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Kent Wain
Manager Southern Region
Department of Local Government, Racing and Multicultural Affairs
Level 3, 12 First Avenue
Maroochydore QLD 4558

10 September 2019

Dear Mr Wain

Re: Additional information re Ipswich City Council's request for exemption under section 236 (1)(f) of the *Local Government Regulation 2012* - Nicholas Street - Ipswich Central (CBD Redevelopment)

With reference to departmental correspondence dated 26 August 2019 and the 28 August 2019 meeting between council, its consultants and officers of the Department of Local Government, Racing and Multicultural Affairs (DLGRMA), this correspondence provides the requested executive summary outlining (at a high-level) reasoning for pursuing the above ministerial exemption (exemption) together with responses to other clarifications sought by DLGRMA.

At the 28 August 2019 meeting, discussions occurred on both the scope and complexity of council's application dated 12 August 2019. As a result, council has modified its request for an exemption to solely the leasing and sub-leasing component of the original application. Council proposes that any future divestments within the precinct will be the subject of separate site-specific exemption applications. Given this, a number of the clarifications sought by your department specifically relating to the disposal of freehold or leasehold land are not dealt with in this correspondence (refer Attachment 8).

Executive Summary

Council is seeking a ministerial exemption under section 236 (1)(f) of the *Local Government Regulation 2012* (Regulation) for the disposal of valuable non-current assets (leases/sub-leases) associated with its Nicholas Street - Ipswich Central CBD redevelopment (the project). The exemption will allow council to efficiently and effectively implement its retail strategy through the disposal of related non-current assets (leases/sub-leases) by more appropriate, market accepted,

transactional means other than by a tender or auction process as required under section 228 of the Regulation.

Background

Since 2009 Council's subsidiary, Ipswich City Properties Pty Ltd (ICP), has purchased the majority of the Nicholas Street assets (freehold and leasehold) with the vision of leading the redevelopment of the Ipswich CBD. Due to a number of factors, significant delays were experienced in progressing the redevelopment. As a result, the CBD is currently underutilised and the ongoing delays have contributed to its decline, significantly impacting commercial activity and community perception of the precinct.

Council's overarching goal for the project is to revitalise the precinct into a vibrant, mixed-use development ultimately incorporating civic functions, retail, commercial, entertainment and public spaces. The project's success is critical to allow council to regain the local community's trust and rebuild the positive sentiment which has been eroded by recent political events. Council's strategic objectives for the CBD's renewal also include the creation of an enduring and activated civic heart, the relocation of council's administration centre and a civic space capable of delivering cultural and entertainment activities (refer schematic Attachment 6).

Council's ultimate redevelopment of the Nicholas Street/Union Place precinct will include up to 46 retail and four commercial tenancies with up to 13 floors of commercial office space (refer Attachments 3 to 5 for the latest schematics of the retail tenancies).

Application Driver

To progress the delayed redevelopment and as part of the process to deregister ICP due to prior governance concerns and poor public perception, all of ICP's land holdings and interests in the CBD precinct transferred to council on 27 June 2019. Due to the Regulation's requirements, the change in ownership of these non-current assets (refer Attachments 1 and 2) has impeded council's ability to implement ICP's leasing and divestment strategy (refer pp 18-21 of Business Case - Attachment 3). This strategy was underpinned by ICP's ability to successfully lease the retail and commercial tenancies to a predetermined mix and at a future date, divest itself of what are essentially non-core local government assets. Attachment 2 identifies the leasing or sub-leasing proposal for each precinct asset.

Under section 228 of the Regulation, disposal of non-current assets must be through a tender or auction process unless an exemption is granted under section 236 (1)(f). Under ICP's strategy now adopted by council, the proposed disposal of non-current assets specifically relates to the leasing and future sale of freehold land and the sub-leasing or future sale of State leases. Following the meeting with DLGRMA on 28 August 2019, council has modified its request for an exemption to the solely the leasing and sub-leasing component of the original application dated 12 August 2019. It is council's position sub-optimal outcomes for both the project and the Ipswich community will result if disposal of the leases and sub-leases occurs through either a tender or auction process.

