

Cairns Airport Pty Ltd

Response to ACCC request for further information

2 March 2020

Request for further information

The ACCC has requested that Cairns Airport provide further information relevant to the ACCC's assessment of the application by the incumbent car rental operators at Cairns Airport for authorisation to collectively negotiate with Cairns Airport.

The ACCC has requested that Cairns Airport provide the following information:

- What type of contracts will be offered to potential car operators who are successful through the Request For Tender process which Cairns Airport is conducting?
- Will the potential car rental operators have scope to negotiate on these contracts? If so, please explain what scope and on what terms a potential car rental operator would have to negotiate with Cairns Airport in a the tender process.
- Please provide copies of the documents which have been provided to parties as part of the Request for Tender (RFT).
- Please provide details of how the RFT will allocate car rental space amongst those parties who have submitted a bid. How does Cairns Airport intend to use the information submitted by parties who put in a bid in the tender process.
- Has the size and configuration of the T2 Car Rental Enhancement Development Project been finalised? What is the expected timing for completion of the expansion.
- Please explain whether the RFT process will feed into how decisions are made about how to allocate terminal space for other uses (ie not just car rental space). If yes, please outline how the RFT will impact those decisions.

This document sets out Cairns Airport's response to these questions and attaches the requested documents (**Response**).

Some of the information contained in this response is commercially sensitive and relates to Cairns Airport's contractual negotiations with the rental operators. As such, Cairns Airport provides this submission on the basis that the redacted information is treated as confidential and withheld from the public register.

ACCC Interim Authorisation not in the interests of competition and consumers

A key purpose of the RFT process is to promote significantly greater competition between car rental companies operating at Cairns Airport than has previously existed to improve levels of service and value for money received by consumers. Unfortunately the ACCC Interim Authorisation decision to allow cartel conduct in an already highly concentrated market has the potential to significantly impact the ability to the RFT to provide better outcomes in terms of price and quality of service for consumers. That is the ACCC's interim decision is to the detriment of consumers.

The RFT process is designed to create:

- Competition between car rental companies for the limited facilities currently available at Cairns Airport (competition for the market). Currently there are more car rental companies interested in facilities at Cairns Airport than there are facilities. Accordingly, it is likely that one or more car rental companies may not receive access to car rental facilities at Cairns Airport thus creating competition for the market: and
- A framework to promote competition in the market between successful tenders. The RFT requests that tenders demonstrate how they propose to increase competition, provide value for money to consumers, provide innovative products and services.

Allowing car rental companies to engage in price fixing, bid rigging and market allocation will limit the ability of Cairns Airport to promote competition for the market and competition in the market to the detriment of consumers. Notwithstanding the Interim Authorisation Cairns Airport does not propose to collectively negotiate with car rental companies so as to ensure as much competition as possible between car rental companies for the benefit of consumers.

ACCC Questions

What type of contracts will be offered to potential car operators who are successful through the Request For Tender process which Cairns Airport is conducting?

Cairns Airport has provided to short listed tenderers a lease agreement which will form the starting point for negotiations with individual operators.

This document is based on Cairns Airport's previous agreements with rental operators.

The only material change has been to streamline the documentation by consolidating the various lease and license documents into a single lease agreement. This has necessitated some consequential drafting changes, but on the whole the underlying terms are similar to the agreements that Cairns Airport has in place with the incumbent rental operators.

A copy of the draft lease agreement is provided in attachments to this Response.

Will the potential car rental operators have scope to negotiate on these contracts? If so, please explain what scope and on what terms a potential car rental operator would have to negotiate with Cairns Airport in a the tender process.

Cairns Airport is entirely open to negotiating reasonable alternative terms with the rental operators. Cairns Airport appreciates that terms may need to vary from operator to operator to accommodate specific needs and circumstances.

The draft lease agreement is merely a starting point for negotiations with Cairns Airport. In the addendum to the RFT Cairns Airport has made it explicitly clear that tenderers can propose alternative terms to those in the proposed lease agreement:

The terms and conditions in the Lease and License (in Appendix 5) are negotiable. Cairns Airport would like to conduct open and transparent negotiations with individual Respondents in as timely a manner as possible and reserves all rights to do this by whatever means is necessary to secure expeditious execution of the Lease. To this end, and to avoid protracted negotiations. Respondents are requested to set out material non-conformances or departures to the terms and conditions of the Lease and License in the Non-Conformance table (Appendix 3A to this Tender Addendum).

