughout the City. It places a high priority on streets and roads

that lead to key destinations such as public transport stops/stations, schools, community facilities, and other services.

The driveway replacement incentive was not actively promoted through this program due to the limited resources that could be dedicated to engaging with all landowners as part of the notification and construction process. This resulted in no driveway crossovers being replaced where landowners have requested the crossover replacement and contributed 50% towards it.

However there were a number of driveway crossovers that were replaced, and were fully funded by Council as part of the footpath project budget. These situations included:

- Replacement of driveway crossover sections to ensure levels of the connections between the driveway crossover and new/upgraded footpath were well matched so as not to cause tripping hazards.
- Construction of new driveway crossover sections where no crossover of suitable material existed, e.g. where driveways were dirt or gravel.
- Construction of new driveway crossover sections, where the existing driveway crossover was constructed of non-compliant material.

In all cases the driveway crossover sections were constructed to align with the width of the new/upgraded footpath. The average cost of each crossover replacement is \$400-\$600.

In considering the implementation of this motion, some observations and feedback have been collected and summarised:

- Generally, driveway crossover replacements requested by landowners only occur when they are damaged and therefore become unsafe. Staff did not note any crossovers in this state as part of the 2020-21 footpath upgrade program.
- Driveway crossovers that need to be replaced due to the points raised above (change in levels, change in materials) could be considered council's responsibility given council is delivering the footpath upgrade program and hence needs to consider engineering design, levels, construction standards, materials etc. and it may be that some landowners would not contribute to this.
- Implementing this motion as part of the new/upgrade footpath program will be administratively onerous. The implementation process will require:
 - upfront communication on the incentive opportunity with all landowners along the road where the footpath is due for replacement/upgrade. This differs with current communication practices, where the resident (not necessarily the landowner) is notified of the planned works
 - follow-up on site meeting with any landowner that wishes to replace their driveway crossover, to measure and quote
 - preparation of an invoice to seek the 50% contribution from the landowner
 - confirmation and processing of payment of the invoice before works begin
 - organising the construction of the driveway as part of the construction of the footpath
- There is a risk that program delivery may be delayed if, for example, landowners delay in paying their 50% contribution.
- In situations (outside of the footpath new/upgrade program) where driveway crossovers are identified as unsafe, the landowner is responsible for repairing/replacing the driveway crossover and funding 100% of its cost. There may be some landowners who think there is inequity in providing 50% funding for some landowners over others.

As the incentive opportunity was not actively promoted through the new/upgraded footpath program over this financial year, and therefore cannot be fully evaluated, it is difficult to assess the benefits of the program against the risks and potential impacts.

Therefore it is recommended that:

1. The 50% funding opportunity is fully promoted and implement over the 2021-22 program, for those landowners who wish to pro-actively replace their driveway crossover; and
2. Council continues to fully fund the replacement of crossovers where these are critical in ensuring a high quality service outcome i.e. where levels, materials, designs need altering as part of the new footpath construction.

Policy Review - Final Climate Change Policy

Originating Officer	Unit Manager Environment and Sustainability - Ann Gibbons
Corporate Manager	Manager Engineering, Assets and Environment - Mathew Allen
General Manager	General Manager City Services - Tony Lines
Report Reference	GC210427R15

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REPORT OBJECTIVE

The purpose of this report is to:

- Provide Council with the public consultation feedback relating to the DRAFT Climate Change Policy (Attachment 1); and
- Present a final Climate Change Policy for endorsement (Attachment 2).

EXECUTIVE SUMMARY

At the 9 February 2021 General Council meeting, Council passed the following resolution endorsing the DRAFT Climate Change Policy for public consultation (GC210209R05).

- 1. Notes the revised Climate Change Policy provided as Attachment 1 to this report.*
- 2. Endorses the revised Climate Change Policy for public consultation during February 2021.*
- 3. Notes that the final Climate Change Policy and summary of public consultation findings will be brought to Council for consideration and endorsement in April 2021.*

A public consultation process was conducted via the Making Marion website from 11 February 2021 until 12 March 2021. There were 426 visits to the Making Marion page and 36 respondents completed the online survey (Attachment 1).

A Making Marion e-newsletter was distributed to 2,237 registered participants with an open rate of 41.3%. The consultation was also promoted via the February edition of the Green Thymes e-newsletter to 854 local environment group members and other interested residents. A post on the City of Marion Facebook page on 9 March 2021 reached 975 people.

Additional comments received via Making Marion have been reviewed and amendments made to the Policy.

A FINAL Climate Change Policy (Attachment 2), with tracked changes, is presented for endorsement.

RECOMMENDATION

That Council:

- 1. Notes the public feedback received on the DRAFT Climate Change Policy (Attachment 1).**
- 2. Endorses the revised Climate Change Policy (Attachment 2).**

GENERAL ANALYSIS

A DRAFT Climate Change Policy was endorsed for public consultation at the 9 February 2021 General Council meeting (GC210209R05). A public consultation process was conducted via the Making Marion website from 11 February. We experienced a technical error with a link distributed in our communications. Based on feedback we received, the consultation period was extended to Friday 12 March. The consultation went live on the 11 February 2021 so, with the extension, this allowed a month for consultation.

A Making Marion e-newsletter was distributed to 2,237 registered participants which had an open rate of 41.3%. The consultation was also promoted via the February edition of the Green Thymes e-newsletter to 854 local environment group members and other interested residents. A post on the City of Marion Facebook page on 9 March 2021 reached 975 people.

There were 426 visits to the Making Marion page and 36 people participated in the online survey (Attachment 1).

Key findings from the 36 responses received include (refer to graph in Attachment 1 for further detail):

- **47%** 'agreed' or 'strongly agreed' that the draft Policy objectives clearly state how the City of Marion will respond to climate change while **30%** 'disagreed' or 'strongly disagreed'.
- **36%** 'agreed' or 'strongly agreed' that the scope of the draft Policy is appropriate for the City of Marion while **39%** 'disagreed' or 'strongly disagreed'.

Many of the respondents who did NOT agree that the draft Policy objectives clearly state how the City of Marion will respond to climate change and/or did NOT agree that the scope of the draft Policy is appropriate for the City of Marion indicated in their comments that they were looking for more detail on the actions Council would be taking in response to climate change. The City of Marion's Policy Framework endorsed in 2018 states that '*a policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject*' that sets the Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans.

Some of the actions respondents were looking for are covered in various reports and Council plans including the Carbon Neutral Plan 2020 - 2030, the Coastal Climate Change Adaptation Study 2018, the Remnant Native Vegetation Plan, and the Tree Management Framework. Other suggested actions are governed by the South Australian Planning and Design Code established under the Planning, Development and Infrastructure Act 2016 or addressed through the Power Line Environment Committee that supports implementation of the Electricity Act 1996.

A number of respondents who indicated support for the Policy statements commented that they were looking for more guidance on which emission scenarios Marion is aligning with to prioritise actions and make decisions, and/or were also seeking more detail on specific actions and measures.

In response to public comments the following amendments have been made to the Policy (amended text is underlined):

- Scope expanded to clarify what is covered: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.
- Clarification added to clause 4.1 **Evidence-based strategic and operational activity** (founded on the most recent International Panel on Climate Change (IPCC) assessment reports, whilst recognising the need for flexibility to adapt as scientific knowledge and climate models improve) to address climate change, support informed decision-making, and facilitate a change to a low carbon economy in support of global targets to limit global warming to 1.5^o Celsius.
- Amendments to Clause 4.3 **Community support** through:
 - support services to vulnerable members of the community
 - education initiatives that raise awareness about climate risks, hazards and opportunities
 - supporting volunteers and community groups to deliver projects that build resilience to climate change.
- Mitigation definition changed to: Taking action to reduce or prevent emission of greenhouse gases and/or to increase the amounts of greenhouse gases removed from the atmosphere. Can also be referred to as 'Abatement'.
- Reference to the Carbon Neutral Plan 2020 - 2030 included in Section 7 of the Policy.

A FINAL Climate Change Policy (Attachment 2), with tracked changes, is presented for endorsement.

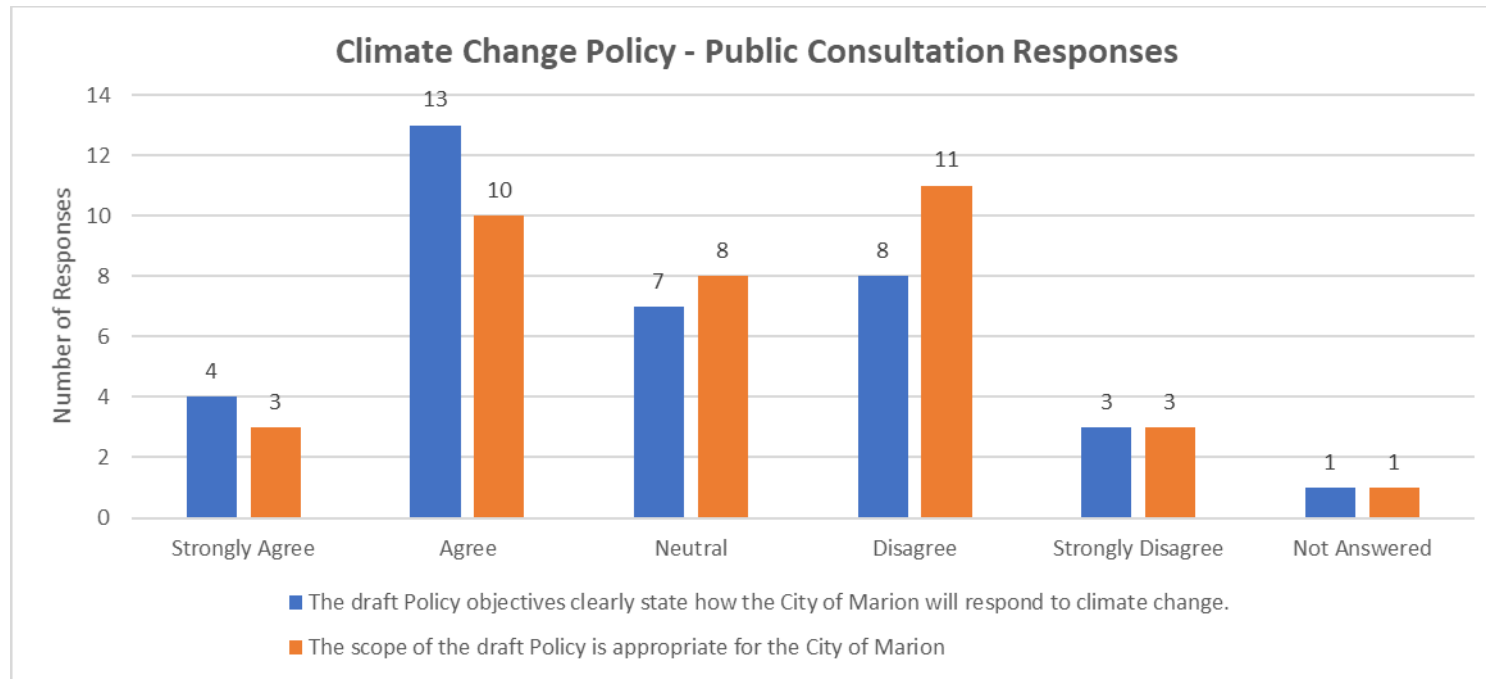
Attachment

#	Attachment



1	GC210427R - Attachment 1 - Climate Change Policy - public comments 2021
2	GC210427R - Attachment 2 - Climate Change Policy - Final tracked changes

GC210427R – Climate Change Policy – Attachment 1: Public Consultation Feedback



	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response
				* Text highlighted in yellow indicates amendments or added text in the Policy.
1	Not answered	Not answered	<i>Via email</i> 1. The policy seems too weak and vague to give any guarantee of effectiveness - how strongly it is implemented, how well it is integrated at all levels of council, how it is prioritised financially	1. A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans ⁱ . Detailed actions, including timeframes for delivery and financial impacts, contained in the Carbon Neutral Plan 2020 – 2030 .

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			<p>and how seriously it is considered will determine if anything changes. So whilst I support the policy in principal, I worry that it will not necessarily be followed or "enforced".</p> <p>2. I suggest broadening the definition of <i>mitigation</i> to additionally include activities that seek to reduce the level of GHGs in the atmosphere. For example, sequestering CO2 from the atmosphere through changes to terrestrial or marine environments. Taking inspiration from NSW, the new definition could be something like: <i>Mitigation: Taking action to reduce or prevent emission of greenhouse gases, or to increase the amounts of greenhouse gasses removed from the atmosphere. Can also be referred to as 'Abatement'.</i></p> <p>This would broaden the scope of potential council activities covered by this policy.</p> <p>Thank you for all your work!</p>	<p>* Text highlighted in yellow indicates amendments or added text in the Policy.</p> <p>2. Mitigation definition changed to: Taking action to reduce or prevent emission of greenhouse gases and/or to increase the amounts of greenhouse gases removed from the atmosphere. Can also be referred to as 'Abatement'.</p>
2	Strongly Agree	Strongly Agree	Not answered	No change to the Policy required.
3	Agree	Agree	Does the Council currently use electric vehicles? A good time to "mitigate" GHG's.	<p>Addressed in Carbon Neutral Plan 2020 – 2030 (2.2 Zero Emissions Fleet)</p> <p>Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p>
4	Neutral	Neutral	I think the policy has some room for improvement with more specific actions.	A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response * Text highlighted in yellow indicates amendments or added text in the Policy.
			And how can council engage with the community to encourage participation at individual level as well.	<p>a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.</p> <p>Detailed actions contained in the Carbon Neutral Plan 2020 – 2030 and being delivered via the Resilient South Regional Climate Partnership.</p> <p>Community education included in 4.3 and 4.4 of the Policy.</p> <p>Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p>
5	Disagree	Disagree	It is full of motherhood statements but very little on targets and how they will be achieved in practical terms.	<p>A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.</p> <p>Detailed actions contained in the Carbon Neutral Plan 2020 – 2030 and being delivered via the Resilient South Regional Climate Partnership.</p> <p>Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p>

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response * Text highlighted in yellow indicates amendments or added text in the Policy.
6	Agree	Disagree	Scientists are basing their estimates on wrongcasts that the Bureau of meteorology is notorious for. The cycle of Adelaide weather has not changed for years.	No change to the Policy required.
7	Neutral	Neutral	Not answered	No change to the Policy required.
8	Agree	Neutral	A step in the right direction may be to use a 'green energy' company. Diamond energy supply's my electricity. They are rated by Choice (Australian Consumers Association) as the best green energy supplier for South Australia. Their policy is to sell energy produced from renewable resources. Not rocket science but certainly, a step in the right direction.	Addressed in Carbon Neutral Plan 2020 – 2030 (3. Switch to Renewable Electricity) Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.
9	Disagree	Disagree	There are no concrete measures described how Mariaon will mitigate climate risk. Build own solar plants? Fund privates? Install wind power? etc.	Addressed in Carbon Neutral Plan 2020 – 2030 (3. Switch to Renewable Electricity) Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.
10	Agree	Agree	Great work to City of Marion in setting this policy. It's great to see a high level document that directs all of the Council's operational activities on this important issue. A few comments - * "Evidence-based" in 4.1 is bit unclear - is this referring to evidence of climate change? Surely planning would also be based on theoretical models? * We know that there are lots of different future scenarios that we could be	The Climate Risk Governance Assessment completed in 2018 recommended that Council's Climate Change Policy should align to specific IPCC climate change scenarios and suggested a high emissions scenario of RCP8.5 (Representative Concentration Pathway) as a minimum. More recently, an international team of climate scientists, economists and energy systems modellers have built a range of new 'pathways' that examine how global society, demographics and economics might change over the next century. They are collectively known as the Shared Socioeconomic Pathways (SSPs) and are complementary to RCPs.

