



## **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 4 December 2018 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
- 

**1. Apologies**

**2. Declarations of Interest**

**3. Deputations**

#### **4.1 Community Gallery - Use of Former Ballina Fire Station**

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### **4. Committee Reports**

#### **4.1 Community Gallery - Use of Former Ballina Fire Station**

**Delivery Program**      Community Facilities

**Objective**              To seek the Council's endorsement for the ongoing occupation and use of the former Ballina Fire Station for cultural and artistic purposes associated with the adjoining Northern Rivers Community Gallery.

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#### **Background**

In August 2016 Council acquired the heritage listed, former Ballina Fire Station. Built in the same architectural style as the Northern Rivers Community Gallery (NRCG) and located in the adjoining property, the former Ballina Fire Station provided an exceptional opportunity to trial the expansion of NRCG's facilities to encompass dedicated workshop, artist studios and creative project spaces to meet the growing need for local arts and a fit-for-purpose space for arts activities.

Council authorised the temporary use of the former Ballina Fire Station for a period of twelve months for uses associated with the NRCG, but occupation was delayed due to the building being required to temporarily house Council Civil Services staff whilst refurbishment of Council's Customer Service Centre was undertaken.

A temporary 12 month use was approved as the alternative option was to commercially rent the building which could potentially generate \$30,000 to \$40,000 income per annum for Council. The temporary use provided an opportunity to evaluate the use of the building for gallery purposes as compared to the commercial lease.

Prior to the NRCG occupying the space, minor building works were also required to ensure the facility was compliant with current accessibility and Building Code standards. A Development Application was submitted in December 2016 with approval and construction certificate issued in May 2017. Stage one of the minor construction works commenced in October 2017 and were completed in April 2018. Occupation of the three 12 month leased artist studio spaces commenced in February 2018 and **Ignite Studios @ NRCG** was officially launched on 5 May 2018.

As with Gallery exhibition programming, planning for the ongoing provision of services and programs within **Ignite Studios @ NRCG** will need to commence in December 2018. This will allow appropriate lead time to develop programs relative to the facility and promote callouts for the ongoing leasing of the studio spaces to rollover in February 2019.

Endorsement is now being sought from the Council for the former Ballina Fire Station to be retained within Gallery facilities operating as **Ignite Studios @ NRCG**, providing dedicated space for expanded creative activities.

## 4.1 Community Gallery - Use of Former Ballina Fire Station

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### Key Issues

- Arts and cultural development now and into the future
- Commitment of resources

### Information

The NRCG is housed in a heritage building, built in 1927 as the original Ballina Municipal Council Chambers and was renovated in 2007 to establish the Gallery.

The NRCG, distinct from a regional or commercial artistic institution, is a unique public cultural facility in the region with the primary focus to support and showcase local regional arts. As a community gallery the artistic programs are largely initiated by our local community where individual artists, artist groups, educational, cultural and community groups, curators and heritage groups may apply to exhibit. Additionally, the NRCG presents a range of public programs that include: creative workshops; artist talks and demonstrations; community events; performance events (music and spoken word); industry forums and panel discussions.

Prior to the expansion of facilities to include **Ignite Studios @ NRCG**, the NRCG had no dedicated space for arts related workshops or special projects and all programs were previously presented in Gallery space 1 or 4. This limited both the number and range of programs the NRCG could present, as many programs cannot practically take place in an occupied exhibition space posing risk to the exhibition artworks and visitors.

Since 2014, annual visitation to the NRCG has increased by 66% and by 324% in public program participation. Welcoming 25,000 visitors in just the last financial year, the NRCG is experiencing exceptional growth demonstrating need for expansion of facilities.

Gradual expansion of the NRCG to include **Ignite Studios @ NRCG**, as a multi-disciplinary 'art centre' model, enables a sustainable strategic approach towards future planning for an arts and cultural precinct for the Ballina Shire.

The following table details engagement and participation statistics over the last four financial year periods.

Engagement Statistics	2017/18	2016/17	2015/16	2014/15
Visitation	25,000	23,537	20,269	15,017
Public Program Total	41	26	10	11
Participation – Public Programs	1,200	672	388	283

Whilst not yet operating for a full twelve month period, the expansion of NRCG to include **Ignite Studios @ NRCG**, shows positive growth with flow on benefits that include meaningful community engagement, encouraging entrepreneurship for local creative industry and diversified income stream potential for the Gallery. The first stage of extended program offerings has shown positive increase in workshop income and nearly doubled public program participation numbers.

### Legal / Resource / Financial Implications

This report takes into account the approved budget allocation for **Ignite Studios @ NRCG** operations. Aside from the expenditure of the allocated budget there are no additional resourcing or financial implications associated with retaining **Ignite Studios** within NRCG operations.

There are some legal issues relating to the property which are currently being pursued by staff.

By way of explanation, Council acquired the former Ballina Fire Station at market value in 2014. Contracts were exchanged in January 2014, with settlement occurring in April that year.

This acquisition by Council was part of a “land swap” type arrangement with NSW Fire and Rescue, whereby that organization acquired land from Council on Tamarind Drive, Council took possession of the Fire Station and a financial payment was made by Council to the State Government for the difference in the respective property values.

At the time of settlement of the contract, Council attempted to register the title deeds into our name. However, part of the Fire Station site (it comprises two allotments) was requisitioned due to a notation on the title indicating that the land comprised a reserve, with restrictions on transfer.

Since that time, substantial efforts have been made by staff and our lawyer to remedy the situation. This action has included Council requesting reviews by NSW Land Registry Services (formerly Land and Property Information) and Office of the Registrar General. These efforts have not provided a satisfactory outcome.

Aside from not being provided with a “clear” title, another concern is that Council may not have insurance coverage for the property, or for activities conducted within it. Pending a resolution to the problem with the title, it is now proposed to immediately request the Government to lease the property to Council (at nil or nominal rental) so that it may be covered within our register of insured properties.

In the meantime, we will continue to do whatever is possible to have the title anomaly rectified, including making representations to our State Government parliamentary representatives.

Returning to the key purpose of this report, the NRCG has been successful in securing external funding to support the establishment of Ignite Studios that includes minor building works, public program development and implementation, philanthropy and partnership development.

## 4.1 Community Gallery - Use of Former Ballina Fire Station

A summary of the successful external funding includes:

Funding Body	Grant	Purpose	Amount
Create NSW	Arts and Cultural Projects	Establish 'Ignite Studios' – connecting regional artists with audiences and opportunities. [Program funding]	\$55,000
Cultural Infrastructure Project Management Office (CIPMO)	Regional Cultural Fund (RCF)	Establish 'Ignite Studios', Gallery Lighting upgrade and Partnership Development. [Capital Works & Program funding]	\$158,480

The following table shows the positive trend of operational income and expense results over the last four financial year periods:

Financials - INCOME	2017/18	2016/17	2015/16	2014/15
Rental - Café outgoings & Crown Prop	37,800	37,100	36,000	37,600
Bookings Exhibitions	15,800	16,400	11,200	12,600
Ignite Studios Bookings	5,100	N/A	N/A	N/A
Commission – Consignment Sales	22,100	13,700	17,100	14,600
Sales – Stock Items	9,500	12,300	11,200	3,500
Donations	1,100	1,300	1,000	800
Other (incl. workshops)	6,500	4,900	600	2,400
Grants Contributions	59,500	13,000	N/A	N/A
<b>TOTAL</b>	<b>157,400</b>	<b>98,700</b>	<b>77,100</b>	<b>71,500</b>

Ignite Studios 2017/18 income budget target was \$8,000 and actual came in under target at \$5,000. However, as a result of the extended public program capacity, the Workshop income was \$2,700 above the \$3,000 budget target.

Financials – EXPENSE	2017/18	2016/17	2015/16	2014/15
Administration	207,500	186,600	134,500	121,000
Operations	102,900	110,100	108,300	97,350
Grants	7,400 **	4,900*	n/a	n/a
<b>TOTAL</b>	<b>317,800</b>	<b>301,600</b>	<b>242,800</b>	<b>218,350</b>
Net Cash Loss	160,400	202,900	165,400	146,850

\*\* Unspent grant funding of \$55,800 carried forward to 2018/19 budget

\* Unspent grant funding of \$8,100 carried forward to 2017/18 budget

### Sustainability Considerations

- **Environment**

The adaptive re-use of the former Ballina Fire Station and Municipal Council Chambers as a community-focused arts and cultural facility provides a potent opportunity to promote the heritage values of the buildings through this reuse for the purpose of another arm of cultural activity – that being creative arts.

