

**12.3. SECTION 270 REVIEW OF COUNCIL DECISIONS – ANDREW SMALL PLAYGROUND**

REPORT INFORMATION	
Report Title	Section 270 Review of Council Decisions – Andrew Small Playground
Records Reference	9.24.1.2 REP23115
Organisational Unit	Executive, Growth & Innovation
Responsible Officer	Chief Executive Officer - Matthew Morgan
Report Attachment/s	Yes Attachment 10 I231566 Minter Ellison Report – Section 270 Final Report - Request for Review of Council Decision
REPORT PURPOSE	
The purpose of this report is for Council to receive and consider the report on the investigation into the Section 270 review of council decisions conducted externally by Minter Ellison Lawyers.	
REPORT DECISION MAKING CONSIDERATIONS	
Council Role	Regulate - Specific role in response to legislation and compliance - direct, specific or general in nature (such as duty of care)
Strategic Alignment	SDP GOAL: Goal 3: Governance and Leadership SDP ACTION: Not Applicable
Annual Business Plan	ABP INITIATIVE: Not Applicable ABP PROJECT: Foreshore Redevelopment (ongoing)
Legislation	Local Government Act 1999
Policy	Internal Review of Council Decisions 9.63.2
Budget Implications	Minor Variation < \$10,000
Risk Implications	Low Risk
Resource Implications	Not Applicable
Public Consultation	Not Applicable
IAP2 Commitment	Not Applicable
OFFICER'S RECOMMENDATION	
That Council, having received and considered the Minter Ellison 'Section 270 Final Report - Request for Review of Council Decision' for the purposes of reviewing its decisions, notes the report and advises the applicants that the Council decisions as detailed in the Minter Ellison 'Request for Review of Council Decisions Report' have been upheld.	

**12.3 SECTION 270 REVIEW OF COUNCIL DECISIONS – ANDREW SMALL PLAYGROUND****REPORT DETAIL**

Council received three separate applications relating to the Andrew Small Playground requesting a review of Council Decisions, pursuant to Section 270 of the *Local Government Act 1999* (the Act) and Council Policy 9.63.2 Internal Review of Council Decisions (Policy). Two of the applications are the matters considered by Minter Ellison in their Investigation Report provided as an attachment to this Council Report. The third application was not accepted pursuant to Section 270(4)(d) of the Act, in that Council was satisfied that the subject matter of the application relates to the same subject matter of the existing internal reviews already being investigated.

***THE REQUEST FOR INTERNAL REVIEW APPLICATIONS***

Council received an application for Internal Review of a Council Decision from Sonia Tidemann on 17 May 2023. Dr Tidemann's application requested a review of Council's decision to reject Councillor Poynter's Notice of Motion put to the 15 May 2023 Ordinary Council meeting in 2 parts being:

*Part A: On the advice of Minister Brock's office, I am appealing against the decision made by the Councillors at last Monday's (May15) meeting to remove the Andrew Small playground on the grounds of a flawed consultation process.*

*Part B: I am also appealing against the decision made by the Councillors at last Monday's (May 15) Council meeting on the grounds of a flawed process of Council<sup>1</sup> providing feedback, in relation to the consultation process, to Councillors.*

Pursuant to Council's Policy, the Internal Review Contact (IRC) Officer undertook a preliminary assessment of the application to ensure that the application was properly lodged and to determine how the review would be handled. One of the reasons stated in the application, in support of the applicant's opinion that the decision made by Council was wrong, was the applicant's belief that Council staff had been non transparent with the information provided to the decision makers. It was therefore decided that Council would refer the review to an independent law firm to undertake the investigation and prepare a report for Council's consideration.

Dr Tidemann was provided with written correspondence on 25 May 2023 acknowledging receipt of her application, explaining the process for the internal review and offering her an alternative option to consider to resolve her concerns. Dr Tidemann's Request for Review raised various issues with respect to the community consultation that occurred in relation to the Andrew Small Playground, but that the 15 May 2023 Council decision did not directly (or indirectly) relate to the community consultation that occurred. However, a review of the 15 May 2023 Council decision would only analyse the decision-making with respect to that decision. Council communicated this with Ms Tidemann and queried if the undertaking of the section 270 review as requested would address her concerns.

Notwithstanding the above, and knowing that the application for section 270 review would not assess the community consultation, Council took Dr Tidemann's concerns seriously and therefore committed to engaging legal advisors to undertake an independent legal assessment of the Council's community consultation processes in relation to the Andrew Small Playground decisions, and specifically the decisions which were made in relation to the removal and replacement of that playground.

<sup>1</sup> *(interpreted as Council Staff not providing correct consultation results to Councillors)*

For the avoidance of doubt, Dr Tidemann was clearly informed that this abovementioned legal assessment would not be a formal section 270 review, but nonetheless the assessment would be conducted with reference to procedural fairness and other important elements of a section 270 review.

Dr Tidemann was given the option to withdraw or suspend her request for review and was advised that if she chose to do so, this would not preclude her from recommencing that process, if desired. Dr Tidemann did not make a decision to withdraw or suspend her request for review and therefore the request for review was continued and referred to Minter Ellison, the appointed independent law firm. Dr Tidemann was advised as such.

Council received the second application for Internal Review of a Council Decision from Linda Davies on 24 May 2023. Ms Davies' application was seeking review of Council decisions relating to decisions pertaining to the Andrew Small Playground at the Ordinary Council meetings on the 20 February 2023 and 15 May 2023 and "all other decisions made to remove the Andrew Small Playground".

Similarly, to the preliminary assessment of Dr Tidemann's applications, it was evident that Ms Davies reasons for requesting a review were primarily based on her beliefs that the decision-making process had been non-transparent and that the Councillors decisions were based on incomplete or incorrect information. The IRC Officer wrote to Ms Davies on 2 June 2023 to inform her:

- The application for request for review of Council decisions had been accepted.
- Council had appointed an independent law firm to undertake the investigation and prepare a report for Council.
- The formal section 270 review would include an analysis of the decisions, including whether any historical or cultural matters should have been considered by Council in making those decisions.
- The request to review 'all other decisions made to remove the Andrew Small Playground' would not be considered as the decision in relation to the removal and replacement of the Andrew Small Playground were made during 2021 and therefore were outside the six months timeframe of when a review of a decision can be sought.
- The application had been referred to Minter Ellison to undertake the investigation

Notwithstanding the above, Ms Davies was also advised that neither the 20 February 2023 nor the 15 May 2023 Council decisions had the operative effect of removing the playground, however Council had already initiated an independent legal assessment of its processes in relation to the Andrew Small Playground decisions.

The third application for review of Council decisions was received from Jill Coates and was received by Council on 9 June 2023. Ms Coates requested a review of Council decisions relating to the Andrew Small Playground made at the Council meetings of 20 February 2023, 24 April 2023 and 15 May 2023. Ms Coates stated that the reason she considered that the Decisions of Council were wrong was primarily based on her allegations that Council's decision-making processes relating to the Foreshore Project and Andrew Small Playground, particularly Council's consultation, briefings and community feedback considerations (amongst other things) were deficient.

Council's IRC made a preliminary assessment of the application and recommended that Council refuse to consider the application pursuant to section 270(4)(d) of the Act which states:

- (4) A council, or a person assigned to consider the application, may refuse to consider an application for review if—
- (a) the application is made by an employee of the council and relates to an issue concerning his or her employment; or
  - (b) it appears that the application is frivolous or vexatious; or
  - (c) the applicant does not have a sufficient interest in the matter; or
  - (d) the council or person (as the case requires) is satisfied that the subject matter of the application has been or is already the subject of a review by the council or an investigation, inquiry or review by another authority.

Council was satisfied that although Ms Coates application for an internal review referenced an additional decision to those that were currently under review under separate applications, Section 270(4)(d) of the Act refers only to the 'subject matter' of the application and Council considered that the subject matter of the 24 April 2023 decision related to the same subject matter of the existing internal reviews.

Ms Coates was advised in writing that Council would not consider her application for review and the basis for that decision. Ms Coates was informed that Council had recently received two separate applications for internal review concerning the Andrew Small Playground and that these applications raise similar concerns in relation to Council's community consultation, and similarly identify the Council decisions made at its 20 February and 15 May 2023 meetings. Council advised Ms Coates that Council had referred the previous accepted applications for review to an external investigator to assess the relevant decisions pursuant to Council's Policy and that in addition to these two reviews, the Council had also commissioned a separate independent legal assessment, in which the Council's community consultation with respect to the Andrew Small Playground will be the subject of a detailed and thorough independent review.

In response to Ms Coates concerns and questions in relation to Council's decision to refuse to consider her application for a review of Council decisions, Ms Coates was also informed that:

- the 'level of detail' as found in her application, compared to the 'level of detail' found in the existing reviews, does not have a bearing on the acceptance process under section 270(4)
- the existing reviews have the benefit of detailed submissions from the respective applicants, many of which have similarities to her application.
- Council's Disposal of Land and Assets Policy is under consideration as part of the existing internal reviews

Dr Tidemann and Ms Davies were both advised that Minter Ellison had indicated that the investigation into the Council decisions under review could reasonably be completed by 7 July and therefore, although there were no legal grounds for Council to defer the removal of the playground, in a sign of good faith, the removal of the playground was postponed. It was also made clear that if the completion of the section 270 review process was delayed, (including due to factors outside of Council's control or further reviews being received), then Council could not guarantee that the project would be postponed beyond 7 July 2023.

**THE INVESTIGATION REPORT**

The accepted applications and the contact details of the two applicants, Dr Tidemann and Ms Davies, were provided to Minter Ellison who were engaged by Council to undertake the independent investigation into the Council decisions that were the subject of the requests for review.

Minter Ellison liaised directly with the applicants, and both applicants were given the opportunity to provide further information/submissions in support of their applications.

Minter Ellison have prepared a single report that encompasses both of the section 270 review requests to avoid duplication and for ease of reading, however throughout the report it is made clear that there are two separate reviews.

As noted in the Executive Summary of their report, the report and Minter Ellison's conclusions do not relate to the previous community consultations and decision-making in relation to the Foreshore Redevelopment Project, principally undertaken in 2021. Those matters are to be addressed in a separate independent legal assessment.

The detailed report provides a background including the decisions under review, chronology of key decisions and the legislative and policy framework under which the Council decisions were required to be made. It also provides the details of the original applications for review and the additional submissions made by the applicants.

The report describes the methodology of the investigation to determine if the Council:

- had the appropriate power to make the decisions
- had considered matters relevant to the decisions
- had operated with any bias or conflict of interest
- had made the decisions in bad faith or an improper purpose
- had afforded procedural fairness to those who may be affected by the decision
- had made a reasonable decision based on merit and correctness

Having considered all the matters and details of the investigation and their findings in all the aspects outlined above, Minter Ellison's report provides the following conclusion:

The Council Decisions were lawful.

We have found that Council had the power to make its decisions to:

1. receive and note the petition at the 20 February 2023 meeting relating to the Andrew Small Playground; and
2. not adopt a Notice of Motion lodged by Councillor Poynter at the 15 May 2023 meeting relating to the Andrew Small Playground (which also arose from a separate petition).

The Council's Decisions were reasonable, and the correct or preferable decision.

As explained within this report, our conclusions do not relate to the previous community consultations and decision-making in relation to the Foreshore Redevelopment Project, principally undertaken in 2021. Those matters are to be addressed in a separate independent legal assessment.

We recommend Council, having received and considered this report for the purposes of reviewing its decisions, note this report.

Minter Ellison also acknowledges in their report that Council's decision to initiate an independent legal assessment of the public consultation and decisions relating to the Foreshore Project is a generous approach by Council and they commend Council for its integrity and transparency, and for inviting rigorous scrutiny of its decision-making. They also expect that the Applicants will understand the reasons that their substantive submissions (regarding the 2021 decision-making and consultation) cannot be fully addressed in this particular report.

The IRC has written to the applicants to advise them that Minter Ellison have completed their independent investigation in to the Council decision that were the subject of the Section 270 request for review, and that the investigation report and their findings will be included in the Council Agenda for this meeting.

Having considered the detailed investigation report and Minter Ellison's findings and conclusions, it is recommended that Council receives and notes the report and advises the applicants that the Council decisions that were the subject of the reviews, as detailed in the Minter Ellison 'Section 270 Final Report -Request for Review of Council Decision', have been upheld.

It is also recommended that the applicants be advised that Council will notify them when the independent legal assessment of the public consultation and decisions relating to the Foreshore Project has been completed and the report presented to Council. It is estimated the legal assessment will be completed and presented to Council in August.



**City of Port Lincoln**

*Seafood Capital of Australia*



**ATTACHMENT 10**

**I231566**

**REPORT 12.3**

**MINTER ELLISON REPORT – SECTION  
270 FINAL REPORT – REQUEST FOR  
REVIEW OF COUNCIL DECISION**

# *Local Government Act 1999 -* **s 270 reviews**

Requests for review of Council decisions

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Final Report

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10 July 2023



# Local Government Act 1999 – s 270 reviews

## Requests for review of Council decisions

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# Executive summary

Triggered by two applications under section 270 of the *Local Government Act 1999* (SA), the City of Port Lincoln (**Council**) determined to commence two internal reviews of (related) Council decisions.

