TRUSTEE LEASES TO MERIDIEN PTY LTD AND THE AUSTRALIAN VOLUNTEER COASTGUARD ASSOCIATION INC. (PORT DOUGLAS) OVER PART OF LOT 126 ON SR868, WHARF STREET, PORT DOUGLAS – DIVISION 10

Kylie Richardson : 19/3/3-79: #1972315

RECOMMENDATION:

That Council:

A approve the issue of three (3) monthly trustee permits to Meridien Pty Ltd (“Meridien”) over part of Lot 126 on SR868, Wharf Street, Port Douglas (“the Land”), upon expiry of trustee lease numbers 602825953 ‘E’, 602825964 ‘H’, 602825965 ‘J’, 602825967 ‘G’, 602825968 ‘B’, 602825963 ‘D’ and 602825969 ‘C’ for a period up until and including 10 March 2012; subject, but not limited to the following terms and conditions:

- trustee permits to be on the same terms and conditions as the existing trustee lease trustee lease numbers 602825953 ‘E’, 602825964 ‘H’, 602825965 ‘J’, 602825967 ‘G’, 602825968 ‘B’, 602825963 ‘D’ and 602825969 ‘C’, with the exception of lease rental;

- Lease clause 1(b) “rental” of the existing trustee leases to be deleted;

- Lease rental to be subject to annual review in accordance with the Brisbane All Groups Consumer Price Index (CPI);

- Public Liability insurance cover being increased to $20,000,000.00;

B approve the issue of three (3) monthly trustee permits to the Australian Volunteer Coastguard Association Inc. (Port Douglas) (“Coastguard”) over part of Lot 126 on SR868, Wharf Street, Port Douglas, for a period up until and including 10 March 2012, commencing 01 October 2009 subject, but not limited to the following terms and conditions:

- trustee permit to be on the same terms and conditions as the existing trustee lease trustee lease 602825952 ‘A’, with the exception of lease rental;

- Lease rental to be amended from clause 1 (b) of the existing trustee lease to reflect an annual rental of $117 pa (GST inclusive), in accordance with Council’s “Tenures Policy For Not For Profit Recreation, Sporting and Community Groups – (1:02:45)”;
- Public Liability insurance cover being increased to $20,000,000.00;

and

C advise Meridien and the Coastguard that prior to the expiration of trustee permits, being 10 March 2012, Council will re-assess tenure options based on the outcomes of the Port Douglas Waterfront Master Plan.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the *Local Government Act 1993* to:


2. deal on any and all matters associated with any future tenure of Lot 126 on SR868, Wharf Street, Port Douglas including:
   - Negotiate, determine, approve, execute and finalise any and all matters of future tenure agreement over Lot 126 on SR868, Wharf Street, Port Douglas, including the surrender of any existing trustee leases;
   - Review and determine the outcomes of public consultation associated with the Land Management Plan for Lot 126 on SR868

**INTRODUCTION:**

Meridien Pty Ltd (“Meridien”) has requested that Council extend tenure over their existing trustee leases, E, H, J, G, B, D and C, that they have an interest in along the Port Douglas waterfront, until March 2012. This will result in all of their trustee leases expiring at around the same time, i.e. 2012.

The Australian Volunteer Coastguard Association Inc (Port Douglas) (“Coastguard”) currently hold a 30 year trustee lease due to expire 30 September 2009. They have requested that Council renew tenure so that it expires as at 10 March 2012.

**BACKGROUND:**

Lot 126 on SR868, Wharf Street Port Douglas, with an area of 28.10 ha, is a reserve for Local Government (Port and Harbour) held in trust by Council from the State. The area forms part of the Port Douglas Waterfront Precinct that is currently the subject of intensive Master Planning.

Meridien currently holds the following trustee leases over Lot 126 on SR868, which forms a large part of the Port Douglas Waterfront Precinct:
<table>
<thead>
<tr>
<th>Lease</th>
<th>Number</th>
<th>Site</th>
<th>Expiry</th>
<th>Proposed Rental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trustee Lease J</td>
<td>602825965</td>
<td>Slipway site</td>
<td>Expiry 25 April 2009</td>
<td>$4,175.11pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease C</td>
<td>602825969</td>
<td>Thomas Charter site</td>
<td>Expiry 26 April 2009</td>
<td>$8,710.88pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease G</td>
<td>602825967</td>
<td>Prince’s Wharf site</td>
<td>Expiry 26 April 2009</td>
<td>$30,566.23pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease B</td>
<td>602825968</td>
<td>Thomas Charter site</td>
<td>Expiry 30 Sept 2009</td>
<td>$6,668.12pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease E</td>
<td>602525953</td>
<td>Fisherman's Wharf</td>
<td>Expiry 30 Sept 2009</td>
<td>$18,693.80pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease H</td>
<td>602825964</td>
<td>Old Ben Crop site</td>
<td>Expiry 19 Jan 2011</td>
<td>$8,635.80pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease D</td>
<td>602825963</td>
<td>“On the Inlet” site</td>
<td>Expiry 4 Jan 2012</td>
<td>$66,000.00pa inc GST</td>
</tr>
<tr>
<td>Trustee Lease K</td>
<td>602825966</td>
<td>Concrete wharf site</td>
<td>Expiry 10 Mar 2012</td>
<td>$31,468.76pa inc GST</td>
</tr>
</tbody>
</table>

Meridien has participated in the preparation of the Port Douglas Waterfront Master Plan over the past year and has indicated their commitment to working further with Council and the community throughout this process. Meridien believe it is necessary to retain their interest in these trustee leases to ensure the best possible result for Council and the community in achieving the most desirable planning outcome for the Port Douglas Waterfront.

