



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 **Wednesday 20 November 2019 commencing at 4.45 pm.**

Business

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

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal flourish 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 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

4. Committee Reports

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

Delivery Program Commercial Services

Objective To obtain Council approval to attach the seal to the lease to Bitupave Limited (Boral) based upon an exercise of their option.

Background

Bitupave Limited (*“the Lessee”*) has occupied an area on the Tuckombil Quarry site for a number of years. This area has increased (with Council’s consent) over time to include an area for stock piling material. The area under lease is Lot 21 DP 1243105, Gap Road Alstonville.

A site plan is included as Attachment 1.

The current lease is for a term of five years commencing 1 January 2015, terminating 31 December 2019, with an option to the Lessee for a further term of five years. The Lessee has exercised the option contained in the lease to extend the lease for a further term of five years commencing on 1 January 2020.

A copy of that notification is included as Attachment 2.

The purpose of this report is to update Council on this lease renewal, obtain approval to attach the Council seal and to discuss other associated matters, particularly on-going investigations from the NSW EPA in respect to odour generated from the asphalt plant.

Key Issues

- Council legal rights
- Lease term and rental

Information

Lease Details

The Lessee has a lease with Council over Lot 21 DP 1243105, Gap Road, Alstonville. The site has development approval, DA 1995/127, for an asphalt batching plant.

The current lease is for a term of five years commencing 1 January 2015, terminating 31 December 2019, with an option for a further term of five years. The current rental is \$45,908.89 p.a. + GST + outgoings.

The Lessee has exercised the option for a new lease for further term in accordance with the terms and conditions of Registered Lease AN446426X.

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

The option for lease renewal requires a market rental review.

This review has been undertaken and following negotiations the Lessee has agreed a commencing rental of \$47,745.23 p.a. + outgoing + GST.

This is a 4% increase on the current rental and consistent with an independent valuation received by Council.

Council has also previously resolved to seek legal advice in respect to the lease with Bitupave, as there has been discussion as to whether Council should renew the lease due to concerns regarding the impact, particularly of odour from the asphalt plant, on adjoining residential properties.

Parker & Kissane Solicitors (i.e. Clarissa Huegill) has provided a legal opinion to Council and a copy of that advice is included as Attachment 3.

As per that advice Council is obliged to issue a fresh lease for a further five years so long as the Lessee is not in breach of the provisions of the lease.

The following extract from page two of the legal advice is also critical:

Similarly, in relation to clause 12, whilst the lessee may be in breach of a law for example in relation to pollution, the clause provides that any notice for rectification must be complied with so that there is no breach. There would only be a breach if there was evidence that the lessee had not complied with any notice from any Statutory or Public Authority arising from the lessee's failure to comply with any law.

In summary even though there may be a breach of law, if the Lessee complies with any notice of rectification there is no breach that would support a termination or non-renewal of the lease.

Plant Operation - Odour and Noise Matters

In November 2017 Council resolved to invite the EPA to provide a presentation to Councillors and interested members of the community of the EPA's role in monitoring the operation of the Bitupave Asphalt Plant at Alstonville.

Subsequently, in March 2019 Council resolved to engage an independent contractor to obtain accurate and impartial data on noise and air pollutants associated with the plant.

On 1 May 2019 Council hosted an independently facilitated meeting at Alstonville where the EPA provided information on its role and approach in relation to the asphalt plant. The discussion included address of the EPA's approach to the sampling and analysis of noise and odour emissions.

In addition to several EPA staff, the meeting was attended by Councillors, Council staff, members of the Alstonville Asphalt Watch Group and the State Member for Ballina.

At the meeting, the EPA indicated that resources would be allocated to undertake inspections, sampling and analysis in relation to odour emissions in relation to the plant.

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

The EPA also confirmed that it has access to the technical expertise to do the necessary odour monitoring.

Having regard for the outcomes of the meeting and the position of the EPA, Council resolved at its May 2019 Ordinary meeting to defer expenditure of \$50,000 on independent noise and air pollutant assessment in relation to the Bitupave Asphalt Plant for a period of six months to allow the EPA to conduct its sampling and analysis.

Since Council's May decision, the EPA has undertaken an analysis of complaint data to inform the design of an odour sampling program (considerations include timing, whether conditions and locations for sampling).

