

### **5.3. TRUSTEE LESSEE REQUEST TO PERMANENTLY CONSTRUCT FRONT FENCING ON PART OF LOT 175 ON SP241399**

<b>REPORT AUTHOR</b>	Property Services
<b>MANAGER</b>	Terry Farrelly, Manager People and Community Services
<b>DEPARTMENT</b>	People and Community Services

#### **RECOMMENDATION**

That Council resolves to:

- 1. Request Trustee Lessee to remove improvement (gate extension and gate) over Part Lot 175 on SP 241399 due to the improvement's inconsistency with the purposes of the Trustee Land that is open space and recreation purposes.**
- 2. Advises Trustee Lessee that this improvement is not required by the business to demonstrate compliance with the current restrictions on business activities and undertakings for COVID-19. The implemented measures should be site specific and relevant to the premises design/layout, any alterations required for better management of customer flow can be achieved without impacting the nearby public beach access.**
- 3. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters associated with breach notice sent to the Lessees of Part Lot 175 on SP 241399**

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#### **EXECUTIVE SUMMARY**

Trustee Lessee is requesting permission for the improvement (gate extension and gate) added over Part Lot 175 on SP 241399 to remain due to being part of the business Covid safe plan.

As per Trustee Lease any improvement to the premises requires Council approval. The improvement is not consistent with Council's land management plan for this Trustee Land and other improved measures can be undertaken to address this premises Covid safe plan.

#### **BACKGROUND**

A café premises is located on Council's Trustee land currently under a Trustee Lease over part of Lot 175 on SP 241399 in Thornton Beach.

Council was notified that the Trustee Lessee fenced off and added a locked gate to the public access path to the beach and that this improvement is affecting other businesses.

The improvement was verified by officers and discussed on site with Lessees (*Attachment 1*). On site, Lessee's explained that improvement was added to assist the business with the Covid safe plan.

Internal consultation concluded that the improvement does not assist with Covid 19 safe plan; it is not consistent with the purpose of the land and increases difficulty for disabled access - refer to the comments section below.

Following internal consultation, on 7 September 2020 a letter was sent requesting Lessees to remove fence extension and gate within 21 days as the improvement was added without any permission by Council and is contrary to the Trustee Lease Clause 7.1.1. (*Attachment 2*).

As a response to this letter Lessees requested permission from Council for the improvement to remain due to a Covid related reasoning (*Attachment 3 and Attachment 4*).

## COMMENT

The internal Council consultation comments below are for consideration:

Council Officers do not support the notion that such measures are required by the business to demonstrate compliance with the current restrictions on business activities and undertakings for COVID-19.

The implemented measures should be site specific and relevant to the premises design/layout, any alterations required for better management of customer flow can be achieved without impacting the nearby public beach access.

The idea of reducing a premises with two existing access points to a single point for entry and exit actually increases the potential for close contact, it is preferable to have a dedicated entry and a dedicated exit if this can be achieved.

Considering that there are 4 other public beach access points in the vicinity, the closure of one will do little to prevent customers walking up to the rear of the café from the beach. Adequate signage should be erected to clearly display entry and exit points, floor markings and barriers on the deck can also be utilised to improve customer flow and prevent unauthorised access. It is also important to consider the maximum capacity of the premises when large groups arrive as there may be periods when the capacity is exceeded and groups need to queue or congregate for a period of time prior to being allowed to enter.

The Trustee Leased area is located on Reserve Land, the primary use of this land under the Land Management Plan is for open space and recreation purposes. As per Land Management Plan, there is no intention to modify or restrict the primary use of the trust land, other than that part of the land occupied by the café. In the management of the trust land the Trustee must observe its duty of care for the trust land and fulfil its statutory obligations in accordance with the *Land Act 1994*. Blocking the beach access is restricting access to the land, this is inconsistent with the land management plan and Council's duty of care responsibility.

Further, subject to Trustee Lease clauses below Trustee Lessee must not make improvements to the premises without Council's permission:

*Clause 6.2. Without limiting clause 6.1, if the purpose of this Trustee Lease is inconsistent with the purpose for which the Trust Land was dedicated or granted, all improvements built or placed by the Trustee Lessee on the Premises must first be approved by the Minister under section 59 (2) of the Act. - State's Mandatory Terms for a Trustee Lease.*

*Clause 7.1.1. Subject to clause 6.2 of the mandatory standard terms document, unless otherwise permitted or required by this trustee lease, the trustee lessee must not make improvements, alterations, or additions to the premises, or allow them to be made, without trustee permission. - Council Standard Terms Document.*

Further, the deck on the café is raised and if this deck is the only way to access the beach this creates further difficulties to disabled access to the beach.

## PROPOSAL

That Council:

1. Requests Trustee Lessee to remove improvement (gate extension and gate) over Part Lot 175 on SP 241399 due to the improvement's inconsistency with the purposes of the Trustee Land that is open space and recreation purposes.
2. Advises Trustee Lessee that this improvement is not required by the business to demonstrate compliance with the current restrictions on business activities and undertakings for COVID-19. The implemented measures should be site specific and relevant to the premises design/layout, any alterations required for better management of customer flow can be achieved without impacting the nearby public beach access.
3. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters associated with breach notice sent to the Lessees of Part Lot 175 on SP 241399.

## FINANCIAL/RESOURCE IMPLICATIONS

Trustee Lessee is responsible for any associated costs to the removal of the improvement.

## RISK MANAGEMENT IMPLICATIONS

If the discussed improvement is not removed the Trustee's management of the land is inconsistent with the Land Management Plan. In the management of the trust land the Trustee must observe its duty of care for the trust land and fulfil its statutory obligations in accordance with the *Land Act 1994*.

