

<b>PLANNING AND ENVIRONMENT COMMITTEE</b> <b>12 JULY 2023</b>	<b>3</b>
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## **PROPOSED TRUSTEE LEASE OVER PART OF COUNCIL RESERVE FOR COMMERCIAL PURPOSES - DIVISION 5**

19/28/261- | #7188269

### **RECOMMENDATION:**

That Council 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 17 SP155099 being Esplanade, Cairns City to the existing lessee by supporting an offer of a new trustee lease to Christopher McCorkell and Natasha McCorkell as trustee for Aqua Trust trading as Aqua Cairns Lagoon (the Kiosk), as per the terms and conditions contained within this report.

### **INTERESTED PARTIES:**

Lessee – Christopher and Natasha McCorkell as trustee for Aqua Trust  
 Asset owner – Lifestyle and Community

*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 current lessees, Christopher and Natasha McCorkell as trustee for Aqua Trust trading as Aqua Cairns Lagoon, over part of Council reserve land described as lot 17 on SP155099 being Esplanade, Cairns City.

The existing trustee lease is due to expire on 28 November 2023 and the new lease will be subject to the terms and conditions outlined within this report.

### **BACKGROUND:**

The Aqua Cairns Lagoon kiosk is located on the eastern side of the Esplanade Lagoon. Christopher and Natasha McCorkell as trustee for Aqua Trust have been exemplary Lessees since the registered transfer of the trustee lease which took place in March 2020.

During Covid-19 restrictions in 2020, Council as lessor, provided financial assistance to all Council managed commercial 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 business financially. With the eased restrictions, the lessees have been able to establish a viable business model and seek to renew their lease for a further 10 year term.

The kiosk is currently open from 8:00am to 7:30pm, 365 days a year, except for when the adjoining lagoon is closed for servicing and maintenance. Trading hours are extended during key events such as Ironman and New Year's Eve, and also during the school holidays. The Lessees have indicated the current minimum opening hours of 6am-9pm 365 days a year as conditioned in the lease are not viable due to being a family operated business with limited staffing numbers. The Lessees have proposed minimum trading hours be revised in the new lease to 8am – 7.30pm 365 days a year, which are their current trading hours.

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

**COMMENT:**

Property Services 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 29 November 2023;
- as per the terms and conditions of the current trustee lease registered as dealing number 715880843, with the following minor amendments;
  - delete item 1.9 Amount of Percentage Rent for the first year of the Term (exclusive of GST) from the reference information schedule;
  - delete item 1.10 Threshold Amount – first lease year from the reference information schedule;
  - 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;
  - delete item 1.14 Percentage rent from the reference information schedule; and
  - amend item 1.16 trading hours to 8:00am -7:30pm, 365 days of the year;
- lessees to be responsible for all costs associated with the preparation and registration of the tenure arrangement.
- 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 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 17 SP155099 being Esplanade, Cairns City to the existing lessee by supporting an offer of a new trustee lease to Christopher McCorkell and Natasha McCorkell as trustee for Aqua Trust trading as Aqua Cairns Lagoon (the Kiosk), as per the terms and conditions contained within this report.

## Option 2

That Council does not support the proposal to renew tenure for a further ten (10) year term over part of lot 17 on SP155099, Esplanade, Cairns City to Christopher and Natasha McCorkell as trustee for Aqua Trust trading as Aqua Cairns Lagoon.

### **CONSIDERATIONS:**

#### Risk Management:

The cafe is situated in a high-profile location adjoining the Cairns Esplanade and Lagoon. It is important that Council ensure the continuity of business in this area by renewing the trustee lease.

#### Council Finance and the Local Economy:

The current annual rent is \$60,350.08 (including GST) for 142m<sup>2</sup>. A new valuation has determined that the base market rent will remain the same with 3% annual increases and a market rental assessment taking place on year 4 and 8.

The lessees have completed an application to renew tenure and supplied Council with their 2021 and 2022 profit and loss statements.

Council's finance branch analysed the 2022 financial statements and provided the following advice; "It is of our opinion that the Aqua Cairns Lagoon are in a positive financial position overall. The financial ratio's we have 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 year 4 or 8 of the lease. Extending the lease by 10 years would be low risk to Council."

#### Community and Cultural Heritage:

Aqua Cairns Lagoon is a local kiosk providing a location for the community to meet over food and drink in the Esplanade Lagoon precinct. The kiosk compliments the Cairns lagoon area providing lagoon users with light refreshments, hot and cold beverages, ice-creams and sunscreen, hats and thongs.

#### Corporate and Operational Plans:

This report aligns with Corporate Plan Focus1 – Robust Economy: Promote and protect the growth of diverse industries and small business.

#### Statutory:

The tenure arrangement will be approved and prepared in accordance with the *Retail Shop Leases Act 2014*, the *Local Government Act 2009* and the *Local Government Regulations 2012*.

Policy:

The tenure arrangement will be prepared in accordance with Council's 'Tenure Arrangements and Disposal of Council Property' Policy, Part 3 of the associated Administrative Instruction which provides for commercial use, including primary production and government agencies.

**CONSULTATION:**

Preston Law were consulted and advised that the proposed amendments to the lease were not considered to cause a change that would significantly disrupt the lessee's leasehold interest in conflict with the award of the 2013 Tender and procedural requirements of Chapter 6 of the *Local Government Regulations 2012*.

**ATTACHMENTS:**

1. Locality map/aerial photo
2. Sketch plan of lot 17 on SP155099 showing lease area



Ed Johnson  
Director Planning, Growth and Sustainability

Attachment 1. Locality map/aerial photo



Attachment 2. Sketch plan of lot 17 on SP155099 showing lease area

