



Notice of Commercial Services Committee Meeting

Notice is hereby given that a Commercial Services Committee Meeting will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Tuesday 19 November 2013 commencing at 4.30 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 Lennox Developments Pty Ltd - Land Owner Authority Request

4. Committee Reports

4.1 Lennox Developments Pty Ltd - Land Owner Authority Request

Delivery Program Commercial Services

Objective To obtain Council's consent as landowner to allow Lennox Developments Pty Ltd to lodge a development application for residential land subdivision.

Background

In 1993 Council purchased a significant holding of land in Lennox Head generally known as the "Henderson Farm" for approximately \$3,500,000. The property comprised an area of 92 hectares

In 2002 Council resolved to sell the Henderson Farm by public tender. After a period of negotiations Council sold 78 hectares to Lennox Developments Pty Ltd for \$11,300,000 + GST in January 2003 and retained 14 hectares. The sale to Lennox Developments had a delayed settlement period of three years, in which time they hoped to have the land rezoned for residential use and a development application approved for same.

Following on from the sale of the Henderson Farm, Lennox Developments Pty Ltd and Council (as land owner) worked together in engaging consultants to prepare the appropriate documentation and studies to lodge a joint rezoning proposal for the their respective properties.

The properties were eventually rezoned on 10 August, 2012 and the approximate areas of residentially zoned land pertaining to each holding are as follows:

Lennox Developments	23 hectares
Council	7 hectares

At the Commercial Services Meeting of 18 June, 2012 Council resolved to fund a joint development application with Lennox Developments Pty Ltd for an integrated residential development over their respective landholdings. The resolution from that meeting was:

- 1. The Council approves funding of up to \$60,000 from the Commercial Opportunities Reserve to finance the cost of preparing and lodging a development application for a residential subdivision on a pro-rata basis, for Council's portion of the Henderson Farm land, with Lennox Developments Pty. Ltd., based upon each party's respective land holdings proposed to be rezoned for residential development. The proposal is that Lennox Developments Pty Ltd contribute 77% and Council contribute 23%.*
- 2. That Council authorise the General Manager to finalise negotiations with Lennox Developments Pty Ltd for a joint development application funding agreement and to execute the relevant documentation.*

4.1 Lennox Developments Pty Ltd - Land Owner Authority Request

Following on from that meeting, investigations, planning and design work commenced.

In late 2012, the parties decided to abandon the joint development application to allow Lennox Developments to pursue what it considered appropriate for its landholding. In summary Council staff had concerns with the development being proposed by Lennox Developments and therefore it was not considered appropriate for Council to be part of that joint application.

Council is now in receipt of a request from Planners North on behalf of Lennox Developments Pty Ltd for landowner's consent to lodge their development application. A copy of that correspondence is attached.

Typically the General Manager will sign these types of authorities, however due to the lengthy history of this proposal and initial concerns from staff about what type of residential development may be proposed on the adjoining land, it was considered appropriate for the elected Council to authorize the owner's approval.

Key Issues

- On-going relationship with adjoining land owners

Information

Lennox Developments Pty Ltd owns at Lot 1 DP 1070446, Lot 99 DP 755684 and Lot 1 DP 829744 at Lennox Head, and adjoins a Council landholding Lot 2 DP 1070446.

It is not unusual for a developer to seek an adjoining land owner's authority to lodge a development application for residential land subdivision. The reason being that there are issues such as stormwater drainage, road access, infrastructure servicing etc. that require co-operation between land owners.

For example a developer may propose in a development application that a road or stormwater drain be constructed across an adjoining land owner's property to enable the development to proceed. Once development consent is granted the two parties may then negotiate a commercial agreement to facilitate such a proposal, or simply resolve that there are mutual benefits and one party simply wishes to proceed to development earlier than another party.

As Mr Connelly (Planners North) notes in the letter attached hereto:

"The issuing of a Land Owner Authority does not involve any "pre-judgement" as to the merits of a particular application. That examination is conducted as part of a Development Application assessment process prescribed on the Environmental Planning and Assessment Act. The issuing of a Land Owner Authority does not involve any "commercial commitments" on the part of Council in relation to the use or disposal of any of its property. Such negotiations are normally undertaken post development approval when exact details are known in relation to the project that is required."

In this instance Lennox Developments are seeking land owner's authority from Council to enable them to lodge a development application for residential

4.1 Lennox Developments Pty Ltd - Land Owner Authority Request

development that amongst other things proposes an easement for stormwater along the western boundary of Council's property.

When Council eventually undertakes a subdivision for residential development they will need to drain a portion of their proposed lots to the same area. The lot layout for Council's land may also rely upon seeking access across Lennox Development's land.

Upon signing the Development Application Council can negotiate a formal deed of agreement with regards to the provision of easements and road accesses with Lennox Development.

Legal / Resource / Financial Implications

There are no legal impediments to Council granting a land owner authority to an adjoin owner to lodge a development application. Council agreeing to such a request in does not involve any "pre-judgement" of a particular application.

Once development consent is granted a deed of agreement can be negotiated between Council and Lennox Developments Pty Ltd setting out each parties obligations and the basis for any compensation or cost sharing.

Consultation

This report is provided for public information.

Options

1. Council agrees to the request from Lennox Developments Pty Ltd to grant land owner's authority to enable them to lodge a development application for residential land subdivision. Upon development consent being granted, the General Manager is authorized to negotiate a deed of agreement with Lennox Developments Pty Ltd setting out each party's obligations and the basis for any compensation or cost sharing. Upon reaching agreement the matter will be referred back to Council for ratification.

