

Management and Provision of Infrastructure
Report to the Ordinary Meeting of Council held on Monday 19 February 2018

IN2 – Lease – Lot 12 DP 531898 Cawdor Road, Cawdor – Rural Fire Station

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10845

TRIM 3016

EXECUTIVE SUMMARY

- The purpose of this report is to enable Council to consider entering into a new Lease for the Rural Fire Service Station located at Cawdor Road, Cawdor.
- It is recommended that:
 - Council enter into a Lease with the owner of the land to secure tenure of the Rural Fire Station which provides an important service to the community.
 - Council enter into a Lease over the property known as Lot 12 DP 531898 Cawdor Road, Cawdor for the NSW Rural Fire Service Station comprising of 911.3m².
 - The Mayor and General Manager be authorised to execute all documents in relation to the lease, including those requiring the Common Seal of Council.
 - Council acknowledge that the current site may not be available in the future and a contingency to be in place for such outcomes.

REPORT

The Lease for the Cawdor Rural Fire Station expired on 16 March 2017. Since the expiry of the Lease, Council have been in contact with the owner to negotiate terms of the Lease over part of Lot 12 DP 531898 Cawdor Road, Cawdor. The current lease is being operated on a month-to-month basis. The area proposed to lease is 911.3m².

Given the owner's preference for a three year lease and the possible sale of the site, initial discussions have been held with the Rural Fire Service regarding planning for a new facility at a different location.

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MAP - LOT 12 DP 531898 - PIN LOCATES THE POSITION OF THE RURAL FIRE STATION



2017 HEADS OF AGREEMENT FOR THE PROPOSED NEW LEASE

- Three year lease commencing 16 March 2017 expiring 15 March 2020
- All terms and conditions as per the previous Lease
- Annual rental payment transferred to owner's bank account before 25 August 2017
- Lessee pays all reasonable solicitors and registration costs for the preparation of the Lease by proponent's solicitor

It has taken ten months to negotiate the terms of this agreement.

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LEGAL ADVICE

- A three year term lease is not required to be registered
- The Lease otherwise is identical terms and conditions to the existing Lease. Important terms of the Lease to consider are:
 - Clause 3.2 provides that the Lease can be terminated on 72 hours' notice if Council is in default of its obligations under the Lease.
 - Clause 4.2 provides that Council is responsible for operating expenses such as rates and taxes which are separately rated on the area subject to the Lease. These are the operating expenses which are directly related to land levied on the area leased by Council, not the property as a whole.
 - For the first annual rent adjustment, the annual rent will be increased by the same percentage change in the Council rates from 1 July 2017 to 1 July 2018.
 - For each subsequent annual rent adjustment thereafter, the same percentage increase in the Council rates for the preceding year will apply.
 - The same provisions regarding contamination remain. That is, the last six (6) months prior to the termination of the Lease, Council must commission (at Council's expense), an examination of the premises by a reputable environmental auditor who must prepare a written report identifying any contamination on the property and formulating any remediation program, if appropriate, to remediate any contamination or pollution.
 - There is no ability for Council to terminate the Lease prior to the expiration of the fixed term of three years by giving three months' notice. As such, if Council wished to terminate the Lease earlier than the agreed fixed term, then Council may be exposed to a claim for damages for unpaid rent for the unexpired balance of the three year term together with any other costs that the Landlord incurs in relating to the early termination of the Lease. If the rent is paid in advance, then there is generally no entitlement to a pro rata refund in the event the Lease is terminated before the fixed expiry date as this would normally be a recoverable from of damages from Council as the party in breach of the Lease.

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VALUER’S ADVICE

Valuation for the rental of the property was completed on 30 January 2017. It was concluded that the estimated annual rent should be \$9,130 including GST and operating costs.

Ideally, Council should not enter into an arrangement that sees its annual rent determined by increases in land rates. There is not necessarily a connection between Council land rates and levels of value in a real estate market place, particularly when long term rate pegging legislation has been in place in New South Wales. Linking annual rent to changes in annual Council rates could lead to a rent being paid which is way above normal market rent. For example, Special Rate Variation where rates are increasing at 10.8% per annum.

A further risk in being involved in such a rent review method would be the impact of any subdivision, rezoning or land acquisition proposals affecting any of Lot 12. Any of these events would trigger a revaluation of all of the land contained in Lot 12 by the Valuer General and may result in new valuations that dramatically impact on land rates as the new valuations of the land would fall outside rate pegging controls. There would be potential for the annual rent to increase dramatically. Whilst the Valuers advice is accepted, Council currently has no other option in this matter at this time.

COMMENT

The leased area of the property is not valued separately for rating purposes. The estimated rates for the next two years for the whole of Lot 12 are as follows (figures are estimates only). Any change to the rateable valuation, Council's rating structure and permitted income increase will cause changes to the estimated figures provided.

Year	Estimate Annual Rate Levy	Increase %	Rent Estimate
2018-2019	\$29,066.11	10.80%	\$13,340
2019-2020	\$29,792.76	2.5% (Est rate peg)	\$13,673

The current rent \$12,039.39 paid advance is in accordance with the terms of the lease. The annual rent is adjusted on the anniversary of the lease increasing by the percentage change in Council rates. The current rent paid is above the estimated valuation.

It is difficult to forecast the exact future rent on the premises using the above formula which takes into account land valuations and rate increases. Advice from the legal provider and Valuer must be considered.

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An audit of the rent, including operating costs over the last five (5) years are as follows (GST inclusive):

- 15.03.2017 to 15.03.2018 - \$12,039.39
- 16.03.2016 to 15.03.2017 - \$10,893.98
- 16.03.2015 to 15.03.2016 - \$10,787.43
- 16.03.2014 to 15.03.2015 - \$10,020.85
- 16.03.2013 to 15.03.2014 - \$ 9,526.84.

The property is currently under application for a planning proposal to rezone the land. The owner has advised that he is under contract arrangements to sell the land and is required to disclose all contingencies of the lease with all users of the property.

The future of the site is unknown taking into account the proposed rezoning, future development, sale of the land and sustainability of paying rent in accordance with the term of rates levied. If valuations on the land raise significantly the rent may be unreasonable.

As such, there must be a consideration by Council that the current site may not be available in the future and should plan for such contingencies.

CONSULTATION

- Valuer
- Legal Advisor
- Manager Governance
- Manager Infrastructure Strategy & Planning
- NSW Rural Fire Service
- Owner of the subject property

FINANCIAL IMPLICATIONS

The rental costs for the Cawdor Rural Fire Station and other related expenditure is included in Council's adopted budget.

ATTACHMENTS

Nil

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RECOMMENDATION

1. That Council enter into a Lease with the owner of the land to secure tenure of the Rural Fire Service Station which provides an important service to the community.
2. That Council enter into a Lease over the property known as Lot 12 DP 531898 Cawdor Road, Cawdor for the NSW Rural Fire Service Station comprising of 911.3m².
3. That the Mayor and General Manager be authorised to execute all documents in relation to the lease, including those requiring the Common Seal of Council.
4. That Council acknowledge that the current site may not be available in the future and that the process of liaising with the NSW Rural Fire Service for a replacement facility continue.