

Late Item 8.6.1

Ordinary Meeting

Thursday, 7 December 2017

commencing at 9.00am

Council Chambers, Corner Currie and Bury Streets, Nambour

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8 REPORTS DIRECT TO COUNCIL**8.6 OFFICE OF THE MAYOR AND CEO****8.6.1 QUANDA LAKE 60 JUNCTION DRIVE COOLUM BEACH RENT REVIEW****File No:** Council meetings**Authors:** Chief Legal Officer
Office of Chief Executive Officer
Coordinator Development Audit and Response
Customer Engagement & Planning Services Group
Manager Property Management
Business Performance Group**Attachments:** Att 1 - Acting Manager Development Services Advice..Conf 5/122
Att 2 - Integrity Management Officer Advice Conf 31/122
Att 3 - External Valuer Assessment.....Conf 49/122
Att 4 -Valuer's assessment to Property ManagementConf 117/122
Att 5 - Manager Property Management Assessment,,Conf 119/122
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This report is brought to Council following a request of the Councillor for Division 10 to the Chief Executive Officer. It informs Council of issues raised by the Division 10 Councillor relating to the Rent Revenue to be applied to the existing lease of Quanda Lake and use of the Council owned land, and its associated lease from Council to the current lessee.

EXECUTIVE SUMMARY

The Council owned property on which Quanda Lake is located is leased to Oz Ski Resort Pty Ltd and is now due for a rent review.

Following rent assessment by a Council engaged valuer and Council's Property Management Branch, the Division 10 Councillor has requested the matter come to Council before any final determination is made.

OFFICER RECOMMENDATION**That Council:**

- (a) receive and note the report titled "Quanda Lake 60 Junction Drive Coolum Beach Rent Review" and
- (b) refer the matter to the Chief Executive Officer to deal with under delegated power.

FINANCE AND RESOURCING

This brief report was prepared within the operational budget for Legal Services Branch.

CORPORATE PLAN**Corporate Plan Goal:** *Service excellence***Outcome:** We serve our community by providing this great service

Operational Activity: S22 - Development services - planning, engineering, plumbing and landscaping approvals, provision of specialist advice to the community on planning requirements, audit of private development works, investigation of complaints from the public around land use or development, management of appeals

CONSULTATION

Portfolio Councillor Consultation

The Chief Executive Officer has addressed the Mayor, Deputy Mayor and Divisional Councillor. Councillor Greg Rogerson made representation to staff on this matter.

Internal Consultation

Consultation has occurred with the following:

- Property Management Branch
- Development Services Branch
- Corporate Governance Branch
- Legal Services Branch

External Consultation

No external consultation

Community Engagement

No community engagement

PROPOSAL

Lease

The Quanda Park Water Resource ("Quanda Lake") is a constructed water body owned by Council, located on the western edge of the Quanda Road industrial estate off Junction Drive, and accessed from Quanda Road.

Following the calling of expressions of interest in 2010, a lease was granted by Council over Council owned land located at 60 Junction Drive Coolumb Beach, having an area of 32.62ha on which the water body known as Quanda Lake is located. The lease commenced January 2013 and allows the site to be used for "Outdoor recreation (water ski park) and ancillary caretaker's residence and training and recovery facility".

The lease is now due for a rent review and it has been called up to Council following the Division 10 Councillor's request to the Chief Executive Officer.

In addition to concerns about the rent methodology the Councillor has other concerns that are referenced – by way of [confidential attachments](#) from the Acting Manager Development Services (**Attachment 1**) and from the Integrity Management Officer (**Attachment 2**).

Council will be giving owners consent to any code assessable development application and will amend the lease once approved.

Head Lease Market Rent Review

Lot 5 on SP118756 (of which Quanda Lake is a part) is leased by Council to Oz Ski Resort Pty Ltd as trustee for the Habermann Trust ("the head lease"). Oz Ski Resort Pty Ltd sublease part of the lake area to an aqua park operator ("the sublease").

