



# Byron Shire Council



## Agenda

### Byron Shire Reserve Trust Committee Meeting Thursday, 25 October 2012

held at Council Chambers, Station Street, Mullumbimby  
commencing at 2.00pm

*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.*

A handwritten signature in black ink that reads 'R. E. Darney'.

Ray Darney  
Acting General Manager

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## 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)

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## 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

25 OCTOBER 2012

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## BUSINESS OF MEETING

1. APOLOGIES
2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
3. EXECUTIVE MANAGER’S REPORT

### **Corporate Management**

- 3.1. Temporary Market Licence – Byron Bay Community Association Inc .....2

# BYRON SHIRE COUNCIL

## CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORT

**Report No. 3. 1. Temporary Market Licence – Byron Bay Community Association Inc**

**Executive Manager:** Corporate Management

5 **File No:** #E2012/6662

**Theme:** Corporate Management, Property, Procurements and Contract Services

**Summary:** Byron Bay Community Association Inc has applied for a temporary licence to hold a Beachside Artisan Market on three (3) separate dates in 2013.

Byron Bay Community Association Inc has previously applied for, and been granted licences for the same Market at the same location in 2010/2011 and most recently December 2011, April 2012 and September 2012.

This report outlines Council's obligations as Reserve Trust Manager in granting artisan market licences without a competitive process and recommends that Council grant a temporary licence for the Beachside Markets until such time as the draft Market Policy is adopted and expressions of interest are called for ongoing licences.

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### RECOMMENDATION:

- 10
1. That Council, as the Reserve Trust Manager, resolve not to call a competitive process to establish a licence to conduct Beachside Artisan Markets on R82000 due to the following circumstances:
    - 15 a. There is no provision under the current Policy – Markets within Byron Shire to facilitate a competitive process to establish ongoing agreements for Markets; and
    - 20 b. The new draft Policy – Markets on Council Owned and/or Controlled Land, which is being developed by Council, to include the appropriate provisions for a competitive process is not yet adopted.
  - 25 2. That Council, as Reserve Trust Manager, authorise the General Manager to issue a temporary licence to the Byron Bay Community Association Inc for a beachside (artisan) market to be held once in January 2013, March 2013 and September 2013.
  - 30 3. That a non-commercial temporary licence fee for use of council owned and controlled land be charged and the bond be waived. The charges to apply are an application fee of \$170.00 and licence fee \$320 per market.

### Attachments:

- 35 • Byron Beachside Market Application 2013 #E2012/6439 [14 pages] ..... **Annexure 1**

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

25 OCTOBER 2012

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## Report

### Beachside Market

- 5 Beachside Markets to be held on Denning Park, Byron Bay part of  
Crown Reserve R82000 Byron Bay Beach Reserve  
Reserve Trust - Byron Coast Reserve Trust  
Purpose – Public Recreation  
Owner – Department of Primary Industries-Crown Lands Division  
10 Trust Manager – Byron Shire Council  
Zoned – 7F1 – Coastal Lands  
Plan of Management – no adopted Plan of Management

### History

- 15 The beachside market has historically been an arts and craft market held once per year after  
Christmas since approximately 1995. It was originally a fair run on behalf of the Lions Club and  
the Byron Bay Community Safety Committee to support the Lions Club and the Safety  
20 Committee's entertainment and safety initiative for New Years Eve. Most recently, temporary  
licences have been issued under delegated authority for the event once in December 2008 and  
once in December 2009, both to the Lions Club.

- On 16 October 2010, the Lions Club wrote to Council advising that the Byron Community  
Association Inc would be taking over the management of the market to assist them in their  
25 fundraising endeavours.

- Council received an application from Byron Bay Community Association Inc for the Beachside  
Artisan Market and issued a licence under delegated authority for the market to be held on 29  
December 2010. The market was held on 5 January 2011 as the temporary licence had  
30 conditions allowing the option of an alternate date in case of wet weather, and this option was  
exercised.

