

**Report No. 13.2 Lease to Australia Skydive Pty Ltd**

**Directorate:** General Manager

**Report Author:** Paula Telford, Leasing and Licensing Coordinator

**File No:** I2021/429

5 **Summary:**

Australia Skydive Pty Ltd requests a new twenty (20) year lease with Council over part Lot 1 in DP 713023, Staceys Way Tyagarah to continue its skydive operations from the Tyagarah Airstrip.

10 Australia Skydive Pty Ltd is required by an agreed Remediation Action Plan to clean-up a jet A1 fuel spill that occurred on Lot 1 in DP 713023 and neighbouring Tyagarah Airfield land before 28 March 2018.

Lot 1 in DP 713023 is also included in Councils adopted Byron Shire Business and Industrial Lands Strategy.

15 As a result, to ensure that both Australia Skydive Pty Ltd remediates Lot 1 DP 713023 in accordance with the Remediation Action Plan, and that Council is not constrained from enacting its planning actions as detailed in its Byron Shire Business and Industrial Lands Strategy, it is proposed that a lease to Australia Skydive Pty Ltd is limited to fifteen (15) years.

20

---

**RECOMMENDATION:**

25 **That Council authorises the General Manager, under delegation, to enter into a lease with Australia Skydive Pty Ltd over part Lot 1 DP713023 Staceys Way Tyagarah on the following:**

- a) **term five years with option of two by five years to a total of 15 years;**
- b) **initial rent to be set by an independent market valuation to be provided by Valuers Australia Pty Ltd with annual rent increased thereafter by Consumer Price Index All Groups Sydney;**
- 30 c) **for the purpose of skydiving and associated activities carried out by the Lessee;**
- d) **acknowledgement that the Lessee owns all building improvements on the leased land;**
- e) **Lessee must, at its cost, be responsible for the following:**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.2

- 5
- i) all outgoing payments payable in respect of the leased land;
  - ii) all maintenance of the leased land including but not limited to any road, or carpark constructed on the leased land;
  - iii) all insurances including a minimum \$20 million public risk insurance noting Byron Shire Council as an interested party; and
  - iv) all consents, approvals and other authorisation to operate its business and improve its buildings on the leased land;
- 10
- f) Lessee must at its cost, removal its building improvements from the land and return the land to vacant possession at the end of the lease unless a new lease is negotiated to commence on the day after the end date of the lease; and
- 15
- g) special conditions that the Lessee must at its cost:
    - i) comply with the Remediation Action Plan annexed to the lease with any failure by the Lessee to comply with the Remediation Action Plan being grounds to terminate the lease;
    - ii) not sub-let any part of the leased land without the Lessor's written consent that will not be unreasonably withheld;
    - 20
    - iii) remove all unapproved buildings, shipping containers and other structures on the leased land within sixty (60) days of commencement of the lease with a failure to comply with this clause grounds to terminate the lease;
    - 25
    - iv) indemnify Byron Shire Council for all liabilities arising from the use of the leased land during and after the remediation of the land in accordance with the Remediation Action Plan with the Lessee obligations in this clause extending beyond the end of the lease;
    - v) not build any structures, temporary or otherwise in the dedicated easement in Lot 1 DP713023 for a water pipeline as detailed in the plan annexed to this lease;
    - 30
    - vi) ensure that all aviation fuel stored on the leased land is to be used by Australia Skydive Pty Ltd only; and
    - vii) obtain all necessary approvals from Byron Shire Council to operate a coffee cart or other retail food business in the leased land.