Industry Practice

Retail and commercial leasing is generally not undertaken through a tender or auction process. It is a specialised process best undertaken by experienced retail leasing executives who have relationships with the types of tenants targeted for a project. Given these relationships, the retail leasing executives are able to conduct trusted conversations to adequately explain a project and its

opportunities tailored to that particular tenant and as a result, gather an understanding of their tenancy requirements.

Traditional industry practice (especially for a development of this size) is that an independent assessment of likely market rents is first prepared with a schedule of asking rents determined. Properties are then marketed and advertised widely. ICP had until 27 June 2019 undertaken this approach and appointed a leasing agent (secured after a competitive process). This agent, now directly appointed by council, has and is continuing to actively market the subject properties to prospective retail tenants with a number confirming strong interest. Further a number of parties have submitted signed lease offers to both ICP/council with a majority of the offers received meeting or exceeding council's target rental levels.

Why an Exemption?

Industry advice confirms that it would be highly likely that any tender or auction process for the retail or commercial tenancies would receive very limited responses and that those that were received would not contain the commercial terms sought by council. In addition, these processes are inherently incapable of creating the desired mix and style of lessee council is seeking for its food and beverage and entertainment areas. Council's reasons for pursuing the exemption option are clarified below.

Why wouldn't a tender or auction process deliver optimal outcomes or the commercial terms desired by Council? Advice from council's retail leasing team is that the retail leasing market would not adequately respond to a tender or auction process for retail or commercial tenancy opportunities. Traditionally this market operates and responds to experienced retail leasing executives who have developed relationships and trust with retailers to individually and specifically introduce such opportunities directly to them.

A tender or auction process does not spread the 'net' wide enough to capture all parties that would or could be interested in the precinct or identified for targeting by council. Prospective tenants sought would simply not engage in such processes given opportunities are generally historically introduced to them on a specific and individual basis. In short, generally these entities do not need to engage in a tender or auction process to secure space to expand their businesses.

Interstate operators would not receive or be aware of local or state-based public tender processes. In contrast, the direct contact leasing approach to date has introduced the project and its specifically targeted opportunity to approximately 300 retailers. A previous EOI campaign conducted by ICP in relation to the entertainment venue and a component of the food and beverage offer only received limited responses.

Generally speaking retail space is never auctioned. While multiple offers might be entertained for an individual site, there is no bidding process to drive an improved commercial outcome. Also with retail, the highest bidder for a particular tenancy may not be provide the lessor with the best result for the development overall. The quality of offer, fit-out, covenant, brand and overall experience a customer can expect are far more important drivers for the appropriate commercial decision and long-term viability of the both the tenancy and the overall retail development. This is especially so in the case of this project where the strategy is to create an enduring point of difference over both Riverlink Shopping Centre and other food and beverage and entertainment providers in the Ipswich area.

Why wouldn't an appropriately drafted tender process deliver the desired tenancy mix for the CBD?

The tenancy mix for a project is a carefully considered strategic approach, followed by strategic targeting of tenants who are deemed most appropriate for that mix, with direct contact established to introduce and articulate the project opportunity. It is common industry practice that this is the process by which tenants receive their tenancy opportunities for consideration.

The tenancy mix is critical as in reality it is tailoring the targeted tenants to suit the environment and precincts that are being created together with ensuring longevity of the lease. Rather than taking an ad-hoc approach to the market and inviting anyone to tender, the general industry approach is to take a more precise approach. By leveraging retailer relationships, better engagement and interest is achieved. In this project's case, irrespective of how well defined a tender process may have been designed, it is considered highly unlikely that some of the extremely interested prospective tenants (who have already submitted offers) would be regularly reviewing the LG Tender Box or local papers or the internet to identify potential tenders to participate in.

Why wouldn't a tender or auction process achieve commercially sound bids due to the CBD

redevelopment project's chequered history? As discussed above, prospective tenants generally do not participate in tender or auction processes. This is certainly the case for projects that have had significant challenges and/or history such as in the case with the Ipswich CBD redevelopment. The personalised approach with prospective tenants including open communication with interested or targeted parties has and will enable the leasing team to address and clear up any pre-existing and or ill-conceived perceptions of council or Ipswich due to recent events and reinforce the opportunity. A degree of 'sales' prowess is required for this project which is why a personalised approach will always yield superior results.

