

19.1 Lease Report - Kangaroo Island Providore - Request for Fee Concessions and Lease Variations

Moved: Cr R Cotterill, Seconded: Cr G Miller

That Council approves under the provisions of Section 90 (2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting, with the exception of CEO, DWI, DCS, DCD, Governance Officer and Minute Taker in order to consider, in confidence, a matter on the grounds of Section 90 (3):

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
- (ii) would, on balance, be contrary to the public interest.

This report relates to commercial information relating to a commercial lease negotiations for the cafe at the airport and as such represents private interest that should not be divulged in the public realm.

CARRIED

Minute: OM25:2025

Moved: B Teasdale

Seconded: J Gellard

Amendment

That Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a 12-month 75% concession of the Base Rent for the area known as the Airport Café at the Kangaroo Island Airport Terminal for the period 9 December 2024 – 9 December 2025.

Amendment is carried

The Amendment became the motion.

That Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a 12-month 75% concession of the Base Rent for the area known as the Airport Café at the Kangaroo Island Airport Terminal for the period 9 December 2024 – 9 December 2025

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Minute: OM26:2025

Moved: Cr G Miller, Seconded: Cr S Mumford

2. That Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a negotiated fee for Event Hire of the Airport Terminal Building (or part thereof) of \$100 per Event for the period 9 December 2024 – 9 December 2025.

3. That delegation be granted to the CEO to vary the Lease of Virginia Jones trading as Kangaroo Island Providore, specifically an amendment to *Clause 13.2.1 – Trading Hours*.

4. That Council resolves to charge a flat rate of \$1000 per annum for the applicable outgoings in line with *S 9.7 – Utility Charges Unable to be Accurately or Reasonably Determined* of the Lease.

5. That Council resolves not to charge applicable rates and taxes to the tenancy area for the lease trading as Kangaroo Island Providore for the area known as the Airport Cafe at the Kangaroo Island Airport Terminal for the period 9 December 2024 – 9 December 2025.

CARRIED

Minute: OM27:2025

Moved: Cr G Miller, Seconded: Cr S Mumford

That Council approves:

- a. That all documents relating to the above matter be kept confidential by all parties, pursuant to Section 91 (7) (b) of the said Act.
- b. Further, that pursuant to Section 91 (9) (a) of the said Act, that part a of this resolution shall cease from 1st July 2025.

This report relates to commercial information relating to a commercial lease negotiations for the cafe at the airport and as such represents private interest that should not be divulged in the public realm.

CARRIED

Minute: OM28:2025

19.1 Lease Report - Kangaroo Island Providore - Request for Fee Concessions and Lease Variations

Responsible Officer	Melanie Stephens
Title	Property Management Officer
Directorate	Daryl Buckingham, Chief Executive Officer
Purpose	Decision
Summary	

This report has been prepared for Council to obtain a decision on Virginia Jones trading as Kangaroo Island Providore's requests for the following:

- A further 12 months 100% concession of the Base Rent, Rates and Taxes (including CWMS charges), Landscape Levy and power, water and gas
- Variation of clause 13.2.1 Trading Hours
- Variation of clause 13.2.3 Trading Hours
- Reduced hire fees for the Airport Terminal Event Area for Events held by the Lessee

At its meeting on 5 December 2023 Council resolved to issue Virginia Jones trading as Kangaroo Island Providore a 5-year lease (1 + 1 + 1 + 1 +1) to occupy and operate a café in the area known as the Airport Café at the KI Airport Terminal.

The first year of the Lease came to an end on 9 December 2024. The Lessee exercised their right to renewal within the required timeframe and thus intends to remain in occupation for another year.

In a meeting with Council Officers in October 2024 the Lessee requested another 12 months of concessions on the basis that they are still establishing their business and rental costs/outgoings would put the business under financial strain. The Lessee also requested that Clause 13.2.1 and Clause 13.2.3 of their Lease be varied in order to provide more flexibility in operating hours and holding events.

Further, the Lessee requested a reduced charge for hire of the Airport Terminal (outside of their Leased/Licence area) noting that this fee is prohibitive of running events at the airport and reduces the likelihood of clients choosing this location for an event as the fee is passed on to them.

