Request for Tenders

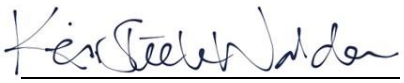
McKinlay Shire Council

Nelia Common Paddock Trustee Lease

Tender Number: T1920014

PREPARED BY:

Keir Steele Waldon Lawyers
for an on behalf of McKinlay Shire Council



Signature

22/01/2020
Date

DOCUMENT CHANGE HISTORY

Version	Author	Issue Purpose	Date
1	Keir Steele Waldon Lawyers	Draft for Approval	23/10/2019
2	Keir Steele Waldon Lawyers	Tender	17/01/2020

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PART 1 – Preamble

An invitation is extended to submit a written tender to enter into a Trustee Lease/Lease ('**Lease**') of the Nelia Common Paddock located at Flinders Highway and Nelia Road, Nelia in the State of Queensland ('**Property**') and shown on the Plan contained in Part 4, on the terms and conditions contained in the Lease in Part 5.

The Nelia Common Paddock is suitable for grazing of cattle.

PART 2 – Tender Information

Principal:	McKinlay Shire Council	
Project Name:	Nelia Common Paddock Trustee Lease	
Lease:	To lease the Property on the terms prescribed in the Lease in Part 5 – Trustee Lease/Lease	
Property:	Nelia Common Paddock, comprising the following three (3) Leases on plan SP317981: 1. Lease C - Lot 9 on Crown Plan EN139, Title Reference 49002178; 2. Lease A - Lot 10 on Crown Plan N6312, Title Reference 49002960; and 3. Lease B - Lot 4 on Crown Plan EN115, Title Reference 49001566	
Property Particulars:	Land Size: 1,222.164ha (total, approx.) Land Management Plan to be provided by the Tenderer: ☐ Yes ☒ No Land Management Plan will be provided by McKinlay Shire Council	
Lease Particulars:	**Length of Lease:**	5 years
	Annual Rent increases:	CPI Review on anniversary of Commencement Date of Lease
	Public risk insurance amount:	$20,000,000.00 (twenty million dollars)
	Workers compensation insurance:	Yes
	Costs of lease preparation, drafting, negotiation, execution and registration:	To be paid for by successful Tenderer/Trustee Lessee
Proposed Timetable:	**Action**	**Proposed Date**
	Release of Tender:	23 January 2020
	Tender Closing Time:	21 days from Release of Tender Date, being 5.00pm 13 February 2020
	Notification to Tenderers of Successful Tender / Unsuccessful Tender:	Within 30 days of the Tender Closing Time
Tender Closing Time:	5.00pm on 13 February 2020 *Note: Tenderers must allow adequate time for the Tender (including all supporting documentation) to upload to the Tender Box by the Tender Closing Time.*	

<table>
<tr><td rowspan="6">Evaluation Criteria:</td><td>Criteria</td><td colspan="2">Weighting (%)</td></tr>
<tr><td>Compliance with Part 3 of this Request for Tender</td><td colspan="2">No weighting</td></tr>
<tr><td>Completion of the attached Tender Response Schedule including the Price Schedule</td><td colspan="2">No weighting</td></tr>
<tr><td>Demonstrated support of the local community within McKinlay Shire</td><td colspan="2">No Weighting</td></tr>
<tr><td>Demonstrated Management of pasture and grazing infrastructure</td><td colspan="2">No Weighting</td></tr>
<tr><td>Demonstrated management of noxious plants and animals</td><td colspan="2">No Weighting</td></tr>
<tr><td>Tender Box:</td><td colspan="3">Tenders must be submitted duly signed and in a sealed package clearly endorsed with the following information:
Tender title;
Tender number;
marked Confidential; and
be addressed to:
BY MAIL: The Chief Executive Officer
McKinlay Shire Council
PO Box 177
JULIA CREEK QLD 4823

BY HAND: Attention: The Chief Executive Officer
McKinlay Shire Council Administration Office
29 Burke Street
JULIA CREEK QLD 4823

BY EMAIL: tenderbox@mckinlay.qld.gov.au</td></tr>
<tr><td>Tender Format:</td><td colspan="3">Tenders must consist of:
1 x complete Tender in a single document; and
1 x set of the Response Schedules in the format provided by the Principal.
Files submitted electronically must have file names that include the tender number and a brief description of the documents being submitted</td></tr>
<tr><td>Principal's Representative:</td><td colspan="3">Megan Pellow</td></tr>
<tr><td rowspan="3">Principal's Complaints Manager:</td><td>Name:</td><td colspan="2">Megan Pellow</td></tr>
<tr><td>Telephone:</td><td colspan="2">07 4746 7166</td></tr>
<tr><td>Email:</td><td colspan="2">meganp@mckinlay.qld.gov.au</td></tr>
</table>

PART 3 – Conditions of Tendering

1. BACKGROUND

1.1 **(Invitation to tender)** The Principal invites tenders from interested parties to enter into a trustee lease or lease (as the case may be) of the Property.

1.2 **(Timetable)** The Principal proposes to adopt the process identified in the Proposed Timetable, but may change this process in accordance with paragraph 5.1(a).

1.3 **(Acceptance of terms)** By submitting a Tender, a Tenderer will be taken to have accepted and be bound by the conditions stated in these Conditions of Tendering.

1.4 **(Meaning of terms)** Capitalised terms used in these Conditions of Tendering have the meanings given in the Tender Information.

2. COMMUNICATIONS

2.1 **(Communications)** All communications regarding this Tender are to be conducted through the Principal's Representative.

2.2 **(No reliance)** Tenderers must not rely on any information which is communicated by a means other than that described in paragraph 2.1 unless and until it is communicated in writing in accordance with paragraph 2.1.

2.3 **(Complaints)** Complaints in relation to this process should be directed to the Principal's Complaints Manager.

3. TENDER BRIEFING OR SITE INSPECTION

3.1 **(Tender briefing or site inspection)** A Tenderer may request an onsite inspection by contacting the Principal's Representative. At no time does the Principal guarantee an onsite inspection may be provided, however will do all possible to ensure that a request of this nature be met.

3.2 **(No reliance)** Tenderers must not rely on any verbal statements made during a tender briefing or site inspection unless those statements are confirmed in writing by the Principal's Representative.

4. LODGEMENT OF TENDER

4.1 **(Tender Box)** A tender must be lodged by at least one of the following means:

(a) By mailing by post to the following address:

The Chief Executive Officer
McKinlay Shire Council
PO Box 177
JULIA CREEK QLD 4823

(b) By delivering by hand to the Principal at the following address:

Attention: The Chief Executive officer
McKinlay Shire Council Administration Office
29 Burke Street
JULIA CREEK QLD 4823

(c) By electronic submission by email to the following address:

tenderbox@mckinlay.qld.gov.au

The Principal's Representative may, on request by a Tenderer allow a Tender to be lodged by an alternative method.

4.2 **(Time of Lodgement)** A document forming part of a Tender shall be deemed to have been lodged at the time that the document is:

(a) if submitted by mail, the time and date the document is inputted into the Principal's filing system, evidenced by the time and date stamp affixed to the Tender;

(b) if submitted by hand, the time and date the document is delivered by the tenderer (or the tenderers representative) and accepted by the Principal, as evidenced by the time and date stamp affixed to the Tender; or

(c) if submitted by email, at the time the tender is successfully received by the Principal's email address.

4.3 **(Tender opening)** Tenders will not be opened publicly and the Tenderer will not be permitted to attend the opening of Tenders.

4.4 **(Tender format)** A Tender must be lodged in the Tender Format.

4.5 **(Conforming Tender)** A Tender is a Conforming Tender if, in the opinion of the Principal, it:

(a) is substantially in the form of the response schedules included in **Part 6 – Response Schedule**;

(b) contains substantially all information and documentation required by those response schedules;

(c) outlines a clear and detailed explanation of the Evaluation Criteria; and

(d) contains no significant alternatives, qualifications or amendments to or departures from the Request for Tender, Lease or Trustee Lease (as the case may be).

4.6 **(Non-conforming Tender)** A Tender which does not comply with the requirements of paragraph 4.5 is a Non-Conforming Tender ('**Non-conforming Tender**').

4.7 **(Alternative Tender)** A Tender which, in the opinion of the Principal contains significant alternatives, qualifications or amendments to or departures from the requirements of this

Request for Tender or contained provisions not required by this Request for Tender but otherwise complies with paragraph 4.5 is an alternative tender ('**Alternative Tender**').

4.8 **(Late Tender)** A Tender which is not received in the Tender Box by the Tender Closing Time is a Late Tender ('**Late Tender**').

5. PRINCIPAL'S RIGHTS AND LIABILITY

5.1 **The Principal:**

(a) (**conduct of procurement process**) may conduct the procurement process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with this Request for Render issued under section 228 of the *Local Government Regulation 2012* (Qld) and in accordance with the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld) ('**sound contracting principles**');

(b) (**no representation or undertaking)** makes no representations and provides no undertakings other than to invite the submission of Tenders;

(c) (**no obligation**) is not bound to accept the Tender with the highest tender price, or the Tender with the highest score or any Tender;

(d) (**ability to accept**) may accept or reject, at its discretion any Tender (including a Non-Conforming Tender, an Alternative Tender or a Late Tender) but will, if it accepts a Tender, accept the Tender which is most advantageous to the Principal in its absolute discretion having regard to the sound contracting principles;

5.2 **(Exclusion of consequential loss)** Neither the Principal nor any of its officers, employees, agents, contractors or representatives shall under any circumstances, whether in tort (including for negligence), contract (including for breach of an express or implied term), statute, equity or otherwise at law be liable to a tenderer for any special, indirect or consequential loss, damage, cost or expense in connection with this procurement process (including, without limitation, loss of or loss of anticipated profit, income, opportunity or contract).

6. TENDERER'S WARRANTIES AND REPRESENTATIONS

6.1 By submitting a Tender, a Tenderer warrants and represents that:

(a) (**reliance**) the Tenderer:

(i) has received or obtained copies of all of the documents referred to in this request for Tender;

(ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided by or on behalf of the Principal in connection with this Request for Tender in preparing its Tender and has notified the Principal of any ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from any document supplied by or on behalf of the Principal in connection with the request for tender on which the Tenderer intends to rely;

(iii) has undertaken its own enquiries and investigations to satisfy itself of the condition of the Property and to read and understand the draft Lease contained in Part 5, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out the terms of the Lease for its tendered price.

