



Notice of Extraordinary Meeting

Notice is hereby given that a Extraordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Wednesday 6 August 2014 commencing at 4.00 pm.**

Business

1. Acknowledgement of Country
2. Apologies
3. Declarations of Interest
4. Deputations
5. Reports
 - 5.1 Tender – Refurbishment of the Wigmore Arcade
 - 5.2 Wigmore Arcade Complex Refurbishment Project – Leasing Update
6. Confidential Session
 - 6.1 Wigmore Arcade Complex Refurbishment Project – Leasing Update

Paul Hickey
General Manager

Deputations to Council – Guidelines

Deputations by members of the public may be made at Council meetings on matters included in the business paper. Deputations are limited to one speaker in the affirmative and one speaker in opposition. Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting. Deputations are given five minutes to address Council.

Any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.

The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.

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1. Acknowledgement of Country
 2. Apologies
 3. Declarations of Interest
 4. Deputations
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1. Acknowledgement of Country

In opening the meeting the Mayor provided an Acknowledgement of Country by reading the following statement on behalf of Council:

I would like to respectfully acknowledge past and present Bundjalung peoples who are the traditional custodians of the land on which this meeting takes place.

2. Apologies

3. Declarations of Interest and Reportable Political Donations

4. Deputations

5.1 Tender - Refurbishment of the Wigmore Arcade

5. Reports

5.1 Tender - Refurbishment of the Wigmore Arcade

Delivery Program Commercial Services

Objective To obtain Council approval to award the contract for the refurbishment of the Wigmore Arcade and to review the budget for the project.

Background

Council resolved at the February 2014 Ordinary meeting, following a report to a Commercial Services Committee meeting, to undertake a refurbishment of the Wigmore Arcade, with the project to include the following infrastructure works:

- *Create a new south western vehicular entrance to the Wigmore car park to improve traffic flows and pedestrian safety.*
- *Create a shared traffic zone on Winton Lane between the rear of the arcade and the Wigmore car park to improve pedestrian safety.*
- *Create a landscaped area with public seating leading off the shared traffic zone into the Wigmore Car Park.*

Tenders were subsequently advertised on 24 June 2014, for Tender RFT770 – Provision for the Re-Development / Refurbishment of the Wigmore Arcade.

The following tenders were received:

- Bennett Constructions Pty Ltd - Lismore
- Greg Clark Building Pty Ltd – South Lismore
- HBI Australia Pty Ltd – Byron Bay

This report provides details on the outcomes from the tender evaluation process including budget considerations.

Key Issues

- Tender Process
- Development Consent - status;
- Budget items – Additional items for consideration
- Tender Evaluation – Appoint qualified/experienced contractor;
- Award the tender in accordance with the Local Government (General) Regulations 2005

Information

Tender submissions were received on 18 July 2014 from the following contractors;

Bennett Constructions Pty Ltd	\$ 1,295,070 (ex GST)
Greg Clark Building Pty Ltd	\$ 1,339,693 (ex GST)
HBI Australia Pty Ltd	\$ 1,494,035 (ex GST)

5.1 Tender - Refurbishment of the Wigmore Arcade

Following a review of the tender submissions Council requested clarifications and for the reasons discussed shortly, the removal of the landscaping element from the tenders submitted by Bennett Constructions and Greg Clark Building Pty Ltd.

The following revised tender submissions were received on 29 July 2014¹;

Bennett Constructions Pty Ltd	\$ 1,225,456 (ex GST)
Greg Clark Building Pty Ltd	\$ 1,158,237 (ex GST)

Development Consent

At the time of developing this report, Council (as the applicant) is yet to receive development consent. In the interest of minimising both a commercial and construction program risk the landscaping, shared zone and Winton Lane works are proposed to be deferred until the refurbishment works on the Arcade are completed. At this stage, Council's Engineering Works section will undertake those other works.