The first applicant sought an internal review of the following Council resolution:

1. Council's decision at its 15 May 2023 meeting with respect to item 7.1 (titled '*Foreshore Project and the Andrew Small Playground*').

The second applicant also sought an internal review of the above 15 May 2023 resolution, in addition to the following Council decisions:

2. Council's decision at its 20 February 2023 meeting with respect to item 12.1 (titled '*Petition Received – Retain the Andrew Small Playground (Foreshore)*'); and
3. "... ALL OTHER DECISIONS MADE TO REMOVE THE ANDREW SMALLS PLAYGROUND...".

Council determined that the second applicant's request for '... ALL OTHER DECISIONS MADE TO REMOVE THE ANDREW SMALLS PLAYGROUND' was not capable of review, as the decisions made by Council relating to the removal (and replacement) of the Andrew Small Playground were made in 2021. The applicant was informed that requests for internal reviews must be made within six calendar months of the decision, consistent with the *Local Government Act 1999*.<sup>1</sup> This request has therefore not formed part of this review.

Council has commenced two reviews. Firstly, a review of the 15 May 2023 resolution, and secondly, a review of both the 20 February 2023 and 15 May 2023 Council resolutions. Due to the overlap between the two reviews, for ease of consideration and avoidance of duplication, a single report has been produced.

Separately to these reviews, Council has voluntarily initiated its own independent legal assessment of (some) of the consultation processes relating to the removal of the Andrew Small Playground (principally undertaken in 2021). (Council was not compelled to undertake this assessment). The substantive decision(s) by Council to remove the Andrew Small Playground are to be assessed within that independent legal assessment, but not the present section 270 review (for reasons which are set out below). Many of the applicants' submissions have centred on the 2021 community consultation, but for the same reasons, could not be considered in this review. However, we expect that the concerns raised by the applicants and assertions of a 'flawed' consultation process will be assessed as part of the forthcoming independent legal assessment.

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<sup>1</sup> <https://www.portlincoln.sa.gov.au/council/section-270-internal-reviews>

The applicants have each raised concerns with the removal of the Andrew Small Playground, being part of the Foreshore Project and Redevelopment, for a number of reasons, including on the grounds that

1. Council paid insufficient regard to the historic or cultural background of the playground;
2. Council's decisions were infected by conflicts of interest, and bias, on the part of the elected members
3. there were deficiencies and flaws in the public consultation processes carried out by the Council.

Pursuant to Council's Internal Review of Council Decisions Policy, MinterEllison was engaged as external investigator. We have undertaken an investigation and find that Council had the (legal) power to make its decisions to:

1. receive and note the petition at the 20 February 2023 meeting relating to the Andrew Small Playground; and
2. not adopt a Notice of Motion lodged by Councillor Poynter at the 15 May 2023 meeting relating to the Andrew Small Playground (which also arose from a separate petition).

Council's decisions were also reasonable, and the correct or preferable decision.

As stated above, our conclusions do not relate to the previous community consultations and decision-making in relation to the Foreshore Redevelopment Project, principally undertaken in 2021. Those matters are to be addressed in a separate independent legal assessment.

We recommend Council, having received and considered this report for the purposes of reviewing its decisions, note this report.



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# Report

## 1. Background

### 1.1 Andrew Small Playground

These reviews concern the Andrew Small Playground, located at Tasman Terrace, Port Lincoln (**Playground**).

After lengthy periods of design, development and consultation, the Council has determined to undertake a \$7.24m Foreshore Redevelopment Project, involving changes to the existing Playground located at the Foreshore.

It is evident that the Playground is important to the local community. Our investigation has identified that the Playground has been a source of community commentary since inception of the Project. More recently, as works on the Foreshore Redevelopment Project have commenced, certain residents have (continued) to raise concerns about the removal of the Playground.

The following sections explain the requests for review received by Council, the pertinent Council resolution, and a chronology of events in relation to the Playground.

### 1.2 Internal Review Request

By application dated 17 May 2023, the Council received a request for internal review of a council decision, from Dr Sonia Tidemann (**First Applicant**). The First Applicant sought a review under section 270 of the *Local Government Act 1999* (SA) of the following Council decision:

1. decision at 15 May 2023 Council meeting with respect to item 7.1 (titled '*Foreshore Project and the Andrew Small Playground*').

By application dated 24 May 2023, the Council received a request for internal review of a council decision, from Linda Davies (**Second Applicant**). The Second Applicant sought a review under section 270 of the *Local Government Act 1999* (SA), of the following Council decisions:

1. decision at 20 February 2023 Council meeting with respect to item 12.1 (titled '*Petition Received – Retain the Andrew Small Playground (Foreshore)*'); and
2. decision at 15 May 2023 Council meeting with respect to item 7.1 (titled '*Foreshore Project and the Andrew Small Playground*'); and
3. "... ALL OTHER DECISIONS MADE TO REMOVE THE ANDREW SMALLS PLAYGROUND...".

On 2 June 2023, the Council's Manager People, Governance & Communications, wrote to the Second Applicant, restating Council's position that requests for reviews must be made within six

calendar months of the making of the relevant decision.<sup>2</sup> The Manager advised that the third limb of this request ('*all other decisions ...*') related to decisions of Council in 2021, and therefore would not be accepted by the Council. (In our view, this is appropriate).

Copies of each of the First Applicant's and Second Applicant's (referred to together as the **Applicants**) requests are attached at **Annexure A**.

For ease of reference, the First Applicant's submissions asserted that the 15 May 2023 decision was based on '.... a flawed consultation', because:

1. *At no time during the consultation process for the redevelopment of the foreshore did the Council or Councillors ever put in their on-line surveys or advertise at 'drop in' sessions or utilise other forms of consultation the following question.*  
**'Does the community approve of the removal of the Andrew Small playground from the foreshore of Port Lincoln?'**
2. *Council responded to a small number of requests during the consultation process (I have written to the Port Lincoln Yacht Club for actual details) to not have a basketball court (possibly amongst other things) at their end of the lawn area but has discriminated against huge numbers of community members who responded that they wanted the foreshore playground to stay where it is.*
3. *Councillors were only provided with dot points at the meeting of 15 March 2021, not actual figures related to categories of response. The provision of material relating to the consultation results was not transparent.*
4. *When basic statistics relating to the feedback on the consultation process relating to the foreshore were presented by a member of the community to each Councillor, they were dismissed.*

The Second Applicant summarises her key grievances as follows:

1. *Council staff have not considered the cultural and historical value of the Andrew Small Playground or conveyed it to Councillors and the public in their plans, or its removal.*
2. *The importance and cultural significance this playground has in our community over the last 78 years.*
3. *The Councillors were not aware and did not appear interested in our community history, volunteer efforts to raise funds to build this playground.*
4. *The majority of councillors were not coming to the meeting with an open mind, to listen to the deputations but to vote the way they personally wanted, workplace would benefit or concluded as a group.*
5. *Cultural heritage is the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations. The fact volunteers raised the money for this playground originally, the community want to keep it and have gone to great lengths to retain it, it should stay in the ownership of the community and not removed by people who have no understanding of Port Lincoln history and cultural significance.*
6. *The decisions made by Councillors to remove the Andrew Small Playground have been non-transparent and flawed throughout the whole process as incomplete and incorrect information was provided.*

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<sup>2</sup> See <https://www.portlincoln.sa.gov.au/council/section-270-internal-reviews>. This is consistent with section 270(2a)(a) of the *Local Government Act 1999*.

Pursuant to section 5.1 of the Internal Review of Council Decisions Policy, Council determined to engage MinterEllison as external investigator to undertake the investigation and prepare a report for Council's consideration.

Upon our engagement as external investigator, we wrote to the Applicants on 6 and 7 June 2023 respectively, and separately invited them to submit any relevant information, documentary evidence, or submissions, in support of their respective requests.

In response, from each Applicant we received a letter of submissions containing a number of annexures (see Annexure C).

In summary, the First Applicant's further submissions asserted that:

- (a) the process of consultation since January 2021 has been flawed;
- (b) the community is requesting the retention of both the new playspace and Playground on the Foreshore;
- (c) the community has never been consulted as to whether the Playground should be removed;
- (d) the feedback to Council has been ignored by councillors;
- (e) Council has selectively responded to written feedback received. For example:
  - (i) two letters from the Port Lincoln Yacht Club resulted in Council making changes to the project plan,
  - (ii) however, thousands of community petitions and submissions regarding the Playground have not been successful in influencing a vote to retain the Playground;
- (f) the flawed consultation constitutes a breach of section 75E of the *Local Government Act 1999*;
- (g) in voting to remove the Playground, councillors are 'acting totally blinkered, seemingly in their own interests and self-initiated motions';
- (h) Council is 'failing to consult on the historical significance of the foreshore playground and that it was established, in the first instance, with community-raised funds.'

The Second Applicant's further submissions asserted that:

- (a) there is a 'lack of relevant documentary evidence' showing procedural fairness in Council's decision-making;
- (b) relevant materials from the previous term of Council were not presented to newly elected Council members, and were not clearly presented to the public (meaning that 'the public awareness of removal of the playground was not properly considered or transparent');
- (c) 'Council has had a large turnover of CEO's and staff in this consultation period';
- (d) the 'History Group' was consulted, but their feedback was not reported to the Council ('except for the Theatre');
- (e) Council failed to properly consult on the removal of the Playground, and 'the historical, cultural and community value' of the Playground;
- (f) it was only when petitions were received to 'save' the Playground that the Council became aware of its value to the community, but the petition 'fell on deaf ears of our councilors';
- (g) Council's consultation process did not include reference to 'any historic, cultural or community ownership of this community asset', nor 'calling it by name and explaining the significance and history behind it';

- (h) at Council's 15 May 2023 decision, elected members voted against a motion to retain the Playground, without yet discussing a petition which also appeared on the meeting agenda. This shows 'the lack of respect and the groupthink where no discussion was given to the formal retention of a community asset';
- (i) the plans and documents presented to the public were 'confusing and misleading', and comments by elected members evidenced a 'Lack of transparency and misinformation sharing'; and
- (j) the Council's *Disposal of Assets Policy* was not considered.

To the extent these further submissions are relevant, they are considered and addressed in this report.

### 1.3 Council Resolutions (Decisions)

The Council accepted the Applicants' requests for review in relation the following decisions of Council:

1. Council's decision made at its 20 February 2023 meeting in relation to the petition received at item 12.1; and
2. Council's decision made at its 15 May 2023 meeting in relation to the Notice of Motion at agenda item 7.1,

(referred to together as **Council's Decisions**).

#### February Meeting

The minutes of the 20 February 2023 Council meeting record the following, with respect to item 12.1:

*That Council receives and notes the tabled petition and advises the head petitioner that Council will not be retaining the existing playground on the foreshore as per the endorsed Foreshore Concept Plan and that much of the existing equipment will be refurbished and redeployed to Nelson Square.*

**CARRIED**

*Mayor Mislov called for a Division, and as the Presiding Member, declared the vote be set aside.*

**Members Voting in the Affirmative:** Councillors Hollamby, Broadfoot, Ritchie, Rowsell, Cowley, Linn and Richards

**Members Voting in the Negative:** Councillor Poynter

***The Presiding Member declared the Motion CARRIED***

#### **(February Decision)**

The minutes of the 15 May 2023 Council meeting record the following, with respect to item 7.1:

*In relation to the Foreshore Project and removal of the Andrew Small Playground, Council resolves that the Andrew Small Playground is not closed and is to be retained at its current location.*

**LOST**

#### **(May Decision)**

## 1.4 Chronology

The Playground was officially opened in 1944.<sup>3</sup>

In October 2018, Jensen PLUS, a planning and consultancy firm, was engaged by the Council to prepare a Precincts Master Plan, encompassing the Port Lincoln CBD, Foreshore, and Marina. Development of the Master Plan (including community consultation) occurred throughout 2018, 2019 and 2020, until the Master Plan was finalised in September 2020. At Council's 21 September 2020 meeting, it received the final Master Plan and adopted the accompanying Implementation Strategy.<sup>4</sup> The Implementation Strategy presents 'a plan of action designed to achieve the long-term objectives of the Precincts Master Plan over a period of time through coordinated projects and activities.'<sup>5</sup>

The Implementation Strategy identified that partnerships with Federal and/or State governments would be critical to fund Master Plan projects.<sup>6</sup>

At Council's 25 January 2021 (Special Council) meeting, it considered three major infrastructure projects as potential Economic Stimulus Projects, and submission for funding under the Government's Local Government Infrastructure Partnership Program.<sup>7</sup> The Council considered:

1. Library & Visitor Centre Project
2. Foreshore Redevelopment Project
3. Stormwater Infrastructure Project

The Foreshore Redevelopment Project is the flagship project of the Precinct Master Plan and Implementation Strategy.