Moreover, the former fire station's reuse as a community space increases potential to again enjoy an extended time of continual use for the one purpose, thereby increasing the likelihood of the building's ongoing, and best practice, care as a significant heritage item in the Ballina Shire.

- **Social**

The NRCG is an inclusive facility catering to all members of the community including disadvantaged and disability groups, Aboriginal community, school groups, and the ageing (30% of Ballina Shire population).

The expanded facilities allows for greater engagement with the community as demonstrated by the '1000 Words – Arts and Literacy' schools program and the 'BOLD Sparks – Life Long Learning' aged care arts program.

These programs were established last year through external funding sources and were aimed to directly engage with young people and the ageing population of Ballina Shire.

These programs introduced new and diverse audiences to the NRCG and participation in arts and cultural activities and, due to demand, the programs were made available to groups across the Northern Rivers region.

The 2016 'National Arts Participation Survey' conducted by the Australia Council for the Arts identified that 86% of the Australian population (17 million Australians) acknowledge the many positive impacts the arts have on our daily lives and in our communities.

This survey found that Australians believe the arts are critical to social cohesion – reflecting Australia's diversity; shape and express identity; and create empathy, understanding and connection. The study revealed 98% of Australians engage with the arts and 46% creatively participate in the arts.

With the highest growth nationally of employment in the arts and creative industry outside of a capital city<sup>1</sup>, the Northern Rivers region represents an area of real opportunity that directly align with Council priorities within our Delivery Program and Community Strategic Plan.

Ballina, as part of a Shire population approaching 45,000, is identified in the NSW Government's Far North Coast Regional Strategy as a developing major regional centre. The Ballina-Byron Gateway Airport, extensive tourism assets and strong education and hospitality sectors provide exceptional audience and partnership development opportunities for the exciting revitalised NRCG facility encompassing ***Ignite Studios @ NRCG***.

This multi-disciplinary 'art centre' model would be the first of its kind in the Northern Rivers region, providing accessible, professional exhibition space; studio spaces; dedicated workshop spaces and a unique multi-purpose arts project space.

The expansion of facilities increases capacity to:

- Present a more diverse range of art workshops (Gallery and community run workshops)
- Provides accessible creative space for people with a disability
- Support local arts workers through the subsidized studio program
- Secure revenue to off-set operational costs for reinvestment back into regional arts and cultural development



## 4.1 Community Gallery - Use of Former Ballina Fire Station

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- Provides a self-managed hire space for artists to run independent activities (workshops, pop-up exhibitions, special projects etc) to support their creative practice
- Access creative spaces with less time and use restrictions for community to hire (7 days per week)
- Engage local community and artists in broader arts practices through the visiting artist-in-residence program

- **Economic**

Retaining *Ignite Studios @ NRCG* as part of the Gallery will extend NRCG's capability, now and into the future to encourage entrepreneurship for local creative industry and diversifies income stream for the Gallery through:

- Ability to offer more workshops with a higher income potential such as a professional Master Class program, After School Art program and term long workshop series
- Facilities hire – workshop, studio spaces, Artist-in-Residence studio
- Support income potential for local artists through the provision of affordable space for artists to run their own workshop programs & events capitalizing on the NRCG profile and visitors
- Attract cultural tourism to the area

An income of \$48,000 was paid to local artist suppliers during 2017/18 supporting regional creative industry.

The expansion of facilities, high volume of audience engagement and Federal Government tax incentives of Deductible Gift Recipient (DGR) and Cultural Gift Register (CGR) status of the NRCG also provides an opportune time for pursuing philanthropic and corporate partners. This strategy has been supported through the success of funding through the Regional Cultural Fund for the appointment of a temporary, part-time Strategic Partnership Officer to pursue strategic partnership, sponsorship and philanthropic opportunities whilst leveraging the current growth success of the NRCG.

The recruitment process for the Strategic Partnership Officer position was completed early November and the contract position recently commenced for a 12 month period.

### **Consultation**

Consultation was undertaken with 22 Gallery stakeholders consisting of key arts and culture organisations, education providers (primary, secondary and tertiary), community art groups, Indigenous organisations, disability arts groups, aged care providers and independent artists; and over 260 community members.

The community survey results have shown 94% of 262 respondents either 'Agree' or 'Strongly Agree' that the adaptive re-use of the former Ballina Fire Station as an extension of NRCG provides a potent opportunity to promote the heritage values of the building while strengthening pride in our local history and connection to place.

## 4.1 Community Gallery - Use of Former Ballina Fire Station

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All participants in the consultation have shown strong endorsement for the project with 80% - 95% from each consultation group agreeing or strongly agreeing the establishment of **Ignite Studios @ NRCG** will be beneficial to the community and arts and cultural development.

### Options

1. Council may discontinue the current use of the former Ballina Fire Station as part of the operation of the Northern Rivers Community Gallery.

With this option, expressions of interest would be called for the commercial occupation and lease of the property for the purposes that are compatible with the property's commercial zoning and heritage status.

Whilst this option may be advantageous to Council from a financial perspective, it is not recommended as it would detract from the goal of consolidating the cultural and artistic precinct as envisaged under Council's adopted Community Strategic Plan.

2. Council can endorse the retention of the former Ballina Fire Station as part of the Northern Rivers Community Gallery operating as 'Ignite Studios @ NRCG' This option provides strong community engagement outcomes, an additional income stream for the Gallery and significant opportunity to nurture arts and cultural development within the Ballina Shire.

This is the recommended option, noting that more work remains to be done to satisfactorily resolve the problem relating to the property title.

### RECOMMENDATIONS

1. That Council endorses the retention of the former Ballina Fire Station as part of the NRCG facilities to operate as 'Ignite Studios @ NRCG'.
2. That Council notes the situation relating to the land title of the former Ballina Fire Station and supports the General Manager to continue to take all steps necessary to have the NSW Government rectify the anomaly.

### Attachment(s)

Nil

## 4.2 Former Tintenbar Council Chambers - Sublease of Area 2

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### 4.2 Former Tintenbar Council Chambers - Sublease of Area 2

**Delivery Program** Commercial Services

**Objective** To seek Council's concurrence for a sublease of Area 2 in the former Tintenbar Council Chambers, 2 High Street, Alstonville.

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#### **Background**

Council has a vacancy within the former Tintenbar Council Chambers at 2 High Street, Alstonville October 2018. This vacant tenancy is described as "Area 2".

Council has a head lease with the Crown over the former Tintenbar Council Chambers.

A prospective tenant has expressed interest in Tenancy Area 2 of the building. Negotiations with this party for a sublease have concluded and Council's concurrence is now sought.

A locality plan and a leasing plan for the former Tintenbar Council Chamber are **attached**.

#### **Key Issues**

- Sublease terms and conditions

#### **Information**

The former Tintenbar Council Chambers is configured into three sub tenancies as follows:

<b>Area</b>	<b>Size m<sup>2</sup></b>	<b>Occupier</b>
Area 1	106.46m <sup>2</sup>	S Fleming
Area 2	53.12m <sup>2</sup>	Vacant
Areas 3 and 4	28.57m <sup>2</sup>	T Woznitza

Area 2 is the subject of this report, and has been vacant since October, 2018. Area 1 was subleased in September 2018.

The prospective subtenant for Area 2 proposes to operate a fashion design studio, wholesale showroom and stockroom.

Negotiations have concluded for a sublease with this party and are set out in a confidential report included in this meeting agenda.

#### **Legal / Resource / Financial Implications**

Council currently holds a head lease for this Property with the Crown. Approval will be sought from the Crown for the proposed sublease.

## **4.2 Former Tintenbar Council Chambers - Sublease of Area 2**

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### **Consultation**

This sub tenancy has been listed for lease with local real estate agents since it was vacated in October 2018.

### **Options**

This report is for information purposes only with a confidential report included in this meeting agenda providing options and recommendations.

### **RECOMMENDATION**

That Council notes the contents of this report in regards to a new sub-lease for Tenancy Area 2, Former Tintenbar Council Chambers, 2 High Street, Alstonville.

