

His Worship the Mayor  
Councillors  
City of Marion

## **Notice of General Council Meeting**

Public Access via Virtual Meeting Room (Zoom) only

**Tuesday, 10 August 2021 at 6.30 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. Due to COVID-19, interested members of the community are welcome to attend by electronic means. Access to the meeting is via the link published on the City of Marion website (<https://www.marion.sa.gov.au/about-council/council-meetings/council-meeting-live-stream>) on the day of the meeting.



Tony Harrison  
Chief Executive Officer

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**1 Open Meeting****2 Kaurna Acknowledgement**

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

**3 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.

**4 Elected Member Declaration of Interest (if any)****5 Confirmation of Minutes****5.1 Confirmation of Minutes of the General Council Meeting held on 27 July 2021**

<b>Report Reference</b>	GC210810R5.1
<b>Originating Officer</b>	Governance Administration Officer – Anne Mitchell
<b>Corporate Manager</b>	Manager Office of the CEO – Kate McKenzie
<b>General Manager</b>	Chief Executive Officer – Tony Harrison

**RECOMMENDATION**

That the minutes of the General Council Meeting held on 27 July 2021 be taken as read and confirmed.

**ATTACHMENTS**

1. GC210727 - Final Minutes [5.1.1 - 24 pages]





**Minutes of the General Council Meeting  
held on Tuesday, 27 July 2021 at 6.30 pm  
Virtual Meeting Room - Zoom**



**PRESENT**

His Worship the Mayor Kris Hanna  
Councillor Ian Crossland  
Councillor Maggie Duncan  
Councillor Raelene Telfer  
Councillor Bruce Hull  
Councillor Kendra Clancy  
Councillor Sasha Mason

Councillor Tim Gard  
Councillor Matthew Shilling  
Councillor Luke Hutchinson  
Councillor Nathan Prior  
Councillor Jason Veliskou  
Councillor Joseph Masika

**In Attendance**

Chief Executive Officer - Tony Harrison  
General Manager City Services - Tony Lines  
General Manager Corporate Services - Sorana Dinmore  
General Manager City Development - Ilia Houridis  
Manager Corporate Governance - Kate McKenzie  
Unit Manager Governance and Council Support - Victoria Moritz

**1 Open Meeting**

The Mayor opened the meeting at 6.31pm

**2 Kurna Acknowledgement**

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

**3 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.

**4 Elected Member 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

The following interests were disclosed:

- Councillor Duncan declared a perceived conflict of interest in the item *Pedestrian Pathway – David Avenue to Sampson Reserve, Mitchell Park (GC210727M14.1)*



## 5 Confirmation of Minutes

**5.1 Confirmation of Minutes of the General Council Meeting held on 22 June 2021 and Special General Council Meeting held on 13 July 2021**  
**Report Reference** GC210727R5.1

**Moved Councillor – Matthew Shilling**

**Seconded Councillor – Joseph Masika**

That the minutes of the General Council Meeting held on 22 June 2021 and Special General Council Meeting held on 13 July 2021 be taken as read and confirmed subject to the following corrections being made:

- P8 correction in the spelling of Minister Speirs name (Deputy Mayors Communication Report – 28 May 2021 entry)
- P12 Councillor Gard has been omitted from the division vote for the Glandore Item and voted in favour.

**Carried Unanimously**

## 6 Communications

**Moved Councillor – Matthew Shilling**

**Seconded Councillor - Ian Crossland**

That the following Communications Items be moved en bloc:

- Mayoral Communication Report
- Deputy Mayor Communication Report
- CEO and Executive Communication Report

**Carried Unanimously**

### 6.1 Mayoral Communication Report

**Report Reference** GC210727R6.1  
**Name of Council Member** Mayor - Kris Hanna

Date	Event	Comments
21 June 2021	Launch of World Refugee Day 2021 at Government House	
22 June 2021	Meeting with Graeme Botting of Hallett Cove Lions	Received certificate of appreciation
23 June 2021	Meeting with SA Jockey Club representatives	
24 June 2021	Coast FM radio interview	
24 June 2021	Meeting with Edwardstown Football Club representatives	
26 June 2021	George Street Reserve celebration event	Hosted event
28 June 2021	Club Marion grants discussion meeting	
29 June 2021	Meeting with Mayor of West Torrens	

1 July 2021	Funeral/wake of former Marion Council Alderman Walter David Woodhouse	
1 July 2021	Meeting with Principal Andrew Linke of Emmaus Christian College	
6 July 2021	Meeting with the Hon Vickie Chapman MP, Minister for Planning and Local Government	Attended with CEO
6 July 2021	Marion City Band constitution discussion	
7 July 2021	Meet and greet with OneWorld LED at their head office in Edwardstown	
9 July 2021	Open Space Grant Program Launch Event hosted by The Hon Vickie Chapman MP, Minister for Planning and Local Government	
9 July 2021	Sturt Pistol Shooting Club 2021 Committee Dinner	
10 July 2021	Westall Way Reserve Playground Upgrade Celebration Event	Hosted event
11 July 2021	St Mary's Anglican Church 180th Anniversary Service	
17 July 2021	Glandore Community centre upgrade and playground celebration event	
18 July 2021	Citizenship ceremonies (x3)	Hosted events
19 July 2021	Community Grants Cheque Presentation Ceremony	
19 July 2021	Club Marion meeting	Attended as club liaison
In addition, the Mayor met with residents, community groups, and industry representatives.		

**Moved Councillor – Matthew Shilling****Seconded Councillor – Ian Crossland**

That the Mayoral Communication report be received and noted with the following entry included 15 July 2021 – *Community Leadership Program Graduation* which was omitted in error.

**Carried Unanimously**



## 6.2 Deputy Mayor Communication Report

Report Reference GC210727R6.2

Name of Council Member Deputy Mayor – Nathan Prior

Date	Event	Comments
25 June 2021	Carbon Sequestration initial discussion with staff	
26 June 2021	George Street Playground opening	
15 July 2021	Carbon Sequestration report discussion with staff	

**Moved Councillor – Matthew Shilling**

**Seconded Councillor – Ian Crossland**

That the Deputy Mayor Communication report be received and noted.

**Carried Unanimously**

## 6.3 CEO and Executive Communication Report

Report Reference GC210727R6.3

Date	Activity	Attended By
23 June 2021	Meeting   Mayor Kris Hanna, Tony Harrison, Grant Mayer and Neil Anderson (SAJC)	Tony Harrison
23 June 2021	Cross Council Meeting   Data Analytics   CoM, City of PAE, CCS	Sorana Dinmore
24 June 2021	Meeting   City of Marion and Edwardstown Football Club meeting	Tony Harrison
24 June 2021	Executive Coaching Session with Judith Sellick	Sorana Dinmore
24 June 2021	Meeting: Elyse Hearn (LG Professionals SA)   Sorana Dinmore (CoM)	Sorana Dinmore
25 June 2021	SMRF JV Committee Construction Project Meeting	Sorana Dinmore
25 June 2021	Meeting   Todd Elliott (Satalyst)   Michelle Stokes (Satalyst)   Sorana Dinmore (City of Marion)	Sorana Dinmore
25 June 2021	Meeting: Aaron Reynolds (Pernix)   JC De Klerk (Pernix) Ben Farrell (CoM)   Sorana Dinmore (CoM)	Sorana Dinmore
28 June 2021	Meeting: Pete Auhl (EQI Consulting)   Sorana Dinmore (CoM)	Sorana Dinmore
29 June 2021	Meeting   Tony Harrison and David Johnson (Mott MacDonald)	Tony Harrison
29 June 2021	Meeting   Tony Harrison, Matt Pears (City of Mitcham) and Nigel	Tony Harrison

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	Bear (Forty2) re Environmental Change prediction project	
30 June 2021	Meeting   Oaklands Green Project Monthly Control Group	Tony Lines
30 June 2021	Signing of Management Agreement with Southern Cultural Immersion	Tony Lines
1 July 2021	Meeting   Tony Harrison and Christine Locher	Tony Harrison
1 July 2021	Meeting   CoM & Aboriginal Community Housing Ltd re Aboriginal Elders Independent Living Village	Tony Harrison Ilia Houridis
1 July 2021	Meeting  Eddie Dessman (Edwardstown Football Club), Tony Harrison & Thuyen Vi-Alternetti (City of Marion)	Tony Harrison
1 July 2021	Meeting   Cross Council Fleet governance Meeting with Cities of Marion, Charles Sturt and Port Adelaide Enfield	Tony Lines
2 July 2021	Stirling Hospital Strategic Planning Workshop	Tony Harrison
2 July 2021	SMRF JV Committee - Construction Project Meeting	Sorana Dinmore
6 July 2021	Meeting   Carolyn Power MP and Attorney General, Hon Vickie Chapman MP and Minister for Planning and Local Government	Tony Harrison
8 July 2021	Meeting   Oaklands Green Project Control Group with Housing Renewal SA re Rajah Reserve	Tony Lines
8 July 2021	Meeting   Flinders University re Graduate Opportunities	Tony Lines
9 July 2021	Launch Event - Open Space Grant Program & Local Design Review Scheme	Tony Harrison
12 July 2021	Meeting   Tony Harrison, Cr Ian Crossland, Dave Brain and Phil	Tony Harrison
13 July 2021	Meeting   Flinders University re Graduate Opportunities	Tony Lines
13 July 2021	Meeting   Planning and Land Use Services & City of Marion	Ilia Houridis
15 July 2021	Meeting   Minter Ellison re internal review	Tony Lines
15 July 2021	Meeting   SAJC re Concept plan for infield community sports facilities	Ilia Houridis
18 July 2021	MC Citizenship ceremony 11.30am 2:00pm 4:00pm	Tony Harrison Tony Harrison Tony Lines
20 July 2021	Meeting   PEET & City of Marion re Tonsley	Tony Lines

21 July 2021	Meeting   Tony Harrison and Minister Speirs	Tony Harrison
22 July 2021	Meeting   Geoff Smith (Housing Renewal Australia, Oaklands Green) and Tony Harrison	Tony Harrison
23 July 2021	CEO Steering Group - Environmental Change Prediction Project	Tony Harrison
23 July 2021	Meeting   CleanPeak	Tony Lines
23 July 2021	Meeting   Minister Wingard re South Adelaide Basketball Club	Ilia Houridis
26 July 2021	Meeting   Future Urban & City of Marion re Lot 707 zoning discussion	Ilia Houridis
27 July 2021	Meeting   Nadia Clancy (Labor candidate for Elder) and Tony Harrison	Tony Harrison
27 July 2021	Meeting   Site Contamination Reference Group	Ilia Houridis

**Moved Councillor – Matthew Shilling****Seconded Councillor – Ian Crossland**

That the CEO and Executive Communication report be received and noted.

**Carried Unanimously****6.4 Elected Member Communication Report****Report Reference** GC210727R6.4**Name of Council Member** Councillor - Raelene Telfer

<b>Date</b>	<b>Activity</b>	<b>Comments</b>
24/6/21	Coast FM	Presentation
26/6/21	George St Reserve	Opening
28/6/21	Mitchell Park Neighbourhood Centre	Met Tony lines re additional resources
30/6/21	Messines Avenue Streetscape	Option 2 discussion by phone with Cain Jeffries
1/7/21	Jasmine Ave Reserve	Met staff re Green Fingers proposal
6/7/21	AG Vicki Chapman MP and Caroline Power MP	Elder concerns , particularly Hamilton SC oval Pedestrian access
7/7/21	Council Assessment Panel	Member
7/7/21	Mitchell Park SC Club	Meeting to interpret Council's management proposal
12/7/21	CAP	Ethics training
13/7/21	Warriparinga Ward briefing	Met by zoom
15/7/21	Community Leadership	Graduation presentation

**7 Adjourned Items - Nil**



## 8 Deputations

### 8.1 Pedestrian Pathway - David Avenue to Sampson Reserve - Amber Tomas Report Reference GC210727D8.1

Ms Tomas made a five minute deputation to Council regarding community access across the Hamilton Senior College Oval.

## 9 Petitions – Nil

## 10 Committee Recommendations – Nil

## 11 Corporate Reports for Decision

### 11.1 Local Government Association Annual General Meeting 2021 Report Reference GC210727R11.1

**Moved Councillor – Tim Gard**

**Seconded Councillor – Matthew Shilling**

That:

1. The nominated Council Voting Delegate for the 2021 Local Government Association Annual General Meeting is Mayor Kris Hanna and that the Proxy Delegate for this meeting is Councillor Nathan Prior.
2. Council submits the following Notices of Motion to the Local Government Association by 6 August 2021 for consideration at the 2021 Local Government Association Annual General Meeting:
  - a. *That the Annual General Meeting requests the LGA to investigate and provide a report with an analysis of likely costs to the sector (and individual Councils where relevant) of:*
    - *submissions to the Remuneration Tribunal*
    - *submissions to ESCOSA*
    - *the Behavioural Panel*
    - *HR consultancy when recruiting a CEO and performance reviews*
    - *any other relevant changes mandated by the 2021 Local Government legislative reforms*
  - b. *That the Annual General Meeting requests the LGA research the possibility of a regular print media item that addresses the interests and needs of metropolitan Adelaide residents and businesses.*
3. On submitting Notices of Motion to the Local Government Association, the Chief Executive Officer be authorised to amend the wording (without changing the meaning or purpose of the motion) if required.





## Amendment

**Moved Councillor – Bruce Hull**

**Seconded Councillor – Ian Crossland**

That:

1. The nominated Council Voting Delegate for the 2021 Local Government Association Annual General Meeting is Mayor Kris Hanna and that the Proxy Delegate for this meeting is Councillor Nathan Prior.
2. Council submits the following Notices of Motion to the Local Government Association by 6 August 2021 for consideration at the 2021 Local Government Association Annual General Meeting:
  - a. *That the Annual General Meeting requests the LGA to investigate and provide a report with an analysis of likely costs to the sector (and individual Councils where relevant) of:*
    - *submissions to the Remuneration Tribunal*
    - *submissions to ESCOSA*
    - *the Behavioural Panel*
    - *HR consultancy when recruiting a CEO and performance reviews*
    - *any other relevant changes mandated by the 2021 Local Government legislative reforms*
  - b. *That the Annual General Meeting requests the LGA research the possibility of a regular print media item that addresses the interests and needs of metropolitan Adelaide residents and businesses.*
  - c. *That the Annual General Meeting requests the LGA to divest from fossil fuel investments in their share portfolios.*
4. On submitting Notices of Motion to the Local Government Association, the Chief Executive Officer be authorised to amend the wording (without changing the meaning or purpose of the motion) if required.

**The amendment to become the motion was Carried**  
**The motion as amended was Carried**

**11.2 Local Government Finance Authority Annual General Meeting 2021**  
**Report Reference GC210727R11.2**

**Moved Councillor – Bruce Hull**

**Seconded Councillor – Jason Veliskou**

That:

1. The nominated Council Representative for the Local Government Finance Authority Annual General Meeting 2021 is Mayor Kris Hanna.
2. Council submits the following Notices of Motion to the Local Government Finance Authority by Friday 20 August 2021 for consideration at the 2021 Local Government Finance Authority Annual General Meeting:

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a. *That the LGFA divest from fossil fuel investments in their share portfolios.*

3. On submitting Notices of Motion to the Local Government Finance Authority, the Chief Executive Officer be authorised to amend the wording (without changing the meaning or purpose of the motion) if required.

**Carried**

### 11.3 Spinnaker Circuit Reserve - Revocation of Community Land Classification Report Reference GC210727R11.3

**Moved Councillor – Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That Council:

1. Acknowledges the determination by the Minister for Planning and Local Government dated 23 June 2021;
2. Confirms its intention is to sell the portion of the reserve indicated as 'Piece A' in Attachment 3 to St Martins De Porres School by negotiation, at or close to market value (based on assumed residential zoning value), subject to the outcome of the revocation process;
3. Confirms its intention is to sell the portion of the reserve indicated as 'Piece B' in Attachment 3 on the open market in a manner to achieve maximum net financial return to Council, subject to the outcome of the revocation process;
4. Endorses the Report for Consultation titled 'Section 194 Report for Consultation - Spinnaker Circuit Reserve' contained in Attachment 1 and resolves that it be subject to a period of Community Engagement, in accordance with Section 194(2)(b) of the Local Government Act 1999 and Council's Community Engagement Policy;
5. Authorises the 'Chief Executive Officer' or his nominee, to make minor variations to the Report for Public Consultation prior to the commencement of Community Engagement;
6. Require a Community Engagement Plan to be prepared and referred to the Ward Councillors and Mayor for review prior to the commencement of the consultation period, community consultation to include mail out to residents within a 400 metre radius of the reserve, excluding the area to the west of Lonsdale Road;
7. Confirms that should the revocation of community land classification and sale proceed, that net sale proceeds will be paid into the Open Space Reserve Fund for the development of Open Space for the benefit of the community, as approved by Council.
8. Requires a further report to be presented for consideration by Council following conclusion of the public consultation under Section 194(2)(b) of the Local Government Act 1999 for the potential revocation of community land classification of the whole of the land known as Spinnaker Circuit Reserve East, Allotment 88 in Filed Plan 17901 comprised in Certificate of Title Volume 5546 Folio 484 to enable Council to determine if the revocation and disposal process should proceed.

#### **Amendment**

**Moved Councillor Hull**

That Council:



1. Acknowledges the determination by the Minister for Planning and Local Government dated 23 June 2021;
2. Confirms its intention is to sell the portion of the reserve indicated as 'Piece A' in Attachment 3 to St Martins De Porres School by negotiation, at or close to market value (based on assumed residential zoning value), subject to the outcome of the revocation process and subject to a satisfactory reservation of pedestrian access between Spinnaker Crescent and Berrima Road.
3. Confirms its intention is to sell the portion of the reserve indicated as 'Piece B' in Attachment 3 on the open market in a manner to achieve maximum net financial return to Council, subject to the outcome of the revocation process;
4. Endorses the Report for Consultation titled 'Section 194 Report for Consultation - Spinnaker Circuit Reserve' contained in Attachment 1 and resolves that it be subject to a period of Community Engagement, , in accordance with Section 194(2)(b) of the Local Government Act 1999 and Council's Community Engagement Policy;
5. Authorises the 'Chief Executive Officer' or his nominee, to make minor variations to the Report for Public Consultation prior to the commencement of Community Engagement;
6. Require a Community Engagement Plan to be prepared and referred to the Ward Councillors and Mayor for review prior to the commencement of the consultation period, community consultation to include mail out to residents within a 400 metre radius of the reserve, excluding the area to the west of Lonsdale Road;
7. Confirms that should the revocation of community land classification and sale proceed, that net sale proceeds will be paid into the Open Space Reserve Fund for the development of Open Space for the benefit of the community, as approved by Council.
8. Requires a further report to be presented for consideration by Council following conclusion of the public consultation under Section 194(2)(b) of the Local Government Act 1999 for the potential revocation of community land classification of the whole of the land known as Spinnaker Circuit Reserve East, Allotment 88 in Filed Plan 17901 comprised in Certificate of Title Volume 5546 Folio 484 to enable Council to determine if the revocation and disposal process should proceed.

The amendment lapsed for want of a seconder

**The motion was Carried**

**Councillor Shilling called a Division**

**Those for:** Councillors Clancy, Mason, Gard, Prior, Hutchinson, Crossland, Masika, Veliskou Duncan and Shilling

**Those against:** Councillor Hull

**Carried**



**11.4 Warriparinga Advisory Team**  
**Report Reference** GC210727R11.4

**Moved Councillor – Ian Crossland**

**Seconded Councillor – Joseph Masika**

That Council:

1. Notes that the Expression of Interest for the recruitment of two representatives for Warriparinga Advisory Team will progress via the Review and Selection Committee.
2. Endorses a sitting fee of \$300 per quarterly meeting per City of Marion Warriparinga Advisory Team Representative.
3. Notes this will be funded from within existing budgets set for independent members or advisory services for Section 41 Committees.

**Amendment**

**Moved Councillor – Bruce Hull**

**Seconded Councillor – Nathan Prior**

That Council:

1. Notes that the Expression of Interest for the recruitment of two representatives for Warriparinga Advisory Team will progress via the Review and Selection Committee.
2. Endorses a sitting fee of \$300 per quarterly meeting per City of Marion Warriparinga Advisory Team Representative with an additional two paid meetings in the first year of operation if required.
3. Notes this will be funded from within existing budgets set for independent members or advisory services for Section 41 Committees.

**The Amendment to become the motion was Carried**  
**The motion as amended was Carried Unanimously**

**Councillor Crossland Called a Division**

**Those for:** Councillors Crossland, Shilling, Clancy, Duncan, Veliskou, Gard, Hutchinson, Mason, Prior, Masika, Hull

**Those against:** Nil

**Carried Unanimously**



**11.5 Hallett Cove Beach: coastal protection and outdoor pool**  
**Report Reference GC210727R11.5**

**Procedural Motion**

**Moved Councillor – Nathan Prior**

**Seconded Councillor – Tim Gard**

That formal meeting procedures be suspended to discuss the item

**Carried**

7.39pm formal meeting procedures suspended

8.00pm Cr Clancy left the meeting  
 8.00pm Cr Duncan left the meeting  
 8.01 pm Cr Masika left the meeting  
 8.01pm Cr Duncan re-entered the meeting  
 8.01pm Cr Masika re-entered the meeting  
 8.04pm Councillor Masika left the meeting  
 8.06pm Councillor Masika re-entered the meeting  
 8.08pm Councillor Clancy re-entered the meeting

8.19 formal meeting procedures resumed.

**Moved Councillor – Ian Crossland**

**Seconded Councillor – Tim Gard**

That Council:

1. Part funds a concept plan and community consultation program for an outdoor pool at Hallett Cove Beach that includes:
  - a. allocation of up to \$35,000 (i.e. up to 50% of the cost) from savings identified through the 2021/22 first budget review process
  - b. applying for funding from the state government's Coast Protection Fund for the remaining project costs (opens mid-2021)
  - c. referring the Hallett Cove outdoor pool back to Council's unfunded priorities list for future consideration if funding cannot be secured from the Coast Protection Fund in 2021/2022.
  - d. a community engagement process as part of the design process to inform the scope of the concept design.
  - e. a report back to Council with a draft concept plan and proposed approach for community consultation (subject to confirmation and timing of grant funding)
  - f. a report back to Council summarising results of community feedback and recommending next steps (subject to Council approval of the concept plan and approach for community consultation, and confirmation and timing of external funding).

**Carried**



### Councillor Crossland called a Division

**Those for:** Councillors Hull, Clancy, Shilling, Duncan, Mason, Gard, Masika Prior, Hutchinson and Crossland

**Those Against:** Councillors Veliskou and Telfer

**Carried**

### 11.6 Carbon Sequestration

Report Reference GC210727R11.6

8.27pm Councillor Shilling left the meeting

**Moved Councillor – Nathan Prior**

**Seconded Councillor – Ian Crossland**

That Council:

1. Notes the high-level carbon sequestration information provided in this report.
2. Allocates up to \$10,000 as part of Council's 2021/22 first budget review process to engage a technical carbon sequestration specialist to:
  - undertake a feasibility assessment that considers all aspects affecting eligibility against the *Carbon Credits (Carbon Farming Initiative) Act 2011* and viability (carbon yield and potential costs),
  - provide a written report detailing assessment outcomes, and
  - present assessment outcomes in a workshop forum.

8.28pm Councillor Telfer left the meeting

8.29pm Councillor Duncan left the meeting

8.30pm Councillor Hutchinson left the meeting

8.30pm Councillor Masika left the meeting

**Carried Unanimously**

8.32pm Councillor Shilling returned

8.32pm Councillor Duncan returned

8.34pm Councillor Hutchinson returned

### Procedural Motion

**Moved Councillor – Kendra Clancy**

**Seconded Councillor - Jason Veliskou**

That the following two items be moved en bloc:

- Local Government Infrastructure Partnership Program - LKCC Coach House Restoration and Pedestrian Bridge Upgrade
- Landlord Consent - YMCA Hall Glengowrie

**Carried Unanimously**



**11.7 Local Government Infrastructure Partnership Program - LKCC Coach House Restoration and Pedestrian Bridge Upgrade**  
**Report Reference GC210727R11.7**

**Moved Councillor – Kendra Clancy**

**Seconded Councillor - Jason Veliskou**

That Council:

1. Notes the Department of Treasury and Finance has allocated \$750,000 towards the restoration of the Coach House and upgrade of the pedestrian bridge at the Living Kurna Cultural Centre.
2. Pursuant to Section 38 of the Local Government Act 1999, authorises the Mayor and Chief Executive Officer to sign and affix the common seal to the documentation necessary to execute the Grant Deed for restoration of the Coach House and upgrade of the pedestrian bridge at the Living Kurna Cultural Centre.

**Carried Unanimously**

**11.8 Landlord Consent - YMCA Hall Glengowrie**  
**Report Reference GC210727R11.8**

**Moved Councillor – Kendra Clancy**

**Seconded Councillor - Jason Veliskou**

That Council:

1. Grants Landlord Consent to undertake internal upgrades of the YMCA Hall Glengowrie, 1A Butler Crescent, Glengowrie, Certificate of Title Volume 1636 Folio 163, subject to:
  - All works being undertaken in a professional manner and to the satisfaction of the City of Marion;
  - The City of Marion being indemnified against all claims, suites, losses etc. that may result from carrying out this work.
2. Delegates to the Unit Manager Land and Property approval to authorise any relevant documents necessary to facilitate the construction and management of the work.
3. Advises that the YMCA of SA Incorporated will be responsible for any project related costs and will be responsible for all future maintenance and repairs of the internal upgrades
4. Notes that Landlord Consent will be subject to all Statutory approvals being obtained.
5. Notes that a new lease agreement with the YMCA of SA Incorporated be supported and entered into under delegation in accordance with Councils Leasing and Licensing Policy.

**Carried Unanimously**



## 12 Corporate Reports for Information/Noting

**Moved Councillor - Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That the following reports for noting be moved en bloc:

- Cats (Confinement) Variation By-law Update
- Revitalisation of the Edwardstown Employment Precinct – Progress Report
- WHS End of Year Performance Report - June 2021
- Questions Taken on Notice Register

**Carried Unanimously**

### 12.1 Cats (Confinement) Variation By-law Update Report Reference GC210727R12.1

**Moved Councillor - Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That Council:

1. Note this report.

**Carried Unanimously**

### 12.2 Revitalisation of the Edwardstown Employment Precinct - Progress Report Report Reference GC210727R12.2

**Moved Councillor - Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That Council:

1. Note the progress of the Revitalisation of the Edwardstown Employment Precinct project.

**Carried Unanimously**

### 12.3 WHS End of Year Performance Report - June 2021 Report Reference GC210727R12.3

**Moved Councillor - Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That Council:

1. Notes the report and statistical data contained therein.

**Carried Unanimously**





**12.4 Questions Taken on Notice Register**  
**Report Reference** GC210727R12.4

**Moved Councillor - Matthew Shilling**

**Seconded Councillor – Maggie Duncan**

That Council:

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

**Carried Unanimously**

**13 Workshop / Presentation Items - Nil**

**14 Motions With Notice**

**14.1 Pedestrian Pathway - David Avenue to Sampson Reserve, Mitchell Park**  
**Report Reference** GC210727M14.1

Councillor Duncan declared a perceived conflict of interest in the item as she is nominated as the Council Liaison Officer for Hamilton College, and will remain the room for the item.

**Moved Councillor – Luke Hutchinson**

**Seconded Councillor – Jason Veliskou**

That a report be brought to General Council (after consideration at the Asset and Sustainability Committee) regarding the feasibility and cost to Marion Council of a fenced pedestrian pathway to connect from David Avenue, Mitchell Park to Sampson Reserve, Mitchell Park, across the south east perimeter of the Hamilton College school oval.

**Carried Unanimously**

**14.2 Rescission Motion - SWBMX - Scope of Pump Track**  
**Report Reference** GC210727M14.2

8.39pm Councillor Telfer re-entered the meeting

**Moved Councillor – Nathan Prior**

**Seconded Councillor – Bruce Hull**

That Council:

1. Rescinds the following resolution of Council relating to SWBMX Scope of Pump Track made on 22 June 2021 (GC210622R12)

That Council approve the scope of the pump track to be:

1. A community pump track comprising of both bitumen and dirt to cater for all levels of riders.

And

2. Resolves the following:

That Council approve the scope of the pump track to be:

1. A Union Cyclist International (UCI) pump track that will be sealed with bitumen with additional funding of \$64,000 to be provided from the Asset Sustainability Reserve.

**Carried Unanimously**

**14.3 Green Adelaide  
Report Reference** GC210727M14.3

**Moved Councillor – Jason Veliskou****Seconded Councillor – Nathan Prior**

That Council:

1. Writes to the Green Adelaide Board advising that:
  - Council shall contribute \$10,000 to Green Adelaide for heat mapping and canopy cover work subject to the CEO receiving a satisfactory proposal and invoice (funds to be drawn from savings arising from the next budget review); and
  - Council shall sign the Adelaide National Park City Charter if there is widespread support from other metropolitan SA councils.

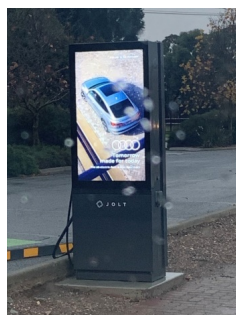
**Carried Unanimously****15 Questions With Notice**

**15.1 JOLT EV Charging Station Advertising**  
**Report Reference** GC210727Q15.1  
**Council Member** Councillor – Bruce Hull

**Question:**

With regards to the installation of a number of JOLT electric vehicle stations around the city:

- Was the illuminated advertising approved by Council as part of the JOLT EV charging station contract?
- In terms of informed consent in approving this contract by Elected Members. Was it clearly and explicitly explained to Councillors that there would be illuminated advertising signage on these JOLT EV charging stations?
- With regards to determining the location of these JOLT EV charging stations, was the potential advertising exposure the primary consideration for their locations?
- Given the relative revenue pittance that Council will receive with this quite lengthy contract with JOLT. Was the lucrative advertising revenue factored into the assessment of an appropriate contract with our Council?

**Supporting Information:**



**Response Received From  
Corporate Manager  
General Manager**

Unit Manager Engineering – Carl Lundborg  
Manager Engineering, Assets and Environment – Mathew Allen  
General Manager City Services – Tony Lines

**Staff Comments:**

**• Was the illuminated advertising approved by Council as part of the JOLT EV charging station contract?**

Yes, Council endorsed at the 10 December 2019 General Council meeting (report reference GC191210F02) recommendation item 2 – *“Advises Jolt Charge Pty Ltd that they are the successful proponent in the delivery of Electric Vehicle charging stations in the Marion council area under the terms and conditions described in this report.”*

The report stated:

*To pay for the ‘up front’ and operational costs of the EV charging stations, an advertising panel would be installed similar to that of the ‘advertising bus shelters’ which would generate the revenue required to facilitate the installation and ongoing operating costs.*

**• In terms of informed consent in approving this contract by Elected Members. Was it clearly and explicitly explained to Councillors that there would be illuminated advertising signage on these JOLT EV charging stations?**

Yes, the report (report reference GC191210F02) stated:

*The advertising will be via a 55 or 75 inch screen with a total width of 0.9 or 1.1 meters depending on the local site restraints (2.38 meters high).*

*Advertising at no cost for Council for the purpose of promoting Council business or community messaging (repeating once in every 6 advertisements – with a 45 second dwell time in accordance with DPTI requirements from a road safety perspective).*

Attachment 1 of the report showed an artist impression of how the charger could look in the public realm. Please refer to supporting information above.

**• With regards to determining the location of these JOLT EV charging stations, was the potential advertising exposure the primary consideration for their locations?**

In considering locations for electric vehicle charging station Jolt have undertaken an analysis to determine ‘link and place’ locations within the Council that will likely meet the need for EV charging and also locations for effective advertisement.

Locations will likely be near arterial roads and car parking areas before considering Collector & Distributor roads with car parking areas – areas around high-volume areas (such as Westfield) seem to be the best opportunity for Council and Jolt. Consideration of locations also includes the distance to suitable power connections while also ensuring safety to pedestrian and motorists (path widths and sight lines).

**• Given the relative revenue pittance that Council will receive with this quite lengthy contract with JOLT. Was the lucrative advertising revenue factored into the assessment of an appropriate contract with our Council?**

Yes, In October 2019 a ‘Request for Proposal’ open tender was called to explore suitable proponent/s to provide Electric Vehicle (EV) charging stations within the cities of Marion, Port Adelaide Enfield Charles Sturt.

Jolt Charge Pty Ltd (Jolt) was assessed as the preferred contractor amongst the three Councils. Jolt demonstrated an effective business case, offered more flexibility and a higher number of charging stations (minimum 15 and up to 35 charging stations over the next several years within City of Marion).



It was also included as part of the contract that advertising at no cost for Council for the purpose of promoting Council business or community messaging (repeating once in every 6 advertisements – with a 45 second dwell time in accordance with DIT requirements from a road safety perspective). Other electric vehicle charging station providers offered neither revenue nor free advertising with their application.

## 15.2 Dog and Cat Registrations

Report Reference GC210727Q15.2

Council Member Councillor – Matthew Shilling

### Question:

1. How many dogs were registered in the City of Marion in the 2020/21 Financial Year
2. What was the breakdown of dog breeds?
3. How many cats were registered in the City of Marion in 2020/21?
4. Were all registration fees paid on time (August 2020), if not how many were followed up and expiated (where required)?

### Supporting Information:

Nil

**Response Received From** Team Leader Community Safety – Caroline Corston

**Corporate Manager** Manager Development and Regulatory Services  
– Warwick Deller-Coombs

**General Manager** City Development – Ilia Houridis

### Staff Comments:

1. How many dogs were registered in the City of Marion in the 2020/21 Financial Year
  - *There were 13,943 dogs registered for the 2020/2021 financial year.*
2. What was the breakdown of dog breeds?
  - *The Dogs and Cats Online (DACO) data base does not have the capability to report on a breakdown of dog breeds. Administration has raised a request with DACO administration requesting a report to be created as an enhancement to the system.*
3. How many cats were registered in the City of Marion in 2020/21?
  - *1,792 cats were 'registered' in the 2020/2021 financial year.*
  - *The City of Marion does not have compulsory cat registration, but the Dog and Cat Management Board and Council's Administration encourage cat owners to record their cat's details on DACO.*
  - *As microchipping is compulsory, the Dog and Cat Management Board refer to recording cat details on DACO as 'registration'.*
4. Were all registration fees paid on time (August 2020), if not how many were followed up and expiated (where required)?
  - *Not all registrations were paid on time.*



- *The Community Safety Team conducted follow-up enquiries with 1,057 residents who did not pay for their dog registrations. Subsequently, 89 of these people failed to make registration payments and they were issued an expiation.*

### 15.3 LGAMLS Declaration

**Report Reference**

GC210727Q15.3

**Council Member**

Mayor – Kris Hanna

#### **Question:**

Why is it necessary for the Mayor to sign an LGAMLS Elected Members and Officers Declaration and what are the implications of it not being signed by the Mayor?

#### **Supporting Information:**

On 23rd March 2021 at 10:32 am the Mayor received an email from staff stating that “both Adrian and Kris’ signature are required on the LGAMLS Elected Members & Officers Declaration for 2021”. Attached to the email was the Declaration form which had a few questions about the organisation.

On 23 March 2021 at 10:46 am the Mayor replied “I am not comfortable signing off on the “No” to awareness of employee behaviour which may give rise to civil liability. I do not recall being asked to sign such a form before. I think forms of this nature should come to me directly rather than through Tom.”

To that the Mayor received no response or follow-up from staff. After raising a query about this verbally with the new CEO, the Mayor wrote to the CEO on 26 April 2021 stating “after my email of 23/3/21, I heard nothing further at all”. After receiving a report “Energy Review of Marion Leisure and Fitness Centre” at the General Council meeting of 24 October 2017, Council resolved that:

To date the Mayor has received no clarification.

**Response Received From**  
**Corporate Manager**  
**General Manager**

Sherie Walczak, Unit Manager Risk  
Kate McKenzie, Manager Office of the CEO  
Tony Harrison, CEO

#### **Staff Comments:**

The Local Government Association Mutual Liability Scheme (LGAMLS) requested dual sign off from the CEO and Mayor regarding the Elected Members and Officers Declaration as part of the insurance renewals. The Mayoral sign off is not a legislative requirement but imposed by the scheme as part of their assurance processes. The dual sign off is a recent addition to the insurance declaration process.

Mayor Hanna indicated that he was uncomfortable in signing off on employee behavior which may give rise to civil liability, as the declaration is for both employees and Council members. This was raised with the LGAMLS and the forms were submitted without the Mayor’s signature. The LGAMLS accepted the submission and the insurance renewals progressed as normal.

As the declaration is an administrative process that can be executed by the CEO, management will seek to streamline the process with the LGAMLS for the 2022/23 renewal and request again that the dual declaration is removed.



#### 15.4 Solar Panels - Marion Leisure and Fitness Centre

Report Reference GC210727Q15.4  
Council Member Mayor – Kris Hanna

##### Question:

Did negotiations ever take place regarding joint funding of solar panels for the rooftop of the Marion Leisure and Fitness building? If so, can a summary of interactions please be provided?

##### Supporting Information:

After receiving a report “Energy Review of Marion Leisure and Fitness Centre” at the General Council meeting of 24 October 2017, Council resolved that:

*“Financing models to support energy efficiency and solar energy on Council-owned leased facilities is discussed at an Elected Members Forum early in 2018 with a report brought to Council by 20 February 2018 for consideration following the Forum discussion”.*

When the matter came back to Council on 13 February 2017, it was resolved that Council.

- “1. Adopts a proposed approach to fund up to 50% of the purchase and installation costs of energy efficiency upgrades and solar panels for Council-owned and leased facilities.**
- 2. Supports the use of the Community Facilities Partnership Program to assess and fund applications for energy efficiency upgrades and solar panels for Council-owned and leased facilities.**
- 3. Adopts Methodology B – Council coordination of submission process and sites installation to implement the program.”**

When the matter was again considered at a General Council meeting on 8th August 2017, Council resolved to *“adjourn the item until the 10 October 2017 General Council meeting to enable discussions regarding equitable contributions from relevant parties to occur”.*

On 29 September 2020 the Mayor's Assistant, based on the Mayor's instructions, sent an email to a relevant staff member stating.

*“Mayor has dug up an old report (GC080817 are) proposing to install solar and energy saving infrastructure at the Marion Leisure and Fitness Centre. (Link below)  
Do you know if this ended up happening or not?”*

To which the staff reply on 16 October 2020 was;

*“at this stage it doesn't appear solar has been installed under this arrangement”.*

**Response Received From**  
**Corporate Manager**  
**General Manager**

Acting Unit Manager Land & Property – Michael Collins  
Manager City Property – Thuyen Vi-Alternetti  
General Manager City Development – Ilia Houridis

##### Staff Comments:

Following a previous Council report seeking Council funding of a new rooftop solar system for the MLFC on 13 February 2018 Council resolved to seek expressions of interest for 50% contribution to solar installation on Council leased premises in accordance with 'Methodology B' outlined in the Council Report. This methodology proposed that Council coordinates the management of the program, seeking expressions of interest from lessees over a period of around 3 months, and then



engaging a provider/retailer to work with the Council and lessees in a coordinated way to manage the installation of improvements.

In September 2020 the Mayor followed up with Administration in relation to the implementation of the resolution, it was identified that Administration had not progressed Council's 2018 resolution and this was communicated to the Mayor.

Administration subsequently commenced the EOI process in line with Council's previous decision, with the EOI opening on 22 April 2021 and concluding on 16 July 2021.

Correspondence was sent to all lessees and licensees of Council's facilities, including the lessees of the MLFC at the commencement of the EOI period. A follow up email was also sent on 5 July 2021 as a reminder to lessees and licensees.

Four enquiries were received following the EOI notification and at the close of the EOI period on 16 July only one EOI submission had been received from YMCA of SA in relation to the MLFC.

An assessment of the submission from YMCA in relation to MLFC is currently being carried out, and a further report will be prepared for Council to provide a formal update Council's resolution from 2018. Subject to Council endorsement, Administration will seek to procure a provider to manage the installation of the improvements at the facility in consultation with the YMCA.

## 16 Motions Without Notice

## 17 Questions Without Notice

## 18 Confidential Items

### 18.1 Cover Report - Abandoned trolleys and the utilisation of the Local Nuisance and Litter Control Act

Report Reference GC210727F18.1

**Moved Councillor – Matthew Shilling**

**Seconded Councillor – Sasha Mason**

That pursuant to Section 90(2) and (3)(h) 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 Development & Regulatory Services, Unit Manager Community Health and Safety 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 Abandoned trolleys and the utilisation of the Local Nuisance and Litter Control Act, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to legal advice.

**Carried Unanimously**

8.47pm the meeting went into confidence.

9.00pm Councillor Masika re-entered the meeting





**Moved Councillor – Joseph Masika**

**Seconded Councillor – Sasha Mason**

That Council:

1. Endorses enforcement action under the Local Nuisance and Litter Control Act 2016 being pursued against the owner of an abandoned shopping trolley discarded on public or council-controlled land within the City of Marion, in a manner giving rise to a litter offence, including by the issue of a litter abatement notice, using the following proposed enforcement strategies as appropriate:
  - a. for any litter abatement notice issued to the owner of an abandoned shopping trolley to include a requirement that abandoned trolleys be removed within 72 hours; and
  - b. where such a requirement is not complied with, for the Council to take action itself to remove and store the trolley and to recover the costs of such action from the recipient of the notice; and
  - c. for Council to make an application to the Environment Resources and Development Court for a civil remedy in suitable cases.
2. Note that resourcing will be monitored to measure impacts to other service areas.
3. Local retailers known to make shopping trolleys available for customer use shall be sent a copy of these minutes.

