



## NOTICE

of

### SPECIAL COUNCIL MEETING

Pursuant to the provisions of section 84 (1) of the  
*Local Government Act 1999*

to be held in

to be held in the

**WALKERVILLE CIVIC CENTRE  
COUNCIL CHAMBERS  
66 WALKERVILLE TERRACE GILBERTON**

On

**MONDAY 28 SEPTEMBER 2020 AT 7PM**

KIKI CRISTOL  
CHIEF EXECUTIVE OFFICER

Issue Date: 28 September 2020

#### MEMBERSHIP

MAYOR ELIZABETH FRICKER - PRESIDING MEMBER

Cr R Ashby AM  
Cr S Furlan  
Cr C Wilkins

Cr M Bishop  
Cr J Joshi  
Cr J Williams

Cr N Coleman OAM  
Cr J Nenke

**AGENDA**  
28 September 2020

**1. ATTENDANCE RECORD**

- 1.1 Present
- 1.2 Apologies
- 1.3 Not Present / Leave of Absence

**2. DECLARATIONS OF INTEREST (material, actual, perceived)**

**3. REPORTS REQUIRING DECISION OF COUNCIL**

Nil.

**4 REPORTS PRESENTED FOR INFORMATION**

Nil.

**5. CONFIDENTIAL ITEMS**

- 5.1 Ryad Hill Pty Ltd Application for Rent Relief

**6. CLOSURE**



Item No: 19.1

File No: 16.85.1.5

Date: 28 September 2020

Attachment: A, B.

**Meeting:** Council

**Title:** Ryad Hill Pty Ltd Application for Rent Relief

**Responsible Manager:** Business Analyst (Property & Contracts), Scott Reardon

**Author:** Business Analyst (Property & Contracts), Scott Reardon

**Key Focus Area:** Financial Guiding Principle 1- Finances managed responsibly

**Key Focus Area:** Community Land Management Plan

**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 Asset & Infrastructure Ben Clark, Group Manager Planning, Environment & Regulatory Services Andreea Caddy, Group Manager Corporate Services Monique Palmer, Group Manager Customer Experience Danielle Garvey, Manager Community Development & Engagement Fiona Deckert, Business Analyst (Property & Contracts) Scott Reardon and Council Secretariat Vanessa Davidson be excluded from attendance at the meeting for Agenda Item 19.1 Ryad Hill Pty Ltd Application for 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 19.1, 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 receives and notes the letter (dated 15 September 2020) submitted by Ryad Hill Pty Ltd, seeking a waiver of all fees payable under the Management/Lease Agreement between 1 April 2020 and 30 November 2020, with the exception of the offered compensatory amount of \$69,758.96 (incl. gst);
2. That in response, Council agrees to **waive** the previously deferred amounts for the period of 1 April 2020 and 30 September 2020 (only) totalling \$237,814.62 (plus GST), subject to:

- a. the Park Manager paying all amounts due to Council for October and November 2020, totalling \$79,271.54 (plus GST), bringing the total amounts paid by the Park Manager to Council during the final year of the Agreement to \$251,954.64 (which equates to 51% of the total rental amounts due);
  - b. the Park Manager relinquishing to Council any/all Park Manager owned minor plant, assets, equipment, furniture, fittings and fixtures (ie. television, kitchen equipment, mattresses, bedding, furniture, hot water unit etc) presently located within Council owned cabin assets within the Park;
  - c. that, unless otherwise approved, at their cost the lessee adheres to yielding up all obligations outlined in the Head Agreement dated 20 February 2001, the Deed of Variation dated 23 November 2005 and the Deed of Assignment dated 16 March 2007;
3. That the aforementioned be legally recorded via Deed of Release, which must be mutually executed in full by both Ryad Hill Pty Ltd and Council prior to the expiration of the current Agreement; and
  4. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents pertaining to the proposed Deed of Release between the Ryad Hill Pty Ltd and Council including affixing of the common seal of Council.

## Recommendation (Public)

### Pursuant to s.91(7)

That having considered Agenda Item 19.1 Ryad Hill Pty Ltd Application for 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 (**expiry**).

At the Ordinary Meeting of 20 April 2020, Council considered a request from the Park Manager seeking a **waiver** of its rental obligations under the Agreement for the period between 1 April 2020 and 30 June 2020. This request was made as a direct result of the significant down turn in business within the Park due to the imposed State and Federal Governments COVID-19 social distancing restrictions. At this meeting 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 were paid back to Council prior to the expiry.

On 18 June 2020 a subsequent request was received from the Park Manager seeking additional assistance and Council again resolved to **defer** the July, August, September 2020 rental amounts on the same terms as the preceding deferral. In accordance with resolutions **CNC364/19-20** and **CNC38/20-21**, to date the amounts deferred by Council total **\$237,814.62** (plus GST).

On 15 September 2020, Administration received a further request from the Park Manager. The correspondence (appearing as Attachment B to this report) advises that the Park Manager is still being adversely affected by the impacts of COVID-19 and as such seeks a **full waiver** of all rental fees payable to Council for the period 1 April 2020 to 30 November 2020 (inclusive) with the exception of a proposed compensatory amount of **\$69,758.96** (incl. GST).

It should be noted that while Council is under no obligation at law to provide waivers or deferrals to its tenants, the intent of the *National Mandatory Code of Conduct (Commercial Leasing Principles)* introduced by the Federal Government on 3 April 2020, is for landlords to implement measures to assist tenants weather the impacts of the COVID-19 global pandemic.

