

ITEM NUMBER: 19.3

CONFIDENTIAL REPORT

SOMERTON SURF LIFE SAVING CLUB – REQUEST TO EXTEND COUNCIL’S APPROVAL OF MANAGEMENT AGREEMENT (Report No: 211/21)

Pursuant to Section 90(2) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- 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; and would, on balance, be contrary to the public interest.

CONFIDENTIAL

Recommendation – Exclusion of the Public – Section 90(3)(d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 211/21 Somerton Surf Life Saving Club – Request to Extend Council’s Approval of Management Agreement in confidence.
 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: Report No: 211/21 Somerton Surf Life Saving Club – Request to Extend Council’s Approval of Management Agreement on the following grounds:
 - d. pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is 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.
 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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CONFIDENTIAL

Item No: **19.3**

Subject: **SOMERTON SURF LIFE SAVING CLUB – REQUEST TO EXTEND COUNCIL’S APPROVAL OF MANAGEMENT AGREEMENT**

Date: 13 July 2021

Written By: Property Officer, Commercial & Leasing

General Manager: Strategy and Corporate, Ms P Jackson

SUMMARY

Pursuant to Council Resolution No. C140720/1966 dated 14 July 2020, Somerton Surf Life Saving Club Inc (**Club**) was granted conditional approval (for a period of twelve (12) months only) to enter into a Management Agreement with a third party (namely Gambell & Sutton Pty Ltd) to manage and operate the bistro and upstairs bar under the Club’s control and direction.

Council’s approval of the Management Agreement will expire on 14 July 2021. However, the Club has now requested that Council extend its approval for an unspecified period of time. As such, this report discusses the Club’s request with respect to the background of the matter, the progress made by the Club to date, and the impact caused to some nearby residents by the current interim arrangements.

All things considered, this report recommends that Council accede to the Club’s request for an extension to the term of the Management Agreement, but that it be for a limited six (6) month period, and that it should do so with the imposition of some additional conditions to address the concerns raised by the surrounding residents.

RECOMMENDATION

1. That the Somerton Surf Life Saving Club be granted approval to extend the current Management Agreement with a third party (being Gambell & Sutton Pty Ltd) to 13 January 2022 to manage and operate a bistro, bar and function business provided always that:
 - (a) such arrangement must be under the respective Club’s care and control and consistent with the existing lease conditions and any development approvals;
 - (b) the Club remedy its breach of condition 1(c) of Council Resolution No. C140720/1966 forthwith by reducing the scale of operations of the business to that

required by condition 1(c) of Council Resolution No. C140720/1966 as and from 13 July 2021;

- (c) such arrangement operates under the Club's liquor licence and any applicable conditions thereof;
- (d) such arrangement must not give rise to a sublease or otherwise constitute a parting of possession of the leased premises;
- (e) any revenue generated by such arrangement must be by way of a profit share arrangement only and cannot take the form of rent or similar payment which may give rise to a sub-lease or otherwise constitute rent;
- (f) use of the eastern balcony by staff and patrons is prohibited as and from 9:00pm on evenings when functions or events are held or the number of patrons exceeds 50 persons;
- (g) the blinds on the windows and doors leading to the eastern balcony and along the upper floor of the eastern façade are drawn as and from 9:00pm when functions or events are held or the number of patrons exceeds 50 persons;
- (h) noise levels from amplification systems emitting sound and music associated with functions and events are limited to a total output of 52 decibels when measured from the nearest residential property;
- (i) responsible and suitably accredited security personnel are engaged to manage patron behaviour outside the licensed premises on all evenings when functions or events are held or the number of patrons exceeds 50 persons to ensure the orderly arrival and departure of patrons, and that such personnel also be charged with the responsibility to address any indiscretions around the consumption of alcohol outside the licensed premises;
- (j) the Club do all things necessary to ensure that Gambell & Sutton Pty Ltd adhere to the conditions and requirements of such approval including but not limited to varying the duration of the Management Agreement so that it ends on 13 January 2022;
- (k) the Lease be varied to include a special condition noting the terms and conditions of Council's approval of the Management Agreement and imposing any other requirements on the the Club as Council may, in its absolute discretion, deem reasonable and necessary;
- (l) such arrangement must end on 13 January 2022 without exception nor reservation and management of the business must be returned to the Club.

2. Should the Club wish to enter into a sub-lease agreement or other commercial arrangement with a third party, they shall:
 - (a) lodge a separate submission for Council approval as required by their lease, including details of the arrangement and audited financials from 1 September 2020 up to the date of submission, so that Council can assess the proposal and if necessary determine the effective community and commercial rent to be applied;
 - (b) submit any necessary development and liquor licence applications;
 - (c) resolve parts (a) and (b) above with all necessary approvals obtained by 13 January 2022.
3. That Administration be authorised to issue a letter of approval to the Club.

RETAIN IN CONFIDENCE - Section 91(7) Order

4. That having considered Agenda Item 19.3 Somerton Surf Life Saving Club – Request to Extend Council’s Approval of Management Agreement 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, attachments, recommendation and discussion be retained in confidence for a period of 24 months from the date of this decision and that the Chief Executive Officer is authorised to release the documents at the expiry of that period and that this order be reviewed every 12 months.

COMMUNITY PLAN

Placemaking: Creating lively and safe places

Community: Providing welcoming and accessible facilities

Community: Fostering an engaged and contributing community

Economy: Supporting and growing local business

Economy: Making it easier to do business

Economy: Boosting our visitor economy

Culture: Supporting excellent, efficient operations

COUNCIL POLICY

Sporting and Community Club Leasing Policy (Policy)

STATUTORY PROVISIONS

Local Government Act 1999

Retail and Commercial Leases Act 1995

BACKGROUND

Council Report No. 178/20; Item No. 13.1. *“Adjourned Report – New Management Agreement – Somerton Surf Life Saving Club Inc.”*, 14 July 2020 (Resolution No. C140720/1966)

Council Report No. 161/20; Item No. 18.3, *“New Management Agreement – Somerton Surf Life Saving Club Inc.”*, 23 June 2020 (Adjourned)

The Somerton Surf Lifesaving Club Inc. (**Club**) has a lease over the Somerton Surf Lifesaving Club building for a term of 21 years from 7 December 2005 to 6 December 2026 (**Lease**).

In 2005, the property was redeveloped to provide new facilities for the use of the Club, including a bar, commercial kitchen, large seating area and balcony on the upper floor. In previous years, the Club has used the upstairs licensed area to operate a bar, bistro (open to both club members and the public), to host club functions (for club members) and for venue hire to the public for weddings, birthdays and other functions (all of which is hereafter called **“the business”**).

However, the business proved to be unsustainable from an economic and volunteer perspective and the Club has discontinued business operations. The Club’s losses from the business reduced the financial resources of the Club including funds to maintain its equipment, training and rescue operations.

In early 2020, the Club approached Council seeking to activate the upstairs licensed area under a commercial model pursuant to which a third party operator would run the bistro, upper level bar and kitchen as a for-profit commercial restaurant, function centre and bar by way of sublease. However, it was determined by Administration that the proposal contravened the permitted use as outlined in the Lease and the original Development Approval and would trigger a change of land use.

Pursuant to Council Resolution No. C140720/1966 dated 14 July 2020, the Club sought and was granted conditional approval to enter into a Management Agreement with a third party (Gambell & Sutton Pty Ltd) to manage and operate the business under the Club’s control and direction (which, in Administration’s view, was consistent with the Lease and original Development Approval) on the basis that:

- the Management Agreement was an interim measure so the Club could secure the third party operators and be given time to seek the approvals necessary to effect a change of use to operate a full commercial restaurant, function centre and bar;
- Council’s approval was limited to a period of twelve (12) months and the Club would seek the necessary approvals within that twelve (12) month period;
- the Club would not increase nor exceed the current scale of operations of the previous hospitality/catering business or change its approved hours of operation; and
- the Club comply with the additional conditions outlined in Council Resolution No. C140720/1966.

