



**Meeting:** Council

**Title:** Levi Park Caravan Park, Management Agreement Report, July 2016

**Responsible Manager:** Chief Executive Officer, Kiki Magro

**Author:** General Manager, Heather Barclay  
and Property and Contracts Manager  
James Forde

**Type of Report:** **Decision Required**

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Item No: 16.1.1

File No: 16.51.4.11

Date: 18 July 2016

Attachment: A and B

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)(h) of the Act being:

(h) legal advice;

The said information relates to the Management Agreement of Levi Park Caravan Park.

**Recommendation (Public)**

**Moved:**  
**Seconded:**

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Administration being the Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, and the Protocol, Compliance and Governance Officer, Deb Bria from being present at the meeting on the basis that the matter contained in this report is information of the nature specified in subsections 90(3)(h) of the Act being:

(h) legal advice;

The said information relates to the Management Agreement of Levi Park Caravan Park.

## Recommendation (Confidential)

1. That Council receives and notes the Levi Park Caravan Park, Management Agreement Report, July 2016.
2. That Council advise the managers of the Levi Park Caravan Park (*Ryad Hill Pty Ltd*), that their request for the cessation of interest on capital payments due under the Management Agreement between Ryad Hill Pty Ltd and Council for the Management of the Levi Park Caravan Park, **be refused**, and that a Deed of Agreement be prepared (and signed by the parties) that recognises the existing and accepted method of calculation of payment.
3. That Administration advises the Managers of the Levi Park Caravan Park (*Ryad Hill Pty Ltd*), of Council's decision in 2. above.

## Recommendation (Confidential)

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report titled "Levi Park Caravan Park, Management Agreement Report, July 2016" dated 18 July 2016, and any other documentation relative to the report to be retained in confidence. In addition, that the minutes relating to this Agenda Item be kept confidential until this matter has been finalised excepting that the Council authorises the release of relevant documentation to parties to enact the resolution and that this order be reviewed every 12 months by the Chief Executive Officer; and,

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

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## Summary

Council has received a request from Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park) regarding the cessation of certain interest on capital payments due under the Management Agreement between Council and the Manager. The amounts vary but average to approximately \$30,000 each quarter.

The request was put to Council (in April 2015) as part of a series of issues set out in a letter to Council from the **Managers** dated (received) 17 April 2015. The request was subsequently reiterated in the letter to the CEO, dated 6<sup>th</sup> July 2015, for consideration by Council's appointed Working Group on this matter, and tabled at the August 2015 Ordinary Council Meeting.

The Administration sought legal advice from its solicitors to obtain clarity on the position before bringing the matter before Council for consideration.

The legal advice has now been received and it appears appropriate that interest on capital payments due under the Management Agreement should be retained.

Accordingly, it is recommended that Council refuse the request for the cessation of certain interest on capital payments due under the Management Agreement.

Members should note that this report does not address the totality of the issues relating to Levi Park Caravan Park Agreement, i.e. matters of tenure, ownership of assets and future operations, all of which will be the subject of a further confidential report to Council in due

course, under the banner of the larger portfolio of work considering the review of Community Land Management Plans and Leases and Licenses within the Town of Walkerville.

The recommendation is presented for adoption or otherwise.

## **Background**

Members will be aware of reports presented to Council (in confidence) at the May and August 2015 Ordinary Council Meetings, as it relates to the Levi Park Caravan Park Management Agreement.

By way of background, *Ryad Hill Pty Ltd*, entered into an Agreement with the Town of Walkerville (Council) for a term of 15 years commencing on the 1<sup>st</sup> day of December 2000 and expiring on the 30<sup>th</sup> day of November 2015, to manage the Caravan Park on behalf of the Council, subject to the conditions set out in the Agreement.

The Agreement referred; that the Manager shall be entitled to an extension of the term of Agreement for a further period of five (5) years commencing on the 1<sup>st</sup> day of December 2015 ("the extended term"). The **Managers** have formally given notice (in writing) of their intention to exercise their right to extend the term of the Agreement by 5 years to **30<sup>th</sup> November 2020**, and this has been acknowledged.