Head lease details, in brief, are:

Date:	January 2013
Area:	32.62ha
Term:	10 years (plus 2 x 5 year options)
Permitted use:	Outdoor Recreation (Water Ski Park) and Ancillary Caretakers Residence & Training and Recovery Facility
Rent:	\$2,000 – 2013
	\$4,000 – 2014
	\$6,000 – 2015
	\$8,000 – 2016
	\$10,000 – 2017
	Market Rent to be determined – 2018
	Market Rent + CPI – 2019-2022
	Market Rent to be determined – 2023
	Market Rent + CPI – 2024-2027
	Market Rent to be determined – 2028
	Market Rent + CPI – 2029-2033

Sublease details, in brief, are:

Date:	1 July 2015
Term:	7.5 years to 30 December 2022 (plus 6 month option)
Permitted use:	A floating inflatable obstacle course “Aqua Park Coolum”
Rent:	\$50,000 plus 10% of the Aqua Park gross takings to June 2020 increasing to \$60,000 plus 12.5% gross takings for remainder of the term.

Head Lease Market Rent Assessment Process

In accordance with the head lease, the procedure for determining the market rent to apply from 2018 (and again in 2023 and 2028) is as follows:

1. Council is to give notice to the lessee of Council's estimate of the rent that should apply;
2. Council and the lessee have one month to reach agreement; and
3. If agreement is not reached, an independent valuer appointed by the Australian Property Institute is to determine the appropriate rent.

Council and the lessee are currently at stage 1 whereby the lessee is awaiting Council to estimate the rent that should apply as market rent for the next 5 years.

In the event Council and Oz Ski don't agree on the rental amount, the only guidance provided by the lease on how an API appointed valuer should assess the market rent is the following:

- The valuer may take into account any matters the valuer considers relevant
- The valuer must assess it as if the property was unoccupied and must consider any outgoings payable by the lessee
- The valuer must have regard to the terms of the lease and any submissions made by Council and the lessee about the rent
- The valuer must not have regard to the goodwill of the lessee's business or the lessee's improvements

The decision of an API appointed valuer will be final and binding.

Current Matter for Consideration

The rent review process is currently at stage 1 whereby Council is to notify the lessee of the annual rent that Council considers should be paid by the lessee for the next 5 years (with CPI increases). The matter currently under consideration is what annual rent amount should Council propose in its notice to the lessee.

Process to Date

In anticipation of the upcoming rent review, Council officers briefed an external valuer to assess the market rent. A copy of that report is attached and appears as a [confidential attachment 3](#).

The Councillor for Division 10 enquired of the rent review and expressed his concern that the rent review should take account of the site's income earning potential as evidenced by the 'Aqua Park' operating on the site under a sublease. As noted earlier in this report, the sublease from Oz Ski to the operator of the Aqua Fun Park commenced 1 July 2015 and is for approximately 7.5 years at a rent payable to Oz Ski of \$50,000 plus 10% of gross sales until 2022 increasing to \$60,000 plus 12.5% of gross sales in 2021 and 2022.

Review by Valuer

In response to the Councillor's submission, Property Management Branch requested the valuer to comment on those issues and to consider the details of the Twin Waters Aqua Park as something of a comparable site. The valuer's assessment of those matters appears as a [confidential attachment 4](#).

Review by Property Management Branch

Also following submissions from the Division 10 Councillor, the Chief Executive Officer invited the Manager of Property Management Branch to consider the calculation of the market rent. The Manager provided a further assessment of the market rent and appears as a [confidential attachment 5](#).

Submission by Division 10 Councillor

An extract (from the Division 10 Councillor's email to the CEO) of the material submissions of the Division 10 Councillor appears as a [confidential attachment 6](#).

Matter for Council Consideration

The matter of the market rent is now before Council in response to the Division 10 Councillor's request to the Chief Executive Officer.

Legal

The process by which the market rent is to be determined, if the parties cannot reach agreement, is set out in the lease. In brief, it will require both Council and the lessee to make submissions to an independent valuer appointed by the Australian Property Institute, if necessary.

The parties will be bound by the decision of the independent valuer.

The next opportunity after 2018 to assess the market rent will be 2023.

Policy

The lease agreement details what is covered in determining market rent.

