



## 18.7 Marion Ice Arena

Report Reference	GC240827F18.7
Originating Officer	General Manager Corporate Services – Tony Lines
Corporate Manager	N/A
General Manager	Chief Executive Officer – Tony Harrison

### CONFIDENTIAL MOTION

1. Pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999, the Council orders that the public be excluded from attendance at that part of this meeting relating to Agenda Item GC240827F18.7 Marion Ice Arena, except the following persons: Chief Executive Officer, Manager Office of Chief Executive, General Manager City Development, General Manager Corporate Services, General Manager City Services, Chief Financial Officer, Unit Manager Governance and Council Support, Governance Officer and Media and Engagement Adviser to enable the Council to consider Item GC240827F11.7 in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter relating to the Item GC240827F11.7 as its disclosure of information could reasonably be expected to prejudice the confidence of Council and the Developer whilst in the process of negotiations.
2. Notes the disclosure of information, on balance, be contrary to the public interest being commercial information pertaining to the operations of the Developer.
3. Determines, on this basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep consideration of the information or matter confidential.

### REPORT HISTORY

Report Reference	Report Title
GC220628R11.2	Marion Arena Proposal to Grant Lease
GC220823R11.2	Marion Arena Proposal to Grant Lease
FORUM240430F1.4	Ice Rink, Basketball and Marion Tennis Update (verbal update only)
GC240514R11.3	Ice Arena Development at 262 Sturt Road
FORUM240813F1.4	Marion Ice Arena – Update (verbal update only)

### REPORT OBJECTIVE

The objective of this report is to advise Members of recent discussions between Council and Pelligra regarding termination of the Ice Arena development agreement, and to seek endorsement of that termination.

### EXECUTIVE SUMMARY

In October 2021 Council received an (updated) Unsolicited Proposal to develop an indoor ice sports and rock-climbing recreational facility on Council owned land at 262A Sturt Road, Marion to be

known as the Marion Arena.

Following extensive community consultation and final negotiation of the Ground Lease, the Ice Arena agreement was signed by Council and Pelligra on 4 August 2023. Pelligra submitted a development application to Council on 29 August 2023. Further to the provision of required mandatory information, Pelligra paid its development fees on 13 December 2023, meaning that the development application was 'lodged'.

The development approval process (for planning and building consent) commenced as soon it was lodged with Council but has not concluded due to outstanding information on satisfactory tree, traffic and parking solutions (including information sought by DIT).

Pelligra advised Council that the removal of two significant trees on Council land in the Club Marion car park was important to ensure adequate and efficient development of the site. At the 14 May 2024 General Council Meeting, Council considered the two trees in its capacity as the landowner and voted not to block removal of the two trees.

Council staff met with Pelligra to monitor progress of the development application and the project as a whole. By July 2024 however it had become evident that – due to a significant change over the last few years in the economic environment, construction costs and interest rates – Pelligra would not be able to undertake the project without significant external project funding. External project funding is not anticipated in the short to medium term.

Given the nearly 3 years spent on the project to date, and that despite best intentions the project cannot progress in its current form, Pelligra has suggested that the project agreement should be terminated. Given the overall project uncertainty, this is now also in Council's best interests, and a mutual termination is recommended.

Pelligra has drafted a Deed of Termination of Lease (refer **Attachment 1**) to effect the termination of the Marion Ice Arena project.

The draft Deed of Termination of Lease has been forwarded to CoM Lawyers, Cowell Clarke who have advised that they will review and provide feedback by Monday 26 August 2024.

## **RECOMMENDATION**

**That Council:**

- 1. Notes Pelligra's advice that – due to a significant change over the last few years in the economic environment, construction costs and interest rates – the Ice Arena project cannot progress in its current form (i.e. without significant external funding).**
- 2. Endorses termination of the Marion Ice Arena agreement.**
- 3. Authorises the Mayor and/or Chief Executive Officer to issue a media release and information to key stakeholders in relation to the matter notwithstanding confidentiality orders.**
- 4. Authorises the Mayor and Chief Executive Officer to attest to the affixation of the Common Seal of the Corporation of the City of Marion to the Deed of Termination of Lease.**

**That Council:**

- 1. Pursuant to section 91(7) of the Local Government Act 1999, orders that the following document(s) relating to Agenda Item GC240827F18.7 Marion Ice Arena shall be kept**

confidential, being document(s) relating to a matter dealt with by the Council on a confidential basis under sections 90(2) and 90(3)h of the Act:

- Report Marion Ice Arena
- Attachment 1 – Deed of Termination of Lease
- Minutes

on the grounds that the documents relate to information the disclosure of which could reasonably be expected to prejudice the confidence of Council and the Developer whilst in the process of negotiations.

