

# NOTICE OF MEETING



## BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

A Byron Shire Reserve Trust Committee Meeting of Byron Shire Council will be held as follows:

Venue	<b>Council Chambers, Station Street, Mullumbimby</b>
Date	<b>Thursday, 22 March 2012</b>
Time	<b>2.00pm</b>

This meeting will be open to the public and the press.

**Public Access** relating to items on this Agenda can be made between 9.00am and 10.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Graeme Faulkner  
General Manager

---

---

## CONFLICT OF INTERESTS

**What is a “Conflict of Interests”** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

### Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

**Non-pecuniary interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

---

---

## RECORDING OF VOTING ON PLANNING MATTERS

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(1)

## BUSINESS OF MEETING

1. **APOLOGIES**

2. **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

3. **EXECUTIVE MANAGER’S REPORTS**

**Community Infrastructure**

3.1. Proposed Sites for Installation of Multiple Bicycle Parking Rails .....2

**Corporate Management**

3.2. New Lease over Lot 385 DP 728504 Byron Bay Autumn Club Inc.....5

3.3. Byron Bay War Memorial Swimming Pool - 12 Month Option – Lease and  
Management Contract.....8

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(2)

## COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER'S REPORT

### Report No. 3.1. Proposed Sites for Installation of Multiple Bicycle Parking Rails

5 **Executive Manager:** Community Infrastructure  
**File No:** EN220500 #1206045

**Principal Activity:** Infrastructure Planning and Project Definition

**Summary:** Council resolved to support a submission for grant funding to install secure bike parking at up to nine (9) sport and recreation locations.

This funding has been received, but prior to the project proceeding, endorsement by Council, as Reserve Trust Manager, is required.

Thus it is recommended that Council, as Reserve Trust Manager, authorise the five (5) sites proposed, noting installation of the bike rails proposed is scheduled to occur prior to June 2012.

---

### RECOMMENDATION:

10

**That Council, as Reserve Trust Manager, authorise the instalment of bicycle parking facilities as proposed within this report at the following locations:**

Site	Name and location	Authority
3	Brunswick Heads sports fields and skate park, Old Pacific Highway	Reserve Trust
5	Mullumbimby sports fields, Pine Avenue, Mullumbimby	Reserve Trust
6	Apex Park, Bay Street, Byron Bay, near surf club	Reserve Trust
7	Apex Park, Bay Street, Byron Bay, opposite pool	Reserve Trust
8	Venture Park, South Beach Rd, Brunswick Heads, next to surf club	Reserve Trust

15

# BYRON SHIRE COUNCIL

## Report

On 11 March 2010 Council **Resolved 10-142**, Part 3 of which states:

- 5           *“That Council endorse the submission of a grant application to the Department of Sport and Recreation for the sum of \$12,500, to be matched by funds allocated to Council’s bikeways program in 2010/11 (total project cost \$25,000) for the provision of bike racks.”*

10 Council has been successful in receiving the grant funding and has reserved matching funding within Council’s current 2011/12 budget.

The bike parking is scheduled to be installed April/May 2012, however Council approval of the proposed locations is first required as either land owner or Reserve Trust Manager.

- 15 For the sites owned by Council, a report is also being presented to Council’s Ordinary Meeting on 22 March 2012. As per that report, Council is land owner of four (4) of the nine (9) locations, while the remaining five (5) sites Council is the Reserve Trust Manager.

20 Therefore these same five (5) sites are the subject of this report with the recommendation made that Council, as Reserve Trust Manager, authorise installation of bike parking at the locations as follows:

Site	Name and location	Authority
3	Brunswick Heads sports fields and skate park, Old Pacific Highway	Reserve Trust
5	Mullumbimby sports fields, Pine Avenue, Mullumbimby	Reserve Trust
6	Apex Park, Bay Street, Byron Bay, near surf club	Reserve Trust
7	Apex Park, Bay Street, Byron Bay, opposite pool	Reserve Trust
8	Venture Park, South Beach Rd, Brunswick Heads, next to surf club	Reserve Trust

25 As for the type of bike parking proposed to be used, please refer to Figure 1 below noting the proposed rail differs from the ‘bike rack’ also pictured, which was proposed in the funding submission.

