



Notice of Commercial Services Committee Meeting

A Commercial Services Committee Meeting will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **Tuesday 17 February 2015 commencing at 4.00 pm.**

Business

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal line underneath.

Paul Hickey
General Manager

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1. Apologies
 2. Declarations of Interest
 3. Deputations
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1. Apologies

2. Declarations of Interest

3. Deputations

4.1 Land Sale - Lot 5 Wollongbar Residential Estate

4. Committee Reports

4.1 Land Sale - Lot 5 Wollongbar Residential Estate

Delivery Program Commercial Services

Objective To seek Council's authority to place a building envelope restriction on the title of Lot 5.

Background

Civil construction works on Stage 1 of Council's Wollongbar Residential Estate were completed in November 2014 and a plan of subdivision was lodged with the Land and Property Information (LPI) Service in early January 2015. Council is now waiting on registration of the plan and issuance of titles so it can proceed to settle the sale of eleven lots.

The marketing of Lot 5 was placed on hold until the completion of civil works as per a recommendation from the Commercial Services meeting of 18 February, 2014. At the same meeting it was also recommended that the large teak tree on Lot 5 be retained.

At the Commercial Services of 18 November, 2014 it was then recommended as follows:

2. *That Council authorises Lot 5 to be placed on the market for sale, inclusive of the teak tree, with the sale price to be within the reserve identified by HTW Valuers. The contract for sale of Lot 5 is to include any legal restrictions available to protect the removal of the tree.*

Following on from that resolution Council staff sought submissions from three local real estate agents to place the property on the market for sale by public auction, which has resulted in the appointment of Century 21 Plateau Lifestyle Real Estate.

The feedback from the market and agents are concerns as to the size of the envelope on Lot 5 available for construction of a house, garage, swimming pool, etc.

The objective of this report is to seek Council's authority to place a building envelope restriction on the title of Lot 5 to provide certainty to potential purchasers on where they can build on the site.

Key Issues

- Potential legal liability in not adequately disclosing specific constraints

Information

At the Commercial Services Meeting of 18 February, 2014, Council recommended to retain a large teak tree located on Lot 5.

4.1 Land Sale - Lot 5 Wollongbar Residential Estate

Condition 36 of the Council consent (DA 2013/302) notes that no development is to take place within one metre of the identified root protection zone of the teak tree on Lot 5.

This consent condition has created confusion and uncertainty in the market as to where exactly the tree protection ("TPZ") extends to on Lot 5.

To assist in removing this uncertainty, consultants Newton Denny Chapelle ("NDC") were instructed to prepare a plan detailing the TPZ and area available for building on Lot 5. A copy of the plan is **attached**.

As it was proposed to include this plan in the auction contract advice was obtained from CH Law as to whether purchasers could reasonably rely on this plan.

It is important that the uncertainty regarding the size and extent of the building envelope is removed, or else such uncertainty will be reflected in the price potential purchasers may be prepared to pay for Lot 5.

Legal / Resource / Financial Implications

Legal

Advice from CH Law was sought in regards to this issue. A copy of their advice is **attached** hereto.

CH Law advise that to remove uncertainty in the proposed auction of Lot 5 or any subsequent transactions of the property, the building envelope should be formalised by noting it on the title of Lot 5 to avoid exposure of Council to a claim.

This is particularly relevant where Council is both vendor and consent authority.

Registration of building envelopes and/or TPZs on title is not unusual. A number of lots in Greenfield Road, Lennox Head have such notations on title.

Financial Implications

As noted in CH Law's advice, failure to adequately disclose the size and location of the building envelope may adversely impact on the market value of Lot 5.

Consultation

Local real estate agents, CH Law and planning consultants NDC have been consulted in preparing this report.

Options

1. Council can resolve to place a restriction on the title of Lot 5 detailing the building envelope as per the plan prepared by NDC and authorise the General Manager to sign and affix the Council seal to relevant documentation. This option is recommended as it will provide certainty to potential purchasers as to the size and boundaries of the building envelope for Lot 5 and in doing so also assist purchasers in establishing what they are prepared to pay for the property.
2. Council can resolve to not place a restriction on the title of Lot 5 detailing the building envelope and instead rely upon attaching the plan **attached** to the auction contract the plan prepared by NDC.