### **Attachment(s)**

1. Former Tintenbar Council Chambers - Locality Plan
2. Former Tintenbar Council Chambers - Leasing Plan

4.2 Former Tintenbar Council Chambers - Sublease of Area 2



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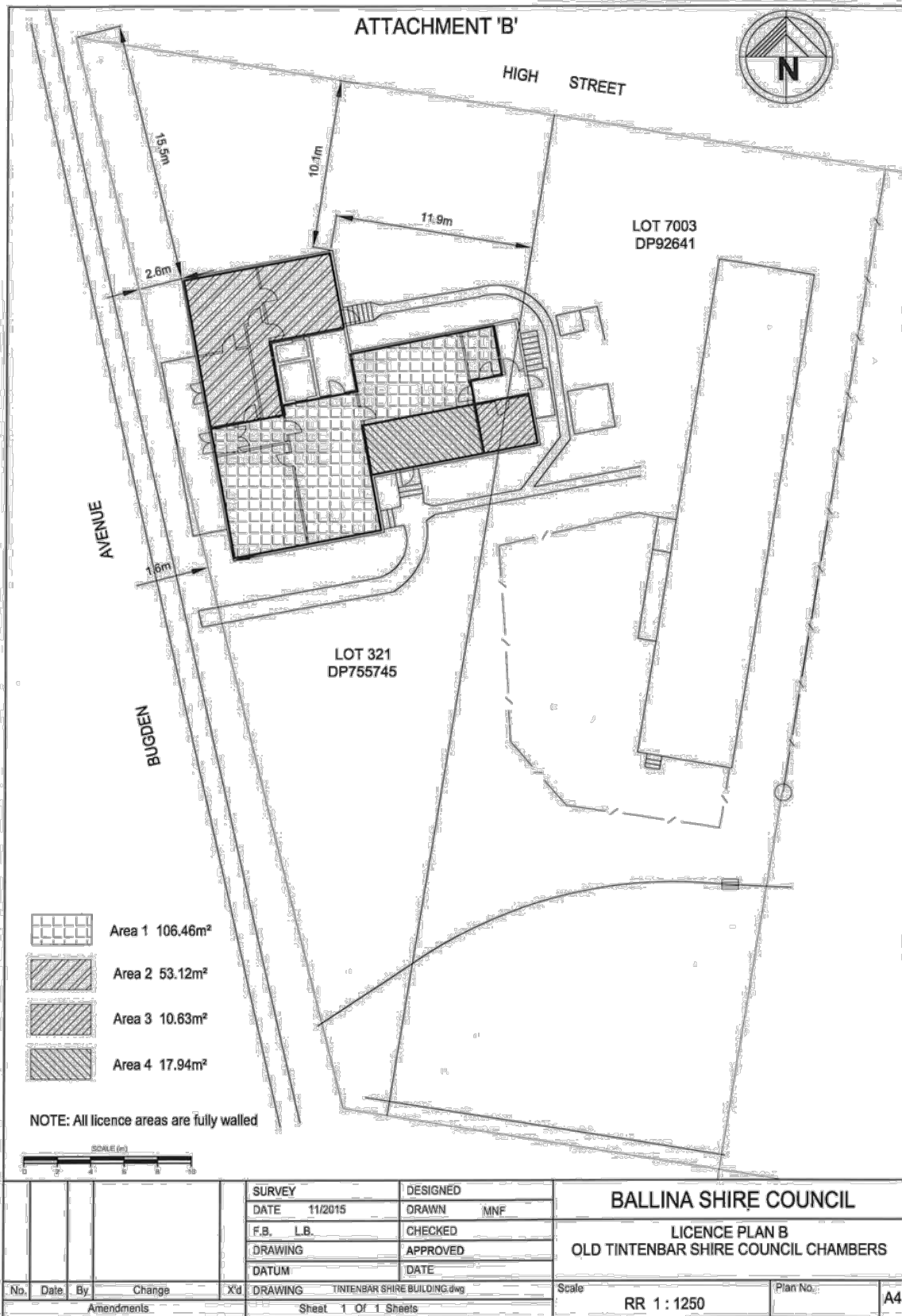
Locality Plan  
Mewing Area 2  
Old Tintenbar Council Chambers

ballina shire council  
geographical information system

Projection: GDA94 / MGA zone 56  
Date: 19/11/2018

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4.2 Former Tintenbar Council Chambers - Sublease of Area 2



#### **4.3 54 North Creek Road, Ballina - Sale Contract Amendment**

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#### **4.3 54 North Creek Road, Ballina - Sale Contract Amendment**

**Delivery Program** Commercial Services

**Objective** To seek Council's concurrence to transfer a sales contract from one family member to another.

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#### **Background**

Unfortunately the purchaser of a proposed lot in the industrial subdivision of 54 North Creek Road has passed away and his family has requested the sales contract be rescinded and re-issued in the name of another family member.

Details relating to this matter are contained in the confidential report included in this meeting agenda.

#### **Key Issues**

- Rescission and reissuance of sales contract.

#### **Information**

This project was last reported to Council at the Commercial Services meeting held on 18 September, 2018. Four sale contracts that had been exchanged in 2015 had subsequently expired as development of the lots had not been completed.

It was recommended to Council that the contracts be re-entered into with the four purchasers but at revised prices to reflect the increase in land values and development costs. The resolution arising from that meeting was as follows:

1. *That Council advise all four buyers that the market has moved up and that Council has incurred significant additional costs and that if they wish to proceed with their respective purchases, the purchase price will be increased based upon CPI movements and a resultant sale rate of \$269/m<sup>2</sup> plus GST.*
2. *That Council authorises the Council seal to be attached to the sale contracts as per point one.*
3. *That Council authorises the transfer (sale) of the proposed Lot 7 from the General Fund to the Sewer with the transfer price to be determined by an independent valuation, subject to the approval of the General Manager.*

Council staff subsequently advised the purchasers of the revised sale price rate of \$269/m<sup>2</sup> plus GST. All purchasers agreed to the price increase on the proviso that the completion date for settlement be revised to 30 June, 2020 with the final sunset date being 30 June, 2021.

#### **4.3 54 North Creek Road, Ballina - Sale Contract Amendment**

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Instructions have subsequently been given to Council's solicitor to issue revised contracts to the four purchasers based upon the revised prices, settlement and sunset dates.

Due to the death of one of the parties the confidential report seeks direction from Council in respect to that contract.

In regards to the status of the project, it is progressing well with completion anticipated in late February 2019 (subject to weather).

Settlement of the sale contracts will then be subject to, among other things, receiving the appropriate certification that the fill material placed upon the site has achieved the appropriate rate of settlement.

Assuming development works are completed in February 2019 and the appropriate settlement certification has been received, it is proposed to put Lots 6 and 7 to auction in March or April 2019.

A further report will be put Council dealing with the auction in 2019. A copy of the plan of proposed subdivision is **attached**.

#### **Legal / Resource / Financial Implications**

There are no legal impediments or financial implications for Council in agreeing to this request.

#### **Consultation**

Not applicable

#### **Options**

This report is for information purposes only with a confidential report included in this meeting agenda providing options and recommendations.