30 This is due to the relevant Australian Standard (AS2890.3) advising that the bike rail offers better security and safety and that the rack does not comply with DDA requirements and should be replaced and that no new installations of such racks occur.

Figure 1: proposed bike rail and existing DDA non-compliant bike rack



35 The proposed installation arrangement of the bike rails per site is as follows:

- up to five (5) parking rails per site to accommodate up to ten (10) bikes; and
  - a concrete pad of approximate dimensions of 2.1m (min) to 3.6m (max) width and up to 5.1m (max) length, with a depth of (maximum) 350mm to provide secure footing for both
- 40 bikes and parking rails

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(4)

The concrete pad will also assist with security of both parking rail and bike, reduce maintenance of parking rails and provide an easier area to clean and maintain (for example mowing) than if the rails were to be installed into the mainly grassed areas nominated.

- 5 If further detail on the proposed sites and installation arrangements are required, please refer to the 22 March 2012 Council report (#1201180) and its Annexure (No. 30).

## **Financial Implications**

- 10 Quotes for the supply and installation of up to 45 bike rails (as shown in Figure 1) which can accommodate up to 90 bikes across nine locations, including installation of new purpose built concrete pads, have been received.

- 15 Based on these quotes, the project can be completed as specified and budgeted, ie Council has received 50% of the funding (\$12,500) via grant funding from the NSW Department of Sport and Recreation. This funding has been matched by Council and is available within the 2011/12 budget.

## **Statutory and Policy Compliance Implications**

- 20 It is noted that installation of bike parking facilities is a stated aim of Council's 2008 adopted Bike Plan which, while not specifying locations, looks to "increase the number of end trip facilities (eg secure bike parking)".

- 25 Perhaps more pertinent, however, is that the adoption of the recommendations now made will result in Council part-funding the installation of Council assets upon land that is not Council owned but instead Council managed, ie Council is the Reserve Trust Manager.

- 30 However should Council, as Reserve Trust Manager, not support the installation as proposed, the grant funding will need to be either returned or redirected, neither of which has been explored further at this time with the former (ie the return of the grant money) believed most likely of the two options.

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(5)

## CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORTS

**Report No. 3.2. New Lease over Lot 385 DP 728504 Byron Bay Autumn Club Inc**

**Executive Manager:** Corporate Management

5 **File No:** BEN400000 #1201041

**Principal Activity:** Property and Contracts

**Summary:** To seek the authorisation of the Reserve Trust to enter into a new lease with the Byron Bay Autumn Club Inc over the Senior Citizens Hall at 41 Marvel Street, Byron Bay (R89520).

---

### RECOMMENDATION:

- 10
1. That subject to Ministerial consent, Council as Reserve Trust Manager authorise the General Manager to enter into a new lease over Lot 385 DP 728504 with the Byron Bay Autumn Club Incorporated on the following terms:
    - 15 a) Term of five (5) years commencing 1 July 2011
    - b) Annual lease fee based on the minimum Crown rent provided by the Crowns Lands Act 1989 and Crown Lands Regulations 2006
    - c) All lease preparation costs are to be met by the tenant
  - 20 2. That Council authorise the General Manager to affix the Council Seal to the new lease over Lot 385 DP 728504 with the Byron Bay Autumn Club Incorporated in accordance with Regulation 400 of the Local Government (General) Regulations 2005.

25 **Attachments:**

- Draft Lease to Byron Bay Autumn Club #1200945 [29 pages] ..... **Annexure 1**

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(6)

## Report

Reserve 89520 – Lot 385 DP 728504 known as the Senior Citizens Hall

Purpose – Senior Citizens Centre

5 Owner – Department of Lands (Crown Land)

Trustee – Byron Bay (R89520) Reserve Trust

Byron Shire Reserve Trust Committee Meeting dated 12 March 2009, resolved:

### 10 **09-132**

1. *“That subject to Ministerial approval, Council as Reserve Trust Manager authorise the General Manager to enter into a new lease over Lot 385 DP 728504 with the Byron Bay Autumn Club Incorporated on the following terms:*

- 15
- a) *Term of five years commencing 1 July 2006*
  - b) *Annual lease fee based on the minimum Crown rent provided by the Crown Lands Act 1989 and Crown Lands Regulations 2006*
  - c) *All lease preparation costs are to be met by the tenant.*
- 20
2. *That Council authorise the General Manager to affix the Council Seal to the new lease over Lot 385 DP 728504 with the Byron Bay Autumn Club Incorporated in accordance with Regulation 400 of the Local Government (General) Regulations 2005.”*

25 Ministerial consent was granted in accordance with the above resolution.

A lease was subsequently executed with the Byron Bay Autumn Club. That lease expired on 30 June 2011.

