

## Code of Conduct - Preliminary Report - matter 1

**Originating Officer** Manager Corporate Governance - Kate McKenzie

**Corporate Manager** Manager Corporate Governance - Kate McKenzie

**General Manager** Chief Executive Officer - Adrian Skull

**Report Reference** GC180911F07

**Confidential**



**Confidential Motion**

**That:**

1. Pursuant to section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all person present, with the exception of the following, Adrian Skull, Chief Executive Officer, Kate McKenzie, Manager Corporate Governance and Victoria Moritz, Acting Governance Quality Coordinator, be excluded from the meeting where the Council receive and consider information pertaining to the item Code of Conduct, upon the basis it is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential on the grounds that the report contains information relating to personnel matters.

## REPORT OBJECTIVE

The purpose of this report is to present the preliminary report with supporting documentation regarding the Code of Conduct Complaint for Councillor Hull for the allegation of breach of confidence.

## EXECUTIVE SUMMARY

The Code of Conduct complaint alleges that Councillor Hull has breached section 3.3 of the Code of Conduct for Council Members which state *"a Member must not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence"*.

The complaint alleges that Councillor Hull released information determined to be confidential by the Council on 12 June 2018 regarding the Expression of Interest for the Marion Cultural Centre site. The confidential order states that *"In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018....."*

The matter has been investigated (by EMA Consulting) and statements were taken from relevant people. Based on these statements, a Preliminary Report summarising the matter has been prepared in **Appendix**

1. Council is now required to:

- Review the Preliminary Report and the supporting documentation.
- Determine if a breach of aart 2 and/or 3 the Code of conduct has occurred.
- Determine any relevant sanctions (if applicable).
- Make any changes that may be required to the Preliminary Report.
- If finding is made, determine if the matter is to be referred to the next public meeting of Council or

refer the matter to the Ombudsman.

## RECOMMENDATION

### That Council:

1. **Determines that Councillor Hull has breached section(s) XXX of the Code of Conduct for Council Members.**
2. **Determines the following actions be applied in accordance with section 5 of the Elected Member Code of Conduct Procedure for Investigating Complaints:**
  - 2.1. x
  - 2.2. x
3. **Finalise the Preliminary Report with the following changes:**
  - 3.1. x
  - 3.2. x
4. **Refers the Final Report and recommendations to the next public meeting of the Council or Refers the matter to the Ombudsman for review and recommendation (if a breach of Part 3 has been determined).**
5. **In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, and any attachments to this report and the minutes arising from this report having been considered in confidence under section 90(2) and (3)(a) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidential order will be reviewed at the General Council meeting in December 2018.**

## GENERAL ANALYSIS

A copy of the Code of Conduct for Council Members (the Code) is attached as **Appendix 2**. The Elected Member Code of Conduct Procedure for Investigating Complaints (the Procedure) is attached as **Appendix 3**. The Procedure outlines the various options for Council to investigate Code of Conduct complaints. In accordance with section 4.2 of the Procedure, Council referred this matter to an independent person for investigation. EMA Consulting were appointed to take statements from relevant persons involved with the matter. Each person was provided natural justice and procedural fairness in the taking of their statements.

A Preliminary Report has been drafted (**Appendix 1**) based on the statements obtained by EMA Consulting. This Preliminary Report has been provided to Councillor Hull for review and comment prior to being presented to Council for consideration.

Based on the information/evidence within the Preliminary Report, Council will need to determine if a breach of Part 2 and/or 3 of the Code has occurred and then determine the next steps.

## PRELIMINARY REPORT

### Part 3 - Misconduct

The Preliminary Report (including a statement from Councillor Hull), determines that he did release confidential information before the close of business on the 14th June 2018. If Council determines that this is a breach of section 3.3 of the Code, Council will need to determine the next cause of events.

- Option 1 - Determine a breach of Part 3 of the Code has occurred and determine what action to take

in accordance with section 5 of the Procedure.

- Option 2 - Determine a breach of Part 3 of the Code has occurred and refer the matter to the Ombudsman for review and recommendations. The Code states that an alleged breach of the code 'may' be referred to the Ombudsman.

If Council determines option 1, the final report and supporting documentation should be referred to the next public meeting of Council.

If Council determines option 2, the report and supporting documentation will be referred to the Ombudsman. Please note that the report and findings should not be released and referred to a public meeting until the Ombudsman has finalised their review. Sections 263b and 264 of the Local Government Act 1999 cannot be enacted without an Ombudsman finding (refer to sections below)

**263B—Outcome of Ombudsman investigation**

*(1) The recommendations that may be made by the Ombudsman under the Ombudsman Act 1972 on the completion of an investigation of the complaint include that the council—*

- (a) reprimand the member (including by means of a public statement); or*
- (b) require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps; or*
- (c) require the member to reimburse the council a specified amount; or*
- (d) ensure that a complaint is lodged against the member in the District Court.*

*(2) If a member of a council fails to comply with a requirement of the council of a kind referred to in subsection (1) made in accordance with the recommendation of the Ombudsman, the member will be taken to have failed to comply with Chapter 5 Part 4 and the council is to ensure that a complaint is lodged against the member in the District Court.*

*(3) A council is taken to have the power to act according to the Ombudsman's recommendations.*

**264—Complaint lodged in District Court**

*(1) A complaint setting out the matters that are alleged to constitute the grounds for complaint against a member of a council under this Part may be lodged with the District Court by—*

- (a) a person authorised in writing by the Minister or the council for the purposes of this section; or*
- (b) the chief executive officer of the council.*

*(2) However, a person referred to in subsection (1)(a) or (b) may not lodge a complaint unless the matter has been investigated by the Ombudsman or the Independent Commissioner Against Corruption.*

*(3) An apparently genuine document purporting to be an authorisation under subsection (1)(a) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the authorisation has been given.*

(4) *The complaint must be lodged within a time prescribed by the rules of court.*

#### **Part 2 - Behavioural**

Following this, the Council will need to determine if Councillor Hull knew or ought to have known that the embargo was in place until close of business on the 14th June 2018 or if there were any extenuating circumstances based on the evidence presented. The following sections of part 2 of the Code should be considered:

*Council members must:*

*2.2 Act in a way that generates community trust and confidence in the Council.*

*2.6 Comply with all Council Policies, codes and resolutions.*

*2.7 Deal with information received in their capacity as Council members in a responsible manner.*

*2.8. Endeavour to provide accurate information to the Council and to the public at all times.*

#### **Attachment**

#	Attachment	Type
1	Appendix 1 - preliminary report	PDF File
2	Appendix 2 - EM Code of Conduct	PDF File
3	Appendix 3 - Procedure-for-investigation-complaints	PDF File



## Preliminary Report – Code of Conduct – Councillor Bruce Hull

### Reported Breach: Section 3.3 Code of Conduct

*"A Member must not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence".*

### Complaint:

The complaint relates to Councillor Hull breaching the confidential order determined by Council on the 12th June 2018 regarding the Expression of Interest for the Marion Cultural Centre site. The confidential order in questions stated that *"In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018....."*

### Background:

At its meeting of 12 June 2018, Council considered a report on an unsolicited proposal for the Marion Cultural Centre site.

The following provides a summary of the report:

- The Marion Cultural Centre (MCC) currently operates from 287 Diagonal Road, Oaklands Park. This site is owned by the City of Marion.
- This prominent site has been the subject of a recent unsolicited enquiry from a private developer to build an international standard hotel. This is consistent with the types of development envisaged in the Development Plan Amendment (DPA) for this site.
- The site is designated Regional Centre Zone. The site was excluded from the Community Land classification under the provisions of Section 193 of the *Local Government Act 1999*. This means that the site can be sold without Ministerial approval.
- Council determined progress with a competitive open market EOI for this site with expert advice provided by a commercial agent.
- The EOI sought proposals for a hotel which are to complement the precinct and will deliver community as well as economic benefits. The EOI requested that the existing community and cultural facilities are retained.
- The report highlighted the project risks and mitigation strategies.
- The report included a section on stakeholder engagement as follows:

#### ***Stakeholder Engagement***

*An engagement plan has been developed to inform key stakeholders and the community about the EOI for the site (refer to attachment three). The key message is to inform stakeholders that a proposal was received to build a hotel at the site incorporating all of the existing community functions and Council would like to test the market.*

*Prior to the release of the EOI to the market, a media release and briefings will be provided to the following key stakeholders before 14 June 2018:*

- [REDACTED]
- Marion Cultural Centre staff
- Gallery M staff and Redhouse group
- Next Chapter Café Operators
- Precinct stakeholders
- Residents in Warracowie Ward and wider community
- Community users of MCC
- Media

*Elected Members and Customer Service will be provided with talking points about the process.*

A full copy of this report and the minutes is attached as **Document 1**.

At its meeting of 10 July 2018, a Code of Conduct complaint was submitted to Council regarding Councillor Hull releasing confidential information. Council determined that the Code of Conduct complaint be referred to the Local Government Governance Panel for assessment.

On 14 August 2018, Council received an initial assessment from the Governance Panel. This report made the following statement:

*"given the potential seriousness of the alleged breach, the matter could not be considered trivial or frivolous, and the Panel has no information to suggest the complaint is vexatious. The Panel recommends that an investigation by an investigator nominated by the Panel be appointed to determine the relevant factual circumstances with a view to:*

*- attending on and interviewing relevant witnesses. At this stage we identify them as Mayor Hanna, Councillor Hull, [REDACTED] (Council Employee), [REDACTED] (Council Employee), [REDACTED] (Council Employee) and [REDACTED]."*

A copy of this report is attached as **Document 2**.

Council resolved to appoint an independent investigator rather than referring the matter back to the Governance Panel. EMA Consulting was appointed to obtain statements from those involved.

#### Investigation:

On the 23rd August 2018, statements were taken from the following people:

- Councillor Bruce Hull (**Document 3**)
- [REDACTED] (**Document 4**)
- [REDACTED] (**Document 5**)

[REDACTED] declined to participate. Based on the statements provided the most probable sequence of events are as follows:

- The media was listed in the key stakeholder group of people who would be notified prior to the confidentiality embargo being lifted.

- [REDACTED] notified [REDACTED] late morning on the 14th June 2018.
- Councillor Hull received a phone call from [REDACTED] seeking comments about the MCC EOI after the media was notified.
- Councillor Hull called [REDACTED] to seek advice. This occurred between 2.45 pm and 3.30 pm.
- [REDACTED] issued an email to Elected Members at 3.44 pm. This email said "Today, staff have been informed along with stakeholders around the precinct."
- Councillor Hull phoned [REDACTED] sometime between 3.30 pm and 3.45 pm.
- [REDACTED] phoned [REDACTED] sometime between 3.45 pm and 4.00 pm.

Without a statement from [REDACTED] it is difficult to establish the exact times.

Mayor Hanna and [REDACTED] were also not interviewed as the probable events have been established from the statements taken.

Councillor Hull has requested that the following documents are provided as part of this report:

- Email from [REDACTED] to Elected Members dated 14 June 2018 (**Document 6**)
- Email from Councillor Hull to [REDACTED] dated 24 July 2018 (**Document 7**)

### Findings

From the information provided in the statements (including Councillor Hull's), it is evident that Councillor Hull phoned [REDACTED] before close of business on the 14<sup>th</sup> June advising [REDACTED] of the expression of interest for the Marion Cultural Centre site.

### Considerations for Council:

When deciding this matter and based on the facts presented, Council will need to determine if Councillor Hull knew or ought to have known that the embargo was in place until close of business on the 14th June 2018 or if there were any other extenuating circumstances.

### Documents:

- Document 1 Report and Minutes – 12 June 2018 – Commercial Development within Regional Centre Zone
- Document 2 Governance Panel Initial Assessment
- Document 3 Statement Councillor Bruce Hull
- Document 4 Statement [REDACTED]
- Document 5 Statement [REDACTED]
- Document 6 Email from [REDACTED]
- Document 7 Email from Councillor Hull

**CITY OF MARION  
GENERAL COUNCIL MEETING  
12 JUNE 2018**

**CONFIDENTIAL REPORT**

**Originating Officer:** Donna Griffiths, Unit Manager Economic Development  
**Manager:** Greg Salmon, Manager City Activation  
**General Manager:** Abby Dickson, General Manager City Development  
**Subject:** Commercial Development in Regional Centre Zone  
**Report Reference:** GC120618F02

If the Council so determines, this matter may be considered in confidence under Section 90(3)(b) and (d) of the *Local Government Act 1999*, on the grounds that the report contains information relating to matters pertaining to commercial operations of a confidential nature, the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information and could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or prejudice the commercial position of the council.

**Adrian Skull**  
Chief Executive Officer

**RECOMMENDATION**

That pursuant to Section 90(2) and (b) and (d) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Abby Dickson, Tony Lines, Vincent Mifsud, Kate McKenzie, Greg Salmon, Donna Griffiths, Craig Clarke, Ray Barnwell, Jaimie Thwaites and Victoria Moritz, be excluded from the meeting as the Council receives and considers information relating to the report Commercial Development in Regional Centre Zone, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential relating to matters pertaining to commercial operations of a confidential nature, the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information and could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or prejudice the commercial position of the council.

## REPORT OBJECTIVES

The objective of this report is for Council to consider the potential development of a hotel on the site currently occupied by the Marion Cultural Centre (287 Diagonal Road, Oaklands Park), given its prominent and strategic location; and to seek endorsement to proceed to an Expression of Interest (EOI) for the site with assistance of a commercial agent.

This report relates to:

- An unsolicited proposal to develop an international standard hotel in the City of Marion following a confidential council resolution of May 2018.
- A proposed open market, competitive EOI process to enable Council to consider alternative proposals for the site

## EXECUTIVE SUMMARY

The Marion Cultural Centre (MCC) currently operates from 287 Diagonal Road, Oaklands Park. This site is owned by the City of Marion. This prominent site has been the subject of a recent unsolicited enquiry from a private developer to build an international standard hotel. This is consistent with the types of development envisaged in the Development Plan Amendment (DPA) for this site.

The site is designated Regional Centre Zone. The site was excluded from the Community Land classification under the provisions of Section 193 of the *Local Government Act 1999*. This means that the site can be sold without Ministerial approval.

If Council determines it wishes to pursue a hotel development at the MCC site, it is recommended Council undertake a competitive, open market, EOI with expert advice provided by a commercial agent.

The EOI would be open to proposals for a hotel development that is consistent with the planning policy for Council's Regional Centre Zone and seek to activate the site within the spirit that was intended. The EOI will seek proposals for a hotel which are complementary to the precinct and will deliver community as well as economic benefits.

As with any significant project there are accompanying risks and these are detailed in full for Council's consideration including mitigation strategies. The risks are heightened by the limited time leading up to caretaker period. To address this a two staged process is recommended to Council should it endorse proceeding with the project. Alternatively, should Council have interest in the project but be concerned with the timing the option exists to progress after the November local government elections. If Council decides to defer the project, there is a risk that the current developer interest may cease.

A requirement of the EOI will be the due consideration to retaining existing community and cultural functions including a café, theatre, library and art gallery. A developer may envisage this as part of the construction of a new building or retaining part or all of the existing MCC and developing as an extension. Council may also consider continuing these services from alternative sites.

The EOI will seek to achieve or complement Council's vision for the MCC Plaza as a vibrant and activated town square for the City.

