



Meeting:	Council
Title:	Community Leases – COVID-19 Rent Assistance
Responsible Manager:	Chief Executive Officer, Kiki Cristol
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 2 – Invest sustainably in community assets for the future
Type of Report:	Decision Required

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(b) of the Act being commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information or that would confer a commercial advantage on a third party and that would, on balance, be contrary to the public interest.

Recommendation (Public)

Pursuant to s90(3)(b)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Chief Executive Officer Kiki Cristol, Group Manager Asset & Infrastructure Joshua Bowen, Group Manager Planning, Environment & Regulatory Services Andreea Caddy, Group Manager Customer Experience Danielle Garvey, Manager Community Development & Engagement Fiona Deckert, Business Analyst (Property & Contracts) Scott Reardon and Council Secretariat Vanessa Davidson, be excluded from attendance at the meeting for Agenda Item 19.2 Community Leases – COVID-19 Rent Assistance.

The Council is satisfied that, pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item 19.2, is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council may propose to conduct business and would therefore prejudice the commercial position of the Council.

Recommendation (Confidential)

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

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 19.2 Community Leases – COVID-19 Rent Assistance - 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 Town of Walkerville currently has four (4) community tenants; those being Walkerville Sports Club Inc, Walkerville Bowling and Community Club Inc, INEA YMCA, and Walkerville Lawn Tennis Club Inc. Combined, for the 2019/20 financial year, these tenants are budgeted to generate approximately \$18,799 in revenue by way of rent.

As a direct result of the current global COVID-19 pandemic these community groups and sporting clubs have been adversely affected by both the sudden downturn in the economy, the social distancing restriction and closures imposed State and Federal Governments; thus are now limited in their ability to generate and maintain a sustainable income.

On this basis it is recommended that Council grant a three (3) month blanket waiver of rental payments for its community tenants for the period between 1 April and 30 June 2020 (inclusive).

Background

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

CNC361/19-20

That Council receives and notes this report.

Discussion/Issues for Consideration

Application for Rent Relief

On 21 April 2020 Administration received a written request from INEA YMCA (**INEA**) seeking:

- a rent waiver equivalent to 100% of the rent payable under the current terms of the lease; and
- a waiver of all outgoings currently invoiced by the Town of Walkerville.

INEA requested that these waivers be applied from 24 March 2020 and up until such time that the Federal Government restrictions on indoor sporting facilities are lifted. INEA also requested that their lease, which currently expires 30 November 2020, be extended. Administration does not recommend extending the lease for INEA YMCA.

On the same day, a verbal request was also made by the Walkerville Sports Club Inc seeking financial assistance due to a loss of income directly related to the impacts and closures associated with COVID-19.

At the time of writing, Administration had not received requests from the Bowling Club or Lawn Tennis Club for financial assistance.

While Council is currently under no obligation at law to provide waivers or deferrals (as established by the recent legal advice from Norman Waterhouse), it is recommended that Council grants a blanket three (3) month waiver of rent and outgoings to all of its community tenants to ensure their sustainability within the community. This also ensures a consistent approach across all community leased facilities, notwithstanding that it could be argued that the Lawn Tennis Club may not have been as adversely affected compared to those tenants that were forced to close.

Options for Consideration

Option 1

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

Option 2

That Council directs Administration to undertake the following alternate actions:

- _____

Analysis of Options

Option 1

This option recognises the adverse impact that COVID-19 has had on community groups and sporting clubs, and further provides security of tenancy for an interim period.

Financial Implications

Should Council endorse the recommendation of this report, the 2019/20 budget will be impacted by a loss of rental revenue of **-\$4,519.50**.

Community Leases	Annual Charge	Outstanding amounts as at 31 March 2020	Discount - Three (3) Month Rent Free Period
INEA YMCA Inc.	\$ 11,441.00	Nil	\$ - 2,860.25
Walkerville Bowling & Com. Club Inc.	\$ 1,246.00	Nil	\$ - 311.50
Walkerville Lawn Tennis Club Inc.	\$ 3,112.00	Nil	\$ - 778.00
Walkerville Sport Club Inc.	\$ 3,000.00	Nil	\$ - 750.00
	\$ 18,799.00	Nil	\$ - 4,519.50

	2019/20
Original 2019/20 Budget - Rental Revenue	\$ 18,799.00
Loss of Rental Revenue through Rent Relief	\$ - 4,519.50
Total Revised 2019/20 Budget - Rental Revenue	\$ 14,279.50

Regional Implications

There are no perceived regional implications association with this report.

Governance Implications

The proposal is both aligned and consistent with Council Policy and the current recommendations of both the Local Government Association and Norman Waterhouse, which recommends that Councils adopt clear and targeted hardship and relief policies to ensure that they have the financial capacity to provide support where it is needed most.

Preferred Option & Reasoning

Option 1 is the preferred option on the basis that it recognises those facilities that were forced to close, allows Council to share the burden of COVID-19, supports the hardships of community tenants in line with Council Policy, provides clear example of Council taking a fair and consistent approach to its 'community' tenants.

Attachments

Attachment A	INEA YMCA – Request for Rent Relief
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21 April 2020

Ms Kiki Cristol
Chief Executive Officer
Town of Walkerville
Via e-mail

Dear Ms Cristol,

Re: Lease of Premise – 39 Smith St Walkerville

I write in good faith regarding the Federal Government's announcement of a mandatory code of conduct (Code) for commercial tenancies during COVID-19.

This new Code applies to the YMCA Inner North East Adelaide as it is a small to medium sized organisation with turnover less than \$50m and is an organisation entitled to the Job Keeper Payment.

The Code requires that Landlords must offer adjustments in rent based on the Tenant's reduction in trade during COVID-19. The Code requires Landlords and Tenants to discuss the relevant issues, to negotiate appropriate temporary leasing arrangements that are mutually satisfactory to the parties. The Code requires that leasing principles be applied as soon as practicable and that the Landlord offers the Tenant proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenants trade during the COVID-19 pandemic and a subsequent reasonable recovery period.

Further, the rental waiver must constitute no less than 50% of the total reduction in rent payable and the component that is deferral of rent is payable over the remaining term of the lease, or no less than 24 months.

We also note that any recovery of outgoings applicable under the terms of the lease should be waived during the period the tenant is unable to trade.

The Code outlines that a tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic.

COVID-19 Impact on YMCA Inner North East Adelaide

On 22nd March 2020, the Federal Government announced the closure of all indoor sporting facilities effective from 12 noon on the 23rd March 2020, with which we complied. Since this date all revenue related to the operation of community recreation

and youth services from 39 Smith St Walkerville, has ceased, while outgoings related to the building continue to be incurred by YMCA Inner North East Adelaide.

Our Proposal:

With reference to the new Code and the impact that COVID-19 has had and will continue to have on YMCA Inner North East Adelaide being unable to undertake community recreation and youth services, we propose a rent waiver equivalent to 100% of the rent payable under the current terms of the lease and waiver of all outgoings currently invoiced by the Town of Walkerville. We propose that this take effect from 24th March 2020, and continue until all Federal Government restrictions in relation to COVID-19 affecting the operation of indoor sporting facilities are removed.

Further, we request in accordance with the code that the current lease be extended for an equivalent period of the rent waiver and/or deferral period.

Please advise by return email a response on our proposal in accordance with the National Cabinet Mandatory Code Of Conduct SME Commercial Leasing Principles During COVID-19.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Colin Organ', written in a cursive style.

Colin Organ
CEO
YMCA Inner North East Adelaide
Via Email.