



City of
Mount Gambier

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I hereby give notice that a Council Meeting will be held on:

Date: Tuesday, 21 July 2020

Time: 6.00 p.m.

**Location: Council Chamber
Civic Centre
10 Watson Terrace
Mount Gambier**

CONFIDENTIAL AGENDA

Council Meeting 21 July 2020

**Andrew Meddle
Chief Executive Officer
17 July 2020**

27 NEW CONFIDENTIAL ITEMS

27.1 PROPERTY MANAGEMENT - EXPIRY OF AGREEMENT – REPORT NO. AR20/44292

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Mayor L Martin, Councillors S Mezinac, K Amoroso, M Bruins, C Greco, B Hood, P Jenner, F Morello and S Perryman and Council Officers A Meddle, B Cernovskis, J Nagy, N Serle, M McCarthy, A Watson and E Solly be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 27.1 AR20/44292 Property Management - Expiry of Agreement.

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

- information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is
 - conducting business; or
 - proposing to conduct business; or
 - to prejudice the commercial position of the Council
- commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
 - to prejudice the commercial position of the person who supplied the information, or
 - to confer a commercial advantage on a third party
- information relating to:
 - actual litigation, or
 - litigation that the Council or Council committee believes on reasonable grounds will take place,
 - involving the Council or an employee of the Council

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be considered relates to operations by individuals whose arrangements with Council comprise their personal financial affairs associated with the use of a Council controlled asset to conduct a business operation for which Council is exploring alternate delivery options, and the expiry and non-renewal of which could reasonably be expected to result in litigation.



27.1 PROPERTY MANAGEMENT - EXPIRY OF AGREEMENT – REPORT NO. AR20/44292

Committee:	Council
Meeting Date:	21 July 2020
Report No.:	AR20/44292
CM9 Reference:	AF13/64
Author:	Michael McCarthy, Manager Executive Administration
Authoriser:	Michael McCarthy, Manager Executive Administration
Summary:	This report provides information on the expiry of a tenancy arrangement for a third party operated Council controlled tourism asset.
Community Plan Reference:	Goal 1: Our People Goal 2: Our Location Goal 3: Our Diverse Economy Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- (b) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business; or proposing to conduct business; or to prejudice the commercial position of the Council
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected: to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party
- (i) information relating to: actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.

REPORT RECOMMENDATION

1. That Council Report No. AR20/44292 titled 'Property Management - Expiry of Agreement' as presented on 21 July 2020 be noted.
2. That Garry and Patricia Turner be thanked for their many years of tourism service at the Blue Lake.
3. That, as sub-licensees of the Blue Lake Welcome Centre, the Turners be notified of the expiry and non-renewal of sub-licence arrangements on and from 30 November 2020 and that Council seek the quiet surrender of the premises in accordance with their Sub-Licence.
4. That the Chief Executive Officer be authorised to take such action as considered reasonably necessary for the handover of the Blue Lake Welcome Centre premises in accordance with the Sub-Licence.
5. That the Chief Executive Officer (or delegate/s) continue engagement with SA Water and Crown Lands (DEW) with a view to securing future tenure arrangements for the perimeter



area around the Blue Lake and/or partnership arrangements for the activation of natural and built cultural and tourism assets in this precinct.

6. That a further report be presented to Council to provide an update on the matters contained in this report once the relevant actions have been undertaken.

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BACKGROUND

The land parcel comprising the Blue Lake is under the care and control of SA Water for water supply purposes. In 2000 SA Water granted Council a 21 year Licence of the perimeter area of the Blue Lake for the provision of footpaths, lookouts and other infrastructure, including the Blue Lake Welcome Centre building.

Since its construction by Council in the early 2000's Council has sub-licensed the 'Welcome Centre' to third party operators (Garry and Patricia Turner) who also conduct tours of the SA Water Blue Lake pump station under a separate arrangement with SA Water.

The Head Licence granted by SA Water is due to expire on 31 December 2020 with the Welcome Centre sub-licence expiring one month prior.

Council is yet to secure further tenure over the perimeter area of the Blue Lake beyond 31 December 2020 and accordingly has no property interest that it is able to offer to the sub- licensee for any extension of the current arrangements, not even on a monthly 'holding over' tenancy.

This report presents discussions that have been occurring with SA Water and Crown Lands (DEW) in relation to the future management and use of the perimeter area of the Blue Lake.

