



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting Thursday, 13 June 2013

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, appearing to read 'Ken Gainger'.

Ken Gainger
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.

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

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BUSINESS OF MEETING

1. APOLOGIES

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COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER'S REPORT

Report No. 3.1. Commercial Trailer Parking on Crown Reserve, Byron Bay

5 **Executive Manager:** Community Infrastructure
Report Author: Michael King, Manager Infrastructure Planning
File No: #E2013/26030

Theme: Community Infrastructure, Local Roads and Drainage

Summary: Council called for a report on a means by which parking could be provided upon Crown Reserve #82000 for the purposes of two kayak operators parking their trailers.

10 **RECOMMENDATION:**

1. That the Reserve Trust endorse the proposal to provide parking on Crown Reserve 82000 for the placement of trailers used by the kayak businesses at two distinct sites, as shown by Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821).
- 15 2. That the provision of "No Stopping" at the two points of access as shown in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) be referred to the Local Traffic Committee for consideration.
- 20 3. That funds for the proposed works as per the details in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) come from Crown Reserves.

Attachments:

- 25
- Council Drawing #2130/SK1 Proposed Access Loop #E2013/34820 [1 page]Annexure 1(a)
 - Council Drawing #2130/SK2 Access and Paved Areas for Each Operator #E2013/34915 [1 page] Annexure 1(b)
 - Site Analysis by the Two Kayak Operators #E2013/34822 [1 page]Annexure 1(c)
- 30

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Report

A report to the Byron Shire Reserve Trust Committee meeting held 1 December 2011 considered "Commercial Activities". It was resolved:

- 5
- 11-1000:**
1. That Council, as Reserve Trust Manager, recommend to Council:
 - 10 a) That Council adopt the amendments to Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves as detailed at Annexure 1(a) (#939163), to enable the calling of Tenders for Commercial Activities, and that public comment not be sought on the amended Policy.
 - 15 b) That Council call tenders to establish sub-licences for Commercial Activities for Commercial Surf Schools, Personalised Surf Schools and Sea Kayak Tours.
 2. That report be provided to the Reserve Trust Committee in relation to the position, access, design and an indicative costing for the provisions of trailer parking for Sea Kayak operators on R82000 at Byron Bay Main Beach adjacent to the Clarkes Beach Car Park.
- 20

This report addresses part 2 of res 11-1000.

25 Figure 1: Locality of kayak operations upon Reserve #82000



30 Within the report of 1 December 2011, the following advice in regards to trailer parking on the reserve was stated:

35 "Council's current Sea Kayak sub-licensees pay \$20,000 and \$30,000 per annum respectively for their sub-licences. They have requested that Council consider parking options for their trailers. Having a dedicated parking area on the Reserve would alleviate the parking issue. They would be required to remove their trailers at the end of each day. A further report would be prepared for the Reserve Trust Committee in relation to position, access, design and indicative costing in relation to an area of the Reserve being utilised for parking of the Sea Kayak Tour operators' trailers."

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Further in the report, the following advice was stated in regards to funding of any works to provide trailer parking:

5 *“As the income is generated on Crown reserves, they are only able to be expended in relation to maintenance and development of those reserves. There is currently approximately \$400,000 held in the Crown Reserve of which approximately \$60,000 per annum is income raised by Commercial Activities. It is proposed that Reserve Funds be utilised to provide trailer parking upon the Main Beach Reserve adjacent to the Clarkes Beach car park for the Sea Kayak Operators. A further report will be provided to the Reserve Trust Committee in relation to position, access, design and indicative costing to construct the parking area.”*

10

Ongoing compliance issues remain relating to the parking of the trailers along the kerb side of Lawson Street.

15

Between 26 July 2008 to date, 34 infringements have been issued.

One of the operators appeared before the Byron Bay Local Court on 8 December 2011 in respect of the offence of "Disobey No Parking sign".

20

The operator entered a plea of guilty. The offence was found proved but dismissed pursuant to the provisions of Section 10 of the Crimes (Sentencing Procedure) Act.

In taking that course the Court indicated that it had regard to undertakings which had been foreshadowed.