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			<p>planning for in response to climate change depending on how well we all do in managing carbon emissions. Often climate change practitioners are directed to choose 'high emissions scenarios' to ensure we plan for the worse case. It would be good for the policy to contain some direction about whether City of Marion is planning climate change responses based on high emissions scenarios.</p> <p>* Possibly as part of 4.1, it would also be good if the policy made a commitment to publicly share information on climate hazards and risk to the broader community where Council has a role in risk mitigation e.g. through stormwater management, coastal protection, bushfire fuel load management etc. This could assist with better transparency in determining the risk for the community including impacts to personal healthy and safety, property values, insurance and finance.</p>	<p>These SSPs are now being used as important inputs for the latest climate models, feeding into the Intergovernmental Panel on Climate Change (IPCC) sixth assessment report due to be published in 2020/21.</p> <p>The Carbon Neutral Plan 2020 – 2030 refers to the need to limit global warming to 1.5 degrees Celsius, a threshold the Intergovernmental Panel for Climate Change (IPCC) suggests is safe.</p> <p>Clause 4.1 amended as follows: Evidence-based strategic and operational activity (founded on the most recent International Panel on Climate Change (IPCC) assessment reports, whilst recognising the need for flexibility to adapt as scientific knowledge and climate models improve) to address climate change, support informed decision-making, and facilitate a change to a low carbon economy in support of global targets to limit global warming to 1.5° Celsius.</p> <p>Clause 4.3 amended as follows:</p> <ul style="list-style-type: none"> education initiatives that raise awareness about climate risks, hazards and opportunities encouraging behaviour change to increase community mitigation and adaptation efforts and help build resilience to changes in our climate
11	Disagree	Disagree	<p>Could not see any details - am I reading the wrong document? it's one thing to have a policy, another to have a plan of action. How would increasing housing density with unsustainable developments of mostly glass and synthetic material requiring aircon, with no lawn or garden to soak up rain during flooding events,</p>	<p>A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management,</p>

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			mitigate the effects of Climate Change? Council consistently approves such developments in the face of continuing ratepayer outrage and all advice. Sorry, not happy.	<p>planning and development, community support, and economic development.</p> <p>Detailed actions contained in the Carbon Neutral Plan 2020 – 2030 and being delivered via the Resilient South Regional Climate Partnership.</p> <p>Clause 14 – Principles of good planning of the Planning, Development and Infrastructure Act 2016 includes reference to climate change and states that “<i>particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change</i>”. Development planning rules are set by the State Government in the Planning and Design Code and implemented by councils through development approvals responsibilities.</p> <p>Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p>
12	Strongly Agree	Strongly Agree	Very happy to read that the City of Marion plans to be carbon neutral in its own operations by 2030.	No change to the Policy required.
13	Strongly Disagree	Strongly Disagree	Wheres the detail? There is nothing in it - just fluff and motherhood statements. What is the detailed policy about retreat from the shoreline? What is the councils response to the eventual total loss of sandy beaches? What is the councils response to those who will be displaced and bankrupted by climate change? How will the council respond to near coastal salinization, rising water tables and loss of storm drainage? What urban changes will be made to cope with exceptional heatwaves? What increased resources will	<p>A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community and economic development.</p> <p>Coast-related issues are addressed in the Coastal Climate Change Adaptation Study 2018 (City-of-Marion-Coastal-Climate-Change-Adaptation-Study-2018.pdf)</p>

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response
			be allocated to reducing bio-fuel risk of bushfires? How will Marion council respond to the loss of biodiversity within our area. Have you even studied this in depth? In any policy, other than fatuous political speak, all these and other questions have to be adequately addressed. From what I see, you haven't even scratched the surface.	<p>Clause 14 – Principles of good planning of the Planning, Development and Infrastructure Act 2016 includes reference to climate change and states that “<i>particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change</i>”. Development planning rules are set by the State Government in the Planning and Design Code and implemented by councils through development approvals responsibilities.</p> <p>Biodiversity matters, including climate impacts, fuel loads and fire risk, are addressed in the Remnant Native Vegetation Plan (Remnant-Native-Vegetation-Plan.pdf (marion.sa.gov.au))</p>
14	Disagree	Disagree	I would like to see some additional content within this policy to ensure council is going to take a proactive approach to this and take responsibility to address solutions towards a low carbon economy. Additionally the council needs to include a focus on educating people and encouraging all community residents to be proactive with their responsibilities. Let everyone's role in reduce, reuse recycle and supporting businesses in the council area that include low carbon in their business operations. Providing clear examples of how this will impact our lives here and make a difference. Additionally I would like to include a greener community focus, too many large significant trees are being removed in Marion to allow for infill.	<p>A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans.ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.</p> <p>Detailed actions contained in the Carbon Neutral Plan 2020 – 2030. Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p> <p>Community education included in Clauses 4.3 and 4.4 of the Policy.</p> <p>Tree-related issues considered in the Tree Management Framework (Tree Management Framework Trees City of Marion)</p>

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response * Text highlighted in yellow indicates amendments or added text in the Policy.
				A report on 'Tree Management' detailing a 7-year planting program was considered at the 23 March 2021 General Council meeting (GC210323R07).
15	Agree	Agree	The issues of council responsibility for planning and development do not appear to be fully addressed in relation to the effects of climate change. For example building development approvals close to water ways and the sea. The effect on dunes and basically what happens when the gulf level rises to buildings and infrastructure affected by it. It is a simple short easily readable policy.	<p>Clause 14 – Principles of good planning of the Planning, Development and Infrastructure Act 2016 includes reference to climate change and states that <i>"particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change"</i>. Development planning rules are set by the State Government in the Planning and Design Code and implemented by councils through development approvals responsibilities.</p> <p>Coastal and sea-level rise issues are addressed in the Coastal Climate Change Adaptation Study 2018 (City-of-Marion-Coastal-Climate-Change-Adaptation-Study-2018.pdf)</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.</p>
16	Strongly Agree	Agree	I feel like there could be more large trees planted to help as well. Most trees seem to be sparse and small like bottle brush. Lots of new playground and reserves which is great but once again, more trees.	<p>Tree-related issues considered in the Tree Management Framework (Tree Management Framework Trees City of Marion)</p> <p>A report on 'Tree Management' detailing a 7-year planting program was considered at the 23 March 2021 General Council meeting (GC210323R07).</p> <p>No change to the Policy required.</p>
17	Strongly Disagree	Strongly Disagree	what a waste of intelligent people's time. All that work to come up with something that is so meaningless	<p>No change to the Policy required.</p>

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				* Text highlighted in yellow indicates amendments or added text in the Policy.
18	Neutral	Neutral	<p>A very 'wafty' document was my impression. It calls up the "Southern Region Local Government Implementation Plan 2015-2019" which of course has run its defined time period. One wonders as to the applicability of using to a) maintain the plan (logical), and b) respond to new challenges with new ideas - which is beyond its self-defined role perhaps? On the whole, it gives the impression of a rather unclear set of documents someone could "drive a truck through"</p> <p>For specifics, I would like to comment as follows: I would like to comment as follows:</p> <p>1) FIREBREAKS Places liable to fuel buildup need clearing of trees etc in traditional firebreak manner. The effect of the loss of removed trees by whatever metric you want, is obviously FAR FAR LESS than if the whole lot went up in bushfire!</p> <p>2) SEA-LEVEL - no expenditure on property reclamation/remediation until it is obvious that gulf sea levels are rising. Anyone who has spent their life on the Adelaide coast knows that there is ZERO change in the sea level, to date. Of course, there is the perennial longshore sand-drift problem, now that the original dunes have been removed; but I understand there has been good success with implementing</p>	<p>The Resilient South 'Southern Region Local Government Implementation Plan 2015 – 2019' is currently being reviewed and will take in to account priorities identified in the Climate Risk Governance Assessment (FAC190226R05) and a benchmarking review currently underway with Flinders University.</p> <p>Specific responses:</p> <ol style="list-style-type: none"> 1. Biodiversity matters, including climate impacts, fuel loads and fire risk, are addressed in the Remnant Native Vegetation Plan (Remnant-Native-Vegetation-Plan.pdf (marion.sa.gov.au)). Tree-related issues considered in the Tree Management Framework (Tree Management Framework Trees City of Marion). A report on 'Tree Management' detailing a 7-year planting program was considered at the 23 March 2021 General Council meeting (GC210323R07). 2. Coastal and sea-level rise issues are addressed in the Coastal Climate Change Adaptation Study 2018 (City-of-Marion-Coastal-Climate-Change-Adaptation-Study-2018.pdf). The sea level trend at all observation gauges on the SA coast has been rising between 1965 and 2016. Furthermore, CSIRO and BoM projections of sea level rise for the South Australian coast indicate a continuation of rising levels and for the rate of rise to increase in future. (Department for Environment and Water (2018). Technical information supporting the Climate: Sea level trend and condition report card 2018. DEW Technical note 2018/46, Government of South Australia, Department for Environment and Water, Adelaide.) 3. There are a number of wetlands in Marion including at Oaklands, Warriparinga, Tonsley and Glade Crescent. Water Sensitive Urban Design (WSUD) principles proactively used in streetscape upgrades, etc.

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response
			special-purpose material sand-bag groynes. 3) WETLANDS Where possible, use Australian-environment principles to create mini-environments that are sustainable. Please refer Peter Andrews: https://www.peterandrewsoam.com http://nsfarming.com/index.html	* Text highlighted in yellow indicates amendments or added text in the Policy.
19	Agree	Agree	I commend the City of Marion for their commitment to mitigation of climate change and their carbon neutral plan, however, I'm disappointed that the council had the opportunity to declare a climate emergency, twice, and never did. Also that the City of Marion has gone backwards in terms of tree canopy cover, despite planting thousands more trees - you have an adopt a tree program yet no-one knows about it and artificial turf on verges is still prolific despite there being a policy in place. As a council you are mostly talk and more action is needed - get out there and educate the residents, encourage them to look after and plant a tree and if they have plastic turf remove it for them and dispose of it correctly. How difficult can this be? Over 2 years and still nothing!	A motion for the City of Marion to declare a climate emergency was considered but not supported at the 25 February 2020 General Council meeting (GC200225M03). A report on 'Tree Management' detailing a 7-year planting program was considered at the 23 March 2021 General Council meeting (GC210323R07). A report on 'Artificial Turf within the City of Marion' (GC210223R06) was considered at the 23 February 2021 General Council meeting. Promotion of the 'adopt-a-tree' program via the monthly Green Thymes e-newsletter, social media, rates notices, etc. can be increased. An article on 'adopt-a-tree' was included in the Green Thymes edition distributed on 12 March 2021. No change to the Policy required.
20	Agree	Neutral	I have 2 concerns with 1.the draft policy and 2. the carbon neutral paper. 1. Successes with tree and grass planting are to be welcomed. Identifying areas for	1. Detailed actions contained in the Carbon Neutral Plan 2020 – 2030 (4. Offsetting Carbon Emissions)

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response
			<p>suitable use are necessary, but so is the long term view that vacant land already owned in Marion Council should be kept and not sold off for a quick profit. All these areas have a use in carbon offset and many already have large native trees. Green belts and pockets are vital. Make use of assets we already have and plant in these areas first.</p> <p>2. Achieving a climate active certificate? The start up and then the ongoing costs do not have an impact on the residents to help achieve any positive change, but just appear to be another certificate to put on the wall and use for bragging rights for a few to add the their CVs. Not a good use of residents money.</p>	<p>2. Feedback relevant to the Carbon Neutral Plan; can be considered when Council determine whether or not to attain Climate Active certification in 2029.</p> <p>No change to the Policy required.</p>
21	Disagree	Strongly Disagree	it lacks imagination, leadership and is a policy for the sake of having a policy. it honestly reads like it was downloaded off the internet by someone on work experience	Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.
22	Disagree	Disagree	Not answered	No change to the Policy required.
23	Disagree	Agree	It's not clear at all how the CoM will respond to climate change beyond "considering" it and incorporating "appropriate" mitigation and adaptation into some of its activities. To give just one example, it's not at all clear if council intends to	<p>A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Detailed actions contained in the Carbon Neutral Plan 2020 – 2030</p>

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			mitigate the GHG emissions from council-approved construction projects, road maintenance, etc.	Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.
24	Agree	Agree	Be bold and ambitious. We only have one planet. We should underground all power lines to allow for big tree planting for mitigation, and also stormwater detention on the streets to help plants grow and reduce flooding.	City of Marion proactively works with the Power Line Environment Committee (PLEC) established under the Electricity Act 1996 and administered by the Essential Services Commission of SA (ESCOSA) to underground power lines within the Marion Council area. No change to the Policy required.
25	Strongly Agree	Strongly Agree	Better late than never	No change to the Policy required.
26	Neutral	Neutral	All prediction regarding this have been wrong, No ice in the arctic? It's snowing on the pyramids.	No change to the Policy required.
27	Strongly Disagree	Disagree	The draft policy reads like Marion wants to have something they can show, look we have a policy. But without actually committing to anything. It is if it was written by politicians in Canberra.	A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development. Detailed actions contained in the Carbon Neutral Plan 2020 – 2030 and being delivered via the Resilient South Regional Climate Partnership. Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.
28	Agree	Disagree	The Policy doesn't outline how the City of Marion will be accountable for activities within their control - how will progress be	A policy is a high-level strategic directive that establishes a philosophical principle-based approach to a subject and sets Council's commitment to

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response
			measured? what reporting will be provided to the community? It doesn't refer to more detailed action planning such as through the City of Marion business planning process. The Policy is appropriately high level but doesn't show the link to more specific actions over time. Under the section for City of Marion contribution to the community - could include a dot point about City of Marion supporting community groups taking initiatives such as Friends of Sturt River and friends of Warraparinga who are volunteers helping with planting and maintaining green spaces.	<p>a particular matter, with detailed actions or measures contained within supporting procedures, guidelines and action plans. ⁱ</p> <p>Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management, planning and development, community support, and economic development.</p> <p>Detailed actions, including reporting mechanisms, contained in the Carbon Neutral Plan 2020 – 2030 (1. Tracking Carbon Emissions and 5. Supporting Activities)</p> <p>Reference to the Carbon Neutral Plan 2020 – 2030 included in Section 7 of the Policy.</p> <p>Added dot point to 4.3 Community support section in the Policy: supporting volunteers and community groups to deliver projects that build resilience to climate change.</p>
29	Agree	Agree	Thank you for asking for feedback. I'm not a fan of the word "mitigate", where shown in the objectives. I think it's clearer to say "reduce greenhouse gas emissions and adapt to climate change". The next few years are 'make or break'. Please take strong action to reduce greenhouse gas emissions and help us adapt to climate change.	<p>Definition of 'mitigation' included in Section 5 of the Policy.</p> <p>No change to the Policy required.</p>
30	Agree	Disagree	It doesn't go far enough.	Amendments to Scope to clarify purpose: This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets, urban greening and tree management,

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				* Text highlighted in yellow indicates amendments or added text in the Policy.
				planning and development, community support, and economic development.
31	Neutral	Disagree	Not answered	No change to the Policy required.
32	Neutral	Neutral	What about strategies to assist the community make sustainable lifestyle choices?	<p>Amendments to Clause 4.3 of the Policy aim to clarify and strengthen support to the community as follows:</p> <p>4.3 Community support through:</p> <ul style="list-style-type: none"> • support services to vulnerable members of our community • education initiatives that raise awareness about climate risks, hazards and opportunities • encouraging behaviour change to increase community mitigation and adaptation efforts and help build resilience to changes in our climate • supporting volunteers and community groups to deliver projects that build resilience to climate change. <p>Addressed in Carbon Neutral Plan 2020 – 2030 (5.2 Partner with and provide stewardship with the community by providing education and incentives)</p>
33	Agree	Agree	The draft Policy is very general in nature but does provide a generic framework for Council's Climate Change position. When read in conjunction with the Carbon Neutral Plan, Council's objectives and action plans can be understood in more detail. I fully support policies and initiatives to achieve carbon neutrality by 2030 and applaud Council on adopting this position on this important issue. Thank you for extending the deadline to allow me to comment.	No change to the Policy required.

	The draft Policy objectives clearly state how the City of Marion will respond to climate change.	The scope of the draft Policy is appropriate for the City of Marion	Do you have any comments or feedback to add?	Response * Text highlighted in yellow indicates amendments or added text in the Policy.
34	Agree	Agree	A good start which, along with the carbon neutral plan, should make a difference to how COM acts.	No change to the Policy required.
35	Disagree	Disagree	I feel that Marion Council's and in fact Australia's impact on climate change to be so minimal as to render any actions taken superfluous.	No change to the Policy required.
36	Neutral	Neutral	It's great to see the City of Marion being proactive and taking responsibility in the climate change space. As a resident I can already see some of the actions stated in the carbon neutral plan being put into place (such as the jolt charging stations, slowly but surely the council is establishing infrastructure for electric cars). However, I am a bit skeptical on how the council is going to effectively engage, inform and advocate climate change to the community. By informing and advocating is the council aiming to empower the community to take action and play their part? Or does the council just want our community to be informed and be aware of this issue?	The intent is to provide the community with the knowledge and skills they need to take action and play their part in responding to climate change. No change to the Policy required.

ⁱ City of Marion Policy Framework (GC180710R01)

Climate Change Policy

1. RATIONALE

Changes to Australia's climate are being accelerated by human activity. It has been projected that:

- average temperatures will continue to increase with fewer cold extremes and longer and more intense heatwaves
- annual rainfall will decrease while extreme rainfall events that lead to flooding are likely to become more intense
- our region will experience more frequent and extreme fire danger days
- sea levels will continue to rise throughout and beyond the 21st Century with our oceans warming and become more acidic.

It is widely acknowledged that action is required to mitigate and adapt to climate change.

2. POLICY STATEMENT

The City of Marion recognises the importance of climate change; the impact of human activity on the composition of the global atmosphere; and the urgent need to mitigate the production of greenhouse gas emissions and adapt to climate change.

3. OBJECTIVES

The primary objectives of this Policy are:

- To incorporate climate change mitigation and adaptation into strategic and operational activity, and when exercising statutory responsibilities and regulatory powers.
- To support residents, businesses, and local ecosystems to build resilience and adapt to the impacts of a changing climate.
- To work in collaboration with regional partners and the wider community to mitigate against climate change.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This Policy sets Council's commitment to respond to climate change and applies to all Council strategic and operational activity. This includes but is not limited to management of Council assets and infrastructure, urban greening, tree management, urban planning and development, community support, and economic development.