(b) (**accuracy of Tender**) all information provided in or with the Tender is accurate;

(c) (**ability**) the Tenderer:

(i) holds all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which will be required for the Tenderer to carry out its obligations under the Lease in the event that its Tender is accepted; and

(ii) has and will maintain the necessary experience, expertise and skill to perform its obligations under the Contract in accordance with the requirements of the Lease;

(d) (**price**) the Tendered price allows for all of the risks, contingencies and other circumstances which could have an effect on the Tenderer's ability to carry out the terms of the Lease for its Tendered price;

(e) (**conduct of tenderer**) neither the Tenderer nor any of its employees or agents has:

(i) engaged in misleading or deceptive conduct in connection with the procurement process;

(ii) engaged in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the procurement process;

(iii) attempted to improperly influence any of the Principal's employees, consultants or elected representatives or violated any applicable law regarding the offering of inducements in connection with the procurement process;

(iv) accepted or invited improper assistance of any current or former employee, consultant or elected representative of the Principal, in preparing the Tenderer's Tender;

(v) used any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Tender;

(vi) breached any law in connection with the procurement process; or

(vii) engaged in any aggressive, threatening, abusive, offensive or other inappropriate behaviour in connection with the procurement process;

(f) (**conflicts of interest**) the Tenderer has disclosed in its Tender any conflict of interest (whether actual, potential or perceived) arising or which is likely to arise as a result

of this Request for Tender process or the performance of the obligations which a successful Tenderer may have under the Lease.

7. ASSESSMENT OF TENDER

7.1 **(Criteria)** The Evaluation Criteria will be considered but not necessarily exclusively in assessing Tenders. All Tenders must address each item of the Evaluation Criteria in this Tender Application.

8. DOCUMENTS AND INFORMATION

8.1 **(Intellectual Property Rights)** All rights of intellectual property, including copyright, in documents and information provided on behalf of a party in connection with this Request for Tender remain, as between the parties, with the party on whose behalf they were provided.

8.2 **(Confidentiality)** Each party shall keep confidential the documents and information provided by the other party in connection with this Request for Tender which are of their nature confidential.

8.3 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with this Request for Tender may be used, copied or disclosed as required by any law and otherwise:

(a) by the Principal, as the Principal considers to be reasonably necessary to properly conduct the Request for Tender process and/or to properly carry out its functions as a local government authority;

(b) by the Tenderer, as is reasonably necessary to enable the Tenderer to:

(i) prepare the Tender;

(ii) obtain legal, accounting or other professional advice;

(iii) comply with the Tenderer's corporate governance requirements

8.4 **(Media)** The Tenderer must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, in connection with the Request for Tender process in any media without the prior approval of the Principal.

9. ACCEPTANCE OF TENDER

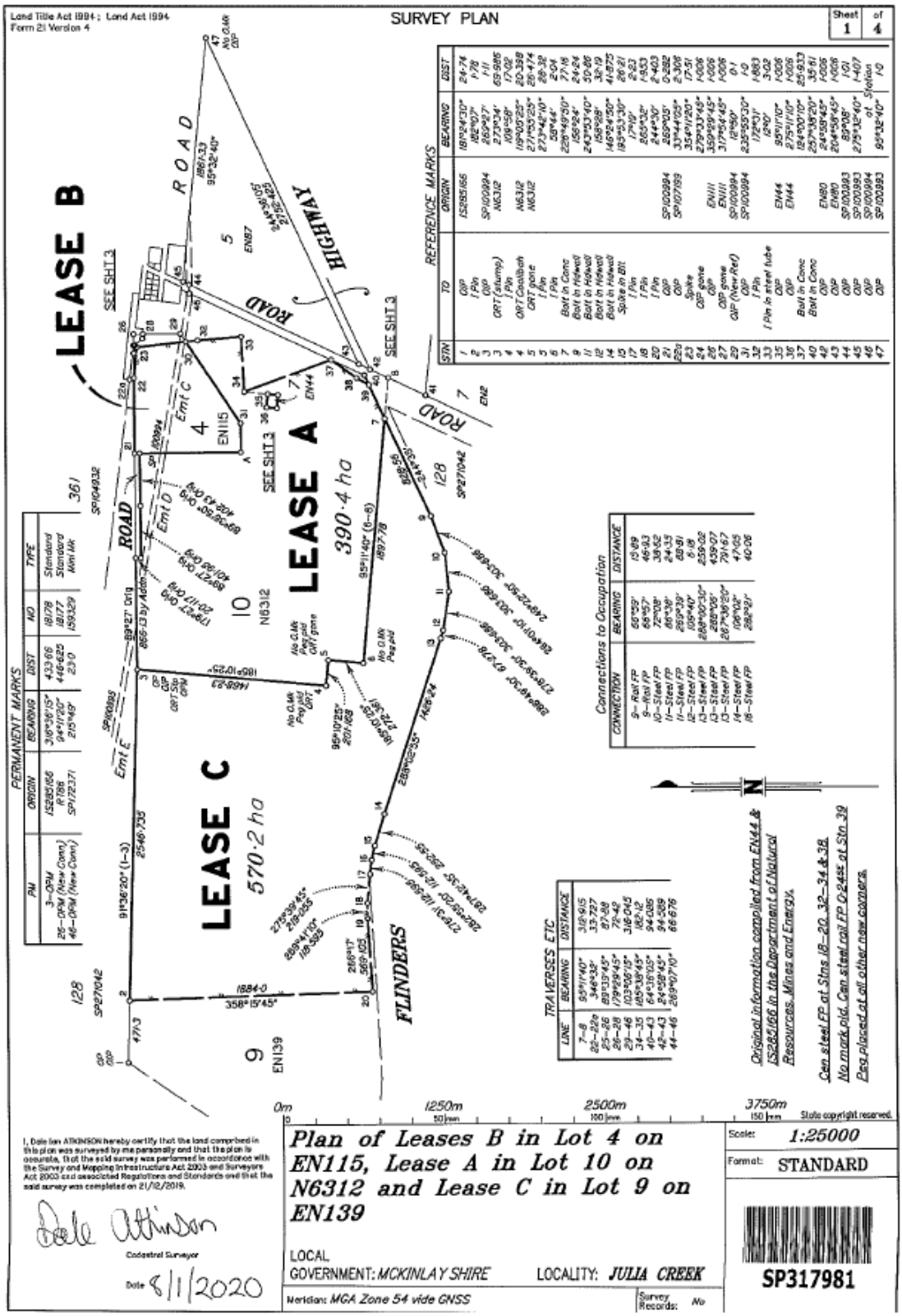
9.1 **(Form of Lease)** If a Tender is accepted, the Tenderer will be required to enter into a Lease (or Trustee Lease as the case may be) with the Principal in the form contained in Part 5 – Trustee Lease/Lease. Notwithstanding the form contained in Part 5, the Principal may be required to make amendments to the Lease (or Trustee Lease) as required, and this will be advised to the successful Tenderer at the time of provision of the document for execution.

9.2 **(Alternative terms not included)** The Lease (or Trustee Lease) will not include any alternative terms, conditions or qualifications which a Tenderer submits with a Tender unless specifically and expressly accepted in writing by the Principal.

9.3 **(Form of acceptance)** A Tender will not be taken to be accepted, and no Lease (or Trustee Lease) will exist, unless and until the successful Tenderer receives written confirmation of the acceptance from the Principal.

9.4 **(Unsuccessful tenderers)** Unsuccessful Tenderers will be notified after a Tender has been accepted. The Principal may provide feedback to unsuccessful Tenderers if requested to do so, but such feedback, if given, may be general in nature and limited to the Tenderer's Tender only.

PART 4 – Plan


SURVEY PLAN
LEASE A
390·4 ha
LEASE B
LEASE C
570·2 ha
FLINDERS
HIGHWAY
ROAD
Plan of Leases B in Lot 4 on EN115, Lease A in Lot 10 on N6312 and Lease C in Lot 9 on EN139
LOCAL GOVERNMENT: MCKINLAY SHIRE
LOCALITY: JULIA CREEK
Meridian: MGA Zone 54 vide GNSS
Scale: 1:25000
Format: STANDARD
SP317981
I, Dale Ian ATKINSON hereby certify that the land comprised in this plan was surveyed by me personally and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 21/12/2019.
Cadastral Surveyor
Date 8/1/2020
Original information compiled from EN44 & IS285166 in the Department of Natural Resources, Mines and Energy.
Cen steel FP at Stns 18–20, 32–34 & 38.
No mark pkd. Cen steel rail FP 0·248E at Stn 39
Peg placed at all other new corners.
State copyright reserved.

Land Title Act 1994 : Land Act 1994
Form 2 B Version 1

(Dealing No.)

WARNING : Folded or Mutilated Plans will not be accepted. Plans may be rolled. Information may not be placed in the outer margins.

Sheet 2 of 4

5. Lodged by

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

I/We MCKINLAY SHIRE COUNCIL

GAZETTED ON 09/06/1995 PAGE 1091
GAZETTED ON 14/01/1933 PAGE 276
GAZETTED ON 28/06/1941 PAGE 2415

(Names in full)

*as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

*as Lessees of this land agree to this plan.

Signature of *Registered Owners *Lessees

* Rule out whichever is inapplicable

6. Existing / Created

Title Reference	Description	New Lots	Road	Secondary Interests
49001566	Lot 4 on EN115			LEASE B
49002960	Lot 10 on N6312			LEASE A
49002178	Lot 9 on EN139			LEASE C

Lease A, B and C replace trustee lease 715537596

SURVEY REPORT:
Stations 1, 3, 4, 21, 22a, 28, 31, 35, 36 and 42–47 are from original marks/reference marks and agree within expected survey tolerance. Stations 5 and 6 are deed dimensions from station 5. Station 8 is deed distance from station 42 as per EN80 and N6312. Station 7 is the intersection of lines 8–6 and 43–47. Stations 9–17 are 30m from the existing road centreline and are in general agreement with the existing fence. Stations 28 and 29 are deed angle and distance as per EN111. Station 24 and 25 are deed distance as per SP107199.

2. Planning Body Approval.

*
hereby approves this plan in accordance with the :
%

Dated this ..... day of .....

..... #

..... #

* Insert the name of the Planning Body.
# Insert designation of signatory or delegation
% Insert applicable approving legislation.

