



Item No: 19.1

File No:16.85.1.22

Date: 19 August 2019

Attachment: A, B

Meeting: Council

Title: Walkerville Sports Club Incorporated
Loan Repayment Schedule, Lease and
Licence Agreements.

Responsible Manager: Group Manager Corporate Services, Katy Bone

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 Magro, Group Manager Asset & Infrastructure Josh Bowen, Group Manager Planning, Environment & Regulatory Services Andreea Caddy, Group Manager Corporate Services Katy Bone, Group Manager Customer Experience Danielle Garvey, Manager Marketing & Communications Sonia DeNicola, 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 Walkerville Sports Club Loan Repayment Schedule, Lease and Licence Agreements.

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 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 grants the Walkerville Sports Club Incorporated with an extension to the existing loan term by five (5) years;
2. That Council endorses the proposed annual mandatory loan repayment schedule of \$11,061.74 (payable in four equal quarterly instalments of \$2,765.43);
3. That Council supports (in Principle) the Walkerville Sports Club's proposal to make additional voluntary loan repayments, thus reducing the principal of the existing loan – the amounts payable being:
 - a) Year 1 - \$2,000 (plus GST);
 - b) Year 2 - \$1,500 (plus GST);
 - c) Year 3 - \$1,000 (plus GST);
 - d) Year 4 - \$500 (plus GST);
 - e) Year 5 - \$0 (plus GST).
4. That Council enters into a new Lease Agreement with Walkerville Sports Club Incorporated over a portion of land contained in Certificate of Title Volume 5785 Folio 445 authorising the Club's use and occupancy of Walkerville Oval Sports Club Building for a term of five (5) years commencing 1 November 2019 and expiring 31 October 2024;
5. That the commencing annual rent be \$2,500 plus GST and subject to annual CPI increases;
6. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents that pertain to the proposed Lease Agreement between the Walkerville Sports Club Incorporated and Council including affixing of the common seal of Council;
7. That Council enters into a new non-exclusive Licence Agreement with Walkerville Sports Club Incorporated over a portion of land contained in Certificate of Title Volume 5785 Folio 445 authorising the Club's use of Walkerville Oval and Surrounds for a term of five (5) years, commencing 1 November 2019 expiring 31 October 2024;
8. That the applicable annual Licence Fee be as follows:
 - a) Year 1 - \$500 (plus GST);
 - b) Year 2 - \$1,000 (plus GST);
 - c) Year 3 - \$1,500 (plus GST);
 - d) Year 4 - \$2,000 (plus GST);
 - e) Year 5 - \$2,500 (plus GST);
9. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents that pertain to the proposed Licence Agreement between the Walkerville Sports Club Incorporated and Council including affixing of the common seal of Council.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item Walkerville Sports Club Loan Repayment Schedule, Lease and Licence Agreements 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 Walkerville Sports Club Incorporated ("WSC" / "Club") has been a tenant at Walkerville Oval for a number of decades. While the Club's most recent Lease Agreement expired in 2004 the Club has since retained its occupancy over the premises on a periodic Hold Over basis.

As at 18 December 2017 the Club had accumulated a debt that totalled approximately \$31,000. This total was comprised by missed loan repayments, unpaid maintenance, insurance costs and lease fees.

Due to this period of lease and loan breach, Administration wrote to the Club regarding this matter and on 4 April 2018 the Club made a payment of \$6,298, on 4 June 2018 a payment of \$6,298, and on 13 August 2018 a payment of \$2,234. Between 29 August and 14 December 2018 the Club proceeded to resolve all further outstanding amounts, and have remained consistent with their payments to date.

In October 2018 the Club was advised that their periodic tenancy agreement would be terminated in December 2019 due to the Club being in breach of its Lease Agreement. Subsequent to this notification, Administration and the Club have since been engaged in discussions to renegotiate both the terms and conditions of new tenancy agreements and a mutually agreed loan extension and repayment schedule.

On 25 July 2019 agreement was finally reached on a suitable loan repayment schedule, as well as the terms and conditions of the proposed lease and licence agreements.

Administration is seeking Council's support to the recommendations outlined in this report in order for Administration to proceed with the execution of the respective agreements.

