

5.8. FURTHER LEASE TO PORT DOUGLAS TENNIS CLUB INC, PART OF LOT 18 ON PTD20939, DAVIDSON STREET, PORT DOUGLAS

REPORT AUTHOR	Robert Donovan, Team Leader Property Services
MANAGER	Terry Farrelly, Manager People and Community Services
DEPARTMENT	People and Community Services

RECOMMENDATION

That Council:

- 1. Offers a further trustee lease to Port Douglas Tennis Club Inc (Lessee) over Lot 18 on PTD20939, Davidson Street Port Douglas, for the purposes associated with the playing and coaching of tennis and basketball, subject to but not limited to the following terms and conditions:**
 - a. for a term of ten (10) years to commence from a date to be determined;**
 - b. rent for the first year of the term to be \$110.00 (including GST) and subject to annual review in accordance with the Brisbane All Groups Consumer Price Index (CPI);**
 - c. lessee to be responsible for all rates and charges, including any costs of water usage on the premises;**
 - d. lessee to be responsible for all reasonable costs associated with the preparation and registration of the lease;**
 - e. Council's Standard Terms Document for Trustee Leasing, registered under dealing number 717940164 and amended as detailed in this report; and**
 - f. The State's (represented by the Department of Natural Resources Mines & Energy) registered mandatory standard terms document for Trustee Leasing registered under dealing number 711932933.**
- 2. Delegates authority to the Chief Executive Officer in accordance with Section 257 of the *Local Government Act 2009* to determine and finalise any and all matters associated with the lease.**

EXECUTIVE SUMMARY

The Port Douglas tennis Club Inc (Club) previously held a ten (10) year lease over part of Lot 18 on PTD20939, Davidson Street Port Douglas. At the time that the lease expired in late December 2018, Council officers placed the Club on Trustee Permits, pending negotiation of the terms of the new lease.

The Club has now accepted the proposed terms, with an agreed amendment in their favour with respect to responsibility for maintenance issues associated with the existing basketball court, which is situated on the premises.

Council's standard terms document for trustee leasing will need to be amended in order to reflect maintenance responsibilities of the Lessee, with respect to the basketball court which forms part of the leased area.

This report is prepared in order to gain Council approval to issue a further trustee lease to Port Douglas tennis Club Inc.

BACKGROUND

Land described as Lot 18 on PTD20939, Davidson Street Port Douglas is Reserve land, held in trust by Douglas Shire Council. Since January 2009, the Club has held tenure over 7065 m² of this Reserve land (Reynolds Park) for the purposes associated with the playing and coaching of tennis and basketball.

When the lease expired in December 2018, Council officers consented to allow the Club to continue to occupy the premises by way of Trustee Permits, until such time that the terms of the new lease could be developed and agreed upon by both parties.

Negotiations on the new lease commenced in October 2018 and since that time, Council officers have been engaged in discussions with the Club regarding their acceptance of the proposed terms of Council's standard terms document for trustee leasing.

The outcome of these discussions has resulted in the Club expressing their general acceptance of these terms, however they have also expressed their concerns with renewal of the lease, on similar terms to the expired terms to the expired lease, which included a requirement to keep and maintain a basketball court within the leased area. Hence the Club would like to renew their lease on terms which allowed for re-development of this basketball court into a tennis court.

Council records indicate that the previous lease agreement included this basketball court within the leased area, due to the existence of an agreement which was signed back in 2006, between the Port Douglas Tennis Association and the Port Douglas Basketball Club Inc. (copy attached to this report). It should be noted that part of this agreement contained the following clauses:

- The surplus assets of the Port Douglas Basketball Club Inc, including the sum of \$10,000 from the investment account and other assets including basketball courts and clubrooms shall be transferred to the Douglas Tennis Association Inc on the cessation of the Port Douglas Basketball Club Inc: and
- Douglas Tennis Association Inc, shall during the life of its Incorporation provide and maintain at least one paved Australian standard size basketball court with regulation backboards and hoops for unrestricted public access. In the event that the existing basketball court is moved to make way for another tennis court a new standard size basketball court with regulation backboards and hoops would be constructed at the same time.

