



# *Local Government Act 1999 - s270 review*

Request for internal review of Council decision by Cove Football Club

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Final Report

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20 November 2019



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## **Request for internal review of Council decision by Cove Football Club**

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# Executive summary

Council resolved to terminate the Cove Football Club's occupancy of the Cove Sports and Community Complex.

Council had the power to make its decision.

In making its decision, Council relied on an investigation report, and various legal advices. Cove Football Club was afforded procedural fairness in that they were notified of the decision, given an opportunity to be heard, and were provided with enough information in relation to the decision.

Council's decision was also reasonable, even in circumstances where other options existed.



**Susie Inat**

Special Counsel

T +61 8 8233 5692 M +61 407 710 255

[susie.inat@minterellison.com](mailto:susie.inat@minterellison.com)



# Report

## 1. Background

### 1.1 Cove Sports and Community Complex

This request for internal review concerns the occupation of the Cove Sports and Community Complex (**Complex**) by the Cove Football Club (**CFC**). The Complex is within the area of the City of Marion (**Council**).

The Complex is owned by the Council. In addition to CFC, two netball clubs, a soccer club and a BMX club share use and occupancy of the Complex.

### 1.2 Tenancy Arrangement

The review has identified that the occupancy and use of the Complex has in the last few years been challenging for all parties involved. The Cove Sports and Community Club Inc (**CSCC**) occupied the Complex pursuant to an undated Licence Agreement between CSCC and Council, commencing 1 January 2009 and expiring 21 December 2013 (**Licence Agreement**). The CSCC managed use of the Complex under the terms and conditions of the Licence Agreement. The Licence Agreement was not renewed, and since 2013 the CSCC has occupied the Complex as a monthly tenant pursuant to clause 5.11 of the Licence Agreement. It appears that through a 'sub-licence' arrangement with CSCC, CFC (and the other users) occupied and used the Complex during this period.

It appears that Council was aware of some issues with the use of the Complex by the CSCC over the last few years – being the reason no extension or renewal of the Licence Agreement had ever been entered into. Those issues culminated with significant works being undertaken to the kitchen on the site without Council approval (as required under the Licence Agreement). We understand in January 2019, Council terminated the monthly tenancy with the CSCC and took over the management of the Complex.

On 27 May 2019, Council offered the CFC a (1 year) licence. That offer was not entered into and was later formally withdrawn by Council<sup>1</sup>.

We understand no subsequent agreement has been entered into between CFC and the Council, but CFC has continued occupying the Complex pursuant to a tenancy at will.

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<sup>1</sup> Minutes Special General Council Meeting 2 September 2019, Letter to CFC from City of Marion dated 3 September 2019.

### 1.3 Legal Advice – Tenancy Arrangement

Council sought legal advice in relation to the tenancy arrangement with the CSCC, and later with the CFC, in relation to the Complex (**Tenancy Advices**). It is not appropriate to cite the details of the Tenancy Advices and it is not our role, in conducting this review, to consider the accuracy of the advices obtained. We are required to review the decision based on the information (including legal advices) available to Council and in that regard we find that Council prudently sought advice about the tenancy arrangement with the CFC and relied on that advice for the purposes of making its decision.

We find Council's reliance on the Tenancy Advices entirely appropriate and reasonable.

### 1.4 Investigation Report

Having taken over the management of the Complex in January 2019, i.e. after terminating the Licence Agreement with the CSCC, Council, as owner of the Complex, became the appropriate and primary contact of reports of poor behaviour by users of the Complex. Council cites that it received reports of poor behaviour, excessive consumption of alcohol, and concerns by some clubs using the Complex.<sup>2</sup> On 1 July 2019 (pursuant to Council resolution made 11 June 2019<sup>3</sup>), the Council instructed EMA Consulting to conduct an independent investigation of past and continuing behaviour of sports club members using the Complex. The scope of the investigation is set out in the Investigation Report, dated 28 August 2019, (**Investigation Report**) but principally was to:

- identify behaviour and conduct issues occurring at the Complex;
- identify what were the contributing factors to such behaviours and conduct;
- establish the source of any inappropriate behaviour;
- identify Council risks; and
- identify potential strategies for shared use of the facility.

The Investigation Report is the subject of a confidentiality order<sup>4</sup> made by Council at its Special General Council Meeting on 2 September 2019. The contents of the Investigation Report, in particular the witness statements attached thereto (which we understand are separately subject to confidentiality agreements) will not be disclosed as part of this review or in this Report.


However, as the key ground upon which the CFC relies on for the purposes of making this application for review is that it was not afforded procedural fairness, it is relevant to set out the

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<sup>2</sup> Report to Council, 24 September 2019, Report GC190924F02.

<sup>3</sup> Confidential resolution 11 June 2019, Report Reference GC190611F08

<sup>4</sup> Sections 90((2) and 90(3)(f) and sections 91(1) and (2) *Local Government Act 1999* (SA).



following extracts of the Investigation Report, noting that both statements have been communicated to the CFC<sup>5</sup>:

- Page 3 of the Investigation Report, states that the investigator explained to each witness at the commencement of each interview the '*purpose*' of the interview, '*including that their information would be utilised to ultimately report to the Council so that it could make appropriate decisions*'.
- The Investigation Report found a '*strong suggestion of inappropriate behaviour occurring on the part of the football club members ... considered to be hostile, territorial, unwelcoming or otherwise unreasonable.*'

In response to the Preliminary Report, CFC advised that a meeting between representatives of the Council, the CFC (incl the SANFL) was held on 3 July 2019, ie 2 days after the investigation was commissioned. CFC stated that they were not advised of the independent investigation, but understood the Council were "satisfied with actions being taken" by the CFC to address Council concerns. CFC assert this further demonstrates a lack of procedural fairness on the part of the Council.

In response, Council (Council's CEO) has confirmed the meeting was held to discuss the Council's concerns with the behaviour of the CFC, and to inform the SANFL what was occurring.

We accept the CFC are frustrated and disappointed about not being informed of the independent investigation at the meeting on 3 July 2019. However, we do not find that having not advised CFC at that meeting, CFC were not afforded procedural fairness.

## 1.5 Legal Advice – Investigation Report

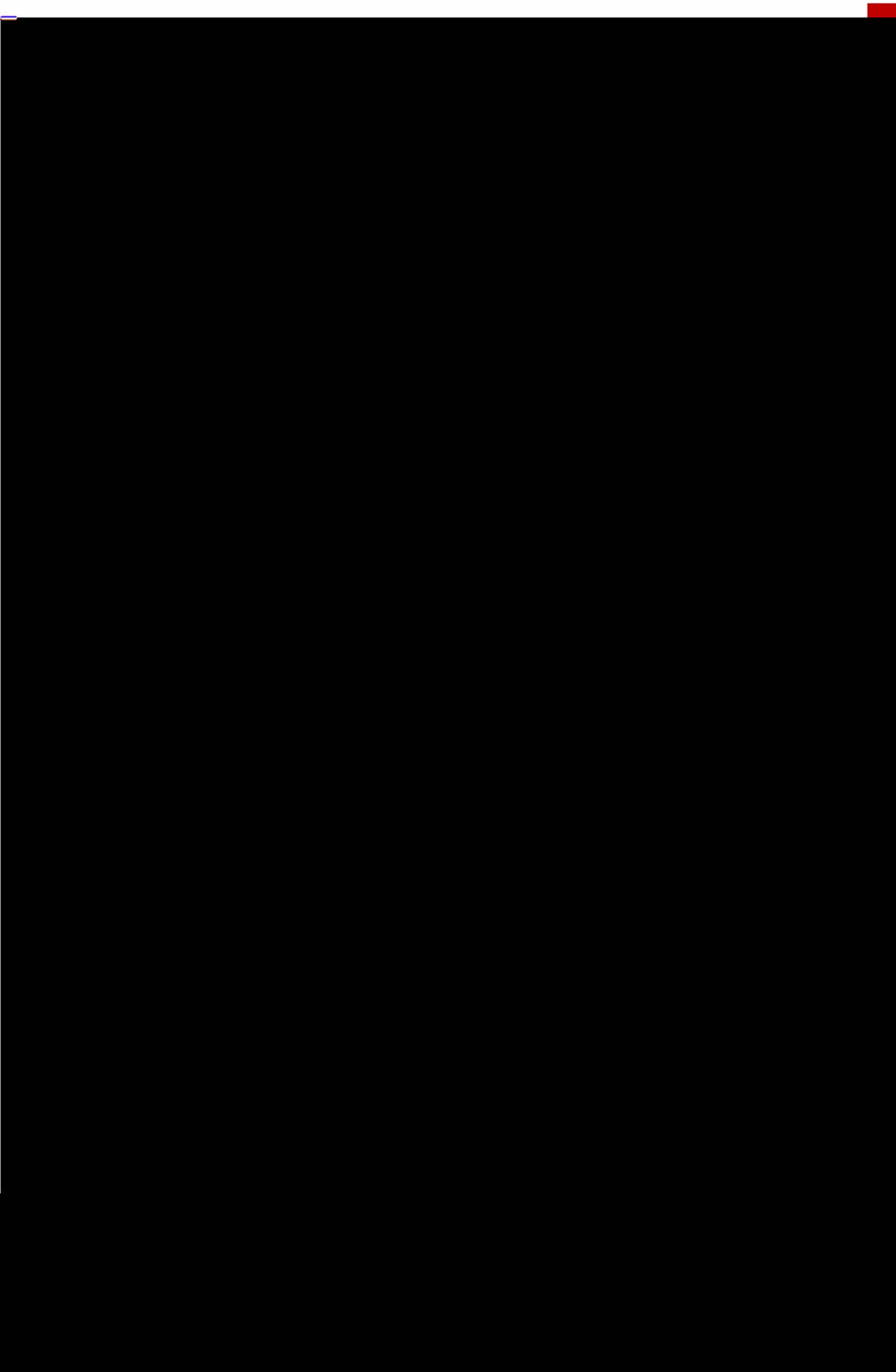
EMA Legal provided advice dated 2 September 2019 to Council, principally on the findings of the Investigation Report, but also having regard to the Tenancy Advices (**Option Advice**). The Option Advice set out (3) options, including recommendations and advice as to the process relating to each option, determined to be available to Council.

As with the Tenancy Advices, it is inappropriate to cite from the Option Advice and it is not our role, as investigator, to consider the accuracy of the Option Advice. We are required to review the Council decision based on the information (including legal advices) available to Council, and in that regard we find that Council prudently sought legal advice about the Investigation Report (and specifically its risks), and relied on that legal advice for the purposes of making its decision.

We find Council's reliance on the option Advice entirely appropriate and reasonable.

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<sup>5</sup> Letter to CFC from City of Marion dated 3 September 2019 – Cove Sports and Community Facility investigation Outcomes.









## 1.7 Council's Decision

At its General Council Meeting on 24 September 2019, Council resolved to:

*1. Note the response from Cove Cobras Football Club (CFCC) to the Council's Tentative Findings of Fact as provided in Appendix 1.*

*2 Provides (sic) CFCC one month's written notice to terminate the tenancy arrangement for their use of the Cove Sports and Community Centre ('the Facility').*

### **(Council's Decision).**

The Report and Minutes of the General Council Meeting held on 24 September 2019 are also the subject of a confidentiality order pursuant to sections 90(2) and 90(3)(a) and sections 91(7) and (9) of the *Local Government Act 1999* (SA) (**LG Act**). Although the validity of the confidentiality orders has been (at least implicitly) raised by the CFC, we are not, as part of this review, examining the validity of the confidentiality orders made by the Council. (They do not impact on the merits of the Council Decision). Set out below are extracts from the Report and Minutes of that Meeting which evidence Council being presented with information for consideration on the impacts of its decision on the CFC and its members. Because of the confidentiality order, the extracts will be redacted in the copy of the report provided to the CFC, pending authorisation by Council (or a delegate) for their release. (No such authorisation was provided pending the release of this Final Report).

[Redacted]

## 1.8 Notice to Terminate – Council's Decision

By letter dated 25 September 2019 (attached as **Annexure D**), Council advised the CFC of the Council's Decision and that a formal termination letter would be issued.

Pursuant to the Council's Decision, by letter and notice dated 25 September 2019 (authored and sent by Mellor Olsson Lawyers on behalf of Council), a Notice to Terminate was issued to CFC (attached at **Annexure E**).

## 1.9 Internal Review Request

On 26 September 2019, Mr Skull received a formal written request from Mr Kernahan, on behalf of CFC, to undertake an internal review of the Council's Decision (attached at **Annexure F**).

## 1.10 Change of Council's Decision

At a Special Meeting of Council held on Tuesday 15 October 2019, Council relevantly resolved:

*"...to offer a new licence to the CCFC for the use of the Cove Sports and Community Centre (The Facility) for a period of one year commencing on 1 October 2019 subject to the following conditions being met;*

*..."*


While this resolution of Council effectively made the Council Decision redundant, on 18 October 2019, Mr Kernahan confirmed to MinterEllison via email that he did not wish to withdraw the application. Separate consideration was given as to whether this review legally could continue or if it should be terminated on the basis that the Council's Decision (being the subject of the review) was no longer in force. That is, was Council's Decision still capable of being reviewed under this process?

It was determined that as the Council's Decision had been implemented (i.e., a Notice to Terminate was served to terminate the tenancy), the decision was not capable of being rescinded, only changed, and as such an internal review to determine if the decision was legally made and reasonable at the time was still capable of being lawfully undertaken. The review continued.

## 1.11 Legislative and policy framework

Council's Decision considered and was made within the following legislative and policy framework:

### Key Legislation



The nature of CFC's occupancy of the Complex was the subject of legal advice which advice identified as relevant and therefore considered the *Retail and Commercial Leases Act 1995* (SA) (**RCLA**) and the *Landlord and Tenant Act 1936* (SA) (**LTA**).

As stated above, we are not challenging the accuracy of Tenancy Advices.

#### Council Policies

Various Council policies were relevant, including:

##### Leasing and Licencing Policy

The Council's *Leasing and Licencing of Council Owned Facilities Policy* (**Leasing Policy**) applies to Council decisions relating to the leasing/licencing of its property – i.e. it 'applies to the leasing or licensing of Council owned or managed land and facilities'. (The Leasing Policy is attached at **Annexure G**). Relevantly, the Leasing Policy provides:

*The aim of the policy is to make land and building facilities available to groups or organisations on a fair and equitable basis to meet community needs and support the optimal use of facilities.*

Guiding principles under the Leasing Policy include:

*Optimise use of Council's community facilities and provides equitable and inclusive access by the City of Marion Community*

*Support and encourage diversity of programs and activities offered from Council facilities*

*Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Marion*

*Ensure sound financial management and effective administration of community facility leasing and licensing*

##### Disposal of Land Policy

The Council's *Disposal of Land and Assets Policy* (**Disposal Policy**) (attached at **Annexure H**) is also relevant to Council's Decision. The Disposal Policy contemplates the disposal of land through the grant of a leasehold interest. The Policy Principles, which Council must have regard to in its disposal of land and assets, include:

*Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations*



## 2. Internal review

### 2.1 Request for internal review – Details of the Complaint

On 26 September 2019, Mr Kernahan requested an internal review of Council's Decision. An email from Nicky Moore, CFC Secretary, attaches a letter outlining Mr Kernahan's request for an internal review of Council's Decision (**Request for Review**) (attached as **Annexure F**).

Mr Kernahan's letter states:

*'We are devastated by the news that the City of Marion has terminated our lease at the Cove Sports and Community Club. This is a difficult and emotional time in our club's 35-year history and the council's decision will have a far-reaching impact on our club and the community at Hallett Cove.*

*We do not believe we have had a fair and reasonable opportunity to respond to the Council. We have had no right of reply. We have not been provided natural justice or procedural fairness. We have not been able to provide a detailed response to our actions without knowing and understanding the accusations and the findings of the investigation which has been held in confidence.*

...

*We request a formal review of the Councils decision on removing the Cove Football Club from the Cove Sports and Community Complex'.*


The Request for Review is governed by Council's Complaints and Grievance Policy and accompanying Procedure (**CGP&P**) (see paragraph 2.2 below). The CGP&P prescribes that an application for an internal review of a decision must include, inter alia, 'a statement clearly indicating which decisions the applicant wishes to be reviewed', and 'a statement outlining the reasons why the review is requested'.

It therefore appears that the Request for Review was made because Mr Kernahan believed that Council's Decision was wrong in that it did not sufficiently afford CFC 'a right of reply', 'natural justice' or 'procedural fairness'.

### 2.2 Complaints and Grievance Policy & Procedure (CGP&P)

The CGP&P outlines and governs the processes to be followed when an internal or external review of a Council decision is to be made (attached at **Annexure I**).

Mr Kernahan (in correspondence provided on 18 October 2019, attached in an email from Nicky Moore (CFC Secretary) to Susie Inat (Special Counsel, MinterEllison)) states that the CGP&P



must be given weight in making a decision. The CGP&P only governs the process of reviewing a decision, not the initial making of a decision by the Council.

## 2.3 Appointment of MinterEllison

Council's CGP&P allows the Manager Corporate Governance to refer a matter to an independent investigator to conduct a review.

Council's Manager Corporate Governance has referred the Request for Review to MinterEllison for independent investigation.