Background

Following an ongoing period of loan repayment abuse and numerous unresolved lease breaches, at their meeting 20 August 2018 Council resolved:

CNC74/18-19

1. *That Council requires Administration develop a strategy, which includes a communication plan, to issue WSC with a self-executing payment plan attached to a notice of intention to terminate tenancy under periodic lease conditions allowing a minimum of 6 months' notice which will be presented to Council at its next meeting;*
2. *That Council requires the WSC to acknowledge the outstanding amount of their loan and requests it be listed in their audited financial statements, and;*

3. *That Council demands the WSC provide Council with a copy of their Auditor's Report for financial year 17/18 as per the conditions of their lease.*

At its meeting 17 September 2018 Council subsequently resolved to:

CNC117/18-19

1. *serve notice on the Club to terminate the periodic tenancy, giving at least 6 months' notice; and*
2. *set a deadline for the new lease terms and new loan agreement to be agreed, failing which the matter will be brought back to Council for a decision on a "Plan B".*

In accordance with resolution **CNC117/18-19**, on 5 October 2018 the CEO served a notice of termination ('Notice') on the Club advising them that their existing periodic lease would terminate on 31 December 2019.

Following this notice, Administration and the Club commenced discussions to renegotiations a new tenancy agreement for the site and on 25 July 2019 the Club President both agreed to the terms and conditions of the proposed lease and provided Administration with a loan repayment schedule that was deemed to be reasonable on the basis that: it did not stray too far from the existing loan repayments; and ensured that the club's financial obligations would be fulfilled over the course of the next five (5) years (aligning with the term of the proposed new Lease Agreement).

Administration subsequently provided the Club with a draft Licence and proposed Licence Fee Charge for the Club's use of the oval and surrounds. These charges were also accepted by the Club President 25 July 2019.

Discussion/Issues for Consideration

Loan Repayment Schedule

The Club's existing loan commenced 15 March 2005 for a term of 15 years (expiring 15 March 2020). The loan amount totalled \$140,000, required annual payments of \$12,597.84 (payable in to equal half-yearly instalments of \$6,298.92) and required one (1) final Balloon payment of \$59,364.41 upon the expiration of the loan term.

The Club now requests that Council extend the term of the loan by five (5) years, and have agreed to make mandatory annual payments of \$11,061.74 (payable in four equal quarterly instalments of \$2,765.43). Based on these repayment, the Balloon repayment due at the expiration of the loan will reduce to approximately \$10,000.

In addition to these mandatory payments, the Club have also indicated that they will pay additional annual voluntary amounts off the principal of the loan in order to reduce the final Balloon payment. The Club have indicated that they will make the following additional payments:

	2019/2020	2020/21	2021/22	2022/23	2023/24
Voluntary Principal Payment	\$2,000	\$1,500	\$1,000	\$500	\$0

Lease Agreement

The Club's previous lease agreement expired 31 December 2004 and they have occupied the premises on a periodic Hold Over tenancy ever since.

On 5 October 2018 the Club was advised that the existing periodic lease arrangement would terminate 31 December 2019. Following a period of negotiation, on 25 July 2019 the Club President agreed to

the proposed lease terms and conditions as put forth by Administration. A summary of the terms and conditions is outlined as follows:

Tenant / Licensee	Walkerville Sports Club Incorporated ABN 11 604 044 684
The Land	The whole of the land comprised in Certificate of Title Volume 5785 Folio 445 (the land known as Walkerville Oval).
Premises	The portion of the land comprised in Certificate of Title Volume 5785 Folio 445 (the premises known as Walkerville Sports Club).
Permitted Use	Walkerville Sports Club and associated club sporting, function and meeting venue.
Initial Term	Five (5) years.
Commencement Date	1 November 2019
Licence Fee	\$2,500 per annum (plus GST) payable monthly in advance.
Renewal Term	Nil.
Rent Review	Annual CPI Increases on Lease Anniversary Date.
Public Liability Insurance	\$20,000,000
Special Conditions	<p>That the Club is bound to its maintenance obligations as outlined in the Lease Building Maintenance Schedule.</p> <p>That Council and the Club have entered into concurrent non-exclusive Licence Agreement for the Club's use of Walkerville Oval.</p> <p>That any Breach of the Licence Agreement will constitute a Breach of this Lease Agreement, and similarly, any Breach of Lease will constitute a Breach of Licence.</p> <p>The Club has entered into a loan repayment schedule for loan amounts owing to Council. Ongoing payment of the loan is a requirement of this tenancy agreement. Any Breach of the Loan conditions will constitute a Breach of Lease and Licence.</p> <p>The Walkerville Sports Club Incorporated has agreed to pay additional payments toward the principal of the Loan in the amounts of:</p> <ul style="list-style-type: none"> • Year 1 - \$2,000 (plus GST); • Year 2 - \$1,500 (plus GST); • Year 3 - \$1,000 (plus GST); • Year 4 - \$500 (plus GST); • Year 5 - \$0 (plus GST).

Licence Agreement

The previous lease agreement held between Council and the Club included both the building and oval within the Club's leased area. This arrangement precluded Council from licensing the oval to third parties, however it should also be noted that Council was still responsible for maintaining the upkeep and condition of the oval.

Based on the new arrangement however, the Club will only have exclusive use of the sports club building, and will have a non-exclusive licence that authorises their use of the oval and surrounding areas during specified times. This new arrangement will permit Council to licence the oval to third parties.

A summary of the terms and conditions of the proposed new Lease Agreement is as follows:

Tenant / Licensee	Walkerville Sports Club Incorporated ABN 11 604 044 684
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The Land	The whole of the land comprised in Certificate of Title Volume 5785 Folio 445 (the land known as Walkerville Oval).
Premises	The portion of the land comprised in Certificate of Title Volume 5785 Folio 445 (the premises known as Walkerville Oval and Surrounds).
Permitted Use	Sporting and recreation activities associated with the Walkerville Sports Club. Licensed hours of use: <ul style="list-style-type: none"> Monday to Friday between the hours of 3:30 pm and 10:00 pm Saturday and Sunday between the hours of 8:00 am and 10:00 pm.
Initial Term	Five (5) years.
Commencement Date	1 November 2019
Rent	<ul style="list-style-type: none"> Year 1 - \$500 (plus GST) payable monthly in advance; Year 2 - \$1,000 (plus GST) payable monthly in advance; Year 3 - \$1,500 (plus GST) payable monthly in advance; Year 4 - \$2,000 (plus GST) payable monthly in advance; Year 5 - \$2,500 (plus GST) payable monthly in advance.
Renewal Term	Nil.
Rent Review	Annual CPI Increases on Licence Anniversary Date.
Public Liability Insurance	\$20,000,000
Special Conditions	<p>The Licensee acknowledged that the Licence is entered into on a non-exclusive basis and the licence in no way confers occupancy rights outside of the designated authorised hours of use.</p> <p>In addition to the permitted hours of use, the Club may access the oval as and when needed for the purpose of grounds maintenance for areas directly associated with the Club's sporting activities.</p> <p>That Council and the Club have entered into concurrent Lease Agreement for the Club's use of the Walkerville Sports Club building.</p> <p>That any Breach of the Licence Agreement will constitute a Breach of this Lease Agreement, and similarly, any Breach of Lease will constitute a Breach of Licence.</p> <p>The Club is responsible for the ongoing maintenance and preparation of the Cricket Pitch at the Clubs cost.</p> <p>The Club is responsible for the playing field line-marking for all seasonal sports associated with the Club.</p> <p>Council's maintenance obligations of Walkerville Oval will be restricted to that outlined in Licence Maintenance Schedule.</p>

Options for Consideration

Option 1

1. That Council grants the Walkerville Sports Club Incorporated with an extension to the existing loan term by five (5) years;
2. That Council endorses the proposed annual loan repayment schedule of \$11,061.74 (payable in four equal quarterly instalments of \$2,765.43);