In September 2019, the EPA wrote to 16 residents who reside in the vicinity of the asphalt plant seeking further details on the concerns of the residents to inform the sampling program design.

More recently, the EPA has advised that an odour sampling plan has been prepared and is now under review by the EPA's technical advisory team.

With respect to noise, a monitoring assessment was completed by Bitupave (Muller Acoustic Consulting) in December 2018. That report concluded that the operations monitored did not exceed relevant limits in relation to noise.

Having regard for the steps taken to date by the EPA, it is recommended that Council further defer its engagement of consultant resources for another six month period.

This is to enable the EPA to carry out its odour sampling program during a period where the plant is operating and the conditions are suitable for the odour monitoring to occur.

Legal / Resource / Financial Implications

Council has obtained legal advice from Parker Kissane Solicitors on whether the Lessee has correctly exercised the option to renew the lease, and is eligible to do so.

The lease rental is transferred to the Quarry Reserves to assist with future remediation and operation of the Tuckombil Quarry.

Consultation

Council staff have been in negotiations with the Lessee regarding the new term and rental for the lease. Council's legal advisor has also assisted with legal advice.

Council has also been in discussions with Bitupave representatives in respect to their long- term strategy for this site.

Based on community and Council concerns Bitupave understand they may need to relocate at the end of the five-year option period, if not earlier.

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

If a longer-term (ten to 20 years) lease was available Bitupave could potentially examine the feasibility of investing in a more modern asphalt plant, that would result in a lower level of environmental impacts. Council has not indicated any interest in offering a longer-term lease.

Discussions have also been held with Council staff to look at other sites in the shire and even potentially for Bitupave to operate from the Council Resource Recovery / Landfill site.

This would allow Bitupave to cost effectively source and use renewable products in their processes in conjunction with Council's Resource Recovery Centre. This has potential benefits for Council and Bitupave.

One of the main risks in identifying a preferred alternative location is the anticipated difficulty in obtaining a planning consent for the Bitupave operations, with nearly all sites identified having some residential properties in the local proximity.

These discussions remain ongoing.

Options

In respect to options the responsibility for the lease renewal rests with Bitupave and as per the attached legal advice they have exercised their option.

Council does have some ability to negotiate the new lease rental and the figure identified in this report is satisfactory, in line with an independent valuation and an increase of 4% on the current rental.

Other comments / proposals that have been raised in respect to the operation of this lease, and particularly the asphalt plant, include:

- Advising Bitupave that there will not be a further renewal of this lease due to community concerns, and asking whether they would vacate the site at an earlier date – A further lease renewal will be the responsibility of another elected Council, although Council could confirm a current position to assist Bitupave with their future planning
- Advising Bitupave that Council could be interested in a long term lease if they modern their plant – Council has not indicated any interest in this and to recoup their investment Bitupave would need a term in the range of ten to 20 years
- Asking Bitupave to operate less frequently at night to minimize community impacts – As Bitupave has a planning consent to operate a set number of nights Council has no legal authority to force a reduction, albeit that the request could be formalized in a resolution.
- Indicating Council's interest in potentially partnering with Bitupave to co-locate at the Ballina Resource Recovery Centre, subject to commercial terms being negotiated and all necessary planning approvals being obtained. There is potential for improved environmental outcomes through Bitupave reusing materials from the landfill site, and Council's Resource

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

Recovery staff are supportive of these discussions, with Bitupave also showing interest.

- Acknowledging the complexity of the odour testing and continue to wait for NSW EPA to finalise their testing. There is reluctance to expend the \$50,000 Council allocated for this sampling until Council eventually reviews the results delivered by the EPA.

Recommendations one and two focus on the lease only and it is a matter for Councillors to determine whether they wish to provide any further guidance / direction to staff / Bitupave in respect to the lease renewal and future plans for the leased area.

In relation to odour sampling, recommendation three provides for deferral of Council expenditure of sampling on the basis that noise analysis undertaken in late 2018 has not identified the exceedance of relevant limits and the EPA is progressing the delivery of an odour sampling and analysis program.

In the meantime, staff will continue to liaise with the EPA in relation to the odour sampling program and the need for further noise assessment.