Implementation

Council's approach to climate change includes, but is not limited to:

- 4.1 **Evidence-based strategic and operational activity** (founded on the best available most recent International Panel on Climate Change (IPCC) assessment reports science, whilst recognising the need for flexibility to adapt as scientific knowledge and climate models improves) to address climate change, support informed decision-making, and facilitate a

Climate Change Policy

change to a low carbon economy [in support of global targets to limit global warming to 1.5° Celsius](#).

4.2 Mitigation and adaptation to climate change impacts through:

- statutory responsibilities and regulatory powers relating to land use planning, asset and infrastructure management, environmental planning, environmental protection, and natural resource management
- Council operations that consider climate change and its potential impacts and incorporate appropriate mitigation and adaptation into all relevant operational activity. The City of Marion has set a target of becoming carbon neutral by 2030 for its own operations.

4.3 Community support through:

- support services to vulnerable members of our community
- education initiatives [that raise awareness about climate risks, hazards and opportunities](#)
- encouraging behaviour change to increase community mitigation and adaptation efforts and help build resilience to changes in our climate
- [supporting volunteers and community groups to deliver projects that build resilience to climate change](#).

4.4 Partnering through the Resilient South Regional Climate Partnership and with our partners at a state and federal level to increase the resilience of our communities to climate change and support appropriate policies and strategies for a low carbon economy.

5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
<i>Adaptation</i>	Taking action to avoid, withstand or benefit from current and projected climate changes and impacts.
<i>Climate change</i>	Refers to any change in climate over time, whether due to natural variability or as a result of human activity.
<i>Greenhouse gas</i>	A gas in an atmosphere that absorbs and emits radiation within the thermal infrared range. This process is the fundamental cause of the greenhouse effect. The primary greenhouse gases in Earth's atmosphere are water vapour, carbon dioxide, methane, nitrous oxide, and ozone. Greenhouse gases (GHGs) can be emitted through transport, land clearance, and the production and consumption of food, fuels, manufactured goods, materials, wood, roads, buildings, and services. For simplicity of

Climate Change Policy

<i>Term</i>	<i>Definition</i>
	reporting, GHG emissions are often expressed in terms of the equivalent amount of carbon dioxide or carbon emissions.
<i>Low carbon economy</i>	An economy based on low carbon power sources that therefore has a minimal output of greenhouse gas emissions into the environment. Can also be referred to as 'low-fossil-fuel economy' or 'decarbonised economy'.
<i>Mitigation</i>	Taking action to reduce or prevent emission of greenhouse gases <u>and/or to increase the amounts of greenhouse gases removed from the atmosphere</u> . Can also be referred to as 'Abatement'.
<i>Resilience</i>	The ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organisation, and the capacity to adapt to stress and change.

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
<i>Environment Sustainability Team</i>	<ul style="list-style-type: none"> Coordinate the implementation of this Policy across Council.

7. REFERENCES

City of Marion

Community Vision: Towards 2040 (adopted 26 July 2016)

Strategic Plan 2019 – 2029 (endorsed August 2019)

Business Plan 2019 – 2023 (endorsed June 2019)

Environmental Policy (endorsed November 2019)

[Carbon Neutral Plan, 2020 – 2030](#)

Other

Resilient South Regional Climate Partnership (www.resilientsouth.com)

8. REVIEW AND EVALUATION

The Manager Engineering, Assets & Environment reviews this Policy every four years (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

CORPORATE REPORTS FOR INFORMATION/NOTING

Economic Development - Six Monthly Update

Originating Officer	Acting Manager City Activation - Donna Griffiths
Corporate Manager	N/A
General Manager	Acting General Manager City Development - Greg Salmon
Report Reference	GC210427R16

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REPORT OBJECTIVE

The purpose of this report is to provide Elected Members with a six monthly update on the Economic Development function within the City of Marion. The last report was prepared in October 2020.

EXECUTIVE SUMMARY

The Economic Development team at the City of Marion is responsible for providing an environment ripe for business growth and investment.

The team provides the following broad services for the business community:

- Open for Business Program - A collation of business support services available within the City of Marion including networking events such as Multicultural Event for Business and the Mayor's End of Year function, to support connections and collaboration across the city.
- Business Engagement - At least one monthly e-news to help businesses to keep up to date with what is happening in the business community. Other supporting business engagement activities are conducted as needed to support other areas of the business such as planning and regulatory services, environmental health, open space and civil departments.
- Urban Renewal - Revitalisation of the Edwardstown Employment Precinct - delivery of a 12-month action plan endorsed by Council.
- Cove Business Hub – A Calendar of business events consisting workshops, networking, digital literacy programs, education and peer-to-peer support. Annual feature events include International Women's Day, Co-working week and an End of Year Celebration.
- Cove Business Hub Co-working Space – A community co-working space, welcoming a variety of small businesses to the Cove Civic Centre.
- Business advice - The Southern Business Mentoring Program, a regional service now supporting four Councils, provides access to a number of disciplines including general business, digital marketing, social media, strategic marketing, mental health and wellbeing and retail. This program is managed and administered regionally by the City of Marion on behalf of the participating Councils.
- Peer to peer support – Support for two local business associations, i.e. Southern Business Connections and Hallett Cove Business Association.
- Economic Impact Statements – Support CoM grant applications through the provision of economic impact statements that identify cost-benefit analysis for jobs and return on investment for infrastructure projects.
- Strategic Economic Industry Analysis – Provision of industry briefings and round-table discussions, aligning with the Growth State Agenda, with key industry leaders to identify opportunities for business growth and investment.

This function generates a sense of belonging within a business community, connections into the business support ecosystem and creates the environment for a vibrant prosperous economy.

RECOMMENDATION

That Council:

1. Note the Economic Development function report and that this report will be brought to Council at six monthly intervals.

DISCUSSION

Benefits

The benefits of an Economic Development function within the City of Marion include:

- Support business owners - one in five people own a business in the City of Marion
- Retention of local jobs - 22,900 jobs within City of Marion and 41,867 workers
- Promote awareness of local suppliers - Council has procured \$2.3 million of goods and services from 138 local City of Marion suppliers to date in 2020/21.
- Open for Business Program - that supports approximately 5,000 home-based businesses
- Value for money for rate payers - The Economic Development budget is approximately 3% of the total rates received annually (\$79.2 million) or 1.7% of total rates received from commercial and industrial sources (\$16.8 million). 21% of total rates are from commercial and industrial sources.
- Welcome new business entrants into the business support ecosystem each year. In 2020/21 we have already welcomed 1785 new ABN registrations.
- Operate a co-working space with an active community of over 50 co-workers, and providing home-based businesses with networking and meeting facilities at Cove Civic Centre
- Program the Cove Business Hub that has now attracted over 1500 businesses to the Cove Civic Centre and programmed 45 workshops or activations in 2020/21.
- Generated approximately \$192,000 worth of volunteer hours by supporting business associations
- Build and maintain strong local collaboration with Federal Government, State Government, Local Government, not-for-profits and private sector.

In Attachment 1, an infographic provides an overview of the Economic Development function and highlights the current state of play, and current inputs and outputs generated in 2020/21 to date.

Marketing and Communications

Economic development implicitly performs a marketing function. The following elements are conducted:

- Ongoing promotion of the following brands:
 - 'Open for Business' program,
 - 'Cove Business Hub', and
 - 'Southern Business Mentoring Program'.
- End-to-end management and promotion of all business engagement activities. This includes, but is not limited to, generation of marketing content and scheduling, development of collateral, management of business databases and newsletter content.
- Modes of communication include: City Limits, City of Marion Facebook, 'What's Happening' booklet; City of Marion Libraries Facebook, City of Marion Libraries Instagram, Eventbrite, monthly e-newsletters, direct mail to new entrants / businesses as required, email, Making Marion project pages, City of Marion website, and City of Marion and Southern Business Mentoring Program's LinkedIn pages.
- Brand development: Continuing to work with a creative agency to create an appropriate brand for Edwardstown - as a place to live, work, invest and do business.

COVID-19 Update

In response to COVID-19, the Federal Government introduced its JobKeeper Payment; a wage subsidy program to support employees and businesses. This payment was available to qualifying businesses until 28 March 2021. With the cessation of the JobKeeper payments, jobs are expected to be lost across the country over the coming months.

Victoria recorded the greatest number of JobKeeper applications as a result of their extended lockdown period. Of metropolitan LGAs in South Australia, Marion had the highest percentage of claims. The 5158 post code recorded the largest number of applications, with 14% of Marion's total.

In Marion, the total percentage of businesses claiming JobKeeper in August 2020 was 49.1%. In January 2021, the percentage of businesses claiming JobKeeper was 17.5%; a decrease of 31.6%. As at February 2021, there were 5184 residents claiming JobSeeker or youth allowance payments. This is an almost 45% increase from March 2020's figures of 3578.



Despite the comparatively high number of JobKeeper applications, the City of Marion's economy has fared well to date. The Education and Training and Transport, Postal and Warehousing industries have seen an expected decline while the Construction, Financial and Insurance services, and Health Care and Social Assistance industries saw increases.

In Marion, prior to COVID-19, the total employment across all local industry sectors was estimated at 22,983. For January 2021, total employment is estimated at 22,992; an increase of 9 jobs. The total monthly output across all local industry sectors was estimated at \$539.737 million prior to COVID-19. For January 2021, the City of Marion's industry output is estimated at \$543.075 million; an increase of 0.6%.

Attachment

#	Attachment
1	Attachment One ED Infographic March 2021

ECONOMIC DEVELOPMENT

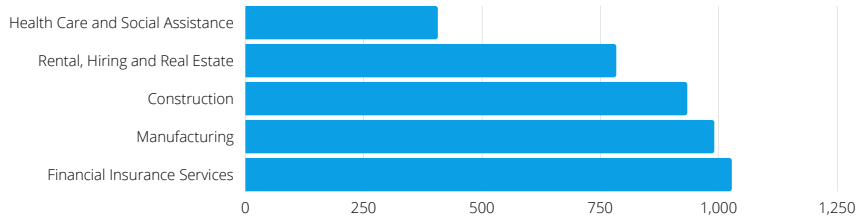
PROSPEROUS

By 2040 our city will be a diverse and clean economy that attracts investment and jobs, and creates exports in sustainable business precincts while providing access to education and skill development

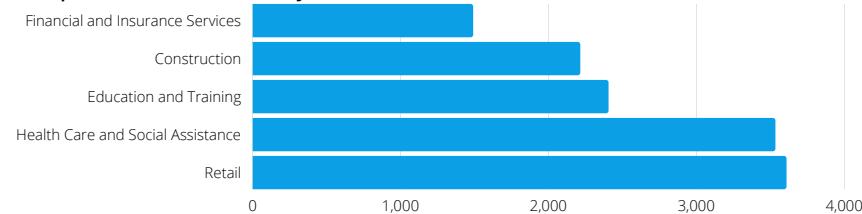
CURRENT STATE OF PLAY

August 2020 - March 2021

Top 5 Industries by Value (\$M)



Top 5 Industries by Jobs



Percentage of
business types

64%

Sole Traders

22%

Partnerships/
Trust

14%

Private

1%

Public

City of Marion spent

\$2.3m

on

138

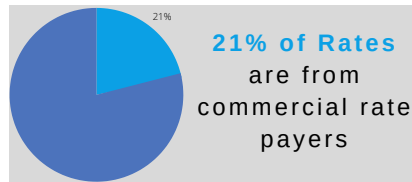
local
suppliers in
20/21.



\$27.6m

invested into capital
projects generating

76 jobs



5000
Home-based
Businesses



1:5 People own a
business

22,900
Jobs

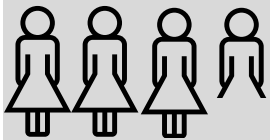


41,867
Workers



INPUTS

3.3
FTEs



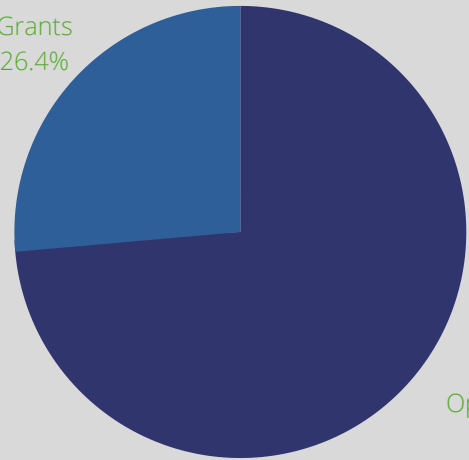
**35 Collaborative
Partners**



Collaborated with Flinders University
supporting 8 students



Grants
26.4%



Operational
73.6%

REVITALISATION OF THE EDWARDSTOWN EMPLOYMENT PRECINCT

Creative space EOI
with **\$105k** seed
funding

Tonsley and
Edwardstown Value
Proposition and
Capability mapping

Greening of
Edwardstown
Part One
concluded

7



businesses
with **25+**
years were
celebrated

Study into local area
traffic management

Stobie pole art and mural
installation



Creating the
Edwardstown
Brand

Projects 2019-2021
7 Access, **12** Amenity,
23 Activation

Community Celebration
Held



\$60k + \$60k CoM
funded successful



COVE BUSINESS HUB

Co-working at
Cove Business Hub

Co-working

50

Active co-workers

115

monthly bookings

70%

of co-workers
currently on a
membership plan

\$1550

in revenue

9/10

customer satisfaction



Programming

45

Workshop, events and
activations

277

Program participants



SOUTHERN BUSINESS MENTORING PROGRAM

542 Completed
Appointments
Nov 2019 - Feb 2021

5

Yankalilla

98

Holdfast Bay

269

Onkaparinga

170
Marion

9.5/10

Customer
satisfaction

67%

received referrals

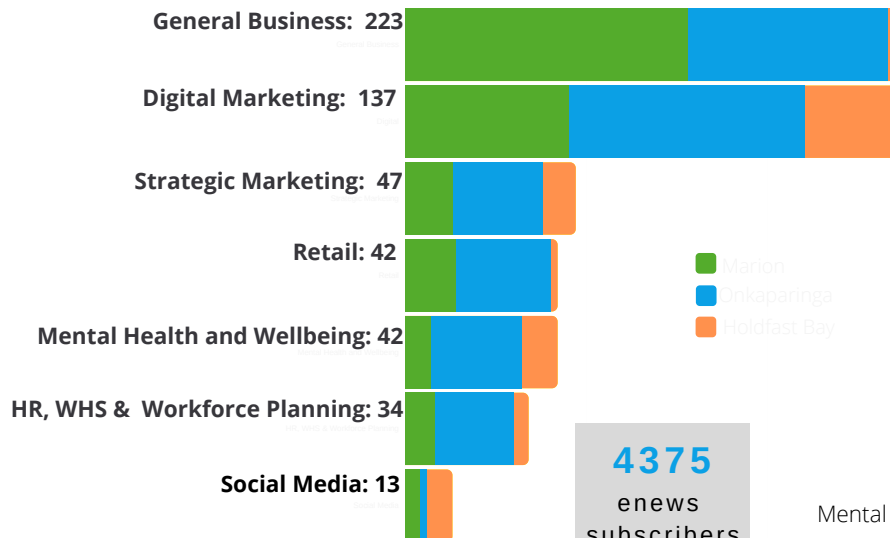
100%

Would refer others to the
service

86%

Rate the service
10/10

Breakdown of appointments by Discipline and Council Area



4375

enews
subscribers

Additional Services

Mental Health & Wellbeing added April 2020

Retail added May 2020

Social Media added February 2021

BUSINESS ENGAGEMENT

1920

Business Association
Volunteer hours totalling
\$192,000 of value

23

Business association
events and workshops
delivered

110

Tonsley
Walking
Tour
Participants

Tonsley

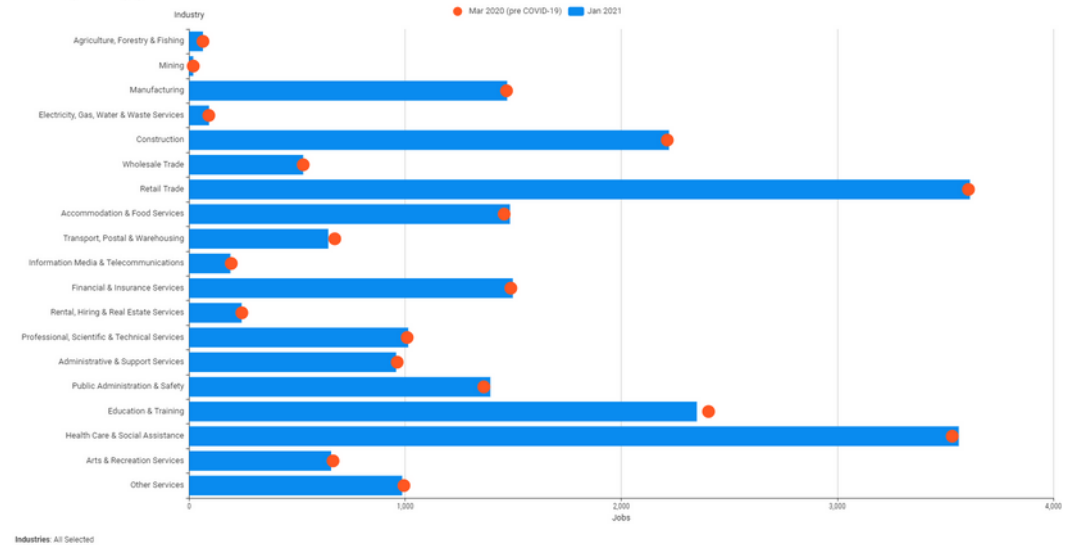
Managed fortnightly
volunteer walking tours

COVID-19 IMPACTS

In Marion, prior to COVID-19, the total employment across all local industry sectors was estimated at 22,983. For January 2021, total employment is estimated at 22,992, an **increase of 9 jobs**.

