

ORDINARY MEETING	16
22 NOVEMBER 2023	

COMMERCIAL TENURE ARRANGEMENT – FREEHOLD LEASE OVER PART OF LOT 1 ON RP715541 BEING 102-110 LAKE PLACID ROAD, CARAVONICA – DIVISION 8

63/1/370 | #7283982

RECOMMENDATION:

That Council:

1. Approves to offer a tenure arrangement (freehold lease) to Sunmanor Pty Ltd trading as Cairns Adventure Group over part of Lot 1 on RP715541 being 102-110 Lake Placid Road, Caravonica; and
2. 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 negotiation and finalisation of the tenure arrangement.

INTERESTED PARTIES:

Sunmanor Pty Ltd trading as Cairns Adventure Group (local)

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 recommend that the commercial tenure arrangement over part of Lot 1 on RP715541 being 102-110 Lake Placid Road, Caravonica is offered as a freehold lease to Sunmanor Pty Ltd trading as Cairns Adventure Group (ABN 72 061 191 517), for a proposed term of five (5) years with a five (5) year option. The offer is subject to final negotiations of terms and conditions, and approval of a development application for the building upgrades.

BACKGROUND:

The land and buildings at 102-110 Lake Placid Road, Caravonica are on Council freehold land described as Lot 1 on RP715541. The site contains approximately 4,061m² of parkland, purchased by Council in 1991 and commercially leased since 1993. Structures on the land include a restaurant, outdoor dining area, caretaker's residence, public toilets and carpark. The premises have previously been used as a takeaway shop, café and restaurant. The site is located within the Tourism Zone under the Planning Scheme.

The previous tenure arrangement for the site, a commercial lease with Bella and Buona Pty Ltd trading as Alessandro's Pizzeria, expired on 30 June 2023. Alessandro's Pizzeria held the lease for 10 years and upon expiry of the lease, Council took the opportunity to search for a suitable lessee and viable commercial activity to support the growth and development of the Lake Placid area via an open tender process.

In order to test the market and ensure the best and highest use of the premises, Council Officers undertook a tender process for the tenure arrangement in accordance with section 227(1)(a) of the *Local Government Regulation 2012* (LGR) which states, "A local government cannot enter into a valuable non-current asset contract unless it first invites written tenders for the contract under section 228".

In accordance with section 228 (10) of the LGR, "if the local government does decide to accept a tender, the local government must accept the tender most advantageous to it, having regard to the sound contracting principles."

In July 2023, Council invited tenders responses pursuant to section 228 of the *Local Government Regulation 2012* for a proposed commercial tenure arrangement. Submissions were encouraged from suitably qualified, innovative, and experienced Respondents to provide high quality service, management, and maintenance of the site. The tender was facilitated by Knight Frank Real Estate who carried out two site inspections for the public during the tender advertising period. Interested parties were advised that the premises were to be leased to the successful Respondent in their current "as is, where is" condition and the lease area was restricted to the buildings and a small part of the carpark area identified in Appendix 1.

The tender closed on 2 August 2023 with one (1) submission received from Sunmanor Pty Ltd trading as Cairns Adventure Group (CAG).

The tender response from Sunmanor Pty Ltd was evaluated against the requirements of the Request for Tender and was deemed conforming. In addition, the evaluation panel had regard to the sound contracting principles described in section 104 of the *Local Government Act 2009*. The panel members reviewed and scored responses against qualitative criteria, which included:

- Criteria A – Business profile (local, social and sustainability) – 10%
- Criteria B – Relevant experience – 30%
- Criteria C – Key personnel and skills – 15%
- Criteria D – Resources and management systems – 15%
- Criteria E – Value for money – 30%

COMMENT:

Cairns Adventure Group is a local, family-owned and operated adventure tour operator, with nine Cairns-based companies. The owner, Roderic Rees is a well-known local advocate for Cairns tourism.

It was assessed that CAG's proposal would benefit the premises, reactivate the Lake Placid area, and actively engage the local community and tourism to the area for recreation purposes in an eco-friendly manner. The existing building will undergo significant upgrades to ensure it is fit for purpose for the recreation activities proposed by CAG as part of its tender.

