

4. OBJECTIVE 3 - IMPROVE SOUTH GIPPSLAND'S BUILT ASSETS AND VALUE OUR NATURAL ENVIRONMENT

4.1. WARATAH BAY CARAVAN PARK - PROPOSED LEASE

Sustainable Communities and Infrastructure Services Directorate

EXECUTIVE SUMMARY

The Waratah Bay Caravan Park (the Park) is located on Crown Land and Council is the land manager, appointed as Committee of Management by the Department of Environment, Land, Water, and Planning (DELWP).

The Park is currently leased to Harry Corporation Pty Ltd and the lease expires on 12 December 2017. The expiry provisions of the lease are poorly timed being the commencement of South Gippsland's peak visitor period. Council officers have been in discussions with DELWP and investigated various options to address current and future lease arrangements.

Following discussions with DELWP, it is recommended that Council enter into an overholding arrangement with Harry Corporation Pty Ltd until 30 June 2018 to address the current lease and commence negotiations of a new five year lease.

A petition was tabled at the June 2017 Council meeting urging Council to ensure that the Park remain under private management. It is further recommended that the lead petitioner be informed of Council's decision.

RECOMMENDATION

That Council:

1. Enter into an overholding arrangement of the current lease with Harry Corporation Pty Ltd for the Waratah Bay Caravan Park from 13 December 2017 to 30 June 2018.
2. Commence preparation of a new lease pursuant to ss.190 and 223 of the Local Government Act 1989, Crown Land (Reserves) Act 1978, and Retail Leases Act 2003 to Harry Corporation Pty Ltd for the Waratah Bay Caravan Park, being Part Crown Allotment 20C Parish of Waratah North, with an area of approximately 3.795Ha (the Land):
 - a. for the period (term) 1 July 2018 to 30 June 2023;
 - b. at a market rental to be not less than that determined by a Valuer;

- c. with special conditions relating to Harry Corporation Pty Ltd (the Tenant) transitioning the Park into compliance with the Best Practice Management Guidelines for Committees of Management: Managing Crown Land Caravan and Camping Parks (the Proposal).
 3. Give public notice in accordance with s.223 of the Local Government Act 1989 of the Proposal (item 2 above) in Council's Noticeboard section of the local newspapers in the week commencing 31 July 2017 and invite written submissions from the community by 5.00pm Tuesday 29 August 2017.
 4. Authorise the Chief Executive Officer to undertake the administrative procedures necessary to enable the Council to carry out its functions under s.223 of the Local Government Act 1989 in respect of the Proposal (item 2 above).
 5. If submissions are received to the public notice (item 2 above):
 - a. Authorise the Chief Executive Officer to set the time, date, and place to hear, consider, and determine submissions.
 - b. Hear submitters who had elected to speak to their submission at a Special Committee of Council in closed session comprising of:
 - i. the Mayor who will chair the meeting;
 - ii. not less than two other Councillors; and
 - iii. the Director of Sustainable Communities and Infrastructure for administrative purposes.
 - c. Consider and determine submissions at Council's Ordinary Meeting to be held 25 October 2017 in open session.
 6. If no submissions are received to the public notice, continue with the Proposal.
 7. Write to the Department of Environment, Land, Water, and Planning (DELWP) confirming Council's decision in item 2 above and request DELWP to:
 - a. Commence the procedure for Parliamentary Scrutiny and Ministerial Approval in Principle (AIP) for the new Lease;
 - b. Exempt Council from conducting an expression of interest process for the new lease on the grounds that the existing tenant is best placed to work with Council on existing site holder compliance requirements.
 8. In response to Confidential Attachment [15.1.1] Petition - Possible Changes to the Management of Waratah Bay Caravan Park.
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- a. Forwards the Council Minutes for item 4.1 Waratah Bay Caravan Park – Proposed Lease listed in the open Ordinary Council Meeting Agenda 26 July 2017 to the lead petitioner.