Budget Considerations

Wigmore Arcade Roof

There have been growing concerns in relation to the longer term viability of a number of the existing roofs on Wigmore Arcade. There are particular concerns with ongoing 'corrosion' and 'leaking' issues which if not addressed soon will result in damage to the shops proposed to be refurbished. Some preliminary estimates for this work have been sought for planning and budgetary purposes; i.e.

- Main roof facing River Street (approx 990sqm). Existing corrugated roof to be replaced with trim deck to comply with current standards. Includes parapet walls and flashings (\$105,000).
- Specsavers - Roof requires replacing with cliplock roof including flashings (\$13,000).
- Storeroom – Replace skillion roof, flashings and downpipes (\$8,000).
- Carport – Replace asbestos roof with trimdeck, gutters, downpipes and flashing (\$10,000).
- Butcher's Roof – Replace existing skylight, flashing (\$2,500).
- Roof Safety Systems – Work/Costs incorporated in the tender.

Civil Works – Shared Zone/Winton Lane

The QS report presented to the February 2014 Commercial Services Committee meeting, copy included as attachment one, included an allowance of \$140,930 for works referred to as "Shared Zone".

However during the assessment process it has become clear that this estimate excluded allowances for a range of civil infrastructure works including, but not limited to:

- Restoration and improvements to the existing Wigmore Car Parking area
- Winton Lane pavement reconstruction
- Drainage improvements.

These works are considered essential to provide an overall positive outcome for the Ballina town centre and Council staff have costed these works at approximately \$200,000, consistent with other Council road/capital works of this nature.

Landscaping

The \$140,930 in the QS report included \$16,000 for landscaping related works. Council staff estimate to do this work properly, for this high profile site, the preferred estimate should be \$108,000.

This includes extensive paving, landscape blisters, seating, bike racks etc.

Also the development conditions (draft) for the project are imminent. Due to potential time delays associated with obtaining Construction Certificate documentation for the Winton Lane Shared zone (including landscaping) it was considered prudent to remove any landscaping from the refurbishment works and tender as the finalisation of this tender process would require those conditions.

This means that this work, if it proceeds, would be undertaken in conjunction with the car parking and shared zone works by Council personnel.

Water Service/Meter Upgrade

Recent emergency repair works were conducted on the Wigmore Arcade building which has highlighted the need to reconsider whether an upgrade to the existing water service in light of the proposed refurbishment works should be carried out now.

Council's water and sewer team has provided an indicative cost to upgrade the service including a metered service for each shop. The cost included in the total budget summary that follows reflects a cost to upgrade (with backflow prevention devices) provisions to 23 shops.

An alternative slightly cheaper alternative would be to provide sub meters targeting the higher water users.

Approximate cost for 13 sub-meters in lieu of 23 is estimated at \$16,000.

DA Contributions

It is understood, at this stage, that the required developer contributions to satisfy development consent is likely to be of the order of \$112,000 with \$86,000 consisting of section 94 car park contributions.

Council's original planning advice, from Newton, Denny and Chapelle was that car parking contributions would not be payable.

Council, as the applicant, may well ask our Development Engineering Section to review the requirement to pay these contributions as there remains disagreement on this issue

Consultants

The balance of the consultant fees yet to be paid for the detailed design and architectural services is approximately \$43,000.

Budget Summary

The following table represents a summary of the projected collective costs remaining for the project.

5.1 Tender - Refurbishment of the Wigmore Arcade

Item	Estimate (\$)
Wigmore Arcade Roof Repair	144,000
Civil Works - Shared Zone/Winton Lane	200,000
Landscaping/Paving/Planting	108,000
Water Service/Meter upgrade	20,000
Council DA contributions (includes \$86,000 for car parking)	112,000
Outstanding consultant fees	45,000
Construction Tender (revised tender submission by Greg Clark)	1,158,237
Subtotal	1,787,237
Available Budget 2014/2015	1,450,000
Funding Deficit for Increased Works Program – Approx	(340,000)

Note: No contingency has been applied to any item apart from the Tender which contains 5%.

