

<b>PLANNING AND ENVIRONMENT COMMITTEE</b>	<b>1</b>
<b>7 JUNE 2023</b>	

## **PROPOSED SURRENDER AND RENEWAL OF FREEHOLD LEASE OVER PART OF COUNCIL LAND FOR COMMERCIAL PURPOSES - DIVISION 5**

Ellie Johnston | 19/28/126- | #7188873

### **RECOMMENDATION:**

**That Council:**

1. **Applies the exception under Section 236 (2) of the Local Government Regulation 2012 with reference to subsection (1) (c) (iii) being that the disposal is for the purpose of renewing the lease over part of lot 43 on SP188087, 119-147 Spence Street, Cairns City to the existing lessee by supporting:**
  - i. **The surrender of the existing freehold lease with Go Simply Delicious Pty Ltd trading as Cairns Courtyard Café; and**
  - ii **An offer a new freehold lease to Go Simply Delicious Pty Ltd trading as Cairns Courtyard Café, as per the terms and conditions contained within this report.**

---

### **INTERESTED PARTIES:**

Lessee – Go Simply Delicious Pty Ltd trading as Cairns Courtyard Cafe  
 Asset owner – Cairns Infrastructure and Assets

*Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.*

### **EXECUTIVE SUMMARY:**

This report has been prepared to gain approval to surrender the existing freehold lease with Go Simply Delicious Pty Ltd A.C.N 612 262 469, trading as Cairns Courtyard Café over part of lot 43 on SP188087, 119-145 Spence Street, Portsmith. Upon surrender of the current freehold lease, it is intended to enter into a new freehold lease subject to the terms and conditions outlined within this report. The current lease is due to expire on 31 March 2025 and the proposed surrender and new lease will provide security to the lessee with a lease term until 2033.

**BACKGROUND:**

Go Simply Delicious Pty Ltd took over the lease of Cairns Courtyard Café in June 2016. Since then, the owners Adrienne and James Veering (Lessees) have established themselves within the Council Chambers and built relationships with both staff and visitors. They have been reliable lessees providing constant cafe operations, meeting lease requirements and cooperating with any requests by Council for works in the area.

During Covid-19 in 2020, Council as lessor, provided financial assistance to all Council lessees during this difficult time through reduced rent. The Lessees complied with all State Government Legislation without hesitation even though this caused significant impacts on their businesses financially. The lessees during this time also lost five (5) key staff members including the full-time head chef. Additionally, Council's support for staff to work remotely from home further impacted the ability for Cairns Courtyard Cafe to operate at full capacity due to a reduction in patrons.

Council have recently been made aware that Cairns Courtyard Café was listed for commercial sale. Under the current or new lease, an application is required in writing for the consent of the lessor to an assignment, transfer or sublease and must contain the relevant information for the lessor to make an informed decision to support the transfer or not. It should be noted that the lessor cannot unreasonably withhold support under the terms of the existing lease or proposed new lease.

There is no outstanding rent, rates or water from the existing tenure arrangement.

**COMMENT:**

Property Services support the surrender of the existing freehold lease and enter into a new freehold lease based on the current terms and conditions, including but not limited to the following:

1. Surrender of current freehold lease registered under dealing number 716677253;
2. Enter into a new freehold lease;
  - a. for a term of ten (10) years;
  - b. for the purpose of Café and takeaway including the retail sale of products in the category of light meals and refreshments, including, but not limited to hot and cold food items, snack foods, hot and cold non-alcoholic beverages and newspapers;
  - c. amend the rent review method in Section 1.11 of the freehold lease by removing CPI review dates and inserting 3% increase review dates to be in line with other Council managed commercial tenancies;
  - d. Amend the bond to the effect of new rental amount determined by a current market rent valuation;
  - e. Grants the lessee for the term of the lease, a non-exclusive licence agreement to make use of the licenced area in common with others for the purpose of providing public dining facilities and common area seating for the benefit of the lessee's customers; and
3. The lessee being responsible for all associated costs including the valuation for the new rent and registration of title documents.

**OPTIONS:**

## Option 1 (Recommended)

That Council:

1. Applies the exception under Section 236 (2) of the Local Government Regulation 2012 with reference to subsection (1) (c) (iii) being that the disposal is for the purpose of renewing the lease over part of lot 43 on SP188087, 119-147 Spence Street, Cairns City to the existing lessee by supporting:
  - i. The surrender of the existing freehold lease with Go Simply Delicious Pty Ltd trading as Cairns Courtyard Café; and
  - ii. An offer for a commercial freehold lease to Go Simply Delicious Pty Ltd trading as Cairns Courtyard Café as per the terms and conditions contained within this report.

## Option 2

That Council does not support the proposal to surrender and renew the freehold lease for a further ten (10) year term over part lot 43 on SP188087, 119-145 Spence Street, Portsmith, therefore the current lease is to remain in effect until 31<sup>st</sup> March 2025.

**CONSIDERATIONS:****Risk Management:**

The cafe is situated in a high-profile location adjoining Council Chambers. It is therefore important for Council to ensure the continuity of business in this area by renewing the freehold lease.

**Council Finance and the Local Economy:**

The current annual rent is \$26,000 (excluding GST) for 88m<sup>2</sup>. A new valuation will be required, and the base market rent will be determined by an independent registered valuer with 3% annual increases.

The lessee is responsible for all utilities, rates and charges, including water usage costs on the premises.

Council's finance branch analysed the 2021/2022 financial statements and noted that the Cairns Courtyard Café are in a positive financial position overall. The financial ratio's were analysed suggest that the business is profitable and can meet their lease repayments.

The lease repayments will be similar to prior years, with annual 3% increases and market reviews in years 4 or 8 of the lease. Extending the lease by 10 years would be low risk to Council and would provide a sustainable operation for Council's existing clientele.

The lessee is responsible for any costs associated with the surrender, preparation and registration of the freehold lease documents.

#### Community and Cultural Heritage:

The Courtyard Cafe is a local café providing a place for the community to meet over food and drink and is at the main entrance and exit to the Council Chambers. The Café enlivens the immediate area that comprises of the Council Chambers being an attraction for Council staff, contractors, nearby businesses and members of the general public.

#### Corporate and Operational Plans:

This report has been prepared in accordance with the Cairns Corporate Plan 2021-2026, including:

##### Focus One – Robust Economy:

- Promote and protect the growth of diverse industries and small business; and
- Grow and sustain education and employment opportunities.

#### Statutory:

The tenure arrangement will be approved and prepared in accordance with the *Retail Shop Leases Act 2014*, the *Local Government Act 2009* and associated regulations.

#### Policy:

The freehold lease will be prepared in accordance with Council's 'Tenure Arrangements and Disposal of Council Property' General Policy, in particular part 3 of the associated administrative instruction which provides for commercial use.

### **CONSULTATION:**

Council officers have completed a walk-through inspection with Building & Facilities Management on 25 May 2023 and confirmed the leased area is being well maintained by the lessees.

It is noted that the process to clean the shade sail over the outdoor area has previously caused water run off into the air conditioning vents which resulted in disruptions to the air-conditioning in the leased area. This cleaning method has since been modified to avoid future problems.

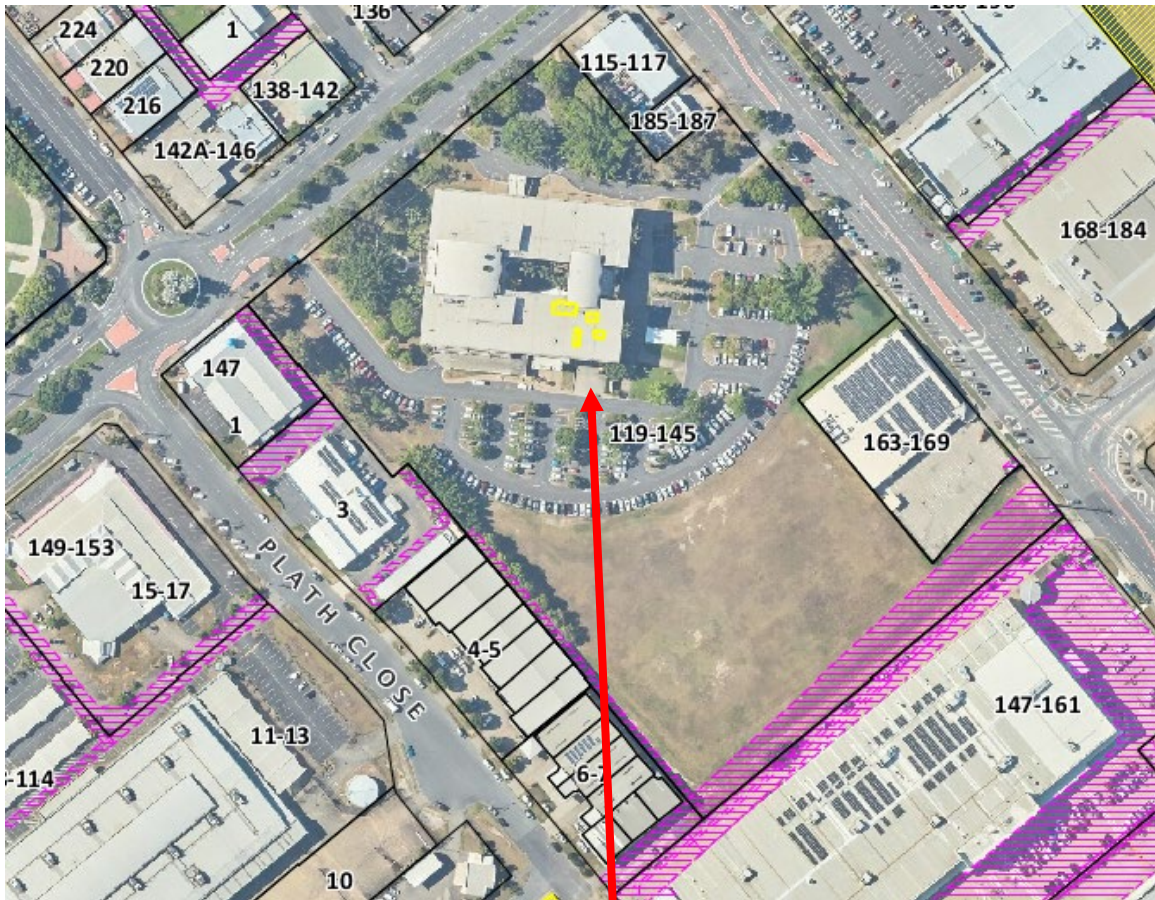
**ATTACHMENTS:**

1. Locality map/aerial photo
2. Sketch plan of lot 43 on SP188087 showing lease area
3. Sketch plan of licence agreement adjacent to lease area A

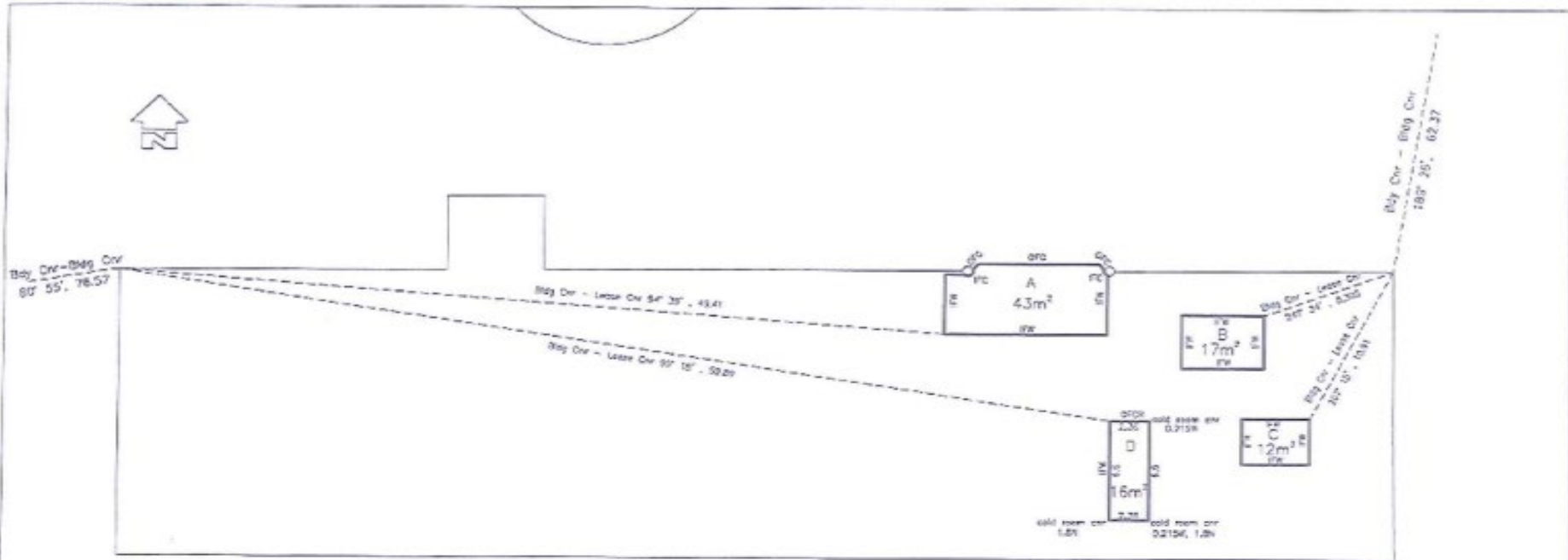
A handwritten signature in black ink, appearing to be 'Ed Johnson', with a long horizontal flourish extending to the right.

Ed Johnson  
Director Planning, Growth and Sustainability

Attachment 1 - Locality map/aerial photo



Attachment 2 - Sketch plan of lot 43 on SP188087 showing lease area A, B, C and D



- Legend**
- IFW Inside face of wall
  - IFC Inside face of column
  - OFW Outside face of wall
  - OFC Outside face of column

**Notes:**  
 Lease Area is Net Lettable Area (NLA) as defined by the Property Council of Australia Method of Measurement for Lettable Area (March 1972)  
 Lease boundary connections are to the external corner of building.

See Sheet 1 For Bdy Cnr - Bldg Cnr connections



I, Gary Thomas Pozzi, Cadastral Surveyor, certify that the details shown on this sketch plan are correct.

*G. T. Pozzi*  
 Cadastral Surveyor

Title : Description of premises being leased : Part of the ground floor of a multi storey building shown as leases A,B,C and D on this plan.	PARISH CAIRNS	CALCULATED	DATE	<b>G.T. POZZI</b> Bach.App.Sc.(Surv.) M.L.S.(Aust.) Cadastral Surveyor.	SCALE 1:250 (A3)
	COUNTY NARES	SURVEYED GSM	DATE Mar 13		TITLE REF. CT 50617481
	LOCAL AUTH. CAIRNS R C	DRAWN GSM	DATE Mar 13		PROPERTY DESC. LOT 43 on SP188087
project: Lease Area in Building.	SURVEY EXAMINED G. Pozzi		DATE Mar 13	11 Kavieng Street, Trinity Beach 4879. P.O. Box 152 Trinity Beach Phone: 0740 577 177 0406 772 213 Fax: 0740 577 089 Email: gpozzi@bigpond.net.au	FILE REF.
client: CAIRNS REGIONAL COUNCIL	PLAN EXAMINED G. Pozzi		DATE Mar 13		FILE 13/056

Attachment 3 - Sketch plan of licence agreement adjacent to lease area A