## 2.4 Additional Information

On behalf of MinterEllison and in accordance with the CGP&P, Susie Inat wrote to Mr Kernahan, inviting CFC to provide additional supporting documents to facilitate the investigation. On 18 October, Mr Kernahan responded (attached as **Annexure J**). In a written statement, Mr Kernahan relevantly noted:

*The Cove Football Club feel that they were not provided natural justice or procedural fairness by the City of Marion in coming to the decision to terminate the tenancy from the Cove Sports and Community Complex ... the Council did not provide adequate details into the exact nature of the alleged incidents identified during a confidential investigation, making it extremely difficult for the Cove Football Club to be able to adequately respond to the allegations ...*

*The Council has refused to provide all of the specifics of the incidents, with dates, times offenders etc. This decision demonstrates a lack of procedural fairness and natural justice ...*

*the findings of the investigation and the details of all events, have not been shared with the Cove Football Club ...*

As to concerns of a drinking culture, Mr Kernahan argues the City of Marion and the bar staff are to take responsibility, being the holders of a liquor licence and RSA certification respectively.

In response to allegations of other improper behaviour, Mr Kernahan argues that insufficient information was provided in order for CFC to take further action, even when requested.

Mr Kernahan reiterates the fact that he believes CFC 'were not advised about the true nature of the investigation ... at no stage were they lead to believe that the consultants were conducting an investigation into the Cove Football Club.'

Mr Kernahan also questions why Council chose to treat the investigation as confidential, refusing to reveal information to the public or to CFC.

## 2.5 Methodology

### Procedure

Council's CGP&P prescribes that in conducting our investigation we must:


- (i) Establish the facts, including:
  - a. obtaining statements from stakeholders;
  - b. interviewing any relevant staff, elected members or the complainant;
  - c. establishing legislative framework; and
  - d. gathering facts and information,
- (ii) Prepare a Preliminary Report that includes:
  - a. details of the complaint;
  - b. scope of the review;
  - c. details of the investigation;
  - d. findings; and
  - e. recommendations,
- (iii) Prepare a final report that includes:
  - a. any feedback received from the complainant and undertake any further enquiries;
  - b. the final determination of the complaint/grievance; and
  - c. the external review processes if the complaint/grievance remains unresolved

### Scope of Review

A Preliminary Report was prepared in accordance with the CGP&P. Council and Mr Kernahan (on behalf of CFC) were provided with a copy of the Preliminary Report on 31 October 2019 and given 10 working days to respond pursuant to the CGP&P. (Responses were required by 5pm Thursday 14 November 2019).

Council's feedback identified 2x typographical errors and an issue with the interpretation of a word. These matters have been addressed. On 11 November 2019, Susie Inat sent CFC (Mr Kernahan) an email reminding the CFC of the date of providing a response and a request to acknowledge receipt of the Preliminary Report.

On 12 November 2019, Mr Kernahan sent an email to Council's CEO requesting an extension of time to review and respond to the Preliminary Report.



On 14 November 2019, a response to the Preliminary Report was received by the CFC (attached as **Annexure L**) This response was also sent in support of the request for an extension of time to respond.

An extension was granted to allow the CFC until Monday 18 November at 12pm.

No further response from the CFC was given.

No further time for response was provided to the Council.

The findings made centre on whether Council's Decision was *lawful*, and whether it was *reasonable*. In making these determinations, we have reviewed Council's Decision to ensure that the decision-making process was in compliance with the following administrative principles:

- (i) The decision maker had the power to make the decision;
- (ii) All matters relevant to the decision (including legislation, policies, or procedures) were considered and were not influenced by extraneous factors;
- (iii) The process was free from bias;
- (iv) The decision maker did not exercise a discretion or power in bad faith or for improper purpose;
- (v) The subject of the decision was afforded adequate procedural fairness; and
- (vi) The decision was reasonable.

While Council's CGP&P does not prescribe that Council decisions must comply with these principles, they represent best-practice administrative decision-making.<sup>9</sup> We will use these principles as a guide for assessing the legality and reasonableness of Council's Decision.

### 3. Review - Details of the Investigation and Findings

#### 3.1 Power to make decision

The Tenancy Advices (and to a lesser extent the Option Advice) (together the **Legal Advices**) principally considered whether Council had the power to make the Council Decision. Although we did not review the accuracy of the Legal Advices, we have considered whether Council had the power to make the Council Decision.

As owner of the Complex (i.e. the land) and on the assumption that the Legal Advices were accurate as to the tenancy arrangement, we find that Council had the power to make the Council Decision.

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<sup>9</sup> As outlined in the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

## 3.2 Matters relevant to decision

### Leasing Policy

As discussed above in section 1.12 of this Report, the Leasing Policy appears relevant to the making of the Council's Decision. The Option Advice referred to the Leasing Policy as being a 'significant document', which 'the Council should refer to'.

The aim of the Leasing Policy is to make land and building facilities available to organisations on a fair and equitable basis. Principles that must guide the Council's leasing/licencing of its property include ensuring optimal use of Council's community facilities, providing equitable and inclusive access by the community, and to support and encourage diversity of activities offered from Council facilities. The Council is to also ensure sound financial management and effective administration of community facility leasing and licencing.

The Investigation Report alleges that:

*There is a strong suggestion that the main clubroom is not a family-friendly or welcoming environment because of the way the football club members behave towards individual non-football persons, as well as the club's attitude towards the shared use of the Centre ... When other people or clubs attend or use the space, the football club will go in en masse and spread themselves out without respect for the fact that other groups are there.*<sup>10</sup>

It is noted that this behaviour does not promote a harmonious use of the area, and can be characterised as '*hostile, intimidatory and inconsistent with the principle of shared-use*'.<sup>11</sup>

These allegations establish that CFC's occupancy of the Complex (granted, of course, by the Council, being governed by the Leasing Policy) detracts from the Leasing Policy's principles of ensuring inclusive access by the community and encouraging diversity of activities offered from Council facilities.


CFC challenge the findings of the Investigation Report and have repeatedly stated that the findings are unsubstantiated. In response to reviewing the Preliminary Report, additional queries about the accuracy and substance of the findings were raised. The scope of this review was not to challenge the findings of the Investigation Report. Rather, the purpose of the review is to determine whether the Council Decision was lawful and reasonable on the basis of it having commissioned and relied on the findings in the was no longer in force. We accept, the CFC were and remain frustrated by the lack of specifics about incidences attributed to its club's members-

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<sup>10</sup> As set out in the TFF Letter.

<sup>11</sup> Ibid.





however, we find that the Council Decision was appropriate given the findings in the Investigation Report.

The Investigation Report further alleges issues relating to 'misappropriation of grant moneys' through 'insider trading' among individuals associated with CFC, and other discrepancies in the financial reporting that gave rise to a suspicion of dealings that resulted in windfall gains to CFC.

In its initial submission and in response to the Preliminary Report, CFC asserts that the issues and statements made by Council about the financial mismanagement of the Complex were unfairly attributed to the CFC and / or that the Council was confused about the two entities namely, the CFC and the CSCC. That is, the financial issues should have been levelled at the CSCC.

We disagree with this assertion and consider it was both appropriate and reasonable for Council to consider the issues identified by the investigation regarding the financial management of the Complex and CFC's (and other specific user's) role. We do not consider that the Council was confused and further that CFC had an opportunity to respond to the assertions made in the TFF Letter and it did not do so, or it did not do so in a way that adequately addressed the Council's concerns as part of the process.

As stated in the Preliminary Report and now part of this Final Report, the issue relating to the financial allegations are detracted from the Leasing Policy and is in clear breach of the guidelines intending to ensure sound financial management and effective administration of community facility occupancies. These conclusions are echoed in the Option Advice.


Council considered the 'options' set out in the Option Advice at its meeting on 2 September 2019. Council separately identified the Leasing Policy as a policy consideration and that the CFC did not act in line with the Policy, nor the conditions for use.

We find that the Council sufficiently considered and that Council's Decision is in line with the Leasing Policy.

### Legal Advices

In making the Council's Decision, Council also had regard to the Option Advice. The author of the Option Advice proposed three potential courses of action. The Council chose Option 1. Although it was presented to Council that it had other options, nonetheless we find it reasonable to choose the option it did. It was put to the Council in a formal legal advice, and indeed, the author of the Option Advice regarded Option 1 as the 'preferred' option for the Council. Council cannot be faulted for following this advice.

We also find that Council sought the Legal Advices for the purposes of understanding its risks relating to the use of the Complex (by all users), and what options it had available to it within the context of its decision making role, powers, and policies.



## Investigation Report

Separate to the Legal Advices that established Council had the power to make the Council Decision, the Investigation Report was a key document relied on by Council and was highly relevant to Council making the Decision.

As stated above, Council commissioned the Investigation Report on 1 July 2019 following the receipt of a series of reports and complaints about the past and continuing behaviour of sports clubs members using the Complex. To reiterate, the scope of the investigation was to:

- identify behaviour and conduct issues occurring at the Complex;
- identify what were the contributing factors to such behaviours and conduct;
- establish the source of any inappropriate behaviour;
- identify Council risks; and
- identify potential strategies for shared use of the facility.

(Our emphasis).

One of the key purposes of the Investigation Report was to inform Council of its legal and policy risks associated with the use of the Complex.

The Investigation Report makes serious allegations as to the conduct of CFC members and the overarching culture perpetuated within it.

We find it entirely reasonable for Council to commission the Investigation Report and for it to consider the findings of the Investigation Report to make the Council Decision.


Further, we find it entirely open and reasonable for Council to not only consider the findings and allegations relevant, but having sought and considered the response from the CFC to the allegation, to make the Council Decision. (This is discussed further in paragraph 3.6).

### **3.3 Extraneous factors**

Given that Council appeared to consider the above documents and factors only, we do not find that Council considered extraneous factors when making Council's Decision.

### **3.4 Bias**

Macquarie Dictionary defines bias to mean 'a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question'. A finding of bias may be made in this instance if determined that the Council already decided to make the Council's Decision (or similar



decision) prior to receipt of the Legal Advices, Investigation Report and consideration of other relevant factors.

We have not been able to make such a determination. Though complaints about the behaviour of CFC were received by Council from an early stage, in commissioning the Tenancy Advices and the Investigation Report, we find that the Council's instructions were objective and general. That is, the authors of those documents were not tasked with investigating the behaviour/legal position of CFC *only*, but to provide information as to all occupants and users of the Complex.

From this, we conclude that the Council commissioned the Tenancy Advices and the Investigation Report with an open, unprejudiced mind.

We also find that Council's consideration of the Tenancy Advices, the Investigation Report and the Options Advice was done without bias. We of course were not at the Council meetings when Council considered these documents or made the Council Decision, however, in making this finding, we have principally relied the contents of the officer reports to Council on the issue for its meetings held on 2 September 2019<sup>12</sup> and 24 September 2019<sup>13</sup>. (We note that both reports are subject to a confidentiality order).

Accordingly, we can see no evidence of Council being biased in making the Council Decision.

### **3.5 Bad faith or improper purpose**

We can see no evidence of Council making the Council Decision in bad faith or for an improper purpose.

### **3.6 Procedural Fairness**

#### Requirement of Procedural Fairness

Public authorities such as the Council are generally obliged to afford 'procedural fairness' in making decisions. This requires allowing an affected person a 'fair hearing', which will generally require and include notifying the person that a decision will be made, notification of the critical issues to be addressed, and provision of a reasonable opportunity to present a case<sup>14</sup>. (Our emphasis).

In considering whether the Council afforded procedural fairness to the CFC, we have considered the following:

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<sup>12</sup> Report reference SGC190902F02

<sup>13</sup> Report reference GC190924F02.

<sup>14</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Report No 129, December 2015) [14].

Having considered the findings of the investigation as set out in the Investigation Report together with the Option Advice, Council issued CFC prior notice of its intention to make a decision in relation to the use of the Complex by the CFC; the TFF Letter<sup>15</sup>.

We find that the serving of the TFF letter sufficiently notified CFC that a decision would be made, and provided a reasonable opportunity (14 days) to be heard. Critically, on multiple occasions Mr Kernahan has stressed that in notifying CFC of the decision to be made, the Council did not provide sufficient details as to the specifics of the allegations against CFC, thereby denying Mr Kernahan and CFC an opportunity to address them. When Mr Kernahan sought further particulars of the allegations<sup>16</sup> (refer **Annexure C**), his request was denied by Council (both verbally and via email) principally on the grounds of 'confidentiality'.

It is true that Council did not reveal exact details of the specific incidents alleged in the Investigation Report. We discuss the reasons for this below in this Report, under the heading 'Confidentiality'. (We note Council records that some examples were provided to Mr Kernahan in the meeting held on 3 September 2019). However, it does not appear, and we do not find, that the Council's Decision was based on these specific incidents, but rather the broader findings from the Investigation Report, which reveal an overarching poor club culture, often condoned by CFC senior officials. The culture was seen as disrespectful, hostile, territorial, homophobic and sexist. In the TFF Letter, Council outlined all of these tentative findings, and allowed CFC an opportunity to respond. Mr Kernahan responded to the TFF Letter as he saw fit, providing examples of CFC newsletters, letters to members, and testimonials, all which appear to be documents directed at disproving allegations of poor club culture. The response formed an attachment to the report to Council at its 25 September 2019 Council meeting.

Separately, Mr Kernahan, on behalf of the CFC, requested, was permitted to do so and then made a 'representation' (i.e. deputation) at the 25 September 2019 Council meeting to the Council on the issue. This afforded further opportunity for the CFC to present its case and to be heard.

In making Council's Decision, Council noted they had regard to Mr Kernahan's response<sup>17</sup>.

We do not find that the CFC was denied procedural fairness and that the Council Decision was either unlawful or unreasonable as a result of withholding relevant or specific allegations or denying a right of reply.

Instead we find Council's Decision to be lawful in this regard. We also find it to be reasonable, as Council sought and relied on legal advice (the Option Advice) as to process and powers.

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<sup>15</sup> Dated 3 September 2019.

<sup>16</sup> Letter dated 12 September 2019 from CFC to Council.

<sup>17</sup> Council Resolution 25 September 2019 (subject to a confidentiality order).

## Purpose of Investigation Report

Mr Kernahan has also repeatedly stressed (both in his initial submission to provide further information as part of this review, and in response to a review of the Preliminary Report) that he and other members of CFC who participated in the Investigation Report were 'not advised about the true nature of the investigation.'<sup>18</sup> This proving true, CFC allege that Council's actions may amount to a breach of procedural fairness. Mr Kernahan notes that CFC's participants in the investigation were:

*lead to believe that the investigation was being conducted because the Council was committed to making the Cove Community Sports Complex "a welcoming environment for all" and engaged the help of an outside consulting firm to have a "chat" with members of each of the affiliated clubs ... At no stage were they lead to believe that the consultants were conducting an investigation into the Cove Football Club<sup>19</sup>.*

From Mr Kernahan's perspective, he and CFC were informed that a broad investigation into the Complex was taking place, but which resulted in Council deciding to terminate CFC's occupancy of the Complex. Mr Kernahan is of the impression that the Investigation Report was guised as an overarching investigation of the Complex but its true purpose was to investigate CFC, in an attempt to uncover grounds for the Council's Decision to be made. We find that Mr Kernahan is mistaken as to the true purpose of the Investigation Report.

The TTF Letter (at page 1) stated what the focus of the investigation was. From our review of the TTF Letter, the Investigation Report, the Tenancy Advices, and all affiliated correspondence, there is no indication that the Council misled, or had 'set their sights' on the CFC. The Investigation Report and the Tenancy Advices were of a general nature, with a view to uncover information relevant to the entirety of the Complex. While it is true that the Council had previously received complaints against CFC, which may have somewhat instigated the Investigation Report, we are satisfied that the Council entered this process with an open mind<sup>20</sup>.

The author of the Investigation Report claims that at the commencement of each interview, the interviewees were informed of the purpose of the interview and the Investigation Report, which did not depart from Council's motives behind commissioning it<sup>21</sup>. Refer confidential Council resolution made at its meeting on 11 June 2019, which an extract is set out below, but redacted in the copy of this Preliminary Report provided to the CFC pending authority to release by Council.

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<sup>18</sup> Mr Kernahan asked a number of questions of MinterEllison as reviewer pertaining to the scope of the investigation. As explained separately to Mr Kernahan, this review is not a mediation and the review process does not facilitate a response being provided to every question raised. We consider however, that this Report addresses, if not answers, the relevant queries and issues raised in his submission and response.

<sup>19</sup> Tony Kernahan response to Susie Inat, 18 October 2019 (attached as Annexure J).

<sup>20</sup> Confidential Council resolution made 11 June 2019 (Report reference GC190611F08).

<sup>21</sup> Investigation Report page 3.

[Redacted]

We have also asked Mr Kernahan and the Council to provide details of correspondence and communications which invited Mr Kernahan to take part in the investigation as the CFC representative and which explained the basis for the investigation.

Mr Kernahan provided a copy of a text message sent by Ms Abby Dickson, former General Manager City Development, referencing a discussion they previously had, and thanking him for agreeing to be part of the process. Separately the Council provided a copy of a similar text message sent to Mr Kernahan from Ms Dickson (attached as **Annexure K**).

Although no information could be provided about the 'discussion', we are satisfied that the communications to all parties involved (including the CFC) from the Council and the consultants undertaking the investigation explained the purpose of the investigation.