On the basis that the Park Manager is a recipient of the *Job Keeper* subsidy, is classified as an *affected lessee*,<sup>1</sup> and is protected by those associated protections and mediation mechanisms implemented into South Australian legislation during the COVID-19 prescribed period (that period between 30 March 2020 and 30 September 2020);<sup>2</sup> that Council is presently in the process of finalising negotiations with a new incoming Park Manager / Developer to commence operations 1 December 2020 and that further actions against the existing Park Manager could result in formal mediation, Court ordered waiver of fees and/or extension of lease term, thus jeopardising the proposed park redevelopment; in the interest of avoiding both a protracted legal process and possible reputable scrutiny, 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:

### CNC050201/13.4

*"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

<sup>1</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020 (SA), s.3 (2) & (5).

<sup>2</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020 (SA), s.3 (1).

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.*

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

#### **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.*

At the Ordinary Meeting of 18 May 2020, Council resolved in Confidence:

#### **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.*

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

#### **CNC38/20-21**

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.*

### **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 by way of Deed of Assignment (dated 16 March 2007). This Agreement is due to expire on **30 November 2020**.



The annual rental amount payable by the Park Manager to Council in the final year of the Agreement (viz 1 December 2019 to 30 November 2020) totals **\$489,760.29** (plus GST).

### 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.<sup>3</sup> The Code's objective is 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.
- Landlords (on a case by case basis) should 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.

### South Australian COVID-19 Legislation & Legal Advice

The *COVID-19 Emergency Response Act 2020* (SA) came into effect 9 April 2020<sup>4</sup> and 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 principles within the Code.

The *COVID-19 Emergency Response (Commercial Leases) Regulations 2020* (SA) came into effect 16 April 2020<sup>5</sup> and defined those suffering from COVID-19 “financial hardship” as those “*eligible for, or receiving JobKeeper payments/subsidy*”.<sup>6</sup>

The *COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020* (SA) (**Regulations**) came into effect 15 May 2020.<sup>7</sup> 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:*

<sup>3</sup> <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

<sup>4</sup> South Australian Government Gazette, No.30, 9 April 2020, pp.699-780

[https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/April/2020\\_030.pdf](https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/April/2020_030.pdf)

<sup>5</sup> South Australian Government Gazette, No.32, 16 April 2020, pp.799-780.

[https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/April/2020\\_032.pdf](https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/April/2020_032.pdf)

<sup>6</sup> COVID-19 Emergency Response (Commercial Leases) Regulations 2020, s 4 (1).

<sup>7</sup> 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](https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/May/2020_040.pdf)



(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.

These Regulations further:

- Enacted additional provisions into legislation as they pertained to Commercial Lease;
- Defined a lessee suffering financial hardship as an **affected lessee**;<sup>8</sup>
- Defined **prescribed period** to be 30 March 2020 to 30 September 2020;<sup>9</sup>
- Obligated all parties to a lease to negotiate in 'good faith' in accordance with the intentions and principles of the Code;<sup>10</sup>
- Prohibited a lessor from taking action against an **affected lessee** during the **prescribed period** for:<sup>11</sup>
  - failing to pay rent;<sup>12</sup>
  - failing to pay outgoings;<sup>13</sup>
  - failing to remain open for business;<sup>14</sup>
  - increase the rental amount;<sup>15</sup>
- Implemented dispute resolution mechanisms for an **affected lessee** to:
  - apply to the Commissioner to mediate a dispute in relation to a commercial lease;<sup>16</sup>
  - to which the Commissioner may exercise their powers or functions to resolve the dispute,<sup>17</sup> or refer the dispute to the Court for resolution.<sup>18</sup>

### Legal Advice

Administration originally sought legal advice (**Advice**) from Norman Waterhouse on 30 March 2020 and then again on 22 April 2020 regarding the possible impacts that COVID-19 may have on the Caravan Park Lease Agreement. This advice indicated that:

- A. Under the *COVID-19 Emergency Response Act 2020* (SA), there was no express requirement for caravan and camping grounds to close;
- B. Schedule 8 of the *Local Government Act 1999* requires Council to continue to operate Levi Caravan Park as a caravan and camping ground;<sup>19</sup>
- C. Council should not give any direction to the Park Manager to modify its operations at the Park;

<sup>8</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020 (SA) S 3 (2).

<sup>9</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020 (SA), s 3 (2).

<sup>10</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020 (SA), s 6.

<sup>11</sup> 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).

<sup>12</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7(1) (a).

<sup>13</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7(1) (b).

<sup>14</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7 (1) (c).

<sup>15</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 7 (4).

<sup>16</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 8 (1).

<sup>17</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 8 (3).

<sup>18</sup> *COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020* (SA), s 9.

<sup>19</sup> *Local Government Act 1999* (SA), Sch 8, Cl 9 (3) (c).

- D. Council has the scope to share the financial burden of the COVID-19 pandemic if deemed appropriate (either through partial or full rent relief / early termination etc);
- E. There is opportunity for Council to take ownership of the Park Manager's owned plant and equipment **through negotiation** to offset and rent relief;
- F. Each parties' contractual obligations under the Management Agreement are not impacted by the implementation of the COVID-19 legislation;
- G. That unless otherwise enacted into legislation, the principles of the Code are not legally binding in South Australia;
- H. The principles of the Code relating to rental waivers and deferrals had not been given legislative effect in South Australia and are therefore not legally binding;
- I. Rental deferrals and waivers remains a matter for commercial negotiation between the parties.