In summary the major increases in the budget are roof repair (\$144,000), increase in Civil Works and Landscaping over original budget (approximately \$170,000) plus the Section 94 car parking contributions (\$86,000)

Tender Evaluation

The tender documentation defined three areas, by which each tender would be assessed:

- Total price - 40%
- Capability & Experience – 30%
- Quality, Safety & Works Program – 30%

A tender evaluation panel comprising Group Manager Civil Services, Manager Support Operations and Manager Engineering Works assessed the tender submissions. The panel received supporting advice from technical officers and Manager Commercial Services.

The summary of the panel's evaluation is presented in the table that follows.

As noted earlier, Greg Clarke Building and Bennett Constructions were invited to provide revised pricing on an amended scope of works. Both these companies have appropriate work systems, experience, and capability and have previously satisfactorily provided services to Council. Therefore the key issues in the assessment were the comparison of price and program.

The Greg Clarke submission is the least expensive, however the program proposed is longer than the one in the Bennett's submission by approximately three weeks.

The longer program may result in some additional costs to Council in respect of the management of tenants, however the program still enables the project to be completed by the Christmas trading period and the difference in the tender prices means on balance the submission from Greg Clarke is the one providing the best advantage to Council.

Tender Assessment	Weighting (%)	Greg Clark Building P/L	Bennett Constructions P/L
Price	40	40	37
Capability and Experience	30	29	29
Quality, Safety and Program	30	27	28
Total	100	96	94
Ranking		1	2

Legal / Resource / Financial Implications

This report is provided to assist Council meet its statutory requirements in regard to tendering and procurement.

If Council wishes to proceed with the total scope of works now proposed additional funding of \$340,000 is needed. The preferred strategy for that budget adjustment is as follows:

- Council's budget for 2014/15 includes estimated income from land sales of \$1.6m based on eight sales. Contracts have now been signed for eight lots with one more sale imminent and another in negotiation. Based on this it is recommended that the transfer to reserves from these sales be increased by \$400,000 with \$340,000 then transferred out of the reserve to finance this funding shortfall.

There is considered to be very little in the way of risk with this strategy due to the demand for these residential lots, albeit that if the sales did not proceed there remain adequate funds in the Property Development Reserve to finance these works, although the reserve balance would be starting to reach an uncomfortably low level.

Consultation

A public tender process was conducted.

Options

Under the Local Government (General) Regulations 2005 Council must either accept the tender that "appears to be the most advantageous" or decline to accept any of the tenders.

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. As per option one and not proceed with the project due to the overall cost.
3. Council may award the contract to the highest ranked tenderer, Greg Clark Building Pty Ltd and approve the additional funding.

Option one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005.

Option two is not recommended as it is considered that the actual refurbishment works are similar to the original budget, with the additional funding required to complete either essential works (the roof) or improved civil infrastructure in this location.

Option three is recommended as the preferred option as the tender assessment indicates that a reliable market has been established and the assessment by the evaluation panel has determined the highest ranked tender.

Additional funding has also been identified within the report.

RECOMMENDATIONS

1. That Council accepts the tender from Greg Clark Building Pty Ltd for the refurbishment of the Wigmore Arcade for the amount of \$1,158,237 (ex GST).
2. That Council authorises the Council seal to be attached to the contract documents.
3. That Council approves an increase to the budget for this project of \$340,000 funded through an increase in revenue of \$400,000 from land sales for the Wollongbar Residential Estate, with the sale proceeds transferred to the Property Development Reserve and the \$340,000 then transferred from that reserve to fund these works.