This option is not recommended as it will create confusion and uncertainty as the legality of the plan and potentially leave Council exposed to a claim at some stage in the future arising from subsequent transactions of the property.

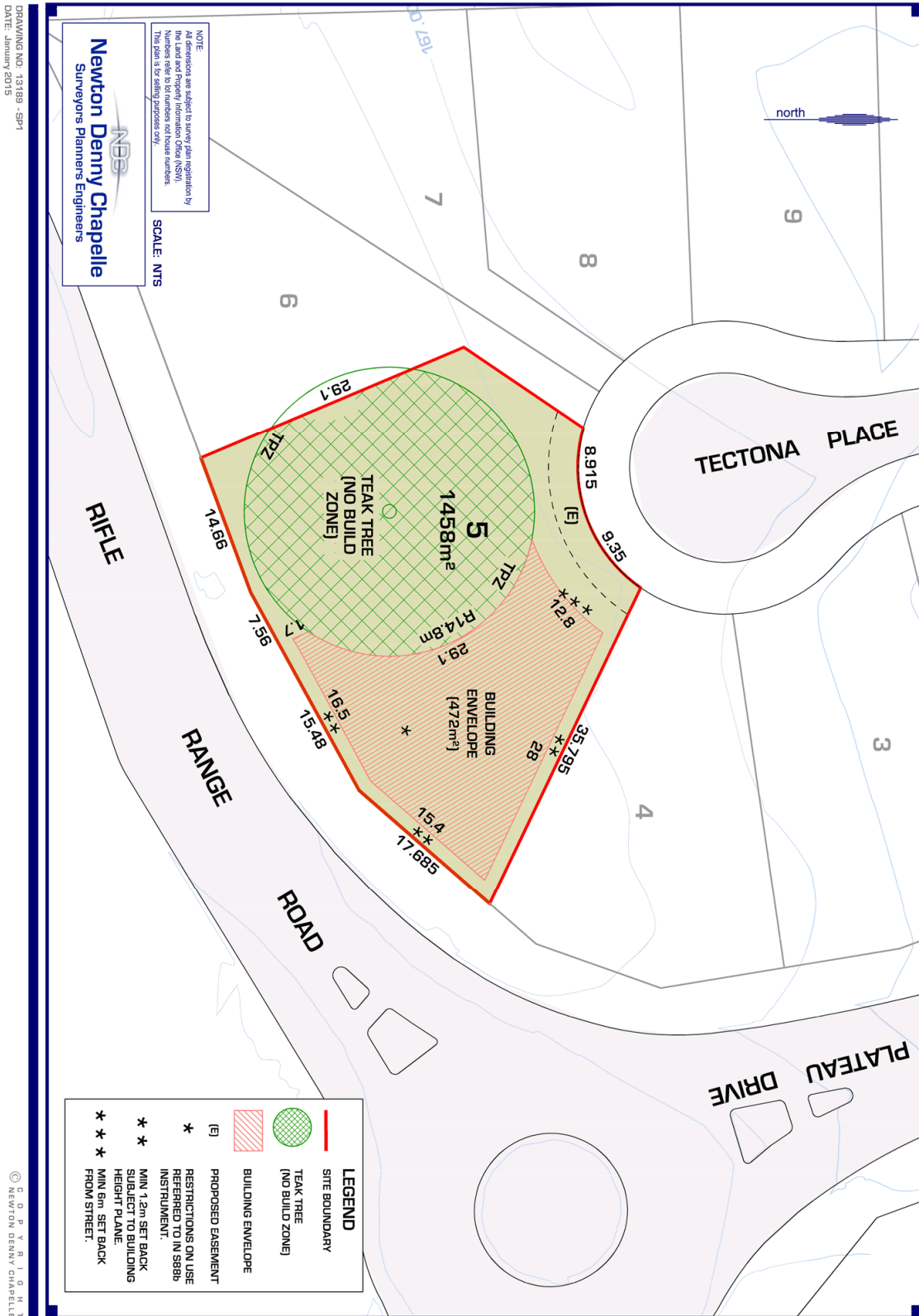
RECOMMENDATIONS

1. That Council approves the placement of a restriction on the title of Lot 5, as per the contents of this report, detailing the building envelope as per the **attached** plan prepared by Newton Denny Chapelle.
2. Council authorises the General Manager to sign and affix the Council seal to all relevant documentation.

