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SLOPES: Leases - Annual Gross Revenue (AGR) NPWS Reporting Guidelines

SLOPES <slopes.au@gmail.com>
Bcc: frank.zipfinger@gmail.com

21 August 2012 at 09:47

Dear SLOPES Members

This email relates only to Clubs that took up the new leases offered in 2007.

The background is set out in our email of 11 August 2011 (copy attached).

Essentially, starting in year 6 rent becomes the higher of the Base Rent and Turnover Rent.

All those new leases have a commencement date of 1 July 2008, **so year 6 is FY 2013/14**.

Base Rent has been paid by Clubs from the commencement of the lease.

Turnover Rent was not relevant for the first 5 years. It has now become relevant.

Reporting obligations came into effect from 1 July 2012 as set out in the Guidelines.

And the Turnover Rent calculation will come into effect from 1 July 2013.

To assist in understanding how NPWS proposes to administer the Turnover Rent provisions, NPWS has issued AGR Guidelines which can be found at this link:

http://www.environment.nsw.gov.au/resources/alpineresorts/LesseeAnnualGrossRevenueReportingGuidelines.pdf

NPWS notes in relation to the Guidelines:

"The guidelines provide advice on types of income that are to be included in annual revenue & information and a standard template to be used for lodging of Audited Accountant's Certificates."

Members will recall that there were a number of contentious issues surrounding the drafting of the new leases, not the least being the Turnover Rent provisions.

SLOPES liaised with NPWS in preparing the Guidelines as we think it is in the interests of Clubs and NPWS to have clarity wherever possible on the grey areas that inevitably arise in interpreting turnover rent provisions.

SLOPES is generally in agreement with NPWS on the Guidelines. However, we differ on:

1. **Telephone calls** - these are calls made on the lodge phone where the Club pays the account and members reimburse the Club. The Guidelines say the member contributions form part of revenue. We say only the net amount should be revenue.

2. **Bad debts** - the Guidelines say these should be excluded from expenses. We say that bad debts will relate to revenue included in a previous year; that revenue is now being reversed by way of the bad debt write off and so the bad debt should be included as an expense.

Both of these are really a case of netting off expenses v revenue - as per the other Expense Items listed on page 11 of the Guidelines.

We have not reached agreement with NPWS on these 2 points. So please keep them in mind as being open for debate. Hopefully, they will not be major items anyway for Clubs so the issues may be more theoretical than practical.

A few important points to note:

A. **The Guidelines are not legally binding.** They are simply a statement of the views of NPWS as to how it sees the lease provisions operating. Ultimately, the interpretation of the lease provisions is a matter for a court in the event of a dispute between NPWS and a lessee. SLOPES will monitor such interpretation issues and keep you informed, as they may affect more than one Club.

2. **Different situations.** There are many variables that apply across different Club situations. For example, some Clubs have lodges in more than one location and members only pay a single annual membership fee to use them all, raising the question of the appropriate apportionment for AGR purposes (see the NPWS view in Item 5 of the Guidelines). The Guidelines are of general application and so may not cover a specific fact situation faced by your Club. If so, please ask us and SLOPES will try to help.

3. **Donations.** We have been asked if donations from members form part of Gross Revenue. Donations are not specifically dealt with in the Guidelines. But "Ski Club Levies" and "Non-Repayable Loans" are listed as inclusions in Gross Revenue. A donation is akin to a non repayable loan so our thinking is donations would form part of Gross Revenue.

4. **Levies of members**. Perhaps the major issue for Clubs to consider given the amounts typically involved (and one that was contentious in the lease negotiations) is "Ski Club Levies (including for building works)". The Guidelines state these **ARE** to be included in revenue. But the Guidelines go on to say the levy may be exempted by NPWS (OEH) where (a) **the Club applies** **in advance** for the exemption and (b) NPWS is satisfied the levy is "for a genuine major development and essentially represent(s) a form of capital raising". The key distinction here is between a levy used for major capital works rather than for other purposes such as general repairs and maintenance. Of course, the other point to note is that a levy raised prior to year 6 would not be part of a turnover rent calculation. **So, if you are planning to raise a levy from members, better to do it soon and, in any event, prior to 1 July 2013.**

Please keep us informed of any issues you encounter so we can monitor them for the benefit of all Clubs as we move into the new Turnover Rent regime.