25

The operator foreshadowed that it would undertake as follows:

30

1. the company will ensure that all vehicles and trailers associated with the company will comply with the posted parking restrictions on Lawson Street, Byron Bay
2. the company will ensure that kayak trailers are removed from the northern side of Lawson Street, Byron Bay prior to posted parking restrictions coming into effect
- 35 3. the company will not park any vehicles and trailers associated with the company on Clarkes Beach Reserve under any circumstances
4. the company will bring the terms of these undertakings to the attention of all of its officers and employees

40

Notwithstanding the Undertaking being foreshadowed and having received the benefit of the proposed undertaking on sentence, it has never been signed by the operator and its terms have not since been complied with.

45

On 10 October 2012 Council informed the applicant by email that:

50 *“Your current sub-licence agreement with Council has no restriction for parking on the reserve. There is an outstanding resolution for Council to consider a report on the provision of trailer parking on the reserve. This matter is with our Community Infrastructure division for action. Your previous request dated 3 August 2012 was forwarded to Community Infrastructure for a response. I will also forward your email of today's date to Community Infrastructure for a response.”*

55

On 2 January 2013 Council informed the applicant by email that:

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"I confirm that if you can physically get your trailer onto the reserve (as your 28/12 email suggests you can) that is where you should be parking (during operational hours...)"

5 In a later conversation Council indicated that it would be appropriate if the trailer remained parked on the reserve overnight should its removal from the reserve at the end of operating hours be blocked.

Council has made it very clear since October 2012 that parking was available on the reserve, thereby obviating the need to park on the street.

10 On 2 January 2013 Council confirmed that the Rangers had been instructed not to infringe the trailer whilst further inquiries take place as to the status and content of the sub-licence.

15 Thereafter, as there appeared to be a readily available interim solution, Council informed the operators that it intended to withdraw the instructions to the Rangers in relation to the trailer should it be parked on the street outside posted times as and from (and including) Monday, 7 January 2013.

Recently one operator requested Council review and withdraw four Penalty Notices, being:

1. 27 December 2012 disobey no parking sign Lawson Street
2. 28 December 2012 disobey no parking sign Lawson Street
- 20 3. 20 January 2013 disobey no parking sign Lawson Street
4. 02 February 2013 disobey no parking sign Lawson Street

25 Two of the offences (3 and 4) occurred in 2013 at a time after Council had given instructions to the Rangers and advice to the operators. Notwithstanding the withdrawal of the instructions, Council considered that it remained the case that the whole parking issue was under discussion and that exceptional circumstances probably existed for offences 3 and 4 to be withdrawn, but that those circumstances did not exist for offences 1 and 2.

30 There have been several recent meetings between the two kayak operators and Council staff regarding the design of a trailer parking area on the Reserve. Most recently an on-site meeting with Community Infrastructure design staff has been held to discuss in detail a means of satisfying their requirements.

Options for Parking Kayak Trailers

35 There are a number of options available for the trailer parking, proposed either by staff or the kayak operators. They include:

1. remove the parking restrictions along the north side of Lawson Street – currently 'No parking /1.00am to 5.00am'
- 40 2. provide exemptions to the parking restrictions along Lawson Street to the kayak operators
3. provide an indented (bus bay) parking area for the sole use of the kayak operators
4. provide designed sheds that are lockable and potentially for multi-purpose use on the reserve (one at each of the two locations)
5. provide a paved area to cater for both operators at the one locality within the reserve
- 45 6. provide a paved area for each operator separately upon the reserve
7. allow parking of the trailers upon the reserve without, any paved area being provided

50 Points 1 – 4 above are not addressed within the context of this report. However, in brief, there are no provisions within the traffic/parking regulations in NSW for restricted on-road parking being made available for the sole use of commercial enterprise, other than for the use of taxi services as a transport provider.

Consideration of the sole use of a commercial enterprise would be contrary to Council's Enforcement Policy, which is to the following effect:

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“The decision as to the appropriate action will not be influenced by:

1. *the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;”*

5 Activities, as it is referred to in the Enforcement Policy, would include the commercial activities of the kayak operators.

10 Further, if an indented (bus bay) kerb side area were to be provided, the same regulations for kerb side parking apply – other than if it was built for the purpose of buses, taxis or emergency services.

15 As for point 4 above, this is a matter for any future consideration in terms of the ongoing commercial arrangements for the use of the Crown Reserve. The Site Analysis (Annexure 1(c)) provided by the two operators shows the locality of their operations and issues for such a proposal as this.

Points 5 and 6 are dealt with in more detail below.

20 Options for Paved Parking on the Crown Reserve

Options 5 and 6 have been investigated and discussed with the kayak operators further. Option 7 above is considered undesirable, as this will lead to the deterioration of the grassed areas. This means the loss of grass, thus creating an area that could become sloppy in wet periods and loose gravel trip hazards during dry periods.