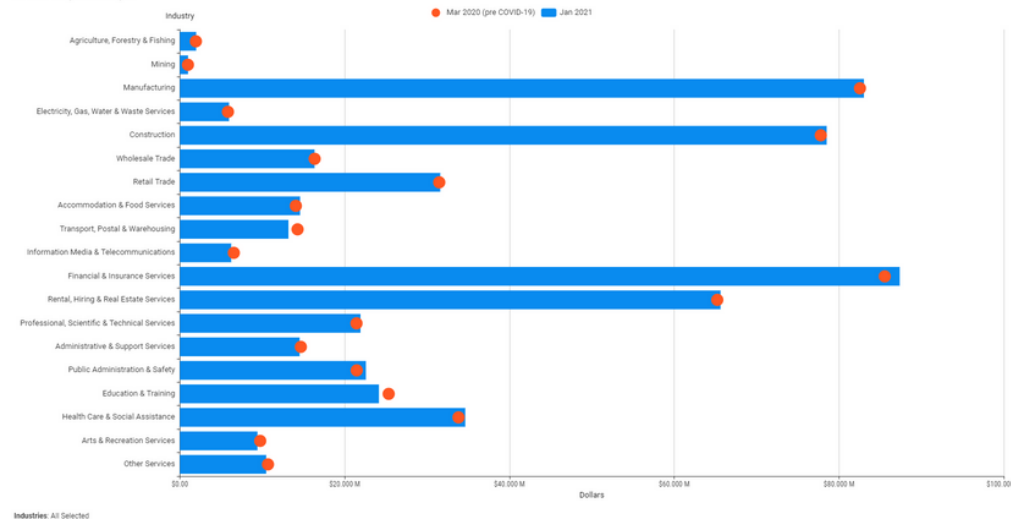
Marion

COVID-19 Impact on Employment



Marion

COVID-19 Impact on Output



In Marion, prior to COVID-19, the total monthly output across all local industry sectors was estimated at \$539.737 million. For January 2021, industry output is estimated at \$543.075 million, an **increase of 0.6%**.

In Marion, the total percentage of businesses claiming JobKeeper in August 2020 was 49.1%. In January 2021, the percentage of businesses claiming JobKeeper was 17.5%, a **decrease of 31.6%**.

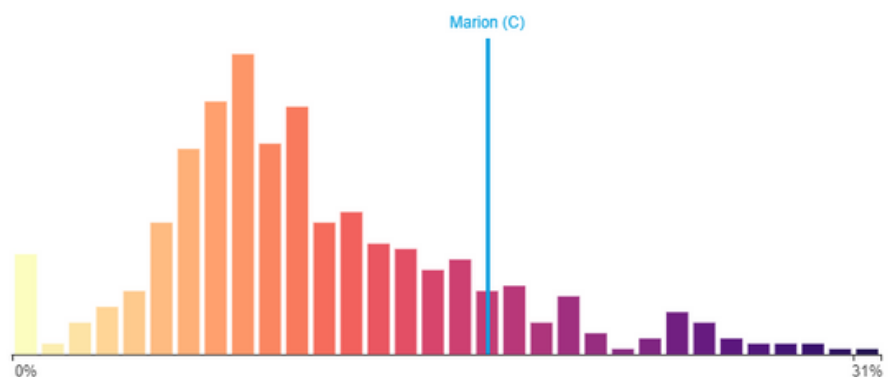
Despite this decrease, Marion has the highest percentage of JobKeeper claims of metropolitan SA LGAs.

Marion (C)

Businesses eligible for JobKeeper have experienced a decline in revenue of at least 30%.

Higher levels of JobKeeper applications are a likely indicator of greater negative economic impacts from COVID-19.

In Marion (C) it is estimated that **17.5%** of local businesses have applied for JobKeeper support.



Marion (C) JobKeeper applications as a percentage of total local businesses compared to LGAs and unincorporated areas in Australia:

- Ranked 64 out of 506 areas in Australia.
- 63 areas in Australia have more applications.
- 442 areas in Australia have less applications.

Work Health & Safety - Monthly Performance Report - March 2021

Originating Officer	Unit Manager Risk - Sherie Walczak
Corporate Manager	Manager Corporate Governance - Kate McKenzie
General Manager	General Manager City Services - Tony Lines
Report Reference	GC210427R17

Confidential ☐

REPORT OBJECTIVE

The objective of this monthly report is to provide Council with assurance that the City of Marion has effective strategies in place to meet its legal obligations as outlined in the Work Health and Safety Act (SA) 2012, and to monitor Council's core target of a 10% reduction of the Lost Time Injury Frequency Rate (LTIFR) from the previous year.

RECOMMENDATION

That Council:

- 1. Notes the report and statistical data contained therein.**

DISCUSSION

Targets and performance indicators have been established in order to measure the continual improvement of the program. Performance against these targets are outlined in **Attachment 1** which are measured in two ways:

- Positive performance indicators (PPI's); and
- Lag performance indicators (LPI's)

Council's KPI is the achievement of a 10% reduction on last year's 6.1 LTIFR, to reach 5.4 or less in 2020-21.

The *rolling* LTIFR, based on internal incident reports, is **14.7** with **ten** lost time injuries being recorded over the last twelve months.

The *current* LTIFR, based on LGAWCS (Schemes) claims data, is **11.6** with **eight** lost time injury claims being submitted this year to date, however only **six** have been accepted and **two** deferred for investigation.

The well-being of the staff involved is paramount and Management has reviewed each incident individually to ensure appropriate controls are in place to reduce or eliminate risk.

The organisation is continuing to implement various initiatives including the Health, Safety and Environment (HSE) Strategic Plan 2019-23 (currently in its second year) to address compliance, key risks and reduce the LTIFR.

Attachment

#	Attachment
1	GC210427R - WHS Monthly Performance Report Mar 2021

Attachment 1 – WHS Monthly Performance Report – March 2021

City of Marion's HSE Vision is that **'We can all make a difference towards achieving zero harm, to people and the environment'**. We are specifically focused on further developing our leadership styles, organisational culture and systems committing to:

- Developing our people to lead the change across the City of Marion
- Embedding a culture of safety and wellbeing as a part of normal business practice
- Continually improving our WHS Management System (WHSMS) and Environmental Management System (EMS) to achieve best practice

Hazard and Near Miss Reports (Internal WHS SkyTrust reporting data)

Historical statistics inform us that when there is a healthy culture of Hazard/Near Miss Reporting, there is a consequential reduction in injuries to Workers. Hazards and Near Misses are reported to date for this financial year and are outlined in Table 1. They can be compared against those reported last financial year which are outlined in Table 2.

➤ **Annual Target Total = 118 hazard and near miss reports (ave 9.8 per month) during 2020-21.**

Table 1: Hazard and Near Miss Reports - Financial Year 2020-21

Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Total	Ave
11	7	12	14	17	11	7	8	10				97	10.8

Table 2: Hazard and Near Miss Reports - Financial Year 2019-20

Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Total	Ave
14	13	10	9	10	9	9	6	7	6	7	12	112	9.3

Lost Time Injuries Reported (Internal WHS SkyTrust reporting data)

Lost Time Injuries (LTI's) are those injuries where a whole work day or more has been lost due to a workplace injury. LTI's reported to date for this financial year are outlined in Table 3 and can be compared against those reported last financial year which are outlined in Table 4.

Table 3: Number of LTI's per month - Financial Year 2020-21

Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Total
1	2	2	0	0	1	0	2	0				8

Table 4: Number of LTIs per month - Financial Year 2019-20

Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Total
0	1	0	0	1	0	0	0	0	0	1	1	4

Table 5: Outline of LTIs reported - Financial Year 2020-21

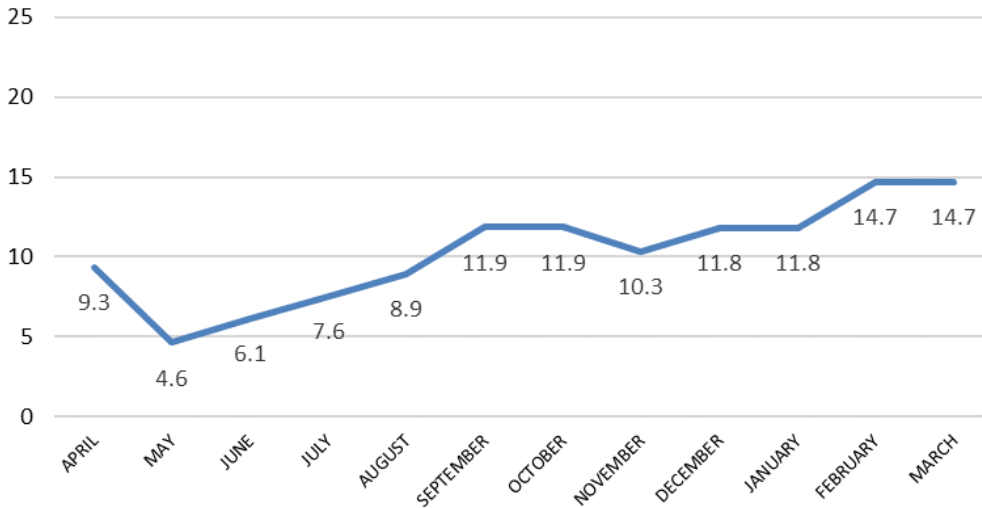
No.	Description of Incident	Mechanism of Injury	Injury Description
1	Experienced left shoulder pain while lifting, dragging & feeding branches into the woodchipper	Muscular stress while lifting, carrying or putting down objects	Sprain to left shoulder
2	Foot got stuck on the footstep and landed heavily on left leg which buckled	Falls from a height	Strained left Knee
3	Dropped an 8kg bollard base onto the top of foot during assembly	Hit by a falling object	Bruised left foot
4	While loading truck, foot twisted in pavers	Stepping, kneeling or sitting on object	Fractured foot
5	Stepped out of backhoe into kerb excavation and twisted left knee	Stepping, kneeling or sitting on object	Trauma to left knee joints / ligaments
6	After Hours Emergency Management - Call Out member impacted by branch resulting in a fall with pain to ribs and limbs	Being hit by falling objects	Fractures, unspecified
7	Standing, squatting and bending to erect new fence and have developed sore feet	Stepping, kneeling, or sitting on objects	Trauma to joints and ligaments, unspecified
8	Walking off the verge onto the road and left foot slipped off the kerb twisting left knee	Stepping, kneeling, or sitting on objects	Trauma to joints and ligaments, unspecified

Rolling Lost Time Injury Frequency Rate (Internal WHS SkyTrust reporting data)

Rolling injury frequency rate over a 12 month or greater period is a common monitoring for performance of WHS and Return to Work performance. It continues over financial and calendar years rather than starting from zero so that longer term trends can be observed and appropriate action taken to address upward trends and/or seasonal spikes in injuries..

The rolling LTIFR, outlined with a solid blue line in Figure 1 from internal incident report data, provides analysis of the average LTIFR over the last 12 months.

Figure 1: Rolling LTIFR over 12 months

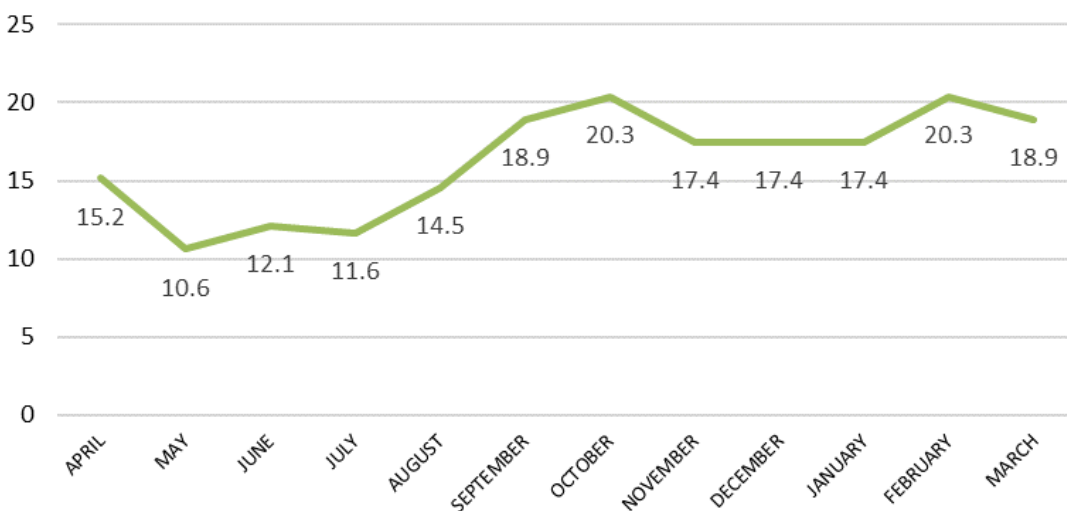


The current 12 month rolling LTIFR for the City of Marion is **14.7** which represents a **57%** increase over the previous 12 months.

Rolling Total Recordable Incident Frequency Rate (Internal WHS SkyTrust reporting data)

Total Recordable Incidents include fatalities, LTI's and incidents resulting in the employee receiving medical treatment and/or is certified as only fit to undertake suitable duties. The Rolling Total Recordable Incident Frequency Rate (TRIFR), outlined with a solid green line in Figure 2 from internal incident report data, provides analysis of the average TRIFR over the last 12 months.

Figure 2: Rolling TRIFR over 12 months

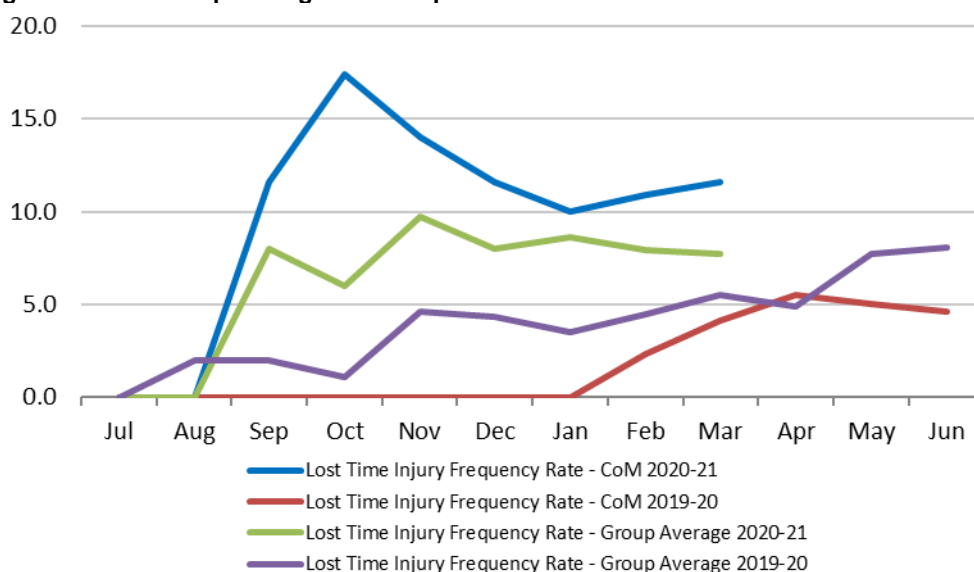


The current 12 month rolling TRIFR for the City of Marion is **18.9** which represents a **25%** increase over the previous 12 months.

Lost Time Injury Frequency Rate (LGAWCS Claims Data)

Lost Time Injury Frequency Rate (LTIFR), is an industry standard tool for measuring LTI's within a given reporting period which enables comparison to other organisations. Council's LTIFR is outlined in Figure 3, from the LGA's Member Portal data once claims have been determined and can be measured and monitored against our industry counterparts being the Group A Councils (1GaC).