Attachment(s)

1. QS Pty Ltd - Wigmore Arcade Trade Summary

Full Estimate Summary

Job Name : <u>WIGMORE ARCADE R2</u> Client's Name:	<u>Job Description</u> Proposed Alterations & Additions Wigmore Arcade Ballina R2 10/02/2014
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Trd No.	Trade Description	Trade %	Cost/m2	Sub Total	Mark Up %	Trade Total
1	SITE PREPARATION	6.41		83,000		83,000
2	SUBSTRUCTURE	0.23		3,000		3,000
3	STRUCTURAL STEEL / TIMBER	1.16		15,000		15,000
4	STAIRS	0.06		800		800
5	EXTERNAL WALLS	0.77		10,000		10,000
6	EXTERNAL WINDOWS AND EXTERNAL DOORS	15.84		205,090		205,090
7	INTERNAL WALLS	6.48		83,929		83,929
8	SUBTOTAL FOR STRUCTURE (arcade)					<u>400,819</u>
9	FLOOR FINISHES	3.93		50,856		50,856
10	CEILING FINISHES	0.93		12,100		12,100
11	SERVICES	6.01		77,800		77,800
12	PAINTING	2.82		36,480		36,480
13	SUBTOTAL FOR FINISHES (arcade)					<u>177,236</u>
14	PRELIMINARIES	6.16		79,700		79,700
15	BUILDERS MARGIN @ 10%	5.08		65,776		65,776
16	SUBTOTAL FOR PRELIMINARIES / MARGIN					<u>145,476</u>
17	TOTAL for ARCADE					<u>723,531</u>
18	RIVER STREET ENTRY AWNING	11.74		152,039		152,039
19	EXISTING TOILETS	2.93		37,910		37,910
20	NEW STORE 5	0.87		11,209		11,209
21	NEW STORE 6	0.52		6,692		6,692
22	NORTH TERRACE	15.43		199,787		199,787
23	BIN STORE	1.75		22,605		22,605
24	SHARED ZONE	10.89		140,930		140,930
25	COST PLAN NOTES					
		100.00		1,294,703		1,294,703
Final Total : \$						1,294,703

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update

Delivery Program Commercial Services

Objective To provide an update on leasing and rental negotiations for the Wigmore Arcade Complex

Background

Council has received tenders from builders to undertake refurbishment of the Wigmore Arcade Complex. Subject to Council resolving to proceed with this project, it is anticipated that the refurbishment works will commence in August 2014 and be completed by mid November 2014.

The proposed works will cause significant disruption to tenants at the entrance to, and within the arcade, these works include:

- Reworking of the floor to the arcade walkway to remove step thresholds into shops
- Retile the floor to the arcade walkway
- Install new shopfronts to all shops
- Install stained timber paneling above shopfronts
- Repaint arcade
- Install new lighting to the arcade
- Upgrade the Winton Lane entrance to the arcade
- Refurbish the staff and customer toilets pertaining to the arcade
- Install a parents' room and new toilet for the disabled in the arcade
- Undertake landscaping and upgrade works to Winton Lane and the Tamar Street carpark immediately to the north of the arcade.

Under the provisions of the NSW Retail Leases Act 1994, tenants are to be reasonably compensated for disturbance, relocation and set up costs.

Commercial Services staff have been in negotiations with tenants who will be directly affected by the proposed refurbishment works. The purpose of this report is as follows:

1. To provide an update on leasing premises to incumbent and prospective tenants.
2. To alert Council to the fact that some tenants will suffer disturbance and some will also incur relocation costs. At this stage the costs of disturbance and relocation are still to be determined or unknown. Depending upon the speed and nature of works to be undertaken, disturbance could be less or greater than anticipated. Once such costs as determined a report will be put to Council accordingly.

Key Issues

- Compliance with the NSW Retail Leases Act 1994.
- Fair and reasonable compensation for disturbance and relocation.
- Rental relief, where reasonable.
- Infrastructure upgrade costs for tenants.

Information

As Councillors may be aware, all of the remaining tenants within the arcade (including 141, 145 and 147 River Street), have been on month to month holdover tenancies since their previous long term leases expired on 31 December, 2012. This action was taken to provide Council with flexibility to consider redevelopment or refurbishment options for the arcade.