RECOMMENDATIONS

1. That Council authorises the General Manager to grant a renewal lease for a term of five years over Lot 21 DP 1243105, Gap Road Alstonville based on an agreed rental for year one of \$47,745.23 p.a. + outgoings + GST to Bitupave (Boral) Pty. Ltd.
2. That Council authorises the General Manager to attach the Council seal to the documentation associated with this lease.
3. That Council confirms the continued deferral of the \$50,000 allocated for expenditure on independent noise and air pollutant assessment for the Boral Asphalt Plant for a further period of six months to allow the EPA to carry out odour sampling and analysis.

Attachment(s)

1. Site Plan - Bitupave Ltd - Lot 21 DP 1243105
2. Boral - Exercise of Option
3. Legal Advice - Parker & Kissane

4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal



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Site Plan - Bitupave Limited - Lot 21 DP 1243105 Gap Road Alstonville

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56
Date: 4/11/2019

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4.1 Tuckombil Quarry - Bitupave Limited (Boral) Lease Renewal

Build something great™



14 August 2019

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Group**
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Notice of Exercise of Option

To: Ms Leanne Harding
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Email : Leanne.Harding@ballina.nsw.gov.au

Bitupave Ltd ACN 000 102 376 hereby gives you written notice of exercise of the option contained in Clause 41 of the lease no AN446426X of the property being Identifier 21/1243105, being the premises known as 540 Gap Road, Alstonville NSW for a term of five (5) years commencing 1 January 2020 and terminating 31 December 2024.

Accordingly we request that you submit a new lease for the above period in accordance with Clause 41 of the lease. In regard to the commencing rent for the new term we understand that this will also be subject to Clause 41 and accordingly we seek your advice of the amount which Ballina Shire Council claims to be the market rent for the property.

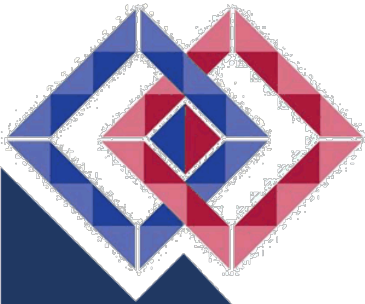
The new lease document should reflect these commercial terms.

Dated 14 August 2019

A blue ink signature of Shane Burke, written over a horizontal line of small dots.

Shane Burke

Authorised Officer for Bitupave Ltd



PARKER & KISSANE

SOLICITORS

Your Ref: Paul Tsikleas
Our Ref: SEB:CLH:191482B
Email: ruthie@parkerkissane.com.au
Reply To: **BALLINA OFFICE**

27 August 2019

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We have accredited
specialists in:



Ballina Shire Council
PO Box 450
BALLINA NSW 2478

By email: leanne.harding@ballina.nsw.gov.au; paul.tsikleas@ballina.nsw.gov.au

Dear Leanne and Paul,

**RE: ADVICE: RENEWAL OF LEASE BY BORAL
PREMISES: TUCKOMBIL QUARRY**

We refer to your email dated 15 August 2019.

We note Bitupave Ltd, tenant under registered lease AN446426 has purported to exercise its option to renew the lease for a further five year period, by written notice dated 14 August 2019.

The lease provides in clause 42 that if the lessee gives the lessor written notice between 3 and 6 months before the expiry of the term and provided the lessee has "duly performed and observed all the covenants and conditions by and on the part of the lessee contained in the lease" the lessor must grant a further lease for the period of the option. That is, provided the lessee is not in breach of the provisions of the lease, a valid notice of exercise of option obliges Council to issue a fresh lease for a further five years.

As the lease terminates on 31 December 2019, the notice must be given between 1 July 2019 and 30 September 2019. The notice you forwarded from the authorised officer of Bitupave Ltd is dated 14 August 2019 and is therefore being given at the appropriate time. We further note your instructions it was served by post and therefore it has been given within the specific notice provisions of the lease and is therefore valid in form.

If it is the case however that has been any breach of the performance obligations under the lease or subsisting at the time the option is exercised, then Council can refuse to accept the notice. The consequence of a valid refusal to accept the notice is that the lease expires on its due date (31 December 2109) and can either be terminated on that date or continue on a month to month basis.

Incorporating the practice of



P&K Solicitors Pty Ltd trading as Parker & Kissane Solicitors ABN 75 614 378 255
Liability Limited by a Scheme Approved Under Professional Standards Legislation
Legal Practitioners employed by P&K Solicitors Pty Ltd are members of the Scheme



We have not been instructed about any specific breach of any of the obligations of the lessee of a particular term of the lease but have been asked whether Council can terminate the lease based on environmental/social impacts, for example if it was found that the lessee was polluting the environment.