**RECOMMENDATIONS****DUE DATES****That Council:**

- |  |                |
|--|----------------|
| 1. Notes that it has received an unsolicited proposal for a hotel at 287 Diagonal Road, Oaklands Park that incorporates the existing community facilities.   | 12 June 2018   |
| 2. Authorises a call for an Expression of Interest for the development of 287 Diagonal Road, Oaklands Park (Certificate of Title Volume 5880 Folio 722) as a hotel.  | 12 June 2018   |
| 3. Approves the allocation of up to \$30,000 to be funded in 2018/19 from identified cash savings following the completion of the 2017/18 audited Annual Financial Statements process to fund the engagement of a commercial agent to assist the Expression of Interest process.   | 12 June 2018   |
| 4. Notes the opportunities and risks in undertaking this Expression of Interest Process and how the risks will be mitigated.   | 12 June 2018   |
| 5. Endorses the following principles pertaining to the Expression of Interest which will guide the assessment criteria:  | 12 June 2018   |
| <ul style="list-style-type: none"> <li>• Alignment to Council's strategic objectives</li> <li>• how the proposal will deliver the best outcomes for the community</li> <li>• Due consideration given to retaining the community functions already at the site (in full or partially ); and/or delivering them from alternative locations</li> <li>• The proposal's fit with the vision for the precinct</li> <li>• Complements the existing facilities within the Precinct</li> <li>• value for money proposition from the proposal for council</li> <li>• if the proposal is technically, legally and financially viable and sustainable</li> <li>• the proposed delivery method and timeframes</li> <li>• Demonstrated experience and capability of proponent to deliver the proposed project</li> <li>• number of jobs to be created during construction and operation</li> </ul> |                |
| 6. Requests Administration bring a report back to Council detailing the outcomes and recommendations resulting from the expression of interest in August/September 2018.   | September 2018 |
| 7. Notes that Consultation requirements arising under applicable enterprise agreements are undertaken prior to the confirming of any decision that will impact on employees.   | 12 June 2018   |

- 8. Notes that Council retains the right to cease the process at any stage after commencing the Expression of Interest**

**12 June 2018**
- 9. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018; and that the report and appendices, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2018.**

**December 2018**



## BACKGROUND

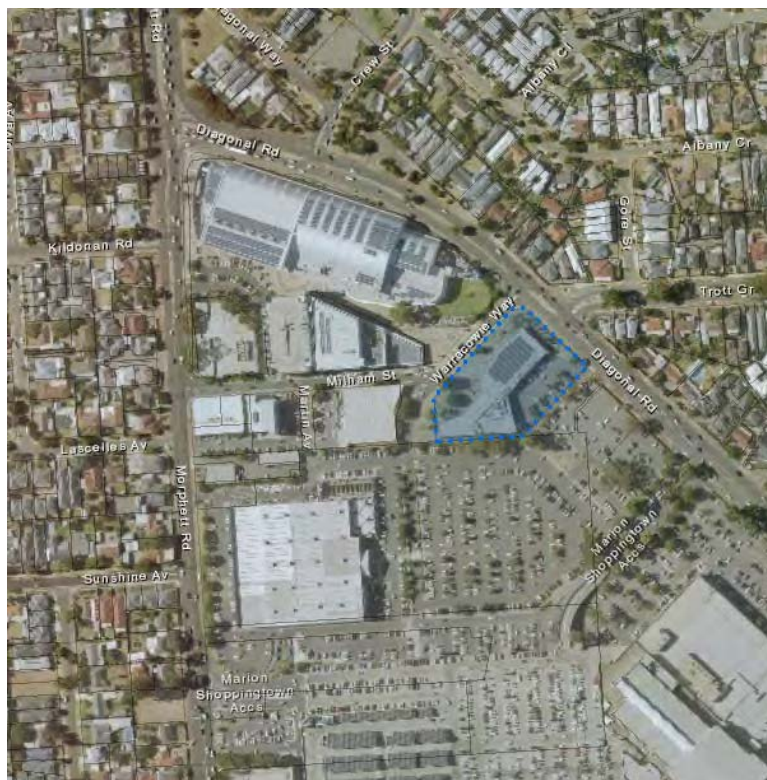
An unsolicited proposal was received by Council to build a hotel at 287 Diagonal Road, Oaklands Park. Council considered this proposal in confidence at the 8 May 2018 General Council meeting and resolved the following:

1. *Authorises the Chief Executive Officer to proceed with an investigation into the feasibility of a hotel/commercial development located within the Marion Cultural Centre Precinct.*
2. *Notes a further report will be brought back to Council after further investigations are conducted and a proposed process has been developed for Council's consideration in June 2018.*

Council also resolved to keep the report and accompanying minutes confidential (GC080518F01).

### The Existing Site:

The site proposed for the EOI is Lot 3 in DP59367 and comprised in Certificate of Title Volume 5880 Folio 722, located at 287 Diagonal Road, Oaklands Park (the site), which is owned by the City of Marion. See below in blue:



The site is currently occupied by the Marion Cultural Centre and includes:

- Library
- Gallery M - Art Gallery
- Next Chapter Café
- Theatre and meeting rooms
- Plaza – open space
- Car parking

Completed in 2001, the Marion Cultural Centre is a vibrant centre that attracts approximately 250,000 visits per annum.

The value of the site is estimated between \$8M-\$12M, according to the Valuer General and Jones Lang LaSalle (Council's insurance value).

The site was excluded from the Community Land classification under the provisions of Section 193 of the *Local Government Act 1999*. This means that the site can be sold without Ministerial approval. The sale of the site will be subject to the Disposal of Land and Assets Policy. This policy requires Council to obtain a valuation from a suitably qualified Valuer.

Further details about the site's zoning is contained in attachment one.

### **Existing Services**

In considering a hotel development, Council needs to consider the existing services offered from the site and the impact of the proposed development. The following section provides a summary of the existing services:

#### **Library**

The Cultural Centre Library was opened in November 2001, following the closure of the Sturt Road branch and redevelopment of the local area. It is the busiest of Council's three library sites. Membership hovers around 20,000, generating 303,410 loans and 211,367 visitors in 2016/2017. It is open seven days and three evenings per week.

The co-location of a Library and a hotel within the one precinct has the potential to see increased utilisation of library services where patrons of the hotel may access facilities within the library including wi-fi and internet services, print and online collections and access to programs.

#### **Theatre and meeting room**

The Domain Theatre is an intimate performance space with unobstructed viewing for the audience. Its flexibility makes it ideal for all types of performing including theatre, cabaret, comedy and dance. The Theatre has seating capacity in various configurations tailorable to each function with a maximum seated capacity of 280 people. The Domain Theatre hosts regular theatre productions, musical performances, product launches, banquets/functions, film screenings, seminars, meetings, conferences and more.

The Sturt Room and Green Room are hired for workshops, training sessions, presentations and seminars. The café, foyer and Gallery M are hired for banquets/functions, expo's, markets and can also be set up flexibly to accommodate events and functions of various styles.

Average attendances from MCC / Domain Theatre programming and via external hires totals approximately 30,000 per year.

The City of Marion presents an annual performance program within the Domain Theatre, including matinee and cabaret shows, school holiday performances, youth music events, films, national touring shows, participation within State and National Festivals ie Fringe Festival, Cabaret Festival, NAIDOC Week, Reconciliation Week, Youth Week, ZEST Fest etc and support the cultural development of residents through skill development opportunities. This suite of initiatives totals approximately 65 individual performances/sessions annually. This annual program generated more than 5,800 ticket sales in 2016-/7 and attracts on average attendances of 130 people per performance, resulting in the theatre operating at 61 per cent capacity.

### **Gallery**

Council currently has a three year management agreement with the Red House Group for the management and operation of Gallery M. The current agreement expires on 30 June 2018. A new agreement is currently in negotiation until 2021. The Red House Group is a not-for-profit, artist run organisation which has managed the Gallery for the past 17 years. The current Gallery provides an opportunity for local artists to exhibit their work and support the local creative economy through sales from exhibitions and a small retail outlet. Council contributes an annual subsidy towards the Gallery in the order \$152k per annum and the current agreement expires on 30 June 2021.

Should Council endorse the EOI, the impact on the Red House Agreement will need to be fully considered. This will be presented to Council at the conclusion of the first stage of the EOI when proposals have been assessed. The development of a hotel on site has the potential to build the financial sustainability of the Gallery and a different management model may be required.

### **Café**

A lease with the Next Chapter Café is currently in operation. The lease is for three years commencing on 17 November 2017 and expiring at midnight on 16 November 2020. There is one right of renewal of two years.

Subject to the recommendation by Council, further legal advice will need to be obtained on options regarding the termination of the current lease agreement.

The proposed development has the opportunity to introduce a range of restaurant and café facilities into the precinct. The increased footfall within the site would create an economically viable environment for restaurants and cafes to operate within.

## DISCUSSION

### Strategic Alignment

For over 20 years the City of Marion has been pursuing an integrated Regional Centre serving as the principal public, community, cultural, retail and recreational space of Marion, southern Adelaide and the region. Oaklands Hub is the 'heart' of the City of Marion. Oaklands Hub is part of a residential and retail precinct straddling the Adelaide to Seaford Rail line at the Oaklands Rail Station. It abuts the Marion Central precinct, which includes the Marion Cultural Centre and library, GP Plus, SA Aquatic and Leisure Centre and Westfield Marion Shopping Centre. The precinct is about to undergo further development with the \$174M Oaklands rail crossing project where improved public transport, vehicle, pedestrian and cycling movement will further activate the site.

It is a significant centre for the City which has the potential to maximise place activation and achieve urban economic uplift. The future Hub will be a place for the local community and an iconic destination for broader Adelaide. It will connect and provide an attractive link to the South Australian Aquatic and Leisure Centre, Marion Cultural Centre and Westfield Marion.

The development of a hotel within the site is aligned to the following strategies within Council's 10 year Strategic plan:

- P1: We will ensure that our development regulation and interaction with businesses allows for a thriving economy, increased visitation and vibrant atmosphere
- P4: We will seek to activate our City through quality streetscapes and placemaking initiatives to deliver vibrant and prosperous business precincts
- L1: We will make our services, facilities and open spaces more accessible
- L4: We will celebrate our rich cultural diversity and heritage through artistic, cultural and community activities and vibrant destinations

This opportunity relates to two Southern Adelaide Economic Development Board Priorities:

- Priority One – develop key mixed use precincts across the City of Marion, linked by the Seaford / Tonsley electric rail lines and the north-south corridor.
- Priority Two – Regional approach to the visitor and lifestyle economy. Work as a region to maximise the visitor experience and position Southern Adelaide as the 'destination of choice' for domestic and international visitors.

### Hotel Accommodation in the City of Marion

Council has received an unsolicited expression of interest from [REDACTED] to develop an international standard hotel at the Marion Cultural Centre site. The proposed mixed-use development would serve Southern Adelaide and adjacent parts of the east and west metropolitan area. The opportunity presented includes:

- A four star international hotel under the 'Hyatt' brand with 250 rooms
- 11 storey mixed-use facility
- Retention of the community functions of café, theatre, library and Art Gallery
- Attraction of a restaurant / bar / microbrewery tenancy for the bottom floor
- Two floors of office space
- One level of undercroft parking

The Development Plan advises this land is within a Regional Centre Zone. The site is located within Precinct 9 Northern Fringe Marion. The uses proposed by the prospective developer accords with the permitted uses under the Regional Centre Zone.

The City of Marion does not currently have an international standard hotel and has limited restaurant facilities. Visitors to the City often stay at hotels located in adjacent Councils and the CBD. This is an opportunity to attract a significant investment into the City of Marion, create new jobs and realise the vision for the space.

Current accommodation suppliers in the City of Marion include:

**Marion Motel and Apartments (155 beds)**

Don Oakley  
Marion Motel and Apartments  
540 Marion Road, Plympton Park, SA 5038  
08 8371 2899  
[www.adelaidemotel.com.au](http://www.adelaidemotel.com.au)  
Marion Motel [info@adelaidemotel.com.au](mailto:info@adelaidemotel.com.au)

**Tonsley Hotel (no of beds not provided)**

<http://www.tonsleyhotel.com.au/>  
1274 South Road, Clovelly Park 8276 8099  
[info@tonsleyhotel.com.au](mailto:info@tonsleyhotel.com.au);  
Sam McInnes (key contact for Tonsley and Marion Hotels)  
General Manager, Hurley Hotel Group  
P: 08 8338 1100 F: 08 8338 4158  
M: 0411 750 205 [sam@hurleyhotelgroup.com.au](mailto:sam@hurleyhotelgroup.com.au)

**Marion Hotel (12 beds)**

[www.marionhotel.com.au](http://www.marionhotel.com.au)  
Address: 849 Marion Road, Mitchell Park South Australia 5043  
Phone: 08 8276 8888

**Marion Holiday Park (211 beds)**

<http://www.marionhp.com.au/>  
[info@marionhp.com.au](mailto:info@marionhp.com.au)  
Call 8276 6695  
323 Sturt Road, Bedford Park, SA, 5042  
[nick@marionhp.com.au](mailto:nick@marionhp.com.au);

**Morphett Arms Hotel (no of beds not provided)**

<http://morphettarms.com.au/>  
138 Morphett Road, Glengowrie South Australia 5044 .  
08 8295 8371  
[office@morphettarms.com.au](mailto:office@morphettarms.com.au)  
Contact Greg Flinn @ [gflinn@morphettarms.com.au](mailto:gflinn@morphettarms.com.au) re MA

**The Warradale (34 beds)**

<http://www.warradalehotel.com.au/>  
Address: 234 Diagonal Road, Warradale South Australia 5046  
Phone: 08 8296 1019  
[tfrench@warradalehotel.com.au](mailto:tfrench@warradalehotel.com.au);

## Opportunities and Benefits

The opportunities and benefits of testing the market for a hotel development are summarised below:

Opportunities and Benefits
<p>Maximise community and economic use of the site</p>
<p>Job creation during construction</p> <p>Example REMPLAN Analysis based on Southern Adelaide data and assuming a \$50M build:</p> <p><i>From a direct investment of \$50M into a non-residential building, the corresponding creation of direct jobs is estimated at 66 jobs. From this direct expansion in the economy, flow-on supply-chain effects in terms of local purchases of goods and services are anticipated, and it is estimated that these indirect impacts would result in the gain of a further 157 jobs.</i></p> <p><i>The increase in direct and indirect output and the corresponding creation of jobs in the economy are expected to result in an increase in the wages and salaries paid to employees. A proportion of these wages and salaries are typically spent on consumption and a proportion of this expenditure is captured in the local economy. The consumption effects under this scenario are estimated to further boost employment by 62 jobs.</i></p> <p><i>Total employment, including all direct, supply-chain and consumption effects is estimated to increase by up to 285 jobs.</i></p>
<p>Job creation during operation</p> <p>Example REMPLAN Analysis based on Southern Adelaide data and assuming a \$50m build:</p> <p><i>From a direct increase in output of \$50M the corresponding creation of direct jobs is estimated at 433 jobs. From this direct expansion in the economy, flow-on supply-chain effects in terms of local purchases of goods and services are anticipated, and it is estimated that these indirect impacts would result in the gain of a further 65 jobs.</i></p> <p><i>The increase in direct and indirect output and the corresponding creation of jobs in the economy are expected to result in an increase in the wages and salaries paid to employees. A proportion of these wages and salaries are typically spent on consumption and a proportion of this expenditure is captured in the local economy. The consumption effects under this scenario are estimated to further boost employment by 76 jobs.</i></p> <p><i>Total employment, including all direct, supply-chain and consumption effects is estimated to increase by up to 574 jobs.</i></p>
<p>Tourism Impact in the Local Economy</p> <p>Example REMPLAN Analysis based on Marion data and assuming 250 people per day (one person per room) for 365 days per year:</p> <p><i>Under this scenario Gross Regional Product is estimated to increase by \$19.109 million (0.56%) to \$3,440.532 million. Contributing to this is a direct increase in output of \$23.028 million, 144 additional jobs, \$6.788 million more in wages and salaries and a boost in value-added of \$10.870 million.</i></p>

<p><i>From this direct expansion in the economy, flow-on supply-chain effects in terms of local purchases of goods and services are anticipated, and it is estimated that these indirect impacts would result in a further increase to output valued at \$9.252 million, 35 more jobs, \$2.438 million more paid in wages and salaries, and a gain of \$4.143 million in terms of value-added.</i></p>
<p>City Activation:</p> <ul style="list-style-type: none"> <li>• increased tourism to the City of Marion</li> <li>• increased exposure and revenue to the businesses within the precinct</li> <li>• Increased visitor economy</li> </ul>
<p>Increased community outcomes: opportunity for expansion of existing services or new activity to the City.</p>
<p>New development to be complementary to the existing site and services with potential to retain the existing community functions of the site</p>
<p>Strong strategic alignment within Council' s Strategic Plan 2017-2027 and Southern Adelaide Economic Development Board vision</p>
<p>Increase patronage to the site resulting in increased patronage of community facilities (Gallery, MCC, Library and Café)</p>
<p>Realises Council vision for an activated plaza and town square within this precinct</p>
<p>Complements and supports existing and future development within the Precinct ie. State Aquatic Centre, retail and hospitality outlets, Oaklands Rail Crossing project and future commercial development alongside rail corridor</p>
<p>Example rates from a \$50M mixed use hotel precinct</p> <p>It is estimated \$326,974.00 rates will be payable in the current year on a commercial property with a capital value of \$50M</p>
<p>The City of Marion is strengthened as a destination for visitors. This will support the 18 million visitors we attract per annum.</p>



The table below summarises the key risks and how they will be mitigated:

Risk	Mitigation
<b>Skillsets of internal staff:</b> specialist expertise is sought in supporting the process and providing advice to Council	<ul style="list-style-type: none"> <li>Engagement of a commercial agent to provide specialist advice and undertake negotiations where necessary</li> </ul>
<b>Political:</b> timing of the upcoming election may result in the EOI and the potential development becoming a campaign issue	<ul style="list-style-type: none"> <li>Communication with the community to promote the benefits of activating the site.</li> </ul>
<b>Political:</b> Perceived poor governance in making a significant decision close to caretaker period	<ul style="list-style-type: none"> <li>Second stage of Tender is undertaken by incoming Council and they are not bound to the continuing the process</li> </ul>
<b>Reputational:</b> Opposition from key stakeholders and the wider community. Perception of loss of key community services	<ul style="list-style-type: none"> <li>Communication with the community and media to minimise the risk of negative publicity.</li> </ul>
<b>Reputational:</b> Process is not open and transparent	<ul style="list-style-type: none"> <li>EOI is an open competitive process and all applicants receive the same information</li> </ul>
<b>Lost Opportunity to generate greater economic activity from the site:</b> No Action by City of Marion.	<ul style="list-style-type: none"> <li>Call of Expression of Interest demonstrates Council's commitment to seeking development which will maximise community and economic benefits</li> </ul>
<b>Potential Demolishment of an Asset:</b> Building has been highly regarded for architectural merit and may be demolished before reaching end of useful life.	<ul style="list-style-type: none"> <li>Communicate the benefits of a potential new development in enhancing the precinct</li> </ul>
<b>Industrial: Staff concern of job security or changes to their role:</b> Announcement of EOI may cause staff concern about future job loss or significant change to working conditions	<ul style="list-style-type: none"> <li>City Activation and General Manager City Development to meet with staff on 14 June to advise of EOI</li> <li>HR involved in discussions to staff support</li> <li>Staff will continue to be informed of the progress of the EOI and next stages</li> <li>Union briefed</li> </ul>
<b>*Contractual:</b> Council may be liable for compensation to be paid to the existing café operator due to early lease termination  <i>*Note: Level of risk is dependent on proposal and level of change to site</i>	<ul style="list-style-type: none"> <li>Seek to negotiate a mutually agreeable early lease termination</li> </ul>

A detailed risk assessment is contained in attachment two.

