

<b>ORDINARY MEETING</b> <b>23 NOVEMBER 2011</b>	<b>4</b>
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NU-LITE ILLUMINATED SIGNS PTY LTD

Peter Tabulo : 8/1/3-41: #3394496

**RECOMMENDATION:**

**That Council advises Nu-Lite that the decision on the 27<sup>th</sup> July 2011 is Council's position on this matter.**

**INTRODUCTION:**

Council will recall that at its meeting July 2011 considered a report of the renewal of the contract. See Appendix A

Council determined that:

That Council:

- a) resolves to conclude the current contract and negotiate a new 12 month contract to the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd to erect illuminated signs on roadways.
- b) delegate the authority under Section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise all operational matters regarding this contract.

Since that decision, Nu-Lite were notified and work commenced on the drafting of a twelve month contract.

Also since that decision representatives from Nu-Lite met with a number of Council staff as well as with some of the Councillors to seek clarification about Council's decision.

The purpose of the report is provide Council with an update and following the meetings with Councillors it is the view of Nu-Lite that some Councillors maybe willing to reconsider their original position on the matter.

**DISCUSSION:**

Nu-Lite have provided a series of letters to the Councillors and officers. See Appendix B

In discussions between the author and Nu-Lite the situation was raised that in order for Council reconsider the matter it was expected that there would need to be new information tabled to assist in the decision making process.

The discussions centred primarily around the concept of having a new suite of signs that would be more in keeping a revitalised City Centre and the urban design elements of the Master Plan. Also the notion of having the signs showcase a sustainability outcome would be something that Cairns should be striving for. The expectation was that some preliminary details of designs and concepts would be prepared by Nu-Lite and tabled to demonstrate their commitment to such. What Nu-Lite's representative responded with was a commitment to work with Council on these aspects as follows:

*“Nu-Lite understands your desire for alternative options in lighting, and we look forward to the changes and plans in the Cairns CBD.*

*We have spoke about the changes that can be made in the lighting in our signs, and we thought that rather than go ahead on our own, we are wanting to work with yourself, Council Officers and Councillors in conjunction with the CBD Master Plan to ensure that any new designs are compatible with the CBD Master Plan and in keeping with expectations of the Council officers, Councillors and the community.*

*We are happy to look at a selection of designs that we can provide and any that can be provided by the Council officers and Councillors.”*

Council was also advised that the one year contract was providing some uncertainty to prospective or current advertisers with Nu-Lite based on advertisers seeing little return or value if there was going to a one year contract.

#### **COMMENT:**

The decision for Council is now whether there is a desire to grant Nu-Lite a revised contract period and or subject to any further conditions.

It is acknowledged that to date design outcomes from the Master Plan have not been progressed and such may take a number of months to finalise. It is therefore unlikely that any new advertising devices would be sometime away from actually being available.

#### **OPTIONS:**

Council has two options:-

Option A – Refuse the request to vary the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd.

Option B – Alter the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd subject to conditions.

**CONCLUSION:**

It is recommended that Council resolves to maintain its decision of July 2011.

**ATTACHMENTS:**

1. Appendix "A"
2. Appendix "B"

PETER TABULO  
**General Manager Planning and Environment**

**APPENDIX 1**

<b>ORDINARY MEETING – CLOSED SESSION</b>  <b>27 JULY 2011</b>	<b>6</b>
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**CONTRACTUAL MATTER - OPTION TO RENEW LICENCE AGREEMENT  
WITH NU-LITE ILLUMINATED SIGNS PTY LTD**

Kylee Miller : 8/1/3-41: #3242702

**RECOMMENDATION:**

**That Council resolves to refuse to renew the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd to erect illuminated signs on roadways.**

**INTRODUCTION:**

Council entered into a ten (10) year Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd (“the Company”) which commenced on 1 June 2001 (“the Licence Agreement” - Attachment “A”). The Licence Agreement was for the Company to erect and maintain illuminated street name signs on roadways under the control of Council, and to display advertising on such signs.

The Licence Agreement ended on 1 June 2011. The Company sought to exercise an option to renew the Licence Agreement for a further five (5) years. Council Officer’s refused the exercise of the option, on the basis that the Company had not duly and punctually paid the licence fees under the Licence Agreement.

**BACKGROUND:**

At an Ordinary Meeting held on 21 December 2000, Council resolved to grant a licence to the Company for the erection of illuminated street name signs with advertising, on roadways under Council control.

Council further resolved at the Planning and Development Committee meeting held on 17 April 2001 to authorise the Mayor and Chief Executive Officer on its behalf to enter in the Licence Agreement with the Company. The Licence Agreement was subsequently signed and sealed by both parties.