This option is recommended as Council encourages adjoining land owners to work co-operatively to achieve better development outcomes.

2. Council does not agree to the request from Lennox Developments Pty Ltd to grant land owner's authority to enable them to lodge a development application for residential land subdivision.

This option is not recommended as it is inconsistent with Council's view that adjoining land owners to work co-operatively to achieve better development outcomes.

Furthermore it would unreasonable to reject such a request from Lennox Developments and then seek them to grant a similar request to Council at some stage in the future.

4.1 Lennox Developments Pty Ltd - Land Owner Authority Request

It is worth noting that in the near future Council will be requesting a land owner's authority from the adjoining land owner at Wollongbar, to enable Council to lodge a development application for Stages two and three of its residential estate.

RECOMMENDATION

That Council authorises the General Manager to provide landowner's consent to the request from Lennox Developments Pty Ltd to enable them to lodge a development application for residential land subdivision. Upon development consent being granted, the General Manager is authorised to negotiate a deed of agreement with Lennox Developments Pty Ltd setting out each party's obligations and the basis for any compensation or cost sharing. Upon reaching agreement the matter will be referred back to Council for approval.

Attachment(s)

1. Planners North Request 5 November 2013
2. Planners North Request 11 November 2013
3. Concept Plan of Proposed Easements & Lot Layout
4. Concept Plan of Proposed Easements



abn: 56 291 496 553
6 Byron Street, PO Box 538,
Lennox Head, NSW 2478
Telephone: 1300 66 00 87

5th November 2013
Our reference: 1318-555

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

ATTN: Mr Paul Tsikleas

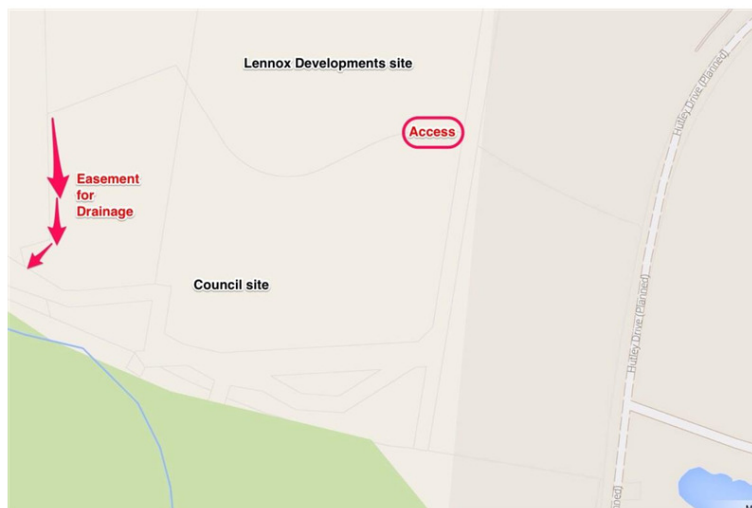
Dear Sir,

RE: Henderson Farm Development

On the 29th May 2013 the registered proprietors of Lot 1 DP 829277, Lot 99 DP 755684 and Lot 1 DP 1070446 provided to Council a land owner authority to facilitate the provision of access, utility services and the like with respect to Council's property Lot 2 DP 1070446.

Earlier, the Council and Lennox Developments Pty Ltd had decided to prepare their own Development Applications for their individual parcels. The authority provided by Lennox Developments Pty Ltd allowed Council to complete its work in that regard at its convenience.

Lennox Developments Pty Ltd are now at a stage where they are near to completion of a Development Application for their property and would be pleased if Council would reciprocate in terms of providing its authority to facilitate the lodgement of a Development Application with respect to the Lennox Developments Pty Ltd land. In particular, authority is sought for access and for an easement for storm water as shown in the diagram below.



We look forward to Council's reciprocal supply of land owner authority to facilitate the company's Development Application lodgement.

Should Council require any additional information in which to clarify any matter raised by this request, please feel free to contact Mr Terry Martin of Lennox Developments Pty Ltd or the writer.

Yours faithfully,

PLANNERS NORTH



Stephen Connelly FPIA CPP

PARTNERSHIP PRINCIPAL

(m) 0419 237 982

(e) steve@plannersnorth.com.au





abn: 56 291 496 553
6 Byron Street, PO Box 538,
Lennox Head NSW 2478
Telephone: 1300 66 00 87

11 November 2013
Our reference: 1318-563

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Mr Paul Tsikleas

Dear Sir,

Re: Henderson Farm Development

Further to my letter of 5th November 2013, please find below some additional details to assist in your evaluation of our request for the provision of a Land Owner Authority to facilitate the lodgement of a Development Application by Lennox Developments Pty Ltd on land recently rezoned for residential purposes.

Firstly, please note that all that is sought at this time is for Council to provide a *Land Owner Authority* to facilitate the lodgement of a Development Application. The issuing of a Land owner Authority does not involve any "pre-judgement" as to the merits of a particular application. That examination is conducted as part of a Development Application assessment process prescribed on the Environmental Planning and Assessment Act. The issuing of a Land Owner Authority does not involve any "commercial commitments" on the part of Council in relation to the use or disposal of any of its property. Such negotiations are normally undertaken post development approval when exact details are known in relation to the project that is required.

