



Item No: 16.1.2  
File No: 16.55.1.30  
Date: 15 May 2017  
Attachment: A & B

**Meeting:** Council

**Title:** Leases and Licences Up-Date

**Responsible Manager:** General Manager, Heather Barclay

**Author:** Property & Contracts Officer, Allison Down

**Key Focus Area 3 & 4:** Transparent and accountable local tier of Government that is respected for its forward thinking approaches and cross council collaborations; and, Healthy connected and inspired community

**Type of Report:** **Information Report**

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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)(d) 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**

#### Pursuant to s90(3)(d)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except the Council's Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, Property and Contract Officer, Allison Down and the Protocol, Compliance & Governance Officer, Deb Bria be excluded from attendance at the meeting for the report on Lease and Licences.

The Council is satisfied that, pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information that is 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

That the Lease and Licence Up-Date Report, 15 May 2017, be received and noted.

## Recommendation

### Pursuant to s.91(7)

That having considered the Agenda Item, Lease and Licence Up-Date Report, 15 May 2017 in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report entitled Lease and Licence Up-Date Report, 15 May 2017 relevant to this Agenda Item be retained in confidence (excepting that Council authorises the release of the resolution / minutes) until the matters are resolved 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* Council and re-admit the public.

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## Summary

In addition to the report that was presented to Council at its March 2017 meeting, the following is provided to update Elected Members of progress on this matter. A copy of the March 2017 Ordinary Council Meeting report is attached and marked **Attachment A** for reference.

In late November 2016 officers commenced negotiations with lessees who have leases pending review. This report is provided to update Council on progress for the following properties:

- Walkerville Pre-Kindy at 13 Alfred Street, Walkerville
- Walkerville Lawn Tennis Club, Creswell Reserve, Walkerville
- Walkerville Bowls Club, 24 Smith Street, Walkerville
- Walkerville Sports Club, 24 Smith Street, Walkerville
- Walkerville Oval, 24 Smith Street, Walkerville
- Smith Street Sports and Recreation, 39 Smith Street, Walkerville
- Levi Oval, 1A Harris Street, Vale Park
- Levi Park, 1A Harris Street, Vale Park

## Background

### The Walkerville Pre-Kindy

Council went to market between 31 March and 8 May 2017, seeking Expressions of Interest from suitably qualified and experienced childcare providers regarding the use and occupation of the site. A copy of the Expression of Interest papers are included and marked **Attachment B**. The Administration used the SA Tenders and Contracts website for the management of this process.

The Expression of Interest document was uploaded by 14 different agencies and resulted in three parties inspecting the property. The process concluded with one party making a submission. The submission in question was provided by the current lessees. At the time of writing this report, the submission had not been fully assessed to determine its compliance. A further report will be provided to Council in June 2017 with recommendations regarding the next steps in relation to the Expression of Interest and the submission.

Anecdotal feedback from other parties concerning the Expression of Interest and the reluctance of those businesses to make a formal submissions suggested that the site needed to undergo substantial changes to make it a worthwhile option and that the current childcare licensing arrangements make it too challenging for incoming parties to be a viable option to pursue.

In the lead up to presenting the Expression of Interest to the market, the Administration obtained a formal valuation of the property in March 2017. This estimated that the market rental value of the property was approximately \$25,500 per annum.

To action Council's resolution **CNC139/16-17**, of September 2016 Officers provided a draft lease to the current lessees in December 2016 for consideration. The proposed draft lease offers tenancy term of up to 30 June 2018, to take account of Council's resolution and the tender. The lessess have sought some clarification regarding the proposed lease from the Administration in relation to items in the disclosure statement but had indicated that the document was generally satisfactory.

At the time of writing this report, the Administration had intended to present the draft lease to Council in May 2017, however this matter is now deferred as a result of the tender response.

### Walkerville Lawn Tennis Club

To enact Council resolution **CNC137/16-17**, Officers have been working with the Walkerville Lawn Tennis Club to progress lease discussions. The draft lease presented to the Tennis Club provides for a lease term of five years plus an optional five.

As the previous lease has expired the draft lease provided to the Tennis Club is a new lease, based on a template which ensures compliance as it relates to the *Retail and Commercial Leases Act 1995*. The Club have requested numerous amendments to the master agreement and many of these changes have financial implications to Council and impact various duties and obligations in terms of maintenance and liability. In order to ensure that the lease continues to support the Tennis Club and its operations without adversely impacting Council, officers have met with the Tennis Club over number of occasions including 3 March, 24 March and 24 April 2017. At the time of writing this report the Club had requested a further meeting to be scheduled after 12 May 2017 to further discuss the lease.

In light of the various discussions that have progressed with the tennis club to date, it is proposed that the lease will be presented to Council for consideration at its June 2017 Meeting. The Administration wishes to ensure that the final lease presented to Council addresses as many of the concerns raised by the Tennis Club as is practicy possible in order to maintain the positive relationship that exists between the Club and Council.

### Walkerville Bowling Club Inc

To enact Council's September 2016 decision, **CNC134/16-17** which provided that Council offer the Walkerville Bowls Club a short term lease of one year with an optional one year, officers have worked with the Club to effect a new lease. The current lease under which the Club has been operating, commenced in 1994 and it has been in operation since then, albeit in holding-over.

Given that the new proposed lease is a relatively short term lease the Club have been reasonably supportive of the draft document and have sought to ensure that its Committee members are well informed of the new lease. To support the Club and ensure that the Club's Committee are familiar with the lease, the Administration has held a number of discussions and provided a number of copies of the draft lease for their consideration.

Many of the negotiations to date have involved clarifying a number of responsibilities set out under the maintenance schedules and ensuring that clauses covering sub-hiring, alcohol licensing and signage do not unreasonably remove rights that the Club has enjoyed under the previous lease. The draft

lease that has been provided to the Bowls Club has been the model lease that complies with Council's obligations under the Retail and Commercial Leases Act 1995. The Administration have worked with the Club to ensure that the new lease does not create a situation that would further exacerbate the Club's difficult financial situation, however it is likely that any rental increase will impact the Club to some degree. A report seeking to endorse the lease is expected to be presented at the next meeting of Council in June 2017.

In addition to the leasing developments with the Walkerville Bowling Club, the site of the Walkerville Bowls Club forms part of the strategic considerations for the Walkerville Oval Master Planning.

### Walkerville Sports Club

The Walkerville Sports Club were first provided with a copy of the proposed lease in December 2016. In accordance with Council resolution **CNC136/16-17**, the proposed lease offers a short term lease of two years with an optional two if renewed. The lease under which the Club is currently operating with was first effected in October 2000.

Under the new proposed lease, the clubrooms, oval, cricket practice nets, change rooms and old clubrooms have been defined and create an opportunity for Council to put in place licensing agreements with the various facility users for greater transparency. Given that the various cross-seasonal clubs that operate under the Sports Club umbrella, the Sports Club has indicated that socialising the proposed lease has taken time to complete. Similarly, the Sports Club's recent claim to Council for hardship has been a priority for the Club to pursue and has possibly taken precedence over the lease.