Under the Licence Agreement, a prescribed sign is an illuminated street name sign with attached advertising signs. The Company is required to gain individual approval from Council for each sign erected. Approval was sought from time to time by the Company to erect illuminated street name signs in various locations. Attachment “B” contains a current list of the signs which have been erected under the Licence Agreement.

The terms of the Licence Agreement require that the Company pay to Council an annual licence fee applicable to the erection of electrical signs as calculated in accordance with such fees as are prescribed by Council. The fee is payable annually in advance on the first day of July in each year during the term of the Licence Agreement (see section 5(J) in Attachment "A").

The Company developed a practice of paying the licence fee on a monthly basis in arrears. The payments particularly in the last 2 years have been sporadic, late or not made at all on some occasions. On occasion, payments were only made following requests from Council. Attachment "C" is a list of payments received by Council from the Company in respect of the Licence Agreement, between 1 July 2009 to 30 June 2011. As such, the payments have not been made 'duly and punctually'.

The Licence Agreement expired on 1 June 2011. The Licence Agreement provides that if the Company had at all times duly and punctually paid the licence and approval fees and strictly observed and performed the covenants, and if it gave written notice of an intention to do so within one (1) month prior to the expiration of the Licence Agreement, the Company had the right to be granted a further agreement for the term of five (5) years.

On 21 March 2011, the Company gave written notice of its intention to exercise the option.

On 2 June 2011 Council Officers confirmed the expiration of the Licence Agreement and advised that it would not be extended or renewed, on the basis that licence fees had not been paid duly and punctually in accordance with the Licence Agreement. Council Officers also advised that Council would reconsider its position in regard to any future Licence Agreements for illuminated street signs on roadways within the Council area.

Under the Licence Agreement, the Company has a period of six (6) months (or until 2 December 2011) within which to remove its illuminated street signs on roadways within the Council area.

On 1 July 2011, the Company's solicitors forwarded correspondence to Council denying that the Company had defaulted under the Licence Agreement as all monies payable during the current term of the Licence Agreement had been paid in full. The Company's solicitors also pointed out that Council had not during the course of the Licence Agreement ever issued notice to remedy breach which they alleged was required under clause 7 (G) of the Licence Agreement.

Council Officer's obtained legal advice from Williams Graham Carman lawyers on the right to refuse the Company to exercise the option. The legal advice confirmed that Council was not obliged to notify the Company when it had defaulted under the Licence Agreement and given that the Company had not 'duly and punctually' paid the licence fees, Council is not obliged to grant the Company the option of an extra five (5) years.

Council Officers have now drafted correspondence to this effect which is to be forwarded to the Company.

**COMMENT:**

It is considered that as this agreement has been in place for 10 years that Council should also be given the opportunity to determine whether it desires to maintain the control and the concept of "Nu-Lite" signs in the suburbs.

**CONSIDERATIONS:****Corporate and Operational Plans:**

This report is in accordance with Corporate Plan Goal 5.3 – Plan and make financial and capital decisions with the state of the local economy in mind.

**Statutory:**

N/A

**Policy:**

N/A

**Financial and Risk:**

Under the Licence Agreement and with the number of signs presently in place, Council receives approximately \$10,300 per annum (approximately \$492 per sign per annum). Projected over the period of 5 years, if Council does not renew the option, the total amount foregone will be approximately \$51,660.

However, Council records reveal that the same licence fees have been paid under the Licence Agreement since at least 2005. Any new Licence Agreement Council may contemplate ought to recalculate and increase the licence fee, which would mean Council would potentially receive more than this amount under a new agreement.

The Company's solicitors have threatened to take 'appropriate action' to have the option exercised in their client's favour. As such, Council should consider that there is a risk of legal action being taken by the Company against Council. However, in light of Council's solicitors advice that Council is entitled in the circumstances to refuse to exercise the option, this risk may be considered minimal.