25 Paved area to cater for both operators at the one locality

As a starting point for discussion with the kayak operators, a preliminary design of a paved parking area was carried out as an extension of the Clarks Beach car park – refer to Council drawing number 2130/SK1 at Annexure 1(a).

30 It provides for a drive-through area to the west of the car park and for two parking spaces for the kayak trailers. There are lockable gates at both the entry and exit to ensure it remains for the sole purpose of the operators. It has limited impact on existing car parking.

35 The area provides for a concrete pavement, rather than asphalt. This is to avoid break up of the pavement caused by diesel drippings from the motors of the vehicles used by the operators. A coloured concrete could be used if desirable.

40 Whilst the initial intent was for concrete in view of the operators’ vehicles also parking in the area, it may be preferable to cater solely for the parking of the trailers, with the vehicles towing them being removed once the trailers are in place.

45 Operator comments:- they believe that this proposal is unsatisfactory as it is bad business to have two operators so close together when competing for business.

This option was referred to the Crown Lands Department and it was endorsed.

50 The other option as described below was not referred to them. However, it is expected that as they endorsed the proposal with more impact on the reserve, they are likely to endorse the option with lesser impact.

Paved area for each operator separately

55 In view of the operator’s desire to be separated, and preferably to be at their current locations, the option of two paved areas is presented for consideration - refer to Council drawing number 2130/SK2 at Annexure 1(b).

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This proposal involves paved areas built to suit the size required for the parking and for each to be north of the foot path. Each requires its own driveway crossing from the street. The localities are such that these driveways will have minimal, to no, impact on kerb side parking.

5

The Cape Byron Kayaks site (east) will utilise the existing driveway crossing currently available for their use as well as council service vehicle access.

10

The GoSea Kayak site (west) would utilise the bikeway access point directly opposite Cowper Street. This may require minor widening as well as relocation of the bike hand rails. This is considered to be an acceptable point of access as there is minimal movement of the kayak vehicles impacting on minimal bike usage at this point.

15

In both cases, though there is no parking restriction at these two kerb crossing points to ensure clear access, it is considered appropriate to provide such restrictions for both the operational benefit of the kayak businesses but also for free access by cyclists and service vehicles to the reserve. In this regard the restrictions could be provided by way of *No Stopping* signs or by the provision of kerb blisters.

20

The preferred locality is close to existing trees within the reserve. This will provide some shade to the trailers and the users of the kayaks as well as provide some visual shielding of the trailers.

25

Operator comments: This proposal is preferred by the kayak operators. The precise location of the paved pads can be determined within the approximate locality as shown on the plans in consultation with the operators.

Other matters for consideration

30

There are a number of other matters that may have a direct impact, or at least an indirect impact, on the proposal to park the kayak trailers and/or vehicles upon the reserve.

Paid Parking

35

Council is to consider a report into implementing a broader paid parking scheme for Byron Bay later this year. One area for consideration is the extension of paid parking along the length of Lawson Street, up to the intersection with Massinger Street and the Clarkes beach access road. Whilst this does not at this time have a direct impact on the kayak operators, it will become an issue for them if they expect to continue parking on the road area.

Angle parking

40

As part of the paid parking proposals for Byron Bay, angle parking along one side of Lawson Street is being investigated. The manner in which this may be able to be implemented is not yet determined, but any proposal for angle parking along the north side of Lawson Street will impact on the current operations of the kayak businesses.

Pedestrian/cyclist safety

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Any increase in vehicular movement across a footpath area and/or in a reserve is a matter for consideration. In this instance, there is expected to be minimal movement of vehicles and thus minimal conflict with cyclists and pedestrians.

Jarjum Playground

50

A number of years ago a proposal for a playground (Jarjum Playground) were planned for Reserve 82000 in the area west of the Clarkes Beach car park. Whilst these plans did not progress to development of the playground, should consideration in the future be given to it, the proposed areas for the kayak parking should have no impact on the proposal.

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Financial Implications

In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

5

- The estimated staff hours for the preparation of this report was approximately 7 hours.

As per the report to Council on 1 December 2011, any funding source for any works that Council will resolve on for this matter will come from the Crown Reserve.