DISCUSSION

As mentioned in the Background to this report, SA Water is the custodian of the Blue Lake land parcel with the boundaries of custodianship not following any obvious markers such as John Watson Drive or the perimeter fence line.

Of some relevance to this matter, the care control and management of the Blue Lake by SA Water is for 'water supply purposes' and past discussions with Crown Land Officers suggest that the Licence granted to Council for the perimeter of the Blue Lake was arguably beyond the power of SA Water to grant.

Council has in turn (and in most cases with the consent of Crown Lands – DEW) relied on that grant from SA Water to construct various infrastructure and to sub-licence the Blue Lake Welcome Centre to a third party operator for an initial ten years and subsequent six year renewal, which has been exercised.

The 21 year SA Water Licence to Council for the perimeter of the Blue Lake expires on 31 December 2020, and accordingly the Welcome Centre sub-licence expires one month prior on 30 November 2020.

In anticipation of the expiry of these arrangements, Council Officers commenced discussions with Crown Lands (DEW) in 2019, and more recently with SA Water (delayed and complicated by the COVID-19 restrictions) regarding Council's future tenure options for the Blue Lake perimeter.

It is fair to say from these discussions that SA Water and DEW (as state government agencies) share a similar vision and objectives as Council with regard to the promotion of Tourism, natural environment and indigenous culture associated with our various regional assets and infrastructure.

Further to this, Council and SA Water also appear to share a similar relationship with the third party operators of the Blue Lake Welcome Centre and SA Water Pump Station tour operators, whose alleged displayed behaviours have long been inconsistent with the aspirational vision for this essential infrastructure and high profile tourism site.

SA Water, Crown Lands (DEW) and Council have each indicated an intent to better utilise this public land and infrastructure to co-promote and deliver on our shared state, regional, local (City) and corporate (SA Water) messaging and objectives.

In this context the tenure discussions have thus far been focussed on options for shared custody between SA Water and Council, with preliminary discussions on the potential for partnership arrangements for the ongoing activation of the Blue Lake Welcome Centre and Pump Station, including integration with the natural and volcanic landscape and indigenous culture and storytelling and other related promotional, cultural and tourism opportunities.



Further work is anticipated in relation to both the land tenure and partnering, which are reasonably expected to continue beyond the current licence periods ending 30 November and 31 December.

In the meantime, including in the context of Council's own strategic direction, it is necessary to give consideration to the expiring sub-lease for the Blue Lake Welcome Centre.

It is unlikely considering discussions to-date that Council will be offered further tenure arrangements equivalent to those currently in place for the Blue Lake Welcome Centre. It is also considered unlikely that alternate arrangements will be finalised (gazetted) prior to the current expiry date(s) or that a continuation of the current arrangements will align with Council's future vision for this tourism asset.

Accordingly, with Council having no valid tenure upon which to extend the current tenancy arrangements, it is proposed that the current operators be advised of the impending expiry of their tenancy arrangement on 30 November 2020 and requested to surrender the premises in accordance with clause 3.15 of their Sub-Licence agreement.

It might reasonably be anticipated that as a longstanding operator, some level of objection or disturbance could arise following notification of the above expiry and non-renewal, which might include (social) media activity and other actions targeted at Council and undermining the positive tourism messaging.

Council should note that the sub-licence and renewal contain provisions with regard to:

- not creating a nuisance or disturbance either for Council or for the occupiers of adjoining lands,
- recovering reasonable costs associated with any damage or repairs caused in surrendering the premises;
- maintaining amicable and respectful working relationships with stakeholders;
- avoiding any embarrassment upon the City of Mount Gambier and Districts tourism industry.

Notwithstanding these provisions and potential likelihood of any breach between giving notice of the expiry and non-renewal and the expiry date, it should also be noted that it is extraordinarily difficult to successfully pursue a substantial breach of such provisions that results in a positive outcome, particularly in such circumstances where the expiry will arise before any substantive legal arguments have been determined.

Accordingly, whilst it is proposed that Council have its legal representatives briefed in readiness to address any matters of concern that might arise, it would be unlikely that Council could successfully seek earlier termination and surrender as a result of a licence breach in the coming months.

This will be a case where Council will need to '*ride the wave*' and be prepared to address any issues arising from the actions of the sub-tenant if they eventuate.

With regard to the ongoing operation of the Blue Lake Pump Station tours by the operator, as these are under separate contractual arrangement with SA Water until June 2022, this is a matter for SA Water to further consider, including the manner in which the operator might continue this in the absence of the Blue Lake Welcome Centre facility licence from Council. SA Water are understood to be obtaining their own advice in this regard. They may seek to engage with Council to time their approach to the operators together with Council's own notice regarding the licence expiry.