Attachment(s)

1. Lot 5 Building Envelope Plan
2. CH Law - Legal Advice

4.1 Land Sale - Lot 5 Wollongbar Residential Estate





Principal
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Our Ref: CLH:KD:150023

27 January 2015

General Manager
Ballina Shire Council
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BALLINA

Also by email: pault@ballina.nsw.gov.au

Dear Paul

RE: BALLINA SHIRE COUNCIL: PROPOSED SALE
PROPERTY: LOT 5, 85 RIFLE RANGE ROAD, WOLLONGBAR

I refer to your email dated 22 January 2015 and my telephone conversation with your Paul Tsikleas on 23 January 2015. Your email attaches a plan of lot 5 with a building envelope due to the large tree on the lot.

I note the current position regarding the plan for this subdivision is that it has been lodged with LPI. Unless the plan has been changed since I saw it, there is no building envelope to be registered onto the title of Lot 5.

Whilst it would be possible to make a simple contractual disclosure in the contract for sale of Lot 5 as to likely existence of a building envelope due to the location of the teak tree, this would not affect the title and therefore not alert any subsequent purchaser. Whilst an attempt could be made to contractually bind the first purchaser to making such a disclosure to subsequent purchasers, there is no guarantee this will happen. I would be concerned that in due course a future purchaser may find themselves purchasing property about which they have not received notification as to any building restrictions caused by the teak tree. In circumstances where the tree clearly is a limiting factor and the building envelope can be ascertained at this point, it would be my advice the envelope be formalised by registration of the building envelope restriction onto the title of Lot 5 to avoid exposure of council to a claim.

Further and in any event, I would have thought making a contractual disclosure but not specifying the size of the envelope would adversely impact upon the market value of the property.

You have asked for my specific as to the disclaimer on the plan. This will not be required if the building envelope is to be registered on the title. If however it is not to be registered on the title then I would suggest the first sentence of the "Note" read as follows:-

"The illustrated building envelope has been prepared as a guide for prospective purchasers only and may be altered or varied by Ballina Shire Council upon any application for development on the lot".

I look forward to hearing from you.

Yours faithfully



CLARISSA HUEGILL

4.2 Land Sale - Southern Cross Industrial Estate

4.2 Land Sale - Southern Cross Industrial Estate

Delivery Program Commercial Services

Objective To obtain Council approval to sell a property at the Southern Cross Industrial Estate.

Background

Council owns a 3,964m² portion of land on the corner of Stinson Street and De Havilland Crescent in the Southern Cross Industrial Estate. This parcel of land forms part of a large residue lot left over from previous subdivisions to create lots for ARC, APN and others. Refer to DP 1194043 **attached**.

At the Commercial Services Meeting of 18 November, 2014 Council recommended to sell a portion of Part Lot 98 in DP 1194043 comprising an area of approximately 1,395m². That site is designated as the portion of land "Under Contract" on the aerial photo plan **attached**.

Since that time the purchaser lodged a development application to construct industrial units and has encountered difficulties in conforming with requirements in regards to truck turning circles. These difficulties mean the purchaser will require a wider site and as such they wish to renegotiate the sale to include the balance of Part Lot 98, comprising a total area of 3,964m².

A copy of DP 1194043 is **attached** with Pt Lot 98 shaded in yellow.

Key Issues

- Sale of surplus operational land

Information

The purchaser wishes to acquire the 3,964m² portion of Part Lot 98 in two lots as follows:

| Lot No. | Area | Settlement |
|---------|---------------------|--|
| 1 | 1,422m ² | 28 days after registration of subdivision plan. |
| 2 | 2,542m ² | Six months after registration of subdivision plan. |
| Totals | 3,964m ² | |

The purchase would be undertaken in two contracts; i.e. Lot 1 and Lot 2 both exchanged at the same time, but with staggered settlement dates as referred to above.

The costs of subdivision including Council contributions and professional fees are estimated to be in the order of \$60,000. This estimate assumes development contributions are payable on Lots 1 and 2.