9. Building Format Plans only.

I certify that :
* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road
* Part of the building shown on this plan encroaches onto adjoining* lots and road

Cadastral Surveyor/Director* Date
*Delete words not required

Lots	Orig

7. Orig Grant Allocation :

8. Passed & Endorsed :

By : Dale Ian ATKINSON
Date : 6/1/2020
Signed : Dale Atkinson
Designation : Cadastral Surveyor

10. Lodgement Fees :

Survey Deposit	$
Lodgement	$
New Titles	$
Photocopy	$
Postage	$
TOTAL	$

11. Insert Plan Number SP317981

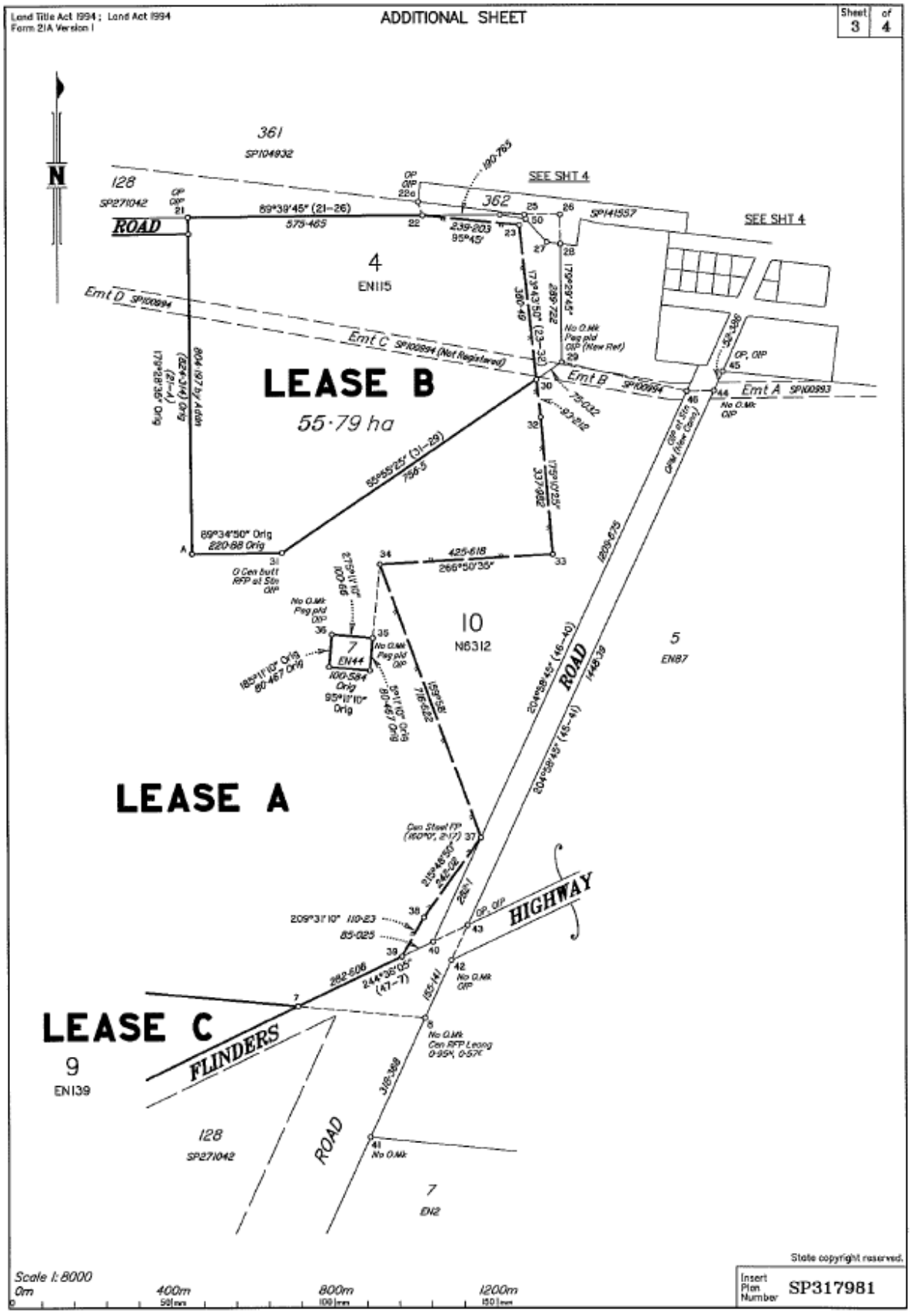
3. Plans with Community Management Statement :

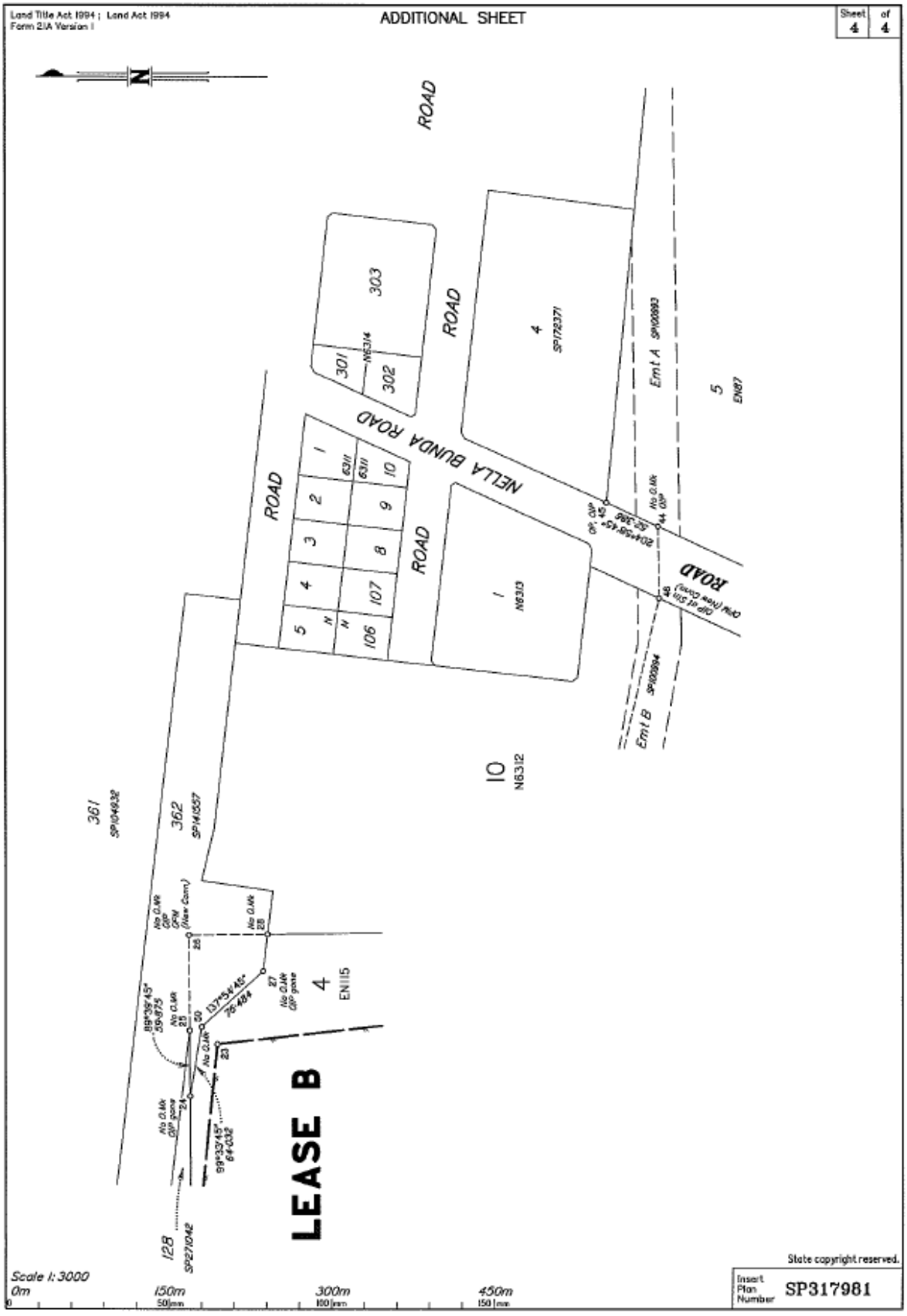
CMS Number :

Name :

4. References :

Dept File :
Local Govt :
Surveyor : 19–208


Land Title Act 1994 ; Land Act 1994
Form 21A Version 1
ADDITIONAL SHEET
Sheet 3 of 4
N
361
SP104932
128
SP271042
ROAD
89°39'45" (21–26)
575·465
SEE SHT 4
362
SP141557
SEE SHT 4
4
EN115
Emt D SP100894
Emt C SP100894 (Not Registered)
Emt B SP100894
Emt A SP100993
LEASE B
55·79 ha
No O.Mk Peg pkd OIP (New Ref)
OP, OIP
No O.Mk OIP
89°34'50" Orig
220·68 Orig
O Con butt RPP at Site OIP
425·618
266°50'35"
10
N6312
5
EN87
7
EN44
No O.Mk Peg pkd OIP
LEASE A
Con Steel FP (160°07', 2·17)
HIGHWAY
OP, OIP
No O.Mk OIP
LEASE C
9
EN139
FLINDERS
ROAD
No O.Mk Con RPP Leang 0·95N, 0·57E
128
SP271042
ROAD
No O.Mk
7
EN2
State copyright reserved.
Scale 1:8000
0m
400m
800m
1200m
Insert Plan Number
SP317981


Land Title Act 1994 ; Land Act 1994
Form 21A Version 1
ADDITIONAL SHEET
Sheet 4 of 4
ROAD
303
301
N6314
302
ROAD
4
SP172371
Emt A SP100893
5
EN87
NELLA BUNDA ROAD
ROAD
1
63III
10
2
9
3
8
4
107
5
N
106
ROAD
1
N6313
ROAD
Emt B SP100894
10
N6312
361
SP104938
362
SP141557
4
EN115
LEASE B
128
SP271042
Scale 1: 3000
0m
150m
300m
450m
State copyright reserved.
Insert Plan Number
SP317981

PART 5 – Trustee Lease / Lease

LEASE

Dealing Number

OFFICE USE ONLY

Privacy Statement
Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Lessor
McKinlay Shire Council

Lodger (Name, address, email & phone number)
Keir Steele Waldon Lawyers
PO Box 1015
Townsville QLD 4810
E-mail: info@kswlawyers.com.au
Tel: 07 4722 0220
Ref: MAK:Matthew Keating:190796

Lodger Code
TE-010

2. Lot on Plan Description | **Title Reference**

Lot 4 on Crown Plan EN115	49001566
Lot 10 on Crown Plan N6312	49002960
Lot 9 on Crown Plan EN139	49002178

3. Lessee

Given names	Surname/Company name and number	(include tenancy if more than one)
|##**first name**##|	|##**surname / company name of tenderer**##|	|##**tenancy, if applicable**##|

4. Interest being leased
Reserve

5. Description of premises being leased
The whole of Lot 4 on CP EN115, the whole of Lot 10 on CP N6312 and the whole of Lot 9 on CP EN139 described as Leases B, A and C respectively on the attached Plan in Schedule 2.