Based on the information provided and available to us, we therefore find that Mr Kernahan and the CFC were advised about the true nature of the investigation and were provided procedural fairness in this regard.

#### Confidentiality


As stated above, we accept and find that it is true that (with the exception of a few examples) the Council withheld details of the specific allegations (i.e. the exact instances) which were the subject of complaint and which were revealed in the Investigation Report directly relating to the CFC. As discussed above, Mr Kernahan felt that withholding this information constituted a breach of procedural fairness on the grounds they could not properly respond as requested.

Importantly, the author of the Investigation Report notes that each interviewee was advised that the investigation was to be kept confidential and they were either asked to and/or entered into a Confidentiality Agreement when providing a statement. We have not reviewed the validity of the confidentiality agreements and do not consider it necessary to do so as part of this review.<sup>22</sup> We accept that the Council was likely not at liberty to reveal the identities or statements of the interviewees, nor details of specific incidents, which potentially could identify the individuals involved, and were bound by the confidentiality agreements (expressly or implicitly). (We also consider that it was reasonable for the Council to identify key individuals, representing the various users of the Complex, to take part in the investigation).

It therefore may have been unlawful or at least unreasonable for the Council to breach these confidentiality agreements by providing CFC this information. Therefore, we believe the Council acted reasonably in providing the information they did (set out in the TFF Letter) and that the

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<sup>22</sup> CFC have queried why participants in the Investigation were required to sign confidentiality agreements and the selection of the participants by Council in the process.



detail was sufficient for CFC to respond to. In any event, it is our view that procedural fairness was afforded to CFC even where details of specific allegations were not revealed to them, as established above.

Further, we note that Council received and relied on legal advice (the Option Advice) which advised Council to keep the Report and their discussions of the Investigation Report confidential (under the provisions of the *Local Government Act 1999* (SA)). We find that Council did not act unreasonably in relying on this advice.

### Disposal Policy

As discussed at section 1.12 of this Report, the Disposal Policy appears to apply to the Council's Decision. The Disposal Policy requires the Council to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations related to the disposal of Council property (including the granting of leasehold interests). All these factors are essentially elements of procedural fairness.

As established, we find that the Council did not withhold procedural fairness from CFC, and in doing so ensured that this requirement of the Disposal Policy was not breached.

## **3.7 Reasonable**


Mr Kernahan has stated in his initial submission to this review that if the Council was concerned about the behaviour of the members of the CFC, why were they not raised with the President of the CFC immediately? Further Mr Kernahan raised that the Council made no attempts to work with the CFC to improve the behaviour of its members. For example, Mr Kernahan states that Council did not run any education sessions, suggest online courses and/ or accreditation<sup>23</sup>.

Mr Kernahan has suggested that these matters, together with the failure to provide warnings or communicate their concerns formally further, evidences the lack of procedural fairness and natural justice afforded to the CFC by the Council in this matter.

We remind the CFC that the Council Decision was based on having undertaken a review of the entire Complex. We are satisfied that the Council was not aware of (all or the extent of) the behavioural and other issues, including those attributed to the CFC, until it had commissioned and received a copy of the Investigation Report. Council's process, including the commissioning of the Investigation Report, was therefore entirely appropriate.

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<sup>23</sup> Mr Kernahan letter to Susie Inat dated 18 October 2019, page 5



Separately, we are of the view it is not Council's role to provide "behaviour improvement" training to the CFC member's, i.e. to comply with the Club's Member Protection Policy and Code of Conduct. (For example, refer clauses 5 and 6).

Additionally, it has been suggested by Mr Kernahan in his initial response and again as part of his response to the Preliminary Report that it is the Council's responsibility to deal with issues relating to alleged intoxication and alcohol related matters. Ironically, the Council, through its decision, has done just that. Having been alerted to behavioural issues, including alcohol related, the Council has undertaken an investigation to inform itself of behavioural issues relating to the users of the Complex.

The fact that CFC state "*it is not the responsibility of CCFC*" with respect to issues relating to alleged intoxication at the Complex <sup>24</sup> is concerning. Licencing laws may strictly make Council 'responsible', however, I would respectfully suggest that the CFC reconsider its position on this matter, the role it has to play as a joint tenant and user of the Complex, particularly in light of the proposed new grant of licence and its own policy and codes of behaviour. CFC should also consider the responsibilities it has to its members.

It is our view that all aspects of the Council's Decision were reasonable. It was reasonable for the Council to commission and rely on the material before it in making its decision, namely the Investigation Report and the Legal Advices. Though the Option Advice provided other courses of action, as discussed in section 3.2 of this Report, the existence of other options did not make making the Council Decision unreasonable. Indeed the Council was advised that from a risk perspective this was the 'preferred' option.

As has been established, the Council's Decision was in compliance with all relevant Council policies. Non-compliance with these policies would demonstrate a potentially unreasonable decision. The fact these policies were complied with further demonstrates the reasonableness of the Council's Decision.

We therefore conclude that not only was the Council's Decision lawful, it was also reasonable.

## 4. Conclusion and Recommendations


Council had the power to make the Council's Decision.

Council considered all relevant factors, and reasonably relied on legal advice in making Council's Decision.

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<sup>24</sup> Email response to Susie Inat from Tony Kernahan dated 14 November 2019





CFC was afforded procedural fairness. CFC were notified of the potential for the making of the decision, were afforded a right of reply, and were provided with as much information as necessary.

Council's Decision was also reasonable.

It is recommended that Council undertake a review of its confidentiality orders to assess what further information could or should be released to the public, i.e. the CFC. We are of the view that relying on the confidentiality of the process and orders has impacted on CFC's perception as to the lawfulness and reasonableness of the decision.

In response to the review of the Preliminary Report and this recommendation, CFC has requested that it be provided with any further information which is, on review by Council, determined to no longer be the subject of a confidentiality order. The *Local Government Act 1999* (SA) does not operate in such a way that the removal of confidentiality orders enables the 'staggered' or provisional release of documents to particular members (or bodies) of the public. In circumstances when a confidentiality order is not made, or no longer applies, the documents must be available for public inspection, without fee. It would be reasonable however, for Council to advise CFC as soon as possible, if further documents relating to the Council Decision become available for inspection.

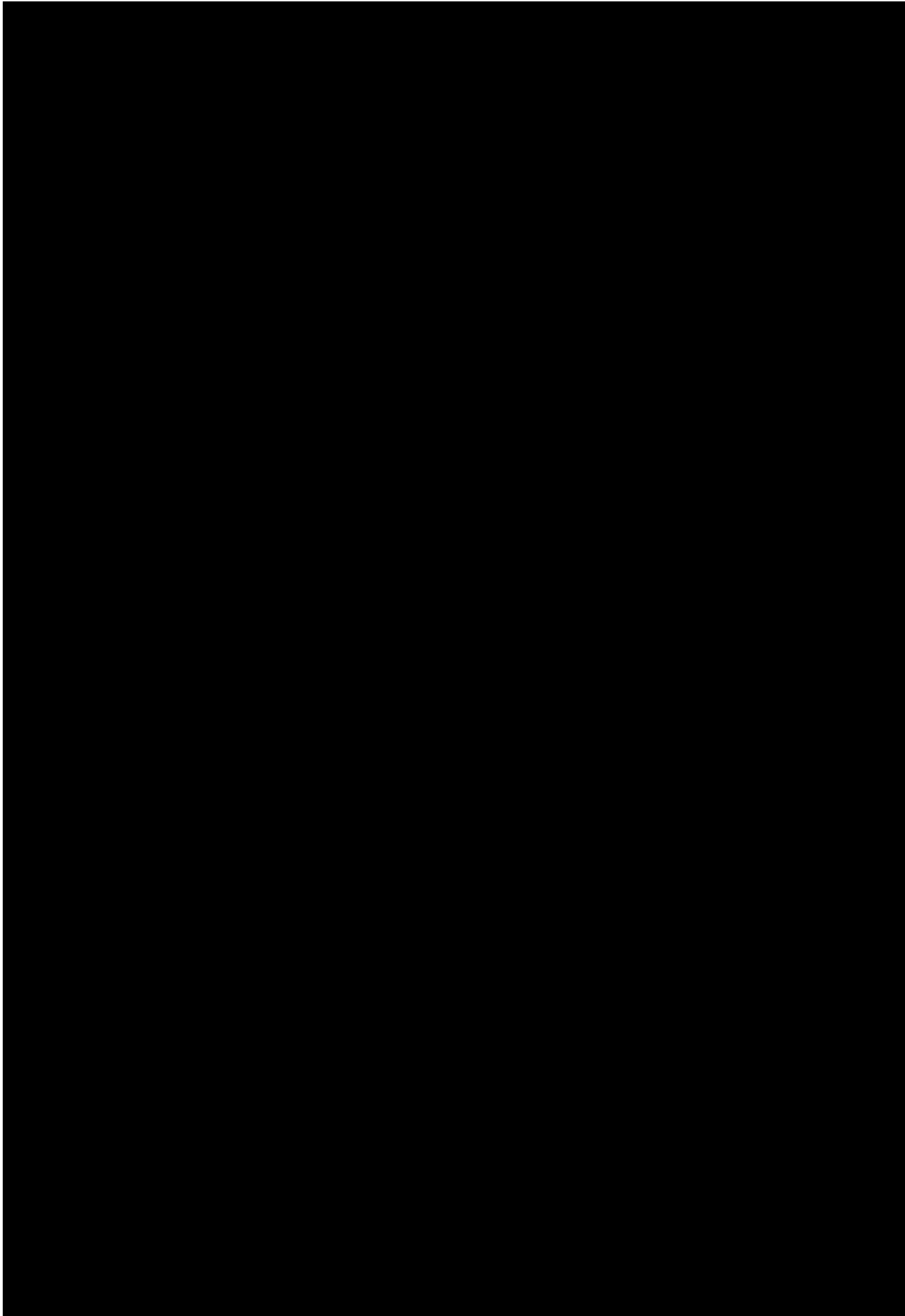
No further recommendations are made as a result of feedback received to the Preliminary Report.

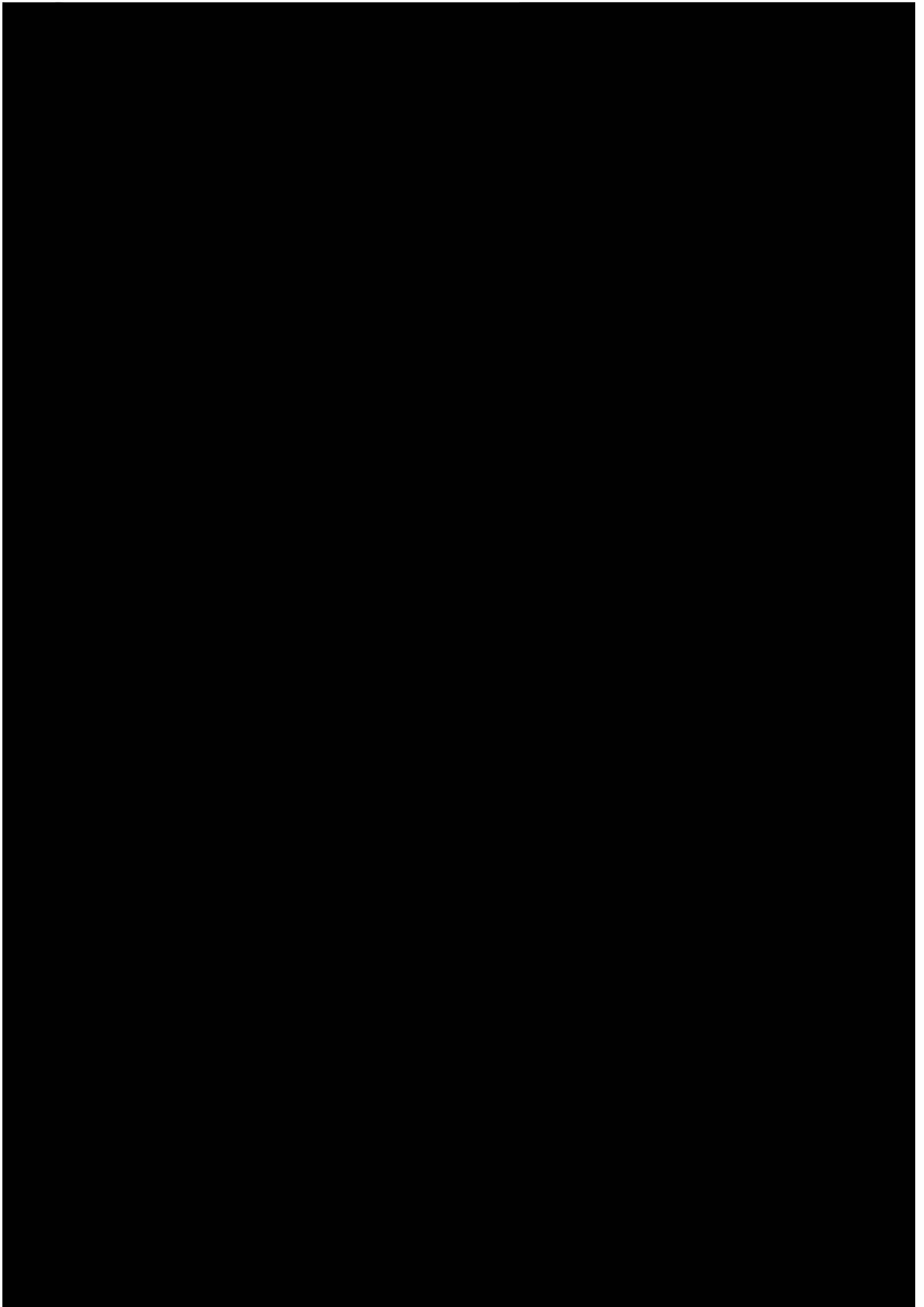


## Annexure – A

# Tentative Findings of Fact Letter

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove  
Football Club







## Annexure – B

### Email Fiona Harvey to Tony Kernahan

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove Football Club

Shireen Dohnt

**From:** Fiona Harvey  
**Sent:** Tuesday, 3 September 2019 3:02 PM  
**To:** cove.president@mail.com  
**Cc:** lisa.faraci@sanfl.com.au; cwarman@adam.com.au  
**Subject:** Confidential: Cove Sports and Community Facility Investigation Outcomes  
**Attachments:** Mr Tony Kernahan Cove Cobras Football Club Inc re Investigation putcomes.pdf

Dear Tony

Adrian Skull (CEO) and I would like to meet with you this afternoon to discuss the outcomes of Council's consideration, on 2 September 2019, of the Cove Sports and Community Facility Investigation.

Most importantly that Council requires Cove Cobras Football Club to respond by 5pm Tuesday 17<sup>th</sup> September 2019, in relation to the Tentative Findings of Fact and the possibility that Council may decide not to enter into a further licence or lease with CCFC.

As you are aware, Council engaged an independent investigator to undertake an investigation into the past and continuing behaviour of sports club members using the Cove sports facility, focusing on:

- Intimidation of Council staff or other users of the facility;
- Behaviour inconsistent with a shared, family-friendly facility;
- Any other inappropriate behaviour;
- Whether it is likely the current clubs on site can share use of the clubhouse building harmoniously

The attached letter sets out the resolutions in respect of the Cove Cobras Football Club, which we wish to discuss with you in more detail today.

We invite you to a meeting at the City of Marion Administration Centre 245 Sturt Rd Sturt, at 5pm today (3 September 2019). We have also extended this invitation to Lisa Faraci (SANFL) and Craig Warman (SFL).

Please check in at reception on your arrival

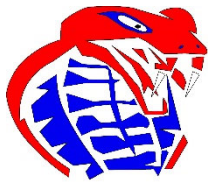
Regards



## Annexure – C

# Cove Football Club response to Tentative Findings of Fact

*Annexure to Local Government Act 1999 - s270 review*  
Request for internal review of Council decision by Cove  
Football Club



## The Cove Football Club Inc

*Believe in us!*

Tony Kernahan  
Cove Football Club Inc  
President  
12 September 2019

To: Mr. Adrian Skull  
Chief Executive Officer  
City Of Marion

### RE: COVE SPORTS AND COMMUNITY FACILITY INVESTIGATION OUTCOMES

Dear Adrian,

I refer to your letter dated 3rd September and thank you for bringing the Council's concerns to our attention.

We believe the Cove Football Club is a family oriented club. We have strong membership in the senior grades, juniors, minis and in the last three years – senior women's and U14 girl's teams. Our mini's program involves close to 300 kids across Auskick programs, U8s up to U12s. We encourage all of our families to be present in the club and try to create a safe, friendly and respectful environment for all – both within our football club, and within the affiliated clubs.


We expect each of our members to follow our published Code of Conduct. We acknowledge that both within our club and within society in general there are exceptions. However, to suggest that there is a culture of inappropriate behaviour is concerning and not consistent with our belief.

We believe we should be measured against how we deal with these exceptions or incidents which is difficult in the current situation as we have not been provided with specific details and information relating to allegations as outlined in your letter.

As a Football Club, if any formal complaint is brought to our attention by any other person/s or affiliated club we would, and have in the past addressed these issues in a professional manner and sought resolution. This includes seeking input from the Southern Football League and representatives from the SANFL to ensure we have followed the correct protocol when dealing with grievances.