4.2 Land Sale - Southern Cross Industrial Estate

The asking price of Part Lot 98 (3,964m²) is \$235/m² + GST. The overall purchase price negotiated is considered to be in line with recent land sales at the Southern Cross Industrial Estate as detailed in the summary schedule below, which should be read in conjunction with the aerial photo plan **attached**.

| Lot/DP | Price (excl GST) | Area | Date of Sale | Purchaser | \$/m ² |
|------------|------------------|---------------------|--------------|-------------|----------------------|
| 93/1161854 | \$290,000 | 1,100m ² | 11/6/2010 | Croft ANORS | \$264/m ² |
| 89/1161854 | \$424,000 | 1,663m ² | 22/12/2010 | Nasmyth P/L | \$254/m ² |
| 95/1184435 | \$533,150 | 2,269m ² | 4/10/2012 | Nasmyth P/L | \$235/m ² |
| 97/1194043 | \$570,058 | 2,429m ² | 2/8/2012 | Nasmyth P/L | \$235/m ² |
| 92/1161854 | \$270,000 | 1,100m ² | 7/2014 | Croft ANORS | \$245/m ² |

No other offers to purchase Pt Lot 98 (3,964m²) have been made since the last report to the Commercial Services Committee on 18 November, 2014.

Council has previously sold three parcels of land to Nasmyth Pty Ltd, who have an excellent track record of acquiring and developing Council land in the Southern Cross Industrial Estate. The agreed price is considered fair and reasonable in the current market.

Legal / Resource / Financial Implications

The subject land is classified as operational land pursuant to the Local Government Act 1993. There is no impediment to the sale of the land as proposed.

Consultation

This report has been listed in open Council to inform the community of the proposed sale. The sale price is listed in the confidential report to allow Council to negotiate a commercial sale price.

Options

The purpose of this report is to obtain Council approval to sell the subject site. The proposed selling price is subject to a separate report.

In respect of the sale of the land the options are to approve or not approve the sale. The recommendation is to approve the sale.