- Byron Bay Community Association Inc. have applied and been issued temporary licences under  
delegated authority in accordance with the current Market Policy and relevant legislation for  
35 Beachside Artisan Markets as set out below:

<b>Licence Date</b>	<b>Licensee</b>	<b>Term</b>
15/11/2010	Byron Bay Community Association Inc.	1 day – 29 December 2010 Alternate date – wet weather 5 January 2011
29/03/2011	Byron Bay Community Association Inc	1 day – 23 April 2011 Alternate date – wet weather 26 April 2011

- On 25 July 2011 Council received an application for the issue of a temporary licence from Byron  
Bay Community Association Inc. for a Beachside Artisan Market at Denning Park which was to be  
40 held on Saturday 24 September 2011 to benefit the Rural Fire Service and Fletcher Street  
Cottage. This request was the subject of a report to Council's Reserve Trust Meeting on 13  
October 2011 titled "3.1 Temporary Market Licence – Beachside Artisan Market", Council  
resolved [11-807]:

- 45 "1. That Council, as the Reserve Trust Manager, resolve not to call a competitive process  
to establish a licence to conduct an Artisan Beachside Market on R82000 due to the  
following circumstances:

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a) *There is no provision under the current Policy "Markets within Byron Shire to facilitate a competitive process to establish ongoing agreements for Markets; and*

5 b) *The new draft Policy "Markets on Council Owned and/or Controlled Land", which is being developed by Council to include the appropriate provisions for a competitive process. is not yet adopted.*

10 2. *That Council, as Reserve Trust Manager, authorise the General Manager to issue a temporary licence under delegated authority to the Byron Bay Community Association Inc for a beachside market to be held once in December 2011, April 2012 and September 2012."*

## Current

15 On 13 September 2012 Council received an application for the issue of a temporary licence from Byron Bay Community Association Inc for a beachside (artisan) market at Denning Park on the following dates:

20	<b>Day</b>	<b>Alternate day in event of bad weather</b>
	Wednesday 2 January 2013	Tuesday 8 January 2013
	Saturday 30 March 2013 (Easter)	Tuesday 2 April 2013 (Easter)
25	Saturday 28 September 2013	Tuesday 1 October 2013

The Rural Fire Service will be the "Charity of the Day" for each of the markets with each market also having a second "Charity of the Day" involved:- The Lions Club in January, (To Be Advised) in March; and Liberation Larder in September.

30 There are no other market events in the Shire scheduled for the above dates except for the New Brighton Farmers Market which takes place each Tuesday morning.

35 Management have been advised by the Crown Lands Division that Ministerial consent is not a requirement for licences of a temporary nature. Council as Reserve Trust Manager has the discretion to issue such licences in accordance with Section 108 of the Crown Lands Act.

40 In considering whether to call expressions of interest for a licence for Beachside Markets, the Reserve Trust Committee must consider any other known interest in a licence for this activity; or any other likely discernable interest, given its experience and knowledge of the Reserve as Reserve Trust Manager. The ultimate decision is that of the Reserve Trust Committee who should take into consideration what is in the best interest of the Reserve.

45 As Denning Park is on the forefront of Main Beach Byron Bay, it is heavily utilised as a public park.

50 Regular applications for temporary licences for sporting events include the Byron Lighthouse Fun Run, Byron Triathlon, Winter Whales Ocean Swim Classic, Ocean Ski-board paddle, various Surf Carnivals and Surfing competitions.

Other regular events include the NAIDOC celebration, Reclaim the Night, Schoolies Safety Hub, Carols by the Sea and the New Years Eve Family Event.

55 Other applications for temporary licences received this year include a peace rally, a Breast Cancer Day event, Sea Shepherd's end of year fundraiser, Byron Youth Service's 'Cringe the Binge' picnic, a Westpac Life Saver Helicopter Charity fundraiser, eleven film/photo shoot

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applications, approximately sixty weddings and annually issue no more than ten other types of activities (fundraising, memorial services and private functions).

5 The Reserve Trust Committee should also consider if the nature of the activity is such that it is considered ongoing or long term, would a better value for money outcome be obtained by seeking an expression of interest process. The Reserve Trust Committee may be called to justify any decision in relation to licensing should the Crown so request. Such requests are usually limited to when the Crown receives complaints or has concerns regarding due consideration of competing interest for the Reserve.

10 Council's draft Policy 5.51 Markets on Council Owned and/or Controlled Land was the subject of a Report to Council at its Ordinary Meeting on 30 August 2012. The report recommended the formation of a project reference group to undertake another review of the Market Policy. The calling of expressions of interest to establish ongoing Market Licences is part of the draft Market Policy. A timetable established for the calling of expressions of interest for Market Licences contained in that report does not envisage that this process will be underway until October 2013.