## Industrial Relation Considerations

Staff working at the Cultural Centre Library and the MCC will potentially be impacted should a hotel development proceed on the site. The extent of the change is unknown until a preferred development is endorsed. Consultation with staff and the union will occur in line with Council's Enterprise Agreement consultation requirements.

## Due Diligence

To meet its due diligence responsibilities in both considering an unsolicited proposal and progressing to test the market for a hotel development at the site the following will be undertaken:

- Assessment of projects strategic alignment
- Council considers the matter in full before progressing the project
- Open market, transparent, competitive process seeking proposals from private developers
- Adherence to City of Marion Procurement and Contractor Policy
- Process is conducted in two stages to ensure the incoming Council has the opportunity to fully assess business case of the preferred proposal. Incoming Council has the right to cease the process
- Section 48 Prudential management report is developed for preferred proposal and considered by the Finance and Audit Committee and Council
- Full risk assessment and implementation of risk controls
- Community and stakeholder engagement
- Council meets all relevant policy and legislative requirements
- The economic and social benefits are fully assessed
- The proposal represents value for money

This align with Council's draft Unsolicited Proposal Policy.

## Rates Analysis

Should a hotel development proceed on the site, it would be levied at the Commercial rate in the dollar. This rate is subject to change on a yearly basis. The calculation is to multiply the current rate in the dollar (0.00644293) by the capital value. This will give general rates levied.

For example: assume capital value of \$50,000,000 x 0.00644293 = \$322,146.50 general rates levied.

The Natural Resource Management Levy would also need to be calculated. The City of Marion collects this on behalf of the State Government. The rate in the dollar is also subject to change on a yearly basis. Council has no jurisdiction over the amount of NRM Levy we must collect.

For example: \$50,000,000 x 0.00009655 = \$4,827.50 NRM levy

Thus, \$322,146.50 + \$4,827.50 = \$326,974.00 rates payable in the current year on a commercial property with a capital value of \$50 M.

## Proposed EOI Process

Should Council be supportive of a hotel development on the site then a competitive EOI process is recommended to test the market.

Proponents will be required to provide Council with a high-level overview of their proposal that will enable the evaluation panel to assess:

- Alignment to Council's strategic objectives
- How the proposal will deliver the best outcome for the community
- Due consideration given to retaining the community functions already at the site
- Proposal's fit with the vision for the precinct
- Complements the existing facilities within the Precinct
- Value for money proposition from the proposal for council
- If the proposal is technically, legally and financially viable and sustainable
- The proposed delivery method and timeframes
- Demonstrated experience and capability of proponent to deliver the proposed project
- Number of jobs to be created during construction and operation

A summary of the process and indicative timeframes is provided below.

#	Proposed Step	Proposed Lead	Proposed Outcome Sought	Indicative Key Date
1	Council to consider whether to endorse the EOI process.	<ul style="list-style-type: none"> <li>• City Activation</li> </ul>	Council direction regarding the proposed EOI process.	12 June 2018
2	Stakeholder engagement and Media Release.	<ul style="list-style-type: none"> <li>• City Activation and Communications</li> </ul>	Key stakeholders are advised in a timely and respectful manner	Within 48 hours should Council approve to progress
3	Direct appointment of a Commercial Agent. When the EOI opens market the opportunity to all the major (ie 4 star) hotel companies operating in Australia.	<ul style="list-style-type: none"> <li>• City Activation</li> <li>• Contracts</li> </ul>	Commercial Agent will provide input and advice, have wider reach / networks to ensure best community outcome	24 June 2018
4	Refine the Expression of Interest and evaluation criteria	<ul style="list-style-type: none"> <li>• City Activation</li> <li>• Contracts</li> </ul>	Documentation is ready to go to market	24 June 2018
5	EOI Go to market with the opportunity with an eight week open	<ul style="list-style-type: none"> <li>• City Activation</li> <li>• Contracts</li> </ul>	Seek best outcome for community and widest reach	26 June 2018 – 21 August 2018
6	City of Marion evaluation panel will assess the applications in line with the vision and criteria and develop report	<ul style="list-style-type: none"> <li>• City Activation</li> <li>• Contracts</li> </ul>	The preferred Proponent(s) / Proposal(s) is identified	21 August – 4 September 2018

#	Proposed Step	Proposed Lead	Proposed Outcome Sought	Indicative Key Date
7	Report to General Council Meeting	<ul style="list-style-type: none"> <li>City Activation</li> <li>Unit Manager, Economic Development</li> </ul>	Council consideration of EOIs received and direction of whether to proceed with one or more proposals to a full business case.	11 September 2018
Council elections (caretaker period to polling day)				18 September 2018 to 10 November 2018
8	Report to General Council Meeting	<ul style="list-style-type: none"> <li>City Activation</li> <li>Unit Manager, Economic Development</li> </ul>	Seek decision from incoming Council whether to continue project.	TBC
9	Full Business Case	<ul style="list-style-type: none"> <li>CoM Contracts</li> <li>Commercial Agent (input)</li> <li>Unit Manager, Economic Development</li> <li>Finance Manager</li> </ul>	Detailed consideration of the feasibility of the proposal(s) is carried out.	TBC
10	Provide a section 48 Prudential management report to be developed and considered by FAC and Council	<ul style="list-style-type: none"> <li>City Activation Manager</li> <li>Unit Manager, Economic Development</li> </ul>	Fully appreciate the value proposition of the business case	TBC
11	Report to General Council detailing terms and conditions of the commercial proposal and seek approval to proceed with the project	<ul style="list-style-type: none"> <li>City Activation Manager</li> <li>Unit Manager, Economic Development</li> </ul>	Scope of project is detailed for consideration.	TBC
12	Contract Negotiation	<ul style="list-style-type: none"> <li>Finance Manager</li> <li>Contract Manager</li> <li>Unit Manager, Economic Development</li> </ul>	Final legal and commercial terms are agreed	TBC

The above process allows the incoming Council to fully consider the potential development and exercise due diligence in regards to a significant change in use. The shortlisted respondent(s) will be fully informed that the incoming Council has the option to cease progressing with the project.

## Political and Reputational Risks

It should be noted Council will be considering the EOI evaluation very close to the commencement of caretaker period on 18 September 2018. Should Council endorse to proceed with the EOI, this will have a significant impact on the existing cultural centre facilities. There are political and reputational risks associated with this decision within an election year. Council would seek to mitigate these risks through effective stakeholder and community engagement with communications which clearly outlines the economic and community benefits of the development.

Alternatively, Council may wish to defer this project until after the November 2018 Council elections. The advantage of this is Council would have more time to consider the project and there is not a risk that the project becomes over politicised. The risk in deferring the EOI is that the developer submitting the unsolicited proposal chooses to seek alternative investment opportunities.

## Stakeholder Engagement

An engagement plan has been developed to inform key stakeholders and the community about the EOI for the site (refer to attachment three). The key message is to inform stakeholders that a proposal was received to build a hotel at the site incorporating all of the existing community functions and Council would like to test the market.

Prior to the release of the EOI to the market, a media release and briefings will be provided to the following key stakeholders before 14 June 2018:

- [REDACTED] (re unsolicited proposal)
- Marion Cultural Centre staff
- Gallery M staff and Redhouse group
- Next Chapter Café Operators
- Precinct stakeholders
- Residents in Warracowie Ward and wider community
- Community users of MCC
- Media

Elected Members and Customer Service will be provided with talking points about the process.

## CONCLUSION

Council has received an unsolicited proposal for a hotel at 287 Diagonal Road, Oaklands Park. The proposed EOI seeks to maximise the community outcomes from the site through a competitive open market process. Preferred respondents will be tabled prior to the caretaker period.

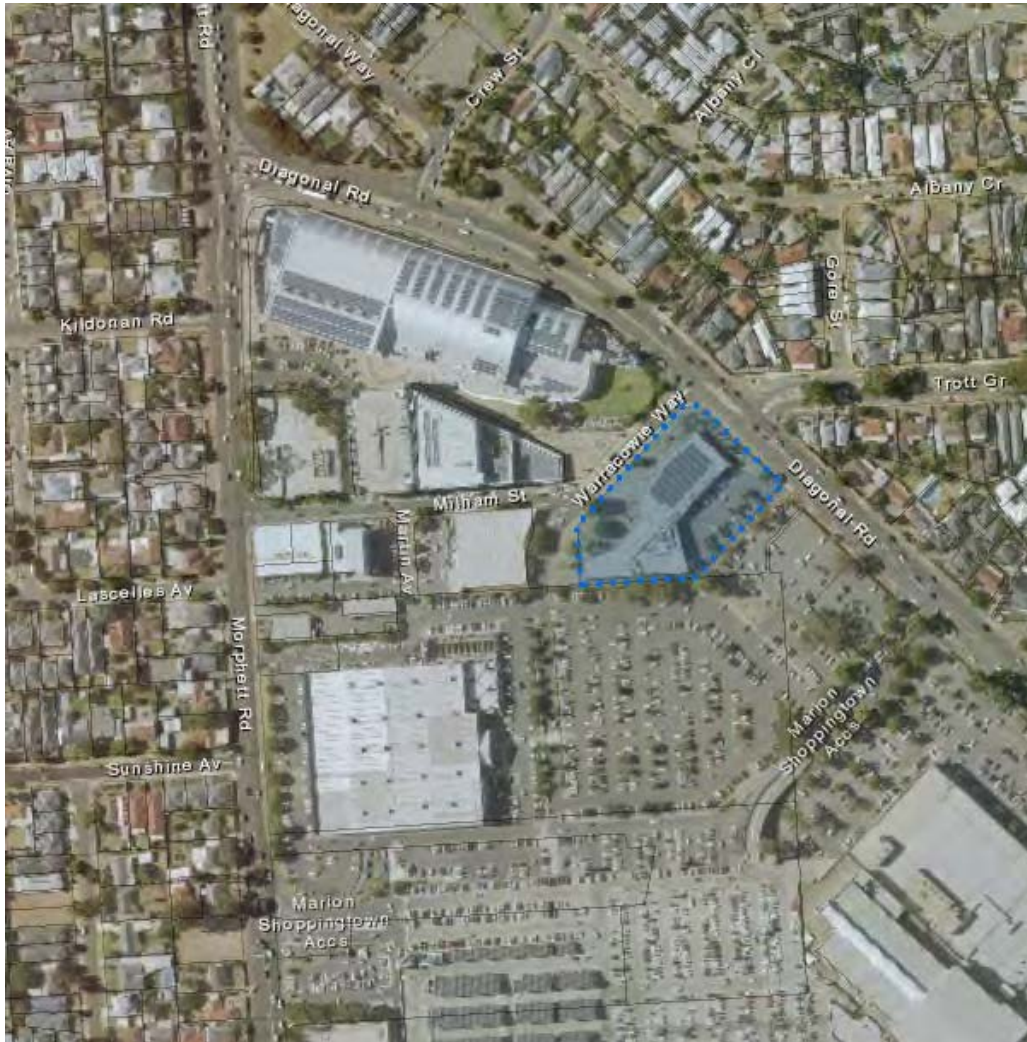
### Attachments:

- Attachment One – The Site
- Attachment Two – Draft Risk Assessment
- Attachment Three – Draft Community Engagement Plan



## ATTACHMENT ONE – THE SITE

The site proposed for the Expression of Interest (EOI) is Lot 3 in DP59367 and comprised in Certificate of Title Volume 5880 Folio 722, located at 287 Diagonal Road, Oaklands Park (the site), which is owned by the City of Marion. See site map below:



The site is zoned Regional Centre Zone. The size of the site is 7213 square metres. The site currently includes:

- Library
- Gallery M – Art Gallery
- Next Chapter Café
- Theatre
- Plaza – open space

The site contains the one major public open space as a feature within the Regional Centre that is to be available for use by the public at all times.

## Easements

Certificate of Title Volume 5880 Folio 722 for the MCC is subject to:

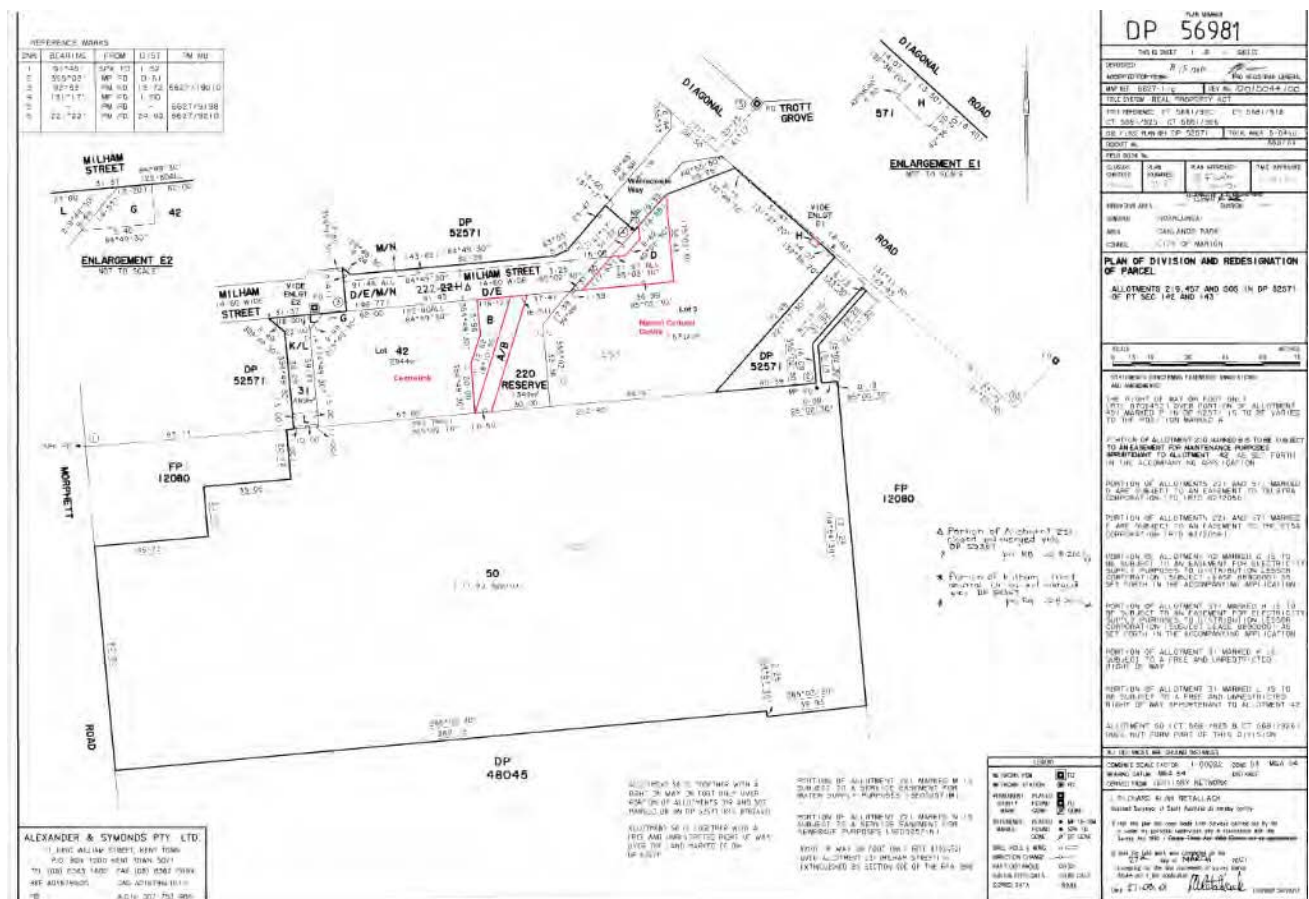
- Easement/s over the land marked D to Telstra Corporation Ltd
- Easements over the land marked H to Distribution Lessor Corporation (SA Power Networks)
- Easements over the land marked D to the SA Power Networks

The adjacent Council owned land in Certificate of Title Volume 5848 Folio 469 (Lot 220 Reserve) is subject to:

- an easement for maintenance purposes over the land marked B
- a right of way on foot over the land marked A

for the benefit of Lot 42 which is occupied by Centrelink.

Please see the map below.





### Land Management Agreement

A Land Management Agreement (LMA) is registered on the Certificates of Title for the State Aquatic Centre and GP Plus Healthcare Centre. The LMA relates to the development, management, preservation or conservation of that land.

### Heritage Listing

A search of the State Heritage Listing shows this facility is not State Heritage listed.

A search of the Local Heritage Listing within Council's Development Plan shows this facility is not Local Heritage listed.