The relevant stakeholders, including Property Services and Community Spaces, recommend awarding the tenure arrangement to CAG based on terms and conditions including, but not limited to, the following:

- for an area of approximately 1,300m² of part of Council's freehold land described as Lot 1 on RP715541;
- for the purpose of a rafting centre, café and restaurant, storage and training centre;
- for a term of five (5) years with a (5) year option to commence from a date to be determined;
- a Deed of Access and Indemnity provided by Council for a term of ten (10) weeks while CAG request quotes for building works and submit a Development Application;
- a 48 month rent-free term in consideration of structural repairs and improvement costs;
- a market rent review to be conducted at the commencement of years 5 and 8 of the lease;
- annual 3% rent increases at the commencement of years 6, 7 and 9 of the lease;
- subject to a payment of \$8,800 security bond/bank guarantee;
- the Lessee acknowledges and agrees to accept the premises on an "as is, where is" basis as at the commencement date and that the Lessee is responsible for the refurbishment of the premises at its own cost in accordance with the terms of a refurbishment contract. Conditions of this contract will include:
 - Lessee to provide 3 monthly construction updates;
 - Lessee to provide supporting evidence of all associated costs;
 - Lessee to submit plans and specifications for the works to the Lessor and its proposed architect and builder and all relevant authorities for approval;
 - Lessee to ensure that all agents, contractors and other persons carrying out the works hold all necessary current licences and permits to carry out the works, and hold insurances for risks;
 - Lessee to deliver to the lessor, a certificate from all relevant Authorities stating that the works have been completed in accordance with the requirements of those Authorities, together with two sets of final "as built" drawings and a certificate of completion from a Certifier;
 - Lessee to comply with the provisions of the *Work Health and Safety Act 2011* (Qld) and accept appointment as principal contractor under the *Work Health and Safety Act 2011* (Qld); and
 - should the Lessee fail to comply with the above conditions, the rent will be reinstated in line with a market rent review.

- Lessee will be responsible for:
 - rates
 - charges – sewerage / EML
 - water
 - utilities – electricity / phone / gas
 - public liability insurance noting Council as a party
 - bin/waste collection
- Lessee is responsible for all legal and other 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 six (6) months of the date of Council endorsement, Council reserves the right to withdraw its tenure offer.

OPTIONS:

Option 1: (Recommended)

That Council:

1. Approves to offer a Tenure Arrangement (freehold Lease) to Sunmanor Pty Ltd trading as Cairns Adventure Group for the recreation area over part of Lot 1 on RP715541, at 102-110 Lake Placid Road, Caravonica; and
2. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into a contract, negotiate, finalise and execute any and all matters associated with, or in relation to, this contract and tenure arrangement, subject to Council's standard procurement policies and practices.

Option 2:

That Council does not offer the Tenure Arrangement (freehold Lease) for Recreation Area at 101-110 Lake Placid Road, Caravonica and adopts an alternative course of action.

CONSIDERATIONS:

The Respondents have completed a detailed submission and provided supporting documents which include:

- Financial details and solvency
- Insurance policies
- Proposal details for building improvements
- Business profile
- Experience and qualifications
- Key personnel and skills
- Management systems

The submission has been reviewed by internal stakeholders and presented to the Procurement Review Board (PRB) on 9 November 2023, where approval was given to proceed to Council report.

Risk Management:

Risk has been mitigated through the selection of a Lessee via a robust procurement process (tender), which has a thorough evaluation procedure requiring submissions to be reviewed internally by the Procurement Review Board (PRB), Procurement, Property Services, Finance, Development and Planning and Community Spaces prior to determining a recommendation. Whilst Officers consider the proposal low risk, a security deposit will be held by Council equivalent to three months of commercial rent should the Lessee default on the lease obligations.

Over a 4-year period, the Lessee will be investing significant financial capital to upgrade the buildings on the premises and undertake structural repairs and floor plan reconfiguration, subject to Development Approval. Risks will be mitigated with the implementation of a refurbishment contract with proactive management of the agreed capital works program.

The proposed water-based recreation activities are considered to be high risk, however the Respondent has provided a detailed Risk Management Plan to ensure the activities comply with health and safety requirements and those undertaking the activities are fully informed and trained to manage potential risks.

Council Finance and the Local Economy:

Officers have given in-principle support to a 48 month rent free period to offset the capital investment of approximately \$400,000 the lessee proposes to invest to upgrade the facilities, including structural repairs, maintenance, and improvements (subject to Development Approval). The cost of repairs, maintenance and improvement works would otherwise be borne by Council to bring the premises up to an appropriate standard prior to leasing.