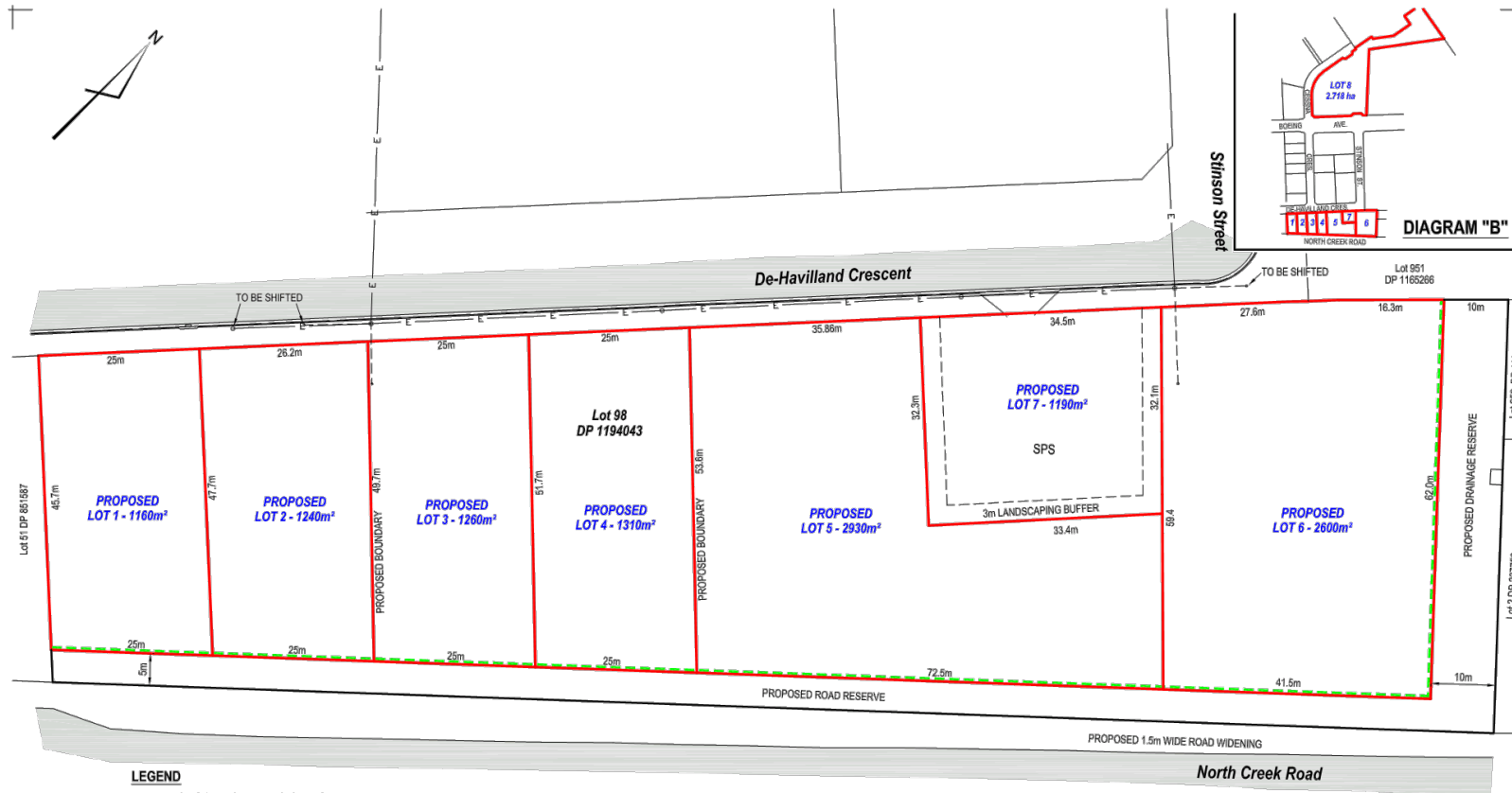
#### **RECOMMENDATION**

That Council notes the contents of this report regarding a sale contract amendment for 54 North Creek Road, Ballina.

#### **Attachment(s)**

1. Plan of Proposed Subdivision





**LEGEND**

- PROPOSED SUBDIVISION BOUNDARY
- - - PROPOSED NOISE WALL (TBC)

\* PROPOSED ROAD WIDENING & DRAINAGE RESERVE AREA HAS BEEN REMOVED FROM LOT AREAS.  
 \*\* LOT F INCLUDES RESIDUE ALLOTMENT ON THE CORNER OF BOERING AVE AND CESSNA CRESCENT.



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**PROPOSED SALES PLAN**  
**FOR SUBDIVISION OF LOT 98 DP 1194043**  
 54 NORTH CREEK ROAD  
 for BALLINA SHIRE COUNCIL

**FIGURE 3**

SCALE:	1 : 1500 at A3
LGA:	Ballina
LOCALITY:	Ballina
DESIGNED:	
DRAWN:	WF
APPROVED:	AZ
DATE:	26.10.2016
COG:	15005 (CAS)
Dwg. No.	14144-SK11D

#### **4.4 North Creek Road Lennox Head - Proposal to Lease Community Land**

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#### **4.4 North Creek Road Lennox Head - Proposal to Lease Community Land**

**Delivery Program** Commercial Services

**Objective** To seek Council's concurrence to undertake community consultation for a proposal to lease a portion of community land under Section 47 of the Local Government Act 1993. The proposal involves erecting a telecommunications monopole on a portion of Lot 11 DP 627149 North Creek Road, Lennox Head.

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#### **Background**

Telstra, through its consultant Axicom, is seeking Council's approval to lease a portion of Lot 11 DP 627149 North Creek Road, Lennox Head which is classified as community land. A locality plan is **attached**.

Telstra are proposing to remove an aircraft navigation lighting tower that was erected on the site by Council for the Ballina Byron Gateway Airport and replace it with a new 45 metre high monopole for telecommunications infrastructure. Telstra has advised that the current monopole lacks the structural strength to support the telecommunications infrastructure and aircraft navigation lighting.

The purpose of this report is to determine whether or not Council wishes to pursue leasing this portion of community land to Telstra.

#### **Key Issues**

- Leasing of community land
- Provision of telecommunication infrastructure
- Airport navigational infrastructure

#### **Information**

A tower with aircraft navigational lighting was erected in 2013 by Council for the airport on Lot 11 DP 627149, North Creek Road, Lennox Head ("the Site").

Axicom, acting on behalf of Telstra, has approached Council seeking approval to replace the existing navigation tower with a new 45 metre high monopole that could accommodate telecommunications infrastructure and aircraft navigational lighting. The requirements for this proposed structure include a 120m<sup>2</sup> fenced site with vehicular access to North Creek Road. A plan of the proposed structure is attached.

This site was selected by Axicom following an extensive search in the local area for a suitable location to house a large monopole structure. It is proposed to affix telecommunications infrastructure to the monopole to enhance mobile phone and internet services west of the North Creek Road Reservoir and down past Skennars Head. An email from Axicom identifying the subject Site and outlining the need to erect the monopole is attached.

#### **4.4 North Creek Road Lennox Head - Proposal to Lease Community Land**

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As the subject Site is classified as community land a number of steps need to be taken or addressed including:

1. Council agreeing to undertake the relevant process for granting a long term lease over community land for commercial purposes. This process would require Council to undertake community consultation for the proposed lease under Section 47 of the *Local Government Act 1993*. The maximum lease period being 21 years.
2. Council reaching an agreement in principle with Telstra for a long term lease on commercial terms and conditions that are mutually acceptable.
3. Council granting landowner's approval to Telstra to lodge a development application for their proposed telecommunications monopole which would include aircraft navigation infrastructure.

Telstra are keen to progress this matter and have presented various leasing proposals to Council, the most recent of which is noted in a confidential report included in this meeting agenda. Council could reach agreement in principle on lease terms and conditions with Telstra, subject to the outcome of Step 1 above; i.e. the community consultation process.

Subject to a positive outcome for Steps 1 and 2, Council could then progress to Step 3 and grant landowner's consent for Telstra to lodge a development application to erect the monopole structure on the subject Site.

Lot 11 DP 627149 comprises a site area of 4,743m<sup>2</sup>, however Telstra only require a 120m<sup>2</sup>. So a subdivision of Lot 11 would be required to create a 120m<sup>2</sup> site for Telstra. Alternatively Council could grant Telstra a licence over the site area they require.

#### **Legal / Resource / Financial Implications**

The subject Site is classified as community land and as such any proposed commercial lease or licence requires notification under Section 47 of the *Local Government Act 1993*.

#### **Consultation**

Council has consulted with airport operational staff. Telstra has also consulted with Council in a pre-lodgement development application meeting.

#### **Options**

The leasing of community land for telecommunication towers has the potential to raise conflicting views within the community.

Council must balance the views of residents in the immediate vicinity of such proposed infrastructure with the needs of residents elsewhere in the community who seek improved mobile phone and internet services.

The following options have been drafted accordingly.

#### **4.4 North Creek Road Lennox Head - Proposal to Lease Community Land**

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1. Council resolves to reject Telstra's request for a lease or licence over a portion of Lot 11 DP 627149, North Creek Road, Lennox Head, remove the existing navigation tower and erect a new monopole structure and affix telecommunications infrastructure and aircraft navigational lighting, as the use of community for this purpose is not supported.

This option is not recommended as Telstra and its consultant Axicom, have conducted an extensive search for a suitable site to erect the proposed structure and enhance mobile phone and internet services in areas where such services are lacking or substandard.

The options for such a site in the elevated areas of Lennox Head and Skennars Head are very limited due to the Ballina Byron Gateway Airport flight path OLS ("Obstacle Limitation Surface") requirements.

2. Council resolves to undertake the relevant process for granting a long term commercial lease or licence to Telstra over a portion of Lot 11 DP 627149, North Creek Road, Lennox Head. This would include undertaking community consultation for the proposed lease of community land under Section 47 of the *Local Government Act 1993*. This option would also be dependent on the commercial leasing arrangements as per the confidential report.

Option two is recommended as investigations by Telstra identify an urgent need to improve mobile phone and internet services in the areas west of the North Creek Road Reservoir and Skennars Head.

Furthermore there is a lack of alternate sites due to Ballina Byron Gateway Airport's flight path OLS requirements.