**Sustainability:**

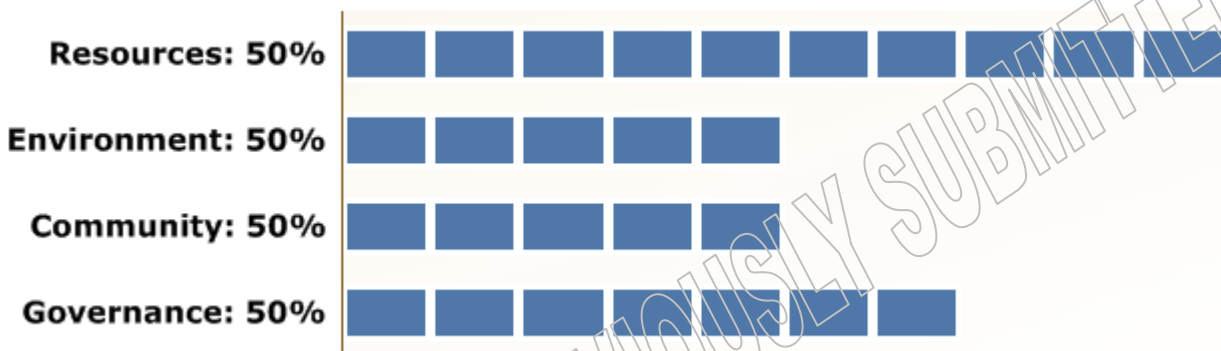
The Cairns Regional Council Sustainability Assessment has been completed in relation to the refusal to grant the option.



Sustainability Assessment report

## SUSTAINABILITY SCORECARD

Activity / Project: Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd  
 Department: Planning & Environment  
 Branch: Environmental Assessment  
 Assessment date: 19/07/2011  
 Project stage: Refusal to exercise further 5 year option under Licence Agreement



Actions undertaken in relation to the revised policy will have a neutral effect on Council's sustainability in the Resources, Environment, Community and Governance assessments.

### **CONSULTATION:**

Council obtained legal advice from Williams Graham Carman solicitors as to whether it may lawfully refuse the option to renew the Licence Agreement. Council was advised that it may lawfully refuse to renew the Licence Agreement in the circumstances.

### **OPTIONS:**

Council has two options:-

Option A – Refuse to renew the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd.

Option B – Renew the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd for a period of five (5) years.

Given that the Company has consistently failed to pay licence fees in accordance with the Licence Agreement, and taking into account the legal advice Council has received, it is considered that it is appropriate to refuse to renew the Licence Agreement with Nu-Lite Signs Pty Ltd.

**CONCLUSION:**

It is recommended that Council resolves to refuse to renew the Licence Agreement with Nu-Lite Illuminated Signs Pty Ltd to erect illuminated signs on roadways.

**ATTACHMENTS:**

1. Attachment "A" – Licence Agreement between Council and Nu-Lite Illuminated Signs Pty Ltd commencing 1 June 2001
2. Attachment "B" – Payment advice and details of illuminated street signs for period ending 30 June 2011
3. Attachment "C" – List of Nu-Lite Illuminates Signs Pty Ltd Payments between 1 July 2009 and 30 June 2011.
4. Attachment "D" – Photograph of Nu-Lite illuminated Sign on Corner of Abbott & Shields Streets, Cairns City.

KYLEE MILLER  
**Co-ordinator Local Laws Compliance Unit**

LAURIE PHIPPS  
**Manager Environmental Assessment**

PETER TABULO  
**General Manager Planning and Environment**

**Attachment A:**

## Licence Agreement for Illuminated Devices on Street Name Signs

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Licence Agreement for Illuminated Devices on Street Name Signs

## AGREEMENT

DATED: \_\_\_\_\_

### PARTIES:

**CAIRNS CITY COUNCIL** (ABN 21 543 571 965) a local government under the Local Government Act 1993 having its public office at 119 – 145 Spence Street Cairns in the State of Queensland.

("Council")

**NU-LITE ILLUMINATED SIGNS PTY LTD** (ABN 30 091 972 619)  
PO Box 1950, Cairns Mail Centre, Cairns, Qld 4870

("the Company")

### RECITALS:

- A. The Company wishes to erect certain illuminated street name signs on roadways under the control of the Council upon condition that the Company be permitted to erect and display advertising signs in association with such illuminated street name signs.
- B. Council has agreed to grant, and the Company has agreed to undertake the erection and maintenance of the prescribed signs on the sites in accordance with the terms and conditions of this Agreement.
- C. The conditions of this Agreement form conditions of approval pursuant to Local Laws 22 (Activities on Roads) and Local Law 28 (Control of Advertising).

### IT IS AGREED:

#### 1. DEFINITIONS

In this Agreement unless inconsistent with the context or subject matter:

"**advertising signs**" means that part of the prescribed signs that contain an advertisement approved of in accordance with this Agreement;

"**Council controlled roads**" shall mean all roads within the Council area other than State controlled roads;

Licence Agreement for Illuminated Devices on Street Name Signs

**"prescribed signs"** means illuminated street name identification signs with attached advertising signs erected in accordance with the specifications as may be approved by Council in accordance with clause 7(a) herein;

**"street name signs"** shall mean that part of the prescribed signs which contains the name of a road to which such sign relates.

The headings contained in the Agreement are for ease of reference only and shall not affect in any way the interpretation or construction of this Agreement.