To date, the Sports Club have indicated that the proposed lease would be discussed at its meeting scheduled in May 2017 and further advice would be provided following that date.

The lease with the Sports Club is considered critical and will have considerable bearing on the licensing arrangements that will follow for the various users of the oval. Until the Sports Club lease is resolved the licensing arrangements cannot be significantly progressed.

In addition to the leasing review, the Walkerville Sports Club forms part of the strategic considerations for the Walkerville Oval Master Planning and may have some bearing on future leasing arrangements.

### Walkerville Oval user agreements and licenses

User agreements and licenses for the clubrooms, oval, cricket nets and change rooms will provide greater transparency in the use arrangements required by each of the user group and improved governance but cannot be significantly progressed until the Walkerville Sports Club lease is resolved.

The Walkerville Oval will be a critical element in the development of a strategic property framework and Master Planning of the Walkerville Sports Oval Precinct.

### Smith Street Sports and Recreation

The Smith Street Sports Complex is currently leased and occupied by the INEA YMCA (Inner North East Adelaide Young Men's Christian Association). They have a lease that is current up to 31 December 2018. Officers met with Ms Catherine Follet, the recently elected President of the YMCA on 5 April 2017 to discuss the status of the lease and the pending expiry date of the lease. From that meeting it was understood that that Council may receive a written request from the YMCA seeking to extend the lease to end in 2020, however Council is yet to receive any correspondence to confirm this.

This property forms part of Council's property portfolio that will be reviewed through the development of a strategic property framework.

### Levi Oval

Levi Oval forms part of Council's property portfolio that will be subject to the development of a strategic property framework and Master Planning for Levi Park.

This land also forms part of the work that is to be carried out in establishing new licensing arrangements for users. A licensing arrangement with St Andrew's School was entered into in 1992 and extensions have since been provided, however in accordance with Council's decision of 27 September 2016 the Administration will now seek to establish a contemporary licence. Use an access to Levi Oval for St Andrew's School is also linked with access to Walkerville Oval. Progressing the licensing arrangements for Levi Oval will be carried out in conjunction with the licensing of Walkerville Oval.

### Levi Park (Caravan Park and Camping Ground)

An agreement is currently in place with Ryad Hill Pty Ltd and not due to expire until 30 November 2020. In terms of managing the operational requirements of the lease that is in place, the Administration is currently working with Caravan Park lessees to carry out minor capital improvements to Vale House in the coming months.

This land forms part of the property portfolio that will be considered by Council in developing it's strategic property framework and Master Planning for Levi Park.

### **Attachment/s**

Attachment A	Leases and Licences Up-Date Report 18 March 2017
Attachment B	Expression of Interest ToW 2017/16.040 for the Operation and Management Pre-Kindy/Child Care at 13 Alfred Street, Walkerville



**EXPRESSION OF INTEREST**

**ToW2017/16.040**

**FOR THE OPERATION AND MANAGEMENT OF PRE-KINDY /  
CHILD CARE AT 13 ALFRED STREET, WALKERVILLE**

**March 2017**

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## STRUCTURE OF THIS REQUEST FOR EXPRESSIONS OF INTEREST

This Request for Expressions of Interest (**REOI**) is comprised of five sections:

Section A – Background and General Information to Respondents

Section B – Conditions of Expression of Interest Process

Section C – Proposed Essential Lease Terms

Section D – Conflict of Interest Declaration

Section E – Expression of Interest Return Schedules

## SECTION A – BACKGROUND AND GENERAL INFORMATION

### 1. Background

The Town of Walkerville (Walkerville) is the registered proprietor in fee simple of the whole of the land comprised in Certificate of Title Volume 5255 Folio 826 and Certificate of Title Volume 5255 Folio 827 (Land).

The Land is community land pursuant to the Local Government Act 1999 (SA).

The pre-kindergarten is located on portion of the Land shown on the plan annexed (Premises) otherwise known as 13 Alfred Street, Walkerville.

The Premises is currently leased to a lessee who operates the Walkerville Pre-Kindy.

The main building on the Premises was constructed in the 1960s as a dwelling and was converted into a pre-kindergarten facility over 35 years ago.

Electrical power, telephone, mains water, gas and sewerage are connected to the Premises.

The Premises overlooks and forms part of the Walkerville Sports Oval Precinct.

Pursuant to the Walkerville Council Development Plan, the Land is community zoned. For further information regarding the zoning, interested parties should refer to [http://www.dpti.sa.gov.au/\\_\\_data/assets/pdf\\_file/0009/250020/Walkerville\\_Council\\_Development\\_Plan.pdf](http://www.dpti.sa.gov.au/__data/assets/pdf_file/0009/250020/Walkerville_Council_Development_Plan.pdf)

Walkerville is seeking Expressions of Interest from well established organisations and/or groups who have relevant experience and qualifications and accreditation to operate and run a facility that supports the needs of the community with respect to early childhood education, child care or pre-kindy services (Child Care).

The current lessee is expected to have tenure until 30 June 2018 unless otherwise negotiated.

### 2. Objectives

#### Objectives of Lease

In leasing the Premises, Walkerville's objectives are to:

- 2.1.1 support Child Care and early childhood education options within the Town of Walkerville;

- 2.1.2 provide a business opportunity for an appropriately qualified and experienced service provider;
- 2.1.3 support a revenue stream to Walkerville for the duration of the lease;
- 2.1.4 maintain the use and value of the asset.

### Fundamental Objectives

The fundamental objectives of this Expression of Interest process to:

- 2.2.1 provide an outline of Walkerville's objectives;
- 2.2.2 advise Respondents of the information required;
- 2.2.3 provide information to and receive information from interested parties; and
- 2.2.4 provide a basis for evaluation of the responses.

## 3. Invitation for Expressions of Interest

Walkerville invites Expressions of Interest from Respondents for the provision of Child Care services for the foreseeable future. It is envisaged that this may involve:

- 3.1.1 a long term lease of the Premises; or
- 3.1.2 any other proposal that satisfies Walkerville.

To assist Respondents, attached to this Information Memorandum are:

- 3.1.3 a plan of the Premises (Attachment A).
- 3.1.4 a copy of a Lands Titles Office register search for the Land (Attachment B).

## SECTION B – CONDITIONS OF REQUEST FOR EXPRESSIONS OF INTEREST

### 4. Lodgement of Expressions of Interest

#### Request for Expressions of Interest

Walkerville seeks Expressions of Interest from Respondents for the provision of Child Care services for the foreseeable future at the Premises that is acceptable to Walkerville either through:

- 4.1.1 a lease of the Premises; or
- 4.1.2 any other proposal that satisfies Walkerville.