### Attachments:

35

- 1 Confidential - Confidential Attachment 1: Remediation Action Plan Precise Environment Consulting Environmental Scientists., E2021/64204

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.2

- 2 Confidential - Confidential Attachment 2: Submission from Australia Skydive Pty Ltd t/as Experience Co for a new 20year lease., E2021/64208
- 3 Confidential - Proposed lease Council to Australia Skydive Pty Ltd, E2021/75115

5

## Report

Council resolved **(15-470)** at its 18 September 2015 meeting:

2. *That Council authorise the General Manager to negotiate and grant a short-term lease with Australia Skydive Pty Ltd subject to the following:*
  - 5 a) *A lease term that aligns with time frame required to complete compliance, safety and subdivision works at the Aerodrome, but not more than 24 months;*
  - b) *Rent to be determined via market rental valuation in accordance with Council's adopted fees and charges;*
  - c) *Inclusion of lease clauses that:*
    - 10 i. *provide for requirements for removal or otherwise of any onsite infrastructure fixtures and fittings (including buildings) to achieve vacant possession of the site at the end of the lease term.*
    - 15 ii. *provide for use of the airfield, taxiways, runway, and other Aerodrome infrastructure in accordance Commercial Access Licence conditions that provide Council with the legal ability to collect fees and charges levied in accordance with Council's adopted Fees and Charges.*
    - 20 iii. *provide the proposed lessee, Australia Skydive Pty Ltd, with a lease termination clause for sufficient notice to vacate the premises, but not more than 6 months.*
- 25 3. *That Council, on expiry of the new short-term lease agreement with Australia Skydive Pty Ltd and completion of the necessary compliance and safety works, and finalisation of the subdivision required to support long-term lease arrangements at the Aerodrome, call for competitive long-term lease proposals for Part Lot 1 in DP 713023 known as Skydive Byron Bay being "plan for lease purposes" Lot 4 in DP 805678.*

In accordance with the above resolution Council entered into a one year lease with Australia Skydive Pty Ltd ('Australia Skydive') to expire on 31 December 2017. Australia Skydive continues to hold tenure under holding over provisions in the lease as a six monthly tenant.

- 30 Australia Skydive now trading as Experience Co requests a new twenty (20) year lease over Part Lot 1 in DP 713023 to continue it's skydive operations from the Tyagarah Airstrip.

- 35 Australia Skydive is additionally required to enter into a new Commercial Access Licence for use of the airfield, taxiways, runway and other aerodrome infrastructure with fees payable set out in Councils adopted Fees and Charges on commencement of the proposed lease.

### Background:

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.2

Part Lot 1 DP 713023 ('the Land') is Council owned land classified as operational. The Land is zoned RU2 Rural Landscape with an airstrip permitted with consent.

5 Council first leased the Land to RD Llewellyn in 1982 to operate an aircraft business from the Tyagarah Airfield. In 1983 RD Llewellyn obtained consent 83/257 and constructed an aircraft hanger incorporating a club room on the Land.

10 RD Llewellyn sold the business to partners WG Jamieson and RJ Palmer in 1996 with Council agreeing to transfer the lease. That partnership operated Byron Bay Skydiving Centre on the land between 1996 and 2003 after which the business name was changed to Skydive Byron Bay. In 2004 RJ Palmer became the sole lessee of the land to December 2010 by resolution **(09-1059)** and thereafter being the sole lessee of a series of short-term leases and holding over to 2014.

15 In 2014 Council resolved **(14-654)** to permit RJ Palmer to transfer the lease to Skydive Australia Group Pty Ltd with a new short-term lease entered into. In 2015 Council resolved **(15-470)** to enter into a one year lease with holding over to Australia Skydive commencing 1 January 2016.

### Land contamination:

20 Prior to 26 March 2018 a release of jet A1 fuel occurred from an underground fuel pipe linking an above ground fuel storage tank to refuelling bowsers on the Land. The spill incident affecting both the Land and neighbouring Tyagarah Airfield land. The spill has the potential of contaminating ground water and waters of the Cape Byron Marine Park, surrounding bushland and drainage lines via rainfall occurring prior to and after the unconstrained jet fuel release.

25 A subsequent clean-up notice was issued to Australia Skydive by Council. A Remedial Action Plan (refer to Confidential Attachment 1) has been agreed requiring Australia Skydive, its agent, employees or contractors to comply with a scheduled four step clean-up and monitoring process.