### Public Transport Connections

The existing bus interchange located immediately adjacent to the shopping centre off Sturt Rd provides public transport users convenient access to the shopping centre without having to navigate road crossings and car parking areas. In the future as substantial development occurs in Precinct 9 Northern Fringe Marion and Precinct 11 Retail Support Marion, the interchange should move further north towards the centre of the zone to one of the two locations shown on *Concept Plan Map Mar/5 – Marion Regional Centre*. Either potential location would be immediately adjacent and directly accessible to the existing shopping centre and thereby provide the greatest convenience in the longer term to the largest number of centre users, and to others who are likely to access public transport such as users of the cinemas, entertainment facilities, library and educational facilities.

In addition, the Oaklands Train Station development will provide a significant public transportation hub whilst easing traffic congestion and improving pedestrian and cycling connectivity within the precinct.

### Marion Council Development Plan

The site is located within Precinct 9 – Northern Fringe Marion of the Regional Centre Zone.

A hotel is neither a Complying Development nor a Non-complying Development within the Regional Centre Zone and would therefore be a Consent on Merit form of development.

The zone provisions are provided below:

## Regional Centre Zone

Refer to the [Map Reference Tables](#) for a list of the maps that relate to this zone.

### OBJECTIVES

- 1 A centre representing the primary focus for business and commercial services for the region, outside the central business district of Adelaide, providing a full range of shopping, administrative, cultural, community, entertainment, education, religious and recreational facilities, and public and private office development.
- 2 A centre providing a focus for public transport interchanges and networks.
- 3 Development of a visually and functionally cohesive and integrated regional centre.
- 4 A centre accommodating high density residential development in conjunction with non-residential development.
- 5 Development that contributes to the desired character of the zone.

### DESIRED CHARACTER

#### Economic Development and Land Use

The State Government's Planning Strategy for Metropolitan Adelaide envisages the Marion Regional Centre as the major regional centre serving the inner southern suburbs of metropolitan Adelaide.

To meet this objective, the existing regional centre must expand and diversify the activities within it to provide a central focus for a range of facilities that can be conveniently accessed by the surrounding population. It is necessary therefore to encourage and provide for a range of additional activities including health, community, recreation and entertainment, offices and a wider range of retail activities, and to extend usage of the regional centre beyond normal working hours. Some of these will be new facilities to the area, others will be relocated from elsewhere within the region. The future diversity and mixture of activities will transform the regional centre to become the community focus and heart of Marion and the inner southern metropolitan region.

To accommodate new facilities, the existing regional centre must be allowed to intensify within the already developed areas and expand to incorporate new areas. The designated area for expansion of the regional centre is to the north of the existing major shopping centre encompassing all of the land within the triangle bounded by Morphett, Diagonal and Sturt Roads.

Within this area it is envisaged major expansion of the existing shopping complex will occur, complemented by a mix of bulky good outlets, smaller and lower order retail establishments, offices, community and leisure facilities. To ensure opportunities are available for a range of commercial and non-commercial developments, expansion of core retail facilities, is to be allowed within and generally limited to **Precinct 10 Retail Core Marion**.

The remainder of the triangle is to be primarily developed for a mix of secondary and non-core retail uses and a range of community, entertainment and recreation uses that will complement, but not unnecessarily duplicate the core retail facilities to the south. Higher order retail establishments such as large supermarkets, discount department stores and department stores are therefore not favoured outside of **Precinct 10 Retail Core Marion**. Further opportunity for community and other related development is provided in **Precinct 9 Northern Fringe Marion**.

### Built Form and Appearance

Further development within the triangle north of Sturt Road is expected through the redevelopment and/or expansion of the existing shopping centre complex (Westfield), or as separate developments not directly linked to the main shopping centre. It is desirable that new buildings and spaces within the regional centre develop a human scale and outwardly orientated character in areas of high pedestrian activity and focus (such as at entrances to buildings and malls, and along highly visible facades (such as those directly facing roads or pedestrian thoroughfares). This can be achieved through the sensitive design (attractive frontages with articulated facades) and location of facilities at pedestrian focal points in any expansion and redevelopment of the main shopping complex, and elsewhere through the development of smaller and more intimate scale buildings (although some large buildings will be appropriate at key locations), and smaller, less expansive car parking areas at ground level.

Buildings will generally be sited and designed to front and address the streets or vehicle/pedestrian network to be established in the zone to create a more traditional urban streetscape rather than the more suburban shopping centre character of large isolated buildings setback from main roads and surrounded by car parking. In particular, the built form of corner buildings and associated development at the intersections of Sturt, Diagonal and Morphett Roads, and adjacent the major access points from these roads to the centre, will create an attractive entry statement that provides an appropriate introduction and gateway to the regional centre.

It envisaged that buildings will be sufficiently setback from road boundaries to accommodate substantial landscape buffers which will soften the appearance of the buildings, particularly form residential development directly opposite the centre on Sturt, Diagonal and Morphett Roads.

A future variety of public and private, open and enclosed spaces provided throughout the centre will provide increased amenity and enhance the form and appearance of the centre. Pedestrian and/or shared pedestrian, bicycle and vehicular paths should be landscaped and become dominant elements in the built-form of the regional centre and provide the primary functional and visual linkage between developments and pedestrian spaces.

At least one major public open space should be developed as a feature within the regional centre to be available for use by the public at all times.

Development south of Sturt Road in **Precinct 8 Community Services Marion** should continue to develop a distinctive civic and community built-form that incorporates formal car parking areas, public open space and pedestrian linkages, all within a pleasantly landscaped setting.

Development along the boundaries of the zone which are opposite or adjoining residential areas should provide a transition in bulk, scale and appearance from that within the centre of the zone, in recognition of the scale, character and amenity of the residential development.

## Amenity

The regional centre should develop as a user friendly, people orientated centre with a high emphasis on providing a comprehensive and convenient pedestrian circulation and access network providing linkages between individual development. Visitor facilities and amenities should be provided, particularly along the pedestrian network in the form of paved footpaths with separation from vehicular areas, covered walkways to provide shade and shelter, outdoor eating and meeting spaces, seating, public toilets, litter bins and where appropriate child minding facilities. These facilities should be provided through a combination of private and public works designed to compliment each other and to meet the objectives for the zone.

Landscaping of development will also be important in providing a comfortable, pleasant and attractive centre and existing vegetation should be retained and protected wherever possible and incorporated into new landscaped spaces.

All service areas and car parking should be screened from the surrounding roads by appropriate landscaping.

The centre should incorporate features of artwork as an integral element of buildings and public spaces.

## Environment

The regional centre should develop as a user friendly and environmentally friendly people orientated centre. New building and spaces within the centre, and landscaping, should incorporate features compatible with biodiversity, water management criteria, and optimisation of energy use.

## Access and Movement

The regional centre should develop an integrated, safe and convenient movement system for vehicles, pedestrians and cyclists with as little reliance as possible on the use of the surrounding arterial roads for intra-centre movement of vehicles.

This should be achieved through the co-ordination and integration of access and parking areas for individual developments to contribute to and gradually build up an integrated circulation system.

Main vehicle access points from the surrounding arterial roads should be limited, and main entrance points may become signalised in the future.

The existing bus interchange, located immediately adjacent to the shopping centre, provides an essential facility and service by enabling public transport users convenient access to the shopping centre without having to cross major traffic flows or walk through large car parking areas. In the future, as substantial development occurs in **Precinct 9 Northern Fringe Marion** and **Precinct 11 Retail Support Marion**, the interchange should move further north towards the centre of the zone to one of the two locations shown on [Concept Plan Map Mar/5 - Marion Regional Centre](#) as the main public transport destination. Either potential location would be immediately adjacent and directly accessible to the existing shopping centre and thereby provide the greatest convenience in the longer term to the largest number of centre users, and to others who are likely to access public transport such as users of the cinemas, entertainment facilities, library and educational facilities.

Development should provide, and the design of buildings and open spaces should promote, pedestrian linkages that form an integrated network for safe and convenient movement within and between the policy areas in the zone, and in particular to form links between the civic centre, the main shopping complex, the major public open space and towards the Oaklands Railway Station.

The council will promote and encourage access and facilities for cyclists to and within the regional centre in accordance with the City of Marion Local Area Bike Plan.

## PRINCIPLES OF DEVELOPMENT CONTROL

### Land Use

- 1 The following forms of development are envisaged in the zone:
  - affordable housing
  - bank
  - child care centre
  - civic centre
  - community health centre
  - consulting room
  - department store
  - dwelling in conjunction with non-residential development
  - educational establishment
  - emergency services facility
  - entertainment facility
  - hospital
  - hotel
  - indoor games centre
  - library
  - motel
  - motor repair station
  - office
  - place of worship
  - playing field
  - pre-school
  - residential flat building in conjunction with non-residential development
  - restaurant
  - shop
  - supermarket
  - swimming pool.
- 2 Development listed as non-complying is generally inappropriate.
- 3 High-density residential development, including affordable housing, and development comprising a variety of residential and non-residential uses may be undertaken provided such development does not prejudice the operation of existing or future retail activity within the zone.

### Form and Character

- 4 Development should not be undertaken unless it is consistent with the desired character for the zone.
- 5 Development should be designed and sited to promote linkages between the various developments within the centre and adjoining main roads.
- 6 Facilities within the centre should be sited and designed with a view to promoting after-hours use to reinforce the centre as the focus of social activity in the region.
- 7 Dwellings should only be located at upper levels of buildings and in conjunction with an envisaged non-residential use located at ground level.
- 8 Medium density development that achieves gross densities of between 23 and 45 dwellings per hectare (which translates to net densities of between 40 and 67 dwellings per hectare) should typically be in the form of 2 to 4 storey buildings.
- 9 High density development that achieves gross densities of more than 45 dwellings per hectare (which translates to net densities of more than 67 dwellings per hectare) should typically be in the form of over 4 storey buildings.

- 10 Development outside of **Precinct 10 Retail Core Marion** should comprise new regional centre facilities that complement but do not duplicate that precinct's function as the focus for major retailing activities.
- 11 Development should be carried out in accordance with [Concept Plan Map Mar/5 - Marion Regional Centre](#).
- 12 The major public open space shown conceptually on [Concept Plan Map Mar/5 - Marion Regional Centre](#) should be developed to a high standard of design and amenity to create a major focus within the regional centre and designed to accommodate:
- (a) a mixture of outdoor leisure, community and entertainment activities
  - (b) formal and informal spaces
  - (c) paved areas in the nature of a square or piazza
  - (d) variety of landscape/planting treatments with a cohesive thematic tree planting and edge treatment
  - (e) pedestrian shelters and structures such as gazebos, rotundas, pavilions, pergolas and colonnades
  - (f) clearly defined safe and attractive pedestrian paths providing access to its facilities and adjacent development and connections between adjacent and surrounding development.
- 13 Within **Precinct 10 Retail Core Marion**, the height and setback of buildings should satisfy the following parameters:

Road	Height of building (metres)	Minimum setback from road boundary (metres)
Diagonal Road	up to 11	20
Diagonal Road	over 11	30
Morphett Road	up to 8	8
Morphett Road	between 8 and 11	20
Sturt Road	up to 11	Nil provided the building addresses Sturt Road and are designed to present an attractive frontage
Sturt Road	over 11	8

- 14 Outside of **Precinct 10 Retail Core Marion**, the height and setback of buildings should achieve a transition from the largest and tallest buildings located well within the zone boundaries and satisfy the following parameters:

Road	Maximum building height (metres)	Setback from road boundary (metres)
Diagonal, Morphett and Sturt Roads	N/a	No building should be located within 8 metres of the road boundary
Diagonal, Morphett and Sturt Roads	8	8 to 20
Diagonal, Morphett and Sturt Roads	11	20 to 30
Diagonal, Morphett and Sturt Roads	23	more than 30

## Vehicle Parking

- 15 Vehicle parking should be provided in accordance with the rates set out in [Table Mar/2 - Off Street Vehicle Parking Requirements](#) or [Table Mar/2A - Off Street Vehicle Parking Requirements for Designated Areas](#) (whichever applies).

## Land Division

- 16 Land division in the zone is appropriate provided new allotments are of a size and configuration to ensure the objectives of the zone can be achieved.

## PRECINCT SPECIFIC PROVISIONS

Refer to the [Map Reference Tables](#) for a list of the maps that relate to the following precincts.

### Precinct 8 Community Services Marion

- 17 The following forms of development are envisaged in the precinct:
- civic centre
  - community administration facilities
  - public health facilities
  - welfare services.
- 18 Consulting rooms and offices should only be developed ancillary to and in association with the provision of civic and community services.
- 19 Development should not have vehicular access from Lindsay Street.
- 20 Development should be sympathetic to and not detrimentally impact upon adjacent and nearby residential properties with respect to:
- (a) over shadowing
  - (b) loss of privacy
  - (c) undue noise.



## Precinct 9 Northern Fringe Marion

21 The following forms of development are envisaged in the precinct:

- cafes
- community and human services facilities
- concession stalls and open air markets developed along main pedestrian and/or vehicle linkages
- consulting rooms
- library
- licensed premises
- offices
- public halls
- recreation and entertainment activities
- restaurants
- small-scale specialty shops.

## Precinct 10 Retail Core Marion

22 The precinct should contain an extensive range and diversity of regional centre facilities related to its function as the core retail area for the region.

23 Major expansion of the existing shopping centre complex should occur primarily in a northerly direction to facilitate integration of the existing complex in respect to function, access, car parking, built-form and landscaping with other development (existing or proposed) in **Precinct 9 Northern Fringe Marion** and **Precinct 11 Retail Support Marion** to the north.

## Precinct 11 Retail Support Marion

24 The following forms of development are envisaged in the precinct:

- bulky goods outlet
- concession stalls and open air markets developed along main pedestrian and/or vehicle linkages
- offices
- recreation and entertainment activities
- restaurants
- small-scale specialty shops
- taverns.

25 Concession stalls and open air markets should only occur on weekends and public holidays.

## PROCEDURAL MATTERS

### Complying Development

Complying developments are prescribed in schedule 4 of the *Development Regulations 2008*.

In addition, the following forms of development (except where the development is non-complying) are complying:

A change of use to a shop, office, consulting room or any combination of these uses where all of the following are achieved:

- (a) the area to be occupied by the proposed development is located in an existing building and is currently used as a shop, office, consulting room or any combination of these uses
- (b) the development is not located inside any of the following area(s):
  - **Precinct 8 Community Services Marion**
- (c) the building is not a State heritage place
- (d) it will not involve any alterations or additions to the external appearance of a local heritage place as viewed from a public road or public space
- (e) if the proposed change of use is for a shop that primarily involves the handling and sale of foodstuffs, it achieves either (i) or (ii):
  - (i) all of the following:
    - (A) areas used for the storage and collection of refuse are sited at least 10 metres from any Residential Zone boundary or a dwelling (other than a dwelling directly associated with the proposed shop)
    - (B) if the shop involves the heating and cooking of foodstuffs in a commercial kitchen and is within 30 metres of any Residential Zone boundary or a dwelling (other than a dwelling directly associated with the proposed shop), an exhaust duct and stack (chimney) exists or is capable of being installed for discharging exhaust emissions
  - (ii) the development is the same or substantially the same as a development, which has previously been granted development approval under the *Development Act 1993* or any subsequent Act and Regulations, and the development is to be undertaken and operated in accordance with the conditions attached to the previously approved development
- (f) if the change in use is for a shop with a gross leasable floor area greater than 250 square metres and has direct frontage to an arterial road, it achieves either (i) or (ii):
  - (i) the primary vehicle access (being the access where the majority of vehicles access / egress the site of the proposed development) is from a road that is not an arterial road
  - (ii) the development is located on a site that operates as an integrated complex containing two or more tenancies (and which may comprise more than one building) where facilities for off-street vehicle parking, vehicle loading and unloading, and the storage and collection of refuse are shared
- (g) off-street vehicular parking is provided in accordance with the rate(s) specified in [Table Mar/2 - Off Street Vehicle Parking Requirements](#) or the desired minimum rate in [Table Mar/2A - Off Street Vehicle Parking Requirements for Designated Areas](#) (whichever table applies) to the nearest whole number, except in any one or more of the following circumstances:

- (i) the building is a local heritage place
- (ii) the development is the same or substantially the same as a development, which has previously been granted development approval under the *Development Act 1993* or any subsequent Act and Regulations, and the number and location of parking spaces is the same or substantially the same as that which was previously approved
- (iii) the development is located on a site that operates as an integrated complex containing two or more tenancies (and which may comprise more than one building) where facilities for off-street vehicle parking, vehicle loading and unloading, and the storage and collection of refuse are shared.

### Non-complying Development

Development (including building work, a change in the use of land, or division of an allotment) for the following is non-complying:

Form of Development	Exceptions
<b>Caravan park</b>	
Dwelling	Except where in conjunction with a non-residential development.
Horticulture	
Fuel depot	
Industry	Except where it is in the form of a service industry.
Major public service depot	
Road transport terminal	
<b>Service trade premises</b>	
Stock sales yard	
Stock slaughter works	
<b>Store</b>	
Wrecking yard	

### Public Notification

Categories of public notification are prescribed in Schedule 9 of the *Development Regulations 2008*.