How will council deal with the sub-leases that it has with State agencies and are there any restrictions within these sub-leases which would impact tender or auction options? As with any other leases, council will abide by the terms and the conditions of any existing sub-leases with State agencies for the duration of that sub-lease. Council has the following existing arrangements in the CBD precinct:

- Queensland Health – Two sub leases on ground and lower ground of 2 Bell Street respectively, both expiring 30 November 2019, post this date only the lower ground tenancy will remain but on a licence arrangement for three years;
- West Moreton Health – Licence on Level 1 of 2 Bell Street has expired, currently operating on a month by month basis; and
- Seqwater – lease for 200 car park spaces in Civic Square (not relevant to this application).

A review of the sub-leases did not identify any restrictive clauses with regard to a tender or auction process taking place. It did identify a requirement for a standard advance notification to the tenant where a sale or a change in ownership is to occur.

Council will need to consult and obtain the written approval of Queensland Rail as the Lessor to enter into any new lease or sub-lease arrangement for the existing registered leases located at 25 Ipswich City Mall and 2 Bell Street.

Is there a possibility of staging an exemption approval for parts of the project, that is delaying leasing certain properties or the divestment strategy? As discussed above, council has modified its request for an exemption to solely the leasing and sub-leasing component of the original application dated 12 August 2019 with any future sale within the precinct to be a site-specific exemption application.

While a number of permutations exist for the staging the delivery of the retail portfolio including realigning the timing for some food and beverage offerings with the administration centre opening around July 2021, council’s position is that the exemption should cover all of the retail and commercial tenancies for the following reasons:

- Council’s staging delivery is yet to be finalised and as such, a restricted exemption approval at this time based on a reduced number of tenancies may be premature and cause subsequent delays to the project;
- Flexibility is crucial in retail leasing to accommodate specific tenants needs as negotiations are advanced in the leasing process, the mix and tenant requirements are constantly reviewed and revised as interest is firmed up through the process; and
- The exemption term sought (see below) is to 30 June 2023 – if granted this will allow council sufficient time to either fully implement its retail strategy or if required modify its delivery program to stage parts of the retail and commercial development.

Exemption Term

To ensure council has a sufficient period to fully implement its retail strategy and maximise the leasing take-up on the numerous retail and commercial leases within the precinct, council is seeking the exemption be granted until 30 June 2023. The success of the precinct is predicated on commercial arrangements for the majority of the tenancies (food and beverage and entertainment) being in place to allow them to commence operation from the middle to the end of 2021. Based on the projected success of the development and the requested exemption timeline to 30 June 2023, council anticipates it will have significantly achieved its leasing strategy by this time.

Depending on the success of any future divestment strategy, if the leasing outcome sought is not likely to be achieved by 30 June 2023, council will in the period leading up to the expiration date lodge a further exemption application.

Transparency and Safeguards

Should council’s application for an exemption for the project’s leasing and sub-leasing be approved, council understands that associated conditions will apply for the term of the exemption. In anticipation, council commits to adhering to the sound contracting principles detailed in section 104(3) of the *Local Government Act 2009*. Council will ensure openness and transparency with regard to the related transactions through, but not be limited to:

S 104(3) Principle	Proposed Activity
a) value for money	<ul style="list-style-type: none"> • Appointment of an independent, external reviewer to assess the commercials and probity of each tenancy deal to ensure lease terms proposed are market aligned • Each lease/sublease to be approved by the Economic Development Committee and then full council prior to its execution – agendas, papers and minutes all publically accessible • Regular reporting to DLGRMA of the application of the exemption including: <ul style="list-style-type: none"> • changes in project strategy/scope/deliverables