MOVED: Cr Skinner

SECONDED: Cr Argento

THAT COUNCIL:

1. **ENTER INTO AN OVERHOLDING ARRANGEMENT OF THE CURRENT LEASE WITH HARRY CORPORATION PTY LTD FOR THE WARATAH BAY CARAVAN PARK FROM 13 DECEMBER 2017 TO 30 JUNE 2018.**
2. **COMMENCE PREPARATION OF A NEW LEASE PURSUANT TO SS.190 AND 223 OF THE LOCAL GOVERNMENT ACT 1989, CROWN LAND (RESERVES) ACT 1978, AND RETAIL LEASES ACT 2003 TO HARRY CORPORATION PTY LTD FOR THE WARATAH BAY CARAVAN PARK, BEING PART CROWN ALLOTMENT 20C PARISH OF WARATAH NORTH, WITH AN AREA OF APPROXIMATELY 3.795HA (THE LAND):**
 - a. **FOR THE PERIOD (TERM) 1 JULY 2018 TO 30 JUNE 2023;**
 - b. **AT A MARKET RENTAL TO BE NOT LESS THAN THAT DETERMINED BY A VALUER;**
 - c. **WITH SPECIAL CONDITIONS RELATING TO HARRY CORPORATION PTY LTD (THE TENANT) TRANSITIONING THE PARK INTO COMPLIANCE WITH THE BEST PRACTICE MANAGEMENT GUIDELINES FOR COMMITTEES OF MANAGEMENT: MANAGING CROWN LAND CARAVAN AND CAMPING PARKS (THE PROPOSAL).**
3. **GIVE PUBLIC NOTICE IN ACCORDANCE WITH S.223 OF THE LOCAL GOVERNMENT ACT 1989 OF THE PROPOSAL (ITEM 2 ABOVE) IN COUNCIL'S NOTICEBOARD SECTION OF THE LOCAL NEWSPAPERS IN THE WEEK COMMENCING 31 JULY 2017 AND INVITE WRITTEN SUBMISSIONS FROM THE COMMUNITY BY 5.00PM TUESDAY 29 AUGUST 2017.**
4. **AUTHORISE THE CHIEF EXECUTIVE OFFICER TO UNDERTAKE THE ADMINISTRATIVE PROCEDURES NECESSARY TO ENABLE THE COUNCIL TO CARRY OUT ITS FUNCTIONS UNDER S.223 OF THE LOCAL GOVERNMENT ACT 1989 IN RESPECT OF THE PROPOSAL (ITEM 2 ABOVE).**
5. **IF SUBMISSIONS ARE RECEIVED TO THE PUBLIC NOTICE (ITEM 2 ABOVE):**
 - a. **AUTHORISE THE CHIEF EXECUTIVE OFFICER TO SET THE TIME, DATE, AND PLACE TO HEAR, CONSIDER, AND DETERMINE SUBMISSIONS.**

- b. HEAR SUBMITTERS WHO HAD ELECTED TO SPEAK TO THEIR SUBMISSION AT A SPECIAL COMMITTEE OF COUNCIL IN CLOSED SESSION COMPRISING OF:
 - i. THE MAYOR WHO WILL CHAIR THE MEETING;
 - ii. NOT LESS THAN TWO OTHER COUNCILLORS; AND
 - iii. THE DIRECTOR OF SUSTAINABLE COMMUNITIES AND INFRASTRUCTURE FOR ADMINISTRATIVE PURPOSES.
 - c. CONSIDER AND DETERMINE SUBMISSIONS AT COUNCIL'S ORDINARY MEETING TO BE HELD 25 OCTOBER 2017 IN OPEN SESSION.
6. IF NO SUBMISSIONS ARE RECEIVED TO THE PUBLIC NOTICE, CONTINUE WITH THE PROPOSAL.
7. WRITE TO THE DEPARTMENT OF ENVIRONMENT, LAND, WATER, AND PLANNING (DELWP) CONFIRMING COUNCIL'S DECISION IN ITEM 2 ABOVE AND REQUEST DELWP TO:
 - a. COMMENCE THE PROCEDURE FOR PARLIAMENTARY SCRUTINY AND MINISTERIAL APPROVAL IN PRINCIPLE (AIP) FOR THE NEW LEASE;
 - b. EXEMPT COUNCIL FROM CONDUCTING AN EXPRESSION OF INTEREST PROCESS FOR THE NEW LEASE ON THE GROUNDS THAT THE EXISTING TENANT IS BEST PLACED TO WORK WITH COUNCIL ON EXISTING SITE HOLDER COMPLIANCE REQUIREMENTS.
8. IN RESPONSE TO CONFIDENTIAL ATTACHMENT [15.1.1] PETITION - POSSIBLE CHANGES TO THE MANAGEMENT OF WARATAH BAY CARAVAN PARK.
 - a. FORWARDS THE COUNCIL MINUTES FOR ITEM 4.1 WARATAH BAY CARAVAN PARK – PROPOSED LEASE LISTED IN THE OPEN ORDINARY COUNCIL MEETING AGENDA 26 JULY 2017 TO THE LEAD PETITIONER.