In this Agreement:

- (a) the masculine gender includes any other gender;
- (b) the singular number includes the plural number and vice versa;
- (c) "month" means a calendar month.

## 2. PERMISSION TO ERECT

In consideration of the Company at its own cost and expense providing, erecting, maintaining and operating the street name signs in accordance with the terms of the Agreement and the covenants by the Company hereinafter appearing, the Council hereby grants to the Company subject to the terms and conditions hereinafter set out during the currency of this Agreement, permission to erect and maintain advertising signs as part of the prescribed signs on Council controlled roads.

## 3. OWNERSHIP OF SIGNS

The signs shall at all times be and remain the property of the Company and at the termination of this Agreement, the Company shall be entitled to remove them.

## 4. COMMENCEMENT AND TERM

This Agreement shall commence on the 1<sup>st</sup> day of June 2001 and shall unless sooner determined as hereinafter set out continue until 1<sup>st</sup> day of June 2011.

If the Company shall at all times during the term hereof have duly and punctually paid the licence fees and approval fees and strictly observed and performed the covenants on its part herein, and if the Company shall have given written notice of its intention in that respect to Council not less than one (1) month prior to the expiration of this Agreement, the Company shall have the right to be granted a further agreement for the term of five (5) years, commencing the day after the expiration of the term herein.

**5. COMPANY COVENANTS**

The Company hereby agrees with Council:

**(A) Council Approval Required**

- (i) The Company shall before erecting any of the prescribed signs submit to the Council for its prior written approval a proposal which shall include:
  - (a) a plan showing the exact location of such prescribed signs;
  - (b) details of advertising to be placed upon the advertising signs; and
  - (c) such other information as the Council may require.
- (ii) That in considering any such proposal for approval the Council may:
  - (a) approve the proposal; or
  - (a) refuse to approve the proposal; or
  - (c) approve the proposal subject to such conditions as the Council deems fit.

**(B) Obtain Consents and Approvals**

- (i) That the Company before erecting any prescribed sign shall obtain at its cost and expense any necessary consents or approvals required under any legislation.

**(C) Standards**

- (i) That the Company shall erect the signs in accordance with the standard approved by the Regulator pursuant to the Electricity Act 1994 and in accordance with the relevant standard Australian Codes of engineering and mechanical practice.

**(D) Inspect and Maintain Signs**

- (i) That the Company at its own cost and expense shall regularly inspect the prescribed signs and undertake any repairs or maintenance necessary to ensure same are in good working order.

**(E) General Sign Repairs**

- (i) That the Company shall repair the prescribed signs at its cost and expense within ten (10) days after receiving written notice to do so from the Council's General Manager City Development or delegate.

**(F) Emergency Sign Repairs**

- (i) In the event that a sign is rendered unsafe in the opinion of the General Manager City Development by reason of the negligent and/or intentional act of a third party or storm and tempest or fire then the Council may take the necessary steps it deems prudent to make the sign safe. The reasonable cost of such work may then be charged to the Company and shall constitute a debt by the Company to the Council recoverable in any Court of competent jurisdiction. Neither shall the Council's actions so exercised be construed as being in any way adverse to the rights of the Company provided that such actions or repairs are limited to preserving the safety of the public users proximate to the sign and do not extend to general repairs and maintenance as provided for in the above.

**(G) Pay Electricity Charges**

- (i) That the Company shall pay to the appropriate collecting authority on demand the cost of electricity consumed by the prescribed signs.

**(H) Indemnify Council**

- (i) That the Company hereby indemnifies and agrees to indemnify and keep indemnified the Council from and against all claims, demands, actions, suits, and proceedings brought or to be brought against the Council arising from or out of the prescribed signs including the manufacture, installation, defective maintenance and/or defective materials of or within the prescribed signs, and/or works or excavations and/or obstructions caused by the installation thereof.

**(I) Public Risk**

- (i) The Company, shall before proceeding with the installation of any of the prescribed signs, procure at its own expense, a Public Risk Policy in amount of five million dollars (\$5,000,000.00) to cover the activities contemplated by this Agreement and shall maintain such Policy in force throughout the period of this Agreement and pay all premiums pertaining thereto as and when the same shall become due and shall, if required by Council, produce receipts of such to the Council within thirty (30) days after payment.

**(J) Annual Licence Fee**

- (i) That the Company shall pay to the Council the annual licence fee applicable to the erection of electrical signs as calculated in accordance with such fees as are from time to time prescribed by Council. The fee shall be payable annually in advance on the first day of July in each year during the term of this Agreement. In respect of any prescribed sign erected after the first day of July in any year during the said term the

## Licence Agreement for Illuminated Devices on Street Name Signs

Council shall allow an adjustment of the fee calculated on a pro rata basis.

- (ii) No annual or pro rata fee shall be payable by the Company to Council in respect of street name signs only, or prescribed signs with community messages only, or where Council utilises any prescribed signs as laid out in 5(N) below.

**(K) Not Assign or Transfer**

- (i) That the Company shall not assign or transfer its rights or obligations under this Agreement without first obtaining the approval in writing of the Council which approval shall not be unreasonably withheld.

**(L) Comply with Provisions, Statutes, Etc**

- (i) That the Company shall at its own cost and expense comply with all of the provisions of all statutes, statutory regulations, local laws for the time being in force so far as the same may concern or relate to the prescribed signs or for the purpose for which the signs are used.

**(M) Pay Legal Costs**

- (i) That the Company shall pay all costs incurred by both parties of and incidental to the preparation, execution and stamping of this Agreement.

**(N) Vacant Space on Prescribed Signs**

- (i) In the event that the Company, for reasons other than Council's consent not being granted, is unable to commercially lease the advertising space of an existing sign for any period during the term of this Agreement, then the Company shall forthwith notify Council that the space is temporarily vacant and the Council may thereupon elect to utilise the said space by way of displaying advertising panels of its own choice and design for so long as the Company continues to be unable to commercially lease the said sign and the Company agrees to manufacture the said panels according to the Council specifications and the Council agrees to pay the reasonable costs of such manufacture, installation and subsequent removal but the Council shall be entitled to the display thereof free and gratis.

**6. COUNCIL COVENANTS**

The Council hereby agrees with the Company:

**(A) Company's Exclusive Rights**

## Licence Agreement for Illuminated Devices on Street Name Signs

- (i) That the Council shall not grant during the period of this Agreement or extension thereto a permit to any other person or company for the right to either:
  - (a) erect advertising signs or sign of any other type or description upon the prescribed signs; or
  - (b) erect the prescribed signs or sign of a like nature on Council controlled roads within the area of Cairns City Council.

**(B) Disturbances to Road, Pavement, Etc**

- (i) That the Council shall allow the Company to disturb the pavement and roadway to the extent reasonably required to install the prescribed signs as approved under this Agreement **PROVIDED THAT** before such installation shall commence the Company shall give forty-eight (48) hours written notice to the Council of such intent and **PROVIDED FURTHER** that it shall forthwith at its own cost and expense clean up, repair and make good to the satisfaction of the General Manager City Development or his delegate any damage whatsoever to streets, footpaths, lands, locations or surrounds caused by such installation.
- (ii) The Company will, prior to commencing any excavation works required for the installation of any prescribed sign, establish the location of any cables, pipelines and services in the area. The Company will bear the sole responsibility for any damage to cables, pipelines and services caused by its activities subsequent to this Agreement.

**7. POSITION OF SIGNS**

The parties to this Agreement hereby agree:

**(A) Amendment Specifications**

- (i) That the Company may from time to time submit to the Council for its written prior approval an application to amend the standard specifications for the prescribed signs. Such application shall include:
  - (a) a plan showing the amendments; and
  - (b) such other information as the Council may require.
- (ii) In considering any such proposal for approval, the Council may either:
  - (a) approve the proposal; or
  - (b) refuse to approve the proposal; or

## Licence Agreement for Illuminated Devices on Street Name Signs

- (c) approve the proposal subject to such conditions as the Council deems fit.

**(B) Council May Require Resiting of Signs**

- (i) That the Council may at any time by notice in writing require the Company to resite any of the prescribed signs to a new site specified by the Council AND shall in giving such notice in writing pay half the costs incurred by such resiting PROVIDED THAT if such costs cannot be mutually agreed upon by the parties such costs shall be referred to the President of the Metal Trades Industry Association of Australia (or his delegate) as independent expert and for this purpose the provisions of the "Commercial Arbitration Act 1990" shall apply.

**(C) Council May Require Temporary Removal of Prescribed Signs**

- (i) That the Council for the purpose of the roadworks may require the Company by notice in writing to temporarily remove and dismantle any of the prescribed signs AND the Council shall in giving such notice in writing pay half the costs incurred by such temporary removal and dismantling and reinstalling PROVIDED THAT if such costs cannot be agreed upon by the parties such cost shall be referred to the President of the Metal Trades Industry Association of Australia (or his delegate) as independent expert and for this purpose the provisions of the "Commercial Arbitration Act 1990" shall apply.

**(D) Removal of Offending Signs**

- (i) That the Council may at any time require the Company, at the Company's cost and expense, to remove any of the advertising signs which do not conform to accepted standards of decency and morality.

**(E) Company May Remove and Resite Signs**

- (i) That the Company may at its own cost and expense either remove any of the prescribed signs completely or remove and resite same to a new site agreed to by the Council in accordance with Clause 5(A) herein at any time during the period of this Agreement, in such cases that:
- (a) the Company is prevented or prohibited from exhibiting a sponsor's message on any of the advertising signs by reason of legislation or by order of any competent authority; or
  - (b) any of the prescribed signs have to be dismantled because of roadworks in accordance with Clause 7(C) herein; or
  - (c) any of the prescribed signs becomes obscured or otherwise unsuitable for display of any of the advertising signs; or

- (d) any of the prescribed signs is subjected to constant and excessive vandalism

**PROVIDED ALWAYS THAT** the Company shall at its own cost and expense clean up, repair and make good to the satisfaction of the General Manager City Development or his delegate any damage whatsoever to the streets, or surrounds caused and brought about by such dismantling and/or removal.

**(F) Removal of Signs upon Termination of Agreement**

- (i) That the Company shall dismantle and remove each of the prescribed signs erected by the Company in accordance with this Agreement within six (6) calendar months of the expiration or prior determination of this Agreement or its extension and the Company shall restore the various surrounds in like manner to that provided in Clause 7(E) herein **PROVIDED FURTHER THAT** any of the prescribed signs or part thereof not dismantled or removed within the aforementioned period shall thereafter be dismantled or removed by Council with the full cost and expense so incurred to be charged to the Company and shall constitute a debt by the Company to the Council recoverable in any Court of competent jurisdiction and no compensation or other monies shall be payable by the Council to the Company in respect thereof.

**(G) Default by Company**

- (i) That if the Company shall commit any breach of this Agreement or shall fail to observe any undertakings on its part as contained within this Agreement and shall not remedy the same within twenty (20) working days after the Council having given notice in writing in accordance with Clause 7 (H) herein to remedy the said breach or if the Company shall be wound up then on the expiration of such period of twenty (20) working days or the date of the winding up of the Company, this Agreement shall forthwith be determined and the signs shall be removed in accordance with Clause 7(F) herein **AND** neither party shall have any right of action against the other in respect thereof save in respect of any antecedent breach by either party.

**(H) Service of Notice**

- (i) That any notice to be given under this Agreement shall be deemed to be sufficiently served and any proposal to be made under this Agreement shall be deemed to be lodged if delivered personally to or mailed by prepaid ordinary post to a party at its address shown herein or such other address as a party may from time to time notify to the other and shall be deemed to have been received upon the second day following the date of posting except where any notice or proposal is posted on a Saturday, Sunday, or public holiday where it shall be deemed to have been received on the second ordinary business day following posting.

Licence Agreement for Illuminated Devices on Street Name Signs

(l) **Confidentiality**

- (i) That the information contained in this Agreement and/or supplied during the negotiations preceding this Agreement shall be confidential and shall be withheld from disclosure to any third party where such disclosure would, in the opinion of the Company, be likely unreasonably to prejudice the commercial position of the Company.

"REPORT PREVIOUSLY SUBMITTED"

Licence Agreement for Illuminated Devices on Street Name Signs

EXECUTED AS AN AGREEMENT

GIVEN under the Common Seal of CAIRNS CITY COUNCIL in presence of KEVIN MICHAEL BYRNE and DAVID BRIAN FARMER The Mayor and Chief Executive Officer of the Council respectively who have hereunto subscribed their names in the presence of:

*[Signature]*  
CAIRNS CITY COUNCIL  
105 NEWMOON ST  
CAIRNS CITY  
Chief Executive Officer  
01/105

*[Signature: Monica In Charles]*  
Justice of the Peace  
OFFICE OF THE PEACE (QUALIFIED)  
REG. NO. 7663e  
DEPARTMENT OF JUSTICE QUEENSLAND

The COMMON SEAL of NU-LITE ILLUMINATED SIGNS PTY LTD ABN 30 091 972 619 was hereunto affixed pursuant to a resolution of the Board of Directors and in the presence of:

*[Signature]*  
Director

*[Signature]*  
Justice of the Peace  
8140

*[Signature]*  
Secretary

"REPORT PREVIOUSLY SUBMITTED"

**Attachment B:**

30/6/2011

Cairns City Council  
119 – 145 Spence St  
Cairns QLD 4870



Dear Sir

This is to advise the details of our illuminated street signs, erected in your Council for the period ending as at the above date. (A/C T343)

Advertiser	Pole No.	Top street name	Bottom street name	Rental
Hog's Breath Café	2	Sheridan St	Shields St	\$41.00
Trinity Cycles	3	Aplin St	Sheridan St	\$41.00
Nu-Lite Illuminated Signs	11	Aplin St	Lake St	\$41.00
Nu-Lite Illuminated Signs	12	Florence St	Lake St	\$41.00
Cairns Plaza	15	Abbot St	Shields St	\$41.00
Nu-Lite Illuminated Signs	16	Abbot St	Aplin St	\$41.00
Cairns Plaza	19	Shields St	Esplanade	\$41.00
Movenpick	20	Aplin St	Esplanade	\$41.00
Nu-Lite Illuminated Signs	26	Callum St	Esplanade	\$41.00
Cairns Private Hospital-X Ray	31	Grafton St	McGregor St	\$41.00
Cock n Bull	34	Grove St	Florence St	\$41.00
Trinity Beach Hotel	40	Moore St	Lake St	\$41.00
Golden Sands	42	Wattle St	Trinity Beach Rd	\$41.00
Southside Shopping Centre	43	Loretta Ave	Varley St	\$41.00
Cairns Colonial Club Resort	44	Cannon St	Anderson Rd	\$41.00
Trinity Beach Sporting Club	48	Nautilus St	Macnamara St	\$41.00
Dragon Resorts	50	Wattle St	Trinity Beach Rd	\$41.00
Sushi Express	15A	Abbot St	Varley St	\$41.00
Hog's Breath Café	18A	Spence St	Shields St	\$41.00
Princess Jewellery	19A	Esplanade	Esplanade	\$41.00
Nu-Lite Illuminated Signs	6A	Shields St	Shields St	\$41.00
			Grafton St	\$41.00
<b>Number of signs:</b>			<b>21</b>	<b>\$861.00</b>

We have pleasure in enclosing our cheque for the above amount.

Yours faithfully

  
C. BERELOWITZ  
NU-LITE ILLUMINATED SIGNS (PTY) LTD

T132.

Rec # 5259474

**Attachment C:**

#3116425v2

**UPDATED 11/07/2011**  
**List of Nu-Lite Illuminated Signs Pty Ltd**  
**Payments since July 2009**

1 July 2009 – Receipt no. #4706211 payment received on 27 August 2009

31 August 2009 - Receipt no. #4162769 payment received on 28 September 2009

31 September 2009 – **No Payment Received**

31 October 2009 – **No Payment Received**

31 November 2009 – **No Payment Received**

15 December 2009 - Receipt no. #4275676 payment received on 18 December 2009

15 January 2010 – **No Payment Received**

15 February 2010 - Receipt no. #4451791 payment received on 24 March 2010

15 March 2010 - Receipt no. #4506801 payment received on 6 May 2010

15 April 2010 - Receipt no. #4553826 payment received on 7 June 2010

15 May 2010 - Receipt no. #4745228 payment received on 7 September 2010

1 June 2010 – Receipt no. #5109775 payment received 1 April 2011

1 July 2010 – Receipt no. #4750176 payment received on 10 September 2010

31 August 2010 – Receipt no. #5108462 payment received on 31 March 2011

30 September 2010 – Receipt no. #5108462 payment received on 31 March 2011

31 October 2010 – Receipt no. #4822386 received on 19 October 2010

30 November 2010 – Receipt no. #4897748 payment received on 8 December 2010

31 December 2010 – Receipt no. #5098546 payment received on 25 March 2011

31 January 2011 – Receipt no. #5119914 payment received 8 April 2011

28 February 2011 – Receipt no. #5119916 payment received 8 April 2011

31 March 2011 – Receipt no. #5139343 payment received on 21 April 2011

30 April 2011 - Receipt no. #5170090 payment received on 11 May 2011

31 May 2011 - Receipt no. #5218121 payment received on 10 June 2011

30 June 2011 – Receipt no. #5259474 payment received on 6 July 2011

**Attachment D:**



## APPENDIX 2

## Nu-Lite illuminated signs

31/6 Trelawney Street, Woolahra, NSW 2025  
 Ph: 02 9531 8010 M: 0421 73 88 74  
 ARN: 30 091 972 419

10<sup>th</sup> November 2011

Re: Nu-Lite Illuminated Signs Pty Ltd

Mr Tabulo  
 General Manager Planning and Environment  
 Cairns Regional Council  
 P.O. Box 359  
 Cairns Q 4879



Dear Mr Tabulo,

Thank you for making the time to meet with me and discuss Nu-Lite Illuminated Signs the other week.

As we discussed in our meeting Nu-Lite is more than happy to look into alternative options for lighting, from solar powered lighting to other energy sustainable options to keep in step with the eco plans for the Cairns area.