Short term tenants have occupied some of the vacant shops within the Arcade on the proviso that they vacate prior to refurbishment works commencing.

Commercial services staff have been in negotiations with parties seeking leases over premises post completion of refurbishment works, however securing firm commitments has been difficult until such time as a definitive completion date for the refurbishment works can be given and the quality or standard of refurbishment meets expectations. This is particularly relevant for retailers who need the certainty that they will be in occupation and established well before Christmas trading commences as shop fitouts have to be organised, stock ordered, staff hired etc.

An issue in negotiations with incumbent prospective tenants is compliance with Council's proposed requirement that four new larger grease traps be installed. The costs of these works are included in the construction tenders for the project but have not been individually itemised.

A major leasing program will be initiated once a building contractor has been engaged and a works program is agreed to with Council.

The status of leasing negotiations is summarised below and should be read in conjunction with the leasing plan **attached**. Separate reports will be presented to Council seeking approval of proposed lease terms and conditions as and when negotiations are finalised.

- a) Relocate Corries from 145 River Street to 141 River Street. Negotiations are progressing with Ms Corrie Steadman to facilitate this relocation and take up a new lease over 141 River Street.
- b) Convert 145 River Street into an alfresco dining area and lease same to Café Swish (147 River Street). Negotiations are progressing with Mr & Mrs Tall to take up a new 5 + 5 year lease over 145 River Street and the alfresco dining area.
- c) Subject to determination of a construction program with a building contractor, temporarily relocate Walshe Hairdressing from Shop 2 to Shop 12 to expedite refurbishment works to the east side of the arcade. Negotiations are progressing with Ms Cathy Munro to facilitate this temporary relocation and then take up a new lease over Shop 2.
- d) Shop 4 & 5. The tenant, Ms Louise Griffiths has advised that she will be vacating her premises on 31 July, 2014.
- e) Shops 9 & 10; Daley's Gourmet Meats. Negotiations are well advanced with Mr Daley to take up a new lease over Shops 9 & 10.

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update

- f) Shop 11 Tobacco Station. Negotiations are continuing with the incumbent tenant, Mr Mike Lynch, to take up a new lease.
- g) Shop 12. A party has expressed interest in leasing these premises as a cafe.

The scope of proposed refurbishment works will cause significant disturbance and disruption to tenants at the entrance to, and within the arcade. It is proposed to undertake the refurbishment works in four stages generally outlined as follows:

Stage 1	Eastern side of arcade; new shopfronts etc.
Stage 2	Western side of arcade; new shopfronts etc.
Stage 3	Upgrade toilets and entrances to arcade
Stage 4	Laneway upgrade, landscaping of Wigmore Carpark.

Stages 1 and 2 will include levelling and tiling of the arcade's floor which will cause significant disruption to pedestrian traffic. Tenders submitted for the project indicate construction periods range from three to five months. A realistic time frame for such works is three to four months.

All remaining tenants at the entrance to, or within the arcade, have been on month to month holdovers since their previous long term leases expired on 31 December, 2012. This action was taken to provide flexibility to Council to enable redevelopment or refurbishment of the Arcade to proceed. All remaining tenants have expressed a desire to take out long term leases at the completion of the proposed refurbishment works.

It is also noted that certain provisions of the NSW Retail Leases Act 1994 apply to on-going month to month tenancies. Council should be mindful that these tenants have displayed loyalty towards Council and promoted the benefits of refurbishing the arcade.

As noted above, at this stage the costs of disturbance and relocation are still to be determined or unknown. Depending upon the speed and nature of works to be undertaken, disturbance could be less or greater than anticipated. Once such costs as determined, a report will be put to Council accordingly.

Legal / Resource / Financial Implications

Legal

The NSW Retail Leases Act 1994 places an onus on landlords to act reasonably when undertaking construction works that temporarily inconvenience tenants resulting in disturbance and relocation. Compensation in the form of rent relief and or a payment towards costs incurred by tenants as result of construction works may be payable by the lessor. The Act does not prescribe specific amounts or formulas for determining such compensation other than what is reasonable.