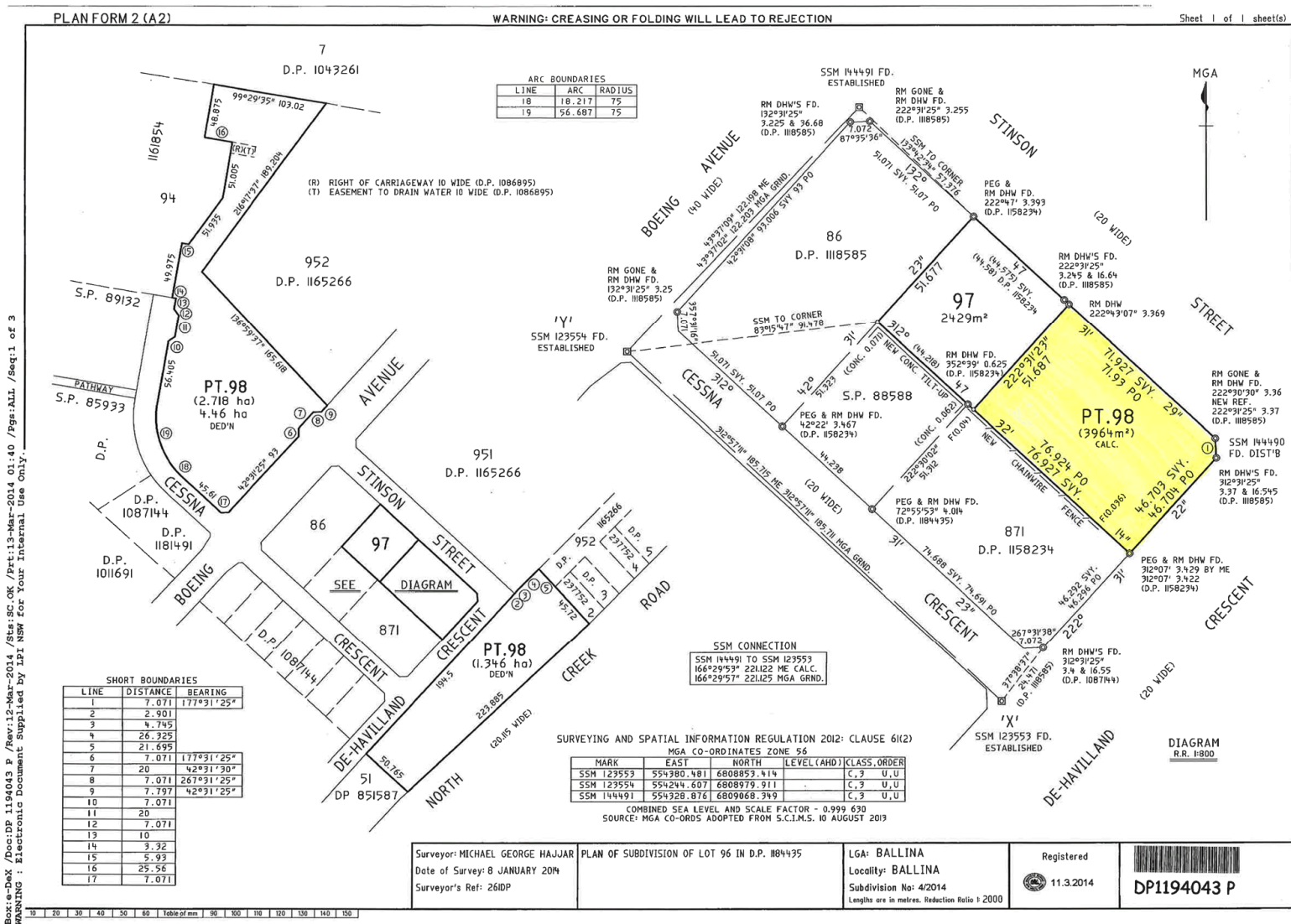
RECOMMENDATIONS

1. That Council approves the sale of approximately 3,964m² of Southern Cross industrial land as two separate lots, as detailed within this report, with the sale price to be determined as per the separate report elsewhere in this agenda.
2. That Council authorises the Council seal to be attached to the contract for sale and subdivision documentation required, as well as any other related documents.

Attachment(s)

1. Deposited Plan 1194043
2. Southern Cross Industrial Estate Land For Sale - aerial photo plan

4.2 Land Sale - Southern Cross Industrial Estate





| Lot No. | Street | Area m ² | Rate \$/m ² | \$ Price |
|---------|----------------------------|---------------------|------------------------|-------------|
| 91 | Cessna Crescent | 1100 | \$270 | \$297,000 |
| 90 | Cessna Crescent | 1100 | \$270 | \$297,000 |
| 88 | Cessna Crescent | 1841 | \$265 | \$488,000 |
| 87 | Cessna Crescent | 1995 | \$260 | \$519,000 |
| Pt 98 | Cnr Stinson & De Havilland | 2542 | \$235 | \$597,370 |
| 2 | Boeing Ave | 23170 | \$200 | \$4,634,000 |
| 3 | Boeing Ave | 34976 | \$200 | \$6,995,000 |

Notes:
 1. All prices are exclusive of GST.
 2. Prices for Lots 2 & 3 Boeing Ave assume Council completes all development works.




BSC Industrial Land For Sale
Southern Cross Industrial Estate, Ballina



DISCLAIMER © Land & Property Information 2015
 Although all care is taken in the preparation of this plan, Ballina Shire Council accepts no responsibility for any misprints, errors, omissions or inaccuracies.
 The information contained within this plan is for pictorial representation only. Do not scale. Accurate measurements should be undertaken by survey.

Printed
09/02/2015

4.3 Wigmore Arcade - Leasing Update

4.3 Wigmore Arcade - Leasing Update

Delivery Program Commercial Services

Objective To seek Council's concurrence to finalise negotiated lease proposals in the Wigmore Arcade

Background

A report was presented to the Commercial Services Meeting of 18 November 2014 providing an update on the progress of the refurbishing the Wigmore Arcade and ongoing lease negotiations with tenants.

Since that report of 18 November 2014 Greg Clark Building have continued on with refurbishment works and advise that completion should be achieved by the end of February.