#### REOI Documents

The REOI Documents are comprised of:

- 4.1.3 this REOI;
- 4.1.4 the Proposed Essential Lease Terms;
- 4.1.5 Conflict of Interest Declaration; and
- 4.1.6 the Expression of Interest Return Schedules.

In the event of any inconsistency between any Addenda and the Expression of Interest, the Addenda shall prevail and two or more Addenda, the last issued Addenda shall prevail.

#### Lodgement of Expressions of Interest

- 4.1.7 Expressions of Interest should be emailed to [EOIChildcare@walkerville.sa.gov.au](mailto:EOIChildcare@walkerville.sa.gov.au) or be delivered under pre-arranged agreement to the reception of Walkerville at 66 Walkerville Terrace, Gilberton SA 5081 no later than 10.00am Monday 1 May 2017.
- 4.1.8 Expressions of Interest must be marked CONFIDENTIAL and be addressed as follows:  
"Expression of Interest for 13 Alfred Street, Walkerville."
- 4.1.9 Should respondents be lodging hard copies they are required to lodge an original Expression of Interest plus three copies (including copies of all supporting documentation), each of which must be certified by the Respondent to be a true copy of the Expression of Interest.
- 4.1.10 Facsimile transmissions Expressions of Interest will not be accepted.

### Late Expressions of Interest

Expressions of Interest received after the Closing Date WILL NOT be considered or accepted.

### Extension of time for the submission of Expressions of Interest

- 4.1.11 Walkerville may, in its absolute discretion, no less than two (2) Business Days before the Closing Date, extend the Closing Date by notice in writing to the Respondents.
- 4.1.12 A Respondent may request Walkerville to extend the Closing Date for the submission of an Expression of Interest by written application to the Nominated Contact Person. Any such requests must be received by the Nominated Contact Person at least five (5) Business Days prior to the Closing Date. Walkerville may agree or not agree to grant the requested extension in its absolute discretion.

### Expressions of Interest Validity Period

All Expressions of Interest will remain valid for six (6) months after the Closing Date.

### Proposed Expression of Interest Process

- 4.1.13 All Expressions of Interest will be considered by Walkerville which may involve a presentation or interview with some or all of the Respondents.
- 4.1.14 Following consideration of the responses, Walkerville will then determine in its absolute discretion whether to:
  - (a) negotiate with one or more Respondents; or
  - (b) proceed to a formal tender process.

### Proposed Timing of Expression of Interest Process

The proposed timing for the Expression of Interest Process is as follows:

ACTIVITY	DATE
Request for Expressions of Interest issued	30 March 2017
Premises Inspection	18 April 2017
Closing Date for lodgement	1 May 2017
Consideration of Responses	2-8 May 2017
Potential Interviews	12 May 2017
Commencement of Negotiations or Tender Process	6 June 2017

## Provision of Information

All technical and other written information supplied to the Respondents must not be used for purposes other than this REOI.

## Intellectual Property

Each Respondent acknowledges and agrees that all intellectual property created by the successful Respondent arising out of any agreement belongs to Walkerville and the successful Respondent will do all reasonable things necessary to assist Walkerville in the protection and transfer of ownership of the intellectual property resulting from the agreement.

# 5. COMMUNICATION BETWEEN PARTIES

## Enquiries or Requests for Information or Clarification

- 5.1.1 Any enquiries or requests for information or clarification regarding this REOI or the REOI Documents must be made in writing and addressed to the Nominated Contact Person.
- 5.1.2 The Nominated Contact Person is: Allison Down  
Phone: (08) 8342 7135  
Email: [adown@walkerville.sa.gov.au](mailto:adown@walkerville.sa.gov.au)
- 5.1.3 The Nominated Contact Person may (but is not obligated to) respond to a Respondent's enquiries or requests for information or clarification.
- 5.1.4 If Walkerville provides any information to a Respondent by way of clarification, then Walkerville reserves the right to provide that information to other Respondents.
- 5.1.5 No statement made by the Nominated Contact Person or any other representative of Walkerville should be construed as modifying this REOI or any of the REOI Documents, unless confirmed in writing by the Nominated Contact Person.

## Respondent's Contact Person

Respondents are required to nominate a person to be the authorised contact person and supply an email, facsimile and postal address for the service of any notices for the purpose of this REOI (**Respondent's Representative**). All communication with the Respondent will be via the Respondent's Representative.

## Premises Inspection

- 5.1.6 Walkerville will conduct an inspection of the Premises on 18 April 2017 at 3.00pm (unless otherwise advised by the Nominated Contract Person). The Premises inspection is intended to provide Respondents with background

information and Respondents are not to treat any statements made at the inspection as variations to this REOI.

- 5.1.7 Each attending Respondent is to advise the Nominated Contact Person of the details of that Respondent's attendees (including name and position) at least two (2) Business Days before the inspection.

### Respondent not to Solicit Walkerville and its Employees

The Respondent and its representatives must not interfere or attempt to interview or to discuss its Expression of Interest with Councillors or employees of Walkerville, other than the Nominated Contact Person. Walkerville reserves the right to reject any Expression of Interest submitted by a Respondent which contravenes this clause.

### Discrepancies and Omissions

Should a Respondent find discrepancies, errors and/or omissions in the REOI Documents or should there be any doubt as to their meaning, the Respondent should notify the Nominated Contact Person immediately.

## 6. EXPRESSION OF INTEREST PREPARATION

### Respondents to be Informed

Each Respondent must, prior to submitting its Expression of Interest, become acquainted with the Premises and make all necessary examinations, investigations, inspections and deductions.

### Conflict of Interest

Respondents must inform Walkerville of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Respondent is successful. If any conflict or potential conflict exists, the Respondent must advise how it proposes to address this.

### Ombudsman

Respondents should be aware that the *Ombudsman Act 1972* (SA) empowers the Ombudsman to investigate matters in the public interest. The Respondent must ensure compliance with all obligations arising under that or any other Act.

#### 6.1 Independent Commissioner Against Corruption

Respondents should be aware that if they enter into a contract with Walkerville, they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (**ICAC Act**) and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

## Freedom of Information

The *Freedom of Information Act 1991* (SA) (**FOI Act**) gives members of the public rights to access documents of Walkerville. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by Walkerville subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by Walkerville and other public authorities.

## Collusion

The Respondent must not collude with any other Respondents or potential Respondents. This does not prevent two Respondents from submitting a joint Expression of Interest.

## 7. REOI DOCUMENTS

### Conforming Expressions of Interest

A Conforming Expression of Interest is an Expression of Interest which meets all of the requirements set out in this REOI and the REOI Documents. Failure to respond to or meet any of the requirements set out in this REOI and the REOI Documents will result in the Expression of Interest being deemed a Non-Conforming Expression of Interest.