With regard to future operations, given the remaining unknown factors with regard to the tenure, pump station tours, and the anticipation that the current operator will not willingly engage with a positive transition and handover of the facility in an operating form, it is recommended that Council continue to engage with SA Water and Crown Lands to with a view to managing a partnered approach to activating the facility, at least in the short-term, as the surrender of the facility and future of the tour component are realised.



CONCLUSION

The current circumstances present Council with difficult (although at this time somewhat limited) short-term decisions and actions, as well as the opportunity to work in partnership with state agencies to develop a shared vision and model for activating the Blue Lake, unconstrained by pre-existing arrangements.

This report recommends that notice of the expiry of the current arrangements be given to the thirdparty operators and that Council continue to work with SA Water and Crown Lands (DEW) to develop plans for integration with the natural and volcanic landscape and indigenous culture and storytelling to activate the Blue Lake with cultural and tourism opportunities.

ATTACHMENTS

Nil

CONFIDENTIAL



CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 27.1 AR20/44292 Property Management - Expiry of Agreement and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b), (d) and (i) be kept confidential and not available for public inspection until 5 years after the expiry and non-renewal of arrangements with the current tenant, with the resolutions to be released immediately upon the giving of notice to the 3rd party operators.
2. Further that Council delegates the power to review, revoke, but extend of the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL

**CONFIDENTIAL MINUTES OF COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE,
MOUNT GAMBIER ON TUESDAY, 21 JULY 2020 AT 6.00 P.M.**

PRESENT: Mayor Lynette Martin (OAM), Cr Sonya Meziniec, Cr Kate Amoroso, Cr Max Bruins, Cr Christian Greco, Cr Ben Hood, Cr Paul Jenner, Cr Frank Morello

OFFICERS IN ATTENDANCE:

Chief Executive Officer	- Mr A Meddle
General Manager Community Wellbeing	- Ms B Cernovskis
General Manager City Infrastructure	- Mr N Serle
General Manager City Growth	- Dr J Nagy
Media and Communications Coordinator	- Mrs A Watson
Manager Executive Administration	- Mr M McCarthy
Executive Administration Officer	- Mrs E Solly

27.1 PROPERTY MANAGEMENT - EXPIRY OF AGREEMENT – REPORT NO. AR20/44292

RESOLUTION 2020/291

Moved: Cr Christian Greco

Seconded: Cr Frank Morello

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Mayor L Martin, Councillors S Mezinac, K Amoroso, M Bruins, C Greco, B Hood, P Jenner and F Morello and Council Officers A Meddle, B Cernovskis, J Nagy, N Serle, M McCarthy, A Watson and E Solly be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 27.1 AR20/44292 Property Management - Expiry of Agreement.

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CARRIED



RESOLUTION 2020/292

Moved: Cr Max Bruins

Seconded: Cr Christian Greco

1. That Council Report No. AR20/44292 titled 'Property Management - Expiry of Agreement' as presented on 21 July 2020 be noted.
2. That Garry and Patricia Turner be thanked for their many years of tourism service at the Blue Lake.
3. That, as sub-licensees of the Blue Lake Welcome Centre, the Turners be notified of the expiry and non-renewal of sub-licence arrangements on and from 30 November 2020 and that Council seek the quiet surrender of the premises in accordance with their Sub-Licence.
4. That the Chief Executive Officer be authorised to take such action as considered reasonably necessary for the handover of the Blue Lake Welcome Centre premises in accordance with the Sub-Licence.
5. That the Chief Executive Officer (or delegate/s) continue engagement with SA Water and Crown Lands (DEW) with a view to securing future tenure arrangements for the perimeter area around the Blue Lake and/or partnership arrangements for the activation of natural and built cultural and tourism assets in this precinct.
6. That a further report be presented to Council to provide an update on the matters contained in this report once the relevant actions have been undertaken.

CARRIED

RESOLUTION 2020/293

Moved: Cr Max Bruins

Seconded: Cr Christian Greco

CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 27.1 AR20/44292 Property Management - Expiry of Agreement and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b), (d) and (i) be kept confidential and not available for public inspection until 5 years after the expiry and non-renewal of arrangements with the current tenant, with the resolutions to be released immediately upon the giving of notice to the 3rd party operators.
2. Further that Council delegates the power to review, revoke, but extend of the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CARRIED