This has been a particularly challenging year both for me personally as the Cove Football Club President and for the Club as a whole. There have been difficulties adjusting to a new management model and having to change Club operations to better meet Council expectations





around facility management. This has been further complicated by the timing of the kitchen upgrade, liquor licencing issues, and proposed relocation of the Club to Capella Drive.

To this end, I have regularly addressed our club members providing facility updates and outlining expectations from not only the Council but our own Club regarding Codes of Conduct. I have held face to face meetings with over 200 club members in attendance, been active within newsletters and posted social media updates to ensure messaging around behavioural expectations are clearly understood by all our members. I have also had the SFL President attend meetings with members and oversee operations on game days and social events to ensure members are acting appropriately and in accordance with our Code of Conduct.

The allegations as raised in your letter are extremely worrying, however the Cove Football Club cannot address these allegations without specific details.

The Cove Football Club are committed to taking a proactive approach where there is evidence of a breach of the Code of Conduct. Members understand that there may be serious repercussions, including disqualification of membership where a breach occurs.

We feel as a Club that we are best placed to seek solution and resolution for any inappropriate behaviour in a quick and respectful manner that ensures our Code of Conduct is being followed at all times. I have also personally requested that the venue manager contact me direct if any issues arise so I can address the matter immediately.


Our Code of Conduct has been reviewed and aligns with the current SFL, SANFL and AFL policies. As a Club we are very happy to continue to review the Code in consultation with other parties, including other user groups at the Cove Sports Club to ensure we have a Code that complies with all Community Club user group expectations.

As the current Club President, I and our Committee are working extremely hard to continue to develop our Club to become recognised as a leader in our community. This is often a thankless task, but we are a strong, positive committee who has faced many challenges over the past 12 months and we are focused on ensuring our Club is inclusive and welcoming of all, including other users and the Community Club.

I request the City of Marion Council help us in this process moving forward. I believe that all Clubs at the Cove Sports and Community Centre can be aligned, work collaboratively and be respectful in all their dealings. Communications can at times be challenging as we are all volunteers and are of course time poor. That said, Cove FC welcome the opportunity to have open and honest conversations with other users at the Cove Sports and Community Centre so we can move forward and ensure best outcomes for all of our sports in a positive and proactive manner.

We note there since the disbanding of the CSCC committee there is limited formal interaction between the six sporting clubs that occupy the facility.

**Allegations:**



We agree that the allegations raised by the City of Marion Council are extremely serious. We seek Council's support to address the concerns and request further information regarding the allegations so we can review and respond properly.

The Cove Football Club wish to co-operate fully and respond respectfully to the serious and strong allegations that have been made against the Cove Football Club and its culture. Accordingly, can you please provide us with the following information to allow the Cove Football Club Committee to investigate and respond as appropriate.

- Terms of reference for the investigation?
- What was the purpose of the investigation?
- How it was conducted?
- How many people were interviewed; who did they represent; how were they selected?
- What specific incidents were raised?
- Who at the Cove Football Club were involved in the alleged incidents?
- Evidence that the Cove FC had involvement in the misappropriation of CSCC funds, and confirm if this has been reported to the South Australian Police?

**Please note:** That while I was personally invited to attend an investigation meeting, I was not of the understanding that it was an investigation into the Cove Football Club. Had I been made clearly aware of this, I would have sought to have a support person present at the interview. I also note that none of the allegations as outlined in your letter, were directly raised with me during the interview process.

The Cove Football Club are committed to being open and proactive in this process. These are very worrying and stressful allegations. In order for the Cove Football Club to respond further, please provide the requested information so we can provide you and the Council a considered response.

The Cove Football Club very much needs the Council's help to resolve any issues big or small with the other users identified in the Council's letter. I have personally felt that relationships between the affiliated clubs was heading in a more positive and respectful manner.

We don't always get it right but the respect from the Cove Football Club towards other users at the Cove Sports Clubs has not diminished while I have been President.

I respectfully await your response.

Kind Regards

Tony Kernahan  
President  
Cove Football Club  
Mobile: 0409-632-378  
Email: [cove.president@mail.com](mailto:cove.president@mail.com)



## Annexure – D

# Council Letter – Advising of Decision

Annexure to *Local Government Act 1999* - s270 review

Request for internal review of Council decision by Mr  
John Pegoli

25 September 2019



The Cove Cobras Football Club Incorporated  
Attention: President, Tony Kernahan  
Oval Road  
HALLETT COVE SA 5158

PO Box 21, Oaklands Park  
South Australia 5046  
245 Sturt Road, Sturt  
South Australia 5047  
T (08) 8375 6600  
F (08) 8375 6699  
E council@marion.sa.gov.au

Dear Mr Kernahan

#### COVE SPORTS AND COMMUNITY FACILITY INVESTIGATION OUTCOMES

As you are aware, Council engaged an independent investigator to undertake an investigation into the past and continuing behaviour of sports club members using the Cove sports facility, focusing on:

- Intimidation of Council staff or other users of the facility.
- Behaviour inconsistent with a shared, family-friendly facility.
- Any other inappropriate behaviour.
- Whether it is likely the current clubs on site can share use of the clubhouse building harmoniously.

The investigation identified serious, inappropriate behaviour by the Cove Cobras Football Club (CCFC), which was provided to you in a tentative Findings of Fact statement on 3 September 2019. Council requested CCFC respond to the findings by 5pm Tuesday 17 September 2019. The letter of 3 September 2019 also recognised the possibility that Council may decide not to enter into a further license or lease with CCFC.

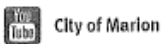
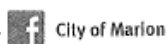
Council carefully considered the response from CCFC, including your deputation, at its meeting on 24 September 2019. It made a decision to terminate the Tenancy at Will arrangement with CCFC at the Cove Sports Facility with one month's notice. A formal termination letter will be provided to you later today.

We appreciate that you will need to take steps to communicate this decision to your members and we can support you to develop this communication.

Yours Sincerely,

**Fiona Harvey**  
Acting Chief Executive Officer

The City of Marion acknowledges it is part of Kaurna land and recognises the Kaurna people as the traditional and continuing custodians of the land.



marion.sa.gov.au



## Annexure – E

# Notice to Terminate

*Annexure to Local Government Act 1999 - s270 review*

Request for internal review of Council decision by Mr  
John Pegoli



Our Ref: JM2:M192056

Mellor Olsson Lawyers  
ABN 44 157 825 957  
lawyers@molawyers.com.au

25 September 2019

Cove Football Club Inc  
Oval Road  
HALLETT COVE SA 5158

**ATTENTION: TONY KERNAHAN**

**BY EMAIL:** cove.president@mail.com

**AND BY EXPRESS POST**

Dear Sir

**OCCUPATION OF PREMISES AT OVAL ROAD, HALLETT COVE**

We act for the City of Marion (**Council**).

The Cove Football Club (**Club**) currently use of part of the premises at Oval Road, Hallett Cove pursuant to a tenancy at will (**Tenancy**).

The Council has resolved to terminate the Tenancy and accordingly we \*enclose, by way of service, a Notice of Termination (**Notice**).

Pursuant to the Notice the Club must vacate the premises by midnight on 25 October 2019.

We confirm that under the current arrangement the main clubroom, function room and bar area are only accessible on prior arrangement with the Facility Manager.

If the Club has equipment or other property in the main clubroom, function room or bar area you are required to contact James O'Hanlon (08 7420 6428) or Clare Benn (08 7420 6410) at Council to arrange to remove any such equipment.

Yours faithfully  
MELLOR OLSSON

  
JAMES McEWEN  
Partner  
Direct Email: jmcewen@molawyers.com.au  
Phone: 8414 3494 (Adelaide)

Adelaide  
Level 5, 60 King William Street  
Adelaide SA 5000

CPO Box 74 Adelaide SA 5001

P 08 8414 3400  
F 08 8414 3444

Port Lincoln  
11 Mortlock Terrace  
Port Lincoln SA 5606

PO Box 411 Port Lincoln SA 5606

P 08 8682 3133  
F 08 8682 6030

Clare  
165 Main North Road  
Clare SA 5453

PO Box 671 Clare SA 5453

P 08 8842 1833  
F 08 8842 1811

Regional Offices  
(By appointment only)

Barossa Valley, Bordertown,  
Kadina, Keith, McLaren Vale

P 1300 414 414  
F 08 8414 3444  
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**TO:**

**COVE FOOTBALL CLUB INCORPORATED**  
ABN 90 884 385 127  
Oval Road,  
HALLETT COVE SA 5158

**FROM:**

**CORPORATION OF THE CITY OF MARION**

**NOTICE TO TERMINATE**

**MELLOR OLSSON**  
Solicitors  
80 King William Street  
ADELAIDE S.A. 5000

**Solicitors for the Licensor**

Telephone : 8414 3400  
Facsimile : 8414 3444  
**SOLICITOR:**

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## NOTICE TO TERMINATE

**TO: COVE FOOTBALL CLUB INCORPORATED ABN 90 884 385 127 (CFC)**  
Oval Road  
HALLETT COVE SA 5158

CFC occupied portion of Oval Road Hallett Cove (**Premises**) pursuant to a sublicence agreement with Cove Sports and Community Club (**CSCC**).

The sublicence agreement automatically terminated as a result of the termination of the head licence agreement between CSCC and the Corporation Of The City of Marion (**Council**).

From the date of termination of the sublicence, CFC occupied the Premises pursuant to a tenancy at will (**Tenancy**) with the Council.


**TAKE NOTICE** that pursuant to the Tenancy the Council **HEREBY GIVES** CFC thirty (30) days clear Notice to Terminate.

Accordingly, the occupation of the Premises by CFC will cease at midnight on 25 October 2019.

This notice is without prejudice to any other rights of the Council and does not relieve CFC of any obligation to comply with the obligations imposed by the Tenancy or at Law.

DATED the *25<sup>th</sup>* day *September* 2019.

The Licensor  
**CORPORATION OF THE CITY OF MARION**  
by its solicitors Mellor Olsson

Per: 

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# Annexure – F

## Request for Review

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove  
Football Club



## **The Cove Football Club Inc.**

***Believe in us!***

Mr Adrian Skull  
Chief Executive Officer  
City of Marion  
council@marion.sa.gov.au

Dear Mr Skull

We wish to formally request a review of a decision under Section 270 of the *Local Government Act, 1999*.

As you are aware, the Cove Football Club tenancy has been terminated from the Cove Sports and Community Facility.

The reasons provided for our termination include:

- Intimidation of council staff or other users of the facility
- Behaviour inconsistent with a shared family-friendly facility
- Sexual harrassment
- Any other inappropriate behaviour


In a letter that we received on the 3<sup>rd</sup> September 2019, we were asked to respond to these matters, however we were provided no context or details for the allegations. We requested additional information via a letter that we sent to you on the 12<sup>th</sup> September 2019. However, in an email from Fiona Harvey, Acting General Manager City Development, we were told that the City of Marion could not provide any additional request for information as the matter was 'confidential'.

The Cove Football Club and its volunteers have worked tirelessly since it was founded in 1984 to create a strong and successful football club for the Hallett Cove and surrounding areas.

We are devastated by the news that the City of Marion has terminated our lease at the Cove Sports and Community Club. This is a difficult and emotional time in our club's 35-year history and the council's decision will have a far-reaching impact on our club and the community at Hallett Cove.

We do not believe we have had a fair and reasonable opportunity to respond to the Council. We have had no right of reply. We have not been provided natural justice or procedural fairness. We have not been able to provide a detailed response to our actions without knowing and understanding the accusations and the findings of the investigation which has been held in confidence.

The Cove Football Club has a Member Protection Policy and always work with members who are displaying inappropriate/unacceptable behavior and we are not averse to removing members from the Cove Football Club if and when required. If matters are brought to our



attention we will take action to ensure that the matter is appropriately dealt with. However, if these matters have not been raised, in detail with us and preferably in writing, how can we possibly know about them and provide specific responses including if this was known to the club and understood to have been dealt with?

One of our major concerns is the sexual harassment allegations that have been mentioned. Why were they not immediately reported or brought to our attention? Was this reported to SAPOL immediately if it was not mentioned to us or was this left until now to be brought up? Has this been allowed to potentially continue? If these are in fact matters we have previously dealt with and it is found that we could (or should) have done things differently or with a better outcome then please work with us and help us to grow and learn. We are volunteers doing our best to provide an environment for all to have fun participating in a sport we love and socialising with friends – we are not experts in human resources.

The loss of the Cove Football Club will have a devastating impact on the community and access to sport in the Hallett Cove area. In a time of increased obesity and lack of activity in children, as well as them spending way too much time in front of digital screens, removing a club full of energetic children from what is potentially their only exercise, is just absurd. We are believers that a team sport environment builds many skills that help young people develop into mature young adults and exemplary members of society – traits like confidence, honesty, integrity, respect of their coaches, teammates and others, and commitment to a team. These skills cannot be learnt on an iPad.

Of all football participation within the City of Marion, 15% is played at the Cove Football Club – with over 2000 members. The majority of the players at Cove – 72% in fact – are aged between 5 and 14. The public outpouring of emotion on social media since the announcement has signified the impact this decision is already having on our young members and their families.

The Cove Football Club has enjoyed sustained growth, increasing our player numbers by 11.5% in season 2019 alone. We have continued to attract new female players to the club and our female program has more than doubled in player numbers in the past three seasons. Our female A Grade side has just won a premiership, for the second year in a row, attracting more members, interest, players, potentially leading to an additional senior women's team at Cove. It is these junior and female players who will suffer the greatest loss if the Cove Football Club no longer has a future at the Cove Sports and Community Club.

We request a formal review of the Councils decision on removing the Cove Football Club from the Cove Sports and Community Complex to ensure that we are provided with a fair solution to prevent further deformation and damage to our brand – The Cove Football Club.

If you require any additional information, or would like to discuss this letter in more detail, please feel free to contact me 0409 632 378 or via email: [cove.president@mail.com](mailto:cove.president@mail.com)

Kind regards,

Tony Kernahan  
President  
Cove Football Club



## Annexure – G

# Leasing and Licencing of Council Owned Facilities Policy

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove  
Football Club

# Leasing and Licensing of Council Owned Facilities Policy



## 1. RATIONALE

Council provides an extensive range of facilities from multipurpose sites with playing fields, halls, community gardens, commercial, tennis and netball clubs, kindergartens etc. Leases or licenses are provided to a diverse range of organisations ranging from small community groups, sporting clubs, state government agencies to commercial entities.

The Policy provides guiding principles and statements that will form the minimum negotiating position of Council as new leases are entered into for all organisations who occupy council owned facilities.

## 2. POLICY STATEMENT

City of Marion may lease or license Council owned or managed land to meet Council's strategic plans based on community priorities. The aim of the policy is to make land and building facilities available to groups or organisations on a fair and equitable basis to meet community needs and support the optimal use of facilities.

## 3. OBJECTIVES

The aim of the Policy is to ensure an equitable and consistent approach to leases and licenses which encourages high utilisation rates, diversity of use and supports organisations occupying Council facilities to be sustainable.

Council will ensure facilities are fit for purpose and the term and conditions of leases are equitable, consistent, support good governance, accountability and optimise the use of Council facilities.

The following principles guide the provision and management of Council owned facilities:

### Community Benefit & Social Inclusion:

- Ensure Council-owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Community Vision
- Optimise use of Council's community facilities and provides equitable and inclusive access by the City of Marion community
- Support and encourage diversity of programs and activities offered from Council facilities
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Marion;
- Encourage active and healthy lifestyles

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# Leasing and Licensing of Council Owned Facilities Policy



## Good Governance & Accountability:

- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria
- Ensure lessees pay fair and reasonable rentals based on established eligibility criteria and calculation methodologies
- Facilitate a shared approach between Council and lessee as to the cost of management and maintenance of Council-owned facilities;
- Ensure lessees are accountable for meeting operational responsibilities for venue management and meeting agreed targets
- Ensure sound financial management and effective administration of community facility leasing and licensing.
- Ensure that Council-owned facilities are appropriately maintained as Council assets

## Environmental Sustainability:

- Ensure Council facilities maximise the use of solar, energy and water efficiency initiatives to reduce the environmental impact
- Encourage and support Lessees to implement environmental initiatives

## 4. POLICY SCOPE

This Policy applies to the leasing or licensing of Council owned or managed land and facilities.

## 5. IMPLEMENTATION

### 5.1 ELIGIBILITY FOR LEASE OR LICENCE

**5.1 (a) Council will enter into a lease or licence agreement with a *not for profit* organisation, once the organisation can demonstrate:**

- It is a not for profit organisation under Australian tax office definitions
- It is an incorporated/legitimate body under the auspice of an incorporated body or under the auspice of an incorporated body
- It has an Australian Business Number (ABN)
- It is financially viable by providing 3 years of annual financial statements to Council
- It complies with relevant legislation and regulations governing its activities
- It is able to demonstrate it will meet a community need
- It has good governance capability

**5.1 (b) Council will consider a lease or licence agreement, for a commercial organisation once the organisation demonstrates:**

- It is able to demonstrate it will meet a community need

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# Leasing and Licensing of Council Owned Facilities Policy



- It provides a financial benefit or return to Council
- It has the professional capacity and experience
- It does not generate income from gambling (including poker machines)
- It provides an economic benefit to the City of Marion

## 5.1 (c) Council will consider a lease or licence agreement with a *school* or *kindergarten* where:

- The use does not impact on the broader community needs or result in a facility being used beyond its capacity
- Consideration is given to a contribution to the maintenance of the facilities used by the school, the level of contribution reflecting the level of use
- Fees are consistent with community fees, although a reduction could be considered to reflect the school's socio economic status
- A school, DECD or other education body have appropriately contributed to the capital development of the facility they will be provided with exclusive use
- The school or kindergarten has adequate insurance

## 5.2 ANNUAL FEE

Rent will be based on the market rate supplied by an external valuer appointed by Council. The fee will be provided to the organisation at the time of entering into a new lease or renewing the lease. Rent will increase annually by CPI and the market rate will be reviewed every 5 years.