10

Detailed estimates of the costs of the various options for providing paving on the reserve have not been carried out to-date. Detailed estimates for the various options are not yet available. However, preliminary estimates for the options described above, are:

Plan Number	Estimate (preliminary)
Council Drawing #2130/SK1	\$40,000
Council Drawing #2130/SK2	\$10,000

15

Though detailed estimates are not provided to-date, the proportional differences of these estimates give a clear indication of the differences between the two options.

Statutory and Policy Compliance Implications

20

Nil

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CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORTS

Report No. 3.2. Byron Bay Swimming Pool - Lease/Management Agreement

Executive Manager: Corporate Management

5 Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

File No: #E2013/19154

Theme: Corporate Management - Property, Procurement and Contract Services

Summary: The current agreement between Crown Lands, Council and Fishheads@Byron Pty Ltd (Fishheads) for the lease and management of the Byron Bay War Memorial Pool Complex (which includes the Café) expires on 30 June 2013. There is no provision for a further term, and the agreement requires Fishheads to vacate the premises at that time.

The tenure of the land on which the Byron Bay War Memorial Swimming Pool Complex (the Complex) is located, involves four land parcels being part Crown Reserve R82000 (part Lot 10 DP 1049827), part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049).

This report relates to part Crown Reserve R82000 Road Reserve. A report about part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049) is included in the Ordinary Meeting Agenda for 13 June 2013.

In accordance with resolution 13-145, this report recommends the Reserve Trust grant a new Lease/Management Agreement with the Fishheads@Byron Pty Ltd over the Byron Bay Swimming Pool Complex which is in part located on Crown Reserve R82000.

10 RECOMMENDATION:

1. That the Reserve Trust, in accordance with resolution 13-145, grant the Lease/Management Agreement over part Crown Reserve R82000, Byron Bay Swimming Pool Complex, to Fishheads@Byron Pty Ltd in accordance with the terms and conditions contained at Annexure 14(a) (#E2013/17509) for a period of 24 months commencing 1 July 2013 and terminating on 30 June 2015, subject to Crown Ministerial consent.
15
2. That Council enter into the Deed of Release from Fishheads@Byron Pty Ltd at Annexure 14(c) (#S2013/4783) in satisfaction of resolution 13-145 item 4.
20

Attachments:

- 25 • Draft lease/management agreement #E2013/17509 [61 pages] **Annexure 14(a)**
- Email from Fishheads@Byron Pty Ltd #E2013/19127 [1 page]..... **Annexure 14(b)**
- Deed of Release signed by Fishheads@Byron Pty Ltd #S2013/4783 [5 pages]..... **Annexure 14(c)**

Please note: Annexures 14(a),(b),(c) can be located in the Ordinary Meeting Agenda for 13 June 2013.

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Report

5 The current agreement between Crown Lands, Council and Fishheads@Byron Pty Ltd (Fishheads) for the lease and management of the Byron Bay War Memorial Pool Complex (which includes the Café) expires on 30 June 2013. There is no provision for a further term, and the agreement requires Fishheads to vacate the premises at that time.

10 The tenure of the land on which the Byron Bay War Memorial Swimming Pool Complex (the Complex) is located, involves four land parcels being part Crown Reserve R82000 (part Lot 10 DP 1049827), part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049).

15 A separate report titled Byron Bay War Memorial Swimming Pool –Lease/Management Agreement is included in the Agenda papers for the 13 June 2013 Ordinary Meeting. It contains the history and provides recommendations in relation to part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049).

20 At its Reserve Trust Committee Meeting on 21 March 2013, the Reserve Trust considered a report titled 3.1. "Byron Bay War Memorial Swimming Pool - Lease and Management Contract". That report provided advice that the Reserve Trust had received written consent from the Crown to negotiate with Fishheads@Byron Pty Ltd, rather than offering the agreement through a competitive process. The Reserve Trust resolved **(13-147)**:

25 *"1. Not call for tenders for the proposed lease/management agreement of the Byron Bay Byron Bay War Memorial Swimming Pool Complex (the Complex) for the following reasons:*

- 30 *a) that Crown Lands (as Lessor) has refused to provide its consent to the calling of tenders to establish a new lease/management agreement;*
b) the specialised nature of pool management means that there are limited persons with sufficient experience and skill; and
c) a tenure of two (2) years would be unlikely to result in commercially acceptable tenders.

