

13.1 Aqualife Cafe - Disposal by way of lease

Location	East Victoria Park
Reporting officer	Manager Property Development and Leasing
Responsible officer	Chief Operations Officer
Voting requirement	Absolute majority
Attachments	<ol style="list-style-type: none">1. CONFIDENTIAL REDACTED - Applicant 1 - Part 3 Respondents Proposal [13.1.1 - 2 pages]2. CONFIDENTIAL REDACTED - Applicant 1 - Part 2 Business Case [13.1.2 - 9 pages]3. CONFIDENTIAL REDACTED - Applicant 2 - 1 Resume [13.1.3 - 2 pages]4. CONFIDENTIAL REDACTED - Applicant 2 - Part 3 Respondents Proposal [13.1.4 - 4 pages]5. CONFIDENTIAL REDACTED - Applicant 2 - Part 2 Business Case [13.1.5 - 11 pages]6. CONFIDENTIAL REDACTED - Applicant 3 - Part 3 Respondents Proposal [13.1.6 - 3 pages]7. CONFIDENTIAL REDACTED - Applicant 3 - Part 2 Business Case [13.1.7 - 5 pages]

Summary

The purpose of this report is for Council to consider a new lease for the Aqualife Cafe, 42 Somerset Street, East Victoria Park with Applicant 2 (Anjana Arumugham & Daniel Pham) subject to advertising compliance.

Recommendation

That Council

1. Authorises the Chief Executive Officer to negotiate with Anjana Arumugham and Daniel Pham (Partnership or Company name and ABN TBC) for a lease for the Aqualife Café located at 42 Somerset Street, East Victoria Park, consistent with key terms as follows:
 - a. Land: Portion of Lot 311 on Deposited Plan 63589 (42 Somerset Street, East Victoria Park)
 - b. Lessee: Anjana Arumugham & Daniel Pham
 - c. Term: 3 years
 - d. Further term: 2 Years
 - e. Tenant break right on or about the end of years 2 and 4.
 - f. Rent: \$13,000 per annum plus any GST at commencement.
 - i. Year 1 – 100% abated rent (Nil rent).
 - ii. Year 2 – 50% abated rent (\$6,500) (indexed to CPI).
 - iii. Year 3 – full rent (indexed to CPI).
 - iv. Year 4 – full rent (indexed to CPI).
 - v. Year 5 – full rent (indexed to CPI).
 - g. Outgoings: The Tenant is responsible for all outgoings from commencement date.
 - h. Maintenance: The Tenant is responsible for non-structural and preventative maintenance.
 - i. Permitted Use: Café (no alcoholic beverages).
 - j. Operating hours: Flexible hours to cater to community and peak times (subject to Aqualife

- operational hours/access).
 - k. Insurance: The Tenant is responsible for \$20M Public Liability Insurance and workers compensation cover. The Landlord is responsible for Building Insurance.
 - l. Signage: With prior written consent from the Landlord.
 - m. Special Conditions:
 - i. No operating subsidy during the Term or Further Term.
 - ii. Redevelopment Clause.
 - iii. The food service is for the attendees and patrons of the Centre and outside food services are not allowed except at the absolute discretion of the Chief Executive Officer.
 - iv. Town to remove vending machines and cease sale of confectionary within the Aqualife Centre.
 - n. Terms to be set by the Town's lawyers and to incorporate any variations or amendments to key terms as may be considered reasonable and necessary by the Chief Executive Officer.
2. Authorises the Chief Executive Officer to advertise the proposed disposal of the Aqualife Café by way of lease by public notice pursuant to section 3.58 of the *Local Government Act 1995*.
 3. Authorises the Chief Executive Officer to execute all documents necessary to give effect to the lease referred to in 1. above, provided that no submissions are received pursuant to 2 above.
 4. Authorises the Chief Executive Officer to re-advertise for Expressions of Interest (EOI) and to lease the Aqualife Café to an alternative operator within the parameters of the key terms in 1(a)-(n) and the terms of 2 & 3 above, should the proposed lease not commence within a reasonable timeframe determined by the Chief Executive Officer.