20 Any expression for interest for a Market Licence to be issued over Council managed land will be reported through that process to the Reserve Trust Committee for endorsement prior to seeking Ministerial Consent. When the time comes, the Byron Bay Community Association Inc will be able to respond to that call with an expression of interest for a long term licence for markets over any Council owned and/or Controlled Land, including Denning Park.

25 There has been significant consultation with the Crown over the draft Policy and the Crown Lands Division is aware that it is not yet finalised.

30 If the Reserve Trust Committee considers it appropriate to issue a temporary licence to the Byron Bay Community Association Inc for the Beachside Markets, without calling for expressions of interest, it could resolve as recommended:

- 35 1. *That Council, as the Reserve Trust Manager, resolve not to call for a competitive process to establish the proposed licence to conduct Beachside (Artisan) Markets on R82000 due to the following circumstances:*
  - 40 a. *There is no provision under the current Policy – Markets within Byron Shire to facilitate a competitive process to establish ongoing agreements for Markets; and*
  - 45 b. *The new draft Policy – Markets on Council Owned and/or Controlled Land, which is being developed by Council to include the appropriate provisions for a competitive process is not yet adopted.*
- 50 2. *That Council, as Reserve Trust Manager, authorise the General Manager to issue a temporary licence under delegated authority to the Byron Bay Community Association Inc for a beachside (artisan) market to be held once in January 2013, March 2013 and September 2013.*
3. *That a non-commercial temporary licence fee for use of council owned and controlled land be charged and the bond be waived. The charges to apply are an application fee of \$170.00 and licence fee \$320 per market.*

## **Financial Implications**

Council's adopted fees and charges for temporary market licences are \$170.00 per application and \$320.00 per market.



**Statutory and Policy Compliance Implications**

**CROWN LANDS ACT 1989**

5 Division 5 - Trust property

*108 Temporary licences*

- (1) A reserve trust may, in respect of the whole or any part of a reserve, grant temporary licences for grazing or any other prescribed purpose.
- 10 (2) A temporary licence may be granted subject to conditions and is also subject to such conditions as may be prescribed.
- (3) A temporary licence may not be granted for any purpose for which an authority, permit, lease or licence may be granted under the [Fisheries Management Act 1994](#).
- 15 (4) A temporary licence ceases to have effect on the expiration of the prescribed period after it is granted unless it is revoked sooner or is granted for a shorter period.

The Crown Lands NSW Business Directive 2004 states:

20 “Government policies and guidelines underpin the following principles which need to be followed for commercial leasing & licensing of Crown land.

- The standards of probity, ethics and integrity from all parties in the supply & dealings of Crown Land.
- 25 - Fair opportunity for all prospective parties to compete for state owned assets.
- Accountability and consistency for all Crown Lands NSW dealings in Crown Land.
- Obtaining the full market value for the highest and best use of Crown land for the benefit of the whole community
- 30 - Provide a rigorous and transparent decision making regime for commercial leasing and licensing of Crown Land.”

35 A commercial lease is defined in the Directive as “any lease, the purpose and /or effect of which provides the opportunity for the holder to generate an income.”

The objectives of the Directive include ensuring that:

- 40 - Leasing of Crown land occurs through an open, fair and impartial process.
- Leasing is carried out on equitable terms and conditions consistent with probity standards in line with government policy, National Competition Policy, and the Independent Commission Against Corruption (ICAC) guidelines.

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**ICAC Guidelines**

An open competitive selection process such as a tender or expression of interest process enables Council to demonstrate accountability and transparency and makes it difficult for private interests to influence, or be seen as influencing the outcome of a contract.

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The “*ICAC Guidelines for managing risks in direct negotiations*”, May 2006”, states:



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*“It is not acceptable to automatically reappoint an incumbent whose fixed term contract is about to expire.”*

5 *“Doing business with government is a key driver of economic activity and many private firms and not-for-profit organisations rely on access to government contracts in order to stay in business. Direct negotiations can unfairly exclude capable firms and employ staff, pay taxes and contribute to the economy.”*

10 *“Obtaining best value for public money is a fundamental principle of public sector work. When it is known that there are other proponents who could feasibly compete for a contract, agreeing to direct negotiations with a single proponent increases the risk that the agency may not obtain best value for money. When a proponent does not have to compete for contracts there is a higher risk that the proponent may unjustifiably increase profit margins, exaggerate expenses or otherwise boost returns on the contract.”*

15 *“Furthermore, when an agency restricts the number of parties with which it does business, it also limits the number of potentially useful ideas, solutions and options that it has access to.”*