Refer Attachment 1

Council's approval is due to expire on 13 July 2021 and the Club has requested that Council extend its approval of the Management Agreement for an unspecified period of time despite having not yet applied for the necessary approvals despite being given a reasonable time to do so. In addition, the Club has also directly contravened condition 1(c) of Council Resolution No. C140720/1966 by significantly increasing the scale of operations of the business. This increase has resulted in receipt by Administration of many complaints from the surrounding residents who claim that the noise emanating from the business during functions, events and busy evenings disturbs quiet enjoyment of their own private residence. Concerns have also been raised as to the Club's compliance with its liquor licence as well as the unruly behaviour of patrons outside the licensed premises.

The Club, in its submission to Council, has raised a number of extenuating circumstances as reasons for the delay in lodging the necessary approvals, and has shown reasonable endeavours by engaging consultants to assist with the process. A copy of the Club's request is annexed hereto as Attachment 2.

Refer Attachment 2

Furthermore, the Club has also indicated that it has a number of functions and events booked after 13 July 2021 and it is relying on the third party manager to run those functions and events.

Following discussions had at a Council workshop on the matter held on 15 June 2021, and in light of the above, it is recommended that Council allow the Club to honour those functions and events which have been booked to date and will occur prior to 13 January 2022 and accede to the Club's request for an extension to the term of the Management Agreement provided that the extension be limited to a period of six (6) months expiring on 13 January 2022 subject to the imposition of additional conditions to address the increase in the scale of business operation as well as the concerns raised by surrounding residents regarding noise, behaviour of patrons outside the venue and liquor licence compliance.

REPORT

As noted above, Council approved the Management Agreement on the basis that it was an interim measure so the Club could secure the third party operators and be given time to seek the approvals necessary to effect a change of use to operate a full commercial restaurant, function centre and bar.

Time was sought by the Club as it was of the view that the new planning reforms (due to take effect in late September 2020) would lessen the requirements and opportunities for community and resident input are significantly reduced with no appeal rights and limited notification/representation requirements, thus making it easier for the Club to seek, and be granted a change of use. Unfortunately, the planning reforms did not come into effect until 19 March 2021 and it is primarily for this reason that the Club is seeking an extension of time.

Upon consideration, it is Administration's view that:

- the planning reforms were only delayed for a period of six (6) months, whilst Council's approval was for a period of twelve (12) months, thus giving the Club sufficient time to lodge an application with Council;
- The Club has not remained idle during this time, having engaged planning and traffic experts to commence the groundwork required prior to the lodgement of a development application; and
- that any further extension to the term of the Management Agreement should be limited to six (6) months, as this timeframe is considered to be more than sufficient to prepare and resolve a development application against the new Planning and Design Code.

It must be noted that any decision by Council regarding the term of the Management Agreement will not prevent or hinder the Club from lodging an application for a change of use, and nor will it prejudice such application.

In considering an extension to the term of the Management Agreement, Council should be mindful of the fact that the community is aware that Council's initial approval was limited to a period of twelve (12) months, and there may be some expectation for some reprieve from the activities to date. Similarly, an extension would further delay the opportunity for the community to be formally engaged on the proposal, and to be given the opportunity to raise concerns via an official community consultation process. In this regard, it will be necessary to strike a balance between the expectations of the various stakeholders by finding a middle-ground resolution. This is best achieved by Council granting a limited, albeit reasonable, extension of time for the Club to formalise its proposal, whilst imposing a number of conditions to reduce the scale of operations of the business to that required by Council Resolution No. C140720/1966 and to ensure that the concerns raised by nearby residents are addressed in the immediate short-term.

BUDGET

Council is not a party to the Management Agreement and is only required to provide advice of Council's decision by way of letter to the Club. In terms of the proposed variation to the Lease, an annual budget allocation is provided to Strategy & Corporate for the review, implementation and variation of property leases. This budget includes the engagement of legal advice and services when and where necessary.

LIFE CYCLE COSTS

There is no implications for the whole of life cost.

Attachment 1



ITEM NUMBER: 13.1

CONFIDENTIAL REPORT

ADJOURNED REPORT - NEW MANAGEMENT AGREEMENT – SOMERTON SURF LIFESAVING CLUB INC. (Report No: 178/20)

Pursuant to Section 90(2) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- 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; and would, on balance, be contrary to the public interest.**

CONFIDENTIAL

Recommendation – Exclusion of the Public – Section 90(3)(d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 178/20 New Management Agreement – Somerton Surf Lifesaving Club Inc. in confidence.
 2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 178/20 Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc. on the following grounds:
 - d. pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is 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.
 3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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CONFIDENTIAL

Item No: 13.1

Subject: **ADJOURNED REPORT - NEW MANAGEMENT AGREEMENT –
SOMERTON SURF LIFESAVING CLUB INC.**

Date: 14 July 2020

Written By: Property Officer

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

Administration submitted Confidential Item 18.3, Report 161/20 New Management Agreement – Somerton Surf Life Saving Club Inc. for consideration by Council at its meeting on 23 June 2020.

Council subsequently resolved to adjourn the matter until the next Council meeting on the basis that Council required further time to discuss the matter at a workshop and further consider the report. The workshop was undertaken on the 30th June 2020.

As the adjournment was moved prior to the consideration of the motion, any Councillor can move, second and/or speak to the motion.

UPDATED RECOMMENDATION

1. That the Somerton Surf Life Saving Club be granted approval to enter into a Management Agreement with a third party (being Gambell & Sutton Pty Ltd) to manage and operate a bistro, bar and function business as previously operated with Club resources subject to the following conditions:
 - (a) the initial approval is for a period of 12 months, with the Club either making:
 - i. an application for a further 12 month extension prior to completion of the initial term; or
 - ii. submitting an application for a sub-licencewhichever is the sooner;
 - (b) the bistro, bar and function facilities business must be under the Club's care and control and consistent with the existing lease conditions and any development approvals;

- (c) not increase nor exceed the current scale of operations of the previous hospitality/catering business or change its approved hours of operation;
 - (d) operate under the Club's liquor licence and any applicable conditions thereof;
 - (e) must not give rise to a sublease or otherwise constitute a parting of possession of the leased premises; and
 - (f) generate revenue by way of a management fee and incentives or a profit share arrangement and cannot take the form of rent or similar payment which may give rise to a sub-lease or otherwise constitute rent.
2. Should the Club wish to enter into a sub-lease agreement or other commercial arrangement with a third party, they shall:
- (a) lodge a separate submission for Council approval as required by their lease, including details of the arrangement and any forecast commercial revenues, so that Council can assess the proposal and if necessary determine the effective community and commercial rent to be applied; and
 - (b) submit any necessary Development and Liquor Licence applications.
3. That Administration be requested to develop a range of options to determine commercial rental from sub-lease or other commercial arrangements that might arise under the Sporting and Community Lease Policy and submit same to Council for consideration.
4. That Administration be authorised to issue a letter of approval to the Club.

RETAIN IN CONFIDENCE - Section 91(7) Order

5. That having considered Agenda Item 13.1 (Report 178/20) New Management Agreement – Somerton Surf Lifesaving Club Inc. in confidence under section 90(2) and (3)(d) the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments, recommendation and discussion be retained in confidence for a period of 24 months from the date of this decision and that the Chief Executive Officer is authorised to release the documents at the expiry of that period or when the Management Agreement has been signed whichever occurs first and that this order be reviewed every 12 months.

COMMUNITY PLAN

Community: Providing welcoming and accessible facilities
Community: Fostering an engaged and contributing community
Economy: Supporting and growing local business
Economy: Making it easier to do business

COUNCIL POLICY

Sporting and Community Club Leasing Policy (Policy)

STATUTORY PROVISIONS

Local Government Act 1999

Retail and Commercial Leases Act 1995

BACKGROUND

Council at its meeting on 23 June 2020 resolved to adjourn (C230620/1948) Report No: 161/20 until the next Council meeting on the basis that Council required further time to discuss the matter at a workshop and further consider the report.

REPORT

As the recommended motion presented in the original report (Report No: 161/20) had not been moved or seconded, Administration has included an updated recommendation which may be more reflective of Council's discussions during the workshop.

The original Report No: 161/20 is presented in Attachment 1a by way of background.

Refer Attachment 1a

BUDGET

Council is not a party to the Management Agreement and is only required to provide landlord's approval by way of a letter to the Club.