Council resolved to submit applications for funding under the Local Government Infrastructure Partnership Program, for each of these proposed projects.<sup>8</sup> Council also resolved to seek community and stakeholder feedback on proposed plans. The consultation period ended on 19 February 2021, and a consultation summary report for each of the proposed projects was noted and received by Council at its 15 March 2021 meeting.<sup>9</sup> (At that meeting Council also resolved to conduct "further dialogue" with the community in relation to the projects should funding approval be received).

<sup>3</sup> <https://trove.nla.gov.au/newspaper/article/99915327>

<sup>4</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0031/762079/9.24.1.2-MIN2039-COUNCIL-MINUTES-20200921-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0031/762079/9.24.1.2-MIN2039-COUNCIL-MINUTES-20200921-PUBLIC.pdf)

<sup>5</sup> Implementation Strategy p. 3, available at [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0032/758057/9.24.1.2-AGEN2039-ORDINARY-COUNCIL-20200921-ATTACHMENTS-COMBINED-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0032/758057/9.24.1.2-AGEN2039-ORDINARY-COUNCIL-20200921-ATTACHMENTS-COMBINED-PUBLIC.pdf)

<sup>6</sup> Ibid p. 21.

<sup>7</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0028/863461/9.24.1.2-REP2112C-Economic-Stimulus-Projects-20210125-CONFIDENTIAL.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0028/863461/9.24.1.2-REP2112C-Economic-Stimulus-Projects-20210125-CONFIDENTIAL.pdf)

<sup>8</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0024/832524/9.24.1.2-MIN212-SPECIAL-COUNCIL-MINUTES-20210125-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0024/832524/9.24.1.2-MIN212-SPECIAL-COUNCIL-MINUTES-20210125-PUBLIC.pdf)

<sup>9</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0027/861426/9.24.1.2-MIN217-ORDINARY-COUNCIL-20210315.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0027/861426/9.24.1.2-MIN217-ORDINARY-COUNCIL-20210315.pdf)



On 23 March 2021, the State Government announced that the Port Lincoln Foreshore Redevelopment Project was one of the 57 projects to receive funding via the Local Government Infrastructure Partnership Program<sup>10</sup>.

The Foreshore Redevelopment Project continued to progress, with Councillor workshops being held in April and May 2021, followed by further community consultation between 20 May – 11 June 2021.

On 16 June 2021, Council held a Special Meeting, for the purpose of hearing verbal submissions with respect to the Foreshore Redevelopment Project.<sup>11</sup>

At the Council Meeting on 21 June 2021, Council received the Foreshore Development Consultation Report.<sup>12</sup>

At the 28 June 2021 Special Council Meeting, the Council:

- received the Foreshore Redevelopment Project Prudential Review Report;
- endorsed the Port Lincoln Foreshore Redevelopment Concept Plan; and
- determined that the Port Lincoln Foreshore Project shall proceed.<sup>13</sup>

At the 20 September 2021 Council Meeting, the Council received a petition in relation to the Port Lincoln Foreshore Project.<sup>14</sup> The petition was dated 24 June 2021 and the head petitioner was Diana Mislov.<sup>15</sup> The head petitioner stated that the petition contained 1339 unique signatures.

The petition contained the following request:

... that the Council change their plans to consider the top 5 priorities identified by the community:

1. Do keep existing car-parking along Tasman Terrace CBD;
2. **Do retain and repair the existing children's playground;**
3. No Boardwalk/Viewing Deck and/or tiered seating at the Toilet;
4. Do repair the seawall;
5. Don't extend the jetty.

(Our emphasis).

The funding deed was executed on 25 December 2021, and physical works on the Foreshore Project commenced in March 2022 and have continued in 2023.

<sup>10</sup> [https://www.treasury.sa.gov.au/\\_data/assets/pdf\\_file/0007/518875/LGIPP-Approved-Projects.pdf](https://www.treasury.sa.gov.au/_data/assets/pdf_file/0007/518875/LGIPP-Approved-Projects.pdf)

<sup>11</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0029/916436/9.24.1.2-MIN2114-SPECIAL-COUNCIL-20210616.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0029/916436/9.24.1.2-MIN2114-SPECIAL-COUNCIL-20210616.pdf)

<sup>12</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0031/920857/9.24.1.2-MIN2116-ORDINARY-COUNCIL-20210621-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0031/920857/9.24.1.2-MIN2116-ORDINARY-COUNCIL-20210621-PUBLIC.pdf)

<sup>13</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0035/923885/9.24.1.2-MIN2118-SPECIAL-COUNCIL-20210628.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0035/923885/9.24.1.2-MIN2118-SPECIAL-COUNCIL-20210628.pdf)

<sup>14</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0021/1035714/9.24.1.2-MIN2121-ORDINARY-COUNCIL-MINUTES-20210920-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0021/1035714/9.24.1.2-MIN2121-ORDINARY-COUNCIL-MINUTES-20210920-PUBLIC.pdf)

<sup>15</sup> Diana Mislov was then a member of the public, and has since been elected Mayor of the Council.

At the 20 February 2023 Council meeting, the Council received a petition, containing 29 signatures.<sup>16</sup>

The petition was worded as follows:

As part of the new foreshore redevelopment the existing playground (Andrew Small Playground) is to be demolished and replaced by a half-court basketball court. We believe the playground should stay in its current position and the half-court basketball relocated to another such as the eastern end of the tennis court opposite Centenary Oval.

We the undersigned are concerned citizens who urge our leaders to act now to retain the Andrew Small Playground in its current location.

Councils minutes show that Council received the petition at Item 8.1.<sup>17</sup>

In response to the petition and to assist Council, staff prepared a report which appeared in the meeting agenda as Item 12.1, which report explained that:

- Council adopted the Port Lincoln Foreshore Concept Plan at a Special Meeting on 18 June 2021, after several rounds of community consultation and revisions;
- the Concept Plan includes a new playspace, and clearly shows the Foreshore Activity zone comprising half-court basketball, etc. at the site of the current Andrew Small Playground;
- Equipment from the current playground will be retained where possible with refurbishment and redeployment at other locations around Port Lincoln, including Nelson Square.

The staff report contained three possible options for the Council to consider, if it determined to do so (either because of the petition or otherwise):

1. Council could determine that no changes will be made to the adopted Foreshore Concept Plan with regards to the Andrew Small Playground
2. Council could determine that the Andrew Small Playground is retained for a short period of time after the new playspace opens, but ultimately determines that no changes will be made to the adopted Foreshore Concept Plan
3. Council could amend the adopted Foreshore Concept Plan to provide for the retention of the existing Andrew Small Playground in addition to the new playspace.

The staff report observed that the third option may result in the following implications:

1. further community consultation on the proposed change;
2. renegotiation of the funding agreement with the State Government;
3. future budgets to provide for renewal of the Andrew Small Playground;
4. increased costs to the Nelson Square enhancement project due to the need to purchase new playground equipment.

<sup>16</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0024/1295061/9.24.1.2-AGEN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0024/1295061/9.24.1.2-AGEN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf)

<sup>17</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0036/1298277/9.24.1.2-MIN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0036/1298277/9.24.1.2-MIN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf)

Council considered the report at Item 12.1 and ultimately chose option 1 and resolved as follows:<sup>18</sup>

*That Council receives and notes the tabled petition and advises the head petitioner that Council will not be retaining the existing playground on the foreshore as per the endorsed Foreshore Concept Plan and that much of the existing equipment will be refurbished and redeployed to Nelson Square.*

This was the February Decision as described in Part 1.2 of this report above.

A Special Council meeting was held on 24 April 2023, to discuss matters pertaining to the Port Lincoln Foreshore Project. Deputy Mayor Ritchie submitted a written notice of motion to the effect that the Playground was to be removed (i.e. retaining the status quo).<sup>19</sup> Mayor Mislov provided an alternative draft motion, to the effect that the Council retain the Playground for six months.<sup>20</sup> The meeting minutes record that Deputy Mayor Ritchie moved an alternative motion, to the effect that the Council would retain the Playground for six weeks.<sup>21</sup> This motion was lost. Councillor Rowsell moved a motion (without notice) on the same terms as Deputy Mayor Ritchie's original motion.<sup>22</sup>

That motion was carried, and the resolution read as follows:

1. That Council, further to the resolution of 20 February 2023, reiterates its position that the Andrew Small Playground will be removed, and additionally requests that a further report is brought to Council to enable consideration of the following:
  - (a) options for extending the fencing of the new Play Space with possible full enclosure of the area;
  - (b) how this would fit with the design aesthetics and accessibility of the area; and
  - (c) possible timing and cost to complete the additional works.
2. That Council, after reviewing this additional report and taking into consideration feedback and user experience after the new Play Space has been open for a period of time, determine whether additional fencing needs to be installed.

At Council's 15 May 2023 meeting, Council received a petition submitted by Sonia Tidemann (the First Applicant), said to contain 1,530 signatures (however Council staff identified that the petition contained duplicate and invalid signatures).<sup>23</sup> The petition sought to '... demand that the Andrew Small playground be retained where it is on the foreshore of Port Lincoln', and requested that the Council 'rescind any motion to remove the Andrew Small playground and present a new motion to retain the playground.'<sup>24</sup>

At meeting on 15 May 2023, Council also heard deputations from the First Applicant (item 9.2) and Mr Scott Rowlands (item 9.4).

<sup>18</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0036/1298277/9.24.1.2-MIN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0036/1298277/9.24.1.2-MIN238-ORDINARY-COUNCIL-20230220-PUBLIC.pdf)

<sup>19</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0028/1326763/9.24.1.2-AGEN2317-SPECIAL-COUNCIL-20230424.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0028/1326763/9.24.1.2-AGEN2317-SPECIAL-COUNCIL-20230424.pdf)

<sup>20</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0028/1326763/9.24.1.2-AGEN2317-SPECIAL-COUNCIL-20230424.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0028/1326763/9.24.1.2-AGEN2317-SPECIAL-COUNCIL-20230424.pdf)

<sup>21</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0032/1327982/9.24.1.2-MIN2317-SPECIAL-COUNCIL-20230424.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0032/1327982/9.24.1.2-MIN2317-SPECIAL-COUNCIL-20230424.pdf)

<sup>22</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0032/1327982/9.24.1.2-MIN2317-SPECIAL-COUNCIL-20230424.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0032/1327982/9.24.1.2-MIN2317-SPECIAL-COUNCIL-20230424.pdf)

<sup>23</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0035/1339793/9.24.1.2-AGEN2319-ORDINARY-AGENDA-20230515-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0035/1339793/9.24.1.2-AGEN2319-ORDINARY-AGENDA-20230515-PUBLIC.pdf)

<sup>24</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0037/1339795/9.24.1.2-AGEN2319-ORDINARY-COUNCIL-20230515-ATTACHMENTS-COMBINED-PUBLIC-Updated2.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0037/1339795/9.24.1.2-AGEN2319-ORDINARY-COUNCIL-20230515-ATTACHMENTS-COMBINED-PUBLIC-Updated2.pdf)

At the meeting, having lodged a written notice of motion, Councillor Poynter spoke to the following Notice of Motion:

In relation to the Foreshore Project and removal of the Andrew Small Playground, Council resolves that the Andrew Small Playground is not closed and is to be retained at its current location.

This motion was lost.<sup>25</sup> This constitutes the May Decision of the Council as described in Part 1.2 above.

## 1.5 Legislative and policy framework

Council's decisions were considered and made within the following legislative and policy framework:

### Key Legislation

The overarching legislation is the *Local Government Act 1999* (SA) and accompanying regulations.

### Council Policies

We have identified a number of Council policies potentially relevant to the Council decisions and actions, including:

- (a) Internal Review of Council Decisions Policy
- (b) Code of Practice – Council and Committee Meetings (Policy No 18.63.2) <sup>26</sup>
- (c) Council's Asset and Disposal Policy

## 2. Internal review

### 2.1 Applicants' Submissions

The Applicants' submissions can (cumulatively) be broadly summarised (and categorised) as follows.

- The playground contributes to cultural heritage of the community and must be preserved.
- When making the Council's Decisions, no regard was had to any historic or cultural background information, specifically the origin of the Playground, and the historic & cultural significance the Playground holds within the community.

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<sup>25</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0032/1343696/9.24.1.2-MIN2319-ORDINARY-COUNCIL-20230515-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0032/1343696/9.24.1.2-MIN2319-ORDINARY-COUNCIL-20230515-PUBLIC.pdf)

<sup>26</sup> [https://www.portlincoln.sa.gov.au/data/assets/pdf\\_file/0031/98932/9.63.1.18.63.2-Code-of-Practice-Council-and-Committee-Meetings.pdf](https://www.portlincoln.sa.gov.au/data/assets/pdf_file/0031/98932/9.63.1.18.63.2-Code-of-Practice-Council-and-Committee-Meetings.pdf)

- This information was not brought to attention throughout the planning and consultation process.