Members may recall the report to Council in May 2015, included a proposal received from Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park), dated (received) 17 April 2015, requesting Council grant a lease extension including a further 21 year lease, to commence at the expiration of the existing lease term (30<sup>th</sup> November 2015). The letter also referred to concerns the Manager had in relation to some clauses contained in the Agreement.

A copy of the **Managers** letter (17 April 2015) is included in **Attachment A**.

Council resolved that the request and concerns raised would need consideration in the context of the Local Government Act and in the context of fair, competitive and non-discriminate procedures and process. Council also resolved that a Working Group be established comprising the Mayor, Councillor Fricker and Webster, and the CEO and a nominee appointed by the CEO, to progress consideration of the matters raised and provide further reports to Council.

In August 2015, a further report was provided to Council (in confidence). The Council subsequently resolved the following (in confidence);

### **CNC84/15-16**

- 1. The Managers of Levi Park Caravan Park, Ryad Hill Pty Ltd, be formally advised that Council has acknowledged their request dated (received) 17 April 2015 for an extended term of 21 years, and in accordance with the Local Government Act 1999 (Section 202), cannot allow the current lease to exceed a period of 21 years in entirety, and;*
- 2. At the cessation of the current Agreement with Ryad Hill Pty Ltd, Council desires to 'test the market' via an open tender process for the Management of the Levi Park Caravan Park or variation thereof, acknowledging the provision of Schedule 8, clause (9) of the Local Government Act 1999,*
- 3. The Managers of Levi Park Caravan Park, Ryad Hill Pty Ltd, be formally advised that Council will complete a 'condition assessment' of assets within the Levi Park Caravan Park Site, and seek to clarify lessee and lessor responsibilities during 2015/16.*
- 4. The Managers of Levi Park Caravan Park, be advised that following adoption of its 2015/16 budget, (including allocation for Cabin Up-Grades - \$20,000, and Sewer Up-*

*Grade \$195,000), Council will work collaboratively to deliver up-grades to minimise disruption to business.*

5. *Council considers allocating funds within the 2016/17 budget, for the development of a Masterplan for the Levi Park site, which considers future operating models for the site, is aligned to the Local Government Act provisions (above), and is consistent with Councils community land management plan for the site.*
  
6. *The Levi Park Caravan Park, Working Party established by resolution in May 2015, be maintained for the term of the current Council, and meet as required, to contribute to the above program.*

*\*\*Note: - Since the August 2015, decision of Council (above), to 'test the market', Members will be aware that amendments to the Local Government Act (March 2016), provide for lease terms up to 42 years in entirety (subject to Consultation).*

At the Meeting in August 2015, a letter was tabled from the **Managers** (dated 6<sup>th</sup> July 2015), which confirmed the lease extension to 30<sup>th</sup> November 2020, and requested the Working Group consider the review of the agreement as it related to the payment of the Annual Guaranteed Return on Capital (AGTC); in particularly requesting to have the capital annual interest payment deleted from the Agreement, in order they could invest those funds into the Park. The previous letter to Council in April 2015, had also requested consideration of this matter, as the Managers considered it no longer relevant, as in their consideration, Council had not financed anything since 2007.

Accordingly, one of the key issues raised by the Manager in its letter of 17 April 2015, which requires resolution, has been the ongoing obligation to make "capital interest payments" to Council.

In essence, these payments are the mechanism by which Council is reimbursed by the Manager for capital expenditure at the site.

The Manager has requested that these payments no longer be payable.

### **Discussion/Issues for Consideration**

In considering this request, the Administration has required a close review of the Management Agreement be conducted.

To do this the Administration sought legal advice from its solicitors to obtain clarity on the position before bringing the matter before Council for consideration.

As it was known that the investigation would take some considerable time to review and on a prima face basis (from an Administrative perspective) it appeared that the payment may not be required, an interim position was offered to the Manager whereby the requirement to make the interest payments would be suspended until the matter was investigated and resolved. This position was taken, so that any possible reimbursement by Council may be minimised, if the payment was not required. *(The payment equates to approximately \$30,000 per quarter).* Accordingly, at this point the payments are suspended pending investigation and decision.