#### **RECOMMENDATIONS**

1. That Council authorises the General Manager to undertake the relevant process for granting a long term commercial lease or licence to Telstra over a portion of Lot 11 DP 627149, North Creek Road, Lennox Head. This would include undertaking community consultation for the proposed lease of community land under Section 47 of the *Local Government Act 1993*.
2. At the conclusion of the community consultation process the matter be reported back to Council.

#### **Attachment(s)**

1. Locality Plan - Lot 11 DP 627149 North Creek Road Lennox Head
2. Telstra Proposed Infrastructure Plans
3. Axicom Email 27 November, 2018

**4.4 North Creek Road Lennox Head - Proposal to Lease Community Land**



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council@ballina.nsw.gov.au  
www.ballina.nsw.gov.au



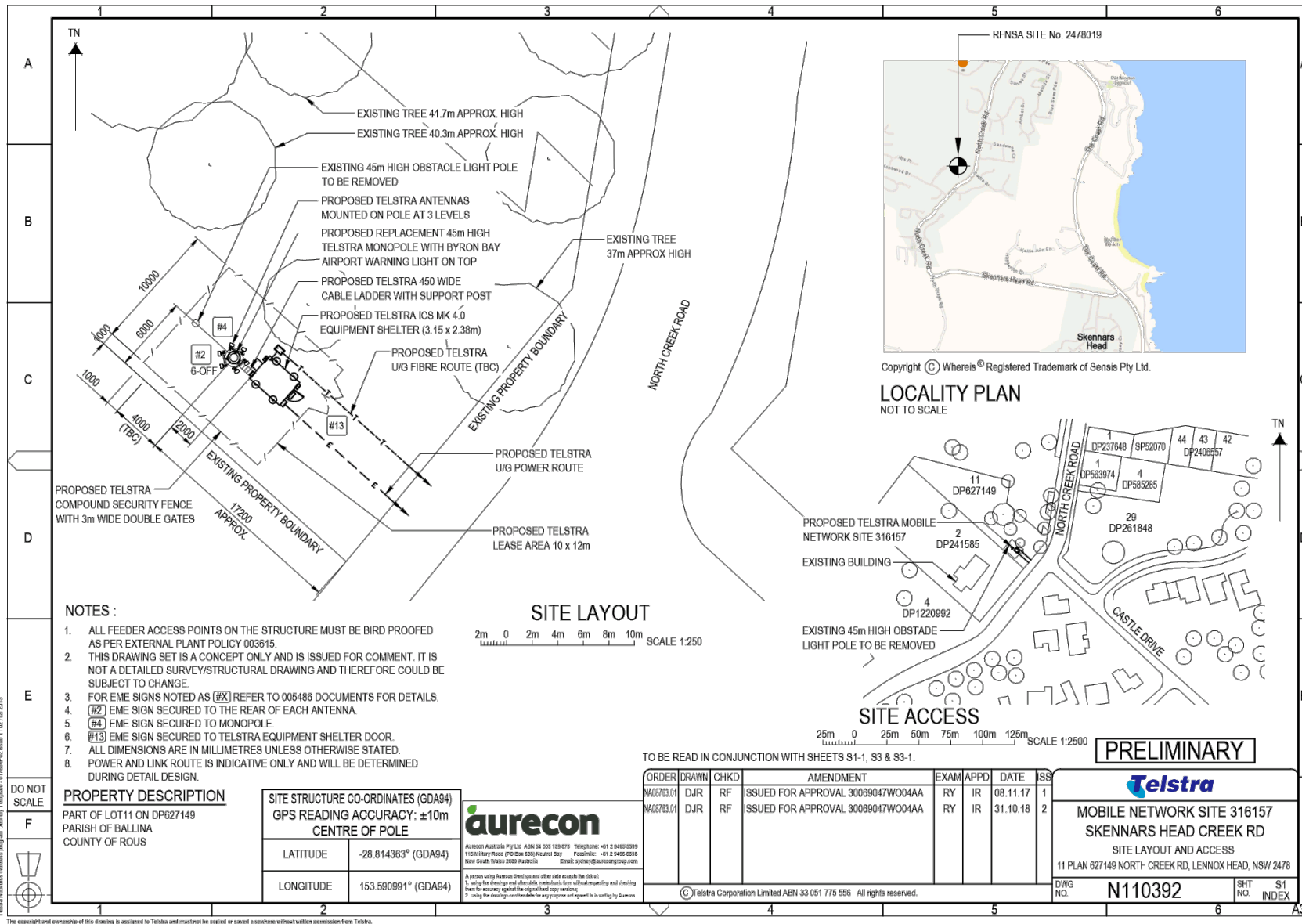
**Site Plan ♦ Proposed Telstra Communication Pole North Creek Road Lennox Head**

**ballina shire council**  
geographical information system

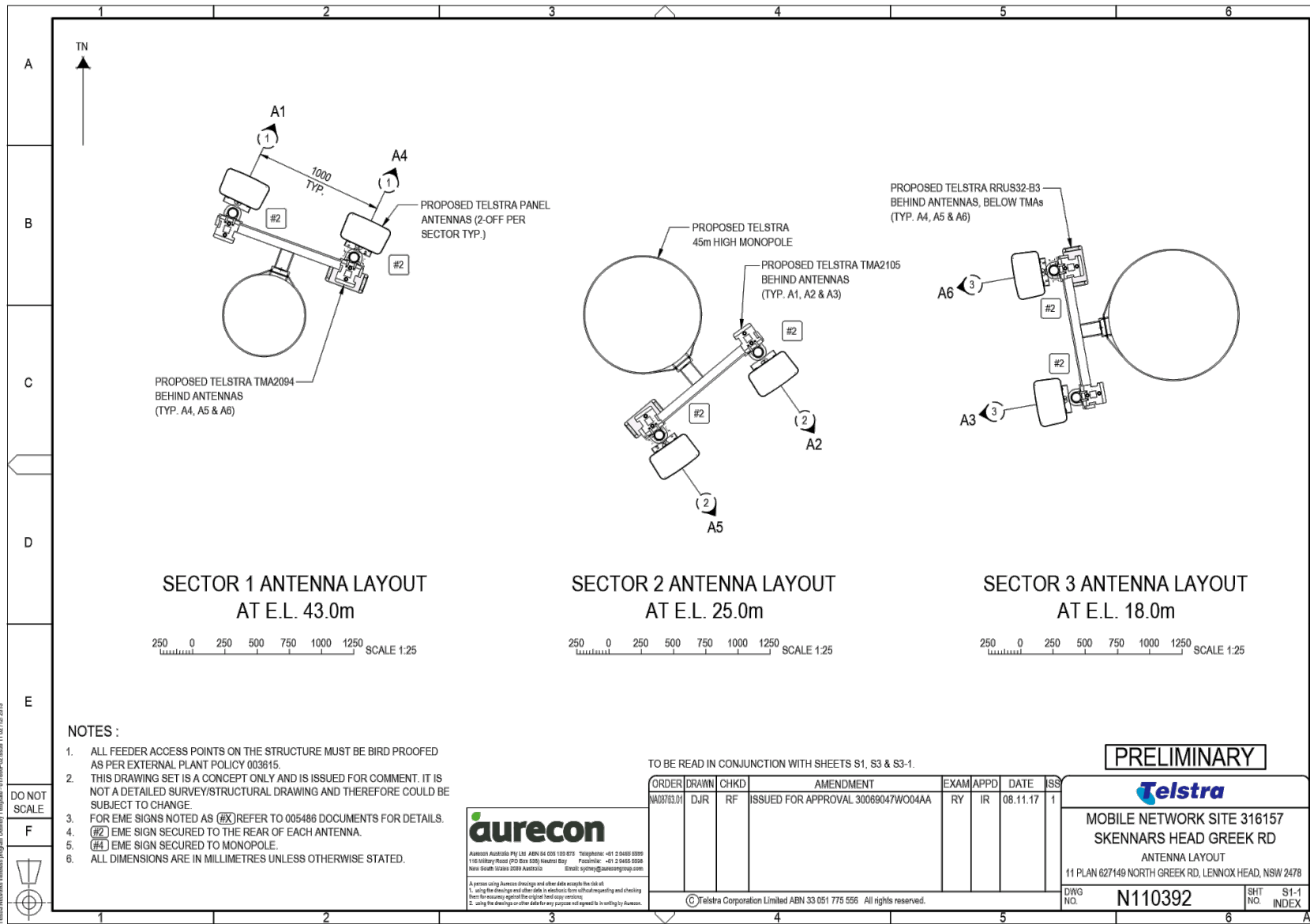
Projection: GDA94 / MGA zone 56  
Date: 15/10/2018