Figure 3: LTIFR compared against Group A Councils

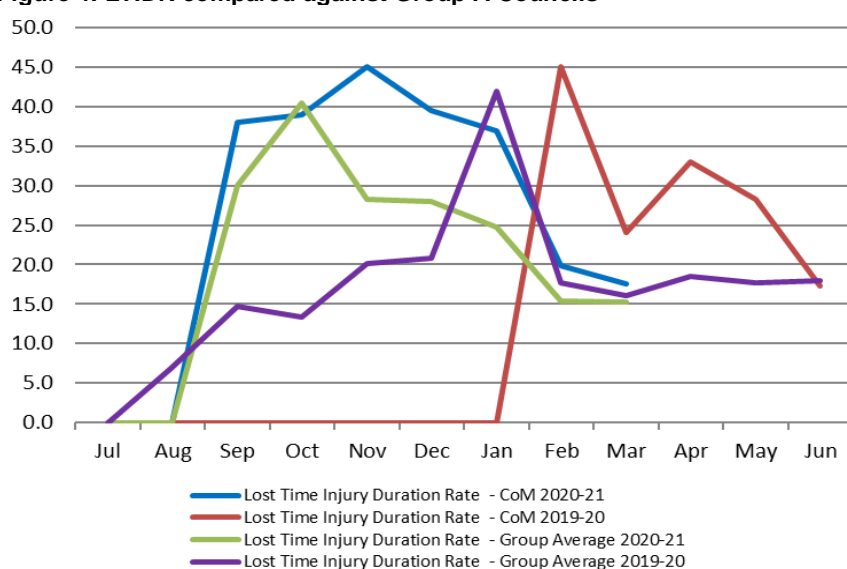


The current LTIFR for the City of Marion (represented in blue) is **11.6**, compared to GaCs recording **7.7** with six claims being accepted to date this year and two yet to be determined.

Lost Time Injury Duration Rate (LGAWCS Claims Data)

The Lost Time Injury Duration Rate (LTIDR), is an industry standard tool for measuring the average days lost from LTI's within a reporting period to enable comparison to other organisations. Council's LTIDR is outlined in Figure 4, data is sourced from the LGA's Member Portal once claims have been determined and can be measured and monitored against our industry counterparts being the GaC.

Figure 4: LTIDR compared against Group A Councils



The current LTIDR for the City of Marion (represented in blue) is **17.5**, compared to GaCs recording **15.2** with six claims being accepted to date this year and two yet to be determined.

1 GaC are metropolitan councils with more than 300 staff (Marion, Adelaide, Charles Sturt, Onkaparinga, Playford, Port Adelaide Enfield, Salisbury and Tee Tree Gully).

Finance Report - March 2021

Originating Officer	Assistant Financial Accountant - Melissa Virgin
Corporate Manager	Acting Manager Finance - Heath Harding
General Manager	Acting General Manager Corporate Services - Ray Barnwell
Report Reference	GC210427R18

Confidential ☐

REPORT OBJECTIVE

This report provides Council with information relating to the management of financial resources under its control as at March 2021. This report is one of a series of reports designed to assist Council in achieving and maintaining a financially sustainable position. Other reports assisting in this process include the Quarterly Budget Reviews and the Long Term Financial Plan.

This report includes financial information regarding major projects. The principles used for the assessment of reportable projects are:

- Council has agreed to proceed with the project and approved a Prudential Report under Section 48 of the *Local Government Act 1999*.
- The Whole-of-Life Cost is greater than \$4 million dollars (including grant assisted projects).

RECOMMENDATION

That Council:

1. Receives the report “Finance Report – March 2021”

GENERAL ANALYSIS

BACKGROUND

This report is presented on a monthly basis to provide Elected Members with key financial information to assist in monitoring Council's financial performance against budget.

APPENDICES

Appendix 1: Monthly Financial Reporting

Appendix 2: Capital Works Reporting including Major Projects

Appendix 3: Debtors Reports for Sundry Debtors & Rates Debtors

Attachment

#	Attachment
1	Finance Report_March Appendix 1 pt 1 2 3 4
2	Finance Report_March Appendix 2 pt 1 2
3	Finance Report_March Appendix 3 pt 1 2

Funding Statement – Actual versus Budget

The Funding Statement provides a view of Council's financial performance against the approved budget and is consistent with the information provided at budget reviews. It provides a review against all of the elements contained within the Statement of Comprehensive Income and the Statement of Financial Position that are adopted as part of the Annual Budget Report. It details Council's:

Statement of Comprehensive Income -

The operating result is recognised as one of Council's key financial indicators. The budget framework includes a commitment to its ongoing Financial Sustainability maintaining an Operating Surplus Ratio of between 0% and 10%, on average over each five-year period, which for 2020/21 means a targeted operating surplus of between \$0 and \$9.652m.

Comment: Council currently has a net operating surplus result of \$4.499m before capital revenues, against a year to date forecast budget of \$4.268m surplus. This position is detailed in the attached Funding Statement and variation notes.

Capital Budget -

The Capital Budget is linked to Council's key financial indicator – "Asset Sustainability Ratio" and an actual to budget comparison reflects Council's progress in achieving its Capital program.

Comment: The actual to budget position reveals that 66.05% of the year to date Capital Renewal Budget has been spent.

Loans -

The loans component of the Funding Statement identifies any new proposed loan receipts or principal payments. Council's borrowings are included in Council's key financial indicator – "Net Financial Liabilities" which reflects Council's total indebtedness.

Comment: \$2.0m of new borrowings are included in the 2020/21 budget and principal repayments of \$1.245m, meaning that the overall loan liability balance is forecast to increase by \$0.755m to \$6.39m at 30 June 2021.

Reserves & Cash -

Various fund movements such as surplus budget review results, unspent grants and carryover projects at year end are reflected as transfers to reserves, whilst utilisation of reserve funds are recognised as transfers from reserves.

Cash may be utilised to fund expenditure within the context of Treasury Management to ensure loans are not drawn down where temporary cash holdings are available.

Comment: Council's Reserves are detailed in the below table. Transfer to Reserves of \$1.804m and Transfers from Reserves of \$28.851m are forecast to occur in 2020/21, and after accounting for amounts quarantined for specific projects or works, there is \$3.864 available.

Reserves (\$000s)	Asset Sustainability Reserve						Water Reserve - Oaklands Wetland	Open Space Reserve	Grants & Carryover Reserve	TOTAL ALL RESERVES
	Major Infrastructure Failure	General	Other	Major New Projects	CFPP	TOTAL ASR				
Opening Balance	2,000	9,753	840	1,525	3,517	17,635	613	2,055	20,882	41,185
Savings from 2019/20 audited accounts	0	3,398	0	0	0	3,398	265	0	0	3,663
Budgeted transfers to reserve	0	0	240	0	20	260	40	38	1,466	1,804
Budgeted transfers from reserve	0	(6,331)	(140)	(1,430)	(2,660)	(10,561)	(30)	0	(18,260)	(28,851)
Current Budgeted Closing Balance	2,000	6,820	940	95	877	10,732	888	2,093	4,088	17,801
Quarantined Funds	(2,000)	(5,675)	(900)	(70)	(320)	(8,965)	(884)	0	(4,088)	(13,937)
Projected Available Balance	0	1,145	40	25	557	1,767	4	2,093	0	3,864

The 2020/21 budget forecasts a net cash surplus of \$0.049m.

*CFPP: Community Facilities Partnership Program

*Other includes Walking & Cycling and Energy Efficiency.

**Funding Statement
as at 31 March 2021**

Original Adopted Budget \$'000	Carryovers \$'000	Budget Review Adjustments \$'000		YTD Actual \$'000	YTD Budget \$'000	YTD Variance \$'000		Annual Budget \$'000	Note
Operating Revenue									
80,044	-	88	Rates	60,162	60,145	17	F	80,132	
2,161	-	7	Statutory Charges	1,767	1,701	66	F	2,168	
2,278	-	278	User Charges	2,090	1,864	226	F	2,556	A
7,824	(1,620)	1,807	Operating Grants & Subsidies	6,352	5,871	481	F	8,011	B
755	-	(251)	Investment Income	369	381	(12)	U	504	
1,164	-	99	Reimbursements	932	691	241	F	1,263	C
1,235	-	285	Other Revenues	276	597	(321)	U	1,520	D
365	-	-	Net gain - Equity Accounted Investments	-	-	-	-	365	
95,826	(1,620)	2,313		71,948	71,250	698	F	96,519	
Operating Expenses									
37,973	-	-	Employee Costs	26,694	27,853	1,159	F	37,973	E
20,848	3,136	3,791	Contractual Services	18,373	17,760	(613)	U	27,775	F
4,808	3	663	Materials	3,652	3,780	128	F	5,474	G
322	-	-	Finance Charges	159	159	-	-	322	
15,708	-	-	Depreciation	11,856	11,790	(66)	U	15,708	
9,478	14	(455)	Other Expenses	6,715	5,640	(1,075)	U	9,037	H
89,137	3,153	3,999		67,449	66,982	(467)	U	96,289	
6,689	(4,773)	(1,687)	Operating Surplus/(Deficit) before Capital Revenues	4,499	4,268	231	F	230	
Capital Revenue									
8,163	(2,307)	15	Capital Grants & Subsidies	2,134	812	1,322	F	5,871	
-	-	-	Contributed Assets	-	-	-	-	-	
-	-	-	Asset Disposal and Fair Value Adjustment	(1,627)	-	(1,627)	U	-	
8,163	(2,307)	15		507	812	(305)	U	5,871	
14,852	(7,080)	(1,671)	Net Surplus/(Deficit) resulting from operations	5,006	5,080	(74)	U	6,101	
15,708	-	-	add Depreciation	11,856	11,790	66		15,708	
-	-	-	add (Gain)/Loss on Asset Disposal	1,627	-	1,627		-	
(365)	-	-	less Share of Profit Equity Accounted Investments	-	-	-		(365)	
30,195	(7,080)	(1,671)	Funding available for Capital Investment	18,489	16,870	1,619	F	21,444	
Capital									
17,119	2,193	(7,939)	less Capital Expenditure - Renewal	4,474	6,774	2,300	F	11,373	I
27,993	5,533	4,296	less Capital Expenditure - New	6,152	11,023	4,871	F	37,822	J
-	-	-	less Capital - Contributed assets	-	-	-	-	-	
-	-	-	add Proceeds from Sale of Surplus Assets	-	-	-	-	-	
(14,917)	(14,806)	1,972	Net funding increase/(decrease)	7,863	(927)	8,790	F	(27,751)	

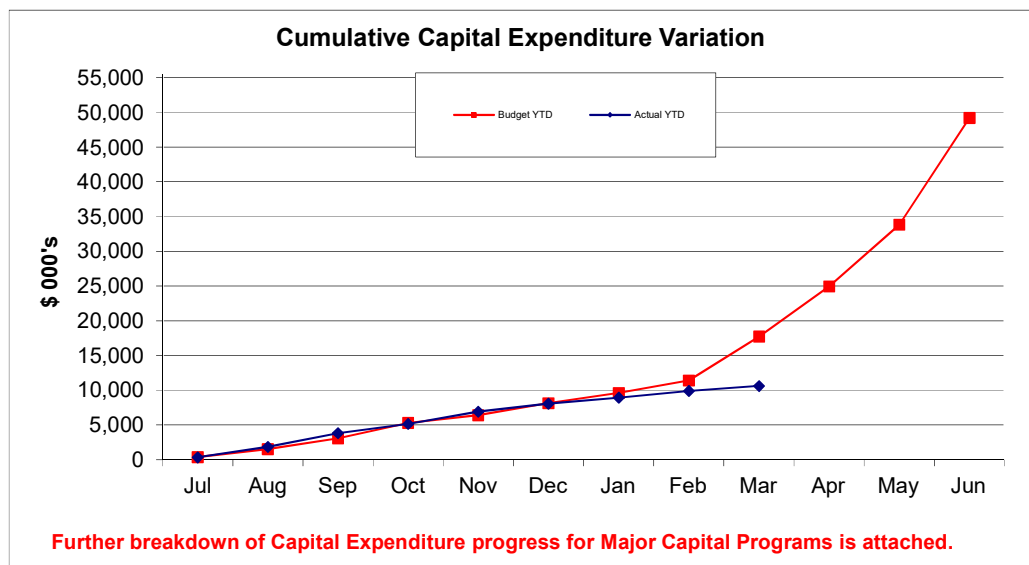
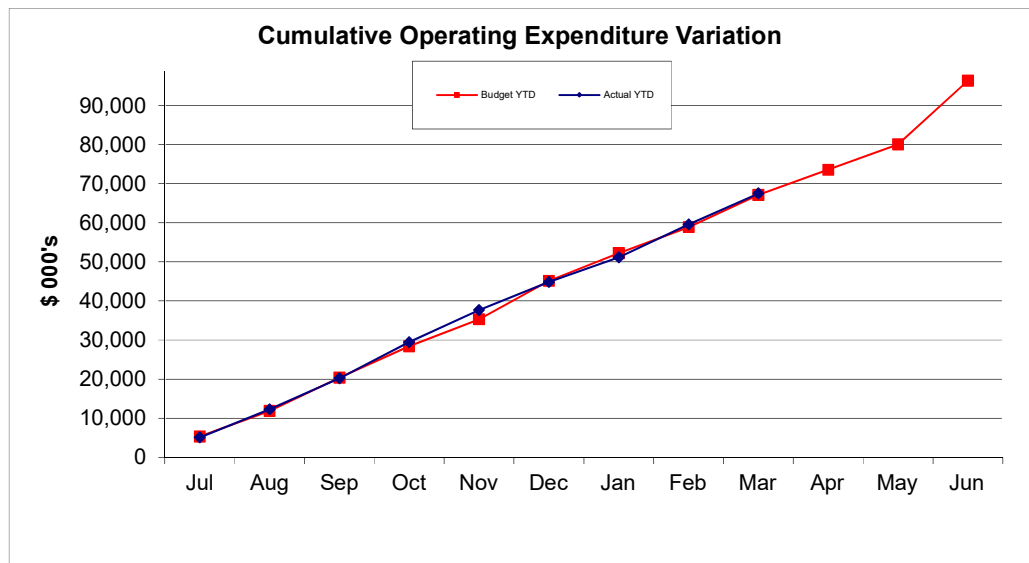
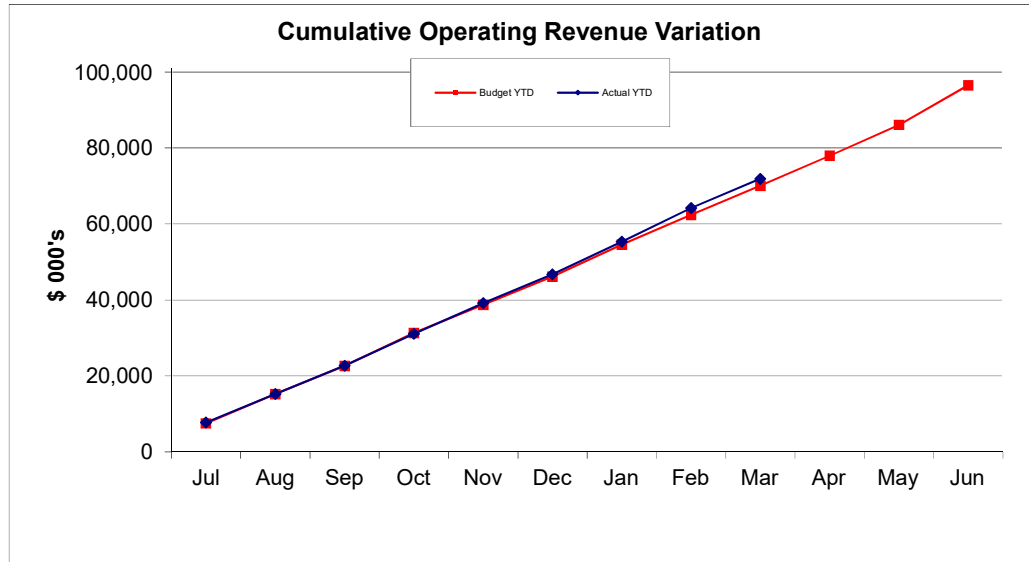
Original Adopted Budget	Carryovers	Budget Review Adjustments		YTD Actual	YTD Budget	YTD Variance	Annual Budget	Note
\$'000	\$'000	\$'000		\$'000	\$'000	\$'000	\$'000	
Funded by								
Loans								
2,000	-	-	Loan Principal Receipts (Net)	-	-	-	2,000	
-	-	-	Loan Receipts/(Payments) from Sporting Clubs (Net)	-	-	-	-	
(1,245)	-	-	Loan Principal Repayments	(613)	(613)	-	(1,245)	
755	-	-	Loan Funding (Net)	(613)	(613)	-	755	
Movement in level of cash, investments and accruals								
154	-	(105)	Cash Surplus/(Deficit) funding requirements	34,295	25,505	8,790	49	
(14,317)	(14,806)	2,078	Reserves Net - Transfer to/(Transfer from)	(27,045)	(27,045)	-	(27,045)	
(14,163)	(14,806)	1,973	Cash/Investments/Accruals Funding	7,250	(1,540)	8,790	(26,996)	
14,917	14,806	(1,972)	Funding Transactions	(7,863)	927	(8,790)	F 27,751	K

Variation Notes

A	User Charges	Favourable \$226k	Reflects budget-timing variances with regards to Community Hubs Programs Tuition income (\$71k) and Community Home Support Program User Charges (\$56k), Admission Charges being greater than budgeted for the Marion Outdoor Pool (\$47k) and with a number of variances which are individually insignificant.
B	Operating Grants & Subsidies	Favourable \$481k	Reflects unbudgeted grants received for Mitchell Park Integrated Artwork (\$100k), Edwardstown Greening Project (\$60k), budget-timing variances for Lonsdale Highway Tree Planting (\$67k) and a number of variances which are individually insignificant.
C	Reimbursements	Favourable \$241k	Reflects unbudgeted funding for the Risk Incentive Program (\$112k), budget-timing variances with regards to private infrastructure works (\$75k) and a number of variances which are individually insignificant.
D	Other Revenue	Unfavourable \$321k	Predominantly reflects budget-timing variances which are individually insignificant.
E	Employee Costs	Favourable \$1,159k	Predominantly reflects budget-timing variances in addition to savings from temporarily vacant positions.
F	Contractors	Unfavourable \$613k	Reflects budget-timing variances with regards to waste (\$291k), payment of IT licences in advance (\$252k) and a number of variances which are individually insignificant.
G	Materials	Favourable \$128k	Predominately reflects budget-timing variances with regards to Water.
H	Other Expenses	Unfavourable \$1,075k	Predominately reflects a reclassification of Birch Crescent grant funding from capital to operating.
I	Capital Expenditure (Renewal)	Favourable \$2,300k	Reflects budget-timing variances with regards to Fleet Replacement (\$481k) Footpath Construction (\$427k), Oakland's Precinct Streetscape Development (\$338k), Road Reseals (\$305k), unbudgeted income from the sale of Travers Street Land (\$361k) and a number of variances which are individually insignificant.
J	Capital Expenditure (New)	Favourable \$4,871k	Reflects budget-timing variances with regards to Southern Regional Football Facility (\$1,169k), Mitchell Park Sports and Community Club Redevelopment (\$1,129k), Drainage construction (\$526k), Sturt Road Streetscape (\$405k), Tarnham Road Tennis Courts (\$400k), Sam Willoughby International BMX Facility (\$373k) and a number of variances which are individually insignificant.
K	Funding Transactions	Favourable \$8,790k	This variance is the sum total of all variances and reflects an increase against council's expected YTD cash position.