Any proposal to adjust the Club's rent based on a commercial sub-lease or other commercial arrangement will be considered at the time of any subsequent application from the Club. This report recommends that Council request Administration to develop options for determining such commercial rental for inclusion in the Sporting and Community Leasing Policy.

LIFE CYCLE COSTS

There is no implications for the whole of life cost.

Item No: **18.3**

Subject: **NEW MANAGEMENT AGREEMENT – SOMERTON SURF LIFESAVING CLUB INC.**

Date: 23 June 2020

Written By: Property Officer

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

The Somerton Surf Lifesaving Club Inc (**Club**) has a lease over the Somerton Surf Lifesaving Club building for a term of 21 years from 7 December 2005 to 6 December 2026.

The Club previously operated a bistro and function business on the premises by using paid and/or voluntary staff managed by the Club itself. However this has proved to be unsatisfactory (economically and otherwise) and the club has discontinued bistro operations.

The Club is seeking approval to enter into a Management Agreement with a third party (being Gambell & Sutton Pty Ltd) to manage and operate the bistro and upstairs bar initially under the Club's control and direction, but ultimately for the 3rd party to operate a bistro as a full commercial restaurant the under a sub-lease arrangement.

The request to operate the bistro under a management agreement is generally routine, however the longer term question of whether to allow a fully commercial business to operate from the club under a sub-lease agreement is relatively new to council and issues such planning, development approval, change of land use, liquor licencing and revenue sharing will need to be considered by Council. All current leases require the Lessee to seek landlord approval prior to sub-lease part of their leased premises.

RECOMMENDATION

1. **That the Somerton Surf Life Saving Club be granted approval to enter into a Management Agreement with a third party (being Gambell & Sutton Pty Ltd) to manage and operate a bistro, bar and function business as previously operated by the Club provided that such arrangement:**
 - (a) **must be under the respective club's care and control and consistent with the existing lease conditions and any development approvals;**
 - (b) **not increase nor exceed the current scale of operations of the existing hospitality/catering business or change its approved hours of operation;**

- (c) operates under the Club's liquor licence and any applicable conditions thereof;
 - (d) must not give rise to a sublease or otherwise constitute a parting of possession of the leased premises;
 - (e) generates revenue by way of a profit share arrangement and cannot take the form of rent or similar payment which may give rise to a sub-lease or otherwise constitute rent.
2. Should the Club wish to enter into a sub-lease agreement or other commercial arrangement with a third party, they shall:
 - (a) lodge a separate submission for Council approval as required by their lease, including details of the arrangement and any forecast commercial revenues, so that Council can assess the proposal and if necessary determine the effective community and commercial rent to be applied;
 - (b) submit any necessary Development and Liquor Licence applications.
 3. That Administration be requested to develop a range of options to determine commercial rental from sub-lease or other commercial arrangements that might arise under the Sporting and Community Lease Policy and submit same to Council for consideration.
 4. That Administration be authorised to issue a letter of approval to the Club.

RETAIN IN CONFIDENCE - Section 91(7) Order

5. That having considered Agenda Item 18.3 (Report 161/20) New Management Agreement – Somerton Surf Lifesaving Club Inc. in confidence under section 90(2) and (3)(d) the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments, recommendation and discussion be retained in confidence for a period of 24 months from the date of this decision and that the Chief Executive Officer is authorised to release the documents at the expiry of that period or when the Management Agreement has been signed whichever occurs first and that this order be reviewed every 12 months.

COMMUNITY PLAN

Community: Providing welcoming and accessible facilities

Community: Fostering an engaged and contributing community

Economy: Supporting and growing local business

Economy: Making it easier to do business

COUNCIL POLICY

Sporting and Community Club Leasing Policy (Policy)

STATUTORY PROVISIONS

Local Government Act 1999

Retail and Commercial Leases Act 1995

BACKGROUND

The Somerton Surf Lifesaving Club Inc. (**Club**) has a lease over the Somerton Surf Lifesaving Club building for a term of 21 years from 7 December 2005 to 6 December 2026.

In 2005, the property was redeveloped to provide new facilities for the use of the Club, including a kiosk facility (**Kiosk**) and a bar and seating area (**downstairs licensed area**) on the ground floor and a bar, commercial kitchen, large seating area and balcony on the upper floor (**upstairs licensed area**).

On 11 March 2014, Council resolved (Resolution C110314/1059) to authorise a sub-tenant to operate the Kiosk, which has been successfully running since then.

Although the Club's original intention was not to profit from the commercial operation of the Kiosk, the original sub-lease rental has increased from \$2,865 (plus GST plus outgoings) in 2014 to \$16,500.00 (plus GST plus outgoings) in 2020. This additional revenue contributes to the Club's financial viability.

The rental paid to Council for the clubrooms increased from \$10.00 per annum pre-2014 to \$2,865 pa when the Kiosk sub-lease was approved in 11 March 2014. This was intended to recognise that Council (and through it the broader community) also benefitted from converting part of clubrooms into a commercial operation. Since that time, the community's share of commercial rental has increased at CPI per year, even though the actual sub-lease rental income for the Club has increased from \$2,865 to \$16,500 per annum. The current rent payable to council is currently \$3,096 per annum.

In previous years, the Club has used the upstairs licensed area to operate a bar, bistro (open to both club members and the public), to host club functions (for club members) and for venue hire to the public for weddings, birthdays and other functions (all of which is hereafter called "**the business**").

The Club previously operated the business using paid and/or voluntary staff within the Club itself. However this proved to be unsustainable from an economic and volunteer perspective and the Club has discontinued business operations. The Club's losses from the business have reduced the financial resources of the Club including funds to maintain its equipment, training and rescue operations.

The Club is now seeking to activate the upstairs licensed area again under a commercial model.

REPORT

Clause 6 of the Lease provides that the Club must not use nor allow any other person to use the property for carrying on a business. Item 8 of the Schedule to the Lease states the intended purpose of the premise as "Surf lifesaving club and associated activities".

The Club does however regard the business as vital for its ability to:

- provide welcoming and accessible facilities;
- foster an engaged and contributing community; and
- support the long term financial viability of the club.

With this in mind, the Club is seeking Council's approval to enter into an agreement with a third party (being Gambell & Sutton Pty Ltd) to:

- Stage 1 - initially manage and operate the business under the Club's control and direction
- Stage 2 – subject to Council, development and other approvals, to sub-lease the upper floor facilities to Gambell and Sutton Pty Ltd to operate a full commercial restaurant, function centre and bar.

Gambell and Sutton Pty Ltd are an experienced and well-versed operator, having previously operated the Glenelg Surf Life Saving Club bistro.

The Club has written to Council seeking landlord's approval to initially establish a Management Agreement for Gambell and Sutton Pty Ltd to manage and operate the business under the Club's control and direction commencing from 1 September 2020.

Refer Attachment 1

The Club is then seeking landlord's approval to progress to Stage 2, subject to Development Approval and Liquor Licencing approvals, and move to a fully commercial model based on sub-leasing of the upper level facilities of the club to a commercial operator.

This will help the Club to concentrate on its core business of life saving while offering a bistro and function space to the local community. The Club has provided a copy of the draft Management Agreement for Council's information.

Refer Attachment 2

The proposed Management Arrangement would free up members of the Club's time as they would not be required to manage the business and could focus their time and effort in more suitable areas. The Club members lack the experience and skill to operate a hospitality business and as such the business is a burden on the club both financially (inadequate meal, alcohol and function costing, disproportionate stock ordering to projected and/or actual income and continual

financial loss) and time-wise (lack of experience means that an already time consuming business is even more so and is extremely draining on members time and resources).

Under the terms of the proposed Management Agreement, the business will be distinct from the Kiosk with the third party operator obligated to make all reasonable efforts to ensure that its trading does not interfere with the operations and offerings do not compete with those of the Kiosk.

Change of Land Use

The original Development Approval was assessed based on the predominant land use being for a community club. Operation of bars and bistro were ancillary to the primary land use.

The introduction of a 3rd party operator to run the bistro, bar and function facilities under a Management Agreement with the Club providing management, accepting commercial risk and using the Club's liquor licence, in our view, consistent with the objects of the Club, its original approval and lease. The only change is that the club has hired someone to undertake the functions it would have previously undertaken using hired staff or volunteers.