Background

1. Prior to 2009, the café in Aqualife was leased (together with the café in Leisurelife) to a private tenant operator. Both leases were terminated, and the Town took possession in October 2009, due to the tenant failing to address rent arrears.
2. The Town then operated the Cafes at both centres, in house.
3. The operation of the Cafes ceased, following an operational review in 2017, which noted that the Cafes had operated at a loss and decided to advertise to seek an external operator.
4. In July 2018, the Town proposed to grant a lease to Onca Enterprises Pty Ltd for both Leisurelife and Aqualife Cafes, with the Aqualife Café lease being 1 year with four 1-year options, year 1 rent \$6,250pa+Outgoings+GST with rent increasing to \$12,500pa+Outgoings+GST thereafter.
5. In January 2019, Onca Enterprises Pty Ltd withdrew their Expression of Interest and did not proceed with leasing the Cafes.
6. In July 2019, the Town entered into an agreement with Hospitality Industry Service Providers Pty Ltd (HISP) for both the Leisurelife and Aqualife Cafes.
7. The lease for Aqualife Café started 1/07/2019 for 1 year with four 1-year options, year 1 rent \$6,250pa+Outgoings+GST with rent increasing to \$12,500pa+Outgoings+GST thereafter.
8. In January 2020, HISP advised *"After reflecting upon the future prospects of our business we do not believe it will be financially feasible or beneficial to continue operating at these centres."*
9. At the Ordinary Council Meeting of 21 April 2020, Council accepted the surrender of lease effective 31 March 2020 for both the Leisurelife Café and Aqualife Café lease.
10. At the Ordinary Council Meeting held 21 April 2020, the Council resolved:

Authorises the Chief Executive Officer to advertise by public notice within the next 12- 24 months of the intention to dispose of the Leisurelife Café and Aqualife Café by lease for a social enterprise to operate from the premises under Policy 114 Community Funding Policy, subsection Operating Subsidy.

11. Two expressions of interest (EOI) were received during the public submission period, which closed on 4 March 2022. Neither EOI evidenced qualification as a social enterprise under the definition of a social enterprise within Policy 114 Community Funding Policy.
12. At the Ordinary Council Meeting held on 12 April 2022, Council resolved to authorise the Chief Executive Officer to readvertise by public notice the lease of the Leisurelife Café and Aqualife Café by lease pursuant to section 3.58 of the Local Government Act 1995, with criteria to include that the Town seeks a service provider, community or sporting organisation that would complement the services provided by the Town at the Leisurelife Recreation Centre and Aqualife Aquatic Centre.
13. One EOI was received from Black Bean Coffee Bar for the Aqualife Cafe and one EOI was received from Perth Basketball Association for the Leisurelife Cafe.
14. In August 2022, Council resolved to negotiate a lease for the Aqualife Cafe with Black Bean Coffee Bar for a 3-year term with a further 2 years (to offer lease tenure of up to 5 years in accordance with the *Commercial Tenancy (Retail Shops) Agreements Act 1985*), with the following rent structure:
 - (a) Rent: \$13,000 per annum plus any GST at commencement.
 - i. Year 1 – 100% abated rent proposed at Nil.
 - ii. Year 2 – 50% abated rent proposed at \$6,500 pa (indexed to CPI).
 - iii. Year 3 – full rent \$13,000 pa (indexed to CPI from commencement).
15. The applicant Black Bean Coffee Bar withdrew from leasing the Aqualife Café in February 2023 and at the Ordinary Council Meeting held 21 March 2023, the Council resolved to advertise by public notice to invite for submissions of interest.
16. Subsequently, the Town advertised the Cafe to invite EOI on several occasions, without success.
17. The Town's officers sought feedback from a Commercial Real Estate Agent as to the viability of the Cafe space. The opinion received was as follows:-

"In short, the café is not a viable commercial operation. This is due to:

 - *Average number of patron numbers being 800 to 1,000 people per day (which includes minors who usually cannot buy from food outlets without the authority or resources of a parent or guardian).*
 - *Highly seasonal patronage (higher during the warmer months and when schools have more carnivals and lessons)*
 - *Location of outlet not being optimal. Less 'impulse buy' decisions as you have to seek out the café.*
 - *The space cannot readily be converted to alternate uses due to its design."*
18. Following indications of renewed interest in leasing the Cafe, the Town re-advertised for EOI on 22nd March 2024 with advertising closing on 13th May 2024, on the following platforms:-
 - a. West Australian Newspaper
 - b. Town's website
 - c. Social media
 - d. Town noticeboards
 - e. E-newsletter (1st April & 1st May)
 - f. A professional Real Estate campaign
19. Conversations have taken place with the applicants prior to the EOI closing to inform them of aspects of the commercial prospects, the level of patronage at the centre, as well as the Café's history. The applicants remain keen on taking up the opportunity to establish the Café business.
20. Three (3) submissions were received during the submission period.
21. The Town's evaluation panel comprising officers from Asset Management, Community Development and Leisure Facilities assessed the submissions against the following qualitative criteria:

Qualitative Criteria	Weighting
<p>A. Business Structure & Financial Position</p> <p>Respondents should detail their business structure and use for the proposed lease space including a detailed business case (labelled "Business Case"). The Business Case should address a minimum of the following:</p> <ol style="list-style-type: none"> 1. BUSINESS STRUCTURE <ol style="list-style-type: none"> a) Organisational background to include mission, purpose, and history. b) Current business structure (evidence of incorporations, NFP or charity) c) Outline how you believe your business will align with the Town's plans, policies, and strategies. d) Any commercial benefit outcomes intended to be achieved e) Any community benefit outcomes intended to be achieved 2. FINANCIAL POSITION <ol style="list-style-type: none"> f) Provide latest audited financial statements g) Financial reference (bank manager or accountant) 3. INSURANCE / RISK MANAGEMENT <ol style="list-style-type: none"> h) Public Liability Insurances (no less than \$20M) i) Workers compensation insurance cover j) Work Health and Safety considerations and compliance. 	<p>35%</p>
<p>B. Detailed Lease Proposal</p> <p>Provide a detailed lease proposal (labelled "Lease Proposal") which addresses, at a minimum the Applicants proposed:</p> <ol style="list-style-type: none"> a) Agreement Type b) Lessee details (registered business name, ABN etc.) <ol style="list-style-type: none"> i) Any guarantor/s to be listed c) Term of Lease d) Rent <ol style="list-style-type: none"> i) Rent Review method ii) Security Deposit / Bank Guarantee e) Special conditions (requested by the Applicant and clearly outlining any terms or licences required etc.) 	<p>35%</p>
<p>C. Fit out Concept Plans</p> <p>Provide high level concept plans for the Applicant's proposed fit out of the premises (Labelled "Fit Out Concept Plans") outlining at a minimum how the proposed fit out:</p> <ol style="list-style-type: none"> a) Caters for the proposed number and type of customer. b) Contributes to the overall look and feel of the premises and matches the concept for the proposed business c) Signage design and locations (both internal and external) d) Any additional relevant information <p>Noting, the Applicant will be responsible for any works and will be required to comply with</p>	<p>10%</p>

any applicable Planning, Building and Environmental Health requirements.	
D. Relevant Experience Describe your experience in conducting similar Requirements: a) Demonstrated experience in managing, owning, or operating a similar business (include details of the location) b) Demonstrate competency and proven track record in establishing and maintaining a similar viable business. c) Provide a CV for the Applicant's key personnel who will be directly involved in the management and day-to-day operations of the business (including skills, qualifications, and relevant experience). d) Any additional information.	20%

Discussion

22. Below is a summary of each application. Copies of the full applications are attached to the report.

Submission	Summary
Applicant 1	<p>A. Business Structure & Financial Position</p> <p>Has previously operated a food truck business but ceased operating 4 years ago.</p> <p>Sole operator and savings to be used to finance.</p> <p>B. Detailed Lease Proposal</p> <ul style="list-style-type: none"> • 5-year lease with year probation • 12,500-\$15,000 in rent and requesting 6-12 months' rent abatement. • No guarantor or bank guarantee offered • Would like to sublease <p>C. Fit out Concept Plans</p> <p>Difficult to provide any submission due to having not seen the space. They have noted they will need additional equipment.</p> <p>D. Relevant Experience</p> <p>Has some experience in food service and operating a business from 4+years ago</p> <p>No CV provided</p>
Applicant 2	<p>A. Business Structure & Financial Position</p> <p>A partnership to be established if they are a successful applicant. They have a vision for what can be achieved.</p> <p>B. Detailed Lease Proposal</p> <ul style="list-style-type: none"> • 3-year lease with a 2-year option