The Coastguard currently holds a trustee lease 602825952 “A”, approx 625m², over part of lot 126 on SR868, Wharf Street, Port Douglas.

The Coastguard is a Not for Profit / volunteer organisation providing an essential public service to the boating fraternity in the Port Douglas, Mossman and surrounding areas. The Coastguard’s current lease specifies an annual lease rental of $6,888.72 per annum.

Until the financial year of 2004/2005, the former Douglas Shire Council refunded 85% of the lease rental to the Coastguard. For the following three years the full amount was paid, with no refund being given.
The current lease rental being charged to the Coastguard does not reflect the Not For Profit / volunteer status of the Coastguard and the club has struggled to pay the current rent, with much of its fundraising profits being used for this purpose instead of enhancing the Coastguard’s development.

The Coastguard’s current leased area is adjacent to, and surrounded by several other trustee lessees’, notably, Meridien.

Under the draft Port Douglas Waterfront Master Plan, much of the area leased by Meridien and the Coastguard is identified as to become public open space area, with the intention to deliver public access to the waterfront. This notwithstanding, the master plan is still at the draft stage and will be subject to further refinement, following the review of public feedback. Finalisation of the Master Plan and subsequent report to Council is not anticipated until mid 2009 with planning scheme amendments to follow.

The Department of Environment and Resource Management (“DERM”) have advised Council officers that they do not have any issue with short term tenure being granted to any lessees in the Master Planning area while the Master Plan is being progressed.

**COMMENT:**

**Planning Strategies**

Planning Strategies have advised that they have no objections to renewing Meridien’s and the Coastguard’s tenure over the waterfront precinct until March 2012 as it is a practical approach to have all trustee leases expiring at the same time.

**Infrastructure Management**

Infrastructure Management, as Asset Owner, have advised that they have no objections to

- issuing trustee permits to Meridian under the current lease arrangements until 10 March 2012; and
- issuing trustee permits to the Coast Guard under the current lease terms until 10 March 2012 with the exemption of lease rental. Lease rental is to be amended in accordance with Council’s Schedule of Fees and Charges (Category C3) so that it is consistent with “Council’s Tenures Policy For Not For Profit Recreation, Sporting and Community Groups – No. 1:02:45” and other not for profit organisations.

**Corporate Performance**

Property Services consider issuing trustee permits to Meridien and the Coastguard to be the most practical and cost effective way of managing tenure over this precinct whilst the Master Plan is being finalised and as Meridien’s final trustee lease expires on 10 March 2012.
Should Council approve the issuance of further trustee leases to Meridien and the Coastguard, it is likely that DERM would require Council to prepare a full Land Management Plan over the reserve. It would be difficult to prepare such a plan, until the Master Plan is finalised. Further public consultation may also be required, at cost to Council.

The preparation, registration and stamping of new trustee lease documents would be a costly exercise for both Meridien and the Coastguard, with no guarantee that the finalisation of all leases will be complete in a timely manner.

Should Council proceed with issuing new trustee leases, and as Council would then be disposing of an interest (lease) in land without going through the tender process, it would be necessary to seek Ministerial approval to issue trustee leases to Meridien in accordance with Section 492(1)(e) of the Local Government Act 1993.

However, if Council grant trustee permits, no such issues (about obtaining the Local Government Minister's exemption) arise because a trustee permit is a contractual licence, and provides a non-exclusive entitlement to occupy part of the land. The granting of a trustee permit is not caught by section 491 of the Local Government Act 1993 (because Council would not disposing of land or an interest in land. This will simplify the process going forward for short term tenure.

**CONSIDERATIONS:**

**Corporate and Operational Plans:**

This report was prepared in accordance with Corporate Plan goal 1.1 (An integrated approach to planning by Council and Stakeholders).

**Statutory:**

Any trustee permit will be subject to the requirements of Section 60 of the Land Act 1994 and Section 4 of the Land Regulations 1995.

The requirements under the Local Government Act 1993 in terms of applying for Ministerial approval would apply, should trustee leases by approved, however this section does not apply to the issuance of trustee permits.

Any amendment will be in accordance with the requirements of the Local Government Act 1993 and the Land Title Act 1994.

**Policy:**

The lease rental charged to the Coastguard will be in accordance with Cairns City Council’s Policy on Tenures for Not-For-Profit Recreation, Sporting and Community Groups No. C3.
Financial and Risk:

Meridien will be responsible for lease rental, rates and charges, water usage, and maintenance.

The Coastguard is currently eligible for rates based financial assistance.