However if the Club seeks a commercial operator to run the bistro, upper level bar and kitchen as a for-profit commercial restaurant, function centre and bar, it is Administration's view that this will trigger a change of land use. Under current planning legislation this would require a non-complying development application, require advertisement, public consultation, representations and have appeal rights through the ERD Court. Issues such as parking, noise, hours of operation and traffic would all be able to be challenged during the development assessment process.

After the new planning reforms come into effect in late September 2020, the requirements and opportunities for community and resident input are significantly reduced with no appeal rights and limited notification/representation requirements.

Similarly, any change to hours of operation, and to the scale and type of operation, would also require landlord and development approval. Transferring or reissuing the upper liquor licence to a new 3rd party commercial operator will also require approval by the Licencing Commissioner.

Subject to the commercial restaurant proposal being endorsed by Council and approval gained through the Development Assessment process, the Lease would need to be amended to reflect the change of use, to permit a commercial sublease for a restaurant and to update rental.

As the Club has negotiated with Gambell and Sutton Pty Ltd to manage the Club bistro from 1 September 2020, it has proposed that they initially manage and operate the business under the Club's control and direction, and under the Club's liquor license. This will allow time for the Club and operator to lodge subsequent applications for Council's landlord approval, development applications and to seek transfer of the liquor license.

This is likely to be the first request of this type received by Council and it is Administration's understanding that a decision in favour of the Club may result in other sporting and community

clubs making similar requests. Accordingly, it is appropriate that Council's views are sought on the merits of clubs engaging third parties to take over and commercialise existing hospitality/catering facilities leased by a club.

It is recommended therefore that Administration to develop a range of options for determining rental for commercial operations under sub-leases or other commercial arrangements so that Council can consider these and incorporate one or more into the Sporting and Community Lease Policy.

Kiosk Sub-lease Renewal

As the Kiosk sublease expired on 30 April 2020, the Club has also sought Council's consent to enter into a new sub-leasing arrangement with the same sub-tenant on similar terms to those previously consented to by Council. A separate report will be presented to Council in the next few weeks.

BUDGET

Council is not a party to the Management Agreement and is only required to provide landlord's approval by way of a letter to the Club.

Any proposal to adjust the Club's rent based on a commercial sub-lease or other commercial arrangement will be considered at the time of any subsequent application from the Club. This report recommends that Council request Administration to develop options for determining such commercial rental for inclusion in the Sporting and Community Leasing Policy.

CONFIDENTIAL - Original Report

Somerton SURF LIFE SAVING CLUB

Repton Road Somerton Park SA 5044
P.O.BOX 1069 GLENELG SOUTH S.A. 5045
ABN: 85 241 889 464

21st May 2020

To: The Mayor and Councillors
City of Holdfast Bay

**Re: Management Agreement
between Somerton Surf Life Saving Club “the club”
and Gambell and Sutton Pty Limited “the manager”**

The club leases its clubhouse from the Council and is asking the Council as landowner to approve the above agreement.

The upstairs floor of the clubhouse includes a commercial kitchen and bar which in the past has been used to hold bistros and functions for the benefit of members and to generate income for the club. This practice has fallen into disuse over the last 18 months due to inadequate returns and the burden placed on volunteers.

Following a review, the Board of Management of the club has decided that an experienced and professional operator is better suited to run these activities than paid staff and/or volunteers, who have done so previously.

The club has chosen the manager from a long list of applicants and proposes to enter into a sub-lease with the manager to run its own business. The sub-lease requires approval from;

- the Council as landowner,
- development approval, and
- licensing approval.



The life of the beach.

Development approval for the sub-lease has been held up due to an anomaly in the development plan and current planning regulations. This has imposed an unacceptable legal and financial risk to the club, which has been forced to delay its application until a new development code comes into effect later this year.

The management agreement is intended as an interim measure until all approvals for the sub-lease are obtained. It will allow the club to commence operations under the club's liquor licence in time for the 2020/21 life saving season with profits shared between the club and the manager. When the sub-lease is fully approved, the agreement will terminate and the manager will run its own business under its own licence and will pay rent to the club.

Benefits to the club of the sub-lease and outsourcing of the business include;

- transferring business risk to the new operator,
- replacing an uncertain income with the greater certainty of rent,
- having skilled and experienced people run the business,
- improved financial outcomes,
- attracting new members to the club with its improved offering, and
- removing the burden on volunteers and allowing them to concentrate on the club's core life saving functions.

The community will benefit from a revived and upgraded hospitality service, which will provide an additional attraction to users of the Council's recently constructed plaza in front of the clubhouse. The plaza and the associated path behind the Minda dunes are already proving to be exceedingly popular.

I trust that you will find the management agreement worthy of approval.

Thank you



Warwick Holland

President

Somerton Surf Life Saving Club

THIS MANAGEMENT AGREEMENT is made

BETWEEN

SOMERTON SURF LIFE SAVING CLUB INCORPORATED

(the club)

AND

GAMBELL & SUTTON PTY LTD ACN 637 647 940

(the manager)

BACKGROUND

- A. The club leases its two storied clubhouse ("the clubhouse") from the City of Holdfast Bay.
- B. It holds a club liquor licence which includes in the licensed area a commercial kitchen, bar, large seating area and balcony on the upper floor ("the upstairs licensed area") and a smaller bar and surrounds on the ground floor ("the downstairs licensed area")
- C. In previous years the club has used the upstairs licensed area to hold bistros (open to both club members and the public) and club functions (for club members) and for the hire to the public for weddings, birthdays and other functions (all of which is hereafter called "the business"). The club has used paid and/or voluntary staff in the business but this has proved unsatisfactory and the club has discontinued business operations. Instead the club has reached an agreement with the Manager to sub-let the upstairs licensed area to the Manager for it to operate the business on its own behalf under its own restaurant liquor licence.

- D. The proposed sub-lease (“the sub-lease”) involves obtaining certain approvals including an approval under the Development Act for change of use of the premises. This approval could be difficult and costly to obtain under the current law, but a change in the law is expected to enable approval to be obtained more readily. For this reason the club has delayed making the application for development approval until the new law comes into effect, which is expected to be the 1st September 2020.
- E. The parties wish to re-commence operation of the business on 1st September 2020, which is shortly before the life saving season for 2020/2021 commences. As development approval is not expected for some months after that date, this agreement is a temporary measure to enable the business to resume on 1st September and continue to be operated under the club’s liquor licence until development approval is obtained and the proposed sub-lease can come into effect.

IT IS AGREED between the club and the manager

Duration of Agreement

1. This agreement comes into effect on the 1st day of September 2020 (or such later date as the parties agree) and continues until the day following the last day on which;
 - i. The last of all necessary approvals are obtained for the sub-lease to come into effect, and
 - ii. the manager obtains a restaurant licence for it to sell or supply liquor in the upstairs licensed area.

Management of the Business

2. The manager shall manage the business on behalf of the club and in the name of the club during the duration of this agreement.
3. The club shall open a special purpose bank account and all revenue of the business shall be paid into that account.

4. The manager shall provide the club with a sales report and invoice for its share of revenue, for each week finishing at the close of trading on Sunday, with payment to be made by the club as soon as practicable and at least no later than 7 days from receipt of the sales report and invoice.
5. Operating hours for the business shall be,

Wednesday and Thursday	5pm to 11pm
Friday	5pm to midnight
Saturday and Sunday	11am to midnight

unless otherwise mutually agreed.
6. On production of a current membership card the manager shall provide to a member of the club a discount of 10% on regular food and beverage prices.
7. The club shall have preference to use the upstairs licensed area for up to five functions and 10 training or assessment days in a year. The dates for the ensuing twelve months shall be determined by the club, in consultation with the manager, at the beginning of the surf life saving season. If requested by the club, the manager shall provide catering and bar services at each function. The training and assessment days shall take place on days or times when the manager is not otherwise trading.
8. The club may open its downstairs bar during the surf life saving season on any day when the club is holding a carnival or other special event and until 6-00 pm on Saturday afternoons.