6. Term of lease
Commencement date/event: 01/03/2020
Expiry date: 28/02/2025 and/or Event:
#Options: NIL
insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years)

7. Rental/Consideration
See Schedule

8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the Mandatory Standard Terms Document No. 711932933 and the attached schedule.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

signature .....
full name.....
qualification.....
Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Mayor
.....
Chief Executive Officer
McKinlay Shire Council
Lessor's Signature

9. Acceptance
The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

signature .....
full name.....
qualification.....
Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
|##**name of Lessee**##|
Lessee's Signature

DRAFT

Title Reference 49001566, 49002960, 49002178

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

signature .....

full name.....

qualification.....

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /

Execution Date

.....

|##name of Lessee##|

Lessee's Signature

DRAFT

Title Reference 49001566, 49002960, 49002178

1. REFERENCE SCHEDULE

Name and Address of Trustee:	McKinlay Shire Council of 29 Burke Street, Julia Creek Q 4823
Name and Address of Trustee Lessee:	|##trustee lessee names##| of |##address##|
Address of Premises:	Nelia Common Paddock, Flinders Highway and Nelia Road, Nelia in the State of Queensland 4816
Term:	5 years
Options to Renew:	Nil
Rental - First Year of Term:	$|##rental in numbers##| (|##rental in words##|) plus GST per annum
Insurances to be taken out by Trustee Lessee:	Public risk insurance - $20,000,000.00 per claim Trustee Lessee's Improvements
Permitted Use:	Grazing
Guarantor:	|##TBC, if company Trustee Lessee##|
Security Bond:	|##TBC##|

Rental Reviews	**Rental Review Date**	**Rental or Review Method**
Term of Lease	First Anniversary of Commencement Date	CPI Review
	Second Anniversary of Commencement Date	CPI Review
	Third Anniversary of Commencement Date	CPI Review
	Fourth Anniversary of Commencement Date	CPI Review

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Trustee Lease, the following terms have the following meanings unless the context otherwise requires:

'Authority' means any federal, state or local government authority or body.

'Average Pasture Yield" means the average pasture yield for the paddock calculated as follows:

(a) the pasture yield at 7 random yield points across the paddock will be measured using the photo standards of the Department of Primary Industry and Fisheries for Mitchell Grass as published from time to time;

(b) the yield points with the highest and lowest pasture yield per hectare will be discarded; and

(c) the Average Pasture Yield will be calculated as the average of the remaining five yield points.

'Consumer Price Index' means the All Groups Consumer Price Index published from time to time by the Australian Bureau of Statistics in relation to the city of Brisbane.

'Contaminated Land' has the meaning given in the *Environmental Protection Act 1994*.

DRAFT

Title Reference 49001566, 49002960, 49002178

'CPI Review' means a review of Rental calculated by using the formula:

$$\frac{XY}{Z}$$

where:

X = Consumer Price Index figure for the quarter ended immediately prior to the commencement of the Rental Year for which the Rental is being calculated;
Y = Rental payable during the Rental Year immediately preceding the Rental Year for which the Rental is being calculated; and
Z = Consumer Price Index figure for the quarter ended immediately prior to the commencement of the Rental Year immediately preceding the Rental Year for which the Rental is being calculated.

'Creditable Acquisition', **'GST'**, **'GST Exclusive Market Value'**, **'Input Tax Credit'**, **'Supply'** and **'Tax Invoice'** each has the meaning attributed to each of those terms in the GST Law.

'Default Rate' means the rate which is 3% per annum above the Queensland Law Society's standard contract default rate as at the due date for payment of the relevant moneys.

'Destock' means the removal of all beasts from the Premises.

'Expiry Date' means the date of expiry of this Trustee Lease as specified in Item 6.

'GST Date' means the date which this Trustee Lease becomes subject to GST under the GST Law.

'GST Law' means that term as defined in the A New Tax System (Good sand Services Tax) Act 1999.

'Guarantee' means the Guarantee and Indemnity in this Trustee Lease.

'Guarantor' means the person or persons named as Guarantor in the Reference Schedule.

'Item' means the relevant item number of the Form 7 of which this Schedule forms part.

'Land Management Plan' means the management plan approved by the Minister in accordance with section 48 of the *Land Act 1994*.

'Law' means any statute, regulation or ordinance made by an Authority and includes the applicable common law.

'Month' or **'Monthly'** means respectively calendar month or calendar monthly.

'Pasture Yield' means the amount of dry matter on the Premises at any time.

'Payee' means the party receiving the Payment.

'Payer' means the party making the Payment.

'Payment' means:

(a) the amount of monetary consideration (exclusive of GST); or

(b) the GST Exclusive Market Value of any non-monetary consideration; or

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(c) any amount required to be paid by the Payer to the Payee for a Supply under this Trustee Lease.

'Permitted Use' means the permitted use described in the Reference Schedule.

'Quarter' means the respective three-monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the Consumer Price Index.

'Reference Schedule' means the schedule in clause 1 of this Trustee Lease.

'Rental Year' means each separate year of the Term, with the first Rental year commencing on the Commencement Date and each subsequent Rental year commencing on the corresponding day of each succeeding year.

'Review Date' means the dates the Rental is to be reviewed, as set out in the Reference Schedule.

'Services' means all services of any nature from time to time provided to the Premises and/or the Trust Land or available for use, and includes any electronic medium, electricity, lighting, gas, fire services, water connection and the fittings and equipment utilised for such services.

'Valuer' means a valuer appointed by the president of the Institute who has been a member of the Institute for at least five years.

'Waste Charges' means costs and charges levied or assessed in respect of sewerage and removal of garbage and other waste from the Land.

'Water Charges' means all rates, taxes and charges payable to any Authority or body in respect of water supplied to the Land.

Weed Free Area means the part of the Premises identified on the plan in Schedule 1.

2.2 Interpretation

(a) Words importing the singular number include the plural and vice versa.

(b) Reference to a person includes any corporation and vice versa.

(c) The respective obligations of each party under this Trustee Lease are separate and independent, and continue throughout the Term and any period of renewal and holding over (unless the context provides otherwise).

(d) If any term of this Trustee Lease becomes unenforceable, that term will not affect the validity of the remaining terms of this Trustee Lease.

(e) Reference to a Law includes all Laws amending or replacing a Law.

(f) Reference to an Authority or body that have ceased to exist or been reconstituted, will constitute a reference to the Authority or body established in lieu of the initial Authority or body.

(g) Where two or more persons are Trustee Lessees or Guarantors, the obligations of the Trustee Lessee and Guarantor (as the case may be) under this Trustee Lease bind them jointly and each of them severally.

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(h) Headings and sub-headings have been included for ease of reference only and have no bearing on the construction of this Trustee Lease.

3. RENTAL AND OTHER CHARGES

3.1 Payment of Rental

(a) Rental is payable monthly in advance on the first day of each month by instalments each being one-twelfth (to the next whole cent) of the Rental for that Rental Year.

(b) If the Term commences on a day other than the first day of a month or expires on a day other than the last day of a month, the Trustee Lessee must pay to the Trustee Rental for the broken period calculated at a daily rate proportionate to the monthly Rental, and payable on the first day of the broken period.

(c) If this Lease ends at a time other than at the end of a Rental Year, the Trustee Lessee must pay to the Trustee prior to the end of this Lease the proportion of the Rental due at that time and the parties must pay any moneys owing to the other under this clause (subject to any right of set-off) within one month of the Lease ending.

(d) If Council has utilised cost per head of stock as its basis for calculating Rental, in the event that stock numbers change, the Trustee Lessee will provide written notice of the change to the Trustee as soon as reasonably practicable following the change. The Trustee will then calculate a revised Rental and provide written notice of it and any adjustment payable by either party, if necessary, to the Trustee Lessee.

3.2 Rental reviews

(a) Rental reviews occur on the date and in the manner set out in the Reference Schedule.

(b) Pending determination of the Rental for any Rental Year, Rental is paid at the rate payable at the end of the previous Rental Year and an adjustment (if necessary) is made within one month of the current Rental being determined.

(c) The Parties acknowledge that the Rental payable in any Rental Year must not be less than the Rental payable in the previous Rental Year.

3.3 Payment of other charges

(a) The Trustee Lessee must pay all charges for electricity, gas (if applicable), water consumption and charges, refuse collection or services and any other services at the Premises:

(i) if assessed directly against the Trustee Lessee, to the assessing Authority by the due date for payment; or

(ii) if assessed against the Trustee, the Trustee shall charge the Trustee Lessee as if the Trustee Lessee was a single consumer directly from the relevant Authority and the Trustee Lessee shall pay such charges within 14 days of being billed by the Trustee.

(b) The Trustee Lessee must at its own costs comply with all fire safety laws, requirements and directions in respect of the Premises and pay any associated levies or charges (whether or not issued directly against the Trustee Lessee or assessed against the Trustee.

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(c) The Trustee must pay by the due date all other outgoings in respect of the Land, except as otherwise provided for in this Trustee Lease.

3.4 Costs of Trustee Lease

(a) The Trustee Lessee must pay for:

(i) the Trustee's reasonable legal costs of and incidental to the negotiation, preparation and registration of this Lease;

(ii) the survey/sketch fees for this Trustee Lease;

(iii) their own costs of and incidental to the negotiation, preparation and registration of this Lease;

(iv) transfer duty and registration fees on this Lease;

(v) any necessary consents and approvals sought by that party; and

(vi) the reasonable expenses incurred by the Trustee in responding to a request by the Trustee Lessee for consent to a sublease, licence, assignment or variation of this Trustee Lease.

3.5 Costs of notices, re-entry and consents

The Trustee Lessee must, upon demand by the Trustee, pay all costs (on a solicitor and own client basis) and expenses incurred by the Trustee in relation to:

(a) any notice lawfully given to the Trustee Lessee pursuant to this Trustee Lease and/or any actions taken to enforce the performance of the Trustee Lessee's obligations under this Trustee Lease;

(b) the lawful determination or attempted determination of this Trustee Lease, or the lawful re-entry or attempted re-entry by the Trustee into the Premises;

(c) the surrender of this Trustee Lease (including any duty and registration fees);

(d) the consideration of any consents by the Trustee, whether or not approved; and

(e) the Trustee, without fault, being made a party to litigation commenced by or against the Trustee Lessee (other than litigation between the parties), and arising directly or indirectly from the Trustee Lessee's occupation of the Premises.