Not for profit organisations will be eligible for up to 93% discount based on meeting the criteria for good governance, facility utilisation, social inclusion, volunteer management and environmental initiatives (refer Appendix 1).

Where a building is acquired by or gifted to Council consideration will be given to the terms of this arrangement when determining the annual fee. In this situation a contribution to the ongoing repairs, maintenance and renewal costs will be considered when determining the annual fee to ensure alignment with the market rate and subsidy.

A minimum fee of \$300.00 (excluding GST) per annum shall be payable should the market rate and subsidy be calculated at less than \$300.00.

The minimum fee of \$300 (excluding GST) per annum shall be payable by Community Gardens.

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# Leasing and Licensing of Council Owned Facilities Policy



## 5.3 TERM OF AGREEMENT

Terms of agreement will not be greater than 5 years unless Council resolves to grant a longer term lease. In these circumstances consideration will be given to developing a management plan in partnership with the organisation which seeks to develop the facility long term.

Where a lease or licence is to be granted for greater than 5 years and is located on Community Land community consultation will be undertaken in line with the Local Government Act 1999.

Where the term of the lease or licence is to be less than 5 years, and Section 20B of the Retail and Commercial Leases Act 1995 applies, the Lessees or Licensee shall be required to provide Council with a certificated exclusionary certificate duly signed by the Lessee's or Licensee's solicitor waiving the minimum statutory term of five years in the form required by the Act.

This certificate must be provided to the Council prior to the Lessee or Licensee taking possession of the premises.

## 5.4 MAINTENANCE, REPAIRS AND REPLACEMENTS

A comprehensive list of building items will be provided to organisations when providing a Letter of Offer which will clearly set out responsibilities. Council will take responsibility for structural items in buildings this will include items relating to footings, floor (not including coverings), walls (not including applied finishes), roof members and cladding and provision of services to the external walls.

## 5.5 UTILITIES, OUTGOINGS AND WASTE DISPOSAL

Organisations will be responsible for the cost of all utilities, outgoing and waste disposal associated with their operations.

Council will work with organisations to assist them to implement environmental initiatives such as waste reduction, recycling and energy efficient practices.

## 5.6 WATER USAGE

### 5.6 (a) Buildings

Where the lease or licence refers only to a building and there is no open space attached to the leased or licensed area then the Lessee/Licensee shall be responsible for the payment of all water and sewer charges levied against the leased area.

### 5.6 (b) Open Space

Where there is an associated playing field that is accessible to the general community the lessee/licensee will be responsible for 10% of the cost of the water used. Where the facility

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is fenced or not accessible to the community the lessee / licensee shall be responsible for the payment of all water and sewer charges levied.

Council encourages water conservation techniques and when considered appropriate shall place a cap on the amount contributed by Council. The amount of the cap shall be determined at the time of negotiating a lease or licence by Council. Access to stormwater reuse will be encouraged.

Where there are shared meters on the site consideration will be taken on community access to the site and the proportion will be negotiated with the organisation to ensure it is in line with like facilities.

## 5.7 SPORTING GROUNDS AND COURTS

Council maintains playing fields that are open to the public for passive recreational activities. There are some circumstances where Council may negotiate with a Club to take on the responsibility of maintaining sporting grounds which are specialist in nature such as bowling greens.

Council will work in partnership with tennis and netball clubs, peak bodies and other funding organisations when courts are required to be resurfaced. Clubs will be expected to contribute funds either through a combination of club funds, external grants or a loan from Council. In determining the club contribution consideration will be given where courts are made available for community use.

## 5.8 FLOOD LIGHTING

Council will be responsible for the regular inspecting of light poles and ensuring they are maintained; lessee and licensees will be responsible for the replacement of lamps.

Should a lessee/licensee seek to install new lights, they will be expected to make a financial contribution. Council will work in partnership with the lessee to seek external funding and/or negotiate a Council loan.

## 5.9 SUB-LETTING OR HIRING OUT OF LEASED FACILITIES

It will be a condition of the lease that all sub-letting arrangements will be in line with this Policy and that lessees must seek Council approval to the terms and conditions prior to sub-letting.

Where an organisation enters into a sub-licence for part or all of the premises to another club or a commercial activity, Council reserves the right to assist the sub-tenant in negotiating a sub-licence fee based on the nature and quantum of the sub-licence.

Clubs are encouraged to hire out facilities to maximise the use of the facilities and to generate income to support them to be sustainable. It is expected that these rates do not exclude the community from being able to access them due to the cost.

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## 5.10 HARDSHIP

Where a Lessee/ Licensee is able to produce evidence that the fee will cause undue hardship (after subsidies are applied) then the Lessee or Licensee can make an application to Council seeking deferment or reduction of payment.

The City of Marion is under no obligation to accept such a request and will make its decision based on the financial position of the lessee or licensee at the time of making the application.

## 5.11 GAMING MACHINES

Council does not support the introduction or increase of gaming machines in premises on Council owned land for any new Lessee or Licensee.

## 5.12 POLITICAL SIGNS

Advertising of political parties, Member of Parliament, Elected Members and candidates for Parliament/Council be prohibited on Council owned premises.

## 6. DEFINITIONS

**Community Buildings** – Buildings primarily available to facilitate community activities in line with Council's corporate strategies and community land management plans.

**Community Club or Organisations** – Organisations that are incorporated for the benefit of the community and any profit is distributed back into the facility and does not restrict its services to its members and provides one or more

**Incorporated Body** – Any Committee or Organisation that is incorporated under the Associations Incorporation Act 1985

**Lease** – Such agreements shall be used where the occupier has full and exclusive use of the premises.

**License** – Such agreements shall be used where the occupier does not have full and exclusive use of the premises

**Maintenance** – Means that facilities are maintained; in good repair and condition; conform to relevant legislation and codes; are free of graffiti and other acts of vandalism; and includes preventative maintenance approaches.

**Non-community organisations** – Organisations that are specifically a 'business' and are in business for the purpose of making a profit or which are so constituted that the assets may be distributed amongst the members of the organisations.

**Open space** – is leased outdoor facilities which is available for community use outside formal sporting use excluding sport related facilities such as clubrooms, storage sheds

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# Leasing and Licensing of Council Owned Facilities Policy



## 7. REFERENCES

The following key City of Marion policies and plans relate to leased and licensed facilities:

- City of Marion Community Vision – Towards 2040
- City of Marion 10-Year Strategic Plan (under revision)
- City of Marion Community Facilities Strategy – (under development)
- City of Marion 3-Year Business Plan 2016-2019
- City of Marion Development Plan
- City of Marion Long Term Financial Plan
- Asset Management Plans
- Community Land Management Plans
- Irrigation Management Plan
- Asset Management Policy
- Disposal of Land and Assets Policy
- Community Consultation and Engagement Policy
- Liquor Licensing Policy

### Relevant Acts

- Local Government Act 1999
- Real Property Act 1886
- Law of Property Act 1936
- Retail and Commercial Leases Act 1995
- Associations Incorporation Act 1985
- Disability and Discrimination Act
- Gaming Machine Act
- Liquor Licensing Act
- Development Act 1993

## 8. REVIEW AND EVALUATION

Reviewed by Council 28 March 2017 (GC280317R01)

Updated to new Format June 2019

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# Leasing and Licensing of Council Owned Facilities Policy



## Annual Fee - Subsidy Criteria for Sporting and Community Organisations

Annual lease/licence fee will be calculated at up to 93% of the market rental rate of the leased area/s. Council will offer the following subsidies on the annual fee for not for profit organisations.

Subsidy Criteria	%
<b>Good Governance</b> The organisation can demonstrate; <ul style="list-style-type: none"> <li>• Compliance with conditions of current or previous lease/licence agreements with Council</li> <li>• Provision of Annual General Meeting reports and minutes including financial reports (to be audited upon request)</li> <li>• Financial viability, have not incurred a debt with Council and have repaid any loans to Council in line with the loan agreement</li> <li>• Quality Management is integrated into operations - capacity building, good governance and planning etc., evidenced through provision of an annual business plan, current constitution, policies and procedures etc.</li> </ul>	33%
<b>Facility Utilisation</b> The organisation is able to; <ul style="list-style-type: none"> <li>• Provide evidence of membership/user/participant numbers and hours of use on an annual basis.</li> <li>• Provide evidence of activities and initiatives undertaken to increase the utilisation of the facility</li> <li>• Initiatives planned to increase use or participant numbers</li> <li>• Evidence of shared use of the facility by the community and other community clubs and organisation to ensure optimal use of the facility</li> </ul>	30%
<b>Social Inclusion</b> The organisation can demonstrate; <ul style="list-style-type: none"> <li>• The activity or service they provide is non-discriminatory and is open to all residents who meet stated criteria for participation.</li> <li>• The use of the facility will increase social inclusion, increase community participation and/or will promote health and well-being in the community</li> <li>• Activities support wider social inclusion targets which may include such groups as:                             <ul style="list-style-type: none"> <li>- Low socio-economic background</li> <li>- Over 60's years of age</li> <li>- Aboriginal and Torres Strait Islander</li> <li>- Culturally and Linguistically Diverse (CALD)</li> <li>- Children Under 17 years of age</li> <li>- Physically and intellectually disabled</li> <li>- Female participation in sport</li> </ul> </li> </ul>	20%
<b>Volunteer Management</b> The organisation can demonstrate that it promotes, supports and develops volunteers	5%
<b>Environmental Initiatives</b> The organisation can demonstrate that is promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments e.g. solar panels	5%
<b>Maximum subsidy available</b>	<b>93%</b>

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## Annexure – H

# Disposal of Land and Assets Policy

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove  
Football Club





# Disposal of Land and Assets Policy



## POLICY STATEMENT

The Local Government Act (the Act)<sup>1</sup> requires Council to develop and maintain policies, practices and procedures directed towards the sale or disposal of land or other assets to:

- obtain value in the expenditure of public money; and
- provide for ethical and fair treatment of participants; and
- ensure probity, accountability and transparency in all disposal processes.

The Act requires that Council prepare and adopt a range of policies, including a policy relating to the sale of land and other assets. The policy seeks to identify circumstances where Council will call for the disposal of land or other assets, and set out associated processes.

## DEFINITIONS

In this Policy, unless the contrary intention appears, these words have the following meanings:

**Asset** means any physical item that the Council owns and that has at any time been treated pursuant to the Australian Accounting Standards as an 'asset'. It includes Major Plant and Equipment such as infrastructure and buildings it **does not include** financial investments, trees or Land.

**Land** includes community land, vacant land, operational land, road reserves, any legal interest in land, and any other land-related assets, including all buildings (community and operational) on Land.

**Major Plant and Equipment** includes all major machinery and equipment owned by the Council. It includes all trucks, graders, other operating machinery and major plant items. It does not include Minor Plant and Equipment.<sup>2</sup>

**Minor Plant and Equipment** includes all minor plant and equipment owned by Council. It includes all loose tools, store items, furniture, second hand items removed from Major Plant and Equipment (such as air conditioners, bricks and pavers) and surplus bulk items (such as sand and gravel).

## POLICY PRINCIPLES

Council must have regard to the following principles in its disposal of Land and Assets:

- Council seriously consider the disposal of land where it has been determined that it is no longer required for the community.
- Encouragement of open and effective competition.
- Obtaining value for money (not restricted to price alone). An assessment of value for money may include the consideration of:
  - the contribution to Council's long term financial plan and strategic management plans;

<sup>1</sup> Local Government Act 1999 (SA) s 49(1)(d)

<sup>2</sup> Materiality; Infrastructure, land and buildings \$5000. Furniture, equipment and other \$3 000. GC240614R03 - Asset Accounting Policy

- any relevant direct and indirect benefits to Council, both tangible and intangible;
- efficiency and effectiveness;
- the costs of various disposal methods;
- internal administration costs;
- risk exposure; and
- the value of any associated environmental benefits.
- Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.
- Ensuring compliance with all relevant legislation including;
  - Local Government Act 1999 (SA)
  - Real Property Act 1886 (SA)
  - Land and Business (Sale and Conveyancing) Act 1994 (SA)
  - Development Act 1993 (SA)
  - Retail and Commercial Leases Act 1995 (SA)
  - Residential Tenancies Act 1995 (SA)
  - Strata Titles Act 1988 (SA)
  - Crown Land Management Act 2009 (SA)
  - Community Titles Act 1996 (SA)
  - Roads (Opening and Closing) Act 1991 (SA)
  - Land Acquisition Act 1969 (SA).

## CONSIDERATIONS PRIOR TO DISPOSAL OF LAND AND ASSETS

Any decision to dispose of Land and Assets will be made after considering (where applicable):

- the usefulness of the Land or Asset;
- the current market value of the Land or Asset;
- the annual cost of maintenance;
- any alternative future use of the Land or Asset;
- any duplication of the Land or Asset or the service provided by the Land or Asset;
- any impact the disposal of the Land or Asset may have on the community;
- any cultural or historical significance of the Land or Asset;
- the positive and negative impacts the disposal of the Land or Asset may have on the operations of the Council;
- the long term plans and strategic direction of the Council;
- the remaining useful life, particularly of an Asset;
- a benefit and risk analysis of the proposed disposal;
- the results of any community consultation process;
- any restrictions on the proposed disposal;
- the content of any community land management plan; and
- Other relevant policies of the Council, including:
  - Asset Accounting
  - Asset Management
  - Community Consultation
  - Procurement
  - Prudential Management

## DISPOSAL METHODS

### 1. LAND DISPOSAL

Any decision to dispose of land must be a decision of Council.



- 1.1.1 Where the Land forms or formed a road or part of a road, the Council must ensure that the Land is closed under the *Roads Opening and Closing Act 1991* (SA) prior to its disposal.
- 1.1.2 Where Land is classified as community land, the Council must:
  - 1.1.2.1 undertake public consultation in accordance with the Act and the Council's public consultation policy; and
  - 1.1.2.2 ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
  - 1.1.2.3 comply with all other requirements under the Act in respect of the disposal of community land.<sup>3</sup>
- 1.1.3 Where the Council proposes to dispose of Land through the grant of a leasehold interest, the Council must have complied with its obligations under the Act, including its public consultation obligations under Section 202 of the Act.
- 1.1.4 The Council will, where appropriate and through the use of appropriate delegations, dispose of Land through one of the following methods:
  - 1.1.4.1 *open market sale* - advertisement for disposal of the Land through the local paper and where appropriate, a paper circulating in the State, or by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with the Council's Procurement Policy);
  - 1.1.4.2 *expressions of interest* - seeking expressions of interest for the Land;
  - 1.1.4.3 *select tender* - seeking tenders from a selected group of persons or companies;
  - 1.1.4.4 *open tender* - openly seeking bids through tenders, including public auction;
  - 1.1.4.5 *by negotiation* – with owners of land adjoining the Land or others with a pre-existing interest in the Land, or where the Land is to be used by a purchaser whose purpose for the Land is consistent with the Council's strategic objectives for the Land.
- 1.1.5 Selection of a suitable disposal method will include consideration of (where appropriate):
  - 1.1.5.1 the number of known potential purchasers of the Land;
  - 1.1.5.2 the original intention for the use of the Land;
  - 1.1.5.3 the current and possible preferred future use of the Land;
  - 1.1.5.4 the opportunity to promote local economic growth and development;
  - 1.1.5.5 delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
  - 1.1.5.6 the total estimated value of the disposal; and
  - 1.1.5.7 compliance with statutory and other obligations.
- 1.1.6 The Council will not dispose of Land to any Council Member or employee of the Council who has been involved in any process related to a decision to dispose of the Land and/or the establishment of a reserve price.
- 1.1.7 If Land is to be auctioned or placed on the open market or disposed of by an expression of interest, then (unless the Council resolves otherwise) one independent valuation must be obtained to establish the reserve price for the Land. The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 1.1.8 If Land is to be disposed of via a select tender or direct sale, then (unless the Council resolves otherwise) a minimum of two independent valuations must be

<sup>3</sup> The Act may be amended from time to time.



- obtained to ensure that an appropriate market value is obtained. The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 1.1.9 The Council will seek to dispose of Land at or above current market valuation by whichever method is likely to provide the Council with a maximum return, unless there are reasons for the Council to accept a lesser return which is consistent with the Council's overall strategic direction. These reasons must be documented in writing.
  - 1.1.10 If the disposal is not to be on the open market, the disposal should be at or above the current market valuation (with due regard to all associated costs to achieve the transaction or such other amount as the Council resolves).


## 1.2 ASSETS DISPOSAL

The sale of Assets (both Major Plant and Equipment and Minor Plant and Equipment) will be the responsibility of the relevant Council Officer who is responsible for those Assets and who has the necessary delegations.

