


VICTORIA POINT LIBRARY LEASE REVIEW

Objective Reference: A1601508
Reports and Attachments (Archives)

Attachment: [Lease Schedule](#)

Authorising Officer: 
Louise Rusan
General Manager Community and Customer Services

Responsible/Report Officer: Greg Jensen
Group Manager Community and Cultural Services

PURPOSE

The purpose of this report is to recommend to Council to take the necessary steps to renew the lease for the Victoria Point Library for a further ten (10) years until 31 March 2026 as allowed under clause 18 of the current lease between Victoria Point Lakeside Pty Ltd (Lessor) and Redland City Council (Lessee).

BACKGROUND

Following a report to Council at its Planning and Policy meeting dated 16 April 2004, Council resolved at its General Meeting dated 28 April 2004 to enter into a lease arrangement with Victoria Point Lakeside Pty Ltd for premises situated at 11-17 Bunker Road, Victoria Point (the current site) for a public library. The lease commenced on 1 April 2006 for a period of 10 years with an option to renew for a further 10 years.

On 11 February 2016, Council received a Lease renewal proposal from the Lessor for consideration to renew the lease for a further 10 years.

ISSUES

The current Victoria Point Library has been operating successfully for 10 years and has become well established as an important service in Victoria Point. The library also serves the southern Redlands community. The library serves as a community hub for community organisations, workshops, meeting spaces, access to technology, information and other resources to support learning for all.

Successful partnerships have been established with local businesses, child care centres, community health, retirement villages and other organisations to implement grant funded programs such as *Libraries2U* and children 0-5 years *First 5 Forever*.

Current membership at the Victoria Point Library is 24,254 which is almost twice the population of the Victoria Point catchment area and this suggests that borrowers from Redland Bay and Mt Cotton are also using the library.

Annual visitation over the last 10 years is 1,788,071 and 3,599,605 items have been borrowed from the library from this location. This does not include virtual library loans by Victoria Point residents since loan statistics for e-books and e-magazines are calculated centrally.

The population catchment for this service is Victoria Point 14,798 (2011). When including Redland Bay with 13,642 (2011) and Mt Cotton 4,779 (2011) the total population catchment is 33,219.

If the lease is not renewed this would require residents of Victoria Point and suburbs south to travel to either Cleveland Library or Capalaba Library to access the services they currently enjoy.

Having the library located in this important centre of community activity is a successful enterprise for both the library and adjoining businesses.

The original report for Council titled, "Victoria Point Library Review of Library Feasibility Study" from May 2003 identified that the shopping precincts at the intersections of Cleveland-Redland Bay Road and Colburn Avenue/Bunker Road as being the most advantageous sites due to them having a major road frontage, access to public transport, opportunity for expansion, ground floor location and proximity to a shopping precinct.

The study went on further to determine whether Council should capitalise land, building and fit out or lease land and building and capitalise fit out.

The report recommended the current site as one of 2 options and that Council lease the building for a library. The report recommendations were adopted at Council's General Meeting on 13 August 2003 and also resolved to enter into discussions with the owners of the shopping precincts for leasing.

This culminated in the current site being leased for 10 years.

During the term of the current lease an analysis was undertaken by Social Infrastructure Solutions in 2013 on options for the Victoria Point Library. These included continued leasing at the current or another site, purchase of the existing tenancy and other site options for construction of a new library. The analysis concluded that it would be preferable for Council to purchase the existing tenancy if possible and to renew the current lease to allow that option to be further explored.

Price Waterhouse Coopers provided advice in 2014 relating to potential leasing options at the 3 major shopping centres at Victoria Point, i.e. Victoria Point Lakeside, Town Centre Victoria Point and Victoria Point Shopping Centre. In discussions with the owners of the centres, only the Victoria Point Lakeside had capacity of offering suitable space for the library. The advice also recommended that consideration be given to purchase of the existing tenancy but that it may not be viable given that the centre is not currently strata titled.

Subsequent discussions with the owners of Victoria Point Lakeside revealed that purchase of the existing tenancy was not their preference and that the tenancy issues surrounding strata title would make it difficult and expensive to pursue. Additional discussions have been held where the owners have agreed that should the shopping centre be redeveloped then Council would have an option to negotiate through mutual agreement development of its own facility within the redevelopment and purchase on reasonable commercial terms and for a fair

market price. Under that event the lessor will agree to accept surrender of the lease from the lessee.

To enable that option to come to fruition it is necessary to renew the current lease.