In that regard there are 4 relevant provisions in the lease namely:-

1. *"10. The lessee covenants that it shall take all steps necessary to protect the Property and the soil under the Property from contamination and to avoid spillage upon or leakage onto the Property or into the soil beneath the Property of any chemical or toxic substances."*
2. *"11. In circumstances of accidental spillage or leakage of any substance that may be or is likely to contaminate the Property or soil under the Property the Lessee shall take immediate steps to de-contaminate, remediate, restore or remove from the Property of the soil under the Property such substance and comply with all directions of any statutory or Public authority in relation thereto."*
3. *"12. The Lessee will comply with and observe all Commonwealth and New South Wales state laws in so far as they apply to the Property including but not limited to any licencing requirements of Australian Standards specific to the permitted use under the Lease, and will comply with and observe all notices received from any Statutory or Public Authority relating to the Property or otherwise in regard thereto and will carry out the requirements thereof at its own expense provided that this clause shall not relate to structural defects."*
4. *"26. The Lessee shall at all times comply with the conditions of the Development Consent."*

In relation to clause 10, we are of the opinion that a Court would read it with clause 11 in which event the combination of those clauses makes a breach of clause 10 capable of rectification. That is, should there be a breach of clause 10 because the lessee has not taken all steps necessary to protect the property and the soil under the property from contamination, spillage or leakage, clause 11 provides the remedy. There would only be a breach therefore if there was evidence of contamination, spillage or leakage which had not been de-contaminated, remediated, restored or removed.

Similarly, in relation to clause 12, whilst the lessee may be in breach of a law for example in relation to pollution, the clause provides that any notice for rectification must be complied with so that there is no breach. There would only be a breach if there was evidence that the lessee had not complied with any notice from any Statutory or Public Authority arising from the lessee's failure to comply with any law.

Clause 26 of the lease however requires the lessee at all times to comply with the conditions of development consent 1995/127 which includes within it the following relevant conditions:-

4. *The development shall meet noise emission criteria, standards relating to airborne pollutants and discharge of polluted waters from the site as specified*

by the Department of Environment and Climate Change NSW. (Modified by Amendment No. 3, 27 May 2008).

5. All necessary licences shall be obtained from the Department of Environment and Climate Change NSW and lodged with Council prior to commencement of work.
 - 5a. The conditions contained within the DECC's Environment Protection Licence issued for the premises under the Protection of the Environment Operations Act are to be complied with at all times. (Modified by Amendment No. 3, 27 May 2008).
 6. Sediment control measures shall be put into place and be properly maintained to prevent soil erosion and the transport of sediment off the development site to the requirements and satisfaction of Council's Chief Engineer.
 7. The control and management of waste water shall be carried out generally in accordance with the proposed Water Management Plan prepared by Envirotest dated November, 1994 to the requirements and satisfaction of Council's Chief Engineer. This plan and its management shall incorporate the following features:-
 - (a) The containment of stormwater runoff and discarded water from the plant and workshop areas and the prevention of such water entering Branch Creek.
 - (b) The provision of vehicle wash down and treatment system prior to overflow to quarry.
 - (c) The removal of silt from settling dams to the extent necessary to maintain 90% of wastewater design capacity.
 - (d) Stormwater from undisturbed areas shall be diverted around the site.
 - (e) Design details of the settlement pond shall be lodged with Council's Engineering Department for approval prior to construction.
 8. The implementation of strategies to reduce dust and emissions from the proposed plant to the requirements of Council and the Department of Environment and Climate Change NSW. Such strategies shall include:-
 - (a) The recording of details of all complaints by local residents of smell, dust or emissions.
 - (b) The implementation of a dust monitoring program in accordance with AS 2724-1.
 - (c) The monitoring of exhaust from the hot asphalt loading.
 - (d) The monitoring of particles from the stack with the installation of a continuous monitoring device.
 - (e) The construction and operation of the proposed plant to contain dust fallout at below 120-130 mg/m³/day near residential areas.
 - (f) The reporting of monitoring results and recorded complaints to Council and the Environment Protection Authority every 3 months for the first year of operation and thereafter by arrangement.
 - (g) The provision of baghouse filter air pollution control of the plant stacks."