- 1.2.1 The Council will, where appropriate, dispose of Assets through one of the following methods:
  - 1.2.1.1 *trade-in* – trading in equipment to suppliers;
  - 1.2.1.2 *expressions of interest* – seeking expressions of interest from buyers;
  - 1.2.1.3 *select tender* – seeking tenders from a selected group of persons or companies;
  - 1.2.1.4 *open tender* – openly seeking bids through tenders;
  - 1.2.1.5 *public auction* – advertisement for auction through the local paper and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer (following compliance with the Council's Procurement Policy).
- 1.2.2 Selection of a suitable method will include consideration of (where appropriate):
  - 1.2.2.1 the public demand and interest in the Asset;
  - 1.2.2.2 the method most likely to return the highest revenue;
  - 1.2.2.3 the value of the Asset and whether it is Major Plant and Equipment or Minor Plant and Equipment;
  - 1.2.2.4 the costs of the disposal method compared to the expected returns; and
  - 1.2.2.5 compliance with statutory and other obligations.
- 1.2.3 Preference will be given to community groups for Minor Plant and Equipment
- 1.2.4 Elected Members and employees of the Council will not be permitted to purchase Assets unless the purchase is via an open tender process or a public auction, and the tender submitted or bid made is the highest.
- 1.2.5 Purchasers of Assets must be required to agree in writing that before purchasing any Asset that no warranty is given by the Council in respect of the suitability and condition of the Asset for the purchaser and that the Council will not be responsible for the Asset in any respect following the sale.

## 1.3 MINOR PLANT AND EQUIPMENT: REGISTER OF INTEREST

Where Minor Plant and Equipment has not been disposed of through any of the processes in clause 1.2 of this Policy, the City of Marion will publish a list of surplus items and seek offers for their disposal. Decision making will be supported by the following provisions:

- 
- 1.3.1. If two or more offers are the same and one is from within the City of Marion area but the other is not, preference is to be given to the offer within the City of Marion.
  - 1.3.2 If two or more offers are the same and one is from a community group, preference is to be given to the community group.
  - 1.3.3 If two or more offers are the same and one is from a staff member or elected member and the other is from a community member, preference is to be given to a community member.
  - 1.3.4 If the above process does not yield a preferable result as indicated, a random draw be conducted and no further correspondence entered into.

## **2. CONSULTATION**

Council must undertake public consultation in respect of its proposed disposals in accordance with the Act and its public consultation policies where applicable.

## **3. DELEGATIONS**

Council or its officers with delegated authority will, when implementing the decisions under this policy, act in accordance with the Council's budget, relevant policies, plans, agreements and resolutions.

Council acknowledges that the Chief Executive Officer may sub-delegate matters related to this policy to staff or other persons employed or engaged by Council.

## **4. RECORDS**

Council must record reasons for utilising a specific disposal method and where it uses a disposal method other than a tendering process.

## **5. EXEMPTIONS FROM THIS POLICY**

This Policy contains general guidelines to be followed by the Council in its disposal activities. There may be emergencies, or disposals in which a tender process will not necessarily deliver best outcome for the Council, and other market approaches may be more appropriate. In certain circumstances, the Council may, after approval from its elected members, waive application of this Policy and pursue a method which will bring the best outcome for the Council. The Council must record its reasons in writing for waiving application of this Policy.

## **6. FURTHER INFORMATION**

- 6.1 This policy will be kept on the Council's website for the public to view.
- 6.2 This policy will be reviewed in conjunction with the suite of finance policies every two years.
- 6.3 However, Council may revise or review this Policy at any time (but not so as to affect any process that has already commenced).

## **AUTHOR**

Heather Montgomerie



**DATE**

23 June 2015



## Annexure – I

# Complaints and Grievance Policy and Procedure

*Annexure to Local Government Act 1999 - s270 review*  
Request for internal review of Council decision by Cove  
Football Club



# Complaints and Grievance Procedure



## 1. Purpose

The purpose of this document is to detail the City of Marion's procedures for managing complaints and grievances, to set expectations for customers and staff in how complaints will be managed, and to explain the procedure so all staff understand their role in the complaint handling process.

## 2. Scope

This procedure applies to all City of Marion employees (including the CEO), consultants/contractors, volunteers and Elected Members or members of the public who make a complaint. All staff are empowered and encouraged to handle complaints in person in the first instance and it is preferred that they are promptly dealt with at the initial point of contact. This procedure applies to complaints which are not resolved at this first 'local' level and require escalation or referral to other staff or agencies.

## 3. Reporting and Investigation Procedure

An overview of the reporting and investigation procedure is provided on the following pages.

### Making or Receiving a Complaint

A person can make a complaint in person, over the phone or in writing via email or post. If the complaint requires an Internal Grievance Review, the complaint must be submitted in writing. Where required, assistance may be provided in preparing a written complaint, including the provision of interpreters, aids or advocates if necessary.

All complaints will be electronically recorded in the City of Marion records management system to ensure that relevant information can be analysed for any service improvement opportunities.

Often complaints can be resolved at this first point of contact and all council employees are encouraged to promptly address complaints person to person at this local level wherever possible. If the complaint is received in writing, Council staff will acknowledge the receipt of a complaint within one (1) to three (3) working days and, where possible resolve it within this time.

If the complaint is unable to be resolved at this point and requires the provision of further information, escalation to a more senior staff member or a thorough investigation, the following steps will be followed.

### Escalation to Supervisor or Manager for further review

The purpose of this review is to resolve the complaint by reaching a fair and objective view on the issues identified by the complainant and to provide an appropriate solution or remedy.

It is expected that all complaints will be dealt with transparently and within appropriate timeframes. Depending on the nature and complexity of the complaints, Council staff will advise the complainant if the matter will not be resolved within 10 working days and the likely timeframe required to resolve the complaint. Regular progress updates will be provided where necessary. At the conclusion of the investigation, the findings will be communicated to the complainant and they will be offered a resolution.

Where a complaint is not resolved to the customers' satisfaction, the decision will be explained clearly and any alternative actions or review opportunities will be provided to the complainant.

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F 08 8375 6699  
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# Complaints and Grievance Procedure



## Internal Grievance Review (Review of Decisions pursuant to section 270 of the Local Government Act 1999)

If a complainant is not satisfied with the reviews completed to date or the matter progresses straight to an Internal Grievance Review, then a written grievance may be formally lodged with the Manager Corporate Governance requesting a review of the decision. Requests for review must include:

- a statement clearly indicating which decisions the applicant wishes to be reviewed;
- a statement outlining the reasons why the review is requested;
- any other relevant information; and
- their name and contact details.

Applications for a review of a decision are to be acknowledged within five (5) working days. In the majority of cases, requests for review will be considered and determined within 6 – 8 weeks. Some reviews may take up to six months depending on the nature and complexity of the matter.

### Establishing a Review Panel

If determined appropriate, the Manager Corporate Governance will establish an internal review panel of senior staff who have not been involved in the decision making process to date. The Panel will consist of at least three people (including the Manager Corporate Governance) who will bring independent views and opinions regarding the matter.

The Review Panel may seek legal advice on a matter if required.

### Referring to an independent investigator

The Manager Corporate Governance may, on a needs basis, refer a matter to an independent investigator. The independent investigator may be a:

- Consultant experienced in investigations and reviews
- A lawyer within Councils legal services panel.

Costs associated with this investigation will be incorporated within the Corporate Governance Budget.

Matters can be referred to an independent investigator based on the following:

- The complexity of a matter,
- If the matter is time critical,
- If specialist skills and advice is required,
- Matters relating to the decision making or conduct of Council (and Elected Members), the Chief Executive Officer, General Managers or the Manager of Corporate Governance.

### Review of Staff or Representative Decision

The grievance will be assessed by the Manager Corporate Governance who will determine if the matter will be reviewed by themselves, an internal review panel or outsourced to an independent investigator.

The complainant will be advised in writing of the process to be undertaken and expected timeframes. The complainant will receive a preliminary report before the matter is finalised as

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# Complaints and Grievance Procedure



a matter of procedural fairness. A final report will be prepared once feedback has been received on the preliminary report.

In preparing the preliminary report, consultation will occur with staff and elected members involved in the decision making process. This will include the gathering of information, documentation and, if required, an interview and statement from those involved. Staff and elected members will be requested to review the preliminary report prior to it being released to the complainant, for factual accuracy of the matter. The findings and recommendations of the section 270 review must remain independent from those involved in the original decision making process.

The Manager Corporate Governance will advise Council and/or Ward Councillors (as appropriate) of the request to Review a Staff or Representative Decision.

## Review of Council or CEO Decision

If an Internal Grievance Review is received for a decision of the CEO or Council, upon receiving the request for review, the Manager Corporate Governance will advise the CEO and Council of the request and conduct a preliminary investigation to prepare a report for the next General Council Meeting, including a recommendation regarding how the review will be undertaken. A review of this nature, will be completed by either an independent investigator or an internal review panel.

## Review of Manager Corporate Governance

If the complaint concerns a decision or action of the Manager Corporate Governance, the Chief Executive Officer will assign the matter to be investigated to an appropriate person of their choice.

## 4. Standard Process for Investigation

The standard process for investigating a matter will include:

- Establish if the grievance can be determined within the Complaints and Grievance Policy and Procedure.
- Establish how the matter will be investigated and if a review panel needs to be formed or the matter be outsourced.
- Determine:
  - the scope of the review
  - key decision makers /stakeholders in the process
  - estimated time frame
- Establish the facts including;
  - Obtaining statements from stakeholders
  - Interviewing any relevant staff, elected members or the complainant
  - Establishing legislative framework
  - Gathering facts and information
- Prepare a Preliminary Report that includes:
  - Details of the complaint
  - Scope of the review
  - Details of the investigation
  - Findings
  - Recommendations

The preliminary report will be reviewed for factual accuracy by staff and elected members involved in the grievance.

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The preliminary report must be provided to the complainant for review for a minimum of 10 working days.

- Prepare a final report that includes:
  - Any feedback received from the complainant and undertake any further enquires.
  - The final determination of the complaint/grievance.
  - The external review processes if the complaint/grievance remains unresolved.

The final report must be provided to the complainant in writing (either by email or hard copy).

## 5. Reporting on process improvement, findings and/or recommendations

All findings and/or recommendations from Internal Grievance Reviews that require action will be tracked to ensure implementation.

Any finding or recommendation not implemented within specified timeframes will be raised and escalated accordingly.

All Internal Grievance Reviews completed will be reported within the City of Marion's Annual Report.

## 6. Availability of the Procedure

This procedure will be promoted throughout the City of Marion via the City of Marion website and the organisations intranet.

## 7. Review and Evaluation

The review of this Procedure is to be conducted every three years. An interim review is to be carried out in the event of an amendment to any relevant Acts; or a matter reported via this Procedure is not managed appropriately. Any changes to the document will be submitted to the Executive Leadership Group (ELT) for approval.

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# Complaints and Grievance Policy



## 1. RATIONALE

This Policy is consistent with the Australian Standards for complaint handling and the Ombudsman SA *Right of Review* Audit (completed November 2016).

## 2. POLICY STATEMENT

The City of Marion:

- Is committed to providing good governance practices through efficient fair and accessible mechanisms to resolve services complaints or grievances.
- Encourages customers and the community to raise issues and complaints with the Council as it provides the opportunity to improve services to the community.
- Recognises the importance of transparency in decision making and the need to provide a fair and objective process for the review of all decision and actions.

## 3. OBJECTIVES

The purpose of this Policy is to provide a fair, consistent and structured process for City of Marion's customers if they are dissatisfied with an action, decision or services. These actions, decisions or services may be delivered by the Council (being the elected body as a whole), an employee of the council or another person acting on behalf of the council.

Lessons learnt from a complaint investigation will be used to directly inform service improvement.

Where complaints cannot be settled in the first instance the City of Marion will ensure that they are dealt with through appropriate, more formal procedures by staff or Council with the authority to make decisions. Complainants will be referred to this Policy and the associated procedure which details the steps required for further review.

## PRINCIPLES

This policy is based on the following principles:

- Fairness – All Complaints and grievances will be treated with procedural fairness, impartiality and transparency at all stages of the review.
- Responsiveness – taking into consideration the complexity of the matter, all complaints and grievances will be resolved in a timely manner.
- Efficiency – those involved in the complainant process will have the required skills, knowledge and resources to undertake the review.

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# Complaints and Grievance Policy



## 4. POLICY SCOPE AND IMPLEMENTATION

### MANAGING INTERNAL COMPLAINTS AND GRIEVANCE

Complaints and grievances can vary in their complexity and seriousness. There are three ways in which a complaint or grievance can be resolved/reviewed:

#### 1. Immediate response to resolve the matter

All staff are empowered to handle complaints in the first instance and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level where ever possible.

#### 2. Escalated to a supervisor or manager

When a complaint cannot be resolved in the first instance, it will be referred to either a supervisor or manager. Additionally, where the circumstances indicate that the complaint would be more appropriately dealt with at a high level, the matter will be escalated. Complaints of this nature must be made in writing and outline the specific nature of the complaint.

#### 3. Internal Grievance Review – Review of Decision (pursuant to section 270 of the Local Government Act 1999)

When a complaint cannot be resolved in the first instance and/or by a supervisor or manager, it will be referred for internal review in accordance with the Complaints and Grievance Procedure. The complaint or grievance will be reviewed by the Manager Corporate Governance. The Manager Corporate Governance may investigate the matter themselves, or establish an internal Review Panel (depending on the complexity of the matter) or refer the matter to an independent investigator.

Any complaint or grievance relating to a decision made by the Chief Executive Officer or the Council at a Council or Committee Meeting, will be referred to the next General Council Meeting to determine how the matter will be reviewed, either by an internal Review Panel or outsourced to an independent investigator.

Complaints of this nature must be made in writing to the Manager Corporate Governance and outline the specific nature of the complaint and the dis-satisfaction with any internal review completed so far.

Applications for the review of decisions must be lodged within six (6) months of the decision in question being made. However, in exceptional but reasonable circumstances, the Manager Corporate Governance may agree to accept a late application. This will be assessed on a case by case basis.

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# Complaints and Grievance Policy



This process will be the last level of internal review for the Council's complaint and grievance process.

## ALTERNATIVE DISPUTE RESOLUTION METHODS

The City of Marion prefers to try and resolve complaints and grievances internally but there will be circumstances where this is not possible. If this occurs, the dispute resolution methods available to complainants include:

1. Mediation – refer to Mediation SA  
Contact details:  
Address: 175 Oaklands Road, Warradale SA 5046  
Email: [wreception@mediationsa.org.au](mailto:wreception@mediationsa.org.au)  
Phone: (08) 8350 0376
2. Ombudsman Review – refer to Ombudsman SA  
Contact details:  
Address: Level 9, 55 Currie Street, Adelaide SA 5000  
Email: [ombudsman@ombudsman.sa.gov.au](mailto:ombudsman@ombudsman.sa.gov.au)  
Telephone: (08) 8226 8699
3. Legal action

## TIMEFRAME

Timeframes for complaints and grievances will be dependent on the complexity of the matter. Complainants will be advised upfront of the likely timeframe required to investigate a matter and updated on progress where necessary. Timeframes may change as matters progress. The estimated timeframe for complaints and grievances are as follows:

1. Immediate response to resolve the matter  
1-3 working days
2. Escalated to a supervisor or manager  
10 working days of the matter being escalated
3. Internal Grievance Review (pursuant to section 270 of the Local Government Act 1999)  
6 – 8 weeks of the matter being referred to the Manager Corporate Governance but may take up to six months for complex matters.

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# Complaints and Grievance Policy



## ITEMS EXCLUDED FROM THIS POLICY

The following matters are excluded from being reviewed pursuant to this Policy and associated procedure:

- If the complaint is made by an employee of the council and relates to an issue concerning his or her employment.
- It appears that the complaint is frivolous or vexatious.
- If the Complainant does not have a sufficient interest in the matter.
- Complaints which are determined to be about matters that are not Council's responsibility (i.e. neighbourhood disputes).
- Complaints that refer to staff or elected member misconduct or behaviour (will be referred to relevant Code of Conduct).
- Reports of fraudulent, corrupt or illegal activity (will be referred to the relevant authority).
- Matters that have existing appeal rights through their own legislations (i.e. Freedom of Information, Expiation of Offences act 1996, Development Act 1993 etc).
- Claims and Insurance decisions made by other agencies.

Matters that fall outside statutory appeals procedures will be considered for the conduct of an Internal Grievance Review on the merits of the individual application.

## UNREASONABLE COMPLAINANT

All complaints received by the City of Marion will be treated seriously and complainants will be treated courteously. However, occasionally the conduct of a complainant can be unreasonable. This may take the form of unreasonable persistence, unreasonable demands, lack of cooperation, argumentative or threatening behaviours.

Where a complainant's behaviour consumes an unwarranted amount of Council resources or impedes the investigation of their complaint, a decision may be made to apply restrictions on contact with the complainant. Before making any decision to restrict contact, the complainant will be warned that, if the specified behaviour(s) or actions continue, restriction may be applied.

Any decision to restrict contact or suspend action on a complaint process will be made by the Chief Executive Officer and/or a General Manager. This will be communicated to the complainant in writing.

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# Complaints and Grievance Policy



## REPORTING

All matters reviewed via an Internal Grievance Review will be reported via the City of Marion Annual Report.