STRATEGIC IMPLICATIONS

Legislative Requirements

Lease of the subject property supports Council's strategic direction of Strong and Connected communities "supported through a full range of services, programs, organisations and facilities...."

Risk Management

Leasing of the site does not increase Council's current risk exposure. The maintenance and management of the facility is done by the owners so some risk is transferred from Council.

Financial

Annual cost of the lease is contained in the attached Lease Schedule. Budget exists in the Libraries annual operating budget to cover the lease costs. Council's Principal Property Consultant has advised that based on his analysis, the rent is reasonable for the location. Given the other benefits of the precinct, the lease is reasonable.

People

No people issues have been identified.

Environmental

There are no environmental implications identified from the leasing of the centre.

Social

No Social implications are identified by leasing of the site.

Alignment with Council's Policy and Plans

Lease of the property supports Council's strategic direction under the current Redland Library Service - A ten year plan June 2007.

CONSULTATION

The Group Manager Community and Cultural Services has consulted with Council's Principal Property Consultant and Services Manager Library Services.

OPTIONS**Option 1:**

That Council resolves to:

1. Confirm its intention to renew the lease of property at the Victoria Point Lakeside Shopping Centre, 11-17 Bunker Road, Victoria Point for the purpose of a public library;
2. Agree to enter into a lease arrangement with the Lessor, Victoria Point Lakeside Pty Ltd generally in accordance with the Lease Renewal Proposal document submitted to Council dated 11 February 2016, and subject to final negotiation; and
3. Authorise the Chief Executive Officer to execute all documents related to the above.
4. Ensure that this Report and Attachment remain confidential.

Option 2:

That Council resolves to:

1. Not renew the lease of property at the Victoria Point Lakeside Shopping Centre, 11-17 Bunker Road, Victoria Point for the purpose of a public library;
2. Cease library operations at Victoria Point Lakeside Shopping Centre.

OFFICER'S RECOMMENDATION

That Council resolves to:

1. **Confirm its intention to renew the lease of property at the Victoria Point Lakeside Shopping Centre, 11-17 Bunker Road, Victoria Point for the purpose of a public library;**
2. **Agree to enter into a lease arrangement with the Lessor, Victoria Point Lakeside Pty Ltd generally in accordance with the Lease Renewal Proposal document submitted to Council dated 11 February 2016, and subject to final negotiation; and**
3. **Authorise the Chief Executive Officer to execute all documents related to the above.**
4. **Ensure that this report and attachment remain Confidential.**

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Type/Dealing No of Instrument/Document being amended	Lodger (Name, address, E-mail & phone number)	Lodger Code
Type of Instrument/Document LEASE	McCarthy Durie Lawyers PO Box 178 Cleveland QLD 4163 Cleveland QLD 4163 Tel: 07 3370 5100 163638:SJG	BE223A
Dealing Number 710365363		

2. Lot on Plan Description	Title Reference
LOT 21 ON SP 179472	50608912

3. Grantor/Mortgagor/Lessor
VICTORIA POINT LAKESIDE PTY LTD ACN 106 781 757

4. Lessee
REDLAND CITY COUNCIL

5. Amendment of Lease Details (Only to be completed for an amendment of the term and/or option of lease)

Expiry date: 31/03/2026

Option/s#: NIL

Insert nil if no option or insert option period (eg 3 years or 2 x 3 years etc)

6. Request/Execution

The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with: - ~~item 5~~; *item 5 and attached schedule; ~~attached schedule~~.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Victoria Point Lakeside Pty Ltd ACN 106 781 757

.....signature

.....Director

.....full name

.....qualification

Execution Date / /

.....Director

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner JP, C Dec)

Lessor's Signature

Redland City Council

.....signature

.....full name

.....qualification

Execution Date / /

.....

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP,C Dec)

Lessee's Signature

Title Reference 50608912

BACKGROUND:

- A. By Lease (called the Lease and described in the Reference Schedule) the Lessor granted to the original Lessee a Lease of the Premises for the original term set out in the Reference Schedule at the rent and subject to the covenants contained in the Lease.
- B. The Lessee has requested, and the Lessor has agreed, to vary the terms of the lease in accordance with the terms of this Deed.
- C. The Lessor and Lessee wish to record their agreement as to the rental to be paid by the Lessee to the Lessor for the renewed term as well as any modifications to the Lease which are necessary as a result of the renewed term.