Subsequent verbal advice was also obtained from Mellor Olsson on 25 June 2020, regarding the effectiveness of the dispute resolution mechanisms enacted by the COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020 (SA). The advice indicated that a number of landlord / tenant disputes had either been mediated or tested in Court since the commencement of COVID-19 and where the tenant was defined as an **affected lessee**, the courts were generally finding in a tenant's favour.

#### Applications for Rent Relief

Following an application received from the Park Manager on 8 April 2020, at their Ordinary Meeting 20 April 2020, Council resolved (**CNC364/19-20**) 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 **\$118,907.31** (plus GST).

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. Council resolved (**CNC38/20-21**) to also defer all rental amounts payable on the proviso that the amounts are paid back to Council prior to the expiration of the Agreement (viz 30 November 2020). The quarterly amount also totalled **\$118,907.31** (plus GST).

To date the total amounts deferred by Council total **\$237,814.62** (plus gst).

On 15 September 2020, Administration received a further request from the Park Manager. The correspondence (appearing as Attachment B to this report) advises that the Park Manager is still being adversely affected by the impacts of COVID-19 and as such they seek a full waiver of all rental fees payable to Council for the period 1 April 2020 to 30 November 2020 (inclusive), with the exception of a compensatory amount totalling **\$69,758.96** (incl.GST). This amount represents 20% of the total rental amounts payable during this period.

It should be noted that the lessee is still receiving the *JobKeeper* subsidy, which in accordance with the Regulations defines the lessee as an **affected lessee** whom is suffering financial hardship.<sup>20</sup> Therefore those aforementioned protections enacted into legislation in South Australia continue to apply.

It should also be noted that the **prescribed period** as defined by the Regulations, is the period 30 March 2020 to 30 September 2020.<sup>21</sup>

<sup>20</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020 (SA), s 3 (2) & (5).

<sup>21</sup> COVID-19 Emergency Response (Commercial Leases No.2) Regulations 2020 (SA), s 3 (2).

## Options for Consideration

### Option 1

1. That Council receives and notes the letter (dated 15 September 2020) submitted by Ryad Hill Pty Ltd, seeking a waiver of all fees payable under the Management/Lease Agreement between 1 April 2020 and 30 November 2020, with the exception of the offered compensatory amount of \$69,758.96 (incl. gst);
2. That in response, Council agrees to **waive** the previously deferred amounts for the period of 1 April 2020 and 30 September 2020 (only) totalling \$237,814.62 (plus GST), subject to:
  - a. the Park Manager paying all amounts due to Council for October and November 2020, totalling \$79,271.54 (plus GST), bringing the total amounts paid by the Park Manager to Council during the final year of the Agreement to \$251,954.64 (which equates to 51% of the total rental amounts due);
  - b. the Park Manager relinquishing to Council any/all Park Manager owned minor plant, assets, equipment, furniture, fittings and fixtures (ie. television, kitchen equipment, mattresses, bedding, furniture, hot water unit etc) presently located within Council owned cabin assets within the Park;
  - c. that, unless otherwise approved, at their cost the lessee adheres to yielding up all obligations outlined in the Head Agreement dated 20 February 2001, the Deed of Variation dated 23 November 2005 and the Deed of Assignment dated 16 March 2007;
3. That the aforementioned be legally recorded via Deed of Release, which must be mutually executed in full by both Ryad Hill Pty Ltd and Council prior to the expiration of the current Agreement; and
4. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents pertaining to the proposed Deed of Release between the Ryad Hill Pty Ltd and Council including affixing of the common seal of Council.

### Option 2

That Council reject the offer made by Ryad Hill Pty Ltd and direct Administration to further pursue recovering the amounts owed and/or negotiate alternate amounts/arrangements.

### Option 3

That Council directs Administration to undertake the following alternate actions:

- \_\_\_\_\_

## Analysis of Options

### Option 1

While this option does not see Council recover the entirety of the \$237,814.62 (plus GST) owed, this option recognises the adverse impact that COVID-19 has had on the tourist sector and provides a final resolution to the matter, which not only sees Council recover 51% of the total amounts payable for the final year of the Agreement, but also sees Council avoid potential mediation, legal action and reputable damage.

Option 1 also allows for a smooth transition for Across Australia Parks & Resorts Pty Ltd (Innoviv) to commence operations and redevelopment of the Park from 1 December 2020.

## Option 2

While Council is under no obligation at law to provide waivers or deferrals to its tenants and the legal advice obtained indicates that each parties' contractual obligations under the existing Agreement are not impacted by the implementation of the COVID-19 legislation (therefore in principle the lessee remains liable to pay the entirety of the amounts owed to Council), in accordance with the intentions and principles of the Code and further protections and provisions enacted into South Australian legislation, this option could expose Council to protracted mediation/legal proceedings, reputable damage, as well as additional expense.

As the lessee remains defined as an **affected lessee**, pursuant to the Code and s.8 (3) of the COVID-19 Emergency Response (Commercial Leases No.2) Regulation 2020 (SA), this option may also result in a Court order being placed on the existing lease agreement which **could** enforce a rental waiver, and/or extend the term of the existing agreement with Ryad Hill for a term equal to the duration of COVID-19 **prescribed period**, thus jeopardising Council's current negotiations with the Across Australia Parks & Resorts Pty Ltd for redevelopment and future management of the site.