CARRIED UNANIMOUSLY

REPORT**Particulars of the current Lease**

Tenant:	Harry Corporation Pty Ltd
Term:	18 years
Expiry Date:	12 December 2017
Area:	Approximately 3.795 ha.
Rental:	Income from the Lease is currently \$72,000 per annum (inclusive of GST).
Maintenance:	The tenant is responsible for repairs, maintenance, and its own supplies. Council is responsible for capital improvement works.

Procedural and Legal Considerations with a New Management Agreement

The procedural and legal considerations that need to be addressed when developing a new management agreement for the Park include the following:

1	Ministerial Approval
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As the Park is on Crown Land, Council is required to consult with DELWP regarding any future tenure arrangements for the Park.

The Park has a reservation status of “*Permanently Reserved for Protection of the Coastline*”. This is a reservation status under Part 2, Section 4(1)(ze) of the Crown Land (Reserves) Act 1978.

DELWP have confirmed:

“If council is wishing to formalise the current tenant’s occupation for say no more than four years, there are reasonable grounds to issue a lease without recourse to an expression of interest. The lease is only for four years and is to cover the period Council needs to complete planning for future long term arrangements. This type of situation is identified in the Leasing Policy as one of the grounds for granting a lease outside of a public competition process however at minimum Council will need to advertise a Notice of Intention to Lease. If Council decides to go down this path, it is required to put a case to the Department. If the term is beyond four years, an EOI process may be required.

As you may be already aware the land is reserved for Protection of the

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Coastline therefore the granting of any tenure over the land requires the direct approval of the Minister and Parliamentary Scrutiny process."

The outcome of discussions with DELWP confirmed the following:

1. There are options available to Council for a short-term lease and these options may be exempt from following an expression of interest process if they are in line with clause 5.3 – Principle 2 of the *Crown Land Leasing Policy 2010* which aims to ensure consistency and transparency in leasing. (This means that Council will be required to notify the public of its intentions to lease to the tenant).
2. As the Park is "*Permanently Reserved for the Protection of the Coastline*" any future management agreement for the Park, regardless of the term, will require "Parliament Scrutiny and Ministerial Approval in Principle (AIP)"¹.

2 Parliamentary Scrutiny (Order by the Governor in Council)

The Park is located on DELWP land which has been reserved for the protection of the coastline, and not for camping purposes. Therefore, as the current lease will expire, a proposed new lease requires the decision of Parliament to determine that the site can be used as a caravan park. This means that s.17A(3)(a) of the Crown Land (Reserves) Act 1978 applies "*17A Continuation of uses of reserved land for purposes other than those for which it is reserved—licences and agreements*".

This step is part of DELWP's process but as this is a lengthy process, DELWP will require Council's decision on the tenure of the Park sooner rather than later to complete the process before the expiry of the current lease.

3 Retail Leases Act 2003 (Vic)

The operation of the Park is a retail use. This means that the Retail Leases Act 2003 (Vic) also applies in addition to the Crown Land (Reserves) Act 1978. The Retail Leases Act 2003 binds the Crown and its land managers.

In accordance with s.21(1) of the Retail Leases Act 2003, a retail lease must be for a minimum term of five years unless a lesser term is agreed to by the Tenant and approved by the Commissioner for Small Business in accordance with s.21(5) of the Retail Leases Act 2003. So whereas Council is able to negotiate a

¹ **Parliamentary scrutiny** is the close examination and investigation of government policies, actions, regulations, legislation, and spending that is presented to Parliament.

short-term management agreement for say, six months, it is limited to the Tenant agreeing and seeking approval from the Commissioner for Small Business.

4 Lease or Contract?

Council could entertain a contract arrangement and in so doing, avoid the Retail Leases Act 2003, but this means Council would not receive the benefit of rental income, and would instead be paying the Tenant to manage the Park whilst Council receives the benefits of the income derived (profits).

