



Item No: 19.2
 File No: 7.69.3.8
 Date: 21 September 2020
 Attachment: A

Meeting: Council

Title: Walkerville Sports Club – Request for Rent Relief – COVID-19

Responsible Manager: Group Manager Corporate Services, Monique Palmer

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

Key Focus Area: Strategic Community Plan Focus area 3 - Transparent and accountable local tier of Government

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

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 Corporate Services Monique Palmer, Group Manager Planning, Environment & Regulatory Services Andreea Caddy, 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 19.2 Walkerville Sports Club – Request for Rent Relief – COVID-19.

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 19.4, 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)

That Council offers further assistance to the Walkerville Sports Club by waiving 75% of all rent and loan repayments due for August 2020, 50% for September 2020 and 25% for October 2020.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 19.2 Walkerville Sports Club – Request for Rent Relief – COVID-19 - 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 until 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

As a direct result of the COVID-19 social distancing restrictions and the associated closures imposed by the State and Federal Governments, at their Ordinary Meeting of 18 May 2020, Council resolved to grant a three (3) month waiver of all rent, outgoings and loan repayments (for the period between 1 April and 30 June 2020 (inclusive)) for its community tenants in order to assist the Townships various clubs weather the impacts of the global pandemic.

Though the recent gradual easing of these restrictions has allowed the Walkerville Sports Club Inc (**WSC / Club**) to recommence operations, the Club has again approached Administration seeking further assistance by way of rent relief as they continue to remain affected and financially impacted through their inability to operate at full capacity.

The Club has requested to pay 25% of all total payable amounts (for both rent and loan repayments) for the month of August 2020, 50% of all total payable amounts for the month of September 2020, and 75% of all total payable amounts for the month of October 2020; with 100% repayments resuming from November 2020. Should Council endorse the Club's request, this equates to approximately \$1,756 worth of waived payments.

It should be noted that while Council is under no obligation at law to provide waivers or deferrals, in accordance with the intent of the *National Mandatory Code of Conduct (Commercial Leasing Principles)*, it is recommended that Council endorses the recommendation of this report to ensure the local club continues to remain sustainable.

Background

At its Ordinary Meeting of 20 April 2020, Council received the Confidential COVID-19 – Lease/Licence Rent Waiver Projections, and resolved:

CNC361/19-20

That Council receives and notes this report.

At their Ordinary Meeting of 18 May 2020, Council resolved (in confidence):

CNC412/19-20

That Council grants a three (3) month waiver of rental payments, as well as any applicable outgoings and loan repayments for its community tenants for the period between 1 April and 30 June 2020 (inclusive).

Discussion/Issues for Consideration

COVID-19 Emergency Response Act 2020 and COVID-19 Emergency Response (Commercial Leases) 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) Regulations 2020 (SA)* came into effect 16 April 2020.

The legislation 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 provisions within the National Mandatory Code of Conduct (Commercial Leasing Principles) (**Code**).

Section 7 of the Act prohibits a Lessor/Landlord from taking action against a Tenant for the following breaches if the Tenant is suffering from hardship as a direct result of COVID-19:

- Failure to pay rent;¹
- Failure to pay outgoings;²
- Closure of business;³
- Any other act or omission contrary to the terms of the lease.⁴

A Lessor/Landlord is also prohibited (under s 7) from:

- Increasing the rent payable;⁵ and/or
- Enforcing the reimbursement of land tax.⁶

Requirement to offer Deferrals and/or Waivers

Principles 3, 4 & 5 of the **Code** recommends that Landlords offer either waivers or deferrals to their tenants.⁷ While these principles have not been given effect at law in South Australia, the intent of the Code is that landlords must favourably consider any such requests on a case by case basis in order to assist tenants remain operational during their tenure.

Options for Consideration

Option 1

That Council offers further assistance to the Walkerville Sports Club by waiving 75% of all rent and loan repayments due for August 2020, 50% for September 2020, and 25% for October 2020.

Option 2

That Council directs Administration to undertake the following alternate actions:

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¹ *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (3) (a).

² *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (3) (b).

³ *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (3) (c).

⁴ *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (3) (d) & (4).

⁵ *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (5).

⁶ *COVID-19 Emergency Response Act 2020 (SA)*, s 7 (6).

⁷ <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

Analysis of Options

Option 1

This option recognises the adverse impact that COVID-19 has had on community groups and sporting clubs, and further assists the Club to remain financially sustainable and accountable.

Financial Implications

The amounts payable by the Club during the three (3) months period between August and October 2020 (inclusive) totals \$3,390; comprised by \$625 worth of building rent repayments and \$2,765 worth of loan repayments.

Based on the Clubs proposal, of the \$3,390, a total of \$1,695 is proposed to be waived.

Month	Rent Payable	Rent Waived	Loan Payable	Loan Waived
August	\$52.08	-\$156.25	\$230.42	-\$691.25
September	\$104.17	-\$104.17	\$460.83	-\$460.83
October	\$156.25	-\$52.08	\$691.25	-\$230.42
Total	\$312.50	-\$312.50	\$1,382.50	-\$1,382.50

Regional Implications

There are no perceived regional implications association with this report.

Governance Implications

The proposal is both aligned and consistent with Council Policy and the previous recommendations made by both the Local Government Association and Norman Waterhouse, which recommends that Councils adopt clear and targeted hardship and relief policies to ensure that they have the financial capacity to provide support for its tenants.

Preferred Option & Reasoning

Option 1 is the preferred option on the basis that it recognises those facilities that were forced to close, allows Council to share the burden of COVID-19, and supports the hardships of community tenants in line with Council Policy.

Attachment

Attachment A	WSC Application for Assistance
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Scott Reardon

From: Paul Reid <finance@walkervillesportsclub.com.au>
To: Scott Reardon
Cc: Mark Webber [WSC]
Subject: Council rates

Hi Scott,

I trust you are well.

Thank you for the councils support with waiving the past quarters fees, it has been much appreciated by all of our members and sections and allowed us some breathing space. As you would be aware, we have re-opened and trading under very strict Covid restrictions as per the Governments instructions.

These restrictions have increased the workload not only our volunteer helpers but also our paid workers with cleaning change rooms and club rooms after every use, wiping over all tables and chairs after each use etc etc. This with reduced numbers permitted in our club rooms and encouragement for people to not congregate or socialise with others, has resulted in reduced turnover though the bar and canteen (Which has remained shut on Sundays).

As such we would kindly request a slower build up back to full rates. We would like to increase the payments back to 25% in August, 50% in September, 75% in October and back to 100% come November.

If this can be provided it would allow us to build up turnover as more people feel comfortable staying around after games for a bite to eat, a coffee or a drink and as such allow us to manage payment of Council on an equivalent growth line.

I do look forward to Councils confirmation and again thank you for the co-operation for which we have so far been very grateful. If you have any questions please let me know.

Kind Regards
Paul Reid
Finance Director WSC