## ATTACHMENT TWO - RISK ASSESSMENT

### Commercial Development within Regional Centre Risk Assessment & Treatment Plan



#### Details:

<b>Assessed Area:</b>	Commercial Development within Regional Centre	<b>Date Assessed:</b>	7/5/18
<b>Area Description:</b>	Expression of Interest to be sought for a hotel development within the Regional Centre on land known as Marion Cultural Centre		
<b>Risk Raised:</b>	Commercial Agent/ Political Risk/ Industrial Implications/ Existing Agreements with MCC Operators/ Site Suitability/ Loss of Community Facility/ Lack of demand and Feasibility of Proposals		
<b>Relevant Information:</b>			

Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Staff do not have the commercial expertise to manage EOI	<ul style="list-style-type: none"> <li>- Inadequate internal skills to provide specialist advice in seeking interest for commercial development on the site.</li> <li>- Lack of contacts with the commercial industry to attract interested parties</li> </ul>	<ul style="list-style-type: none"> <li>- Damaged reputation if the correct process is not followed or expertise sought.</li> <li>- Full potential of development opportunity not recognised.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Recognising the skills shortage within the Council and seeking the approval to engage an agent with the expertise and industry knowledge</li> <li>▪ Contracts and Economic Development developing the project brief that will outline the role, responsibilities and expectations/ deliverables of the commercial agent.</li> </ul>	Unlikely	Major	MEDIUM	<ul style="list-style-type: none"> <li>▪ Engagement of a commercial agent to provide specialist advice and undertake negotiations</li> <li>▪ Formal contract with the Agent that will clearly spell out the extent of the agent's authority to seek EOI and negotiate a contract</li> <li>▪ KPIs within the contract will outline within the contract to ensure the Agent performs and achieves the deliverables set out.</li> </ul>	Rare	Minor	Low
Risks of Using a Commercial Agent	<ul style="list-style-type: none"> <li>- Controlling the agent</li> <li>- Responsibility for the agent's activities. We are bound by the agent's actions if they are acting within the authority we have given.</li> <li>- Underperforming agents</li> </ul>	<ul style="list-style-type: none"> <li>- Too much control can inadvertently create an employment relationship with the agent</li> <li>- Agent misleading proponents</li> <li>- Council does not receive proposals within the vision for the site</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contracts and Economic Development developing the project brief that will outline the role, responsibilities and expectations/ deliverables of the commercial agent.</li> <li>▪ Council to work with the Agent to develop the EOI documentation and outcomes to be achieved by EOI.</li> <li>▪ Agent to disclose any conflicts of interest</li> </ul>	Unlikely	Minor	Low	<ul style="list-style-type: none"> <li>▪ Formal contract with the Agent that will clearly spell out the <b>extent</b> of the agent's authority to seek EOI and negotiate a contract</li> <li>▪ KPIs within the contract will outlined within the <b>contract</b> to ensure the Agent performs and achieves the deliverables set out.</li> <li>▪ Council will meet regularly with the Agent to be informed with the process.</li> <li>▪ Agent not be a member of the evaluation panel and will be sign a confidentiality agreement with Council to not disclose any information.</li> </ul>	Rare	Minor	Low

Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Political Risk - Timing of the upcoming election may result in the EOI and the potential development becoming a campaign issue	- Community concerns about the potential loss of the MCC - Member of the public making the EOI election campaign platform	- Damaged reputation and negative publicity - Political motivations impacting election result - Miscommunicati on about project	▪ Community engagement strategy has been developed should Council approve proceeding to EOI	Possible	Moderate	MEDIUM	▪ Communication with the community and media to promote the benefits of activating the site to minimise the risk of negative publicity ▪ Media announcements and meetings with staff and members of the community scheduled post Council meeting should EOI be approved	Possible	Moderate	MEDIUM
Reputational: Perceived poor governance in making a significant decision close to caretaker period	Seeking an EOI for the development of MCC close to commencement of caretaker period	- Damaged reputation and negative publicity	▪ Council report to clearly document risks of proceeding with EOI ▪ EOI to provide a transparent approach in seeking submissions to redevelop the site.	Possible	Moderate	MEDIUM	▪ First stage of Tender is only to seek EOI, not full business case from proponents ▪ Tender documents to clearly outline Council's ability to not proceed and cease the process ▪ Second stage of Tender is undertaken by incoming Council and they are not bound to continuing the process	Possible	Moderate	MEDIUM
Staff concern of job security changes to role	Announcement of EOI may cause staff concern about future job loss or significant change to working conditions	- Poor staff morale - Staff disengagement - Increased anxiety -	▪ Staff engagement strategy has been developed should Council approve proceeding to EOI	Likely	Moderate	HIGH	▪ City Activation and General Manager City Development to meet with staff on 13 June to advise of EOI ▪ HR involved in discussions staff support ▪ Staff will continue to be informed of the progress of the EOI and next stages ▪ Union briefed	Possible	Moderate	MEDIUM

Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Council exposed to liabilities with existing Agreements with Next Chapter Café,	Council proceeding with the redevelopment and terminating agreements	- Compensation to existing café operators for loss of revenue Damaged reputation and negative publicity -	▪ EOI to require due consideration for existing community functions within MCC	Likely	Moderate	HIGH	<ul style="list-style-type: none"> <li>Legal advice sought about the possibility to terminate the lease should Council elect to proceed with development of the site.</li> <li>Ending the lease early will require a mutually agreeable negotiation with the operator.</li> </ul>	Likely	Moderate	HIGH
Public perception of loss of community facility and associated services	Announcement of EOI causing community concerns about the potential loss of the MCC	- Damaged reputation and negative publicity - Community objection about loss of facilities	▪ EOI will require due consideration from developers to retaining existing community and cultural functions including a café, theatre, library and Art Gallery	Possible	Moderate	MEDIUM	<ul style="list-style-type: none"> <li>Communication with the community and media to promote the benefits of activating the site to minimise the risk of negative publicity.</li> <li>Media announcements to inform the community that the intention is to retain capacity to continue existing functions should a development proceed on the site.</li> <li>Other sites to be considered should the outcome of the EOI be to only build a hotel</li> </ul>	Possible	Moderate	MEDIUM
Demolition of a highly regarded architectural merit building and demolished before end of useful life	Council agreement for the development of a hotel on the site	- Public and Architectural discipline objection to the demolition of the building - Loss of asset and not realising the full depreciation	▪ Community engagement strategy has been developed should Council approve proceeding to EOI	Possible	Moderate	MEDIUM	<ul style="list-style-type: none"> <li>Communication with the community and media to promote the benefits of activating the site to minimise the risk of negative publicity.</li> <li>New development will result in an increase in jobs, activation and income (rates) to the City of Marion</li> <li>Communication with Architects</li> </ul>	Possible	Minor	LOW

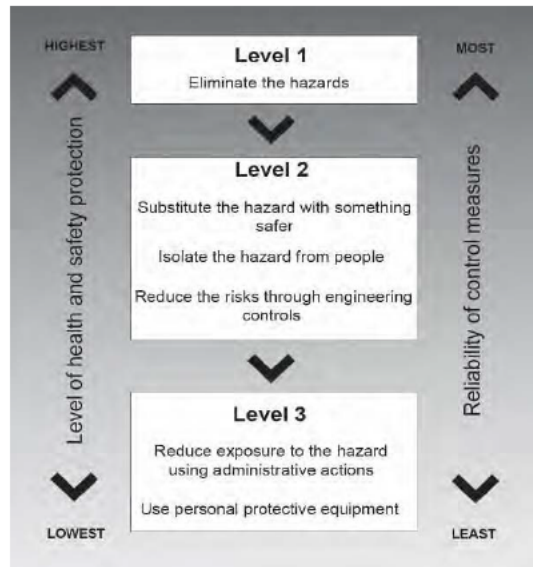


Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Non-compliance to Land Management Agreement (LMA) with the State Government	<ul style="list-style-type: none"> <li>- Potential loss of public open space and onsite car parking</li> <li>- Breach of Agreement with State Government</li> </ul>	<ul style="list-style-type: none"> <li>- Lack of open space and car parking</li> <li>- Potential negotiations with the State Government</li> </ul>	<ul style="list-style-type: none"> <li>▪ EOI tenders documents to specify the requirements under the LMA</li> </ul>	Unlikely	Moderate	MEDIUM	<ul style="list-style-type: none"> <li>▪ EOI will outline the requirements of the LMA with proposals to address their conformance.</li> <li>▪ An evaluation criteria will include an assessment of how the development will address the LMA. Non-conformance will result low to poor score of proposal.</li> <li>▪ See legal advice if there any amendments to the LMA to be negotiated</li> </ul>	Unlikely	Minor	LOW
Site not suitable for a Hotel development	<ul style="list-style-type: none"> <li>- Proposal non-compliant with the Development Act</li> <li>- Location of existing easements</li> </ul>	<ul style="list-style-type: none"> <li>- Development onsite cannot proceed</li> <li>- Easements do not allow for construction of hotel on a portion of land</li> </ul>	<ul style="list-style-type: none"> <li>▪ Existing zoning regulations allow for a commercial development</li> <li>▪ Unsolicited Proposal demonstrated willingness for a hotel development on the site</li> <li>▪ Existing accommodation providers claim their operating at capacity</li> <li>▪ Plan of easements to be provided with EOI</li> </ul>	Unlikely	Minor	LOW	<ul style="list-style-type: none"> <li>▪ EOI tender documents will outline the planning regulations for the site to inform the proponents.</li> <li>▪ Proponents required to provide concept plans and site layout as part of EOI</li> <li>▪ Future development will be subject to planning approval</li> <li>▪ Due diligence to be undertaken by Council and proponents to ensure the viability of the site for a hotel redevelopment</li> </ul>	Unlikely	Minor	LOW
Lack of demand for accommodation within the City of Marion	<ul style="list-style-type: none"> <li>- Too many suppliers in the market</li> <li>- Hotel has high vacancies</li> </ul>	<ul style="list-style-type: none"> <li>- Reputation loss for hotel chain and poor publicity for the City of Marion</li> <li>- Negative community perception of the hotel</li> </ul>	<ul style="list-style-type: none"> <li>▪ Local demand identifies that there is a need for a hotel within the City of Marion</li> <li>▪ Interest from a prominent hotel chain to develop a hotel within the City.</li> </ul>	Possible	Minor	LOW	<ul style="list-style-type: none"> <li>▪ Response to EOI will demonstrate the demand for a commercial development</li> <li>▪ Council considers full business case for preferred proposal which clearly demonstrates variability and financial sustainability</li> </ul>	Unlikely	Minor	LOW

Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Feasibility of the proposals presented to Council	Poor tender documentation and evaluation process established not allowing adequate assessment of proposals.	- Council selecting a proposal that is not feasible or financially viable	<ul style="list-style-type: none"> <li>EOI documentation and Evaluation Plan developed clearly outlining the criteria for which submissions will be assessed.</li> <li>Evaluation criteria will require</li> </ul>	Unlikely	Major	MEDIUM	<ul style="list-style-type: none"> <li>Evaluation criteria will require proponents to provide audited financial statements and demonstrate their previous experience in the development of a hotel and its successful operation.</li> <li>Council will undertake their own due diligence of the preferred proponents to ensure viability prior to recommending to proceed.</li> <li>Independent assessment for commercial agent</li> <li>Section 48 Report to be prepared for Finance and Audit Committee prior to finalising negotiations with the proponent</li> </ul>	Unlikely	Minor	LOW
Stakeholders within the Precinct not supportive of a hotel development	Poor communication from Council and not understanding the outcome of EOI	<ul style="list-style-type: none"> <li>Damaged reputation and negative publicity</li> <li>Public objection about loss of facilities</li> </ul>	<ul style="list-style-type: none"> <li>Community engagement strategy has been developed should Council approve proceeding to EOI</li> </ul>	Unlikely	Minor	LOW	<ul style="list-style-type: none"> <li>Communication with the stakeholders to promote the benefits of activating the site to minimise the risk of negative publicity.</li> <li>City Activation will continue inform stakeholders of the process of EOI</li> </ul>	Unlikely	Minor	LOW
Disconnected from Oaklands Hub	Poor planning of the hotel development and communication from Council about the vision for the Precinct.	- Lack of walkability and connectivity within the Precinct	<ul style="list-style-type: none"> <li>City of Marion has a developed a vision and objective for the Oaklands Hub that will guide the future development of the Precinct.</li> </ul>	Possible	Moderate	MEDIUM	<ul style="list-style-type: none"> <li>Ensure connections are a high priority throughout the process</li> <li>EOI responses must demonstrate the links</li> </ul>	Unlikely	Minor	LOW

Risk <i>[What action will fail/ cause issue/impact...]</i>	Risk Cause/ Source	Potential Consequences	Current Controls	Current Risk Assessment			Risk Treatment Plan	Residual Risk Assessment		
				L	C	RR		L	C	RR
Loss opportunity of generating greater economic activity on the site	Council decides to not progress with an EOI	- Loss of potential revenue and activation on the site.	▪ Seeking Council approval to proceed with an EOI for a hotel development	Possible	Moderate	MEDIUM	▪ Calling an EOI demonstrates Council's commitment to seeking development which will maximise community and economic benefits	Unlikely	Minor	LOW

## The Hierarchy of Risk Control



**Risk Assessment Matrix – determine the Level of Risk**

## Potential Hazards for Identification, Assessment & Control

Hazard	Potential harm examples
Manual tasks	Overexertion or repetitive movement can cause muscular skeletal sprains or strains
Gravity	Falling objects, falls, slips and trips of people can cause fractures, bruises, lacerations, dislocations, concussion, permanent injuries or death
Electricity	Potential ignition source.  Exposure to live electrical wires can cause shock, burns or death from electrocution
Machinery and equipment	Being hit by moving vehicles, or being caught by moving parts of machinery can cause fractures, bruises, lacerations, dislocations, permanent injuries or death
Hazardous chemicals	Chemicals (such as acids, hydrocarbons, heavy metals) and dusts (such as asbestos and silica) can cause respiratory illnesses, cancers or dermatitis
Extreme temperatures	Heat can cause burns, heat stroke or fatigue  Cold can cause hypothermia or frost bite
Noise	Exposure to loud noise can cause permanent hearing damage
Radiation	Ultra violet, welding arc flashes, micro waves and lasers can cause burns, cancer or blindness
Biological	Micro-organisms can cause hepatitis, legionnaires' disease, Q fever, HIV/AIDS or allergies
Psychosocial hazards	Effects of work-related stress, bullying, violence and work-related fatigue

Likelihood of Occurrence	Consequence of Occurrence				
	Insignificant	Minor	Moderate	Major	Severe
Almost Certain	MEDIUM	HIGH	HIGH	EXTREME	EXTREME
Likely	LOW	MEDIUM	HIGH	HIGH	EXTREME
Possible	LOW	MEDIUM	MEDIUM	HIGH	HIGH
Unlikely	LOW	LOW	MEDIUM	MEDIUM	HIGH
Rare	LOW	LOW	LOW	MEDIUM	MEDIUM

Likelihood Criteria	
Almost Certain	The event is occurring now or is almost certain to occur. (Probability >75%)
Likely	The event is likely to occur. (Probability 50- <75%)
Possible	The event may possibly occur. (Probability 25 - < 50%)
Unlikely	The event is unlikely to occur. (Probability 1 - < 25%)
Rare	The event will only occur in exceptional circumstances. (Probability close to 0)

Consequence Criteria (Summarised)	
Insignificant	Physical or other injury requiring First Aid. No impact on wellbeing*. Minor local disruption.
Minor	Physical or other injury resulting or requiring medical attention. Minor temporary impact on wellbeing*.
Moderate	Physical or other injury resulting in brief hospitalization / medical treatment (1 day). Significant/medium term wellbeing* or morale morale issues
Major	Serious injury requiring hospitalisation (2 days or more or re-admission)/ extensive rehabilitation. Long term wellbeing* impact.
Severe	Death or critical injury. Wellbeing* of majority of workforce affected. Loss of a majority of the workforce.