3.6 Goods and Services Tax

(a) Subject to sub-clause (b), any Payment required to be made under this Trustee Lease after the GST Date will be increased by any GST payable by the Payee for that Supply. The Payee will deliver a Tax Invoice for the Payment to the Payer at or before the Payment becoming due.

(b) Where a Payment is a repayment of, or contribution to, a Creditable Acquisition made by the Payee, the Payment will (prior to the increase provided for under sub-clause (a)) be discounted by the amount of the Input Tax Credit to which Payee is entitled for that Creditable Acquisition under the GST Law.

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4. OCCUPATION OF PREMISES

4.1 Use and conduct

(a) The Trustee Lessee must not use the Premises for any use other than the Permitted Use.

(b) The Trustee does not warrant that the Premises are, or will remain, suitable or lawful for the Permitted Use and any warranties as to the suitability or lawfulness of the Premises implied by Law are negatived.

(c) The Trustee does not promise or represent to the Trustee Lessee that the Trustee Lessee has any exclusive right to carry on the type of business permitted by the Permitted Use.

(d) The Trustee Lessee must:

(i) comply with all Laws, and obtain and maintain all licences and approvals required at Law to carry on the Permitted Use from the Premises;

(ii) promptly notify the Trustee in writing of any damage sustained to the Premises.

(e) The Trustee Lessee must not:

(i) interfere with the Services;

(ii) carry on or permit to be carried on any annoying, offensive, disruptive or illegal act at the Premises;

(iii) hold or permit to be held any auction, bankrupt or fire sale on the Premises; or

(iv) bring upon the Premises any explosive, flammable or corrosive fluid except that normally used by the Trustee Lessee in its business, and only if such fluids are safely confined in containers.

(f) Subject to the Trustee's rights under this Trustee Lease, the Trustee Lessee may occupy the Premises during the Term without interruption by the Trustee.

4.2 Obligations under Environmental Protection Act

(a) The Trustee does not warrant that the Trust Land is not Contaminated Land. The Trustee Lessee acknowledges and agrees that it has made the necessary inspections and enquiries to satisfy itself whether or not the Trust Land is Contaminated Land.

(b) The Trustee Lessee must not permit its employees, agents or others (with or without invitation) who may be at or around the Premises to cause the Trust Land to become Contaminated Land. If it does become Contaminated Land, the Trustee Lessee must immediately take such remediation measures as reasonably required by the Trustee and the chief executive under the *Environmental Protection Act 1994*. If the Trustee Lessee fails to take such measures, the Trustee may take such remediation measures as the agent of the Trustee Lessee and at the expense of the Trustee Lessee, which will constitute a liquidated debt due and owing by the Trustee Lessee to the Trustee and payable on demand made by the Trustee.

(c) The Trustee Lessee must indemnify and keep indemnified the Trustee against any claim, damage, liability of expense which the Trustee may be, or becomes, liable (during or after the Term) because the Trustee Lessee fails to comply with sub-clause (b).

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5. MAINTENANCE AND REPAIR OF PREMISES

5.1 Obligation to clean, repair and maintain

(a) The Trustee Lessee must:

(i) keep the Premises clean and tidy and in a high presentable standard;

(ii) maintain all Improvements, including without limitation, fences, to their condition as at the Commencement Date; and

(iii) not allow any accumulation of useless property or rubbish at the Premises.

The Trustee Lessee must maintain and repair the Premises and all Services in good condition as at the Commencement Date.

5.2 Consent to fitout works, signage, additions, alterations and improvements

In addition to Ministerial Approval, if required, the Trustee Lessee must obtain the Trustee's prior written consent to any fitout works, installation of signage, additions, alterations or improvements ('works') that the Trustee Lessee proposes to undertake at the Premises or to the Services. The Trustee's consent (should it be forthcoming) may include the following conditions without limitation:

(a) The Trustee Lessee must provide detailed plans and specification of the works to the Trustee who may, dependent on the nature of the works, refer the plans and specifications to the Trustee's relevant advisers or architect for approval (at the Trustee Lessee's cost);

(b) The Trustee Lessee must obtain any relevant Authority approvals or other requisite consents to the works before commencing the works. If required by the Trustee depending on the nature of the works, the Trustee Lessee must construct the works under the supervision of the Trustee's adviser or architect (the cost of the supervision will be borne by the Trustee Lessee);

(c) The works must be carried out in a proper and workmanlike manner with as minimal disruption as possible, and at the cost of the Trustee Lessee, by contractors who have a current public liability insurance policy for at least $10,000,000 and have previously been approved by the Trustee; and

(d) The Trustee Lessee must indemnify and keep indemnified the Trustee against all claims, expenses and losses incurred by the Trustee of and incidental to the Trustee Lessee undertaking the works.

6. DAMAGE OR DESTRUCTION OF PREMISES

6.1 Abatement of rent and suspension of covenant to repair

(a) If, without any neglect or default by the Trustee Lessee, all, or part, of the Premises are damaged or destroyed by any flood, storm, riot, war or act of God which renders the Premises wholly or partially unfit for use by the Trustee Lessee in conducting its business, payment of the Rental or a proportionate part, (according to the damage sustained) will abate. The Trustee Lessee's covenants to repair under this Trustee Lease will suspend until the restoration of the Premises.

(b) The Trustee Lessee will during any period of repair of the Premises continue to utilise the Premises for the Permitted Use as far as practicable having regard to the extent of the damage to the Premises.

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6.2 Parties may terminate if no reinstatement

(a) If, without any neglect or default by the Trustee Lessee, the Premises are damaged or destroyed by any flood, storm, riot, war or act of God so as to render the Premises wholly unfit for use by the Trustee Lessee, the Trustee Lessee may give a written notice to the Trustee stating that the Trustee Lessee terminates the Trustee Lease

(b) If the Trustee Lessee has built Improvements upon the Premises, it must deal with those in accordance with the terms of this Trustee Lease and must otherwise ensure no debris or rubbish is left on the Premises.

(c) This termination will not prejudice either parties' rights regarding any antecedent breach of this Trustee Lease.

6.3 Arbitration of disputes

If a dispute arises between the parties in respect of this clause 6, the dispute must be submitted for arbitration to an independent arbitrator appointed by the president of the Queensland Law Society Incorporated, whose decision will be conclusive and binding on the parties. The submission will be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2013*. A determination from arbitration under this clause will be a condition precedent to the parties commencing legal proceedings relating to the dispute.

7. RESERVATIONS

7.1 Right of entry

The Trustee reserves the right to:

(a) access the Premises, upon the provision of reasonable notice to the Trustee Lessee every 6 months for the purposes of assessing the conditions of the Premises and undertaking weed control tasks. If the Trustee considers it necessary, the Trustee may leave a notice at the Premises requiring the Trustee Lessee, within a stated period, to carry out a repair or take the required action for the Trustee Lessee to comply with the terms of this Trustee Lease;

(b) at all times effect any works to the Premises considered necessary by the Trustee for the safety or preservation of the Premises or to comply with any Laws. The Trustee will (except in an emergency, of which the Trustee will be the sole judge) carry out the works in a manner which minimises, so far as practicable, interruption to the Trustee Lessee.

7.2 Third party interests

(a) The Trustee Lessee must during the Term permit any person having any interest in the Premises superior to or concurrent with the Trustee to exercise the Trustee's and that person's lawful rights.

(b) The Trustee reserves the right to grant, and the Trustee Lessee's rights under this Trustee Lease are subject to, any easements or arrangements the Trustee makes regarding the Trust Land for the purposes of providing access to the Trust Landor the provision of any services to the Land, provided that such easements do not substantially interfere with the Trustee Lessee's rights under this Trustee Lease.

(c) If a person, other than the Trustee becomes entitled to receive the Rental, that person has the benefit of all of the Trustee Lessee's covenants under this Trustee Lease. The Trustee Lessee (at the cost of the

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Trustee) will enter into any agreements with such person in this regard, as reasonably required by the Trustee.

7.3 Additions to the building

The Trustee may, in its absolute discretion, build additions to the Premises and/or Improvements. The Trustee must carry out the works in a manner which minimises, so far as practicable, any inconvenience or interruption to the business of the Trustee Lessee.

8. INSURANCES AND INDEMNITIES

8.1 Insurances

(a) The Trustee Lessee must take out and maintain an insurance policy to the replacement value of the Trustee Lessee's Improvements, property and fittings at the Premises.

(b) If requested by the Trustee, the Trustee Lessee must produce to the Trustee evidence of any insurance policies effected by the Trustee Lessee under this clause 8.1 and the Mandatory Standard Terms Document prior to the Commencement Date.

(c) The Trustee Lessee must not do anything which could prejudice any insurance of the Premises or property in the Premises.

(d) If the Trustee Lessee does anything that increases the premium of any insurance the Trustee has in connection with the Premises, the Trustee Lessee must pay the amount of that increase to the Trustee on demand.

8.2 Indemnities

(a) The Trustee Lessee occupies and uses the Premises at its own risk. The Trustee is not liable in any circumstances to the Trustee Lessee for any damage to the Trustee Lessee's property in or about the Premises, interruption to the Services nor any loss of profits by the Trustee Lessee.

(b) Notwithstanding anything in this Trustee Lease to the contrary, the Trustee will not be in default of this Trustee Lease for a remediable breach, unless the Trustee Lessee has given written notice to the Trustee of the breach, and the Trustee has failed to remedy the breach within a reasonable period of time.

9. ASSIGNMENT, SUBLETTING AND ENCUMBERING

9.1 Subletting and encumbering

(a) The Trustee Lessee must not without the Trustee's prior written consent:

(i) sublet or in any manner part with possession of the Premises; or

(ii) mortgage or otherwise encumber the Trustee Lessee's interest in this Trustee Lease.

9.2 Assignment

(a) The Trustee Lessee must not assign this Trustee Lease without the prior written consent of the Trustee. The consent will not be unreasonably withheld, if:

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(i) the proposed assignee is a respectable and financially responsible person with suitable prior business experience and at least equal trading and turnover potential in conducting a business substantially similar to that of the Trustee Lessee. The Trustee Lessee has the onus of proving these requirements to the satisfaction of the Trustee;

(ii) the Trustee Lessee pays the Trustee's costs and expenses of, and incidental to, making enquiries regarding the suitability of the proposed assignee;

(iii) at the date of assignment, the Trustee Lessee has paid all Rental and other moneys owing to the Trustee, and has otherwise complied with all of its obligations under the Trustee Lease;

(iv) the proposed assignee enters into a deed in the form required by the Trustee and prepared by the Trustee's solicitors at the Trustee Lessee's expense. Under the deed, the proposed assignee must covenant with the Trustee to observe the terms of the Trustee Lease and appoint the Trustee its attorney for the purposes described in clause 16 of the Mandatory Standard Terms Document. Where the proposed assignee is a corporation, the Trustee may require the directors or principal shareholders of the proposed assignee, or both, to guarantee the proposed assignee's obligations under that deed.

