



Item No: 19.1

File No: 16.85.1.5

Date: 20 July 2020

Attachment: A, B

Meeting:	Council
Title:	Levi Caravan Park – Ryad Hill Pty Ltd Subsequent Application for COVID-19 Rent Relief
Responsible Manager:	Group Manager Corporate Services, Marc Sodomka
Author:	Business Analyst (Property & Contracts), Scott Reardon
Key Pillar:	Strategic Community Plan Key Pillar 7 - A responsible and influential local government
Key Focus Area:	Financial Guiding Principle 2 – Invest sustainably in community assets for the future
Type of Report:	Decision Required

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(b) of the Act being commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information or that would confer a commercial advantage on a third party and that would, on balance, be contrary to the public interest.

Recommendation (Public)

Pursuant to s90(3)(b)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Chief Executive Officer Kiki Cristol, Group Manager Corporate Services Marc Sodomka, Business Analyst (Property & Contracts) Scott Reardon and Council Secretariat Vanessa Davidson, be excluded from attendance at the meeting for Agenda Item 19.1 Levi Caravan Park – Ryad Hill Pty Ltd Subsequent Application for COVID-19 Rent Relief.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item 19.2, is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council may propose to conduct business and would therefore prejudice the commercial position of the Council.

Recommendation (Confidential)

1. That Council having considered the request submitted by Ryad Hill Pty Ltd (**Park Manager**) (dated 18 June 2020), and pursuant to the objectives of the *National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 (Code)*, endorse a further three (3) month deferral of rent payable by the Park Manager for the period between 1 July and 30 September 2020 (inclusive);
2. That Council review and evaluate the possibility of further rent relief options (if required) on a quarterly basis thereafter;

3. That Council notes the projected budget implication of **-\$120,892.25** for the 2020/21 financial year;
4. That Council directs Administration to commence negotiations with Ryad Hill Pty Ltd for the purpose of discussing alternate options of repayment for all outstanding rental amounts.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 19.1 Levi Caravan Park – Ryad Hill Pty Ltd Subsequent Application for COVID-19 Rent Relief in confidence under section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report and attachments relevant to this Agenda Item be retained in confidence for a period of 12 months or the matter has been finalised, excepting that Council authorises the release of the minutes to substantive party / parties to enable enactment of the resolution and that pursuant to Section 91(9)(c) of the *Local Government Act 1999* the Council delegates to the Chief Executive Officer the review and power to revoke this Order

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* and re-admit the public.

Summary

The Levi Caravan Park (**Park**) is located in Vale Park and is currently managed by Ryad Hill Pty Ltd (**Park Manager**). The current Management Agreement (**Agreement**) held between the Park Manager and the Corporation of the Town of Walkerville (**Council**) is due to expire on 30 November 2020 and the Agreement does not include a further Option to Renew.

On 8 April 2020 Administration received correspondence from the Park Manager advising that bookings at the Park had drastically reduced as a direct result of COVID-19 and the social distancing restriction imposed both State and Federal Governments. As such, the Park Manager request a **waiver** of its rental obligations under the Agreement for the period between 1 April 2020 and 30 June 2020. This request was presented to Council at their Ordinary Meeting 20 April 2020 where Council resolved to instead **defer** all rental amounts payable by the Park Manager for the period between 1 April 2020 and 30 June 2020 on the proviso that the amounts are paid back to Council prior to the expiration of the Agreement (viz 30 November 2020).

On 18 June 2020 a subsequent correspondence was received from the Park Manager seeking additional assistance through a further deferral of the July, August, September rental amounts.

In accordance with the objectives of the *National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19* and the subsequent provisions outlined in the *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), it is recommended that Council endorses the recommendations of this report.

Background

At their ordinary meeting 5 February 2001, Council resolved to enter into a Management Agreement with Goodwin Management Pty Ltd:

“That the Mayor and Chief Executive Officer be authorised to sign and seal the Agreement between the Corporation of the Town of Walkerville and Goodwin Management Pty Ltd for the management of the Levi Park Caravan Park for a period of ten years with a right of renewal for a further five years”.