Regards

Frank Zipfinger
President
SLOPES

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SLOPES - Club leases - Annual financial statements reporting to NPWS

SLOPES <slopes.au@gmail.com> **11 August 2011 18:02**
Bcc: frank.zipfinger@gmail.com

Dear Members

As you know from earlier correspondence, NPWS is seeking to initiate the requirement under the new Club leases to provide annual financial statements.

Each Club affected by this should have received a letter from NPWS a few weeks ago (around 23 June 2011).

If you did not receive a letter, then you are probably on the old lease and this email does not affect you (all the new leases commenced on 1 July 2008).

..ie NPWS initiative is part of the process under the lease terms, starting in year 6, of moving to a review scenario where rent is the higher of the Base Rent or the Turnover Rent. For the first 5 years Turnover Rent has not been relevant.

NPWS could have asked for annual financial statements from day 1 but waived this for the first 3 years .

NPWS wants to start now getting the annual financial statements so a process is in place when calculation of the Turnover Rent becomes relevant.

Some issues arose from the initial position taken by NPWS in it's recent letter having regard to the lease terms and the discussions that took place years ago between SLOPES and NPWS when the new lease terms were robustly negotiated and put in place.

Fortunately, a satisfactory outcome has been achieved from our recent discussions with NPWS on the latest issues.

A letter will issue from NPWS directly to each Club affected with the detail.

summary the key points are:

1. under the new leases, financial statement reporting to NPWS is required by 31 October each year.

2. NPWS now accepts that each Club's reporting period under the lease will be the annual accounting period of that Club for the purposes of complying with it's reporting obligations to authorities such as the NSW Department of Fair Trading (and to it's members). This period is referred to in the lease as the "Trading Period".

3. so importantly you do **NOT** need to prepare a special set of accounts for NPWS. You just need to provide the accounts you prepare each year for the 12 months ending on your Club's relevant balance date, be it 30 June, 31 December, 30 April or whatever.

4. As mentioned, NPWS has waived the requirement under the lease to provide financial statements for the first 3 years of the lease. So, in the letter NPWS will ask for the accounts for the most recent Trading Period prior to 31 October 2011. To clarify this (and to allow sufficient time for accounts preparation after year end date), if your Trading Period ends on:

(a) 31 December, you will need to provide financial statements for the year ending 31 December 2010;

(b) 30 June, you will need to provide financial statements for the year ending 30 June 2011;

(c) a date between 1 January and 30 June, you will need to provide your financial statements for the period ending on the relevant date in 2011; or

(d) a date between 1 July and 31 December, you will need to provide your financial statements for the period ending on the relevant date in 2010.

5. the financial statements need to be audited. However, where a Club is not legally required to provide audited accounts to the regulatory authorities, NPWS will accept a Certificate signed by an independent accountant who has undertaken a "Review Engagement" as per the Australian Auditing standards. The Certificate alternative usually involves a less intensive review of the accounts - it is available to some entities and may cost less.

6. the accounts required by NPWS are the usual Profit and Loss report and Balance Sheet. You need to provide these by 31 October 2011.

7. in addition to the accounts, as from **next** year (ie the reporting to be done by 31 October 2012), you will need to provide an Accountant's Certificate as to Gross Revenue (revenue statement) to NPWS. The form of that revenue statement is attached to the NPWS letter. When preparing your next set of accounts, SLOPES suggests you give this form to your auditor or accountant with the books to prepare and lodge this form as part of the annual audit or review. As the information in the form is basically extracted from the audited or reviewed accounts, the additional cost (if any) to Clubs of completing the NPWS revenue statement should be minimal.

you have any questions after you receive your NPWS letter please let us know.

Regards

Frank Zipfinger
President
SLOPES