If Council can show that any condition of the consent is not being complied with, then this would amount to a breach of clause 26 of the lease in which event, the lessee in not having "duly performed and observed all the covenants and conditions by and on the part of the lessee contained in the lease", will not have properly given its notice.

Before considering whether there is any such breach Council would require evidence. In particular, in relation to the conditions 5 – 8 of development consent 1995/127, regard would have to be had to:-

- A. The noise emission criteria, standards relating to airborne pollutants and discharge of polluted waters from the site as specified by the Department of Environmental and Climate Change NSW (condition 4).
- B. The terms of all licences issued by the Department of Environmental and Climate Change NSW and lodged with Council (condition 5).
- C. The conditions contained within the Environment Protection Licence issued by the Department of Environmental and Climate Change NSW (condition 5a).
- D. Any previous opinions of Council's Chief Engineer as to the adequacy of sedimentary control measures and his opinion as to the current adequacy of sedimentary control measures (condition 6).
- E. The requirements of the Water Management Plan prepared by Envirotec dated November 1994 (condition 7).
- F. The requirements of the Department of Environmental and Climate Change NSW (if any) in relation to dust and emissions (condition 8).
- G. The results of any recording and monitoring of dust and emissions required by condition 8.

In relation to a breach of clauses 10 and 11 of the lease, Council would need evidence of contamination, spillage or leakage which had not been decontaminated, remediated, restored or removed. This may become apparent as a result of item G above, but otherwise it is difficult to see how this could be established. In relation to a breach of clause 12 of the lease, unless Council is confident it would be notified by any other relevant statutory authority of the failure of the lessee to comply with a notice for breach of a law, it should contact other relevant statutory authorities to make the appropriate enquiry.

If Council were to refuse to issue the fresh lease on the basis the notice had not been properly given because of a breach, it would be open to Bitupave to commence proceedings for a declaration that there was no such breach and for an order that Council issue a fresh lease. If those proceedings were successful, Council would in the ordinary course be subject to an order to pay Bitupave's costs. It could also be exposed to a claim for damages if any had been sustained by Bitupave as a consequence of failure of Council to issue the fresh lease.

In the circumstances, it would be our advice that before taking any further steps, Council should undertake a detailed enquiry as to the matters raised in paragraphs A – G above. These enquiries should be undertaken without delay. If there is substantiable evidence of a breach of any of the conditions of consent, Council could consider advising Bitupave of the details of the breach or breaches and:-

- (a) Notifying it that accordingly Council does not accept the validity of the notice of exercise of option; and
- (b) Giving notice of termination expiring on 31 December 2019.

We recommend that further advice should be taken by Council once the result of the enquiries are to hand, as to whether the evidence is sufficient to found refusal to accept the notice of exercise of the option.

We note in passing the investigation might also find proceedings against Bitupave for breaching the conditions of consent, a matter about which further advice should be sought if Council resolved to do so.

Please advise whether we can be of any further assistance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'CH', is positioned below the text 'Yours faithfully'.

CLARISSA HUEGILL
Assistant: Ruthie Rule

4.2 Tuckombil Quarry - Ron Southon Pty Ltd Lease Renewal

4.2 Tuckombil Quarry - Ron Southon Pty Ltd Lease Renewal

Delivery Program Commercial Services

Objective To obtain Council approval to attach the seal to the lease to Ron Southon Pty. Ltd. based upon an exercise of their option.

Background

Ron Southon Pty Ltd (*“the Lessee”*) has occupied an area on the Tuckombil Quarry Site for a number of years. The area under lease is described as Lot 3 DP 1130300, Gap Road Alstonville.

A site plan is included as Attachment 1.

The current lease is for a term of five years commencing 1 January 2015, terminating 31 December 2019, with an option to the Lessee for a further term of five years.

The Lessee has exercised the option contained in the lease to extend the lease for a further term of five years commencing on 1 January 2020.

The exercise of the option also includes a market rent review.

Key Issues

- Lease term and rental

Information

The Lessee has a lease with Council for the occupation of Lot 3 DP 1130300, Gap Road, Alstonville. The site has development approval, DA 1998/252, to establish a depot for the storage and maintenance of drilling plant and equipment and the storage of hazardous materials.