35 *2. Delegate the General Manager to negotiate a new lease/management agreement for the Complex with the current lessees/managers (Fishheads@Byron Pty Ltd) on a "without admission, without prejudice and without obligation" basis and subject always to all necessary approvals from external agencies and resolutions of the Reserve Trust and Council being obtained.*

40 *3. Endorse the proposed lease/management agreement for the Complex be on the same basis of the existing deed of agreement, refer Annexure 1(b) (#E2013/17509) with the following changes:*

- 45 *a) a 24 month period commencing 1 July 2013 and terminating on 30 June 2015,*
b) the Rent and Management Fee will be indexed where necessary,
c) inclusion of clauses that sever the pool management part of the agreement without fault or liability to any party should there be a plant failure during the term of the agreement, as included at Schedule 3 clause ii of Annexure 1(b),
50 *d) delete the word BYO from Annexure 1, Page 36 of 56, - BB. Contractors Additional Obligations, clause e), and*
e) delete the word BYO from Annexure 1, Page 47 of 56, - 6 KIOSK/CAFE, clause iv.

55 *subject to meeting all statutory requirements relating to any new lease including public notice and public consultation processes, obtaining approval of the Minister of Lands, as well as the Minister for Local Government if necessary.*

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4. That the lease/management agreement be subject to the following:

- 5 a) the lessees releasing Council, as Reserve Trust Manager, from all (real or perceived) claims, damages, liability, actions or the like, arising from anything to do with the tender of the Complex, leases or generally their occupation of the Byron Bay War Memorial Swimming Pool Complex at any time, such release to be in writing to the satisfaction of the General Manager and Councils solicitors; and
- 10 b) the lessees personally guaranteeing that they will vacate the premises by the end date of the proposed new lease, namely 30 June 2015, and indemnifying Council as the Reserve Trust Manager, from all claims, damages, actions, liability or the like in the event that they do not so vacate the premises.

15 On 25 March 2013 council wrote to the current lessees/managers (Fishheads@Byron Pty Ltd) about the proposed lease/management agreement at Annexure 14(a) and on 26 March 2013, Council received agreement to the proposed lease/management arrangements from Fishheads (refer Annexure 14(b)).

20 The current lessees/managers have provided an executed Deed of Release (Annexure 14(c)) satisfying the Reserve Trust's requirements contained in resolution 13-147 item 4.

Financial Implications

25 Current lease rental and management fees are set out below:

Council's Management Fee:	\$184,634.34 ex GST,	\$203,097.77 inc GST
Reserve Trust Rent Income:	\$206,389.00 ex GST,	\$227,027.90 inc GST

30 Plus CPI (all groups Sydney June 2013)

The proposed agreement will retain the same rental and management fee values, which will result in no impact to the draft 2013/2014 budget for these items.

35 In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

- The estimated staff hours for the preparation of this report was approximately 1 hour.

Statutory and Policy Compliance Implications

40 Crown Lands Act 1989

45 As part of the site is located on Crown Reserve certain statutory requirements and obligations under the *Crown Lands Act 1989* must be met in order to issue a valid lease as noted below. (Part of the site is also on operational and road reserve land and the relevant statutory requirements are addressed in a separate report to the Strategic Planning Committee Meeting of 28 March 2013).

50 Crown Lands Act 1989

- Statutory Power:

55 Council has the power to issue a lease of less than 5 years over Crown Reserve land subject to Minister's consent (sections 102(2)(b)).

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- Public Consultation Requirements:

There are no public consultation requirements for Council, as Reserve Trust Manager, in relation to the proposed 24 month Deed/Lease.

5

However, if the proposed lease is "*a lease for a term that, by the exercise of an option, could exceed 5 years*", the Minister must publish a notice of an intention to give consent to such a lease at least 14 days before giving such consent (s102(2)). By inference, this is a type of public consultation obligation on the Minister in certain circumstances. Staff have written to the Department of Lands asking them to consider whether this public consultation process is necessary in relation to the proposed 24 month Deed/Lease and, if so, for the necessary notice to be published in a timeframe which would permit Minister's approval to be granted prior to 30 June 2013.

10

- Mandatory Considerations prior to Determination:

There are no mandatory considerations which Council as Reserve Trust Manager must have regard to prior to resolving whether to issue a Deed/Lease.

20

Minister's approval of the Deed/Lease is of course necessary but this is not a prohibition against the Reserve Trust resolving to issue a Deed subject to Minister's approval being obtained.