Secondly, please note that there is nothing unusual in relation to Council providing a Land Owner Authority to Lennox Developments Pty Ltd. Council regularly provides Land Owner Authorities to persons who are involved in the making of Development Applications. The situation in the subject circumstances is that Council was aware before and from the date of the sale of the subject land to Lennox Developments Pty Ltd that the property would require its main access (in accordance with Council's planning for the locality) to be over land held by Council. I respectfully submit that the issuing of a Land owner Authority for access was an implicit as part of the sale of the land to Lennox Developments Pty Ltd.

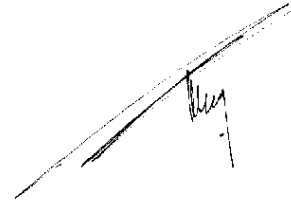
Thirdly, please be aware that Council itself will be in need of a reciprocal arrangement from Lennox Developments Pty Ltd for it to develop its site. Council will require the provision of further access for bushfire fighting purposes as well as water, sewage and other access across the Lennox Developments Pty Ltd land. As pointed out in my letter of the 5th November 2013, the reciprocal provision of Land Owner Authorities to adjoining owners is common in the land development industry. In fact, Lennox Developments Pty Ltd provided to Council such an authority on 29th May 2013.

sjc435727

I would be pleased if Council would give this matter its urgent consideration as my client company is rapidly approaching a situation where it must lodge a Development Application with Council.