THIS DEED EVIDENCES:

1. DEFINITIONS

- 1.1 "Parties" means each of the Lessor and Lessee and includes their personal representatives and successors in title depending on the context.
- 1.2 "Party" means either of the Lessor and Lessee and includes their personal representatives and successors in title depending on the context.
- 1.3 "Original Lessee" means the original Lessee set out in the Reference Schedule being the party to whom the Lessor originally granted the Lease in respect of the premises.
- 1.4 "Variations" means the variations to the Lease set out in the Reference Schedule to this document.

2. LEASE

- 2.1 The Lessor leases to the Lessee and the Lessee accepts a Lease of the premises for the renewed term on the terms and conditions set out in the Lease as varied by this document.

3. VARIATIONS

- 3.1 From the first day of the renewed term the Lease is varied by the variations set out in the Reference Schedule.

4. LESSOR AND LESSEE COVENANTS

- 4.1 The Lessor and the Lessee covenant with each other that they will:
 - 4.1.1 Respectively perform and observe the covenants and stipulations contained in the Lease as if the same had been repeated in this Deed in full subject only to the modifications set out in the Deed.

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- 4.1.2 Pay each amount payable by the Parties under the Lease when due (including the rent reserved by the Lease as amended by the variations).

5. JOINT AND SEVERAL LIABILITY

- 5.1 This Deed shall bind the Lessor, Lessee and the Guarantors as well as their respective executors and administrators and successors in title.
- 5.2 This Deed shall bind each and every Lessor, Lessee and Guarantor jointly and severally.

6. LEGAL COSTS AND DUTY AND FEES

- 6.1 All duty assessed, and any registration fees or mortgagee consent fees as payable in respect of this Deed shall be paid by the Lessee.

7. GENERAL

7.1 Interpretation

In this Deed, where the context permits or unless otherwise provided

- 7.1.1 Words importing the masculine, feminine or neuter gender shall include the other genders and words importing the singular shall include the plural.
- 7.1.2 Words denoting individuals or persons including body corporate and trust and vice a versa
- 7.1.3 Headings are for convenience only and do not affect interpretation
- 7.1.4 Reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Deed
- 7.1.5 Reference to any document or agreement or deed includes reference to the document or agreement as amended, notated, supplemented, varied or replaced from time to time
- 7.1.6 Reference to any amount of money is a reference to the amount of lawful currency of the Commonwealth of Australia
- 7.1.7 Reference to a time and date in connection with the performance of an obligation by a participant is a reference to a time and date in Brisbane, notwithstanding the obligation is to be performed elsewhere
- 7.1.8 If under this deed, the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a Public Holiday in the place in which the Act, matter or thing is to be done, then that act, matter or thing will be done on the next succeeding day which is not a Saturday, a Sunday or a Public Holiday.
- 7.1.9 Reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued, under the legislation.

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7.2 Severability

7.2.1 If any provision of this Deed shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this Deed will not be affected and will continue in full force and effect.

7.3 Jurisdiction / Governing Law

7.3.1 This Agreement shall be governed by and construed in accordance with the Laws of Queensland.

7.3.2 The parties each irrevocably and unconditionally submit to the non exclusive jurisdiction of the Courts of Queensland whether State or Federal and each waives any immunity or any objection it may have to any action in those Courts and to a claim that any action has been brought in an inconvenient forum or to those Courts not having jurisdiction.

7.4 Further Assurances

Each party must do all things necessary to give full effect to this Deed and the transactions contemplated by this Deed.

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REFERENCE SCHEDULE

- ITEM 1 LEASE: Dated 27 April 2006 commencing on 1 December 2005 and terminating on 30 November 2015
- ITEM 2 PREMISES: Shop no: Shops F00 and F17 Victoria Point Lakeside, shopping centre
Address: Bunker Road, Victoria Point
- ITEM 3 ORIGINAL TERM: Ten (10) years
- ITEM 4 ORIGINAL LESSEE: Not applicable
- ITEM 5 RENEWED TERM: Ten (10) years commencing on 1 April 2016 and terminating on 31 March 2026.
- ITEM 6 VARIATIONS: The Lease is varied as follows:
- Item 6 of the Form 7 – Term of Lease:** is amended to read:
Commencement Date: 1 April 2016
Expiry Date: 31 March 2026
Options: Nil
 - Item 7 of the Form 7 – Rental / Consideration:** is amended to read:
\$519,278.70 plus GST for the first year of the further term and thereafter as varied in accordance with the terms of the Lease – see Schedule
 - Item 4 of the Reference Schedule – Term:** is amended to read:
Ten (10) years commencing on 1 April 2016 and terminating on 31 March 2026.
 - Item 5 of the Reference Schedule – Option to Renew:** is amended to read:
Not applicable
 - Item 7 of the Reference Schedule – Rent:** is amended to read:
\$519,278.70 plus GST for the first year of the Further Term
 - Item 8 of the Reference Schedule – Fixed Review Date:** is amended to read:
1 April 2017, 1 April 2018, 1 April 2019, 1 April 2020, 1 April 2022, 1 April 2023, 1 April 2024 and 1 April 2025