Risk

There is a risk that if the market rent cannot be agreed, the determination of that rent may be an amount that neither Council nor the lessee consider favourable.

Previous Council Resolution

Decisions of Council have been provided in attachment 7.

Related Documentation

Other than the referenced confidential attachments, there is no other related documentation that is materially important to this report.

A number of confidential attachments are referenced in this report. They have been compiled for the purpose of providing material that is either:

- legally privileged; or
- commercial in confidence; or
- confidential investigative material under the Ombudsman Act (Qld).

Critical Dates

By 14 December 2017 Council is to advise the lessee of Council's assessment of the market rent that should apply for the next 5 years.

Implementation

It is recommended that the following directions be given to the Chief Executive Officer: Implementation will proceed in accordance with the CEO's delegated authority.

Decisions of Council

29 January 2015 - Notice of Motion - Oz Ski Resort - OM15/7

1. That Council authorise the Chief Executive Officer to prepare a report and report back to Council on matters concerning the lease and development approval in favour of Oz Ski Resort Pty Ltd, particularly, but not limited to those matters as they pertain to:
2. Council's endorsement of the ancillary purposes permitted in the Development Approval
3. compliance of conditions of Development Approval e.g. water/lake Risk Assessment Management Plan, water quality testing, community use etc
4. the requirement of the Lessee to pay rates and outgoing as set out in the 'Agreement to Lease' dated 3/10/11
5. the obligation of the Lessee to pay a Tourism Levy and all other levies applicable to land uses typical of 16 Junction Drive, Coolum
6. the timing of the granting of the Lease taking into account the condition precedent number 2 in the Agreement to Lease dated 3/10/11
7. the consistency between the intended use as set out in the tender submission and current operation of the site
8. an email to Warren Bunker and Julie Edwards regarding "Quanda Lakes Information and Documentation" dated Wednesday 28 January 2015 at 1:49pm from Councillor G Rogerson and
9. an email to John Knaggs under the heading "Email to staff regarding your advice on Ancillary Use Quanda Lakes" dated Wednesday 28 January 2015 at 2:44pm from Councillor G Rogerson.

28 June 2012 - Material Change of Use Application for Outdoor Recreation (Water Ski Park and ancillary Caretaker's Residence and Training and Recovery Facility) - 60 Junction Drive, Coolum Beach - MCU 12/0033 – OM12/79

That Council:

- (a) APPROVE WITH CONDITIONS Application No. MCU12/0033 and grant a Development Permit for a Material Change of Use of Premises (Outdoor Recreation - Water Ski Park) and Ancillary Caretaker's Residence and Training and Recovery Facility situated at 60 Junction Drive, Coolum Beach, in accordance with Appendix A; and
- (b) find the following are sufficient grounds, pursuant to Section 326 of Sustainable Planning Act 2009, to justify the decision despite the conflict with the Planning Scheme:
 1. the site, which contains a man-made lake and has been dedicated to council for park or other purposes, is no longer required for extractive industry;
 2. a water ski park is an appropriate outdoor recreational use for a lake, which separates an industrial estate from the Arcoona Road Bushland Conservation reserve;
 3. a water ski park, capable of hosting local, national and international ski events, would strengthen Council's tourism profile and sports industry sector, and benefit local businesses including accommodation providers, restaurants and retailers;
 4. the ski park would be open to the public and by arrangement, provide opportunities for other clubs/associations, school groups, youth, seniors and people with disabilities;

5. *the impacts of the proposal can be mitigated to an acceptable level and the lake's water quality maintained in accordance with a Lake Risk Management Plan.*

6 April 2011 - Quanda Lakes – Tender Arrangement – OM 11/92

That Council authorise the Chief Executive Officer, in relation to the Quanda Lakes Expression of Interest, to conduct independently mediated discussions between Oz Ski and community groups interested in the use of the site with the goal of this mediation to provide as many groups as possible with access to the resource, consistent with the values outlined in the expression of interest, by way of a potential shared usage arrangement and shared cost before any decision is made to award the tender.