**Carried Unanimously**

**Moved Councillor - Jason Veliskou**

**Seconded Councillor - Matthew Shilling**

4. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Abandoned trolleys and the utilisation of the Local Nuisance and Litter Control Act, having been considered in confidence under Section 90(2) and (3)(h) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection 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**

9.11pm the meeting came out of confidence.

## **19 Other Business**

Nil

## **20 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.

The meeting was declared closed at 9.11pm

**CONFIRMED THIS 10TH DAY OF AUGUST 2021.**

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**CHAIRPERSON**

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GC210727 - General Council Meeting - 27 July 2021



**6 Communications - Nil**

**7 Adjourned Items - Nil**

**8 Deputations - Nil**

**9 Petitions - Nil**

**10 Committee Recommendations**

#### **10.1 Confirmation of the minutes for the Review and Selection Committee held on 3 August 2021**

<b>Report Reference</b>	GC210810R10.1
<b>Originating Officer</b>	Acting Manager People and Culture – Rachel Read
<b>Corporate Manager</b>	N/A
<b>General Manager</b>	Chief Executive Officer - Tony Harrison

#### **REPORT OBJECTIVE**

The purpose of this report is to facilitate the receiving and noting of the minutes of the Review and Selection Committee meeting held on 3 August 2021.

#### **EXECUTIVE SUMMARY**

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

##### **Confidential Item**

- Staff Movements and Exit Survey Data

##### **Reports for Discussion**

- Independent Member - Finance and Audit Committee
- Warriparinga Advisory Team

##### **Reports for Noting**

- Corporate and CEO KPI Report Quarter Four 2020/21

#### **RECOMMENDATION**

**That Council:**

- 1. Receives and notes the minutes of the Review and Selection Committee meeting held on 3 August 2021.**
- 2. Notes that separate reports will be brought to Council for consideration of any recommendations from the Review and Selection Committee.**

#### **ATTACHMENTS**

- 1. RSC210803 - Final Minutes [10.1.1 - 5 pages]**



**Minutes of the Review and Selection Committee  
held on Tuesday, 3 August 2021 at 6.00 pm  
Committee Room 1, Council Administration Centre  
245 Sturt Road, Sturt**

**PRESENT**

His Worship the Mayor Kris Hanna  
Councillor Tim Gard  
Councillor Maggie Duncan

**In Attendance**

Chief Executive Officer - Tony Harrison  
General Manager City Development - Iliia Houridis  
Manager Office of the CEO – Kate McKenzie  
Acting Manager People and Culture – Rachel Read  
Chief Financial Officer – Ray Barnwell

**1 Open Meeting**

The Mayor opened the meeting at 6.01 pm

**2 Kaurna Acknowledgement**

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

**3 Elected Member 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.

**4 Confirmation of Minutes****4.1 Confirmation of Minutes of the Special Review and Selection Committee Meeting held on 1 June 2021**

**Report Reference** RSC210803R4.1

**Moved – Councillor Gard**

**Seconded – Councillor Duncan**

That the minutes of the Special Review and Selection Committee Meeting held on 1 June 2021 be taken as read and confirmed.

**Carried Unanimously**



## 5 Confidential Items

### 5.1 Cover Report - Staff Movements and Exit Survey Data

Report Reference RSC210803F5.1

**Moved – Councillor Duncan**

**Seconded – Councillor Gard**

That pursuant to Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer and Manager People and Culture, be excluded from the meeting as the Council receives and considers information relating to *Staff Movements and Exit Survey Data*, 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 past and present employees of the City of Marion.

**Carried Unanimously**

6:03pm the meeting went into confidence.

**Moved – Councillor Duncan**

**Seconded – Councillor Gard**

In accordance with Section 91(7) and (9) of the *Local Government Act 1999*, the Council orders that this report, the attachments and any minutes arising from the report having been considered in confidence under Section 90(2) and (3)(a) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2021.

**Carried Unanimously**

6:14pm the meeting came out of confidence.

## 6 Reports for Discussion

### 6.1 Independent Member - Finance and Audit Committee

Report Reference RSC210803R6.1

**Moved – Councillor Gard**

**Seconded – Councillor Duncan**

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 *Independent Member Finance and Audit Committee*, 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 employment of Independent Member Finance and Audit Committee.

**Carried Unanimously**

6:15pm the meeting went into confidence.

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RSC210803 - Review and Selection Committee - 3 August 2021



6:22pm the meeting came out of confidence.

**Moved – Councillor Duncan**

**Seconded – Councillor Gard**

That the Review and Selection Committee:

1. Recommend to Council that Ms Emma Hinchey be re-appointed as Chair to the Finance and Audit Committee for a period of 3 years until 30 November 2024.

**Carried Unanimously**

## 6.2 Warriparinga Advisory Team

**Report Reference** RSC210803R6.2

The Committee discussed the following points:

- That the recruitment Panel should include a staff member with technical background. This role will be Manager City Property.
- Whether political affiliations should be included within the advert for the role and the committee suggested it be removed.

**Moved – Councillor Gard**

**Seconded – Councillor Duncan**

That the Review and Selection Committee:

1. Approve the process and timeframes for recruitment via an Expression of Interest process as outlined in the report with minor amendments as discussed.
2. Conduct the interviews, with the addition of the Manager City Property, following the Expression of Interest process for the recruitment of 2 members to the Warriparinga Advisory Team.
3. Provide recommendation to Council for the two WAT members selected through the Expression of Interest process for Council's endorsement.
4. Notes that City of Marion, People and Culture team will coordinate the recruitment process and advertising.

**Carried Unanimously**

## 7 Reports for Noting

### 7.1 Corporate and CEO KPI Report Quarter Four 2020/21

**Report Reference** RSC210803R7.1

The Committee noted the report and discussed the two KPI's/targets that had not been met for 2020/21:

- Staff Teamgage Survey and satisfaction stretch target had not been met for the participation rates.
- Lost Time Injury Frequency rate target had not been met. It had been reported to Council through the monthly WHS report for some months that the target wouldn't be achieved.

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RSC210803 - Review and Selection Committee - 3 August 2021



5

**Action:**

Provide the Committee with an example of Teamgage survey results at the next committee meeting.

**Moved – Councillor Duncan****Seconded – Councillor Gard**

That the Review and Selection Committee:

1. Notes this report and information contained within the attachments for Quarter Four.

**Carried Unanimously****8 Workshop / Presentation Items - Nil****9 Other Business****10 Meeting Closure**

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

The meeting was declared closed at 7:06pm

**CONFIRMED THIS 21ST DAY OF SEPTEMBER 2021**

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CHAIRPERSON

## 11 Corporate Reports for Decision

### 11.1 State Bicycle Fund - Grant Funding Deed

<b>Report Reference</b>	GC210810R11.1
<b>Originating Officer</b>	City Activation Senior Advisor – Brett Grimm
<b>Corporate Manager</b>	Manager Engineering, Assets and Environment - Mathew Allen
<b>General Manager</b>	General Manager City Services - Tony Lines

#### REPORT OBJECTIVE

The purpose of this report is to seek Council's approval for the execution of the State Bicycle Fund 2021/22 Grant Deed between Council and The Minister for Infrastructure and Transport to affix the Common Seal for \$235,000 ex GST towards funding.

#### EXECUTIVE SUMMARY

On 25 June 2021, the State Government advised that Councils' funding applications were successful for the State Bicycle Fund 2021/22. The City of Marion will receive \$235,000 ex GST as part of the 50/50 funding partnership approach.

The projects include:

- Diagonal Road Streetscape (Crew Street to Trott Grove) proposed pedestrian actuated crossing at the corner of Diagonal Road, Trott Grove and Warracowie Way.
- Safe walking and cycling connection across Marion Road for the Sturt River Linear Path to Parkmore Street, Sturt.
- Construct final stage for the Waterfall Creek shared path connection with the Linear Park Reserve, Hallett Cove, between the Linear Park Reserve playground and Aroona Road.

This report seeks Council approval to authorise the Mayor and Chief Executive Officer to affix the Common Seal to the document necessary to execute the Grant Deed.

#### BACKGROUND

The State Bicycle Fund is an annual subsidy scheme that provides financial assistance of up to a dollar-for-dollar basis for Councils to progress cycling initiatives in their local area. The Fund has fostered a long-standing partnership between the State Government and local councils to respond to Federal, State Government and Council strategies relating to encouraging cycling.

The grant funding criteria is outlined as follows:

- Construction of on-road bicycle lanes (which meet Austroads Guidelines).
- Construction of off-road shared use paths (desirable 3.0m width or 4.0m for highly trafficked paths).
- Construction or modification of median refuges or road crossings.
- Publicly accessible bicycle parking.
- Maximum funding contribution \$200,000.00 per project. Subsidy funding is up to 50% of the total project cost.

Council staff submitted applications for the following programs of work.

Project	Grant Funding Amount	Relevant Council resolution or capital works program
Diagonal Road Streetscape - Crew Street to Trott Grove Proposed Actuated Crossing	\$190,000	Streetscape program capital works 2021/22 MCC Plaza GC2000623R16
Safe walking and cycling across Marion Road – Sturt Linear Path	\$15,000	
Final Stage Waterfall Creek shared path - Hallett Cove linear park reserve (between Linear Park Reserve Playground and Aroona Road)	\$30,000	

## RECOMMENDATION

### That Council:

- Notes the Minister for Infrastructure has allocated \$235,000 ex GST from the State Bicycle Fund towards:
  - Diagonal Road Streetscape (Crew Street to Trott Grove) proposed pedestrian actuated crossing at the corner of Diagonal Road, Trott Grove and Warracowie Way.
  - Safe walking and cycling connection across Marion Road for the Sturt River Linear Path to Parkmore Street, Sturt.
  - Construct final stage for the Waterfall Creek shared path connection with the Linear Park Reserve, Hallett Cove, between the Linear Park Reserve playground and Aroona Road.
- Pursuant to Section 38 of the *Local Government Act 1999*, authorises the Mayor and Chief Executive Officer to sign and affix the common seal to the documentation necessary to execute the Grant Deed for State Bicycle Fund.

## ATTACHMENTS

- Letter of Award City of Marion 2021-22 State Bicycle Fund [11.1.1 - 2 pages]
- 2021-22 State Bicycle Fund Funding Deed - City of Marion Draft [11.1.2 - 11 pages]





Government of South Australia

Department for Infrastructure  
and Transport

In reply please quote #17195844  
Enquiries to Evan Woolford  
Telephone 8402 1914

**TRANSPORT PLANNING  
AND PROGRAM  
DEVELOPMENT**

77 Grenfell Street  
Adelaide SA 5000

GPO Box 1533  
Adelaide SA 5001

ABN 92 366 288 135

Dr Brett Grimm  
City Activation Senior Advisor  
City of Marion  
935 Marion Road, Mitchell Park, SA, 5056

### STATE BICYCLE FUND APPLICATION 2021-2022

Dear Dr Brett Grimm,

I refer to the City of Marion's (Council) application to fund cycling initiatives through the 2021-22 State Bicycle Fund. I am pleased to advise that Council has been successful in gaining funding for the following projects:

<b>State Bicycle Fund</b>			
<b>Description of Project</b>	<b>Total Project Cost</b>	<b>Approved Funding</b>	<b>Council Contribution</b>
Diagonal Road Streetscape (Crew Street to Trott Grove) and a Pedestrian Actuated Crossing at the corner of Diagonal Road, Trott Grove and Warracowie Way	\$1,232,927	\$190,000	\$1,042,927
Safe walking and cycling connection across Marion Road from the Sturt River Linear Park shared path to Parkmore Street, Sturt	\$30,000	\$15,000	\$15,000
Construct final stage of the Waterfall Creek shared path connection within the Linear Park Reserve in Hallett Cove between Linear Park Reserve Playground and Aroona Road	\$60,000	\$30,000	\$30,000

This funding continues to develop the strong partnership of State and Local Government working together to encourage cycling in our community.

To secure funding Council is required to enter into a formal Funding Deed. Please advise the appropriate Council officer to contact Evan Woolford at the Department for Infrastructure and Transport regarding the Funding Deed. Mr Woolford can be contacted on 8402 1914, or via email at: [evan.woolford@sa.gov.au](mailto:evan.woolford@sa.gov.au).

I look forward to the successful completion of your projects and continuing the collaboration with Council to improve the conditions for cyclists in South Australia.

Yours sincerely,

Evan Woolford  
Transport Planner

25 June 2021

**FUNDING DEED under STATE BICYCLE FUND**

(Diagonal Road Streetscape (Crew Street to Trott Grove) and a proposed pedestrian actuated crossing (PAC) at the corner of Diagonal Road, Trott Grove and Warracowie Way; and

Safe walking and cycling connection across Marion Road for the Sturt River Linear Path to Parkmore Street, Sturt; and

Construct the final stage of the Waterfall Creek shared path connection within the Linear Park Reserve in Hallett Cove between Linear Park Reserve playground and Aroona Road)

Between

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

(Minister)

And

**THE COUNCIL NAMED IN THE SCHEDULE**

(Council)

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**DEED** dated the                      day of

**PARTIES:**

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT**, a body corporate pursuant to the *Administrative Arrangements Act 1994*.....(**Minister**)

And

**THE COUNCIL NAMED IN THE SCHEDULE** a body corporate under the *Local Government Act 1999*.....(**Council**)

It is agreed:

**1. FUNDING**

- 1.1 Subject to this deed, the Minister will pay the Council up to the amount of money specified in the Schedule (**Funding**).
- 1.2 The Council must only use the Funding for the **Purpose** set out in clause 3 of the Schedule.
- 1.3 For the purposes of this deed, the **Funding Period** is the period commencing on the Start Date and, subject to funding being available, will continue until the End Date. The **Start Date** and **End Date** are set out in the Schedule.
- 1.4 The Funding is payable by way of a lump sum in accordance with the Schedule. During the Funding Period, the Council is entitled in accordance with the conditions set out in the Schedule to invoice the Minister for the payment of the Funding.
- 1.5 At the end of the Funding Period the Council must provide a report on the level of any unexpended Funding.
- 1.6 The Council must repay any part of the Funding which is unexpended at the end of the Funding Period to the Minister, unless the Minister gives written approval for the Council to retain the money.
- 1.7 The Council must pay at least fifty per cent of the total cost of the works undertaken for the Purpose.

Unless otherwise agreed in writing with the Minister, if by the end of the Funding Period, the total cost of the works for the Purpose is less than double the amount of the grant (GST Exclusive) then in addition to repaying any unexpended Funding, the Council must repay to the Minister the difference between the amount of the Funding and a half of the actual cost of the works.

**2. GST**

- 2.1 In addition to any amounts payable by the Grantor as part of the Funding (**Base Payment**), the grantor must, if in relation to a Taxable Supply for which the grantor has received a Tax Invoice, pay to the Council an additional amount (**GST Payment**) calculated by multiplying the Base Payment by the rate at which GST is levied at the time of this deed.
- 2.2 The GST Payment is payable at the same time and subject to the same conditions as the Base Payment. "*Taxable supply*", "*GST*" and "*Tax Invoice*" have the meaning attributed under the *A New Tax System (Goods and Services Tax) Act 1999*.

3. **ADMINISTRATION OF DEED**

- 3.1 Any power or discretion exercisable by the Minister under this deed may be exercised by the person (**Minister's Representative**) for the time being in the position within the Department for Infrastructure and Transport (**Department**) set out in the Schedule.
- 3.2 Any power or discretion exercisable by the Council under this deed may be exercised by the person (**Council's Representative**) for the time being in the position within the Council set out in the Schedule.

4. **PROVISION OF FINANCIAL INFORMATION**

- 4.1 The Council must provide the Minister with appropriate and regular information, records and reports as the Minister may request from time to time about:
- 4.1.1 the administration and financial affairs of the Council;
  - 4.1.2 the progress of and any change to the authorised scope of the Purpose;
  - 4.1.3 any significant changes to the nature and scope of the activities conducted by the Council;
  - 4.1.4 any other matter relevant to the granting of assistance;
  - 4.1.5 any other funding or financial assistance promised or received from any source other than the Minister;
  - 4.1.6 the Council's management of the Funding, including, but not limited to, the economic and efficient use of resources to achieve the outcomes of the Purpose; and
  - 4.1.7 the performance of the Council's undertakings and obligations under this deed.
- 4.2 The information provided by the Council must be sufficient for the Minister to make an informed judgement about:
- 4.2.1 the Council's ongoing financial position and its resources and expertise in relation to the Purpose;
  - 4.2.2 the Council's performance in managing public moneys, acquiring and using resources economically and efficiently and in achieving specified objectives in relation to the Purpose;
  - 4.2.3 the overall effectiveness of the Funding throughout the Funding Period;
  - 4.2.4 compliance with legislation and generally accepted accounting principles; and
  - 4.2.5 compliance with the Council's constitution and the conditions of this deed.
- 4.3 The Council must permit any officer authorised by the Minister:
- 4.3.1 to enter the Council's premises and to have access to all accounting records, equipment, documents and information in possession of the Council; and
  - 4.3.2 to interview employees of the Council on matters pertaining to the operations of the Council.

**5. OBLIGATIONS OF THE COUNCIL**

The Council must:

- 5.1 ensure that any works undertaken towards the Purpose are undertaken in accordance with (and to the standard required by) any applicable Standards published by Austroads and Standards Australia Limited;  
(all bicycle facilities constructed must be planned, designed and constructed in accordance with Austroads guidelines and AS 1742.9 – Manual of uniform Traffic Control Devices Part 9: Bicycle Facilities);
- 5.2 maintain accounting records of the Funding in accordance with generally accepted accounting principles;
- 5.3 ensure that any activity carried out by the Council in connection with the Council's use of the Funding complies with the laws from time to time in force in South Australia;
- 5.4 comply with its constitution;
- 5.5 comply with the reporting requirements set out in the Schedule;
- 5.6 prepare financial statements in accordance with Australian Accounting Standards at the end of the Funding Period and submit the financial statements, signed by a senior office holder of the Council, to the Minister no later than one calendar month after the expiry of the Funding Period; and
- 5.7 where requested by the Minister, provide to the Department management accounts, annual reports, financial statements and any other information or documents relevant to the Council's operations.

**6. TERMINATION**

- 6.1 If the Council fails to comply with this deed, the Minister may:
  - 6.1.1 require the Council to repay either the whole or a portion of the Funding (whether expended or not);
  - 6.1.2 withhold all future funding from the Council;
  - 6.1.3 pursue any legal rights or remedies which may be available to the Minister; and
  - 6.1.4 terminate or curtail any program or project conducted by the Minister of which the Purpose conducted by the Council is part.
- 6.2 The Minister may review any decision made pursuant to this clause if the Council is able to satisfy the Minister within a period of 30 days from the decision that the Council has complied with the conditions of this deed.
- 6.3 Nothing in this deed is to be taken to limit the Minister's discretion to determine whether and how any program or project of the Minister is to be conducted, except if and to the extent that the Minister gives an express undertaking in that regard.

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7. **INSURANCE**

The Council warrants that it is a member of the Local Government Association Mutual Liability Scheme (**Scheme**) and is bound by the Scheme pursuant to section 142 and Schedule 1, Part 2 of the *Local Government Act 1999* (SA) (**Act**) and in the event that the Council ceases to be a member of the Scheme it will forthwith, pursuant to Section 142(1) of the Act and the regulations under that Act, take out and maintain insurance to cover its civil liabilities at a minimum level of cover of AUD \$50 million.

8. **ACKNOWLEDGEMENTS**

The Council acknowledges that the Funding represents a one-off contribution by the Minister towards the Purpose, and the Council agrees that any request for subsequent funding will require a new application to the Minister.

The Minister is under no obligation to agree to pay any subsequent funding to the Council.

The Council further acknowledges and agrees that the Minister will not be liable to reimburse the Council for any losses (or cost over runs) that may result from the operation of this Agreement or the carrying out of the Purpose or a Project.

9. **INDEMNITY**

The Council acknowledges and agrees that it remains at all times solely responsible for the conduct of the Purpose and any Project and it releases and indemnifies the Minister, the Commissioner of Highways and the Crown in right of the State of South Australia together with their employees, contractors and agents (**those indemnified**) from and against any loss or liability incurred or suffered by any of those indemnified as a result of any claim, suit, demand, action or proceeding brought by any person against any of those indemnified in respect of the works to carry out the Purpose and/or a Project or otherwise caused by any breach or default of the Council under this Agreement.

10. **AUDIT**

The Minister may direct the Council to arrange for the financial accounts relating to the Funding to be audited at the Council's expense. The Minister may specify the minimum qualifications to be held by a person appointed to conduct the audit.

11. **ASSIGNMENT**

The Council must not assign, novate or encumber any of its rights or obligations under this deed.

12. **PUBLICITY**

The Council must not make or permit a public announcement or media release to be made about any aspect of this deed without first obtaining the Minister's consent.

13. **CONSENT**

If the Council requires the Minister's consent under this deed, the Minister may, in its absolute discretion, give or withhold its consent and if giving consent, the Minister may impose any condition on that consent that it considers appropriate. The Minister's consent will not be effective unless it is in writing and signed.

**14. ENTIRE DEED**

This deed incorporates any attached schedules and annexures. This deed contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject matter.

**15. PROPER LAW**

The laws in force in South Australia apply to this deed.

**16. JURISDICTION OF COURTS**

The courts of South Australia have non-exclusive jurisdiction to determine any proceeding in relation to this deed. Any proceeding brought in a Federal Court must be instituted in (and remain with) the Adelaide Registry of that Federal Court.

**17. COMPLIANCE WITH LAWS**

The Council must comply with the laws in force in South Australia in the course of performing its obligations under this deed.

**18. NOTICES**

A notice is properly given or served if the party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the address of the Representative of the other party. A notice is taken to be received:

- 18.1 if sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;
- 18.2 if sent by electronic mail, only in the event that the sender receives confirmation that the e-mail has been successfully transmitted to the correct e-mail address; or
- 18.3 if delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

**19. PERFORMANCE AND FUTURE PROPOSALS**

The satisfactory completion of the works for the Purpose and on-going compliance with reporting obligations, may be taken into account as a factor in assessing any future applications by the Council for funding under the State Bicycle Fund.

**20. WAIVER**

Any waiver of any provision of this deed is ineffective unless it is in writing and signed by the party waiving its rights. A waiver by either party in respect of a breach of a provision of this deed by the other party is not a waiver in respect of any other breach of that or any other provision. The failure of either party to enforce any of the provisions of this deed at any time must not be interpreted as a waiver of that provision.

**21. VARIATION**

Any variation of this deed must be in writing and signed by each party (or its Representative).

Any request by the Council for agreement to vary the Funding or the Purpose must be accompanied by sufficient details explaining the reasons for the requested variation to enable the Minister to have regard to its merits.



22. **READING DOWN AND SEVERANCE**

In the event that any provision (or portion of any provision) of this deed is held to be unenforceable or invalid by a Court of competent jurisdiction, the validity and enforceability of the remaining provisions (or portions of such provisions) of this deed shall not be adversely affected.

The offending provision or part of a provision shall be read down to the extent necessary to give it legal effect, or shall be severed if it cannot be read down, and the remaining part and provisions of this deed shall remain in full force and effect.

23. **AUDITOR GENERAL**

Nothing in this deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (South Australia). Without limiting this clause, the Council acknowledges the Auditor General's obligations and powers under sections 32 and 34 of the *Public Finance and Audit Act 1987* (South Australia).

24. **PUBLIC DISCLOSURE**

The Minister may disclose this deed and/or information relating to this deed in both printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the Council's obligations under any provision of this deed or the provisions of the *Freedom of Information Act, 1991*.

25. **ADDITIONAL CONDITIONS**

The additional conditions set out in the Schedule (if any) form part of this deed.

**EXECUTED as a DEED**

**THE COMMON SEAL of the  
MINISTER FOR INFRASTRUCTURE  
AND TRANSPORT**

was affixed on: .....

.....  
(Date above)

in the presence of:

Witness Signature:.....

Print name:.....

By the Council

**THE COMMON SEAL of the  
COUNCIL NAMED IN THE SCHEDULE**

on:.....

(Insert date above)

by:

Chief Executive Officer

(print name above)

and:

Principal Member of Council

(print name above)

(Affix Seal Above)

(Affix Seal above)

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## SCHEDULE

### 1. THE COUNCIL

Legal Name: City of Marion  
 Trading Name: City of Marion  
 Site Address: 935 Marion Road, MITCHELL PARK, SA 5043  
 Postal Address: PO Box 21, OAKLANDS PARK, SA 5046  
 ABN: 37 372 162 294

### 2. REPRESENTATIVES

#### Minister's Representative

Name: Mr Scott Cooper  
**Position:** Director, Transport Project Planning  
 Address: Level 7, 77 Grenfell Street, ADELAIDE SA 5000  
 Telephone: 8343 2844  
 Fax: -  
 E-mail: scott.cooper@sa.gov.au

#### Council's Representative

Name: Mr Mathew Allen  
**Position:** Manager Engineering, Assets and Environment  
 Address: 935 Marion Road, MITCHELL PARK, SA 5043  
 Telephone: 8375 6440  
 Fax: -  
 E-mail: mathew.allen@marion.sa.gov.au

### 3. PURPOSE

The Funding is provided for the Purpose of the Council undertaking (within the Funding Period) the **Project** described below (and in the proposal and plans attached to this deed) in accordance with (and to the standard required by) any applicable Standards published by Austroads and Standards Australia Limited.

#### Description of Project

Diagonal Road Streetscape (Crew Street to Trott Grove) and a proposed pedestrian actuated crossing (PAC) at the corner of Diagonal Road, Trott Grove and Warracowie Way (\$190,000)

Safe walking and cycling connection across Marion Road for the Sturt River Linear Path to Parkmore Street, Sturt (\$15,000)

Construct the final stage of the Waterfall Creek shared path connection within the Linear Park Reserve in Hallett Cove between Linear Park Reserve playground and Aroona Road (\$30,000)

### 4. FUNDING PERIOD

**Start Date:** 01 July 2021

**End Date:** 30 June 2022

### 5. FUNDING

**Amount (AUD):** \$235,000 AUD (GST exclusive)

**6. MANNER & CONDITIONS OF PAYMENT**Limit on payments

The Funding of \$235,000 (GST exclusive) is the maximum total amount the Minister may be liable to pay the Council under this deed.

Invoice

The Minister is **not** obligated to pay an invoice unless properly rendered. An invoice is properly rendered if it:

- (a) is issued in respect of a payment for which the Council is entitled to invoice for under this deed;
- (b) quotes the relevant purchase order number allocated by the Minister;
- (c) reflects the correct amount for payment under this deed; and
- (d) is a valid Tax Invoice in accordance with GST Law.

Payment Term

Provided that the total amount of the Funding has not been (or will be) exceeded, the Minister must pay the amount of a properly rendered invoice for the Funding within 30 days of receiving the Council's invoice.

7. **ADDITIONAL REPORTING REQUIREMENTS**

<b>Report (Title)</b>	<b>Frequency (By when)</b>	<b>Requirements (Information and applicable standard)</b>
<b>Project Report</b>	31 December 2021 and 31 March 2022 or 7 days from request.	<ul style="list-style-type: none"> <li>• The progress of the Project and scheduling of works.</li> <li>• Updated Expenditure forecasts during the term of the funding period</li> <li>• The management of the Funding (i.e. break down of expenditure of the Funding).</li> <li>• Any changes to the authorised scope of the Project.</li> <li>• Any significant changes to the nature and scope of the activities conducted by the Council.</li> <li>• Any operational matters requested from time to time by the Minister for inclusion in the Project Report.</li> </ul>
<b>Financial Statements</b> (As referred to in clause 5)	Within 30 days from the expiry of the Funding Period.	Financial Statements prepared in accordance with Australian Accounting Standards setting out in detail the Council's expenditure of the Funding (with invoices attached from any contractors engaged for the Purpose) and signed by a senior office holder of the Council.

8. **SPECIAL CONDITIONS****Alteration to DIT Roads or other Assets**

If the Project requires any traffic management, alteration to (or effect on) a road or other asset that is under the care, control and management of (or is otherwise the responsibility of) the Commissioner of Highways or is the responsibility of the Department for Infrastructure and Transport (**DIT**), the Council must seek the written approval of the appropriate DIT Regional Manager prior to commencing any work.

**Traffic Control Devices**

The installation of Traffic Control Devices must comply with the requirements outlined in the Manual of Legal Responsibilities and Technical Requirements for Traffic Control devices – Part 2 – Code of Technical Requirement – February 2012.

## 11.2 By-law Review

<b>Report Reference</b>	GC210810R11.2
<b>Originating Officer</b>	Unit Manager Community Health and Safety – Sharon Perin
<b>Corporate Manager</b>	Manager Development and Regulatory Services - Warwick Deller-Coombs
<b>General Manager</b>	General Manager City Development - Ilia Houridis

### REPORT OBJECTIVE

The purpose of this report is to present Council with the results of the community consultation regarding the making of 7 by-laws, being our existing 6 by-laws and 1 new animal management by-law; and to seek Council's endorsement to make and pass the by-laws.

### REPORT HISTORY

<b>Report Reference</b>	<b>Report Title</b>
GC210608R10	By-law Review

### EXECUTIVE SUMMARY

At the General Council Meeting on 8 June 2021 (GC210608R10), Council made the following resolution:

*"That Council resolves to:*

- 1. Note the report entitled 'By-law Review'.*
- 2. Endorse the proposed bylaws from No. 1 – 6 for community consultation*
- 3. Note that given the Premier has not yet responded to Council regarding the trolley by-law, a new one has not been drafted at this time.*
- 4. Endorse the proposed Animal Management By-law No. 7 for community consultation"*

Consultation has been undertaken satisfying the consultation requirements of the Local Government Act 1999, including the community and with the Dog and Cat Management Board.

Council should note the following in particular:

- the response from the Dog and Cat Management Board, who have no recommendations to make and are satisfied that the relevant by-laws are 'broadly consistent with those of other councils' (Attachment 1);
- the by-laws attached to the Certificates of Validity (Attachments 2 - 8);
- the National Competition Policy report (Attachment 9); and
- the outcome of community consultation regarding the draft by-laws (Attachment 10).

In summary, there are no material changes proposed as a result of the consultation and it is recommended that Council make and pass the 7 draft by-laws and undertake all steps necessary to finalise the by-law review process.

It should be further noted that to pass the by-laws, two thirds of the members of Council must be present and support by an absolute majority. As Council comprises 13 Elected Members, at least 9 members must be present and the resolution must be supported by at least 7 members. It is recommended that the minutes reflect the number of members who voted in favour of the resolution to evidence that the resolution was supported by an absolute majority.

## RECOMMENDATION

### That Council:

1. In exercise of the powers contained in section 246 of the *Local Government Act 1999*, having satisfied the consultation requirements of the Act and having had regard to the outcome of the consultation process, the National Competition Policy Report, the Certificates of Validity provided by the Council's legal practitioner and the comments from the Dog and Cat Management Board in relation to By-Law numbers 4 and 6, the majority of Council, in the presence of at least two thirds of its members, hereby makes and passes the following By-laws as attached and marked 'Attachment 1':
  - Permits and Penalties By-law No. 1 of 2021;
  - Moveable Signs By-law No. 2 of 2021;
  - Local Government Land By-law No. 3 of 2021;
  - Dogs By-law No. 4 of 2021;
  - Roads By-law No. 5 of 2021;
  - Cats By-law No. 6 of 2021; and
  - Animal Management By-law No. 7 of 2021.
2. That the Chief Executive Officer be authorised to undertake all steps necessary to finalise the by-law review process and to give effect to the newly adopted by-laws.

## DISCUSSION

### Background

Under 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 its community. Councils can also make by-laws to deal with specific matters relevant to the local area.

Under the *Local Government 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.

The City of Marion currently has 6 by-laws which expire on 1 January 2022.

At the General Council Meeting on 8 June 2021 (GC210608R10), Council resolved to consult with the community regarding 7 draft by-laws:

- Permits and Penalties By-law No. 1
- Moveable Signs By-law No. 2
- Local Government Land By-law No. 3
- Dogs By-law No. 4
- Roads By-law No. 5
- Cats By-law No. 6
- Animal Management By-law No. 7

Community consultation occurred from 2 July 2021 to 23 July 2021, however the community consultation remained open and available until midnight Sunday 25 July 2021 to give the public an extra opportunity to provide feedback.

## **Community Consultation**

The purpose of the community consultation was to seek the views of the community and stakeholders on the 7 draft by-laws. The consultation sought to ascertain the levels of support for the draft by-laws and to see if the community and stakeholders had any concerns or suggested changes.

### **Community Consultation Techniques**

Community consultation was through Council's "Making Marion" website. The community consultation page included:

- The purpose of the consultation.
- A summary of each draft by-law.
  - Any potential contentious prohibition or restrictions were highlighted. For example, Council seeking to introduce the requirement for cats to be contained on their property during certain hours.
- A link to each draft by-law.
- Questions to gauge the level of support of community members and the opportunity to provide comments and feedback regarding each by-law.

### **Marketing the Community Consultation**

Community consultation was advertised widely by the following methods:

- Social media through Councils' Facebook page
- Advertisement in 'The Advertiser' newspaper on Monday 5 July 2021
- Postcard delivered to every residential and business property throughout the City of Marion
- City of Marion website
- Messaging on Council's digital screens at the Neighbourhood and Community Centres, Libraries and the Marion Cultural Centre
- Posters displayed at Council's Neighbourhood and Community Centres and Libraries
- Message on Council's "Messages on Hold" telephone service
- Message on electronic signboard outside Council's Administration Building
- A letter to key stakeholders
- An e-newsletter was sent to 392 Making Marion participants
- Information was provided to the tri-council 'Inclusion Reference Group', made up of stakeholders across the Cities of Marion, Mitcham, and Holdfast Bay
- Information was provided to Council's 'Youth Collective Committee'.

### **Social Media**

Posts were placed on Council's Facebook page to assist with marketing the by-law review, including providing a link to find out more information and to provide feedback.

This resulted in:

- 13,798 views
- 38 likes
- 61 shares

### **Community feedback statistics**

- 263 people visited the Making Marion community consultation page
- 223 people were 'informed' by clicking through further to content on the Making Marion page
- 114 people provided a submission to the survey on Making Marion

A high level summary of the outcomes of the community consultation are provided below, with the detailed report included as Attachment 10 (page 63 of this report).



By-law	Strongly Support/Support	Undecided	Strongly do not support/do not support
By-law No.1	73.1%	15.4%	11.5%
By-law No.2	50%	18.2%	31.8%
By-law No.3	80%	5%	15%
By-law No.4	74.4%		25.6%
By-law No.5	65%	20%	15%
By-law No.6	72.9%	5.4%	21.7%
By-law No.7	68.2%	13.6%	18.2%

## **Making the By-laws**

### **Increase to Maximum Penalty for a Breach of By-law**

In finalising the By-laws, Phase 1 of the Local Government Reforms which commence on 10 November 2021 have been considered. This includes the commencement of the changes to the maximum penalty for a breach of by-law prescribed by section 246(3)(g) of the Local Government Act, which will increase the maximum expiation fee penalty from \$750 to \$1,250.

Whilst Permits and Penalties By-law No.1 has been drafted in broad terms without referencing penalty amounts, a note on the final page of the By-law previously included a reference to the 'current' maximum penalty as \$750. Since this will now change in the near future, the by-law note has been updated on the certified version of the by-law to notify readers that the maximum penalty is prescribed by section 246(3)(g) of the Local Government Act without specifying an amount.

### **Adoption of the By-laws**

The by-laws must be adopted at a meeting of Council where two thirds of the members of Council are present and where the associated resolution is supported by an absolute majority of the members of the Council. As Council comprises 13 Elected Members, at least 9 members must be present and the resolution must be supported by at least 7 members.

It is recommended that the minutes of the Council meeting reflect the number of members who voted in favour of the resolution to evidence that the resolution was supported by an absolute majority of the members of Council.

After the by-laws have been adopted by Council, each of the by-laws must be signed by the Chief Executive Officer.

### **Publication of By-laws**

Following the adoption of the by-laws, the by-laws must be published in the South Australian Government Gazette. Council must also publish a notice of the making of the by-laws in the local newspaper in accordance with section 249(7) of the Local Government Act 1999. The notice must refer to the fact that the by-laws have been made, the date of their adoption and that the by-laws may be inspected at the Council's offices.

### **Commencement of By-laws**

The by-laws will commence operation 4 months from the date that they are published in the South Australian Government Gazette (unless disallowed by Parliament).

### **Referral to Legislative Review Committee**

Once Council has made the by-laws, within 6 Parliamentary sitting days, the signed versions of the by-laws must be delivered to the Legislative Review Committee (in conjunction with the Legislative Review Committee Reports which are not included in this Council report).

The Legislative Review Committee will not report back to Council unless the Committee has concerns in relation to any of the by-laws.

### **Council's Ability to Set the Expiation Fee**

As per clause 9.1.2 of Permits and Penalties By-law No. 1, Council may fix, by resolution, the expiation fee that applies for an offence relating to a breach of the by-laws.

The maximum expiation fee that can currently be set under the Local Government Act for a breach of a by-law is \$187.50, which is 25% of the maximum penalty.

If Council does not set an expiation fee, the maximum expiation fee will apply as per clause 9.1.2 of the Permits and Penalties By-law.

As the maximum expiation amount is set by the State Government and will change with the implementation of Phase 1 of the Local Government reforms, the maximum penalty for offences under the by-laws will automatically increase from \$187.50 to \$312.50.

To note that Council may resolve a lesser expiation fee to apply if, and where it sees fit to do so, and this may be done at a subsequent meeting.

### **Cost Recovery Upon Enforcement of By-laws**

A number of the by-laws include an 'Orders' clause. These clauses serve to reinforce the powers available to an authorised person under section 262 of the Local Government Act to order a person who is in contravention of the by-law to take specified action. In the event the order is not complied with, and the requirements of the order are carried out by the authorised person, the clauses state that Council may seek to recover its associated costs from the person who is in breach of the order. If Council seeks to recover its costs, this must be done by way of civil proceedings against the person who failed to comply with the order.

### **Next Steps**

If Council endorses the by-laws, the following steps will occur:

The by-laws will commence operation 4 months from the date that they are published in the Gazette (unless disallowed by Parliament.)

- 17 August 2021: the lawyer assisting Council with the by-law review will send a notice to the South Australian Government Gazette and the required information to the LRC
- 19 August 2021: the by-laws will be gazetted in the South Australian Government Gazette
- 1 January 2022: the by-laws will take effect (unless disallowed by Parliament)

### **ATTACHMENTS**

1. Letter for delegated decision - Response from Dog and Cat Management Board [11.2.1 - 1 page]
2. Certificate of Validity and Permits and Penalties By-law - By-law No. 1 [11.2.2 - 4 pages]
3. Certificate of Validity and Moveable Signs By-law - By-law No. 2 [11.2.3 - 7 pages]
4. Certificate of Validity and Local Government Land By-law - By-law No. 3 [11.2.4 - 14 pages]
5. Certificate of Validity and Dogs By-law - By-law No. 4 [11.2.5 - 6 pages]
6. Certificate of Validity and Roads By-law - By-law No. 5 [11.2.6 - 7 pages]
7. Certificate of Validity and Cats By-law - By-law No. 6 [11.2.7 - 6 pages]
8. Certificate of Validity and Animal Management By-law - By-law No. 7 [11.2.8 - 4 pages]
9. National Competition Policy Report [11.2.9 - 8 pages]
10. Community Engagement Report - By-law Review 2021 [11.2.10 - 28 pages]



**Government of South Australia**  
Dog and Cat Management Board

Level 9  
81-95 Waymouth Street  
Adelaide SA 5000  
GPO Box 1047  
Adelaide SA 5001

Ph: 08 8124 4962  
ABN 48100971189

[www.dogandcatboard.com.au](http://www.dogandcatboard.com.au)

20 July 2021

Ms. Cimon Burke  
Kelledy Jones Lawyers

E: [cburke@kelledjones.com.au](mailto:cburke@kelledjones.com.au)

Dear Cimon,

**CITY OF MARION –  
DOGS BY-LAW NO. 5 OF 2021 AND CATS BY-LAW NO. 6 OF 2021**

Thank you for your email dated 9 June 2021 enclosing the relevant information for City of Marion's draft dogs and cats by-laws.

The Dog and Cat Management Board has delegated its power under section 90(5) of the Act to make recommendations on draft by-laws to the Manager, Dog and Cat Management.

Having reviewed the draft by-laws, I am satisfied they are broadly consistent with those of other councils with similar by-laws, and have no recommendations to make.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Gayle Grieger".

Gayle Grieger  
**Manager**  
**Dog and Cat Management**

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 1 – Permits and Penalties By-Law 2021**

*A By-law to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and to clarify the construction of Council By-laws;*

and do certify that in my opinion:

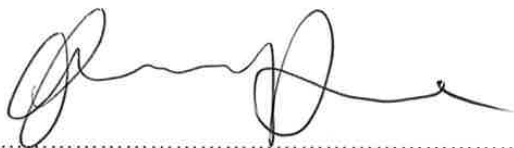
City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(f) and 246(3)(g);*

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 28 day of July 2021



Cimon Burke, Legal Practitioner

CITY OF MARION

Permits &amp; Penalties By-law 2021



CITY OF MARION

**PERMITS AND PENALTIES BY-LAW****By-law No. 1 of 2021**

*This By-law is to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and to clarify the construction of Council By-laws.*

**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Permits and Penalties By-law 2021* and is By-law No. 1 of the City of Marion.

**2. Authorising law**

This By-law is made under section 246 of the Act.

**3. Objectives**

The objectives of this By-law are to provide for the good rule and government of the Council area, and for the convenience, comfort and safety of its inhabitants by:

- 3.1 creating a permit system for Council By-laws;
- 3.2 providing for the enforcement of breaches of Council By-laws and fixing penalties; and
- 3.3 clarifying the construction of Council By-laws.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No. 1 – Permits and Penalties 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**Note:**

- 1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act,
- 2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
- 3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

This By-law applies throughout the Council's area.

