

# Update on Activities of the Strategic Risk and Internal Audit Group Meetings

**ITEM 9.1 22/10/2019**  
**Audit Committee**

**Program Contact:**

Rudi Deco, Mayor Governance  
8203 7442

2012/00053

Confidential - s 90(3) (i) litigation

**Approving Officer :**

Mark Goldstone Chief Executive  
Office

## EXECUTIVE SUMMARY:

This update reports on the activities of the Executive Strategic Risk and Internal Audit Group (SRIA Group) is intended to provide the Audit Committee with relevant information on Council's risks and other associated matters, as tabled at the monthly SRIA Group meetings.

Consideration in confidence is sought because the report includes information disclosure of which could reasonably be expected to prejudice the outcome of Council's actual litigation

## RECOMMENDATION:

### THAT THE AUDIT COMMITTEE

1. Receives and notes the report.
2. The report is provided to the next meeting of the Council as part of the confidential report of Audit Committee meeting.
3. In accordance with Section 9(7) & (9) of the *Local Government Act 1999* and on the grounds that Item 9.1 listed on the Agenda for the meeting of the Audit Committee held on 22 October 2019 was received, discussed and considered in confidence pursuant to Section 90(3)(i) of the *Local Government Act 1999*, this meeting of the Audit Committee, do order that:
  - 3.1. The resolution become public information and included in the Minutes of the meeting.
  - 3.2. The report, the discussion and any other associated information submitted to this meeting and the Minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 3 December 2027.
  - 3.3. The confidentiality of the matter be reviewed in December 2020.
  - 3.4. The Chief Executive Officer be delegated authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.

## IMPLICATIONS AND FINANCIALS:

City of Adelaide 2016-2020 Strategic Plan	Strategic Alignment - Corporate Activities The role of the City of Adelaide is diverse and complex. Our core role is to deliver services to the community as a leader, service provider, regulator, advocate, facilitator and owner of assets.
Policy	Alignment with the City of Adelaide Risk Management Operating Guideline
Consultation	Not in relation to this report
Resource	Not in relation to this report
Risk / Legal / Legislative	Sound risk and opportunity management enables well informed decision making and supports the delivery of the Strategic Plan
Opportunities	Sound risk and opportunity management enables well informed decision making and supports the delivery of the Strategic Plan.
19/20 Budget Allocation	Not in relation to this report
Proposed 20/21 Budget Allocation	Not in relation to this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not in relation to this report
19/20 Budget Reconsideration (if applicable)	Not in relation to this report
Ongoing Costs (eg maintenance cost)	Not in relation to this report
Other Funding Sources	Not in relation to this report

## GROUNDINGS AND BASIS FOR CONSIDERATION IN CONFIDENCE

### Grounds:

Section 90(3)(i) of the *Local Government Act 1999* [litigation]

- (i) Information relating to the actual litigation, or litigation that the council or council committee believe on reasonable grounds will take place, involving the council or an employee of the council

### Basis:

This Item is of a confidential nature because the report includes information on Council litigation

The disclosure of information in this report could reasonably be expected to prejudice the outcome of Council's actual litigation.

The Audit Committee is satisfied that the principle that the meeting be conducted in a place to which the public has been outweighed in the circumstances because the disclosure of this information relates to the actual litigation of council.