Liquor Licensing

9. The club will at all times remain the Licensee pursuant to Licence No. 57210525 .
10. The parties shall comply with the provisions of the Liquor Licensing Act 1997 (the "Act") and in particular sections;
 - i. 36 - Club Licence;
 - ii. 71 - Approval of Management and Control;
 - iii. 97 - Supervision and Management of Licensee's business;
 - iv. 99 - Prohibition of Profit Sharing;
 - v. 105 – Prescribed Entertainment on Licensed Premises.

11. Pursuant to section 99 (3) of the Act the manager shall at all times ensure that the business is conducted under the personal supervision and management of a natural person approved by the licensing authority.

Purchases

12. The manager shall be responsible for;
 - i. ordering all liquor, non alcoholic drinks and other bar stock, which shall be paid for by the club; and
 - ii. ordering and paying for all food and other catering and cooking supplies.

Revenue

13. The club shall be entitled to 50% of revenue from bar sales (which includes alcoholic and non alcoholic drinks and chips, nuts and other like snacks).
14. The manager shall be entitled to,
 - i. 50% of revenue from bar sales, and
 - ii. all other revenue.

Staff

15. The manager, at its cost, must at all times employ adequate and competent staff to the extent necessary to carry out its obligations to the standard required pursuant to this agreement and must;
 - i. observe all legal requirements as to payment of staff salaries, wages, PAYG tax, contributions to superannuation and other entitlements,
 - ii. comply with all legal requirements relating to occupational health and safety,
 - iii. comply with all workplace and employment requirements under the Registered and Licensed Clubs Award or other applicable award;
 - iv. register as an employer pursuant to the Return to Work Act 2014, promptly pay all levies and other amounts payable under the Act and

when requested by the club, provide to the club proof of registration and/or payment.

- v. Ensure that all staff present whilst on duty or in the environs of the club behave in an appropriate manner.

Conduct of the Business

16. The manager;
 - i. must not use the upstairs licensed area other than for carrying on the business, which it must conduct in a proper and prudent manner, and
 - ii. must observe and comply with all legislative provisions, rules or policies relating to the business including, without limiting the generality of this clause, with respect to:
 - iii. The Food Act 2001
 - iv. The Work Health and Safety Act 2012
 - v. Emergency drills and procedures
 - vi. Discrimination and harassment
 - vii. Security
 - viii. Privacy

Fixtures and Fittings

17. The Manager must use the club's, fixtures, fittings, plant, furnishings and equipment carefully so as to maintain them in good repair order and condition, fair wear and tear excepted and must promptly report to the club any such items in need of repair or replacement.

Cleaning

18. The manager shall ensure that the kitchen and other parts of the upstairs licensed area (including the western balcony) are kept in a clean and tidy state and filters for the extractor fan in the kitchen are cleaned on a regular basis.

Insurances

19. The manager must effect and keep current a public liability and product risk policy in an amount of not less than twenty million dollars (\$20,000,000) per claim or such other sum as the club may reasonably require from time to time and must deliver to the club a certificate of currency when requested by the club.

Alterations and Additions

20. The manager shall not make any alteration or addition to the clubhouse or install or alter any partitions, fixtures, fittings, signs or notices or undertake any painting or decorating without the prior written consent of the club

Indemnities

21. The manager hereby indemnifies the club and agrees to keep the club indemnified from and against all claims, damages, costs and expenses for which the club may be or become liable in respect of:
 - i. The negligent use, misuse, waste or abuse of the club's, fixtures, fittings, plant, furnishings and equipment by the manager,
 - ii. loss, damage or injury to any property or person caused or contributed to by the manager during the operation of the business,
 - iii. any claim, proceeding or complaint made by a customer or other person in relation to goods and services sold or provided by the manager;

and for the purposes of paragraphs i–iii of this clause the term “manager” includes any officer, employee, agent, or contractor of the manager.

Kiosk

22. The manager shall make all reasonable efforts to ensure that its trading does not interfere with the operations of the kiosk and that its offerings do not compete with those of the kiosk.

Early Termination

23. If the manager is in breach of any obligation under this agreement, the club may serve on it a notice requiring it to rectify the breach within 14 days and if it fails to do so the club may serve another notice on the manager forthwith terminating the agreement.
24. If any of the stipulations for ending this agreement set out in clause 1 have not occurred by the 31st March 2021 either party may serve a notice on the other to terminate the agreement upon the expiration of 14 days.
25. Service of a notice shall be by email sent to both addresses of the other party as set out below:

The club - president@somertonsurfclub.com.au

secretary@somertonsurfclub.com.au

The manager kate@gambell.io

cheffi1984@hotmail.com

Approvals

26. This agreement is subject to approval by;
- i. the City of Holdfast Bay as the lessor of the clubhouse, and
 - ii. the Liquor and Gambling Commissioner pursuant to section 99 (2) of the Act.

EXECUTED AS AN AGREEMENT

SIGNED on the _____ day of _____ 2020

by authorized Somerton Surf Life Saving Club Inc directors

SIGNED on the _____ day of _____ 2020

by authorized Gambell & Sutton Pty Ltd directors

Confidential Minutes of the Ordinary Meeting of Council of the City of Holdfast Bay held in the Council Chamber, Glenelg Town Hall, Moseley Square, Glenelg, on Tuesday 14 July 2020.

18. ITEMS IN CONFIDENCE

- 13.1 Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc. (Report No: 178/20)

Motion – Exclusion of the Public – Section 90(3)(d) C140720/1965

1. That pursuant to Section 90(2) of the Local Government Act 1999 Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 178/20 Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc. in confidence.
2. That in accordance with Section 90(3) of the Local Government Act 1999 Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No:178/20 Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc. on the following grounds:
 - d. pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is 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.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.
3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information

Moved Councillor Miller, Seconded Councillor Lonie

Carried Unanimously

Conflict of Interest

Councillor Clancy declared an a perceived conflict of interest for Item 13.1 Adjourned Report – New Management Agreement – Somerton Surf Lifesaving Club Inc. (Report No: 178/20). The nature of the perceived conflict of interest (pursuant to Section 75 of the *Local Government Act 1999*) is that she is a member of the Somerton Surf Lifesaving Club.

Councillor Clancy dealt with the perceived conflict of interest by making it known to the chamber and remaining in the chamber as she is acting in the best interest of the community.

Mayor Wilson declared a perceived conflict of interest for Item 13.1 Adjourned Report – New Management Agreement – Somerton Surf Lifesaving Club Inc. (Report No: 178/20). The nature of the perceived conflict of interest (pursuant to Section 75 of the *Local Government Act 1999*) is that she is a member of the Somerton Surf Lifesaving Club.

Mayor Wilson dealt with the perceived conflict of interest by making it known to the chamber and remaining in the chamber as she is acting in the best interest of the community.

Administration submitted Confidential Item 18.3, Report 161/20 New Management Agreement – Somerton Surf Life Saving Club Inc. for consideration by Council at its meeting on 23 June 2020.

Council subsequently resolved to adjourn the matter until the next Council meeting on the basis that Council required further time to discuss the matter at a workshop and further consider the report. The workshop was undertaken on the 30th June 2020.

Motion

C140720/1966

1. **That the Somerton Surf Life Saving Club be granted approval to enter into a Management Agreement with a third party (being Gambell & Sutton Pty Ltd) to manage and operate a bistro, bar and function business as previously operated with Club resources subject to the following conditions:**
 - (a) **the initial approval is for a period of 12 months, with the Club either making:**
 - i. **an application to Council for a further 12 month extension prior to completion of the initial term; or**
 - ii. **submitting an application for a sub- lease whichever is the sooner;**
 - (b) **the bistro, bar and function facilities business must be under the Club's care and control and consistent with the existing lease conditions and any development approvals;**

- (c) not increase nor exceed the current scale of operations of the previous hospitality/catering business or change its approved hours of operation;
 - (d) operate under the Club's liquor licence and any applicable conditions thereof;
 - (e) must not give rise to a sub-lease or otherwise constitute a parting of possession of the leased premises; and
 - (f) generate revenue by way of a management fee and incentives or a profit share arrangement and cannot take the form of rent or similar payment which may give rise to a sub-lease or otherwise constitute rent.
2. Should the Club wish to enter into a sub-lease agreement or other commercial arrangement with a third party, they shall:
- (a) lodge a separate submission for Council approval as required by their lease, including details of the arrangement and any forecast commercial revenues, so that Council can assess the proposal and if necessary determine the effective community and commercial rent to be applied; and
 - (b) submit any necessary Development and Liquor Licence applications.
3. That Administration be requested to develop a range of options to determine commercial rental from sub-lease or other commercial arrangements that might arise under the Sporting and Community Lease Policy and submit same to Council for consideration.
4. That Administration be authorised to issue a letter of approval to the Club.