	<ul style="list-style-type: none"> • \$13,000pa with 100% abated for year 1, 50% abated for year 2 & full rent in the 3rd year • Guarantor provided • Bank guarantee of 3 months <p>C. Fit out Concept Plans They have viewed the Cafe and any fit-out will be provided once the Town has conducted clearing and cleaning of the Cafe. They have viewed the Cafe and they have thought about how to operate and make the space work for them and have a concept in mind.</p> <p>D. Relevant Experience One applicant has experience operating a successful food service business and what it takes to run and operate a business. The second has experience with the Department of Health. 1 of 2 CVs provided</p>
Applicant 3	<p>A. Business Structure & Financial Position A partnership or similar will be established if they are a successful applicant. They have an idea of how they intend to structure their business.</p> <p>B. Detailed Lease Proposal</p> <ul style="list-style-type: none"> • No term proposed – assumed to be 1 year • No rent offered, just 100% abatement for the first year and following years to be negotiated • No guarantor or bank guarantee offered <p>C. Fit out Concept Plans Fit out request to be provided once the Town has conducted a clear out and clean of the Cafe. Some concepts provided.</p> <p>D. Relevant Experience Both experienced in food service and some experience is running a business No CVs provided</p>

23. The evaluation of the submissions against the qualitative criteria resulted in the scores as shown below:

Submission	Weighted Score
Applicant 1	48.17%
Applicant 2 (Anjana Arumugham and Daniel Pham)	72.17%
Applicant 3	52.67%

24. It will be noted that all proposals received feature requests for rent abatement. Policy 310 – Leasing and Licensing requires a rent for a commercial premises of not less than 10% of a commercial market related rent, and as such, does not make provision for the extent of rent abatement sought.
25. The market rent for the cafe has been assessed at \$12,500 – 15,000pa in terms of a valuation report dated 24 May 2024.
26. The Cafe has been vacant for some time, with equipment needing to be thoroughly cleaned and serviced. Some equipment is no longer working or damaged beyond repair.
27. The Town will service and repair equipment where economical to do so, remove non-working equipment and clean the Cafe, prior to the successful applicant taking up occupancy. It is not envisaged at this time that further works will be conducted at the Town's cost.
28. The Property will be leased "as is." The applicant will be fully responsible for all fit-out works, obtaining approvals and licences.
29. The applicant will be making a significant investment in time and money to start the business up and ensure that it is financially viable.
30. A brief overview of the centre and its patronage:
- Swim lessons run all year round with a 2-week break in July school holidays and a 4-week break in December
 - Swim lessons operated from 8am to 12 and 3.30 to 6 weekdays and 7.30am to 12 Sat and Sun
 - Swimming squads train mornings from 5.30am to 7am and 3.30 to 6 most weekdays.
 - Opening hours as per website change slightly to an earlier close in winter from 9pm to 8.30pm
 - School carnivals typically run most days during mid Feb / March
 - Vic Park Swim Club carnival is usually in December
 - Aqualife Summer season runs from 1 January to 31 March
 - Aqualife Winter season runs from 1 April to 31 December
31. Whilst the Town obtained an opinion from a Commercial Real Estate Agent on the viability of the Cafe in Aqualife, the market response to this expression of interest has been relatively good. The recent establishment of the new tenancy at Aqualife for the BalanZ Therapy health treatment business further illustrates that Aqualife is attractive to commercial business offerings that provide services complementary to the Aqualife Centre. In addition, the fortunes of a hospitality business such as a cafe may be favourably affected by the personal touch of a capable operator.
32. Whilst Applicant 2 has not requested a tenant break right at this stage, the recommendation makes provision for a tenant break right on or about the end of years 2 and 4. A similar request arose at a late stage of detailed lease negotiations with a previous prospective tenant.
33. A lease of the Café with the abated rent sought and other recommended terms would: -
- a. be reflective of the market response, following a competitive EOI process
 - b. take cognisance of the leasing history and other factors detailed in the background section of this report.
 - c. acknowledge the cafe operator's time and financial investment in starting up the new business, establishing the Café's presence and building a customer base.
 - d. acknowledge the service that would be provided by the Cafe to Aqualife patrons and potential for increased patronage of the Aqualife facility.
 - e. activate the area in line with the Social Infrastructure Strategy.