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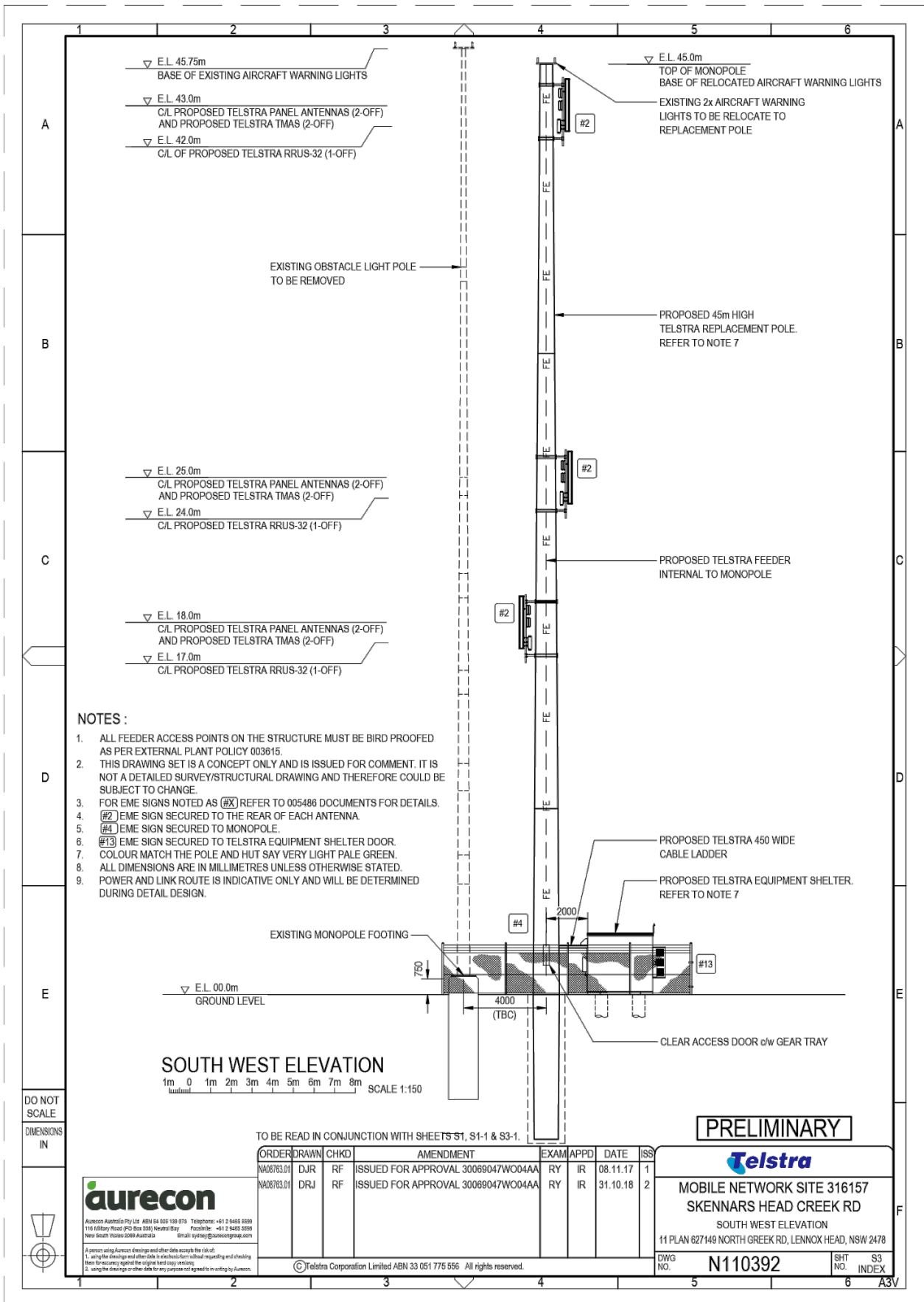
# 4.4 North Creek Road Lennox Head - Proposal to Lease Community Land



# 4.4 North Creek Road Lennox Head - Proposal to Lease Community Land



# 4.4 North Creek Road Lennox Head - Proposal to Lease Community Land



**NOTES :**

1. ALL FEEDER ACCESS POINTS ON THE STRUCTURE MUST BE BIRD PROOFED AS PER EXTERNAL PLANT POLICY 003615.
2. THIS DRAWING SET IS A CONCEPT ONLY AND IS ISSUED FOR COMMENT. IT IS NOT A DETAILED SURVEY/STRUCTURAL DRAWING AND THEREFORE COULD BE SUBJECT TO CHANGE.
3. FOR EME SIGNS NOTED AS (#X) REFER TO 005486 DOCUMENTS FOR DETAILS.
4. (#2) EME SIGN SECURED TO THE REAR OF EACH ANTENNA.
5. (#4) EME SIGN SECURED TO MONOPOLE.
6. (#13) EME SIGN SECURED TO TELSTRA EQUIPMENT SHELTER DOOR.
7. COLOUR MATCH THE POLE AND HUT SAY VERY LIGHT PALE GREEN.
8. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS OTHERWISE STATED.
9. POWER AND LINK ROUTE IS INDICATIVE ONLY AND WILL BE DETERMINED DURING DETAIL DESIGN.

**SOUTH WEST ELEVATION**

1m 0 1m 2m 3m 4m 5m 6m 7m 8m SCALE 1:150

DO NOT SCALE DIMENSIONS IN

TO BE READ IN CONJUNCTION WITH SHEETS S1, S1-1 & S3-1.

**PRELIMINARY**



Aurecon Australia Pty Ltd ABN 54 005 109 870 Telephone: +61 9 9485 8990  
 116 Military Road (PO Box 538) Neutral Bay Postcode: +61 2 9485 5558  
 New South Wales 2090 Australia Email: sydney@aurecongroup.com

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ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPD	DATE	ISS
NA06783.01	DJR	RF	ISSUED FOR APPROVAL 30069047W004AA	RY	IR	08.11.17	1
NA06783.01	DRJ	RF	ISSUED FOR APPROVAL 30069047W004AA	RY	IR	31.10.18	2