(b) If the Trustee must obtain the consent of any other person or authority to the assignment of the Trustee Lease, the Trustee's consent will be deemed to be conditional upon that consent being received. The Trustee Lessee is liable for the Trustee's costs and expenses associated with seeking, obtaining and documenting the consent of any other such person or authority to the assignment.

9.3 Corporation

(a) Where the Trustee Lessee is a company (other than a company whose shares are listed on any Australian stock exchange), the Trustee Lessee must not, without the Trustee's prior written consent, transfer any share in the capital (including the beneficial interest) of the Trustee Lessee. The company also must not issue any new shares or take such other action which results in the shareholders of the Trustee Lessee at the Commencement Date having less than 51% of the voting, income and capital participation rights in the Trustee Lessee.

(b) The Trustee's consent under sub-clause (a) will not be unreasonably withheld, if:

(i) the Trustee Lessee gives the Trustee at least one month's written notice of the intention of the Trustee Lessee's directors to take the action referred to in sub-clause (a);

(ii) the Trustee Lessee is not in default under this Trustee Lease;

(iii) the person receiving the share/s in the Trustee Lessee ('proposed transferee') prove to the satisfaction of the Trustee that that person is respectably responsible and solvent with suitable business experience, and that the Trustee Lessee will remain capable of carrying on its business at the Premises; and

(iv) the proposed transferee guarantees the Trustee Lessee's obligations under this Trustee Lease. The guarantee is to be in the form required by the Trustee.

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10. DEFAULT OF TRUSTEE LESSEE

10.1 Trustee may rectify

If the Trustee Lessee fails to perform any of its obligations under this Trustee Lease, the Trustee may (as the agent of the Trustee Lessee) do all such things and incur such expenses as are necessary to perform these obligations. Those expenses constitute a liquidated debt due and owing by the Trustee Lessee to the Trustee and payable on the demand of the Trustee.

10.2 Overdue payments

(a) If the Trustee Lessee fails to pay any money payable on demand within 14 days of the Trustee's demand, or fails to pay any other money due under this Trustee Lease within 7 days of their due date, the Trustee Lessee must pay to the Trustee interest accruing daily at the Default Rate:

(i) on the money owing from the payment due date until the money is paid; and

(ii) upon any judgment the Trustee obtains against the Trustee Lessee from the date of the judgment until the debt is satisfied.

(b) Interest is capitalised on the last day of each month and payable on the first day of the next month. The interest is recoverable in the same manner as the Rental in arrears.

(c) If an amount of Rental, or any other money due under this Trustee Lease, remains unpaid by the Trustee Lessee as a result of consecutive breaches of the same term of this Trustee Lease, interest at the Default Rate accrues on that amount from the date when the breach first occurred.

(d) Without prejudice to any other remedy, the Trustee may sue the Trustee Lessee for any money owing by the Trustee Lessee under this Trustee Lease. Neither the institution of legal proceedings nor the entering of judgment by a court will bar the Trustee from bringing any subsequent suits against the Trustee Lessee for any other money owing by the Trustee Lessee to the Trustee under this Trustee Lease.

10.3 Definition of default

The Trustee Lessee will be in default of this Trustee Lease, if:

(a) any part of the Rental is in arrears for seven days, whether demanded or not;

(b) any money (other than the Rental) payable by the Trustee Lessee under this Trustee Lease on demand is not paid within 14 days of the Trustee making such a demand, or if any other money payable by the Trustee Lessee under this Trustee Lease is not paid by the payment due date;

(c) the Trustee Lessee fails to comply with a term of this Trustee Lease;

(d) the Trustee Lessee (except for the purpose of reconstruction) becomes bankrupt, insolvent, under administration, in liquidation or receivership, or otherwise without full capacity; or

(e) the Trustee Lessee's interest under this Trustee Lease is taken in execution under any legal process.

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10.4 Essential terms

(a) The covenants contained in clauses 3.1 (Payment of Rental), 3.3 (Payment of other charges), 4.1 (Use and conduct), 5.1 (Obligation to clean, repair and maintain), 7.3 (Additions To The Building), 8 (Insurances And Indemnities), and 9 (Assignment, Subletting And Encumbering) are essential terms of this Trustee Lease. The failure to specify that a clause is an essential term does not in itself mean that that clause is not essential.

(b) A breach of an essential term of this Trustee Lease entitles the Trustee to do any one or more of the following (without prejudicing any other rights the Trustee may have):

(i) terminate this Trustee Lease;

(ii) re-enter the Premises;

(iii) forfeit the Trustee Lease;

(iv) sue for and recover damages from the Trustee Lessee for loss occasioned by the breach.

(c) Should the Trustee forfeit this Trustee Lease, the Trustee will (without prejudice to any other right it may have) be entitled to recover from the Trustee Lessee by way of liquidated damages for any cost incurred by the Trustee from, and incidental to, the Trustee Lessee's breach of this Trustee Lease. This entitlement includes recovery for re-letting the Premises and any difference in the Rental and other money that would have been paid by the Trustee Lessee for the unexpired residue of the Term.

10.5 Rights upon default

(a) If the Trustee Lessee defaults under this Trustee Lease, the Trustee may (without prejudice to any other rights):

(i) subject to any prior notice required by Law, re-enter and take possession of the Premises and eject the Trustee Lessee and any persons in possession of the Premises (which may be by force, if necessary), from which time this Trustee Lease will be terminated; or

(ii) terminate this Trustee Lease by giving written notice to the Trustee Lessee.

(b) Upon re-entry to the Premises, the Trustee may remove any items at the Premises and store them at the cost of the Trustee Lessee (those costs are payable by the Trustee Lessee to the Trustee on demand) without being guilty of conversion or liable for any loss or damage to these items. If the Trustee Lessee fails to claim the items within 14 days of removal, those items are deemed abandoned by the Trustee Lessee and will become the property of the Trustee.

11. END OF TRUSTEE LEASE

11.1 The Trustee Lessee must at the end of the Trustee Lease peacefully yield up the Premises in the condition required by this Trustee Lease and return to the Trustee all keys and security devices relating to the Premises.

11.2 At the end of the Trustee Lease, the Trustee may elect to either:

(a) deem any Improvements, fittings, additions or signage not removed from the Premises as abandoned; or

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(b) remove any Improvements, fittings, additions or signage not removed from the Premises with any costs associated with the removal of the Improvements, fittings, additions or signage to be at the Trustee Lessee's sole cost.

11.3 If required by the Trustee, the Trustee Lessee must immediately, prior to vacating the Premises, paint the interior parts of any Improvements which have been previously painted, with two coats of first quality paint in a workmanlike manner and in the colour as directed in writing by the Trustee.

11.4 The ending of this Trustee Lease does not affect any of the Trustee's rights against the Trustee Lessee on account of any antecedent breach by the Trustee Lessee of a term of this Trustee Lease.

12. STOCK ROUTE

The Trustee Lessee must comply with the provisions of the *Stock Route Management Act 2002.*

13. MAXIMUM STOCK NUMBERS

(a) The Trustee Lessee must ensure that no more than one beast per thirty-five (35) acres (14 hectares) is depastured on the Premises.

(b) When determining stock numbers, the Trustee Lessee must consider the pasture requirements of travelling stock across or through the Premises under the authority of the *Stock Route Management Act 2002*, or of an approval or permit under the *Stock Route Management Act 2002*.

(c) The Trustee must provide details of the estimated annual usage by travelling stock of the Premises to the Trustee Lessee to allow the Trustee Lessee to determine the quantity of pasture to be retained for future travelling stock.

(d) The Trustee wishes to ensure that the Average Pasture Yield for the Premises does not fall below 500 kilograms per hectare.

(e) The Trustee will undertake monthly measurements of the Pasture Yield for the Premises.

(f) The Trustee or its authorised officers may enter onto the Premises at any time and without notice to the Trustee Lessee for the purpose of undertaking the monthly measurements of the Pasture Yield.

(g) The monthly measurements of the Pasture Yield will be used for the purpose of calculating the Average Pasture Yield for the Premises.

(h) The Trustee may give twenty-eight (28) days written notice to the Trustee Lessee to Destock the Premises when the Average Pasture Yield for the Premises is assessed by the Trustee as having fallen below 700 kilograms per hectare.

14. LAND MANAGEMENT PLAN

(a) The Trustee must comply with the provisions of the Land Management Plan the Trustee has developed in respect of the Premises.

(b) The Trustee Lessee acknowledges it has received a copy of the Land Management Plan from the Trustee.

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15. WEEDS

(a) For the avoidance of doubt, the parties acknowledge that the reference to the *Land Protection (Pest Stock Route Management) Act 2002* in the Mandatory Standard Terms Document is a reference to the *Biosecurity Act 2012*.

(b) The Trustee Lessee must maintain the Weed Free Area free from invasive plants as described in the *Biosecurity Act 2012* for the Term of this Trustee Lease at its cost.

(c) If the Trustee Lessee does not comply with its obligations under this clause, the Trustee may enter the Premises, upon reasonable notice to the Trustee Lessee, and perform weed control tasks considered appropriate by the Trustee in its sole discretion. The costs of any work undertaken by the Trustee will be recoverable from the Trustee Lessee on demand.

16. GENERAL PROVISIONS

16.1 Consent

Subject to anything in this Trustee Lease to the contrary, any consent which the Trustee is requested to provide under this Trustee Lease may, at the absolute discretion of the Trustee, be granted, refused, granted subject to conditions or withdrawn at any time.

16.2 Waiver

(a) A waiver by either party of a term of this Trustee Lease will only be effective if it is made in writing by that party. The waiver will not extend to, and act as, a waiver of a term generally.

(b) If the Trustee Lessee is in breach of this Trustee Lease, the acceptance by the Trustee of money from the Trustee Lessee does not act as a waiver of the Trustee's rights regarding that breach.

(c) A delay by the Trustee to exercise its rights under this Trustee Lease (including without limitation in respect of a review to the Rental) does not act as a waiver of those rights.