Administration is supportive of a further 12-month concession of the Base Rent and variation of Clause 13.2.1 to provide increased flexibility in operating hours. Further, Administration also supports a reduced fee for hire fees of the Airport Terminal Event Area.

Administration suggests that Council charge the Lessee percentage or fixed amount of the relevant outgoings (i.e. power, water and gas) as the Lessee is running a commercial business from the premises. This will allow Council to recoup some cost in relation to this tenancy.

In relation to applicable rates and taxes as per lease requirements, Council Administration is in the process of setting up a tenancy for the café area at the airport to allow for the appropriate determination of applicable rates and taxes. This is still being finalised by the Rates Officer at the time of this report. However, Administration is supportive of a further 12-month concession of the rates and taxes at this stage.

This matter was brought before Council at an Information Briefing Session on 28 November 2024. Administration is now seeking a decision on the above requests as under the Lease all relevant fees are due and payable as of 9 December 2024.

Officer Recommendation

That Council approves under the provisions of Section 90 (2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting, with the exception of CEO, DWI, DCS, DCD, Governance Officer and Minute Taker in order to consider, in confidence, a matter on the grounds of Section 90 (3):

- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest.

This report relates to commercial information relating to a commercial lease negotiations for the cafe at the airport and as such represents private interest that should not be divulged in the public realm.

2. That Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a 12-month 100% concession of the Base Rent for the area known as the Airport Café at the Kangaroo Island Airport Terminal for the period 9 December 2024 – 9 December 2025.
3. That Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a negotiated fee for Event Hire of the Airport Terminal Building (or part thereof) of \$100 per Event for the period 9 December 2024 – 9 December 2025.
4. That delegation be granted to the CEO to vary the Lease of Virginia Jones trading as Kangaroo Island Providore, specifically an amendment to *Clause 13.2.1 – Trading Hours*.
5. That Council resolves to charge a flat rate of \$1000 per annum for the applicable outgoings in line with *S 9.7 – Utility Charges Unable to be Accurately or Reasonably Determined* of the Lease.
6. That Council resolves not to charge applicable rates and taxes to the tenancy area for the lease trading as Kangaroo Island Providore for the area known as the Airport Cafe at the Kangaroo Island Airport Terminal for the period 9 December 2024 – 9 December 2025.
7. That Council approves:
 - a. That all documents relating to the above matter be kept confidential, pursuant to Section 91 (7) (b) of the said Act.
 - b. Further, that pursuant to Section 91 (9) (a) of the said Act, that part a of this resolution shall cease from 1st July 2025.

This report relates to commercial information relating to a commercial lease negotiations for the cafe at the airport and as such represents private interest that should not be divulged in the public realm.

BACKGROUND

At its meeting on 5 December 2023 Council resolved to issue Virginia Jones trading as Kangaroo Island Providore a 5-year lease (1 + 1 + 1 + 1 + 1) to occupy and operate a café in the area known as the Airport Café at the KI Airport Terminal.

Council also resolved that the first year's rent was to be waived with rent of \$250 per week indexed annually by CPI applicable to subsequent years. The resolution can be seen below.

20.1 Airport Cafe - Lease

Moved: Cr S Pledge, Seconded: Cr K Liu

That Council resolves to release minute number C588:2023 from its confidentiality provision.

CARRIED

Minute: OM640:2023

Moved: Cr S Mumford, Seconded: Cr B Teasdale

1. That Council notes the content of this report recommending the revocation or amendment of a resolution passed since the last general election of the council pursuant to Regulation 21(1) Local Government (Procedures at Meetings) Regulations 2013

2. That Council revokes Minute: C588:2023 dated 14 November 2023.

3. That Council resolves to delegate to the CEO to negotiate and enter into a lease agreement for 5 years (1 + 1 + 1 + 1 + 1) with Virginia Jones trading as Kangaroo Island Providore, for \$250 per week rent (inclusive of GST), Indexed annually by CPI, with the first year's rent being waived, to occupy and operate a café in the area known as the Airport Café within the Kangaroo Island Airport Terminal (part CT6215/983). The terms of the lease will include requirements for the operator to provide adequate public liability insurance, be responsible for all area cleaning within agreed hours of operation.