	Insignificant	Minor	Moderate	Major	Severe
People / OHS	Physical or other injury requiring First Aid. No impact on wellbeing. Minor local workforce disruption. Loss of continuity of staff knowledge.	Physical or other injury resulting in time lost (1 day) or requiring medical attention. Minor temporary impact on wellbeing. Local and temporary poor morale. Temporary loss of some staff of an individual Unit's workforce. Loss of staff continuity requiring recruitment.	Physical or other injury resulting in brief hospitalization / medical treatment (1 day). Significant/medium term wellbeing impact or a whole CoM worksite affected. Widespread morale issues. Temporary loss of staff across a number of Units. Loss of key staff with specific knowledge and skills. Impact on recruitment capacity as an Employer of Choice.	Serious injury requiring hospitalisation (2 days or more or re-admission)/ extensive rehabilitation. Long term wellbeing impact or more than one CoM worksite affected. Entrenched severe morale problems. Inability to recruit with necessary skills. High employee turnover.	Death or critical injury. Wellbeing of majority of workforce affected. Loss of a majority of the workforce. Inability to replace critical services.
Social/ Cultural	Resident (household) experiences minor wellbeing impact, disempowered, inconvenience or disadvantage.  Household impact <\$50.	A group of residents within a suburb or identified cultural or community group experiences ongoing minor wellbeing impact or are disempowered, inconvenienced or disadvantaged.  Household financial impact <\$200.	A number of neighbourhoods (up to 25% of residents) or cultural groups experience wellbeing impact, are disempowered, inconvenienced or disadvantaged.  Household financial impact <\$1,000.	Up to 50% of residents are disadvantaged, inconvenienced, disempowered or may experience wellbeing harm.  Cultural group or community offended, unable to practice recognised traditions.  Household financial impact <\$10,000.	Majority of CoM residents are disadvantaged, inconvenienced, disempowered or may experience wellbeing harm.  Household financial impact >\$10,000.
Business Continuity / Organisational	Insignificant impact on Council's ability to achieve strategic outcomes. Minor impact on local Business Unit plan.  Project – Nil impact on achievement of key project objectives or project duration extended up to 10% of original project timeframe.	Minor impact on a small number of Business Unit plans. Some impact on strategic initiatives but only minor aspects impacted. Overall strategic intent still achievable.  Project – Some impact on isolated key project objectives. Additional minor effort required to ensure all objectives are met. Project duration extended by 10-20% of original project timeframe.	Some key components of the strategic plan could not be achieved as a result of risk event. Additional funding / resources required to rectify.  Project – Impacts numerous key project objectives. Considerable effort required including some change in project scope to achieve required outcomes. Project duration extended by 21-35% of original project timeframe.	Council unable to deliver on numerous key strategic initiatives without additional funding / resources. Major review of strategic plan required.  Project – Significant portion of key project objectives impacted. Major changes to project scope and work necessary to achieve required outcomes. Project duration extended by 36-50% of original project timeframe.	Majority of initiatives and / or key initiative within the Council's strategic plan unattainable.  Project – Failure of project to meet all required objectives. Project duration extended by >50% of original project timeframe.
Reputation & Public Administration	A slight but manageable increase in the number of adverse resident/ stakeholder complaints. No media enquiry.	An increase in the number of resident/stakeholder complaints requiring direct effort to resolve / attend to.  Media enquiry, isolated media mention (social or mainstream media).  Elected Member dissatisfied, complaint.	Campaign of adverse social media coverage supported by Local mainstream media agency for a period up to 3 days. A high volume of resident / stakeholder complaints. Majority of Elected Members dissatisfied, Council motion affecting CEO/Administration. CoM under severe pressure on numerous fronts. Ombudsman or Office of Public Integrity involvement. Complaint from partner organization resolved within portfolio.	Campaign of adverse social and mainstream media coverage at State and Local level for a period of up to one week. Publicised adverse resident comments and/or complaints. Forced resignation of Director/s. Ombudsman or Office of Public Integrity involvement. Relationship with partner organization harmed, requiring CEO involvement.	National / State campaign of adverse media coverage for a period greater than 1 week. Widely publicized adverse resident / stakeholder comments and / or complaints. Forced resignation of CEO / Mayor. Council stood down. Minister intervention required.

Environ- mental	Minor adverse environmental impacts that are short term and/or reversible.	Isolated instances of environmental damage requiring minor effort to reverse / remediate.	Isolated but significant instances of environmental damage / implications requiring concentrated effort to reverse / remediate.	Severe and/or widespread environmental damage and / or loss of environmental aspect. Extensive effort and support required to reverse / remediate. Danger of continuing environmental damage / losses.	Major widespread loss of environmental aspect and progressive irrecoverable environmental damage.
Financial	CoM – Financial impact, loss and/or penalty up to \$10,000.  Project – up to 5% of original project budget.	CoM – Financial impact, loss and/or penalty between \$10,000 - \$100,000  Project – between 5-10% of original project budget.	CoM – Financial impact, loss and/or penalty between \$100,001 - \$1M.  Project – between 10-20% of original project budget.	CoM – Financial impact, loss and/or penalty between \$1M and \$4M.  Project – between 20-35% of original project budget.	CoM – Financial impact, loss and / or penalty in excess of \$4M or higher impact on sustainability.  Project - >35% of original project budget.



## **ATTACHMENT THREE - STAKEHOLDER ENGAGEMENT PLAN**

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### **Key talking points**

- The City of Marion intends to seek expressions of interest (EOI) to build a major hotel at Oaklands Park.
- A hotel would overcome a severe shortage of accommodation in southern Adelaide and create jobs and local investment.
- Council on June 12 agreed to appoint a commercial agent to oversee the EOI process, which is expected to be released publicly for two months from late June.
- It is proposed the development would be built on land currently occupied by the Marion Cultural Centre.
- Proposals would need to consider the retention of the existing community facilities, which includes a library, theatre, art gallery and cafe.
- An open and competitive EOI will test the market to determine the degree of interest in building a major hotel in the heart of Marion.
- The community is required to be consulted before any decision was made on the future of the site.
- The final decision on whether to proceed or not with a development is many months away and will be made by the new Council after the local government elections in November.

### **Background**

- The EOI has been prompted by an unsolicited inquiry to redevelop the Marion Cultural Centre for commercial use, incorporating an international standard hotel.
- For commercial reasons, Council is unable to name the developer or outline the proposal.
- More than 18 million people are attracted to the inner south each year for business and pleasure and visitors have few accommodation options.
- In 2017, the Southern Adelaide Economic Development Board – a partnership between Marion and Onkaparinga Councils – released its priorities for the region.
- Included was the need for an international standard hotel in Oaklands Park.

Should Council proceed with an EOI, within 48 hours of the decision, the following people / organisations will be contacted:

Who	How	Responsible Officer
[REDACTED]	Phone Call	General Manager City Development
Media	Media Release	Manager Communications
Marion Cultural Centre Staff – Gallery M, Theatre and Library	Staff briefing session	General Manager City Development
SAALC – Adam Luscombe	Phone call	General Manager City Development
All staff	Media Release via email	Unit Manager Economic Development
Scentre Group	Phone call	General Manager City Development
GP Plus	Phone call	Unit Manager Economic Development
Red House Group	Meeting	Unit Manager Economic Development
The Next Chapter Café	Meeting	Unit Manager Economic Development
Bunnings	Phone call	General Manager City Development
Centre Link	Phone call	General Manager City Development
ASU	Phone Call	HR

**MINUTES OF  
CONFIDENTIAL ITEM**

**6.37pm Commercial Development within Regional Centre Zone  
Report Reference: GC120618F02**

**Moved Councillor Byram, Seconded Councillor Hutchinson** that Council:

1. Pursuant to Section 90(2) and (b) and (d) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Abby Dickson, Tony Lines, Vincent Mifsud, Kate McKenzie, Greg Salmon, Donna Griffiths, Craig Clarke, Jaimie Thwaites and Victoria Moritz, be excluded from the meeting as the Council receives and considers information relating to the report Commercial Development within Regional Centre Zone, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential relating to matters pertaining to commercial operations of a confidential nature, the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information and could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or prejudice the commercial position of the council.

**POINT OF ORDER**

Councillor Hull called a point of order that the Mayor had not allowed him to ask a question on the motion.

The Mayor disallowed the point of order ruling that Councillor Hull should have asked his question when he was speaking to the motion.

**Moved Councillor Hull** a motion of dissent as he wanted to be able to ask a question.

**The motion lapsed for want of a seconder**

The motion was **Carried**

6.45pm the meeting went into confidence

**Moved Councillor Crossland, Seconded Councillor Telfer** that Council:

1. Notes that it has received an unsolicited proposal for a hotel at 287 Diagonal Road, Oaklands Park that incorporates the existing community facilities.
2. Authorises a call for an Expression of Interest for the development of 287 Diagonal Road, Oaklands Park (Certificate of Title Volume 5880 Folio 722) as a hotel.
3. Approves the allocation of up to \$30,000 to be funded in 2018/19 from identified cash savings following the completion of the 2017/18 audited Annual Financial Statements process to fund the engagement of a commercial agent to assist the Expression of

Interest process.

4. Notes the opportunities and risks in undertaking this Expression of Interest Process and how the risks will be mitigated.
5. Endorses the following principles pertaining to the Expression of Interest which will guide the assessment criteria:
  - Alignment to Council's strategic objectives
  - how the proposal will deliver the best outcomes for the community
  - Due consideration given to retaining the community functions already at the site (in full or partially ); and/or delivering them from alternative locations
  - The proposal's fit with the vision for the precinct
  - Complements the existing facilities within the Precinct
  - value for money proposition from the proposal for council
  - if the proposal is technically, legally and financially viable and sustainable
  - the proposed delivery method and timeframes
  - Demonstrated experience and capability of proponent to deliver the proposed project
  - number of jobs to be created during construction and operation
6. Requests Administration bring a report back to Council detailing the outcomes and recommendations resulting from the expression of interest in August/September 2018.
7. Notes that Consultation requirements arising under applicable enterprise agreements are undertaken prior to the confirming of any decision that will impact on employees.
8. Notes that Council retains the right to cease the process at any stage after commencing the Expression of Interest
9. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018; and that the report and appendices, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2018.

6.48pm Councillor Westwood left the meeting

6.49pm Councillor Westwood re-entered the meeting

**Councillor Crossland** with the consent of **Councillor Telfer** sought and was granted leave of the meeting to vary the motion as follows:

That Council (as varied):

1. Notes that it has received an unsolicited proposal for a hotel at 287 Diagonal Road, Oaklands Park that incorporates the existing community facilities.



2. Authorises a call for an Expression of Interest for the development of 287 Diagonal Road, Oaklands Park (Certificate of Title Volume 5880 Folio 722), potentially incorporating Warracowie Way, as a hotel.
3. Approves the allocation of up to \$30,000 to be funded in 2018/19 from identified cash savings following the completion of the 2017/18 audited Annual Financial Statements process to fund the engagement of a commercial agent to assist the Expression of Interest process.
4. Notes the opportunities and risks in undertaking this Expression of Interest Process and how the risks will be mitigated.
5. Endorses the following principles pertaining to the Expression of Interest which will guide the assessment criteria:
  - Alignment to Council's strategic objectives
  - how the proposal will deliver the best outcomes for the community
  - Due consideration given to retaining the community functions already at the site (in full or partially ); and/or delivering them from alternative locations
  - The proposal's fit with the vision for the precinct
  - Complements the existing facilities within the Precinct
  - value for money proposition from the proposal for council
  - if the proposal is technically, legally and financially viable and sustainable
  - the proposed delivery method and timeframes
  - Demonstrated experience and capability of proponent to deliver the proposed project
  - number of jobs to be created during construction and operation
6. Requests Administration bring a report back to Council detailing the outcomes and recommendations resulting from the expression of interest in August/September 2018.
7. Notes that Consultation requirements arising under applicable enterprise agreements are undertaken prior to the confirming of any decision that will impact on employees.
8. Notes that Council retains the right to cease the process at any stage after commencing the Expression of Interest
9. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018; and that the report and appendices, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2018.

**Carried**

**Councillor Crossland called for a Division:**

**The vote was set aside**

**Those For:** Councillors Pfeiffer, Telfer, Hutchinson, Prior, Westwood, Byram, Appleby, Gard and Crossland

**Those Against:** Councillors Kerry, Hull and Veliskou

**Carried**

7.16pm the meeting came out of confidence

CONFIDENTIAL

# Initial Assessment

## Investigation

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<b>Complainant:</b>	<b>Mayor Kris Hanna</b>
<b>Council members:</b>	<b>Cr Bruce Hull</b>
<b>Council:</b>	<b>City of Marion</b>
<b>Issues:</b>	<b>Alleged breach of Part 2 – Code of Conduct for Elected Council Members</b>
<b>Matter No:</b>	<b>180241</b>
<b>Dated:</b>	<b>2 August 2018</b>

### Summary of Complaint

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The complainant alleges a breach of the Code of Conduct for Elected Council Members (**the Code**)<sup>1</sup>. The allegations are made against Cr Hull who has allegedly breached clause 3.3 of the Code. The provision allegedly breached, Clause 3.3, is located in Part 3 of the Code ('Misconduct'). It is outside the Panel's jurisdiction to investigate. Consequently, this Initial Assessment does not consider whether it may have been breached. The Panel has considered, however, whether the subject matter of the Complaint is within its jurisdiction to consider under Part 2 of the Code, that is, whether the alleged conduct may amount to a breach of one or more of clauses 2.6 or 2.7 of the Code.

### Documentation

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- Documentation provided by Council on 11 July 2018
- Code of Conduct complaint emailed by Mayor Hanna to Ms McKenzie 1 July 2018 at 10:58am.
- Cr Hull's email to Ms McKenzie 24 July 2018 at 10:06am.

### Assessment Process

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My assessment has involved:

- Assessing the information provided by Council, including Mayor Hanna's email complaint and Cr Hull's email declining to submit a formal response; and
- Preparing this Initial Assessment.

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<sup>1</sup> made pursuant to section 63 of the *Local Government Act 1999*.



**Initial Assessment**

Complainant: Mayor Hanna

**Investigation**

Council: Cr Hull

Reference: 180241

**Approach**

The Complaint has been assessed on the papers. Cr Hull has declined the opportunity to respond to the Complaint by way of a Form 2 Response. My consideration is confined to the documents provided by Council.

I have not conducted any interviews nor gathered any information beyond that with which I have been provided. The purpose of the Initial Assessment is only to identify whether some or all of the matters raised in the Complaint taken at their highest should be investigated or otherwise dismissed and not investigated.

A finding that an investigation should take place does **not** indicate any view as to whether or not any of the alleged Code breaches are substantiated.

**Initial Assessment****Overview and Background**

Information provided by Council indicates the following general background:

- Council owns a large plot of land at 287 Diagonal Road, Oaklands Park (**the Land**).
- The Land hosts, among other things, the Marion Cultural Centre (**MCC**) complex.
- Council has been approached by a developer contemplating the development of an international standard hotel on the site (**the Proposal**). Council resolved in its meeting of 8 May 2018 to authorise the CEO to investigate the feasibility of such a development.
- Council considered a number of matters relating to the Proposal in its meeting of 12 June 2018 (**the Meeting**). Such matters were considered in confidential session and resulted in Council adopting a resolution (**the Resolution**) which, among other things, authorised an Expression of Interest (**EOI**) process relating to the Proposal.
- Cr Hull was one of three elected members present who opposed the motion.
- Also adopted as part of the Resolution was the following:

*In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that the minutes, Commercial Development within Regional Centre Zone, having been considered in confidence under Section 90(2) and (3)(b and d) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection until the close of business on 14 June 2018...[Confidentiality Order]*

- The Complaint alleges that Cr Hull breached the Confidentiality Order. Mayor Hanna refers in the Complaint to information provided to him by Council staff to the effect that the [REDACTED] had been informed about the Motion by Cr Hull prior to a scheduled stakeholder engagement meeting and therefore prior to the scheduled expiry of the Confidentiality Order.

## Initial Assessment Investigation

Complainant: Mayor Hanna  
Council: Cr Hull  
Reference: 180241

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### Consideration

I note there is no particular time at which the confidentiality of the information, other than 'close of business on 14 June 2018' was specified in the minutes. Although those concerned may have understood 'close of business' to be 5:00pm, Courts have noted that as a matter of law the phrase has no commonly accepted or settled meaning.<sup>2</sup> This requires investigation.

It will be necessary to identify if, what and (significantly) when any disclosure was made. These matters require investigation. Assuming a disclosure was made contrary to the order for confidentiality then this *may* amount to conduct in breach of the following clauses of the Code:

*Clause 2.6 Comply with all Council policies, codes and resolutions*

*Clause 2.7 deal with information received in their capacity as Council members in a responsible manner*

Given the potential seriousness of the alleged breach, the matter could not be considered trivial or frivolous, and the Panel has no information to suggest the complaint is vexatious.

The Panel recommends that an investigation by an investigator nominated by the Panel be appointed to determine the relevant factual circumstances with a view to:

- Attending on and interviewing relevant witnesses. At this stage we identify them as Mayor Hanna, Cr Hull, [REDACTED] (Council employee), [REDACTED] (Council employee), [REDACTED] (Council employee) and [REDACTED]. The Panel preparing a Preliminary Report for distribution to the complainant and Cr Hull for comment and response (if any)
- Taking account of any responses to the preliminary report and the Panel preparing a Final Report.

Please note that a failure of a Council member to co-operate with Council's process for handling an alleged breach of Part 2 of the Code may be referred for investigation under Part 3 of the Code

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<sup>2</sup> See e.g. *Jalun Pool Supplies Pty Ltd v Onga Pty Ltd* [1999] SASC 20 at [14] per DeBelle J and at [15]: 'Although in past years, close of business might have meant 5 o'clock in the afternoon, I do not think it can be assumed that in the modern business world the expression still has that meaning.'

**Initial Assessment  
Investigation**

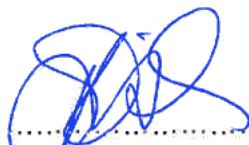
Complainant: Mayor Hanna  
Council: Cr Hull  
Reference: 180241

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**Next steps**

The Panel recommends that:

- a. A copy of this Initial Assessment be provided by the administration to Mayor Hanna and Cr Hull.
- b. Allegations relating to potential breach(s) of the Code by further investigated by interviews with the Mayor and others on a relevant (but limited) basis to be facilitated by the administration directly with the investigator;
- c. An indicative fee estimate on standard terms to be provided to the administration (likely in the broad range of \$4,000 to \$6,000 plus GST, but dependent on the complexity of the investigation).