30 In 2019 Australia Skydive was granted development consent 10.20.19.352 for the installation of a new removable 38,800L above ground fuel tank on Lot 1 DP 713023. Consent conditions required the decommissioning and removal of the above ground tank subject to the original jet fuel spill. At the time of writing this report the original above ground fuel tank had not been removed.

### Future use of the land:

35 Council by resolution **(20-368)** adopted its Byron Shire Business and Industrial Lands Strategy October 2020 ('the Strategy') to facilitate and accommodate further business and industrial zoned land in the Shire. The Strategy includes part Lot 1 DP 713023.

As a result, planning advice suggests that the term of the proposed lease to Australia Skydive is limited to ten (10) years to ensure that Council is unrestrained from carrying out planned actions on the Land as set out in the Strategy.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.2

Further planning advice also suggests that Australia Skydive obligations under the Remedial Action Plan may be concluded within ten years.

5 However to ensure that Australia Skydive completes all its obligations under the Remediation Action Plan and fully remediates the part of the Land subject to the jet A1 fuel spill, Council staff recommend that the proposed leased term is a maximum fifteen (15) years.

#### Direct negotiation:

Council is not required to run a competitive offer for a new long-term lease in accordance with s55(3)(e) of the *Local Government Act 1993* (NSW).

10 This report recommends that Council directly negotiate a fifteen (15) year lease with Australia Skydive.

#### Terms of new lease:

Australia Skydive provided a written submission requesting a new twenty (20) year lease (refer to Confidential Attachment 2).

- 15 Council staff propose a new lease under the following conditions:
- a) over part Folio 1/713023 with acknowledgement that the Lessee owns all building improvements on the Land;
  - b) term five years with two options of five years to a total of 15 years;
  - c) rent to be set by an independent market valuation to be provided by  
20 Valuers Australia Pty Ltd with annually rent increased annually thereafter by Consumer Price Index All Groups Sydney;
  - d) for the purpose of skydiving and associated activities carried out by the Lessee;
  - e) Lessee must, at its cost, be responsible for the following:
    - 25 i) all outgoings payable in respect of the Land;
    - ii) all maintenance of the Land including but not limited to any road or carpark constructed on the Land;
    - iii) all insurances including a minimum \$20 million public risk insurance noting Byron Shire Council as an interested party; and
    - 30 iv) all consents, approvals and others authorisation to operate its business and improve its buildings on the Land;
  - f) Lessee must at its cost, removal its building improvements from the Land and return the Land to vacant possession at the end of the lease unless a new lease is negotiated to commence on the day after the end date of the lease; and
  - g) special conditions the Lessee must at its cost:
    - 35 i) comply with the Remediation Action Plan annexed to the lease with any failure by the Lessee to comply with the Remediation Action Plan being grounds to terminate the lease;
    - ii) not sub-let any part of the leased land without the Lessor's written consent that will not be unreasonably withheld;
    - 40 iii) obtain all planning approval from Byron Shire Council or remove all unapproved buildings, shipping containers and other structures on the

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.2

leased land within sixty (60) days of commencement of the lease with a failure to comply with this clause grounds to terminate the lease;

- iv) indemnify Byron Shire Council for all liabilities arising from the use of the leased land during and after the remediation of the land in accordance with the Remediation Action Plan with the Lessee obligations in this clause extending beyond the end of the lease;
- v) not build any structures, temporary or otherwise in the dedicated easement in Lot 1 DP713023 for a water pipeline as detailed in the plan annexed to this lease;
- vi) ensure that all aviation fuel stored on the leased land for is use by Australia Skydive Pty Ltd only; and
- vii) obtain all necessary approvals from Byron Shire Council to operate a coffee cart or other retail food business in the leased land.

