



AGENDA

Wednesday, 30 November 2022

Special Council Meeting

I hereby give notice that a Special Meeting of Council will be held on:

Date: Wednesday, 30 November 2022

Time: 10:00am

Location: Council Chambers

Peter Franks
Chief Executive Officer

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1 MEMBERS IN ATTENDANCE

2 APOLOGIES/LEAVE OF ABSENCE/ABSENCE ON COUNCIL BUSINESS

3 CORPORATE AND COMMUNITY SERVICES

7.1 AMENDMENT TO LEASE - KURANDA POST OFFICE - PART OF LOT 412 SP103859

Date Prepared: 21 November 2022

Author: Senior Compliance Officer

Attachments: 1. Submission from Carruthers Solicitors to Council - consideration for Amendment to Lease

EXECUTIVE SUMMARY

This report seeks Council consent for an amendment to the unregistered Lease over part of Lot 412 on SP103859, to include a 5-year option.

RECOMMENDATION

That:

1. In accordance with s 236(2), Council agrees that the exception for disposal of a valuable non-current asset, in s 236(1)(c)(iii) *Local Government Regulation 2012* (Qld) applies; and
2. Council consents to the amendment of unregistered Lease over part of Lot 412 on SP103859, located at 4-12 Thooree Street Kuranda, to include a 5-year option; and
3. Council delegates authority to the Chief Executive Officer to execute the Form 13 Amendment of Lease instrument to reflect the amendment and conditions.

BACKGROUND

Council, at its Ordinary Meeting on 26 October 2022, resolved to approve the assignment of all interests in the unregistered Lease over part of Lot 412 on SP103859, located at 4-12 Thooree Street Kuranda, also known as the Kuranda Post Office, from Hobbit Holdings NQ Pty Ltd to Aoming Pty Ltd ACN 626 976 725 as trustee for Aoming Family Trust. The current Lease expires on 30 November 2026.

On 9 November 2022, Council received correspondence from the legal representation for Aoming Pty Ltd requesting an amendment to the expiry of the Lease, to 30 November 2031, citing the reasons “for continuity, forward planning and financing arrangements”.

Council Officers responded and advised that a matter of this nature would ordinarily be considered closer to the expiry of the Lease in 2026 upon receipt of formal written request from the Lessee.

On 18 November 2022, the Director of Aoming Pty Ltd attended at Council offices to appeal to Council to give consideration to an additional 5-year term on the Lease and provided the explanation that Finance approval for the business purchase had been provided on the condition of an extension of term to the Lease, now resulting in Financier delays for Settlement of the business purchase.

On 21 November 2022, Council received a written submission from the legal representation for Aoming Pty Ltd formally requesting urgent consideration to the Amendment of Lease to include a 5-year option upon expiry of the current term in 2026. The reason for the request for urgent consideration is that Settlement of the business purchase is currently scheduled for 28 November

2022, and the current financing arrangements are dependent upon the proposed Amendment of the Lease.

A copy of the submission is **attached**.

To ensure that the assignment of lease interest transaction is not unreasonably jeopardised and in an effort to facilitate the economic viability and continuity of a local Kuranda business, Council has agreed to consider the matter at the Special Council Meeting.

Upon expiry of the current term in 2026, exercise of the option to renew for a period of 5-years would be subject to the requirement of the Lessee having punctually paid the rent and observed and performed and kept the covenants and restrictions required to be observed, performed and kept by the Lessee throughout the term of the Lease, and that the rental amount for the further term will be subject to market review.

Ordinarily, upon the expiry of a Lease, the Lease for premises would then be offered, and subsequently disposed of, via tender processes. Section 236(1)(c)(iii) of *Local Government Regulation 2012 (Qld)*, provides that *a local government may dispose of a valuable non-current asset other than by tender or auction if, for the disposal of land or an interest in land, the disposal is for the purpose of renewing the lease of land to the existing tenant of the land.*

As Council has previously consented to assignment of the Lease interest to Aoming Pty Ltd who is now effectively the lessee to which the lease interest is assigned, the aforementioned s 236(1)(c)(iii) exemption provision is applicable to effect a disposal via 5-year option to an existing tenant of the land.

Council's interests are adequately protected, as the terms of the option to renew mean that Council has grounds to refuse the exercise of the option in in 2026 in the event that rent is outstanding or there have been recorded breaches of the lease terms.