## **Financial Implications**

The annual rental amount payable by the Park Manager to Council in the final year of the Agreement (viz 1 December 2019 to 30 November 2020) totals **\$489,760.29** (plus GST).

To date (during the final year of the Agreement), the Park Manager has paid a total of **\$172,674.10** (plus GST) for 1 December 2019 to 31 March 2020 (inclusive), Council has deferred a total of **\$237,814.62** (plus GST) for 1 April to 30 September 2020 (inclusive), and a total of **\$79,271.54** (plus GST) remains outstanding for 1 October and 30 November 2020. Should Council endorse Option 1, and recover the \$79,271.54 (plus GST), the Park Manager will have paid a total of **\$251,954.64** (plus GST) for the final year of the Agreement, which equates to 51% of the total rental amounts due.

As part of the 2020/21 budget process, Council accepted and endorsed a 50% reduction in revenue for the Caravan Park. This was based on: (A) the expectation that COVID-19 would continue to affect operations and accommodation for an interim period; and (B) the status of the future tenancy and operations were (at the time) uncertain. As a result and as part of the 2020/2021 annual budget, Council projected and adopted total revenue for the Park of \$246,161.00.

Noting that a new Park Manager will commence operations from 1 December 2020 and will be liable to pay seven (7) months' worth of rent for the 2020/21 financial year (which will total \$288,750.00), should Council endorse Option 1 and recover \$79,271.54 (plus GST) from the current Lessee, the total income received from the Levi Park Caravan Park for the 2020/21 financial year will be **\$368,021.54**.

In addition to this, Option 1 provides for smooth transition for change in site management which also results in Council's existing cabin assets being purchased by Across Australia Parks & Resorts Pty Ltd (Innoviv); with an agreed fair and reasonable purchase price being approximately **\$400,000.00**.

Should Council choose not to endorse Option 1, there is potential that no outstanding rent will be recovered and the future operations of the Park could remain uncertain. Furthermore, Council's legal costs could easily extend well beyond the actual monies owed by the Lessee, which may not be recoverable.

## **Regional Implications**

Whilst there are no perceived regional implications association with this report, the Caravan Parks Association of SA has advised that Caravan Parks across SA have been adversely affected with severe downturn of patronage impacted by the travel restrictions imposed by federal and state governments.

For the June 2020 quarter, SA occupancies in cabins dropped to an average 35%, while powered site occupancy fell to 18%.<sup>22</sup>

On the 11 May 2020, intrastate restrictions in SA were lifted and this saw an increased demand. However, demands in the Adelaide region have been slower to recover, with Tourism SA data showing that visitors to caravan and camping sites is generally made up of 75% interstate travellers compared to 25% intrastate travellers.

### **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**

Administration will be guided by Council. However, Option 1 is considered to deliver a sound and viable commercial outcome for Council and allow for Across Australia Parks & Resorts Pty Ltd to commence redevelopment and future management of the site.

### **Attachments**

Attachment A	Legal Advice
Attachment B	Correspondence from Ryad Hill Pty Ltd

<sup>22</sup> Source - Caravan Industry Aust Industry Heartbeat BDO study June 2020.

**Scott Reardon**

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**From:** Mabel Tam <MTam@normans.com.au>  
**Sent:** Wednesday, 22 April 2020 4:53 PM  
**To:** Scott Reardon  
**Subject:** Levi Caravan Park  
**Attachments:** 19.2 Levi Caravan Park - Application for Rent Relief - Attachment A.pdf

Hi Scott

Thank you for your email.

My responses to your specific queries are below.

1. **Are the first two points (above) consistent with the *Mandatory Code of Conduct (Commercial Tenancies)*? (<https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>);**

The National Cabinet Mandatory Code of Conduct (for small to medium enterprise commercial leasing) (**Commonwealth Code**) is currently not legally binding on South Australian landlords and tenants. It was intended, and the Commonwealth Code itself makes it clear, that the Code will need to be given effect through State and Territory legislation (or regulation) and it will complement that legislation (or regulation), not supersede it.

South Australia's Parliament passed the *COVID-19 Emergency Response Act 2020 (SA)* on 9 April (**COVID Response Act**) and the *COVID-19 Emergency Response (Commercial Leases) Regulations 2020(SA)* on 16 April (**COVID Response Regulations**). The main provisions of the COVID Response Act that deal with commercial leases are found in section 7 of that Act.

In summary, the COVID Response Act:

- prohibits the Council (as landlord) from taking certain actions (such as termination and eviction proceedings) against a tenant who is suffering financial hardship as a result of the COVID-19 pandemic;
- provides protection to tenants who are limited from trading during the COVID-19 pandemic such that the tenant's actions do not constitute breaches of their lease agreement; and
- prohibits landlords from requiring tenants to pay or reimburse land tax or from increasing the rent of a tenant where that tenant is suffering financial hardship as a result of the COVID-19 pandemic.

The COVID Response Regulations that have been passed to date provide some guidance on how "financial hardship" is to be assessed for the purposes of the COVID Response Act. In essence, if a tenant is eligible for, or receiving, the JobKeeper payment then the protections included with the COVID Response Act should be immediately available to them.