Per the above, the legal advice has taken some months to prepare.

A copy of the legal advice is contained in **Attachment B**.

In summary, the advice provides that it remains appropriate for the interest payments to be made.

The advice does however raise concerns regarding how the interest payment is calculated, but refers that a detailed accounting investigation would be required to determine any variations to amounts paid.

The advice does however suggest that the conduct of the parties and approach taken to calculation of the payment has been acceptable for over ten years and this may be an approach that Council is prepared to continue to accept, i.e. not to pursue a detailed accounting investigation.

Having received that advice, Council should consider the **Managers** request to cease payment of the interest payments.

Accordingly, in the context of the remaining term of the Management Agreement, and in light of the fact that Council has already resolved to “test the market” upon the expiration of the Management Agreement, it would appear that maximising revenue to the expiry of the Management Agreement is a favourable outcome, as it would appear that there is no incentive for the Manager to invest any savings made in relation to the interest payments back into the site, given the nearing expiration of the Agreement.

Based on the above it is recommended that Council advise Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park) that their request for the cessation of interest on capital payments due under the Management Agreement, be refused.

## **Options for Consideration**

### **Option 1**

That Council advise Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park) that their request for the cessation of interest on capital payments due under the Management Agreement between Ryad Hill Pty Ltd and Council for the Management of the Levi Park Caravan Park, **be refused** and a deed of agreement be entered into which recognises the current terms of payment.

### **Option 2**

That Council advise Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park) that their request for the cessation of interest on capital payments due under the Management Agreement between Ryad Hill Pty Ltd and Council for the Management of the Levi Park Caravan Park, **be refused** and a full and comprehensive financial investigation be undertaken to determine the required payment and any variations required.

### **Option 3**

That Council advise Ryad Hill Pty Ltd (the **Managers** of the Levi Caravan Park) that their request for the cessation of interest on capital payments due under the Management Agreement between Ryad Hill Pty Ltd and Council for the Management of the Levi Park Caravan Park, **be accepted**.

## **Analysis of Options**

### **Option 1**

Option 1 is considered appropriate on the basis that legal consideration finds that there should be a continuance of the approach by the parties and the application for cessation of the capital interest payment be **refused**. Such a decision will also continue the expected income until cessation of the Agreement in 2020.

Under Option 1, it is suggested that there is a deed of agreement that recognises the existing payment approach as acceptable (as has been the case for the term of the existing agreement), to ensure there is no rebuttals or variation claims by either party at the end of the Agreement in 2020.

## **Option 2**

Option 2 is per option 1; on the basis that legal consideration finds that there should be a continuance of the approach by the parties and the application for cessation of the capital interest payment be **refused**.

Under Option 2, however the Council may require that a full and comprehensive financial forensic investigation be undertaken to determine any variations required to the payment and any underpayments or reimbursements prior to continuance of the payment.

## **Option 3**

Option 3, would (per legal advice), not accord with the agreement and result in a net loss of income per annum in the order of \$120,000.00.

## **Community Implications**

The management and leasing of Community Land must be aligned to Councils CLMP's, Community Land Management Plans, and relevant legislation (namely the *Local Government Act 1999*). Council has agreed that it intends to; '*At the cessation of the current Agreement with Ryad Hill Pty Ltd, 'test the market' via an open tender process for the Management of the Levi Park Caravan Park or variation thereof, acknowledging the provision of Schedule 8, clause (9) of the Local Government Act 1999*' to ensure best value for the community.

## **Governance Implications**

Council is required to adhere to *Local Government Act 1999*, requirements as it relates to Community Land.

## **Preferred Option & Reasoning**

### Option (1)

It is the Administration's recommendation that option 1 is the preferred option as it provides a continuance of the Agreement in the manner that the parties have acted and accepted since the commencement of the agreement on 1 December 2000.

The recommendation is presented for adoption or otherwise.

## **Attachment/s**

Attachment A	Ryad Hill Letter to Council, received 17 April 2015
Attachment B	Norman Waterhouse Legal Advice, June 2016