Following this, at their ordinary meeting 21 November 2005, Council resolved to vary specific terms and conditions with the Agreement:

CNC211105/7.1

- 1. That the report on the Levi Park Caravan Park Deed of Variation be received and noted and that the Mayor and Chief Executive Officer be authorised to execute the Deed of Variation between Goodwin Management and the Corporation of the Town of Walkerville with clause 7(c) being amended to include “or gas pipeline” after electrical wiring, and*
- 2. That the document be forwarded to Mellor Olsson Lawyer for stamping.*

Then, at their ordinary meeting on 7 August 2006 Council resolved to Assign the Agreement to a subsequent party:

CNC070806/11.1.15

- 1. That subject to carrying out a satisfactory check on the financial capacity (both by Council staff and Council auditors), references and through the police on the integrity of Ian & Marie Baum (Ryad Hill Pty Ltd) the lease on the Levi Park Caravan Park be assigned to them on the same terms and conditions as provided to the current lessee of the Park; and*
- 2. That the Mayor and Chief Executive Officer be authorised to execute documents to give effect to this resolution.*

The initial Agreement expired on 30 November 2015 and at their ordinary meeting on 18 May 2015 Council endorsed the Renewal of the Agreement (**CNC070806/11.1.15**). It should be noted that the content of this resolution was retained in confidence at the time (**CNC353/14-15**) due to the commercial nature of the report. The confidential order has since been lifted.

At the Ordinary Meeting of 20 January 2020 Council resolved in Confidence:

CNC256/19-20

- 1. That pursuant to the requirements of s 20J (1) (b) of the Retail and Commercial Leases Act 2002, Council officially advises the current Park Manager (Ryad Hill Pty Ltd) that at the end of the lease term, Council does not propose to offer a renewal or extension of the lease;*
- 2. That Council engage an Independent Valuation Service to undertake a valuation assessment of all Manager owned assets located within the Park;*
- 3. That in accordance with s 202 of the Local Government Act 1999, Council undertakes the necessary statutory consultation process in order to obtain the community’s feedback about the proposed alienation of Certificate of Title Volume 5874 Folio 181 (Levi Caravan Park) for a lease term in excess of five (5) years and up to and including 42 years;*
- 4. That following the successful conclusion of Recommendation 3, Administration undertakes an open Expressions of Interest Tender process seeking out relevant industry bodies whom may have an interest in entering into a long-term lease over Certificate of Title Volume 5874 Folio 181 (Levi Caravan Park) for the purposes of investing in, redeveloping and / or managing the Park;*

5. That in accordance with s 70A of the Residential Parks Act 2007 Council simultaneously:
 - a. serves a preliminary 'Notice of Intention to Redevelop' on all long-term guests currently residing in the Levi Caravan Park;
 - b. serves an advanced 'Notice of Termination' on all long-term guests that have resided in the Park for less than five (5) years, advising them that they are required to vacate the Park no later than 30 November 2020;
6. That following the completion of Recommendation 1 to 5 a subsequent report be returned to Council for consideration and determination.

CNC364/19-20

1. That per the request submitted by Ryad Hill Pty Ltd (dated 8 April 2020) Council endorse a three (3) month deferral of rent for the period between 1 April and 30 June 2020 (inclusive) dependent on substantiation of claim, to be paid back prior to or at the conclusion of the lease;
2. That Council review and evaluate the possibility of continuing the deferral period or additional rent relief options (if required) on a quarterly basis thereafter, the first being the June 2020 Council meeting;
3. That Council notes the projected cashflow implication of -\$120,892.25 for the 2019/20 financial year based on the rent deferral;
4. That Administration obtain further legal advice in order to clarify the requirements and obligations of each party for the remainder of the Term of the Management Agreement.

CNC409/19-20

1. That Council receives and notes the Commercial Leases – COVID-19 Legal Advice and Application for Assistance Report; and
2. That to ensure consistency for all commercial lease agreements, Council grants a three (3) month deferral of rental payments for the period between 1 April and 30 June 2020 (inclusive) for Walkerville Pre-Kindy Pty Ltd, to be paid back prior to 30 November 2020.