(In our interpretation, the Applicants are cumulatively asserting that the Council paid insufficient regard to historic/cultural factors when making the Council Decisions).

- In the 'earlier public consultation process', the Playground was not going to be removed.
- 'The plan never showed the Andrew Small Playground was going to be replaced.'
- Page 24 of 'the initial plan' does not reference the Playground or its removal, and page 75 of the initial plan states 'do not move foreshore playground'.
- The decisions to remove the Playground have been 'non-transparent and flawed throughout the whole process as incomplete and incorrect information was provided.'
- The plans and documents presented to the public were 'confusing and misleading'.
- Relevant materials from the previous term of Council were not presented to newly elected Council members, and were not clearly presented to the public (meaning that 'the public awareness of removal of the playground was not properly considered or transparent').
- Council failed to properly consult on the removal of the Playground, particularly 'the historical, cultural and community value' of the Playground.
- Council's consultation process did not include reference to 'any historic, cultural or community ownership of this community asset' [the Playground], nor 'calling it by name and explaining the significance and history behind it'.
- Council failed to 'consult on the historical significance of the foreshore playground and that it was established, in the first instance, with community-raised funds.'
- The community was not asked whether it approves of the removal of the Playground.
- The elected members 'dismissed' basic statistics relating to the feedback from the consultation process, and have 'ignored' the feedback given to Council.
- Councillors were only provided with 'dot points', not actual figures, arising from the results of the community consultation.
- The Council has selectively responded to written feedback received.

(In our interpretation, the Applicants are cumulatively asserting that there were deficiencies in the public consultation process, due to inaccurate or non-transparent communication regarding removal of the Playground).

- Council members and staff are ignoring petitions, community gatherings and attendance in Council meetings
- 'The majority of councillors were not coming to the meeting with an open mind'.
- Cr Rowsell and Cr Cowley 'work with West Coast Youth' and therefore represent the youth, not the toddlers or the ratepayers. These councillors work directly with the age group that will likely use the new space, rather than the toddlers that will be losing the use of the Playground.
- Cr Hollamby appears supportive of the proposal due to her 13 year old son wanting to use basketball hoops.

- Most of the councillors operate in group activities outside Council business (e.g. City Band, Freds Van, Rotary, SALT Festival), causing groupthink and 'a perceived association that creates a bond that is not open minded and reflective of this community but the best interests of their friendships.'
- The petitions 'fell on deaf ears of our councilors'.
- The elected members are 'acting totally blinkered, seemingly in their own interests and self-initiated motions'

(In our interpretation, the Applicants are cumulatively asserting that the Council's Decisions were infected by conflicts of interest and bias, on the part of the elected members).

In addition, the Second Applicant has asserted that the Council's Disposal of Assets Policy was not considered.

Finally, the First Applicant asserted that the community consultation is 'flawed' which represents a breach of section 75E of the *Local Government Act 1999*. Section 75E contains behavioural standards for Council elected members and is found within the member integrity provisions of the *Local Government Act 1999*. The section 270 internal review framework is separate to the member integrity investigation framework. We do not consider that a section 270 internal review is the appropriate forum to agitate member integrity concerns.

## 2.2 Internal Review of Council Decisions Policy

The Council's Internal Review of Council Decisions Policy (**Policy**) outlines and governs the processes to be followed when an external or internal review of a Council decision is to be made (attached as **Annexure B**).

Pursuant to section 5.1 of the Policy, where the decision being reviewed was made by the elected Council, the elected Council will be the reviewer. The Council may determine that another person (such as an external expert party) will undertake the investigation and prepare a report for Council consideration. MinterEllison has been engaged on this basis.

This report will therefore assist the Council in carrying out its review of the Council Decisions. Section 5.3 of the Policy sets out the review process as follows:

### 5.3 Review process

In carrying out a review of a decision, the reviewer [*ie Council*] will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available on the evidence.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

In respect to the remedies that are available following a review, section 6 of the Policy sets out the following:

## **6 Remedies**

Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

As a general principle the applicant will, so far as possible, be put in the position they would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

### Scope of Review

Reviews pursuant to section 270 of the *Local Government Act 1999* (SA) will encompass both merit and process review.<sup>27</sup> Accordingly, this Report will encompass a process review (review of the correctness of the procedures followed in making the decisions) and a merits review (reconsideration of the facts, law, and policy aspects of the decisions and determining the correct or preferable decision).<sup>28</sup>

Pursuant to section 5.2 of Council's policy, this involves having regard to the following:

#### *Process:*

- (i) The decision must be within the properly conferred power of the decision-maker under the relevant Act.
- (ii) The decision-maker only considered matters which were relevant to the making of the decision
- (iii) The decision-maker made the decision in good faith and did not exercise power for an improper purpose.
- (iv) Those who may be affected by a decision were accorded procedural fairness, including the principles of natural justice.
- (v) A decision-maker did not exercise a discretionary power at the direction of another person.

#### *Merit:*

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<sup>27</sup> Ombudsman SA, 'Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures' (November 2016) <<https://www.ombudsman.sa.gov.au/publication-documents/audit-reports/2016/Right-of-Review-An-audit-of-Local-Government-Internal-Review-of-Council-Decisions-Procedures.pdf>> [143].

<sup>28</sup> Ombudsman SA, 'Report to the Minister for Local Government regarding implementation of Ombudsman recommendations from "Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures"' (June 2017) <<https://www.ombudsman.sa.gov.au/publication-documents/audit-reports/2017/Report-to-Minister-for-Local-Government.pdf>> (Annexure B).

- (vi) The decision was reasonable, findings of fact were based on evidence, and the decision maker considered the application of existing policies.

We have used these principles to assess the legality and reasonableness of Council's Decisions.

## 2.3 Identification of Decision

As stated above in section 1.2, the scope of this review includes two decisions:

1. Council's decision made at its 20 February 2023 meeting in relation to the petition received at item 12.1; and
2. Council's decision made at its 15 May 2023 meeting in relation to the Notice of Motion at agenda item 7.1,

As explained earlier, while the Second Applicant's original request for review included '... ALL OTHER DECISIONS MADE TO REMOVE THE ANDREW SMALLS PLAYGROUND ...', this limb of the request was (appropriately) not accepted by the Council, and is therefore not included within the scope of this review and report.

The submissions of the Applicants as contained in their requests for review also relate not only to the February Decision and the May Decision, but also Council's historical decision-making with respect to the Playground (e.g. 2021 decisions). To the extent possible, we have interpreted these submissions as applying to the February Decision and May Decision, for the benefit of the Applicants.

It is also important to explain that, in reviewing these decisions, the February Decision and May Decision must be assessed on their own merits. These decisions relate primarily to petitions. They do not directly relate to broader and historical decision-making with respect to the Playground. It follows, that this review will not directly analyse the broader decision-making leading up to the February Decision and May Decision (including decision-making of Council elected members and Council administration). The First Applicant in particular has provided a substantial amount of submissions and evidence regarding Council's community consultation that was carried out in 2021. The bulk of the First Applicant's submissions seek to establish that the community consultation was 'flawed', on a number of specified grounds. Notably, Council's broader decision-making with respect to the Playground (including the 2021 public consultations and decisions) is the subject of a separate, thorough independent legal assessment. This is quite a generous approach and we commend the Council for its integrity and transparency, and for inviting rigorous scrutiny of its decision-making. We expect that the Applicants and the general public will share this view, and will understand the reasons that their substantive submissions (regarding the 2021 decision-making and consultation) cannot be fully addressed in this particular report.

At the time that the Applicants' internal review request were accepted by the Council, the Applicants were advised that neither the February or May Decisions had the operative effect of removing the Playground. Rather, the substantive decisions relating to the Playground as part of the Foreshore Redevelopment Project were principally made by Council in 2021. It was explained



to the Applicants that their primary concerns (which ostensibly appeared related to Council's 2021 decision-making) would not be addressed via a section 270 internal review of the February and May Decisions. Nonetheless each Applicant separately chose to proceed with their applications, and the reviews have proceeded accordingly.

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

#### 3.1 Power to make decision

We have considered whether the Council Decisions were made within the properly conferred power of the decision-maker (the Council elected body) under the relevant Act.

##### February Decision

Requirements for a valid petition are set out in regulation 10 of the *Local Government (Procedures at Meetings) Regulations 2013* (SA) (**Meeting Regulations**), and supplemented by section 4.17 of Council's *Code of Practice – Council and Committee Meetings* (**Code of Practice**).

The Meeting Regulations require that petitions must:

- be legibly written or typed or printed
- clearly set out the request or submission of the petitioners
- include the name and address of each person who signed or endorsed the petition
- be addressed to the council and delivered to the principal office of the council

and that, if the CEO receives a petition under the Meeting Procedures, they must place on the agenda for the next ordinary meeting of the Council:

- a statement as to the nature of the request or submission
- the number of signatures or the number of persons endorsing the petition

The Council practice as set out the Code of Practice additionally prescribes that that the first page of the petition will be included as an attachment to the report, and the complete petition will be tabled at the meeting.

The staff report for the February Decision as contained in the meeting agenda explained that:

- the petition was received by the Council at its principal office on Wednesday 8 February 2023

- the first page of the petition was attached to the report, and the full petition was to be tabled at the meeting

The Attachments to the meeting agenda (as available on Council's website) contain a copy of the first page of the petition.<sup>29</sup>

As a result of the foregoing, it appears that the Meeting Regulations and Code of Practice were complied with, and the petition was validly received and presented to Council.

There is no assertion that the Council otherwise did not possess the power to make the February Decision.

### May Decision

Requirements for a valid petition are set out in regulation 12 of the Meeting Regulations, and supplemented by section 4.20 of Council's Code of Practice.

The Meeting Regulations provide that a member may bring forward any business in the form of a written notice of motion, which must be given to the CEO at least five clear days before the date of the relevant meeting.

The staff report for the May Decision as contained in the meeting agenda explained that the Notice of Motion was submitted by Cr Poynter in accordance with regulation 12 of the Meeting Regulations, and was received on Friday 5 May 2023. As the meeting was held on 15 May 2023, the Meeting Procedures were correctly complied with.

The Council practice as set out in Council's Code of Practice additionally prescribes that a notice of motion is required to be submitted using the Council's template form. Councillor Poynter's Notice of Motion was included in the agenda attachments, and appears to be contained in the correct Council template form.<sup>30</sup>

As a result of the foregoing, it appears that the Meeting Regulations and Code of Practice were complied with, and the Notice of Motion was validly received and presented to Council.

There is no assertion that the Council otherwise did not possess the power to make the May Decision.

As a result of the foregoing, we find that Council had the power to make the Council Decisions.

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<sup>29</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0030/1295076/9.24.1.2-AGEN238-ORDINARY-COUNCIL-20230116-ATTACHMENTS-PUBLIC-COMBINED-amended.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0030/1295076/9.24.1.2-AGEN238-ORDINARY-COUNCIL-20230116-ATTACHMENTS-PUBLIC-COMBINED-amended.pdf)

<sup>30</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0037/1339795/9.24.1.2-AGEN2319-ORDINARY-COUNCIL-20230515-ATTACHMENTS-COMBINED-PUBLIC-Updated2.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0037/1339795/9.24.1.2-AGEN2319-ORDINARY-COUNCIL-20230515-ATTACHMENTS-COMBINED-PUBLIC-Updated2.pdf)

### 3.2 Matters relevant to decisions

We have considered whether the Council considered all matters which were relevant to the making of the Council Decisions at the time, and did not take into account matters which were not relevant.

The Applicants have asserted that the Council should have, but failed to, consider historic and cultural factors, in making the Council Decisions.

Specifically, the Second Applicant has submitted that:

- The Playground contributes to cultural heritage of the community and must be preserved.
- When making the Council's Decisions, no regard was had to any historic or cultural background information, specifically the origination of the Playground, and the historic & cultural significance the Playground holds within the community.
- This information was not brought to attention throughout the planning and consultation process.

#### Heritage and Cultural Significance

The meeting documents do not evidence the Council elected body having explicit regard to the historic and cultural significance of the Playground when making the February and May Decisions.

We have considered whether these factors were sufficiently relevant to the decisions, so as to render Council's decision-making flawed by virtue of not having considered them.

The petitions which gave rise to the February and May Decisions, and the staff agenda reports which accompanied them, contained no reference to the cultural significance of the Playground, nor any historic or cultural background information regarding the Playground.

The petitions contained no reference to these matters, and not surprisingly therefore the accompanying staff reports also did not reference these matters. In our view, it follows that there was no apparent cause for the Council elected members to pay regard to these matters, at the time of making the Council Decisions.

If the petitions or staff reports had identified heritage or cultural concerns or implications, then it may have been open for the Council elected members to inquire as to whether those concerns/implications needed to be further explored.

However, no such concerns or implications were identified. There was no reason for the Council elected members to turn their minds to heritage or cultural matters in making the Council Decisions.