Cairns Airport will deal with proposals to vary the terms of the draft lease agreement on a case-by-case basis. This is an effective approach that will enable the parties to expediently negotiate bespoke terms that are suited to the individual rental operators circumstances and priorities. For example, bilateral negotiations will enable Cairns Airport to tailor its terms to account for each operator's unique commercial objectives and strategy (for example some operators look to position themselves as low-cost rental companies, while others may seek to offer a more premium services), pricing model, and preferred price/risk allocation trade-offs.

Please provide copies of the documents which have been provided to parties as part of the Request for Tender (RFT).

Cairns Airport has provided the requested documents in the cover email to this letter. Cairns Airport provides the following attachments:

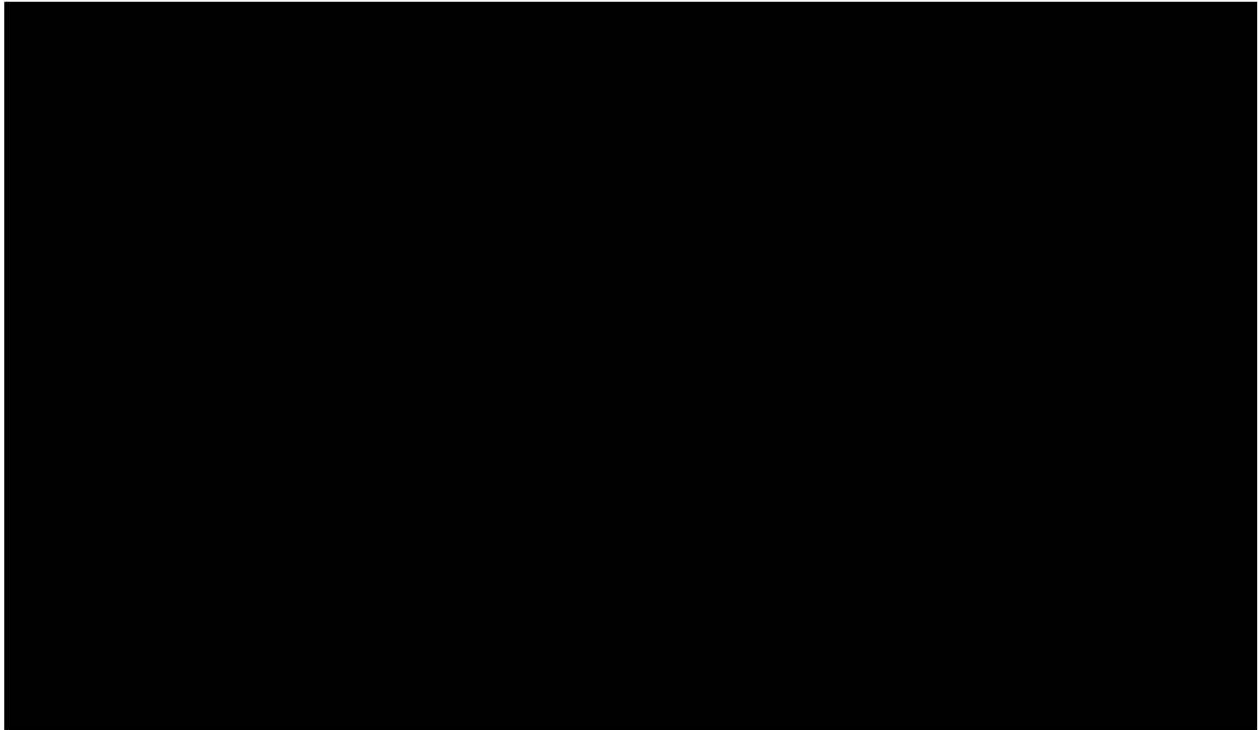
- The initial RFT along with Appendices 1 to 11 (excluding appendix 3), which were made available to participants on 17 February 2020.
- The addendum to the RFT which Cairns Airport made available on 25 February 2020, and which attached Cairns Airport's proposed Lease and License agreements.
- Cairns Airport's proposed lease for rental operators.
- Cairns Airport's proposed car park license for rental operators.

Please provide details of how the RFT will allocate car rental space amongst those parties who have submitted a bid. How does Cairns Airport intend to use the information submitted by parties who put in a bid in the tender process.