## DISCUSSION

1. The Chief Executive Officer's Strategic Risk and Internal Audit Group (the SRIA Group) is responsible for:
  - 1.1. Developing and overseeing Enterprise Risk Management in its practical application with the Corporation
  - 1.2. Ensuring early, quick and clear escalation of strategic risks and emerging issues to key decision makers
  - 1.3. Ensuring appropriate controls are in place to actively manage and monitor strategic risks and emerging issues
  - 1.4. Ensuring that sufficient mitigation matters are in place for routine operations management
  - 1.5. Identifying and communicating key findings and ensuring the relevant processes are reviewed for continuous improvement
2. The Terms of Reference for both the SRIA Group and the Audit Committee require regular updates on activities of the SRIA Group to be provided to the Audit Committee
3. This report provides an update on the activities of the SRIA Group and is intended to provide the Audit Committee with relevant information on Council's risks and other associated matters, as tabled at the monthly SRIA Group meetings.
4. Since the last Audit Committee Report on the activities of the SRIA Group, tabled at the 19 July 2019 Audit Committee meeting, the SRIA Group has met three times on 14 August 2019, 11 September 2019 and 9 October 2019. At the meeting, the SRIA Group considered the following items:
  - 4.1. Internal Audit:
    - 4.1.1. Internal Audit Scope approved:
      - 4.1.1.1. Budget Management
      - 4.1.1.2. Section 7 Statements
      - 4.1.1.3. Travel Expenditure
    - 4.1.2. Internal Audit Reports:
      - 4.1.2.1. Environmental Health Management
      - 4.1.2.2. Stores Management
      - 4.1.2.3. Post Audit Implementation
      - 4.1.2.4. Employee Reimbursements
      - 4.1.2.5. Legislative Compliance

5. The Corporate Strategic Risk and Opportunity Register (the Register) is a living document, developed following executive consultation and a series of executive workshops. The purpose of the Register is to assist the Executive Leadership Team with the delivery of a successful Strategic Plan, to inform the allocating of resources and to inform the City of Adelaide Internal Audit Plan. The Register will be reviewed and updated at an Executive Leadership workshop on 5 December 2019, to align with the new Council Strategic Plan implementation. The current Strategic Risks are:
  - 5.1. Relationships
  - 5.2. Economic Outlook
  - 5.3. Service Delivery
  - 5.4. Compliance
  - 5.5. Organisational Culture
  - 5.6. City Emergency
  - 5.7. Reputation
  - 5.8. Financial Sustainability
  - 5.9. Climate Adaptation
6. Matters raised by employees and management included:
  - 6.1. Torrens Weir
  - 6.2. Datacentre incident
  - 6.3. Emergency Management
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. Grievances / Investigations: Nil
11. Ombudsman: 6 monthly Ombudsman report tabled for discussion
12. Section 270 Local Government Act 1999 (SA) returns: Nil
13. [REDACTED]
14. Relevant Legislation Update Report

[REDACTED] An overview of all applications received was considered

## ATTACHMENTS

Nil

- END OF REPORT -

## Council Litigation Update Report - October 2019

## CULTURE PORTFOLIO

## CUSTOMER AND PEOPLE

## Timothy Rossiter Parking Expiation Prosecution

## Responsible Council Officer

Robert Donoghue, Enforcement Officer

## Date of Update

## Status Update

23 September 2019

Matter adjourned to 4 October 2019 after defendant did not appear at the original hearing in August.

22 August 2019

A parking Expiation (no. 18614190) was issued to vehicle S282AKZ on 7 April 2019 in Grote Street, Adelaide for overstaying the maximum time limit. The driver of the vehicle has elected to be prosecuted. Initial hearing set for 27 August 2019 @ 11:30 am.

## Harold Morgan Parking Expiation Prosecution

## Responsible Council Officer

Robert Donoghue, Enforcement Officer

## Date of Update

## Status Update

23 September 2019

A Pre-Trial Conference has been set for 24 October 2019.

22 August 2019

A parking Expiation (no. 18406188) was issued to vehicle S225AUA on 1 March 2019 in Gouger Street, Adelaide for stopping in a Taxi Zone. The owner of the vehicle claims the signs are hard to read and has elected to be prosecuted. Initial hearing set for 3 September 2019 @ 11:30 am.