2. Notes the disclosure of information, on balance, would be contrary to the public interest being commercial information pertaining to the operations of the Developer.
3. Determines this order shall operate until it is revoked, or a further order is made and will be reviewed every 12 months.
4. Pursuant to section 91(9)(c) of the Local Government Act 1999, delegates to the Chief Executive Officer the power to revoke this order in whole or part.

## DISCUSSION

Council received an Unsolicited Proposal to develop an indoor ice sports and rock-climbing recreational facility on Council owned land at 262A Sturt Road, Marion to be known as the Marion Arena. This land is classified as community land.

Council undertook a period of public consultation for the adoption of a proposed Community Land Management Plan (CLMP) under Section 197 of the Local Government Act and the alienation of community land by a lease for more than 5 years under Section 202. This was noted at the General Council meeting of 28 June 2022 (GC220628R11.1 and GC220628R11.2).

At the General Council meeting of 23 August 2022, Council resolved that it:

1. *Notes that the feedback received from the Marion Arena community consultation process was noted at the General Council meeting of 28 June 2022.*
2. *Notes the additional information received about the Marion Arena from the Consortium, including a site Master Plan, a letter of commitment from Pelligra, and agreement to undertake stakeholder engagement during the planning phase.*
3. *Notes the independent report on traffic management for the Marion Arena and the broader site.*
4. *Notes that all Marion Arena car parking requirements, as identified by the independent traffic consultant, including replacing the 39 car parks that are already on the site, will be achieved in a three level (ground plus two decks above) 270 car park.*
5. *Notes that several options exist for improving site access arrangements on Sturt Road and that the Consortium will need to negotiate an access outcome with the Department of Infrastructure and Transport (DIT) and Council as part of their planning approval.*
6. *Authorises Administration to negotiate and agree final terms and make further amendments to the draft lease agreement as reasonably required, for the lease between Council and the Consortium over 262A Sturt Road Marion currently described as Allotment 100 in Filed Plan 147234 comprised in Certificate of Title Volume 5794 Folio 420.*
7. *Authorises the Mayor and Chief Executive Officer to attest to the affixation of the Common*

*Seal of the Corporation of the City of Marion to a ground lease agreement with the Consortium or their related entity nominee for a term of 42 (forty two) years for an indoor ice sports and rock climbing recreational facility to be constructed and operated.*

8. *Authorises Administration to serve the required notice to Marion Croquet Club to terminate their occupancy agreement of the site which is currently operating on a month-to-month basis with no written agreement in place.*

Following final negotiation of the Ground Lease agreement, the agreement was signed (executed) by Council and Pelligra on 4 August 2023. Pelligra submitted the development application to Council on 29 August 2023. Further to the provision of required mandatory information, Pelligra paid its development fees on 13 December 2023, meaning that the development application was 'lodged'.

The development approval process (for planning and building consent) commenced as soon it was lodged with Council but has not concluded due to outstanding information on satisfactory tree, traffic and parking solutions (including information sought by DIT).

## **COMMUNITY ENGAGEMENT**

Community consultations for building an Ice Arena at 262A Sturt Road, Marion were undertaken during the period 25 May and 20 June 2022. The consultation activities were designed to raise awareness, inform the community and to give the public an opportunity to express their opinions, provide information and suggest alternatives to Council's proposed use of the land.

Engagement was undertaken on both 'The alienation of land by lease or license for a term up to 42 years, that allows for the construction of multi-sport recreation facility', and a general feedback. Community response was as follows:

Alienation of land by lease: A total of 94 responses were received during the consultation. 56 (59%) were supportive of the proposal to grant the lease, 26 (28%) were not supportive of the proposal, and 12 (13%) were supportive of the proposal subject to amendments. Overall there was clear majority support for the proposal to grant the lease.

General feedback: A total of 232 responses were received during the consultation (although only 231 completed the survey questions). 179 (78%) definitely agreed or somewhat agreed with the proposed Marion Arena, 8 (3%) neither agreed nor disagreed, and 44 (19%) somewhat disagreed or definitely disagreed with the proposed Marion Arena. There was overwhelming support for the proposal to build an Ice Arena.

## **REMOVAL OF SIGNIFICANT TREES**

Pelligra advised Council that the removal of two significant trees on Council land in the Club Marion car park was important to ensure adequate and efficient development of the site. At the 14 May 2024 General Council Meeting, Council considered the two trees in its capacity as the landowner and voted not to block removal of the two trees.

## **CONCERNS RE PROJECT UNABLE TO CONTINUE**

Council staff met with Pelligra to monitor progress of the development application and the project as a whole. By July 2024 however it had become evident that – due to a significant change over the last few years in the economic environment, construction costs and interest rates – Pelligra would not be able to undertake the project without significant external project funding. External project funding is not anticipated in the short to medium term.

