

Summary of concerns and emails – Meagan Jeffery

I refer to the agenda item 13 on the Agenda of our recent **AGM for Travancore on the Park** (30th March 2020), in which approval was sought for variations to the OC4 and OC5 Caretaking Agreements and Letting & Licence Agreement - between the Owners Corporations and Saskia and Maurice Yardley.

Many questions were asked during the AGM however the **motion was carried**, and this is a concern. It was obvious during the meeting that information was lacking, financials remained undisclosed, proxies were not represented (due to conflict) and the voting was confusing. On receipt of the **minutes of the meeting**, I noted that these did not provide any text as a record of the discussions in the meeting and immediately emailed MICM and the OC expressing my concerns. Several other owners have voiced the same concerns.

Below is a summary of the Deed of Variation and estimated Financial impacts, and copies of emails to MICM and the OCs.

Deed of Variation – what is this?

The current Caretaking Agreements expire in 2035 (OC4) and 2037 (OC5). **The Deed of Variation seeks to extend these contracts for another 10 years (so to 2045 and 2047 respectively), under the same contract terms, as “payment” for additional services** (essentially waste management).

In addition, the Deed of Variation seeks to extend the Letting & License Agreement for another 10 years. This is a completely separate agreement that is getting a free ride; there is no benefit to owners.

These long term Caretaking Agreements lock owners into caretaking services that are highly priced and include contractual terms that are unattractive. E.g. Termination by the OC is very difficult - the agreements do not outline performance levels (SLAs), so termination for poor performance would be a lengthy legal process. In addition, there are terms in the contract that allow ownership to be transferred by the Yardley family to another party (with one month’s notice), a situation over which the owners will have no vote and no control.

What is the Deed of Variation worth? Financial facts

Using the current cost of services as a baseline, the value of the Deed of Variation is estimated as close to \$8M. The price for the additional services, are worth at best \$1.5M. These financials exclude the value of extending the Letting & License Agreement.

	Current Caretaker Agreements			Deed of Variation		Value of waste management services			Cost to signing Deed of Variation
	Budget for 2020	Remaining years	Value	Added Years	Value of added years	Cosy of services		Total to current expiry	
OC4	313,134	15	4,697,010	10	3,131,340	38,144	15	572,160	2,559,180
OC5	492,934	17	8,379,878	10	4,929,340	53,529	17	909,993	4,019,347
					8,060,680			1,482,153	

Emails to MICM and the OC following AGM

3 June 2020

I reference to **item 5.9 in the AGM Minutes of Meeting: the ALT & Sienna Onsite Management Agreement Deed of Variation to extend the maintenance contract by a further 10 years taking it to years 2045 and 2047** (OC4 and OC5 respectively), **I would like to formally state that these minutes are not accurate and the proposed Deed of Variation to the ALT & Sienna Onsite Management Agreement motion cannot be carried for reasons:**

1. Owners were not provided sufficient, accurate and transparent information prior to the meeting (in reports attached to the agenda) to assist informed voting;
2. The minutes do not capture the questions, concerns and suggestions raised by owners in the AGM and therefore do not inform the majority of owners of the significance of this variation; and
3. Saskia Yardley, who held the majority of proxy votes, had a conflict of interest and therefore was unable to vote on this motion on behalf of owners (with a “no” show of hand).

Appropriate procedures and due diligence have not been applied.

During the meeting a number of points were raised by owners, including:

- Requests for copies of the current contract in order to assist owner understanding of the variation.
- It was noted that current termination clauses were in the favour of the other party however a termination variation was not sought although the contract was being extended by 10 years.
- Requests for details on all other options considered by the OC have not been provided. An option to pay for the service was glossed over as too expensive. Light reference was made to the annual contract values but financial details were not at hand for total contract values. Therefore the overall impact on the contract was not visible to owners.
- There were calls for a tender process.
- It was noted that the current contract, inherited from Roscon (and Bensons), includes terms that are most unattractive to Travancore on the Park.
- With reference to OC5, there were questions about the timing of this vote as a decision is not required for another 2 years.

There was mention of, and general consent regarding, the excellent service provided by the Yardley Family today. This was emphasised a number of times and we can conclude that there is genuine desire to seek resolution that will work for all parties.

The overall failure of this proposal is that the individuals performing the additional services today – ‘for nothing’ – would continue to perform these services for the same annual price. The contract variation is simply a commercial ploy to extend this contract, which is already not commercially priced, for another 10 years. There is something inconceivably wrong with this kind of variation ; it does not meet the reasonableness test.

So I ask you to please update the minutes accurately, and the Motion is Not Carried.

And I request that appropriate procedures be implemented and due diligence conducted.

4 June 2020 following clarification of votes

... thanks for clarifying the voting numbers for the proposed Deed of Variation – and this in fact is what you have for OC5:

- 5 voted against
- 2 abstained
- 12 presumed to have voted for, due to the absence of a call for a 'yes' vote
- 35 prevented from voting, most likely unknowingly so, due to their proxy's conflict of interest.

OC, the easiest course would be to carry this motion; however in this particular circumstance you cannot. It would be unethical and an abuse of position.

In fact, the chair of the meeting should not have allowed a vote due to (1) the proxy's conflict of interest, and (2) lack of transparency to owners, as evidenced by the questions in the AGM.