Discussion/Issues for Consideration

Management Agreement History

In 2001 the Corporation of the Town of Walkerville (Council) entered into a Management Agreement (Head Agreement) with Goodwin Management Pty Ltd for the Levi Caravan Park (Park). The Head Agreement was for a term of ten (10) years (commencing 1 December 2000) and included one (1) Option to Renew for a subsequent five (5) years; expiring 30 November 2015.

On 21 November 2005 Council resolved to vary the Head Agreement term increasing it to 15 years (commencing 1 December 2000) with one (1) Option to Renew for a subsequent five (5) years; expiring 30 November 2020.

The Head Agreement was then Assigned (Agreement) on 7 August 2006 over to Ryad Hill Pty Ltd. Pursuant to the terms of the Deed of Assignment (dated 16 March 2007), Ryad Hill Pty Ltd (Park Manager) commenced their occupancy and management of the site from 1 February 2007.

This Agreement is due to expire on **30 November 2020**.

Mandatory Commercial Tenancy Code

As part of the Commonwealth Government's safety-net for businesses affected by COVID-19, on 3 April 2020 the *National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19* (Code) came into force. The Code's objective was to:

“impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, where the tenant is an eligible business for the purpose of the Commonwealth Government's JobKeeper programme”

The primary leasing principles enforceable by the Code are as follows:

- Landlords must not terminate leases for non-payment of rent during the COVID-19 pandemic (or reasonable recovery period);
- Tenants must stay committed to their lease terms (subject to amendments);
- Landlords must offer reductions in rent (as waivers or deferrals) based on the tenant's reduction in trade during COVID-19.
- Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.

The Code is available via the below hyperlink for members reference.¹

COVID-19 Emergency Response (Commercial Lease No.2) Regulations 2020

The *COVID-19 Emergency Response Act 2020* (SA) (Act) came into effect 9 April 2020 and the *COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020* (SA) (Regulations) came into effect 15 May 2020.²

The Act was passed by the South Australia Parliament in order to temporarily modify South Australian legislation in response to the COVID-19 pandemic, and among other things to give effect to certain fundamental provisions within the Code.

The Regulations were passed in order to enact certain aspects of the Code that has not previously been enforceable in South Australia; particularly those aspects relating to dispute resolution between landlords and tenants, including mechanisms for a lessee to seek remedy in the event of unfair treatment by a landlord. Pursuant to s 4, the prescribed Objectives of the Regulations are:

“having regard to the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 published on 7 April 2020:

- (a) to implement temporary measures to apply to parties to certain commercial leases related to circumstances brought about by the COVID-19 pandemic; and*
- (b) to provide for mechanisms to resolve disputes concerning those leases.*

The primary points of the Code now enforceable under South Australia Law include (but not restricted to):

- A lessor cannot:

¹ <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

² South Australian Government Gazette, No.40, 15 May 2020, p.1383,

https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/May/2020_040.pdf

- take action against an *affected lessee* for:³
 - failing to pay rent;⁴
 - failing to pay outgoings;⁵
 - failing to remain open for business⁶
- increase the rental amount;⁷
- An affected lessee may:
 - apply to the Commissioner to mediate a dispute in relation to a commercial lease;⁸
- To which the Commissioner may exercise their powers,⁹ or refer the dispute to the Court for resolution.¹⁰

Application(s) for Rent Relief

Following an application received from the Park Manager on 8 April 2020, at their Ordinary Meeting 20 April 2020, Council resolved to defer all rental amounts payable by the Park Manager for the period between 1 April 2020 and 30 June 2020 on the proviso that the amounts are paid back to Council prior to the expiration of the Agreement (viz 30 November 2020). This amount totalled \$120,892.25.

On 18 April 2020, Administration was again contacted by the Park Manager seeking a second deferment of all rental amounts payable during the period between 1 July 2020 and 30 September 2020 (refer Attachment A). The quarterly amount also being \$120,892.25.

The Park Manager's rational for the subsequent request remains based on the COVID-19 and the social distancing restriction imposed both State and Federal Governments, which has resulted in:

- Existing bookings at the Park being significantly lower than the previous year;
- Very few forward bookings in the Park; and
- The necessity to stand down and/or fire staff.