Yours faithfully,

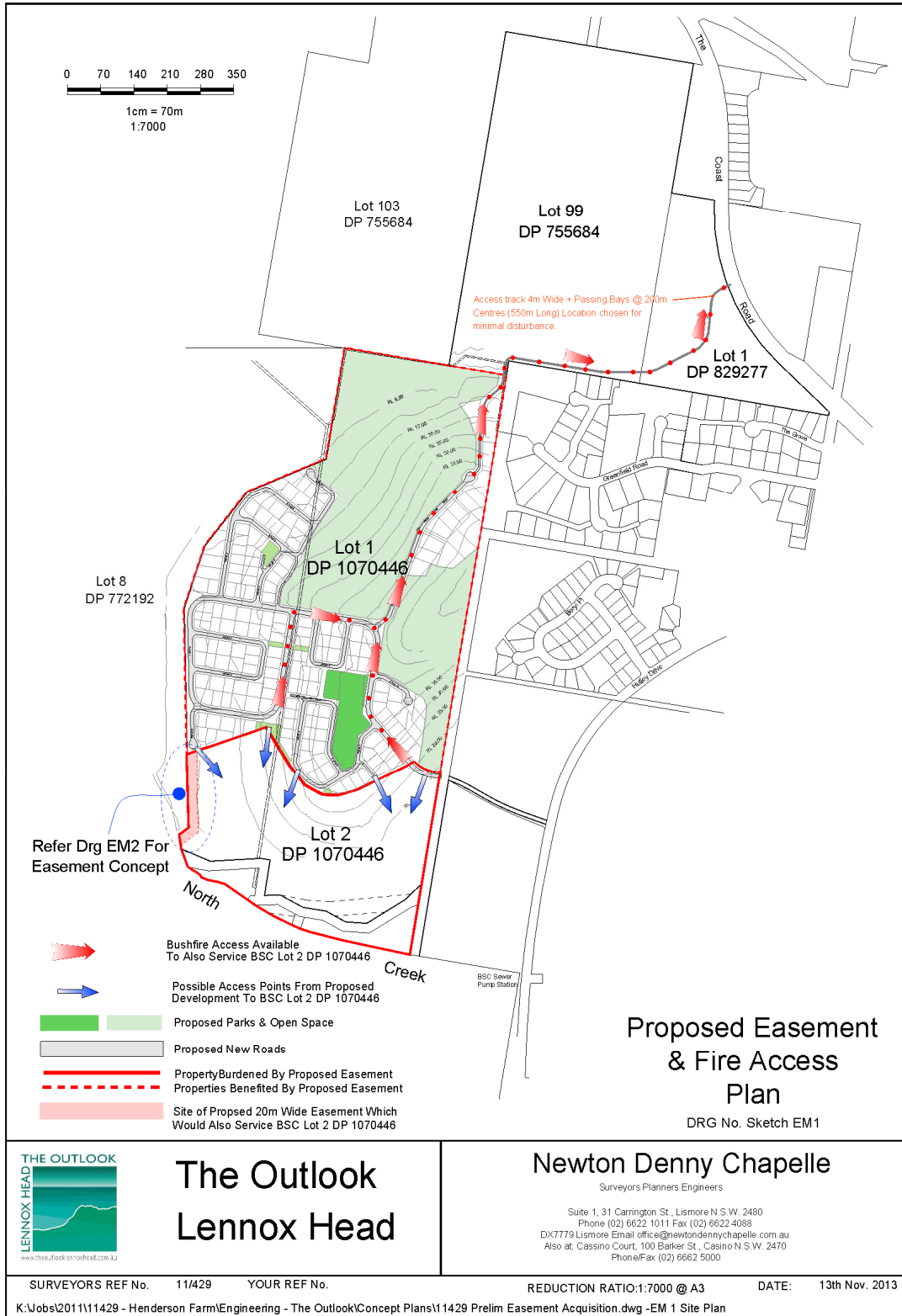
PLANNERS NORTH

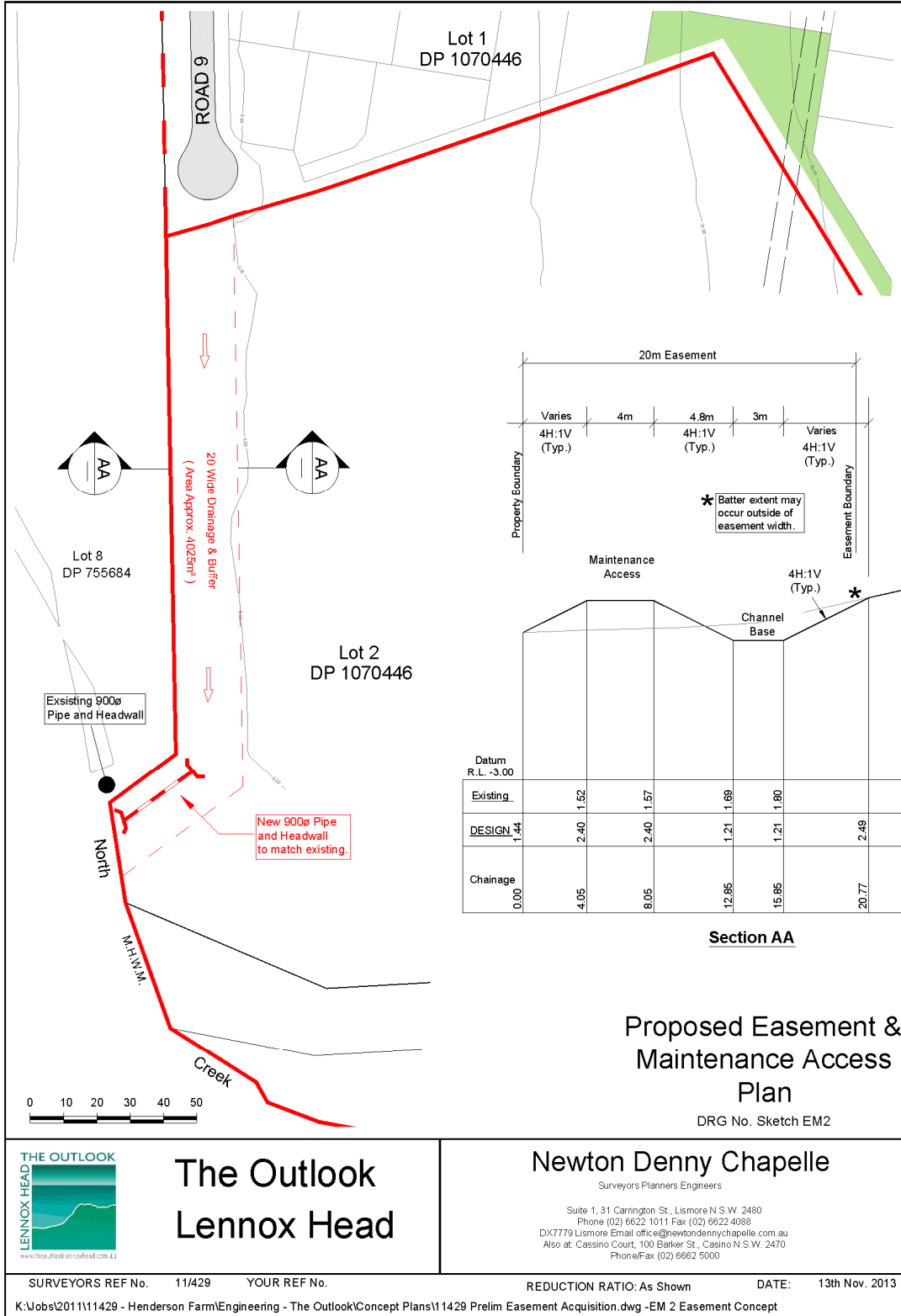


Stephen Connelly FPIA CPP
PARTNERSHIP PRINCIPAL
(m) 0419 237 982
(e) steve@plannersnorth.com.au