## SUSTAINABILITY IMPLICATIONS

**Economic:** Improvement may turn away visitors to this beach area and may affect other businesses.

**Environmental:** Nil.

**Social:** Ensuring Council follows the correct Trustee management guidelines and Acts ensures that land continues to be available to Council as a Trustee of the land to be made available for the community to be used now and in the future.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

**Goal 1** - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Custodian** Council owns and manages infrastructure, facilities, reserves, resources and natural areas. In fulfilling its role as custodian, Council will be mindful of the community, the economy, the environment, and good governance.

## CONSULTATION

**Internal:** Environmental Health and Property teams.

**External:** Nil

## COMMUNITY ENGAGEMENT

Nil.

## ATTACHMENTS

1. Improvement Over Part Lot 175 on SP 241399 Photos 08.07.20 [5.3.1 - 1 page]
2. Letter to Trustee Lessee Addressing Improvement 07.09.20 [5.3.2 - 1 page]
3. Letter Re Request for Alterations 15.09.20 [5.3.3 - 1 page]
4. Letter Re Request for Alterations 17.09.20 [5.3.4 - 2 pages]



### Improvement Over Part of Lot 175 on SP241399



Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

YOUR REF:  
OUR REF:RJD #970244

07 September 2020



Dear Sirs

**RE: Council Trustee Lease: Reserve for Recreation and Camping 175**


Council is concerned that access to Thornton Beach has been blocked by the extension of an old fence line and installation and locking of a gate.

This action has been taken without any permission by Council and is contrary to the provisions of Clause 7.1.1 of the Trustee Lease.

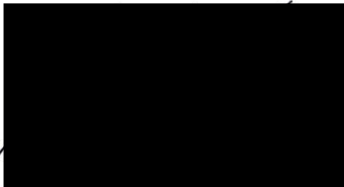
The Council requires the fence extension and gate to be removed within twenty one (21) days of the date of this letter.

This letter constitutes a notice under Clause 19 of the Trustee Lease and the removal of the fence extension and gate must have been completed within the 21 day period.

Failure to do so will oblige Council to take further action for removal of the fence extension and gate. Council reserves all of its rights under the Trustee Lease but is hopeful no further action will prove necessary.

Should you have any additional concerns please do not hesitate to contact Team leader Property, 

Yours faithfully



**MANAGER PEOPLE AND COMMUNITY SERVICES**



A certified ECO Destination by  
Ecotourism Australia.



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 SEPTEMBER 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

**RE : COUNCIL TRUSTEE LEASE RESERVE FOR RECREATION AND CAMPING**

We hereby request permission from council to extend the current fence line and install a gate. As per Clause 7.1.1 of the trustee lease.

This request is retrospective as the fence line and gate have already been erected.

The above alterations were made due to the global pandemic emergence. Measures were taken for the security and wellbeing of our customers, our team and our community.

These measures were put in place due to the advice being given by Queensland's Chief Medical Officer, Liquor Licensing Queensland, the Queensland Government and Councils own Environmental Health Department.

We apologise for not contacting the property department to request these security measures prior to the gate and fence extension being erected.

It had never occurred to us that we would be in breach of 7.1.1 of the trustee lease as we had not considered these actions to be improvements or alterations just COVID-19 precautions.

We promise that we will be more diligent in the future and contact the property department for consent prior to making any future improvements or alterations.

Therefore we request permission from your department to allow the fence line and gate to remain.

Due to circumstances outlined in the letter we do not consider this request to be unreasonable.

Yours Sincerely

[REDACTED]  
[REDACTED]

[REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

YOUR REF RJD#970244

17 SEPTEMBER 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

Further to your letter of 7th September 2020.

We sincerely apologise for the breach of Clause 7.1.1 of the trustee lease.

Our actions regarding the fence line and gate were taken due to the COVID-19 pandemic and we did not realise or consider at the time, those actions being improvements or alterations. (Clause 7.1.1)

Since we have received your notice. We have formally applied to Council's property department for the "improvements/alterations" you have related to in your notice. We are hoping that permission will now be granted. And the new gate and fence line will be approved as the request in not unreasonable.

Further, to address your concerns.

The gate and fence line were installed to limit the impact of customers entering the premises without first sanitising and signing the Queensland COVID-SAFE tracing register.

Prior to us opening the cafe (and prior to COVID-19), patrons would park-up and enter the premises from the deck as well as through the cafe itself.

When the ferry lands on the north side of the Daintree River and offloads its passengers, 30 minuets later we have 50-60 and sometimes more, customers arriving in an instant at our front door.



And this is exactly where we want them! At the front door! Signing the register and sanitising.

If the fence and gate were to be removed customers could and would enter via the deck and invade the premisses, then leave without a trace.

This contradicts strategies highly recommended by the Queensland Government, the Chief Medical Officer, Liquor Licensing Queensland and Councils own Environmental Health Department.

When we limit the entry point to just one, then all checks and safeguards are in-place and customers do not enter and leave the premisses without a trace due to the tracing register.

With this plan in-place we feel we are fulfilling our obligations in keeping our unique part of Australia Safe. Whilst the threat continues to escalate elsewhere.

Regarding access to Thornton Beach.

You have stated in your letter, that we have blocked access to the beach by our actions.

Access to Thornton Beach is still available via the cafe while the gate is locked and via the open and unlocked gate when the cafe is closed.

There is also ample access to the beach adjacent to the cafe, 2 access points south and 2 more to the north, all with car parking facilities.

I sincerely hope once the departments concerned have digested all of the relevant information that we have offered in this letter of the reply to the notice. The gate and extended fence line will be allowed to remain. Thus allowing us a safer working environment, as council have also strived for within their own workplace.

Hoping to receive a reply prior to the 21 days given in the notice.

Yours Sincerely