The Park Manager has supplied a copy of their Profit & Loss (P&L) statement which indicates that the Park Manager is operating at a loss even before their rental obligations are factored into their financial position. A copy of this P&L appears as Attachment B to this report.

On this and the further basis that the lessee is receiving the JobKeeper subsidy, which in accordance with the Regulations defines the lessee as an *affected lessee* whom is suffering financial hardship,¹¹), it is recommended that Council endorses a further rent deferral.

Options for Consideration

Option 1

1. That Council having considered the request submitted by Ryad Hill Pty Ltd (**Park Manager**) (dated 18 June 2020), and pursuant to the objectives of the *National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 (Code)*, endorse a further

³ A lessee is an affected lessee if the lessee is suffering financial hardship as a result of the COVID-19 pandemic, *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), Sub-Regulation s3(2)(a).

⁴ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7(1) (a).

⁵ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7(1) (b).

⁶ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7 (1) (c).

⁷ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7 (4).

⁸ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 8 (1).

⁹ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 8 (3).

¹⁰ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 9.

¹¹ *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 3 (5).

three (3) month deferral of rent payable by the Park Manager for the period between 1 July and 30 September 2020 (inclusive);

2. That Council review and evaluate the possibility of further rent relief options (if required) on a quarterly basis thereafter;
3. That Council notes the projected budget implication of **-\$120,892.25** for the 2020/21 financial year;
4. That Council directs Administration to commence negotiations with Ryad Hill Pty Ltd for the purpose of discussing alternate options of repayment for all outstanding rental amounts.

Option 2

That Council directs Administration to undertake the following alternate actions:

- _____

Analysis of Options

Option 1

This option recognises the adverse impact that COVID-19 has had on the tourist sector and provides security of tenancy for an interim period, notwithstanding that the lease is due to expire on 30 November 2020. It also recognises that the contractual terms and obligations on both parties, under the Management Agreement continue to apply.

Further it recognises that Council has an ongoing obligation under Schedule 8 of the *Local Government Act 1995* and any decision Council makes must be in line with those obligations. In essence, Schedule 8 requires that Council is to maintain the Park for the benefit of the community, to continue to maintain and preserve the caravan park and camping ground and to not alter the nature of the use of the Caravan Park without the Minister's consent.

Option 2

Dependent on the nature of Option 2, it may prove inconsistent with both the requirements of the Code and Regulations.

Financial Implications

Should Council endorse Option 1, the 2020/21 budget will incur a projected budget implication of **-\$120,892.25**. It should be noted however that in accordance with the objectives of the Code, the lessee will still be required to fulfil its obligation under the lease; including all rental obligation. Therefore Council are within its right to recover all deferred amounts from the lessee through either: A) a lump sum payment at the cessation of the lease; b) periodic instalments as negotiated with the lessee; or C) through the agreed acquisition of the lessees assets to the total value of the outstanding amounts.

Regional Implications

There are no perceived regional implications association with this report.

Governance Implications

The proposal is both aligned and consistent with Council Policy, previous recommendations made by both the Local Government Association and Norman Waterhouse, and is aligned with both the Code and Act.

Preferred Option & Reasoning

Option 1 is the preferred option on the basis that it adheres to Council's statutory obligations and supports the hardships of a current commercial tenant.

Attachments

Attachment A	Park Manager's Request for Rental Deferral
Attachment B	Profit & Loss Statement

Released

Scott Reardon

From: Ian Baum <maran@levipark.com.au>
Sent: Thursday, 18 June 2020 12:39 PM
To: Scott Reardon
Subject: Additional info re Park rental waiver request.
Attachments: P & L council 1.jpeg; P & L council 2.jpeg

Hi Scott,

Further to my request that council waive the park rental for the months of April, May and June, I now submit the business profit and loss for the two months of April and May. This document is a direct printout from MYOB but of course being a two month period only, does not reflect annual costs and charges as I have short listed on page two. The actual loss will be greater.

The P & L shows a loss of \$7,340 for the two months including Govt subsidies but with other annual costs we estimate our loss will be greater than \$7,000 per month. That does not include park rental.

As business is still extremely slow we do not foresee a significant increase in revenue for some months yet. The opening of SA borders only, will not make much difference because travelers still are not able to return to their home state. 50% of our revenue comes from interstate travelers.