In accordance with the Club's advice attached to this report, the Club now requests that the abovementioned agreement be extinguished by Council and the Club be then allowed to develop the existing basketball court into a 4th tennis court.

The Club has also requested that if removal of the basketball court is not achievable, they request Council's suggestion on how to move forward.

COMMENT

The Club's activities help to promote the important recreational activity of tennis within the Douglas Shire community. Comment received from the Club on their membership and viability are as follows:

- Current Members – 47 seniors and 8 juniors. It is usual for club membership to increase substantially around the middle of each year. Membership enables players to participate in the club championships.
- Casual hire fees for the courts are \$15.00 per hour plus \$5.50 per hour for lights if used.
- During the school term, the courts are used for coaching of juniors on Tuesday and Thursday afternoons, plus adults on Tuesday night.
- There are social evenings every Monday, Thursday and Friday from 6.00pm and every Wednesday morning from 9.00am.
- There are regular social tournaments on weekends throughout the year.

During the term of the previous lease, the Club maintained the leased premises in a sound and well presented condition and they actively sought grants to improve the clubhouse and assets belonging to the Club. In recent years the Club has invested in excess of \$190,000 into site improvements which include upgrades to courts, fencing, drainage and lighting, as well as clearing vegetation and repainting the clubhouse.

In order to satisfy the requirements of the Club for an additional tennis court and to ensure that the existing basketball court is not lost from this Reserve, Council officers have suggested to the Club, that the basketball court could be developed into a multi-use court, which included both tennis and basketball on the same court. It is understood by Council officers, that grant applications for multi-use facilities, have a much higher rate of a successful outcome.

PROPOSAL

This report is prepared in order to obtain Council approval for the issue of a further trustee lease to the Port Douglas Tennis Club Inc over part of Lot 18 on PTD20939, Davidson Street Port Douglas for the purposes associated with the playing and coaching of tennis and basketball.

In the interests of finalising the lease renewal negotiations which have been ongoing since October 2018, officers recommend that the terms of the new lease allow the Tennis Club to seek grant funding and use its own funds to turn the existing basketball court into a multi-use court for both tennis and basketball, on the understanding that the Club only has exclusive use of the multi-purpose court during club tournaments, competition matches and social nights. Outside of these times, the proposed new multi-purpose court would be required to be available to the public 24/7, for use as a basketball court.

With respect to the fact that part of the proposed leased area is currently a basketball court, inherited by the Club through a signed agreement with a former basketball club, it is further recommended that the Lessee's responsibilities to keep this court in good and substantial repair order and condition, should not apply until such time that this court is developed into a multi-use court.

In the meantime, officers also recommended that Council absorb all future costs associated with maintenance of the existing basketball court, until such time that it gets re-developed. It is anticipated that these costs will be minimal, apart from replacement of the current perimeter fence, which is currently in a poor and dangerous condition. A budget bid of \$11,000 has been made for replacement of this fence, in Council's 2019/2020 CAPEX works program.

Should Councillors agree to the recommendations detailed above, Council standard terms document for trustee leasing will be amended accordingly.

FINANCIAL/RESOURCE IMPLICATIONS

It is recommended that the Lessee will be responsible for reasonable costs associated with the preparation and registration of the lease.

Under the terms of the proposed lease, the Lessee will be responsible for Council rates and charges including water usage associated with the premises. As the Lessee is eligible for rates based financial assistance from Council, 100% of the general rates levied is refunded to them.

RISK MANAGEMENT IMPLICATIONS

Granting a new lease to the Club will have no impact on Council's liability exposure. Council's Property section undertakes annual lease compliance inspections at all leased facilities. At the time of these inspections, facilities are inspected from a health and safety perspective and Lessee insurances are also checked to ensure they are current.

SUSTAINABILITY IMPLICATIONS

- Economic:** No associated cost to Council
- Environmental:** There are no environmental sustainability implications.
- Social:** Granting a lease to the Club will help enhance social activities which are available to the local community.

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

Goal 1 - We will conduct 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.