### Non-Conforming Expressions of Interest

Walkerville is not required to, but may at its sole discretion, consider an incomplete, informal or a Non-Conforming Expression of Interest.

### Content of Expressions of Interest

- 7.1.1 Respondents are required to complete the Expressions of Interest Return Schedules and submit them in accordance with clause 4.1.7.
- 7.1.2 Respondents can also supply any other additional information or documents. Walkerville may have reference to such additional information or documents in evaluating the Expressions of Interest, but is not required to.
- 7.1.3 Any presentation or interview will form part of the Respondent's Expression of Interest.
- 7.1.4 All prices quoted by Respondents in their Expressions of Interest must be in Australian dollars and be exclusive GST.



## 8. ACKNOWLEDGEMENT BY Respondents

Each Respondent acknowledges that Walkerville:

- makes no representations and offers no undertakings in issuing this REOI or the REOI Documents;
- may require one or more Respondents (but is not obliged to require all) to supply further information and/or attend a conference or interview;
- may undertake 'due diligence' checks on any Respondent, including but not limited to, verifying references and/or referees and undertaking company searches and credit checks;
- will not be responsible for any costs or expenses incurred by the Respondent arising in any way from the preparation and submission of its Expression of Interest;
- accepts no responsibility for a Respondent misunderstanding or failing to respond correctly to this REOI;
- will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of an Expression of Interest or prior to the signing of any agreement with the successful Respondent, or otherwise; and
- will not be bound by any verbal advice given or information furnished by any member, officer or agent of Walkerville in respect of the REOI Documents or this REOI, but will be bound only by written advice or information furnished by the Nominated Contact Person.

## 9. WALKERVILLE'S RIGHTS

Walkerville reserves the right to:

- amend, vary, supplement, postpone or terminate this REOI at any time;
- accept or reject any Expression of Interest, including the lowest price Expression of Interest;
- negotiate the terms of a legally binding agreement or agreements with any Respondent;
- accept all or part of any Expression of Interest;
- negotiate or not negotiate with one or more of the Respondents;
- discontinue negotiations with any Respondent; and
- include the Respondents' names in Council reports and make them public.

## 10. EXPRESSIONS OF INTEREST EVALUATION

Respondents will need to demonstrate their capability to operate Child Care services before being subjected to a detailed evaluation.

Responses will be assessed and evaluated against the following Evaluation Criteria, as detailed in Section E:

- 10.1.1 Business Experience;
- 10.1.2 Quality Assurance and Accreditation;
- 10.1.3 Community Commitment;
- 10.1.4 Financial Capability; and
- 10.1.5 Risk.

Walkerville may use, retain and copy any information contained in the Expressions of Interest for the evaluation of tenders in any subsequent tender process and for the finalisation of the provisions of any agreements and other documents.

## 11. ACCEPTANCE OF EXPRESSION OF INTEREST

No obligations will exist between Walkerville and the Nominated Respondent until the parties have executed a legally binding agreement.

## 12. DEFINITIONS

In this REOI:

A reference to a clause is a reference to a clause of this REOI.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Closing Date** means the time and date specified in clause 4.1.7 or such later time and date as may be notified in writing to Respondents by Walkerville.

**Conforming Expression of Interest** means an Expression of Interest described in clause 7.

**Expression of Interest** means an Expression of Interest submitted by a Respondent pursuant to this REOI.

**Expression of Interest Process** means the process for calling, receiving and evaluating Expressions of Interest set out in this REOI and negotiating and entering into contracts following this process.

**Expressions of Interest Return Schedules** are the forms attached to Section E of this REOI.

**Lease Agreement** means the lease agreement for the Premises described in this REOI, as may be agreed between Walkerville and a Respondent.

**Nominated Contact Person** means the person named in clause 5.1.2

**Non-Conforming Expression of Interest** means an Expression of Interest which does not meet the requirements set out in this REOI and/or the REOI Documents.

**REOI** means this Request for Expressions of Interest set out in the REOI Documents.

**REOI Documents** means the documents specified in clause 4.

**Respondent** means a Respondent that has submitted an Expression of Interest.

## SECTION C – PROPOSED ESSENTIAL LEASE TERMS

The following list comprises an outline of the essential terms that are proposed to be included in any Lease Agreement for the Premises. Other terms will be negotiated by the parties. The terms will be expanded and drafted in more detail for inclusion in any lease that is prepared for Walkerville. Respondents must detail in their Expressions of Interest any proposed departures from the proposed essential lease terms set out below and must also detail any special conditions that Respondents request be included in any Lease Agreement.

1. **Retail and Commercial Leases Act application.** If the *Retail and Commercial Leases Act 1995 (SA) (RCLA)* applies to the Lease Agreement, the Lessee and Walkerville will be required to apply for an exemption from the application of section 13 of the RCLA to the Lease. If such application is unsuccessful and the exemption is not obtained, the Lease Agreement will be void.
2. **Rent.** The rental payable by the lessee will be the rental amount detailed in the Expression of Interest submitted to Walkerville by the successful Respondent during the REOI process, or as otherwise negotiated by the parties. The rent will be payable in monthly instalments in advance.
3. **Rent reviews.** The rental payable by the lessee will be reviewed to CPI each year on the anniversary of the commencement date of the Lease Agreement and market reviews will be required on the commencement of any renewal term or earlier as required by Walkerville.
4. **Term and renewals.** The term of the Lease Agreement will be the term detailed in the Expression of Interest submitted to Walkerville by the successful Respondent during the REOI process or as otherwise negotiated by the parties. Because it is community land, the term cannot exceed 42 years.
5. **Rates, taxes, utilities and outgoings.** The lessee will be responsible for the payment of all applicable rates and taxes and all utilities consumed by the lessee at the Premises. The lessee will also be responsible for payment of the total of all amounts paid or payable by Walkerville in connection with the ownership, management, administration, maintenance (including structural repairs) and operation of the Premises (subject to the application of the RCLA).
6. **Insurance.** The lessee must take out and maintain during the term of the Lease:
  - 6.1 public liability insurance in an amount of not less than twenty million dollars (\$20,000,000);
  - 6.2 insurance for the full replacement value of the lessee's equipment;
  - 6.3 plate glass insurance; and
  - 6.4 any other insurance required by Walkerville or by law.
7. **Risk.** The lessee occupies the Premises at its own risk and must provide indemnities and releases to Walkerville to the satisfaction of Walkerville.