Relevant documents

Policy 310 Leasing and Licensing

Legal and policy compliance

[Local Government Act – Section 3.58](#)

[Commercial Tenancy \(Retail Shops\) Agreements Act 1985](#)

Financial implications

Current budget impact	The Town currently does not receive any revenue from the Aqualife Café as this space has remained vacant for some years.
Future budget impact	<p>The leasing of Aqualife Café will provide the Town with an income in the form of reimbursement of outgoings from commencement date and rent for years 2-5.</p> <p>The establishment of a successful cafe operation at Aqualife will enhance the facility and may increase patronage and income received from Aqualife.</p>

Risk management consideration

Risk impact category	Risk event description	Risk rating	Risk appetite	Risk Mitigation
Financial	Leaving the Cafe vacant will leave the centre not providing new services, benefit, or activation.	High	Low	TREAT risk by leasing the Cafe and activating it for the centre's patrons.
Environmental	Not applicable.			
Health and safety	Not applicable.			
Infrastructure/ ICT systems/ utilities	Not applicable.			
Legislative compliance	Failure to comply with section 3.58 of the <i>Local Government Act 1995</i> .	Low	Low	TREAT risk by following the disposal of property process in accordance with section 3.58 of the Local Government Act 1995.
Reputation	Failure to lease the Cafe to someone to activate the space and service the patrons may damage the reputation of the Aqualife facility.	Medium	Low	TREAT risk by granting a lease to a suitable applicant and activating a much-desired service within the centre.
Service delivery	Failure to secure a suitable operator to meet community expectations.	Medium	Medium	TREAT risk by securing a suitable tenant that complements the Centre and will ensure service provision for the community.

Engagement

Internal engagement	
Community	Formed part of the assessment panel and support the recommendation
Leisure Facilities	Formed part of the assessment panel and support the recommendation
Asset Management	Supportive of this proposal.
Finance	Supportive of the proposal and have no objections.
Place Planning	Supportive of this proposal. The Social Infrastructure Strategy (2022) identifies Aqualife as a Neighbourhood Hub for recreation and social activity, and a café compliments this arrangement.
Development Services	No objection
Environmental Health	The food business owner will need to comply with the Food Act. Therefore, it is important for the business to ensure that the facilities are suitable for the level of food handling that they wish to undertake (i.e. grease extraction fans, double bowl wash sinks, food preparation sink/s, hand wash basin, fridges, freezers, suitable flooring/walls/ceiling etc.). Additionally, they will need to ensure they have a Food Safety Supervisor.

External engagement	
Stakeholders	Public at large, service providers, community, and sporting organisations
Period of engagement	22 March 2024 to 13 May 2024 inclusive
Level of engagement	Consult
Methods of engagement	Written submissions accepted
Advertising	The Towns website, social media, the Towns noticeboards, E-newsletter (1 st April & 1 st May), Posting in the West Australian News Paper and a professional Real Estate campaign
Submission summary	Three submissions received
Key findings	Summary of information resulting from engagement.

Strategic alignment

Civic Leadership	
Community Priority	Intended public value outcome or impact
CL2 - Communication and engagement with the community.	By prioritising communication, engagement, and community involvement, we can establish the Café as a beloved destination within Aqualife, fostering strong connections and loyalty among patrons.

Economic	
Community Priority	Intended public value outcome or impact
EC2 - Connecting businesses and people to our local activity centres through place planning and activation.	The Cafe has been under utilised and centre patrons have shown some desire to have the space activated and Café facilities will be available within a clean, safe, and accessible environment, activating a service for the patrons that would otherwise be vacant.

Environment	
Community Priority	Intended public value outcome or impact
EN5 - Providing facilities that are well-built and well-maintained.	Any new tenant will be required to operate the Cafe facility to a well-maintained standard.

Further consideration