

ITEM 8

REQUEST TO WAIVE PART FEES - MARKET RENT REVIEW - LICENCE AGREEMENT WITH EASTERN SUBURBS LEAGUES CLUB LIMITED, BERKELEY

This report requests Council's approval to waive part fees payable to Council by Eastern Suburbs Leagues Club Limited. The Club is the licensee in respect of the playing fields, bowling greens, tennis courts and car park forming part of the premises known as "Berkeley Sports and Social Club", Wilkinson Street, Berkeley.

A market review was undertaken in accordance with the licence. The previous Council resolution provided for a discount to the rental payable under the licence however did not make provision for the discount to be applied to consecutive terms. This report seeks endorsement of an increase to the rental in line with Consumer Price Index [CPI] (as calculated in accordance with the licence) instead of the scheduled market rental review. The rental will be re-determined at the time of the next market rental review under the licence.

RECOMMENDATION

- 1 Council waive the market rent review under the licence agreement and adopt an increase to the rental reflecting Consumer Price Index (as calculated in accordance with the licence agreement) only.
- 2 It is noted that rental will be re-determined at the next market rent review required to occur under the licence agreement being 1 May 2024.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation (Acting)

Authorised by: Sue Savage, Director Community Services - Creative + Innovative City (Acting)

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

Council is the owner of land adjoining Berkeley Sports and Social Club, comprising playing fields, bowling greens, tennis courts and car park. The licensee of the Council land is Eastern Suburbs Leagues Club Limited ('the Club'). The Club owns the Berkeley Sports and Social Club premises adjoining the Council land.

Prior to entering into negotiations in respect of the licence agreement in 2014, Council obtained an initial rental assessment valuation in 2013 from a registered valuer. This rental assessment value determined that a realistic market rental for the Council property would be \$94,000 per annum plus GST. Subsequently a licence agreement was negotiated with the Club, with a lesser initial rental of \$38,870.80 plus GST payable in the first year (being a reduction of approximately 60% from the assessed value). It was determined at the time and noted Council's resolution of 14 July 2014 that the reduction recognised the significant social and community benefit that the Club provides as well as taking into consideration the ongoing maintenance costs of the bowling greens, tennis courts and playing fields.

The current licence agreement between Council and the Club has 15 years remaining of a 20 year term, having commenced on 1 May 2014 (and due to expire 30 April 2034).

Council obtained a revised market valuation to determine the rent payable in accordance with the market rent review to be undertaken every five years. The valuation determined the market rent to be \$171,500 per annum plus GST. As the current rent being paid by the Club is \$41,943.46 plus GST this represents a significant increase to the rent.

On 15 May 2019, Council wrote to the Club to inform it of the revised market rental amount based on the valuation. On 24 May 2019 the Club responded noting it does not agree on the reviewed rental amount.

Further information has been sought from the Club in respect of the ongoing use and maintenance of the sporting field, bowling greens and tennis courts to further inform the decision. According to the Club, it spends approximately \$150,000 per annum on the maintenance and upkeep of the sports field, bowling greens and tennis courts. The Club pays power and water usage charges in addition to these maintenance costs which are billed directly to the Club. The Club also confirmed that it pays a further \$150,000 per annum in sponsorship directly to sporting teams, which, as confirmed by the Club is not re-invested back into the Club in a significant way through post-match patronage.

The Club revenue from the hire/sublease of the soccer field, bowling greens and tennis courts does not exceed \$10,000 per annum, the biggest limitation being that one soccer field is not a large enough area to rent out for multiple teams to play on for weekends/evenings. The Club has confirmed that at the current running costs, being \$150,000 plus sponsorship of teams at \$150,000 and rent at the current rate (being \$41,943.46 plus GST as at the date of this report) and approximately \$10,000 per annum in subleasing/licencing revenue, the Club does not receive a commercial return from the operation.

Internal consultation has been undertaken to substantiate the maintenance costs and confirmation has been received noting that the costs appear to be within a reasonable range based on Council's maintenance of comparative sites. This is especially the case when applying a contingency to allow for any renovation or improvements to the fields, courts or greens.

PROPOSAL

In accordance with the licence agreement, rent is to be reviewed as follows:

- 1 Annually on each anniversary of the commencement date during the term in accordance with clause 4.3 (CPI review date).
- 2 Every five years from the commencement date during the term in accordance with clause 4.4 (market rent review).