Council staff have also been progressing negotiations with a number of prospective new tenants for shops in the Wigmore Arcade. The purpose of this report is to provide an overview of the confidential report included later in this agenda which deals with the actual lease details.

Key Issues

- Ratification of lease agreements negotiated

Information

Specific lease details are contained in a confidential report also included in this agenda. A leasing plan is also **attached** to this report. The confidential reports deals with the leasing of Shop 153 River Street, Shop 7 Wigmore Arcade, Shop 11 Wigmore Arcade and possibly Shop 12 Wigmore Arcade..

Legal / Resource / Financial Implications

Lease and licencing documentation will be prepared and executed in accordance with the NSW Retail Leases Act (1994).

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

- The cost of rental relief detailed in the confidential report to the Commercial Services Committee of 18 November, 2014.
- Rent free periods for new leases (including those to incumbent tenants)
- Proposed rentals and
- Vacancy periods.

Details of the updated cash flow projections are as follows. The gross rental income projections are estimates only and are subject to fluctuations depending upon a number of factors including market conditions.

4.3 Wigmore Arcade - Leasing Update

Table One – Revised Cash Flows for the Wigmore Arcade (\$)

| Year | 2014/15 | 2015/2016 | 2016/2017 | 2017/2018 | 2018/2019 |
|----------------|---------|-----------|-----------|-----------|-----------|
| Gross Income | 300,000 | 564,000 | 613,000 | 628,000 | 644,000 |
| Less Outgoings | 140,000 | 143,000 | 146,000 | 150,000 | 154,000 |
| Net Income | 160,000 | 421,000 | 467,000 | 478,000 | 490,000 |

The figures included in the Long Term Financial Plan as presented to the 11 February 2015 Finance Committee meeting were as follows:

Table Two – Previous Cash Flows for the Wigmore Arcade

| Year | 2014/15 | 2015/2016 | 2016/2017 | 2017/2018 | 2018/2019 |
|----------------|---------|-----------|-----------|-----------|-----------|
| Gross Income | 364,000 | 452,000 | 570,500 | 587,500 | 605,400 |
| Less Outgoings | 129,500 | 128,300 | 132,400 | 136,700 | 141,000 |
| Net Income | 234,500 | 323,700 | 438,100 | 450,800 | 464,400 |

The variance in figures for the current financial year is due to the refurbishment works taking longer than expected. On the positive side, the cash flows for the 2015/2016 year and onwards are projected to recover sooner than previously anticipated due to a pickup in the enquiry rate for vacant shops and lease deals in progress.

Consultation

Negotiations have been conducted with existing and prospective tenants on an ongoing basis.

Options

This report is for noting purposes in respect to the lease negotiations that are outlined in more detail in the confidential report, with approval also sought for the revised forecast cash flow.