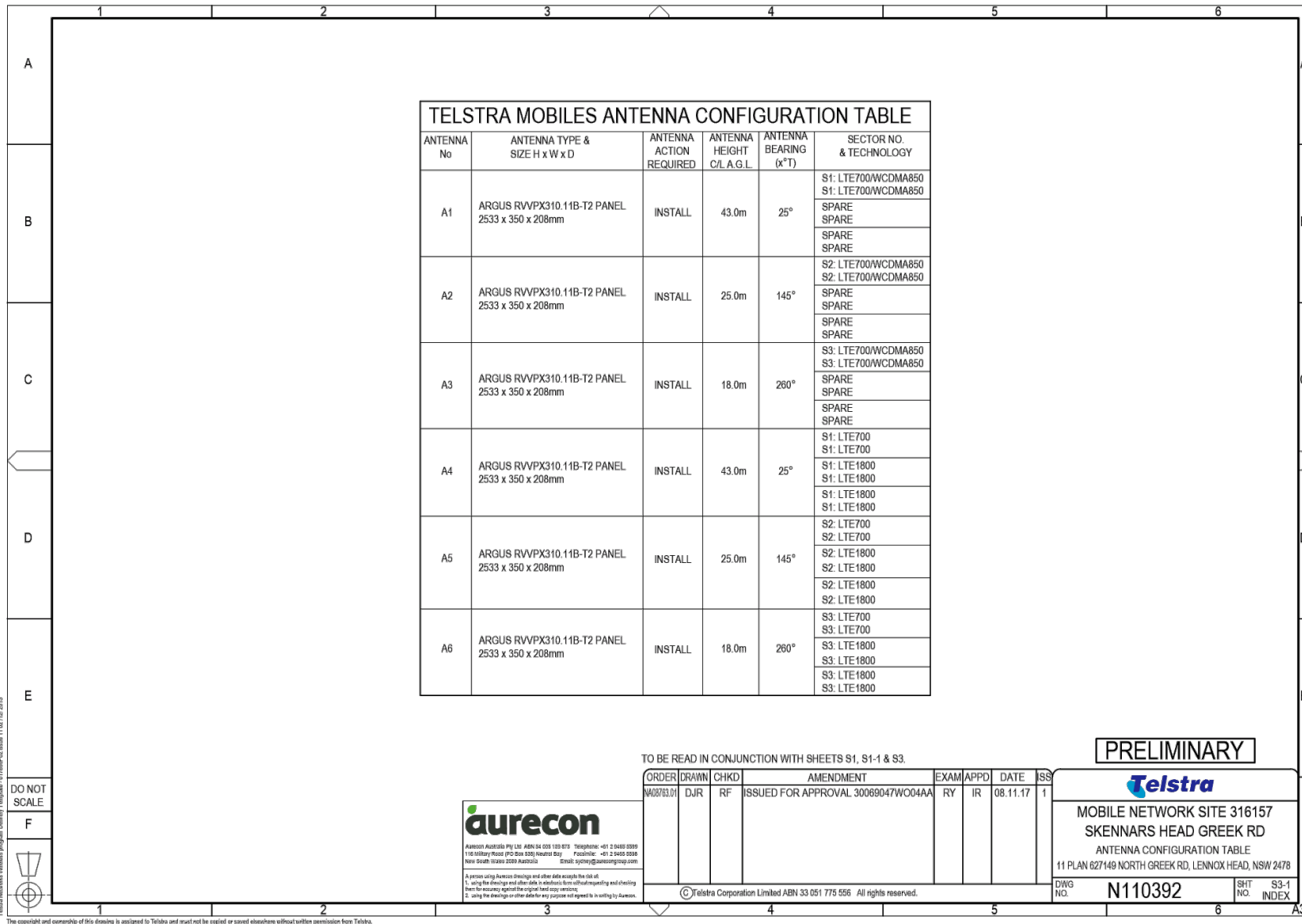
**Telstra**

MOBILE NETWORK SITE 316157  
 SKENNARS HEAD CREEK RD  
 SOUTH WEST ELEVATION  
 11 PLAN 627149 NORTH GREEK RD, LENNOX HEAD, NSW 2478

DWG NO. **N110392** SHT NO. **S3** INDEX



4.4 North Creek Road Lennox Head - Proposal to Lease Community Land



## 4.4 North Creek Road Lennox Head - Proposal to Lease Community Land

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**From:** "Hughes, David" <[David.Hughes@axicom.com.au](mailto:David.Hughes@axicom.com.au)>

**Date:** 27 November 2018 at 8:48:32 am AEDT

**To:** Leanne Harding <[Leanne.Harding@ballina.nsw.gov.au](mailto:Leanne.Harding@ballina.nsw.gov.au)>

**Subject:** RE: Our Ref: NA08763.01 Skennars Head - Proposed Aviation Pole Swap out

Leanne, I have received [below](#) response from Telstra for inclusion in your report, let me know if any further clarifications required also –

*The existing site at Lennox Head Water Tank is a two sector site that provides little to no coverage to the residential area to the south described as Sector 1 in the below image.*

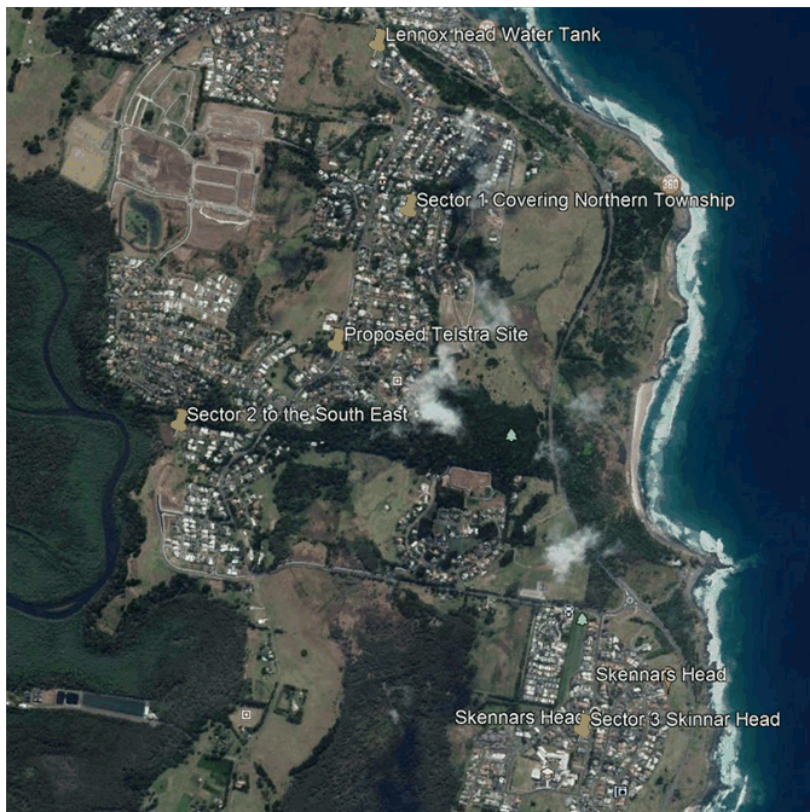
*The area from the south of Lennox Head Water Tank down to Skennars Head is the area that we are trying to provide coverage.*

*In reference to the map below our site will provide three sectors of coverage:*

- 1. Sector 1 Towards Lennox Head including the highway.*
- 2. Sector 2 Along the highway to the south and west.*
- 3. Sector 3 To the south east towards and covering Skennars Head township.*

*This site will provide coverage and capacity to these areas which currently have very little coverage.*

*In relation to site selection as you would be aware there are no other areas which are suitable due to the majority of the coverage area being compacted residential areas, as this site has an existing pole it was considered to be a good selection , it also has elevation and will cover the area mentioned above.*



Regards

**David Hughes** *LREA*

Site Acquisition Manager

*Axicom*

Address: PO Box 13127, George Street, QLD, 4003

**M** +61 433 142 402 | **F** +61 7 3003 0916

[david.hughes@axicom.com.au](mailto:david.hughes@axicom.com.au) | [www.axicom.com.au](http://www.axicom.com.au)

**Download our whitepaper:**

"How shared infrastructure offers carriers a way forward for 5G". [Click here.](#)

## 4.5 Ballina Byron Gateway Airport - Retail Lease Proposal

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### 4.5 Ballina Byron Gateway Airport - Retail Lease Proposal

**Delivery Program** Commercial Services

**Objective** To provide background information on the lease of a new retail tenancy in Ballina Byron Gateway Airport Terminal.

---

#### **Background**

Council is currently in the process of undertaking an expansion of the Ballina Byron Gateway Airport ("BBGA") terminal.

A significant feature of the proposed terminal expansion and upgrade works is to increase the size of the departure lounge from seating for approximately 180 people to 360 people. As with other major airports, the departure lounge will be classified as a "sterile area" for security purposes.

The expansion plans propose to demolish the existing café and create a new enlarged café and bar in the sterile departure area as well as a new retail tenancy for news and gifts.

A copy of the proposed terminal layout plan is **attached**.

This purpose of this report is to provide general information on the proposed news and gifts retail tenancy. A confidential report included in this meeting agenda contains specific lease and rental details.

#### **Key Issues**

- Proposed retail tenancy
- EOI process to secure tenant

#### **Information**

Two new retail tenancies will be created in the expanded departure lounge of the airport terminal as part of expansion works currently in progress.

Construction and fitout works are well advanced on a new café and bar which is proposed to be operational by this Christmas. A previous report to Council dealt with leasing of this new tenancy.

This report focuses upon the news and gifts retail tenancy comprising an area of 131.5m<sup>2</sup>. Construction and fitout works have not yet commenced on this tenancy however an agreement in principle has been reached to lease it.

Council engaged a specialist airport retail consultant, Justin Smith Retail Consulting Services, to undertake an Expression of Interest ("EOI") process to seek and secure a tenant for the news and gifts tenancy.

Three proponents initially responded to the EOI, however one withdrew without submitting a formal response.

## **4.5 Ballina Byron Gateway Airport - Retail Lease Proposal**

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All three proponents are national traders and have retail tenancies in airports, hospitals and other facilities throughout Australia. No responses were received from local retailers.

From the two proposals that were received a preferred proponent was selected. Details of the preferred proponent's proposal and outcome of negotiations are noted in the confidential report included in this meeting agenda.

### **Legal / Resource / Financial Implications**

The airport terminal is located on operational land and Council is able to lease it for commercial purposes. The lease income helps to support the operations of the airport, along with providing a service to the passengers.

### **Consultation**

An EOI process was undertaken.

### **Options**

This report is for information purposes only with a confidential report included in this meeting agenda providing options and recommendations.

### **RECOMMENDATION**

That Council notes the contents of this report in regards to a proposed new retail lease for the Ballina Byron Gateway Airport Terminal.