The above comments referring to budget timing variations are where some monthly budget estimates are not reflective of the actual expenditure patterns as at the reporting date.

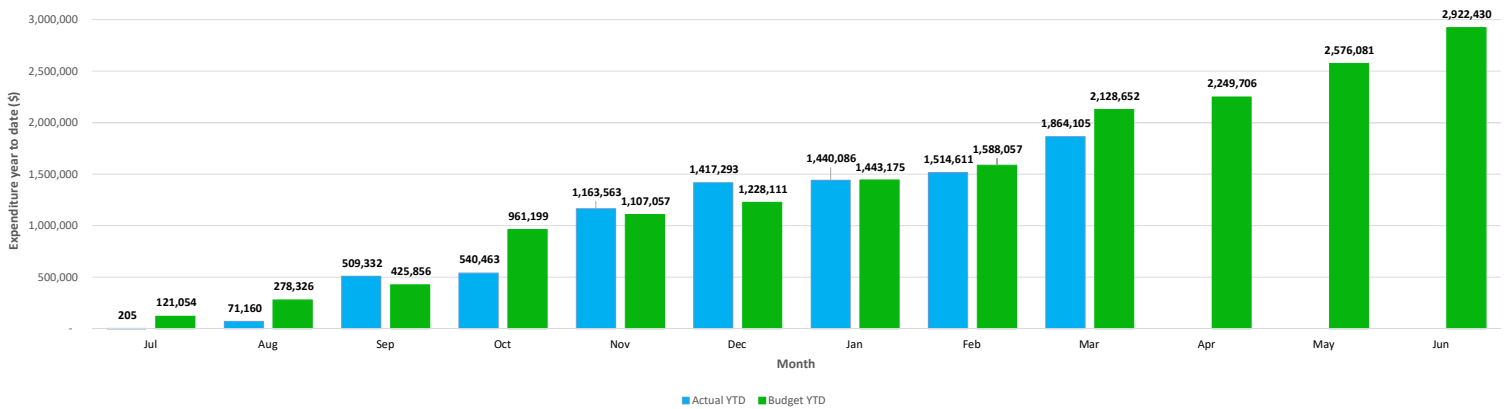
Funding Statement Cumulative Position - 2020/21



Road Reseal

Monthly Comment

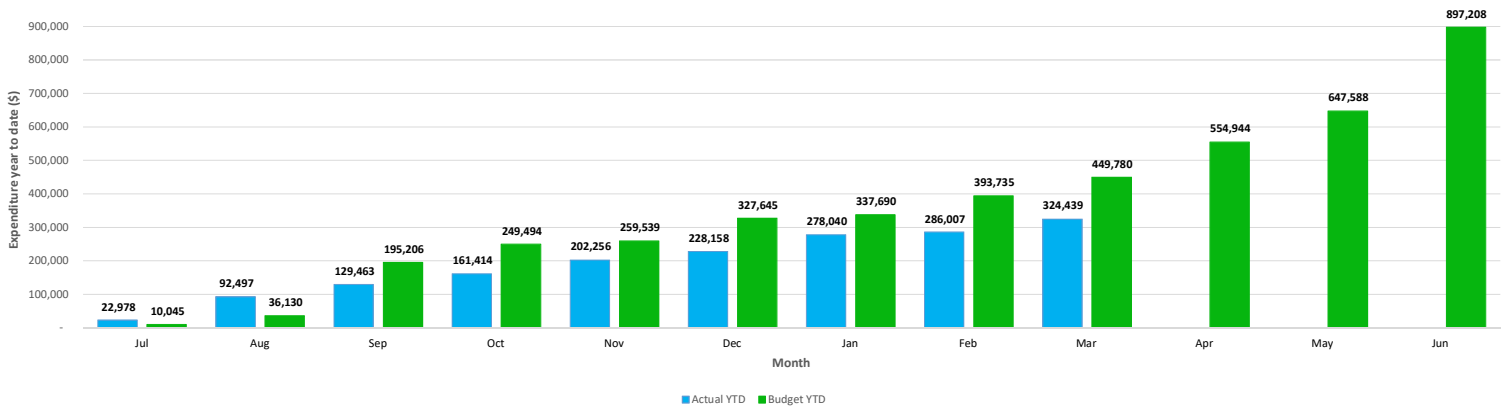
Road reseal program is 83% complete and on track to be completed in 20/21.



Kerb and Water Table

Monthly Comment

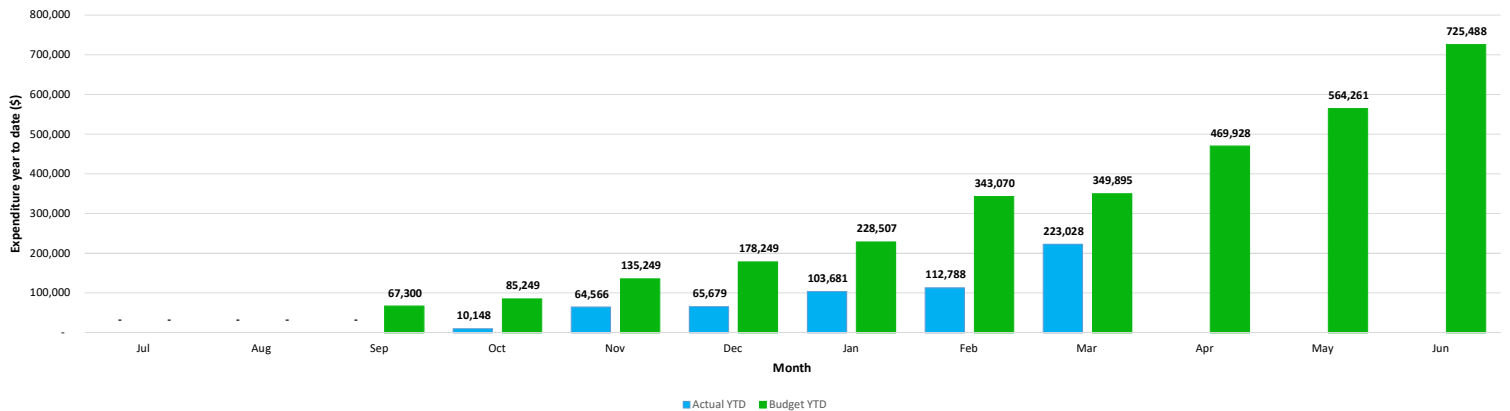
Program is 56% complete and on track to be completed by end of financial year. The Kerb Ramp program is progressing with a focus on high priority locations.



New Footpath Construction

Monthly Comment

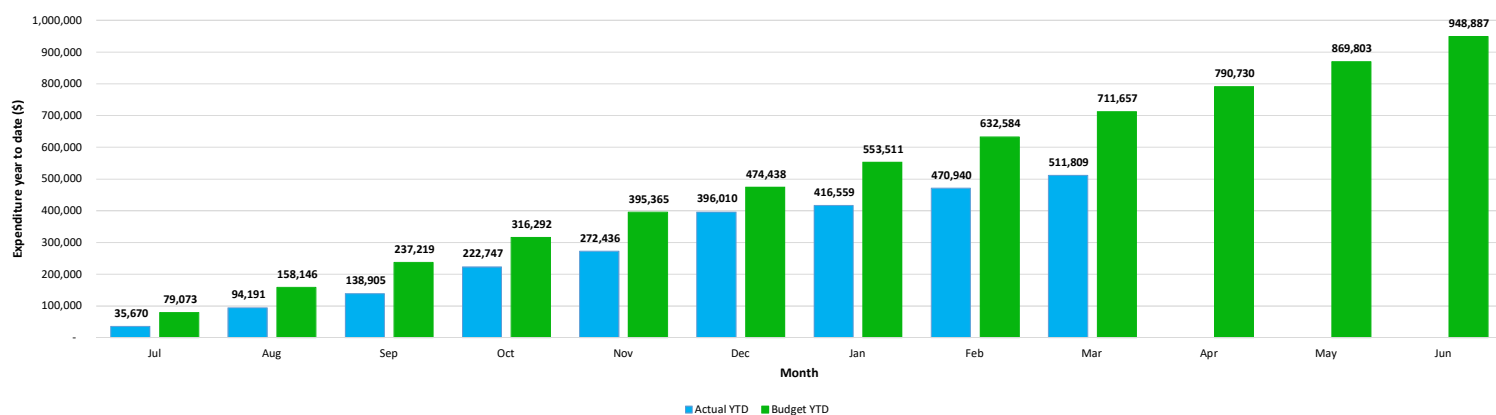
Program is in progress with 78% complete, and on track to be completed by end of financial year. A number of projects situated near schools are progressing during the school holiday periods.



Renewal Footpath Construction

Monthly Comment

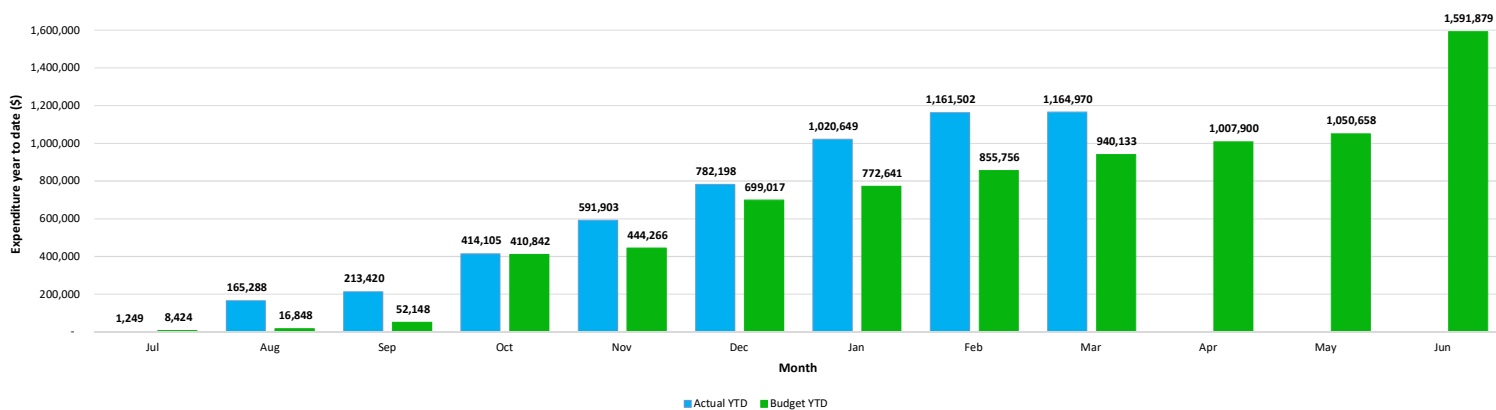
Program is 62% complete and on track.



Transport

Monthly Comment

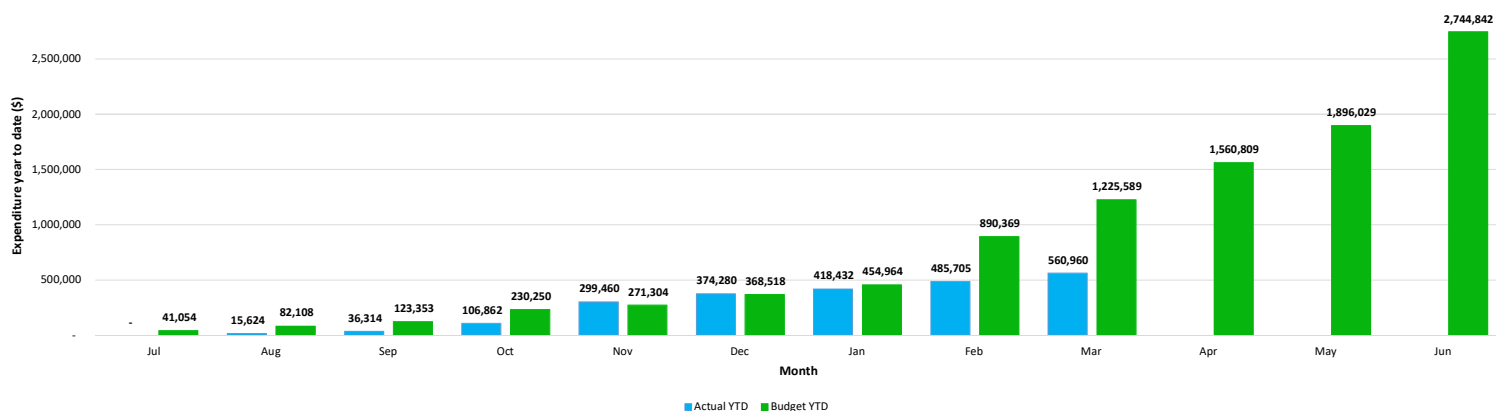
Program in progress and on track with the exception of Lander Road and Young Street, this projects is anticipated to be a carryover.



Drainage

Monthly Comment

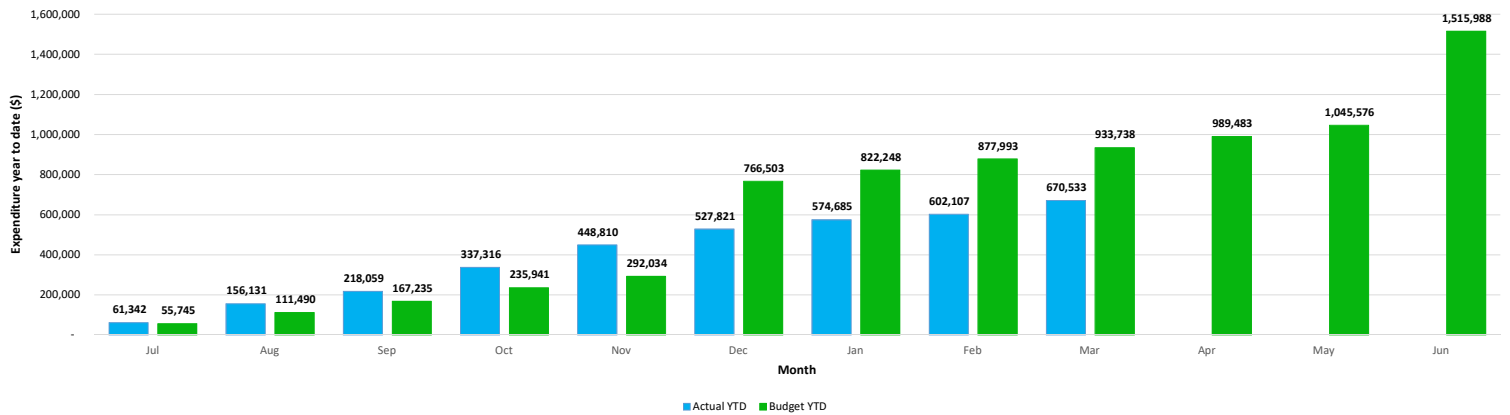
Program in progress and on track. Designs are complete for all drainage projects in the 20/21 program. Lucretia Way, Hallett Cove and Lynton Avenue and Castle Street, South Plympton have progressed to construction phase, a carryover is anticipated for Lucretia Way.