## COMMUNITY AND CULTURE

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## INFORMATION MANAGEMENT

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**FINANCE AND PROCUREMENT****David Starke - Litigation for unpaid rates 2 x Matters****Responsible Council Officer**

David Burgess, Accounts Receivable Supervisor

Date of Update	Status Update
1 October 2019	Outcome agreed in principle that debtor acknowledges the debt is owed but requires a further 4 weeks to pay. Court adjourned hearing to 25/10/19 @9.30am.
27 August 2019	Defendants representative attended providing 2 x \$1000 chqs, one for each property. Court adjourned hearing to 2/09/19 to allow time for the remaining balance to be paid in full.
23 July 2019	Directions hearing set for 27/08/19 @ AMC, joint hearing of 2 x matters

**Graham Brunsgard - Litigation for unpaid rates****Responsible Council Officer**

David Burgess, Accounts Receivable Supervisor

Date of Update	Status Update
13 September 2019	The Defendant again failed to submit a valid defence claiming sickness and stress as the reason. Magistrate saw fit to adjourn the hearing once again to provide time for this to occur, but referenced the interlocutory application and stated that if a valid defence has not been submitted by the next hearing (25/10/19) judgement will be entered. The Magistrate also made a discovery order on both parties to file and serve by the 11/10/19.
12 September 2019	Interlocutory application and affidavit submitted to Court to strike out defendants non-valid defence.
26 August 2019	Defendant again failed to submit a valid defence. Hearing adjourned to 13/09/19 to give defendant a final opportunity to lodge a defence.
8 July 2019	The Defendant appeared at the Directions Hearing on 8/7/19. The Magistrate adjourned the hearing to the 12/08/19 to allow Mr Brunsgard to obtain legal advice and re-enter his defence as it did not meet the Supreme Court requirements as required in the General jurisdiction.
20 June 2019	Directions hearing set for 8 July 2019 @ 10:00am, Adelaide Magistrates Court.
20 June 2019	Claim served 13 May 2019.
20 June 2019	Minor Civil Action Claim filed for outstanding property rates

**GROWTH PORTFOLIO****PROPERTY AND COMMERCIAL**

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**ECONOMIC DEVELOPMENT AND INNOVATION**

-
MARKETING AND COMMUNICATIONS
-
SUSTAINABILITY
-

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PLACE PORTFOLIO	
PLANNING, DESIGN AND DEVELOPMENT	
<b>Application for notice of review for granting of planning consent of Development Application - 15-17 Hamilton Place, Adelaide (DA/979 018)</b>	
<b>Responsible Council Officer</b>	
Phil Chrysostomou, Planner	
Date of Update	Status Update
20 September 2019	No further update.
4 September 2019	Council has received notice of application for review from adjoining owner of subject site. Compulsory conference on 23 September 2019.
<b>Application for notice of review for granting of planning consent of Development Application - 113 Kingstons Terrace (DA/383/2019)</b>	
<b>Responsible Council Officer</b>	
Rebecca Rutschack, Manager Planning Assessment	
Date of Update	Status Update
20 September 2019	Compulsory conference set for 30 October 2019.
4 September 2019	Council has received notice of application for review from adjoining owner of subject site. Compulsory conference date yet to be scheduled.
<b>Appeal against refusal of Development Application - 22A Moger Lane (DA/81 2018)</b>	
<b>Responsible Council Officer</b>	
Rebecca Rutschack, Manager Planning Assessment	
Date of Update	Status Update
20 September 2019	Proposal before the CAP was not supported. Matter will now proceed to hearing.
4 September 2019	Proposal going back to Council Assessment Panel on 9 September 2019 to ascertain if the Panel can support a further compromise.
7 August 2019	Appellant has provided a compromise proposal that the Administration is still unable to support. Legal counsel are negotiating further with the appellant.
5 July 2019	Appellant working towards a compromise proposal to be tabled at a future CAP meeting.
20 May 2019	Adjournment granted to allow a report to be tabled at the CAP meeting on 17 June. Council cannot secure expert opinions that support the refusal.
23 April 2019	Aden Migel from Norton Waterhouse Lawyers appeared at a directions hearing before Commissioner Nolan and advised the Court that the Council had been somewhat distracted in considering experts due to the further application lodged by the appellants. The Commissioner was advised that the Council had not decided what experts to call and that given the timeframe