## 6. Interpretation

In this By-law, unless the contrary intention appears;

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **authorised person** means a person appointed as an authorised person pursuant to Section 260 of the *Local Government Act 1999*;
- 6.3 **Council** means the City of Marion; and
- 6.4 **person** includes a natural person, a body corporate, an incorporated association or an unincorporated association.

### Note-

Section 14 of the Acts Interpretation Act 1915 provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Act.

## 7. Construction of By-laws generally

- 7.1 Every By-law of the Council is subject to any Act of Parliament and Regulations made thereunder.
- 7.2 In any By-law of the Council and unless the contrary intention appears, **permission** means permission granted by the Council (or its delegate) and includes permission of general application granted by way of the Council adopting a policy for that purpose, prior to the act, event or activity to which it relates.

## PART 2 – PERMITS AND PENALTIES

### 8. Permits

- 8.1 Where a By-law requires that permission be obtained, any person seeking the grant of permission must submit a written application to the Council in the form (if any), and accompanied by the fee (if any) prescribed by the Council.
- 8.2 The Council (or such other person as the Council may authorise) may attach such conditions as it thinks fit to a grant of permission and may vary or revoke such conditions or impose new conditions by notice in writing to the person granted permission.
- 8.3 A person granted permission must comply with every such condition. Failure to do so is an offence (to the extent that the failure gives rise to a contravention of a By-law).
- 8.4 The Council (or such other person authorised by the Council) may suspend or revoke a grant of permission under a By-law at any time by notice in writing to the person granted permission.

**9. Offences and Penalties**

- 9.1 A person who commits a breach of any By-law of the Council is guilty of an offence and may be liable to pay:
- 9.1.1 a maximum penalty being the maximum penalty referred to in the Act that may be fixed by a By-law for any breach of a By-law; or
  - 9.1.2 subject to any resolution of the Council to the contrary, the expiation fee fixed by the Act for alleged offences against By-laws, being a fee equivalent to 25 per cent of the maximum penalty fixed for any breach of a By-law.
- 9.2 A person who commits a breach of a By-law of the Council of a continuing nature is guilty of an offence and, in addition to any other penalty that may be imposed, is liable to a further penalty for every day on which the offence continues, such penalty being the maximum amount referred to in the Act that may be fixed by a By-law for a breach of a By-law of a continuing nature.

**Note-**

The maximum penalty for a breach of a By-law is prescribed by section 246(3)(g) of the Act.

Pursuant to section 246(5) of the Act expiation fees may be fixed for alleged offences against by-laws either by a by-law or by resolution of the Council. However, an expiation fee fixed by the Council cannot exceed 25 per cent of the maximum penalty for the offence to which it relates.

This By-law was duly made and passed at a meeting of the City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 2 – Moveable Signs By-Law 2021**

*A By-law to set standards for moveable signs on roads and to provide conditions for the placement of such signs for the purpose of protecting visual amenity and public safety;*

and do certify that in my opinion:

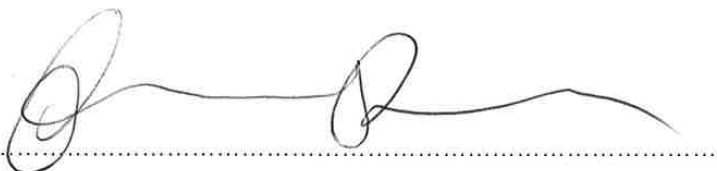
City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 226, 238, 239(1)(a), 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(f) and 246(3)(h)(iii);*

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 28 day of July 2021

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a long horizontal line and a smaller 'B' at the end.

Cimon Burke, Legal Practitioner





**CITY OF MARION**  
**MOVEABLE SIGNS BY-LAW 2021**

**By-law No. 2 of 2021**

*A By-law to set standards for moveable signs on roads and to provide conditions for the placement of such signs including for the purpose of protecting visual amenity and public safety.*

**PART 1 – PRELIMINARY**

**1. Title**

This By-law may be cited as the *Moveable Signs By-law 2021* and is By-law No. 2 of the City of Marion.

**2. Authorising law**

This By-law is made under sections 226, 238, 239 and 246 of the Act.

**3. Purpose**

The objectives of this By-law are to set standards for moveable signs on roads:

- 3.1 to protect the comfort and safety of road users and members of the public;
- 3.2 to enhance the amenity of roads and surrounding parts of the Council's area;
- 3.3 to prevent nuisances occurring on roads;
- 3.4 to prevent unreasonable interference with the use of a road; and
- 3.5 for the good rule and government of the Council's area.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No.2 – Moveable Signs 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**NOTE -**

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.

2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2021*.
- 5.2 This By-law applies throughout the Council's area and is subject to the exemptions set out in clause 11.

## 6. Interpretation

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **authorised person** means a person appointed as an authorised person pursuant to section 260 of the Act;
- 6.3 **banner** means a slip of cloth, plastic or other material hung up or carried on a pole, fence or other structure;
- 6.4 **business premises** means premises from which a business is being conducted;
- 6.5 **Council** means the City of Marion;
- 6.6 **footpath** means:
  - 6.6.1 a footway, lane or other place made or constructed for the use of pedestrians; or
  - 6.6.2 that part of a road between the property boundary of the road and the edge of the carriageway on the same side as that boundary;
- 6.7 **Local Government land** has the same meaning as in the Act;
- 6.8 **moveable sign** has the same meaning as in the Act;
- 6.9 **road** has the same meaning as in the Act; and
- 6.10 **vehicle** has the same meaning as in the *Road Traffic Act 1961*.

### NOTE-

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

**PART 2 – MOVEABLE SIGNS****7. Design and Construction**

A moveable sign displayed on a road must:

- 7.1 be of a kind known as an 'A' frame or sandwich board sign, an inverted 'T' sign, or a flat sign, or with the permission of the Council (including as may be set out in a Council policy of general application from time to time), a sign of some other kind;
- 7.2 be constructed so as not to present a hazard to any member of the public;
- 7.3 be maintained in good condition (as determine by an authorised person);
- 7.4 be constructed so as to be stable when in position and to be able to keep its position in adverse weather conditions;
- 7.5 not be unsightly or offensive in appearance or content;
- 7.6 not contain flashing or moving parts;
- 7.7 be not more than one metre high, 70cm in width or 70cm in depth; or
- 7.8 not contain any sharp or jagged edges or corners.

**8. Placement**

A moveable sign displayed on a road must:

- 8.1 not be placed anywhere except on the footpath;
- 8.2 not be placed on the sealed part of any footpath, unless the sealed part is wide enough to contain the sign and still leave a clear thoroughfare of at least 1.2 metres wide;
- 8.3 be placed at least 1.5 metres from the kerb (or if there is no kerb, from the edge of the roadway) unless this cannot be done without contravening subclause 8.2;
- 8.4 not be placed on a landscaped area, other than on landscaping that comprises only lawn;
- 8.5 not be placed on a designated parking area or within 1.8 metres of an entrance to any premises or corner of a road;
- 8.6 not be fixed, tied or chained to, leaned against or placed closer than 1.2 metres to any other structure, object, tree, bush or plant (including another moveable sign);
- 8.7 not be placed in a position that puts the safety of any person at risk or that unreasonably restricts the use of the footpath;
- 8.8 not be placed on a median strip, traffic island or on a carriageway;
- 8.9 be securely fixed in position such that it cannot be blown over or swept away; or

- 8.10 not be displayed during the hours of darkness unless it is in a clearly lit area and is clearly visible.

## **9. Banners**

A banner must:

- 9.1 only be displayed on a road, footpath area or road related area;
- 9.2 be securely fixed to a pole, fence or other structure so that it does not hang loose or flap;
- 9.3 not, without the Council's permission, be attached to any building, structure, fence, vegetation or other improvement on a road owned by the Council;
- 9.4 not be displayed more than one month before and two days after the event it advertises;
- 9.5 not be displayed for a continuous period of more than one month and two days in any twelve month period; and
- 9.6 not exceed 3m<sup>2</sup> in size.

## **10. Restrictions**

- 10.1 The owner or operator of a business must not, without the permission of the Council, cause or allow more than one moveable sign for each business premises to be displayed on the footpath at any time.
- 10.2 A person must not cause or allow a moveable sign to be placed on a footpath unless:
- 10.2.1 it only contains material which advertises a business being conducted on commercial premises adjacent to the sign, or the goods and services available from that business; and
- 10.2.2 the business to which it relates is open to the public.
- 10.3 A person must not, without the permission of the Council, display or cause to be displayed a moveable sign on or attached to or adjacent to a vehicle that is parked on Local Government land or a road primarily for the purpose of advertising or offering for sale a product (including the vehicle) or business to which the sign relates.
- 10.4 If in the opinion of the Council a footpath is unsafe for a moveable sign to be displayed, the Council may by resolution prohibit or restrict the display of a moveable sign thereon on such conditions as the Council thinks fit.

## **11. Exemptions**

- 11.1 Subclauses 10.1 and 10.2 do not apply to a moveable sign which is used:
- 11.1.1 to advertise a garage sale taking place from residential premises; or

11.1.2 as a directional sign to an event run by an incorporated association or a charitable body.

11.2 This by-law does not apply to:

11.2.1 a flat sign containing only the banner or headlines of a newspaper or magazine; or

11.2.2 a moveable sign that is placed on a public road pursuant to an authorisation under the Act or another Act; or

11.2.3 is related to a referendum and is displayed during the course of and for the purpose of that referendum.

11.3 A requirement of this By-law will not apply where the Council has granted permission (which may include by way of adopting a policy of general application for this purpose) for a moveable sign (or class of moveable sign) to be displayed contrary to that requirement.

**Note-**

This By-law does not apply to moveable signs placed and maintained on a road in accordance with section 226(3) of the Act, which includes any sign:

- placed there pursuant to an authorisation under another Act;
- designed to direct people to the open inspection of any land or building that is available for purchase or lease;
- related to a State or Commonwealth election and is displayed during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day;
- related to an election held under this Act or the *Local Government (Elections) Act 1999* and is displayed during the period commencing four (4) weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
- the sign is of a prescribed class.

## **PART 3 – ENFORCEMENT**

### **12. Removal of moveable signs**

12.1 A person must immediately comply with the order of an authorised person made pursuant to section 227(1) of the Act to remove a moveable sign.

**Note-**

Pursuant to section 227(1) of the Act, an authorised person may order the owner of a moveable sign to remove the sign from the road if:

- the design, construction or positioning of a moveable sign does not comply with a requirement of this By-law; or
- any other requirement of this By-law is not complied with; or
- the moveable sign unreasonably restricts the use of the Road or endangers the safety of other persons.

12.2 If a moveable sign that is removed by an authorised person is not claimed within 30 days of such removal, the authorised person may sell, destroy or otherwise dispose of the moveable sign as the authorised person thinks fit.

- 12.3 The owner of or other person entitled to recover a moveable sign removed by an authorised person pursuant to section 227(2) of the Act, may be required to pay to the Council any reasonable costs incurred by the Council in removing, storing, and/or disposing of the moveable sign before being entitled to recover the moveable sign.
- 12.4 The owner, or other person responsible for a moveable sign must remove or relocate the moveable sign at the request of an authorised person:
- 12.4.1 if, in the opinion of an authorised person, and notwithstanding compliance with this By-law, there is any hazard or obstruction or there is likely to be a hazard or obstruction arising out of the location of the moveable sign; or
  - 12.4.2 for the purpose of special events, parades, roadworks or in any other circumstances which, in the opinion of the authorised person, require relocation or removal of the moveable sign; or
  - 12.4.3 to protect public safety or to protect or enhance the amenity of a particular locality.
- 13. Liability of vehicle owners**
- 13.1 For the purposes of this clause 13, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 13.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 3 – Local Government Land By-Law 2021**

*A By-law to manage and regulate the access to and use of Local Government land (other than roads), and certain public places;*

and do certify that in my opinion:

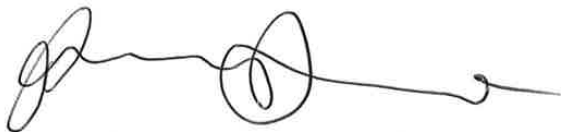
City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 238, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and  
Harbors and Navigation Act 1993: section 18A.*

and the by-law is not in conflict with the *Local Government Act 1999*.

**DATED** the 28 day of July 2021



Cimon Burke, Legal Practitioner



## CITY OF MARION

## LOCAL GOVERNMENT LAND BY-LAW 2021

## By-law No. 3 of 2021

*A By-law to manage and regulate the access to and use of Local Government land (other than roads), and certain public places.*

**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Local Government Land By-law 2020* and is By-law No. 3 of the City of Marion.

**2. Authorising law**

This By-law is made under sections 238 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

**3. Purpose**

The objectives of this By-law are to regulate the access to and use of Local Government land (other than roads), and certain public places:

- 3.1 to prevent and mitigate nuisances;
- 3.2 to prevent damage to Local Government land;
- 3.3 to protect the convenience, comfort and safety of members of the public;
- 3.4 to enhance the amenity of the Council's area; and
- 3.5 for the good rule and government of the Council's area.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-law No.3 – Local Government Land 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**Note-**

- 1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
- 2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
- 3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.



**5. Application**

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2021*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council's area.
- 5.3 Subclauses 9.3, 9.19.1, 9.19.2, 9.21.2, 9.30, 10.4.1 and 10.7 of this By-law only apply in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the *Local Government Act 1999*.
- 5.4 Subclause 9.10.2 of this By-law applies throughout the Council area except in such parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

**6. Interpretation**

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds and insects but does not include a dog;
- 6.3 **aquatic life** means any animal or plant living or growing in water including, but not limited to, yabbies, molluscs, fish, insects, insect pupa or larvae and water plants;
- 6.4 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.5 **boat** includes a raft, canoe, personal watercraft or other similar device;
- 6.6 **camp** includes setting up a camp, or causing a tent, swag and/or similar bedding, a caravan, motor home or other camping vehicle, to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 6.7 **community garden** means an area of land set aside by the Council for the purposes of being gardened collectively by a group of people;
- 6.8 **Council** means the City of Marion;
- 6.9 **electoral matter** has the same meaning as in the Electoral Act 1985 provided that such electoral matter is not capable of causing physical damage or injury to any person within its immediate vicinity;
- 6.10 **effective control** means a person exercising effective control of an animal either:
  - 6.10.1 by means of a physical restraint; or
  - 6.10.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.11 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules-Ancillary and Miscellaneous Provisions) Regulations 2014*;

## CITY OF MARION

## Local Government Land By-law 2021

- 6.12 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;
- 6.13 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 6.14 **Local Government land** means all land owned by the Council or under the Council's care, control and management (except roads);
- 6.15 **low water mark** means the lowest meteorological tide;
- 6.16 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 6.17 **open container** means a container that:
- 6.17.1 after the contents of the container have been sealed at the time of manufacture:
    - 6.17.1.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);
    - 6.17.1.2 being a can, it has been opened or punctured;
    - 6.17.1.3 being a cask, it has had its tap placed in a position to allow it to be used;
    - 6.17.1.4 being any other form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to its contents; or
  - 6.17.2 is a flask, glass, mug or other container able to contain liquid.
- 6.18 **personal watercraft** has the same meaning as in the *Harbors and Navigation Act 1993*, which is a device that –
- 6.18.1 is propelled by a motor; and
  - 6.18.2 has a fully enclosed hull; and
  - 6.18.3 is designed not to retain water if capsized; and
  - 6.18.4 is designed to be operated by a person who sits astride, stands, or kneels on the device,
- and includes the device commonly referred to as a jet ski;
- 6.19 **tobacco product** has the same meaning as in the *Tobacco and E-Cigarette Products Act 1997*;
- 6.20 **road** has the same meaning as in the Act;
- 6.21 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 6.22 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council but does include coastal waters; and

- 6.23 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

**Note-**

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in a By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

**PART 2 – ACCESS TO LOCAL GOVERNMENT LAND****7. Access****Note-**

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

The Council may:

- 7.1 close, or regulate or restrict access to, any part of Local Government land to the public for specified times and days; and
- 7.2 fix charges or fees payable for entry onto any part of Local Government land.

**8. Closed lands**

A person must not without permission, enter or remain on any Local Government land:

- 8.1 which has been closed or in respect of which access by the public is regulated or restricted in accordance with subclause 7.1;
- 8.2 where entry fees or charges are payable, without paying those fees or charges; or
- 8.3 where the land is enclosed with fences and/or walls and gates, at anytime when the gates have been closed and locked or, where a sign is displayed at the entrance of the land notifying that the land has been closed.

**PART 3 – USE OF LOCAL GOVERNMENT LAND****9. Activities requiring permission****Note-**

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

A person must not without the permission of the Council, do any of the following activities on Local Government land.

**9.1 Access to waters**

Subject to the provisions of the *Harbors and Navigation Act 1993* and the *Marine Safety (Domestic Commercial Vessel) National Law*, enter any waters, or swim or use or operate a boat in or on waters except:

- 9.1.1 in an area where a nearby sign erected by the Council states that one or more of these activities is permitted; and
- 9.1.2 in accordance with any condition stated in the sign.

**9.2 Advertising**

Display, paint or erect or cause to be displayed, painted or erected, on Local Government Land or a structure, building or fixture on Local Government Land any sign, advertising or hoarding for the purpose of commercial advertising or any other purpose.

**9.3 Alcohol**

Consume, carry or be in possession or in charge of any liquor in an open container on Local Government land comprising parks or reserves to which the Council has determined this paragraph applies.

**9.4 Amplification**

Use an amplifier or other mechanical or electrical device for the purpose of amplifying sound or for broadcasting announcements or advertisements.

**9.5 Animals**

9.5.1 Ride, lead or drive any horse, cattle or sheep, except on any track that the Council has set aside (through the erection of signage) for the use by, or in connection with ~~the~~ animal and provided that the animal or animals are under effective control.

9.5.2 Cause or allow an animal to stray onto, move over, graze or be left unattended.

**9.6 Attachments**

Subject to subclause 9.2, attach or cause to be attached, hang or fix anything to a tree, plant, equipment, fence, post, structure or fixture.

**9.7 Bees**

Place, or allow to remain thereon, any bee hive.

**9.8 Buildings and Structures**

9.8.1 Use a building, or structure on Local Government land for a purpose other than its intended purpose.

9.8.2 Erect, place, install or cause to be erected, placed or installed a building or structure or any other items (including pipes, wires, cables, fences, memorials, fixtures, fittings or other objects).

**9.9 Burials and Memorials**

9.9.1 Scatter ashes on land to which the Council has resolved this subclause applies.

9.9.2 Erect any memorial.

**9.10 Camping and Tents**

- 9.10.1 Subject to this subclause 9.10, erect a tent or other structure of calico, canvas, plastic or similar material as a place of habitation.
- 9.10.2 Camp, sleep overnight or occupy any caravan or other camping vehicle for or in connection with undertaking camping activities (including but not limited to washing, cooking, sleeping) except:
- 9.10.2.1 in an area which has been designated by resolution of the Council for that purpose and only then, in accordance with any conditions determined by resolution of the Council and contained in any signage erected thereon; or
- 9.10.2.2 in a caravan park (the proprietor of which has been given permission to operate the caravan park on that land).

**9.11 Canvassing**

Subject to subclause 14.2, convey any advertising, religious or other message to any bystander, passer-by or other.

**9.12 Damaging Property**

Deface, remove, paint, spray, write upon, cut names, letters or make marks on any tree, rock, gate, fence, object, monument, building, sign, bridge or property of the Council.

**9.13 Distribution**

Subject to subclause 14.2 and the *Local Nuisance and Litter Control Act 2016*, place on a vehicle (without the consent of the owner of the vehicle), or give out or distribute any book, leaflet or other printed matter to any bystander, passer-by or other person.

**9.14 Donations**

Ask for or receive or indicate that he or she desires a donation of money or any other thing.

**9.15 Entertainment**

- 9.15.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of entertaining others whether or not receiving money.
- 9.15.2 Conduct or hold a concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

**9.16 Equipment**

Use an item of equipment, facilities or property belonging to the Council other than in accordance with any conditions of use contained on a sign or notice in the vicinity of the equipment, facility or property.

**9.17 Fires**

Subject to the *Fire and Emergency Services Act 2005*, light a fire except:

- 9.17.1 in a place provided by the Council for that purpose; or
- 9.17.2 in a portable barbeque, as long as the barbeque is used in an area that is clear of flammable material for a distance of at least four (4) metres.

**9.18 Flora and Fauna**

Subject to the *Native Vegetation Act 1991* and the *National Parks and Wildlife Act 1972*:

- 9.18.1 except in a community garden, plant, damage, pick, cut, disturb, interfere with or remove any plant, tree or flower thereon;
- 9.18.2 take, interfere with, tease, harm or disturb any animal, bird or aquatic life or the eggs or young of any animal, bird or aquatic life;
- 9.18.3 except in a community garden, pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 9.18.4 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 9.18.5 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or aquatic life; or
- 9.18.6 collect or take any dead wood or timber or burn any timber or dead wood; –

with the exception that subclauses 9.18.2 and 9.18.5 do not apply to what are otherwise lawful fishing activities.

**9.19 Games & Sport**

- 9.19.1 Engage or participate in or conduct any organised group fitness activity or training on Local Government land to which the Council has resolved this subclause applies.
- 9.19.2 Play or practice any game or sport on Local Government land to which the Council has resolved this subclause applies except at the times determined by the Council and indicated on a sign on or in the vicinity of the land (if any).
- 9.19.3 Participate in any game, recreational activity or event where the Council has caused a notice to be erected indicating the game, recreational activity or event is prohibited.
- 9.19.4 Play or practice the game of golf.

**9.20 Interference with Land**

Interfere with, alter or damage the land (including a building, structure or fixture located on the land) including:

## CITY OF MARION

## Local Government Land By-law 2021

- 9.20.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.20.2 changing or interfering with the construction, arrangement or materials of the land;
- 9.20.3 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or
- 9.20.4 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

**9.21 Model Aircraft, Boats and Cars**

Subject to the *Civil Aviation Safety Regulations 1998*:

- 9.21.1 fly or operate a model or drone aircraft, boat or model or remote control vehicle in a manner which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of the land or detract from or be likely to detract from another person's lawful use of and enjoyment of the land; or
- 9.21.2 fly or operate a model or drone aircraft, boat or model or remote control vehicle on any Local Government Land to which the Council has resolved this subclause applies.

**9.22 Playing Area**

Use or occupy a playing area:

- 9.22.1 in such a manner as to damage or be likely to damage the surface of the playing area or infrastructure (above and under ground level);
- 9.22.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or
- 9.22.3 contrary to directions of the Council made by resolution and indicated on a sign displayed adjacent to the playing area.

**9.23 Preaching**

Preach, harangue or solicit for religious purposes.

**9.24 Removing Materials**

Carry away or remove any soil, sand, clay, timber, stones, pebbles, gravel, other organic or inorganic materials or any part of the land.

**9.25 Rubbish Dumps and Rubbish Bins**

- 9.25.1 Interfere with, remove or take away any rubbish that has been discarded at any rubbish dump on Local Government Land.

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- 9.25.2 Remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a bin on any Local Government Land, or placed on Local Government Land for collection by the Council (or its agent).

**9.26 Trading**

- 9.26.1 Sell, buy, offer or display anything for sale or hire or lease any goods, merchandise, commodity, article or thing.
- 9.26.2 Carry on or cause to be carried on any business.
- 9.26.3 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the apparent purpose of buying, selling, offering, displaying or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing.

**9.27 Vehicles**

- 9.27.1 Drive or propel a vehicle except on an area or road constructed or set aside by the Council for that purpose by means of signs, devices or fencing.
- 9.27.2 Except on an area properly constructed for the purpose, promote, organise or take part in any race, test or trial of any kind in which vehicles take part.
- 9.27.3 Panel beat or carry out any other work to a vehicle, except for running repairs in the case of a breakdown.

**9.28 Weddings, Functions and Special events**

- 9.28.1 Hold, conduct or participate in a marriage ceremony or funeral ceremony or similar special event.
- 9.28.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral ceremony or similar special event.
- 9.28.3 Hold or conduct any filming where the filming is for a commercial purpose.

**9.29 Wetland**

Subject to the *Landscape South Australia Act 2019*, where that land constitutes a wetland:

- 9.29.1 operate a model boat; or
- 9.29.2 fish, or take any aquatic creature.

**9.30 Wheeled Recreational Devices**

Subject to the *Road Traffic Act 1961*, ride a wheeled recreational device on Local Government land to which the Council has determined this subclause applies.

**10. Prohibited activities**

A person must not do any of the following on Local Government land.



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**10.1 Animals**

10.1.1 Allow or suffer any animal under the person's control to swim or bathe in or enter any waters to the inconvenience, annoyance or danger of any other person bathing or swimming.

10.1.2 Allow an animal in that persons control, charge or ownership to damage Council property.

**10.2 Annoyances**

Annoy, or unreasonably interfere with any other person's use of the land by making a noise or by creating a disturbance that has not been authorised by the Council.

**10.3 Equipment**

10.3.1 Use any device, equipment or apparatus installed in a children's playground if that person is of or over the age indicated by sign or notice as the age limit for using such equipment, apparatus or other installed device.

10.3.2 Use any item of equipment, facilities or property belonging to the Council other than in the manner and for the purpose for which it was designed, constructed or intended to be used or in such manner as is likely to damage or destroy it.

**10.4 Fishing**

10.4.1 Fish in any waters to which the Council has determined this subclause applies.

10.4.2 Return any noxious species including European carp (*Cyprinus carpio*) or redfin perch (*Perca fluviatilis*) caught by the person to any land or waters.

**10.5 Interference with Permitted Use**

Interrupt or unreasonably interfere with any other person's use of Local Government land where the person is using the land in a manner permitted by the Council or in accordance with any permission that has been granted by the Council.

**10.6 Playing games**

Play or practice a game:

10.6.1 which is likely to cause damage to the land or anything in it; or

10.6.2 which endangers the safety or interferes with the comfort of any person; or

10.6.3 in any area where a sign indicates that the game is prohibited.

**10.7 Smoking**

Subject to the *Tobacco and E-Cigarette Products Act 1997*, smoke, hold or otherwise have control over an ignited tobacco product on any land to which the Council has determined this subclause applies.

**10.8 Missiles**

Throw, roll or discharge any stone, substance or missile to the danger of any person.

**10.9 Obstruction**

Obstruct:

10.9.1 any path or track;

10.9.2 any door, entrance, stairway or aisle in any building; or

10.9.3 any gate or entrance to or on Local Government land.

**10.10 Solicitation**

Tout or solicit customers for the parking of vehicles or for any other purpose whatsoever.

**10.11 Toilets**

In any public convenience on Local Government land:

10.11.1 urinate other than in a urinal or pan or defecate other than in a pan for that purpose;

10.11.2 smoke tobacco or any other substance;

10.11.3 deposit anything in a pan, urinal or drain which is likely to cause a blockage;

10.11.4 use it for a purpose for which it was not designed or constructed;

10.11.5 enter a toilet that is set aside for use of the opposite gender except:

10.11.5.1 where a child under the age of ten years is accompanied by a parent or adult guardian of that gender; or

10.11.5.2 to provide assistance to a person with a disability; or

**10.12 Waste**

10.12.1 Deposit or leave thereon anything obnoxious or offensive;

10.12.2 Deposit in any rubbish bin:

10.12.2.1 any trash emanated from a domestic, trade or commercial source;  
or

10.12.2.2 contrary to any information on signs on the bin or in its vicinity.

**PART 4 – ENFORCEMENT****11. Directions**

11.1 A person on Local Government land must comply with a reasonable direction from an authorised person relating to:

- 11.1.1 that person's use of the land;
- 11.1.2 that person's conduct and behaviour on the land;
- 11.1.3 that person's safety on the land; or
- 11.1.4 the safety and enjoyment of other persons on the land.

11.2 A person who, in the opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with a direction of an authorised person to leave that part of Local Government land.

**12. Orders**

If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

**Note-**

Section 262(1) of the Act states:

- (1) *If a person (the offender) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-*
- (a) *if the conduct is still continuing - to stop the conduct; and*
  - (b) *whether or not the conduct is still continuing- to take specified action to remedy the contravention.*

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out.

For example, an authorised person may order a person to:

- cease smoking on Local Government land;
- remove an object or structure encroaching on Local Government land;
- dismantle and remove a structure erected on Local Government land without permission.

**13. Removal of animals and objects**

An authorised person may remove an animal or object that is on Local Government land in breach of a By-law if the authorised person reasonably believes no person is in charge of the animal or object.

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**PART 5 – MISCELLANEOUS****14. Exemptions**

- 14.1 The restrictions in this by-law do not apply to any Police Officer, emergency worker, Council Officer or Council employee acting in the course and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision or in accordance with a direction of a Council Officer.
- 14.2 The restrictions in subclauses 9.11 and 9.13 of this By-law do not apply to electoral matter authorised by a candidate and which is:
- 14.2.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day; or
- 14.2.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
- 14.2.3 related to, and occurs during the course of and for the purpose of a referendum.

**15. Liability of vehicle owners**

- 15.1 For the purposes of this clause 15, *owner* in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 15.2 the owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Marion held on the **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 4 – Dogs By-Law 2021**

*A By-law to limit the number of dogs kept on premises and for the management and control of dogs in the Council area;*

and do certify that in my opinion:

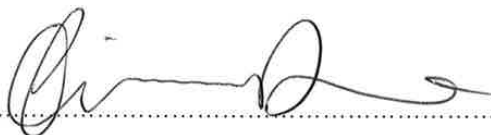
City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 238, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e) and 246(3)(f);  
Dog and Cat Management Act 1995: section 90; and  
Harbors and Navigation Act 1993: section 18A.*

and the by-law is not in conflict with the *Local Government Act 1999*.

**DATED** the 28 day of July 2021



Cimon Burke, Legal Practitioner

**CITY OF MARION****DOGS BY-LAW 2021****By-law No. 4 of 2021**

*A By-law to limit the number of dogs kept on premises and for the management and control of dogs in the Council's area.*

**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Dogs By-law 2021* and is By-law No. 4 of the City of Marion.

**2. Authorising law**

This By-law is made under section 90(5) of the *Dog and Cat Management Act 1995*, sections 238 and 246 of the Act, and section 18A of the *Harbors and Navigation Act 1993*.

**3. Purpose**

The objectives of this By-law are to control and manage dogs in the Council's area:

- 3.1 to reduce the incidence of environmental nuisance caused by dogs; and
- 3.2 to promote responsible dog ownership; and
- 3.3 to protect the convenience, comfort and safety of members of the public; and
- 3.4 for the good rule and government of the Council's area.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No. 5 – Dogs 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**Note-**

- 1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
- 2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.

3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2021*.
- 5.2 Subject to subclause 5.3, this By-law applies throughout the Council's area.
- 5.3 Clauses 9 and 10.1, of this By-law only apply in such part or parts of the Council area as the Council may, by resolution, direct in accordance with section 246(3)(e) of the Act.

## 6. Interpretation

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **approved kennel establishment** means a building, structure, premises or area approved by a relevant authority, pursuant to the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* for the keeping of dogs on a temporary or permanent basis;
- 6.3 **children's playground** means any enclosed area in which there is equipment, apparatus or other installed devices for the purpose of children's play (or within 5 metres of any single such device if there is no enclosed area);
- 6.4 **assistance dog** means a dog trained and used for the purpose of assisting a person who is wholly or partially disabled;
- 6.5 **Council** means the City of Marion;
- 6.6 **dog** (except for in clause 7.1) has the same meaning as in the *Dog and Cat Management Act 1995*;
- 6.7 **effective control** means a person exercising effective control of a dog either:
- 6.7.1 by means of a physical restraint (as defined under the *Dog and Cat Management Act 1995*); or
- 6.7.2 by command, the dog being in close proximity to the person and the person being able to see the dog at all times;
- 6.8 **keep** includes the provision of food or shelter;
- 6.9 **park** has the same meaning as in the *Dog and Cat Management Act 1995*;
- 6.10 **premises** includes land and part of any premises or land whether used or occupied for domestic or non-domestic purposes;

- 6.11 **small property** means a property involving any self-contained dwelling where the property or part thereof (i.e. flat, home unit etc) contains a secured unobstructed yard area of less than 100 square metres;
- 6.12 **wetland area** includes any park, reserve, scrub, trail or other land adjacent to a wetland; and
- 6.13 For the purposes of clause 10 of the By-law, a dog is under **effective control by means of a leash** if the dog is secured to a leash, chain or cord that does not exceed 2 metres in length and:
- 6.13.1 the leash, chain or cord is either tethered securely to a fixed object; or
- 6.13.2 held by a person capable of controlling the dog and preventing it from being a nuisance or a danger to other persons.

**Note-**

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-laws was made.

**PART 2 – LIMITS ON DOG NUMBERS****7. Limits on dog numbers in private premises**

- 7.1 Subject to subclauses 7.3 and 7.5, a person must not, without the Council's permission, keep or cause, suffer or permit to be kept:
- 7.1.1 more than one dog in a small property; or
- 7.1.2 more than two dogs in premises other than a small property where a dog can be effectively contained.
- 7.2 For the purposes of subclause 7.1, 'dog' means a dog that is three (3) months of age or older or, a dog that has lost its juvenile teeth.
- 7.3 Subclause 7.1 does not apply to:
- 7.3.1 approved kennel establishments operating in accordance with all required approvals and consents; or
- 7.3.2 any other business involving the keeping of dogs provided that the business is registered in accordance with the *Dog and Cat Management Act 1995* and operating in accordance with all required approvals and consents.
- 7.4 The Council may require that premises which are the subject of an application for permission to keep additional dogs, must be inspected by an authorised person for the purpose of assessing the suitability of the premises for housing dogs.
- 7.5 No dog is to be kept on any premises where, in the opinion of an authorised person, there is no secure or appropriate area where a dog may be effectively confined.



**PART 3 – DOG CONTROLS****8. Dog exercise areas**

Subject to clauses 9 and 10 of this By-law, a person may enter a park in the Council's area for the purpose of exercising a dog under his or her effective control.

**Note-**

If a person is exercising a dog in a park as permitted under this clause and the dog is not under effective control as that term is defined by the *Dog and Cat Management Act 1995*, this gives rise to a dog wandering at large offence under section 43(1) of the *Dog and Cat Management Act 1995*, for which the owner of or person responsible for the dog may be liable.

**9. Dog Prohibited Areas**

A person must not allow a dog under that person's control, charge or authority (except an assistance dog) to enter or remain on any Local Government land or public place to which the Council has determined that this subclause applies.

**10. Dog on Leash Areas**

A person must not allow a dog under that person's control, charge or authority (except an assistance dog that is required to remain off-lead in order to fulfil its functions) to be or remain:

- 10.1 on Local Government land or in a public place to which the Council has resolved that this subclause applies;
- 10.2 on any park during times when organised sport is being played;
- 10.3 within 5 metres of a children's playground; or
- 10.4 in any wetland area -

unless the dog is under effective control by means of a leash.

**11. Dog faeces**

No person is to allow a dog under that person's control, charge or authority to be in a public place or on Local Government land unless that person has in their possession a bag or other suitable container for the collection and lawful disposal of any faeces that the dog may deposit (for the purpose of complying with their obligation under section 45A(6) of the *Dog and Cat Management Act 1995*).

**PART 4 – EXEMPTIONS****12. Council may grant exemptions**

- 12.1 The Council may, by notice in writing, on application or on its own initiative, exempt a person (or a class of persons) from the operation of a specified provision of this By-law.

**12.2 An exemption—**

12.2.1 may be granted or refused at the discretion of the Council; and

12.2.2 may operate indefinitely or for a period specified in the instrument of exemption; and

12.2.3 is subject to any conditions specified in the instrument of exemption.

12.3 The Council may, by notice in writing, vary, revoke or add a condition of an exemption.

12.4 The Council may, in its discretion, revoke an exemption for a contravention of a condition of the exemption, or for any other reason it thinks fit.

**PART 5 – ENFORCEMENT****13. Orders**

13.1 If a person engages in conduct that is in contravention of this By-law, an authorised person may order that person:

13.1.1 if the conduct is still continuing – to stop the conduct; and

13.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.

13.2 A person must comply with an order under this clause.

13.3 If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out, and the Council may seek to recover its costs of any action so taken from the person to whom the order was directed.

13.4 However, an authorised person may not use force against a person under this section.

**Note-**

For example, an authorised person may order a person to:

- cease keeping more than the permitted number of dogs on that person's premises; or
- remove a dog from a dog prohibited area.

This By-law was duly made and passed at a meeting of City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 5 – Roads By-Law 2021**

*A By-law to manage, control and regulate certain activities on roads in the Council's area;*

and do certify that in my opinion:

City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 239, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and*

*Local Government (General) Regulations 2013: regulation 28.*

and the by-law is not in conflict with the *Local Government Act 1999*.

**DATED** the 28 day of July 2021



Cimon Burke, Legal Practitioner

**THE CITY OF MARION****ROADS BY-LAW 2021****By-law No. 5 of 2021**

*For the management, control and regulation of activities on roads in the Council's area.*

**PART 1– PRELIMINARY****1. Title**

This By-law may be cited as the *Roads By-law 2021* and is By-law No. 5 of the City of Marion.

**2. Authorising law**

This By-law is made under sections 239 and 246 of the Act and regulation 28 of the *Local Government (General) Regulations 2013*.

**3. Objectives**

The objectives of this By-law are to manage, control and regulate the prescribed uses of roads in the Council's area:

- 3.1 to protect the convenience, comfort and safety of road users and members of the public;
- 3.2 to prevent damage to buildings and structures on roads;
- 3.3 to prevent certain nuisances occurring on roads; and
- 3.4 for the good rule and government of the Council's area.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No. 5 – Roads 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**Note-**

- 1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.

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## Roads By-law 2021

2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2021*.
- 5.2 Subject to subclause 5.3, this By-law applies throughout the Council's area
- 5.3 Subclause 7.3 and 7.4.2 of this By-law apply throughout the Council's area except in such part or parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

## 6. Interpretation

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds, insects and poultry but does not include a dog;
- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **camp** includes setting up a camp or causing:
  - 6.4.1 a tent or other structure of calico, canvas, plastic or other similar material; or
  - 6.4.2 a swag or similar bedding; or
  - 6.4.3 subject to the *Road Traffic Act 1961*, a caravan, motor home or similar camping vehicle -

to remain on a road for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the road;
- 6.5 **Council** means the City of Marion;
- 6.6 **electoral matter** has the same meaning as in the *Electoral Act 1995* provided that such electoral matter is not capable of causing physical damage or injury to a person within its immediate vicinity;
- 6.7 **emergency vehicle** has the same meaning as in the *Australian Road Rules* and the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.8 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.9 **moveable sign** has the same meaning as in the Act;

- 6.10 **road** has the same meaning as in the Act being, a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes:

6.10.1 a bridge, viaduct or subway; or

6.10.2 an alley, laneway or walkway; and

- 6.11 **vehicle** has the same meaning as in the *Road Traffic Act 1961*.

**Note-**

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

## **PART 2 – USE OF ROADS**

### **7. Activities Requiring Permission**

A person must not do any of the following activities on a road without the permission of the Council:

#### **7.1 Advertising**

Display or cause to be displayed on a road or on a structure on a road, any poster, advertising or sign for the purpose of advertising goods or services or for any other purpose, other than a moveable sign that is displayed in accordance with the Council's *Moveable Signs By-law 2021*.

#### **7.2 Amplification**

Use an amplifier or other device for the purpose of amplifying sound or magnifying sound including for the broadcasting of any announcements or advertisements.

#### **7.3 Animals**

Subject to the *Road Traffic Act 1961*, ride, lead or drive any horse, cattle or sheep, except on any road that the Council has set aside (as indicated by signage on or near the road) for use by that animal.

#### **7.4 Camping and Tents**

7.4.1 Subject to this subclause 7.4, erect a tent or other structure of calico, canvas, plastic or other similar material as a place of habitation.

7.4.2 Camp or occupy any caravan or other camping vehicle for or in connection with undertaking camping activities, including (but not limited to) washing, cooking, sleeping, except on any road to which the Council has resolved this subclause applies.

#### **7.5 Donations and soliciting**

Ask for or receive or do anything to indicate a desire for a donation of money or any other thing.

**7.6 Obstructions**

Erect, install or place or cause to be erected, installed or placed, any structure, object or material of any kind so as to obstruct a road, footway, water-channel, or watercourse.

**7.7 Preaching & Canvassing**

7.7.1 Preach, harangue, solicit or canvass for religious or charitable purposes.

7.7.2 Subject to subclause 11.2, convey any or other message to any bystander, passerby or other person.

**7.8 Public Exhibitions and Displays**

7.8.1 Sing, busk, play a recording or use a music instrument, or perform similar activities.

7.8.2 Conduct, cause or hold a concert, festival, show, display public gathering, circus, performance or a similar activity.

7.8.3 Erect a stage or structure for the purpose of conducting or holding a concert, festival, show, circus, performance or a similar activity.

7.8.4 Cause any public exhibition or displays.

**7.9 Rubbish Bins**

Deposit in any Council bin on a road any rubbish:

7.9.1 emanating from a domestic, commercial or trade source; or

7.9.2 that is not rubbish of the type permitted to be placed in the bin, as indicated on signs on the bin or in its vicinity.

**7.10 Repairs to Vehicles**

Repair, wash, paint, panel beat or perform other work of any nature on or to any vehicle, except for running repairs in the case of a vehicle breakdown.

**Note-**

Movable signs on roads are regulated by sections 226 and 227 of the Act and the Council's Moveable Signs By law.

**PART 3 – ENFORCEMENT****8. Directions**

A person on a road who, in the opinion of an authorised person is committing or has committed a breach of this By-law, must immediately comply with a direction of the authorised person to leave that part of the road.