Failure to act reasonably may result in Council being taken to the NSW Civil & Administrative Tribunal ("NCAT") which can be a lengthy and costly process.

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update

Given the long term nature and quality of tenants seeking rental relief and compensation for disturbance, having the matter dealt with by NCAT would not be a preferred outcome.

Resource

A considerable amount of staff time has and will be incurred in reaching a reasonable outcome in negotiations with tenants.

Finance

A five year estimated cash flow projection has been prepared factoring in:

- The cost of rental relief outlined above.
- Rent free periods for new leases (including those to incumbent tenants); and
- Vacancy periods.

Details of the cash flow projections are as follows. Please note that the gross rental income projections are estimated and as such are subject to fluctuations depending upon a number of factors including market conditions and the outcome of negotiations yet to be finalized.

Year	1	2	3	4	5
Gross Income	\$357,353	\$521,165	\$588,109	\$651,481	\$665,378
Less Outgoings	\$139,256	\$142,737	\$149,963	\$154,462	\$159,096
Net Income	\$218,107	\$378,428	\$438,146	\$497,019	\$506,282

The figures previously reported Council at the February 2014 Commercial Services meeting were as follows.

Year	2013/14	2014/15	2015/16	2016/17	2017/18
Gross Income	\$321,756	\$433,860	\$548,767	\$669,659	\$689,749
Less Outgoings	\$111,774	\$115,127	\$118,581	\$122,138	\$125,803
Net Income	\$209,982	\$318,733	\$430,186	\$547,521	\$563,946

Due to the timing of this project it will be necessary to review the cash flows for the Wigmore Arcade once the works are completed to ensure that Council's long term financial plan reflects the correct revenues.

Consultation

Negotiations with incumbent and prospective tenants are ongoing.

Options

1. Council resolves to authorise the General Manager to finalise negotiations with tenants seeking rental relief as compensation towards disturbance and a downturn in trade during the refurbishment works proposed for the Wigmore Arcade generally in accordance with the compensation proposed in this report.

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update

This option is recommended given the provisions of the NSW Retail Leases Act 1994 for a landlord to act unreasonably in instances where tenants are inconvenienced and suffer a temporary downturn in trading.

Council also receives an additional report in regards to specific costs for disturbance and relocation for each tenancy, once such figures are available.

The tenants affected, do not want to close temporarily as they do not wish to lose trade or staff. Furthermore, these tenants have continued trading without leases for the past eighteen months combined with the uncertainty as to the final outcome of works proposed for the arcade. This loyalty and confidence in Council to make a responsible decision should be considered and recognized.

2. Council resolves not to authorise the General Manager to finalise negotiations with tenants seeking rental relief as compensation for disturbance and a downturn in trade during the refurbishment works proposed for the Wigmore Arcade.

This option is not recommended as such action may be contrary to the provisions of the NSW Retail Leases Act 1994 for a landlord to act unreasonably in instances where tenants are inconvenienced and suffer a temporary downturn in trading.

In addition to this report the confidential report that follows in this agenda provides financial information relating to the tenants.