8. **Subletting, sub-licensing, assigning, mortgaging and charging.** The lessee will only be permitted to sublet, sub-licence, assign, mortgage or charge the Premises or its interest in the Premises with the prior written approval of Walkerville and subject to any conditions imposed by Walkerville in its complete discretion.
9. **Walkerville's termination rights.** Walkerville will have a right to terminate the Lease Agreement if:
  - 9.1 the lessee breaches any term of the Lease Agreement and fails to remedy the breach in accordance with a notice from Walkerville;
  - 9.2 the lessee fails to pay any amount due pursuant to the Lease Agreement to Walkerville; and
  - 9.3 Walkerville may immediately terminate the Lease Agreement if the Lessee (without the prior written consent of Walkerville) ceases to operate as a Child Care facility at the Premises or the Premises are not otherwise being used in accordance with all requirements regarding its use in the Lease Agreement. In addition to any other rights of termination or otherwise that Walkerville may have at law in relation to these matters.
10. **Security.** Walkerville will require security for the lessee's compliance with its obligations under the Lease Agreement in the form of either a bank guarantee in the amount equal to six (6) months' rent and outgoings or a director's guarantee (at Walkerville's election).
11. **Alterations.** The lessee may not make any alterations to the Premises unless:
  - 11.1 the alterations are approved by Walkerville as lessor (which approval may be withheld in its absolute discretion); and
  - 11.2 the lessee has all other approvals and consents required at law for the alterations.
12. **No warranty of fitness.** Walkerville does not warrant that the Premises is fit for any use to which the lessee intends to use it. The lessee will be required to sign an Exclusion of Warranty of Fitness for Purpose notice in the form required by the RCLA if the RCLA applies to the Lease Agreement.
13. **Fees and charges.** The lessee must pay all GST, stamp duty and registration fees applicable to the Lease Agreement. The lessee will also be required to pay all of Walkerville's legal costs relating to the preparation of the Lease Agreement (subject to the application of the RCLA).
14. **Use of Premises.** The lessee will be required to only use the Premises for the purpose of a Child Care centre and as otherwise detailed in the Expression of Interest submitted to Walkerville by the successful Respondent during the REOI process or as otherwise negotiated by the parties.
15. **Repair and maintenance obligations.** The lessee will be required to:
  - 15.1 keep the Premises in good repair (not taking into account the condition of the Premises at the start of the Lease), unless otherwise agreed with Walkerville;

## SECTION C – PROPOSED ESSENTIAL LEASE TERMS

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15.2 carry out all repairs and maintenance required at the Premises itself and at its cost, including (subject to the application of the RCLA) structural maintenance and repairs unless otherwise agreed with Walkerville.

16. **Fit Out.**

The lessee will be required at its cost to provide all additional items of plant and equipment it believes are required for its use of the Premises in accordance with the use permitted pursuant to the Lease Agreement.

**SUPPLIER/CONTRACTOR  
CONFLICT OF INTEREST DECLARATION**

**Respondent's Name:** .....

**Goods/Services Supplied:** .....

I declare that, to the best of my knowledge:

**1. Conflict of Interest**

I do not have any financial interest or conflicts of interest which may influence, or be perceived to influence any decision made by Walkerville or its staff for the supply of goods or services at this time.

**2. ICAC**

I acknowledge that if I enter into a contract with Walkerville that I will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (**ICAC Act**) and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

***If your circumstances change or if you are unsure at any stage of your responsibilities as a supplier/contractor/consultant, please contact Walkerville's Property & Contract Officer to discuss.***

Signature: .....

Name: .....

Position: .....

Date: .....

## SECTION E – EXPRESSION OF INTEREST RETURN SCHEDULES

The Expressions of Interest must contain the following:

Part 1: Execution by the Respondents

Part 2: Acknowledgement of Addenda or Notices

Part 3: Response to Evaluation Criteria



**PART 1: EXECUTION BY RESPONDENT**

I / We ....., (**Respondent**), having read, understood and fully informed myself / ourselves of the contents, requirements and obligations of the Expression of Interest, submit this Response.

Full Company Name:
Details of Company Principals:
Australian Business No. (ABN):

This Response has been prepared without improper assistance or the use of illegally obtained information. Prior to submitting this Response, I / we had no knowledge of the details of any other bid submitted by any other bidder.

This Response and any Contract which may result does not constitute or imply a Conflict of Interest with any other business activities conducted by the proposed service provider / partner, its servants, agents or employees.

Registered Address:
---------------------

Postal Address:
-----------------

Contact for Enquiries (name in block letters):
Telephone Number:
Facsimile Number:

Signature:	Date of Signature:
Name (block letters):	Position held:

SECTION E – EXPRESSION OF INTEREST RETURN SCHEDULES

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Signature of witness:	Address of Witness:
Name of witness (block letters):	

**PART 2: ACKNOWLEDGMENT OF ADDENDA OR NOTICES**

I / We, ....., acknowledge receipt of the following:

*[Respondents must fully describe all documents including addenda, and any notices, which are issued by Walkerville]*

Name of Respondent:	
Signature of Respondent:	Signature of Witness:

### **PART 3: EVALUATION CRITERION**

Respondents are required to address each Response Requirement.

#### **1. BUSINESS EXPERIENCE**

The Respondent's relevant experience in operating a Child Care centre.

The Respondent's plan for the delivery of the proposed services, including the nomination of key personnel, their experience and qualifications.

Demonstrated knowledge and understanding of the provision of Child Care services.

#### **2. QUALITY ASSURANCE**

Commitment to quality and quality assurance processes, including details of any accreditations held.

Commitment to work health and safety (**WHS 2012**) and demonstrated WHS systems.

#### **3. COMMUNITY COMMITMENT**

The proposed use of the Premises, including any refurbishment or re-development plans.

The minimum number of hours the Respondent proposes to make the Premises open for use.

The Respondent's philosophy concerning the provision of Child Care services.

Any proposal which is considered to add value to the Walkerville community.

#### **4. FINANCIAL CAPABILITY**

The proposed financial return to Walkerville this may be the proposed annual rental amount or other.

The Respondent's capacity to meet the lessee's obligations under a Lease Agreement.