RECOMMENDATIONS

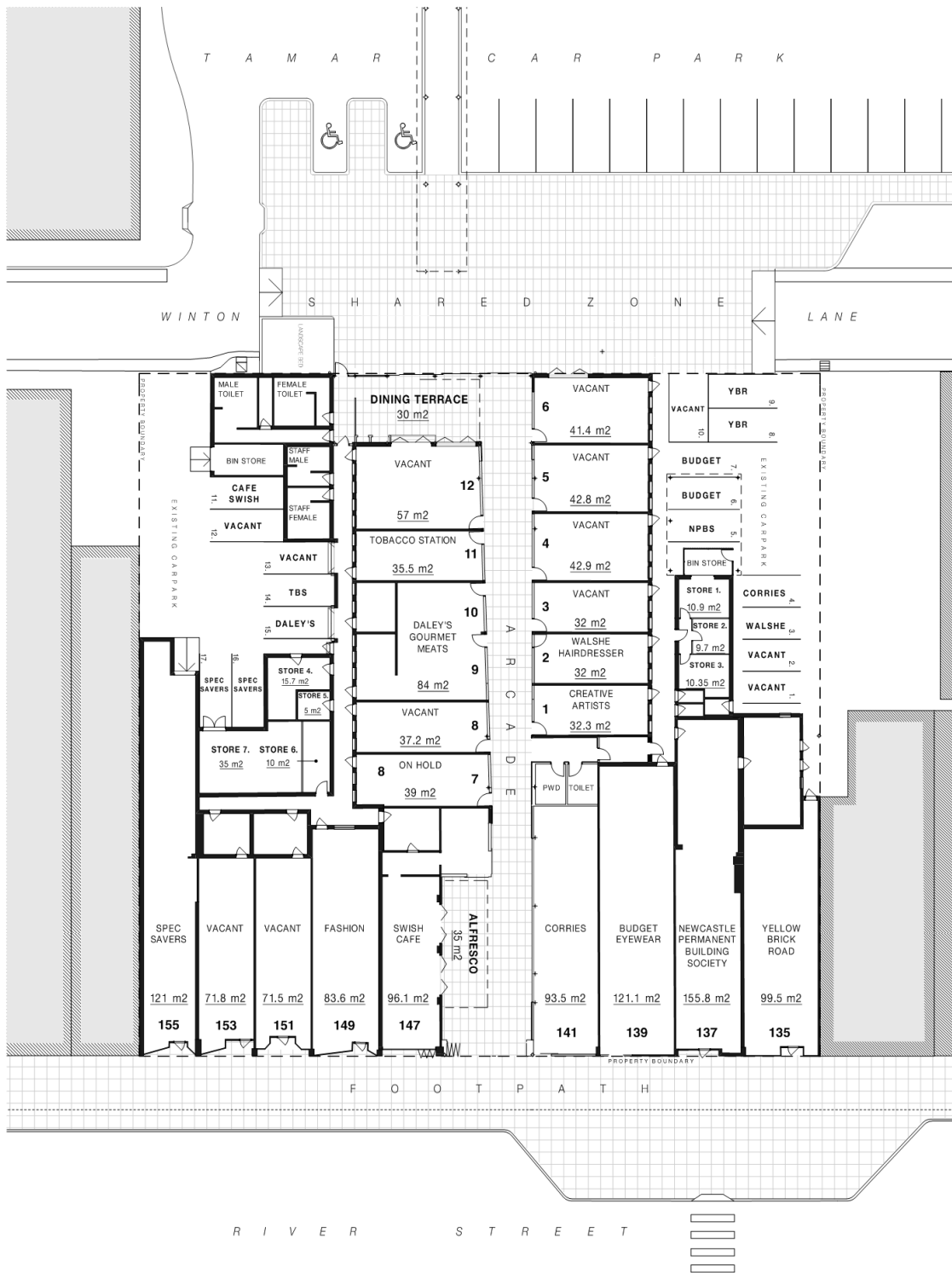
1. That Council notes the contents of this report in respect to the current lease negotiations.
2. That Council amend its Long Term Financial Plan to reflect the latest forecast cash flows for the Wigmore Arcade as per the following table and as outlined within this report:

| Year | 2014/15 | 2015/2016 | 2016/2017 | 2017/2018 | 2018/2019 |
|----------------|---------|-----------|-----------|-----------|-----------|
| Gross Income | 300,000 | 564,000 | 613,000 | 628,000 | 644,000 |
| Less Outgoings | 140,000 | 143,000 | 146,000 | 150,000 | 154,000 |
| Net Income | 160,000 | 421,000 | 467,000 | 478,000 | 490,000 |

Attachment(s)

1. Wigmore Arcade - Leasing Plan

4.3 Wigmore Arcade - Leasing Update



WIGMORE ARCADE - COMPLEX LEASING PLAN

NOTE: NOT TO SCALE - AREAS ARE APPROXIMATE ONLY



5. 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.

A brief summary of each of the reports recommended for consideration in confidential session follows:

5.1 Land Sale - Southern Cross Industrial Estate (Price)

Refer to Item 4.2 of this agenda.

5.2 Wigmore Arcade - Leasing Update (Commercial Elements)

Refer to Item 4.3 of this agenda.

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.

5.1 Land Sale - Southern Cross Industrial Estate (Price)

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 the discussion of the matter in an open meeting is not considered to be in the public interest due to the on-going commercial negotiations.

5.2 Wigmore Arcade - Leasing Update (Commercial Elements)

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
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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 the discussion of the matter in an open meeting is not considered to be in the public interest due to the on-going commercial negotiations.