Street Trees

Monthly Comment

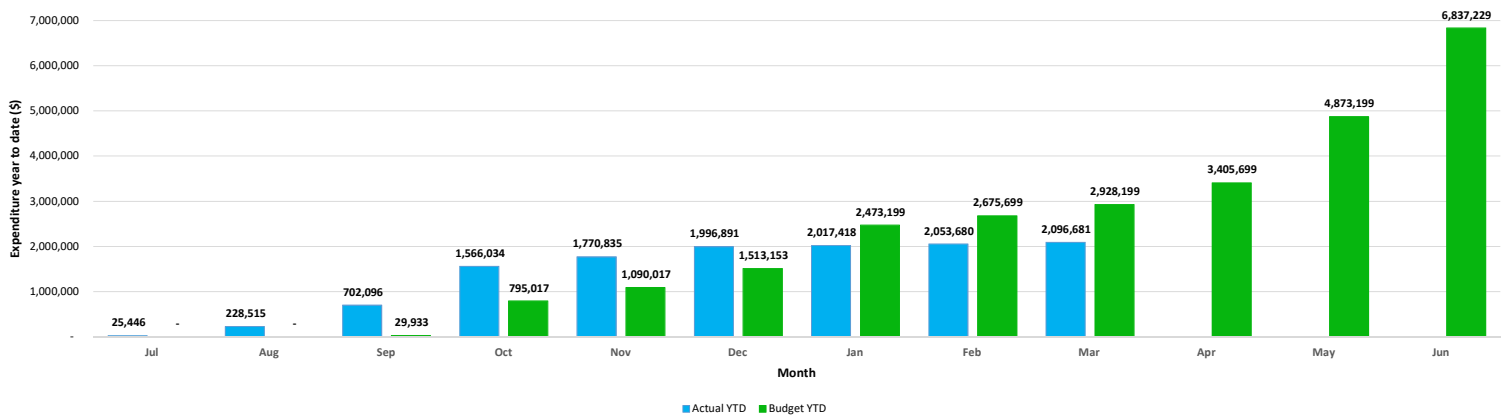
The Tree Planting program has been completed for this season with the focus now being on tree watering over the summer months. Planting is anticipated to recommence in April, tree pits are being created in preparation.



Streetscapes

Monthly Comment

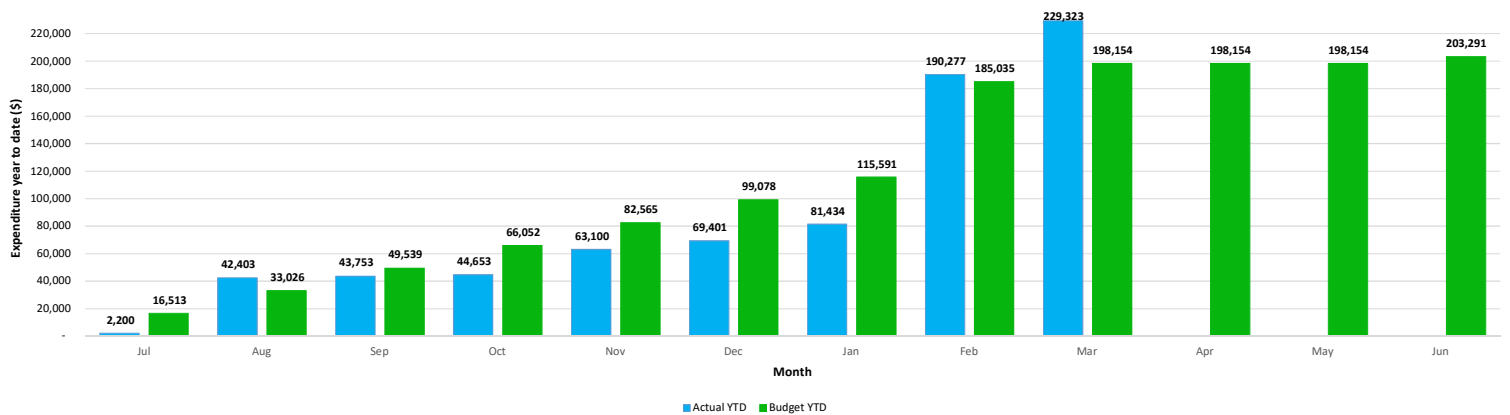
Program in progress with Sturt Road (Stage 1 - South Road to Marion Road), Diagonal Way and Quick Rd (carryover c/o) streetscapes complete. Works on Sturt Road (Marion Road to Diagonal Road) and Birch Crescent (c/o) have commenced. A carryover is anticipated for Sturt Road (Marion Road to Diagonal Road) due to restrictions with working on arterial roads.



Irrigation

Monthly Comment

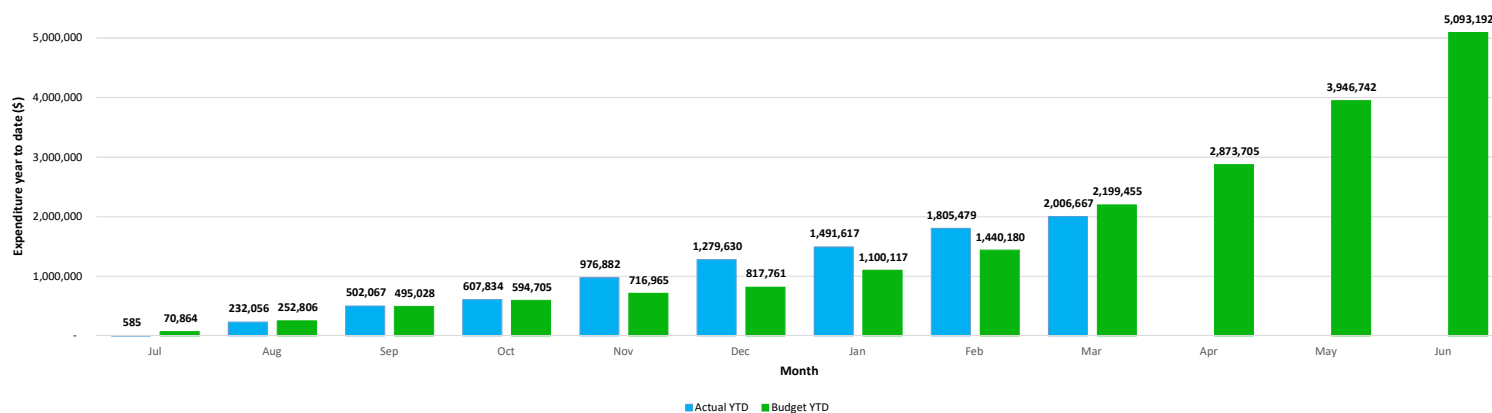
Irrigation program is complete.



Open Space Developments

Monthly Comment

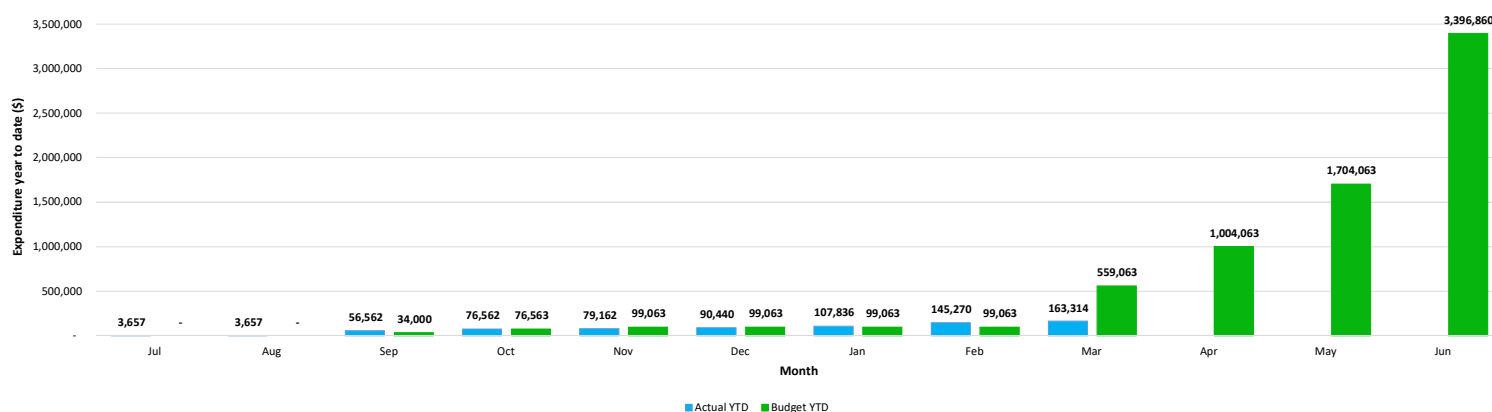
Program in progress and on track for completion by the end of financial year with the exception of Capella Drive Reserve Skate Park which is being impacted by volume of work in the market.



Sports Facilities and Courts

Monthly Comment

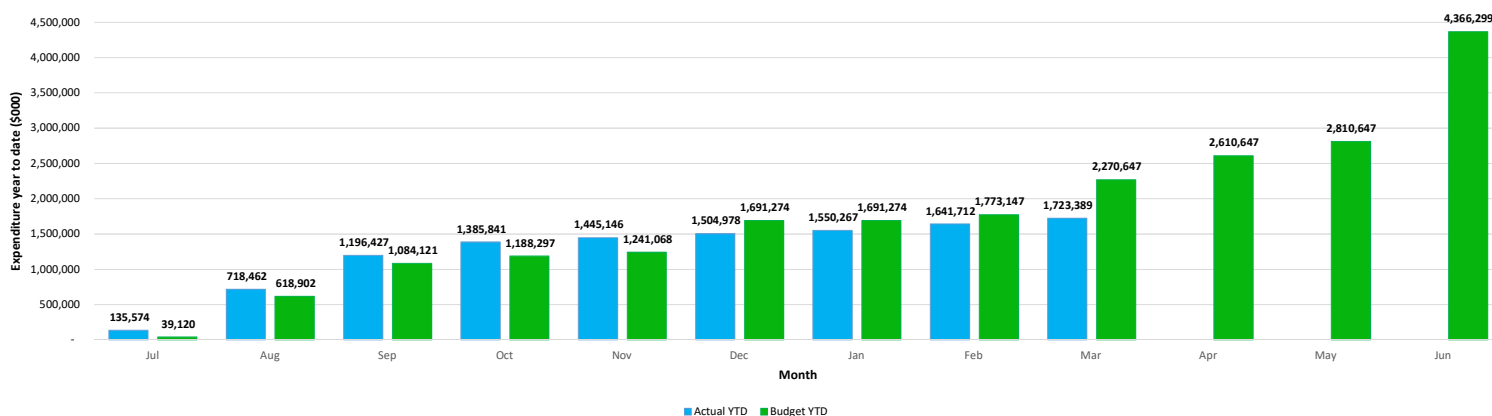
Edwardstown Bowls Shade Sails (c/o) and Sports Light Tracker (c/o), Glandore Oval Storage Shed and Marion Bowls Carpet replacement are complete. A number of key projects including the Marion Golf Club, Tarnham Road Reserve and Glandore Crickets Nets are subject to further council reports and grant applications. The tender documentation for the LED lighting are being finalised for install and connection only, council will purchase the structures to assist in delivery of this project, a carryover is anticipated for this project. The remainder of this program is on track.



Building Upgrades

Monthly Comment

Program in progress with 80% of planned projects complete. Works on Marion RSL carpark have commenced and units for Admin Air Conditioner have been ordered, completion is anticipated by end of financial year. Re-scoping of the CCTV project has caused delays, this project is anticipated to go to tender in April 2021, there is a risk of carryover with this project. There is also a risk of carryover with the Marion Outdoor Pool Boiler Replacement.



Major Projects

Mitchell Park Sports and Community Club Redevelopment

	2020/21 Actual YTD 31/03/2021	2020/21 Budget	Project Cost At Completion
Income			
Commonwealth Government Grant Contribution	1,000,000	4,605,000	5,000,000
Total Income	1,000,000	4,605,000	5,000,000
Expenditure			
Operating	-	-	-
Capital Construction	(829,961)	(6,605,000)	(16,250,000)
Total Expenditure	(829,961)	(6,605,000)	(16,250,000)
Project Result Surplus/(Deficit)	170,039	(2,000,000)	(11,250,000)

The net deficit forecast will be funded in the following manner:

**Funded By :
(Over Project Life)**

\$

Proposed Borrowings	10,920,000
Open Space Capital budget	250,000
Reserve Transfer	
- Asset Sustainability Reserve – Energy Efficiency	80,000
	11,250,000

Sam Willoughby International BMX Facility

	2020/21 Actual YTD 31/03/2021	2020/21 Budget	Project Cost At Completion
Income			
City of Onkaparinga Contribution	-	750,000	750,000
State Government Grant Contribution	-	-	3,550,000
Total Income	-	750,000	4,300,000
Expenditure			
Operating	-	-	-
Capital Construction	(421,774)	(5,800,000)	(6,050,000)
Total Expenditure	(421,774)	(5,800,000)	(6,050,000)
Project Result Surplus/(Deficit)	(421,774)	(5,050,000)	(1,750,000)

The net deficit forecast will be funded in the following manner:

**Funded By :
(Over Project Life)**

\$

Reserve Transfer

- Asset Sustainability Reserve

1,750,000

1,750,000

Council have received \$3.3m of the State Governments contribution to this project.

Southern Regional Football Facility

	2020/21 Actual YTD 31/03/2021	2020/21 Budget	Project Cost At Completion
Income			
State Government Grant Contribution	-	-	2,500,000
Total Income	-	-	2,500,000
Expenditure			
Operating	-	-	-
Capital Construction	(231,159)	(6,121,741)	(7,000,000)
Total Expenditure	(231,159)	(6,121,741)	(7,000,000)
Project Result Surplus/(Deficit)	(231,159)	(6,121,741)	(4,500,000)

The net deficit forecast will be funded in the following manner:

**Funded By :
(Over Project Life)**

\$

Reserve Transfer

- Asset Sustainability Reserve

4,500,000

4,500,000

Council have received the State Governments contribution to this project.

Sundry Debtors Report - Ageing report as at 31 March 2021

Debtor	Total Balance	Current	30 Days	60 Days	90 Days	90+ Days	Percentage of total 90+ day balance	Comments for 90+ Day balances
General Total	10,179.07	6,170.17	1,725.00	2,283.90	.00	.00	0%	
Neighbourhood Centres Total	3,109.00	1,254.00	.00	.00	.00	1,855.00	3%	Made up of 1 out of 4 debtors. The debt collection process is being worked through for this account.
Regulatory Services Land Clearing Total	3,381.28	.00	490.34	.00	.00	2,890.94	4%	Made up of 4 out of 6 debtors, with one account totalling \$1,725.35.
City Property Facilities Total	47,804.83	20,698.21	6,721.46	444.39	9,476.31	10,464.46	15%	Made up of 2 out of 19 debtors. One account totalling \$7,500.00 is on a payment plan.
Civil Services Private Works Total	43,343.75	21,695.00	890.00	.00	3,003.75	17,755.00	26%	Made up of 9 out of 23 debtors in this category with two accounts totalling \$4,200.00 relating to works not commenced, awaiting payment, one of the remaining accounts totals \$3,190.00. Five accounts totalling \$9,475.00 are on payment plans, payments of \$250.00 have subsequently been received in April.
Swim Centre Debtors Total	9,433.25	7,821.50	1,093.35	518.40	.00	.00	0%	
Grants & Subsidies Total	615,993.59	589,354.85	.00	26,638.74	.00	.00	0%	
Environmental Health Inspections Total	56,017.23	4,835.13	5,940.70	36,062.80	151.00	9,027.60	13%	Made up of 49 out of 140 debtors, with none individually significant. One account totalling \$121.00 has subsequently been settled in April.
Regulatory Services Other Total	36,559.65	.00	2,915.00	.00	6,777.65	26,867.00	39%	Made up of 110 out of 140 debtors in this category. The debt collection process is being worked through for five accounts totalling \$4,006.50.
Supplier Refund Totals	36,689.18	.00	.00	.00	36,689.18	.00	0%	
Marion Cultural Centre Total	5,826.00	4,885.00	135.00	806.00	.00	.00	0%	
Living Kaurna Cultural Centre Total	9,818.60	8,469.20	1,349.40	.00	.00	.00	0%	
Local Government	53,188.74	.00	.00	53,188.74	.00	.00		
Economic Development Total	132.00	132.00	.00	.00	.00	.00	0%	
Total	931,476.17	665,315.06	21,260.25	119,942.97	56,097.89	68,860.00		
Total Aging Profile		71%	2%	13%	6%	7%		

Category	Description
Employees	Anything that relates to CoM employees.
General	Anything that does not fit into one of the below categories.
Neighbourhood Centres	For hire of rooms in Neighbourhood Centres, etc. - usually charged out at an hourly rate. Also includes cultural workshops and tours.
Regulatory Services Land Clearing	When council has had to clear land due to non-compliance of owner.
Sporting Clubs & Other Leases	Rent, electricity, water, maintenance, etc. charged out to lessees.
Civil Services Private Works	Repairs or modifications to infrastructure (footpaths, kerbs, driveway inverts). Can be at resident request.
Swim Centre Debtors	Outdoor Swimming Centre - used for lane hire, school visits, etc.
Grants & Subsidies	Government grants and subsidies.
Environmental Health Inspections	Food inspection fees.
Regulatory Services Other	Vehicle impoundment fees and other regulatory services.
Supplier Refunds	Where a supplier owes the City of Marion funds. This category is used to keep track to ensure we have received payment for credits.
Development Services	Includes contribution from residents and/or developers for the removal and/or replacement of Council Street Trees and significant trees.
Living Kaurna Cultural Centre	Relates to programs run through the LKCC.
Environmental Health Testing	Environmental testing fees.
Local Government	Transactions with other Local Government corporations.
Communications	Anything related to communications.
Economic Development	Events, etc. relating to economic development within the City of Marion.
Marion Cultural Centre	Hiring of the Marion Cultural Centre.