RISK IMPLICATIONS

Nil

LEGAL/COMPLIANCE/POLICY IMPLICATIONS

Nil

FINANCIAL AND RESOURCE IMPLICATIONS

Nil

LINK TO CORPORATE PLAN

Community: An informed and engaged community which supports and encourages effective partnerships to enhance the liveability of the Shire.

Governance: Sound decision making based on effective frameworks and clear strategic direction to achieve regulatory compliance while delivering affordable levels of identified services within the Shire.

IMPLEMENTATION/COMMUNICATION

Communication of Council Resolution to the legal representation of the Assignee/Lessee and, if approved, execution of Form 13 Amendment to Lease to reflect the new arrangement.



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'Liability limited by a scheme approved under professional standards legislation.'

Your Ref:

Our Ref: 22195

21 November 2022

Chief Executive Officer
Mareeba Shire Council
PO Box 154
MAREEBA QLD 4880

Dear Mr Franks

**Assignment of lease to Aoming Pty Ltd as trustee
Part Lot 412 on SP 103859, 4-12 Thorree St, Kuranda
Licensed Post Office Premises**

I act for the assignee, Aoming Pty Ltd as trustee, whose director Shan Yang has asked that I write on his behalf to thank the Council for their acceptance as a suitable lessee and consenting to assignment of the lease.

For continuity, forward planning and financing arrangements, our client also seeks Council agreement to the lease providing for a 5 year option from the current expiry date of 30 November 2026.

The lease being assigned which commenced 1/12/2016 for a term of 5 years, allowed for continuity by providing for a 5 year option, which commenced 1/12/2021.

A similar option would also add security of tenure for forward planning of business operations and for our clients financing arrangements and satisfy their financier's requirements.

The Renewal Option, clause 4.15, requires that the Lessee shall have punctually paid the rent and observed and performed the covenants and conditions of the lease throughout, to exercise the option for the further term, and also sets out the process for rent review; therefore balancing the rights and interests of the Council as Lessor and our client as Lessee.

Attached is a draft Form 13 Amendment and Schedule for Council's consideration.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Carruthers'.

Robert Carruthers
Carruthers Solicitors

Att

4 INFRASTRUCTURE SERVICES

8.1 T-MSC2022-13 LEASE AND OPERATION OF AQUATIC FACILITIES AND CARAVAN PARK

Date Prepared: 22 November 2022
Author: Manager Technical Services
Attachments: Nil

EXECUTIVE SUMMARY

The purpose of this report is to inform Council of the assessment of tender submissions for T-MSC2022-13 Lease and Operation of Aquatic Facilities and Caravan Park.

RECOMMENDATION

That Council does not award the contract for T-MSC2022-13 Lease & Operation of Aquatic Facilities and Caravan Park due to the value of submissions exceeding available budget.

BACKGROUND

Council's Aquatic Centres and Dimbulah Caravan Park are currently managed under agreement with H2O Sport and Leisure Group, through to 31 December 2022.

To ensure the long-term operation of these facilities, Council invited submissions from suitably qualified and experienced operators to provide tender for the operation and management of the three (3) Council owned facilities, being;

- (a) Mareeba Aquatic Centre,
- (b) Kuranda Aquatic Centre,
- (c) Dimbulah Caravan Park & Pool.

The preferred agreement was anticipated to commence on, or about, 1 January 2023, with Council willing to consider proposals for term lengths between 3.5yrs and 9.5yrs.

Tenders were invited through VendorPanel on 15 September 2022, and closed 11am on Monday, 10 October 2022.

Tender Evaluation

Each tender was evaluated and scored against the criteria, with the criteria scores then weighted to provide a total weighted score for each submission. Additionally, each tender has been assessed for conformance, compliance and discrepancies, against the requested response schedules.

