

ORDINARY MEETING	15
22 NOVEMBER 2023	

COMMERCIAL TENURE ARRANGEMENT - TRUSTEE LEASE OVER PART OF LOT 22 ON C198406, 93-105 LAKE STREET, CAIRNS - DIVISION 5

19/28/319- | #7284364

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), to allow the disposal of a valuable non-current asset via lease, described as part of Lot 22 on C198406 being Shop 4, 93-105 Lake Street, Cairns City, to the existing tenant of the land;
2. Approves to make a trustee lease offer to Christina Darwen and David Darwen trading as The Roti Shack, ABN 22 962 542 866, 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 tenure offer.

INTERESTED PARTIES:

Lessee – Christina Darwen & David Darwen trading as The Roti Shack

Asset owner – Creative Life

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 offer a new trustee lease to the incumbent trustee lessees, Christina Darwen and David Darwen trading as The Roti Shack ABN 22 962 452 866, over part of Council's Deed of Grant in Trust (DOGIT) for Local Government purposes described as part of lot 22 on C198406 being Shop 4, 93-105 Lake Street, Cairns City.

The existing trustee lease is due to expire on 31 May 2024 and the new trustee lease will be subject to the terms and conditions outlined within this report.

BACKGROUND:

The Roti Shack is situated in a high profile, ground floor, inner city location within the School of Arts heritage listed building. The building is important in demonstrating a range of aesthetic characteristics valued by the Cairns community, in particular the contribution of the building through scale, form and material, to the streetscapes of Lake and Shields Streets and to the Cairns townscape.

The incumbent trustee lessees, Christina and David Darwen as directors of The Roti Shack, have been exemplary trustee lessees throughout the term of their two previous three-year trustee leases.

The Roti Shack serves Trinidadian and Caribbean street food and is the only shop of its kind in Australia. The cafe is a family owned and operated business that sources fresh ingredients and local produce which supports other local businesses. All items offered within the menu are made on the premises daily, including the roti bread, various curries, and sauces.

The Roti Shack currently operates from 11:00am to 8:00pm, six days per week. During the current three-year term, the café has provided alternative ordering methods to their customers which include phone orders, Uber eats, Door Dash and online orders. The business has been awarded one of the top 15 restaurants in Australia through the delivery service Door Dash. Furthermore, to positively engage their customers, The Roti Shack has an open plan kitchen floorplan to allow customers to view their meals being made.

For the period from 2018 to 2023, The Roti Shack has received 62 “excellent” and 5 “very good” reviews on tripadvisor.com and zero “terrible” reviews which is considered outstanding feedback from their customers.

During Covid-19 in 2020, Council as trustee, provided financial assistance to all Council managed commercial lessees through reduced rent. With eased Covid-19 restrictions, the lessees have been able to re-establish a viable business model and seek to renew their trustee lease for a further term.

There are no outstanding debts relating to rent, rates or electricity.

COMMENT:

Officers propose to renew the tenure arrangement with The Roti Shack as the performance and management of the business to date has satisfactorily met all Council requirements.

Subject to section 236(1)(c)(iii) of the *Local Government Regulation 2012* (LGR), Council may dispose of an interest in land other than by tender or auction if the asset is disposed of for the purpose of renewing the lease to the existing lessee; and if the local government has decided by resolution that the exception may apply (section 236(2)).

As the trustee lessee has met the conditions of their tenure arrangement, there have been no breaches, and the LGR permits renewal of trustee lease to the existing trustee lessee, Council has no reason not to assess an application from the incumbent trustee lessee for renewal.

Council officers recommend renewing the trustee lease with the same terms and conditions as the existing lease, including but not limited to the following:

- for a term of three (3) years to commence from 1 June 2024;
- for the purpose of a takeaway and dine in food shop;
- amend the bond amount in accordance with a revised market rent valuation;
- in accordance with the terms and conditions of the standard terms document relating to trustee leases registered as dealing number 721353145;
- trustee lessee 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.

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), to allow the disposal of a valuable non-current asset via lease, described as part of Lot 22 on C198406 being Shop 4, 93-105 Lake Street, Cairns City, to the existing tenant of the land;
2. Approves to make a trustee lease offer to Christina Darwen and David Darwen trading as The Roti Shack, ABN 22 962 542 866, 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 tenure offer.

Option 2 :

That Council does not support the proposal to renew the tenure for a further three (3) year term to the incumbent trustee lessee and adopts an alternate course of action.