*any category that does not have any outstanding invoices will not be displayed.

Rates Report - Collection of Rates to 31 March 2021

ANALYSIS OF OUTSTANDING RATES AS AT 31 MARCH 2021

	<u>Note</u>		% of Total Annual Rates
CURRENT	1	\$ 15,712,571	19.6%
OVERDUE	2	\$ 1,726,726	2.2%
ARREARS	3	\$ 1,136,497	1.4%
INTEREST	4	\$ 42,287	0.1%
POSTPONED	5	\$ 202,738	0.3%
LEGALS	6	\$ 50,049	0.1%
		\$ 18,870,868	23.6%
TOTAL ANNUAL RATES FOR 2020/21		\$ 80,044,096	

Note 1: Current

Current rates represent the total amount of rates levied in the current financial year that are not yet due for payment. For example at 1st January this represents Quarter 3 & Quarter 4 rates unpaid.

Note 2: Overdue

Overdue rates represent rates levied in the current financial year that remain unpaid past their due payment date. For example on 1st January, this represents rates from Quarter 1 and Quarter 2 that remain unpaid.

Note 3: Arrears

Rates in arrears represent rates and charges levied in previous financial years that remain unpaid .

Note 4: Interest

Interest represent the fines and interest applied to overdue rates and rates in arrears.

Note 5: Postponed

Postponed rates represent any rates amount due by seniors that have been granted a deferral, until the eventual sale of their property, as allowable under the Local Government Act. Interest is charged on these deferred rates and is recoverable when the property is sold.

Note 6: Legals

Legals represent any legal fees, court costs that have been incurred by Council in the collection of rates in the current financial year. These amounts represent costs that have been on-charged to the defaulting ratepayers and are currently outstanding.

Questions Taken on Notice Register

Originating Officer Governance Officer - Angela Porter

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager General Manager City Services - Tony Lines

Report Reference GC210427R19

Confidential ☐

REPORT OBJECTIVE

To receive and note the information contained within the *Questions Taken on Notice Register* provided in Attachment 1.

EXECUTIVE SUMMARY

At the 8 May 2018 General Council meeting Council resolved that (GC080518M01):

Questions without Notice that were not answered at the same meeting will be entered into a register. This register will be tabled as an information report at the following meeting.

Under Regulation 9 of the Local Government (Procedures at Meetings) Regulations 2013 (The Regulations):

- (3) A member may ask a question without notice at a meeting.
- (4) The presiding member may allow the reply to a question without notice to be given at the next meeting.
- (5) A question without notice and the reply will not be entered in the minutes of the relevant meeting unless the members present at the meeting resolve that an entry should be made.

RECOMMENDATION

That Council:

- 1. Notes the report 'Questions Taken on Notice Register'.**

Attachment

#	Attachment
1	GC210427 - QON Register

Questions Taken on Notice Register



Report Reference	Meeting Date	Councillor	Responsible Officer	Question taken on notice during the meeting	Response								
GC210323R07 – Tree Management	23 March 2021	Cr Joseph Masika	Manager Operations – Fiona Harvey Team Leader Planning – Alex Wright	The Planning and Design Code states each house block has to plant one tree, how many houses are going to be built in a year and how many trees are expected to be planted?	<p>The Planning & Design Code outlines the number and size of trees desired to be planted for new development.</p> <p>Tree planting should be provided in accordance with the below requirements, however there are a number of exceptions and exemptions for these requirements. Therefore it is difficult to determine how many trees are expected to be planted.</p> <table><tr><th>Site size per dwelling (m²)</th><th>Tree size and number required per dwelling</th></tr><tr><td><450</td><td>1 small tree</td></tr><tr><td>450-800</td><td>1 medium tree or 2 small trees</td></tr><tr><td>>800</td><td>1 large tree or 2 medium trees or 4 small trees</td></tr></table> <p>The Code specifies the size of small, medium and large trees.</p> <p>On average 460 new dwellings are constructed in Marion each year.</p> <p>A more detailed response has been emailed to Members.</p>	Site size per dwelling (m ²)	Tree size and number required per dwelling	<450	1 small tree	450-800	1 medium tree or 2 small trees	>800	1 large tree or 2 medium trees or 4 small trees
Site size per dwelling (m ²)	Tree size and number required per dwelling												
<450	1 small tree												
450-800	1 medium tree or 2 small trees												
>800	1 large tree or 2 medium trees or 4 small trees												

WORKSHOP / PRESENTATION ITEMS - Nil**MOTIONS WITH NOTICE****Rescission Motion - City Limits Magazine**

Elected Member Councillor Joseph Masika

Report Reference: GC210427M01

Confidential Report ☐

Motion:

That Council:

1. Rescinds the following resolution of Council relating to City Limits Magazine made on 8 December 2020 (City Limits magazine - Report Reference: GC201208R11):

That Council:

1. Publishes a 12-page City Limits community magazine six times a year from February 2021.
2. Publishes a Mayoral column each edition of the magazine.
3. Discontinues publishing Councillor columns but incorporates comments, where possible, into news stories.
4. A draft Publications Policy and a draft City Limits Publications Policy be brought to Council early 2021 for consideration.

And

2. Resolves the following:

That Council:

1. Publishes City Limits community magazine six times a year – three editions of 12 pages and three editions of 16 pages.
2. Publishes a Mayoral column (maximum 200 words) each edition of the magazine.
3. Publishes Councillor columns three times a year (February, August and December) in the 16-page edition of City Limits.
4. Each Councillor will receive 200 words per column or 400 words per Ward.
5. Amend the draft City Limits Policy to reflect these changes.

Supporting Information:

Nil

Response Received From: Craig Clarke - Unit Manager Communications

Corporate Manager Manager Customer Experience - Karen Cocks

General Manager Acting General Manager Corporate Services - Ray Barnwell

Staff Comments:



A 12-page edition of City Limits is currently delivered to households six times a year so as to increase the amount of local news and information sent to the community. Elected Members resolved (GC201208R11) to discontinue Councillor columns but incorporate comments into stories where possible. The Mayoral column would continue each edition as per the previous resolution.

Should Council wish to support the motion, Elected Member columns can easily be returned to City Limits three times a year. The columns would take up just under three pages (with each member receiving 100 words) and four pages if Council decided to revert back to the previous arrangement of 200 words per Member.

Regardless of which approach is adopted, it is recommended that the number of pages is increased from 12 to 16 for the editions that contain EM columns otherwise there will be little space for news. In printing of publications, we're locked in to increases by multiples of four pages.

The cost for the increase from 12 to 16 pages three times a year is an additional \$3400 per year (excluding GST), which can be absorbed in the operational budget of the Communications Unit.

Vinnall Street Reserve - Irrigation

Elected Member Councillor Bruce Hull

Report Reference: GC210427M02

Confidential Report ☐

Motion:

That Council:

- 1. Alters the public value of the Vinnall Street reserve to 4;**
- 2. Allocates funding in the 2021/22 financial year to upgrade the irrigation system at Vinnall Street Reserve.**
- 3. Advises the residents adjacent Vinnall Street Reserve of this resolution.**

Supporting Information:

Vinnall Street Reserve is an attractive area located in Dover Gardens. This reserve was previously irrigated; residents highly value this area and would like to see the Reserve irrigated again.

Response Received From: Rebecca Deans - Open Space and Recreation Planner

Corporate Manager N/A

General Manager Acting General Manager City Development - Greg Salmon

Staff Comments:

Vinnall Street Reserve, Dover Gardens is classified as a Local level natural landscaping area. The reserve is 1,429m² with mature trees and natural ground cover.

The recently endorsed Open Space Plan considers Vinnall Street Reserve but recommends no further improvements apart from a continuance of regular maintenance.

The reserve has a current total irrigation score of 5, with a public value of 1.

Reserves are irrigated when they have a total score of 12 (or above), or a public value of 4.

Council endorsed an Irrigation Management Plan on 9 September 2014. The Plan is part of a suite of documents within Council's Environmental Management System (EMS) framework. It also aligns with the Climate Change Adaption Planning and the general requirements of the Irrigation of Public Open Space Water Licence issued by SA Water (which requires Council to be "Water Wise"). The Plan has been reviewed by Council on a number of occasions since.

While the Plan outlines Council's commitment to sustainable water usage and responsible management in relation to the irrigation of open spaces, it also identifies a number of objectives. These are to:

- Ensure compliance with government legislation, regulations and water restrictions as they arise.
- Achieve a balance between the provision of an amenity landscape that is aesthetically pleasing and meets the needs of the community and is economically and environmentally sustainable.
- Achieve a consistent approach in the provision and development of the irrigated landscape.

- Provide a clear direction and framework for irrigation and water management strategies to enable accountability in relation to water usage and financial impacts.
- Complement and integrate with existing Council strategies and plans and the General Environmental Policy.

The provision of irrigated turf areas and landscape treatments is currently guided by functional benefit, that is, the area irrigated is kept to the minimum required to meet the purpose of the reserve. This applies to all reserves. The intent of this is to encourage low maintenance and water wise landscaping (using non-native and native plants and grasses) to complement the area and the environment. This is often referred to as 'dry-landscape' treatments.

Function is related to the intended use as opposed to aesthetic purpose. Areas deemed to be functional include athletic fields, cricket ovals, winter sport areas (e.g. AFL, rugby), informal ball play/recreation areas, picnic areas, BBQ, and seating.

Council's Irrigation Decision Support Tool:

- Allows the selection of which sites are functional (as defined above) and of Public Value.
- Allows the selection of how much of each site is irrigated.
- Allows the selection of turf quality (turf quality visual assessment levels 1-4) and therefore watering frequency.
- Determines the corresponding cost of watering and maintenance.

The Reserve is a 200m walk from the recently upgraded Crown Street Reserve, which has new irrigation and turf. Less than 400m walking distance is Scarborough Terrace Reserve which is extensively irrigated with a large open space.

The Open Space Plan does not include budget to renew or upgrade the irrigation at Vinall Street Reserve.

Staff have inspected the existing irrigation system at Vinall Street Reserve and found that it will be fully functional with a \$1,000 upgrade.

The estimated ongoing cost if Council endorses this motion is \$1,300 per annum for water. Existing maintenance levels have been assessed as appropriate with irrigation.

ATTACHMENTS:

#	Attachment
1	Vinall Street Reserve Location



City of Marion Web Map Printout



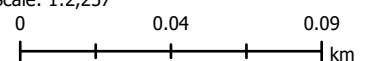
Disclaimer

While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions. Property boundary line network data is supplied by State Government.

About this Document

This map has been created for the purpose of showing basic locality information and is a representation of the data currently held by The City of Marion. This information is provided for private use only.

Created by svc.ArcGIS
15/04/2021 12:41 PM
Coordinate System:
WGS 1984 Web Mercator Auxiliary Sphere
Scale: 1:2,257



Flu Vaccine for Elected Members

Elected Member Councillor Matthew Shilling

Report Reference: GC210427M03

Confidential Report ☐

Motion:

That Council:

- 1. Amend the Councillor Allowance and Benefit Policy to include an annual Flu Vaccination for Elected Members. It will not be compulsory for members to take up the benefit.**

Supporting Information:

Flu Vaccinations are an important part of preventing the spread of the Flu throughout workplaces and our community. Council is a workplace for us. This is currently offered to staff as a part of their EB. In 2020 it was extended to Councillors and several took up the offer.

Response Received From: Unit Manager Risk - Sherie Walczak

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager General Manager City Services - Tony Lines

Staff Comments:

The Council Members' Allowances and Benefits Policy clarifies those expenses, incurred by Council Members, which must be or can be reimbursed and ensures compliance with the provisions of *the Local Government Act 1999 (the Act)* and the *Local Government (Members Allowances and Benefits) Regulations 2010*. Section 78 of the Act provides that Council can provide facilities and forms of support for use by its Council Members to assist them to perform or discharge their official functions and duties.

The City of Marion is committed to providing a safe and healthy workplace for employees and others who visit Council premises. With the community and safety at the forefront of everything we do, Council aims to minimise the risk to employees who may be exposed to infectious agents during the course of their work, this commitment currently includes the offering of influenza vaccination to employees through an annual onsite influenza vaccination clinic. Employees who are unable to attend the onsite influenza vaccination clinic are able to obtain an influenza vaccination through an external provider and are eligible for a reimbursement, through provision of a tax receipt, up to the cost of an individual vaccination at the onsite influenza vaccination clinic, currently \$18.00.

To further the commitment of providing a safe and healthy workplace, and to assist Council Members to perform their official functions and duties, access to influenza vaccinations to Elected Member through its inclusion in the Council Member Allowances and Benefits Policy, is supported in line with the current arrangement for employees ie at the annual onsite influenza vaccination clinic (note that this has already been provided in 2021) or through an external provider with a reimbursement available up to the cost of an individual vaccination at the onsite influenza vaccination clinic, currently \$18.00.

If this is Council's preference, it is recommended the following alternate recommendation could be considered:

- 1. That Council amends the Council Members' Allowances and Benefits Policy to include the following additional point:**

2.8.15 Council Members will be offered the influenza vaccination through an annual onsite influenza vaccination clinic. Council Members who are unable to attend the onsite influenza



vaccination clinic are able to obtain an influenza vaccination through an external provider and are eligible for a reimbursement, through provision of a tax receipt, up to the cost of an individual vaccination at the onsite influenza vaccination clinic, currently \$18.00.

QUESTIONS WITH NOTICE

Waste from City of Marion skips and bins

Elected Member Councillor Bruce Hull

Report Reference: GC210427Q02

Confidential Report ☐

Question:

What tonnage of putrescible and recyclables are being incinerated from Marion Council skips and bins that are under the care and control of the City of Marion, be it in house or contracted?

Supporting Information:

Nil.

Response Received From:

Senior Procurement Specialist - Colin Heath

Staff Comments:

We do not know the exact tonnages of putrescible and recyclables waste collected from the City of Marion that are being incinerated.

Our best estimate is approximately 15 T per annum of the 20-23 T per annum of comingled recyclables we estimate are collected from bulk bin arrangements used by Council could have been incinerated. This volumes represents 0.18% of the approximate 8000T of kerbside recyclables collected annually.

Key points to note regarding this statement include:

- Co-mingled recycling collected from the bulk bin arrangements are not weighed when collected, and therefore an estimated weight per collection has been used to estimate the 20-23T per annum
- Councils tonnages are added to Cleanaway's trucks collecting similar waste from other customers. We subsequently do not monitor:
 - What periods of time SUEZ ResourceCo's plant is accepting loads, or
 - if accepted by SUEZ ResourceCo, what tonnages of waste accepted by SUEZ ResourceCo are recovered (eg metals, wood) before the residual tonnages are converted into PEF and essentially incinerated "
- Cleanaway have estimated SUEZ ResourceCo have accepted loads during 8-9 months of the last 12 months (approximately 75% of the time period).

Previous information provided (refer GC210323Q01):

The City of Marion currently has a bulk bin service provided by Cleanaway. Bin sizes range from 660 litres to 3000 litres (compared to the standard 140/240 litre kerbside recycling bin sizes) and collect various waste streams (general waste, co-mingled recycling, and cardboard recycling).

The City of Marion currently has 10 co-mingled recycling bulk bins collecting recycling product from the Tonsley residential precinct (6 bins) and Council operated buildings (4 bins).

Cleanaway have advised:

1. the City of Marion's bulk bin comingled recycling is disposed as "dry waste" at SUEZ Resource-Co. The dry waste process is summarised below:
 - SUEZ-Resource-Co sorts materials for higher use (eg. Metals, cardboard etc) and the remaining is converted into Processed Engineered Fuel (PEF)



- Processed Engineered Fuel (PEF) is used as an alternate to fossil fuels at Adelaide Brighton Cement (ABC) and burnt

2. SUEZ-ResourceCo's capability to receive the material is quite unstable based on the operational requirements of ABC and from time to time, SUEZ-ResourceCo are unable to receive the material. This can change daily and where Cleanaway is unable to dispose of the material at SUEZ-ResourceCo, the material is disposed at the Cleanaway Wingfield Transfer Station for processing, with residual material going to landfill. Unfortunately at this time Cleanaway is unable to dispose of Bulk Comingled Recycling at a dedicated MRF (ie. Visy) as they only process loads which are only from residential sources.

We estimate 20-23 tonnes of co-mingled recycling material is collected annually through these bins (based on estimated weights per collection), and processed as either PEF or sent to landfill in accordance with Cleanaway's advice above.

Cardboard Recycling is treated as a separate stream and disposed at OPAL (Previously Orora) for recycling.

General Waste is disposed at a landfill site.



MOTIONS WITHOUT NOTICE

QUESTIONS WITHOUT NOTICE

OTHER BUSINESS

MEETING CLOSURE

Council shall conclude on or before 9.30pm unless there is a specific motion adopted at the meeting to continue beyond that time.