

	21.1	Review of Memorandum of Understanding Signed with Mallala Lions Club
	Department: Report Author:	Finance and Economic Development General Manager – Finance and Economic Development
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EXECUTIVE SUMMARY

- The Council’s former CEO Mr Charles Mansueto has signed a MOU with the Mallala Lions Club in May 2013 regarding ablutions block facility that has been constructed with the intent to providing toilet and shower facilities, for the wider community;
- Council management sought legal advice on the validity of MOU, since it is an old and one-sided MOU not benefitting Adelaide Plains Ratepayers financially;
- Council lawyers have advised that the MOU signed in May 2013 relating to the ablution block appears to be legally binding because of the actions of the Adelaide Plains Council & the Mallala Lions Club since it’s signed;
- Council has been advised that it can either “review” the MOU at any time or end the arrangements documented. Or alternatively, take the view that the two years have passed and the MOU has already expired. In either case though, written confirmation should be provided to the Lions Club that Council considers the arrangements have ended. Council will then need to take over management of access and security and responsibility for collection of fees.
- Further, Council lawyers have advised that there isn’t any basis for the argument put forward by the Mallala Lions Club “that the intention of the MOU was to cover camping site” at all, given the express wording of the MOU. It clearly only deals with the ablutions block.

RECOMMENDATION 1

“that Council, having considered Item 21.1– *Review of Memorandum of Understanding Signed with Mallala Lions Club*, dated 19 February 2018, receives and notes the report and in doing so Council acknowledges that the existing MOU executed in May 2013 is not an appropriate vehicle to document binding and ongoing arrangements in relation to occupation and management of ablution block at the Mallala Oval;

RECOMMENDATION 2

“that Council having considered Item 21.1 – *Review of Memorandum of Understanding Signed with Mallala Lions Club*, dated 19 February 2018, instruct the Chief Executive Officer to advise Mallala Lions Club that the Council formally wish to end the MOU signed in May 2013 in order to reduce the financial burden on the general ratepayers of the Adelaide Plains Council”.

RECOMMENDATION 3

“that Council, having considered Item 21.1 – *Review of Memorandum of Understanding Signed with Mallala Lions Club*, dated 19 February 2018, instruct the Chief Executive Officer to:-

- 1. negotiate with the Mallala Lions Club who constructed the ablution block on Council land to enter into a new management/lease agreement to maintain the ablution block at the Mallala Oval on a cost neutral basis to the ratepayers and until such negotiations are concluded, take over the management of access and security and responsibility for collection of fees”**
- or**
- 2. negotiate with the Mallala Lions Club who constructed the ablution block on Council land to enter into a new management/lease agreement to maintain the ablution block at the Mallala Oval on a cost neutral basis to the ratepayers and until such negotiations are concluded, authorise the Mallala Lions Club to continue to manage the access and security and responsibility for collection of fees and utilise the fee income to maintain the shower and toilet facility at the ablution block.” and**
- 3. formally advise Mallala Lions Club that user of the shower facility should be charged \$2 for a 7 minute shower as per Council resolution 2017/099”.**

RECOMMENDATION 4

“that Council, having considered Item 21.1 – *Review of Memorandum of Understanding Signed with Mallala Lions Club*, dated 19 February 2018, instruct the Chief Executive Officer to:-

- 1. advise Parham Port Parham Sports and Social Club that Council will commence charging a fee of \$10 per site per night from the campers at Parham camp ground**

BUDGET IMPACT

Estimated Cost:	Ratepayers have contributed \$47,762 for water, gas, electricity, labour, consumables, cleaning and insurance over four (4) financial years to maintain the ablution block as per the MOU signed in May 2013. i.e. around \$12,000 per year on average and this represents 0.15% of this financial years rates income. Retrofit coin operated shower \$3,000
Future ongoing operating costs:	Yet to be negotiated.
Is this Budgeted?	Yes

RISK ASSESSMENT

Not applicable.

Attachments

1. **Legal advice received on 27 September 2017 on the question of whether Council should have given the opportunity to other parties to develop the camping grounds.**
2. **Legal advice received on 17 January 2018 on the validity of the MOU signed in May 2013.**

DETAILED REPORT

Purpose

The purpose of this report is to provide the Council with a legal advice received on the validity of the MOU signed with the Mallala Lions Club in May 2013.