Accordingly, the principles of the Commonwealth Code are not binding in South Australia, except for those principles that have specifically been given effect by the COVID Response Act and COVID Response Regulations as described above. Specifically, the provisions of the Commonwealth Code that relate to rental waivers and deferrals have not yet been given legislative force in South Australia and are therefore not legally binding at this stage. As such, in relation to the matter of rental deferrals and waivers, this remains a matter for commercial negotiation between the parties. The Commonwealth Code may assist in guiding parties in their commercial discussions but it is not necessary as yet that any agreed outcomes be consistent with the Commonwealth Code.

2. **In this circumstance, what are Council's specific obligations to the Park Manager regarding rent relief options up until the expiration of the lease (30 November 2020)?**



## ATTACHMENT A

The “commercial lease” provisions in section 7 of the COVID Response Act apply to all “commercial leases”. A “commercial lease” is defined broadly by the Act and includes:

- a retail shop lease within the meaning of the *Retail and Commercial Leases Act 1995(SA)(RCLA)*; and
- any other agreement under which a person grants or agrees to grant another person for value a right to occupy (exclusively or non-exclusively) premises for carrying on a business.

We note that there are no references in the Management Agreement to the RCLA and we are unsure whether the parties have been treating the RCLA as applying to the Management Agreement. While the Management Agreement provides that it is for the appointment of a manager only and that the Park Manager acknowledges and agrees in clause 10(iii) that it has no right to occupy the Park by virtue of the Agreement, some form of underlying tenure or occupation must have been granted to the Park Manager to enable the Park Manager to carry out its obligations under the Management Agreement and to keep 15 cabins (and possibly also other equipment) at the Park. As such, it is our view that the Management Agreement is likely to be a “commercial lease” for the purposes of the COVID Response Act and our advice has been prepared on this basis.

As discussed above:

- if the Park Manager is suffering from “financial hardship as a result of the COVID-19 pandemic” within the meaning of the COVID Response Act and COVID Response Regulations, the Council must not:
  - increase the rent payable by the Park Manager (from the amount that was payable as at the operative date of the COVID Response Act, being 30 March 2020);
  - take action to take back the premises (other than via agreement), to distrain goods or take action for forfeiture or damages;
  - charge interest on unpaid rent or outgoings; and/or
  - seek to recover all or part of a security bond or seek to enforce a guarantee against the Park Manager.

In assessing whether the Park Manager is suffering from “financial hardship as a result of the COVID-19 pandemic” the starting point is to confirm if the Park Manager is eligible for, or receiving, the JobKeeper subsidy (either as an employer or on their own behalf) - and if this is the case, the protections afforded by the COVID Response Act should be afforded to the Park Manager. If not, then the Park Manager’s circumstances will need to be considered in more detail to determine if the protections in the COVID Response Act must be extended to them.

The COVID Response Act commercial leasing provisions commenced operation on 30 March 2020 and they will continue to operate for up to six months (at this stage) with the end date to be officially determined by the Minister at a later date. Thus, whether these provisions will remain operative until the end of the Management Agreement term is yet to be determined.

- in terms of rent deferrals and/or waivers and any other matters that relate to financial or other relief that the Park Manager might request or the Council might consider, this is entirely a matter for commercial consideration and negotiation between the parties at this stage. The principles in the Commonwealth Code are not binding on the Council. Thus, while the Commonwealth Code principle might assist some landlord and tenants in their negotiations, outcomes reached do not need to comply with the Code principles at this stage.

3. **The Manager claims revenue has reduced from an average of \$120k per month down to \$26k per month. Their current rental obligations are approximately \$40k per month. Can Council offer a lesser amount (than the total \$40k per month) by way of rent relief?**

The amount and terms of any rent relief package that the Council proposes is entirely within the discretion of the Council. In considering the amount that is appropriate in this regard, the Council



## ATTACHMENT A

should take into account relevant commercial factors for the Park Manager as well as taking into account the Council's financial position and other requests for relief that have been received. For more detail on commercial considerations that may be relevant to the Council's decision making on these types of matters please refer to the COVID-19 Commercial and Community Leases and Licences Practice Guidance Notes that we have prepared for the Local Government Association and that are available to councils through the COVID-19 portal on the LGA's website.

**4. Is Council obligated to extend the lease term in order to allow the Park Manager to recover lost earnings to reimburse any/all outstanding/deferred amounts;**

No, there is no obligation on the Council to extend the Management Agreement term (either under the terms of the Management Agreement itself or pursuant to the COVID Response Act). Further, any extension of the term of the Management Agreement would require the Council to comply with its obligations under section 202 of the *Local Government Act 1999*(SA) (as an extension of a lease or licence of community land is legally the grant of a new right) and any applicable procurement or other policies of the Council (these requirements would also apply to any new management agreement that might be considered by the parties).

OR

**5. Can Council come to an agreement to with the Manager to recoup the deferred amounts over a specified period after the Lease expires?**

Yes. Again, this is a commercial matter for the Council but is not prohibited by the COVID Response Act or COVID Response Regulations. However, it will be more difficult to enforce the debt after the Management Agreement expires when the Park Manager no longer has any connection to the Park premises. If the Park Manager was to default on the repayment agreement, then this would need to be pursued as a personal debt owed to the Council. If such an agreement was to be considered, the Park Manager's potential to repay after the expiry of the Management Agreement should be considered as well as appropriate security arrangements for the debt.