- Determination:

25

Section 102(1)(a) requires the Council, as Reserve Trust Manager, to resolve to issue a lease "*on the terms and conditions specified in the decision*". That is, the wording of the resolution must be something like "Council resolves to grant a Deed/Lease to the current managers of the Pool Complex on the terms and conditions contained in the Deed/Lease."

30

- Post Determination Requirements:

Post any resolution of the Council to grant a lease, Minister's approval must be sought, if it has not already been provided, and staff would address this requirement if necessary.

35

102 Consent of Minister to sale, lease, easement, licence or mortgage

(1) A reserve trust may not sell, lease or mortgage land, or grant an easement or a licence (except a temporary licence) in respect of land, comprising the whole or any part of the 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) in the case of a proposed sale, the trust has caused a notice to be published in a newspaper circulating in the locality of the land setting out the date and the terms and conditions of the trust's decision, the location of the land and other prescribed particulars,

45

(c) the trust has (in the case of a proposed sale, not earlier than 14 days after the publication of the newspaper notice) applied to the Minister in writing for consent, giving full details of the proposal, and

(d) the Minister has consented in writing to the proposal.

50

(2) The Minister may not give a consent under subsection (1)(d) to:

(a) a sale,

(b) a lease for a term exceeding 5 years, or

(c) a lease for a term that, by the exercise of an option, could exceed 5 years,

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unless at least 14 days have elapsed since notice of intention to give the consent has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

- 5 (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- (4) If the application for consent proposes a sale, lease, easement or licence, the Minister's consent:
- 10 (a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or
- (b) may be specific, approving of a particular contract of sale, lease or licence.
- 15 (5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.
- (6) In giving consent, the Minister may:
- 20 (a) vary the terms and conditions to which the sale, lease, easement, licence or mortgage is to be subject, and
- (b) impose such other terms and conditions as the Minister thinks desirable.
- (7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.

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Report No. 3.3. Markets Licences – Crown Reserves

Executive Manager: Corporate Management

Report Author: Trish Kirkland, Manager Property Contracts and Information Systems

File No: #E2013/30190

Theme: Corporate Management - Property, Procurements and Contract Services

Summary: At its Ordinary Meeting of 30 August 2012, Council considered a report titled "13.20 Markets Policy Review and Expression of Interest for Market Licences" and resolved in part **12-693**:

"5. That Council write to the Crown Lands Division seeking a further extension of all currently extended Market Licence Agreements to March 2014, and provide the following project timetable in support of the request."

This report addresses resolution 12-693 item 5, provides advice from Crown Lands, and recommends the Reserve Trust Committee offer temporary licences to the current farmers market and community market managers in accordance with section 108 of Crown Lands Act.

Related reports titled "Market Licences – Community Land" and "Market Licence – Artisan Market on Railway Park" are included in the Agenda of Council's 13 June 2013 Ordinary Meeting.

RECOMMENDATION:

- 10 1. That the Reserve Trust Committee, in accordance with resolution 12-693, not call for tenders or conduct a similar competitive process until such time as the draft Market Policy is adopted.
- 15 2. That the Reserve Trust Committee, in accordance with resolution 12-693 and advice received from Crown Lands, offer a temporary farmers' market licence to existing farmers' market managers for each farmers' market currently operating on Crown Reserves managed by Council as the Reserve Trust Manager, commencing 1 April 2013 and ending 31 March 2014 under the terms and conditions contained at Annexure 2(b) (#E2013/32559).
- 20 3. That the Reserve Trust Committee, in accordance with resolution 12-693 and advice received from Crown Lands, offer a temporary community market licence to existing community market managers for each community market currently operating on Crown Reserves managed by Council as the Reserve Trust Manager, commencing 25 1 April 2013 and ending 31 March 2014 under the terms and conditions contained at Annexure 2(a) (#E2013/30448).
- 30 4. That the Reserve Trust Committee apply the adopted 2012/13 fees and charges for a Temporary Commercial Approved Activity on Council owned or controlled land of \$220.00 application fee and licence fee per day of \$210 for 8 to 21 market days per annum and \$145.00 for greater than 21 market days per annum.