## COUNCIL LITIGATION REPORT - OCTOBER 2019

27 March 2019	No further update.
27 February 2019	No further update.
4 February 2019	Application refused by the Council Assessment Panel has been appealed through the ERD Court. Council has engaged Norman Waterhouse Lawyers. Letter has been sent advising that the "agreement" reached by the CEO and Mr Brown contemplated no further legal action relating to the development of the Land, not just demolition of the previously existing walls. Applicant will withdraw appeal if they receive a letter from Planner comparing merits between DA 812/2018 and previously approved 268/2014 (i.e. that we prefer the former proposal). Norman Waterhouse to draft response to letter from Mr Brown's lawyers dated 4 February 2019 advising the former DA has been approved so they can proceed with that.

<b>Appeal against consent granted to non-complying development - 1-2 Brougham Place, North Adelaide (DA/672/2018)</b>	
<b>Responsible Council Officer</b>	
Helen Dand, Principal Planner - Development Assessment	
<b>Date of Update</b>	<b>Status Update</b>
20 September 2019	New development application has been submitted that will be treated as Category 2.
4 September 2019	Council attended the directions hearing on 4 September 2019. Directions hearing scheduled for 4 December 2019. Applicant advised they are going to submit another development application that will be Category 2.
7 August 2019	Council attended the compulsory conference on 15 July. The appellant indicated willingness to conciliate as did the applicant and Council. A conciliation hearing has been set out for 13 August 2019.
8 July 2019	Council granted consent to a non-complying development (once SCAP concurrence had been received) to construct three level building comprising parking and common lobby at ground, with two apartments (one per each level) with associated fencing and landscaping. Appellant has appealed the decision. Compulsory conference to be held at ERD Court on 15 July.
<b>INFRASTRUCTURE</b>	
-	
<b>PUBLIC REALM</b>	
-	
<b>CEO</b>	
<b>GOVERNANCE</b>	

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Litigation Closed		
Date closed	Title	Description
6 December 2018	Gawler Place Rent Review	All items finalised. Council has paid the court order in relation to the defendant's costs of \$75,000
1 March 2018	Removal of unfinished development at 22 Moger Lane, Adelaide	All items in the Court Order have been added and finalised
12 April 2018	Appeal against the refusal of Planning consent - DA 80/2017 - 382 Gilles Street	Applicant withdrew
12 April 2018	Kaurna Native Title Claim	No longer a claim
1 June 2018	Mark Bombardieri Parking Expiation Prosecution	Magistrate found in Council's favour
19 July 2018	Litter Prosecution	Magistrate rejected defendant's version of events, and fined the defendant (largest imposed)
11 October 2018	Common law claim in negligence Dust Diseases Act 2005	Matter finalised - payment made
23 November 2018	Martyn Faranda parking expiation prosecution	Magistrate found in Council's favour
30 November 2018	George Kareklas parking expiation prosecution	Magistrate found in Council's favour
21 December 2018	Town Hall Café	No response from plaintiff until September 2016
21 December 2018	Gawler Place Carpark - rent calculation	Costs have been settled
13 February 2019	Gawler Place Concrete Sealing	Item to be closed or moved, as there is no current or pending litigation re: concrete sealing. Concrete sealing works are being progressed.
13 February 2019	Cosenza vs South Australia - SCCIV 1124 of 2016	Decision of the Chief Justice stands and in favour of Council
25 February 2019	Ellie Davidson parking expiation prosecution	Magistrate found in Council's favour
25 February 2019	Debt Recovery / Bankruptcy Proceedings	Judgement received. Bankruptcy is now reinstated and a trustee allocated
12 March 2019	Joe Santo parking expiation prosecution	Defendant agreed to settle the matter and made payment
20 May 2019	St Ann's College	Judgement received. Appeal allowed and the ERD Court granted consent via an order on 8 May 2019.
10 July 2019	Appeal against refusal of Development Application 200 Hutt Street and 290 Halifax Street, Adelaide (DA/3/2019)	ERD Court issued a consent order on 19 June, matter has been withdrawn
10 July 2019	Appeal against refusal of Development Application - Ancillary Car Park Hutt Street (DA/998/2018)	Appeal was withdrawn
22 August 2019	Constantinos Trakas Parking Expiation prosecution	Defendant agreed to settle the matter and made payment
22 August 2019	Novus Actus PTY LTD Parking Expiation prosecution	Defendant agreed to settle the matter and made payment