**6. The Park Manager owns 15 cabins on the site, with an approximate 'fair value' of \$10,850 each (totalling \$162,750). Can Council seek to acquire the assets (through agreement) to the extent of the deferred rent?**

Yes, and this may be a sensible approach from a commercial perspective as it:

- will relieve the Park Manager of its financial burden without incurring a debt that needs to be repaid or compromising the remaining cash flow for the Park's operations; and
- gives the Council a more valuable asset and that may be a more attractive proposition and assist in attracting a new manager for the Park after the COVID-19 pandemic.

However, before the Council makes any decisions in relation to acquiring the cabins, the Council should:

- consider if there are any existing security rights over the cabins (for example, a mortgage, charge or other security interest granted by the Park Manager) as the Council would want to acquire them unencumbered; and
- the condition of the cabins and whether they in fact add to the value of the Park as an asset or if they are instead likely to be a liability.

If any agreement is reached with respect to the Council acquiring the cabins then this must be formally documented and we are happy to assist with this if required.

Thanks Scott - please do not hesitate to contact me if you would like to discuss any of the above, or if you have any queries at all.

Kind regards

Mabel

**Mabel Tam**

Principal



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---

**From:** Scott Reardon [mailto:[SReardon@walkerville.sa.gov.au](mailto:SReardon@walkerville.sa.gov.au)]

**Sent:** Tuesday, 21 April 2020 10:33 AM

**To:** Mabel Tam

**Subject:** RE: Levi Caravan Park

Hi Mabel, hope all's well and that you're staying safe.

Following on from your previous advice below, at last night's Council meeting Council considered an official request from the Park Manager to suspend their requirement to pay the Park Management Fee for the period between 1 April 2020 and 30 June 2020 (please refer attached correspondence).

Last night, Council resolved (in confidence) as follows:

- *That per the request submitted by Ryad Hill Pty Ltd (dated 8 April 2020) Council endorse a three (3) month deferral of rent term 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;*
- *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;*
- *That Council notes the projected cashflow implication of -\$120,892.25 for the 2019/20 financial year based on the rent deferral;*
- *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.*

Based on the resolution, I require further clarification to the following questions:

1. Are the first two points (above) consistent with the *Mandatory Code of Conduct (Commercial Tenancies)*? (<https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>);
2. In this circumstance, what are Council's specific obligations to the Park Manager regarding rent relief options up until the expiration of the lease (30 November 2020)?

## ATTACHMENT A

3. The Manager claims revenue has reduced from an average of \$120k per month down to \$26k per month. Their current rental obligations are approximately \$40k per month. Can Council offer a lesser amount (than the total \$40k per month) by way of rent relief?
4. Is Council obligated to extend the lease term in order to allow the Park Manager to recover lost earnings to reimburse any/all outstanding/deferred amounts;

OR

5. Can Council come to an agreement to with the Manager to recoup the deferred amounts over a specified period after the Lease expires?
6. The Park Manager owns 15 cabins on the site, with an approximate 'fair value' of \$10,850 each (totalling \$162,750). Can Council seek to acquire the assets (through agreement) to the extent of the deferred rent?

Thanks in advance and regards,

Scott Reardon  
Business Analyst (Property & Contracts)

### Town of Walkerville

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---

**From:** Mabel Tam <MTam@normans.com.au>

**Sent:** Thursday, 2 April 2020 9:48 PM

**To:** Scott Reardon <SReardon@walkerville.sa.gov.au>

**Subject:** RE: Levi Caravan Park

Hi Scott

Thank you for your email below in relation to the Levi Caravan Park (**Caravan Park**).

We have now reviewed the documents you sent through and given some consideration to this matter. Obviously, the COVID-19 pandemic is and will continue to impact many people, including business operators, and the circumstances surrounding the pandemic and the Government's response to it is changing rapidly. We have already seen a number of councils receive requests from tenants and managers for rent/fee relief. These requests will be in addition to businesses and incorporated associations seeking council support and ratepayers seeking relief from rates. Where a council owned site is tenanted or managed by a third party, it is generally not the role of the council to direct lessees and managers to cease, or modify, their operations and activities and councils should think carefully about taking on such a burden because it may have far-reaching financial and other adverse consequences. It is our advice that councils need to adopt clear and targeted hardship and relief policies to ensure that they have the financial capacity to provide support where it is needed most. Unfortunately, this is likely to mean that the Council cannot provide all support that is requested and needed, and decisions will need to be made having regard to the Council's broader aims and objectives.

With this in mind, we set out below some comments on the Management Agreement for the Caravan Park, the emergency declaration that applies in South Australia and other considerations that we suggest the Council have regard to in relation to this matter and the request that has been received from the manager.

### The Management Agreement

In respect of this particular matter, we have conducted a high level review of the Management Agreement and note the following:

## ATTACHMENT A

- The Management Agreement requires the manager to keep the Caravan Park open for trade.
- The Management Agreement requires the manager to maintain the 4 star rating for the Caravan Park.
- The Management Agreement requires the manager to comply with all laws and lawful directions and to comply with public health requirements.
- There are no specific termination rights for either party for matters outside of bankruptcy, default and misconduct.
- There is no “force majeure” clause that allows parties to suspend their contractual obligations during an event outside of their control.
- The current renewal period of the agreement is due to end in November this year and the Council has an option to purchase plant and equipment from the manager at the end of the Management Agreement.

Thus, in terms of the strict contractual position under the Management Agreement, the COVID-19 pandemic does not affect the parties' contractual obligations under the Management Agreement and it continues to apply on its terms.