If new trustee leases were offered they would also be responsible for all costs associated with the preparation, registration and stamping of the lease. Council would be responsible for costs associated with any public consultation.

Sustainability:

The Port Douglas Volunteer Coastguards is a valuable and essential community service that should be maintained for the good of the community.

CONSULTATION:

As per the comments section of the report.

OPTIONS:

1. That Council:

A. approve the issue of three (3) monthly trustee permits to Meridien Pty Ltd ("Meridien") over part of Lot 126 on SR868, Wharf Street, Port Douglas ("the Land"), upon expiry of trustee lease numbers 602825953 ‘E’, 602825964 ‘H’, 602825965 ‘J’, 602825967 ‘G’, 602825968 ‘B’, 602825963 ‘D’ and 602825969 ‘C’ for a period up until and including 10 March 2012; subject, but not limited to the following terms and conditions

   • trustee permits to be on the same terms and conditions as the existing trustee lease trustee lease numbers 602825953 ‘E’, 602825964 ‘H’, 602825965 ‘J’, 602825967 ‘G’, 602825968 ‘B’, 602825963 ‘D’ and 602825969 ‘C’, with the exception of lease rental;

   • Lease clause 1(b) “rental” of the existing trustee leases to be deleted;

   • Lease rental to be subject to annual review in accordance with the Brisbane All Groups Consumer Price Index (CPI);

   • Public Liability insurance cover being increased to $20,000,000.00;

B. approve the issue of three (3) monthly trustee permits to the Australian Volunteer Coastguard Association Inc. (Port Douglas) ("Coastguard") over part of Lot 126 on SR868, Wharf Street, Port Douglas, for a period up until and including 10 March 2012, commencing 01 October 2009 subject, but not limited to the following terms and conditions:
trustee permit to be on the same terms and conditions as the existing trustee lease trustee lease 602825952 ‘A’, with the exception of lease rental;

Lease rental to be amended from clause 1 (b) of the existing trustee lease to reflect an annual rental of $117 pa (GST inclusive), in accordance with Council’s Tenures Policy For Not For Profit Recreation, Sporting and Community Groups – No. C3;

Public Liability insurance cover being increased to $20,000,000.00;

and

C. advise Meridien and the Coastguard that at the expiration of the issuance of trustee permits, being 10 March 2012, Council will re-assess tenure options based on the outcomes of the Port Douglas Waterfront Master Plan.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the Local Government Act 1993 to:


2 deal on any and all matters associated with any further trustee leases associated with Lot 126 on SR868, Wharf Street, Port Douglas.

2. That Council

A. approve the issue of further trustee leases to Meridien Pty Ltd (“Meridien”) over part of Lot 126 on SR868, Wharf Street, Port Douglas (“the Land”), as existing leases 602825953 ‘E’, 602825964 ‘H’, 602825965 ‘J’, 602825967 ‘G’, 602825968 ‘B’, 602825963 ‘D’ and 602825969 ‘C’ for respective terms so that they expire 10 March 2012; subject, but not limited to the following terms and conditions

Ministerial approval being obtained in accordance with Section 492(1)(e) of the Local Government Act 1993 on the basis that the Port Douglas Waterfront master plan has yet to be completed;

At a rental to be determined in accordance with market value at the time of commencement of the trustee lease and subject to annual review in accordance with the Brisbane All Groups Consumer Price Index (CPI);

Lessee to be responsible for all rates and charges, including any costs of water usage on the leased premises;

Lessee being responsible for all reasonable costs associated with the preparation, execution, stamping and registration (if required) of the lease;
Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the *Local Government Act 1993* to deal on all matters associated with the proposed trustee lease;

B. approve the issue of a further trustee lease to the Australian Volunteer Coastguard Association Inc. (Port Douglas) (the “Lessee”) over part of lot 126 on SR868, Wharf Street, Port Douglas, for a term of two (2) years and five (5) months, commencing 01 October 2009, subject but not limited to the following terms and conditions:

- In accordance with Council’s Tenures Policy For Not For Profit Recreation, Sporting and Community Groups – No. C3;
- At a rental in accordance with Council’s Schedule of Fees and Charges at the time of renewal, and subject to annual review in accordance with the Brisbane All Groups Consumer Price Index (CPI);
- Lessee to be responsible for all rates and charges, including any costs of water usage on the leased premises; and
- Lessee being responsible for all reasonable costs associated with the preparation, execution, stamping and registration (if required) of the lease.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the *Local Government Act 1993* to deal on all matters associated with the proposed trustee lease.

3. That Council not enter into any further trustee permits or trustee leases with either Meridien or the Coastguard over Lot 126 on SR868 and advise both parties that they will be expected to vacate the leased premise(s) in accordance with the current trustee lease terms.

**CONCLUSION:**

That Council concur with the recommendation of this report.

**ATTACHMENTS:**

Map of Reserve  
Map of Lease Areas

L GIACOMI  
**Team Leader Property and Administration**

L KIRCHNER  
**Manager Corporate Performance**

B GROSSER  
**General Manager Corporate Services**
Map of Lease Areas