At the commencement of year five, a market rent review will be undertaken to determine the current market rent value and again in year eight of the lease. Additionally, annual 3% rent increases at the commencement of years 6, 7 and 9 of the lease will be applied.

There will continue to be operational costs to Council associated with maintaining the surrounding public areas and facilities which includes the public toilets, management of surrounding gardens and annual tree maintenance. These costs will be programmed and budgeted for as part of the annual operational budget. Initial upgrade works will also be required in the carpark area by way of bitumen resurfacing and these works have been budgeted for in the 2023/2024 budget.

Finance has conducted a financial risk assessment of CAG and has found the business' results satisfy Council's minimum benchmarks. Based on financial key indicators, Officers have determined there is currently a low risk of default or insolvency.

The Lessee will be responsible for all utilities, rates and charges, including water usage costs on the premises.

Community and Cultural Heritage:

Cairns Adventure Group are highly engaged throughout the local community and are a well-known advocate for Eco Tourism Australia, Tourism Tropical North Queensland and the Australian Rafting Federation. CAG's proposal outlines the use of the venue as a base for the Barron River Rafting tour operations which will actively engage 40-100 visitors per day. Rafting spectators will be provided with shaded café/restaurant facilities and other activities including guided nature walks and an information hub on local flora and fauna. The café/restaurant will also continue to be open to the general public.

Adjoining the Barron Gorge National Park, which is managed by Traditional Owners, the Djabugay people, Lake Placid is a renowned culturally and environmentally significant aspect of the Cairns region. CAG have recognised opportunities for Welcome to Country ceremonies and plans to engage Indigenous speakers for bespoke events.

Furthermore, CAG sponsor and support "up and coming" young sports people and community fundraisers that promote equality in the Tourism industry, with events such as "Women in Rafting", which provides women with free trial days to promote participation and empowerment of women.

The venue will be designed with inclusive access options as CAG have promoted work placement days with MAX Employment Disability Recruitment Services, which recognises their commitment to inclusivity and diversity.

Natural Environment:

The premises are surrounded by dense rainforest which is home to native flora and fauna and under conversation management programs maintained by the Wet Tropics Management Authority (WETMA).

CAG are ECO Certified at the Ecotourism level with Ecotourism Australia and were inducted into their Hall of Fame in 2019, in recognition of 20 years of consecutive ECO Certification. CAG is also certified as a Climate Action Business.

CAG will incorporate an environmental policy in their business plan, which is intended to leave no footprint from their activities on the environment. CAG have outlined how they intend to enhance an ecological experience for visitors amongst the tropical rainforest location without diminishing or impacting the surrounding open space.

In addition, CAG have proposed to create an information hub on local flora and fauna within the facility and host guided walking tours to share insights on the local biodiversity and ecology, promote awareness and a deeper appreciation for the natural environment.

Corporate and Operational Plans:

This report aligns with Council's Corporate Plan 2021 - 2026, with particular emphasis on:

1. Focus One - Robust Economy
Supporting a diversified and resilient economy that backs business innovation, growth and jobs:
 - Optimise visitation and tourism opportunities
 - Promote and protect the growth of diverse industries and small business
 - Grow and sustain education and employment opportunities
 - Promote Cairns as the place to relocate.

2. Focus Four - Community and Culture
Fostering a vibrant and healthy community where everyone feels they belong:
 - Support diverse sport, cultural and community groups that contribute to wellbeing.

Statutory:

The procurement (tender) process has been conducted in accordance with legislative requirements under the *Local Government Act 2009* and the *Local Government Regulation 2012*.

The freehold lease will be prepared in accordance with the requirements of the *Retail Shop Leases Act 1994*, *Land Act 1994*, and *Land Title Act 1994*.

Policy:

The tender process was undertaken in accordance with Council's adopted Procurement Policy.

The 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:

A number of post-tender clarifications and site visits with the CAG during the evaluation period were conducted to discuss and understand the practicalities of the proposal offered. Council Planning Officers attended the site inspection to answer specific questions regarding the development application process which may be required as part of building upgrade works.