Attachments:

- 35 • Temporary crown land trust community market licence #E2013/30448 [30 pages] **Annexure 2(a)**
- Temporary crown land trust farmer's market licence #E2013/32559 [30 pages]..... **Annexure 2(b)**

40 *Annexures 2(a) and (b): Due to the size of these documents they have been provided to Councillors on their Agenda CD only. They are also available for viewing on Council's website and as hard copies at community access points throughout the Shire.*

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Report

The current Market licence holders/Market Managers operating markets on Crown Reserves that are managed by Council as the Reserve Trust Manager are:

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Community Markets

Byron Bay Community Association Inc
Byron Bay Community Market held 1st Sunday monthly

10

Bangalow Park Trust
Bangalow Village Market held 4th Sunday monthly

15
Brunswick Valley Woodchop Committee
Brunswick Community Market held 1st Saturday monthly

Brunswick Valley Historical Society Inc
Mullumbimby Community Market held 3rd Saturday monthly

20 Farmer's Markets

Byron Farmers Market Inc
Byron Bay Farmers Market held Thursday weekly

25 The Market Policy and Market Licence arrangements for markets operating on council owned and controlled land in Byron Shire have been the subject of many reports to the Reserve Trust Committee and Council. One of the recent reports, titled "13.20 Markets Policy Review and Expression of Interest for Market Licences" was considered by Council at its Ordinary Meeting of 30 August 2012, refer <http://www.byron.nsw.gov.au/meetings/2012-08-30-ordinary>.

30

The report recommended and Council resolved (**12-693**):

"1. *That Council note the content of this report.*

35 2. *That Council write to the individuals and organisations that provided feedback during the exhibition period of the Policy and Expressions of Interest document and thank them for their contribution.*

40 3. *That Council consider the formation of a project reference group or Advisory committee to undertake another review of the Market Policy.*

45 4. *That Council, for the purpose of item 3 above, receive a full and comprehensive report on the history of Market Licences, current Market Policy, new draft Market Policy, draft Market Policy public submissions, previous Market consultation processes, legal advice, advice and directives from Crown Lands, draft terms of reference, and briefing report.*

50 5. *That Council write to the Crown Lands Division seeking a further extension of all currently extended Market Licence Agreements to March 2014, and provide the following project timetable in support of the request.*

<i>Report to new Council</i>	October 2012
<i>Formation of new PRG or Advisory Committee</i>	December 2012
<i>Committee Policy review and draft completed</i>	March 2013
<i>Committee Recommendation to Council</i>	April 2013
<i>Committee Recommendation Adopted</i>	April 2013

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<i>Place draft amended Market Policy and/or Expression of Interest document on public exhibition</i>	May 2013
<i>Public exhibition period (28 days) to close</i>	June 2013
<i>Review submissions and prepare report to Council (allow 4 weeks)</i>	July 2013
<i>Report to Executive Manager for review</i>	Mid August 2013
<i>Report to Administration for Agenda Delivery</i>	Late August 2013
<i>Report to Council on submissions received, adopt draft amended Market Policy and endorse Expression of Interest/tender documentation</i>	September 2013
<i>Call for Expressions of Interest/tenders for Market Licences</i>	Open call early October 2013 Close call late October 2013
<i>Evaluation of all Expressions of Interest/tenders received and preparation of Evaluation Panel Recommendation Report (allow four weeks)</i>	November 2013

More recently at its Ordinary Meeting held 18 April 2013, Council considered a report titled “12.9 Market Policy Review Project Reference Group”, about resolution 12-693 items 3 and 4, refer www.byron.nsw.gov.au/meetings/2013-04-18-ordinary, which recommended:

- 5
1. That Council note the Markets on Council owned and controlled land – Briefing document at Annexure 4(b) (#E2012/9700) and the Markets on Council owned and controlled land – History document at Confidential Annexure 4(c) (#E2013/14637).
 - 10 2. That Council establish the Markets Policy Review Project Reference Group comprising three Councillors, three interested community representatives and staff nominees of the General Manager.
 - 15 3. That Council authorise the Project Reference Group to undertake a review of the Market Policy in accordance with the constitution with a report due to Council in 20 November 2013.
 - 20 4. That Council authorise the Project Reference Group to consult with community expertise as required, to assist with the review and development of recommendations to Council.
 5. That Council adopt the draft constitution at Annexure 4(a) (#E2012/9824) for the Project Reference Group.