Kaye Smith  
Panel Manager – Governance Panel

Dated: 2 August 2018



# WITNESS STATEMENT OF COUNCILLOR BRUCE HULL

Statement taken on: 23 August 2018

1. My name is Bruce William Hull. I am an elected member of the City of Marion ("Council") and have been for approximately 15 years.

## **Unsolicited Hotel Proposal**

2. Council received an unsolicited proposal for a hotel on the current Marion Cultural Centre site. Several months ago, I am not certain when, at a General Council meeting, there was a motion to commence an expression of interest process. I believe at that meeting (when the motion was passed), I expressed concern about the communications strategy with stakeholders, or lack thereof.

14 June 2018

3. The embargo on the proposal was to be lifted at close of business on 14 June 2018. I understand 'close of business' to be 5:00 pm. At approximately 3:15 pm on 14 June 2018, I received a call from [REDACTED] Messenger journalist, who advised me that she had been advised about the hotel plan. I quickly told her that I would need to check with Council about what I could disclose before commenting.
4. I rang [REDACTED] for Council, at approximately 3:30 pm. The phone call went for approximately ten minutes. I advised [REDACTED] that I had received a phone call from the Messenger and asked, words to the effect of, "if the Messenger has been advised, does that mean that the stakeholders have also been advised?" [REDACTED] advised me that all of the stakeholders had been notified of the proposal.
5. I sought guidance from [REDACTED] about what I could and could not say. [REDACTED] advised that he would send out an email to the Members which included the expression of interest talking points for discussions with stakeholders.
6. I advised [REDACTED] that I would contact [REDACTED] a current [REDACTED] Marion Cultural Centre. [REDACTED] raised no objections to this. I believe that [REDACTED] genuinely thought that [REDACTED] had been advised. As I am the liaison for the [REDACTED] and as it is an important stakeholder for the proposal (as a [REDACTED]), I thought it was prudent for me to make contact with [REDACTED].
7. [REDACTED] wasn't well that day. [REDACTED] was coughing on the phone to the point that I had to stop and wait for [REDACTED] to finish coughing before I could continue talking. In my opinion [REDACTED] should not have been at work that day. My understanding is that the Department was very short staffed, and he was asked by Council to come into work.
8. [REDACTED] sent out an email at 3:43 pm to the Members, which stated, "Please find attached a copy of the media release that has been issued to Messenger. It is likely to appear in on AdelaideNow and possibly the Tiser tomorrow. Today, staff have been informed along with stakeholders around the precinct".
9. Attached to [REDACTED] email were two documents: 'Hotel EOI announcement' and 'EOI talking points'.
10. After my conversation with [REDACTED] and after receiving his email which confirmed that the stakeholders had been advised, I rang [REDACTED]. The conversation with [REDACTED] was to the following effect. I said, "I have been advised that you have been told about the hotel plan". [REDACTED] replied, "What hotel plan?" I said, "The plan to demolish the culture centre and build a hotel on the site". [REDACTED] was quite shocked and said, "You're kidding?". I told [REDACTED] that, "This is what I have been sitting on for months and could not talk about it". [REDACTED] was very upset about the proposal and to my horror had not been advised by Council (as I believed) before I called [REDACTED]. I was very concerned that [REDACTED] found out that way.
11. I did not provide any technical detail about the proposal to [REDACTED]. I did not disclose the name of the hotel chain, how many rooms or car parking and any other detail. I would struggle to remember that detail now or even the name of the hotel chain.
12. There was no 'scaremongering' in what I told [REDACTED]. The facts speak for themselves. For the Mayor to impugn that what I said was 'scaremongering' is not correct. [REDACTED] has spoken to the media since my conversation with [REDACTED]. Nothing has come out from what [REDACTED] has said to the media that would suggest that I released information that was commercial in confidence to [REDACTED].
13. Everything was done in good faith. I took a responsible position to seek information from Council staff before making any comment. At the end of the day, Council's reputation has not been damaged and the commercial in confidence has not been breached.
14. After my conversation with [REDACTED] I rang the Council's [REDACTED]. I raised with Adrian that [REDACTED] had not been informed by Council and raised concerns again about the communication plan. I assume that Mayor Hanna found out about my conversation with [REDACTED] from [REDACTED].

15. I am not sure whether the Mayor was aware of [REDACTED] email (paragraph 8 above) before he lodged the Code of Conduct complaint.

Page 58

16. The Mayor never discussed the issue with me one-on-one, before making the complaint.

17. In my opinion, this is more about the Mayor lodging a Code of Conduct against an elected member on mere suspicion. It is a fishing exercise, but there are no fish to catch.

18. In an interview on ABC radio with Ali Clarke, the Mayor went into detail about the height of the proposed hotel. He said that it was proposed to be a similar height as the Westfield tower. When I attempted to question Mayor Hanna during the Council meeting about these radio comments, the Mayor declined to answer my questions and took it upon himself to quickly advise me during this public Council meeting (with a public gallery and media in the room), that I was subject to a Code of Conduct complaint. I do not think that if someone is subject to a Code of Conduct complaint, you blurt it out in public. Staff have also been advised of the complaint. I have not been afforded natural justice.

19. In an interview on ABC radio, the Mayor went into detail about the height of the proposed hotel. He said that it was proposed to be the same height as the Westfield tower. If anyone has a case to answer, it's not me.

20. In my view, the Mayor does not want me to speak to the media. I have no such obligation not to. I have never misrepresented Council to the media, the media had clearly contacted me, my views are always expressed as my own and I have that stated on my personal Twitter account.

I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform the City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.



Signature

Bruce William Hule  
Name

28<sup>TH</sup> AUGUST 2018  
Date



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## WITNESS STATEMENT OF [REDACTED]

Statement taken on: 23 August 2018

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1. My name is [REDACTED]. I am employed by the City of Marion ("Council") as [REDACTED].

### *Unsolicited Hotel Proposal*

2. The Council was approached with a proposal to build a hotel on the Marion Cultural Centre site. We suspected it would be a controversial proposal. I was brought into the project to advise on [REDACTED], [REDACTED], maybe a week or two weeks before the expression of interest went public.
3. Council met on Tuesday 12 June 2018. I was quite sick so was not at that meeting. Elected Members resolved to publicly seek an expression of interest for the hotel. There was an embargo on the proposal until 5:00 pm on 14 June 2018, to give us time to brief the media, staff and key stakeholders, prior to it becoming public as per the strategy.
4. I was responsible [REDACTED] would handle the stakeholders. My role was to prepare the [REDACTED], and provide a [REDACTED]. The media strategy was one of being proactive so as to control the first news cycles around the announcement in the hope of it being a positive story for the Council.
5. EOI talking points were included in the agenda from the meeting on 12 June 2018. The media release, based on the talking points, stated, "Not for publication prior to 5pm, Thursday, 14 June 2018".

### *13 June 2018*

6. [REDACTED] confirmed to me that the hotel EOI had gone through and that the communications/media strategy could be enacted.

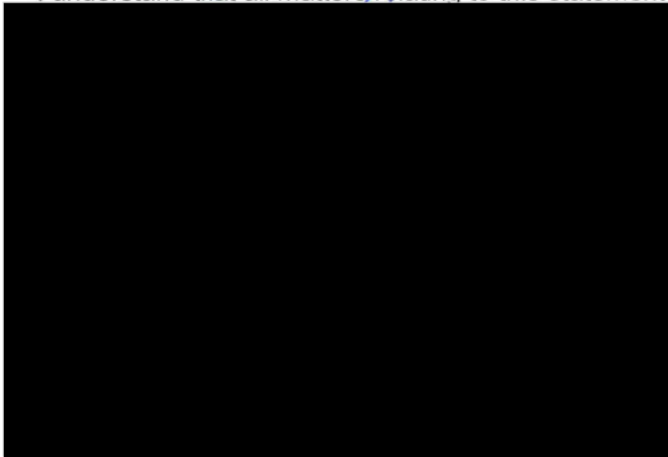
### *14 June 2018*

7. [REDACTED] provided a copy of the release to the Messenger late that morning under embargo to ensure it could be included in the following week's paper, AdelaideNow and in The Advertiser the next day. We had made an agreement with the Messenger reporter [REDACTED], that she would not publish the story or contact external stakeholders until after 5:00 pm. We have a good relationship with [REDACTED] and [REDACTED] knew that she was getting the story exclusively. [REDACTED] did not publish until about 6:05 pm that day on AdelaideNow.
8. [REDACTED] had been out a lot of the day briefing stakeholders.
9. Cr Hull called me on my mobile at about 2:45 pm 3:00 pm. He was upset because he was expecting that [REDACTED] was going to send a copy of the media release and talking points to all Elected Members by lunch time. I advised that the media release was based on the talking points that were in the Council agenda.
10. Cr Hull said that [REDACTED] wanted to speak to him about his "reaction" to the hotel and he didn't know what he could say and if it was ok to talk to [REDACTED]. I told him that we had made a deal with the Messenger not to publish the story before 5:00pm. As [REDACTED] had the information, he was – in my opinion – free to speak with [REDACTED] without breaking the intent of the embargo.
11. Cr Hull asked me to send the media release and the talking points to Elected Members. I agreed and subsequently emailed the Elected Members at 3:44 pm (**Attachment 1**).

12. Cr Hull then asked whether the stakeholders, including [REDACTED] by name, had been briefed. I told him that I did not know as I was not a part of briefing the stakeholders, I was just dealing with the [REDACTED]. I told him I knew some had been briefed, but I didn't know if all of them had, as I wasn't doing the briefings.
13. At no point did I confirm whether [REDACTED] had or had not been briefed by Council. At no point did Cr Hull advise that he was going to contact [REDACTED].
14. I asked Cr Hull if he wanted me to get [REDACTED] [REDACTED] to give him a call. He responded, words to the effect of, "Don't worry about it. Just send me the media materials". The call ended.
15. I tried to find [REDACTED] to let her know that Cr Hull had contacted me. I went up to [REDACTED] but [REDACTED] was not there. I tried to contact [REDACTED], maybe by phone or text message, without any luck.
16. I emailed the media release and talking points to Elected Members at 3:44 pm. The email stated, "Today, staff have been informed along with stakeholders around the precinct."
17. I was unwell and extremely busy with competing priorities. My email was not meant to be anything more than a statement of fact. This is what is happening, rather than this is what has happened.
18. On reflection, I may not have been as clear as I would have liked. However, I don't believe the words in themselves would give rise to a belief that the confidential order had been lifted.
19. I was first made aware that Cr Hull had contacted [REDACTED] when [REDACTED] sent me the text message at 4:47 pm stating, "Thanks. Cr Hull had rung [REDACTED] before we had a chance to speak with [REDACTED]. [REDACTED] is very upset. Not helpful."

I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform the City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.





[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 14 June 2018 3:44 PM  
**To:** Kris Hanna; Janet Byram; Ian Crossland; Tim Gard; Jerome Appleby; Jason Veliskou; Nick Westwood; Bruce Hull; Nathan Prior; Luke Hutchinson; Raelene Telfer; Nick Kerry; Tim Pfeiffer  
**Cc:** [REDACTED]  
**Subject:** Media release - hotel EOI and talking points  
**Attachments:** 06142018 Hotel EOI announcement.doc; EOI Talking Points.docx

Dear Members

Please find attached a copy of the media release that has been issued to Messenger. It is likely to appear on AdelaideNow and possibly the Tiser tomorrow.

Today, staff have been informed along with stakeholders around the precinct.

Please call if you require any assistance.

Regards  
[REDACTED]



## **MEDIA RELEASE**

**Not for publication prior to 5pm, Thursday, 14 June 2018**

### **Marion seeks EOI for major hotel**

The City of Marion will seek expressions of interest to build a major hotel at Oaklands Park to overcome a severe shortage of accommodation in southern Adelaide.

It is proposed the development would be built on land currently occupied by the Marion Cultural Centre, and sandwiched between Westfield Marion and the State Aquatic and Leisure Centre.

Proposals would need to consider the retention or replacement of community facilities, including a library, theatre, art gallery and cafe.

Mayor Kris Hanna said a major hotel at Oaklands Park was long overdue.

"The inner south attracts more than 18 million people a year and visitors have few options for accommodation," Mr Hanna said.

"An open and competitive EOI will test the market to determine the degree of interest in building a major hotel in the heart of Marion."

The EOI has been prompted by an unsolicited inquiry to redevelop the Marion Cultural Centre for commercial use, incorporating an international standard hotel. For commercial reasons, Council is unable to name the developer or outline the proposal.

Mayor Hanna said: "An international standard hotel would be a major boost to the local economy, creating jobs and investment".

Council at its meeting on June 12 agreed to appoint a commercial agent to oversee the EOI process. It is expected the EOI will be released to the market for two months from late June.

The new Council elected in November would consider the proposals, and would have the option to cease the project or proceed.

The Southern Adelaide Economic Development Board – a partnership between Marion and Onkaparinga Councils – released its priorities for the region last year.

Included was the need for an international standard hotel in Oaklands Park.

The community is required to be consulted before any decision is made on the future of the Marion Cultural Centre site.



facebook.com/CityofMarion



twitter.com/CityofMarion



youtube.com/CityofMarion

## **EOI Talking Points**

### **Key points**

- The City of Marion intends to seek expressions of interest to build a major hotel at Oaklands Park.
- A hotel would overcome a severe shortage of accommodation in southern Adelaide and create jobs and local investment.
- Council on June 12 agreed to appoint a commercial agent to oversee the EOI process, which is expected to be released publicly for two months from late June.
- It is proposed the development would be built on land currently occupied by the Marion Cultural Centre.
- Proposals would need to consider the retention or replacement of community facilities, including a library, theatre, art gallery and cafe.
- An open and competitive EOI will test the market to determine the degree of interest in building a major hotel in the heart of Marion.
- The community is required to be consulted before any decision was made on the future of the site.
- The final decision on whether to proceed or not with a development is many months away and will most likely be made by the new Council after the local government elections in November.

### **Background**

- The EOI has been prompted by an unsolicited inquiry to redevelop the Marion Cultural Centre for commercial use, incorporating an international standard hotel.
- For commercial reasons, Council is unable to name the developer or outline the proposal.
- More than 18 million people are attracted to the inner south each year for business and pleasure and visitors have few accommodation options.
- In 2017, the Southern Adelaide Economic Development Board – a partnership between Marion and Onkaparinga Councils – released its priorities for the region.
- Included was the need for an international standard hotel in Oaklands Park.

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**WITNESS STATEMENT OF** [REDACTED]Statement taken on: 23 August 2018

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1. My name is [REDACTED] I am employed by the City of Marion ("Council") as [REDACTED]  
[REDACTED]
2. Council received an unsolicited bid in approximately March 2018 to build a hotel at 287 Diagonal Road, Oaklands Park, which is currently the Marion Cultural Centre site.
3. We presented the proposal to Council. Council said that they would be willing to consider opportunities, as long as they were market tested through an expression of interest process.
4. The proposal included that we wanted to notify stakeholders before it landed in the media and included a list of stakeholders, the day that we would contact the list of the stakeholders and the person responsible for the phone call to the stakeholder. We wanted the stakeholders to hear from Council before anyone else. [REDACTED] as one of those stakeholders listed.
5. We had a 48 hour period to brief staff and stakeholders. [REDACTED] and I were briefing the stakeholders on Thursday 14 June 2018. There was a confidentiality order until 5:00 pm that day. We briefed the manager, [REDACTED] who [REDACTED] at 2:00 pm and [REDACTED]
6. After the last meeting at approximately 3:00 pm, [REDACTED] grouped and worked out who was left to contact. We decided that [REDACTED] was going to ring [REDACTED] and I would ring [REDACTED] because I had a relationship with [REDACTED].
7. After 3:00 pm but before 4:00 pm, I rang [REDACTED]. I know it was after 3:00 pm because I met with [REDACTED] until approximately 3:00 pm and before 4:00 pm because I had to do a letter box drop, which I did from about 4:30 pm until 5:30 pm that night.
8. When I rang [REDACTED] [REDACTED] must have my number saved in [REDACTED] phone, because the words I remember when [REDACTED] answered the phone were, [REDACTED] "I'm flabbergasted". [REDACTED] proceeded to tell me that Councillor Hull had already called [REDACTED]. I just asked [REDACTED] whether [REDACTED] had any additional questions, what did Councillor Hull say, and can I talk through this with you? But the answer was "No" to all of those and that [REDACTED] wanted time to process and would give me a call back. I don't know what was said by Councillor Hull.
9. I rang [REDACTED] straight away after the phone call with [REDACTED]. [REDACTED] offered to call [REDACTED] which I agreed was appropriate. I am not certain when, but [REDACTED] called [REDACTED] maybe that day or the day after.
10. It was very clear that staff would be contacting stakeholders so that there was a clear and consistent message and that there was a confidentiality order until 5:00 pm on 14 June 2018.

I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform the City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.



Date

27 . August . 2018 .

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 14 June 2018 3:44 PM  
**To:** Kris Hanna; Janet Byram; Ian Crossland; Tim Gard; Jerome Appleby; Jason Veliskou; Nick Westwood; Bruce Hull; Nathan Prior; Luke Hutchinson; Raelene Telfer; Nick Kerry; Tim Pfeiffer  
**Cc:** [REDACTED]  
**Subject:** Media release - hotel EOI and talking points  
**Attachments:** 06142018 Hotel EOI announcement.doc; EOI Talking Points.docx

Dear Members

Please find attached a copy of the media release that has been issued to Messenger. It is likely to appear on AdelaideNow and possibly the Tiser tomorrow.