A copy of the proposed lease is Confidential Attachment 3.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6	Optimise Council's property portfolio (SP)	1.2.6.9	Manage leases and contracts at Tyagarah Airfield
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.5	Manage Council's finances sustainably	5.5.1	Enhance the financial capability and acumen of Council	5.5.1.2	Support the organisation in identifying financial implications of projects, proposals and plans

## Recent Resolutions

- Resolution 14-654
- Resolution 20-368

## Legal/Statutory/Policy Considerations

Nil.

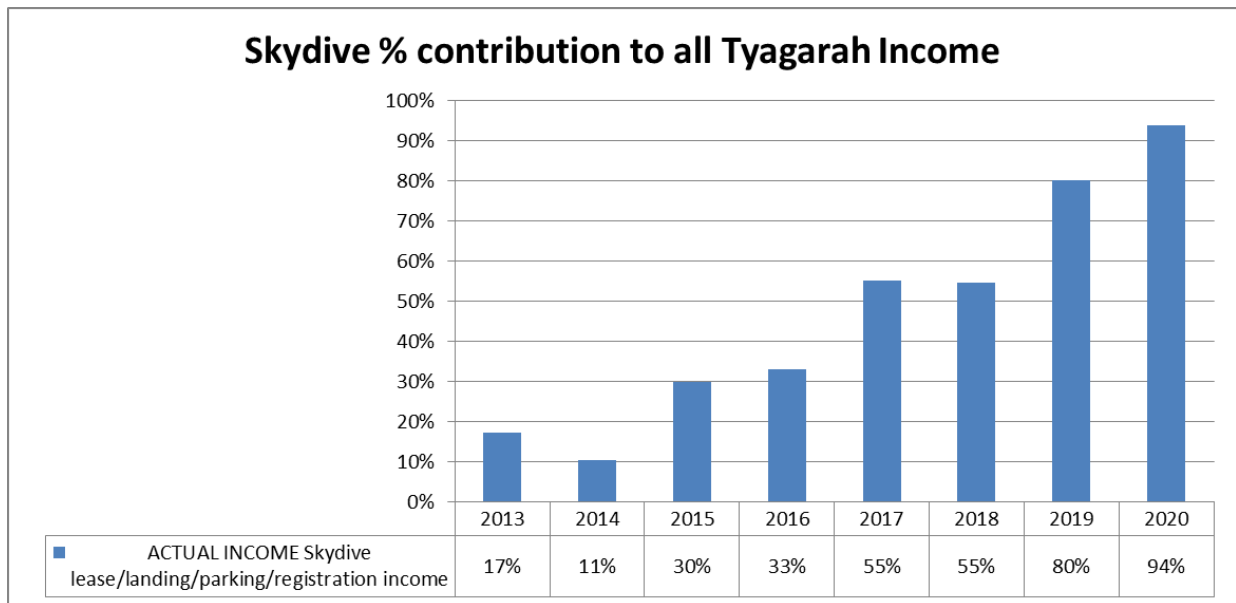
**Financial Considerations**

5 Initial rent to be established by an independent market rent valuation report to be provided by Valuers Australia Pty Ltd with rent increased annually thereafter by Consumer Price Index All Groups Sydney.

Ancillary uses of the airfield, Australia Skydive currently is paying landing, parking and registration fees of \$43,500 p.a exc GST being a contribution of 92% of all ancillary fees collected at Tyagarah Airfield. A further access licence fee linked to the proposed new lease will provide an additional \$20,000 annually.

10 Australia Skydive fees and current rent for use of the Tyagarah Airfield currently totals \$71,500 p.a exc GST and equal 80% of all Tyagarah Airfield Income. (Based on pre COVID figures – 2019)

15 Skydive operations at Tyagarah Airfield have significantly helped towards the current breakeven status of Tyagarah and will continue the trajectory towards positive cash flow for this Council and Community Asset.



**Consultation and Engagement**

20 Council provided Australia Skydive Pty Ltd with an email setting out the staff recommendations and reasons therefore. At the time of writing this report no response has been received.