

ITEM 5 APPROVAL TO SEEK MINISTERIAL CONSENT TO GRANT AN AGREEMENT FOR LEASE AND A LEASE - NORTH WOLLONGONG BEACH CAFE & KIOSK

This report recommends that Council apply to the Minister for Local Government for consent to enter into an agreement for lease and a lease with North Kiosk Pty Ltd (ABN 45 106 911 862) for the North Wollongong Beach Café & Kiosk, located on land described as Part Lot 70 DP 751299, Part Lots 1 and 3 DP 1136814 and Part Lot 11 DP 865220. Statutory public notification was undertaken in accordance with Section 47 of the Local Government Act 1993 and, as objections were received and not withdrawn, Council is required under Section 47(5) to seek the Minister’s consent before granting the proposed agreement for lease and lease.

RECOMMENDATION

- 1 Note the public notice and exhibition of the agreement for lease and lease over the land described as part of Stuart Park being Part Lot 70 DP 751299, Part Lots 1 & 3 DP 1136814 and Part Lot 11 DP 865220 has been carried out in accordance with Section 47 of the *Local Government Act 1993*.
- 2 Note that submissions objecting to the proposed agreement for lease and lease were received during the public exhibition period and those objections have not been withdrawn.
- 3 In accordance with Section 47(5) of the *Local Government Act 1993*, Council makes an application to the Minister for Local Government for consent to grant the proposed agreement for lease and lease of the North Wollongong Beach Café and Kiosk over the land described as part of Stuart Park being Part Lot 70 DP 751299, Part Lots 1 & 3 DP 1136814 and Part Lot 11 DP 865220 to North Kiosk Pty Ltd (ABN 45 106 911 862) for a term of five (5) years with two (2) options of five (5) years each under Section 46(b)(i) of the *Local Government Act 1993*.

REPORT AUTHORISATIONS

Report of: Roisin OSullivan, Manager Commercial Operations + Property
 Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

There are no attachments for this report.

ACRONYMS USED IN REPORT

Abbreviation	Meaning
GIPA	Government Information (Public Access)

BACKGROUND

On 15 December 2025, in reference to the lease of North Wollongong Beach Café and Kiosk, Council resolved in part to:

1. *Council accept the offer of North Kiosk Pty Ltd for the Lease of North Wollongong Beach Café & Kiosk subject to the consideration of any submissions made during the statutory notice period as required under Section 47 of the Local Government Act 1993.*

Public notice was carried out in accordance with Chapter 6, Part 2, Section 47 of the *Local Government Act 1993*. The proposed agreement for lease and lease was publicly advertised for a period of 28 days, concluding on 23 December 2025, with two (2) objections received.

The following table summarises the objections received and Council’s response:

Theme	Objection (Summary)	Council's Response
<p>Lease Term, Tenure and Consistency</p>	<ul style="list-style-type: none"> ○ Claims inconsistency between public notice and Council resolution ○ Suggests total tenure exceeds 15 years ○ Says tender documents and draft lease differ ○ Objects to 15-year term and compares nearby sites 	<p>Council originally advertised the leasing tender for a 5 + 5-year term (total 10 years) closing on 21 October 2025.</p> <p>Following review of the tender submissions received, Council resolved to readvertise the lease for a longer term of 5 + 5 + 5 years (total 15 years) to support the capital investment into Council's asset.</p> <p>The revised Public Notice reflected Council's resolution of 15 December 2025, confirming the longer lease term being 15-year lease term.</p> <p>An agreement for lease is not considered a lease and is instead a contractual promise to grant a lease in the future. It is not part of the lease term and, accordingly, does not create or extend tenure. The agreement for lease will be executed with the tenant during the seawall upgrade and North Beach Kiosk building upgrade works, prior to the commencement of the formal lease. The Lessee will not be able to trade or operate during the agreement for lease period.</p> <p>The Lease documents accurately reflect Council's resolution.</p> <p>A 15-year lease term is permissible under the <i>Local Government Act 1993</i>, is supported by independent valuation advice, and is typical for commercial arrangements requiring substantial Lessee capital investment.</p>
<p>Statutory Process, Notification and Ministerial Consent</p>	<ul style="list-style-type: none"> ○ Claims Ministerial consent was not addressed ○ Allegations of notice period being insufficient ○ Questions Plan of Management authority and procedural validity 	<p>Council met all requirements of Sections 47 and 47A of the <i>Local Government Act 1993</i> in relation to the Statutory Public Notification 28 period.</p> <p>Under Section 47(5)(a), Council resolves to seek Ministerial consent after considering submissions, which this report now seeks. The Plan of Management supports the proposed café use which permits food and beverage consistent with the proposal.</p>
<p>Tender Process, Probity and Governance</p>	<ul style="list-style-type: none"> ○ Alleged non-compliance with policy guidelines ○ Concerns about declined tenders, negotiation pathway, recommendation changes, and conflicts ○ Questions GIPA access 	<p>A competitive tender was completed. Regulation 178 of the NSW Local Government (General) Regulation 2021 allows Council to decline tenders and negotiate. Negotiations were structured and guided by independent valuation and probity advice. Conflicts were declared and managed appropriately in line with Council's Policies and Procedures.</p> <p>Recommendation changes reflected updated advice and Council direction. GIPA requests were processed lawfully; commercial-in-confidence and privileged material are exempt.</p>