Today, staff have been informed along with stakeholders around the precinct.

Please call if you require any assistance.

Regards

[REDACTED]



## **MEDIA RELEASE**

**Not for publication prior to 5pm, Thursday, 14 June 2018**

### **Marion seeks EOI for major hotel**

The City of Marion will seek expressions of interest to build a major hotel at Oaklands Park to overcome a severe shortage of accommodation in southern Adelaide.

It is proposed the development would be built on land currently occupied by the Marion Cultural Centre, and sandwiched between Westfield Marion and the State Aquatic and Leisure Centre.

Proposals would need to consider the retention or replacement of community facilities, including a library, theatre, art gallery and cafe.

Mayor Kris Hanna said a major hotel at Oaklands Park was long overdue.

"The inner south attracts more than 18 million people a year and visitors have few options for accommodation," Mr Hanna said.

"An open and competitive EOI will test the market to determine the degree of interest in building a major hotel in the heart of Marion."

The EOI has been prompted by an unsolicited inquiry to redevelop the Marion Cultural Centre for commercial use, incorporating an international standard hotel. For commercial reasons, Council is unable to name the developer or outline the proposal.

Mayor Hanna said: "An international standard hotel would be a major boost to the local economy, creating jobs and investment".

Council at its meeting on June 12 agreed to appoint a commercial agent to oversee the EOI process. It is expected the EOI will be released to the market for two months from late June.

The new Council elected in November would consider the proposals, and would have the option to cease the project or proceed.

The Southern Adelaide Economic Development Board – a partnership between Marion and Onkaparinga Councils – released its priorities for the region last year.

Included was the need for an international standard hotel in Oaklands Park.

The community is required to be consulted before any decision is made on the future of the Marion Cultural Centre site.



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## **EOI Talking Points**

### **Key points**

- The City of Marion intends to seek expressions of interest to build a major hotel at Oaklands Park.
- A hotel would overcome a severe shortage of accommodation in southern Adelaide and create jobs and local investment.
- Council on June 12 agreed to appoint a commercial agent to oversee the EOI process, which is expected to be released publicly for two months from late June.
- It is proposed the development would be built on land currently occupied by the Marion Cultural Centre.
- Proposals would need to consider the retention or replacement of community facilities, including a library, theatre, art gallery and cafe.
- An open and competitive EOI will test the market to determine the degree of interest in building a major hotel in the heart of Marion.
- The community is required to be consulted before any decision was made on the future of the site.
- The final decision on whether to proceed or not with a development is many months away and will most likely be made by the new Council after the local government elections in November.

### **Background**

- The EOI has been prompted by an unsolicited inquiry to redevelop the Marion Cultural Centre for commercial use, incorporating an international standard hotel.
- For commercial reasons, Council is unable to name the developer or outline the proposal.
- More than 18 million people are attracted to the inner south each year for business and pleasure and visitors have few accommodation options.
- In 2017, the Southern Adelaide Economic Development Board – a partnership between Marion and Onkaparinga Councils – released its priorities for the region.
- Included was the need for an international standard hotel in Oaklands Park.

[REDACTED]

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**From:** Bruce Hull  
**Sent:** Tuesday, 24 July 2018 10:06 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: Code of Conduct Complaint - confidential

Dear Kate,

Thank you for returning my call yesterday.

As discussed I am not going to respond to the LGA.

Already the fact that I am subject to a Code of Conduct relating to the Hotel proposal has been in appropriately conveyed to a public meeting as a consequence of me asking the Mayor reasonable questions at that meeting relating to comments he made on ABC radio about the height of the proposed hotel.

I would arguably be the most outspoken Councillor in SA in relation to the performance of the LGA. I am profoundly fearful of being judged by the LGA in relation to this or any other matter.

For this reason I will not be responding to the LGA.

Given the gravity of the Mayor's allegations against me it would be best that the matter is referred to the appropriate State Authority.

I will not be engaging in a "tit for tat" Code of Conduct exchange about the Mayor revealing to the public that I am the subject of a Code of Conduct, nor will I lodge a Code of Conduct against the Mayor where he stated on ABC radio that I raised the Oaklands Park cancer cluster matter as part of my election campaign.

I hope that it seen that I am taking a responsible and considered approach. A flurry of Code of Conducts in the last few months of this Council is concerning and distracting us from our main/important business.

Kind regards

Bruce

Sent from my iPhone

**Bruce Hull**  
**Warracowie Ward Councillor | City of Marion**

P 08 7420 6484 | M 0401 765 821  
E [Bruce.Hull@marion.sa.gov.au](mailto:Bruce.Hull@marion.sa.gov.au) | W [www.marion.sa.gov.au](http://www.marion.sa.gov.au)

139 Diagonal Road Warradale SA 5046

On 17 Jul 2018, at 11:02 am, [REDACTED] wrote:

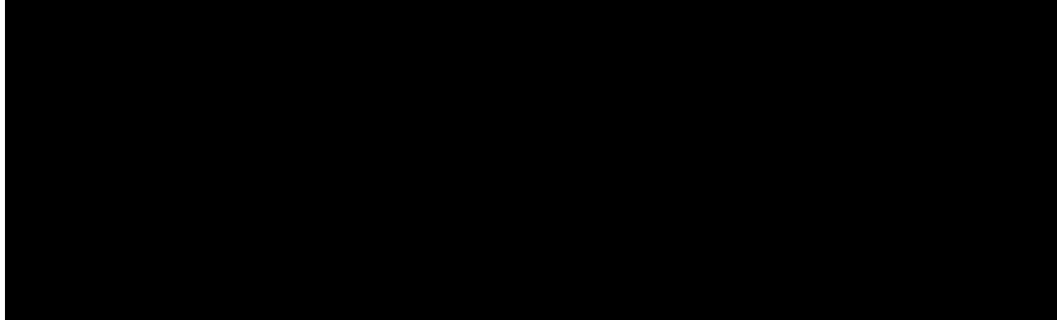
Hi Bruce,

As you are aware from discussions with Adrian, the council resolved to forward the Code of Conduct complaint regarding 'breach of confidence' to the LGA Governance Panel for investigation. Kaye Smith is currently the Panel Manager. She has contacted me and advise the Panel offers those the

subject of a complaint to complete the attached form. It is not mandatory to complete it, however it gives the person 'accused' a preliminary opportunity to respond to the complaint, and also serves to outline the scope of the investigation that should be conducted. Please note that where there are disputes as to the facts, context or circumstances, it is usually the case that the matter will be recommended for investigation to resolve the issue (with or without a form response). It is in this secondary process of investigation that you will be given a full opportunity to explain your position.

Can you please let me know if you wish to complete the form and if yes, by when.

Kind regards



PO Box 21 Oaklands Park SA 5046  
245 Sturt Road Sturt SA 5047

[<IMG1MarionLogoMain\\_jpg.gif>](#)

[<IMG2LGP-Awards-Signatures\\_png.png>](#)

[<IMG3MarionLogoFacebook\\_jpg.gif>](#) [<IMG4MarionLogoTwitter\\_jpg.gif>](#) [<IMG5MarionLogoYouTube\\_jpg.gif>](#)

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

**Follow us on Facebook** - Follow City of Marion on Facebook for the latest news, events and announcements.

**E-talk newsletter** - Subscribe to our email newsletter to receive regular news and updates straight to your inbox.

[<Response to a Code of Conduct Complaint - Bruce Hull.docx>](#)

## CODE OF CONDUCT FOR COUNCIL MEMBERS

*Local Government Act 1999: Section 63 (1)*

NOTICE under Clause 3.10 of the Code of Conduct for Council Members published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.

For the purposes of Clause 3.10 of the Code of Conduct for Council Members adopted for the purposes of Section 63 (1) of the Local Government Act 1999 and published in the *Gazette* on the day on which this Notice is made, the value of \$100 is specified.

Dated 18 August 2013.

JOHN RAU, Deputy Premier, Minister for Planning

## Code of Conduct for Council Members

*Published by the Minister for Planning for the purposes of Section 63 (1) of the  
Local Government Act 1999.*

### This Code of Conduct is to be observed by all Council members.

Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

## PART 1—PRINCIPLES

### 1. Higher principles—Overarching Statement

*This part does not constitute separate enforceable standards of conduct.*

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

## PART 2—BEHAVIOURAL CODE

### 2. Behavioural Code

In line with 'Part 1—Higher Principles' of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

### **General behaviour**

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

### **Responsibilities as a member of Council**

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

### **Relationship with fellow Council Members**

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

### **Relationship with Council staff**

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

### **Requirement to report breach of Part 3**

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

### **Complaints**

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

### **Findings**

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
- 2.25.1 Take no action;
  - 2.25.2 Pass a censure motion in respect of the Council member;
  - 2.25.3 Request a public apology, whether written or verbal;
  - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
  - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
  - 2.25.6 Request the member to repay monies to the Council.

## **PART 3—MISCONDUCT**

### **3. Misconduct**

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the Local Government Act 1999. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the Local Government Act 1999, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

#### **Member duties**

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

#### **Gifts and benefits**

3.7 Council members must not:

- 3.7.1 Seek gifts or benefits of any kind;
  - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
  - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the Local Government (Elections) Act 1999.

- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
- 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
    - 3.9.1.2 Council work related events such as training, education sessions workshops and conferences;
    - 3.9.1.3 Council functions or events;
    - 3.9.1.4 Social functions organised by groups such as Council committees and community organisations.
  - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the *Government Gazette* by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

#### **Register of Interests**

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

#### **Campaign donation returns**

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

#### **Conflict of interest**

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

#### **Misuse of Council resources**

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

#### **Repeated or sustained breaches of Part 2**

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

## **APPENDIX—CRIMINAL MATTERS**

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outlined in this Appendix should be reported to the Office for Public Integrity in the first instance.

#### ***Breaches of the Local Government Act 1999***

##### **Member duties**

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (3)).



A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (4)).

#### **Provision of false information**

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the Local Government Act 1999, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

#### **Restrictions on publication of information from Register of Interests**

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

#### ***Breaches of other Acts***

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the Independent Commissioner Against Corruption Act 2012, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring benefit on basis of public office;
- offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.

## Elected Member Code of Conduct Procedure For Investigating Complaints



### 1. POLICY

- 1.1 The Code of Conduct for Council Members is set by regulation and applies to all Elected Members across local government in South Australia. Depending on the nature of an alleged breach of the Code, a matter may be subject to a Council investigation or an investigation by the Ombudsman or Office of Public Integrity (OPI). This procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. A copy of the Code is available on the City of Marion's website [www.marion.sa.gov.au](http://www.marion.sa.gov.au)

### 2. ALLEGED BREACH

- 2.1 Breaches of the Code of Conduct may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Elected Members but are referred to in the Appendix of the Code of Conduct.
- 2.2 Where an alleged breach occurs the complainant should report the allegation, in writing to the Chief Executive Officer. The allegation should:
- 2.2.1 Be specific
  - 2.2.2 Provide as much supporting evidence as possible to assist an investigation
  - 2.2.3 Provide the name of the Elected Member who has allegedly breach the Code.
- 2.3 Complainants can, at any time, take the alternative option of lodging the complaint with the Ombudsman or Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.
- 2.4 On receipt of a complaint, the CEO will be responsible for advising the Mayor and referring the complaint to Council.
- 2.5 When no allegations have been substantiated, Council will consider the matter in confidence.
- 2.6 The Council will consider the matter, in conjunction with legal advice if required, and determine whether the complaint relates to:
- 2.6.1 Behavioural which falls under Part 2 of the Code
  - 2.6.2 Misconduct which triggers action under Part 3 of the Code, or
  - 2.6.3 Criminal or Corrupt behaviour.
- 2.7 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.
- 2.8 As soon as practical after the receipt of an allegation and prior to the complaint being referred to Council, the Mayor will advise the Elected Member who is the subject of the

complaint and its substance. If the complaint is about the Mayor, the Deputy Mayor will undertake this function.

- 2.9 A copy of the complaint will be provided to the Elected Member and will also be provided to confidentially Council. This may be done in person, via email and/or a Council report.

### **3. COMPLAINT ASSESSMENT**

- 3.1 In undertaking the preliminary assessment of a complaint, the Council may have regard to the following considerations:
- a) whether the complaint is a “code of conduct complaint”,
  - b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
  - c) whether the complaint discloses prima facie evidence of a breach of the code,
  - d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
  - e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
  - f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
  - g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
  - h) whether the conduct complained of forms part of a pattern of conduct,
  - i) whether there were mitigating circumstances giving rise to the conduct complained of,
  - j) the seriousness of the alleged conduct,
  - k) the significance of the conduct or the impact of the conduct for the council,
  - l) how much time has passed since the alleged conduct occurred, or
  - m) such other considerations that the Council considers may be relevant to the assessment of the complaint.

### **4. ALLEGED BREACH UNDER PART 2**

Having regard to the seriousness of the allegation and information provided, the Council will:

- a) seek to resolve the matter internally, including through conciliation or mediation,
- b) refer the matter to an independent person of Council's choice,
- c) refer the complaint to the Local Government Governance Panel or
- d) dismiss the allegation.

#### **4.1 Internal Response**

- 4.1.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties.
- 4.1.2 Council may request that the Mayor facilitate a meeting with the complainant and the Elected Member and may seek mediation and conciliation between the

parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also an Elected Member.

- 4.1.3 The Mayor must ensure that the principles of natural justice and procedural fairness are observed.
- 4.1.4 Where the matter is resolved by the Mayor to the satisfaction of all the parties the matter will be closed and no further action will be taken. The Mayor will send written confirmation to all the parties confirming that the matter has been resolved and provide report the outcome to a public meeting of the Council if appropriate.

Where the matter cannot be resolved in this manner, it will be referred back to Council for further consideration.

- 4.1.5 Where the Mayor is the complainant or the subject of the complaint the internal response will be facilitated by the Deputy Mayor or other Elected Member as resolved by Council.
- 4.1.6 If Council determines to resolve a complaint internally, it must be satisfied that it has all relevant facts have been obtained. If Council has outstanding questions, relating to the matter, these must be addressed prior to finalising the complaint.

#### **4.2 Referral to independent person of Council's choice**

- 4.2.1 A complaint may be referred by Council to an independent person for investigation.
- 4.2.2 Complaints to an independent person will specify:
  - The grounds of the complaint
  - Set out the circumstances of the complaint
  - Be accompanied by any other material that is available to support the complaint.
- 4.2.3 The independent person must ensure that the principles of natural justice and procedural fairness are observed.
- 4.2.4 Following the investigation, a report will be prepared by the independent person and will be provided to Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

#### **4.3 Referral to the Local Government Governance Panel**

- 4.3.1 Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel's procedures is available on the Governance Panel webpage on the LGA's website under Rules of Engagement. [[www.lga.sa.gov.au](http://www.lga.sa.gov.au)]
- 4.3.2 The matter will be assessed initially by the Panel Manager who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.

- 4.3.3 A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. The Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding. In these circumstances, Council will consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.
- 4.3.4 Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

#### **4.4 Dismiss the allegation.**

- 4.4.1 The Council may choose to dismiss a matter only in the circumstances where it is evident that the complaint is frivolous, vexatious, misconceived or lacking in substance. The Council must provide reasoning for undertaking this action.

### **5. REPORTING TO COUNCIL**

- 5.1 At the conclusion of an investigation, Council must resolve if a breach of part 2 of the Code is found, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
  - 5.1.1 Take no action and provide the reasons as to why
  - 5.1.2 Pass a censure motion in respect of the Elected Member
  - 5.1.3 Request a public apology, whether written or verbal
  - 5.1.4 Request the Elected Member to attend training on the specific topic found to have been breached
  - 5.1.5 Resolve to move or suspend the Elected Member from a position within the Council (not including the Members Elected position on Council)
  - 5.1.6 Request the member to repay monies to the Council.

### **6. APPEALS**

- 6.1 The Council will not enter into any process of appeal in relation to Part 2 of the Code. If an Elected Member is aggrieved by the process and or outcome, they may refer the matter to the Ombudsman for review.

### **7. PART 3 – MANDATORY CODE (MISCONDUCT)**

- 7.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or Office of Public Integrity. Alleged breaches of this Part made to Council or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
- 7.2 Under the Code of Conduct, an Elected Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office of Public Integrity.

- 7.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.
- 7.4 A failure of an Elected Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 7.5 A failure of an Elected Member to comply with a finding of an investigation under this procedure may be referred for investigation under Part 3 of the Code.
- 7.6 Repeated or sustained breaches of Part 2 of the Code by the same Elected Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 7.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

## **8. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT**

- 8.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act 1999* must be reported to the Office of Public Integrity.
- 8.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

## **9. FURTHER INFORMATION**

Adopted by Council:	27 March 2018
Next Review:	November 2019 (within 12 months of general election)
Version:	1.1
Previous Version:	Adopted 24 June 2014
Owner:	Manager Corporate Governance
Applicable Legislation:	Local Government Act 1999 (sections 59-63) Local Government (General) Variation Regulations 2013 Independent Commissioner against Corruption Act 2012
Related Documents:	Code of Conduct for Council Members Directions of Guidelines issued by ICAC
Related Policies:	Caretaker Policy