We do not consider that the Council, in making the Council Decisions, paid insufficient regard to heritage and cultural factors. Whilst the Council paid no regard to these factors, the factors were

not relevant to the decision-making and Council was not obliged to consider them. That is, the failure to consider heritage or cultural matters does not in any way impact the legality of the Council Decisions.

The petitions evidenced community support for a particular course of action, but our investigations did not find they raised or disclosed any new or compelling information. We suggest that it may have been improper for the elected members to have made decisions (specifically the Council Decisions), based on heritage and cultural reasons, in circumstances where no heritage/cultural factors were relevant considerations in that decision-making process.

As stated in Part 2.3 above, we are tasked with assessing the February and May Decisions on their own merit. These decisions did not constitute the substantive consideration of the Playground works or the Foreshore Project. As stated above, heritage and cultural factors were not relevant to these two decisions.

Although therefore not strictly within the purview of this investigation and/or the review of the Council Decisions, for the benefit of Council (as reviewer) and the Second Applicant, we have given high level consideration to the Second Applicant's submission that the Council failed to consider the Playground's heritage and cultural significance (if any) as part of the broader development (and in particular the 2021 decision-making by Council to proceed with the Foreshore Project). The Second Applicant has specifically referred to and relies on the Council's Disposal of Land and Assets Policy, and the Council's purported failure to comply with this Policy, in asserting that the Council decision making is flawed.<sup>31</sup>

Firstly, we note that the community consultation that occurred in 2021 with respect to the Project did not appear to elicit any responses which specifically related to the heritage or cultural significance of the Playground.

Secondly, we are also unpersuaded, based on information reviewed generally and the submissions of the Second Applicant (but on a prima facie basis) that there is "historic or cultural significance" attaching to the Playground. Whilst the Second Applicant's submissions demonstrate that the Playground site dates back to 1945, and is held in high regard by the community, it does not necessarily follow that the Playground itself becomes a heritage or culturally significant place.

Indeed, from our review of the planning policies applicable to the locality, the Playground does not appear to be within any heritage zones, overlays, or areas. Nor does there appear to be any Local or State Heritage Places in the immediate vicinity of the Playground.

The Second Applicant has referenced the Disposal of Land and Assets Policy and asserts that it was inadequately applied in Council's Decision making. In response, we note that the Policy refers to "applicable" considerations. The Policy requires Council to consider, *where applicable*, any cultural or historical significance of an asset. Our review has identified that the Council did not

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<sup>31</sup> [9.63.1.16.63.7-Disposal-of-Land-and-Assets-Policy.pdf \(portlincoln.sa.gov.au\)](#)

specifically consider the culture and heritage significance of the Playground. On the basis that the Playground has no cultural or historical significance (as opposed to significant community value and sentiment), this was the correct approach. Indeed, it would have been wrong for Council to consider these matters as part of any of its decision making relating to the Project, not just the decisions the subject of this review.

There is no other assertion (or evidence) that the Council failed to consider all relevant matters, or took into account matters which were not relevant

### Previous Term of Council

The Second Applicant has also asserted that the newly elected councillors (i.e. those elected in the November 2022 local government elections) did not have the benefit of information relating to the Foreshore Redevelopment Project, which was previously provided to the immediate past term of Council.

This submission is not compelling and we do not consider that a newly elected council body (nor elected representatives at any level of government) must comprehensively revisit, reaffirm or reacquaint themselves with decisions of the previous term of council. An incoming Council elected body will be bound by lawful decisions of the previous council elected bodies.

The current Council elected body will have benefit of this section 270 report and possesses the ability to decide whether to affirm, revoke or change the decisions that are the subject of the review. However, revoking or changing a decision will still require a rescission motion. If proposing to revoke or change the substantive decision to remove the playground, Council should be careful that it understands all consequences, (for example, the commercial and operational costs for doing so, and any legal issues including contract termination rights and penalties).

## **3.3 Bias and Conflicts of Interest**

Whilst not prescribed in Council's Policy, we have considered whether the decision-maker(s) had a conflict of interest, were biased, or demonstrated perceived bias.

As set out in part 2.1, the Applicants have asserted that:

- 'The majority of councillors were not coming to the meeting with an open mind'.
- Cr Rowsell and Cr Cowley 'work with West Coast Youth' and therefore represent the youth, not the toddlers or the ratepayers. These councillors work directly with the age group that will likely use the new space, rather than the toddlers that will be losing the use of the Playground.
- Cr Hollamby appears supportive of the proposal due to her 13 year old son wanting to use basketball hoops.

- Most of the councillors operate in group activities outside Council business (e.g. City Band, Freds Van, Rotary, SALT Festival), causing groupthink and 'a perceived association that creates a bond that is not open minded and reflective of this community but the best interests of their friendships.'
- The petitions 'fell on deaf ears of our councilors'.
- In voting to remove the Playground, the elected members were 'acting totally blinkered, seemingly in their own interests and self-initiated motions'.

We have interpreted the Applicants as cumulatively asserting that the Council's Decisions were infected by conflicts of interest and bias, on the part of the elected members.

Elected member conflicts of interest are governed by the member integrity provisions in Chapter 5, Part 4 of the *Local Government Act 1999* (SA). The section 270 internal review framework is separate to the member integrity investigation framework. We do not consider that a section 270 internal review is the appropriate forum to agitate member integrity concerns.

However, conflicts of interest have impacted Council's consideration of the Foreshore Redevelopment Project. The 15 May 2023 meeting minutes<sup>32</sup> evidence that Mayor Mislov declared a general conflict of interest in relation to items 9.3, 9.4 and 7.1 (each of which concerned the Playground). This is because: '... she had previously held an executive role on the Port Lincoln Community Action Group, but is now only a member.' The minutes indicate that Mayor Mislov determined to stay in the meeting and preside. We have no reason, nor is it appropriate, to reassess Mayor Mislov's declaration of conflict of interest, or her determination to stay in the meeting and preside.

A review of the Council's Register of Interests identifies the following:<sup>33</sup>

- Cr Rowsell is identified as 'Chair of WCYCS' [West Coast Youth and Community Support].
- Cr Cowley is identified as 'Employee of West Coast Youth and Community Support'.
- Cr Broadfoot is identified as 'Committee member SALT Festival'.
- Cr Staunton is identified as Port Lincoln City Band – President'.

To some degree, these declarations support the Second Applicant's suggestion that: '... Councillors operate in group activities outside Council business (e.g. City Band, Freds Van, Rotary, SALT Festival) ...'. However, on its face, this does not support the Second Applicant's

<sup>32</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0032/1343696/9.24.1.2-MIN2319-ORDINARY-COUNCIL-20230515-PUBLIC.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0032/1343696/9.24.1.2-MIN2319-ORDINARY-COUNCIL-20230515-PUBLIC.pdf)

<sup>33</sup> [https://www.portlincoln.sa.gov.au/\\_data/assets/pdf\\_file/0028/98632/9.33.1.2-Register-of-Members-Interest-2023-20230207-redacted-for-website.pdf](https://www.portlincoln.sa.gov.au/_data/assets/pdf_file/0028/98632/9.33.1.2-Register-of-Members-Interest-2023-20230207-redacted-for-website.pdf)

assertion that such activities are causing 'groupthink', nor a 'perceived association', nor that the councillors failed to have 'an open mind'. We have not been provided with any evidence to support this assertion.

A section 270 internal review is able to assess whether a decision maker was biased or conflicted in its decision-making. In this instance, the Council elected body was the decision-maker of the February and May Decisions. We are able to assess whether the elected body as a whole was biased or conflicted. The Second Applicant has made bare assertions that the elected members approached the decision-making with a closed mind and 'deaf ears'. There is no evidence supporting the conclusion that the Council elected body (or a substantial portion of the elected members) were conflicted or biased in the decision-making.

The Applicants may also be inferring that the Council elected members in question have met, or come to mutual agreement, contrary to the formal meeting requirements in Chapter 6 (Meetings) of the *Local Government Act 1999*, and Part 2 (Meeting of councils and key committees) of the *Local Government (Procedures at Meetings) Regulations 2013*. We have not been made aware of, nor have we identified, any circumstances which would indicate a breach of these meeting procedures.

### **3.4 Bad faith or improper purpose**

We have considered whether the decision-maker(s) exercised a discretion or power in bad faith, for an improper purpose, or while subject to duress or the influence/direction of another person.

There is no suggestion, nor any evidence, that the Council Decisions involved any bad faith, improper purposes, or duress.

### **3.5 Procedural Fairness**

We have considered whether the Council accorded procedural fairness (including the principles of natural justice e.g. the opportunity to be heard)<sup>34</sup> to those who may be affected by the Council Decisions.

The Applicants appear to have alleged a failure by Council to afford procedural fairness.

To the extent these assertions relate to the soundness of the public consultation processes carried out in 2021 in relation to the Foreshore Redevelopment Project, the assertion is irrelevant to this review, because the 2021 public consultation processes are irrelevant to the February and May Decisions. The decision-making for the February and May Decisions did not (and were not required to) involve any consideration of the 2021 public consultation.

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<sup>34</sup> Administrative Review Council, *The Scope of Judicial Review* (Report No. 47, 2006) 61.

The 2021 public consultation simply was not raised by the petitioners, nor was it raised within the respective motions or accompanying staff reports.<sup>35</sup> As a result, the petitions and motions which gave rise to the Council Decisions did not provide any reason for the Council or the elected members to effectively look backward, in order to scrutinise the substance and procedure of the 2021 community consultation.

As stated in Section 2.3 above, this review is not the appropriate forum for a revisiting of Council's 2021 decisions (including the public consultation which occurred at that time). This was previously communicated to the Applicants. Unless there are compelling reasons, a review of a decision two years in the past would be contrary to section 270(2a)(a) of the Local Government Act.<sup>36</sup>

As for the February and May Decisions themselves, these were, in effect, resolutions that sought to directly or indirectly respond to petitions. These decisions did not represent the substantive decision-making in relation to the Playground, or the public consultation regarding the Playground.

### Requirement of Procedural Fairness

Public authorities such as the Council will generally always be obliged to afford 'procedural fairness' in making decisions. This requires allowing an affected person a 'fair hearing', which will ordinarily require and include notifying the person that a decision will be made, notification of the critical issues to be addressed, and provision of a reasonable opportunity to present a case.<sup>37</sup>

Procedural fairness must generally be afforded to a person whose interests will be adversely affected by the decision. If the Applicants' interests (or any other rights or legitimate expectations held by them) would be affected by the Council Decisions, it is probable that the Council would accordingly be required to provide an opportunity to be heard. However, such 'interests' must be affected in a direct and immediate way. It is insufficient for a person's interests to be affected simply as a citizen who is affected in the same way as other citizens generally:

But the duty does not attach to every decision of an administrative character. Many such decisions do not affect the rights, interests and expectations of the individual citizen in a direct and immediate way. Thus a decision to impose a rate or a decision to impose a general charge for services rendered to ratepayers, each of which indirectly affects the rights, interests or expectations of citizens generally does not attract this duty to act fairly. This is because the act or decision which attracts the duty is an act or decision: "... which directly affects the person (or corporation) individually and not simply as a member of the public or a class of the public. An executive or administrative decision of the latter kind is truly a 'policy' or 'political' decision and is not subject to judicial review" (*Salemi (No 2)* (CLR) at p 452; 14 ALR at p 45, per Jacobs J).<sup>38</sup>

In our view, the Applicants' interests (and indeed the interests of each individual petitioner) were not affected by the Council Decisions in a manner any different to the interests of the public at

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<sup>35</sup> (Even if it was raised, Council could have made the Decisions nonetheless).

<sup>36</sup> As noted in Section 2.3, the public consultation that occurred in 2021 in relation to the Playground, is the subject of a separate, thorough, independent legal assessment.

<sup>37</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Report No 129, December 2015) [14].

<sup>38</sup> *Kioa v West* (1985) 159 CLR 550, 584; 62 ALR 321, 346; LexisNexis, *Halsbury's Laws of Australia* [10-12645].



large. As a result, we consider that there was no obligation to afford any greater opportunity to be heard.

This is particularly so where the subject matter of the petition had already been the subject of significant consultation, submissions, and deputations. We are unpersuaded that further consultation, or extending any additional right to be heard, would be required in this instance.

The inherent nature of a petition is that it allows persons to be heard. Further, if a petitioner (or any other person) was desirous of making additional submissions, they could seek to do so by means of a deputation. Indeed the minutes for the May Council meeting indicate that deputations were in fact made for this purpose (including by the First Applicant).

As such we do not find that the Council failed to afford procedural fairness in making the Council Decisions.

### **3.6 Reasonable**

We have considered whether the Council Decisions were reasonable, findings of fact were based on evidence, and the decision-maker considered the application of existing policies.

The assessment of reasonableness is largely determinative of the question of merit, and whether a decision was correct or preferable. When there is only one possible lawful decision, the enquiry is centred on the 'correct' decision. When there is more than one correct decision, the enquiry is centred on the best decision (the 'preferable' decision).<sup>39</sup>

As discussed above, the Council Decisions were lawful. This review must now assess the reasonableness of these decisions, which will determine whether the decision in question were correct or preferable.