The current lease is for a term of five years commencing 1 January 2015, terminating 31 December 2019, with an option for a further term of five years. The current rental is \$14,030.18 p.a. + GST + outgoings.

The Lessee has exercised the option for a new lease for further term in accordance with the terms and conditions of Registered Lease AJ492274J.

The option for lease renewal requires a market rental review. Following negotiations, the Lessee has agreed a commencing rental of \$16,000 p.a. + GST + outgoings, which is reasonable and supported.

Legal / Resource / Financial Implications

The Lessee has exercised the option for a new lease for further term in accordance with the terms and conditions of Registered Lease AJ492274J.

4.2 Tuckombil Quarry - Ron Southon Pty Ltd Lease Renewal

The right to exercise this option is solely at the discretion of the Lessee.

Consultation

Council staff have been in negotiations with the Lessee regarding the new term and rental for the lease.

Options

1. Council resolves to accept the Lessee's notice to exercise the option to renew their lease for a further term of five years over Lot 3 DP 1130300 at a commencement rental of \$16,000 p.a. + outgoings + GST.

This option is recommended as the Lessee has complied with its obligations under the lease and the rental negotiated provides a good commercial return in the current market.

2. Council resolves to reject the Lessee's notice to exercise the option to renew their lease for a further term of five years over Lot 3 DP 1130300.

This option is not recommended as there are no substantive grounds on which to do so, and it would leave Council open to the Lessee taking legal action and a claim for damages.

RECOMMENDATIONS

1. That Council authorises the General Manager to grant a renewal lease for a term of five years over Lot 3 DP 1130300, Gap Road Alstonville Alstonville based on an agreed rental for year one of \$16,000 p.a. + outgoings + GST to Ron Southon Pty. Ltd.
2. That Council authorises the General Manager to attach the Council seal to the documentation associated with this lease.

Attachment(s)

1. Site Plan - Ron Southon Pty Ltd

4.2 Tuckombil Quarry - Ron Southon Pty Ltd Lease Renewal



Ballina Shire Council. © NSW Spatial Services 2019. This map is illustrative and not to scale. 80 m

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**Site Plan - Ron Southon P/L - Lot 3 DP 1130300,
Gap Road Alstonville**

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56
Date: 4/11/2019

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4.3 Wigmore Arcade - Leasing Matters

4.3 Wigmore Arcade - Leasing Matters

Delivery Program Commercial Services

Objective To Council's approval for changes to a number of leases within the Wigmore Arcade Complex, with this report providing an overview of the confidential report later in this agenda.

Background

Council staff have been in negotiations with a number of tenants in Wigmore Arcade Complex in regards to leasing matters.

General information is included in this report relating to these matters with specific rental and lease details contained in a confidential report included in this meeting agenda.

Key Issues

- Lease terms and conditions

Information

Shops 145 & 147 River Street – Café Swish & Swish to Go

The Lessee and Licencee of Café Swish and Swish to Go have requested an assignment of their leases and licence as well as additional option periods of five years for each lease and licence.

Shop 12 & Alfresco Dining Terrace, Wigmore Arcade - Belle Central

The Lessee and Licensee of Belle Central have requested an assignment of their lease and licence to a related entity as well as additional option periods of five years for the lease and licence.

Shops 5 & 6 Wigmore Arcade – Nourish Bulk Health

The Lessee of Nourish Bulk Health has requested an additional five year option period be granted to the existing lease.

Shops 1 & 8 Wigmore Arcade – Creative Artisans

The leases for these two tenancies expire on 31 January 2020. The Lessee has requested new leases.

Shop 11 Wigmore Arcade – Ballina Deli

The Lessee of Ballina has requested assistance in addition to that granted at Council's July 2019 Ordinary meeting.

4.3 Wigmore Arcade - Leasing Matters

Legal / Resource / Financial Implications

All leases within the Wigmore Arcade Complex must comply with the Retail Leases Act 1994 (NSW).

Consultation

Council staff have been in negotiations with various tenants in the Wigmore Arcade Complex.

Options

This report is provided for general information purposes only. Detailed commercial and confidential information is contained in a confidential report included in this meeting agenda.