8 December 2010 - Confidential – Not For Public Release - Quanda Park Water Resource Expression Of Interest – OM 10/370

That Council:

- (a) receive and note the report titled “Quanda Park Water Resource Expression of Interest”;*
- (b) authorise the Chief Executive Officer to commence negotiations with the preferred tender to consider an ‘Agreement to Lease’ or ‘Lease’ (subject to Planning Approval) under the Expression of Interest Contract 326901 in consultation with the Divisional Councillor;*
- (c) thank the other submitters who lodged submissions and inform them that their Expression of Interest has been unsuccessful; and*
- (d) continue interim management of the site to ensure public safety and desirable water quality are maintained.*

8 April 2010 - Quanda Road Park Coolum Water Resource - Future Use – OM 10/076

That Council:

- (a) receive and note the report titled “Quanda Park Water Resource Expression of Interest”;*
- (b) authorise the Chief Executive Officer to commence negotiations with the preferred tender to consider an ‘Agreement to Lease’ or ‘Lease’ (subject to Planning Approval) under the Expression of Interest Contract 326901 in consultation with the Divisional Councillor;*
- (c) thank the other submitters who lodged submissions and inform them that their Expression of Interest has been unsuccessful; and*
- (d) continue interim management of the site to ensure public safety and desirable water quality are maintained.*

10 December 2009 - Confidential – Not For Public Release - Quanda Road Park Coolum Water Resource - Future Use - OM 09/372

That the matter lay on the table until the February 2010 round of Council meetings to allow for site inspections and further consideration of the documented options by Council.

29 October 2009 - Sunshine Coast Difficult-To-Locate Sports Study 2009-2028 – OM09/311

That Council:

- (a) *receive and note the report titled “Difficult-to-Locate Sports Study 2009-2028”;*
- (b) *adopt the Draft Sunshine Coast Difficult-to-Locate Sports Study 2009-2028 (Appendix A as amended) as a working draft, noting that further work is required to identify feasibility and viability of meeting Difficult-to-Locate Sports needs not currently being provided for; and*
- (c) *request the Chief Executive Officer to prepare an appropriate implementation plan for Council's consideration taking into account the objectives of the corporate plan and Council's ability to fund or obtain funding for a number of the actions contained in the working draft.*

23 April 2009 - Draft Sunshine Coast Noisy And Hard-To-Locate Sports Study – OM09/124

That Council:

- (a) *endorse for the purpose of public viewing and community comment the Draft Sunshine Coast Noisy and Hard-to-Locate Sports Study consisting of:*
 1. *Volume 1 (refer Appendix A – Draft Sunshine Coast Noisy and Hard-to-Locate Sports Study, Strategy and Action Plan) as provided to Ordinary Meeting on 23 April; and*
 2. *Volume 2 (refer Appendix B – Draft Sunshine Coast Noisy and Hard-to-Locate Sports Study Background Documentation) as provided to Ordinary Meeting on 23 April.*
- (b) *forward Volume 1 (refer Appendix A – Draft Sunshine Coast Noisy and Hard-to-Locate Sports Study, Strategy and Action Plan) and Volume 2 (refer Appendix B Draft Sunshine Coast Noisy and Hard-to-Locate Sports Study Background Documentation) as identified above in (a) for comment to the:*
 1. *Department of Communities – Sport and Recreation;*
 2. *Department of Infrastructure and Planning – Property Services Group;*
 3. *Department of Employment, Economic Development and Innovation - Tourism, Regional Development and Industry, Primary Industry and Fisheries;*
 4. *Department of Environment and Resource Management – Environmental Protection Agency;*
 5. *All adjacent land owners to potential sites; and*
 6. *Key industry stakeholders and community;*
- (c) *request the Chief Executive Officer to make representation to the Minister for Infrastructure and Planning in relation to the provision for land and the protection of existing venues with a particular emphasis on the Quanda Road Industrial Area; and*
- (d) *complete the noise study on the Quanda Road water body site, Coolum and if results are satisfactory Council proceed to an Expression of Interest for the use of the water body on the Quanda Road site.*

25 October 2006 MSC - Use Of Public Open Space Policy

That Council endorse the Use of Public Open Space Policy.