CAG was advised the carpark area would be included within the leased area for exclusive use of CAG fleet and that pre-lodgement will be beneficial as some matters will need to be considered and technical reporting required such as acoustic impacts. It was also advised that a liquor licence may be required.

CAG undertook an independently organised Building and Pest inspection to assess the current state of building structures as the report supplied by Council with the tender was completed back in 2022. The Respondents have independently engaged a local building contractor to provide cost estimates for the building restoration and upgrades which contribute to the associated costs contained within this report.

ATTACHMENTS:

- Appendix 1. Locality map/aerial photo
- Appendix 2. Sketch plan showing lease area over part of Lot 1 on RP715541
- Appendix 3. Proposed floorplan

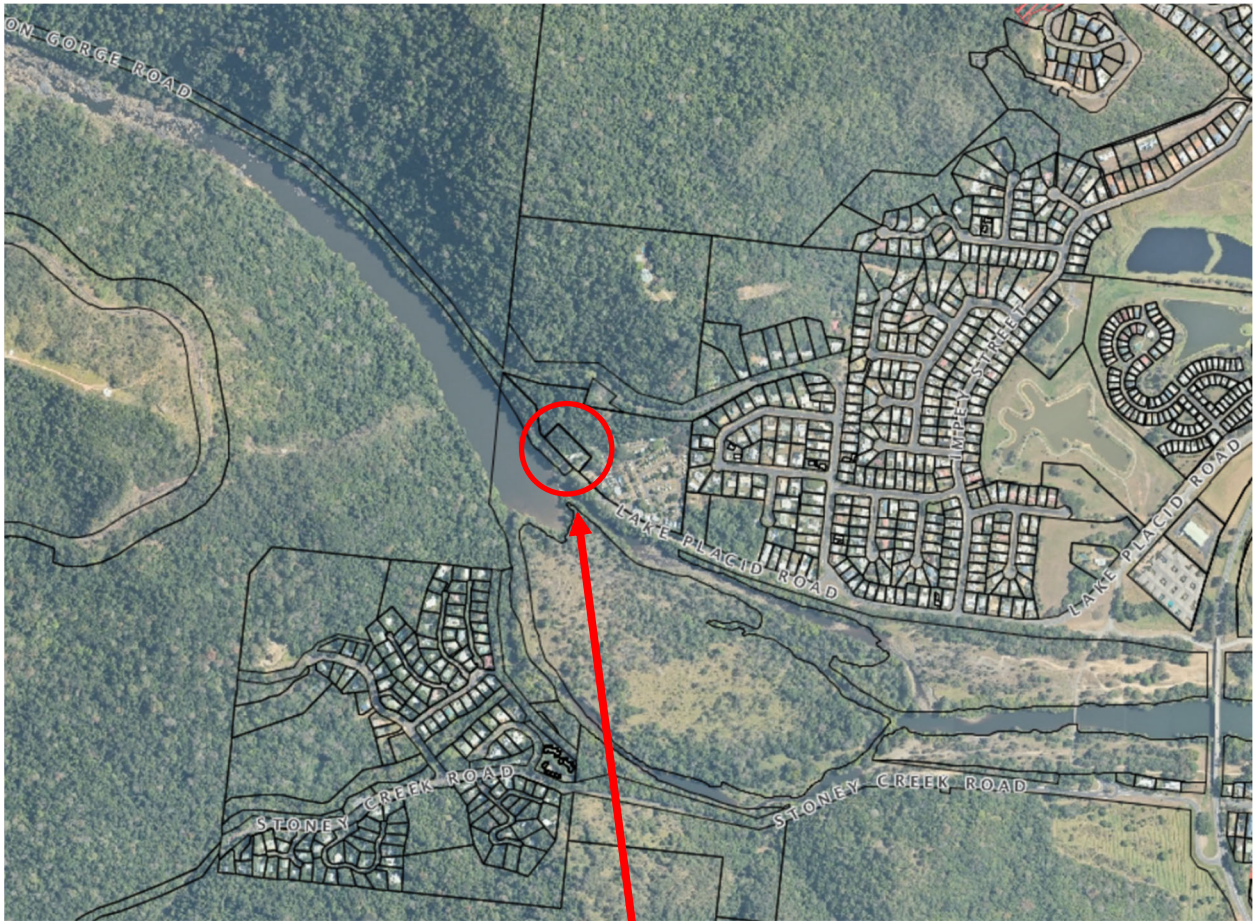


Amy Patterson
Executive Manager Licensing and Compliance

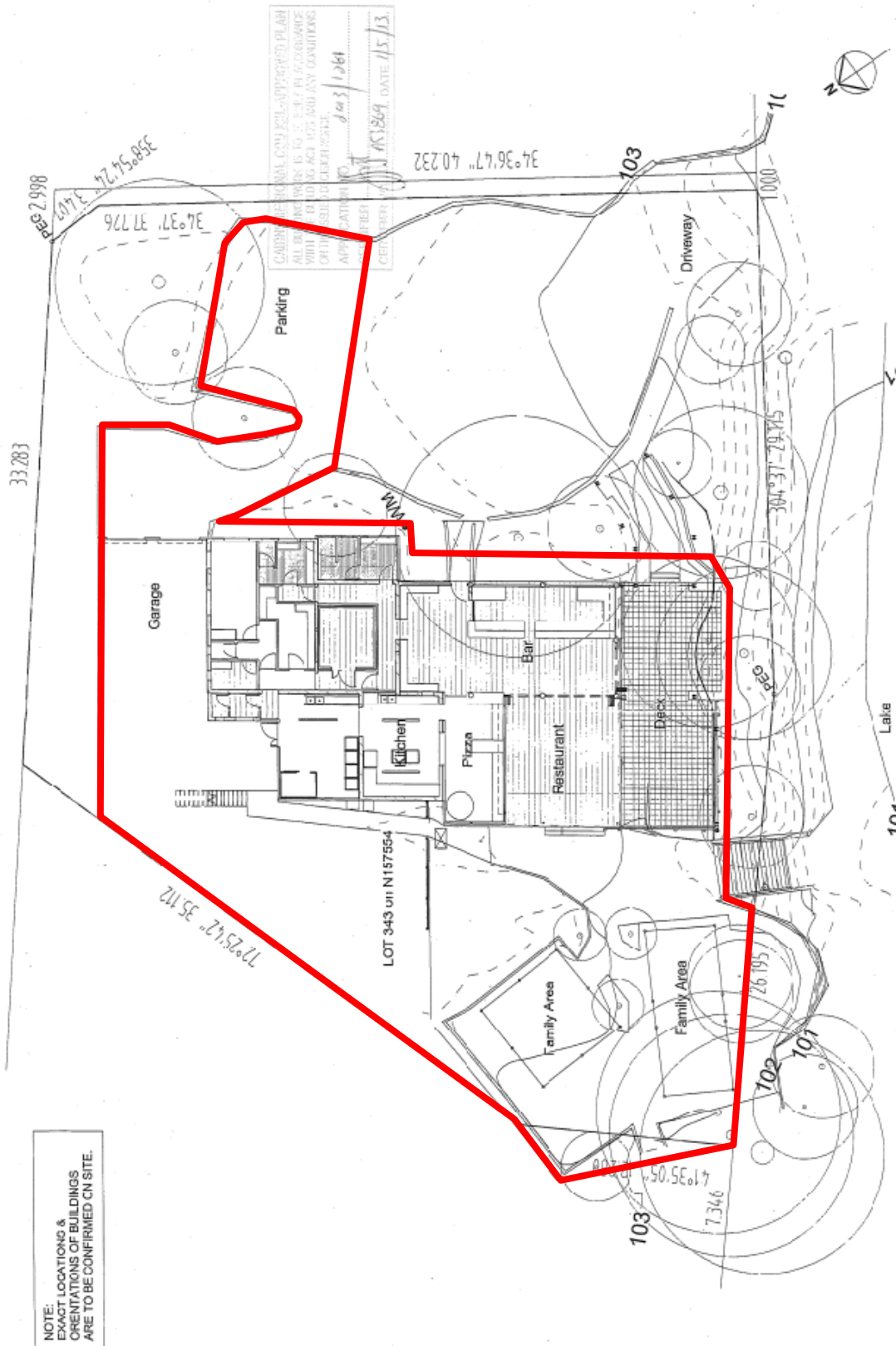


Ed Johnson
Director Planning Growth and Sustainability

Appendix 1. Locality map/aerial photo



Appendix 2. Lease area sketch plan



Appendix 3. Proposed floorplan