4.1 Lennox Developments Pty Ltd - Land Owner Authority Request



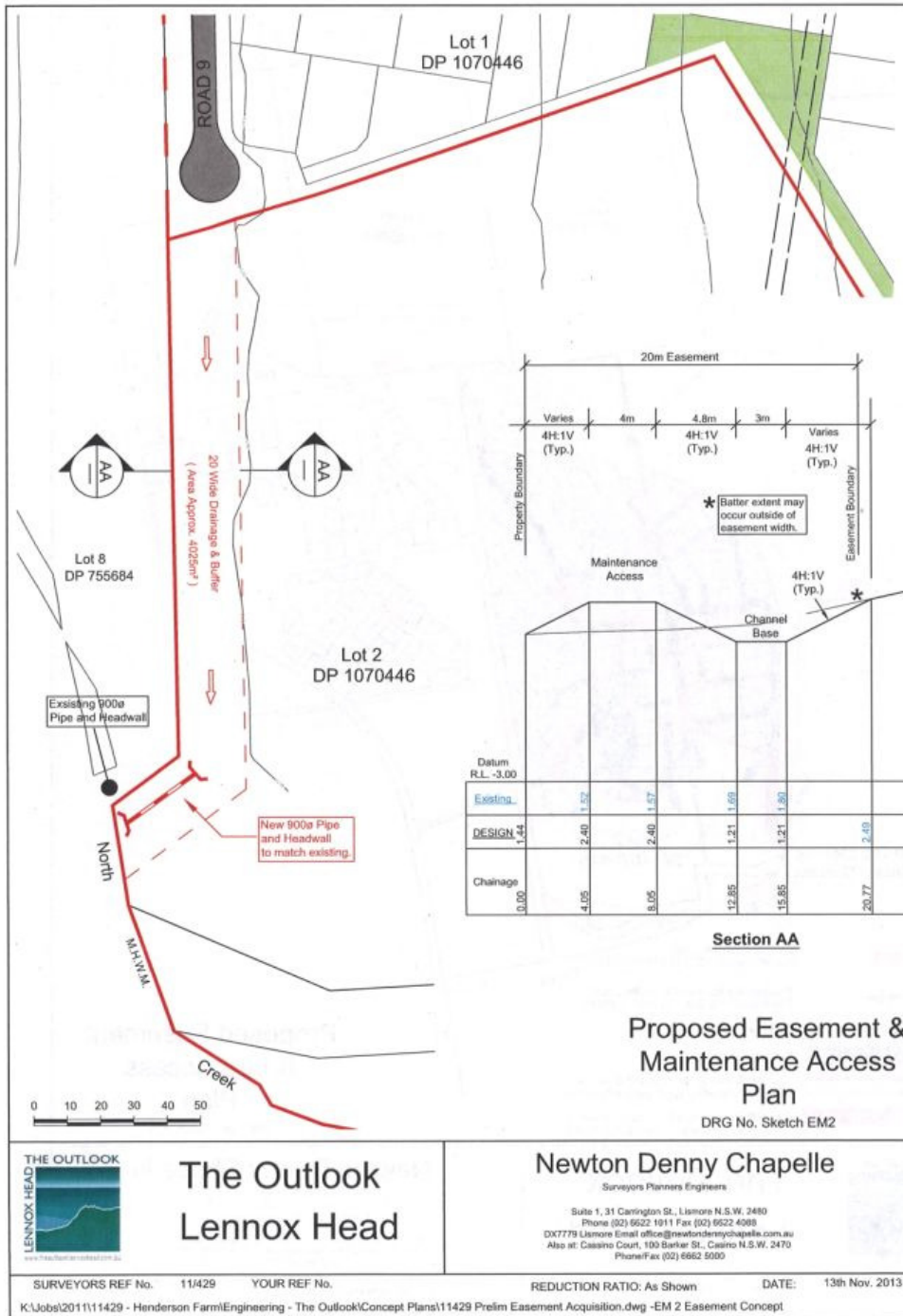


**The Outlook
Lennox Head**

Newton Denny Chapelle
Surveyors Planners Engineers

Suite 1, 31 Carrington St., Lismore N.S.W. 2480
Phone (02) 6622 1011 Fax (02) 6622 4088
DX7779 Lismore Email office@newtondennychapelle.com.au
Also at: Cassino Court, 100 Barker St., Cassino N.S.W. 2470
Phone/Fax (02) 6682 5000

SURVEYORS REF No. 11/429 YOUR REF No. REDUCTION RATIO: As Shown DATE: 13th Nov. 2013
K:\Jobs\2011\11429 - Henderson Farm\Engineering - The Outlook\Concept Plans\11429 Prelim Easement Acquisition.dwg -EM 2 Easement Concept



4.2 Crown Reserves - Head Leases to Council

4.2 Crown Reserves - Head Leases to Council

Delivery Program Commercial Services

Objective To determine if Council wishes to enter into long term lease arrangements with the Crown for certain reserves.

Background

At the September 2013 Ordinary meeting, Council considered a Use of Seal report to affix the Council Seal to a head lease from the Crown to Council for Crown Reserve R57675. This Crown land contains the Old Tintenbar Shire Council Chambers and the Old Alstonville Hall.

The Crown has offered this lease, being Crown reference No. 450458 for "Business Purposes", being the head lease over this Crown land, for a term of 20 years commencing 1 July 2013. The actual property description for this Crown reserve is Lot 321 DP 755745 and Lot 7003 DP 92641,

The Crown has also offered Lease No. 493147 for "Business Purposes" at Ballina being the head lease over Crown land described as Lot 2 DP 1153927, for a term of 20 years commencing 1 July 2013. This parcel of land contains the Old Ballina Library.

The report that now follows explains the process being followed by the Crown in respect to these new head leases.

Key Issues

- Rental charged by the Crown relative to the rental received
- Long term tenure for sub-tenants and licensees

Information

Council has been in negotiations with the Crown Lands Division – Department of Primary Industries ("the Crown") over a period of time to formalise the tenure arrangements at the Old Tintenbar Shire Council Chambers and Alstonville Hall, and the Old Ballina Library. A number of licensees currently occupy these buildings by way of temporary licences pending the issuance of a head lease by the Crown.

As noted in the Use of Seal Request to the Council Meeting of 26 September, 2013, Council has granted licence agreements over the Old Tintenbar Shire Council Chambers and Alstonville Hall, since the mid 1980s. The four current occupants each have 12 month temporary licence agreements.

4.2 Crown Reserves - Head Leases to Council

Issues have arisen over time attempting to sub-lease and/or licence parts of this property due to the fact that it is reserved for "Municipal Purposes". In an effort to resolve this problem the Crown placed a notice in the Government Gazette on 13 September, 2013, noting the Minister's intention to grant a lease for "Business Purposes" over Reserve No. 57675.

Earlier this year, the Crown commissioned independent valuations of both properties (Alstonville and Ballina). The market rental values assessed were as follows:

- Old Tintenbar Shire Council Chambers & Hall - \$21,600 p.a. + property outgoings + GST
- Old Ballina Library - \$16,500 p.a. + property outgoings + GST

Copies of the valuation reports were obtained in confidence from the Crown and have been reviewed by Council staff. The Crown's instructions to the valuer for the extent of the interest to be valued (i.e. rental value) in each instance were:

"The market rental shall be for the use and occupation of the land only and does not include any tenant improvements. The use reflected in the formal purpose of the draft lease shall form the basis for the assessment of market rent."