### **Attachment(s)**

1. Ballina Byron Gateway Airport -Departure Terminal Plan



## **4.6 Kentwell Community Centre, Ballina - Leasing Proposals**

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### **4.6 Kentwell Community Centre, Ballina - Leasing Proposals**

**Delivery Program** Commercial Services

**Objective** To provide background information on proposals to lease premises in the Kentwell Community Centre.

---

#### **Background**

The Kentwell Community Centre ("KCC") has a number of spaces leased to tenants and meeting rooms managed by Council.

FSG Australia leased a significant amount of space in the KCC including the eastern wing and the Bernice Kentwell Room (part of the western wing) (see shaded area as per the plan).

FSG also had a deed of agreement to manage the front reception area for Council's Community Facilities Section.

Unfortunately FSG recently went into liquidation and an administrator was appointed. As permitted by law, the administrator exercised its right to disclaim the FSG lease and the tenancy was returned to Council.

The purpose of this report is to provide general information on proposals for leasing space within the KCC vacated by FSG. A confidential report providing further detail on the leasing proposals is contained in a confidential report included in this meeting agenda.

#### **Key Issues**

- Leasing proposal
- Local Government Act 1993; leasing of community property

#### **Information**

KCC has a number of spaces leased to tenants and meeting rooms managed by Council. Tweed Byron Ballina Community Transport and St Andrews are tenants within the building.

With FSG vacating there is now a significant amount of space available for lease.

Discussions were conducted with Council's Community Facilities Section to determine the need for additional meeting rooms within the KCC, however these discussions indicated that there is scope to increase utilization of the existing meeting rooms managed by Council in the KCC, as well as other facilities such as the Ballina Surf Club, Lennox Head Community Centre and the Richmond Room.

Without Council undertaking an advertised expression of interest process, three community based organisations have expressed interest in leasing the space vacated by FSG; these being:

## **4.6 Kentwell Community Centre, Ballina - Leasing Proposals**

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1. The Family Centre;
2. CPL; and
3. Tweed Byron Ballina Community Transport.

The three organisations were requested to lodge expressions of interest for the vacated space. The details pertaining to the expressions of interest are included in the confidential report included in this meeting agenda.

That report is confidential as it contains commercial information.

### **Legal / Resource / Financial Implications**

The KCC is located on community land as classified under the Local Government Act 1993.

Sections 47 and 47A of the *Local Government Act 1993* note the requirements for leasing community land and premises.

### **Consultation**

Consultations have been conducted with the three proponents as noted above.

### **Options**

This report is for information purposes only with a confidential report included in this meeting agenda providing options and recommendations.

### **RECOMMENDATION**

That Council notes the contents of this report on the leasing of the Kentwell Community Centre.

### **Attachment(s)**

1. Leasing Plan - Kentwell Community Centre



4.6 Kentwell Community Centre, Ballina - Leasing Proposals



Notes:	SURVEY MB 2005-343		DESIGNED	BALLINA SHIRE COUNCIL
	DATE Jan 2016		DRAWN	
	F.B. 2004/2		CHECKED	
	DATUM		APPROVED	
		DRAWING BDSCA.dwg		KENTWELL COMMUNITY CENTRE LEASE PLAN
No.	Date	By	Change	X'd
Amendments				
Sheet 1 Of 1 Sheets			Scale NTS	Plan No. A4

## 4.7 Shellys on the Beach - Lease Update

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### 4.7 Shellys on the Beach - Lease Update

**Delivery Program** Commercial Services

**Objective** To provide Council with a lease update on Shellys on the Beach since fire destroyed the building on the site.

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#### **Background**

This matter was last reported to Council on 21 June, 2018, as the tenant, Fishheads@Byron Pty Ltd (Mr Mamone), wished to have a lease proposal presented to Council. The resolution arising from that meeting is as follows:

1. *That Council supports the actions being taken for the site to be cleaned up.*
2. *That Council does not support the proposal submitted by Mr Mamone.*

Staff have received no further communication on this matter from Mr Mamone since the meeting of 21 June, 2018.

Mr Mamone has attempted to keep the site secure and clean of rubbish but vandals and squatters have continued to enter it and leave rubbish.

In the early hours of 31 October, 2018 the NSW Fire Brigade was called to the site to extinguish a small fire. It appears no major damage was done. Mr Mamone was notified and requested to clean up any mess and secure the site.

Three days later, in the early hours of Saturday 3 November, 2018 the NSW Fire Brigade was again called to the site to extinguish a fire, however in this instance the building was destroyed.

A confidential report is included in this meeting agenda and provides an update of action taken by staff since 3 November, 2018 and matters relating to the lease over the site.

#### **Key Issues**

- Clearing of site
- Lease option

#### **Information**

A fire destroyed the Shellys' building in the early hours of Saturday 3 November, 2018.

In the following week staff sought legal advice from the perspective of regulator and landlord on how to deal with this matter. Upon receipt of the legal advice, an Emergency Order was issued in accordance with Sections 124 and 129 of the Local Government Act requesting the tenant (Fishheads / Mr Mamone) remove all debris from the site and terminate electrical, water and sewer services by 21 November, 2018.

## **4.7 Shellys on the Beach - Lease Update**

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Mr Mamone, through his solicitors, sought an extension of time to comply with this order. Staff revised the date by which the order must be complied with to 29 November, 2018. As at the time of writing this report the site has not been cleared.

Staff also sought legal advice as to what rights Council may have as landowner and lessor to determine (terminate) the lease with Fishheads. This matter and the advice received are discussed in the confidential report.

### **Legal / Resource / Financial Implications**

Under Clause 7 of the lease and matching provisions of the Retail Leases Act, rental for the premises abates until such time as the buildings are rebuilt or the lease is terminated. The current rental is \$50,573 p.a. + GST.

In accordance with the lease and the Retail Leases Act, any rental paid since 3 November, 2018 will be reimbursed and rental will not be charged pending outcome of a determination of the lease.

The legal advice in respect to the determination of the lease is outlined in the confidential report.

### **Consultation**

Legal advice has been sought. Council has had many negotiations with Mr Mamone without any success to date.

### **Options**

The lease pertaining to Shellys on the Beach was assigned to Fishheads@Byron Pty Ltd (Mr Mamone) on 1 May, 2012. Mr Mamone took the decision at that time to close the business and seek a development approval to demolish the existing building and construct a new larger building.

Since that time, Council acquired more land at a cost of \$240,000 to accommodate Mr Mamone's proposed new building and agreed to undertake certain site works that he was required to do in accordance with the development consent granted to him. The various proposals he has put forward seeking a long term lease have been rejected on the grounds of being commercially unviable to Council.

This report is for information purposes only with a confidential report included in this meeting agenda providing options and recommendations in respect to the determination of the lease.

### **RECOMMENDATION**

That Council notes the contents of this report in respect to an update on the Shellys on the Beach lease.

### **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 Former Tintenbar Council Chambers - Sublease of Area 2 - Details

Refer to Item 4.2 of this agenda.

5.2 54 North Creek Road, Ballina - Sale Contract Amendment

Refer to Item 4.3 of this agenda.

5.3 North Creek Road Lennox Head - Proposal to Lease Community Land

Refer to Item 4.4 of this agenda.

5.4 Ballina Byron Gateway Airport - Retail Lease Proposal

Refer to Item 4.5 of this agenda.

5.5 Kentwell Community Centre - Leasing Proposals

Refer to Item 4.6 of this agenda.

5.6 Shellys on the Beach - Leasing Update

Refer to Item 4.7 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 Former Tintenbar Council Chambers - Sublease of Area 2 - Details**

**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:-

## 5. Confidential Session

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- 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 due to the ongoing commercial negotiations and the release of any information could prejudice those negotiations.

### 5.2 **54 North Creek Road, Ballina - Sale Contract Amendment**

#### **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 the open meeting discussion could prejudice Council's commercial negotiations.

### 5.3 **North Creek Road Lennox Head - Proposal to Lease Community Land**

#### **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 due to the ongoing commercial negotiations and the release of any information that could prejudice those negotiations.

**5.4 Ballina Byron Gateway Airport - Retail Lease Proposal**

**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 due to the ongoing commercial negotiations and the release of any information could prejudice those negotiations.

**5.5 Kentwell Community Centre - Leasing Proposals**

**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 due to the ongoing commercial negotiations and the release of any information could prejudice those negotiations.

**5.6 Shellys on the Beach - 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 commercial leasing matters and confidential legal advice are to be discussed.