

ORDINARY MEETING**22 MAY 2024****16****TENURE ARRANGEMENTS OVER LOT 515 ON RP 908330, 3 SHIELDS STREET, CAIRNS CITY- DIVISION 5**

19/28/51 | #7404656

RECOMMENDATION:**That Council:**

- A. Applies an exception in accordance with section 236(2) of the *Local Government Regulation 2012* for the disposal (via lease) of a valuable non-current asset other than by tender or auction pursuant to section 236(1)(b)(ii) being for the purpose of issuing a tenure arrangement to a community organisation;**
- B. Supports the offer of a freehold lease to the Cairns Art Gallery Limited over the whole of lot 515 on RP808330, 3 Shields Street, Cairns City, subject but not limited to the terms and conditions herein; and**
- C. Authorises the Chief Executive Officer to negotiate and finalise any and all matters relating to the freehold lease and sub lease arrangement.**

INTERESTED PARTIES:

Landowner – The State of Queensland (represented by the Department of Housing and Public Works)

Head Lessee – Cairns Regional Council

Lessee – Cairns Art Gallery Limited

Lessee legal representative – Williams Graham and Carmen Lawyers

Sub Lessee – Ivo and Susie Perrotta – Perrotta’s at the Gallery Restaurant

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 Council resolution to apply an exception under section 236(2) of the *Local Government Regulation 2012* and support the offer of a freehold lease for Art Gallery and reasonable ancillary uses to the Cairns Art Gallery Limited (Lessee) over the whole of lot 515 on RP808330 described as 3 Shields Street, Cairns City.

By applying an exception under the *Local Government Regulation 2012*, the local government can lease land to a community organisation without the need to tender and at below market value.

BACKGROUND:

There are four (4) agreements in place over The Department of Housing and Public Works ("The Department") freehold owned lot 515 on RP908330, 3 Shields Street, Cairns City:

1. The Council has leased the land from The Department since 1 September 1995 for 25 years with two options for renewal, being for a period of 25 years each. The first option period was due for renewal as of 31 August 2020 which has been enacted and there is now a lease in place until 31 August 2045 with a further 25 year option. Ultimately there is a lease in place until 2070.
2. The Cairns Art Gallery Limited (Lessee) has sub-leased the land from Council since 1 September 1995. Similarly, the term of the sub-lease has the same renewal options as the head lease between Council and The Department.
3. The Lessee has a Funding and Performance Agreement with the Council which provides intricate details for an agreed program between Council and the Lessee. The term of the agreement is 3 years, expiring 30 June 2025.
4. The Lessee subleases part of the premises to Ivo and Susie Perrotta for restaurant purposes being Perrotta's at the Gallery Restaurant. The sub lease provides a strong source of income to the Lessee.

The original lease between the Council and the Lessee did not provide for future amendments, modernisation of the terminology/language, clear details on maintenance responsibilities, or the inclusion of the purchase of the Courthouse (by Council) bringing a potential new gallery precinct to the area.

Discussions have resulted in a positive outcome for a new lease, incorporating both existing and newly introduced terms and conditions, summarised as follows:

- inclusion of modernised lease terms and conditions, inclusive of redevelopment clauses, to ensure that that the lease agreement remains relevant and effective in today's context;
- a clear and defined maintenance schedule attached to the lease document providing for the Lessee's responsibilities and Council's responsibilities for the building e.g.: building insurance, air conditioning maintenance and replacement, electricity to and from the premises and overall maintenance of a heritage listed building to meets current standards;
- a term of 25 years with a 25 year option providing comfort to the Lessee that the overall the changes are for clarity and modernisation only.

The Lessee is keen to continue the sub-lease they have with Perrotta's at the Gallery Restaurant which provides a steady source of income. The sub-lease with Perrotta's at the Gallery Restaurant will proceed under delegation as the proposed area needs to be updated and details of the sub-lease between the two parties finalised.

COMMENT:

Creative Life have been an integral part of the negotiations with the Lessee and supports the proposed new lease under the terms and conditions outlined within this report.

TERMS AND CONDITIONS:

The offer of a freehold sub lease to the Cairns Art Gallery (lessee) is subject to the following terms and conditions:

- for the purpose of an Art Gallery and reasonable ancillary uses;
- over the whole of the freehold described as Lot 515 on RP908330 under Council's control as lessee under the above freehold lease with the Department of Housing & Public Works;
- consistent with the terms and conditions of the headlease between Council and the Department of Housing & Public Works;
- for a term of twenty five (25) years to commence from the date of expiry of the current period under the freehold sublease in place;
- with an option for a further twenty five (25) years;
- in accordance with Council's 'tenure and disposal policy', in particular part 1 of the associated administrative instruction which provides for use by not for profit community groups (refer to item 5 for terms and conditions); 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 offer.

OPTIONS:**Option 1: (Recommended)**

That Council:

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- B. Supports the offer of a freehold lease to the Cairns Art Gallery Limited over the whole of lot 515 on RP808330, 3 Shields Street, Cairns City, subject but not limited to the terms and conditions herein; and
- C. Authorises the Chief Executive Officer to negotiate and finalise any and all matters relating to the freehold lease and sub lease arrangement.

Option 2:

That Council does not provide approval to make a new freehold lease offer to the Cairns Art Gallery Limited and continues under the previous lease terms and conditions.

CONSIDERATIONS:

Risk Management:

There is minimal risk associated with the recommendations of this report as the conditions have been reviewed to be in line with modern terminology as per the key terms noted in the sections above.

Council Finance and the Local Economy:

All costs associated with the lease of the property including, but not limited to, legal costs, associated professional services and registration fees will be borne by Council.

The lessee is responsible for their own legal fees, general rates, including utility charges if applicable (i.e., fire levy, access to water and access to sewerage).

There are no outstanding rent, rates, and water from the previous arrangement.

Corporate and Operational Plans:

This report aligns with Council's Corporate Plan 2021 – 2026, including:

1. Focus 4 – community and culture; by fostering a vibrant and healthy community where everyone feels they belong and providing spaces and programs for the wellbeing of the community;
2. Focus 3 – design for liveability; by creating a safe, sustainable and connected place the supports a quality life and enhancing community wellbeing, safety and natural disaster resilience; and
3. Focus 5 – focused council; by ensuring decision making is collaborative, transparent and accountable.

Statutory:

Section 236 of the *Local Government Regulation 2012* allows Council to apply an exception to dispose of a valuable non-current asset without the need to tender or auction. This section also allows Council to issue leases to community organisations for less than market value which would not apply in the absence of the exception.

Both the Chief Executive Officer and Executive Manager Licensing and Compliance have delegated authority under this provision where an exception has been applied through Council resolution.

The lease will be prepared in accordance with the requirements of the *Land Title Act 1994*.

Policy:

The tenure arrangement will be prepared in accordance with Council's 'Tenure Arrangements and Disposal of Council Property General Policy', in particular part 1 of the associated administrative instruction which provides for use by not for profit community groups.

CONSULTATION:

Detailed discussions have already occurred with the Lessee, Creative Life and Property Services regarding the new freehold lease and conditions.

Draft lease documents have been presented to the Lessee who is keen to finalise the matter.

ATTACHMENTS:

Attachment 1 – Aerial view of the proposed lease area



Amy Patterson
Executive Manager – Licensing and Compliance



Ed Johnson
Director – Planning, Growth and Sustainability

Attachment 1 – Aerial view of lot 515 on RP908330, 3 Shields Street, Cairns City