The "permitted use" noted in Schedule 1, Item 36, Column 2, of the Draft Lease for each is property is "Business Purposes".

Both draft Leases include a clause regarding to rebates to apply on market rent where the property, or part thereof, is used for community purposes:

82 Application of Rebate on Market Rent

For the term of the lease the Minister may apply a rebate to the rent, as set out in Clause 22, on the following terms and conditions:

- a) The rebate will apply to that extent of the premises which are used and occupied for Community Purposes;*
- b) The rebate will be subject to variation at the time of any change to the use and occupation as set out in 82(a);*
- c) The Lessee will notify the Lessor in writing, within 30 days, of any change to the use and/or occupation as set out in 82(a);*
- d) The notification set out in 82(c) should include, and is not limited to, a list of the current use and occupation, a plan showing the area allocation and percentage of the premises utilized for Community Purposes;*
- e) If a rebate is to be applied it will be in accordance with the relevant Rebate Policy of the day.*

Comments in regards to each of the properties are noted as follows:

Old Tintenbar Shire Council Chambers and Alstonville Hall

The rental value has been assessed taking into account a number of factors including:

- the "Permitted Use" of the property as noted in the Draft Lease; i.e. "Business Purposes"

4.2 Crown Reserves - Head Leases to Council

- the zoning of the property; in this instance part “R2 Low Density Residential” and part “R3 Medium Density Residential”
- Lot 321 DP 755745 is identified as Heritage 15 – Former Tintenbar Shire Council Chambers under Ballina LEP 2012.

The valuer makes comment of the anomaly between the current zoning of the property (residential) and the permitted use of “Business Purposes” under the Draft Lease, and notes that *“the value of the subject land must therefore be less than the value of unrestricted business zoned land”*.

The issue that may arise for Council as property manager is when a prospective tenant seeks to lease part or all of the property for business purposes and seeks development consent to do so; i.e. business use in a residential zone.

It may be that the property has existing or continuing use rights to permit such uses.

Details pertaining to current sub-tenants are noted as follows:

Tenant	Floor space	Current Rent pa Ex GST
Arts Northern Rivers Inc	106.46m ²	\$10,400
Coffey Geotechnics	53.12m ²	\$7,790
Thea Woznitsa	28.57m ²	\$4,812
Adrienne Kniha	171.3m ²	\$20,000
Total	359.45m²	\$43,002

Arts Northern Rivers Incorporated is a community based organisation and have been paying more than a minimum statutory rent due to the commercial component of their operation. However a rebate would apply to the market rental payable by Council over the site due to the presence of a community based organization.

The rebate applied to the market rental assessed is based upon the ratio of community tenancy area to total site area, equating in this instance to 4.90%.

Therefore the adjusted market rental for the property is calculated as follows:

\$21,600 p.a. x 4.90%	=	\$1,058
Less: 50.00%	=	<u>\$ 529</u>
Rental discount	=	<u>\$ 529</u>
Assessed market rental	=	\$21,600
Less: discount		<u>\$ 529</u>

Adjusted rental payable by Council \$21,071 p.a. + GST

Whilst there may be some concern over the difference between what Council will be charged by the Crown in comparison to the rentals currently being obtained from the sub-tenants, the overall situation must be considered in light of the changes described above.

4.2 Crown Reserves - Head Leases to Council

The fact is that the twenty year head lease being offered by the Crown to Council over the property will enable Council to offer long term sub-leases or licences to tenants for business purposes, thus hopefully removing a degree of uncertainty and enabling higher rentals to be charged.

Old Ballina Library

A similar situation applies to this property. A notice appeared in the Government Gazette on 18 October, 2013, advising that the property is to be used for purposes other than the declared public purposes, that of a "Town Hall" and that the Minister intends to grant a lease for "business purposes" over the property.

The valuation undertaken for the property on 22 April, 2013, assessed the market rental at \$16,500 p.a. plus property outgoings + GST assuming the abovementioned proposed lease is in place and taking into account:

- the "Permitted Use" of the property as noted in the Draft Lease; i.e. "Business Purposes"
- the zoning of the property; in this instance zoned "B3 Commercial Core" under BLEP 2012
- The property is situated within a Heritage Buffer zone under BLEP 2012.

The Old Ballina Library building located on the property is part occupied by Paradise FM Community Radio Association Incorporated and part occupied by Council for training and meeting rooms.

The current rent paid by Paradise FM for 123m² of space in the building is \$15,165 p.a. + property outgoings + GST.

As Ballina Shire Council and Paradise FM are community organisations the Crown has deemed a 50.00% rental rebate should apply to the market rental value assessed of \$16,500 p.a. Therefore the adjusted initial rental payable by Council to the Crown in the first year of the lease is \$8,250 p.a. + property outgoings plus GST.

If the property, or part thereof, is sub-let to commercial tenants the rental rebate will need to be re-assessed.

Legal / Resource / Financial Implications

Legal - Occupants of the Alstonville and Ballina properties have tenure by way of temporary licences until such time as the issue of the head leases is resolved. Should Council accept head leases over both properties, it can then offer long term sub-leases and licences.

Resource - Council has a number of Crown properties with commercial tenants including Ballina Gallery Café, Ballina Waterslide and Shelly's on the Beach. Staff resources are used to manage and maintain these properties.