Given the pending Lease expiry and the need to set a management arrangement in place, it is considered more practical to continue with a retail lease model and reach agreement with the existing tenant on a 5 year term with special conditions requiring the Tenant to work with existing annual site holders on compliance with the following:

1. Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2010; and
2. Best Practice Management Guidelines for Committees of Management: Managing Crown Land Caravan and Camping Parks.

5 Interest of DELWP – new Coastal Committee of Management

DELWP have confirmed that it is interested in progressing the option of one coastal foreshore Committee of Management in an aim to address the recommendations of an expert panel appointed by the State Government to review the current system of managing Victoria's coastline starting with the Coastal Management Act 1995. A new marine and coastal system for Victoria: Marine and Coastal Act Consultation (August 2016) presents the outcome of the review and with regards to management of the coastline recommends (p.25) that DELWP:

"...provide economic efficiencies of scale to allocate limited resources effectively."

This recommendation is in recognition of the misalignment of resourcing, management responsibilities and ability to raise revenue by coastal committees of management.

6 Other Considerations

1. Time - Council needs time to carefully plan for the future of its Crown Land Caravan Parks.

2. Community concern - The broader community of South Gippsland is still concerned about Council directly managing Crown Land Caravan Parks. Delaying any decision with the Park will allow Council to work more closely with the community to plan for the future of the Crown Land Caravan Parks and coastal foreshore.

PETITION: POSSIBLE CHANGES TO THE MANAGEMENT OF WARATAH BAY CARAVAN PARK

At the June 2017 Council meeting a petition was tabled with 1,088 signatures in relation to the future management of the Waratah Bay Caravan Park. A copy of the petition prayer is available in **Figure 1** below.

Figure 1: Petition Prayer

Petition to South Gippsland Shire Council & the Victorian Parliament	
Petition summary and background	The decision of the South Gippsland Shire Council to take over 2 previously successfully commercial leases; Yanakie and Long Jetty caravan parks; have proven to be costly and against the best interests of the ratepayers, forgoing what was a steady income for council in favour of an increasing financial burden. The Council intends to do the same to the Waratah Bay Caravan Park at the end of 2017 when its lease expires. In stark contrast the Waratah Bay Caravan Park is a shining example of how a commercially run park can be successful with a sensible mix of long term sites, cabins and casual camping to suit all budgets and currently no drain on the public purse. Council takeover will end the current successful business model and impose greater financial burden to the ratepayer.
Action petitioned for	<p>We, the undersigned, are concerned citizens who urge our leaders to act now to;</p> <ol style="list-style-type: none"> 1. Ensure the Waratah Bay Caravan Park be managed by private enterprise where it can be financially viable, support local tourism and negate the financial burden on taxpayers. 2. To consult with stakeholders of South Gippsland Caravan Parks to devise fair and more achievable guidelines, that achieves maximum usage in our Crown Land Caravan Parks, which ultimately benefits local business dependent on tourism. 3. Demand transparency from Council regarding future plans for the Waratah Bay Caravan Park, and therefore be held accountable for their actions.

As this petition is concerned with the particulars and outcome of this Council report, it is appropriate to address this petition in conjunction with this report.

A full copy of the petition is available in **Confidential Attachment [15.1.1] – Petition - Possible Changes to the Management of Waratah Bay Caravan Park.**

CONSULTATION

Council officers have met with the existing tenant to discuss current and future lease considerations. Harry Corporation Pty Ltd expressed an interest to enter into a five year agreement and agreed that the current lease expiry date of December was impractical.

Council officers have been in discussions with DELWP and investigated various options to address current and future lease arrangements. DELWP have offered an overholding arrangement of the current lease to give Council time to negotiate the finer details of a further lease.

Further consultation will include discussions with the existing Tenant, DELWP, and the community via the public notice of the new lease.

NEXT STEPS – THE NEW LEASE

1. Negotiate terms of a new Lease

As mentioned under 'Other considerations' above, the terms of the new lease will include special conditions requiring the Tenant to work with existing annual site holders on compliance of their accommodation (caravans and annexes).

When valuing the land for market rental purposes, the valuer will be instructed to take the special conditions into account in order to recognise any potential losses or gains in site sales to the Tenant.

The Tenant will not be required to attend to any capital works or investment.

Once the terms have been agreed to, the draft Lease will be sent to DELWP for its approval process to commence (i.e. Parliamentary Scrutiny and Approval in Principle).