Theme	Objection (Summary)	Council's Response
Market Valuation and Commercial Return	<ul style="list-style-type: none"> ○ Concerns about rent level, valuation method and non-disclosure ○ Suggests long terms reduce community benefit 	<p>Council sought independent valuation advice on two occasions to assist with the lease negotiations. The offer accepted by Council exceeds the market advice.</p> <p>Full reports cannot be released due to commercial-in-confidence restrictions. Annual fixed percentage increases and market review clauses in the lease ensure ongoing commercial return.</p> <p>Upon finalisation of the lease documentation and execution, the commercial rental will be made available on Council's contract register in accordance with Section 53 of the <i>Local Government Act 1993</i>.</p>
Public Use, Amenity and Operational Impacts	<ul style="list-style-type: none"> ○ Concerns about pedestrian corridor impacts and Crown land protection 	<p>The leased area does not encroach on the pedestrian corridor. The proposal enhances public benefit through activation, increased revenue and stronger maintenance obligations while maintaining public access.</p>

As objections were received, a resolution from Council is required to seek Ministerial consent under Section 47 of the *Local Government Act 1993*. Once a determination is received from the Minister for Local Government, Council will notify the submitters of the outcome.

PROPOSAL

In accordance with Section 47 of the *Local Government Act 1993*, Council must obtain the Minister's consent to enter into the proposed agreement for lease and lease with North Kiosk Pty Ltd (ABN 45 106 911 862), as objections were received to the granting of a lease exceeding five years.

Pursuant to Section 47(9), the granting of the Minister's consent constitutes conclusive evidence that Council has complied with public notice and objection requirements.

Subject to the Minister's determination, lease documentation allows for reasonable amendment or delayed commencement to accommodate any conditions imposed.

CONSULTATION AND COMMUNICATION

The agreement for lease and lease proposal was publicly notified for a period of 28 days in accordance with Section 47 of the *Local Government Act 1993*. The public notification comprised of a notice on Council's website, written notification to surrounding property owners and the placement of a notice sign on the land inviting public submissions. The public submission period concluded on 23 December 2025.

Two (2) submissions by way of objection were received as outlined above.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2035 Goal 3 – *We foster a diverse economy, and we value innovation, culture, and creativity*. It specifically delivers on core business activities as detailed in the Community Strategic Plan 3.3 – 'Increase and attract new business investment and enterprise to Wollongong while supporting and growing existing local businesses.'

RISK MANAGEMENT

The proposal is subject to the requirement for Ministerial consent under the *Local Government Act 1993*. This risk is being managed through completion of the statutory notification process, consideration of the submissions received, and an application is being prepared to the Minister for determination. No agreement for lease or lease will be granted and no financial commitment entered into until Ministerial consent is obtained.

FINANCIAL IMPLICATIONS

Upon granting of the agreement for lease and lease, Council will receive commercial market rental as outlined in the confidential attachment to the previous Business Paper Item 17 dated 15 December 2025.

CONCLUSION

This report recommends that Council resolve to apply for the Minister's consent to enter into an agreement for lease and lease with North Kiosk Pty Ltd (ABN 45 106 911 862) as objections have been received. In accordance with Section 47(9) of the *Local Government Act 1993*, the Minister's consent is conclusive evidence that Council has complied with statutory requirements.