The purpose of a petition is to place a matter or argument before a decision-maker, for consideration. Not every petition should be treated, or considered, in the same manner. The correct or preferable decision in relation to a petition will depend on certain factors.

Persuasive and effective petitions often provide the decision-maker with new information, or will otherwise be particularly compelling (whether by weight of argument, or number of signatories). If such a petition encourages the consideration, or reconsideration, of a particular matter, then it may be reasonable for the decision-maker to undertake or commission an appropriate inquiry or investigation.

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<sup>39</sup> Ombudsman SA, 'Right of Review: An audit of Local Government Internal Review of Council Decisions Procedures' (November 2016) <<https://www.ombudsman.sa.gov.au/publication-documents/audit-reports/2016/Right-of-Review-An-audit-of-Local-Government-Internal-Review-of-Council-Decisions-Procedures.pdf>>.

In making a decision in response to a petition, a properly informed decision-maker will have a comprehensive understanding of the background or history to the matter, the available options, and the likely ramifications of those options.

It is less likely that a decision-maker can reasonably make a defensible substantive decision based solely on the existence of a petition, without the benefit of the abovementioned information.

We have applied these principles to the February and May Decisions in this matter (which, as noted above, were effectively resolutions that sought to directly or indirectly respond to petitions).

In both instances, it was appropriate for the Council elected members to consider the persuasiveness of the petitions and any new or compelling information therein. It was appropriate for the Council elected members to have regard to the full petition document, the history of the matter, and the available options and implications. It would also be appropriate to consider any applicable policies.

The staff report which accompanied the petition giving rise to the February Decision contained all of the above information in quite some detail. The staff report which accompanied the petition and notice of motion giving rise to the May Decision did not contain quite as much information, but it would be reasonable to expect the elected members to recall or reference the pertinent information from the February Decision's staff report. It is also highly likely that the elected members were aware of the previous rounds of public consultation that had occurred in the lead-up to the Project, which evidences the fact that there had already been significant community participation in the decision-making for this Project. This information is also publicly available.

The February Decision staff report did not contain any express reference to the Council's Disposal of Land and Assets Policy,

However, the staff report did make reference to many of the relevant principles and objectives contained within that Policy. The Policy requires consideration of principles including:

- Obtaining value for money
- the annual cost of the Asset
- any alternative future use of the Land or Asset
- any duplication of the Land or Asset or the service provided by the Land or Asset
- any impact the disposal of the Land or Asset may have on the Community
- the results of any community consultation process

The staff report for the February Decision addressed matters relating to:

- the previous community consultation
- the new basketball court and new playspace which is intended to be more inclusive
- the retention of equipment where possible, for refurbishment and redeployment
- the need to renegotiate the funding agreement
- the need for future budgets to provide for renewal (if retaining the Playground)
- the increased cost to the Project if purchasing new equipment.

Therefore in our view, Council paid appropriate regard to many of the principles in the Disposal of Land and Assets Policy.

In light of the above, we find that Council adopted a reasonable approach, and Council's Decisions were correct or preferable.

## 4. Conclusion

The Council Decisions were lawful.

We have found that Council had the power to make its decisions to:

1. receive and note the petition at the 20 February 2023 meeting relating to the Andrew Small Playground; and
2. not adopt a Notice of Motion lodged by Councillor Poynter at the 15 May 2023 meeting relating to the Andrew Small Playground (which also arose from a separate petition).

The Council's Decisions were reasonable, and the correct or preferable decision.

As explained within this report, our conclusions do not relate to the previous community consultations and decision-making in relation to the Foreshore Redevelopment Project, principally undertaken in 2021. Those matters are to be addressed in a separate independent legal assessment.

We recommend Council, having received and considered this report for the purposes of reviewing its decisions, note this report.

# Annexure – A

## Requests for Review

Annexure to *Local Government Act 1999* – s 270 review

Request for internal review of Council decision

# Port Lincoln City Council

## Form 9-67-T1 INTERNAL REVIEW OF A COUNCIL DECISION

### PART 1 – Contact Details

Name: Sonia Christine Tidemann

Phone: [REDACTED]

Email: [REDACTED]

Address: [REDACTED]

Postal address: [REDACTED]

### PART 2 – Section 270 Review of Council Decision

Date of Council Decision: 15 May, 2023

Decision Maker: Elected Council

Council Decision: To reject Councillor Poynter's motion that 'The Andrew Small playground is not closed and is to be retained at its current location'.

Reasons for requesting review and why you believe the decision is wrong (please attach additional pages if required.)

A. On the advice of Minister Brock's office, I am appealing against the decision made by the Councillors at last Monday's (May15) meeting to remove the Andrew Small playground on the grounds of a flawed consultation process.

1. At no time during the consultation process for the redevelopment of the foreshore did the Council or Councillors ever put in their on-line surveys or advertise at 'drop in' sessions or utilise other forms of consultation the following question.

**'Does the community approve of the removal of the Andrew Small playground from the foreshore of Port Lincoln?'**

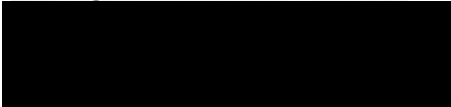
2. Council responded to a small number of requests during the consultation process (I have written to the Port Lincoln Yacht Club for actual details) to not have a basketball court (possibly amongst other things) at their end of the lawn area but has discriminated against huge numbers of community members who responded that they wanted the foreshore playground to stay where it is.

B. I am also appealing against the decision made by the Councillors at last Monday's (May15) Council meeting on the grounds of a flawed process of Council providing feedback, in relation to the consultation process, to Councillors.

3. Councillors were provided with only dot points at the meeting of 15 March 2021, not actual figures related to categories of response. The provision of material relating to the consultation results was not transparent.

4. When basic statistics relating to the feedback in the consultation process relating to the foreshore were presented by a member of the community to each Councillor, they were dismissed.

**I hereby confirm that the information provided is accurate to the best of my knowledge at the time of submitting this application.**

Name: Sonia Christine Tidemann    Signature:     Date: 17 May, 2023

**Port Lincoln City Council**

**Form 9-67-T1 INTERNAL REVIEW OF A COUNCIL DECISION**

**PART 1 – Contact Details**

Name: Linda Davies

Phone: [REDACTED]

Email: [REDACTED]

Address; [REDACTED]

Postal Address; [REDACTED]

**PART 2 – Section 270 Review of Council Decision**

**Date of Council Decision:** 20<sup>th</sup> February 2023

**Decision Maker:** Elected Members

**Council Decision:** 12.1 PETITION RECEIVED- ANDREW SMALL PLAYGROUND

CO23/081

1. Notes and receives the petition submitted by Sonia Tideman on behalf of the residents and visitors to Port Lincoln who have included in the petition as tabled; and
2. Write to the Head Petitioner to advise that the retention of the Andrew Small Playground was considered by Council as per Agenda Item 8.1;
3. Write to the Head Petitioner to advise the outcome and resolution of Agenda item 8.1

AGENDA ITEM BEING; Background information was lacking in any historic or Cultural information

**Date of Council Decision:** Monday 15<sup>th</sup> May, 2023

**Decision Maker:** Elected Council

**Council Decision:** 7.1 Councillor Poynter motion was rejected

In relation to the foreshore project and removal of the Andrew Small Playground Council resolves that the Andrew Small's Playground is not closed and is to be retained at its current location.

AND ALL OTHER DECISIONS MADE TO REMOVE THE ANDREW SMALLS PLAYGROUND on the grounds NO HISTORIC OR CULTURAL background has ever been presented to Councillors throughout the entire process.

**Reasons for requesting review and why you believe the decision is wrong (please attach additional pages if required.)**

As a past Councillor that worked through the Foreshore projects and public consultations I know, at no time, did Council present any of the Andrew Small Playgrounds history of how this playground first originated or even referenced to which particular Playground by name. I believe Council would not have been aware of any of the historic or cultural significance this particular playground would hold within our community and unquestionably did not bring it to the attention at any point throughout the planning or consultation process that has taken years.

In the earlier public consultation process Andrew Small Playground was not going to be removed it was only when budget became a problem so the youth space was moved to take over the existing toddlers playground. This change did not happen within the public consultation timeframe. The plan never showed the Andrew Small Playground was going to be replaced. Page 24 of the initial plan talks about the Red Shed children's play area with pictures of the Red Shed and does not say anything about the Andrew Small Playground or its removal. **Page 75 of the initial plan specifically mentions 'do not move foreshore playground'**. This decision was not transparent to the public until recently. People look at plans for what is there, not what is NOT there. Community were specifically saying 'do not move foreshore playground' way back then even though Council was not being transparent about removing it. Although this consultation happened many years ago, it was the foundation for the decision making that occurred with a newly elected Council in the February, April and May meetings and was not communicated. I would challenge whether newly elected Councillor's and present staff (because we have such a large turnover and even the CEO was not there for the initial plan process) even knew this information or the name of the playground.

On the 15<sup>th</sup> May Council meeting a new petition was noted and presented of 1530 names collected within 10 days so that it could make the agenda and be in Council format. Discussion should have been conducted on the petition and its contents BEFORE a decision was made by Council that meeting. The petition discussion was on the agenda AFTER the decision had already been made.

Cultural heritage affirms our identity as a people because it creates a comprehensive framework for the preservation of cultural heritage including cultural sites, old buildings (playgrounds), monuments, shrines, and landmarks that have cultural significance and historical value. Culture and its heritage reflect and shape values, beliefs, and aspirations, thereby defining a people's national identity. It is important to preserve our cultural heritage, because it keeps our integrity as a people.

The people involved in the creation of the Andrew Smalls Playground back in 1940's were volunteers in our community. They were go getters that made things happen for our community. These people fundraised for several years until opening the actual Andrew Small Playground 26<sup>th</sup> December 1945. Community members have been using that playground for 78 years after fundraising for the whole structure, a huge effort from our community. Now Council members and staff, some of which were not born or breed in our community, are ignoring the petitions, the community gatherings and impressive community turn outs into council chambers from those that ARE born and breed and love our community and also understand the history and its importance.

On the 15<sup>th</sup> May 2023 2 individuals presented deputations with the support of an impressive amount of community members that came to Council chambers as concerned citizens.



I sat directly to the side behind Councilor Staunton and she did not take any notice of the power points provided but sat in her chair writing on a piece of paper, which I realized later, was her speech against keeping the Andrew Small playground. This is the same Councilor that put up on her public Councilor social media page how she was being victimised and tried to create divides in the community saying she and fellow councilors were being abused and insulted.

She publicly told me I was wrong, when I wrote about what the final concept plan was that would replace the Andrew Small Playground, and then privately sent me the concept plan that was adopted by Council back in June 2021. Only hours prior voting she sent me a message that said

*“What is EXACTLY done will be down to the project team and feedback. I believe council has already suggested against the football/pingpong but **I’m not sure on the final scope of plans exactly**”.*

Screen shots of these messages can be provided on request.

Councilor Valerie Staunton felt confident enough to vote NO to keeping the Andrew Small Playground based on not knowing even what the final scope actually was that was replacing it only hours prior or listening to any new information presented at the deputations.

I also question the connection and perceived conflict of interest conflict with Councillor Robyn Rowsell and Councillor Dylan Cowley as they work with West Coast Youth and work directly with the age group that will most likely use the space that is replacing the toddlers safe and secure Andrew Smalls Playground, an age group they are directly not involved with. Instead they represent the YOUTH not the toddlers or the ratepayers.

After speaking with Councillor Karen Hollamby via telephone and asking her the reason why she is choosing to vote removing the Andrew Small Playground, Karen replied it was ‘because she has a 13 year old son who thinks it would be great to come to the beach and shoot hoops’. She also said she ‘has been forced to buy a membership for her son to the Leisure Centre as that’s the only basketball hoops in her area’.

Most of the Councillors are operating in group activities outside Council business and are not reflecting the views of the ratepayers and residents. For example they participate together in the City Band, Freds Van, Rotary, SALT Festival, just to name a few. Whilst we are a community that gathers together and encourages participation, the groupthink aspect makes me believe there is a perceived association that creates a bond that is not open minded and reflective of this community but the best interest of their friendships. I guess the next election will tell as I have never seen such a divide between Community and Council - as on the current topic that I have asked for a review of a decision on.

To me this shows no confidence in my elected member that they are listening to their constituents, those same people that took time to collect 1530 signatures in 10 days to keep the Andrew Small Playground, the massive crowds that attended peaceful community events and the council chambers on Monday 15<sup>th</sup> 2023.

This tells me:

1. Council staff have not considered the cultural and historical value of the Andrew Small Playground or conveyed it to Councillors and the public in their plans, or its removal.
2. The importance and cultural significance this playground has in our community over the last 78 years.
3. The Councillors were not aware and did not appear interested in our community history, volunteer efforts to raise funds to build this playground.
4. The majority of councillors were not coming to the meeting with an open mind, to listen to the deputations but to vote the way they personally wanted, workplace would benefit or concluded as a group.
5. Cultural heritage is the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations. The fact volunteers raised the money for this playground originally, the community want to keep it and have gone to great lengths to retain it, it should stay in the ownership of the community and not removed by people who have no understanding of Port Lincoln history and cultural significance.
6. The decisions made by Councillors to remove the Andrew Small Playground have been non-transparent and flawed throughout the whole process as incomplete and incorrect information was provided.