### The Emergency Declaration

As you are likely aware, the *Emergency Management (Non-essential Business and Other Activities No 2) (COVID-19) Direction 2020* was made under section 25 of the *Emergency Management Act 2004* on 30 March and operates from 31 March 2020. Pursuant to this direction:

- numerous facilities and businesses are required to close to the public including, amongst other things, “*local government non-essential facilities – such as libraries and pools*” and buildings/halls for social meetings/recreation, fitness centres and swimming pools must be closed to the public. In relation to these premises and businesses, there is, however, an exemption for “*the provision of accommodation services on defined premises to house guests, permanent residents and workers provided that the density requirement is complied with*” and “*outdoor sporting and recreational venues, such as golf courses and tennis courts and playing fields, where the total number of persons participating in a particular activity does not exceed 10 people and provided that the density requirement is complied with*”. The “density requirement” is that the total number of persons present at premises must not exceed one person per 4 square metres. There is also a requirement that people maintain at least 1.5 metres distance between each other at all times.
- there is no express requirement for caravan and camping grounds to close altogether as has occurred in other States, but this could change in the future.

Thus, under the current terms of the Emergency Declaration (noting that this may change in the days and/or weeks to come) the Caravan Park could continue to operate (even in a scaled back fashion, which would reduce costs) provided that the “density requirement” and 1.5 metre minimum distancing rules are met and enforced. This is something that should be assessed by the Council's Environmental Health Officers and there are fact sheets and resources available on the LGASA website to assist Council in its regulatory role in this regard (as distinct from its role as landowner and principal under the management agreement).

We note that all national parks within South Australia have now closed their camp grounds due to the COVID-19 pandemic.

### The Local Government Act 1999

The Caravan Park is included in Schedule 8 of the *Local Government Act 1999* (SA) (**LG Act**) and the provisions of schedule 8 are also relevant considerations in the Council's decision making in respect of the Caravan Park. Relevantly, Schedule 8 requires the Council to continue to maintain Levi Park for the benefit of the community, to continue to maintain and preserve the caravan park and camping ground, to not alter the nature of the use of the Caravan Park without the Minister's consent and to have a community land management plan for the Caravan Park – which the Caravan Park should be managed in accordance with.

Thus, to the extent that the Management Agreement remains on foot the Council should stand by it in order for the Council to continue to comply with the requirements of Schedule 8 of the LG Act. If the Council agrees to bring the current Management Agreement to an end before the expiry date (and this regard, we

## ATTACHMENT A

strongly advise that the Council seek our further advice before doing so), it would need to have arrangements in place to ensure that the Caravan Park is continued to be managed in accordance with the requirements of Schedule 8 of the LG Act, and so that it can return to full operation after the COVID-10 pandemic has concluded.

### Other Considerations

Some other practical and legal considerations that we recommend the Council takes into account in its decision making around this matter are:

- It is our advice, and the advice of the LGA, that councils need to adopt clear and targeted hardship and relief policies to ensure that they have the financial capacity to provide support where it is needed most. Thus, we recommend that the request from the Caravan Park manager not be considered in isolation - rather that it be considered as part of a whole of Council approach to requests of this, and a similar, nature.
- The Council should not, acting in its capacity as owner of the Caravan Park and the principal under the Management Agreement, give any direction to the manager to cease operating the Caravan Park or modify its operations at the Caravan Park as this is a matter for the manager to determine itself. It is for the manager to interpret the Emergency Declaration itself and make its own arrangements regarding compliance with same.
- However, the Council as a regulatory authority should conduct a risk assessment of the Caravan Park to determine if there is a risk or perceived risk to public health. There are a number of resources available on the LGASA COVID-19 portal to assist with this. Where a risk exists, or may exist, an Environmental Health Officer may determine to issue a notice under the *South Australian Public Health Act 2011*(SA) that may impose restrictions on access to, or use of the, the Caravan Park, or require the Caravan Park to close entirely, and the manager would then need to comply with this notice under the terms of its Management Agreement. Consideration will need to be given to relevant factors that include the user mix for the Caravan Park (including permanent residents/workers/holiday makers). If such a notice is issued, this does not affect the continued operation of the Management Agreement, and as such this will still require separate consideration by the parties on the basis outlined above.
- The Council does have scope to share the financial burden of the COVID-19 pandemic in respect of the Caravan Park if and when it is deemed appropriate. This can take many forms including partial or full rent relief, early termination and in kind assistance. In this case, there is also the opportunity for the Council to take ownership of any plant and equipment that the manager may own at the Caravan Park and that could be used to offset any rent relief that is determined and provide a better offering to the market if the Council is intending to enter into a new long term management arrangement or lease at the end of the current agreement.
- Subject to any advice from the Council's Environmental Health Officers, the Council should consider the benefit in keeping the Caravan Park in operation (even in a scaled back fashion) to maintain the Caravan Park's assets and ensure that they don't become a target for vandalism. The Council should also consider whether it needs the manager to continue operation of the Caravan Park, or whether the Council has its own resources to cover this additional work if the Management Agreement was brought to an end before the expiry date.
- The Council should enquire as to whether the manager has any business continuity or other insurance that it could rely upon at this time to assist with rent and operational payments.
- The Council should enquire as to how many permanent residents reside at the Caravan Park (if any), what workers use the site regularly and what bookings have been taken (and which have not yet been cancelled at this point) until the end of the year.

If the Council does agree to provide assistance to the manager we recommend that the agreed terms are clearly documented and allow for review as circumstances evolve (if appropriate).