S 104(3) Principle	Proposed Activity
	<ul style="list-style-type: none"> • lease arrangements/lessee • market appraisal v actual lease terms • reasons why a lease may not achieve market value
b) open and effective competition	<ul style="list-style-type: none"> • Promotion of the Nicholas St website, encouragement of leasing enquiries through an on-line form and associated contact details • Continued public presentations and other communications outlining the project and promotion of its opportunities to prospective tenants • Publically available monthly reports to council on status of the leasing strategies including confirmation of signed leases (less confidential information) • Regular reporting to DLGRMA on the status of the leasing strategy including confirmation of signed leases etc.
c) development of competitive local business and industry	<ul style="list-style-type: none"> • Promotion of the Nicholas St website, encouragement of leasing enquiries through an on-line form and associated contact details • For the exemption's duration, six monthly high-level reporting to DLGRMA on the project's overall implementation and achievements and its impacts of the surrounding and wider Ipswich economy
d) environmental protection	<ul style="list-style-type: none"> • Council will balance the development needs with environment needs and ensure all leases and sub-leases meet regulated environmental requirements
e) ethical behaviour and fair dealing	<ul style="list-style-type: none"> • Release of regular updates (press releases) to the media regarding key tenants secured (once leases are binding and the tenant agrees) • Appointment of an independent, external reviewer to assess the commercials and probity of each tenancy deal • Monthly reports to council on status of the leasing strategies including details of any conflicts of interest of the Interim Administrator, Interim Management Committee, councillors, council employees or project consultants • Regular reporting to DLGRMA to include: <ul style="list-style-type: none"> • report on process probity by independent, external reviewer • reasons for any lease being under market value • details of any conflicts of interest

Summary

The granting of an exemption will enable council to both counter-sign the existing lease offers achieved under ICP and continue the active marketing and acceptance of lease offers for the remaining tenancies. The success of the redevelopment is largely based on council's ability to identify and lock-in a high-quality, diverse tenancy mix that will on an ongoing basis draw the community into the precinct. In terms of momentum, communicating to prospective tenants, the quantum and type of leases already locked in to the development will greatly assist council in promoting the attractiveness of the opportunity. This is now at a critical point in time for the project, where further delay could have adverse impacts to ongoing leasing success.

Should council not be provided with the exemption, it is highly likely that sub-optimal commercial outcomes will result together with an inability to obtain the desired mix of retail and commercial leases and the ongoing devaluation of the council's assets. Further leasing momentum has been built through recent activities with approximately 300 prospective tenants communicated with to date and a number of lease offers received or under negotiation. Should the exemption not be granted, the project runs the risk of confidence being eroded once again if there are further delays with prospective tenants likely 'going cold' on the opportunity.

In line with a divestment strategy underpinned by the belief that it should not be the long-term owner of significant CBD holdings, it is council's medium to long-term intention to dispose of the leased/subleased assets to the private sector. Site specific ministerial exemptions will be sought at that time, likely once all or the majority of leases are in place and the precinct fully established and activated, strengthening each property's valuation and subsequent return to council upon sale.

This correspondence includes a number of attachments that provide additional supporting information and schematics to previously provided documentation. Attachment 7 contains a guide of detailed references in the correspondence and the business case dated 12 August which support the discussion above.

In summary, approval of a section 236 exemption for the disposal of non-current assets (via leases or sub-leases) for the Nicholas Street – Ipswich Central project will allow council to utilise traditional retail industry practices to significantly or fully lease/sub-lease the subject assets, assist council achieve its retail strategy goals and ultimately fully realise the value of each property and maximise the financial returns for the Ipswich community. The period of the ministerial exemption sought is to 30 June 2023.

Should you require further discussion or information on this matter, please contact me at greg.thomas@ipswich.qld.gov.au or on (07) 3810 7080 or 0447200008.

Yours sincerely

Greg Thomas
PROJECT MANAGER

ATTACHMENTS:

Attachment	Title
Attachment 1	Subject Precinct Properties – Retail/Commercial Tenancy Yield
Attachment 2	Schematic – Retail Leasing – Impacted Freehold/Leasehold Properties
Attachment 3-5	Retail and Commercial Tenancies - Architectural Drawings 26.8.19
Attachment 6	Precinct Site Plan – Completion Dates – Civic Space/Council Building/Library
Attachment 7	References - Letter and Business Case
Attachment 8	26 August 2019 DLGRMA Sale Related Clarifications