## Annexure – B

# Internal Review of Council Decisions Policy

*Annexure to Local Government Act 1999 – s 270 review*

Request for internal review of Council decision

## POLICY DOCUMENT

9.63.2

<b>Policy Name</b>	<b>INTERNAL REVIEW OF COUNCIL DECISIONS</b>
<b>Policy No.</b>	9.63.2
<b>Version:</b>	1
<b>Strategic Reference:</b>	Strategic Focus, effective and accountable decisions, responsive to significant events
<b>Responsible Department:</b>	Corporate & Community
<b>Policy Adopted:</b>	16 August 2021
<b>Last revised date:</b>	16 November 2015
<b>Minute reference:</b>	CO 21/151
<b>Next review date:</b>	Council will endeavour to review this policy 4 years after adopted date or following significant change to legislation or where required by relevant public policy considerations.
<b>Applicable Legislation:</b>	Local Government Act, 1999, Section 270
<b>Related Policies:</b>	9.63.26 Complaint Handling 18.63.7 Service & Program Reviews
<b>Related Documents:</b>	18-37-T2 Service Review Assessment

### 1. PURPOSE

The City of Port Lincoln is committed to transparent decision making and to providing access to a fair, consistent and structured process for any party dissatisfied with a decision that has been made by Council or its agents. This policy addresses the manner in which requests for a review of a previous decision of Council will be dealt with to ensure that:

- every applicant has the opportunity to make an application for review of a decision covered by this policy;
- an unbiased assessment is undertaken;
- decisions are based on sound evidence;
- applicants receive information about the outcome of the review.

### 2. SCOPE

Internal review of a Council decision is available under section 270 of the Local Government Act 1999. This is a process established by legislation that enables a council to reconsider all the evidence relied on to make a decision, including new evidence if relevant. This policy commences at the point where;

- A request for the review of a decision is received; or
- A complaint cannot be satisfactorily resolved through Council's normal complaint handling processes.

A formal application or request for review of a decision will therefore initiate the procedure process. The person who lodges a formal request for internal review is referred to as the “applicant”.

The policy applies to all Council staff who may be involved in receiving an application for review of a decision of:

- the Council;
- employees of the Council; and
- other persons acting on behalf of the Council.

### **2.1. *Matters Outside of the Scope***

Matters that have prescribed appeal arrangements pursuant to the Local Government Act 1999 or other legislation will not fall into the scope of this policy. Examples include but not limited to:

- Appeals against orders made pursuant to section 254 of the Local Government Act;
- Complaints under Code of Conduct for Council Members ;
- Appeals under the *Planning, Development & Infrastructure Act 2016*;
- Appeals under the *Local Nuisance & Litter Control Act 2016*;
- Appeals under the *Dog and Cat Management Act 1995*; and
- Appeals under the *Freedom of Information Act 1991*.

While Council prefers to work with its customers to resolve requests for review quickly and effectively, an applicant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. Note however that as a general rule, the Ombudsman prefers that matters be addressed by Council in the first instance, unless this is not appropriate in the circumstances.

## **3. KEY PRINCIPLES**

This policy is based on the principle that everyone will be treated equally, in accordance with good administrative practice.

Council, its committees, staff and contractors make decisions every day which impact on members of the community. It is imperative that these decisions are fair, objective and subject to review.

Council is committed to open, responsive and accountable governance. This includes providing processes by which citizens adversely affected by a decision of Council can have their grievances considered.

The review could lead to the original decision being affirmed, varied or overturned. Sometimes the decision is unable to be changed; in this case Council will undertake an internal review to establish any opportunities for systems or continuous improvement.

This policy will be accessible to ensure that customers are fully aware of their right to request the review of a decision and the process that will be followed.

#### **4. APPLICATION FOR INTERNAL REVIEW OF A COUNCIL DECISION**

##### **4.1. *Making an Application***

An application for a review of a Council decision provides Council with an opportunity to revisit a decision which has aggrieved an interested party. This may include an individual or a group, ratepayer, resident or business owner. Depending on the particular circumstances, it may also include a person who is not the direct subject of the decision. (For example, where a Council issues a permit for a person to keep more than the maximum number of dogs permitted under a by-law, a neighbour may seek an internal review of the decision.) Council will determine whether a person has a sufficient interest to apply for an internal review of a decision, on a case-by-case basis.

An application for review must be in writing and set out the reasons for requesting the review (that is, why the applicant believes that the decision is wrong). Although Council can be expected to have information and material relevant to the matter under review, an application for review may also include new, relevant information or evidence to support the application.

##### **4.2. *Assisting with the Application for Review***

It is essential that no one is excluded from lodging an application for review because of any difficulties they may have representing themselves. All staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the reasons for the review in writing when circumstances warrant.

If necessary arrange access to interpreters, aids or advocates to ensure that an applicant is treated equitably.

For any complainant who may be unable to make a written submission due to a disability or significant impairment, such as illiteracy, Council will provide alternative options for the complaint to be lodged.

##### **4.3. *Internal Review Contact Officer***

The Internal Review Contact Officer (IRCO) is the Chief Executive Officer (CEO), or their nominated delegate, and is the initial point of contact for applicants.

The role of the Internal Review Contact Officer is to:

- explain the procedure to the applicant and explore any alternative options to resolve the matter, such as alternative dispute resolution prior to an application for review.
- acknowledge the receipt of the application;
- maintain a register of all applications for review received and the outcomes of the applications;
- outline the timeframes involved and the action to be taken in the first instance;
- undertake a preliminary investigation to determine what actions have already been taken to try to resolve the matter;
- keep the applicant informed of progress;
- ensure adequate records are maintained; and
- report to Council at prescribed intervals on all applications lodged for review.

All applications are to be referred to the IRCO immediately, including meeting with the applicant or transferring a telephone call when contact is first made.

#### **4.4. *Acknowledging an Application for Review***

The IRCO is responsible for:

- a) working in conjunction with the appropriately delegated officer to determine how the review will be handled;
- b) advising the applicant of the process to be undertaken and the time of the next contact; and
- c) ensuring the application is properly lodged and assigned.

Applications for a review of a decision must be responded to within ten business days, acknowledging receipt and advising of the expected timeframe for dealing with the matter. Council will use its best endeavours to ensure that a review of the original decision will be completed within twenty one business days.

However, if the decision is to be reviewed by Council, a committee, or an external panel there may be delays caused by meeting cycle timelines. In more complex cases, a review may take longer.

The applicant will be regularly informed of progress, either by email, letter or telephone.

#### **4.5. *Application for a Review of the Impact of Rates or Services Charges***

If Council receives an application for a review of a decision concerning the financial impact of Council rates or services charges, these will be dealt with as a matter of priority.

### **5. UNDERTAKING A REVIEW**

#### **5.1. *Assignment of applications for review***

The elected Council will be the reviewer;

- When the decision being reviewed was made by the elected Council, a Committee of the Council or the CEO;
- When the decision relates to civic and ceremonial matters; and
- In other circumstances as determined by the CEO or resolution of the Council.

Council is also responsible for determining who will undertake the investigation and the preparation of a report for Council consideration. (This may be the CEO, their delegate, or an external expert party).

Where the elected Council is not the reviewer, a review methodology to suit the nature of the internal review to be undertaken will be chosen from the following:

- CEO;
- A panel comprised of Council Members and Senior Staff;
- A panel of external experts; or
- The assistance of an external person.

If appropriate, Council will seek to involve an external person or panel to assist with the review, including the enlistment of employees of other Councils.

### **5.2. *Role of Reviewer***

The role of a reviewer is to review the decision in question to ensure that the decision-maker complied with the following procedural requirements and made the best possible decision in the circumstances:

- The decision made was within the properly conferred power of the decision-maker under the relevant Act;
- The decision-maker only considered matters which were relevant to the making of the decision.
- The decision-maker made the decision in good faith and did not exercise power for an improper purpose.
- A decision-maker ensured that findings of fact were based on evidence.
- Decisions were reasonable.
- Those who may be affected by a decision were accorded procedural fairness, including the principles of natural justice.
- A decision-maker properly considered the application of existing policies.
- A decision-maker did not exercise a discretionary power at the direction of another person.

### **5.3. *Review Process***

In carrying out a review of a decision, the reviewer will consider all the information and material that was before the original decision-maker and any additional relevant information or material provided by the applicant. The reviewer will 'stand in the shoes' of the original decision-maker and make the best decision available on the evidence.

This means the reviewer will do more than simply consider whether the decision is legally and procedurally correct. The reviewer will also consider whether a different decision would be better, based on the evidence. The process of merits review, as described above, will typically involve a review of the facts that support a decision, including any new evidence that may come to light.

### **5.4. *Providing 'Procedural Fairness'***

Council will observe the principles of procedural fairness (also called 'natural justice') when exercising its statutory powers which could affect the rights and interests of individuals.

Put simply, 'procedural fairness' involves:

- Giving an applicant a right to put their case forward. This will generally involve giving an applicant the opportunity to provide all relevant documentary evidence, rather than an oral hearing;
- Ensuring that the reviewer does not have a personal interest in the outcome (is not biased); and
- Acting only on proper evidence that is capable of proving the case.



### **5.5. *Giving Reasons***

While there is no statutory requirement to give reasons for a decision, Council will provide reasons for the decision of the reviewer where practicable.

Council will give reasons to explain the outcome where:

- A decision is not in accordance with published policy;
- A decision is likely to detrimentally affect rights or interests of individuals (or organisations) in a material way; or
- Conditions are attached to any approval, consent, permit, licence or other authorisation.

### **5.6. *Refusing an application for review***

A council, or a person assigned to consider the application, may refuse to consider an application for review if:

- The application is made by an employee of the council and relates to an issue concerning his or her employment; or
- It appears that the application is frivolous or vexatious; or
- The applicant does not have a sufficient interest in the matter.

Refusing an application for review will not be done lightly and reasons for the refusal will document the evidence on which a refusal is based.

## **6. REVIEW OUTCOMES & REMEDIES**

Where the review of a decision upholds the applicant's grievance, an appropriate remedy or response will be determined which is consistent and fair for both Council and applicant. The remedy chosen will be proportionate and appropriate to the failure identified.

As a general principle the applicant will, so far as possible, be put in the position they would have been in, had the decision not been made. This may mean changing a decision. Where circumstances are such that it is not possible to return to the original situation, or to rectify the outcome of the decision, it may only be possible to offer an apology.

The range of other possible outcomes includes:

- an explanation;
- mediation;
- an admission of fault;
- a change to policy, procedure or practice;
- a correction of misleading records;
- financial compensation, including a refund of any fees;
- the waiving of a debt;
- the remission of a penalty;
- disciplinary action, or referral of a matter to an external agency for further investigation or prosecution.

The remedy or response may be one, or a combination of these actions. The chosen remedy will be proportionate and appropriate to the failure in service and take account of what the applicant is seeking as an outcome of the review.

If an apology is required it will be done promptly and the applicant advised that appropriate action will be taken to ensure the problem is not repeated.

Compensation will only be offered in cases where the loss or suffering is considered substantial. Only the Council itself and the CEO are authorised to offer financial compensation and this will only occur after consultation with the Local Government Association Mutual Liability Scheme.

When advising an applicant of the outcome of a review, information will also be provided about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

## **7. RECORDS MANAGEMENT & REPORTING**

All documents, notes, photographs and correspondence will be retained and stored in accordance with Council's records management protocols as required by Section 125 of the Local Government Act.

Clear and accurate records of interviews and review actions, focussing on factual information will be kept. All records will be safe and secure, and only relevant parties with a genuine interest will have access to the records.

The IRCO will record the following information about all applications for review:

- a) the number of applications for review made;
- b) the kinds of matters to which the applications relate;
- c) the outcome of applications;
- d) such other matters as may be prescribed by the regulations.

If applicable, the IRCO will submit a report to Council annually about section 270 applications for review of a decision, including:

- the number of applications for review made under this section;
- the kinds of matters to which the applications relate;
- the outcomes of applications under this section.

The IRCO will also provide information on how the outcomes have been used to improve Council's customer service, policies, procedures and practices.

This information, as specified in section 270(8), will be included in Council's Annual Report.

## **8. RELEVANT DELEGATED POWERS AND DUTIES**

Any actions or decisions made regarding this policy, will be taken in accordance with Council's current Delegations Register.