4.2 Crown Reserves - Head Leases to Council

Financial - Council currently receives \$43,000 p.a. in rental from the Alstonville property and \$15,165 p.a. from the Ballina property. The head leases being offered to Council over both properties will provide greater certainty to sub-tenants by being able to offer longer term sub-leases and the flexibility of to whom the properties can be sublet to; i.e. community groups or commercial uses. This will hopefully result in improved economic returns to Council.

Under the terms and conditions of the leases being offered for “Business Purposes”, the rental payable is for the for the land components only. Council can seek market rentals from sub-tenants for the buildings on the land in each instance.

Consultation

Council has been consulting with Crown Lands Division – Department of Primary Industries

Options

1. Accept the terms and conditions for Lease 493147 for “Business Purposes” at Lot 2 DP 1153927 (Old Ballina Library) and Lease 450458 for “Business Purposes” at Lot 321 DP 755745 and Lot 7003 DP 92641 (Tintenbar Shire Council Chambers and Alstonville Hall).

This option is recommended as it provides Council with the scope to offer long term sub-leases and licences over the buildings on the properties to commercial tenants. This should provide greater certainty to commercial tenants and improve economic returns to Council.

2. Not accept the terms and conditions for Lease 493147 for “Business Purposes” at Lot 2 DP 1153927 and Lease 450458 for “Business Purposes” at Lot 321 DP 755745 and Lot 7003 DP 92641.

This option is not recommended as the current situation makes it difficult to lease premises to commercial tenants and lacks the scope to provide any form of long term security of tenure to such tenants.

RECOMMENDATIONS

1. That Council accepts the terms and conditions for Lease 493147 for “Business Purposes” at Lot 2 DP 1153927 and Lease 450458 for “Business Purposes” at Lot 321 DP 755745 and Lot 7003 DP 92641.
2. Council authorises the use of seal to be attached to the lease documents for each of the properties.

Attachment(s)

Nil

4.3 Cafe Negotiations - Update

4.3 Cafe Negotiations - Update

Delivery Program Commercial Services

Objective To provide an update on the status of Council's negotiations for the cafes located on Council owned or controlled land.

Background

Council is currently in the process of negotiating tenure arrangements for three cafes, being the Ballina Surf Club, Shelly Beach and Fawcett Park. This report provides an update on the status of those negotiations.

Key Issues

- Status and progress

Information

The current status of the negotiations for each of these cafes is as follows:

Ballina Surf Club

The terms and conditions as previously presented to Council for the café and kiosk have been agreed with the sub-tenant. The sub-tenant has commenced operating the kiosk located on the ground floor of the Surf Club.

A subdivision of the Ballina Coastal Reserve is required to legally create the parcel of land for the Surf Club Building and enable creation and registration of the head lease and sub-leases for the café and kiosk. This process of subdivision and creation of titles is in progress.

As an interim measure, Ballina Shire Council acting as Trustee of the Ballina Coastal Reserve Trust, will grant Temporary Crown Licences over the café and kiosk for a term of twelve months. This should allow a sufficient period of time in which to undertake and register the subdivision.

The relevant documentation has been prepared and forwarded to the sub-tenant's solicitors for signing.

In respect to fitout works the sub-tenant will now be locating their cool room in the café area resulting in a significant fitout saving cost, as there had been mention of locating the cool room in the first meeting room. The sub-tenant is still seeking extra dry storage room and minor modifications are planned to the existing upstairs storage room to accommodate this change.

The sub-tenant is aiming to have the café up and operating by Christmas, although this is a tight timeframe and may not be achievable.

In summary these arrangements are progressing well and there has already been some positive feedback from customers of the kiosk.

Shellys on the Beach

Since this matter was last reported to Council negotiations have been continuing with the owner of this business (Mr Ralph Mamone – Fishheads at Byron). On 23 October 2013 Mr Mamone emailed Council to confirm:

- a) The site area to be compulsorily acquired by Council – the area has been confirmed at 129 square metres
- b) The new rental figure with the expanded area – The total rental is to be increased by the same dollar rate per square metre as is currently paid, inclusive of the extra area, once acquired.
- c) Fishheads is responsible for the costs of all site works required under DA 2012/348 including relocation or reconstruction of the subterranean storm water pipe if required. This water pipe is an important issue as it currently runs under the building
- d) The rental relief approved by Council will commence from the date of issue of the construction certificate for the new building, as per DA 2012/348; or through the issue of an occupancy certificate or interim occupancy certificate that enables the new building to trade as a café as per DA 2012/348.

This means the tenant has the option of seeking the Council approved rent relief (the exact period was determined by Council in confidential session) from the date they commence their construction works for the redevelopment, or from the date of trading. This allows the tenant to best determine how they manage their cash flows, as both the construction phase and the start up phase involve significant cash outflows for a café operator, or for any business.

In respect to the compulsory acquisition process Chris Abbott Surveying Pty. Ltd. has been engaged to undertake the survey works and liaise with Land & Property Information (LPI) and Crown Lands to ensure all necessary legislative steps are followed. The latest advice from LPI is that the land to be acquired must be firstly excised, with a separate title created. Following that the land must then be consolidated with the existing freehold lot.

The survey works are expected to be completed towards the end of November.

As to the lodgement of the formal acquisition notification, that process will only commence once the survey is completed and the lot created. Once Council has received the plan of acquisition duly signed by Crown Lands, the formal compulsory acquisition can commence with the Division of Local Government. This includes Native Title searches.

The timeframe for the Division to process the application remains uncertain.