RETAIN IN CONFIDENCE - Section 91(7) Order

5. That having considered Agenda Item 13.1 (Report 178/20) Adjourned Report - New Management Agreement – Somerton Surf Lifesaving Club Inc. in confidence under section 90(2) and (3)(d) the Local Government Act 1999, the Council, pursuant to section 91(7) of that Act orders that the report, attachments, recommendation and discussion be retained in confidence for a period of 24 months from the date of this decision and that the Chief Executive Officer is authorised to release the documents at the expiry of that period or when the Management Agreement has been signed whichever occurs first and that this order be reviewed every 12 months.

Moved Councillor Smedley, Seconded Councillor Clancy

Carried

Attachment 2



Somerton SURF LIFE SAVING CLUB

Repton Road Somerton Park SA 5044
P.O.BOX 1069 GLENELG SOUTH S.A. 5045
www.somertonsurfclub.com.au

Mr Anthony Marroncelli
City of Holdfast Bay

Date 3rd June 2021

Council Approval for Management Agreement

Somerton SLSC hereby applies for an extension of Council's approval of the management agreement between Somerton SLSC and Gambell & Sutton Pty Ltd.

An extension is requested for the following reasons.

The management agreement is a temporary arrangement until the club can obtain Council, planning and licensing approval for a sub-lease to Gambell & Sutton Pty Ltd. For reasons set out below, the club has deferred application for planning approval until the new Planning Code came into effect. The application for Council approval has also been put on hold by the Council for the it to consider its position regarding a possible increase in the rent payable by the club under its lease.

When in February 2020, the club made its decision to defer the planning application, the new Planning Code was scheduled to come into operation on 1st July 2020 and the club was looking at a 5 month postponement. This date was pushed back to 1st September and later indefinitely. The Code finally came into operation on 19th March 2019, nearly 9 months after the date first scheduled. This has made it impossible for the club to obtain all the necessary approvals by July 2021, even if everything had gone smoothly.

However, things have not proceeded as smoothly as hoped. The club's planning consultant, Phillip Brunning has been held up preparing the application because he has not received important reports from acoustic engineers Sonus Pty Ltd and parking expert Phil Weaver. Sonus is waiting on Minda to decide whether to release a report, obtained for the building of Brighton Dunes, which is believed to be favourable to the club's case. Mr Weaver's wife is ill and he has had to cancel several dates when he was to attend and make a survey.

I am most concerned, both for the club and for the current managers, Kate Gambell and Charles Sutton, that there be no cessation to the operations under the management agreement until all the applications are resolved.

The club decided, after thorough consideration, that a sub-lease was the best option. The managers were attracted to the club by the opportunity to run their own business and gave up their secure employment. Until the necessary approvals can be obtained, the management agreement is plan B. There is no plan C and I dread to think of what happens to the managers if the management agreement does not continue.

The club is very happy with the performance of the managers. They work extremely hard and long hours; they are very easy to get along with; they are very popular with the clientele and attentive to their needs; they are very inventive and come up with good ideas to improve the business. The business offering is now much improved from the days of volunteers and this translates into a much better financial outcome. The club would be very sorry to lose them.

The background to this application is set out below.

On 18th September 2019 the President and other representatives of the club met with the CEO and other representatives of the Council, when the club informed the Council of its proposal to sub-lease portion of the upstairs level of its clubhouse to allow the sub-lessees to carry on a business of a bistro and function centre. At that meeting, the club representatives were informed that the proposal required planning consent, as it involved a change of use. The club was also informed that the Council might seek to increase the rent payable by the club under its lease as a condition of granting its approval.

On 20th January 2020 the club submitted for approval by Council, a written application for a sub-lease to Gambell & Sutton Pty Limited. The application was accompanied by submissions which mainly contained arguments against an increase in the club's rent under its lease, as at that time, that was the only issue regarding the sub-lease that had been raised by the Council. In the months following the lodging of the application I had a number of discussions with Fabienne Reilly and Howard Lacey regarding those submissions. It was accepted by them that any proposal to increase the rent was inconsistent with the Council's existing Sporting and Community Leasing Policy and I understood that a new policy was to be developed. To the best of my knowledge that has not happened.

I also sought legal advice regarding the planning issue and engaged a planning consultant and a parking expert to help with the planning application. The club was aiming for a development panel hearing on 25th March 2020.

On 28th January I received an email from Philip Brunning, the planning consultant who alerted me as follows:

- that the clubhouse was located within a coastal conservation zone,
- that the proposed use under the sub-lease would be that of a shop and would be a non-complying use,
- that in consequence there were various issues and financial risks that the club faced, and
- If the club could delay its application by 6 months until the new planning code came into operation (then scheduled to be 1st July 2020) the process would be more “straightforward”.

I also spoke to you about deferring the application, following which the board of management of the club decided that it would not unnecessarily risk members’ funds and that the prudent option was to postpone the planning application.

Both the club and the proposed sub-lessees had originally intended to commence operations of the business over the 2019/2020 summer season and had already suffered considerable financial loss when that failed to happen. Neither wanted to lose another season and so a temporary arrangement was worked out and a management agreement was entered into. The effect of the agreement was that the managers would run the business on behalf of the club, using the club’s liquor licence and the revenue of the business would be shared. As the business remained that of the club, there was no change of use and planning approval was not required. However, the sharing of revenue did require the approval of the licensing authorities, who in turn required the Council as the local authority and lessor to approve the agreement.

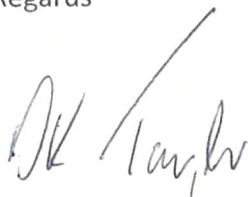
The management agreement was a significant departure from the proposed sub-lease and took some time and several drafts of the agreement before it was finalised and signed. This period was during the Covid lockdown, which didn’t help. A draft of the management agreement was forwarded to the Council on 8th April 2020 for approval.

It took some time for the staff to consider the draft (again due to Covid restrictions) but on 20th May I was notified that it was acceptable. The following day I submitted the final draft for consideration by the

elected members at a meeting of Council on 9th June. It was then adjourned to the meeting in July. By this time I was getting anxious as the proposed sub-lessees/managers had quit their paid employment, in expectation of commencing business in September and the club still had to obtain licensing approval. I requested and was granted permission to address a workshop of elected members on 30th June. The management agreement was eventually approved by the elected members, subject to conditions, at a Council meeting on 14th July.

I think the above demonstrates the commitment that the club has to obtaining the sub-lease and that the considerable delays that have occurred are in no way attributable to it. I look forward to receiving the assistance and cooperation of all levels of Council in progressing this matter.

Regards

A handwritten signature in black ink, appearing to read 'DK Taylor', with a long, sweeping diagonal stroke extending upwards and to the right from the top of the signature.

Davey Taylor

Treasurer, Somerton SLSC

Ph 0447 221 947

Email treasurer@somertonsurfclub.com.au



SOMERTON SURF LIFE SAVING CLUB
APPLICATION FOR LESSOR CONSENT TO SUB-LEASE



Application for Lessor Consent to Sub-lease

The Somerton Surf Life Saving Club hereby applies for consent to sub-let a portion of its clubhouse on the terms set out in Appendix A to enable the sub-lessee to conduct its own business. It also requests that Special Condition 4 in the club's lease relating to trading hours be amended or deleted.

BENEFITS

The benefits to the club of the proposed sub-lease and the outsourcing of the business include:

- transferring business risk from the club to the sub-lessee,
- replacing an uncertain income with the greater certainty of rent,
- having skilled and experienced people run the business,
- improved financial outcomes,
- transferring bookkeeping & accounting functions from the club to the sub-lessee,
- attracting new members to the club with its improved offering,
- removing the burden on volunteers and allowing them to concentrate on the club's core life saving functions.