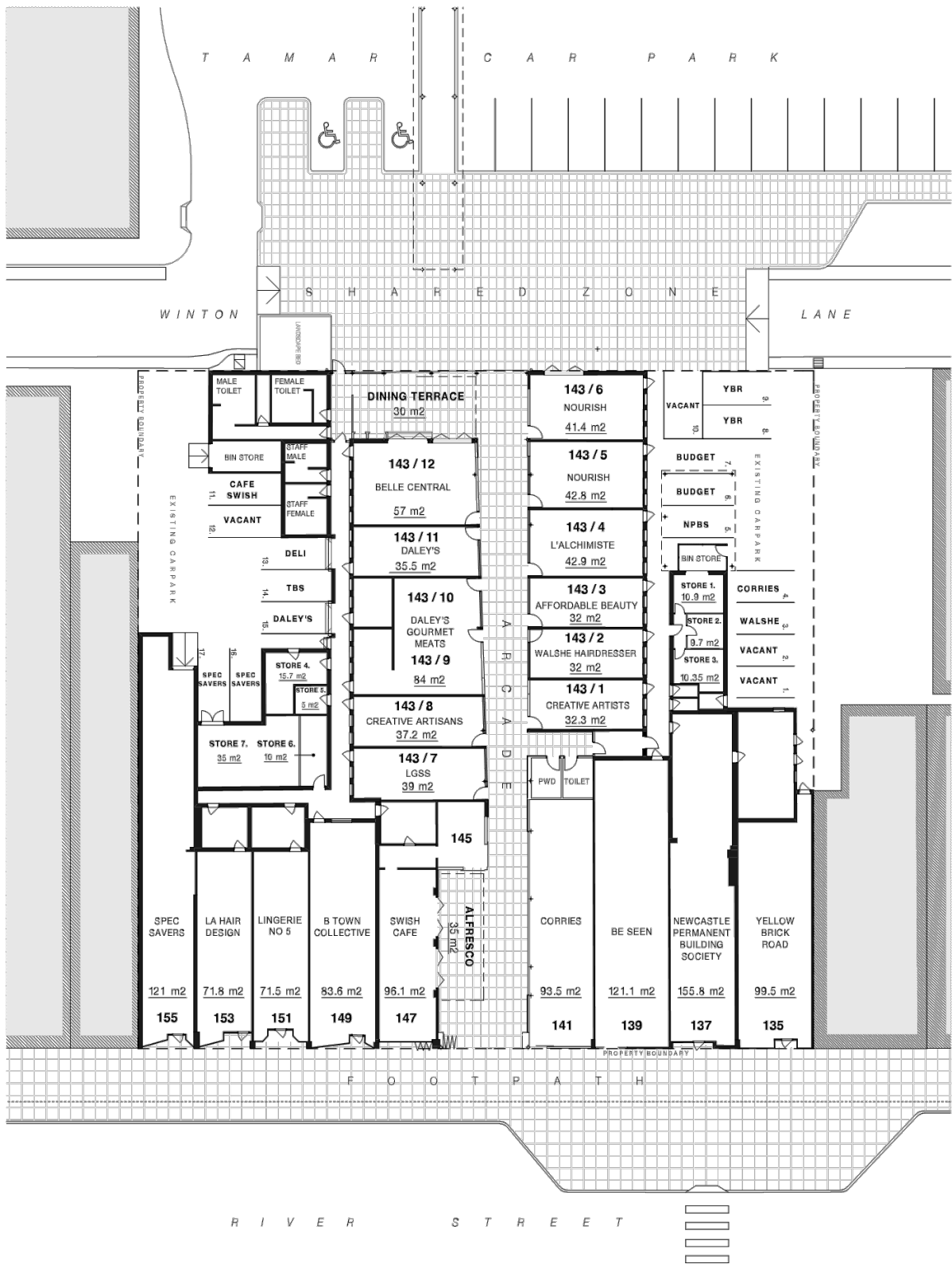
RECOMMENDATION

That Council notes the contents of this report in respect to the Wigmore Arcade – leasing matters.

Attachment(s)

1. Wigmore Arcade Leasing Plan

4.3 Wigmore Arcade - Leasing Matters



WIGMORE ARCADE - COMPLEX LEASING PLAN

NOTE: NOT TO SCALE - AREAS ARE APPROXIMATE ONLY

NORTH



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 Wigmore Arcade Leasing Matters

Refer to Item 4.3 of this agenda.

RECOMMENDATION

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

5.1 Wigmore Arcade Leasing Matters

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, as well as disclosing private and commercial information.