3. That Council supports (in Principle) the Walkerville Sports Club's proposal to make additional voluntary loan repayments, thus reducing the principal of the existing loan – the amounts payable being:
 - a) Year 1 - \$2,000 (plus GST);
 - b) Year 2 - \$1,500 (plus GST);
 - c) Year 3 - \$1,000 (plus GST);
 - d) Year 4 - \$500 (plus GST);
 - e) Year 5 - \$0 (plus GST);
4. That Council enters into a new Lease Agreement with Walkerville Sports Club Incorporated over a portion of land contained in Certificate of Title Volume 5785 Folio 445 authorising the Club's use and occupancy of Walkerville Oval Sports Club Building for a term of five (5) years commencing 1 November 2019 (expiring 31 October 2024);
5. That the commencing annual rent be \$2,500 (plus GST and subject to annual CPI increases);
6. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents that pertain to the proposed Lease Agreement between the Walkerville Sports Club Incorporated and Council including affixing the common seal of Council;
7. That Council enters into a new non-exclusive Licence Agreement with Walkerville Sports Club Incorporated over a portion of land contained in Certificate of Title Volume 5785 Folio 445 authorising the Club's use of Walkerville Oval and surrounds for a term of five (5) years, commencing 1 November 2019 (expiring 31 October 2024);
8. That the applicable annual Licence Fee be as follows:
 - f) Year 1 - \$500 (plus GST);
 - g) Year 2 - \$1,000 (plus GST);
 - h) Year 3 - \$1,500 (plus GST);
 - i) Year 4 - \$2,000 (plus GST);
 - j) Year 5 - \$2,500 (plus GST);
9. That the Mayor and Chief Executive Officer be authorised to execute any/all relevant and ancillary documents that pertain to the proposed Licence Agreement between the Walkerville Sports Club Incorporated and Council including affixing the common seal of Council.

Option 2

That Council does not endorse or proceed with the proposed Loan extension and repayment schedule; the proposed Lease Agreement and Licence Agreement.

Analysis of Options

Option 1

Provides a recommendation that aligns with focus areas 3 & 4 of *2016 – 2020 Living in the Town of Walkerville: a strategic community plan* and supports a long-term tenant in their security of tenancy for club development while also ensuring their accountability to Council.

Option 2

This recommendation does not support the Club in either the short or long-term, as it results in their eviction from the site. However, this option offers Council the opportunity to re-evaluate the use of the premises, as well as potential tenants to occupy of the premises.

Financial Implications

In summary, the Club's financial liability to Council over the next five (5) is as follows.

	2019/2020	2020/21	2021/22	2022/23	2023/24
New Annual Rent	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Oval Licence Fee	\$500	\$1,000	\$1,500	\$2,000	\$2,500
Loan Repayment	\$11,061.74	\$11,061.74	\$11,061.74	\$11,061.74	\$11,061.74
Voluntary Principal Payment	\$2,000	\$1,500	\$1,000	\$500	\$0
	\$16,061.74	\$16,061.74	\$16,061.74	\$16,061.74	\$16,061.74

Under the terms of the lease agreement, the Club will also be responsible for the ongoing maintenance of the building; with the exception of any structural related matters.

Under the terms of the licence, while Council will retain all maintenance costs associated with the Oval and Surrounds (with the exception of line-marking and cricket pitch maintenance), Council will now be in a position to licence the Oval to other parties for use (viz Walkerville Primary School and St Andrew's School). This will in turn allow Council to generate additional revenue.

Community Implications

Though the portion of Community Land (sports club building) will be alienated by lease to a sports club pursuant to s 202 (1) & (3) (a) of the *Local Government Act 1999*, the continued use and activation of the site will directly benefit the Club, it's members, visitors to the site and the greater community, thus will demonstrate Council's commitment to fostering community groups.

Governance Implications

The proposal is both aligned and consistent with Council's *Lease and Licence for Community Land and Buildings Policy* in that it seeks to optimise the use of its community land holdings for the benefit of the community and maximises the amount of revenue it derives from its community land holdings.

Preferred Option & Reasoning

Option 1 is the preferred option as it supports a long-term tenant, generates a revenue for Council by way of reasonable rent and activates the area for the benefit of the community.

Attachment/s

Attachment A	Proposed Lease Agreement
Attachment B	Proposed Licence Agreement