CONSIDERATIONS:

The Roti Shack directors have completed an application to renew tenure and provided supporting documents which include:

- profit and loss statement
- balance sheet
- list of improvements made during the current term of occupancy
- current certificate of currency

The documentation has been assessed and meets the criteria of Property Services, Finance and the Asset Owner to support the renewal of the trustee lease to the incumbent trustee lessee.

Risk Management:

The proposed renewal of tenure poses minimal risk to Council given the exemplary performance of the trustee lessee for the term of their tenure, and assessment of the trustee lessee's current financials.

In the unlikely event that the business defaulted on the terms of their trustee lease, Council holds a security deposit which may be used to offset Council's potential financial loss.

Council Finance and the Local Economy:

The current annual rent for the premises is \$26,734.68 excluding GST for a 56m² leased area. A new valuation will be sought from an independent registered valuer to determine the base market rent. A 3% annual increases will be applied.

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

Council's finance department have reviewed the incumbent trustee lessee's renewal submission and are satisfied that The Roti Shack is in a positive operating financial position and the financial ratios analysed suggest that the business should be able to meet their lease repayments in the future and that extending the lease by 3 years would be low risk to Council.

Community and Cultural Heritage:

The School of Arts building is important in demonstrating the pattern and evolution of Queensland's history and has been an important component of the cultural life of the Cairns community from the beginning of the 19th century, as a school of arts, public library, and museum.

The Roti Shack is situated on the ground floor on the Lake Street frontage of the School of Arts building and provides inner city workers, local residents and tourists to the region, a healthy and tasty menu of food and drinks. The café enlivens the immediate area with the School of Arts building being an attraction for pedestrians in the area.

Corporate and Operational Plans:

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

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 1994, Land Title Act 1994, Land Act 1994, Native Title Act 1993, Local Government Act 2009* and associated regulations.

Policy:

The trustee 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.

ATTACHMENTS:

1. Locality map/aerial photo
2. Sketch plan of lot 22 on C198406 showing Shop 4

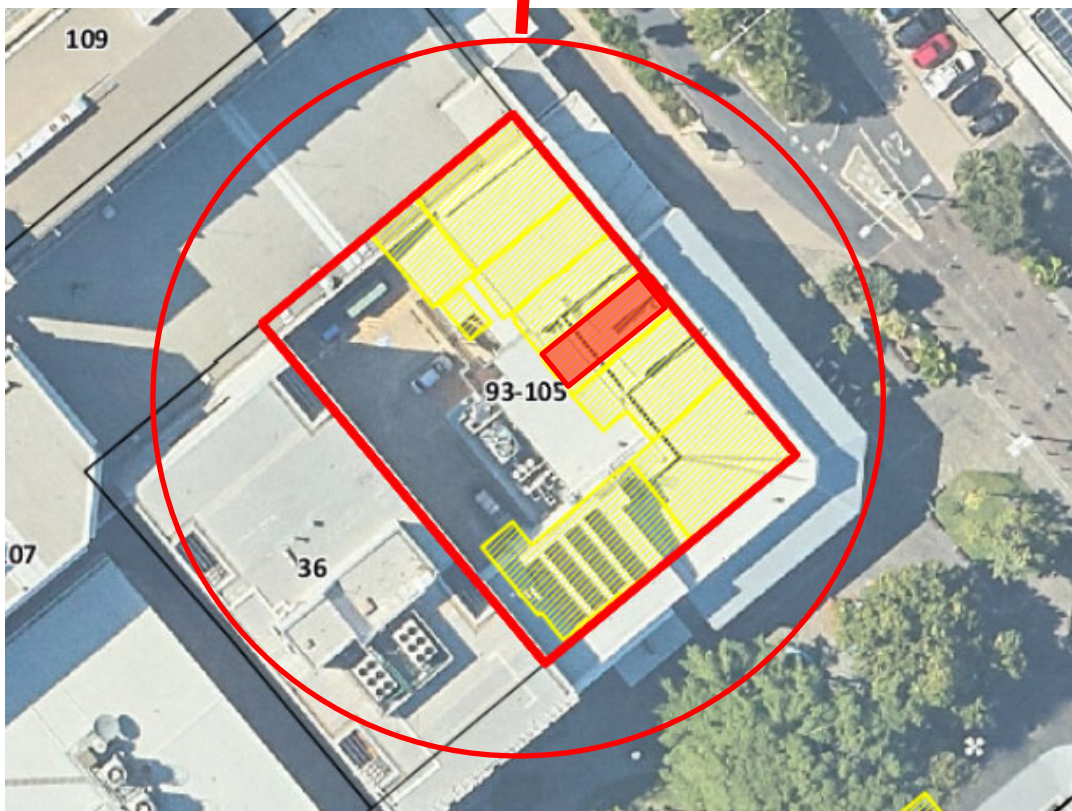
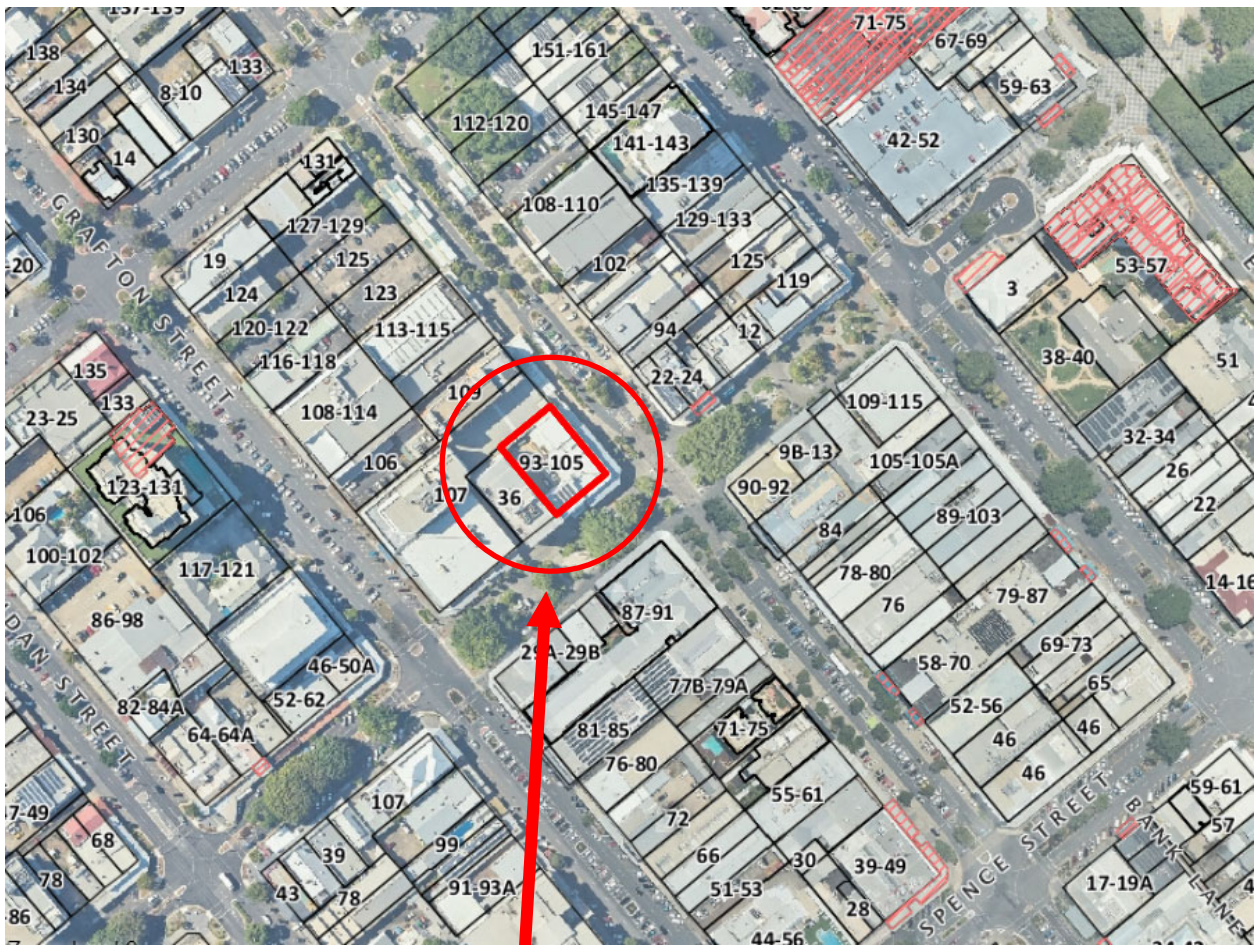


Amy Patterson
Executive Manager, Licensing and Compliance



Ed Johnson
Director, Planning, Growth and Sustainability

1. Locality map/aerial photo



2. Sketch plan of lot 22 on C198406 showing Shop 4