CARRIED

Minute: OM641:2023

In addition to the rent waiver, Special Condition 11 (as below) of the current lease provides for a 12-month concession for 100% of rates and taxes, Emergency Services Levy (error: this should have been the Landscape Levy) and power, water, and gas.

S 11 RENT AND OUTGOINGS CONCESSION DURING INITIAL TERM

S 11.1 Following the Lessee entering into possession of the Premises on the Commencement Date as noted at Item 3, the Lessee will be entitled during the Initial Term to:

S 11.1.1 a 12 month, 100% concession of the Base Rent;

S 11.1.2 a 12 month, 100% concession on Rates and Taxes (including CWMS charges) otherwise payable under clause 20.2;

S 11.1.3 a 12 month, 100% concession on the Emergency Services Levy, otherwise payable under clause 20.2;

S 11.1.4 subject to S 9.2 and if at the Commencement Date the Leased Premises are connected and serviced by the identified utility installed on the Land via a meter which supplies both the Leased Premises and other areas of the Land "a shared utility", which is paid for by the Lessor, a 12 month, 100% concession on Power, Water and Gas consumption otherwise payable under clause 20.3;

S 11.2 In the event that the Lessee assigns the Lease in accordance with clause 30, the concessions identified in S 11.1 and still applicable will cease from the effective date of the assignment of the Lease.

S 11.3 In the event that the Lessee sublets or sub-licences any part of the Premises in accordance with clause 31, the concessions identified in S 11.1 and still applicable will cease from the commencement date of the sub-lease or sub-licence.

In a meeting with Council Officers in October 2024 the Lessee requested another 12 months of concessions on the basis that they are still establishing their business and rental costs/outgoings would put the business under financial strain. The Lessee also requested that Clause 13.2.1 and Clause 13.2.3 of their Lease be varied in order to provide more flexibility in operating hours and hosting events.

Further, the Lessee requested a reduced charge for hire of the Airport Terminal (outside of their Leased/Licence area) noting that this fee is prohibitive of running events at the airport and

reduces the likelihood of clients choosing this location for an event as the fee is passed on to them.

These requests are covered in more detail below:

1. A further 12-month Fee Waiver

RENT

A further 12 months concession of rent is \$13,000 (excluding any CPI increase).

RATES AND TAXES

Administration is unable to calculate the rates and taxes applicable until a tenancy is created, this process is currently underway with the rates officer.

LANDSCAPE LEVY

The Lease includes waiving the Emergency Services Levy. This is an error and should have been noted as the Landscape Levy. Administration recommends that any fee waiver does not include the Landscape Levy or any other charges that are applied under Acts other than the *Local Government Act 1999*. This ensures consistency with other Lease agreements. The Landscape Levy charge is \$91.43 per year.

OUTGOINGS

Administration is unable to estimate the relevant gas, water and power charges used by the Lessee as utilities are charged for the airport as a whole. Under *S 9.7 – Utility Charges Unable to be Accurately or Reasonably Determined* of the Lease the Council and Lessee may agree to determining the Lessee's share of the utility charges to be reimbursed based on the proportion (%) of the area of the Leased Premises bears to the total area of the Airport or a different percentage or a fixed amount determined by Council.

The charges for gas, water and electricity for the airport as a whole are outlined below:

- Gas - The latest bill for gas at the Airport (12 months) was \$1616. Council is also charged a \$605 yearly service charge. Gas is used for the fireplace which is to be discontinued and the Café.
- Water – The annual water usage for 2023/24 was \$6,600.53.
- Electricity – The electricity costs for whole airport for the period 1 June 2024 – 31 August 2024 was \$13,361 this is reduced in summer due to solar to approx. \$10,000.

Based off the above figures Administration recommends that the Lessee be charged a fixed amount of \$1000 contribution toward outgoings. This figure can be re assessed in 12 months.

2. Variation of Clause 13.2.1 – Trading Hours

The Trading Hours required per the Lease are seen below:

13.2 Trading Hours

13.2.1 The Lessee is required to keep the Leased Premises open and operating 7 days a week from 30 mins before first daily arrival/ departure time (scheduled) and until 30 mins post last daily arrival/departure time (actual), unless otherwise agreed in writing by the Parties.