**ATTACHMENT A**

Please do not hesitate to contact me if you would like to discuss any of the above, or if you have any queries at all. Please also let us know if we can be of assistance regarding any future discussions with the manager.

Thanks Scott.

Kind regards  
Mabel

**Mabel Tam**  
Principal



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**From:** Scott Reardon [<mailto:SReardon@walkerville.sa.gov.au>]  
**Sent:** Monday, 30 March 2020 2:53 PM  
**To:** Mabel Tam  
**Subject:** Levi Caravan Park

Hi Mabel,

Thanks for taking the time to talk earlier. As discussed:

1. 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**).
2. This Head Agreement was for an initial Term of ten (10) years (commencing 1 December 2000) (**Term**) and included one (1) Option to Renew for a subsequent five (5) years (expiring 30 November 2015).
3. On 21 November 2005 Council resolved to vary this Head Agreement by increasing the initial Term to 15 years – retaining the one (1) Option to Renew for a subsequent five (5) years (expiring 30 November 2020).
4. The Head Agreement was then Assigned (**Agreement**) by a certain Deed of Assignment (dated 16 March 2007) over to Ryad Hill Pty Ltd (**Manager**).

The Manager has today contacted us seeking to:

- Terminate the Agreement as of the end of June 2020 (EOFY) – currently due to expire 30 November 2020;
- Freeze all rental payments until the expiration of the Agreement (claim of hardship).

The Manager has advised that the park is now empty, all bookings have been cancelled by tourists, and all staff have been 'let go'.

## ATTACHMENT A

Rental payments due to Council are approximately \$9,000 per month. The current revenue being generated on site is less than \$3,000.

Council currently does not have a position on how to proceed. Could you please provide some general advice regarding our options given the current COVID-19 climate, and how the recently announcements made by Prime Minister regarding 'rental leniency' could be relevant.

Regards,

Scott Reardon  
Business Analyst (Property & Contracts)

TOWN OF

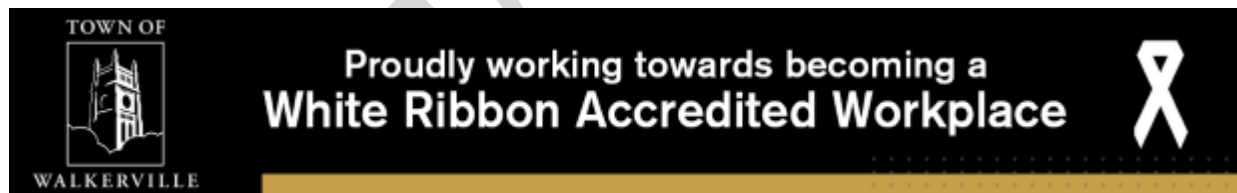


### Town of Walkerville

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Levi Park Caravan Park

15/09/2020

Scott Reardon.

Town Of Walkerville.

Dear Scott,

I write in relation to our lease of the Levi Park Caravan Park. As you are aware the Tourism Industry has and is still experiencing unprecedented downturns in occupancy and revenue, due to the travel restrictions imposed by Governments due to the Covid-19 pandemic.

Further to our previous requests to waive rental during these times I now further request council consider a waiver of rental. Council at the last two meetings have chosen only to defer the rental, and have not chosen any form of waiver. This is by no means “sharing the pain”. As our lease expires on 30/11/2020 the deferral is meaningless. I stress that I do not make this request lightly. We have endeavoured to make changes to assist cash flow, including reducing all staff working hours and reducing cabin tariffs by over 20%. We are also offering “stay 3 days pay for only 2” for all sites and accommodation.

We have qualified for the Job Keeper program from April until end September and we will qualify for the December quarter as well. The caravan park is operating at a substantial loss and we predict this will continue for the duration of our lease.

I assume that this is not your only request for rent relief, and after speaking with a local resident I believe a full waiver was granted to other tenants.

We purchased the business and lease in February 2007. During this period we have paid more than \$6.3 Million in rent. The current benchmark rentals for similar caravan parks is in the vicinity of 22% of revenue. At Levi Park the rental has been a consistent 32 to 34 % of revenue, and has been for the duration of our tenure. This equates to approximately \$140,000 per annum above the benchmark, or over 14 years is a total of approximately \$2 Million. We have invested considerable funds into the park during this period, and are already looking at a capital loss of at least \$1.5 Million. To enforce the full conditions of the lease during this pandemic would put us at a further loss of approximately \$320,000.

Numerous parks in SA have received full rental waivers from Landlords. Most of these caravan parks are paying annual rentals of less than \$100,000, but with revenues between \$1 million and \$3 Million dollars per annum.

We have always envisaged a smooth and seamless transition from our operations to the new lessees. We are currently working toward that by accepting reservations beyond the term of our tenure. We are desirous of a satisfactory outcome for all concerned.

## ATTACHMENT B

We are aware of the Federal Government Code of Conduct for Commercial Leasing and will look at all options if an agreement is not reached.

Although we consider a full rental waiver from 1<sup>st</sup> April 2020 to 30<sup>th</sup> November 2020 is appropriate, we are prepared to make an offer.

The offer of rental for the full 8 month pandemic period is:

\$69,758.96 which is 20% of the total payable under the lease conditions.

We sincerely hope we can settle on the above offer and all move forward for the benefit of all concerned.

Yours Sincerely,

Ian Baum.

Released