2. Public notification – s.190 of the Local Government Act 1989

When leasing its land, Council must comply with the provisions of s.190 of the Local Government Act 1989 which says:

190 Restriction on power to lease land

- (1) A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.
- (2) Subject to any other Act, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.
- (3) If the lease is to be—
 - (a) for 1 year or more and—
 - (i) the rent for any period of the lease is \$50 000 or more a year; or
 - (ii) the current market rental value of the land is \$50 000 or more a year; or
 - (b) for 10 years or more; or
 - (c) a building or improving lease—the Council must at least 4 weeks before the lease is made publish a public notice of the proposed lease.
- (4) A person has a right to make a submission under section 223 on the proposed lease.

Given the provision of s.190(3), if the market valuation of the land returns a rental of more than \$50,000 per year, Council will need to publish a public notice and comply with s.190(4).

Also, as a minimum, DELWP requires Council to publish a "Notice of Intention to Lease". The Local Government Act 1989 s.223 notice will suffice.

THE PROCESS FOR LEASE

Following Council's decision, officers will follow a process that will broadly include the actions as shown in **Table 2** below:

Table 2: Process for Lease

NO.	ACTIONS	2017 EST. TIMEFRAME
1	Council resolves to commence the process for a new Lease for the period (term) 1 July 2018 to 30 June 2023 to the existing Tenant. Write to the existing Tenant and commence negotiations on the terms of the new Lease which will include the requirement for them to work with existing site holders on compliance with the <i>Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2010</i> , and the <i>Best Practice Management Guidelines for Committees of Management: Managing Crown Land Caravan and Camping Parks</i> .	26 July 2017
2	Public notification pursuant to ss.190(4) and 223 of the Local Government Act 1989 of Council's proposal to enter into a new Lease for the period 1 July 2018 to 30 June 2023 to the existing Tenant.	31 July 2017
3	Write to DELWP confirming Council's resolution and request DELWP to commence its process for Parliamentary Scrutiny at a sitting of Parliament and obtain Ministerial Approval in Principle for a new lease for the period 1 July 2018 to 30 June 2023 to the existing Tenant and for Council to be exempt from undertaking an EOI process (include a copy of the public notice). Instruct lawyers to commence preparation of a draft new lease to include special conditions regarding the Tenant working with existing site holders on	1–29 August 2017

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NO.	ACTIONS	2017 EST. TIMEFRAME
	compliance with transition plan to bring the Park in line with the <i>Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2010</i> and the <i>Best Practice Management Guidelines for Committees of Management: Managing Crown Land Caravan and Camping Parks</i> . Obtain a market valuation for rental purposes that will take into account the Tenant's obligations to address the special conditions on compliance.	
4	Potential hearing of any submissions.	27 September 2017
5	Potential report to Council to consider submissions and determine resolution.	October 2017
6	DELWP to issue Ministerial Approval in Principle.	October/November 2017
7	Final Lease prepared for execution signed (subject to the outcome of 4 and 5 above).	December 2017/June 2018

RESOURCES

There will be legal costs incurred by Council's Property team in preparation of the new lease. These costs will be allocated from the existing budget for the lease of Council's Crown Land Caravan Parks.

Market rental income will continue to be received for the term of the lease.

RISKS

Council is well aware of the legal and reputational risk it faces with making decisions regarding the preferred future management model for the Park and its other Crown Land Caravan Parks.

CONFIDENTIAL ATTACHMENT

Confidential Attachment [15.1.1] – Petition - Possible Changes to the Management of Waratah Bay Caravan Park has been provided in accordance with s.77(2)(c) of the Local Government Act 1989, the Chief Executive Officer designates this Agenda Item as confidential information on the grounds that it relates to s.89(2)(h) - any other matter which the Council or Special Committee considers would prejudice the Council or any persons. This item is deemed confidential to protect the privacy of the petition signatories.

REFERENCE DOCUMENTS

Council Policy

Documents are available on Council's website: www.southgippsland.vic.gov.au

A New Marine and Coastal System for Victoria: Marine and Coastal Act
Consultation Paper (August 2016)

Best Practice Management Guidelines for Committees of Management: Managing
Crown Land Caravan and Camping Parks

Crown Land Leasing Policy 2010

Legislative Provisions

Coastal Management Act 1995

Crown Land (Reserves) Act 1978

Local Government Act 1989

Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and
Standards) Regulations 2010

Retail Leases Act 2013