Background/History

The Council's former CEO Mr Charles Mansueto has signed a MOU with the Mallala Lions Club in May 2013 regarding ablutions block facility that has been constructed with the intent to providing toilet and shower facilities, for the wider community. However, there is no record of the draft MOU being presented to Council before it was signed.

The purpose of this MOU was to detail the ongoing responsibilities associated with the facilities management with both parties agreeing to use their best endeavours to work collaboratively and fulfil their obligations under the terms outlined where all the costs associated with the ablutions block (present & future) is to be paid by ratepayers and the income is to be retained by the Lions club.

At he April 2017 Council meeting, following resolution was passed with regard to camping site fees and shower facility fees.

12.5.2 Camping Reserve

Moved Cr Keen

Seconded Cr Lawrence

2017/ 099

“that Council, having considered Item 12.5.2 – Camping Reserves, dated 18 April 2017, charge a fee of \$10 per site per night applied to both Parham and the new Mallala camp ground and a coin operated timer be retrofitted to the existing shower at the Mallala oval set at \$2 for a 7 minute shower.”

CARRIED

Discussion

Legal advice received on 27 September 2017 on the question of whether Council should have given the opportunity to other parties to develop the camping grounds is contained under **Attachment 1**.

Despite Council resolution to charge a fee of \$10 per site per night and \$2 for a 7 minute shower, the management didn't implement Council decision pending the outcome of negotiations Council was having with the Mallala Lions Club with regard to the Mallala Camping site.

However, now the negotiations have been exhausted due to Mallala Lions Club's refusal to pay for the all running expenses of the ablution block and the Council decision to call for public expression of interest to develop, operate and maintain Mallala Camping ground and Parham Camping Ground, it is the right time to implement Council decision (**Resolution no 2017/099**) to charge \$2 for a 7 minute shower by retrofitting a coin operated timer to the existing shower. (The Mallala Lions Club is currently charging \$10 per shower and \$20 key deposit since April 2017).

Memorandum of Understanding

As this MOU is imposing unfair financial burden on Council's ratepayers without any financial gain, management again sought legal advice on the validity of the MOU signed between the Council and the Lions Club as MOUs are generally used to document a relationship of goodwill between the parties to the MOU and as such those MOUs are generally not legally binding. Please refer to **Attachment 2** for the legal advice received on the validity of the MOU. Following is the summary of the legal advice received;

- i. MOU signed in May 2013 relating to the ablution block appears to be legally binding because of the actions of the Adelaide Plains Council & the Mallala Lions Club since it's signed;
- ii. A MOU is not an appropriate vehicle to document binding and ongoing arrangements in relation to occupation and management of a Council facility. An MOU is generally a non-binding agreement between parties outlining the terms and details of an understanding, including each parties' requirements and responsibilities. An MOU is often merely a pre-cursor to a formal contract and helps guide negotiations and the parties conduct during this period. This MOU was not intended for a long-term arrangement and is silent on many relevant issues;
- iii. The Council can either "review" the MOU at any time and end the arrangements documented. Or alternatively, take the view that the two years have passed and the MOU has already expired. In either case though, written confirmation should be provided to the Lions Club that Council considers the arrangements have ended. Council will then need to take over management of access and security and responsibility for collection of fees.
- iv. There isn't any basis for the argument put forward by the Mallala Lions Club "that the intention of the MOU was to cover camping site" at all given the express wording of the MOU. It clearly only deals with the ablutions block.

Conclusion

Given the outdated nature and the cost of maintaining the ablution bloc, Council should review its position on the MOU signed in 2013 in order to maintain the facility on a cost neutral basis.

References

Legislation

Section 49 of the Local Government Act 1999 - Contracts and tenders policies

Section 6 of the Local Government Act 1999 - Principal role of a council

(a) to act as a representative, informed and responsible decision-maker in the interests of its community;

Council Policies/Plans

Procurement Policy

Short Stay Accommodation Policy

Council's Strategic Plain

- 4.2.1.2 – Growing Economy – Promote the growth of tourism.

- 4.5.1.6 – Accountable and Sustainable Governance – Strategically plan for an sustainably maintain Council's assets and finances.