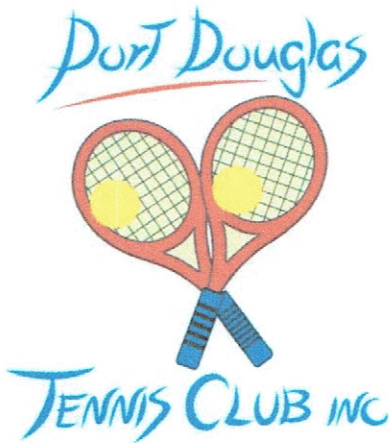
CONSULTATION

Internal: Executive Manager People & Governance
Executive Manager Infrastructure

External: Port Douglas Tennis Club Inc

ATTACHMENTS

1. Letter from Port Douglas Tennis Club regarding renewal of Trustee Lease on Lot 18 on PT D 20939 [5.8.1 - 5 pages]
2. 2006 Agreement between Douglas Tennis Association Inc and Port Douglas Basketball Club Inc [5.8.2 - 1 page]



Port Douglas Tennis Association
Reynolds Park
34-56 Davidson Street
PO Box 778
Port Douglas QLD 4877

Douglas Shire Council
PO Box 723
Mossman QLD 4873
10 April 2019

Dear Sirs,

LEASE LOT 18, PTD20939, DAVIDSON STREET, PORT DOUGLAS

Thank you to your team from Douglas Shire Council ("DSC" and "Council") for their time in discussions with representatives of Port Douglas Tennis Club's Committee ("PDTC" and the "Committee") in recent months.

On 3 April the newly-elected Committee, appointed at our AGM in March, met to discuss at length the current situation. This letter seeks to set out the evolution of our position concerning the renewal of the lease at Reynolds Park based on our current understanding of Council's representatives' comments.

RENEWAL OF LEASE

We understand that DSC is willing to renew our lease and we are keen to do so to ensure high grade tennis facilities remain available for the ongoing benefit of our Club's members and many visitors, as well as for the benefit of the town of Port Douglas as a whole.

We believe PDTC has been an exemplary tenant for DSC. We have maintained the site, improved it with significant capital works, paid our obligations and offered a service to the town's occupants and visitors. However, the costs of our tenancy have continued to rise, for example with the imposition of water rates during this lease term, the costs of rectification of parts impacted by asbestos and various compliance obligations under your direction. These increasing costs are being met out of the Club's limited budget at a time when we are trying to raise funds for further capital improvements.

We hope therefore that the peppercorn rent historically charged under the lease will continue. Any further assistance Council may be able to make towards minimizing the Club's costs would be most appreciated.

OBLIGATIONS IN RELATION TO BASKETBALL

We note that on 8.7.02 Council was advised of certain matters in relation to the lease then existing by a letter from the then representatives of Douglas Tennis Association Inc (now PDTC) and Port Douglas Basketball Association.

One of the commitments in that letter was that "there will always be a basketball court available at the site for the duration of the lease". PDTC has maintained this bargain since then, throughout the remainder of that lease and throughout the subsequent lease which commenced on 1.1.09 and which is now due for renewal.

There was a subsequent agreement dated March 2006 upon the cessation of PD Basketball Club Inc that PDTC would "provide and maintain at least one paved Australian standard sized basketball court... for unrestricted public access".

Now, with the renewal of the lease due, we wish to request that Council reconsider this ongoing onerous obligation.

The points we make are:

- i) For 12+ years PDTC has maintained the basketball court in compliance with its obligation.
- ii) There has been no financial contribution to the costs of maintaining that court from any third parties since the agreement.
- iii) There has been no physical assistance in our many advertised "working bees" from any non-tennis players, including anyone involved in the town's basketball activities, to assist in the court's maintenance.
- iv) The maintenance has involved regular clearing of debris, litter, weeds and damage from the court and fencing by our club members voluntarily, using the tennis Club's equipment, supplies and funds.
- v) The basketball court is rarely used and certainly not regularly by any consistent participants. Generally, any use is by a few people shooting hoops at just one end.: the entire court is rarely played. When it is used the players are seen to treat the court with wholly inadequate regard, leaving their litter and sometimes climbing the fence to access the tennis club's facilities (such as toilets and water fountain, even our showers).
- vi) We cannot imagine that the parties to the agreement originally envisaged an open-ended financial commitment ad infinitum from volunteers who now have no connection to that original agreement. We do not believe such an agreement would be binding at law indefinitely.
- vii) There is now in Port Douglas a dedicated indoor basketball court available for public use at the School.