## Part 2 – Complaints regarding Code of Conduct for Council Employees

### Complaint procedure

Where a person alleges –

- an employee (or a relative of an employee) has sought or received a gift or benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation on the part of the employee to a person or to influence the employee in the performance or discharge of the employee's functions or duties; or
- an employee has failed to record, or correctly record, details of a gift or benefit received by the employee (or a relative of an employee) on the gift and benefits register; or
- the CEO has not appropriately maintained a register for gifts and benefits received by employees of the council,

they may submit a complaint alleging that an employee of council has contravened or failed to comply with the Code of Conduct for Council Employees, as prescribed in Schedule 2A of the *Local Government (General) Regulations 2013*.

A complaint must be given to the Chief Executive Officer, Manager Human Resources or Manager Corporate Governance. In the case of a complaint against the Chief Executive Officer, a complaint must be given to the principal member of the council, except in circumstances where it would be inappropriate to do so (such as where legislation requires the matter to which the complaint relates to remain confidential).

A complaint will be investigated and resolved according to the industrial and human resource procedures of the council.

## 5. POLICY AVAILABILITY AND REVIEW

This policy will be made available to all staff, elected members and the community via the City of Marion website and intranet. This policy will be reviewed every three years.

## 6. DEFINITIONS

### Request for Services

A request for service is an application to have Council or its representative take some form of action to provide a Council service. Council receives thousands of requests for services

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# Complaints and Grievance Policy



each year. This will include matters such as hard rubbish collection, street sweeping, pot holes, home care, etc. All requests for services will be logged within the City of Marion Customer Event System, and managed through this process.

## Feedback

The City of Marion may receive feedback from customers on services provided. It is important to distinguish between feedback and a complaint. Feedback can take the form of comments, both positive and negative, which do not necessarily require a corrective action, alternation of service or a formal review of the decision.

## Complaint

A Complaint is defined as an expression of dissatisfaction with a product or service delivered by the Council or its representatives that has failed to reach the standards set, implied or expected. This includes complaints about a service that has been, or should have been delivered.

## Grievance

A grievance is defined as a wrong decision or action of Council, Council staff or representative. A grievance often occurs when complaints cannot be resolved or have caused significant distress to the complainant.

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# Complaints and Grievance Policy



## 7. REFERENCES

- Complaints and Grievance Procedure
- Employee Code of Conduct
- Elected Member Code of Conduct
- Fraud and Corruption Policy
- Whistleblowers Policy

## 8. REVIEW AND EVALUATION

This policy will be made available to all staff, elected members and the community via the City of Marion website and intranet. This policy will be reviewed every three years.

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## Annexure – J

# Tony Kernahan response to Susie Inat

Annexure to *Local Government Act 1999* - s270 review

Request for internal review of Council decision by Cove  
Football Club





## The Cove Football Club

*#Club #Team #Individual*

Thank you for providing the Cove Football Club with the opportunity to provide additional information in support of our request for review under Section 270 of the *Local Government Act, 1999*. The way in which the Council has come to the decision to terminate the Cove Football Club tenancy, has forced us to formally request a review of the decision, which was requested on the 26<sup>th</sup> September 2019.

While the Cove Football Club are very grateful that the City of Marion has overturned their original decision to terminate the tenancy, the damage that this has done to the Cove Football Club brand, the players and the mental health of the Committee is immense. However, the hard work is just beginning for them now – the Cove Football Club must rebuild, they need to convince new sponsors and players to come on board, and try to maintain the sponsors and players that they already had – all of which will now have doubts about the type of club that they are sponsoring.

The Cove Football Club feel that they were not provided natural justice or procedural fairness by the City of Marion in coming to the decision to terminate the tenancy from the Cove Sports and Community Complex. While, the Cove Football Club acknowledges that the Council did provide some communication about the looming termination of tenancy, the Council did not provide adequate details into the exact nature of the alleged incidents identified during a confidential investigation, making it extremely difficult for the Cove Football Club to be able to adequately respond to the allegations and provide the Council with the details of any actions to rectify these matters.

As per the City of Marion's *Complaints and Grievance Policy*, the City of Marion:

- *Recognises the importance of transparency in decision making and the need to provide a fair and objective process for the review of all decision and actions.*

The Elected Members of the City of Marion have not been transparent or fair in their decision to terminate the tenancy of the Cove Football Club from the Cove Sports and Community Complex.

In a letter that the Cove Football Club received on the 3<sup>rd</sup> September 2019, Attachment 1, the club was asked to respond to these matters, however they were not provided with any context or details for the allegations. The additional information was requested via a letter dated 12<sup>th</sup> September 2019, Attachment 2. However, in an email from Fiona Harvey, Acting General Manager City Development, were told that the City of Marion could not provide any additional information as the matter was 'confidential'. Attachment 3.

In the letter received from Adrian Skull, there was some confusion about the contents of the letter, and whether the Council understood the difference between the two entities: The Cove Football Club and the Cove Sports and Community Club.

Within the letter, there is a paragraph about the Financials, "Council concludes that, under the previous club management dominated by the CCFC, inadequate financial records were maintained and it is likely that misappropriation of funds occurred to the benefit of the CCFC."

This was a completely unfair statement, as the Cove Sports and Community Club committee was made up from members of all sports clubs within the facility – not just the Cove Football Club.



## The Cove Football Club

*#Club #Team #Individual*

Since January, when the City of Marion took over the management of the Cove Community Sports Complex, including the bar, there have been several incidents brought to our attention, some verbally and some via email.

Below is an example of some of the incidents that the Cove Football Club are aware of, and includes the actions taken by the Cove Football Club once these issues were brought to their attention, as well as some additional comments in relation to these matters.

- **Members being 'cut-off' from the bar after being highly intoxicated**

As the City of Marion holds the current liquor license for the venue, and employs staff to work behind the bar, this is an issue for the City of Marion, not the Cove Football Club. Staff employed to work behind a bar must hold "Responsible Service of Alcohol" accreditations, and as such, it is the bar staff's responsibility to ensure the patrons are drinking responsibly. The supply of alcohol should have been cut off earlier, by the Council's own staff, to prevent any issues and signs of intoxication. A letter was sent to a member, from the City of Marion, who had showed repeated signs of intoxication. The letter warned that this continued behaviour could lead to removal from the complex. This was supported by the Cove Football Club.

During a 5AA radio interview, Fiona Harvey, Acting CEO made a comment that there "appears to be a strong drinking culture that exacerbates poor behaviour as well as sexist behaviour." These comments allude to intoxicated misbehaviour by persons at the Cove Sports and Community Club, what responsibility does the Council, or its staff take as the liquor licence holder for the facility?

It is an offence to sell or supply liquor to intoxicated persons, both the licensee and the responsible person are responsible for this action a first offence carries a fine of \$20,000, as per the *Liquor Licensing Act, SA 1997*.

It is concerning if intoxicated persons were being sold or supplied liquor, and it continued to happen, even though the Council and staff believed excessive drinking was leading to the "inappropriate behaviour". The Liquor Licensing Commissioner or SAPOL should have been involved. In addition, the inappropriate behaviour due to excessive drinking was conducted by a handful of members – not the entire Cove Football Club.

- **A member being disgruntled with the change of beer now stocked in the fridge, and used inappropriate language to express his concerns**

Additional information was requested in relation to this incident, to enable the Cove Football Club President to take further action against the specific member. See attached email trail between James O'Hanlon, Unit Manager Sport & Recreation Facilities at the City of Marion and the President of the Cove Football Club, Tony Kernahan, Attachment 4.

- **Children from the football club allegedly throwing stones onto the soccer club canteen roof**

It was brought to the attention of the Cove Football Club, via an email from the Soccer Club President, David Brain, that there were children throwing rocks at the soccer club canteen. See email chain between Tony Kernahan and David Brain Attachment 5.

Once again, more information was requested before corrective action could be taken, however this was not provided.





## The Cove Football Club

*#Club #Team #Individual*

In response to the above notification of incidents, despite not being provided with adequate details of the issues being reported – time, dates, offenders- the Cove Football Club undertook numerous actions to try and address some of the issues that had been identified.

These included:

1. A reminder about the clubs Member Protection Policy was placed in the Monthly Member magazine, Hiss – Attachment 6 Member Protection Policy & Attachment 7 Hiss magazine.
2. An all member meeting held on both a Thursday and Friday night, to ensure the minis and seniors were captured, which attracted over 150 people in total
3. An email message sent from the president, Tony Kernahan to 300 club members Attachment 8
4. Lisa Faraci, Community Infrastructure & Planning Manager, SANFL met with Cove FC Committee to discuss allegations in more detail

As you are aware, the Council engaged an independent investigator to undertake an investigation into the behaviours of sports club members using the Cove Sports and Community Complex.

The Cove Football Club were aware that an investigation was being undertaken, however were not advised about the true nature of the investigation. Details into the investigation were not provided, and as such, the Cove Football Club has the following questions/concerns about the investigation:

- What were the terms of reference for the investigation?
- What was the purpose of the investigation?
- How was it conducted?
- How many people were interviewed; who did they represent; how were they selected?
- What was the appropriate sample size for this type of investigation?
- What specific incidents were raised; and over which time frame; the 2019 season, the 2018 season or further back?
- How were these statements/incidents/allegations checked for facts? What evidence was provided to prove that the statements being made about the Cove Football Club were true and correct?
- Who at the cove football club was involved in the incidents?
- Were any of the incidents reported to police?
- Was the company that conducted the investigation, EMA, accredited to complete such an investigation?

It should be noted that, the Cove Football Club are aware of two football club members being involved in this investigation, however both were lead to believe that the investigation was being conducted because the Council was committed to making the Cove Community Sports Complex “a welcoming environment for all” and engaged the help of an outside consulting firm to have a “chat” with members of each the affiliated clubs to see what their thoughts were on the current facilities and how the facilities could be improved. At no stage were they lead to believe that the consultants were conducting an investigation into the Cove Football Club. See text Attachment 8.

The members were also required to sign a “confidentiality” clause – why would this be necessary for a “chat” about how to improve the facilities at the Cove Sports and Community Complex?



## The Cove Football Club

*#Club #Team #Individual*

The Cove Football Club strongly believe that this is not the correct process to follow for a successful investigation – it is not fair or transparent.

The Council has refused to provide all of the specifics of the incidents, with dates, times, offenders etc. This decision demonstrates a lack of procedural fairness and natural justice. EMA Consulting were hired to do the independent investigation, did they interview anybody from the Cove Football Club about these incidents? Did they identify individuals who allegedly behaved badly from the Cove Football Club?

The Cove Football Club now have grave concerns in relation to the findings of the independent investigation:

- *Inappropriate behaviour, disrespectful language and intimidating conduct by numerous Cove Football Club members and associates has resulted in other sporting clubs not using the facility because they feel unwelcome or unsafe.*
- *Insulting sexist language directed at a female staff member and sexual harassment of female netball players*
- *The behaviour is widespread and part of a club culture that is condoned and, in some cases, practised by some senior members of the Cove Football Club*
- *Inappropriate, sexist and intimidating behaviours, inconsistent with community standards*

If the Council was concerned about the behaviour of members of the Cove Football Club, why didn't they raise the initial complaints with the President of the Cove Football Club immediately? (some notifications were via email days later from James O'Hanlon, Unit Manager Sport & Recreation Facilities at the City of Marion, not from the complex manager directly at the time of the incident) Did the "inappropriate behaviour" continue during the investigation for the next two months? Why was the risk to the public low during the investigation, and then so high at the completion of the investigation that caused the termination of tenancy? Was SAPOL notified of any of the incidents?

- *The Cove Football Club has a sense of entitlement and 'ownership' of the facility, with other clubs experiencing territorial or unwelcome acts when they attempt to use it*

The Cove Football Club has over 2000 players, members, parents and supporters. Due to the number of patron's present, and the fact that there are so many football teams – minis, juniors, females and seniors – training is conducted most days of the week, with games played most Sundays and alternate Saturdays. The Cove Football Club does not have a sense of "ownership and entitlement" to the facility, however this could be perceived by other clubs this way due to the number of days that the Cove Football Club uses the facility – basically 7 days per week during football season.

- *Council does not condone this type of behaviour in its community facilities*

If the Council does not condone this type of behaviour, why did it allow the investigation to go for two months, during which further instances of the alleged behaviour would have put everybody - including members of the Cove Football Club - at risk of exposure to the inappropriate behaviour?

In addition to the two months that it took to undertake the investigation, the report was initially considered at a confidential Council meeting on 3 September 2019, the Cove Football Club were briefed on 4 September 2019, and then provided 14 days in which to respond to the allegations, then the Cove Football





## The Cove Football Club

#Club #Team #Individual

Club made a deputation at the Council meeting of 24 September, and received the official eviction Notice on the 25<sup>th</sup> September – meanwhile was the inappropriate behaviour allowed to continue during this whole time? Is it still happening now? As the Cove Football Club do not know the exact nature of the allegations and details of all of the incidents, they have not been able to address specific members and take action as required, to ensure that the inappropriate behaviour stops.

The City of Marion has not attempted to work with the Cove Football Club to improve the behaviour of its members. They have not run any education sessions, suggested online courses and/or accreditation, provided prior warnings or communicated their concerns formally. Is this Natural Justice?

The consultants used to conduct the investigation, EMA Consulting, could have also been used to provide the Cove Football Club with training, as EMA advertise various courses and training modules on their web site. *"Our Bullying and Harassment Awareness training provides the necessary information for all attendees to easily understand the seriousness of this type of behaviour, their respective obligations and the consequences of non-compliance".*

The City of Marion's *Complaint and Grievance Policy* is based on the following principles:

- *Fairness – All Complaints and grievances will be treated with procedural fairness, impartiality and transparency at all stages of the review.*

There has been no procedural fairness displayed by the City of Marion in coming to their decision. The Cove Football Club were not provided "natural justice"; they were not offered sufficient opportunity to state their case before the decision to terminate the tenancy was made. There was no transparency in how the Council came to their decision, as the findings of the investigation and the details of all events, have not been shared with the Cove Football Club to allow for a comprehensive response specifying what actions the Cove Football Club had taken to rectify the alleged matters. Plus, all Council meetings related to this matter have been held in confidence – therefore not allowing for transparency.

It should also be noted that at the Special General Council Meetings of 11 June 2019 and 2 September 2019, the Council invoked Section 90(2) and (3)(f) of the *Local Government Act 1999* citing the information relating to the Cove Sports and Community investigation was confidential as it *"related to information the disclosure of which 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"*

By invoking Section 90(2) and (3)(f) of the *Local Government Act 1999* infers that an investigation is being undertaken by SAPOL or some other law enforcement body relating to the incidents. To the knowledge of the Cove Football Club, the alleged incidents have not been reported to SAPOL.

At the General Council Meeting of 24 September 2019, Council invoked Section 90(2) and (3)(a) of the *Local Government Act 1999* citing the investigation related to confidential information relating to personal information. Section 90 (3) (a) states *"information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)"*



## The Cove Football Club

*#Club #Team #Individual*

Why did Council change the reason for confidentiality at the General Council Meeting on 24 September 2019 from the original confidentiality reason provided at the General Council meeting on the 11<sup>th</sup> June 2019?

What is the true reason for confidentiality?

This is not an example of a transparent Council as the City of Marion *Complaint and Grievance Policy* states that it will be.

- *Responsiveness – taking into consideration the complexity of the matter, all complaints and grievances will be resolved in a timely manner.*

The investigation was undertaken over a two month period, which would be considered reasonable considering the use of an external provider, however, during this time incidents of “inappropriate behaviour” could have still been occurring.

- *Efficiency – those involved in the complainant process will have the required skills, knowledge and resources to undertake the review.*

Does EMA Consulting have the required skills and knowledge to conduct an investigation of this type – questioning members and volunteers of the various sports clubs affiliated with the Cove Sports and Community Complex, and not staff from the City of Marion?

Is EMA Consulting licenced, to conduct this type of investigation, as required by the *Security and Investigation Industry Act, 1995*? Furthermore, they are not listed as having a license on the SA Consumer and Business Affairs web site as required for “security and investigation agents.”

The Cove Sports and Community Club serves more than 3000 players, supporters and members of the local community. The other sports clubs are:

- Cove (Tigers) Netball Club
- Hallett Cove Lightning Netball Club
- Cove Cricket Club
- Cove BMX Club
- Cove Soccer Club

Why did the council continue to let these clubs use the facilities and risk exposure to the alleged behaviours during the investigation period, instead of notifying each of the clubs?

As the Council has refused to provide detailed specifics in relations to the incidents - dates, times, offenders etc, then they are denying procedural fairness and natural justice. If EMA Consulting - on behalf of the Council - has conducted the investigation, but has not put the details of the incidents to the club, or indeed interviewed any individuals alleged to have breached expected standards of behaviour, then they have not conducted a full investigation. If the situation is so grave that the Cove Football Club is being removed from





## The Cove Football Club

#Club #Team #Individual

the sports centre, then why did Marion Council wait two months during the investigation period, without alerting Cove Football Club to the incidents so they could discuss the concerns with club members to prevent a repeat of the behaviour? Why did they continue to allow further acts of alleged bad behaviour to put community members at risk for the rest of that period? Why was the risk so low during the investigation period, and so high at the end that the Cove Football Club has its tenancy terminated?