**9. Orders**

If a person does not comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

**Note-**

Section 262(1) of the Act states:

- 1) If a person (the offender) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-
  - a) if the conduct is still continuing – to stop the conduct; and
  - b) whether or not the conduct is still continuing – to take specified action to remedy the contravention.

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out. For example, an authorised person may order a person to:

- cease busking on a road;
- remove an object or structure blocking a footpath;
- dismantle and remove a tent from a road.

**10. Removal of animals and objects**

- 10.1 The Council (or its delegate) may, pursuant to section 234 of the Act, remove an animal or object that is on a road in breach of a By-law if the Council (or its delegate) reasonably believes that no person is in charge of the animal or object.
- 10.2 The Council may recover from the owner of an object removed under subclause 10.1 the costs it incurs in removing that object.

**PART 4 – MISCELLANEOUS****11. Exemptions**

- 11.1 The restrictions in this By-law do not apply to any Police Officer, Council Officer or Council employee acting in the course and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision of or in accordance with a direction a Council Officer, or to an emergency worker when driving an emergency vehicle.
- 11.2 The restrictions in subclause 7.7.2 of this by-law do not apply to:



- 11.2.1 electoral matters authorised by a candidate and which relate to a Commonwealth or State election that occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day; or
- 11.2.2 electoral matters authorised by a candidate and which relate to an election under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999* that occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
- 11.2.3 matters which relate to, and occur during the course of and for the purpose of a referendum.

## **12. Liability of vehicle owners**

- 12.1 For the purposes of this clause 12, owner in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 12.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE care of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 6 – Cats By-Law 2021**

*A by-law to limit the number of cats kept on premises and for the management and control of cats in the Council's area;*

and do certify that in my opinion:


City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 238, 246(1), 246(2), 246(3)(a), 246(3)(c), and 246(3)(f); and  
Dog and Cat Management Act 1995: section 90;*

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 28 day of July 2021



Cimon Burke, Legal Practitioner



**CITY OF MARION**  
**CATS BY-LAW 2021**  
**By-law No. 6 of 2021**

*A By-law to limit the number of cats kept on premises and for the management and control of cats in the Council's area.*

**PART 1 – PRELIMINARY**

**1. Title**

This By-law may be cited as the *Cats By-law 2021* and is By-law No. 6 of the City of Marion.

**2. Authorising law**

This By-law is made under section 90 of the *Dog and Cat Management Act 1995* and section 246 of the Act.

**3. Objectives**

The objectives of this By-law are to control and manage cats in the Council's area:

- 3.1. to promote responsible cat ownership;
- 3.2. to reduce the incidence of public and environmental nuisance caused by cats;
- 3.3. to protect the comfort and safety of members of the public; and
- 3.4. for the good rule and government of the Council area.

**4. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No. 6 – Cats 2014.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2029.<sup>3</sup>

**Note-**

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

- 5.1. This By-law operates subject to the Council's Permits and Penalties By-law 2021.
- 5.2. Subject to subclause 5.3, this By-law applies throughout the Council's area.
- 5.3. Clause 10 of this By-law only apply in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.

## 6. Interpretation

In this By-law, unless the contrary intention appears;

- 6.1. **Act** means the *Local Government Act 1999*;
- 6.2. **approved cattery** means a building, structure, premises or area approved by the relevant authority pursuant to the *Development Act 1993* or the *Planning Development and Infrastructure Act 2016* for the keeping of cats on a temporary or permanent basis or, for use in connection with a business involving the keeping of cats, that is operating in accordance with all approvals;
- 6.3. **cat** (except for in clauses 8, 9 and 10) means an animal of the species *felis catus* which is three months of age or has lost its juvenile canine teeth;
- 6.4. **Council** means the City of Marion;
- 6.5. **effective control by means of physical restraint** means
  - 6.5.1 a person is exercising effective control of a cat by means of a chain, cord or leash that does not exceed 2 metres in length restraining the cat; or
  - 6.5.2 a person has effectively secured the cat by placing it in a cage, vehicle or other object or structure;
- 6.6. **keep** includes the provision of food or shelter;
- 6.7. for the purposes of clause 8, a cat (or cats) causes a **nuisance** if it:
  - 6.7.1 unreasonably interferes with the peace, comfort or convenience of a person, including but not limited to a cat(s) displaying aggressive nature or creating unpleasant noise or odour; or
  - 6.7.2 damages or otherwise has an adverse impact upon native flora or fauna; or
  - 6.7.3 acts in a manner that is injurious to a person's real or personal property; or wanders onto land without the consent of the owner or occupier of the land; or
  - 6.7.4 defecates or urinates on land without the consent of the owner or occupier of the land;

- 6.8. **owner** of a cat has the same meaning as in section 5 of the *Dog and Cat Management Act 1995*;
- 6.9. **premises** includes any land, (whether used or occupied for domestic or non-domestic purposes), and any part thereof; and
- 6.10. the **person responsible for the control of a cat** has the same meaning as in section 6 of the *Dog and Cat Management Act 1995*.

**Note-** Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law is made.

## PART 2 –LIMITS ON CAT NUMBERS

### 7. Limits on cat numbers

- 7.1. Subject to this clause 7, a person must not, without the Council's permission, keep or cause, suffer or permit to be kept more than two (2) cats on any premises.
- 7.2. Subclause 7.1 does not apply to premises comprising an approved cattery:
- 7.3. Council may require that premises which are the subject of an application for permission to keep additional cats, must be inspected by an authorised person for the purpose of assessing the suitability of the premises for housing cats.
- 7.4. Permission under subclause 7.3 may be given if the Council is satisfied that:
  - 7.4.1 no insanitary condition exists or is likely to arise on the premises as a result of the keeping of cats; and
  - 7.4.2 a nuisance is not or is not likely to be caused to any neighbour as a result of the keeping of cats on the premises.

## PART 3 –CAT CONTROLS

### 8. Cats not to be a nuisance

- 8.1. An occupier of premises is guilty of an offence if a cat (or cats) kept or allowed to remain on the premises causes a nuisance.
- 8.2. Without limiting liability under clause 8.1, the owner of or person responsible for the control of a cat is guilty of an offence under this By-law if the cat causes a nuisance.
- 8.3. For the purpose of this clause 8, cat means an animal of the species *felis catus* (of any age).

### 9. Effective confinement of cats

- 9.1. As and from 1 January 2023, the owner or person responsible for the control of a cat must ensure that the cat is confined at all times to the premises occupied by that person between the hours of 8pm and 7am daily, unless the cat is under effective control by means of physical restraint.

- 9.2. For the purposes of this subclause 9, **cat** means an animal of the species *felis catus* (of any age).

**10. Cat Free Areas**

- 10.1. A person must not on any Local Government land or public place to which the Council has resolved this paragraph applies, allow, cause, suffer or permit a cat owned by the person or in that person's control to be in, or remain in that place.
- 10.2. For the purposes of this subclause 10, **cat** means an animal of the species *felis catus* (of any age).

**11. Registration of cats**

- 11.1. Where the Council has resolved to adopt a registration scheme for cats, a person must not keep a cat in the Council's area for more than 14 days unless the cat is registered in accordance with this By-law.
- 11.2. An application for registration of a cat must:
- 11.2.1 be made to the Council in the manner and form prescribed by Council (if any); and
  - 11.2.2 be accompanied by the fee (if any) prescribed by the Council; and
  - 11.2.3 nominate a person of or over sixteen (16) years of age who consents to the cat being registered in his or her name; and
  - 11.2.4 identify with reference to an address the premises at which the cat is kept; and
  - 11.2.5 otherwise comply with any other requirements determined by the Council.
- 11.3. Registration under this By-law remains in force until 30 June next following the grant of registration and may be renewed from time to time for further periods of up to twelve (12) months.
- 11.4. Subclause 11.1 does not apply to premises comprising an approved cattery.
- 11.5. The Council may, by resolution, revoke a resolution to adopt a registration scheme under subclause 11.1 should it see fit to do so.

**PART 4 – EXEMPTIONS**

**12. Council may grant exemptions**

- 12.1. Council may, by notice in writing, on application or on its own initiative, exempt a person (or a class of persons) from the operation of a specified provision of this By-law.
- 12.2. An exemption—
- 12.2.1 may be granted or refused at the discretion of the Council; and

12.2.2 may operate indefinitely or for a period specified in the instrument of exemption; and

12.2.3 is subject to any conditions specified in the instrument of exemption.

12.3. The Council may, by notice in writing, vary, revoke or add a condition of an exemption.

12.4. The Council may, in its discretion, revoke an exemption for a contravention of a condition of the exemption, or for any other reason it thinks fit.

## **PART 5 – ENFORCEMENT**

### **13. Orders**

13.1. If a person engages in conduct that is a contravention of this By-law, an authorised person may order that person:

13.1.1 if the conduct is still continuing – to stop the conduct; and

13.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.

13.2. A person must comply with an order under this clause.

13.3. If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out, and the Council may seek to recover its costs of any action so taken from the person to whom the order was directed.

13.4. However, an authorised person may not use force against a person under this section.

#### **Note-**

For example, an authorised person may order a person to:

- cease keeping more than the permitted number of cats on that person's premises; or
- take the necessary steps to mitigate a nuisance caused by cats.

This By-law was duly made and passed at a meeting of the City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
**TONY HARRISON**  
Chief Executive Officer

## SECTION 249 LOCAL GOVERNMENT ACT 1999

## CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

**City of Marion****By-law No 7 – Animal Management By-Law 2021**

*A By-law to manage and regulate the keeping of certain animals on residential premises, including for the prevention of nuisances;*

and do certify that in my opinion:

City of Marion

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: section 246.*

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 28 day of July 2021



Cimon Burke, Legal Practitioner





CITY OF MARION

**ANIMAL MANAGEMENT BY-LAW 2021****By-law No. 7 of 2021**

*A By-law to manage and regulate the keeping of certain animals on residential premises, including for the prevention of nuisances.*

**PART 1 – PRELIMINARY****1. Title**

This by-law may be cited as the *Animal Management By-law 2021* and is By-law No. 7 of the City of Marion.

**2. Authorising law**

This By-law is made under section 246 of the Act.

**3. Objectives**

The objectives of this By-law are to manage the keeping of certain animals in the Council area:

- 3.1. to promote responsible animal management;
- 3.2. to reduce the incidence of public and environmental nuisance caused by the keeping of those animals;
- 3.3. to protect the comfort and safety of members of the public; and
- 3.4. for the good rule and government of the Council area.

**4. Commencement and expiry**

- 4.1 This By-law will come into operation four months after the day on which it is published in the Gazette in accordance with Section 249(5) of the Act<sup>1</sup>.
- 4.2 This By-law will expire on 1 January 2029.<sup>2</sup>

**Note-**

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
2. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

## 5. Application

- 5.1. This By-law operates subject to the Council's *Permits and Penalties By-law 2021*.
- 5.2. This By-law applies throughout the Council's area.

## 6. Definitions

In this By-law:

- 6.1. **Act** means the *Local Government Act 1999*;
- 6.2. **Council** means the City of Marion;
- 6.3. **keep** in relation to a prescribed animal includes to care, feed, provide shelter for, control or possess that animal, whether on a temporary or permanent basis;
- 6.4. **prescribed animal** means either a rooster or peacock that is 2 months or older;
- 6.5. **premises** includes any land, (whether used or occupied for domestic or non-domestic purposes); and
- 6.6. **residential premises** means premises with a residential land use category within the meaning of the *Local Government (General) Regulations 2013*.

## PART 2 – DOMESTIC ANIMAL MANAGEMENT

### 7. Permission required to keep prescribed animal

- 7.1. As and from 1 January 2023, a person must not, without the permission of the Council, keep or cause suffer or permit to be kept, a prescribed animal on any premises that abuts, on any boundary, residential premises.
- 7.2. The Council (or its delegate) may require that the premises, which are the subject of an application for permission to keep a prescribed animal, must be inspected by an authorised person for the purpose of assessing the suitability of the premises for keeping a prescribed animal.
- 7.3. The Council must consider the following matters in determining whether or not to grant permission under subclause 7.1:
  - 7.3.1 whether an insanitary condition exists or has existed on the premises as a result of the keeping of animals;
  - 7.3.2 whether a nuisance is caused or has been caused to any neighbour as a result of the keeping of the animal on the premises or is likely to be caused;
  - 7.3.3 the nature and size of the premises and whether the animal can be adequately contained thereon;
  - 7.3.4 any other matters the Council (or its delegate) considers should be taken into account.

**PART 4 – EXEMPTIONS****8. Council may grant exemptions**

- 8.1. Council may, by notice in writing, on application or on its own initiative, exempt a person (or a class of persons) from the operation of a specified provision of this By-law.
- 8.2. An exemption—
  - 8.2.1 may be granted or refused at the discretion of the Council; and
  - 8.2.2 may operate indefinitely or for a period specified in the instrument of exemption; and
  - 8.2.3 is subject to any conditions specified in the instrument of exemption.
- 8.3. The Council may, by notice in writing, vary, revoke or add a condition of an exemption.
- 8.4. The Council may, in its discretion, revoke an exemption for a contravention of a condition of the exemption, or for any other reason it thinks fit.

**PART 5 – ENFORCEMENT****9. Orders**

- 9.1. If a person engages in conduct that is a contravention of this By-law, an authorised person may order that person:
  - 9.1.1 if the conduct is still continuing – to stop the conduct; and
  - 9.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.
- 9.2. A person must comply with an order under this clause.
- 9.3. If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out, and the Council may seek to recover its costs of any action so taken from the person to whom the order was directed.

## Note-

For example, an authorised person may order a person to cease keeping a prescribed animal on that person's premises.

This By-law was duly made and passed at a meeting of the City of Marion held on **10 August 2021** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
TONY HARRISON  
Chief Executive Officer

**CITY OF MARION****REPORT TO COUNCIL – NATIONAL COMPETITION POLICY****BACKGROUND**

There are a number of statutory requirements that apply to the making of by-laws, including under section 247(c) of the *Local Government Act 1999* (the **Act**), which provides:

*A by-law made by a council must –*

- c. avoid restricting competition to any significant degree unless the council is satisfied that there is evidence that the benefits of the restriction to the community outweigh the costs of the restriction, and that the objectives of the by-law can only be reasonably achieved by the restriction.*

Accordingly, any restriction on competition contained in a proposed by-law must be identified before the Council is in a position to make that by-law. A restriction on competition arises where any provision of the by-law has the potential to impact upon competitive conduct in any market. In general terms, restrictions on competition fall within the following categories:

- regulation of the entry or exit of business entities or individuals in to or out of markets;
- controls on prices or production levels;
- restrictions on the quality, level or location of goods and services;
- restrictions on advertising and promotional activities;
- restrictions on price entitled input used in the production process;
- legislation which is likely to confer significant costs on business; and
- legislation which provides advantages to some business entities or individuals over others.

The purpose of this report is to address the discharging its obligation under section 247(c) of the Act.

**REPORT****1. PERMITS AND PENALTIES BY-LAW 2021****Status**

This by-law has been reviewed in light of national competition policy and has been identified as one that will not restrict competition.

**Objectives of the By-Law**

The objectives of the by-law are to:

- a) create a permit system for Council by-laws;

- b) provide for the enforcement of breaches of Council by-laws and fixing penalties; and
- c) clarify the construction of such by-laws.

## **2. MOVEABLE SIGNS BY-LAW 2021**

### **Status**

The proposed by-law has been reviewed against the requirements of section 247(c) of the Act. The review has concluded that:

- a) there are restrictions on competition contained in the by-law;
- b) some of these restrictions restrict competition to a significant degree;
- c) the objectives of the by-laws containing the restrictions can only be achieved by restricting competition; and
- d) the public benefits of the restrictions outweigh the costs of those restrictions.

### **Objectives of the By-Law**

The objectives of the by-law are to set standards for moveable signs on roads and to provide conditions for the placement of such signs. These objectives include:

- a) the prevention of nuisances;
- b) protecting the convenience, comfort and safety of road users and members of the public;
- c) protecting or enhancing the amenity of the Council's area; and
- d) ensuring that moveable signs do not unreasonably restrict the use of a road.

### **Potential Restrictions on Competition**

Section 226(1) of the Act enables a person to place a moveable sign on a road without an authorisation or permit under Chapter 11, Part 2 of the Act if:

- a) the design and structure of the sign complies with the requirements of the Council's by-laws;
- b) the sign is placed in a position that complies with the requirements of the Council's by-laws;
- c) any other relevant requirements of the Council's by-laws are complied with; and
- d) the sign does not unreasonably:
  - i. restrict the use of the road; or
  - ii. endanger the safety of members of the public.

- **Clause 7: Design and construction**

Clause 7 places restrictions on the construction, design and appearance of moveable signs. This potentially restricts product innovation.

- **Clauses 8 and 10: Placement and restrictions**

Clauses 8 and 10 restrict the placement of a moveable sign. This may inadvertently restrict competitive behaviour and may preclude some businesses from being able to use moveable signs for advertising.

A restriction on competition will restrict competition to a significant degree where the impact on competition is more than nominal or trivial.

The restrictions contained in the proposed by-law are highly prescriptive and are likely to have a significant effect on competition in the market for moveable signs. There may also be significant impacts for other businesses required to comply with the by-law. However, the by-law does not prevent the advertising of businesses. It merely regulates the manner in which this occurs.

In the absence of the proposed by-law, a person would need to seek an authorisation or permit under section 221 or section 222 of the Act. An authorisation or permit under these provisions would also achieve the objective. However, rather than requirements being stated in a by-law any requirements would be conditions on the authorisation or permit. This could mean that there would be a less standardised approach to moveable signs than is achieved by the proposed by-law.

Parliament has expressly indicated that the regulation of moveable signs on a road can, within the terms of section 226 of the Act be regulated by Councils. The public policy preference, therefore, is for by-laws to govern the design, structure and placement of moveable signs on roads. In the context of section 226 of the Act, the optimal means of achieving the objective is through the proposed by-law.

In any event, the by-law contains an administrative discretion such that the Council may grant permission (with conditions) for the display of a moveable sign on a road which is otherwise contrary to the controls under the by-law relating to the construction and placement of moveable signs. The Council can ensure that reasonable and objective criteria are used in the exercise of the administrative discretion by way of appropriate policy implementation.

#### **Alternative Means of Achieving the Same Result**

There are no identified alternative means of regulating the placement of moveable signs within the Council's area.

#### **Do the Benefits of the By-Law Outweigh the Costs to the Community?**

The costs to the community may include:

- a) the costs of compliance with conditions specified in the by-law; and
- b) administrative costs in obtaining a permit, if necessary.

The costs to the Council will include:

- a) the administrative costs of making the by-law; and

- b) staffing costs in connection with the administration and enforcement of the by-law.

The benefits to the community will include:

- a) the proper management of moveable signs on roads on behalf of the community to ensure and maintain road safety;
- b) the protection of Council property and other property within the Council's area;
- c) the protection and enhancement of the amenity of the Council's area;
- d) a reduction in the level of inconvenience that could be caused to members of the public if the placement of moveable signs was not regulated.

The benefits to the community are significant. Accordingly, based on a review of the by-law, the Administration considers that the benefits of the effective management of moveable signs on roads within the Council area outweigh the potential restrictions on competition posed by this by-law.

### **3. LOCAL GOVERNMENT LAND BY-LAW 2021**

#### **Status**

Certain provisions of this by-law have been identified as having the potential to restrict competition.

#### **Objectives of the By-law**

The objectives of the by-law are to regulate the access to and use of Local Government land (other than roads), and certain public places:

- a) to prevent and mitigate nuisances;
- b) to prevent damage to Local Government land;
- c) to protect the convenience, comfort and safety of members of the public;
- d) to enhance the amenity of the Council area; and
- e) for the good rule and government of the Council area.

#### **Potential Restrictions on Competition**

The following provisions of the by-law have the potential to restrict competition:

- Subclauses 5.3 and 5.4 provide that certain provisions of clauses 9 and 10 will only apply in respect of certain areas of the Council as determined by the Council;
- Clause 7 gives the Council a general power to close, regulate or restrict access to Local Government land for specified times and days and to fix fees or charges payable for entry onto Local Government land;

- Clause 9 provides that certain activities require the permission of the Council; “*permission*” means the permission of the Council given in a permit, the form of which is to be determined by the Council in accordance with the *Permits and Penalties By-law 2019*. The Council may attach conditions to a grant of permission as it thinks fit, and may vary or revoke such conditions or impose new conditions by notice in writing to the permit holder; permit holders are to comply with every such condition. The Council may revoke a permit at any time by notice in writing to the permit holder;
- Clause 10 provides that certain activities are prohibited on Local Government land in the Council's area; and
- Clause 11 requires a person's compliance with reasonable directions from an authorised person relating to that person's use of Local Government land, the person's conduct and behaviour on the land, that person's safety on the land and the safety and enjoyment of the land by other persons.

The provisions restricting access to Local Government land, prohibiting certain activities and requiring persons to obtain a permit for other activities, have the potential to restrict competition by limiting the number of providers of goods or service using Local Government land and/or by restricting the area a permit holder may occupy, or the manner in which they may conduct business.

The by-law contains an administrative discretion that can be exercised selectively to grant permission (with conditions) for certain activities to be carried out in certain circumstances. However, the Council can ensure that reasonable and objective criteria are used in the exercise of administrative discretion by way of appropriate policy implementation.

#### **Alternative Means of Achieving the Same Result**

There are no identified alternative means of regulating the use of and access to Local Government land as provided for in this by-law.

#### **Do the Benefits Outweigh the Costs to the Community?**

The costs to the community may include:

- a) administrative costs in applying for a permit, if necessary;
- b) any permit fees; and
- c) the cost of compliance with the by-law, for example, relocating the activity to a suitable location.

The costs to the Council will include:

- a) administrative costs in making the by-law;
- b) administrative costs in considering permit applications; and
- c) staffing costs in connection with the administration and enforcement of the by-law.

Benefits to the community will include:

- a) the proper management of Local Government land on behalf of the community;



- b) the protection of Council property, which is critical for its long-term sustainability; and
- c) a reduction in the level of inconvenience that could be caused to members of the public by unregulated conduct on Local Government land.

Based on a review of the by-law, the Administration considers that the benefits of the proper management and regulation of the use of and access to Local Government land outweigh the potential restrictions on competition posed by this by-law.

#### 4. DOGS BY-LAW 2021

##### **Status**

The by-law has been reviewed in light of national competition policy and has been identified as one that will not restrict competition or otherwise unreasonably restrict or unduly burden business activities.

This is on the basis that the limitations on the number of dogs that may be kept on any premises as prescribed by the by-law (i.e. which has the potential to operate to restrict competition) do not apply to:

- approved kennel establishments operating in accordance with all required approvals and consents; and
- premises of a business that involves the keeping of dogs provided that the business is registered in accordance with the *Dog and Cat Management Act 1995*.

##### **Objectives of the By-law**

The objectives of this by-law are to control and manage dogs in the Council's area:

- a) to reduce the incidence of environmental nuisance caused by dogs; and
- b) to promote responsible dog ownership; and
- c) to protect the convenience, comfort and safety of members of the public; and
- d) for the good rule and government of the Council's area.

#### 5. ROADS BY-LAW 2021

##### **Status**

This by-law has been reviewed against the requirements of section 247(c) of the Act. Certain provisions of this by-law have been identified as having the potential to restrict competition.

##### **Objectives of the By-law**

The objectives of the by-law are to manage and regulate certain uses of roads in the Council's area:

- a) to protect the convenience, comfort and safety of road users and members of the public;
- b) to prevent damage to buildings and structures on roads;
- c) to prevent certain nuisances occurring on roads; and
- d) for the good rule and government of the Council's area.

#### **Potential Restrictions on Competition**

Clause 7 provides that certain activities on a road require the permission of the Council. The Council may attach conditions to any grant of permission. Further, the Council may vary the conditions attaching to a permit or revoke a permit at any time by notice in writing to the permit holder.

Where an activity that is subject to the requirement to obtain permission is an activity undertaken as an incidence of competition within a market, then the requirements to obtain the Council's permission is a restriction on competition. Restrictions on competition will arise where a person is seeking to utilise a road for a business activity.

The use of public roads for business purposes is prohibited by section 222 of the Act except where the Council permits the activity. Section 222 of the Act was considered during the legislation review of the *Local Government Bill 1999*, during which Parliament concluded that the benefits of the provision outweigh the costs.

The proposed by-law does not restrict competition to any greater degree than section 222 of the Act. On this basis, there is no need to further analyse the proposed by-law for the purposes of section 247(c) of the Act.

#### **6. CATS BY-LAW 2021**

##### **Status**

The by-law has been reviewed in light of national competition policy and has been identified as one that will not restrict competition or otherwise unreasonably restrict or unduly burden business activities.

This is on the basis that the limitations on the number of cats that may be kept on any premises as prescribed by the by-law (i.e. which has the potential to operate to restrict competition) does not apply to approved catteries operating in accordance with all required approvals and consents.

##### **Objectives of the By-law**

The objectives of this by-law are to control and manage cats in the Council's area:

- a) to reduce the incidence of environmental nuisance caused by cats; and
- b) to promote responsible cat ownership; and

- c) to protect the convenience, comfort and safety of members of the public; and
- d) for the good rule and government of the Council's area.

## **7. ANIMAL MANAGEMENT BY-LAW 2021**

### **Status**

The by-law has been reviewed in light of national competition policy and has been identified as one that will not restrict competition or otherwise unreasonably restrict or unduly burden business activities.

The by-law merely regulates the keeping of certain animals (peacocks and roosters) on land adjacent to residential premises. It does not prohibit the keeping of such animals and enables them to be kept on such land with the permission of the Council. The Council has the ability to grant an exemption under the by-law from the requirement to obtain permission, which could be applied to any premises where a lawful and approved business activity involving the keeping of a prescribed animal is being undertaken.

### **Objectives of the By-law**

The objectives of this by-law are to regulate the keeping of certain animals in the Council's area:

- e) to promote responsible management of those animals; and
- f) to reduce the incidence of public and environmental nuisance caused by the keeping of the animals; and
- g) to protect the convenience, comfort and safety of members of the public; and
- h) for the good rule and government of the Council's area.

## COMMUNITY ENGAGEMENT FEEDBACK REPORT



### By-laws review



## **By Law Review 2021**

**Date 2/7/2021 – 23/7/2021**

### **Background**

By-laws are "local laws" that a Council can create to prevent or deal with issues relevant to the local area. They:

- provide a framework to assist with creating a safe and welcoming city.
- provide clarity to the community about what can and cannot occur regarding certain matters.
- enable a proactive approach to preventing nuisance or a problem from occurring

Under 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 its community. Councils can also make by-laws to deal with specific matters relevant to the local area.

Under the Local Government Act, a by-law, including all subsequent by-laws altering that by-law, expires on 1 January 2022 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.

The City of Marion has 6 by-laws which expire on 1 January 2022.

Council resolved to remake its 6 by-laws, with amendments. Council also resolved to create a new, 7<sup>th</sup> by-law, to deal with roosters and peacocks whereby housing a rooster or peacock will only be allowed in exceptional circumstances and will require a permit from Council, this permit may be revoked if the animal causes a nuisance.

Council endorsed 7 draft by-laws for community consultation.

Community consultation officially occurred from 2 July 2021 – 23 July 2021, however the community consultation remained open and available until midnight 25 July 2021 to give the public an extra opportunity to provide feedback.

### **Purpose of Community Consultation**

The purpose of the community consultation was to seek the view of the community, if there is support for each of the 7 draft by-laws and if community members' have any particular concerns regarding any of the 7 draft by-laws.

### **Community Engagement Objectives**

- To consult with the community on the 7 draft by-laws to seek feedback and identify any issues
- To inform the community about the requirements of each draft by-law, including what is permissible, what is prohibited and any restrictions under each by-law

### **Community Consultation Techniques**

Community consultation was through Council's "Making Marion" website. The community consultation page included:

- The purpose of the consultation

- A summary of each draft by-law. Any potential contentious prohibition or restrictions were highlighted. For example, Council seeking to introduce the requirement for cats to be contained on their property during certain hours.
- A link to each draft by-law
- Questions to gauge the level of support of community members and the opportunity to provide other comments and feedback regarding each by-law

### **Marketing the Community Consultation**

The community consultation was advertised widely by the following methods:

- Social media through Facebook, LinkedIn and Twitter
- Advertisement in The Advertiser newspaper on Monday 5 July 2021
- Postcard delivered to every residential and business property throughout the City of Marion
- City of Marion website
- Messaging on Council's digital screens at the Neighbourhood and Community Centres, Libraries and MCC
- Posters displayed at Council's Neighbourhood and Community Centres and Libraries
- Message on council's "Messages on Hold" telephone service
- Message on electronic signboard outside Council's Administration Building
- A letter to key stakeholders
- An e-newsletter was sent to 392 Making Marion participants
- Information provided to the tri-council Inclusion Reference Group made up of stakeholders across the Cities of Marion, Mitcham, and Holdfast Bay
- Information provided to Council's Youth Collective Committee

### **Results of Community Consultation through Making Marion**

#### **Community feedback statistics**

- **263** people visited the Making Marion community consultation page
- **223** people were 'informed' by clicking through further to content on the page
- **114** people provided a submission to the survey on Making Marion
- **80% of the 392** people who were sent the e-newsletter opened the newsletter.
- **40,000** postcards were distributed to residential and business properties throughout the City of Marion
- A letter was received from a resident who is a veterinary surgeon in another Council area regarding the draft cat by-law, expressing the need for a balanced approach when dealing with cats, the benefits of cats being able to access outdoor spaces in their yard and mature cats not being able to be retrained to toilet indoors if they have previously had access to toileting outdoor spaces

## Community Sentiment

### ***Draft By-law Number 1 - Permits & Penalties***

26 people provided a response.

Overall, 73.1% of people either supported or strongly supported the Permits & Penalties draft by-law.

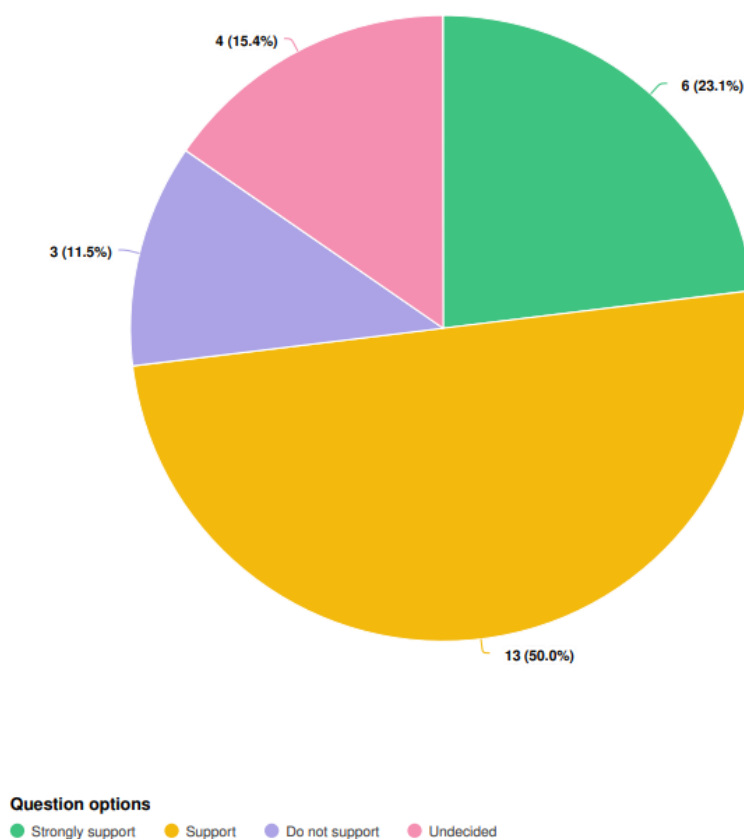
#### **Summary of key feedback and responses**

- People provided positive feedback there was nothing in particular but positive comments such as: agree, fair, all good
- People were happy and agreed with the entirety of the by-law
- People didn't raise any particular concern only commented over regulation
- People were unhappy as they believe it is over regulation

#### **Quote from community**

*"Over regulation".*

The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey



**Draft By-law Number 2 - Movable Signs**

22 people provided a response.

Overall, 50% of people either supported or strongly supported the Movable Signs draft by-law. The remaining 50% was made up of: 13.6% of people do not support the draft by-law, 18.2% strongly do not support the draft by-law and 18.2% of people were undecided.

**A summary of key feedback and responses is provided here.**

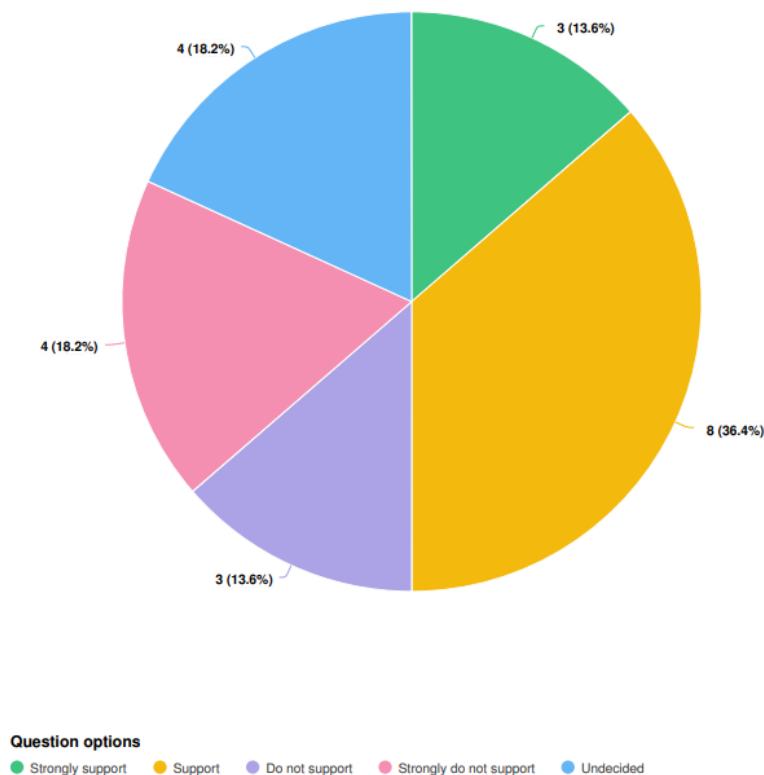
Feedback relating to the project overall

- People had positive feedback about the by-law as signs block the view of the road
- People provided positive feedback stating it was a good idea
- People raised concerns about over regulation, and this should just be common sense that signs should be moved after a time frame
- People were unhappy with over regulation and believe you should be able to put sign in vehicles

**Quote from community**

*"Should just be common sense. If there's a safe space for a moveable sign to be displayed it should be allowed. If I sign is blocking a walkway or isn't safe it shouldn't be allowed."*

**The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey**





**Draft By-law Number 3 - Local Government Land**

20 people provided a response.

Overall, 80% of people either supported or strongly supported the Local Government Land draft by-law.

**A summary of key feedback and responses is provided here.**

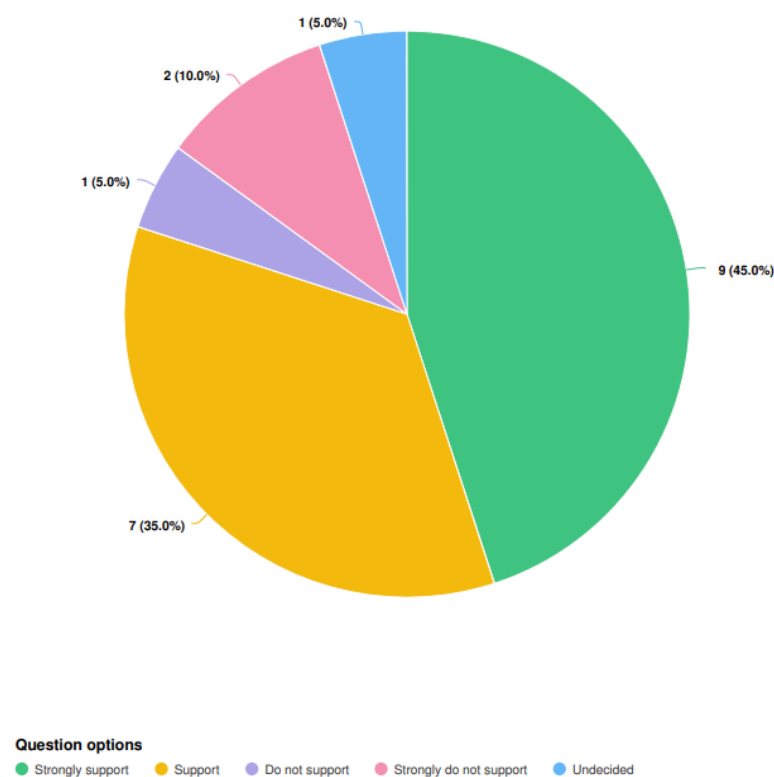
Feedback relating to the project overall

- People had positive feedback about leave the by-law, looks reasonable, good to stop people causing problems
- People provided positive feedback such as all suitable additions
- People raised concerns about permission for fruit picking, camping and tents a would like to allow erection of a temporary shade
- People were unhappy with the consumption of alcohol and drugs at local parks and some parks should be prohibited

**Quote from community**

*"Camping or Tents - Should allow erection of a temporary shade in Recreational areas for picnics provided they are removed, and all/any rubbish generated from that activity removed from site that day"*

**The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey**



**Draft By-law Number 4 - Dogs**

47 people provided a response.

Overall, 74% of people either supported or strongly supported the Dogs draft by-law.

**A summary of key feedback and responses is provided here.**

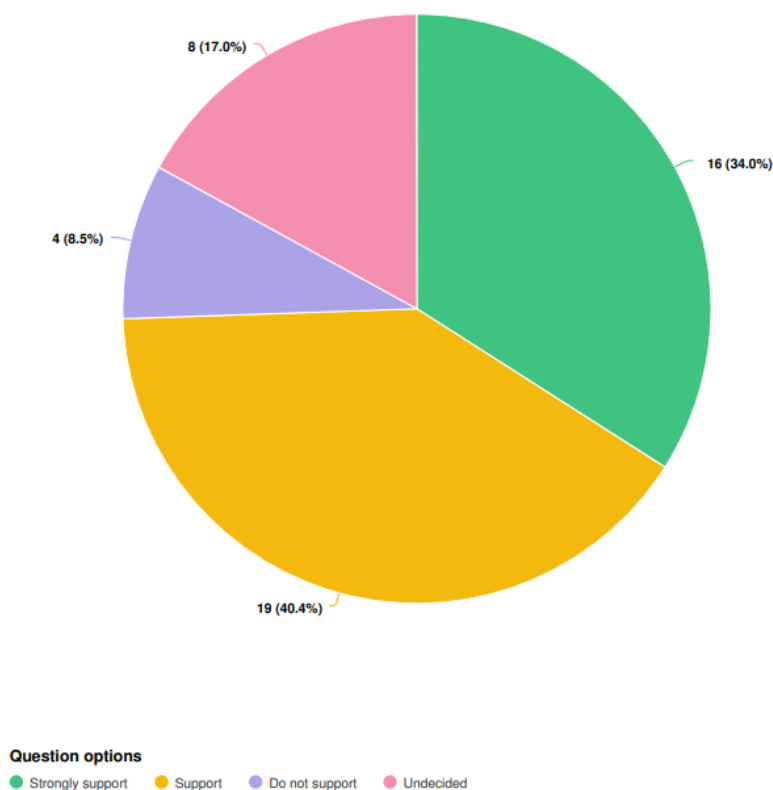
Feedback relating to the project overall

- People had positive feedback about suitable current limit and the restrictions are reasonable, there should be a limit on dogs
- People provided positive feedback agreeing with it should be one dog per small property, comments about barking dogs which is dealt with under the Dog and Cat Management Act not the by-law
- People raised concerns about wanting more off lease dog areas controlled by councils, minimum number, need a definition of small yard (this is already defined in the by-law), dogs being off lead and owners not having control, wanting better signage of on/off leash area
- People were unhappy saying no point having by-laws if you are not going to enforce them

**Quote from community**

*"Much better signage for dogs on/off leash. Signs should face the street and should be clearly seen and observed by dog owners. Dogs should not be allowed on any playground."*

**The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey**



**Draft By-law Number 5 - Roads**

20 people provided a response.

Overall, 65% of people either supported or strongly supported the Roads draft by-law.

**A summary of key feedback and responses is provided here.**

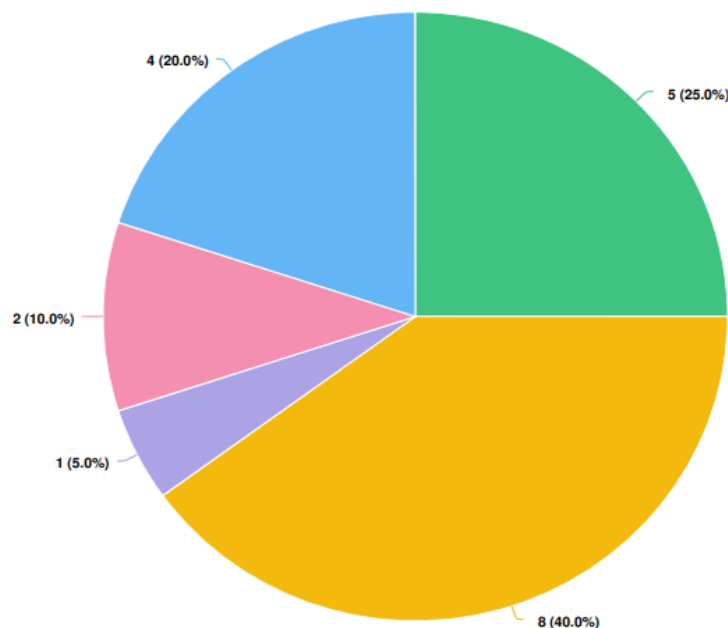
Feedback relating to the project overall

- People had positive feedback about vehicles displaying for sale signs will no longer be parked in one location
- People provided positive feedback
- People raised concerns about clogging up of the streets by parking, changes are vague, and they didn't know what the original by-law stated
- People were unhappy with their own individual issues which did not relate to the by-law and may issues that were raised are dealt with under other legislation.

**Quote from community**

*"It will be good to prevent lots of cars being all parked in the one spot to advertise their cars for sale like happens in some places".*

**The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey**

**Question options**

● Strongly support 
 ● Support 
 ● Do not support 
 ● Strongly do not support 
 ● Undecided

**Draft By-law Number 6 - Cats**

92 people provided a response.

Overall, 72.9% of people either supported or strongly supported the Cats draft by-law.

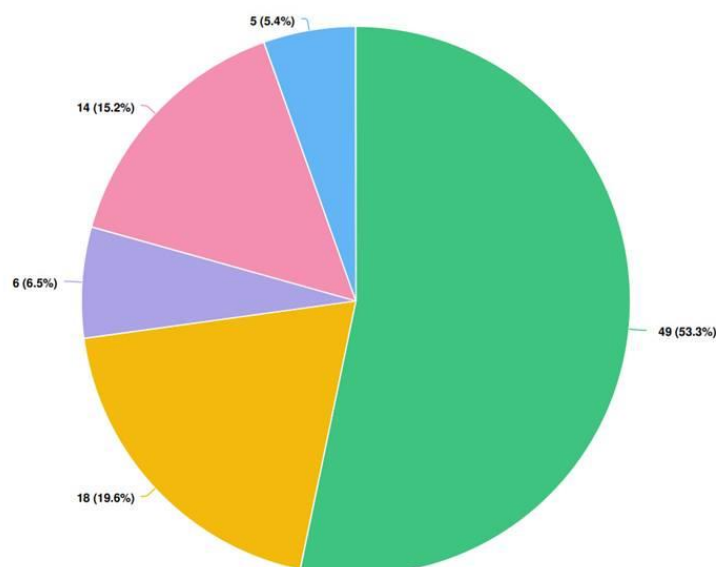
**A summary of key feedback and responses**

- People had positive feedback about reasonable, 2 cats are reasonable, great idea, good idea to protect wildlife, support and wish it could come in to affect sooner, wetlands and other nature reserves should be cat free, all cats should be confined by owners, registration should be mandatory, agree as cats are killing too many birds
- People provided positive feedback saying 2 is reasonable, cats should be contained, it is good to have animals registered. its good to have an animal registered, agree with registration if the money goes to the protection of animals
- People raised concerns about wanting cats detained 24/7, believe locking cats inside all day is not good for a cats psychology, not in agreeance of number of cats if they are inside cats only, concerns re the cost of registration, more clarification on what areas would be cat free, would like cats to be confined to the owners property all the time, how this is going to be policed, not feasible and way beyond the power of the council, merely a way of council getting more money, there is no definition of what is considered a cat free area, don't want the public to trap cats because it is cruel, this will be difficult for cat owners to adhere to
- People were unhappy advising they disagree with cat free areas, do not agree with the curfew, the number of cats

**Quote from community**

*"Absolutely support. The destruction to native birds and reptiles is unacceptable. We constantly have neighbours cats enter our yard at night where we try to provide habitat and a haven for native birds and reptiles."*

The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey



***Draft By-law Number 7 - Animal Management***

22 people provided a response.

Overall, 68.2% of people either supported or strongly supported the Animal Management draft by-law.

**A summary of key feedback and responses is provided here.**

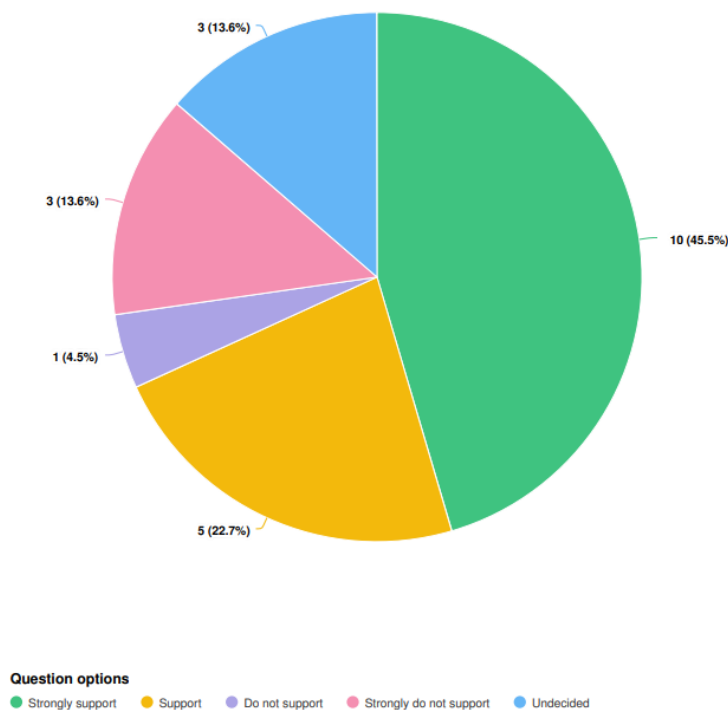
Feedback relating to the project overall

- People had positive feedback about should be enforcement for the greater good of the community, yes people should have to get permission
- People provided positive feedback prescribed animals should not be allowed only in very rare situations.
- People raised concerns about asking what will happen to roosters who are currently being kept
- People were unhappy with seems unreasonable given the possibly low number

**Quotes from community**

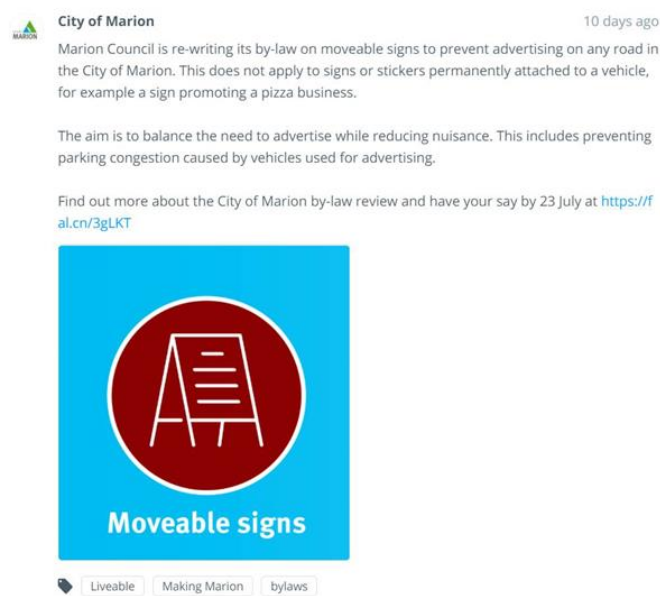
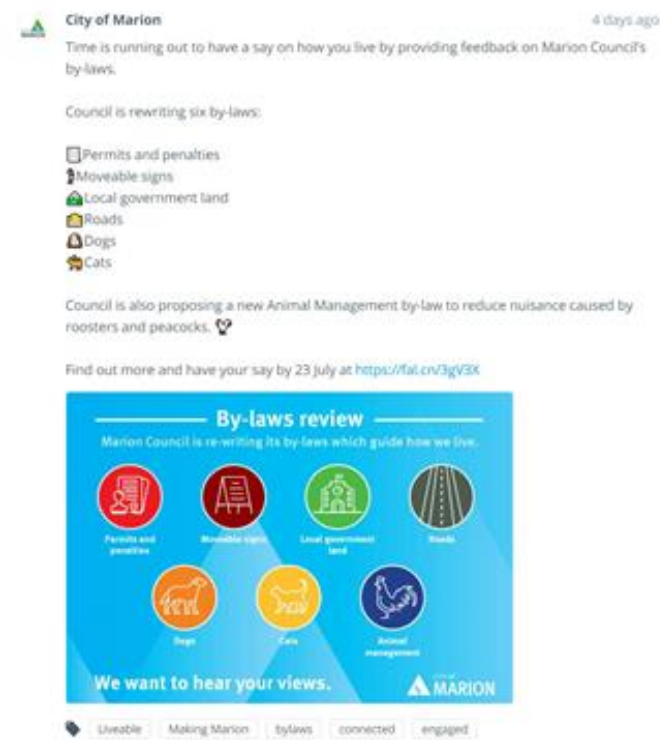
*"Yes should have to get permission. But seriously how much of an issue is this? Cats and dogs and possums are a big issue!"*

**The following graph is an extract from the Making Marion engagement report providing the level of support identified by people in the survey**



Social Media

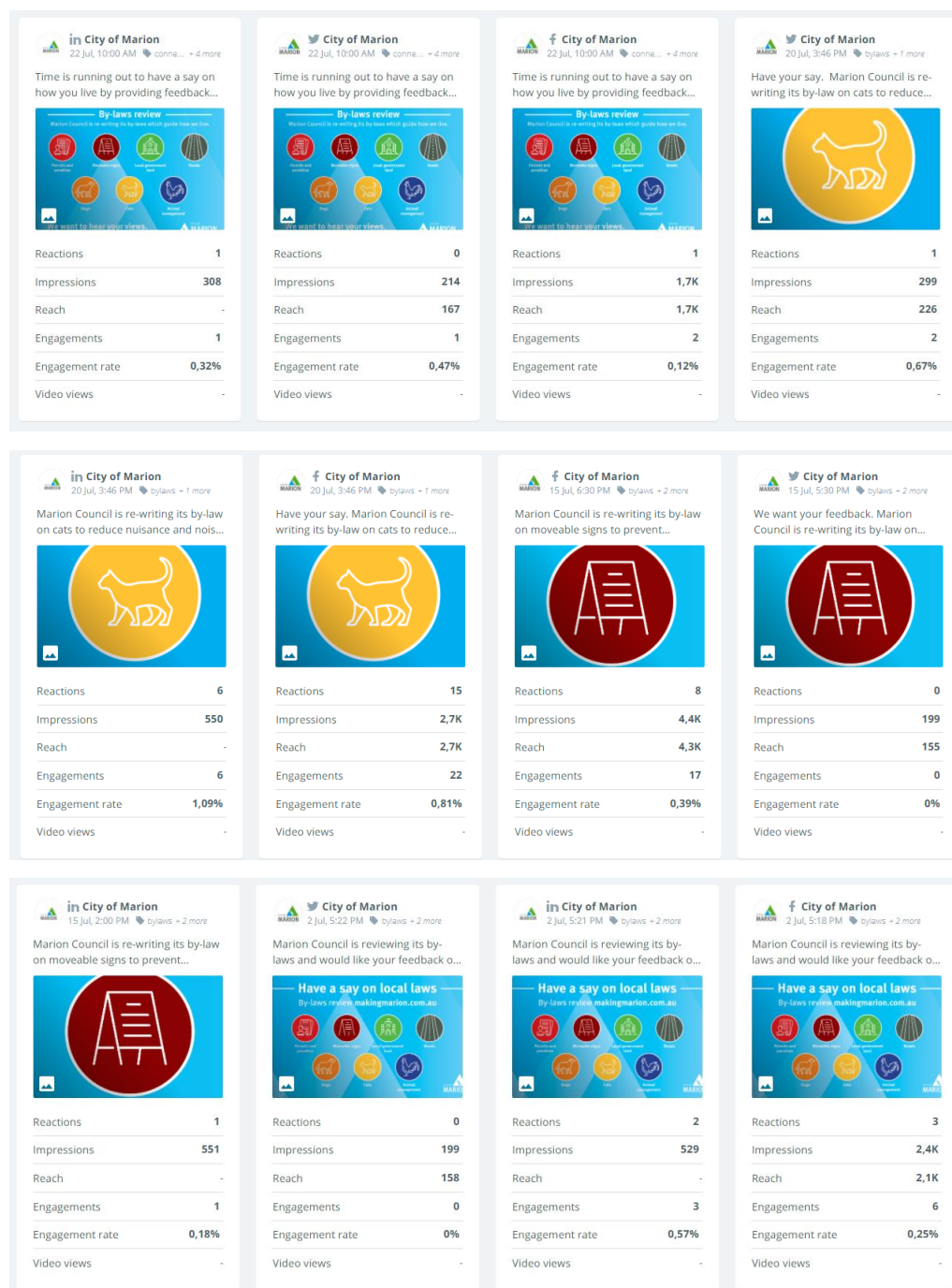
Social media was used to promote the community consultation regarding the by-law review. The following are two examples of the social media posts:



### Summary of the outcome of the social media posts

12 posts were placed on the City of Marion's social media about the review of by-laws, with the following result:

- 13,798 views
- 38 likes
- 61 shares



**APPENDIX 1 – FULL LIST OF QUESTIONS REQUIRING A RESPONSE****By-law no 1 Permits and Penalties**

<b>Comment 1</b>
I can't tell what by laws this is in relation to. If I could tell then I would have feedback.
<b>Response</b>
This by-law is in relation to the Permit and Penalties By-law please see the attached draft copy of this particular by-law.
<b>Comment 2</b>
Which activities?
<b>Response</b>
There are numerous activities within the City of Marion which require permits. For example residential parking permits, special event permits, mobile food vendors permits, and driveway access.

**By-law no 4 Dogs**

<b>Comment 1</b>
How to deal with constantly barking dogs in neighbourhood??
<b>Response</b>
Barking dogs are dealt with under state legislation of the Dog and Cat Management Act. If you have an issue with a barking dog please contact the Community Safety Team who can assist you with your complaint.
<b>Comment 2</b>
What is the rationale for 2? Why not 3 or 4? Should size of dog be taken into account?
<b>Response</b>
Council endorsed 2 to ensuring prevent nuisance that can be caused by dogs, including barking and odour. Some dogs bark more, to the extent it causes a nuisance. This includes small breeds of dogs.

**By-law no 6 Cats****Cat confinement**

<b>Comment 1</b>
Re cat confinement:  Cats ought to be contained to the owner's property 24/7 in which case, it would not be necessary to have cat-free areas. The cats would be contained. Cats who roam can roam



by several kilometres in a day - how will an area ever be cat free, if we are not containing our cats?
<b>Response</b>
The onus will be on the owner to ensure that their cat is contained during the hours specified in the by-law. If a particular cat is causing a nuisance, Council Community Safety Inspectors can investigate this as a separate matter under the Local Nuisance and Litter Control Act 2016 (state legislation).
<b>Comment 2</b>
Re cat confinement:  Cats should be contained 24/7 to their owner's property. So far as between 8pm and 7am, how will this be policed? What do we do if there is a cat out at night?
<b>Response</b>
To maintain a balanced living environment for the enjoyment of all residents, the City of Marion is proposing to limit the number of cats that are permitted per residence to two, desexed cats. This is in Council's existing Cat By-law.  Residents may apply to the City of Marion for permission to keep more than the permitted number of cats. Each application will be investigated by a Community Safety Inspector and each application will be assessed on its merits.
<b>Comment 3</b>
Re cat confinement:  This is a reasonable request for new cats, however as creatures of habit it would be difficult for new cats to meet these requirements. Would this be something that council could phase in for newer cats only, though noting current cats would still be subject to the nuisance requirements? We typically ensure our cat is indoors after dark however she hasn't learnt to tell the time so it can be difficult asking her to come home by curfew!
<b>Response</b>
There will be an information and education period during the initial months of the new by-law, where Council will make the community aware of their obligations under the new by-law. The onus will be on the cat owner to ensure they comply with the times specified in the by-law.
<b>Comment 4</b>
Re cat confinement:  This time limit is very restrictive for cat owners who's cats go outside currently and the owners that work shift work. Most people who are shift workers only get home around 10pm when on an afternoon/evening shift or if on a day/early shift, leave by 6- 6.30am. How are they suppose to have cats inside between 7am and 8pm?
<b>Response</b>
Cats will be required to be kept within the boundary of their property, not necessarily kept indoors. Cat owners will be required to take the steps necessary to ensure their cat is confined at their premises between the hours of 8pm and 7am. Options can include installing a cat run, or making arrangements with others to assist could be considered.

<b>Comment 5</b>
<p>Re cat confinement:</p> <p>This bylaw would cause problems for current owners of cat who go outside. What are the ramifications of your cat being found outside during these times? Who is policing it?</p>
<b>Response</b>
<p>Cats will be required to be kept within the boundary of their property, not necessarily kept indoors. If there is a breach of the by-law (and any by-law) an expiation can be issued to the person responsible for this breach. Community Safety Inspectors are authorised officers and will be responsible for investigating and enforcing any breaches of by-laws.</p>
<b>Comment 6</b>
<p>Re cat confinement:</p> <p>Absolutely not! That is almost impossible to do as anyone who has a cat as a pet will know. Unless you make the cat a house cat right from the very start (as a kitten) you cannot train a cat like you can a dog, to stay in the house. They will literally climb the sofa, curtains and miaow their heads off until you let them out. They are essentially a wild animal that we have domesticated. There are 94,879 people in the Marion Council area and 30% have a cat - that is 28,463 people who have a pet cat, yes 28,463 people! Now obviously there are multiple people living in most households but if you divide that by 3 (taking into account some households will have 4 occupants, some two) that is still 9,487 households that you are expecting to keep their cats indoors - it just won't happen! If the cat is 10 years old or more, how do you suggest you change their whole life? What if they have a cat flap? People won't want the smell of cat poo in their laundry from the litter box - why should they if they have never had it before? We are not in a country area with lots of native animals, we are an urbanised residential area where the only natives you will find are mice and rats, and trust me, you want cats catching those!</p>
<b>Response</b>
<p>If you have a property with a cat flap, the onus will be on the owner to ensure that their cat is confined to the property between the hours of 8pm and 7am. This confinement is to the premises. Cats will be required to be kept within the boundary of their property, not necessarily kept indoors. Options such as keeping the cat inside overnight and or the installation of a cat run could be considered.</p>
<b>Comment 7</b>
<p>Re cat confinement:</p> <p>Sounds a little tricky and uncertain as the animal is free to roam what will you mean?</p>
<b>Response</b>
<p>Owners of cats will be responsible for keeping their cat confined to their property between the hours of 8pm and 7am meaning a cat cannot be wandering the streets, reserves and or other people's yards during this time.</p>
<b>Comment 8</b>
<p>Re cat confinement:</p> <p>I don't understand how this is beneficial for any purpose. What does confining them at night achieve that is different from during the day?</p>

<b>Response</b>
Cats hunt by instinct and they often hunt at night over long distances, hence it is important that cats are contained at night. Any enclosed space can be made comfortable for your cat/s.
<b>Comment 9</b>
Re cat confinement:  This should not happen. What if your cat goes out for a wee after dinner and doesn't come home in time? If my cat is seen out is it going to get taken or will I get a fine? This is silly in my opinion. They aren't harming anyone.
<b>Response</b>
The onus is on the owner to ensure that their cat is confined to their property between the hours of 8pm and 7am. Community Safety Inspectors will be monitoring and investigating any breaches of the by-law. If a breach occurs the owner or person responsible for the cat at the time can receive an expiation for breach of the by-law.
<b>Comment 10</b>
Re cat confinement:  It should be something that is encouraged, but the times are rubbish. 30' after official sunset, 30' before official sunrise? and it would clearly give licence to the cat-haters who seem to have the 'ear' of the council to erm borrow traps? get rid of the pesky things?
<b>Response</b>
The times have been established to make it clear to all cat owners the requirements of exactly when their cat needs to be contained, this reduces any confusion.
<b>Comment 11</b>
Re cat confinement:  Where do these times come from? Too restrictive. Maybe 10pm- 5am? And it should definitely not require cats to remain indoors (I realise it doesn't say this here but it may be under consideration). Cats are very determined and if they have lived their lives being able to go in and out a house at nighttime (as is their natural behaviour) they will not let their owner sleep until they are let out! My cat doesn't leave the property but I can imagine it would be difficult to keep a cat restrained for that period.
<b>Response</b>
The by-law does not require that owners or the person responsible keep cats indoors, but it does require cats to be confined to the premises occupied by that person between 8pm and 7am. The onus will be on the owner/person responsible to ensure that the cat is confined to the premises.

#### Cat-free areas

<b>Comment 12</b>
What would comprise a cat-free area? What is the purpose of a cat-free area?

<b>Response</b>
Any areas that may be considered a cat free area. It is envisaged that if Council chose to use this section of the by-law it would be to declare areas to protect flora and fauna.
<b>Comment 13</b>
Effective control. What does that mean? If I call my cat outside, she will come to me. Leashing a cat could risk an injury if not handled appropriately.
<b>Response</b>
Effective control is defined as:  a person is exercising effective control of a cat by means of a chain, cord or leash that does not exceed 2 metres in length restraining the cat; or a person has effectively secured the cat by placing it in a cage, vehicle or other object or structure.
<b>Comment 14</b>
Does this mean public areas? I would not agree with residential areas being made cat-free.
<b>Response</b>
Yes this relates to public areas.
<b>Comment 15</b>
How will this be done? Can council also declare dog free areas? Ban barking? Fine for dog faeces not being picked up?
<b>Response</b>
The City of Marion has a separate by-law that relates to the management of dogs. As well as this, dog owners have a range of responsibilities and requirements under the Dog and Cat Management Act 1995 (state legislation).
<b>Comment 16</b>
Re Council having the ability to declare cat free areas:  That is not feasible and way beyond the powers of the Council. If you are referring to a conservation park, then yes, but if you are referring to a normal residential area, then absolutely not. Within that area there will be many families with pet cats - what are you proposing they should do? Destroy their family pet because they live in an area the Council has decided should be cat free?
<b>Response</b>
Cat free areas may relate to public places such as conservation parks and or any other parks or reserves. This will not affect individual households. Council can make by-laws to prevent and manage and matters within its Council area.

**Registration, Microchipping and additional cats**

<b>Comment 17</b>
So you currently have no idea how many are in the community?
<b>Response</b>
The exact number of cats within the community is currently unknown. Cats must be microchipped and cat owners are encouraged to record the details on "DACO", the state-wide dog and cat database. The City of Marion can access the number of cats that are recorded on DACO.
<b>Comment 18</b>
I don't want to pay for registration. Otherwise, I have no issue with this, but more information on if a fee applied would be useful.
<b>Response</b>
At this stage the City of Marion does not propose to charge a fee for registration. Cats must be microchipped and cat owners are encouraged to record the details on "DACO", the state-wide dog and cat database.
<b>Comment 19</b>
Perhaps 3 is more reasonable, I own 1 cat and although not many people would have more than 2 I do not think 3 is excessive. Is there a limit on dog numbers?
<b>Response</b>
The number of cats has been decided upon to reduce any nuisance that excess cats may cause to the community. Yes there is currently a limit on the number of dogs.
<b>Comment 20</b>
Waste of rate payers money. Who has the time and resources to police this.
<b>Response</b>
The City of Marion's Community Safety Inspectors are authorised officers and will be responsible for the investigation and enforcement of the by-law.
<b>Comment 21</b>
If a cat gets out of a house between those hours will they be locked up if caught. Don't agree.
<b>Response</b>
If a cat is located not confined to a property during these hours, it may be contained by a Community Safety Inspector. If the cat is not microchipped it will be taken to an animal impounding facility. If it is microchipped, it will be returned to the owner and they can be issued with an expiation for their cat not being confined to the property.
<b>Comment 22</b>
I'd like to know how the council intend to maintain this in a humane way.

<b>Response</b>
Council will respond to complaints about cats that are roaming. If necessary, cat traps will be utilised which are a humane way to capture cats without causing harm.
<b>Comment 23</b>
Why are you punishing people who are responsible cat owners? Our cat is desexed, microchipped and has yearly health checks by the vet. He is contributing to the feral cat population he is a therapy animal for our Autistic child.
<b>Response</b>
The City of Marion appreciates responsible cat owners already do the right thing. The by-law is not intended to prevent people from having beloved family pets. The by-law contains measures to ensure each cat owner is a responsible owner who complies with the by-law.
<b>Comment 24</b>
Yes. Will cat traps be used like previously proposed?
<b>Response</b>
If deemed necessary, the use of cat traps will be considered. The welfare of cats is always considered.
<b>Comment 25</b>
Think the number is fine would like more details if a owner has more than 3. How a permit can be obtained.
<b>Response</b>
A permit can be obtained to keep additional cats as pets by making an application. The application will be allocated to a Community Safety Inspector and each application will be investigated and assessed on its own merits.
<b>Comment 26</b>
I need more clarification on what this means. as I don't think people should be separated from pets. if it means cats are only kept in the home and not allowed to roam then I'd be more on board.
<b>Response</b>
Cat free zones will be for public areas and does not apply to individual residential properties.
<b>Comment 27</b>
Sounds ridiculous – how are you going to control this?
<b>Response</b>
Community Safety Inspectors are authorised officers and will investigate and enforce complaints made in relation to the breach of this by-law.

<b>Comment 28</b>
How will this be done? Can council also declare dog free areas? Ban barking? Fine for dog faeces not being picked up?
<b>Response</b>
Community Safety Inspectors are authorised officers and will investigate and enforce complaints made in relation to the breach of this by-law. In relation to dogs, these matters are dealt with under the dog by-law and/or the Dog and Cat Management Act 1995 (state legislation).
<b>Comment 29</b>
Great idea, but I wonder if there could be a daylight savings time and non daylight savings time option?
<b>Response</b>
Council considered having varying times before endorsing the set times of confinement between 8pm and 7am to provide ongoing clarity and to reduce any confusion.
<b>Comment 30</b>
A good idea but in reality when people are struggling with the every day cost of living you expect them to pay for this also?? Everything is a cost these days. Those that already have a cat may have to give up their animals because of this - how heartbreaking!!
<b>Response</b>
At this stage, Council is not proposing to introduce formal cat registration for a fee. Cat owners are encouraged to record their and their cat's details on the state-wide "DACO" (Dogs and Cats Online) data base. There is no fee to record these details on DACO.
<b>Comment 31</b>
Two is a fair number of cats, however would council be willing to advise what sort of scenarios would meet exemption criteria? For example adopting a litter of three kittens rather than only adopting two and separating one?
<b>Response</b>
Each application for additional cats will be investigated and assessed on its own merits.
<b>Comment 32</b>
This depends on what type of difficulties people who want to have more than 2 cats will face when making an application. What considerations will be taken into account when making a decision for or against??
<b>Response</b>
An application must be completed and lodged for it to be assessed. A Community Safety Inspector will make an assessment based on each individuals' circumstances.
<b>Comment 33</b>
What is the rationale for 2? Why not 3?

Response
Excess cats can cause a nuisance and the number was chosen to reduce any nuisance that cats could potentially cause to nearby neighbouring residents. The by-law aims to provide a balanced of recognising cats are legitimate and beloved pets and prevent nuisance from occurring.

### By-law no 7 Animal Management

Comment 1
Yes should have to get permission. But seriously how much of an issue is this? Cats and dogs and possums are a big issue!
Response
The City of Marion receives numerous complaints in relation to nuisances caused by these prescribed animals, this is to reduce the nuisances these animals cause to nearby neighbours.
Comment 2
What will happen to roosters who are currently being kept?
Response
People who currently have roosters will have to make an application to get permission to keep them. A Community Safety Inspector will make an assessment on each individuals circumstances when determining if permission will be granted.
Comment 3
Do neighbours have a chance to 'weigh in' about the provision of a permit?
Response
No neighbours will not have a chance to 'weigh in' about the provision of the permit. A Community Safety Inspector will make the assessment.
Comment 4
This seems unreasonable given the possibly low number. There's no evidence provided to confirm this is a significant nuisance.
Response
The City of Marion receives numerous complaints about noisy birds this by-law will assist in the reduction of complaints received from the community about this issue.



## APPENDIX 2 – FULL SUMMARY OF COMMENTS

**By-law no 1 Permits and Penalties - Positive Comments**

- Agree
- Yes, retain
- All good

**By-law no 1 Permit and Penalties - Negative Comments**

- No
- I can't tell what by laws this is in relation to. If I could tell then I would have feedback.
- Over regulation

**By-law no 2 Moveable Signs Permits and Penalties - Positive Comments**

- Keep current by-law
- Size of signs should have guidelines so that signs are not huge & obtrusive & distracting motorists
- I think number of a-frames permitted outside a business, as well as proximity to roadways should be controlled - especially in high traffic areas like South Rd where these signs can block the views of oncoming traffic.
- they should be visible, not in a walk way. They should not distract traffic
- It's a good idea to help businesses and to help customers find where businesses are.
- Use snap send solve. Photograph, lodge, get permission via SMS.
- Signs should be regularly checked, that they are not blocking a clear view for traffic
- It seems sensible

**By-law no 2 Moveable Signs - Negative Comments**

- Should just be common sense. If there's a safe space for a moveable sign to be displayed it should be allowed. If a sign is blocking a walkway or isn't safe it shouldn't be allowed
- I do not support these changes, people should be able to mark their vehicles for sale without council getting involved
- There should be no restrictions on small businesses advertising their business on the side walk or using the sidewalk to advert their business as long it directly in front of the store as long as access is not hindered in anyway
- As written this completely restricts ability for micro businesses to advertise using magnetic signs on their vehicles which are cost effective. It is damaging to the micro business sector and appears purposeless
- I believe people should be able to display for sale signs on the vehicle that is for sale. It increases the visibility and chance of that vehicle being sold.

**By-law no 3 Local Government Land - Positive Comments**

- All suitable additions
- No alcohol consumption areas is a good idea.
- Leave it as it is
- Looks reasonable

**By-law no 3 Local Government Land - Negative Comments**

- Over regulation
- Permission is not required for ANYONE to pick fruit from
- At 9.10 Camping or Tents - Should allow erection of a temporary shade in Recreational areas for picnics provided they are removed and all/any rubbish generated from that activity removed from site that day

**By-law no 4 Dogs - Positive Comments**

- If a resident already has 2 or 3 dogs, they should be allowed to keep them.
- There shouldn't be a limit on dogs on small property
- yes people should be encouraged not to own dogs
- 2 is fine if kept under control.
- Dog owners should be able to provide decent life conditions if nobody is at home, a dog needs company and not being left alone all day at home barking/crying of loneliness this is cruel. And nowadays walking a dog is not exercise as most dog owners walk very slowly / stroll while checking their phone when walking their dog, i.e. this is not exercising. MAIN CONCERN = BARKING DOGS this is all the time, I am the victim and the one to report to the council... only to be in peace at home reading a book, gardening.. etc... barking dogs are very distressful!! Potential and already dog owners should pass a test before being allowed to own a dog. A dog is not a toy but a being with feelings and needs to be fulfilled.
- I think the restrictions on how many dogs per household depending on the size of the house is very reasonable.

**By-law no 4 Dogs - Negative Comments**

- Consideration needs to be given to preventing unnecessary restrictions regarding off leash of dogs or dog free areas. Again, Australia is an animal loving country and the council needs to stop attempting to impose rigid laws restrictions free pet ownership.
- the minimum, it is not a matter of limit but of CARING for the dog i.e. walking the dog, keeping the dog company, a dog pet is not meant to be left alone all day, better not having one.
- What is the rationale for 2? Why not 3 or 4? Should size of dog be taken into account?
- People should be allowed up to 2 dogs even if the property is what you categorise as 'small' because you're not accounting for having one or both dogs with disabilities who may be deaf, infirm, or otherwise not mobile or with reduced mobility requirements.

**By-law no 5 Roads - Positive Comments**

- Looks reasonable
- The by-law, other than as above, seems adequate, but more definitely needs to be included about residential parking before there is a bad accident or death. With all the infill going on at present in this area streets are becoming congested and dangerous. One house, one car, now becomes two houses and four cars, two of which are parked permanently on the street as garages are full of overflow from homes. I walk the streets every day and it is often necessary to step between two cars and peer around them to see if it is clear to cross. My neighbours have two vehicles which they park one in front of my home and one in front of their home every day (not using their own garage) restricting traffic movement around the corner, which is taken quite quickly by some drivers. Parking close to the intersections with Towers Terrace is also creating dangerous situations with traffic turning into side streets having nowhere to go when they are confronted by a vehicle waiting to enter Towers Terrace and cars parked on both sides of the street. So all in all I would like Council to undertake a review of parking in residential streets. A Council brochure stated most homes in the area had one car but I don't think this allows for "work" vehicles which are also housed at residences.
- It will be good to prevent lots of cars being all parked in the one spot to advertise their cars for sale like happens in some places
- They seem sensible

**By-law no 5 Roads - Negative Comments**

- Please don't allow in residential area and residentially zoned neighbourhood
- I would like to complain strongly regarding the clogging up of our streets Marion city is becoming a giant car park
- Nothing has been included to prevent developers blocking pedestrian access or cleaning mud and debris from footpaths and roadways. If this is covered by another by-law then it is not monitored.
- Changes here are vague. I don't know what the original bylaw stated nor what the new one states.

**By-law no 6 Cats - Positive Comments**

- 2 is reasonable
- This is reasonable
- 24/7 confinement on property unless under effective control would be preferable, there is no reason for them to be roaming.
- Good. It is good to have registered animals. The RSPCA and veterinary practices should not have to foot the bill for tracing and tracking cats who have gotten lost, etc. Cats kept contained 24/7 should have a concession though, of course!
- In my street, White Crescent Seacombe Gardens, I have around 6 roaming cats, 4 of which visit my yard regularly. They kill the native crested pigeons (and other native birds less frequently) and they leave their faeces everywhere. I do not appreciate the stench, the surprises in the dirt, or the responsibility I now have, to clean up after other peoples' cats. I have my own cats who I clean up after inside my house. I say that I strongly support the bylaw, because I hope that it is a step in the direction to complete containment of pets to their property. My Facebook page has several

videos of cats sitting and stalking in my yard. I have a cheap camera which picks them up sometimes - but it's not very good.

- Two is reasonable, I would like to know about temporary care for a cat if it goes above two.
- This is a great idea.
- Mine stay in overnight and I think it's a good idea
- Absolutely support. The destruction to native birds and reptiles is unacceptable
- Support
- They should stay in their own yard
- Yes this is a good idea
- Two is a fair number of cats, however would council be willing to advise what sort of scenarios would meet exemption criteria? For example adopting a litter of three kittens rather than only adopting two and separating one?
- This is a reasonable request for new cats, however as creatures of habit it would be difficult for new cats to meet these requirements. Would this be something that council could phase in for newer cats only, though noting current cats would still be subject to the nuisance requirements? We typically ensure our cat is indoors after dark however she hasn't learnt to tell the time so it can be difficult asking her to come home by curfew!
- This seems reasonable, it allows council to understand how many cats are in given areas and work with responsible owners to protect the cats and the environment.
- I understand the pressing need to protect local wildlife but encourage you to continue working with cat owners to reach a fair solution. My main concern is the curfew, and as mentioned above the ability in getting a cat to come home on time (particularly if they learn that they don't get to go out again later).
- I think all cats should be kept indoors / within a cat run so I don't think there needs to be cat free areas.
- I think cats should be always confined to the owner's property, i.e. they should be indoor cats. I have a cat door that goes into a confined cat run. It means my cat is safe and happy.
- If cats are not kept indoors, then they should be sterilised so there are not a whole lot of cats that have to go to cat rescues and in many cases, are euthanised.
- I think 2 cats is enough on a standard property as long as people are allowed to keep current cats but unable to purchase or adopt more unless they are under the limit
- I don't think cats should be able to roam in areas with excessive parklands to protect our wildlife
- I think this is an excellent idea - I volunteer at wildlife rescue and see many injured possums and birds - I would prefer a confinement 24/7 but it's a step in the right direction
- I think if people have to register a dog it should also be compulsory for cats - this will also stop people having an excessive amount of cats
- I do not take issue with the idea of registration but Council must be mindful that if fees are involved, there may be some people who claim the cats do not belong to them to avoid financial responsibility, and this will be at the detriment to the animal.
- I have no problems with cat registration. If dogs are, then cat should be too. This would also help with council knowing how many cats you have.
- Yes, cat free areas should be constrained to parks. Residences should not be included.
- Yes, the cost of implementing will be far greater than the benefit. Unlike dogs, Council is unlikely to provide cat parks or cat poop bags. Unless Council used the money to trap stray and feral cats then I do not support
- 100 per cent approve
- I would like all cats to be contained on owners property all the time 24 hours like dogs are.
- All cats should be desexed and registered

- I have a vegetable garden and I am sick of cats in my garden and cleaning up after them I put my garden gloves in the bin sometimes when I garden because of cat poo. They also fight at night and keep me awake. I do like animals especially dogs. My bird bath doesn't have many birds visiting now days because of cats. My neighbour had 6 cats but after other neighbours and myself complaining she now has 2. I have photos of the devastation they cause in my garden when they fight.
- I support that cats should be kept within their own property. Currently cats seem to just roam free especially at night I see them at night repeatedly
- I thought that 2 cats was always the policy. Good enough for dog owners, should be the same for cat owners. Totally agree.
- Domestic cats should be de- seed unless the owner is a registered breeder
- I have no problem with cat registration as long as it is only a small amount, or free.
- They should be confined to their property all the time so the native birds stand a chance of survival.
- I strongly support measures to reduce feral and nuisance cats and to encourage responsible pet ownership. There are a lot of cats that fight and kill wildlife at night in our area. Also a hazard on the roads. Also scare our chickens, on our own property.
- Cats should be registered just as dogs are.
- The concept is good, but the execution is too harsh. Bringing in new laws overtime when proven appropriate by animal welfare groups and independent bodies is more likely to get better community support then all at once with no proof of effectiveness.
- Think it is an excellent idea, have concerns about how this would be controlled/implemented
- No, two without a permit is very reasonable

#### By-law no 6 – Cats - Negative Comments

- If the cat is indoors only and never goes outside - the amount allowed per house should not matter and should not be a Council issue
- Not necessary for indoor only cats - expensive and time wasting
- Need to consider the aged and elderly who have cats as companions. Registration etc is expensive and complicated for them
- Do not support
- Too complex and too controlling.
- A good idea but in reality when people are struggling with the every day cost of living you expect them to pay for this also?? Everything is a cost these days. Those that already have a cat may have to give up their animals because of this - how heartbreaking!!
- Stop coming up with ideas that just mean people have to find more money they just don't have.
- I appreciate the need to control introduced species in this country, and the cat is a particularly gifted hunter and breeder. Cats are also however, much loved and cherished companions for many people, and at first glance it is not possible to tell which cat is which (they are also rather gifted at squirming out of their collars). I urge Council to proceed with caution when implementing any policies relating to cats that could lead to people's pets being neglected, subjected to cruelty, or killed.
- I'd appreciate more clarity on what areas are likely to be declared cat free - nature reserves etc home to vulnerable fauna would be reasonable but unclear whether residential properties are to be included.
- While I understand the intention of this policy, it would have negative ramifications. There is already a degree of hostility towards cats in some members the Australian community, and our governments must avoid sending any message that fuels the malice towards cats these people feel. I believe a policy like this would lead to

people's beloved family pets, who might have slipped out the door while dad was putting the bins out, being killed by vigilante environmentalists.

- I do not support Council in making any areas "cat free" because: 1. Cats are wily and despite their owners' best efforts, they may occasionally escape their home and venture into a "cat free area", where I worry what would be done to them; and 2. Deeming areas "cat free" reinforces the negative attitude towards cats felt by some members of the community and would, whether intended or not, justify them in taking actions to reduce the number of cats in the area, or indeed anywhere.
- As a responsible cat owner, I do not believe the number of desexed cats should be limited by Council. If animals are not being kept in a safe and sanitary manner, the RSPCA should be contacted. The practical implication of placing a limit on animal numbers is that sadly, many people will retaliate by simply keeping the animals secret. This may mean the animal is not registered, nor provided with appropriate veterinary care as some owners would be looking to avoid any ostensible sign of ownership that might be used against them. A better technique would be to educate the public about the merits of desexing and provide subsidised desexing services.
- This time limit is very restrictive for cat owners who's cats go outside currently and the owners that work shift work. Most people who are shift workers only get home around 10pm when on an afternoon/evening shift or if on a day/early shift, leave by 6- 6.30am. How are they suppose to have cats inside between 7am and 8pm?
- That is not feasible and way beyond the powers of the Council. If you are referring to a conservation park, then yes, but if you are referring to a normal residential area, then absolutely not. Within that area there will be many families with pet cats - what are you proposing they should do? Destroy their family pet because they live in an area the Council has decided should be cat free?
- Absolutely not! That is almost impossible to do as anyone who has a cat as a pet will know. Unless you make the cat a house cat right from the very start (as a kitten) you cannot train a cat like you can a dog, to stay in the house. They will literally climb the sofa, curtains and miaow their heads off until you let them out. They are essentially a wild animal that we have domesticated. There are 94,879 people in the Marion Council area and 30% have a cat - that is 28,463 people who have a pet cat, yes 28,463 people! Now obviously there are multiple people living in most households but if you divide that by 3 (taking into account some households will have 4 occupants, some two) that is still 9,487 households that you are expecting to keep their cats indoors - it just won't happen! If the cat is 10 years old or more, how do you suggest you change their whole life? What if they have a cat flap? People won't want the smell of cat poo in their laundry from the litter box - why should they if they have never had it before? We are not in a country area with lots of native animals, we are an urbanised residential area where the only natives you will find are mice and rats, and trust me, you want cats catching those!
- Cats do not respond/behave like dogs. How do you expect a cat to be at home before 8 to lock them up. It's a 24 hr curfew or none at all
- This should not happen. What if your cat goes out for a wee after dinner and doesn't come home in time? If my cat is seen out is it going to get taken or will I get a fine? This is silly in my opinion. They aren't harming anyone
- why would you do that when they are supposedly required to be \*microchipped & registered with the D&C board...ohhh so you can legitimise trapping and euthanasin
- I think 2 cats is too harsh a limit. It should be okay to have more if they are de-sexed or family/siblings, and can prove are well provided for. It also should be made simple for those that look after cats for animal welfare organisations (such as through foster or emergency boarding), or for other short to long term reasons (such as helping care for friends/family cat whilst owner cannot), to apply for extra cat permits.

**By-law no 7 – Animal Management – Positive comments generally**

- They should not be allowed except in very rare situations ... which I consider would be very hard to justify.
- Should be enforced for the greater good of the community
- They should not be allowed except in very rare situations ... which I consider would be very hard to justify.
- Yes should have to get permission. But seriously how much of an issue is this ? Cats and dogs and possums are a big issue !
- Great idea!
- Do neighbours have a chance to 'weigh in' about the provision of a permit?

**By-law no 7 – Animal Management – Negative comments generally**

- This seems unreasonable given the possibly low number. There's no evidence provided to confirm this is a significant nuisance
- Ridiculous
- I don't agree that a permit should be required.

### 11.3 Policy Review - Order Making Policy

<b>Report Reference</b>	GC210810R11.3
<b>Originating Officer</b>	Unit Manager Community Health and Safety – Sharon Perin
<b>Corporate Manager</b>	Manager Development and Regulatory Services - Warwick Deller-Coombs
<b>General Manager</b>	General Manager City Development - Ilia Houridis

#### REPORT OBJECTIVE

The purpose of this report is seeking endorsement of the Order Making Policy following a review at Elected Member Forum on 20 July 2021.

#### REPORT HISTORY

<b>Report Reference</b>	<b>Report Title</b>
EMF210720R1.3	Policy Review

#### EXECUTIVE SUMMARY

The Order Making Policy is created to satisfy Council's requirement under Section 259 of the Local Government Act 1999 (the Act), which is the requirement to develop policies.

This policy is designed to ensure the correct procedures are used when issuing orders under Section 254 of the Act (the power to make orders), including what factors need to be considered before issuing an order.

The policy also applies in respect of orders issued by Council under Section 216 (power to order the owner of private road to carry out specified roadworks) and Section 218 (power to require owner of adjoining land to carry out specified work) of the Local Government Act 1999, including what factors need to be considered before issuing an order.

Amendments to the policy include:

- Alignment with the Local Government Act, including the penalty and expiation fee,
- re-written in keeping with the LGA's "Model Order Making Policy",
- the title of the policy,
- transfer to the new template.

#### RECOMMENDATION

**That Council:**

- 1. Endorse the Order Making Policy as attached to this report, subject to any amendments made by Council at the Council Meeting on 10 August 2021.**

#### DISCUSSION

The previous Order Making (Authority) Policy and a new draft Order Making Policy was presented to Elected Members at the Elected Member Forum on 20 July 2021 (EMF210720R1).

Feedback from Elected Members has informed the review, including Elected Members seeking the



community to be held accountable for their responsibilities under legislation; and Council's Authorised Officers undertaking enforcement of legislation.

This Policy is intended to ensure the correct procedures are used when issuing orders under sections 216, 218 and 254 of the Local Government Act 1999, which are issued by different Council staff not limited to Council's Community Safety Inspectors.

It should be noted the Act outlines the steps to be followed when making and issuing an order.

Key amendment to the draft policy:

4.1: has been reworded to read:

"Authorised Officers may use consultative or collaborative processes to resolve a local nuisance on private land. Examples include but are not limited to: telephone calls; personal visits; notification letters; and negotiation."

This Policy should be endorsed to enable Council to continue to follow relevant legislated processes for making orders under the Local Government Act.

## **ATTACHMENTS**

1. Draft Order Making Policy [**11.3.1** - 6 pages]

# Order Making Policy



## 1. RATIONALE

Councils have order making powers available to them under the Local Government Act 1999 ('the Act') to target and resolve cases of local nuisance on private land; to order the owner of a private road to carry out specified roadworks; and to require the owner of adjoining land to carry out specified work.

Section 259 of the Act requires each council to take reasonable steps to prepare and adopt policies concerning the operation of Part 2 of Chapter 12 of the Act which deals with making such orders.

The City of Marion uses the order making powers available under the Act to facilitate a safe and healthy environment, improve the amenity of a locality, and generally for the good governance of its area.

## 2. POLICY STATEMENT

Council takes a consultative and collaborative approach to resolve a local nuisance on private land prior to exercising its order making powers under the Act unless an emergency or immediate danger exists, in which case, Council may issue an order immediately.

Council applies the principles of social justice, ecological sustainability, accountability, transparent process and good customer service when attempting to resolve a local nuisance on private land.

All orders issued by Council under the Local Government Act 1999 relate to the circumstances specified and comply with the requirements under the Act.

## 3. OBJECTIVES

The primary objective of this Policy is to ensure the order making powers available to Council under the Local Government Act 1999 are exercised appropriately.

## 4. POLICY SCOPE AND IMPLEMENTATION

### Scope

This Policy applies to those circumstances listed in Section 254 of the Act which states that Council may order a person to do or refrain from doing a thing under certain circumstances, as specified in the table included within that section of the Act (refer Attachment 1).

This Policy also applies in respect of orders issued by Council under Section 216 (power to order the owner of private road to carry out specified roadworks) and Section 218 (power to require owner of adjoining land to carry out specified work) of the Act.

### Implementation

Policy Ref/Security Classification:

Category:

Owner: Manager Development & Regulatory Services

Authorisation Date: xx/xx/xx

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# Order Making Policy



## 4.1 Making orders

Authorised Officers consider the following factors when assessing the local nuisance on private land and determining the need to issue an order under the Act:

- severity of the incident
- hazard / danger posed to the Community
- risk to health and safety of the Community
- impact on local amenity
- frequency of occurrence
- previous attempts to reconcile the situation
- potential to use options such as negotiation, mediation, warnings or other more collaborative approaches
- public interest
- offender attitude / recidivism
- evidentiary support (where there is potential for the order to be challenged)
- opportunities to take action under alternative legislation
- number of complaints received in respect of the matter (if any).

Authorised Officers may use consultative or collaborative processes to resolve a local nuisance on private land. Examples include but are not limited to: telephone calls; personal visits; notification letters; and negotiation.

Authorised Officers may determine to issue an order without any prior consultation or collaboration if the circumstances constitute or are likely to constitute:

- a threat to life; or
- an immediate threat to public health or safety; or
- an emergency situation.

Authorised Officers ensure that orders are issued in the manner and form required under the Act and in accordance with Council policy and procedure.

## 4.2 Failure to comply with an issued order

Section 258 of the Local Government Act 1999 provides for a maximum penalty of \$2,500 and an expiation fee of \$210 for failure to comply with an order issued under Section 254 of the Act.

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# Order Making Policy



## 4.3 Reviews and appeals

Pursuant to Section 256 of the Act, any person to whom an order is issued (including an order issued under Sections 216, 218 or 254 of the Act) has a right to appeal against the order. Any such appeal must be lodged within 14 days of that person's receipt of the order.

Council includes reference to the right of review in any order issued.

Appeals against an action brought against a person under this Policy must be in writing and will be considered by Council's Chief Executive Officer. Where appropriate, the Chief Executive Officer may refer the matter to Council.

## 5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
Nil	

## 6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
Authorised Officers	<ul style="list-style-type: none"> <li>Make orders in accordance with this Policy</li> </ul>
Chief Executive Officer	<ul style="list-style-type: none"> <li>Consider appeals lodged in accordance with this Policy; refer appeals to Council, if necessary</li> </ul>

## 7. REFERENCES

### City of Marion

- Enforcement Policy

### Other

- Local Government Act 1999

## 8. REVIEW AND EVALUATION

The Governance Department reviews this Policy every four years (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

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# Order Making Policy



## ATTACHMENT 1

### Local Government Act 1999

#### 254—Power to make orders

- (1) A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following table if in the opinion of the council the circumstances specified opposite it in Column 2 of the table exist and the person comes within the description opposite it in Column 3 of the table.

Column 1	Column 2	Column 3
To do or to refrain from doing what?	In what circumstances?	To whom?
<b>1. Unightly condition of land</b>		
Refer to Local Nuisance and Litter Control Act 2016		
<b>2. Hazards on lands adjoining a public place</b>		
(1) To fence, empty, drain, fill or cover land (including land on which there is a building or other structure).	(1) A hazard exists that is, or is likely to become, a danger to the public.	(1) The owner or occupier of the land.
(2) To remove overgrown vegetation, cut back overhanging branches, or to remove a tree.	(2) The vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.	(2) The owner or occupier of the land.
(3) To remove or modify a flag or banner, a flagpole or sign, or similar object or structure that intrudes into a public place.	(3) The relevant object or structure creates, or is likely to create, danger or difficulty to persons using a public place.	(3) The owner or occupier of the land.

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Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
(4) <i>Where the public place is a road—to take action necessary to protect the road or to remove a hazard to road users.</i>	(4) <i>A situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.</i>	(4) <i>The owner or occupier of the land.</i>

## **Examples—**

- *To fill an excavation, or to prevent drainage of water across the road.*
- *To construct a retaining wall or to remove or modify a fence.*
- *To fence land to prevent the escape of animals.*
- *To remove a structure or vegetation near an intersection.*

### **3. Animals that may cause a nuisance or hazard**

*Refer to Local Nuisance and Litter Control Act 2016.*

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# Order Making Policy



Column 1	Column 2	Column 3
<i>To do or to refrain from doing what?</i>	<i>In what circumstances?</i>	<i>To whom?</i>
<b>4. Inappropriate use of vehicle</b>		
<i>To refrain from using a caravan or vehicle as a place of habitation.</i>	<p><i>A person is using a caravan or vehicle as a place of habitation in circumstances that—</i></p> <p><i>(a) present a risk to the health or safety of an occupant; or</i></p> <p><i>(b) cause a threat of damage to the environment; or</i></p> <p><i>(c) detract significantly from the amenity of the locality.</i></p>	<i>The owner or occupier of the land or a person apparently occupying the caravan or vehicle.</i>

- (2) *A reference in the table to an animal or animals includes birds and insects.*

## **216—Power to order owner of private road to carry out specified roadwork**

- (1) *A council may, by order in writing to the owner of a private road, require the owner to carry out specified roadwork to repair or improve the road.*
- (2) *Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
- (a) any proposal to make an order; and*
  - (b) if an order is made, any order, under subsection (1).*

## **218—Power to require owner of adjoining land to carry out specified work**

- (1) *A council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.*
- (2) *Divisions 2 and 3 of Part 2 of Chapter 12 apply with respect to—*
- (a) any proposal to make an order; and*
  - (b) if an order is made, any order, under subsection (1).*

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**11.4 Policy Review - Enforcement Policy**

<b>Report Reference</b>	GC210810R11.4
<b>Originating Officer</b>	Unit Manager Community Health and Safety – Sharon Perin
<b>Corporate Manager</b>	Manager Development and Regulatory Services - Warwick Deller-Coombs
<b>General Manager</b>	General Manager City Development - Ilia Houridis

**REPORT OBJECTIVE**

The purpose of this report is seeking endorsement of the Enforcement Policy following a review at Elected Member Forum on 20 July 2021.

**REPORT HISTORY**

<b>Report Reference</b>	<b>Report Title</b>
EMF210720R1.3	Policy Review

**EXECUTIVE SUMMARY**

This policy provides the governance framework to guide the enforcement of legislation administered by the City of Marion.

This policy will be the framework used when all Authorised Officers undertake enforcement action.

The policy has been transferred to the new template with some sections re-worded to align to the revised headings.

Further changes were suggested at the Elected Member forum and these have been included in the revised policy.

**RECOMMENDATION**

**That Council:**

- 1. Endorse the Enforcement Policy as attached to this report subject to any amendments made by Council at the Council Meeting on 10 August 2021.**

**DISCUSSION**

The Enforcement Policy provides the governance framework and guidance for all of Council's Authorised Officers when enforcing legislation administered by Council (not limited to Community Safety Inspectors), including when Authorised Officers take enforcement action.

The previous Enforcement Policy and a new Enforcement Policy were presented to Elected Members at the Elected Member Forum on 20 July 2021 (EMF210720R1).

Feedback from Elected Members has informed review of the policy, including seeking options that people be held more accountable for their responsibilities and actions under legislation; and Council's Authorised Officers enforcing legislation.



Operating procedures and operational guidelines for various legislation are administrative and are not included in the policy and are therefore not attached to this report.

Key amendments to the draft policy:

- 4.2 regarding “Informal Action” has been amended to include: “every verbal advice and warning must be noted by the Authorised Officer”.
  - Feedback from some Elected Members sought to include every verbal advice and warning must be noted by the recipient, however as this is beyond the control of Authorised Officers it has not been included in the draft policy.
- 4.6 the first sentence has been prefaced with "in addition to enforcement".

This Policy should be endorsed to enable Council to continue to follow relevant processes for investigating enforcement matters within City of Marion.

## **ATTACHMENTS**

1. Draft Enforcement Policy [**11.4.1** - 5 pages]

# Enforcement Policy



## 1. RATIONALE

The City of Marion is charged with legislative responsibilities which protect individuals and the community as a whole. This includes responsibilities for the safety and amenity of the community's environment under various laws and by-laws as referenced in Section 7 of this Policy.

Breaches or potentially unlawful activity under relevant laws and by-laws may be brought to Council's attention via complaints or public enquiries or detected by Authorised Officers during compliance activity such as patrols or inspections. Council then undertakes enforcement activity and action in accordance with relevant laws, by-laws and this Policy. This may involve informal action such as verbal or written advice or warnings, and formal action such as issuing orders or expiation notices and/or initiating prosecution proceedings, where appropriate.

## 2. POLICY STATEMENT

Enforcement activity is underpinned by the principles of fairness and impartiality and transparent and accountable decision-making. Authorised Officers undertake enforcement activity in a fair, equitable, transparent, timely and consistent manner. Any conflicts of interest (e.g. personal association with an alleged offender) must be disclosed in accordance with the *Code of Conduct* and managed accordingly.

Enforcement action undertaken by Council will be proportionate to the alleged offence and comply with legislative requirements, where applicable.

Council may prioritise enforcement activity and action according to the seriousness of the offences and the degree of risk to the community.

Any individual or business aggrieved by a decision of Council under this Policy may follow the steps set out in Council's *Complaint and Grievance Policy*.

## 3. OBJECTIVES

The primary objectives of this Policy are:

- To provide a decision-making framework for Authorised Officers to undertake enforcement activity and action.
- To set criteria for enforcement or other action.
- To ensure enforcement activity is undertaken in a fair, equitable, transparent, timely and consistent manner, and enforcement action is proportionate to the alleged offence in each case.

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# Enforcement Policy



## 4. POLICY SCOPE AND IMPLEMENTATION

### Scope

This policy applies to all enforcement activity and action undertaken by Authorised Officers.

### Implementation

Enforcement action will be considered if an Authorised Officer:

- receives an allegation that an offence is being committed or is about to be committed or has been committed
- observes or believes an offence is being committed or is about to be committed or has been committed
- otherwise acquires evidence an offence is being committed or is about to be committed.

Enforcement action must comply with the options and requirements in this Policy and any legislative requirements, where applicable.

Authorised Officers keep adequate records of all enforcement activity, decisions and actions. This will include but is not limited to a record of:

- the complaint or alleged offence
- observations and any evidence collected
- verbal responses or written submissions received from the alleged offender and others
- decisions made and action taken or recommended by the Authorised Officer (or reasons for taking no action)
- any written warnings, notices, orders or directions issued by Council.

### 4.1 No Action

Authorised Officers may determine to take no action in a matter if:

- no offence has been committed
- the alleged offence is trivial in nature
- the complaint is vexatious
- there is insufficient evidence that an offence or wrong has been committed or the offender can't be identified
- taking action may prejudice more significant considerations or investigations by Council.

### 4.2 Informal Action

Despite a law or by-law being contravened, Authorised Officers have discretion to take informal action in a matter if:

- the act or omission is not serious enough to warrant formal action

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# Enforcement Policy



- it is reasonably believed that informal action will achieve compliance
- the consequences of non-compliance will not pose a significant risk to the community
- informal action may prove more effective than a formal approach.

Authorised Officers may undertake informal action by:

- offering verbal or written advice
- requesting a lawful action be undertaken within a specified time-frame
- issuing a verbal or written warning.

Every verbal advice and warning must be noted by the Authorised Officer.

Where a written warning is issued, it must:

- specify what needs to be done to comply with legal requirements, the time limit for remedial action if not immediately and, where necessary, the reasons for the warning
- specify the law or by-law contravened, measures necessary to ensure compliance, and consequences of continued non-compliance
- clearly differentiate between legal requirements and recommendations of good practice.

## 4.3 Formal action

### 4.3.1 Expiation Notices, Orders and Directions

An expiation notice, formal order, notice or direction may be issued to stop the offending, minimise the impact of the offending, or otherwise remedy the situation if an Authorised Officer:

- is reasonably satisfied on the available evidence that offending has occurred and that the offender has been identified; and
- considers that none of the factors set out under 4.1 No Action and 4.2 Informal Action apply.

Where the applicable legislation includes the right of review/appeal, reference to this right is included in any order or notice issued by Council.

### 4.3.2 Prosecution

Prosecution will be recommended where warranted and provided there is admissible evidence that an offence has been committed beyond reasonable doubt under the relevant legislation and there is a reasonable prospect of a conviction being secured against the offender.

Examples of situations where prosecution may be warranted include, but are not limited to:

- a blatant breach of the law such that significantly risks or impacts the health and safety of the community

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# Enforcement Policy



- a failure to correct an identified problem after having been given reasonable opportunity to do so
- a failure to comply with the requirements of a statutory notice
- where the serving of an expiation notice for the breach is considered to be inadequate (where this is provided for in the relevant legislation)
- a history of similar serious offences
- an unwillingness of the offender to prevent a recurrence of the problem.

Chief Executive Officer (or delegate) approval is required to commence prosecution proceedings. Legal advice may be sought when determining whether to prosecute.

## 4.5 Mediation

Depending upon the severity of the breach, Council may make mediation available as an alternative to formal action. Authorised Officers may suggest mediation as a dispute resolution mechanism if there is a reasonable prospect of all relevant parties coming to an agreed resolution regarding the alleged breach or offending behaviour. Mediation services may also be appropriate where a positive outcome for Council is possible and in the interests of the broader community in order to minimise the costs to both Council and the offender.

## 4.6 Education and awareness

In addition to enforcement, Council may promote compliance by informing the community about legislative requirements, sensible behaviour and best practice. Communication mechanisms include media releases, publications, social media, City of Marion's website, and information and advice from Council officers.

## 4.8 Recovery of costs

Council will seek to recover enforcement action costs and expenses. A notice will be served in accordance with applicable legislation requiring the offender to pay Council the reasonable costs and expenses incurred by Council in taking such action.

## 5. DEFINITIONS

Term	Definition
Order / Notice	A written direction of Council requiring specific action to be taken to secure legislative compliance

## 6. ROLES AND RESPONSIBILITIES

Role	Responsibility
Authorised Officers	<ul style="list-style-type: none"> <li>• Undertake enforcement activity and action in accordance with this Policy</li> </ul>

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<i>Role</i>	<i>Responsibility</i>
	<ul style="list-style-type: none"> <li>• Suggest mediation as an alternative to formal action</li> <li>• Recommend prosecution, where warranted</li> </ul>
<i>Chief Executive Officer (or delegate)</i>	<ul style="list-style-type: none"> <li>• Approve the commencement of prosecution proceedings</li> </ul>

## 7. REFERENCES

### City of Marion

- Code of Conduct
- Complaint and Grievance Policy
- Order Making Policy

### Other

- Australian Road Rules
- City of Marion By-Laws
- Development Act 1993
- Dog and Cat Management Act 1995
- Environment Protection Act 1993 - Water Quality Policy
- Expiation of Offences Act 1996
- Fire and Emergency Services Act 2005
- Food Act 2001
- Local Government Act 1999
- Local Nuisance and Litter Control Act 2016
- Planning, Development and Infrastructure Act 2016
- Road Traffic Act 1961
- South Australian Public Health Act 2011

## 8. REVIEW AND EVALUATION

The Governance Department reviews this Policy every four years (or earlier if required) in accordance with the City of Marion Policy Framework. Council approves this Policy.

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## 11.5 Policy Review - Privately Funded Development Plan Amendments Policy

<b>Report Reference</b>	GC210810R11.5
<b>Originating Officer</b>	Manager Development and Regulatory Services – Warwick Deller-Coombs
<b>Corporate Manager</b>	N/A
<b>General Manager</b>	General Manager City Development - Ilia Houridis

### REPORT OBJECTIVE

The purpose of this report is seeking endorsement of the revised Privately Funded Code Amendments Policy following a review at Elected Member Forum on 20 July 2021.

### REPORT HISTORY

<b>Report Reference</b>	<b>Report Title</b>
EMF210720R1.3	Policy Review

### EXECUTIVE SUMMARY

The purpose of this policy is to guide Council in the assessment and processing of a privately funded Code Amendment in a clear and transparent manner and clarify Council's requirements and relationships with the potential private funder.

Under the Planning, Development and Infrastructure Act 2016 (PDI Act), Development Plan Amendments are now known as Code Amendments. As such the Policy has been renamed to the "Privately Funded Code Amendments Policy."

It has also been updated into the new format and minor changes made to formatting and language to provide consistency and greater accuracy.

No further changes were identified by Council during discussion at the forum. It is recommended to adopt the new policy.

### RECOMMENDATION

**That Council:**

- 1. Adopt the Privately Funded Code Amendments Policy as attached to this report.**

### DISCUSSION

The Planning and Design Code is the set of statewide planning controls that controls development that occurs throughout South Australia. The PDI Act allows the Minister, Councils, or private citizens to request an amendment to the Planning and Design Code.

Privately funded amendments are a legitimate approach that may be used to expedite and resource the preparation of an amendment particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council.

For example, a private funder may not have the skills or expertise to manage the process and where Council is supportive of a Code Amendment, and is satisfied the policy has been followed, it may 'take on' the process on behalf of-and funded by the private funder.

Under the policy, Council maintains the ability for an independent review of the Code Amendment prior to recommending its support (or opposition) to the Minister. However, it is worth noting the Minister for Planning retains the authority to accept or reject the Code Amendment.

## **ATTACHMENTS**

1. Privately Funded Code Amendments Policy [**11.5.1** - 7 pages]



# Privately Funded Planning and Design Code Amendments Policy



## 1. RATIONALE

The Planning and Design Code ('the Code') is a document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.

A Planning and Design Code Amendment ('Code Amendment') is a document that describes proposed changes to the Code and includes a statutory process required to be undertaken when either the Council, the Minister for Planning or other party seeks to amend land use zoning and/or the policies contained within the Code.

Privately funded Code Amendments are a legitimate approach that may be used to expedite and resource the preparation of a Code Amendment, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council.

## 2. POLICY STATEMENT

Proposals for privately funded Code Amendments may be submitted to Council by Private Funders in accordance with this Policy. Council determines whether to endorse proposals having regard to the assessment criteria in this Policy and taking into consideration the timing of other priorities and projects within Council's policy program and the resources available. Council is under no obligation to endorse a proposal.

Where Council endorsement is provided, two process models are available to proceed with privately funded Code Amendments:

- **Model 1:** The Private Funder provides financial resources but the entire Code Amendment process, including the procurement and management of consultants, is undertaken by Council with the Private Funder given no additional opportunity to input into the Code Amendment process beyond that available to any other person.
- **Model 2:** The Private Funder funds, procures and manages as much of the Code Amendment process as possible but provides funds for Council to procure and engage its own consultants to undertake an independent peer review of the Code Amendment.

Council's decides which of the two models for privately funded Code Amendments is appropriate after considering the proposal and the needs of the area in which it is located.

The ultimate decision to initiate a Code Amendment rests with the Minister for Planning.

## 3. OBJECTIVES

The primary objectives of this Policy are:

- To guide Council in the assessment and processing of privately funded Code Amendments and clarify Council's requirements and relationships with the potential Private Funder.
- To expedite and resource the preparation of a Code Amendment, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council.

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# Privately Funded Planning and Design Code Amendments Policy



## 4. POLICY SCOPE AND IMPLEMENTATION

### Scope

This policy applies when a Private Funder seeks to fund a Council initiated Code Amendment through an agreement with Council.

### Implementation

#### 4.1 Statement of Justification

When requesting Council's endorsement to proceed with a privately funded Code Amendment, the Private Funder must submit a Statement of Justification which outlines the level of consistency with the criteria in Section 4.2 below and the policy outcome sought.

Upon receipt of a Statement of Justification, Council will:

- undertake an assessment of the Statement of Justification against the criteria in Section 4.2 below;
- consider whether the proposed Code Amendment can be appropriately managed, taking into consideration the timing of other priorities and projects within Council's policy program and the resources available;
- conduct any necessary preliminary investigations and consultations with Government Agencies to understand policy positions of the Agencies; and
- determine whether to proceed with the preparation and lodgement of a Proposal to Initiate which must be submitted to the Minister for Planning for agreement to begin the Code Amendment.

Council may, at its absolute discretion, determine to endorse or not endorse a proposed Code Amendment.

#### 4.2 Criteria to consider a Privately Funded Code Amendment

When determining whether to proceed with a privately funded Code Amendment, Council will assess the Code Amendment proposal against the following criteria:

- a) The proposed policy change is consistent with the State Government's Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide).
- b) The proposed policy change is consistent with Council's Strategic Vision for the City.
- c) The existing zoning and/or policy is outdated and not in alignment with the other policy directions of the Government and Council resulting in appropriate development being restricted on the land.
- d) Appropriate consideration has been given to likely social, environmental, economic and physical benefits and costs arising from the proposal.

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# Privately Funded Planning and Design Code Amendments Policy



## 4.3 Deed of Agreement

If Council provides endorsement for a proposed Code Amendment, a legal instrument in the form of a Deed of Agreement must be entered into between Council and the Private Funder. As a minimum, the Deed of Agreement will:

- state that a Private Funder is funding an open and transparent process which provides no guarantee that any Code outcome sought by the Private Funder will be provided;
- outline the heads of agreement and legal procedures, including the roles of the parties, legal requirements and procedures, and project and financial management;
- define in detail the nature of the Code Amendment including the area to be covered, the purpose of the Code Amendment and what the Code Amendment investigations will encompass;
- acknowledge that Council maintains ultimate control of the Code Amendment, in that key stages are presented to Council for consideration prior to being submitted to the Minister for agreement or endorsement. The key stages that are considered by Council include: 'Proposal to Initiate', draft Code Amendment (including investigations and policy) for Agency and Community Engagement, hearing public submissions and draft Code Amendment for Approval;
- acknowledge that the capacity for Council to process the privately funded Code Amendment will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly;
- acknowledge that some parts of the Code Amendment process cannot be outsourced and management, policy oversight and processing will be required to be undertaken by Council staff, therefore the Code Amendment will be managed according to Council priorities and subsequent timeframes;
- acknowledge that while the Council may initiate a Code Amendment, ultimately the decision on its authorisation is a decision of the Minister for Planning, and not the Council, and that the Council has no control over this decision;
- detail what happens if the Code Amendment is either not authorised by the Minister or authorised with amendments that do not suit the interest of the Private Funder (essentially it should be agreed that the Private Funder must accept that scenario and still be responsible for the cost of the Code Amendment's preparation and that there will be no refund of any funds expended by the Private Funder);
- be prepared at the expense of the Private Funder and acknowledge that the Private Funder will fund any additional investigations that are required by Council following Agency and Community Engagement;
- acknowledge that the Private Funder will fund any legal costs associated with preparation of the Code Amendment, including legal review, legal proceedings or judicial review proceedings in relation to the Code Amendment process; and

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# Privately Funded Planning and Design Code Amendments Policy



- acknowledge that the Deed shall not in any way affect Council's standing as the relevant authority to assess applications for development approval in respect of land affected by a privately funded Code Amendment.

Council will indicate within the Proposal to Initiate, at the time of public consultation, and as part of the Code Amendment document that it has received payment for preparation of the Code Amendment but has sought independent advice.

Preparation of the Code Amendment will not commence until such time as notice of agreement has been received from the Minister for Planning regarding the Proposal to Initiate.

## 4.4 Project Management and Procurement

### 4.3.1 Model 1

The cost of the Code Amendment investigations, document preparation, consultation and other costs as per the Deed of Agreement will be borne by the Private Funder and paid into a fund (Privately Funded Code Amendment Fund) as directed by Council.

Council will manage the selection and procurement process for engaging a consultant(s) to undertake the Code Amendment. The consultant(s) undertaking the privately funded Code Amendment will report directly to Council staff and project management of the Code Amendment process will be undertaken by Council staff.

The procurement process for selecting a consultant(s) to undertake the Privately Funded Code Amendment will be undertaken in accordance with Council's Procurement Policy.

### 4.3.2 Model 2

A Privately Funded Code Amendment under Model 2 requires peer review. The cost of the peer review will be borne by the Private Funder and paid into a fund (Privately Funded Code Amendment Fund) as directed by Council.

If Council agrees to proceed with a privately funded Code Amendment under Model 2, the Private Funder will engage suitably qualified consultants, including one who meets the requirements of the Planning, Development and Infrastructure Act and associated Regulations.

Council will engage a suitably qualified and independent consultant(s), including a consultant who meets the requirements of the Planning, Development and Infrastructure Act and associated Regulations, to undertake a peer review of the relevant investigations and Code Amendment documents.

The peer review will encompass a review of:

- the Code Amendment documents prior to consultation occurring. This will include a review of the investigations and an assessment against the Proposal to Initiate agreed by the Minister for Planning;
- the Government Agency engagement responses to the draft Code Amendment and policy changes as a result of the engagement;

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# Privately Funded Planning and Design Code Amendments Policy



- the Public consultation responses to the draft Code Amendment and policy changes as a result of the engagement; and
- the Approval Version of the Code Amendment.

The procurement process for selecting a consultant(s) to undertake the peer review is undertaken in accordance with Council's Procurement Policy.

The consultant undertaking the peer review will report directly to Council staff.

## 5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
Code Amendment	A document that describes proposed changes to the Code. The Code Amendment process involves a series of stages and approvals, and includes undertaking investigations to inform the proposed zoning or policy changes.
Planning and Design Code (the Code)	A document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.
Private Funder	One or more private persons or organisations proposing to fund the undertaking of a Development Plan Amendment where they may benefit from any changes to zoning or development policies resulting from the Amendment.
Proposal to Initiate	A document that outlines the scope, timing, engagement/consultation requirements and nature of investigations to be carried out in preparing a Code Amendment. Council is required to prepare a Proposal to Initiate under Section 73(2)(b) of the Planning, Development and Infrastructure Act 2016 to reach agreement with the Minister for Planning to initiate a Code Amendment.
Statement of Justification	A document to be submitted to Council under this Policy to justify a request for Council to consider initiating a privately funded Code Amendment. This Statement will be assessed and considered against the criteria outlined in this Policy.
State Planning Policies	Policies outlining the State's overarching goals or requirements for the planning system.

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# Privately Funded Planning and Design Code Amendments Policy



## 6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
Administration	<ul style="list-style-type: none"> <li>• Provide report to Council for consideration.</li> </ul>
Council	<ul style="list-style-type: none"> <li>• Consider report provided by Administration and decide whether to endorse a proposal for a privately funded Code Amendment.</li> </ul>

## 7. REFERENCES

### City of Marion

- *Procurement Policy*

### Other

- *Planning, Development and Infrastructure Act 2016*
- *Planning, Development and Infrastructure (General) Regulations 2017*
- *Local Government Act 1999*

## 8. REVIEW AND EVALUATION

This policy will be reviewed after the first 12 months of operation, and then once in every term of Council.

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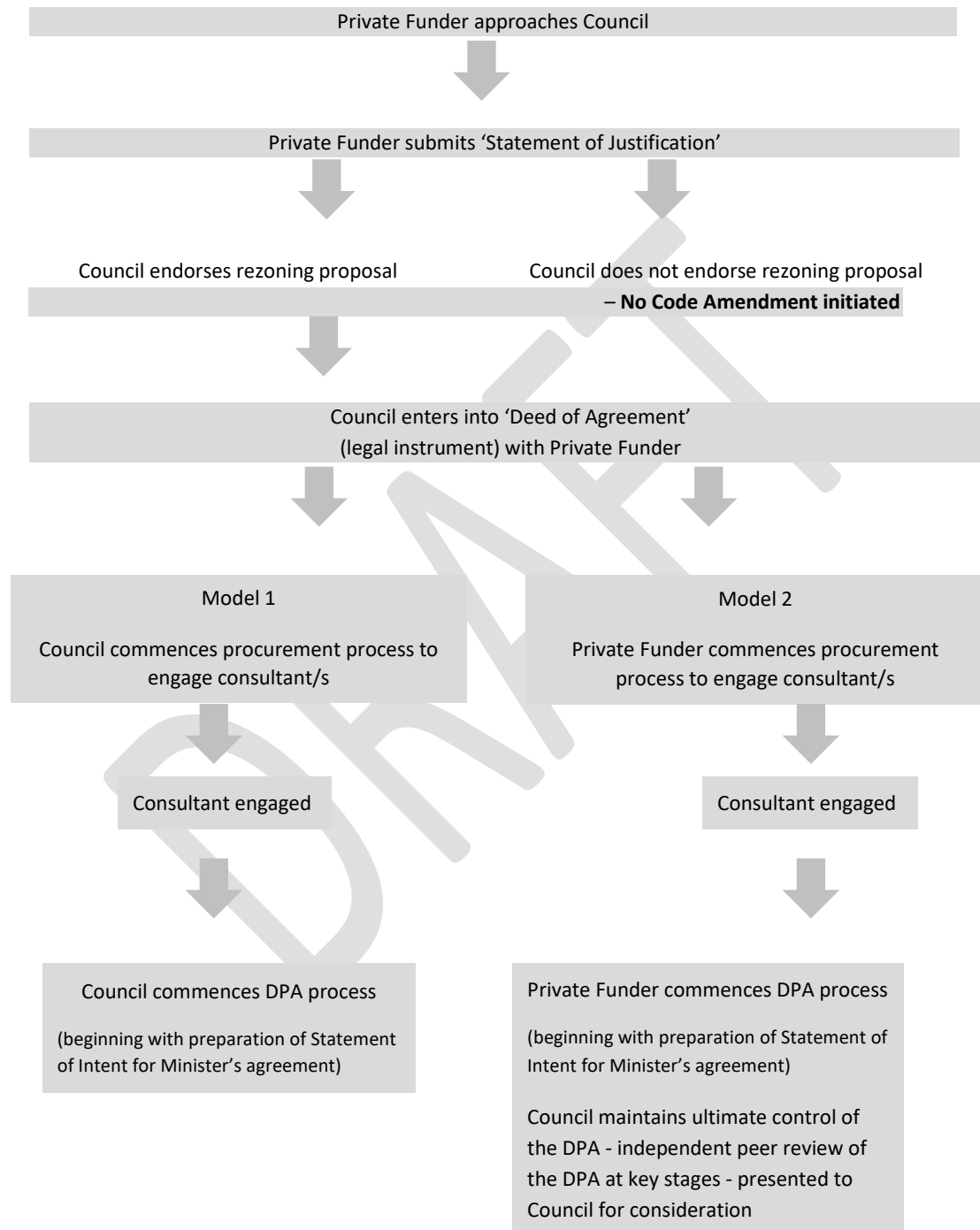
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# Privately Funded Planning and Design Code Amendments Policy



## Privately Funded Code Amendment Flow Chart



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## 11.6 Policy Review - Development Delegations

<b>Report Reference</b>	GC210810R11.6
<b>Originating Officer</b>	Manager Development and Regulatory Services – Warwick Deller-Coombs
<b>Corporate Manager</b>	N/A
<b>General Manager</b>	General Manager City Development - Ilia Houridis

### REPORT OBJECTIVE

The purpose of this report is seeking endorsement of the Development Delegations following a review at the Elected Member Forum on 20 July 2021.

### REPORT HISTORY

<b>Report Reference</b>	<b>Report Title</b>
EMF210720R1.3	Policy Review

### EXECUTIVE SUMMARY

There are no proposed changes to the Development Delegations Policy.

The Policy has been superseded by the Planning, Development and Infrastructure Act 2016 (PDI Act), however is required for all existing applications. It is reviewed by Council annually and will be proposed to be reviewed again in another 12 months.

It is likely the Policy can be rescinded once all previous Development Act applications have been finalised.

### RECOMMENDATION

**That Council:**

- 1. Adopt the Development Delegations Policy as attached to this report.**

### DISCUSSION

As previously communicated to Council, the Planning Reforms have made significant changes to the way development applications are processed and resolved.

For development proposed under the PDI Act, Council is no longer a relevant authority in its own right (for planning assessments) with this task being prescribed to Council's Assessment Manager and Council Assessment Panel.

Council does have responsibilities under the PDI Act (such as issuing development approval) and these are delegated through Instrument A and Instrument B which were endorsed by Council at GC 23 February 2021.

Council is still the relevant planning authority for applications lodged before 19 March 2021 under the Development Act 1993. As of 4 August 2021, Council has 177 development applications that still require resolution under this process.



To note these applications are mostly ones that are yet to provide further information, some that have been superseded by new applications, some paused by applicants, and a few historically complex applications (the oldest being a land division from 2006 on Lander Road, Sheidow Park).

Administration anticipates that these applications will largely be resolved by the end of the year with the existing policy able to be rescinded once they are all complete.

It is recommended to adopt the Development Delegations Policy as attached.

## **ATTACHMENTS**

1. Development Delegations Policy [11.6.1 - 3 pages]

# Development Delegations Policy



## 1. RATIONALE

- 1.1 Section 83 of the *Planning, Development and Infrastructure Act 2016* requires the Council to establish a Council Assessment Panel (the Panel) to undertake development assessment functions on its behalf.
- 1.2 Section 34(23) of the *Development Act 1993*, requires the Council to delegate its powers and functions as a relevant authority with respect to determining whether, or not, to grant development plan consent under the *Development Act 1993*, to the Panel and/or the Council's Administration.
- 1.3 This policy meets Council's obligations under Section 34(27) of the *Development Act 1993*, which requires Council to adopt a Development Delegations Policy.

## 2. POLICY STATEMENT

- 2.1 The purpose of this policy is to outline the basis upon which Council will delegate its powers and duties, under the *Development Act 1993* and the *Planning, Development and Infrastructure Act 2016*, as a relevant authority with respect to determining whether, or not, to grant development plan consent.
- 2.2 This policy establishes what applications will be determined by Council's Assessment Panel and what applications will be determined by the Council's Administration.

## 3. OBJECTIVES

- 3.1 Council actively supports the growth of the City through appropriate development that maintains and enhances the social, economic and environmental conditions desired by the community.
- 3.2 Council acknowledges that an effective and efficient development assessment system is critical to achievement of community and council goals.
- 3.3 The aim of the policy is to identify the basis upon which delegations are made under the *Development Act 1993*. It sets out the types of Development Applications that will be determined by the Council Assessment Panel.

## 4. POLICY SCOPE AND IMPLEMENTATION

- 4.1 The Panel will undertake the role of the relevant authority pursuant to Section 33 of the *Development Act 1993*, in relation to the following types of development applications:
  - 4.1.1 Non-complying applications – the Panel will decide to refuse the application or seek the concurrence of the State Commission Assessment Panel to approve the application, except for the following:

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# Development Delegations Policy



- the decision to proceed with an assessment of a non-complying application pursuant to Regulation 17 (3)(b) of the *Development Regulations 2008*).
  - non-complying applications deemed to be minor in accordance with Regulation 17 and Schedule 9 Part 1 (3) of the *Development Regulations 2008*.
- 4.1.2 Any 'merit' application that has undergone Category 2 or Category 3 public notification where at least one representor has expressed opposition to the proposed development and has expressed their desire to be heard by the Panel.
- 4.1.3 Any application in relation to a Local Heritage Place or a State Heritage Place where the heritage advice commissioned by the Council or the State Government Department responsible for State Heritage have recommended that approval should not be granted.
- 4.1.4 Any application for the total demolition of a Local Heritage Place or a State Heritage Place.
- 4.1.5 Any application for land division that proposes the creation of three or more additional allotments (excluding an allotment identified as common property or as a free an unrestricted right of way) where one or more of the proposed allotments is more than 5% below the minimum site area recommended by the relevant Policy Area of the Development Plan.
- 4.1.6 Any application for three or more dwellings (including detached, semi-detached, row and residential flat) where one or more dwelling sites are more than 5% below the minimum site area recommended by the relevant Policy Area of the Development Plan.
- 4.1.7 Any application involving development by the Council where the Minister has declined a request by the Council that the Development Assessment Commission be appointed as the relevant authority.
- 4.1.8 Any application where an appeal has been made to the Environment, Resources and Development Court, and the General Manager City Development has referred to the Panel a proposed compromise made by the appellant.
- 4.1.9 Any application where the Manager Development and Regulatory Services determines that the application warrants assessment by the Panel due to its significant, contentious or controversial nature.

## 5. Applications to be determined by Council's Administration

- 5.1 All development applications other than applications set out in Section 4.1 of this Policy will be determined by the Administration.

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# Development Delegations Policy



## 6. AVAILABILITY

- 6.1 The Policy is available to be downloaded, free of charge, from the Council's website [www.marion.sa.gov.au](http://www.marion.sa.gov.au)
- 6.2 The Policy is available for inspection without charge at the Administration Building during standard business hours and a copy may be purchased at a fee set annually by Council.

City of Marion Administration Building  
245 Sturt Road, Sturt SA 5047

Telephone: 8375 6600  
Email: [council@marion.sa.gov.au](mailto:council@marion.sa.gov.au)

Office hours: Monday to Friday, 8:30am to 5:00pm (except public holidays)

## 7. REVIEW AND EVALUATION

- 7.1 This policy will be reviewed annually in conjunction with Council's annual review of delegations required under Section 40 (6) of the Local Government Act 1999.

## 8. REFERENCES

Development Act 1993  
Development Regulations 2008  
Schedule of Delegations and Sub-delegations

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## 11.7 Policy Review - Development & Regulatory Policies for Rescission

<b>Report Reference</b>	GC210810R11.7
<b>Originating Officer</b>	Manager Development and Regulatory Services – Warwick Deller-Coombs
<b>Corporate Manager</b>	N/A
<b>General Manager</b>	General Manager City Development - Ilia Houridis

### REPORT OBJECTIVE

The purpose of this report is seeking endorsement to rescind the following policies following a review at the Elected Member Forum on 20 July 2021.

- Building and Swimming Pool Inspection Policy
- Temporary Signs and Banners Application
- Liquor Licensing Policy

### REPORT HISTORY

Report Reference	Report Title
EMF210720R1.3	Policy Review

### EXECUTIVE SUMMARY

#### **Building and Swimming Pool Inspection Policy (recommend to rescind)**

This policy has been superseded by the *Planning, Development and Infrastructure Act 2016*. Technically it has lapsed and it is no longer valid, however, Council may wish to formally rescind the policy.

#### **Temporary Signs and Banners Application (recommend to rescind)**

The application form and procedures are formalised through an alternative process and is captured within the "Moveable Signs By-Law". This policy is not required.

#### **Liquor Licensing Policy (recommend to rescind)**

Changes to the Liquor Licensing Act have greatly reduced Council's ability to object to a liquor licence application. Consumer and Business Services (CBS) only require comment from Council regarding relevant development approval matters. Complaints arising from a licensed premise are primarily dealt with through CBS and SAPOL who are the relevant authority. It is therefore recommended that this policy be removed.

### RECOMMENDATION

That Council:

1. Rescind the Building and Swimming Pool Inspection Policy, noting that it is no longer valid due to the implementation of the *Planning, Development and Infrastructure Act 2016*.
2. Rescind the Temporary Signs and Banners Application, noting that it is not a formal policy and the process is captured within the 'Movable Signs By-Law'.
3. Rescind the Liquor Licensing Policy to align with the changes to the Liquor Licensing Act.

## DISCUSSION

### **Building and Swimming Pool Inspection Policy (recommend to rescind)**

- Under the Development Act 1993, Council was required to have a Building and Swimming Pool inspection Policy to ensure Council met certain targets of inspections for different building classes.
- Council is still responsible to meet building inspection targets, however, under the new legislation, the targets are included in Practice Direction 9.
- Practice Direction 9 is a legal instrument under the Planning, Development and Infrastructure Act 2016, which negates Council from having its own policy.
- Changes to the inspection policy framework were discussed with Council during the Planning Reform process through various reports and forum discussions over the past 12-18 months.
- A copy of the current Practice Direction 9 is included for Council's information ([https://plan.sa.gov.au/\\_data/assets/pdf\\_file/0006/799161/Practice\\_Direction\\_9\\_-\\_Council\\_Inspections\\_2020\\_-\\_Version\\_2.pdf](https://plan.sa.gov.au/_data/assets/pdf_file/0006/799161/Practice_Direction_9_-_Council_Inspections_2020_-_Version_2.pdf))

### **Temporary Signs and Banners Application (recommend to rescind)**

- Under Council's By-law No. 2 "Moveable Signs By-Law" a resident may apply for a temporary sign or banner.
- The application form is available on the CoM website.
- This policy is not required as the application form can exist pursuant to the by-law.

### **Liquor Licensing Policy (recommend to rescind)**

- In reviewing this policy, Administration could find no complaints regarding licensed premises in the past 5 years.
- Administration understands that at least the Cities of Charles Sturt, Port Adelaide Enfield and Holdfast Bay have revoked their Liquor Licence Policies due to the Liquor Licence Act changes.
- Where applicable, standard operating procedures or similar may be developed to manage licensing issues on Council-owned premises.

## ATTACHMENTS

1. Building and Swimming Pool Inspection Policy [**11.7.1** - 9 pages]
2. Temporary Signs and Banners Application [**11.7.2** - 3 pages]
3. Liquor Licence Applications Policy [**11.7.3** - 4 pages]

# Building and Swimming Pool Inspection Policy



Endorsed by Council: 25 February 2014

## POLICY STATEMENT

This policy seeks to improve the standard of construction work within the Council's area by undertaking audit inspections of buildings under construction within that area.

## STATUTORY FRAMEWORK

This Policy is mandatory under Section 71A(1) and Section 71AA(7) of the *Development Act 1993*.

Pursuant to Section 71A(2) and Section 71AA(7) this Policy must (and does) specify:

- (a) a level or levels of audit inspections to be carried out by the Council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and
- (b) minimum levels of inspection of swimming pools (including safety fences and barriers associated with such swimming pools) within the area of the council; and
- (c) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.

Pursuant to Section 71A(4a) and Section 71AA(7) this Policy complies with any regulation prescribing a minimum level of inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12 of the *Development Act*). As of writing, the only regulations to do so are Regulations 76D and 80AB of the *Development Regulations 2008*.

This Policy does not apply to the appropriate authority constituted under Section 71(19), commonly known as the Building Fire Safety Committee, nor does it apply to an inspection under Section 71(1).

## OBJECTIVES

The Council is empowered by the *Development Act* to inspect building work within its area. Such inspections aim to:

1. detect building work which does not accord with a development approval (or exemption),
2. detect building work or practices which do not accord with the requirements of the *Development Act*,
3. detect buildings and building work which are unsafe, and
4. gather the evidence necessary (a) to correct situations 1, 2 and 3 above, and (b) to punish those responsible.

By undertaking such inspections, the Council aims to deter persons from undertaking building work except in accordance with a development approval (or exemption) and the requirements of the *Development Act*.

# Building and Swimming Pool Inspection Policy



In addition, the Council intends that where such inspections reveal problems (that is, one or more of situations 1 – 3 above exist), the evidence gathered by such inspections will permit the Council to take action to correct those problems. Such corrective action is not considered in this Policy.

## CONSIDERATIONS

In accordance with Section 71A(4) this Policy has been prepared taking the following matters into account:

- (a) the financial and other resources of the council, and of its local community; and
- (b) the impact that a failure to inspect a certain number of buildings of the relevant classes over a period of time may have on its local community; and
- (c) past practices of the council with regard to inspections and the assessment of building work in its area; and
- (d) whether the area, or a particular part of the area, of the council is known to be subject to poor building conditions; and
- (e) information in the possession of the council on poor building standards within its local community; and
- (f) the public interest in monitoring the standard of building work within the community and in taking steps to provide for the safety and health of people who use buildings.

## SELECTION OF BUILDINGS FOR INSPECTION

Not all buildings will be inspected. The Council does not have the resources to do so.

Buildings will be selected for inspection in accordance with the following criteria (in descending order of preference):

- 1. buildings which appear to be unsafe;
- 2. buildings which ordinarily present a high risk to life safety, and in particular swimming pools;
- 3. buildings which are used by many people, particularly where many people do so simultaneously;
- 4. buildings which involve roof framing;
- 5. buildings which are obliged to provide access to disabled persons;
- 6. buildings in respect of which a complaint has been made; and
- 7. in the event that inspection of the foregoing buildings does not result in the prescribed minimum inspection levels being met, any other buildings.

Where a building is selected for inspection it may be inspected at any stage of construction, and may be inspected more than once (i.e. it may be inspected at different stages of construction).

Where a complaint is made about the condition or use of a new or existing building, an excavation or construction work in progress, an inspection will be undertaken within timeframes that take account of the urgency of the situation and the availability of resources at the time the complaint is made.



# Building and Swimming Pool Inspection Policy



## LEVELS OF INSPECTION

### *Prescribed Minimum Levels*

In accordance with Section 71A(4a), Section 71AA(7), Regulation 76D(4b) and Regulation 80AB(2) this Policy specifies the following minimum inspection levels for all classes of buildings, other than Class 10 buildings which are not attached to any part of the roof framing of a building of another class:

Where the building work involves the construction of any roof framing within the area of the Council:

- (a) a number of inspections equal to 66% of the building rules consents<sup>1</sup> issued over the course of the year<sup>2</sup> for building work involving the construction of any roof framing where a licensed building work contractor is responsible for the relevant building work<sup>3</sup>; and
- (b) a number of inspections equal to 90% of the building rules consents issued over the course of the year for building work involving the construction of any roof framing where a licensed building work contractor is not responsible for the relevant building work<sup>4</sup>.

Where the building work involves the construction of a swimming pool (including safety fences and barriers associated with such swimming pools) within the area of the Council:

- (a) a number of inspections equal to 100% of the building rules consents issued over the course of the year for building work involving the construction of swimming pools. Of these:
  - at least 80% of swimming pools will be inspected within 2 weeks of Council being notified of completion of the permanent swimming pool child-safety barriers;
  - no more than 20% of swimming pools will be inspected within 2 months of Council being notified of the completion of the permanent swimming pool child-safety barriers.

**NOTE:** *The number of buildings rules consents issued over the course of the year will not be known until the end of the year. By that time it will be too late to determine whether there is a shortfall between the number of inspections conducted and the prescribed minimum levels.*

*To minimise any possible shortfall, the number of inspections undertaken by the Council will be reconciled with the prescribed minimum levels on a month-by-month basis. The Council aims to make up for shortfall: (a) in any month by additional inspections in the subsequent month, and (b) at the end of any year by additional inspections in the first three months of the subsequent year.*

<sup>1</sup> For the purposes of this Policy, a variation to an operative building rules consent does not, itself, count as a building rules consent and nor does the extension of the operative period of any building rules consent (whether operative or lapsed).

<sup>2</sup> For the purposes of this Policy, "the year" is the relevant calendar year.

<sup>3</sup> Regulation 80AB(2) does not identify what "the relevant building work" is. For the purposes of this Policy "the relevant building work" is the entirety of the building work to which the relevant approval or exemption relates.

<sup>4</sup> See above note. Adopting this interpretation has the effect that paragraph (b) applies to "owner-builder" situations. This is consistent with the recommendations of the October 2008 Report of the Ministerial Taskforce on Trusses.

# Building and Swimming Pool Inspection Policy



## *Counting Inspections*

Inspections must be counted to determine whether minimum inspection levels are met.

The first inspection of the building work forming part of any particular building is counted as one inspection.

Where building work forming part of a building is inspected at a particular stage, and problems are found, any re-inspection undertaken to determine whether the problems have been corrected does not count as an inspection. Rather, it is taken to be part of the immediately-prior inspection.

However, inspection of building work forming part of a building at a later stage is counted as a separate inspection, even if the building was inspected at an earlier stage.

## **LIABILITY**

The Council inspects building work in accordance with the objectives of this Policy and for the public good. Inspections are undertaken by the Council solely as a result of its duties under the Policy. Inspections are not carried out for the benefit of any past, current or future owner, occupier or neighbour of any building work and no legal relationship is created between the Council and any other such person as a result of the conduct of the inspections. The Council does not accept that it owes a duty to such persons or indeed any particular person in relation to any inspection.

Section 99 provides that no act or omission in good faith in relation to a particular development by a council or an authorised officer after the development has been approved subjects that person or body to any liability.

The Council does not accept any liability in relation to any inspection. In the event of any dispute with the Council as a result of an inspection, any conduct engaged in or statements or comments made by an officer of the Council with the intent of resolving or otherwise managing the dispute are not intended as, and are not to be taken as, any admission of responsibility or liability on the part of the Council.

## **MANDATORY NOTIFICATIONS**

Pursuant to Regulation 74(1) of the *Development Regulations 2008*, Council will require the following:

**For all sites, including those referred to above and all other sites (irrespective of whether the building work involves the construction of any roof framing):**

- 1 business day's notice of the intended commencement of building work on the site;
- 1 business day's notice of the intended commencement of pouring of footings (if any footings are to be poured);

# Building and Swimming Pool Inspection Policy



- 1 business day's notice of the completion of all roof framing forming part of the building work (including top and bottom chord restraints, bracing and tie-downs) (if any);
- 1 business day's notice of completion of the building work;
- 1 business day's notice of the intended commencement of pouring of a suspended floor slab (if any)
- 1 business day's notice of the intended completion of tilt-up walling (if any).

For sites where the building work involves the construction of a swimming pool (including safety fences and barriers associated with such swimming pools):

- 1 business day's notice of the intended commencement of building work on the site;
- 1 business day's notice of the completion of the construction of a swimming pool (before the pool is filled with water);
- 1 business day's notice of the completion of construction of a safety fence or barrier for a swimming pool.

In relation to some other form of building work where swimming pool safety features are relevant:

- 1 business day's notice of the completion of that aspect or those aspects of the building work relating to the swimming pool safety features.

## STAGES OF INSPECTION

Council may inspect building work at any of the following stages and may inspect a building more than once at different stages. Council may also inspect building work at any other stage.

### 1. Class 1 and 2 buildings

- at pouring of footings;
- at completion of wall and roof framing;
- at completion of masonry walls;
- at completion of wet area waterproofing;
- on completion of building work; and
- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

### 2. Class 3 to 9 buildings

- on completion of wall/floors/roof framing;
- on completion of fire or smoke separation; and
- on completion of building work.
- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

### 3. Class 10 buildings

- inspection of swimming pools on completion; and

# Building and Swimming Pool Inspection Policy



- inspection of any stage of the construction of Class 10 buildings where the Class 10 building is attached to the roof framing of a building of another class. Particular attention will be paid to the inspection of the point of attachment of the Class 10 building to the roof framing of the other building.

## 4. Swimming Pools

- where a swimming pool is to be constructed, on completion of installation of safety barriers (prior to the swimming pool being filled with water).

Subsequent inspections shall be at the discretion of the Inspector inspecting the particular site. Council will request a Certificate of Inspection from the Design Engineer for all concrete slabs.

## DEFINITIONS

Words and phrases defined by the Development Act, the Development Regulations and the Building Rules have the same meaning when used in this Policy. For convenience, the definitions of commonly used terms have been reproduced further below. They are correct as at the date of writing but do not take into account any subsequent changes to the Act, Regulations or Rules.

In addition, the following words and phrases are defined:

**Audit Inspection\*** - An *inspection* which determines (within the scope of the inspection and only insofar as the inspection is able to do so) whether or to what degree the inspected building work complies with:

- the relevant development approval or any applicable exemption
- if applicable, any other relevant documents (for example a required checklist).

An audit inspection does not involve any assessment of building work against the building rules, nor any assessment of the structural or functional adequacy of any building work.

**Inspection\*** - A comparison by an *inspector* (with or without assistants) of

- (a) visual observations of that building work, and
- (b) measurements of selected parts of that building work,

with:

- the plans and details (if any) which form part of a development approval (or exemption) which relates to that building work, and
- if applicable, any other relevant documents (for example a required checklist)<sup>5</sup>

and may include the interview of any person associated with the building work

<sup>5</sup> At present a supervisor's checklist is prescribed in relation to roof framing under Regulation 74(5), and the Minister's Schedule 5 roof framing checklist is prescribed under Regulation 74A in relation to the provision of truss information by a truss manufacturer.

# Building and Swimming Pool Inspection Policy



**Inspector** - an authorised officer of the Council, appointed under Section 18 of the Development Act, who holds a current accreditation as a building surveying technician (or equivalent or greater accreditation), or who has been approved by the Minister under Regulation 87(3)(c)

**Notification, Mandatory** - a notification given in relation to a mandatory notification stage pursuant to Section 59(1) and Regulation 74(1)-(4) inclusive. Such may be given in writing (by post, fax, email or in person) or by telephone.

**Person** - includes all legal persons including bodies corporate

**Statement of Compliance** - a form set out in Schedule 19 to the Development Regulations and required to be completed and provided in relation to all building work (excluding work in relation to a Class 10 building) under Regulation 83AB(4)

**Trained Building Work Supervisor** - a person registered as a building work supervisor under Part 3 of the *Building Work Contractors Act 1995* who has undertaken any training required and recognised under a scheme approved by the Minister for the purposes of Regulation 74(5) of the *Development Regulations 2008*.

**Transportable Building** - A building that is fabricated in its entirety (or substantially so) at one site and then transported without material disassembly to and located at another site

\* Except within the above definitions, where this Policy refers to an *inspection*, that is a reference to an *audit inspection* as defined above. Where this Policy uses the word "inspect", that means "undertake an *audit inspection*".

## Common Definitions

**Building** – a building or structure or a portion of a building or structure (including any fixtures or fittings which are subject to the provisions of the Building Code of Australia), whether temporary or permanent, moveable or immovable, and includes a boat or pontoon permanently moored or fixed to land, or a caravan permanently fixed to land

**Building Code** – an edition of the Building Code of Australia<sup>6</sup> published by the Australian Building Codes Board, as in force from time to time and as modified (from time to time) by the variations, additions or exclusions for South Australia contained in the code, but subject to the operation of subsection (7) of the Act<sup>7</sup>

**Building Owner** – the of land on or in relation to which building work is or is to be performed

**the Building Rules** – any codes or regulations under the Act (or adopted under the Act) that regulate the performance, standard or form of building work and includes any standard or document adopted by or under those codes or regulations, or referred to in those codes or regulations

<sup>6</sup> Now known as Volumes 1 and 2 of the National Construction Code.

<sup>7</sup> Subsection (7) provides that any alteration to the Building Code will not take effect for the purposes of this Act (a) before a day on which notice of the alteration is published by the Minister in the Gazette; and (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.

# Building and Swimming Pool Inspection Policy



Building Rules Consent – a consent granted under section 33(1)(b)

Building Work – means work or activity in the nature of—

- (a) the construction, demolition or removal of a building (including any incidental excavation or filling of land); or
- (b) any other prescribed work or activity,

but does not include any work or activity that is excluded from this definition by regulation

Class 1 building – one or more buildings, which in association constitute –

- (a) Class 1a – a single dwelling being –
  - (i) a detached house; or
  - (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or
- (b) Class 1b –
  - a boarding house, guest house, hostel or the like –
    - with a total area of all floors not exceeding 300 m<sup>2</sup> measured over the enclosing walls of the Class 1b building; and
    - in which not more than 12 persons would ordinarily be resident; or
    - 4 or more single dwellings located on one allotment and used for short-term holiday accommodation,

which are not located above or below another dwelling or another Class of building other than a private garage.

Class 2 building – a building containing 2 or more sole-occupancy units each being a separate dwelling

Class 3 to 9 buildings – guidance note only: the full definitions are not reproduced, but Class 3 to 9 buildings are all buildings which are not Class 1, 2 or 10 and generally comprise commercial and industrial buildings including motels, hotels, offices, shops, warehouses, storage buildings, factories, laboratories, churches, schools, hospitals, nursing homes and the like.

Class 10 – a non-habitable buildings or structure being –

- (a) Class 10a – a non-habitable building, being a private garage, carport, shed or the like; or
- (b) Class 10b – a structure being a fence, retaining wall, mast, antenna, swimming pool, or the like; or

# Building and Swimming Pool Inspection Policy



- (c) Class 10c – a private bushfire shelter

Construct – in relation to a building, includes—

- (a) to build, rebuild, erect or re-erect the building;
- (b) to repair the building;
- (c) to make alterations to the building;
- (d) to enlarge or extend the building;
- (e) to underpin the building;
- (f) to place or relocate the building on land

Structure – includes a fence or wall

Supervisor's checklist – a checklist published by the Minister in the Gazette for the purposes of Regulation 74(5) of the Development Regulations 2008.<sup>8</sup>

Swimming Pool – an excavation or structure that is capable of being filled with water and is used primarily for swimming, wading, paddling or the like and includes a bathing or wading pool or spa pool (but not a spa bath)

Swimming Pool Safety Features – a fence, barrier or other structure or equipment prescribed by regulation, namely, (insofar as are relevant to the particular circumstances taking into account the provisions of the Building Code): (a) fences; (b) barriers; (c) water recirculation systems; (d) secondary outlets from a swimming pool; and (e) warning notices.

## REFERENCES

### Strategic Plan:

CW2.3: Improve the built environment by enhancing character, amenity, safety and accessibility.

### Procedure References:

Not Applicable

### Other Related References:

Development Act 1993  
 Development Regulations 2008  
 National Construction Code (formerly the Building Code of Australia)  
 Australian Standards as referenced in the NCC  
 Minister's Specifications as referenced in the NCC.

<sup>8</sup> As of writing, see the Gazette of 19 January 2012, p 207.  
 Building and Swimming Pool Inspection Policy

## Temporary Signs and Banners

# Application

**LICENSE TO ERECT TEMPORARY SIGNS OR BANNERS****Prior to consideration of this application, Council requires:**

- Certificate of Currency or Certificate of Insurance demonstrating public liability coverage.
- Outline of the inspection process to ensure signs are maintained in an appropriate and safe manner.
- Detailed advice of the locations where the signs will be placed.

This license is issued to: \_\_\_\_\_ (Company name)

\_\_\_\_\_ (Name of Applicant)

For: \_\_\_\_\_ (Event name)

And authorises the licensee to locate temporary signage at:

\_\_\_\_\_

\_\_\_\_\_ (Location of Signage)

Signage will be erected on the: \_\_\_\_\_ and removed on the: \_\_\_\_\_

The signs are made of: \_\_\_\_\_ and measure: \_\_\_\_\_

**GENERAL CONDITIONS OF LICENSE****Indemnification**

The licensee agrees to indemnify and to keep indemnified, and to hold harmless, the Council, its servants and agents and each of them from and against all actions, costs, claims, demands, charges and expenses whatsoever which may be brought or made or claimed against them or any of them in relation to the granting of this licence.

**Public Risk Insurance**

The licensee shall take out and keep current a public risk insurance policy in the name of the licensee insuring for the minimum sum of ten million (\$10,000,000) all actions, costs, claims, damages, charges and expenses whatsoever may be brought or made or claimed against the licence in relation to the granting of this licence.

**Disclosure and Evidence of Policy**

The licensee shall not commence the activity until evidence of such public risk insurance policy is given to the Council. Such policy shall bear the endorsement of the Insurer indicating the Insurer accepts the indemnity given by the licensee.

**Compliance with Requirements**

The licence shall comply with all notices required by any Act of Parliament, ordinance, regulation or by-law relating to the use of the licence.



## TEMPORARY SIGNS POLICY

The City of Marion will control the public amenity of the Council area regarding the promotion of a local event of a religious, educational, cultural, political, social or recreational character.

Under the Local Government Act 1999, Section 221, it is an offence to interfere with any structure (which includes poles and fixtures) on a public road or erect or install a structure (which includes pipes, fixtures, fittings and objects) in, on, across, over or under a public road without the authority of Council.

Section 234 of the Local Government Act, 1999 states that Council may remove and dispose of any object (which includes temporary signs) which has been placed on a public road without authorisation and recover the costs of doing so.

### Definitions:

*Signs* includes moveable signs where appropriate and also includes posters that comprise an advertisement for a local event of a religious, educational, cultural, political, social or recreational character.

### Principles:

Prior to any signs being posted, affixed or erected on property under the care and control of Council, ETSA Utilities or Transport SA (TSA) for the purposes of announcing a local event of a religious, educational, cultural, political, social or recreational character, Council consent must be obtained.

Where Council consent is given, the following terms and conditions for signs must be complied with:

1. The total area of all advertisements of this kind on one building or site must not be more than two square metres (if this criteria is not met, development approval is required).
2. The advertisement must only be displayed for a period not exceeding one month prior to the event and for one week after the conclusion of the event.
3. The advertising display must not move, flash, reflect light and not be internally illuminated.
4. The sign shall be affixed flat against the surface, in a well secured manner.
5. The organisation erecting the temporary sign shall be responsible for refixing or replacing the sign, should it be damaged or lost.
6. The sign shall be fixed in a position where it does not obstruct the vision of motorists, or may pose a hazard to pedestrians or other road users
7. Signs must be securely fixed, or posted and maintained in good repair and conditions at all times.
8. Signs must be designed, made and presented in a quality manner (the intent is that signs must not tear apart and become a danger to road users and end up as litter)
9. Signs must not reduce the effectiveness of other signs and traffic control devices.
10. Signs must not be affixed under any circumstances to trees, shrubs, or other plants or at any location that may cause damage to Council property.
11. The wording on signs should be appropriate. Approval will not be given for signage which is pornographic, offensive, defamatory, abusive, sexist, racist, illegal etc.
12. The person or organisation erecting the sign is also responsible for ensuring that safety is maintained whilst the sign is being installed or removed, and that no traffic disruption is to occur during the installation or removal process.
13. The person(s)/organisation to whom consent is granted and any persons acting on their behalf, accept full responsibility for any personal injury, damage or loss in any way arising out of or consequent upon the display of signage material and the person(s) responsible acknowledges that the Council, have no liability or responsibility in relation to such matters whatsoever.

14. It is a condition precedent to the granting of consent that if any breach occurs which results in action by or on behalf of the Council to enforce the conditions of the policy and thereby results in costs and expenses for the Council, then such costs and expenses will be recovered by the Council from the person(s)/organisation responsible. These costs will include removal and/or destruction of the offending material by an officer or agent of the Council.
15. Should the applicant propose to use property belonging to any party - other than Council, they must firstly obtain the written consent of that third party. Upon request by the Council, the applicant must produce such written consent. In cases where there is property involved belonging to any other party, Council approval will be subject to all of the relevant matters contained in this policy.
16. A site location plan illustrating the exact location of the sign(s) should be provided with each request.
17. Approval for temporary signs and banners to be located within the Council area will be granted on an annual basis only.

#### Exemptions:

This Policy does not apply to moveable signs which:

- directs people to the open inspection of any land or building that is available for purchase or lease;
- direct people to a garage sale that is being held on residential premises; directs people to a charitable function;
- is a flat sign containing only the banner or headlines of a newspaper or magazine; or covers an area larger than two square metres, as they are covered under By-Law No. 2 or by the Development Act

***I acknowledge that I have read and understand the licence conditions and agree to abide by the said conditions.***

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_ / \_\_\_\_ 20\_\_\_\_

Your details: **Phone:** \_\_\_\_\_ (home) \_\_\_\_\_ (work)

**Fax:** \_\_\_\_\_

#### Authorised Council Officer:

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_ / \_\_\_\_ / 20\_\_\_\_

#### CONTACT DETAILS

T (08) 8375 6600  
 F (08) 8375 6699  
 E council@marion.sa.gov.au  
 PO Box 21 Oaklands Park SA 5046  
 245 Sturt Road Sturt SA 5047  
**marion.sa.gov.au**

# Liquor Licence Applications Policy



## 1. POLICY STATEMENT

This Policy provides a framework for the exercise of Council's powers pursuant to the Liquor Licensing Act 1997 (the Act) including:

- Consideration of liquor licence applications referred to the Council pursuant to the Act
- Assessment of concerns identified by the Council, including complaints made to the Council about particular premises.

Upon consideration of any matter pertaining to the Act, Council will attempt to act reasonably in the circumstances so as to ensure that the impacts of licenced premises do not unreasonably impact upon the amenity of residents in the Council area.

Council will also, however, act within the ambit of this Policy so as to encourage and promote licensed businesses in the Council area that act responsibly in respect of the sale and consumption of liquor.

## 2. OBJECTIVE

The City of Marion recognises the contribution of licensed premises within the range of business and recreation facilities in the council area. It also acknowledges the importance of addressing liquor-related issues to protect and enhance the amenity of the City for the benefit of its residents, workers and visitors.

The aim of this policy is to provide a framework for the assessment of liquor licence applications and the exercise of Council's powers under the Act to address detrimental impacts on the local amenity. This will ensure licence applications and responses to liquor-related matters are handled in an effective, timely and consistent manner.

## 3. SCOPE

This Policy provides guidance for managing the requirements of the Act, and establishes a framework to guide Council in managing liquor licence applications (including limited licence applications).

Consumer and Business Services (CBS) is responsible for administering the Act in South Australia. The purpose of the Act is to regulate and control the sale, supply and consumption of liquor for the benefit of related industries and the South Australian public.

The Liquor and Gambling Commissioner is the relevant authority for determining liquor licence applications and issuing relevant licences. The allocated Commissioner will base a decision on the cases presented by the applicant and any objectors. Council only provides comments to the Commissioner with regard to Liquor Licence applications.

This Policy acknowledges that Council may request the Commissioner to include conditions on liquor licences in relation to:

- noise, and other potential disturbances;
- proximity to residential properties;
- types and impacts of entertainment provided;
- the nature of any outdoor activities;
- proposed hours of operation;
- the location of areas where alcohol may be served;

- wine or other tastings or special circumstances/events where alcohol is served;
- obligations of the licensee (pursuant to the Liquor Licensing Act 1997); and,
- any other matters which are considered relevant under the Development Act 1993 and conditions of Development Approval.

Any conditions imposed on a liquor licence by the licensing authority or Development Approval by Council are intended to protect and enhance the amenity and character of the locality, while considering the interests of the different stakeholder groups involved, including residents, neighbouring businesses, the police, and the role of licensed premises in various areas of the Council.

#### 4. PRINCIPLES

In supporting the responsible service of alcohol, harm minimisation practices and the protection of the City's amenity, the Council will:

1. Assess applications for Liquor Licences using this Policy (and associated Procedures), and the Development Plan, where appropriate.
2. Exercise its rights of Objection, Intervention and Complaint under the Liquor Licensing Act 1997, where warranted.
3. Provide information to the public, where appropriate, which discourages the irresponsible service and consumption of alcohol.
4. Act as an advisory body to persons requiring advice and clarification on licensing and related planning issues as they relate to Council.

Council will have regard to this Policy in assessing liquor licence applications lodged with the Liquor and Gambling Commissioner. These include:

Licence Type	Description
Club	Clubs that want to supply liquor to members and the general public (e.g. sporting club, membership club, etc).
Direct Sales	A direct sales licence authorises the sale of liquor at any time where the purchaser orders the liquor by mail, telephone, Fax, internet and any other electronic communication.
Entertainment Venue	Allows licensees to sell liquor in the licensed premises for consumption on the licensed premises at a time when live entertainment is provided on the licensed premises (e.g. night clubs).
Hotel Licence	A hotel licence authorises the sale of liquor for consumption on and off the licensed premises.
Limited Club	A limited club licence authorises the sale of liquor to members and guests of members (e.g. sporting club, membership club, etc).
Limited Licence	To hold a one-off event, or a limited series of events, or to extend trading hours of an existing licence or authorisation for a special event.
Producers	A producer's licence authorises the sale of liquor produced by the licensee (e.g. cellar doors, microbreweries).
Residential	A residential licence authorises the sale of liquor on the licensed premises at any time to a lodger for consumption on or off the licensed premises (e.g. motels, hostels, caravan parks etc).
Restaurant	A restaurant licence authorises the sale and consumption of liquor on the premises at any time with or ancillary to a meal (e.g. cafe, restaurant).
Retail Liquor Merchant	To sell packaged liquor on a retail basis for people to consume away from the licensed premises (e.g. bottle shops).
Small Venue	For small bars, restaurants, art galleries and the like located in the central business district with a maximum capacity of 120 patrons.
Special Circumstances	When no other class of licence suits the proposed style of business (e.g. boats and vessels, caterers, limousines).
Wholesale Liquor Merchant	To supply alcohol on a wholesale basis to other licensees.

Where a Liquor Licence Application is associated with a development application seeking Development Approval, Council's Development Plan will be used as the basis of the assessment in accordance with the provisions of the Development Act 1993. The Licensing Authority will require a Development Approval prior to considering any application that does not already have an existing Development Approval.

Council may seek to have various conditions imposed on applications, but the determination on conditions imposed is a matter for the Licensing Authority only.

An objection may be made on one or more of the following grounds:

- That granting the application would not be consistent with the objects of the Act or this Policy;
- That, if the application were granted:
  - Undue offence, annoyance, disturbance or inconvenience would be likely to result to people who reside, work, play or worship in the vicinity of the premises or proposed premises to which the application relates;
  - The safety or welfare of a child dedicated facility, children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises to which the application relates are likely to be prejudiced; and/or
  - The amenity of the locality in which the premises or proposed premises to which the application relates would be adversely affected in some other way.

## 5. DEFINITIONS

For the purpose of this Policy and its associated Procedures, the following definitions apply:

- **Act** - Liquor Licensing Act 1997
- **CBS** – Consumer and Business Services;
- **dB(A)** – unit of measurement relating to the level of sound exposure to humans;
- **Entertainment** – as defined by the Act is a dance, performance, exhibition or event (including a sporting contest) calculated to attract and entertain members of the public; a visual display but not if provided by means of a television screen the dimensions of which do not exceed 2 metres by 2 metres (specified by the Regulations);
- **EPA** - Environmental Protection Agency;
- **Intervention** - a council in whose area licenced premises or premises proposed to be licenced are situated may intervene in proceedings before a Licensing Authority for the purpose of introducing evidence, or making representations, on any question before the Authority;
- **Licence** - a liquor licence under the Liquor Licensing Act 1997. Definitions for the various forms of licences referred to within this policy can be found within section 4 of the Act;
- **Licensing Authority** - in relation to a matter that is to be decided by the Court under the Act – it is the Court. In relation to any other matter – it is the Liquor and Gambling Commissioner (via Consumer and Business Services);
- **Liquor** - for the purposes of the definition of liquor in Section 4 of the Act, alcohol based food essence and alcoholic ice confection are declared to be liquor for the purposes of the Act;

• **Live Entertainment** - means:

- A dance or other similar event at which a person is employed or engaged to play music (live or pre-recorded)
- A performance at which the performers, or at least some of them, are present in person
- A performance of a kind declared by regulation to be live entertainment;

• **Objection** - if an application has been advertised under Part 4 of the Act, any person may, by notice in the prescribed form (by contacting OLGC) lodged with the Licensing Authority at least seven (7) days before the day appointed for the hearing of the application, object to the application.

• **SAPOL** – South Australian Police

## RELATED DOCUMENTS

- Liquor Licence Applications Procedures
- Marion Council Development Plan
- Liquor Licensing Act 1997
- Development Act 1993
- Development Regulations 2008
- Environment Protection (Noise) Policy 2007
- City of Marion Community Vision: Towards 2040 (adopted 26 July 2016)
- City of Marion Business Plan, 2016 – 2019 (adopted 26 July 2016)

## INFORMATION – COUNCIL CONTACT DETAILS

The contact officers of Council for information in relation to this policy are the Team Leader-Planning and/or the Senior Policy Planner who can be contacted by:

Telephone: 8375 6685, or  
 Fax: 8375 6899, or  
 Email: council@marion.sa.gov.au

Policy Name and version no.	City of Marion Liquor Licence Applications Policy - V1.0
Last update	January 2017
Last Council review (report reference)	GC240117R06
Next review due	January 2019
Responsibility	Manager - Development & Regulatory Services

## 11.8 Local Government Reform Round 1 Regulations - Submission

<b>Report Reference</b>	GC210810R11.8
<b>Originating Officer</b>	Unit Manager Governance and Council Support – Victoria Moritz
<b>Corporate Manager</b>	Manager Office of the CEO - Kate McKenzie
<b>General Manager</b>	Chief Executive Officer - Tony Harrison

### REPORT OBJECTIVE

The purpose of this report is to seek endorsement from Council on the *Local Government Reform Round 1 Regulations* submission to the Local Government Association (LGA).

### EXECUTIVE SUMMARY

The [Statutes Amendment \(Local Government Review\) Act 2021](#) was assented to by the Governor on 17 June 2021. The LGA is now working closely with the Office of Local Government on a commencement timeline.

The *Statutes Amendment (Local Government Review) Act 2021* (Amendment Act) is now an Act of Parliament, however, it has not yet come into operation and will require commencement dates to be fixed by proclamation.

The Minister for Local Government is proposing to have two proclamation rounds that will commence the reforms in stages to enable time for councils and other relevant bodies to prepare for the changes.

The intention is that the first round of proclamations will occur in August 2021, with a number of those provisions due to commence on proclamation.

Feedback on draft regulations intended to support the commencement of local government reforms is required by the LGA by Thursday 12 August 2021.

An Elected Member Forum is also scheduled in August 2021 to advise Council on the changes to the Act and proposed implementation time frames.

### RECOMMENDATION

**That Council:**

- Endorse the submission and feedback to the Local Government Association on the *Local Government Reform Round 1 Regulations Summary Paper* subject to the following amendments:**

- 

### GENERAL ANALYSIS

The Office of Local Government (OLG) is seeking feedback from the LGA on a number of draft Regulations which will support the commencement of changes to the *Local Government Act 1999* and *Local Government (Elections) Act 1999* in August 2021.

The draft Regulations are:

- Local Government (General) (Review) Variation Regulations 2021 (**Appendix 1**)
- Local Government (Procedures at Meetings) (Review) Variation Regulations 2021 (**Appendix 2**)
- Local Government (Elections) (Review) Variation Regulations 2021 (**Appendix 3**)
- Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021 (**Appendix 4**)

The LGA Secretariat has reviewed the proposed Round 1 Regulations and prepared a Summary Paper to assist councils to understand the purpose of the Regulations and provide feedback. Due to the timeframes advised by OLG, this did not permit a formal consultation process.

Given the tight timeframes, Administration have prepared a response and incorporated this into the Summary Paper with an additional column added for 'City of Marion Comments' – **Attached as Appendix 5.**

The proposed Regulations appear to be consistent with sector advocacy and do not impose unanticipated new costs on councils.

On this basis, subject to feedback from member councils, the LGA is likely to make a submission to the State Government, supporting the proposed Regulations. The tightness of timeframes has been acknowledged by the LGA who have requested that sufficient time be allocated for consultation of subsequent rounds.

## **ATTACHMENTS**

1. Local Government General Review Variation Regulations 2021 [**11.8.1** - 3 pages]
2. Local Government Procedures at Meetings Review Variation Regulations 2021 [**11.8.2** - 2 pages]
3. Local Government Elections Review Variation Regulations 2021 - amended 22 July [**11.8.3** - 2 pages]
4. Local Government Members Allowances and Benefits Review Variation Regulations 2021 [**11.8.4** - 2 pages]
5. 210723 Summary LG Reform Regulations Feedback Sought [**11.8.5** - 10 pages]



**Draft for comment**

South Australia

## **Local Government (General) (Review) Variation Regulations 2021**

under the *Local Government Act 1999*

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### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

#### **Part 2—Variation of *Local Government (General) Regulations 2013***

- 4 Substitution of regulation 8AB  
8AB Information or briefing sessions
  - 5 Variation of regulation 10—Annual reports
  - 6 Revocation of regulations 25A to 25C
  - 7 Variation of regulation 35—Schedule 4—Annual reports
  - 8 Substitution of regulation 36  
36 Variation of Schedule 5—Access to documents
- 

### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Local Government (General) (Review) Variation Regulations 2021*.

#### **2—Commencement**

- (1) Subject to subregulation (2), these regulations come into operation on the day on which section 108 of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.
- (2) Regulation 8 comes into operation on the day on which section 92 of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

**Draft**

**Local Government (General) (Review) Variation Regulations 2021**  
 Part 2—Variation of *Local Government (General) Regulations 2013*

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## **Part 2—Variation of *Local Government (General) Regulations 2013***

### **4—Substitution of regulation 8AB**

Regulation 8AB—delete the regulation and substitute:

#### **8AB—Information or briefing sessions**

For the purposes of section 90A(7)(b) of the Act, the following information must be published as soon as practicable after the holding of an information or briefing session:

- (a) the place, date and time of the session;
- (b) the matter discussed at the session;
- (c) whether or not the session was open to the public.

### **5—Variation of regulation 10—Annual reports**

Regulation 10(1)—delete "section 131(5)(b)" and substitute:

section 131(5)

### **6—Revocation of regulations 25A to 25C**

Regulations 25A to 25C (inclusive)—delete the regulations

### **7—Variation of regulation 35—Schedule 4—Annual reports**

Regulation 35(1)(a)(iii)—delete "(n)" and substitute:

(o)

### **8—Substitution of regulation 36**

Regulation 36—delete the regulation and substitute:

#### **36—Variation of Schedule 5—Access to documents**

Pursuant to section 132(4) of the Act, Schedule 5 of the Act is amended by—

- (a) deleting the 2nd dot point under the heading "**Registers and Returns**"; and
- (b) inserting ", draft annual business plan" after "(after adoption by council)" in the 5th dot point under the heading "**Policy and administrative documents**"; and
- (c) deleting the 16th and 17th dot points under the heading "**Policy and administrative documents**"; and
- (d) inserting the following after the 1st dot point under the heading "**By-laws**":
  - Any determination in respect of a by-law made under section 246(3)(e)

**Draft****Local Government (General) (Review) Variation Regulations 2021**  
Variation of *Local Government (General) Regulations 2013*—Part 2

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**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

after consultation with the Local Government Association and with the advice and consent of the Executive Council

on

No            of 2021

## Draft for comment

South Australia

## **Local Government (Procedures at Meetings) (Review) Variation Regulations 2021**

under the *Local Government Act 1999*

---

### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

#### **Part 2—Variation of *Local Government (Procedures at Meetings) Regulations 2013***

- 4 Variation of regulation 6—Discretionary procedures
  - 5 Variation of regulation 12—Motions
  - 6 Variation of regulation 24—Public notice of committee meetings
- 

### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Local Government (Procedures at Meetings) (Review) Variation Regulations 2021*.

#### **2—Commencement**

These regulations come into operation on the day on which section 50(2) of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### **Part 2—Variation of *Local Government (Procedures at Meetings) Regulations 2013***

#### **4—Variation of regulation 6—Discretionary procedures**

Regulation 6(5) and (6)—delete subregulations (5) and (6)

#### **5—Variation of regulation 12—Motions**

Regulation 12(2)—delete "5" and substitute:

7

**Draft****Local Government (Procedures at Meetings) (Review) Variation Regulations 2021**  
Part 2—Variation of *Local Government (Procedures at Meetings) Regulations 2013*

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**6—Variation of regulation 24—Public notice of committee meetings**

Regulation 24—delete ", (3) and (4)" and substitute:

and (3)

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

after consultation with the Local Government Association and with the advice and consent of the Executive Council  
on

No            of 2021

## Draft for comment

South Australia

## Local Government (Elections) (Review) Variation Regulations 2021

under the *Local Government (Elections) Act 1999*

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### Contents

#### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

#### Part 2—Variation of *Local Government (Elections) Regulations 2010*

- 4 Variation of regulation 5—Manner in which nominations are made
  - 5 Substitution of regulation 11
    - 11 Bribery
    - 11A Large gifts returns
  - 6 Variation of Schedule 1—Prescribed forms
- 

### Part 1—Preliminary

#### 1—Short title

These regulations may be cited as the *Local Government (Elections) (Review) Variation Regulations 2021*.

#### 2—Commencement

These regulations come into operation on the day on which section 149 of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

#### 3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### Part 2—Variation of *Local Government (Elections) Regulations 2010*

#### 4—Variation of regulation 5—Manner in which nominations are made

Regulation 5(2)—after paragraph (d) insert:

- (e) the profile must contain a statement as to whether the candidate lives in the area or ward of the council in which the candidate is nominating for election;

**Draft****Local Government (Elections) (Review) Variation Regulations 2021**Part 2—Variation of *Local Government (Elections) Regulations 2010*

- (f) the profile must contain the following information:
- (i) whether the candidate is, at the time of their nomination, or was, at any time in the 12 months preceding their nomination, a member of a registered political party (within the meaning of the *Electoral Act 1985*);
  - (ii) if the candidate is or was a member of a registered political party in accordance with subparagraph (i)—
    - (A) the name of the party; and
    - (B) when the candidate ceased to be a member of the party (if relevant).

**5—Substitution of regulation 11**

Regulation 11—delete the regulation and substitute:

**11—Bribery**

For the purposes of section 57(3) of the Act, the prescribed value is \$20.

**11A—Large gifts returns**

- (1) For the purposes of section 81A(1)(b) of the Act, the amount of \$2 500 is prescribed.
- (2) For the purposes of section 81A(1) of the Act, a large gifts return must be furnished by a candidate—
  - (a) in a year in which a periodic election is to be held—within 5 days after the receipt of each gift or gifts the total amount or value of which is more than the prescribed amount during the period commencing on 1 January and ending 5 days after the end of the disclosure period applying to the candidate; and
  - (b) in any year—within 60 days after 30 June.
- (3) For the purposes of section 87(2)(a) of the Act, the period of 5 days is prescribed.

**6—Variation of Schedule 1—Prescribed forms**

Schedule 1, Form 2—delete Form 2

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

after consultation with the Local Government Association and with the advice and consent of the Executive Council

on

No            of 2021

## Draft for comment

South Australia

## **Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021**

under the *Local Government Act 1999*

---

### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

#### **Part 2—Variation of *Local Government (Members Allowances and Benefits) Regulations 2010***

- 4 Variation of regulation 4—Allowances—section 76
- 

### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021*.

#### **2—Commencement**

These regulations come into operation on the day on which section 39(3) of the *Statutes Amendment (Local Government Review) Act 2021* comes into operation.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### **Part 2—Variation of *Local Government (Members Allowances and Benefits) Regulations 2010***

#### **4—Variation of regulation 4—Allowances—section 76**

Regulation 4(2)—delete subregulation (2)

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.



**Draft****Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021**  
**Part 2—Variation of *Local Government (Members Allowances and Benefits) Regulations 2010***

---

**Made by the Governor**

after consultation with the Local Government Association and with the advice and consent of  
the Executive Council

on

No            of 2021

## Local Government Reform - Round 1 Regulations – Feedback sought

The State Government will stagger the commencement dates of the amendments to the *Local Government Act 1999* (Local Government Act), resulting from passage of the *Statutes Amendment (Local Government Review) Act 2021*.

Each round of commencements will be accompanied by new Regulations which will give practical effect to the new sections in the Local Government Act.

The Office of Local Government has provided a copy of the proposed Regulations which will accompany those sections which will commence in August 2021 (Round 1). The Round 1 Regulations are:

- Local Government (General) (Review) Variation Regulations 2021
- Local Government (Procedures at Meetings) (Review) Variation Regulations 2021
- Local Government (Elections) (Review) Variation Regulations 2021
- Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021

Note that this paper does not separately analyse the proposed *City of Adelaide (Elections and Polls) (Local Government Review) Variation Regulations 2021* nor the *City of Adelaide (Members Allowances and Benefits) (Local Government Review) Variation Regulations 2021*. However, the changes proposed through these are very similar to the changes impacting other councils.

Sections commencing in Round 1 will not generally require councils to make changes to policies, procedures or systems. The LGA Secretariat has reviewed the proposed Round 1 Regulations and provides the advice below.

The OLG has asked for feedback by 13 August. Unfortunately, this timeframe does not permit a formal consultation process with the sector. The LGA has requested that sufficient time be allocated for consultation of subsequent rounds.

Following is a summary of the proposed Round 1 Regulations, with LGA comments. Any feedback on these issues should be provided as soon as possible to Andrew Lamb, Local Government Reform Partner at [andrew.lamb@lga.sa.gov.au](mailto:andrew.lamb@lga.sa.gov.au)

The LGA advises that the proposed Regulations appear to be consistent with sector advocacy and do not impose unanticipated new costs on councils. On this basis, subject to feedback from member councils, the LGA is likely to make a submission to the State Government, supporting the proposed Regulations.

<b>Local Government (General) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comment</b>
1-3	N/A	These are technical sections setting out the title, the date of commencement and to explain how the change will work.	These changes are uncontroversial.	Support
4	<p>Insertion of section 90A— Information or briefing sessions</p> <p>As a result of amendments to <b>section 90</b>, there are changes to requirements for informal gatherings and discussions involving council members. Public notice about these gatherings must be made in accordance with regulations. Council will no longer need to have a policy pursuant to (deleted) section 90(8a).</p>	<p>The regulations require the publishing of the following details as soon as practicable after the holding of an information or briefing session:</p> <ul style="list-style-type: none"> <li>- place, date and time;</li> <li>- the matter discussed;</li> <li>- whether or not the session was open to the public</li> </ul>	<p>Council briefing sessions are a useful tool for council members to obtain information and to ask questions of staff in an informal setting. However, these sessions are only one of many legitimate ways that council members obtain information.</p> <p>The regulatory burden of recording and reporting information sessions still appear disproportionate compared with any intended benefit gained.</p> <p>However, the new s90 and 90A and the proposed Regulation 4 are a significant improvement on the previous laws.</p>	Support process change

5	Amendments to <b>section 131(5)</b> removes the direct specification of provision of copies of the Annual Report to the Presiding Officers of each House of Parliament and is replaced with a requirement to provide to persons or bodies prescribed in regulations.	The change to the Regulation is an update to reference the new numbering in the Act (delete 131(5)(b) and replace with 131(5)).	This is merely a numbering change.  The LGA anticipates further regulations relating to Annual Reports and will facilitate consultation in relation to those when they become available.	Support process change
6	Amendments to <b>section 222</b> have removed special arrangements relating to mobile food vending businesses. These food trucks will be treated like all other businesses, applying for a council permit.	The provisions in the regulations, giving special exemptions to food trucks, are deleted.  Council will no longer need 'location rules' in relation to food trucks.	These changes reflect sector advocacy and are supported.	Support process change
7	A new category of 'award recipient' is added to the list of matters in <b>section 90(3)</b> , which council is entitled to treat confidentially.	As a new category is added to section 90(3), the numbering reference in the Regulations has been updated to ensure any matters considered under the new category are included in Annual Reports.	These changes to the Act reflected sector advocacy and were supported.  The change to the Regulations merely updates the numbering reference to the Act.	Support process change

<b>Local Government (General) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comments</b>
8	<b>Schedule 5</b> of the Act lists the documents that council must make available. This Schedule can be varied by Regulation.	<p>The Regulation:</p> <p>(a) Deletes the obligation to publish candidate's donation returns. These will be now published by the Electoral Commissioner instead.</p> <p>(b) Requires councils to publish draft annual business plans (as well as the existing obligation to publish adopted annual business plans).</p> <p>(c) Deletes the obligation to publish the most recent information statement of the council under the Freedom of</p>	<p>The Freedom of Information Act contains its own provisions (section 10 of that Act) requiring councils to publish certain information. It has been decided not to duplicate this requirement in the Local Government Act.</p> <p>Subsections (b) and (d) create new obligations for councils to publish information on the council website, however these obligations do not appear onerous.</p> <p>All of these changes are reasonable and supported</p>	Support process change

		<p>Information Act and policy documents required to be published under the FOI Act.</p> <p>(d) Section 246(3)(e) already empowers a council to enact a by-law that only applies to a part of a council area. Council must now publish information if this power is used.</p>		
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<b>Local Government (Procedures at Meetings) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comments</b>
1-3	N/A	These are technical sections setting out the title, the date of commencement and to explain how the change will work.	These changes are uncontroversial.	Support
4	Substantial changes to the Act have been made about how council must provide access to information. A consistent change is to remove the requirement for documents to be made available for public inspection at a principal office and to enable publication of information to websites.	This change deletes reference to the sections that provide a member of the public the ability to: <ul style="list-style-type: none"> <li>inspect a code of practice made under this Regulation free of charge; and</li> <li>obtain a copy of the code of practice for a fee.</li> </ul>	Substantial changes to the Act will give councils greater flexibility to publish most information on the council website.  These changes to the Regulations removesome of the prescriptive requirements.	Support process change. This is current practice.
5	No change to the Act	A notice of motion must be provided to the chief executive 7 clear days before the relevant meeting. Currently, 5 days are required.	The extra two days will significantly assist council administrations to prepare papers, to support the deliberations of council members.	Support processes change. This allows consideration of the motion by administration with reasonable time to publish the agenda.  Will this timeframe also be applied to the current Regulation 9 regarding submitting Questions on Notice?

6	Section 88(4) of the Act is deleted. This required councils to keep notices and agendas of council committee meetings on public display and published on the website. A new section 88(3) now refers to publication of information as required by section 132(1)(a).	The change to the Regulation updates the numbering in the Regulation. It does not make any further substantive changes.	The change to section 88(4) is another example of the changes to the Act, giving councils greater flexibility to publish most information on a website determined by the CEO.  The consequential change to the Regulation is supported.	Support process change
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<b>Local Government (Elections) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government (Elections) Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comments</b>
1-3	N/A	These are technical sections setting out the title, the date of commencement and to explain how the change will work.	These changes are uncontroversial.	Support



4	No change to the Act	<p>This Regulation makes changes to the requirements for a candidates profile which is submitted when they nominate for local government elections. A Candidate profile must include:</p> <ul style="list-style-type: none"> <li>• a statement as to whether the candidate lives in the area or ward in which the candidate is nominating,</li> <li>• whether the candidate has been a member of a political party in the previous 12 months, and</li> <li>• if the candidate was a member of a political party, the name of the party and the dates (within the 12-month period) that the candidate joined or ceased to be a member of the party.</li> </ul>	<p>These changes are consistent with sector feedback during consultation during the 'Local Government Review' process in 2019.</p>	<p>Support change on the basis of being transparent to the community on the candidates interest to the area.</p> <p>Support change on the basis that the candidate discloses political interests to the community.</p> <p>Support change on the basis that the candidate discloses political interests and dates for which the interests were relevant.</p>
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<b>Local Government (Elections) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government (Elections) Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comments</b>
5	<p>The definition of bribery in <b>section 57(3)</b> of the Local Government (Elections) Act was amended. Providing food, drink or entertainment below a prescribed level is no longer 'bribery'.</p> <p>New <b>section 81A</b> of the Local Government (Elections) Act creates new reporting obligations for large gifts.</p>	<p>The Regulations set the prescribed level for a bribe at \$20.</p> <p>The Regulation defines large gifts as those valued over \$2500. The Regulation also requires candidates to submit their large gifts return:</p> <ul style="list-style-type: none"> <li>• in an election year, 5 days after the receipt of the gift; and</li> <li>• in other years, 60 days after the receipt of the gift.</li> </ul> <p>The Regulation also requires the Electoral Commission to publish on a website each large gifts return within 2 days of receiving it from a</p>	<p>This means that providing a candidate with small amounts of refreshment (e.g. a cup of coffee or a free sausage) will not constitute a bribe under the Act. This is a sensible change which decriminalises many reasonable interactions between candidates and members of the public.</p> <p>The changes relating to large gifts are consistent with expectations. The LGA will update its information papers and training, to assist candidates in local government elections to understand these new obligations.</p>	Support process change

6	Schedules to Acts can be amended by Regulation.	The Regulation deletes the 'campaign donations' form that candidates were required to complete and submit.	The historical paper-based approach is replaced by an online system, operated by the Electoral Commission of SA.  This change is supported.	Support process change
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<b>Local Government (Members Allowances and Benefits) (Review) Variation Regulations 2021</b>				
<b>Regulation No.</b>	<b>What is the change to the Local Government Act?</b>	<b>What does the Regulation do?</b>	<b>LGA Comment</b>	<b>City of Marion Comments</b>
1-3		These are technical sections setting out the title, the date of commencement and to explain how the change will work.	These changes are uncontroversial.	Support
4	<b>Section 76</b> of the Local Government Act provides for member allowances. Section 76(9) provided that allowances would increase pursuant to a formula in the Regulations.	The formula in the regulations will be deleted.	Councils have regularly reported that the formula is confusing and ambiguous.  Adjustments will be simpler without the CPI formula in the Regulations.  In future, the LGA will regularly liaise with the Remuneration Tribunal of SA, to provide clear advice to councils about CPI adjustments to member allowances.	Support process change. This will simplify the process.

## 12 Corporate Reports for Information/Noting

### 12.1 Corporate and CEO KPI Report Quarter Four 2020/21

<b>Report Reference</b>	GC210810R12.1
<b>Originating Officer</b>	Unit Manager Governance and Council Support – Victoria Moritz
<b>Corporate Manager</b>	Manager Office of the CEO - Kate McKenzie
<b>General Manager</b>	Chief Executive Officer - Tony Harrison

#### REPORT OBJECTIVE

To advise the Council of the results of the CEO and Corporate Key Performance Indicators (KPI's) for quarter four 2020/21.

#### EXECUTIVE SUMMARY

Monitoring performance of the Corporate and CEO KPI's is critical for 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.

Details of the year end results for quarter four are provided in Appendices 1-4. Council achieved the Core or Stretch targets in all of the KPI's with the following two exceptions:

- **Lost Time Injury Frequency Rate** (An industry standard measure for injuries where a whole days work or more is lost due to a workplace injury). The result was a 57.6% Increase. It should be noted that two LTI incidents occurred late in 2019-20 however, weren't included in end of year reporting as they either hadn't yet lost time or had been denied and were undergoing investigation subsequent to an appeal. Both were investigated and accepted post June 2020. Council have resolved not to report on this KPI for 2021-22, however will continue to track the progress through standard monthly reporting to Council.
- **Staff Engagement** – The result was 56%. Council will continue to report on this KPI for 2021-22 with the target to include at least 50% employee participation per senior leadership team department

The final Audited results will be reported on once known.

#### RECOMMENDATION

**That Council:**

1. **Notes this report and information and information contained within the attachments for Quarter Four.**

#### ATTACHMENTS

1. Attachment 1 - KPI Overview [**12.1.1** - 2 pages]
2. Attachment 1a Supporting Information for KPI 2 [**12.1.2** - 1 page]
3. Attachment 2 - KPI Summary [**12.1.3** - 1 page]
4. Attachment 3 - FTE Employees (Staff and Agency) [**12.1.4** - 1 page]
5. Attachment 4 - Labour and FTE Movement Summary [**12.1.5** - 1 page]

# CHIEF EXECUTIVE OFFICER and CORPORATE KEY PERFORMANCE INDICATORS 2020/21 QUARTER FOUR: APRIL '21 – JUNE '21 - ATTACHMENT 1



1

## Financial Sustainability

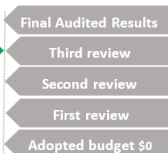
**Core target:** Council maintains, on average a break even or better funding (cash) position over the Long-Term Financial Plan

**Stretch target:** Council maintains a break-even or positive position in delivering its Annual Budget.

**Measure:** This target compares funding cash position at the relevant budget review with the adopted budget figure.

**Result:** Third budget review forecasts end of year surplus of \$0.717M. Stretch target is forecast to be met.

Forecast = \$0.717M



4

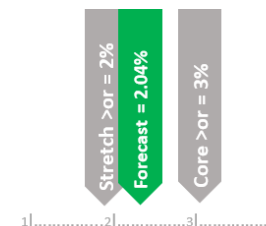
## Total Employee Costs

**Core target:** 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.

**Stretch target:** 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.

**Measure:** The 2019/20 Actual audited figure = \$36.487M

**Result:** Actual Forecast is 4.0% - after adjusting for the additional positions approved by Council (Digital Transformation and CSI Resource) the KPI forecast result is reduced to 2.04%. Core Target is forecast to be met.



2

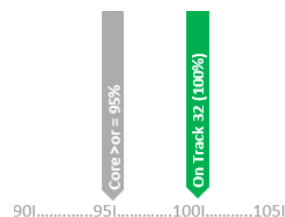
## Delivery of agreed projects identified in ABP and 4-year Plan (32 projects)

**Core target:** Greater than or equal to 95%

**Measure:** Monthly data as at 30 June 2021

**Result:** 100% 32 projects are on track

**Note:** Refer Appendix 1a for supporting information



5

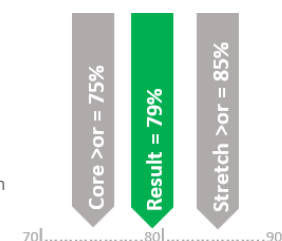
## Overall Satisfaction with Council's performance

**Core target:** Greater than or equal to 75% rated as satisfied or above.

**Stretch target:** Greater than or equal to 85% rated as satisfied or above.

**Measure:** Community Survey

**Result:** Achieved overall 79% satisfaction with Councils performance for 2020/21



3

## Lost Time Injury Frequency Rate.

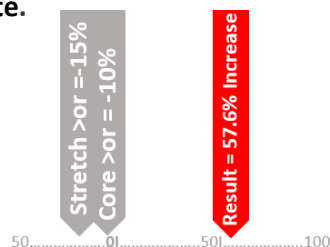
**Core target:** Greater than or equal to 10% reduction from 2019/20 = 5.4%

**Stretch target:** Greater than or equal to 15% reduction from 2019/20 = 5.19%

**Measure:** The LTIFR for Q4 2020/21 is 14.5

**Result:** 57.6% Increase. The Core Target has not been met.

\*It should be noted that two LTI incidents occurred late in 2019-20 however, weren't included in end of year reporting as they either hadn't yet lost time or had been denied and were undergoing investigation subsequent to an appeal. Both were investigated and accepted post June 2020. This has resulted in a revised LTIFR of 9.2 for 2019-20 and the 10% reduction target has now also been revised to 8.28.



6

## Asset Sustainability

**Core target:** Asset Renewal Funding

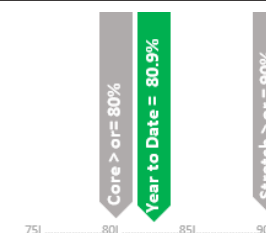
Ratio greater than or equal to 80%

**Stretch target:** Asset Renewal Funding

Ratio greater than or equal to 90%

**Result:** As at May 2021 the year to date renewal expenditure is sitting at 80.9%. This is an annual target and will be confirmed at the completion of the audited financial statements.

The Asset Renewal Funding Ratio indicates whether Council is renewing or replacing existing assets at the rate of consumption.



CEO and CORPORATE KEY PERFORMANCE INDICATORS 2020/21 – QUARTER FOUR: APRIL '21 – JUNE '21

## CHIEF EXECUTIVE OFFICER KEY PERFORMANCE INDICATORS 2020/21 QUARTER FOUR: APRIL '21 – JUNE '21 – ATTACHMENT 1



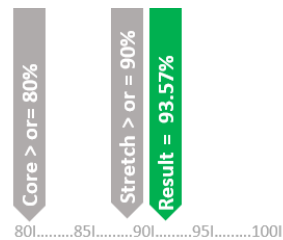
7

### Delivery of Council's capital works program

**Core target:** Greater than or equal to 85% delivery of Council's planned capital works program (adjusted for extraordinary items)

**Stretch target:** Greater than or equal to 90% delivery of Council's planned capital works program (adjusted for extraordinary items)

**Result:** As at May 2021 this indicator sitting at 93.57% and the stretch target is expected to be met. As an annual measure this will be confirmed at the completion of the audited financial statements.



10

### Carbon Neutrality

**Core target:** Actual annual emissions less than the plan's annual target emissions

**Stretch target:** Actual annual emissions 5% less than the plan's annual target emissions.

**Measure:** Carbon emissions footprint, measured against Council's endorsed Carbon Neutral Plan

**Result:** This KPI is applicable 2021/22 onwards and will not be reported during the 2020/21 financial year.

8

### Staff Teamgaze Survey and Field Staff

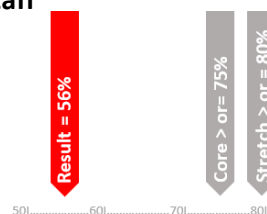
#### Survey Results

**Core target:** Achievement of an overall employee pulse survey result of 75%, based on 9 metrics

**Stretch target:** Achievement of an overall employee survey result of 80%

**Measure:** Staff Teamgaze survey results.

**Result:** 56%. The Core Target has not been met.



**\*Note:** The Teamgaze employee engagement tool is now being utilised, based on 9 metrics (including Communication, Leader Support, Collaboration, Resources, Integrity, Respect, Innovation, Safety and Wellbeing).

9

### Community Engagement / Communications

**Core target:** Project specific communications to the public should be timely and accurate

**Stretch target:** 100%

**Measure:** Based on feedback received on project specific distributed communications.

**Result:** 100%. The Stretch Target has been met. For the Q4 period, there was 19 pieces of project specific communications distributed to the community.



## ATTACHMENT 1a – Supporting Information

As at 30 June 2021 - 100% (32 projects) are on-track.

3 projects were completed in Q4 as identified below. Two projects have a revised due date, placing them on track with supporting comments below.

The on-track includes projects that were started or completed in the 2020/21 financial year and also includes those projects that are deferred and not started.

**Table 1: Year 2 Projects by exception (all other projects are considered on-track or completed)**

Project Name	Start Date	Completion Due Date	Q4	Q4 Supporting Comments
Deliver the Volunteer Strategy 2018-21			Complete	
Implement the Coastal Climate Change Adaptation Plan			Complete	
Hallett Cove Foreshore			Complete	
City Property Strategic Asset Management Plan	01/07/2019	<del>30/06/2020</del> Extended to 30/6/2022	On track	<p>There are a number initiatives and projects commenced that demonstrate a series of system focused activities, precinct and location reviews to put in place plans to review, redevelop or develop City of Marion sites, including the Building and Structures Asset Management Plan and open space plan to contribute towards informing the City Property Strategic Asset Management Plan.</p> <p>The next phase of works will be to identify any potential gaps in Council's existing plans and the review of service provision and future priorities and investment. This will require engagement with groups across Council and Council members. The scope for this work is currently being formalised and will include considerations around community engagement, service standards, pipeline of the proposed expenditure and impact on the Long Term Financial Plan.</p> <p>Finalisation of the scope of the work and engagement of consultant to be undertaken in Q1 2021-22.</p>
Tarnham Road Open Space Redevelopment	02/12/2019	<del>30/06/2021</del> Extended to 30/6/2022	On-track	<p>Council endorsed retaining the western portion of land on the reserve at the General Council meeting held 27 January 2021. A revised concept plan was developed that encompassed the entire Tarnham Road reserve site. The revised concept and funding to complete the project and additional funding was endorsed at the General Council meeting on 22 June 2021,</p> <p>Community consultation is being prepared for July 2021 to inform detailed design to be developed in Q1 2021-22.</p>

## Corporate and CEO KPI Report Quarter Four 2020/21 – ATTACHMENT 2

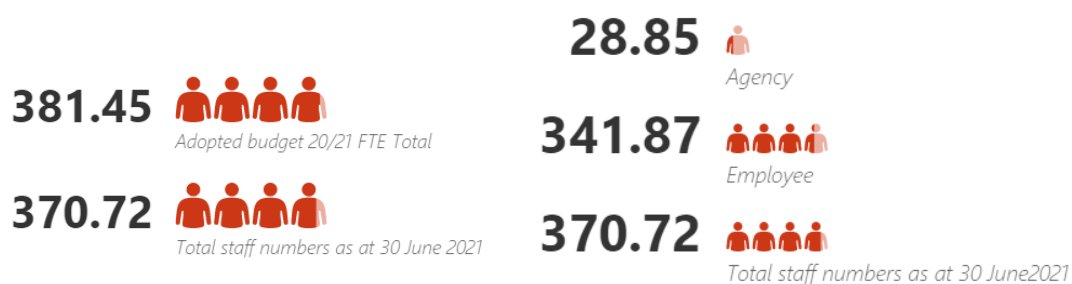
KPI	Details	Target	Stretch Target	Qtr 1	Qtr 2	Qtr 3	Qtr 4
1	Financial sustainability.	Council maintains, on average a break even or better funding (cash) position over the Long Term Financial Plan	Council maintains a break-even or positive cash funding position in delivering its Annual Budget	\$0.154M	\$0.163M	\$0.049M	\$0.717M
				Result: Third budget review forecast and end of year surplus of \$0.717M. Stretch target is forecast to be met.			
2	Delivery of agreed projects identified in the <i>Annual Business Plan</i> and the second year targets in the four-year plan.	Greater than or equal to 95%	No Stretch Target	97%	100%	97%	100%
				Result: 100% - 32 projects are on track including.			
3	Lost Time Injury Frequency Rate.	Greater than or equal to 10% reduction from the previous year's result 2019/20 = 5.49	Greater than or equal to 15% reduction from the previous year's result 2019/20 = 5.19	47.4% increase	47.4% increase	90.17% increase	57.6% increase
				Result: 57.6% Increase. 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. It should be noted that two LTI incidents occurred late in 2019-20 however weren't included in end of year reporting as they either hadn't yet lost time or had been denied and were undergoing investigation subsequent to an appeal. Both were investigated and accepted post June 2020. This has resulted in a revised LTIFR of 9.2 for 2019-20 and the 10% reduction target has now also been revised to 8.28. The 2020-21 LTIFR is 14.5 with 10 lost time injury claims being submitted. This is a 57.6% increase on the 2019-20 LTIFR and therefore, the target has not been achieved.			
4	Total employee costs (inc agency).	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	2.0%	2.04%	2.04%	2.04%
				Result: Actual Forecast is 4.0% - after adjusting for the additional positions approved by Council (Digital Transformation and CSI Resource) the KPI forecast result is reduced to 2.04%. The core target is forecast to be met.			
5	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	N/A	N/A	N/A	79%
				Achieved overall 79% satisfaction with Councils performance for 2021/21			
6	Asset sustainability.	Asset Renewal Funding Ratio greater than or equal to 80%	Asset Renewal Funding Ratio greater than or equal to 90%	109% (projected)	87% (projected)	87% (projected)	80.9% (YTD)
				Result: As at May 2021 the year to date renewal expenditure is sitting at 80.9%. This is an annual target and will be confirmed at the completion of the audited financial statements.			
7	Delivery of Council's capital works program.	Greater than or equal to 85% of Council's planned capital works program (adjusted for extraordinary items)	Greater than or equal to 90% of Council's planned capital works program (adjusted for extraordinary items)	N/A	N/A	N/A	93.57%
				As at May 2021 this indicator sitting at 93.57% and the stretch target is expected to be met. As an annual measure this will be confirmed at the completion of the audited financial statements.			
8	Staff Engagement	Achievement of an overall employee pulse survey result of 75% based on 9 metrics	Achievement of an overall employee pulse survey result of 80%	80.6%	78.4%	79.1%	56%
				Result: 56%. The Core target has not been met.			
9	Community engagement / communications	Project specific communication to the public should be timely and accurate	100%	96.5%	100%	97%	100%
				Result = 100% accuracy. There were 19 pieces of project specific communications during this period with nil identified inaccuracies.			
10	Carbon Neutrality – carbon emissions footprint, measured against Council's endorsed Carbon Neural 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	NA	NA	NA	
				This KPI is applicable 2021/22 onwards and will not be reported during the 2020/21 financial year.			



## ATTACHMENT 3

## FULLTIME EQUIVALENT (FTE) EMPLOYEE AGENCY

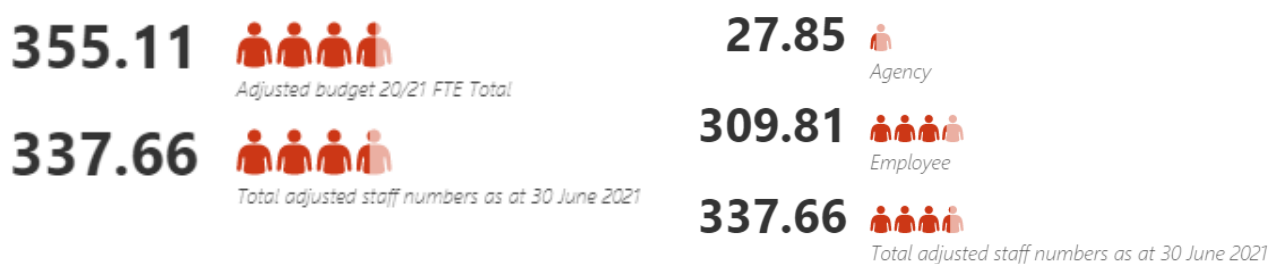
The number of FTE employees (staff and agency) employed across the organisation as at 30 June 2021.



There are currently 21 temporary vacant positions comprised of:

- |                                               |    |
|-----------------------------------------------|----|
| • Recruitment in progress (required position) | 13 |
| • Currently under review                      | 0  |
| • Vacant required position                    | 8  |

The following tables provide comparative FTE data with the Gap Year Team Members, Pool Staff, and Grant Funded positions being excluded.



## ATTACHMENT 4

# LABOUR AND FTE MOVEMENT SUMMARY

	2020/21 \$000's	2019/20 \$000's	2018/19 \$000's	2017/18 \$000's	2016/17 \$000's	2015/16 \$000's	2014/15 \$000's	2013/14 \$000's	2012/13 \$000's
<b>Total Employee Costs (including Agency) % Movement on Prior Year</b>	<b>37,973*</b>	<b>36,487</b>	<b>34,861</b>	<b>33,274</b>	<b>32,221</b>	<b>31,783</b>	<b>31,757</b>	<b>31,532</b>	<b>30,239</b>
	<b>4.07%</b>	<b>4.66%</b>	<b>4.77%</b>	<b>3.27%</b>	<b>1.40%</b>	<b>0.10%</b>	<b>0.70%</b>	<b>4.30%</b>	
<b>Total Number of Employees (FTE at 30 June 2021)** % Movement on Prior Year</b>	<b>370.72</b>	<b>358</b>	<b>365</b>	<b>360</b>	<b>344</b>	<b>342</b>	<b>348</b>	<b>351</b>	<b>359</b>
	<b>3.53%</b>	<b>-1.9%</b>	<b>1.38%</b>	<b>4.80%</b>	<b>0.60%</b>	<b>-1.70%</b>	<b>-0.90%</b>	<b>-2.20%</b>	
<b>5-Year average FTE to June 2021</b>	<b>359.5</b>								

### 13 Workshop / Presentation Items - Nil

### 14 Motions With Notice - Nil

### 15 Questions With Notice

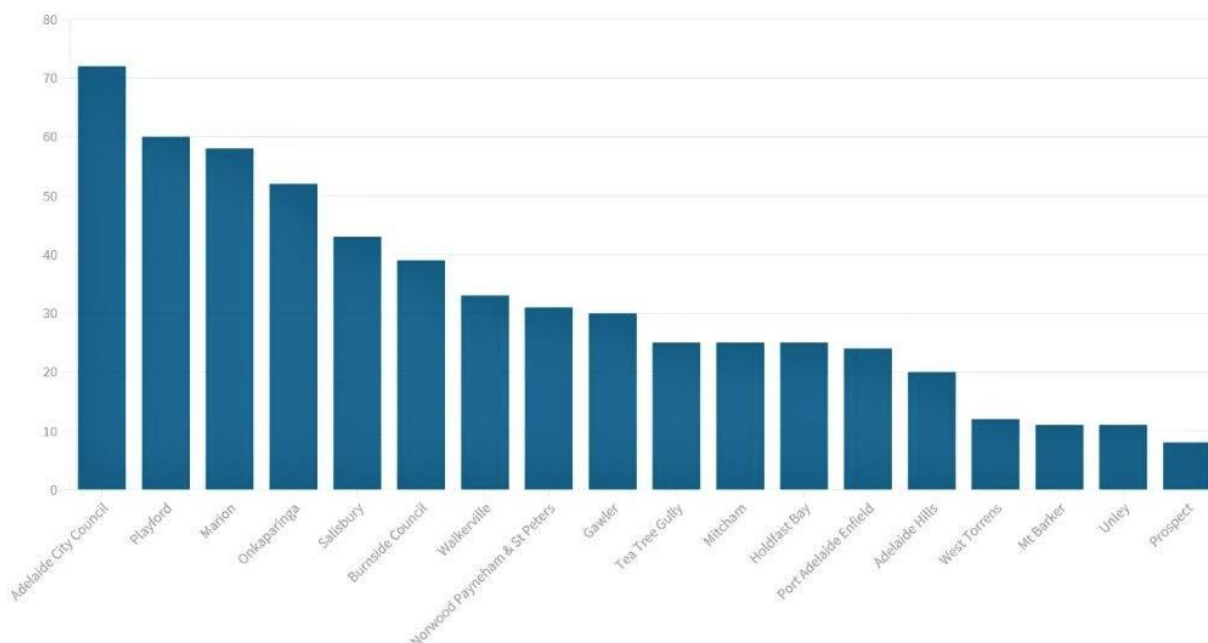
#### 15.1 Confidential Items

<b>Report Reference</b>	GC210810Q15.1
<b>Council Member</b>	Councillor – Bruce Hull

#### QUESTION

With regards to the Advertiser article 27/7/21, titled Chamber of Secrets: Adelaide's most confidential councils, along with the attached graph that shows the Marion Council rating number 3. Could administration provide an explanation as to why Marion scores so highly in terms of the number of confidential items and also provide advise as to how we may be able to reduce the number of confidential items?

#### SUPPORTING INFORMATION



<b>Response Received From</b>	Unit Manager Governance and Council Support – Victoria Moritz
<b>Corporate Manager</b>	Manager Office of the CEO - Kate McKenzie
<b>General Manager</b>	Chief Executive Officer - Tony Harrison

#### STAFF COMMENTS

*The Local Government Act 1999* (the Act) regulates how Council administers confidential items, with an underlying principle that as government is accountable to its public, only certain circumstances evoke the appropriate use of confidential orders.

During the 2019/20 financial year, to which the article refers, Council (including committees) considered 58 reports in confidence in relation to matters in accordance with the Act. The following table provides further detailed information about Council's use of various sections of the Act (more than one confidential clause may apply to an item)

Relevant placita of Local Government Act (SA) 1999	Explanation S 90 (2) Information the disclosure of which would;	Number of times used
3(a)	<ul style="list-style-type: none"> <li>involve unreasonable disclosure of information concerning the personal affairs of any person (living or dead).</li> </ul>	23
3(b)(i) and (ii)	<ul style="list-style-type: none"> <li>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;</li> <li>on balance, be contrary to the public interest.</li> </ul>	14
3(c)	<ul style="list-style-type: none"> <li>reveal a trade secret</li> </ul>	0
3(d)(i) and (ii)	<ul style="list-style-type: none"> <li>commercial information of a confidential nature (not being a trade secret) the disclosure of which—</li> <li>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;</li> <li>on balance, be contrary to the public interest.</li> </ul>	15
3(e)	<ul style="list-style-type: none"> <li>matters affecting the security of council, members or employees of the council or council property, or the safety of any person.</li> </ul>	0
3(f)	<ul style="list-style-type: none"> <li>could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial.</li> </ul>	3
3(g)	<ul style="list-style-type: none"> <li>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.</li> </ul>	4
3(h)	<ul style="list-style-type: none"> <li>legal advice.</li> </ul>	8
3(i)	<ul style="list-style-type: none"> <li>information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;</li> </ul>	2
3(j)(i) and (ii)	<ul style="list-style-type: none"> <li>would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council);</li> <li>on balance, be contrary to the public interest.</li> </ul>	0
3(k)	<ul style="list-style-type: none"> <li>tenders for the supply of goods, the provision of services or the carrying out of works.</li> </ul>	0
3(m)	<ul style="list-style-type: none"> <li>relating to a proposed amendment to a Development Plan under the Development Act 1993 (SA) before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act.</li> </ul>	0
3(n)	<ul style="list-style-type: none"> <li>relevant to the review of a determination of a council under the Freedom of Information Act 1991 (SA).</li> </ul>	0

As identified in the table above, those sections of the Act that have been referred to most frequently include:

- Section 3(b)(i)(ii) and (d)(i)(ii) *Commercial Information* – This is influenced by the nature and number of projects the council is currently or considering undertaking and has resulted in a higher number of reports considered under this clause.
- Sections 3(a) *Personal Affairs* – This is influenced by the number of independent members on committees which includes the recruitment and performance review process. It is also noted that all confidential minutes of committees are subsequently considered at council as confidential item.

It is noted that the number of reports considered in confidence, of which there were 58, is the number of times council resolved to enter into confidence to hold discussions of a confidential nature and does not reflect the number of items that were either not retained in confidence, or that were released at a defined time, subsequent to the item being heard.

The provision to enter into confidence enables well-versed discussions and healthy debate to occur without prematurely releasing information that would be contrary to public interest and before an outcome or decision has been reached.

Each year, in accordance with Section 91 of the Act, Council undertakes a thorough review of any orders made relating to matters considered in confidence be kept confidential. Where Council makes such an order it must specify the duration of the order, or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. Any order that operates for a period exceeding 12 months is reviewed at least once a year to determine whether or not the confidentiality of the document needs to be retained.

Any confidential orders that are revoked are released and made available to the public immediately upon revocation.

When preparing and presenting reports, and when making decisions, we can continue to be mindful of the balance of providing sufficient information to allow informed decisions against the need for providing public awareness of the item.

The City of Marion is committed to the principle of an open and accountable government and maintaining high standards of accountability and transparency while acknowledging that on occasions, it may be necessary to restrict access to discussions and/or documents.

## 16 Motions Without Notice

## 17 Questions Without Notice

## 18 Confidential Items

### 18.1 Cover Report - Animal Impounding

Report Reference	GC210810F18.1
Originating Officer	Team Leader – Building - Stephen Zillante
Corporate Manager	Manager Development and Regulatory Services - Warwick Deller-Coombs
General Manager	General Manager City Development - Ilia Houridis

### REASON FOR CONFIDENTIALITY

#### ***Local Government Act (SA) 1999 S 90 (2) 3***

(b) 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

(d) 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

### RECOMMENDATION

That pursuant to Section 90(2) (3) (b)(i) and (ii), (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 Office of the CEO, Manager Development & Regulatory Services, Unit Manager Communications, Unit Manager Community Health and Safety, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Animal Impounding upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to commercial information regarding the provision of animal impounding services.

## 18.2 Cover Report - Cove Cobras Football Club Update

Report Reference	GC210810F18.2
Originating Officer	Recreation Development Officer – Kane Harrison
Corporate Manager	Manager City Property - Thuyen Vi-Alternetti
General Manager	General Manager City Development - Ilia Houridis

### REASON FOR CONFIDENTIALITY

#### ***Local Government Act (SA) 1999 S 90 (2) 3***

(d) 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

### 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 Property, Unit Manager Sport and Recreational Community Facilities, Unit Manager Communications, Unit Manager Governance and Council Support, Recreation Development Officer and Governance Officer be excluded from the meeting as the Council receives and considers information relating to Cove Cobras Football Club Update, 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 licencing conditions with Council.

**18.3 Cover Report - Confirmation of the confidential minutes for the Review and Selection Committee held on 3 August 2021**

Report Reference	GC210810F18.3
Originating Officer	Acting Manager People and Culture – Rachel Read
Corporate Manager	N/A
General Manager	Chief Executive Officer - Tony Harrison

**REASON FOR CONFIDENTIALITY*****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)

**RECOMMENDATION**

That pursuant to Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Manager People and Culture, Manager Office of the CEO, Unit Manager Governance and Council Support, and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to Confirmation of the confidential minutes for the Review and Selection Committee held on 3 August 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 concerns the personal affairs of any person.



**18.4 Cover Report - Appointment of Independent Member - Finance and Audit Committee**

Report Reference	GC210810F18.4
Originating Officer	Unit Manager Governance and Council Support – Victoria Moritz
Corporate Manager	Manager Office of the CEO - Kate McKenzie
General Manager	Chief Executive Officer - Tony Harrison

**REASON FOR CONFIDENTIALITY*****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)

**RECOMMENDATION**

**That pursuant to Section 90(2) and (3)(a) 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 Office of the CEO, Manage People and Culture, Governance Officer, Unit Manager Governance and Council Support, be excluded from the meeting as the Council receives and considers information relating to the appointment of an independent member to the Finance and Audit Committee, 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 concerns the personal affairs of any person.**

**18.5 Cover Report - CEO Midway Probationary Review**

Report Reference	GC210810F18.5
Originating Officer	Acting Manager People and Culture – Rachel Read
Corporate Manager	Manager Office of the CEO – Kate McKenzie
General Manager	N/A

**REASON FOR CONFIDENTIALITY*****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)

**RECOMMENDATION**

**That pursuant to Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Manager Office of the CEO and Acting Manager, People and Culture be excluded from the meeting as the Council receives and considers information relating to CEO Midway Probationary Review, 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 personal affairs of the Chief Executive Officer.**

**19 Other Business****20 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.