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7. **Item 10 of the Reference Schedule – Outgoings:** is amended to read:

Not applicable

8. **Item 11 of the Reference Schedule – Market Review Date:** is amended to read:

1 April 2021

9. **Clause 11 of the Lease – Workplace Health and Safety Act:** is amended to read:

11. WORK HEALTH AND SAFETY ACT

11.1 Management and Control

11.1.1 The Lessee acknowledges and agrees that, for the purposes of any works carried out in the Premises, the Lessee is the person conducting the business or undertaking in relation to such works and that the Lessee is the person with management or control of the works.

11.1.2 The Lessee must, to the extent that it is personally responsible to do so, comply with the *Work Health and Safety Act 2011* (Qld) (“the Act”) and use reasonable endeavours to ensure that any other person involved in carrying out the works complies with the Act.

11.2 Co-Operation

11.2.1 Notwithstanding clause 11.1, in order to fulfil any of the Lessor’s obligations under the Act with respect to the works, the Lessee agrees to:

- (a) co-operate with the Lessor; and
- (b) use reasonable endeavours to ensure that any other persons involved in carrying out the works also co-operate with the Lessor;

to consult with, exchange information and work together with the Lessor in a co-operative and co-ordinated way to ensure that the Lessor’s Work Health and Safety obligations with respect to the works are fulfilled.

11.3 Indemnity and Liability

11.3.1 The Lessee indemnifies the Lessor against any liability of the Lessor under the Act as owner.

11.3.2 The provisions of this clause apply regardless of whether the work is to be carried out under the supervision of the Lessor or any person nominated by the Lessor.

10. **Clause 18 of the Lease – Option of Renewal:** is deleted entirely and is of no further effect.

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11. **Clause 22.1 of the Lease – Reduced Rent Period:** is deleted entirely and is of no further effect.
12. **Clause 23 of the Lease – Negotiations in Good Faith:** is inserted as follows:

23. NEGOTIATIONS IN GOOD FAITH

23.1 The Lessor and the Lessee agree that, if at any time during the continuance of this Lease the Lessor wishes to add to or vary or modify or alter or redesign or reconstruct or redevelop or extend the whole of the Centre or any part thereof, where such redevelopment makes it possible for the Lessee to acquire the freehold to a reasonably comparable alternative premises within the Centre, then the Lessor and the Lessee mutually agreed to each negotiate in good faith for the sale of that alternative premises to the Lessee on reasonable commercial terms and for a fair market price. The Lessor agrees that, in the event that such a sale does become possible, then upon settlement of such sale and commencement of the Lessee's business from the alternative premises, the Lessor agrees to accept a surrender of this Lease from the Lessee.

23.2 For the avoidance of doubt;

23.2.1 the Lessee acknowledges that the Lessor does not currently have any design for the redevelopment of the Centre during the Term of the Lease; and

23.2.2 nothing in this Clause 23 will be construed to give rise to any obligation for the Lessor to in any way pursue, use best or reasonable efforts, or to otherwise endeavour upon any redevelopment of the Centre.

13. **Clause 24 of the Lease – Lessor's Works:** is, subject to the due execution of this Deed by the Lessee, inserted as follows:

24. LESSOR'S WORKS

24.1 The Lessor agrees that, the Lessor will at the Lessor's sole expense carry out the following works:

24.1.1 Construct an awning for Rear of Building F to cover Library External Entry, including:

- (a) Design of Steel of Awning;
- (b) Awning Steel Works;
- (c) Roof, Flashings, Materials, Downpipes;
- (d) Construction and Installation;
- (e) Redland City Council Lodgement Fees;
- (f) Certification Costs; and
- (g) Project Management.

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24.1.2 Carry out Internal Office Construction as per plan supplied, including:

- (a) Internal Walls, Plasterboard, Doors and Additional Glass
- (b) Construction and Installation
- (c) Painting
- (d) Electrical and Fire Alarm Works
- (e) Redland City Council Lodgement Fees
- (f) Certification Costs
- (g) Project Management

24.1.3 Update the External Red Directory Signs

24.1.4 Install additional Linemarking and Signage for 20min Loading Bay at Rear of Library