Council's failure to alert the Cove Football Club to the incidents when they received them raises questions about how genuine the Council is regarding the findings of the report. The failure to provide specifics in relation to all of the incidents, or interview potential witnesses to the allegations from the Cove Football Club, demonstrates a fundamental lack of procedural fairness and natural justice which in itself could be argued as deviation from procedural norms, and arguably an example of bullying behaviour by the Council. A deviation from the City of Marion's *Equal Opportunity, Discrimination, Harassment & Workplace Bullying Policy*. A reasonable person might conclude that the Council has not been transparent or impartial in the way that it has handled the investigation of this matter, or indeed in the way it failed to provide specific information in seeking a response from the Cove Football Club.

Of additional concern to the Cove Football Club, is some of the commentary within the councils own documents and on their web site, regarding the Cove Sports and Community Complex and the relocation of some of the affiliated clubs.

The City of Marion Annual Business Plan 2019/2020 summary document states as one of its objectives is to "Progress the development of new BMX and soccer facilities"

And then within the Annual Business Plan 2019/2020 document:

"Southern Soccer Facility - Council will contribute \$2.5m towards the development of at least two additional soccer pitches in the south to support growing membership. External funding of \$2.5m will bring this project up to a total of \$5 million."

"Continue planning for a Southern Soccer Facility"

"Expand the number of netball courts at Cove Sports and Community Club"

There is no mention of the Council supporting the Cove Football Club in any capacity. Is this just coincidental timing or is removing the Cove Football Club from the Cove Sports and Community Complex a way in which the Council intends to ensure that they successfully deliver the objectives detailed in their Annual Business Plan for 2019/2020?

In addition, the Cove Football Club is aware of the discussion in regard to the relocation of the Cove Soccer Club and the State Government funding that is associated with this.



## The Cove Football Club

*#Club #Team #Individual*

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Below is an extract from the Cove Soccer Clubs web site:

### **STATE GOVERNMENT INVESTMENT INTO FOOTBALL FACILITIES**

As you may already be aware, our State Government announced on the 14th July 2017 major investment funding for the upgrading of football facilities across the state.

Included in this announcement is a brand new purpose built facility to be located on Majors Road O'Halloran Hill.

The Cove FC has been for quite some time now extremely pro-active in working together with local council in an attempt to expand and grow its current facilities.

From our early beginnings as an Amateur club established in 1983, to the introduction of Junior teams in 2008 and participating in the FFSA, our club's recent growth and development has been outstanding. Our home during this time has been based at Club Cove – Cove Sports & Community Club in Hallett Cove.

As our club has grown, so has the need to seek additional space. In recent years we have been fortunate to acquire the use of Capella Reserve for our Junior squads and even more recently, the erection of light towers at Capella Reserve. Our Junior base has continued to grow and this season, for the first time, the addition of (2) two Junior Girls squads has meant an even greater need for more facilities and infrastructure to host these teams. Club Marion has been a great asset for us to utilize and continuing on with the success of the girls teams, our club is now looking to nominate a Senior Girls team for Season 2018. With so much growth, The Cove FC now needs its own home big enough to have everyone under the one roof. The time has come for our club to truly become one. To do this we need to acknowledge our past and head confidently into the future.

The Cove FC is delighted to be able to announce to all its members that in conjunction with Marion Council, FFSA and the State Government, it is our intention to relocate to the Majors Road development on its completion. The facilities and infrastructure on offer in this "state of the art" facility will be second to none in the Southern area and will boast some of the following features.

- THREE ARTIFICIAL PITCHES
- 500 SEAT SPECTATOR STAND
- 300 LUX LIGHTING FACILITIES
- CLUBROOMS
- BAR & DINING FACILITIES

This is an amazing result for our club, it's players, members, volunteers, families and friends.





## The Cove Football Club

*#Club #Team #Individual*

To have the ability to host both Junior & Senior fixtures at the one venue – our venue – is simply a dream come true and well deserved.

The Cove FC committee has worked extremely long and hard hours to secure this unique opportunity and will continue to work together with Marion Council and the FFSA to ensure a smooth transition.

We are hopeful we may be able to host games at the venue in 2019, of course this is subject to council works – time frames etc.

Finally, I would like to take the opportunity to thank our hard working committee, coaching staff and volunteers of The Cove FC, Marion Council Members, the FFSA and State Government for their support and of course to all our Sponsors, players, members and families whom without your support for this wonderful club none of this would be possible.

We hope you all continue to enjoy the remainder of this season and together we will work hard to ensure a fantastic future ahead.

From the minutes of the council meeting held on 23 April 2019:

- Note that the proposed financial model presented by the Football Federation of South Australia is not financially sustainable for the Cove Football Club to operate and sustain at the Majors Road site.
- Note that the delivery of the Southern Sports Facility at the Majors Road site is unlikely to be achieved within the existing \$5 million budget.
- Authorise staff to commence investigations for the delivery of additional soccer pitches and improved soccer facilities at Cove Sports & Community facility in consultation with the Football Federation of South Australia as part of the overall redevelopment.
- Authorises staff to assess the feasibility of relocating the Cove Football Club (Australian Rules) and the Cove Cricket Club to Capella Reserve with a basic clubhouse of their own and carparking around a football oval, and to commence consultation with relevant parties regarding this concept.

As a consequence of the unsuitability of the Majors Road site for soccer, in June 2019, the City of Marion appointed FlightPath Architects to oversee community consultation for a proposal to move the Cove Football Club to Capella Reserve, which is currently used by the Cove Soccer Club for its junior teams.

The Cove Football Club, along with the Cove Cricket club and representatives from the SANFL, SACA and the SFL, were involved in numerous consultation meetings. The feasibility study was to determine whether the Capella Reserve would be a viable option from a Council and sport's perspective. For example, the infrastructure and playing field upgrade costs are too prohibitive, then the move will not occur.

The feasibility study was to be completed in late August 2019, to date there has been no information on the completion of this study and whether the move to Capella Reserve remains a viable option for the Cove Football Club.



## The Cove Football Club

*#Club #Team #Individual*

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Below is the current information on the council's web site about consultation for the Cove Sports and Community Complex, again there is little mention of the Cove Football Club.

### Cove Sports and Community Club

#### Community Consultation - New options for soccer in the south

You are invited you to share your views on potential changes to plans for the development of the Southern Sports Facility at Majors Road.

Council received a report on April 23 this year which confirmed it was unlikely the delivery of the soccer complex could be achieved within the existing \$5 million budget.

Council is now undertaking a feasibility study into locating extra soccer pitches at the Cove Sports and Community Club.

As part of the study, Council will also investigate relocating the Cove Football Club (AFL) and the Cove Cricket Club to Capella Reserve with a clubhouse and parking.

Council made the decision on the Southern Sports Facility, earmarked for Majors Road, at its meeting of April 23. The Council meeting minutes are available on the [City of Marion website](#).

Sports clubs and the community will be fully consulted before any decision is made.

Formal consultation will be undertaken in the near future.

To find out more and provide feedback visit [www.makingmarion.com.au](http://www.makingmarion.com.au).





## The Cove Football Club

*#Club #Team #Individual*

Over the past 30+ years, the Cove Football Club has cooperated and worked well with all affiliated clubs at the Cove Sports and Community Centre, despite the lack of space and resources at the venue.

The objective of the City of Marion's *Community Facilities Policy* is to: *support planning and decision making that will provide the City of Marion with appropriate facilities, supports people to access services and participate in activities.*

- *Multi-functional and Adaptable - Where possible, design and construct buildings to meet a wide range of community needs*
- *Community Involvement, Pride and Participation -Options for developing facilities will be based on demonstrated demand and community aspirations.*

Removing the Cove Football Club from the Cove Sports and Community Complex shows that the City of Marion is not following the objectives of their *Community Facilities Policy* to support a variety of activities and promote participation, one less sporting club in Hallett Cove, will force members to other clubs, most likely outside of the City of Marion area.

The *Leasing and Licensing of Council Owned Facilities Policy* aims to: *make land and building facilities available to groups or organisations on a fair and equitable basis to meet community needs and support the optimal use of facilities.*

- *Support and encourage diversity of programs and activities offered from Council facilities*
- *Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Marion;*
- *Encourage active and healthy lifestyles*

Removing the Cove Football Club, reduces the community benefit the diversity of programs offered to the community and removes & social Inclusion for many of the residents of the Hallett Cove area.

In summary, the Cove Football Club is extremely grateful that the decision to terminate their tenancy has been overturned, however, still has numerous concerns regarding the process that Marion Council used to make that decision. The Cove Football Club believe that the investigation was not conducted fairly, allowing reasonable and unbiased participation. The Cove Football Club was not provided with adequate evidence, details or specific events to enable appropriate responses to each of the allegations within the letter received from Adrian Skull, CEO Marion Council on the 3<sup>rd</sup> September 2019. Attachment 1.

In addition, we are extremely concerned about the perceived investment that the City of Marion has showed to the Cove Soccer Club and its expansion/relocation.

Should you wish to discuss any of this information in more detail, please do not hesitate to contact Nicole Moore, Secretary of the Cove Football Club, 0419 929 522 or Tony Kernahan, President Cove Football Club, 0409 632 378.






## Annexure – K

### Copy of Text Message

Annexure to *Local Government Act 1999* - s270 review

Request for internal review of Council decision by Cove Football Club



Dear Tony, Thank you for agreeing to participate into the review of Cove Sports to ensure it is a welcoming community facility. As discussed, the review is confidential. Council has engaged Ming-Lyn Hii from EMA Consulting who will be in contact to arrange a time to meet with you. Should you have any questions regarding the process please do not hesitate to contact me. Kind Regards Abby Dickson



## Annexure – L

### Email Tony Kernahan to Susie Inat

Annexure to *Local Government Act 1999* - s270 review  
Request for internal review of Council decision by Cove  
Football Club

**From:** Tony Kernahan <cove.president@mail.com>  
**Sent:** Thursday 14 November 2019 10:29 AM  
**To:** Susie Inat  
**Cc:** Nicky Moore; Lisa Faraci  
**Subject:** Re: RE: Section 270 report [ME-ME.FID5252509]

Dear Ms Inat

Please see our comments below in relation to your preliminary report. Once again I reiterate, without knowing the exact details of the report, it is extremely difficult for me to provide a well considered response.

In our original request for the 270 review, and within the additional information that I provided to you in relation to this matter, we asked a series of questions and advised of our many concerns. I feel that your preliminary report does not address any of these concerns/questions.

In response to our review of the S270 Preliminary Report, we have sought the help of the SANFL and together, we provide the following:

#### **1.4 Investigation Report (Page 5)**

This section indicates that the City of Marion (CoM) instructed EMA Consulting to conduct an independent investigation on 1 July 2019. It is noted that on 3 July 2019, CoM CEO Adrian Skull and then Director Abbey Dickson met with SANFL CEO Jake Parkinson and Lisa Faraci to discuss concerns regarding behaviours at the CCFC. It was our, and the SANFL's, understanding from that meeting the Council were satisfied with actions being taken by the Cove Cobras Football Club (CCFC) to address Council concerns. Furthermore, at no stage during that meeting did Mr Skull indicate that an independent investigation was being conducted, the terms of reference for the investigation or likely outcomes.

This is particularly disappointing and again highlights CCFC concerns regarding Procedural Fairness. If SANFL had been advised of the pending investigation we would have sought to ensure CCFC members interviewed were provided adequate support including necessary representation at meetings with EMA Consulting.

**Page 6** - indicates that CCFC have had the Investigation Report communicated to them in 'one way or another'. This is unsatisfactory and again highlights lack of Procedural Fairness. Any interviews with CCFC members post Council decision were not recorded and cannot be used as evidence that CCFC have been provided necessary information 'one way or another' to action grievances as outlined in the initial termination letter. Providing information 'in one way or another' does not seem like a satisfactory way of communicating such serious issues to the CCFC.

#### **Financials (page 7)**

We again query allegations relating to misappropriation of funds and ongoing confusion relating to these allegations. Again, these allegations should be directed at members of the now defunct Cove Sports and Community Club Board, which at the time had representatives from all user groups based at the Cove Sports and Community Club, and not at the CCFC. We have explained this on numerous occasions, but for some reason there is still confusion about these two entities - the Cove Cobras Football Club is a completely separate entity to the Cove Sports and Community Club.

#### **1.11 (pages 10 and 11)**

Outlines CoM leasing and licensing policy. SANFL queries whether in fact requirements of this Policy for COM to 'assist not-for-profit and volunteer based organisations' have actually been met by CoM in the current landscape. Similarly, have Council behaved with impartiality, fairness, independence, openness and integrity as per their own Disposal of Land Policy where such openness has not provided CCFC with necessary information to action findings from the EMA investigation.

**Page 13** - Once again, we would like to reiterate that the CoM, as per Liquor Licence requirements, bears ALL responsibility for issues relating to alleged intoxication at the Cove Sports Club - this is not the responsibility of the CCFC.

**Page 15** - allegations regarding CCFC members are not family friendly or welcoming and that they 'spread themselves out without respect for the fact that other groups are there' are unsubstantiated. We also also query who the other users are that are accessing the main club-room at the same time as CCFC during season 2019, considering we put a lot of work into coordinating our respective sports timetables for the season? Once again we can only remind you about the amount of CCFC members and how we do our best to accommodate

these members, having to access the club almost every night of the week to allow for training of all teams etc - its purely a numbers game and nothing to do with 'intimidation'.

**Page 15** - allegations relating to 'insider trading' and 'misappropriation of grant money's' remain unsubstantiated. SANFL again queries why no formal action has taken place with SA Police if these matters are in fact found to be sufficient grounds to support CCFC lease provisions?? Once again a Cove Community and Sports Club Board issue and Not a CCFC??

**Page 20** - What information was actually provided by EMA consultants at the commencement of each interview? The two members from the CCFC that were involved in the 'investigation' have a completely different understanding of the purpose of the investigation and potential outcomes - these text messages were provided to you.

**Page 22** - We request that in the first instance any release of information to the public be only to the CCFC.

The Cove Cobras Football Club understand that the council had the power to make the decision to terminate the CCFC from the Cove Sports and Community Club, however, we do not believe that the CCFC was awarded procedural fairness in coming to this decision.

Kind Regards  
Tony Kernahan  
President  
Cove Football Club  
Mobile: 0409 632 378

**Sent:** Wednesday, November 13, 2019 at 12:44 PM  
**From:** "Susie Inat" <Susie.Inat@minterellison.com>  
**To:** "Tony Kernahan" <cove.president@mail.com>  
**Subject:** RE: Section 270 report [ME-ME.FID5252509]

Good afternoon Mr Kernahan

In response to your request for an extension of time to provide further comment in response to my preliminary report, I advise that I am not in receipt of any comments and ask that if you have provided comments on the preliminary report to me, could you please resend them, including advising when you sent them.

For the purposes of determining whether to use my discretion to allow you further time to review and respond, I ask you to please provide reasons for the same, including whether you challenge the factual accuracy of the report or if you have information to support an error (at law or otherwise) in my findings.

For your consideration when responding, it is my view that there is significant community interest in this matter and fit is in both the Football Club's and the Council's interest to have the review completed as expeditiously as possible. I also note (and set out in my report), that the Club have been offered a new licence by the Council.

Please respond with your reasons for my consideration by 12pm tomorrow, Thursday 14 November 2019.

As to your request or ability to review the investigation report, I note Council's CEO has responded to you. (It is not within the scope of my review to advise, consider or respond to you on that issue).



Kind regards

\_\_\_\_\_  
**Susie Inat**  
Special Counsel  
T +61 8 8233 5692 M 0407 710 255  
susie.inat@minterellison.com  
MinterEllison 25 Grenfell Street Adelaide SA 5000  
minterellison.com [Follow us on LinkedIn and Twitter](#)

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**From:** Tony Kernahan <cove.president@mail.com>  
**Sent:** Tuesday 12 November 2019 12:10 PM  
**To:** Adrian Skull <Adrian.Skull@marion.sa.gov.au>  
**Cc:** Nicky Moore <cove.secretary@mail.com>; Susie Inat <Susie.Inat@minterellison.com>; Matthew Shilling <Matthew.Shilling@marion.sa.gov.au>; Lisa Faraci <lisa.faraci@sanfl.com.au>  
**Subject:** Section 270 report

Dear Mr Skull

I am writing to seek an extension of time to provide feedback and further comment on the preliminary report, as prepared by Minter Ellison, regarding our request for a review of the councils decision, as per section 270 of the Local Government Act, 1999.

Having received the preliminary report from Minter Ellison, it is obvious some matters have not been considered and our questions remain unanswered.

I would now like to take up your offer to view/read the Cove Football Club Investigation Report as prepared by EMA consultants.

We continue to remain concerned that we have had no opportunity to read and consider the details of this report to enable us to provide a comprehensive, well considered response to both the investigation report, or provide comments on the preliminary report for the 270 review.

We hope that you can facilitate a time that is suitable for both council staff, and myself, to view the investigation report as offered by both yourself and Kris Hanna at a personal meeting in October.

Once I have seen this report, I will then be in a much better position to provide further comments in regards to the 270 review, so an extension of time to provide feedback would be appreciated.

Thank you.

I look forward to your reply.

Kind regards

**Tony Kernahan**  
President  
Cove Football Club  
Mobile: 0409 632 378

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**IMPORTANT INFORMATION, PLEASE READ**

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken