

ORDINARY MEETING	5
8 NOVEMBER 2023	

TRUSTEE LEASE OVER PART OF LOT 11 ON C198325 AND PART OF LOT 711 ON SP315908, ESPLANADE, CAIRNS CITY BEING COUNCIL RESERVE FOR COMMERCIAL PURPOSES - DIVISION 5

19/28/4- | #7222064

RECOMMENDATION:

That Council:

1. Applies the exception in accordance with section 236(1)(c)(iii) of the *Local Government Regulation 2012* pursuant to section 236(2) for the purpose of renewing the lease of land to the existing tenant over part of lot 11 on C198325 and part of lot 711 on SP315908, Esplanade, Cairns City;
2. Approves to make a trustee lease renewal offer to Alvinleigh Pty Ltd trading as Muddy's Café, as per the terms and conditions contained within this report; and
3. Delegates authority to the Chief Executive Officer under section 257 of the *Local Government Act 2009*, to negotiate and finalise any and all matters relating to the trustee lease offer.

INTERESTED PARTIES:

Trustee Lessee – Alvinleigh Pty Ltd

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 seeks to apply an exception under Section 236(2) of the *Local Government Regulation 2012* to enable the renewal of a trustee lease to an existing tenant without the need to tender. The exception allows Council to offer a renewed trustee lease to the current lessee's being Alvinleigh Pty Ltd trading as Muddy's Cafe, over Council reserve land described as part of lot 11 on C198325 and part of lot 711 on SP315908, Esplanade, Cairns City.

The existing trustee lease expires on 31 January 2024. The offer of a renewed trustee lease will be offered for a term of ten (10) years and subject to the terms and conditions outlined in this report.

BACKGROUND:

Muddy's Café is in a high-profile location situated in the northern half of the Cairns Esplanade reserve and within Muddy's Playground area (See Attachment 1 and 2). The trustee lessee's, Rodel and Kayci Browning as directors of Alvinleigh Pty Ltd have been exemplary lessees throughout the term of their tenure.

The cafe is a family owned and operated business that currently employs over 50 staff. Muddy's Café is a popular, family friendly venue that provides customers with a clean and comfortable dining environment, fast and fresh food and drink options and quality customer service. The directors and their staff strive to provide new and exciting food and drink options that cater to various dietary requirements.

During the Covid-19 pandemic in 2020, Council as trustee, provided financial assistance to all Council managed commercial lessees during this difficult time through reduced rent. The trustee lessees complied with State Government requirements to the best of their ability despite the significant financial impacts on their business as a result of the restrictions. Since the easing of Covid restrictions, the proprietors have been able to re-establish a viable business model and are seeking to renew their trustee lease for a further 10-year term.

Muddy's Café (formerly Skippers Cafe) has occupied the premises since 2006 with the current trustee lessees purchasing the business in 2012. Muddy's Café currently operates from 6:00am to 9:00pm, 7 days a week. In this time the business owners have made several improvements such as changing packaging to be 95% ecofriendly, company rebranding, interior and exterior repainting, upgrading machinery and adding additional equipment to increase production as well as implementing an online ordering system during 2020 to facilitate contactless ordering.

The Directors of Alvinleigh Pty Ltd have recently made significant technology investments to help reduce coffee wait times. The trustee lessee's have also planned future works including:

- Upgrade and modernise the kitchen;
- Installation of an express bar to facilitate shorter wait times;
- Flooring upgrade / replacement;
- Replacement of oven with a state-of-the-art Unox oven;
- Upgrades to the front counter; and
- New refrigeration.

Additionally, the trustee lessees have proposed to complete further works in four stages to improve the facility and surroundings. Attachment 3 provides a concept plan of the following:

Stage 1 - Southern side – 2024

- Build lowline timber decking alongside the venue for practical outdoor dining;
- Extend roofline over whole timber deck area; and
- Install gabion wall to wrap around the garden bed (and clear out low-lying plants to increase visibility to the playground).

Stage 2 – Northern side – 2025

- Extend roofline; and
- Clear small garden bed and wrap with a gabion wall.

Stage 3 – Waterfront – 2025

- Extend roofline with a cantilever shelter; and
- Remove front hedge and concrete to improve dining layout.

Stage 4 – Outside trustee lease area - 2026

- Gabion wall along the esplanade side of the front pathway (to mitigate against king tides);
- Gabion walls throughout the gardens of the southern side to create extra seating for families;
- Pathways on either side of the grass coming from the Esplanade to the cafe (to replace worn grass in high traffic areas); and
- Installation of coloured lighting into the surrounding trees with customisable colours for different events (e.g. State of Origin).

The trustee lessees have agreed to enter into a capital works agreement with Council regarding the proposed works and investment into the facility and surrounding area as part of the tenure agreement.

COMMENT:

Officers support the offer of a new trustee lease based on the current terms and conditions, including but not limited to the following:

- for a term of ten (10) years to commence from 1 February 2024;
- café for the sale of goods falling within the category of light meals and refreshments (including but not limited to snacks, cakes and confectionary, hot and cold non-alcoholic beverages and pre-packaged food items);
- minor amendment to trustee lease area to remove public walkways to be offset through the inclusion of proposed timber decking area;
- referencing a Capital Works Agreement to formalise the above-mentioned improvement works both inside and outside the trustee lease area;
- as per the terms and conditions of the current trustee lease registered as dealing number 716188186 with the following amendment:
 - amend the rent review method in item 1.12 of the trustee lease by removing CPI review dates and inserting 3% increase review dates to be in line with other Council managed commercial tenancies;
- a market rent review conducted by a registered valuer to be completed in year:
 - three (3) to determine rent commencing at year four (4); and
 - seven (7) to determine rent commencing at year eight (8);
- lessee to be responsible for all costs associated with the preparation and registration of the tenure arrangement; and

- should the negotiations become protracted and the tenure arrangement is not finalised within three (3) months of the date of this approval, Council reserves the right to withdraw its renewal of tenure offer.

A number of discussions have been held to ensure alignment with policy and planning for the Cairns Esplanade. The recommended direction will enhance the appeal of the city's most popular playground destination and compliment the planned upgrades for the facility which are expected to occur in early 2024. Capital improvements to the trustee lease area and surrounds will contribute to the overall improved operations and functionality of the site by offering:

- Improved amenity and presentation of the facilities and adjacent areas
- Reduced congestion and improved public movement through the area
- Integration with the playground experience with additional lighting, seating and better passive surveillance/sightlines.

OPTIONS:

Option 1 (Recommended)

That Council:

1. Applies the exception in accordance with section 236(1)(c)(iii) of the *Local Government Regulation 2012* pursuant to section 236(2) for the purpose of renewing the lease of land to the existing tenant over part of lot 11 on C198325 and part of lot 711 on SP315908, Esplanade, Cairns City;
2. Approves to make a trustee lease renewal offer to Alvinleigh Pty Ltd trading as Muddy's Café, as per the terms and conditions contained within this report; and
3. Delegates authority to the Chief Executive Officer under section 257 of the Local Government Act 2009, to negotiate and finalise any and all matters relating to the trustee lease offer.

Option 2

That Council does not apply an exception under Section 236 (2) of the *Local Government Regulation 2012* and undertakes a tender process for the subject site.

CONSIDERATIONS:

Risk Management:

The cafe is situated in a high-profile location adjoining the Cairns Esplanade and Muddy's Playground. It is important that Council ensure the continuity of business in this location which can be facilitated efficiently through the renewal of the trustee lease to the existing lessee.

Council Finance and the Local Economy:

The current annual rent for the premises is \$109,632.60 including GST for 379m² leased area. A new valuation will be required, and the base market rent will be determined by an independent registered valuer with 3% annual increases and market rental assessments being conducted for years 4 and 8.

Council's finance department have analysed the 2021 and 2022 financial year statements for the business and are satisfied the business is in a positive operating financial position and extending the trustee lease for another 10 years would be low risk to Council.

In addition, the trustee lessees propose to enter into a Capital Works Agreement for the next term of the lease to formalise proposed improvements to the facilities and surrounding area.

Community and Cultural Heritage:

Muddy's Café is a local eatery that provides a location for the community to meet over food and drink on the Esplanade. The presence of the café benefits families, tourists and locals visiting Muddy's Playground or the Esplanade area.

In addition to their presence, the current trustee lessees provide support to the community through sponsorships to seven local sporting teams, annual donations to six community causes, fundraising support for a local cancer patient and work experience to high school students and VPG training programs.

Corporate and Operational Plans:

This report aligns with Cairns Regional Councils Corporate Plan Focus 1 – Robust Economy:

- Optimise visitation and tourism opportunities
- Promote and protect the growth of diverse industries and small business
- Grow and sustain education and employment opportunities

Statutory:

Tenure arrangements are be issued in accordance with the *Retail Shop Leases Act 2014*, *Local Government Act 2009* and associated regulations.

Policy:

Tenure arrangements are prepared in accordance with Council's 'Tenure Arrangements and Disposal of Council Property General Policy', and in particular Part 3 of the associated Administrative Instruction which provides for commercial use.

CONSULTATION:

Legal advice has been sought in relation to the minor changes to the trustee lease proposed in this report. Based on this advice, Council has determined that the proposed changes do not unduly favour the trustee lessee compared to others in the community and do not alter the core purpose and essence of the trustee lease.

The current trustee lessees have expressed an interest in renewing their tenure arrangement and relevant Council departments support the offer to renew the trustee lease for a period of ten (10) years.

ATTACHMENTS:

- Appendix 1 - Locality map/aerial photo
- Appendix 2 - Sketch plan showing lease area
- Appendix 3 - Muddy's Café Concept Plan (1)
- Appendix 4 - Muddy's Café Concept Plan (2)
- Appendix 5 - Muddy's Café Concept Plan (3)



Amy Patterson
Executive Manager, Licensing and Compliance

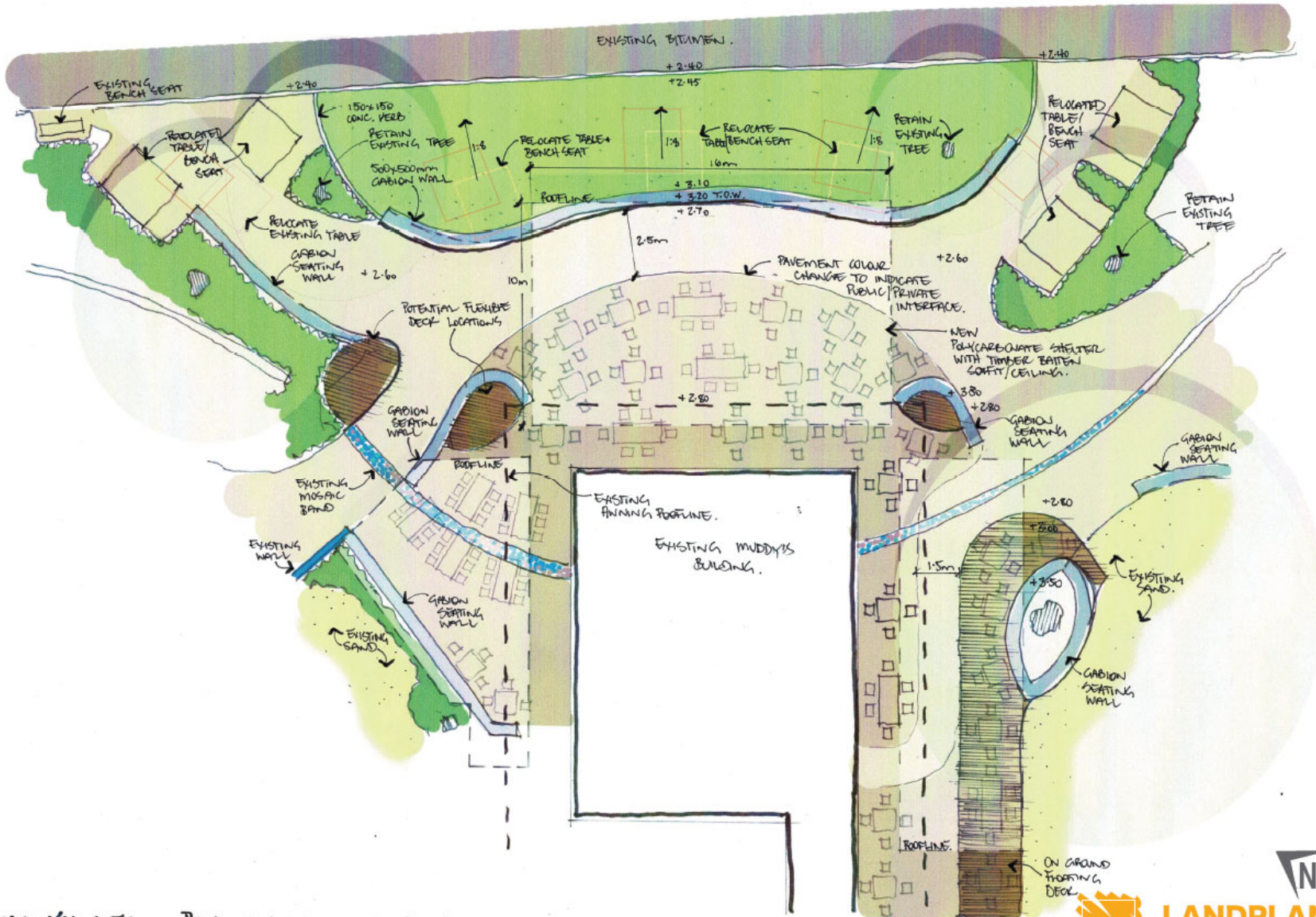


Ed Johnson
Director Planning, Growth and Sustainability

Appendix 1 - Locality map showing current leased area



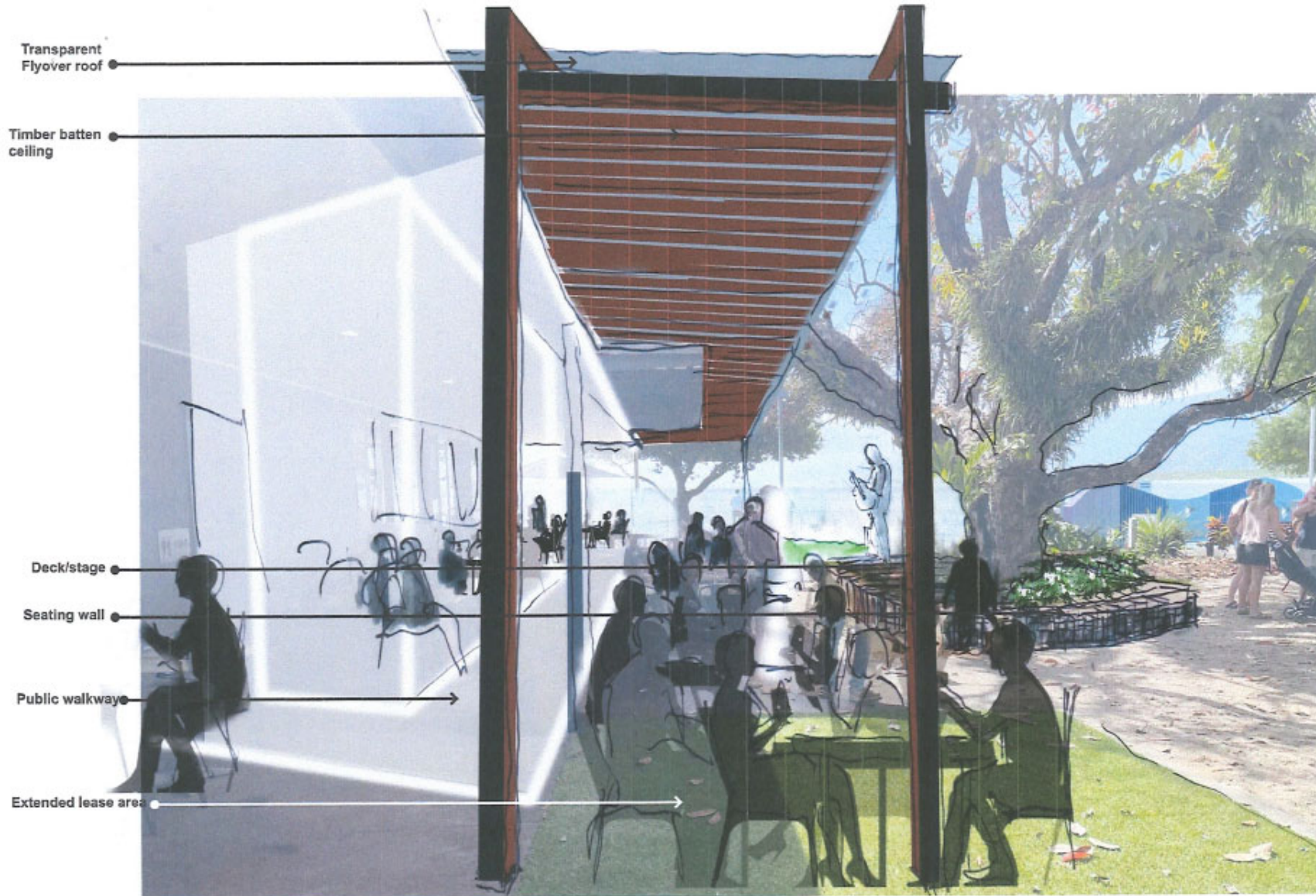
Appendix 3 - Muddy's Café Concept Plan (1)



MUDDY'S CAFE - PRELIMINARY CONCEPT PLAN
1:150 @ A3 12.09.23.



Appendix 4 - Muddy's Café Concept Plan (2)



Appendix 5 - Muddy's Café Concept Plan (3)

