



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting Thursday, 20 December 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, enclosed in a black rectangular box.

Phil Warner
Acting 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

20 DECEMBER 2012

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BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. EXECUTIVE MANAGER'S REPORTS

Corporate Management

3.1. Bangalow Scout Hall land tenure issue.....2

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

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CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORT

Report No. 3.1. Bangalow Scout Hall land tenure issue

5 **Executive Manager:** Corporate Management
File No: #E2012/16923

Theme: Corporate Management, Property, Procurements and Contract Services

Summary: The lease by Scouts Australia NSW over Bangalow Scout Hall expired 30 June 2007.

Scouts Australia NSW is requesting a new lease.

A recent survey confirms the Bangalow Scout Hall sits upon two parcels of land being Part Lot 1 DP 359227 (Crown Reserve 72386 Bangalow Showground) and Part Lot 1 DP 366810 (Community Land adjacent to Bangalow Showground).

This report seeks the Reserve Trust's notation of the land tenure issue and seeks the consent of the Reserve Trust Manager to enter into a temporary licence agreement for that part of the Scout Hall that sits upon the Crown Reserve whilst the land tenure issue is resolved.

Council will consider a separate report at its Ordinary Meeting 20 December 2012 seeking consent to issue a temporary licence agreement for that part of the Scout Hall that sits upon Council owned Community Land for the same licence period.

RECOMMENDATION:

- 10
1. That the Reserve Trust note the contents of this report.
 2. That the Reserve Trust Manager grant a temporary licence, under Section 108 of the Crown Lands Act, to Scouts Australia NSW for part Lot 1 DP 359227 (Crown Reserve 72386) substantially in the form at Annexure 1(a) (#E2012/15299).
- 15

Attachments:

- 20
- Draft temporary trust licence agreement #E2012/15299 [29 pages]Annexure 1(a)
 - Survey of Bangalow Scout Hall #S2012/2546 [2 pages] Annexure 1(b)

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Report

Land information

5 The Bangalow Scout Hall sits upon two parcels of land being:

Description: Part Lot 1 DP 359227 being Crown Reserve R72386

Owner: Crown

Name of Trust: Bangalow Park Showground Reserve Trust

10 Trust Manager: Byron Shire Council

Purpose: Public Recreation gazetted 22/08/47

Description: Part Lot 1 DP 366810

Owner: Byron Shire Council

15 Classification: Community Land

Category –General Community Use

Zoning – 6(a) Open Space

Plan of Management – Generic Plan of Management for Community Land Categorised as
General Community Use – Community Facilities #653083 adopted 24 February 2005.

20

History

On 7 December 1987 Council entered into a Trust lease agreement with The Scout Association of Australia, NSW branch for the vacant land to later become the Bangalow Scout Hall on the following terms:

25

Commencement date 1 July 1987

Term 20 years

Rent \$1.00 per annum

30 That lease expired on 30 June 2007.

Clause 17 of that lease states the following:

35 *“That the Lessor hereby consents to the Lessee constructing at its own expense upon the said lands a Scout Hall in accordance with plans and specifications to be approved by the Lessor. The cost of all services to the building such as water sewerage and electricity shall be the responsibility of the Lessee. At the expiration of this Agreement the said Scout Hall building shall remain the property of the Lessor and the Lessee shall have not right to compensation in respect of same.”*

40

In late 2007 Scouts Australia NSW (Scouts) requested a new lease. Negotiations for a draft Trust lease commenced between Council and the Crown however it was not resolved.

Current

45 In a letter to Council dated 26 June 2012 from Department of Primary Industries – Crown Lands division, they enclosed a letter from Scouts dated 6 June 2012 requesting to renew the lease on similar terms.

50 Crown Lands advised Council (as Reserve Trust Manager) to issue a temporary Trust licence under the provisions of section 108 of the Crown Lands Act 1989 until such time as a Trust lease is in place.

55 Prior to issuing a temporary Trust licence to Scouts, staff requested Scouts to confirm the location of the Scout Hall on a map as Council's GIS mapping system was showing the Scout Hall across two parcels of land. The response from Scouts agreed with Council's GIS mapping

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system. Given the likelihood that the Scout Hall was located upon two parcels of land, rather than Crown Reserve only, staff contracted a survey of the Scout Hall.

5 The survey (attached at Annexure 1(b)) confirmed the Scout Hall sits upon two parcels of land being Part Lot 1 DP 359227 (Crown Reserve 72386 Bangalow Showground) and Part Lot 1 DP 366810 (Community Land adjacent to Bangalow Showground).

10 The outcome of the survey was reported to Crown Lands and staff requested the matter be listed on the agenda for the next meeting between Crown Lands and Council.

15 In an email to Council dated 26 October 2012, Crown Lands confirmed the matter has been listed, however, in the interim to reduce the risks to all affected parties and the general public Crown Lands have advised that the Trust should arrange a temporary Trust licence to Scouts under provisions of section 108 of the Crown Lands Act 1989, to allow time to consider all options available for the Trust, Council and the Minister.

20 Council will consider a separate report at its Ordinary Meeting 20 December 2012 seeking consent to issue a temporary licence agreement for that part of the Scout Hall that sits upon Council owned Community Land.

A further report will be provided to the Reserve Trust following the meeting between Crown Lands and Council.

25 **Financial Implications**

The cost of the survey has been funded in the current Budget.

30 Nominal rent has been proposed for the temporary Trust Licence until such time as a rent determination is required for the purposes of a lease/licence.

Statutory and Policy Compliance Implications

Crown Lands Act 1989

108 Temporary licences

35 (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.

40 (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.

45 (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.

Crown Lands Regulation 2006

31 Temporary licences

50 (1) For the purposes of section 108 (1) of the Act, in addition to grazing, the purposes for which a temporary licence may be granted are as follows:

- (a) access through a reserve,
- (b) advertising,
- (c) camping using a tent, caravan or otherwise,

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- 5 (d) catering,
(e) emergency occupation,
(f) entertainments,
(g) equestrian events,
(h) exhibitions,
(i) filming (within the meaning of the Local Government Act 1993),
(j) functions,
(k) hiring of equipment,
10 (l) holiday accommodation,
(m) markets,
(n) meetings,
(o) military exercises,
(p) mooring of boats to wharves or other structures,
(q) sales,
15 (r) shows,
(s) sporting and organised recreational activities,
(t) stabling of horses,
(u) storage.
- 20 (2) For the purposes of section 108 (2) of the Act, in addition to any other condition subject to which a temporary licence is granted, the licence is subject to the condition that the relationship of landlord and tenant is not created between the parties.
- 25 (3) For the purposes of section 108 (4) of the Act, the prescribed period for the expiration of a temporary licence is one year following the date on which it is granted.