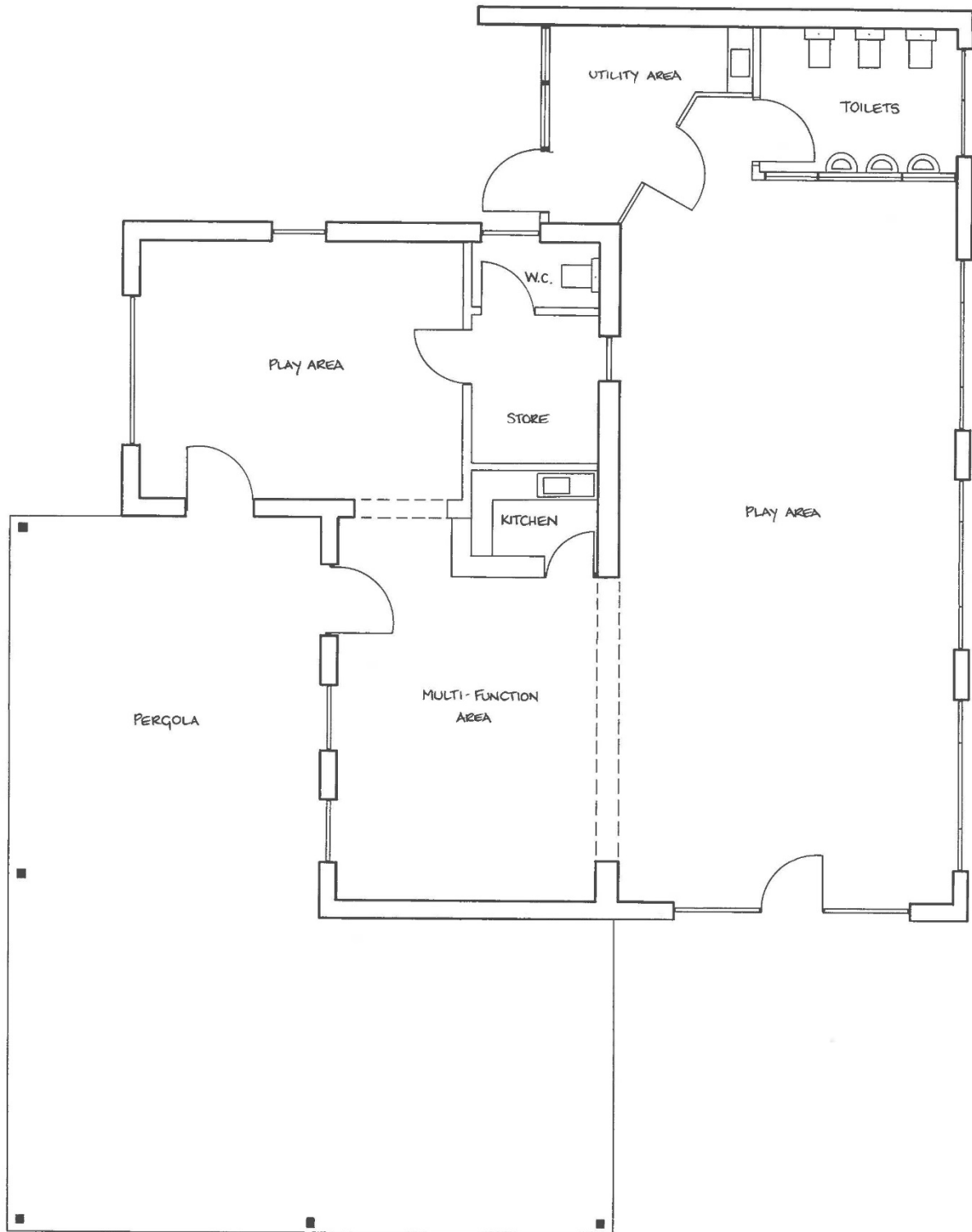
To evidence its ability to meet financial obligations, the Respondent must provide a letter of comfort from a recognised financial institution.

#### **5. RISK**

The proposed term of the Lease Agreement including any rights of renewal.

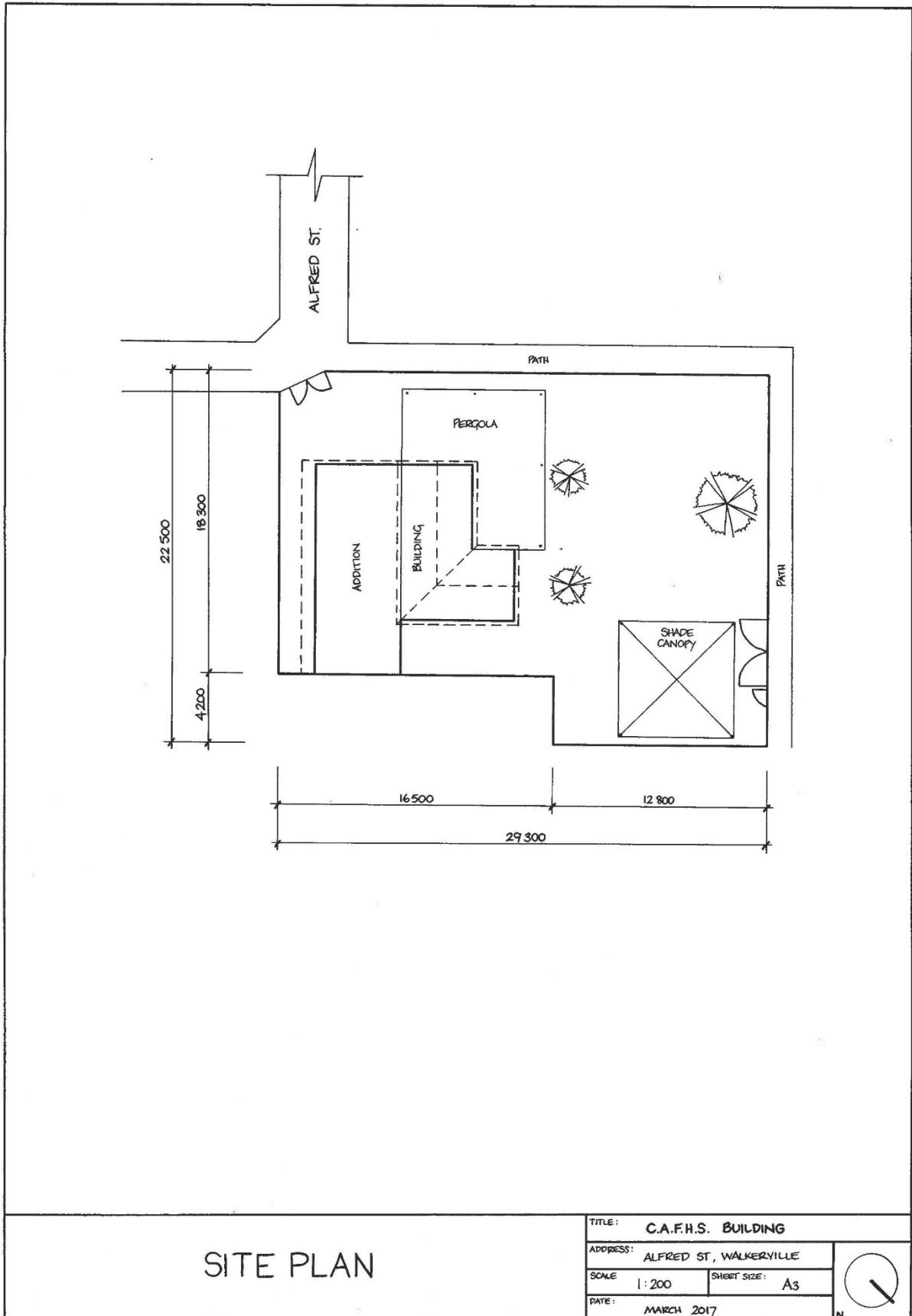
Changes in the risk profile to Walkerville as a result of any departures from the Proposed Essential Lease Terms proposed by the Respondent and any special conditions to the Lease Agreement proposed by the Respondent.