Crown Lands have also recently advised that they are prepared to provide landowner authority for DA 2012/348 to be issued by Council as soon as the plan is signed by Crown Lands and lodged with LPI.

4.3 Cafe Negotiations - Update

Currently Council's Development and Environmental Health Group cannot finalise this application, which was approved by Council in November 2012, without this approval from Crown Lands.

The issuing of the consent will then allow the business owners to commence their redevelopment works. Council has no control over when they commence those works, albeit that they are still paying a land rental, and rent relief is available as an option once works commence

Fawcett Park Cafe

Council resolved in January 2013 to offer the lease to a preferred tenant, which consisted of representatives from Fishheads at Byron and another operator. That January resolution also provided funding for the refurbishment of certain parts of the building.

Since that date the refurbishment has been delayed due to the February storms and due to difficulties in obtaining consensus between Council, the proposed tenant and Council's insurance company as to the works to be undertaken and how they will be funded.

One of the members of the original tenancy proposal has also withdrawn, which means that Council is now dealing directly with Mr Ralph Mamone from Fishheads.

Council accepted a tender from Bennetts Constructions Pty. Ltd. for the refurbishment works at the September 2013 Council meeting. The September report highlighted that Council had funding set aside of approximately \$156,300, inclusive of the insurance payout.

The tender from Bennetts was approximately \$270,000 which left a shortfall of \$114,000. It was intended to negotiate the financing of this shortfall with the tenant to allow the contract to proceed.

Subsequently Mr Mamone did not agree that the balance of the works related solely to his improvements and negotiations then occurred with Bennetts to reduce the scope of the works for Council. With the exclusion of any works related to specific requirements for Mr Mamone, Council was able to reduce the contract value to \$182,000.

However, with a Council budget of \$156,300 and with \$7,480 expended to date on the project, the Civil Services Group, who are now managing these works, were asking for a contingency of 10% on the project, along with a more realistic project budget of \$206,300 (i.e. an increase of \$50,000.) The \$206,300 represents the \$182,000 revised contract figure, a 10% contingency and the \$7,480 expended to date.

In order to fund this shortfall it has been necessary to reallocate \$50,000 that Council had previously allocated to the Shellys Beach compulsory land acquisition to this project.

Council had initially been advised that the compulsory land acquisition would cost in the vicinity of \$300,000 and a more recent valuation for the land has it valued at \$240,000. With other incidentals the acquisition should be able to be finalised for \$250,000, thus allowing the transfer of \$50,000.

4.3 Cafe Negotiations - Update

Due to on-going frustrations in respect to the lengthy delays in refurbishing this building and to move this project forward, Council has authorised Bennetts to commence the construction contract, with the works schedule only including Council requested items.

This will allow the building to be presented to Mr Mamone in a satisfactory condition and as the tenant he can then carry out any fitout works needed to operate the business.

At this stage there is still no formal lease agreement in writing with Mr Mamone, albeit that there are numerous emails between the parties. With the Bennetts' contract now commenced Council is in the process of providing written documentation asking for formal acceptance of the lease conditions.

Assuming matters proceed as planned, Mr Mamone has provided an indicative timeframe, in writing, for the re-opening of the café as follows:

- Anticipated handover to Fishheads from Bennetts - 20 January 2014
- Approximately four weeks to complete the fit out – 17 February 2014
- On completion of fit out – Rent free period commences as per original proposal accepted by Council.

Legal / Resource / Financial Implications

This report highlights a transfer of \$50,000 between the Shellys Beach compulsory land acquisition and the Fawcett Park café refurbishment.

Consultation

The report has been presented in open Council to provide a public update on the current status of the negotiations for the various cafes

Options

The report is largely for information purposes, albeit that the recommendation notes the transfer of \$50,000 between the Shelly Beach land acquisition and Fawcett Park café.

Finally the other café where some negotiations are on-going is the Gallery Café. Council has allocated \$40,000 improvements to this building, along with \$15,000 for improvements to the foyer. The building improvements contract has recently been signed with Eggins Homes Pty. Ltd.

The \$40,000 in improvements is being offset by an increase in the weekly rental for the tenant based on a 10 year timeframe, at 5% interest, as previously resolved by Council. This equates to an increase in the rental of approximately \$100 per week, with the tenant also provided with an extra five years on the term of their lease.

This project is progressing well with Eggins commencing works shortly and the tenant negotiations proceeding as per the Council resolution.

4.3 Cafe Negotiations - Update

RECOMMENDATION

That Council notes the contents of this report in respect to the on-going negotiations for the cafes identified within the report, along with the need to reallocate \$50,000 from the Shellys on the Beach compulsory land acquisition to the Fawcett Park café refurbishment.

Attachment(s)

Nil

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 Property Acquisition - West Ballina

This report contains information relating to as this report provides details of a property that Council may be interested in acquiring and discussing the property in open Council would prejudice Council's ability to purchase that property at a fair market price.

5.2 Property Acquisition - North Ballina

This report contains information relating to as this report provides details of a property that Council may be interested in acquiring and discussing the property in open Council would prejudice Council's ability to purchase that property at a fair market price.

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 Property Acquisition - West Ballina

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 this report provides details of a property that Council may be interested in acquiring and discussing the property in open Council would prejudice Council's ability to purchase that property at a fair market price.

5. Confidential Session

5.2 **Property Acquisition - North Ballina**

Reason for Confidentiality

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

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

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 this report provides details of a property that Council may be interested in acquiring and discussing the property in open Council would prejudice Council's ability to purchase that property at a fair market price.