16.3 Service of notices

(a) A notice required to be given by one party to another under this Trustee Lease (including a notice from or on the Guarantor) is effectively served, if it is in writing and:

(i) served personally or left for the Trustee Lessee at the Premises, upon which the notice will be deemed to have been served immediately;

(ii) sent by facsimile machine to the other party's facsimile machine, upon which the notice will be deemed to be served at the time the facsimile was transmitted from the sending machine, provided the receiving facsimile machine does not immediately indicate a malfunction in the transmission;

(iii) sent by email to the other party's email address, upon which the notice will be deemed to be served at the time the email was transmitted from the sender's email account, provided that the sender does not receive a notification that the email was unable to be delivered or delivery was delayed; or

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(iv) forwarded by registered post addressed to the party at the party's last known place of business or residence, or to the party's registered office if the party is a corporation, upon which the notice will be deemed to be given on the next week day (other than a public holiday) after which it was posted.

(b) A party must as soon as possible advise the other party of its new email, facsimile and address details, if these change from that listed in the Reference Schedule.

16.4 Effect of legislation

Unless mandatory by Law, any Law or right (present or future) will not apply to or be implied into this Trustee Lease if it has the effect of prejudicially affecting any of the Trustee's rights under this Trustee Lease, is inconsistent with the terms of this Trustee Lease, or extends the Trustee's obligations to the Trustee Lessee.

16.5 Entire agreement

(a) The provisions of this Trustee Lease, and any consents given under it, contain the entire agreement as concluded between the parties and no oral or collateral agreements are of any effect.

(b) No representation by the Trustee regarding the Premises will form an implied or other term of this Trustee Lease. The Trustee Lessee acknowledges that it has not been induced into this Trustee Lease by any representation, made by the Trustee or its agents, that is not included in this Trustee Lease.

16.6 Mortgagee's consent

If the consent of any person or body (including a mortgagee) to this Trustee Lease or to the extension of this Trustee Lease is required, the Trustee Lessee must immediately upon request by the Trustee execute any documents necessary to facilitate the granting of this consent.

16.7 Trustee Lessee's costs

The Trustee Lessee must perform all of its obligations under this Trustee Lease at its own cost, unless otherwise specified in this Trustee Lease.

16.8 Electronic communication

The Trustee Lessee confirms it consents to receiving this Trustee Lease and any notices or communications pursuant to this Trustee Lease by electronic communication.

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Title Reference 49001566, 49002960, 49002178

DEED OF GUARANTEE

1. In consideration of the Trustee granting the Trustee Lease to the Trustee Lessee, the Guarantor:

   (a) guarantees to the Trustee that the Trustee Lessee will pay the Rental and other monies payable under the Trustee Lease;

   (b) guarantees to the Trustee that the Trustee Lessee will observe and perform its obligations; and

   (c) undertakes to the trustee that with the Trustee Lessee the Guarantor will be jointly and severally liable for the payment of Rental and other monies and for any loss or damage suffered by the Trustee as a result of the Trustee Lessee's failure to observe and perform the Trustee Lessee's obligations under the Trustee Lease.

2. The Guarantor's liability will not be reduced or discharged by:

   (a) the Trustee granting any time concession or indulgence to the Trustee Lessee;

   (b) the Trustee entering into any composition or scheme of arrangement with the Trustee Lessee;

   (c) the Trustee waiving any breach or default by the Trustee Lessee;

   (d) the Trustee failing to enforce the terms of the Trustee Lease against the Trustee Lessee;

   (e) the disclaimer of the Lease on the insolvency of the Trustee Lessee;

   (f) any payment by the Trustee Lessee that is avoided or set aside under any statute relating to insolvency or under any other statute.

3. If the terms of the Trustee Lease are not enforceable against the Trustee Lessee for any reason the Guarantor will indemnify the Trustee against any loss it may suffer as a result. That loss will include all monies that would have been payable by the Trustee Lessee had the Trustee Lease been fully enforceable against the Trustee Lessee.

4. On assignment of the Trustee Lease the Trustee may require the Trustee Lessee to obtain a further guarantee for the observance and performance of the Trustee Lessee's obligations by guarantors acceptable to the Trustee on terms similar to the guarantee in the Trustee Lease. When the further guarantee has been obtained and delivered to the trustee any further liability of the Guarantor under the Lease will be discharged.

5. The guarantee and indemnity:

   (a) apply to any holding over by the Trustee Lessee named in the Trustee Lease;

   (b) do not apply to any holding over by an assignee unless the assignee is also a Trustee Lessee named in the Trustee Lease; and

   (c) do not apply to any further trustee leases granted after the end of the Trustee Lease.

6. In this guarantee a reference to Rental (whether or not it is a reference to Rental due or payable under the Trustee Lease) includes:

   (a) Rental as defined in the Trustee Lease;

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Title Reference 49001566, 49002960, 49002178

(b) money for the right to occupy and use the Premises;

(c) other money; and

(d) damages for breach of or failure to perform the Trustee Lease.

7. If the guarantor comprises more than one (1) person:

(a) each is liable even if the others do not execute the guarantee;

(b) each becomes liable when he or she executes the guarantee; and

(c) the liability of those that execute the guarantee will be joint and several.

EXECUTED by **|## INDIVIDUAL'S FULL NAME##|** in the presence of:)
)
)

Signature

Signature of witness

Dated

Print full name of witness

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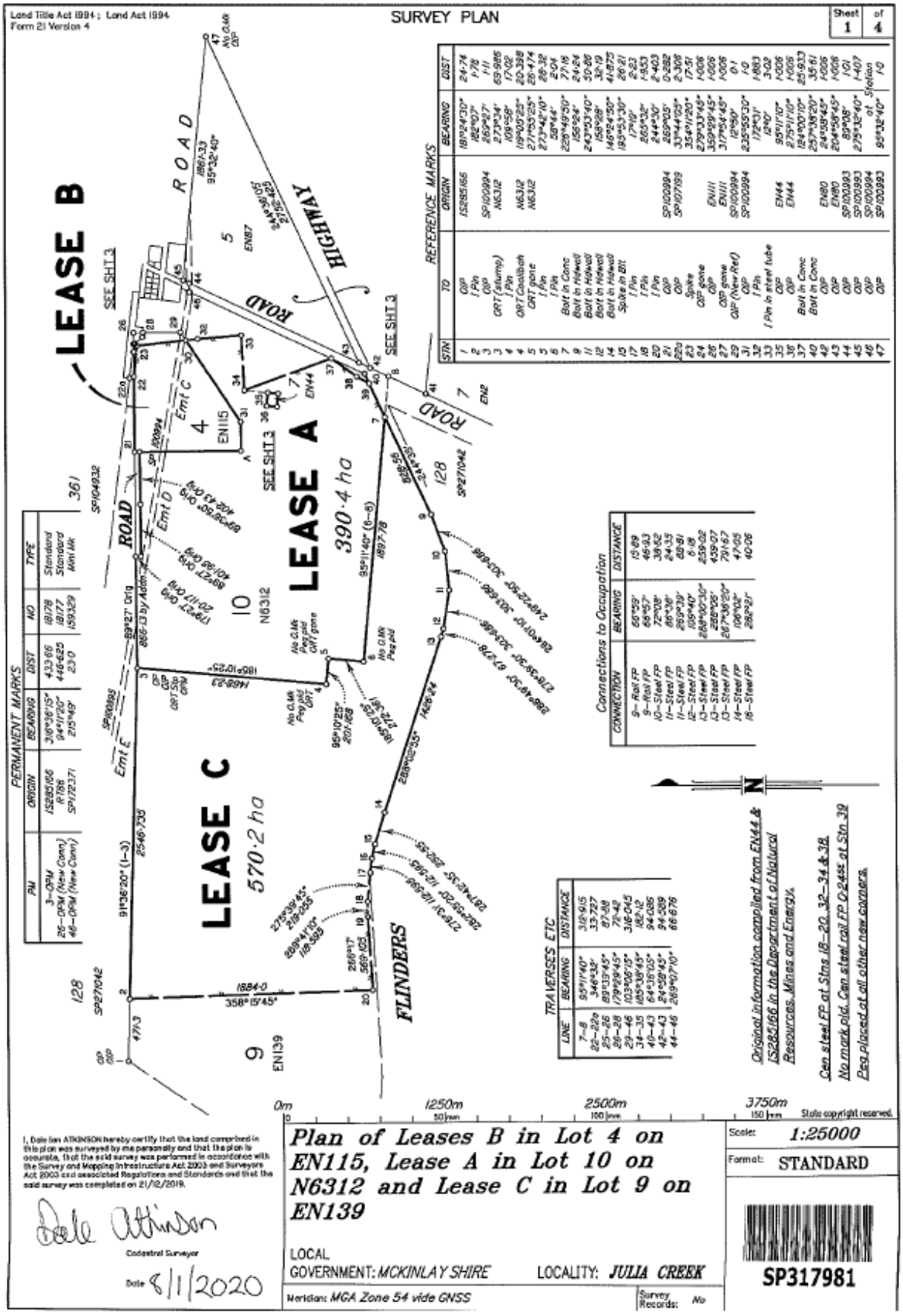
Schedule 1 – Weed Free Areas

NOT USED

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Title Reference 49001566, 49002960, 49002178

Schedule 2 - Plan



Title Reference 49001566, 49002960, 49002178

Land Title Act 1994 ; Land Act 1994
Form 21B Version 1

(Dealing No.)

WARNING : Folded or Mutilated Plans will not be accepted. Sheet 2 of 4
Plans may be rolled.
Information may not be placed in the outer margins.

5. Lodged by

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

I/We MCKINLAY SHIRE COUNCIL
GAZETTED ON 09/06/1995 PAGE 1091
GAZETTED ON 14/01/1933 PAGE 276
GAZETTED ON 28/06/1941 PAGE 2415

(Names in full)

* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

* as Lessees of this land agree to this plan.

Signature of *Registered Owners *Lessees

* Rule out whichever is inapplicable

6.

Existing		Created		
Title Reference	Description	New Lots	Road	Secondary Interests
49001566	Lot 4 on EN115			LEASE B
49002960	Lot 10 on N6312			LEASE A
49002178	Lot 9 on EN139			LEASE C

Lease A, B and C replace trustee lease 715537596

SURVEY REPORT:
Stations 1, 3, 4, 21, 22a, 28, 31, 35, 36 and 42–47 are from original marks/reference marks and agree within expected survey tolerance. Stations 5 and 6 are deed dimensions from station 5. Station 8 is deed distance from station 42 as per EN80 and N6312. Station 7 is the intersection of lines 8–8 and 43–47. Stations 9–17 are 30m from the existing road centreline and are in general agreement with the existing fence. Stations 28 and 29 are deed angle and distance as per EN111. Station 24 and 25 are deed distance as per SP107199.