ATTACHMENT A – PLAN OF PREMISES



<h2>GROUND FLOOR PLAN</h2>	TITLE: <b>C.A.F.H.S. BUILDING</b>		 N
	ADDRESS: ALFRED ST, WALKERVILLE		
	SCALE: 1:50	SHEET SIZE: A3	
	DATE: MARCH 2017		

SECTION E – EXPRESSION OF INTEREST RETURN SCHEDULES



SITE PLAN

**Property Location Browser Report - Parcel Details**

Date Created:  
March 27, 2017

The Property Location Browser is available on the Land Services Website: [www.sa.gov.au/landservices](http://www.sa.gov.au/landservices)



Scale  $\approx$  1:2256 (on A4 page)

100 metres  $\approx$

**Address Details**

**Unit Number:**  
**Street Number:** 13  
**Street Name:** ALFRED  
**Street Type:** ST  
**Suburb:** WALKERVILLE  
**Postcode:** 5081

**Property Details:**

**Council:** THE CORPORATION OF THE TOWN OF WALKERVILLE  
**State Electorate:** ADELAIDE  
**Federal Electorate:** Adelaide  
**Hundred:** YATALA  
**Valuation Number:** 2004471001  
**Title Reference:** CT5255/827  
**Plan No. Parcel No.:** D41671A2

The information provided above, is not represented to be accurate, current or complete at the time of printing this report.

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**Land Services**



Government of South Australia  
Department of Planning,  
Transport and Infrastructure



Item No: 16.1.1  
 File No: 16.55.1.30  
 Date: 20 March 2017  
 Attachment: A and B

**Meeting:** Council

**Title:** Community Land Management Plans and Leases and Licences Up-Date

**Responsible Manager:** General Manager, Heather Barclay

**Author:** Property & Contracts Officer, Allison Down,

**Key Focus Area 3 & 4:** Transparent and accountable local tier of Government that is respected for its forward thinking approaches and cross council collaborations; and, Healthy connected and inspired community

**Type of Report:** **Information Report**

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)(d) being commercial information of a confidential nature the disclosure of which could reasonably 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

#### Pursuant to s90(3)(d)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except the Council's Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, Property and Contract Officer, Allison Down and the Protocol, Compliance & Governance Officer, Deb Bria be excluded from attendance at the meeting for the report on Lease and Licences.

The Council is satisfied that, pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information that is commercial information of a confidential nature the disclosure of which could reasonably 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

That the Lease and Licence Up-Date Report, 20 March 2017, be received and noted.



## Recommendation

### Pursuant to s.91(7)

That having considered the Agenda Item, Lease and Licence Up-Date Report, 20 March 2017 in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report entitled Lease and Licence Up-Date Report, 20 March 2017 relevant to this Agenda Item be retained in confidence (excepting that Council authorises the release of the resolution / minutes) until the matters are resolved 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* Council and re-admit the public.

## Summary

As Members are aware, Council has been reviewing a number of its obligations and duties in relation to a range of property matters. In essence this has involved reviewing the Community Land Management Plans and a number of leases and licences that are in place for community assets. This report provides an up-date on progress to date, as determined by Councils resolutions of 27 September 2016.

## Background

At its Ordinary Meeting on 27 September 2016, Council made a number of decisions in relation to its Community Land Management Plans (CLMP's) and Lease and Licences. The resolutions from that Council meeting are provided below and include details regarding the outcome of the resolution and an outline of action taken to date by the administration:

Council received a report on 21 November 2016 (attachment A) providing an update on progress of the Community Land Management Plans and Leases and Licences. The 4 November 2016 Weekly Round Up (Attachment B) also included a summary of the progress and activities to date.

A further report was provided to Council at its Ordinary meeting on 20 February 2017 where Council adopted an amended Community Land Management Plan (CLMP) No 4 Linear Park. This amendment was carried out after it was identified that the plans did not adequately identify Hamilton Reserve and Stewart Avenue Park.

This report outlines further progress in relation to the 20 September 2016 Council resolutions. It does not include commentary on those Council resolutions where Council 'received and noted' information provided. Specifically on resolutions **CNC130/16-17**, **CNC132/16-17** and **CNC133/16-17**.

### Decision resolutions requiring action from 27 September 2016

#### **CNC131/16-17**

*That Council adopts "in principle" the Draft Community Land Management Plans (Attachment A), and authorises Administration to seek community feedback on same for a period of not less than one month, with consultation including directly sending the draft CLMP's to all existing lessee's of Council land and property with the following global amendments;*

- *Remove acknowledgement notes*
- *Amend the references in legislative framework to "Council is committed to*

*considering opportunities and improvements to the land and its facilities where possible.*

Further to the abovementioned resolutions, the Community Land Management Plans were adopted by Council on 19 December 2016 following a period of consultation in accordance with the resolution. In addition to this, the Community Land Management Plan No 4 for Linear Reserve was subsequently further amended and adopted on 20 February 2017 following a minor amendment to address an administrative issue and to ensure consistency with the 2004 plan. This amendment did not result in a significant or material change.

The Community Land Management Plans now comply with Council's obligation to review and maintain these plans and provide certainty and essential information for the community regarding the identity, use, purpose and relevant policies that apply to lands classified in these plans. Copies of the plans are provided on Council's website.

### **CNC134/16-17**

*That Council makes the following decisions in relation to the land and property portfolio strategic directions document (confidential draft) (Attachment C);*

- a) *Council adopts Option c), of Attachment C for **Walkerville Oval (lawn bowls area), 24 Smith Street, Walkerville.***

Option C of Attachment C for Walkerville Oval (lawn bowls are), 24 Smith Street Walkerville provided for:

*"Short term lease to the Club (say one or two years) pending reconsideration of the Walkerville Oval Precinct Master Plan.*

*Implications:*

- i. Will tidy up the current holding over scenario and ensure compliance with the LG Act and also provide the parties with time to consider the Precinct Master Plan*
- ii. Similar implication to the recommended option without the Council having more control*
- iii. RCLA minimum five year term must be excluded*
- iv. Will involve preparation and negotiation of a lease"*

#### Update

Administration met with the Walkerville Bowls Club in January 2017 and provided a draft lease for consideration, and again in March 2017 to receive feedback regarding the lease. Negotiations are progressing and the Club has verbally indicated that they are generally supportive of the lease conditions provided.

It is expected that negotiations will continue in March 2017 and be finalised in April 2017, with the Administration expecting to present a draft lease for adoption or otherwise to either the April or May 2017, Ordinary Council Meeting.

### **CNC135/16-17**

*That Administration provide a further report on a preliminary scope for a discussion paper concerning investigating future opportunities for **Smith Street and Fuller Street.***

#### Update

Ekistics have been engaged to assist the Council in commencing the development of a strategic property framework and action plan towards developing master plans for strategic sites around

the township. This project also takes into consideration the Levi Caravan Park and adjoining public reserve and the Walkerville Oval. A Councillor workshop is planned for 29 March 2017, to workshop and consider the framework to progress this matter further.