## Annexure – C

# Applicants' Further Submissions

*Annexure to Local Government Act 1999 – s 270 review*

Request for internal review of Council decision

MinterEllison

25 Grenfell Street Adelaide SA 5000

Attention: Ryan Feuerherdt, Susie Inat

Dear Ryan and Susie,

My appeal regarding the Andrew Small playground was based on Council's decisions made this year on May 15, April 24, and February 20. The process of consultation since January 2021 has been flawed. I am not referring to consultation relating to the foreshore redevelopment proposals during the several years prior to that because that consultation has been superseded.

By its definition, 'consultation' is a two-way process. Set out below is the evidence I have collected and includes reference(s) to attachments (A-V) that support the particular point. There is some overlap, but not total, in the information included in the attachments.

It is important to state that I do not object to the new playspace recently opened but am representing all those people who regard it, and have demonstrated recently, as not toddler-safe.

The community is requesting the retention of **both** the new playspace and the Andrew Small (toddler's) playground on the foreshore.

The community has never been consulted as to whether the Andrew Small playground should be removed.

The consultation has been flawed in the following ways:

1. The instrument administered by Council in its 2021 'Your say' (regarding the foreshore re-development proposal) was flawed in its design (Attachments A, D, E, L, U);
2. The feedback to Council has been ignored by Councillors. Why was the 'Your say' implemented if Council was not genuine about obtaining the views of the community and acting on them? Was it just to be able to say that they had consulted? The comment, 'Hey, Council will just do what they want' submitted by a respondent (and quoted in Attachment A) suggests that this is the case. Councillors are not obliged to effect suggestions/petitions that are put to them by their constituents but to continue to ignore the accumulating amounts of feedback is a breach of their required behaviour and is evidence of flawed consultation (Attachments A, D, E, F, K, O, P, T, U);
3. Selective reception to written feedback is flawed consultation and probably also in contravention of the LOCAL GOVERNMENT ACT 1999 SECTION 75E (November 2022)  
Behavioural Standards for Council Members:
  - (i) **Two** letters from Port Lincoln Yacht Club resulted in Council agreeing not to proceed with a basketball court being placed at the end of the lawn adjacent to the Yacht Club
  - (ii) Council responded to the community's views expressed in 'Your say' by not proceeding with the proposed walkway across the road or the viewing platform above the toilets

**BUT**

- (iii) Feedback from their own survey regarding the playground was ignored (as was other material Attachment A) and is clearly selective and so flawed consultation
  - (iv) 1339 signatures (24 June 2021) on a petition submitted to Council to save the playground were not successful in influencing a vote to retain the Andrew Small foreshore playground but reflect the views of a large section of the community (Attachment D)
  - (v) 2000 signatures (15 February 2023) on an electronic petition were not deemed a sufficient statement of community-expressed views and were not successful in influencing a vote to retain the Andrew Small foreshore playground (Attachment D)
  - (vi) 1530 signatures (15 May 2023) on a petition submitted to Council to save the playground were not successful in influencing a vote to retain the Andrew Small foreshore playground but reflect the views of a large section of the community (Attachment D and link in vii below)
  - (vii) 30 pages of Attachments to Agenda (May 15, 2023) (pp 37-65 in link below) included letters from local organisations as well as individuals (an even bigger proportion of the community than (iii) to (vi) above) were not successful in influencing a vote to retain the Andrew Small foreshore playground (Attachments D, E, F, L, M, R, S, T) <https://lgasa-web.squiz.cloud/?a=1339795>
  - (viii) Ignoring the continuing appearance of written concerns in the public domain, for example, social media posts (that Councillors acknowledged reading at 15 May meeting) and letters to the Editor of the local papers, is flawed consultation (Attachments B, R, S, T);
4. Ignoring the concerns expressed by the physical presence of up to 150 citizens, on three occasions) requesting that the Andrew Small playground be retained is selective and therefore flawed consultation (not to mention breaches of Local Government Act 1999 Section 75E (17 November, 2022) (Attachments D, F, L, M, N, Q);
  5. Sections of the Local Government Act 1999 Section 75E (17 November, 2022) Behavioural standards for Council Members encompasses flawed consultation, in particular: Provide accurate information to the community (2.2) and Ensure that the community and Council are not knowingly misled (2.3) were breached by Deputy Mayor Jack Ritchie and is definitely flawed consultation (Attachment D);
  6. Discriminating against an age cohort (toddlers) not able to represent itself but refusing to accept the requests of their advocates (friends, parents, grandparents etc) is flawed consultation as well as breaching the Act 99 (75E) (Attachments B, L, Q);
  7. There is no mention in the current Strategic Plan (2021-30) to remove the Andrew Small playground but Councillors continue to vote to remove it (Attachment L);
  8. Councillors raised the issue of inadequate funds to maintain the playground (Council recordings, meeting May 15, 2023) but then ignored suggestions for community fund-raising and management to alleviate this perceived problem. It points to flawed consultation because of failed engagement by Council to consider a community proposal to overcome an objection raised by the former (Attachments C, F, L, V);
  9. Council is exhibiting flawed consultation in its determination to continue to have toddlers injured in the new foreshore playspace that is unsuitable for them (as demonstrated by posts on social media) rather than allow **both** playgrounds to remain on the foreshore (Attachment B);
  10. Council meeting minutes indicate that the Council is considering making the new playspace safer by modifying the fencing. This has not been put to the community. One of the Council's objections to retaining the Andrew Small playground is the cost of maintenance but the cost of that compared with the cost of additional fencing (and continuing modifications to the new

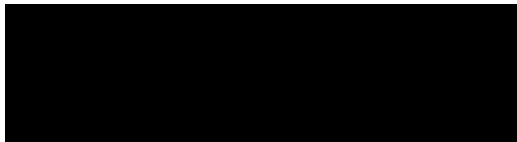
playspace with each reported injury) that were not included in the original concept for the new playspace will be formidable. In addition, the 'open space' concept of the new playspace will have been changed without consultation.

11. There has not been a single suggestion from the community to remove the Andrew Small playground. In voting to remove the playground Councillors are acting totally blinkered, seemingly in their own interests and self-initiated motions and wanting to act in a way that is totally against all community sentiment expressed to date. (Councillor Lillian Poynter is an exception to this closed-rank behaviour exhibited by the remaining Councillors.) To overcome this flaw in their consultation process, the Council needs to hold a referendum for the community to vote on the matter of the removal of the Andrew Small playground or its retention (Attachments C, F, V);
12. Council (Lynne Jolley's correspondence to me, available on request) has said that the plans for the foreshore are on the Council hub but I can find no plans that represent, accurately, what has been effected so far. Changes have been made without consultation but when a large body of community members expresses a need for the retention of a toddler's playground (Andrew Small playground), somehow the retention of the playground becomes contrary to 'plans' and, without doubt, demonstrates flawed consultation.
13. Council is failing to consult on the historical significance of the foreshore playground and that it was established, in the first instance, with community-raised funds. This is more than a flaw in the consultation process, it is refusal to accept that the playground actually belongs to the people of the town and continues to be maintained by rate payers (Attachments C, D, F, K, S, U).

I was, and still am, confused by Lynne Jolley's discussion of the 'decision-making' and that Councillors had no reference to information on the night of the May 15 Council meeting. Given the change in the sequence of Agenda items and the Attachments to the Agenda for the May 15 meeting (in the link above), I asked her to define what she meant by the terms she used but have had no response other than the options previously presented to me regarding aspects of my appeal were withdrawn. Given her inability to define the terms she used, it is difficult for me to submit any evidence. I am willing to submit whatever I might have that is relevant. In the meantime, all I can do is to ask you to refer to the attachments, including the notes to you (in yellow) within them to determine if. Please see attachments G, H, I, J.

If any of what I have submitted is unclear or incomplete, please contact me.

Yours sincerely,



Sonia C Tidemann (Dr)

15 June, 2023

Dear Susie and Ryan

In reply to your confidential letter / email dated 27 June 2023 I would like to reply to your points.

You have asked for relevant documentary evidence that shows procedural fairness in the decision making and unfortunately it is the lack of relevant documentary evidence that I can find that is in fact the problem.

Even though some of this evidence may be over six months old, it is necessary as it was not presented to **newly elected Council members**, as well as previous members and therefore impacted their decision making. It was also not clearly presented to the public in terms of obtaining consultation correctly during any of the consultations, and therefore the public awareness of removal of the playground was not properly considered or transparent.

Let it be noted Council has had a large turnover of CEO's and staff in this consultation period.

Also, although the History Group was consulted there were no reports to the Council or community on their thoughts or findings, except for the Theatre.

The Andrew Small Playground awareness came from the public only, and Council failed in its duty to provide proper consultation on its removal, and the historical, cultural and community value of the asset being removed.

Councillors themselves did not know where youth activation space was going or what was being provided to community.

At no point has the Andrew Small Playground had any reference to its historical cultural and its meaning in our community values throughout this whole process, during the last six months or before. In fact I would challenge if the council even knew it had a name and it was only when petitions were received to save it that council became aware. The same petition that fell on deaf ears of our councilors whose job description is to be a bridge between community and local government.

I challenge you as the reviewer to show me the proof where council put in any reference to any historic, cultural or community ownership of this community asset within the whole consultation process including calling it by name and explaining the significance and history behind it. There are posts on social media of the playground and in the councils own library historic records but I can't locate them through the consultation period or at any reports to Council.

Council also considered the motion presented to retain the Andrew Small Playground on 15-5-2023 after the deputations. The motion to retain **was voted on and lost prior even discussing the petition** which 1536 community members signed within 10 days so it could make it to the agenda for that meeting. Councillors went without looking at the petition first which shows community the lack of respect and the groupthink where no discussion was given to the formal retention of a community asset. Council refused community communication and the community asset policy process to get what they want without any transparency until it is too late – or is it?? I hope not for the community's sake and to have a more harmonious relationship between community and local government. If council has reasons for disposing of a community asset it should be done using the

correct process and also the reasons should be very transparent and communicated effectively without confusion unlike the evidence provided.

Attachment 1: The council did an initial public consultation process where the community was specifically advised that the Andrew Small Playground would not be removed.

Evidence goes back to 10-12-2018 where the Port Lincoln Times reported and showed a picture of the ideas for the Port Lincoln CBD as per Attachment 1, stating clearly '**Do not** move foreshore playground'.

Attachment 2: The Jensen Plus plans also stated '**Do not** move foreshore playground' on page 75 as submitted in my application for review. The plan is on the Council website and will be able to be provided by Council.

Attachment 3: Revised Draft Concept Plans show drawings of the Sport and Activity Zone on page 21. There is no mention of the removal of the Andrew Small Playground or indication where the position of this is, however it does appear in the original plan as at the Yacht Club end. This seems to be another piece of confusing and misleading documentation to the public.

Attachment 4: Arts and History extract from Jensen Plus plan, which shows no discussion of the Andrew Small Playground. It refers to an appendix which is not in the plan. The plan focuses on aboriginal art and history but not the Andrew Small Playground.

Attachment 5: Screenshot of Cr Staunton advising the public 'the playground is not planned to be replaced with a basketball court' 13-2-2021 this shows not even Councillors knew what they were proposing or deciding on and making misleading comments in the public arena. These leaders of the community who were part of the consultation process confused everyone with comments like these. This is a Lack of transparency and misinformation sharing again for everyone concerned.

Attachment 6: 14-5-2023 statement on Cr Staunton's page acknowledging the Andrew Small Playground as a 'community asset'. There is a policy on asset removal that the council did not follow. Procedural processes should be adhered to when removing a community asset. I have attached the policy as attachment 8 separate in this email.

Attachment 7: Screenshots of text conversation several hours before the council decision at the 15-5-2023 meeting. Cr Staunton had no idea what equipment was even being placed in the site where the playground currently is. "The activity space is planned to be more than just a pole and a half court" This information is critical to decision making because it's not even a half court and not communicated correctly to the public.

One deputation analysed consultation statistics free text that were not collated previously for council or verified and this information could not have been regarded by council and should have been tabled correctly. Proof of this would be obtained by contacting the people that made the deputations for further information. If I was reviewing this case this information would be important.

Also one deputation asked council how much money they would need to keep the playground, how many signatures they would need to keep the playground, how community could work together to



keep the playground and other questions, and none of these questions were considered or answered on the night of the 15-5-2023 when they made the decision not to retain it.

Councillor's speech against not saving the playground was about how Council had been to public consultation over a period of many years. So if they were going to take that on board the removal of the playground was not transparent to anyone in those plans to this day and the public were not properly advised or informed and consulted with. Councillor Staunton was referring to the final concept plan in text messages to me only hours prior the 15<sup>th</sup> May Council meeting which is not what the council is delivering. The motion to NOT retain playground was made **prior any discussion** of the petition presented or passed to that same meeting. This cannot be correct procedural practices.

Attachment 8; Separate Attachment to this letter in the same email – Disposal of Land and Assets Policy.

-Petition with 1536 community members signatures collected on the Council approved format within 10 days so it could be received at the 15<sup>th</sup> May Council Meeting which hard copy can be provided by Council.

Considerations prior disposal of assets;

4.6 any impact the disposal of the land or asset may have on the community

4.7 any cultural or historical significance of land or asset

4.12 the results of any community consultation process