2. Planning Body Approval.

*
hereby approves this plan in accordance with the :
%

Dated this ..... day of .....

..... #

..... #

* Insert the name of the Planning Body.
# Insert designation of signatory or delegation
% Insert applicable approving legislation.

9. Building Format Plans only.

I certify that :
* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or roads
* Part of the building shown on this plan encroaches onto adjoining* lots and road

Cadastral Surveyor/Director* Date
*Delete words not required

Lots	Orig

7. Orig Grant Allocation :

8. Passed & Endorsed :

By : Dale Ian ATKINSON
Date : 6/11/2020
Signed :
Designation : Cadastral Surveyor

10. Lodgement Fees :

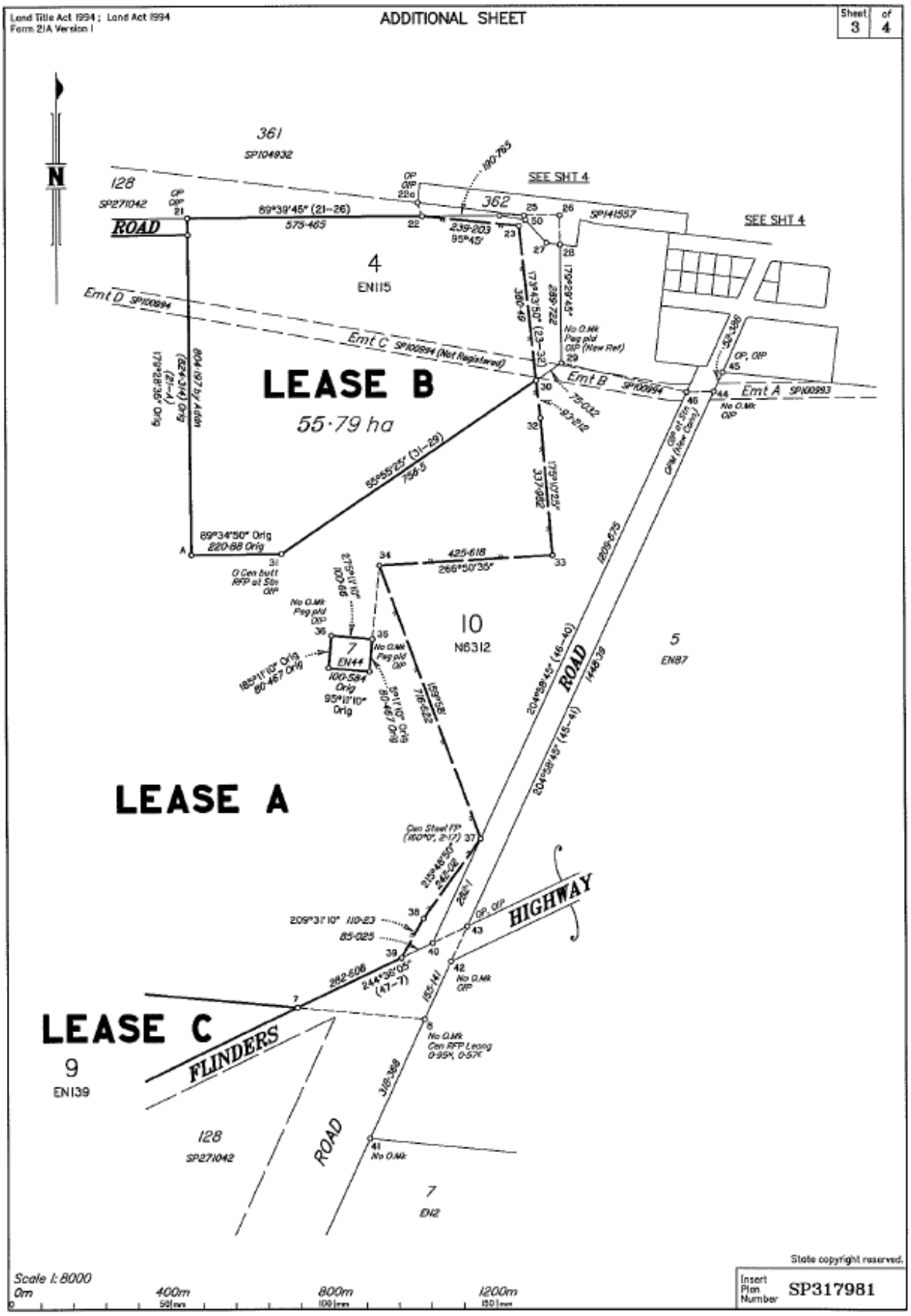
Survey Deposit	$
Lodgement	$
.....New Titles	$
Photocopy	$
Postage	$
TOTAL	$

3. Plans with Community Management Statement :
CMS Number :
Name :

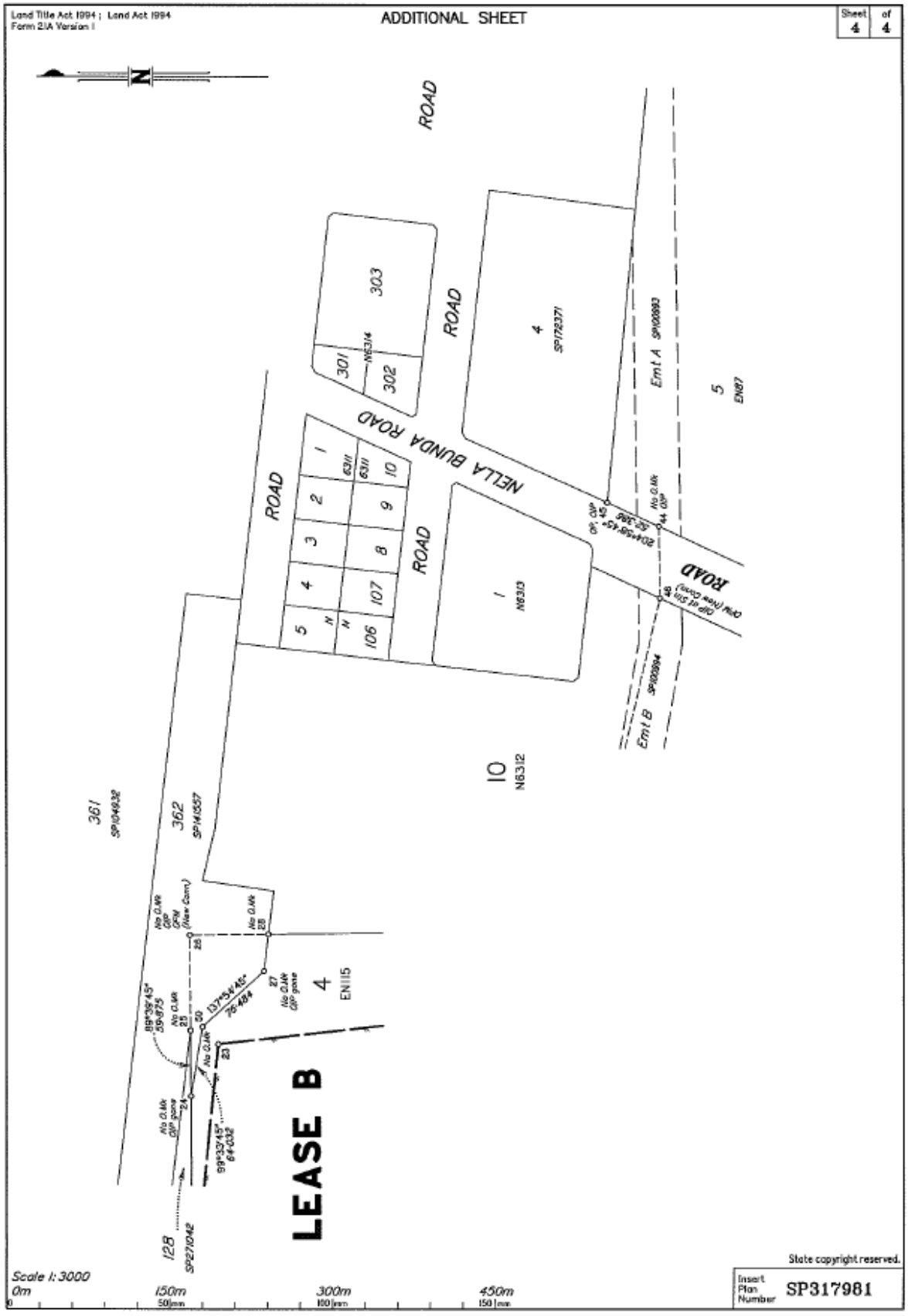
4. References :
Dept File :
Local Govt :
Surveyor : 19–208

11. Insert Plan Number **SP317981**

Title Reference 49001566, 49002960, 49002178



Title Reference 49001566, 49002960, 49002178



PART 6 – Response Schedules

Tender No.: T1920014

To: **Chief Executive Officer**
McKinlay Shire Council
PO Box 177
JULIA CREEK QLD 4823

I/We the undersigned hereby provide a Tender to enter into a Lease (or Trustee Lease) of the Nelia Common Paddock as requested. The tendered consideration is provided in the Price Schedule submitted with this Tender.

Tender Form:

Name of Tenderer:	
Full Name:	
ACN (if applicable):	
Address:	
Phone Number:	
Fax Number:	
Mobile Phone Number:	
Email:	

Price Schedule:

Property Description:	**Nelia Common Paddock** comprising the following three (3) Leases on plan SP317981: 1. Lease C - Lot 9 on Crown Plan EN139, Title Reference 49002178; 2. Lease A - Lot 10 on Crown Plan N6312, Title Reference 49002960; and 3. Lease B - Lot 4 on Crown Plan EN115, Title Reference 49001566
Annual Price Tendered (excl GST) (Billed Monthly)	
GST Component:	
Annual Price Tendered (incl GST) (Billed Monthly):	

Signing Clauses:

Signed by Tenderer
(Where Tenderer is a Company)

EXECUTED by)
)
)
)
[Name of Tenderer: where a company])
)
ACN: _____
in accordance with s 127(1) of the *Corporations Act 2001*:

[Signature]

[Print name]
Director/Company Secretary/Sole Director
[strike out if not applicable]

[Signature]

[Print name]
Director/Company Secretary/Sole Director
[strike out if not applicable]

(Where Tenderer is an Individual/s)

SIGNED by)
)
)
[Name of Tenderer: where an individual])
in the presence of:)

[Tenderer signature]

[Witness signature]

[Print witness name]

SIGNED by)
)
)
[Name of Tenderer: where an individual])
in the presence of:)

[Tenderer signature]

[Witness signature]

[Print witness name]