I also request council defer the July, August, September quarter rental, to be reviewed in October.

This certainly isn't the way we envisaged our last twelve months operating the caravan park.

Kind Regards,

Ian Baum.



Profit & Loss Statement

April 2020 To May 2020

ABN: 64 009 316 020

Email: contact@levipark.com

Income	
Accommodation	
Cabins - GST	\$38,479.79
Cabins - LTG	\$32.47
Tourist Sites - GST	\$10,956.80
Tourist Sites - LTG	\$3,507.11
Long Term Sites - GST	\$207.64
Long Term Sites - LTG	\$17,838.85
Total Accommodation	\$71,022.66
Other Park Revenue	
Gas Sales	\$47.28
Shop Sales GST	\$1,726.53
Shop Sales Exempt	\$120.00
Laundry	\$224.56
Electricity	\$2,636.37
Repairs Reimbursed	\$1,692.76
Misc. Revenue	\$11,448.26
DUNDEE AVE RENT PRIVATE RENTAL HOUSE	\$3,280.92
Retained Deposits	\$591.54
Suspense Receipt	-\$1,122.65
Total Other Park Revenue	\$20,645.57
Other Income	
Jobkeeper Subsidy (no GST)	\$31,500.00
Total Other Income	\$31,500.00
Total Income	\$123,168.23
Cost Of Sales	
Shop Purchases GST	\$4,087.81
Shop Purchases FREE	\$42.50
Cleaning	\$3,420.73
Linen & Crockery Replacements	\$221.96
Linen & Laundering Service	\$2,403.07
Replacements small items vans	\$220.00
Total Cost Of Sales	\$10,396.07
Gross Profit	\$112,772.16
Expenses	
General & Administrative Exp.	\$12.00
Accounting Fees	\$2,310.00
Merchant Fees	\$758.39
Bank Fees	\$69.48
RMS Online Fees	\$2,276.27
Commission Other	\$1,091.25
Office Supplies	\$369.57
Subscription	\$4.55
Telephone	\$907.71
Computer Maintenance	\$896.57
Travel Expenses	\$109.09
Total Expenses	\$8,804.88
Marketing Expenses	
Advertising & Promotion	\$1,190.17

10,000 GOVT SUBSIDY
INCLUDED.

JOB KEEPER.

This report includes Year-End Adjustments.

Profit & Loss Statement

April 2020 To May 2020

ABN: 64 009 316 020

Email: contact@levipark.com

Total Marketing Expenses		\$1,190.17
Employment Expenses		
Wages & Salaries	\$89,968.88	
Superannuation	\$6,050.94	
Workcover	\$2,166.10	
Staff Amenities	\$390.11	
Uniforms	\$62.65	
Total Employment Expenses		\$98,638.68
Occupancy Costs		
Electricity	\$12,516.62	
Fuel	\$652.09	
Gas	\$205.17	
Insurances	\$2,584.90	
Repairs & Maintenance	\$3,027.93	
Waste Removal	\$1,703.38	
Water Rates	\$19,447.05 <i>-3 MONTHS</i>	
Total Occupancy Costs		\$40,137.14
Motor Vehicle Expenses Rodeo		
Registration & 3rd Party	\$1,992.49	
Total Motor Vehicle Expenses Rodeo		\$1,992.49
Rental Property Expenses		
Council Rates	\$349.70	
Total Rental Property Expenses		\$349.70
Total Expenses		\$151,113.06
Operating Profit		-\$38,340.90
Total Towing Services		\$0.00
Net Profit/(Loss)		-\$38,340.90

EXTRA INCOME: JOB KEEPER

+ 31,000-

THIS REPORT DOES NOT ALLOW FOR:

LOSS \$ 7,340.90

- OWNERS WAGES
- DEPRECIATION
- AMORTISATION
- OTHER ONCE OFF ANNUAL COSTS.

EG. : ACCOUNTANCY \$ 5,000 -
 • BANK CHARGES 11,000 -
 • SUBSCRIPTION 9,600 -
 • PARK RENTAL 480,000 -

This report includes Year-End Adjustments.