### CNC136/16-17

*Council adopts Option a), of Attachment C for **Walkerville Oval, 24 Smith Street, Walkerville.***

The abovementioned resolution involved endorsing the following for Walkerville Oval (oval, cricket practice area, club rooms and old clubrooms / change rooms):

*“Grant short term one or two year occupancy use agreement (lease or licence) of the clubrooms and short term licence agreement for the user groups of the oval, cricket practice nets and change rooms to reflect the maintenance responsibilities and the times of use during the sporting seasons pending consideration of the Walkerville Oval Precinct Master Plan”*

Implications:

- i. Would ensure Council complies with LG Act and provide time to reconsider the Precinct Master Plan*
- ii. Terms of the leases or licences will need to be prepared and negotiated and consideration given to such things as maintenance, outgoings and rent, etc.*
- iii. Given this will be a significant change from the current lease arrangement with the Walkerville Sports Club, it may create some push back from the club due to a removal of their controlling rights to the larger site.*
- iv. The use of licence agreements over the fields will create a transparent management structure for the maintenance and use of the facility.”*

Update

Administration met with the Walkerville Sports Club in December 2016 and provided a draft proposed lease for buildings and draft proposed licence for the oval, for their consideration.

The Club has been canvassing their membership, with further meetings expected in March 2017.

To enable consideration of the outgoings on the licence areas, Council has recently been provided with costings for utilities. Further negotiations will be required to determine the arrangements for maintenance regime of the oval in order to support the sport codes.

Based on verbal advice to date, the Walkerville Sports Club is generally welcoming of the proposed lease and licence. Further meetings and discussions with the club are scheduled for March and April 2017 in order to progress the finalisation of the lease for buildings and licence for the oval.

It should be noted that it is expected that the complexities associated with the setting up of the Licence for the Oval would not see a draft lease and licence presented to Council before June 2017.

### CNC137/16-17

*Council adopts Option a), of Attachment C for **Creswell Reserve Sports and Recreation.***

The abovementioned resolution involved endorsing the following for Creswell reserve Sports and Recreation (Walkerville Lawn Tennis Club).

*“New five year lease (consider 5 + 5) and clarify lease area.*

Implications:

- i. Locks up the site to the tenant for five years which is not particularly long.
- ii. If 5 + 5 then Council need to publicly consult pursuant to section 202 LG Act and in any event, will be required to comply with its Disposal of Land Policy.
- iii. Need to consider terms of lease and such things as responsibility for outgoings and maintenance and whether there will be a rent payable.
- iv. Will involve negotiating a new lease. This needs to be dealt with quickly, given that the lease expired on 30 September 2016.
- v. If five years or less, no requirement to publicly consult.
- vi. Any lease must be authorised by the community land management plan for this site.
- vii. Given the circumstances, a direct negotiation as per paragraph 6.5.5 of Council's Disposal of Land Policy would be suitable"

Update

Admiistrarion met with the Club in December 2016 and February 2017 and provided a draft lease for consideration. The Club has received the Draft Lease and negotiations are progressing and it is expected that a Lease will be presented to Council for adoption in either April or May 2017.

**CNC138/16-17**

*Council adopts Option a), of Attachment C for **Levi Park, 1A Harris Street, Vale Park.***

The abovementioned resolution involved endorsing the following for Levi Park (the Caravan Park and camping ground), 1A Harris Street, Vale Park.

*"Develop a draft scope of works / brief for a Master Plan for Levi Park. This process should include testing the market via a Request for Proposal (RFP) process to determine the management options available.*

Implications:

- i. Will provide Council with numerous options to consider.
- ii. Council has already resolved in its resolution dated 17 August 2015 to test the market via an open tender process for the management of the Levi Caravan Park site and advised the existing manager.
- iii. Needs to be completed long before 30 November 2020."

Update

Ekistics have been engaged to assist the Council in commencing the development of a strategic property framework and action plan towards developing master plans for strategic sites around the township. This project also takes into consideration the Walkerville Oval precinct and the Smith Street and Fuller Street site. A Councillor workshop is planned for 29 March 2017, to workshop and consider the framework and action plan to progress this matter.

**CNC139/16-17**

*Council adopts Option a), of Attachment C for **Walkerville Oval 13 Alfred Street, Walkerville.***

The abovementioned resolution involved endorsing the following for (Pre-Kindy) Walkerville Oval 13 Alfred Street, Walkerville.

*“Short term lease (1 year – with up to an additional 12 month notice period to vacate) while Council considers the Walkerville Oval Precinct Master Plan and tests the market for provision of childcare in the Town of Walkerville by open tender for the lease of the premises for the purpose of childcare being operated at the premises in accordance with Council’s 18 May 2015 resolution.*

Implications:

- i. Will provide Council with numerous options to consider.*
- ii. Will provide Council with options and complies with the LG Act and Council’s resolution.*
- iii. Short term lease will require exclusion from the minimum five year term in the RCLA.*
- iv. Will tidy up the current holding over scenario and ensure compliance with the LG Act also provide the parties with time to consider the Precinct Master Plan.*
- v. Council commitment to give existing tenant 12 months’ notice to vacate the premises if not successful in the tender process is fair and reasonable given the length of existing tenancy and the fact that it is a small business and a going concern that may decide to relocate and continue operating.”*

Update

Administration met with the tenants in December 2016 and provided a draft proposed lease for consideration. A formal valuation of the property is currently being prepared and will be used as part of the preparation to take the childcare facility to open market. Officers are finalising the tender documentation now with a view to tendering week commencing 27 March 2017.

**CNC140/16-17**

**Council adopts Option a), of Attachment C for *Levi Oval, 1A Harris Street, Vale Park***

*“Enter into a short term licence agreement with the current tenant while awaiting the outcome of master plan process in relation to Levi Park as per Council’s resolution on 17 August 2015.*

Implications:

- i. It will tidy up the current holding over scenario and ensure compliance with the LG Act and also provide the parties with time to consider the master plan process.*
- ii. RCLA minimum five year term must be excluded.*
- iii. Will involve preparation and negotiation of a new licence.”*

Update

The land is currently used by St Andrew’s School. Officers have engaged Wallmans Lawyers to prepare a draft licence and will meet with representatives from St Andrew’s School week commencing 27 March 2017 to progress implementing revised licensing arrangements.

Whilst separate to the Walkerville Sports Club leasing arrangements, the licencing for the school may be impacted by the leasing negotiations for the Sports Club and may not be able to be presented before June 2017.

**Attachment/s**

Attachment A	Community Land Mangement Plans and Leases and Licences Up-Date Report 21 November 2016
Attachment B	Weekly Round Up 4 November 2016