30 Upon the expiration of the lease, the current Lessee, Byron Bay Autumn Club Incorporated, expressed their desire to renew the lease agreement.

On 20 June 2011 the Crown Lands Division advised that if the lease is to be renewed in the exact same format then Council may proceed with execution without prior Approval in Principle, and once executed, forward the lease to the Crown Lands Division for endorsement together with the following:-

35

- A diagram of the reserve clearly marking the area of the lease
  - A copy of the Reserve Trust’s resolution
  - An explanation showing how the market rent was determined.
- 40

A draft lease has been prepared in the exact same format attached as Annexure 1.

## 45 **Financial Implications**

The Byron Bay Autumn Club is a not for profit organisation. When a nominal rent is to be imposed due to the lessee being a non-profit making organisation, the Crown now requires that the rental fee must not be less than the statutory minimum rental under the *Crown Lands Act* 1989 which was \$429.00 in July 2011 and is subject to quarterly CPI rent reviews.

50

The Byron Bay Autumn Club is responsible for rent and outgoings relating to this building, however apply annually to Council to subsidise their ordinary rates.



# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(7)

## **Statutory and Policy Compliance Implications**

5 The land is a Crown Reserve, the purpose for which it is reserved being a Senior Citizens Centre. Council, as Reserve Trust Manager, is only allowed to lease the property in accordance with that purpose and the Byron Bay Autumn Club is the only Senior Citizens Club in Byron Bay.

10 This lease has expired and it is important that Council secure tenure of this property to reduce liability and to once again formalise the tenancy. As the lease expired in 2011, and the Crown requires any new lease to start from the expiry date of the previous lease, a five year lease will give the Autumn Club secure tenancy until 30 June 2016.

15 Under the Local Government (General) Regulations 2005, Part 13, Division 1, paragraph 400 (4), the seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(8)

**Report No. 3.3. Byron Bay War Memorial Swimming Pool - 12 month option – Lease and Management Contract**

**Executive Manager:** Corporate Management

**File No:** BEN400000/#1197224

**Principal Activity:** Property and Contracts

**Summary:** To obtain Council's authorisation as Reserve Trust Manager to grant a further Lease and Management Contract to the current Managers of the Byron Bay War Memorial Swimming Pool Complex.

5

---

## RECOMMENDATION:

- 10
1. That Council, as Reserve Trust Manager, note the Minister's consent for the further 12 month option to extend the Lease and Management Contract to the current Managers being Fishheads@Byron Pty Limited.
  
  - 15 2. That Council, as Reserve Trust Manager, grant the 12 month option to extend the Lease and Management Contract to the current Managers being Fishheads@Byron Pty Limited of the premises being the Byron Bay War Memorial Swimming Pool Complex which is in part located on Crown Reserve No 82000, in accordance with the terms and conditions contained in the documentation shown at Annexure 2(b) (#1197404) for:
    - 20 a) 12 month period commencing 1 July 2012 and terminating on 30 June 2013, and
    - b) with the Rent and Management Fee being indexed where necessary.

## Attachments:

- 25
- Letter from Department of Primary Industries-dated 9 February 2012 #1196446 [3 pages] ..Annexure 2(a)
  - Draft Lease and Management Contract #1197404 [56 pages] ..... Annexure 2(b)

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(9)

## Report

5 The issues relating to the land tenure at the Byron Bay Swimming Pool and the management of the complex have been the subject of meetings and correspondence between the DLG, LPMA and Council since approximately 2007.