Tenders were assessed in accordance with the evaluation criteria stated in the tender documentation and as provided in *Table 1* below;

Table 1: Evaluation Criteria

Criteria	Weighting
Business & Transition Plan	20%
Previous Experience	20%
Demonstrated Understanding	10%
WH&S Management Systems	10%
Tender Price	40%
Total	100%

Two (2) submissions were received from two (2) providers by close of tender. A summary of the tendered submission is provided in *Table 2* below;

Table 2: Tendered Price at opening

Tenderer	Tendered Price (excluding GST)
H2O Sport and Leisure Group (All Facilities)	\$760,000
Kevin Bruce Wallace (Dimbulah Caravan Park & Pool Only)	\$160,000

While neither submission was assessed as conforming, the 'H2O Sport and Leisure Group' proposal addressed the response schedule requirements, with non-conformance arising through the proposed exclusion of some aspects of the tendered scope. The submission from 'Kevin Bruce Wallace' did not address any of the response schedule requirements (other than price), with the offer assessed as being unsuitable for continued assessment.

Council officers undertook sought clarifications and undertook further negotiations with H2O Sport and Leisure Group regarding the scope of services intended for inclusion within a long-term lease arrangement. Those discussions resulted in the development of an alternative pricing structure (compared to original), as provided in *Table 2a* below;

Table 2a: Amended Pricing Submitted by Tenderers

Tenderer	Tendered Price (excluding GST)
H2O Sport and Leisure Group (original)	\$760,000
H2O Sport and Leisure Group (post tender alternative)	\$1,008,053

The 'post tender alternative' price provided in *Table 2a*, is representative of the pricing structure reached during the post-tender negotiation process. The alternative price better aligns with the scope as defined in the invitation to tender, intended for the successful contractor to a wider array of maintenance responsibilities currently delivered by Council staff, thereby 'freeing up' those staff to deliver Council's core operations. The alternative proposal (as currently presented) would still

require Council to continue with some elements of service delivery over and above the tendered value. Further negotiations would be required should Council seek to progress to award of contract.

General

H2O Sport and Leisure Group (H2O) were initially engaged in August 2021 and undertook to commence operations within an extremely constrained timeframe. Since commencing their management of the facilities, H2O have undertaken substantial works and implemented programs to enhance the presentation and operation of the facilities, which have resulted in improved service levels for those communities serviced by the Facilities.

H2O have demonstrated a clear understanding of the requirements needed to deliver high functioning facilities.

The recommendation provided to Council, not to award the contract, is not a reflection on H2O's provision of services to date, which have been to a high standard. Rather, the recommendation not to award the tender is provided with an understanding of the financial implication to ratepayers should the tender be awarded at the tendered value.

It is proposed that alternative solutions be sought to manage the facilities following the cessation of the current agreement.

RISK IMPLICATIONS

Financial

The tender offered by H2O is substantially above Council's available budget. If the tender is not awarded (as recommended), then Council will retain financial risk associated with the ongoing operation of the facilities.

Infrastructure and Assets

Officers recognise the need for ongoing maintenance/management of the equipment and facilities to continue to provide a service to the community.

Legal and Compliance

The *Local Government Regulation 2012*, section 228 (9) provides that "A local government may decide not to accept any tenders it receives", therefore provision exists for the non-award of Tender.

Ongoing operational responsibilities for continued operations will return to Council on cessation of the existing Agreement with H2O Sport and Leisure Group. It is proposed that alternative solutions be sought to manage the facilities following the cessation of the current agreement.

Health and Safety

Officers will seek to minimise risk during the transition phase of operations, in conjunction with H2O Sport and Leisure.

FINANCIAL AND RESOURCE IMPLICATIONS

Capital

Nil

Operating

Operational budgets will be revised to address potential ongoing operational costs associated with award (or otherwise) of the current tender.

Is the expenditure noted above included in the current budget?

Funding is included in the current budget, in line with the previous year's expenses. The tender offered by H2O is above Council's available budget.

If not you must recommend how the budget can be amended to accommodate the expenditure

Budget review process to be undertaken.

LINK TO CORPORATE PLAN

Financial Sustainability: A council that continuously operates in a cost-effective manner while managing council's assets and reserves to ensure a sustainable future.

Community: An informed and engaged community which supports and encourages effective partnerships to enhance the liveability of the Shire.

Transport and Council Infrastructure: The provision of quality services and infrastructure for our growing community that is planned and managed using sound asset management principles.

Economy and Environment: A resilient economy that promotes and supports the shire's natural assets and local industry and encourages investment while preserving and future proofing for generations to come.

Governance: Sound decision making based on effective frameworks and clear strategic direction to achieve regulatory compliance while delivering affordable levels of identified services within the Shire.

IMPLEMENTATION/COMMUNICATION

Tenderers will be advised of the outcome in writing.