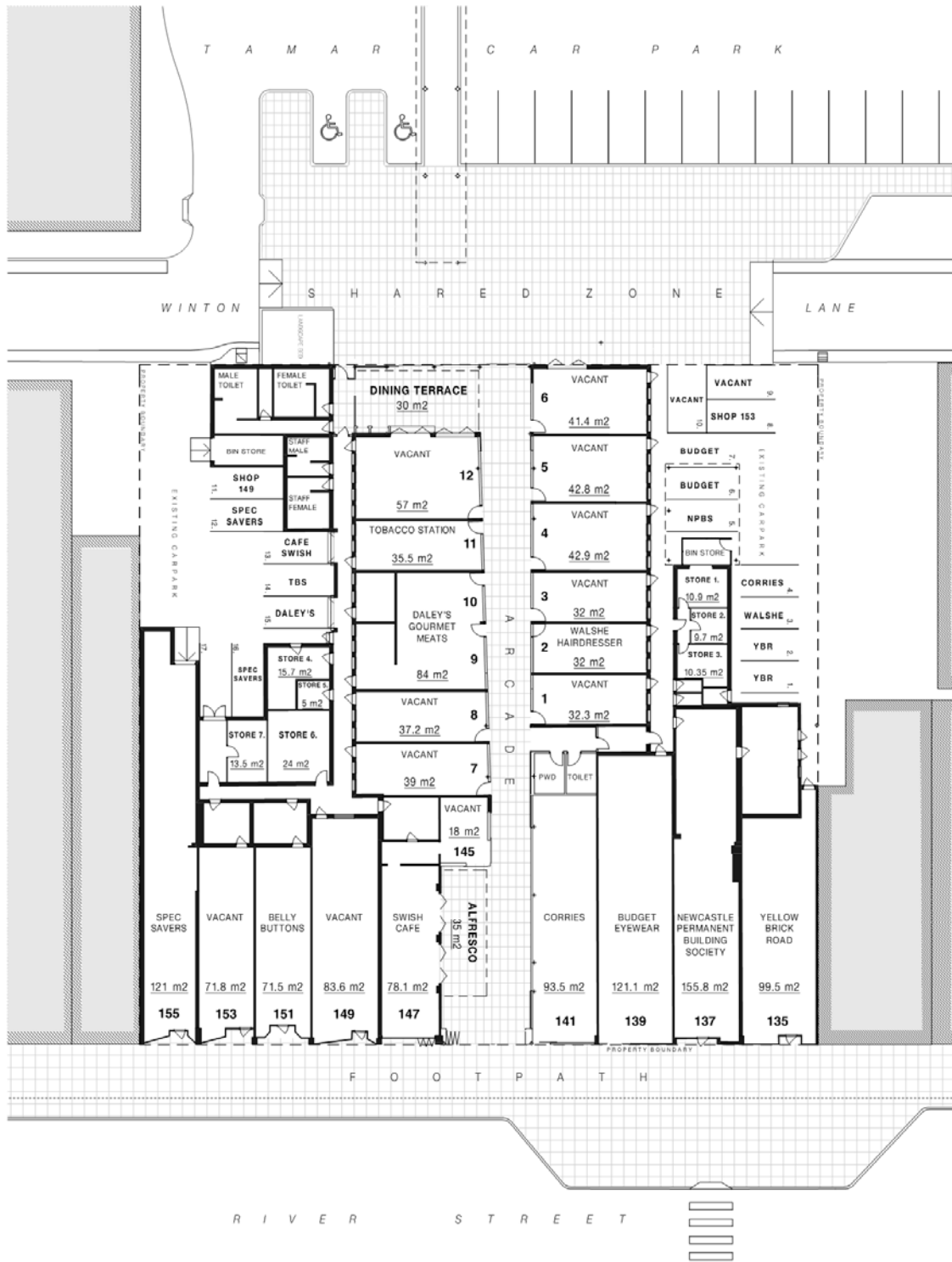
RECOMMENDATION

That Council authorises the General Manager to continue negotiations with tenants seeking rental relief as compensation for disturbance and a downturn in trade during the refurbishment works proposed for the Wigmore Arcade.

Attachment(s)

1. Leasing Plan

5.2 Wigmore Arcade Complex Refurbishment Project - Leasing Update



WIGMORE ARCADE - COMPLEX LEASING PLAN

NOTE: NOT TO SCALE - AREAS ARE APPROXIMATE ONLY



6. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

6.1 Wigmore Arcade Complex Refurbishment Project - Leasing Update

This report contains financial information relating to the tenants.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

6.1 Wigmore Arcade Complex Refurbishment Project - Leasing Update

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as it relates to private information for the tenants.