The community benefits from an upgraded hospitality service, which provides an additional attraction to users of the Council's recently constructed plaza area in front of the clubhouse.

Figure 1: Somerton 2020/2021 Season Stats



BUINESS CASE

Table 1: Estimated Income and Expenses of the Club During 1st Year of Sub-Lease

Income	Note	\$	\$
Fees from members	1		70,000
Grants, sponsorships, fundraising etc	2		55,000
Rent from sub-lease	3		35,000
Rent from kiosk			22,000
Sales, from downstairs bar & club clothing	4		40,000
Other income			5,000
TOTAL INCOME			227,000
Expenditure			
Cost of sales - downstairs bar & club clothing	5	30,000	
Premises - utilities, rent, repairs etc		55,000	
Administration - accounting/audit, insurance, internet etc	6	40,000	
Competition - entry fees, equipment repairs, travel expenses etc		30,000	
Life saving - consumables and equipment maintenance		5,000	
Depreciation & amortisation		45,000	205,000
Surplus	7		\$ 22,000

Notes:

1. Includes annual subscriptions, entry fees for competitions and fees for training in life saving skills.
2. Sponsorships come largely from members and fundraising activities are carried on by volunteers.
3. Sub-lease rent will increase to \$40,000 p.a. after 1st year.
4. Downstairs bar & clothing sales are operated by volunteers.
5. Profit margins on downstairs bar and clothing sales are low because sales are to members.
6. Includes expenses for bookkeeping which is currently carried on by a volunteer who will be retiring.
7. The surplus assumes the Council does not increase the club's rent as a condition of approving the sub-lease. If the sub-lease is not approved the club faces a potential deficit of \$13,000.

The first year's surplus is already spent as it will be applied towards recovering the costs of making an application for planning consent to the sub-lease, anticipated to be not less than \$20,000.

In future years, the surplus will be spent on purchases of new equipment (see Table 2), repairs, improvements to the clubhouse, and paying off debt, all of which have been held back while the club recovers from losses in previous years.

Table 2: Equipment Requirements for 2021/2022 Season

		\$
Shed	LED Lights	2,000
	Storage Shed	4,000
	Energy Efficient Bar Fridges qty 2	4,500
Training	Training Manikins	1,627
	Defib Trainers	900
	Baby Annies x 2	500
Patrol	Patrol trailer refresh	5,000
	Rescue boards refresh (qty 5)	5,500
	Patrol uniforms (new award holders, approx 40)	3,000
	IRB helmets (qty 10)	600
	Air compressor	300
	IRB maitenance (parts)	1,000
	Oils & lubricants (maitenance)	400
	Travel trailer repair	1,000
	Air gauge	80
	Portable air compressor for travel	100
	Nippers	Green Hi-vis Water Safety Shirts qty 10
Additional Board Trolley		500
iPad for Nipper attendance taking & misc admin		600
Proper flag batons qty 20		200
Wahoo balls qty 4		100
AGM tops qty 4/age group plus JC & JA		1,200
Foam Boards x 4		2,400
Seniors	Fibreglass Boards x 4	4,800
	Racing Boards x 4	9,700
Surf Boats	Oars x 4	4,600
Gym	Recover bench	300
		55,407

Future Expenditures on Building Repairs & Improvements:

The clubhouse is expensive to maintain. In the past 12 months the club has spent over \$50,000 in repairing, maintaining, and updating the clubhouse.

The club has a chronic storage problem. A committee has been formed to investigate alternative solutions, all of which are likely to be expensive and require finance from an outside source with the club contributing a significant amount.

The lift is antiquated, slow and tricky to operate, particularly for first time users, who occasionally get stuck between floors. It needs to be replaced but would be very expensive.

Other uncosted improvements required to the clubhouse include:

- replacement of air conditioning system
- upgraded lighting system and ceiling fans for bistro
- installation of balcony blinds
- installation of balcony lighting
- signwriting on front door

Debt Retirement:

At the time of writing Somerton SLSC has \$37,705 debt.

Figure 2: Volunteer Week 2020/2021



Saving our Volunteers

Somerton's volunteers dedicate a huge amount of time to the club. Our 187 surf life savers recorded over 3950 patrol hours this season alone. In addition to these roles, we have over 51 members involved in running the junior program, 30 board and committee members, 41 club officers, 14 coaches & trainers and more than 10 officials.

With 2 out of 3 volunteers stopping volunteering during Covid and overall sector numbers down 7% in 2019/2020 ¹we cannot afford to put any more pressure on our volunteers. Our volunteers are great at surf life saving but they do not have the time or expertise to run a fully licensed bistro and function centre.

¹ <https://www.volunteering-sa-nt.org.au/assets/media-release-and-publication/2021/reinvigorating-volunteering-sa-final.pdf>

Request to Vary Special Condition 4

Trading Hours

The sub-lessee will apply under the Liquor Licensing Act for a restaurant licence and it is requested that the sub-lessee be permitted to trade within the trading hours specified in the club's current liquor licence. Those hours are:

- Monday to Saturday 8 am to 12 midnight
- Sunday 5 am to 12 midnight

The actual hours of trade of The Somerton Bar & Bistro as listed in the management agreement approved by the Council are:

- Wednesday and Thursday 11 am to 11 pm
- Friday, Saturday and Sunday 11 am to midnight

Currently the business does not open on Mondays or Tuesdays except for an occasional corporate function during the day and on public holidays when the kiosk is not open.

The driving reasons to alter special condition 4 of the lease are for consistency and simplification and to allow flexibility. There is no intention to alter current trading hours.

Functions, Noise & Neighbours

Functions are important to the profitability of the business and are essential to it. In the 8 months since the current operations commenced 36 separate functions have been held, ranging from corporate functions to private birthdays, weddings, work gatherings etc. Revenue from these functions was \$126,416. Forward bookings are already held for another 26 functions to bring in \$88,890 in revenue plus additional spending at the bar. It is anticipated that functions will be of even more importance to the business as word-of-mouth publicity takes effect.

Following a complaint to Council on 17th April 2021 about loud music at a function being held at the clubhouse, a Council inspector was sent to investigate. He subsequently reported to the managers that the noise was at an acceptable level and "they didn't need to worry". At the time, electric motors which operated louvre windows at the clubhouse, were not operating properly and the windows could not be fully closed. That problem has now been fixed.

The club is conscious that it needs to be a good neighbour and has engaged Sonus Pty Ltd, Acoustic Engineers to provide a report. Sonus attended at the clubhouse on Friday 14th May 2021 to take measurements. Neighbours were warned that loud music would be played but the engineer's instruments were unable to detect the music above the noise of the wind. The process was abandoned, but the engineer returned on the evening of Monday 17th May, when there was less wind, and he was then able to take measurements. Unfortunately, the writing of the report has been held up by circumstances out of our control and, at the time of submitting this application, has not been received.

Conclusion:

Somerton Surf Life Saving Club would like to be able to focus on our core areas of expertise; life saving and running programs that fill our pipeline of future surf life savers. Sub-leasing our bistro and functions operations provides us with some of the funding and time to do just that. The club does not want to return to running the operations with paid employees or volunteers. Both have been tried in the past and ultimately were unsuccessful.

Figure 3: Somerton SLSC Aligns with Holdfast Bay Council's Vision

Somerton SLSC Supports Holdfast Bay Council's Vision:

Balancing our progress with our heritage, we lead in coastal management to deliver high-quality public spaces and services to build a welcoming, safe and active community where resident, visitor and business prosperity meet.

1) **COMMUNITY: A healthy & connected community**

Somerton SLSC with its robust cafe and bistro operations provides the local community with a safe place to come together and be active while fostering a sense of community and belonging.

2) **ENVIRONMENT: A community connected to our natural environment**

Somerton SLSC supports the protection of the natural environment through our EcoSurf program and other environmental initiatives. The club, cafe and bistro were early participants in the Surf Life Saving plastic-free precinct.

3) **ECONOMY: A diverse and resilient economy**

The establishment of The Somerton Bar & Bistro at the Somerton SLSC has created a draw card for visitors from outside the area. Surf Life Saving Australia research shows visitors are more likely to seek out patrolled beaches.