## INTERNAL MEMO

**DATE:** 30 September 2019

**TO:** Strategic Risk & Internal Audit Group

**CC:**

**YOUR REF:**

**FROM:** Katharine Finlay  
Freedom of Information Officer

**FO REF:** 15/02953

**EXT NO:** 131

**SUBJECT:** Freedom of Information Applications – September 2019

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### Purpose

To report on the monthly status of Freedom of Information (FOI) applications currently being determined by the Risk & Audit Team.

### Background

When an FOI application is received, City of Adelaide has 30 days to make an initial determination as to whether the documents should be released. The determination is made by an Accredited Freedom of Information Officer in accordance with the FOI Act after consultation with any affected third parties and internal staff.

There is a period of 30 days following the determination in which the applicant may appeal a determination made. This internal review is conducted by the Chief Executive Officer, Mark Goldstone, and must be completed within 14 days of receiving the appeal. Following the internal review determination, the applicant can then appeal to the Ombudsman SACAT within 30 days if they are still aggrieved by the decision.

### Summary

Please find attached a report detailing the active Freedom of Information applications for the period 1 to 30 September 2019.

During this period, there have been six (6) active applications and two (2) active reviews.

### Applications

- Five (5) applications are currently being dealt with.
- One (1) application has resulted in full release of information.

Reviews:

- One (1) internal review application is currently being dealt with.
- One (1) External Review application continues to be dealt with by the South Australian Ombudsman.

Consultation by other agencies:

- There have been no consultations by external agencies.

### FOI Applications - September 2019

Applicant Type	Category	Status	Summary	Date Received	Due Date	Date Determined	Outcome	Exemption	Source
Member of Public	Non-personal	Active	<b>External Review:</b> Correspondence/complaints about applicant.	23/08/2019	10/09/2019 (Provided Ombuds 28/08/2019)				FOI Email
Member of Public	Non-personal	Determined	Cooling tower, a/c information relating to the Supreme Court.	9/09/2019	10/2019	17/09/2019	Full release (info only, no documents)	-	FOI Officer email
Member of Public	Non-personal	Active	Legionella in various Adelaide buildings.	13/09/2019	11/10/2019				FOI Officer email
Member of Public	Non-personal	Active	Parking fines issued southern side of lane behind Rockford Hotel since 4 January 2001.	20/09/2019	21/10/2019				Customer Centre
Member of Public	Non-personal	Active	City Library complaints, allegations regarding applicant's behaviour.	29/09/2019	1/10/2019 Application invalid				Customer Centre
Lawyer/Agent	Non-personal	Active	"Conservatory on Hindmarsh" - DA information.	30/09/2019	30/10/2019				FOI Officer email
Member of Public	Non-personal	Active	DAs for 167 Brougham Place.	09/2019	30/10/2019				Customer Centre
Member of Public	Non-personal	Active	<b>Internal Review:</b> Cooling tower a/c information relating to the Supreme Court.	0/09/2019	14/10/2019				City Email

### FO Consultations

Applicant Type	Category	Status	Summary	Date Received	Due Date	Date Determined	Outcome	Exemption	Source
-									