- viii) The Port Douglas Heat use the School court for training and all competitive play.
- ix) We believe there are no regular competitive games or competitions at the public court.
- x) There would be an opportunity to establish an outdoor public basketball court at the site of the proposed new netball courts at the sports fields if public demand warranted it.

POSSIBLE NEW COURT

As you would be aware, PDTC has invested heavily in improving the site it leases from Council. In the last three years we have improved all three courts, fencing, drainage and lighting, as well as clearing vegetation and repainting the clubhouse.

The capital costs we have invested for the benefit of our members and the town's public, including tourists, has exceeded \$190,000. These funds have been raised as a result of enormous effort by our members and supporters.

The three existing tennis courts are regularly used by visitors and members for more than 40 hours per week including at least 8 hours of coaching during school terms. On certain regular nights several players have to sit off waiting for court space since a maximum of 12 players can be on court to play at any one time.

The junior participation in tennis is excellent and we have some young players who participate, and are often successful, in competitions in the Junior Development Series run by Tennis Queensland ("TQ").

However, currently, we are no longer able to host any rounds of this JDS Series at Port Douglas since TQ advise we have insufficient courts and the use of courts at other locations, such as those at some of the town's resorts, is unacceptable.

To resolve this, the Club has continued to raise funds and invest in anticipation of developing a proposed fourth court at the site.

It is recognized that the most cost-effective location to install a fourth court would be at the site of the existing foundations and base provided at the basketball court. This area is also already fenced, nearer to existing lighting and closer to the clubhouse (for optimal participant involvement) than a new site would be.

Development of this site would also allow for the existing practice wall to remain available for ongoing public use.

MULTIPURPOSE COURT

Your Council representatives have given us indicative advice that they considered that, whilst Council would be keen to see a fourth court developed in the area, any new court would need to be a multipurpose court available to the public.

As a tennis Club, this option does not best suit our members for the following reasons:

- a) In order for the Club to be able to host higher-standard tennis competitions attracting more and new participants, we need a fourth court of equivalent standard and adjacent to the current three courts.
- b) To be competition-standard, our courts need to be line-marked only for tennis and with adequate access.
- c) Controlling access to the court to be able to ensure the facilities would be available for tennis when needed, and to ensure adequate lighting, would be difficult.
- d) Such a court, available to the public, would require significant extra management in order for our members to be able to play tennis (moving basketball or other equipment, putting up nets, storing them in order to ensure they would be in appropriate condition for our members to be able to use) and may well be abused or ill-maintained by the public if we are to use the existing evidence as our precedent.
- e) Since the Club would be funding the court and its maintenance, our members would receive no benefit from public use, nor from maintenance of non-tennis facilities.
- f) Funds we have raised to date towards the anticipated costs of the fourth court have been obtained in anticipation and on the understanding that the court would be a dedicated tennis facility.

We note that Council has supported many other sports facilities around our town for public access. These tend to include garbage collection, public toilet facilities and maintenance of the grounds, all of which our members do not wish to have to fund or supply.

CONCLUSION

In conclusion, we seek Council's approval and assistance as follows:

1. We request Council's approval to the concept of developing a fourth tennis court at the Club's site.
2. We request Council's assistance to end the agreement reached 12+ years ago concerning our club's obligations to maintain a public-access basketball court.
3. Assuming these requests can be accommodated and achieved, we request a new lease of at least ten years on terms no less favourable than the current one and with assistance going forward should there be any additional unforeseen tenant costs (such as anything incidental to the asbestos risk recently found at the site).
4. If the event that 2 above cannot be achieved, we request Council's suggestions as to how we might work together to achieve both a fourth tennis court and a public-access multipurpose/basketball court with associated public washroom facilities, plus Council's assistance with the ongoing maintenance and waste disposal facilities needed for the public site.
5. We seek any assistance and advice Council may be able to offer in relation to raising the additional substantial funds required to build a fourth court.