Given the nearly 3 years spent on the project to date, and that despite best intentions the project cannot progress in its current form, Pelligra has suggested that the project agreement should be terminated. Given the overall project uncertainty, this is now also in Council's best interests, and a mutual termination is recommended.

Pelligra has drafted a Deed of Termination of Lease (refer **Attachment 1**) to effect the termination of the Marion Ice Arena project.

## **ATTACHMENTS**

1. Attachment 1 - DRAFT Mutual Termination of Lease - Marion Ice Rink [**18.7.1** - 7 pages]



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# Deed of Mutual Termination of Lease

Premises:

262-264 STURT RD MARION SA 5043

Parties:

The Corporation of the City of Marion (**Lessor**)

Marion Ice Holdings Pty Ltd (**Lessee**)

Marion Ice Holdings Pty Ltd (**Guarantor**)

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## Schedule

<b>Item 1</b>	<b>Lessor</b>	The Corporation of the City of Marion of PO Box 21, Oaklands Park SA 5046
<b>Item 2</b>	<b>Lessee</b>	Marion Ice Holdings Pty Ltd ACN 664 503 851 of L2, 16A Keilor Park Drive, Keilor East VIC 3033
<b>Item 3</b>	<b>Guarantor</b>	Marion Ice Holdings Pty Ltd ACN 664 503 851 of L2, 16A Keilor Park Drive, Keilor East VIC 3033
<b>Item 4</b>	<b>Premises</b>	The whole of the land in Certificate of Title Volume 6274 Folio 785
<b>Item 5</b>	<b>Lease</b>	<p>A certain Lease dated 4 August 2023 made between the Lessor as lessor and the Lessee as lessee for an original term of forty-two (42) years in respect of the Premises, subject to conditions precedent being:</p> <ol style="list-style-type: none"><li>1. Development Approval; and</li><li>2. Leases Act Exemption.</li></ol>



## Deed

### THIS DEED IS MADE BETWEEN:

Name	The party specified in <b>Item 1</b> of the Schedule
Short form name	<b>Lessor</b>
Name	The party specified in <b>Item 2</b> of the Schedule
Short form name	<b>Lessee</b>
Name	The party specified in <b>Item 3</b> of the Schedule
Short form name	<b>Guarantor</b>

### BACKGROUND

- A. The Lessor is the registered proprietor of an estate in fee simple in the whole of the Premises together with all fixtures and improvements therein.
- B. The Lease is conditional on Development Approval Condition and Leases Act Condition being satisfied before the Approval Date.
- C. As the Development Approval Condition and Leases Act Condition have not been met by the Approval Date, the Lessor and Lessee have mutually agreed to terminate the Lease on the terms of this Deed.
- D. The Lessor and the Lessee agree that this Deed of Mutual Termination of Lease is an agreement between the parties.

### AGREEMENT

#### 1 DEFINED TERMS AND INTERPRETATION

##### 1.1 Defined Terms

In the interpretation of this Deed unless the context otherwise requires:

- (a) **Deed** means this Deed of Mutual Termination of Lease.
- (b) **Guarantor** means the party named in **Item 3** of the Schedule who guarantees the Lessee's obligations under the Lease.
- (c) **Lease** means the Memorandum of Lease as described in **Item 5** of the Schedule made between the Lessor as lessor and the Lessee as lessee in respect of the Premises.
- (d) **Lessee** means the party named in **Item 2** of the Schedule and the heirs, executors, administrators, successors and assigns of such party.
- (e) **Lessor** means the party named in **Item 1** of the Schedule who leases the Premises to the Lessee.
- (f) **Premises** means the land and building, and improvements as described in **Item 4** of the Schedule.
- (g) **Schedule** means the Schedule contained in this Deed.

##### 1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) word or expressions which are used or defined in the Lease have the same meaning when used in this Deed;
- (b) headings are for ease of reference and do not affect the interpretation of this Deed;
- (c) the singular includes the plural and vice versa;
- (d) other grammatical forms of defined words have corresponding meanings;

- (e) a reference to a clause is to a clause of this Deed;
- (f) a reference to this Deed or any other document includes a reference to it as novated, altered or replaced;
- (g) a reference to a party includes a reference to that party's heirs, executors, administrators, successors and assigns;
- (h) words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) an agreement, representation or warranty in favour of two or more persons is in favour of them jointly and severally;
- (j) an agreement, representation or warranty made by two or more persons binds them jointly and severally;
- (k) a provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed;
- (l) the background to this Deed forms part of this Deed and has effect as if set out in full in this Deed;
- (m) each and every provision of this Deed shall be read and construed as a separate and severable provision so that if any provision shall be void or otherwise unenforceable then such provision shall not only be severed but the remainder shall be read and construed as if the severed provision was omitted therefrom; and
- (n) where the consent or approval of a party to this Deed is required hereunder to any act matter or thing such requirement shall in the absence of any express stipulation to the contrary mean the prior written consent or approval in the absolute discretion of such party.