At its Ordinary Meeting of 10 March 2011 Council considered Report No. 12.7 "Update on Land Tenure issues at the Byron Bay Swimming Pool" and resolved as follows:

### 10 11-206

*"Council note the report."*

15 The report provided the history and an update on the land tenure issues at the Byron Bay Swimming Pool following receipt of correspondence dated 27 January 2011 from the Land and Property Management Authority (LPMA) (<http://www.byron.nsw.gov.au/meetings/2011>).

20 At its Reserve Trust Committee Meeting of 9 June 2011, after considering report "3.1 Byron Bay Memorial Swimming Pool Complex- proposed 12 Month Lease and Management Contract" (<http://www.byron.nsw.gov.au/meetings/2011>) Council resolved:

### 11-469

25 *"That Council, as Reserve Trust Manager, grant a 12 month Lease and Management Contract to the current managers being Fishheads @Byron Pty Limited of the premises being the Byron Bay Memorial Swimming Pool Complex which is in part located on Crown Reserve No 82000 in accordance with the terms and conditions contained in the documentation shown at Annexure 1(a) (#1080849) for:*

- 30 a) *A 12 month period commencing 1 July 2011 and terminating on 30 June 2012; and*  
b) *A further 12 month option commencing 1 July 2012, and terminating on 30 June 2013 at the discretion of the Minister of Lands, subject to the approval of the Minister for Lands."*

35 The fully executed Lease and Management Contract was forwarded to Crown Lands and was returned to Council with Ministerial Consent.

40 The current Lessee (Fishheads @ Byron Pty Limited) wrote to Council with carbon copy to Department of Primary Industries – Crown Land Division on 9 February 2012 seeking Council's consent to extend the Lease for a further 12 months and requesting Council to obtain appropriate agreement and approval from Minister of Lands (refer Annexure 2(a)).

45 Council received a letter from the Department of Primary Industries dated 9 February 2012 stating that should Council or the Trust have no objection to the renewal of the lease for 12 months, as per the conditions of the current lease, then the Trust may proceed with the execution of a new lease for 12 months subject to the same conditions of the original lease and with the removal of the option for extension. Attached at Annexure 2(b) is a draft copy of the proposed Lease and Management Contract subject to the same terms and conditions, and with the removal of the option, for Council's information.

50 Council will consider a separate report titled Byron Bay War Memorial Swimming Pool –12 month option – Lease and Management Contract, which is included in the Agenda papers for the 22 March 2012 Ordinary Council Meeting.

55 Prior to Council considering the staff recommendation contained in the report to Ordinary Council Meeting scheduled for 22 March 2012 titled "Byron Bay War Memorial Swimming Pool - 12 month option - Lease & Management Contract", Council, in its capacity as Reserve Trust Manager, will

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MARCH 2012

(10)

need to determine on what terms and conditions to offer the new Deed and Management Contract to the current managers.

5 Management recommends that Council as Reserve Trust Manager, grant an extension to the 12 month Deed and Management Contract to the current Managers being Fishheads @ Byron Pty Limited of the premises being the Byron Bay War Memorial Swimming Pool Complex which is in part located on Crown Reserve No 82000 on the terms and conditions contained in the Draft Lease and Management Contract provided at Annexure 2(b).

10 The period of the Draft Lease and Management Contract is for 12 months commencing 1 July 2012 and terminating on 30 June 2013 with the Rent and Management Fee be indexed where necessary.

## **Financial Implications**

15 The Minister has granted consent for the option for a further 12 months on the same terms and conditions of the original lease.

20 The original lease has provision for increases in both the Management Fee and Rent in line with the Consumer Price Index (CPI), (all groups) Sydney. The current fees are:

Management Fee	\$184,634.34 excluding GST
Rent	\$206,389.00 excluding GST

25 The increase will be applied in September 2012 once the CPI figures are published for July 2012 in accordance with the lease.

## **Statutory and Policy Compliance Implications**

30 Crown Lands Act 1989

Approximately 28% of the site is part of Crown Reserve Trust No 82000 for which Council is the Reserve Trust Manager.

35 Pursuant to s102 of the *Crown Lands Act* 1989, a Reserve Trust may not lease land within a reserve unless:

- 40
- (a) the trust has decided that it is desirable to do so on the terms and conditions specified in the decision;
  - (b) the trust has applied to the Minister in writing for consent; and
  - (c) the Minister has consented in writing to the proposal.