The PDTC Committee and members wish to grow participation in sports, particularly tennis, in our town. In order to achieve this in the best manner for the town and the sport, we feel that we need:

- To agree a new lease of at least ten years;
- To commence the planning to provide a fourth tennis court; and
- To agree the means to extricate the club from any further commitment to maintaining a basketball court.

It might be that Council might be prepared to consider an alternative where a multipurpose, public-accessable court might be developed somewhere else on the Reynolds Park area, possibly at the same time as a fourth tennis court. The capital works costs might be able to be minimised for the parties if construction of both facilities was conducted at the same time, or as a single venture.

In response to other questions raised by your representatives, the Club recognises that there will be a cost associated with the drafting of the amended lease which may be shared between the parties and the Committee accepts this necessity.

Lastly, we have also considered comments raised by Council representatives concerning the fencing around the courts and we have noted that there are other sections of the leased area's fencing which appear to us, as laymen, to be in a similar state to the area surrounding the basketball court. We hope that Council will be open to repairing all areas of fencing which are sub-standard or buckled.

Please advise how we can now best move towards a beneficial outcome relating to these matters for Council, Port Douglas residents, visitors and the Tennis Club's members. We would be open to meeting to discuss these matters further.

Yours faithfully,



Neal J Brooks

President

Port Douglas Tennis Association

On behalf of, and with the approval of, the Committee

Agreement between;

**DOUGLAS TENNIS ASSOCIATION INC
and
PORT DOUGLAS BASKETBALL CLUB INC (Inactive)**

1. As per the Rules of the PORT DOUGLAS BASKETBALL CLUB INC., on the cessation of the club, the distribution of surplus assets "... shall not be paid to or distributed amongst the members of the Club, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Club...."

The surplus assets of the PORT DOUGLAS BASKETBALL CLUB INC, including the sum of \$10,000 from the investment account and other assets including basketball courts and clubrooms shall be transferred to the DOUGLAS TENNIS ASSOCIATION INC on the cessation of the PORT DOUGLAS BASKETBALL CLUB INC ..

2. DOUGLAS TENNIS ASSOCIATION INC. shall during the life of its Incorporation provide and maintain at least one paved Australian standard size basketball court with regulation backboards and hoops for unrestricted public access. In the event that the existing basketball court is moved to make way for another tennis court a new standard size basketball court with regulation backboards and hoops would be constructed at the same time.
3. In the event of the cessation of the DOUGLAS TENNIS ASSOCIATION INC., the previous officeholders of the PORT DOUGLAS BASKETBALL CLUB INC. shall be notified in writing (Robin Smith, Ann-Marie Wright-Brown, Jill Jenkins, Andrea Falstein) and a notice placed in the local newspaper advising anyone with interest in re-establishing the Basketball Club to contact the President of the DOUGLAS TENNIS ASSOCIATION INC..
4. In the event of the cessation of the DOUGLAS TENNIS ASSOCIATION INC. and if the PORT DOUGLAS BASKETBALL CLUB INC. is re-established, the surplus assets of the DOUGLAS TENNIS ASSOCIATION INC. shall be transferred to the newly incorporated Basketball Club as per the Rules of Association of the DOUGLAS TENNIS ASSOCIATION INC..

Signed on behalf of the DOUGLAS TENNIS ASSOCIATION INC.

Name <u>Stefan Lee</u>	Signed <u>[Signature]</u>	Position <u>President</u>	Date <u>19/3/06</u>
Name <u>A. Watson</u>	Signed <u>[Signature]</u>	Position <u>Secretary</u>	Date <u>16.3.06</u>

Signed on behalf of the PORT DOUGLAS BASKETBALL CLUB INC. (Inactive)

Name <u>Anna Maria Wright-Brown</u>	Signed <u>[Signature]</u>	Position <u>Secretary</u>	Date <u>19.3.06</u>
Name <u>ROBYN SMITH</u>	Signed <u>[Signature]</u>	Position <u>PRESIDENT</u>	Date <u>19/3/06</u>