## 2 TERMS

- (a) The parties acknowledge and agree that:
  - (i) the Development Approval Condition was not satisfied by the Approval Date;
  - (ii) the Leases Act Condition was not satisfied by the Approval Date; and
  - (iii) the Original Term of the Lease cannot commence.
- (b) The Lessor and Lessee hereby agree to immediately terminate the Lease and the Lessee irrevocably surrenders to the Lessor by mutual consent and for no monetary consideration all of its estate right title claim and interest in the Premises and the Lease and the Lessor accepts such as at the date of this Deed.
- (c) The Lessor and Lessee shall each bear their own costs arising out of, in connection with, or incidental to this Deed, including preparation and execution of this Deed.

## 3 RELEASE

### 3.1 Lessee's Release

- (a) With effect from the date of this Deed, the Lessee and Guarantor hereby irrevocably and unconditionally forever releases and discharges the Lessor from all or any past, current and future claims, actions, suits, demands, costs, damages and expenses and obligations (including an obligation to pay money to any person) directly or indirectly arising out of, in connection with, or incidental to the Lease and this Deed and any other related matter.
- (b) This release may be pleaded in bar to any claim, action, suit, proceeding or demand which otherwise might be brought by any party to this release against any other party to this release.

**3.2 Lessor's Release**

- (a) With effect from the date of this Deed, the Lessor hereby irrevocably and unconditionally forever releases and discharges the Lessee and the Guarantor from all or any past, current and future claims, actions, suits, demands, costs, damages and expenses and obligations (including an obligation to pay money to any person) directly or indirectly arising out of, in connection with, or incidental to the Lease and any other related matter.
- (b) This release may be pleaded in bar to any claim, action, suit, proceeding or demand which otherwise might be brought by any party to this release against any other party to this release.

**4 NON-DISPARAGEMENT**

- (a) The Lessor agrees not to deliberately or maliciously disparage or injure the reputation of the Lessee, the Guarantor or any of its officers, employees or agents.
- (b) The Lessee and Guarantor agree not to deliberately or maliciously disparage or injure the reputation of the Lessor or any of its officers, employees or agents.

**5 CONFIDENTIALITY AND PUBLICITY**

- (a) Subject to the terms of this Deed, no party shall without the consent of the other party at any time divulge or permit that party's employees, consultants or agents to divulge to any third party the terms of this Deed or any information obtained in investigations or negotiations leading to this Deed.
- (b) The disclosure of any information:
  - (i) which is now in or after this Deed comes into the public domain or which is obtainable with reasonable diligence from sources other than the parties;
  - (ii) which is required by law to be disclosed to any person who is authorised by law to receive the same;
  - (iii) to a court, arbitrator or administrative tribunal in the course of proceedings before or to which the disclosing party is a party; or
  - (iv) to any consultants, advisers or bankers as required for the purposes of this Deed,shall not be subject to the restrictions of this clause 5(a).
- (c) The parties will agree an appropriate joint press release to notify the public and stakeholders of their decision to mutually terminate the Lease.

**6 COUNTERPARTS**

This Deed may be executed in any number of counterparts. All counterparts will constitute one instrument.

**7 GOVERNING LAW**

This Deed shall be governed and construed in all respects in accordance with the law of the State of South Australia and the Commonwealth of Australia and the parties hereby submit to the jurisdiction of the Courts of the State of South Australia and the Commonwealth of Australia in respect of matters arising under or relating to this Deed.

**8 BINDING ON SUCCESSORS**

This Deed binds the executors, administrators, assigns and successors of each of the parties.

**9 FURTHER ASSURANCES**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents (if any) as may be necessary or desirable and at their own cost to give full effect to the provisions of this Deed.

## 10 ENTIRE AGREEMENT

The parties acknowledge and agree this Deed supersedes any previous agreement, acknowledgement, authority and the like as between the Parties and comprises the entire agreement regarding the subject matter of this Deed.

## Execution

**EXECUTED as a deed.**

**DATED** the                      day of                      2024

## LESSOR

The common seal of **CORPORATION OF THE CITY OF MARION** was affixed with the authority of:

Signature of Mayor

Signature of Chief Executive Office

Full Name of Mayor

Full Name of Chief Executive Officer

LESSEE

**Executed by MARION ICE HOLDINGS PTY LTD** ACN 664 503 851 pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

Signature of sole director and sole company secretary

\_\_\_\_\_

Fulle name of sole director and sole company secretary

GUARANTOR

**Executed by MARION ICE HOLDINGS PTY LTD** ACN 664 503 851 pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

Signature of sole director and sole company secretary

Full name of sole director and sole company secretary