As stated above a key purpose of the RFT process is to create competition for the market. Accordingly, Cairns Airport will look to enter into binding leases with successful tenders on a first-come first served-basis. Cairns Airport wishes to ensure that successful tenders (following the competition for the market) do not become complacent or exploit the privileged rights they are granted under the leases to the detriment of consumers. Therefore Cairns Airport has developed selection criteria designed to promote competition between successful tenders (competition in the market) throughout the term of the lease, for the benefit of consumers. To this end, the RFT also requires the rental operators to provide a capability statement which demonstrates that the rental

operator is able to provide a competitive service offering, which delivers benefits to end customers. The capability statement must include various information such as business plans, to demonstrate various capabilities such as operator's ability to deliver innovation, value for money, effective customers interfaces, etc.¹

The RFT requires rental operators to nominate which on-airport car rental facilities (including the specific location of the facilities) they require and put forward a tender for each of these facilities at the airport in a pro forma 'financial offer' document.



Has the size and configuration of the T2 Car Rental Enhancement Development Project been finalised? What is the expected timing for completion of the expansion.

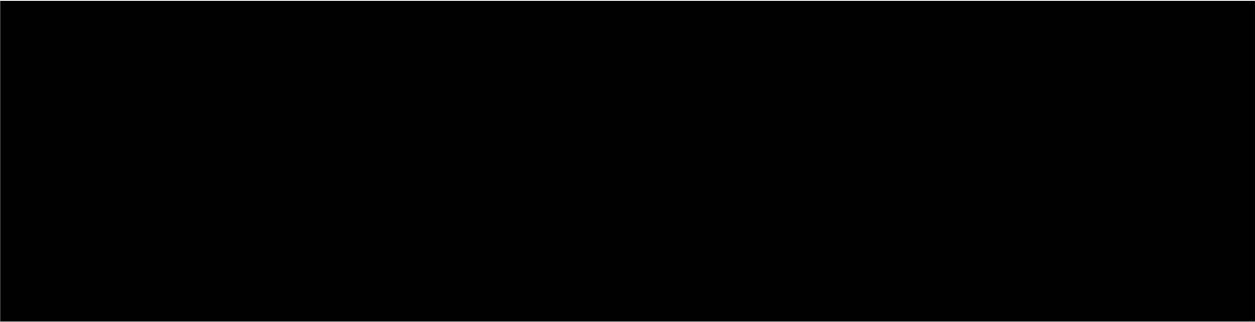
While plans for the T2 Car Rental Enhancement Development Project are well-progressed, the precise size and configuration of the expansion has not yet been finalised.

Cairns Airport retains some limited flexibility to reconfigure the use of terminal and ground space, depending on demand for car rental facilities from the rental operators as determined in the RFT process.

Cairns Airport expects the T2 Car Rental Enhancement Development Project to be completed in May 2020 with tenants occupying the new facilities for June 2020. Cairns Airport is looking to complete the RFT process and enter into agreements with rental operators ahead of this date.

Cairns Airport's timeline for the expansion is summarised in the figure below.

¹ See pages 9 and 10 of the RFT document.



Please explain whether the RFT process will feed into how decisions are made about how to allocate terminal space for other uses (ie not just car rental space). If yes, please outline how the RFT will impact those decisions.

Cairns Airport is tasked with allocating the limited terminal and ground space at the airport in the most efficient way possible. This ensures that that airport customers have access to the services which are most valuable to them.

Cairns Airport is always looking to achieve an optimal mix of retail, food and beverage, transport, parking and other services on offer at the airport, in order to deliver the enhance the experience for customers by providing the offerings that they value most highly. This is not a unique consideration to the car rental facility RFT process, but is an ongoing process which Cairns Airport considers in all of its non-aeronautical planning.

While Cairns Airport has settled on its high level ground and terminal plans for the upcoming period, these plans have been developed based on consultations with rental operators, and reflect their stated demands for larger and improved facilities, the RFT is a competitive process designed to allocate airport space in the most efficient way possible. If tenders provided by the rental operators indicate that demand is stronger or weaker than anticipated, Cairns Airport has some flexibility in its plans, for example to enable it to offer further or improved facilities to rental operators.

The RFT process transparently allows applicants to indicate the value they place on having an airport presence, and on particular locations within the airport, through their bids for given spaces and an operator nominated percentage of turnover. This process ensures that scarce airport space is put to its highest value use, and allows rental operators with a lower cost base to outbid rival rental operators.