On each anniversary of the commencement date, rent is increased by CPI, as noted above. The current rent is \$41,943.46 plus GST.

On 1 May 2019 the market rent review was due, being the fifth anniversary of the commencement date. "Market Rent" is defined by the Australian Property Institute and in the International Valuation Standards Glossary as "*the estimated amount for which an asset should rent, at the date of valuation, between a willing lessor and a willing lessee in an arm's length transaction wherein the parties had each acted knowledgeably, prudently and without compulsion*".

In accordance with the terms of the licence agreement, where the method of the market review is clearly defined, a formal valuation report was obtained by Council for the market rent review. The valuation received assessed rental at \$171,500 per annum plus GST. When the report was received the registered valuer verified that the valuation had been carried out only on the licensed area (owned by Council) and not the Club proper (owned by the Club). The market rent review letter was then issued to the Club. The Club subsequently challenged the review. As the initial resolution for the application of any discount was silent as to whether any discount would apply over the whole term of the licence (including subsequent market reviews) or whether the rent would be reviewed back to market rent in the fifth year, it has been deemed appropriate for this matter to be reconsidered and determined appropriately as to whether the discount will continue.

Procedures for the market rent review were followed by Council officers in accordance with the terms of the licence agreement. The challenge by the Club of the reviewed licence fee leaves Council with the option to take either of the following actions:

- Agree with the Club to jointly appoint an independent qualified valuer to determine the licence fee (in accordance with Clause 4.4 of the licence agreement), noting that the appointed valuer's determination is final and binding. This option means that, if the determination results in a value

similar to that valuation already obtained, the licence fee will be, say, \$171,500 plus GST per annum,

or

- Revise the licence fee as already assessed by formal valuation for the market rent review and offer the Club a discounted licence fee.

In view of the significant increase of the licence fee arising from the market rent review and the Club’s challenge of the review, this matter was further revised internally. Consideration has been given to the following factors:

- The need of Council to achieve a commercial return on the licence of the premises, for and on behalf of the community.
- The organisational and financial status of the Club, noting that the Club is a not-for-profit organisation that reinvests profits back into future developments, including improving existing sites.
- The maintenance and repair obligations that the Club must meet at its own cost and expense in respect of the licensed area, as against the potential maintenance costs that would be incurred by Council to maintain those assets. These have been noted to be approximately \$150,000 per annum.
- The cooperative working relationship between Council and the Club pursuant to the long-term licence agreement.
- The Club voluntarily assists various organisations and charities within this local government area.
- Recognising the significant local sporting, social and community benefits realised with the Club premises operating in Berkeley.

Balancing these factors, it would be reasonable for Council to continue with the starting rent as was initially applied when the licence agreement was originally negotiated and apply an increase in line with CPI rather than the current scheduled market rental review. This report recommends that Council consider a waiver of part of the revised licence fees by way of proposed discount, as follows:

Current rental	\$41,943.46 per annum + GST
Proposed rent review discount in line with CPI as recommended by this report	\$42,642.52 per annum + GST

In accordance with the licence agreement, there will be a CPI increase to this amount each year and, as recommended, there will be the opportunity to re-determine the rental at the next market rent review in 2024.

CONSULTATION AND COMMUNICATION

- Registered valuer
- Licensee representative
- Property and Recreation Division
- Open Space and Environmental Services Division.

Consultation has also been undertaken with the Club’s Head of Finance regarding the maintenance costs incurred by the Club and community contribution.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 goal “Participation in recreational and lifestyle activities is increased.

It specifically delivers on core business activities as detailed in the Service Plan 2019-20 "Provide statutory services to appropriately manage and maintain our public spaces".

FINANCIAL IMPLICATIONS

This report proposes a waiver of approximately \$128,857.48 per annum from the rent as determined by the recent market rent review valuation or \$60,257.48 from the previously discounted rental amount. The current rent will increase by \$699.06, being by way of CPI review. CPI increases will continue to occur annually until the next market rental review in five years time, at which point Council's position will be revisited.

It is noted that based on the estimated maintenance figures, should the Club no longer maintain the grounds, bowling greens and tennis courts, this may result in an additional financial implication to Council, being approximately \$150,000 per annum.

CONCLUSION

While the market rent review was carried out in accordance with the terms of the licence agreement, the challenge by the Club of the reviewed licence fee has triggered the opportunity for Council to revise the fee and to consider the best way forward considering a number of factors, mainly the contribution of the Club to the community and maintenance obligations the Club undertakes.