We undertake to immediately investigate these options and will send you details of our findings as soon as they come to hand.


In light of this and taking steps to ensure any other matters of concern have been addressed, we hope that our contract renewal for the next five years can be honoured.

It has been a pleasure working with Council and the Community of Cairns this last 10 years and we hope to continue that relationship.

Nu-Lite looks forward to moving ahead together with your Council.

Please see enclosed our letter to the CEO and Councillors.

Regards

  
 Annie Graham  
 Manager  
 Nu-lite Illuminated Signs Pty Ltd  
 0421 73 88 74  
 anniegraham@unwired.com.au

## Nu-Lite illuminated signs

31/6 Trelawney Street, Woolahra, NSW 2025  
Ph: 02 9531 8010 M: 0421 73 88 74  
ARN: 30 091 972 419

10<sup>th</sup> November 2011

**Re: Nu-Lite Illuminated Signs Pty Ltd**

Ms Lyn Russell  
CEO  
Cairns Regional Council  
P.O. Box 359  
Cairns Q 4879

Dear Ms Russell,

### REQUEST FOR REVIEW OF CLOSED SESSION MEETING HELD ON 27th JULY 2011

Our company has been faithfully serving the Cairns' business community for the past 10 years.

At a Closed Session meeting held in your Council Chambers on the 27th July 2011, matters affecting our Company, Nu-Lite Illuminated Signs were discussed.

At that meeting a decision was reached which has affected our company in a negative and unfair way.

After meeting with the Councillors, we have now received confirmation that a number of them were not in possession of correct information at the meeting held on the 27th of July.

At this time we believe that had the Councillors been correctly briefed, a different and fair decision would have been reached.

We therefore respectfully request to have the matter reviewed by your Council at the next meeting at the end of November 2011.

I have included a letter to Councillors attached explaining the circumstances around the matter and ask that this letter be included in a report to Council to allow Councillors an opportunity to reconsider their previous decision.

Thank you for your consideration.

Regards,



Annie Graham  
Manager  
Nu-lite Illuminated Signs Pty Ltd  
0421 73 88 74  
anniegraham@unwired.com.au

## Nu-Lite illuminated signs

31/6 Trelawney Street, Woolahra, NSW 2025  
Ph: 02 9531 8010 M: 0421 73 88 74  
ARN: 30 091 972 419

10<sup>th</sup> November 2011

**Re: Nu-Lite Illuminated Signs Pty Ltd**

Cairns Regional Council  
P.O. Box 359  
Cairns Q 4879

Dear Councillors,

Thank you for taking the time to meet with me when I was in Cairns.

I greatly appreciated the support, suggestions and positive feedback throughout our meetings, and it was a genuine pleasure to meet with yourselves and Council officers.

We do apologise for the missed payments and will set up a BPay option in our bank account so that this is ever an issue again.

As I explained it was an oversight on our behalf due to Charles (our Company Director) travelling a couple of times a year and not sending all the cheques before he left. Can you please note though that in the 10 years that we have worked with Council and the Cairns community this issue had never been brought to our attention, by phone, letter or email, and was only done so when the 5 year renewal contract was due to be resigned.

If we had been made aware of this oversight we would have corrected the problem earlier.

We note that in the contract there is a clause that states we have a 10 day grace period to fix any issues that Council brings to our attention. As soon as we were notified we fixed all the arrears within that 10 day period.

As you can understand we were surprised and confused as to why we had not been granted the 5 year renewal as per the original contract.

We are extremely excited about the new CBD Master Plan for Cairns and the positive changes that are going ahead for this wonderful area.

We would love the opportunity to refresh our signs to work in with the changes that are taking place.

We are sure that you can appreciate that in making changes to our signage it will incur a significant expense, and we would need a new contract for a significant period of time, or the 5 year renewal, to be granted as per our original contract for us to be able to recoup our costs.

During our 10 year involvement with the Cairns area and community we have shown our support in a number of ways. An example was when the cyclone passed through the area at the beginning of the year. Our clients were financially damaged by this disaster and we worked with them to help out were we could be reducing their rentals for a significant period of time to help their businesses survive.

*It would be most appreciated if you could please reconsider this matter in light of the above information as we believe we have honoured our agreement with Council and served our clients and the community well over the last 10 years.*

We would appreciate the opportunity to continue our long term relationship with our clients while working closely with Council to provide any positive changes as suggested.

Thank you again for the time and your consideration in this matter.

Regards



Annie Graham  
Manager  
Nu-Lite Illuminated Signs Pty Ltd  
0421 73 88 74  
anniegraham@unwired.com.au

"REPORT PREVIOUSLY SUBMITTED"