4) **PLACEMAKING: An accessible, vibrant and safe coastal city that celebrates our past to build for our future**

Somerton SLSC has occupied its place at Repton Road & Esplanade since 1961. First as a tin shed and now in the current building which was erected in 2005. It provides a valuable link to the past and future and its presence is a symbol of safety for all.



APPENDIX A: Terms

AGREED TERMS & CONDITIONS FOR SUB-LEASE OF PORTION OF THE UPSTAIRS LEVEL OF THE CLUBHOUSE

Parties	Somerton Surf Life Saving Club – sub-lessor Gambell & Sutton Pty Ltd ACN 637 647 940 – sub-lessee
Description of premises and other property included in the sub-lease	<p>That portion of the upstairs level of the clubhouse shown in the attached plan including all fixed coolrooms, fridges and cooking appliances located within that area and other items as shall be agreed. The sub-let premises to include the office, southern storeroom (but not mezzanine level), front balcony and toilets, but to exclude the rear balcony, northern storeroom and both stairs.</p> <p>A list to be prepared of</p> <ul style="list-style-type: none"> • equipment and other items to be given by the club to the sub-lessee, • some fixtures included in the sub-lease (included for the removal of doubt), and • Items which remain the property of the club, but which the sub-lessee may use with the agreement of the club. <p>The club will not be responsible for the repair or maintenance of items given to the sub-lessee. Paintings on the walls and other memorabilia which belong to the club to remain the property of the club and outside the sub-lease but may be lent to the sub-lessee if agreed.</p>
Conditions which must be satisfied before sub-lease takes effect	<ol style="list-style-type: none"> 1. Approval of the sub-lease by the City of Holdfast Bay 2. Approval under the Development Act for change of use of the premises 3. Approval under the Liquor Licensing Act for the grant to the sub-lessee of a restaurant licence for the premises
Term of the sub-lease	3 years commencing on the later of 1 st September 2021 or 7 days after the last of the required approvals is obtained
Use of premises	As a licensed restaurant and function centre
Rent	\$35,000 pa in the first year, \$40,000 pa in the second year and thereafter to be adjusted annually according to movement of the consumer price index for Adelaide, to be paid monthly in advance. GST is to be added to these amounts.

Bond	A bond of \$2,000 plus GST is to be paid by the sub-lessee to the club at the commencement of the sub-lease. The bond, or the balance thereof is to be refunded upon termination of the sub-lease. The club may apply the bond to rent or other amounts overdue to the club by the sub-lessee.
Other costs	<p>Sub-lessee to reimburse the club for</p> <ol style="list-style-type: none"> 1. electricity costs to be calculated in the proportion to which usage of electricity for the sub-leased premises bears to overall usage for which the club is charged, 2. one half of the costs of collection and removal of waste from the clubhouse, 3. one half of the costs of inspection and servicing of the grease trap, 4. one half of gas costs. <p>Sub-lessee to be responsible for the cost of,</p> <ol style="list-style-type: none"> 1. cleaning of the sub-let area. 2. window cleaning, 3. cleaning of kitchen and cooking appliances, 4. servicing and repairs to fridges and coolrooms. <p>The club to be responsible for the costs of all rates and taxes (including water and sewage) and other charges directly related to the premises including</p> <ol style="list-style-type: none"> 1. monitoring of the security alarm and lift, 2. annual inspection and service of the lift, 3. repairs and maintenance to doors and windows, 4. insurance of the premises for damage by fire and other insurable events. 5. Servicing and repairs to the air conditioning system
Cleaning	The sub-lessee shall ensure that the kitchen and other parts of the sub-let premises (including the western balcony) are kept in a clean and tidy state and at all times comply with the Food Act 2001 and other legislation Filters for the extractor fan should be cleaned on a regular basis.
Repairs and maintenance	The sub-lessee is to keep the sub-let premises and all fixtures and fittings including fridges, coolrooms and cooking appliances in at least the same condition as they are at the commencement of the sub-lease (fair wear and tear excepted).

	The sub-lessee will tag and test all electrical appliances and equipment in compliance with legislative requirements.
Access	The club will allow the sub-lessee its staff, suppliers and customers free access to the sub-let premises through the ground floor front door and stairway or lift.
Club access to parts of upstairs level not included in this sub-lease and access by workers.	At times when the sub-lessee is not trading, it will allow members of the club to access areas of the upper level not included in the sub-lease (including the mezzanine level). The sublessee will also allow access to the sub-let premises for services to be provided by trades people and/or other workers arranged by the club.
Keys	The club will issue the sub-lessee with 3 key cards (or more if agreed) to be used for unlocking the front door and arming or disarming the security alarm.
Insurance	The sub-lessee will insure against public liability in the sum of \$20m and will produce to the club a certificate of currency whenever requested so to do.
Alarm	The sub-lessee will reimburse the club for the cost of any patrol ordered by the alarm monitoring company resulting from any action or failure to act by the sub-lessee or a member of its staff.
Member discounts	On production of a current membership card the sub-lessee will provide to a member of the club a discount of 10% on its regular food and beverage prices.
Trading hours	The club may open its downstairs bar during the surf life saving season on any day when the club is holding a carnival or other special event and until 6-00pm on Saturday afternoons. The sub-lessee will apply under the Liquor Licensing Act for a restaurant licence and trading hours will be in accordance with the trading hours specified in the licence.
Kiosk	The sub-lessee shall make all reasonable efforts to ensure that its trading does not interfere with the operations of the kiosk and that its offerings do not compete with those of the kiosk.
Licence	The sub-lessee must comply with the provisions of the Licensing Act and any conditions of its licence.
Holding out	The sub-lessee shall carry on its business on its own account and shall not hold itself out by advertising or

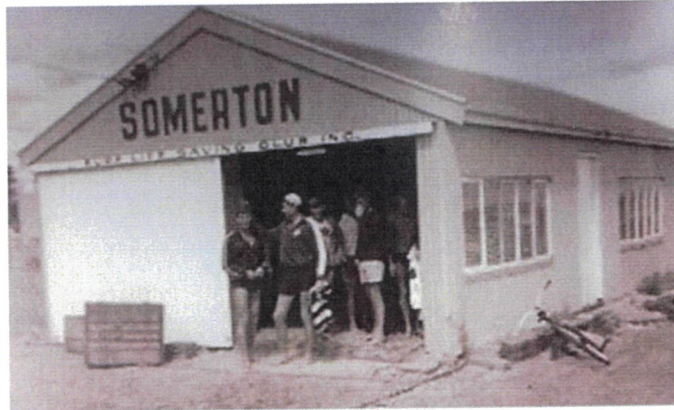
	by any other means as being associated in any way with the club.
Inspection	The club may inspect the sub-let premises at any time on giving at least 24 hours notice to the sub-lessee
Comply with all relevant Acts	The sub-lessee must comply with all legislative and regulatory requirements relating to carrying on the business.
Club functions	The club shall have preference to use the sublet premises for up to five functions and 10 training or assessment days in each year. Each year the dates for the ensuing twelve months shall be determined by the club in consultation with the sub-lessee at the beginning of the season. If requested by the club the sub-lessee shall provide catering and bar services at each function at prices to be agreed. The training and assessment days shall take place on days or times when the sub-lessee is not otherwise trading.
Right of renewal	<p>Upon giving notice in writing of its intention at least 3 months prior to the expiry of the initial term, the sub-lessee to have a right of renewal on the same terms and conditions (other than the right of renewal) for a further term to expire when the headlease expires on 6th December 2026 at a rent to be agreed or failing agreement to be determined by a licensed valuer. The sub-lessee will make its trading figures for the previous 12 months available to the club for the purpose of determining the rent for the renewed term.</p> <p>Upon the Council and the club entering into a new headlease to take effect after the expiry of the existing headlease, the sub-lessee to have a further right of renewal for a further term of 5 years or the term of the new headlease (whichever shall be the shorter) but otherwise upon the same terms and conditions as the first right of renewal.</p>
Storeroom access	The club will allow the sub-lessee to store furniture and other items in the northern storeroom provided there is sufficient room and no inconvenience is caused to the club.

APPENDIX B: Sound Report

(Will be provided once received)



Serving Somerton beach since 1960



Somerton
SURF LIFE SAVING CLUB