The Lessee has requested that the clause be varied to remove the requirement of the business needing to stay open in between flights and allow for closures on Sundays during the off season as only one flight operates. The proposed varied clause is as below:

The Lessee is required to keep the Premises open and operating a minimum 30 minutes before daily arrival/departure (scheduled) and 30 minutes post arrival departure time (actual), with the option to close on Sundays during winter months by providing notice Council outlining duration of closure.

Administration is comfortable with this variation.

3. Variation of Clause 13.2.3 – Trading hours

As per Clause 13.2.3 the Lessee is able to operate outside of the Airport Terminal hours by consent of Council.

The Lessee has requested that the requirement for consent is removed, and that the Lessee need only to advise Council that the event will occur before it occurs.

13.2.3 The Lessee may, with the written consent of the Lessor. Open and keep the Leased Premises open before the Airport Terminal is open to the general public and after it is closed to the general public.

Administration does not support this request as Council should reserve the right to deny events occurring at this space whether that be for security reasons, or the terminal being used for another purpose on the same date. Administration is able to provide consents under the lease within 2 business days and thus, there is limited waiting time for the Lessee in receiving their consent.

4. Reduced hire fees for the Airport Terminal Event Area for Events held by the Lessee

The Fees and Charges Schedule 2024/2025 lists the Event Hire Fee for the Terminal building as \$200 per 2 hours or part there of or if more than 4 hours by negotiation. Generally, events being run by the Lessee would be at least 4 hours and thus the fee is quite high (i.e. \$400).

To support events occurring at the airport and increased use of the space, Administration suggests that a negotiated fee be set with the Lessee as \$100 per event (with no time frame). This allows Council to recover any administrative time in assessing the event and/or cleaning costs that may be associated with the use.

Therefore, overall Administration is supportive of a 12-month concession of the Base Rent and variation Clause 13.2.1 to provide flexibility in operating hours. Further, Administration also supports a reduced fee for hire fees of the Airport Terminal Event Area.

Further, Administration recommends that any concessions or reduced hire fees are only provided for another 12-month period (i.e. 9 December 2024 – 9 December 2025) and re assessed for continuation if requested by the Lessee at the time of exercising their next right to renewal under the Lease.

Administration is now seeking a decision on the above requests as under the Lease all relevant fees are due and payable as of 9 December 2024.

ANALYSIS

Strategic Management Plan

2.2.3 Enhance the character, amenity, safety and accessibility of the built environment.

Legal Considerations / Council Policy Alignment

Leases, Licences and Permits Policy (for Council Owned & Controlled Land & Buildings)
(version 2 November 2017)

Risk Management Implications

RISK	
Identify	Mitigation
Create precedent for other Commercial Lessees requesting concessions/fee waivers	To comply with previous Council decisions on the matter or otherwise make a change in Council position preferably via policy
Financial Implications	Approve fee waivers/fee reduction for a further period of 12 months and request financial information regarding the business profits from the Lessee if any future requests are made

Financial / Resource Implications

Any additional rebates or sponsorship will be at cost to Council and the broader community. Council would be waiving \$13,000 in rent and absorbing some of the cost of outgoings for this business. Further, some income would be lost on the hire charge for the Airport Terminal.

Customer Service and Community Implications

Denying any fee waiver/reduction may result in Kangaroo Island Providore being unable to continue operating in its current arrangement and could potentially result in a reduction of service at the Airport.

OPTIONS

Council has the following options:

1. Endorse recommendation as above.
2. Reject recommendation as above and the resolution be:
Council does not support the requests for a further 12-month fee waiver (i.e. rent and outgoings), reduced Airport Terminal Event hire fees, variation of Lease Clauses 13.2.1 13.2.3 – Trading Hours and Council confirms that all fees will be charged in line with the Lease and Council's *Fees and Charges Schedule 24/25* from 9 December 2024.
3. Alternative recommendation:
Council resolves to grant Virginia Jones trading as Kangaroo Island Providore a 12-month 100% concession of the Base Rent, 100% concession for all outgoings (i.e. water, gas and electricity) and 100% concession of any Hire Fee related to Airport Terminal for the period of 9 December 2024 – 9 December 2025.

ATTACHMENTS

{attachment-list}