Council resolved **13-173**:

- 25
1. *“That Council note the Markets on Council owned and controlled land – Briefing document at Annexure 4(b) (#E2012/9700) and the Markets on Council owned and controlled land – History document at Confidential Annexure 4(c) (#E2013/14637).*
 - 30 2. *That prior to the formation of a Markets Policy Review Project Reference Group, Council convene a councillor workshop and seek independent legal advice with expertise in competition policy in relation to its obligations, or otherwise, to tender out its services and licences. The advice should be received within 1 month and should specifically address:*
 - 35 a) *the obligation or otherwise to do a cost/benefit analysis prior to making a decision to tender out services*
 - b) *the steps Council should take to satisfy themselves that a tender is required*
 - c) *the impact of a Council local preference policy on the tender process*

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- d) *whether licences, such as the markets, fall under any of the heads specifically mentioned in s.55 of the LGA*
- e) *assuming each licence is likely to involve receipt of less than \$100,000 per annum whether it falls within the exemption within S55(3) of the LGA*
- 5 f) *what specific TPA, ICAC guidelines, LEP and Crown Land Act legislative requirements are likely to be breached if the status quo remains in relation to the markets or other similar activities Council licences;*
- g) *general advice on the best practice tendering process, and subsequent evaluation processes*
- 10 h) *In relation to the most recent draft markets policy put on display in 2011, specifically the advice should address the following:*
- (i) *is it a legal requirement that all mention of "local" and the giving of local preference to stall holders be removed from the policy*
- 15 (ii) *is it possible that the market management be limited to not for profit community groups*
- (iii) *is it a legal requirement that market management no longer provide priority to locally grown, home produced goods etc*
- (iv) *is the proposed restriction in section 3.4 of the draft policy legally enforceable"*

20 Due to a congested June councillor calendar, it is envisage that the councillor workshop called for at resolution 13-173 item 2 will be convened after the July recess, in August. A confirmation will be advised to Councillors once possible dates are locked in with the legal advisor.

This report addresses resolution 12-693 item 5.

25 In accordance with item 5 of resolution 12-693 staff wrote to Crown Lands Division on 5 September 2012 seeking their approval to extend the currently extended Market Licence Agreements to March 2014 to accommodate the above project timetable.

30 The Reserve Trust Committee has previously extended the initial 3-year term licence agreements subject to Crown Lands consent. In this instance, however, Crown Lands are not willing to continue this practice and now seek to support the extended timetable and to authorise licensing using a temporary Crown Land trust licence agreement.

35 In an email dated 21 February 2013, after reviewing the above request, Crown Lands Division advised it "*supports the extension of the Trust Licences for Markets until 31 March 2014*".

40 It also noted that "*the extension should be authorised through the issue of a Temporary Reserve Trust Licences pursuant to section 108 of the Crown Lands Act, 1989 for a term of up to one (1) year which do not require approval in principal from the Minister*".

The temporary trust licences must contain the Crown Land Trust mandatory clauses and are based on the Crown Reserve Trust licence template. Market specific clauses have been included. For example the previously extended Market Licence Agreements provide the following restrictions on number of markets:

- no more than 60 farmers markets per annum (for compliance with LEP and current Policy)
- no more than 14 community markets per annum (for compliance with the current Policy)

50 In addition to the inclusion of market specific clauses for the number of markets held per annum, the draft temporary market licence agreements include additional clauses to secure greater accountability, transparency and probity for Council, as the Reserve Trust Manager, in relation to the market licences arrangements. This is considered an interim measure pending the adoption

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of the new draft Market Policy. These clauses are contained at clause "6.6 Reporting requirements" of the draft temporary licence agreement contained at Annexure 2.

5 As a Temporary Market Licence is the appropriate instrument to facilitate the extension of the current market arrangements, to 31 March 2014 to accommodate resolution 12-693, Council's adopted Fees and Charges for temporary markets applies.

10 The current fee for 2012/13 for a Temporary Commercial Approved Activity on Council owned or controlled land is \$220.00 application fee and licence fee per day of \$145.00 for more than 21 days and \$210 for 8 to 21 days.

The current fee for 2012/13 for a Temporary Market Licence is \$170.00 application fee and \$320.00 per day.

15 Council has always strived to maintain equitable market arrangements for markets held both on Crown Reserves managed by Council as the Reserve Trust Manager and those held on Council owned land. Previously, when considering the granting of a Temporary Artisan Licence Agreement, Council has resolved to not apply the Temporary Market Licence fee but instead apply the Temporary Commercial Approved Activity fee.

20 For consistency, this report recommends that this fee be applied to the new temporary licences - \$220.00 application fee and licence fee per day of \$145.00 for over 21 market days or licence fee per day of \$210 for between 8 to 21 market days. The arrangements proposed in this report are reflected for those markets held on Council owned land, refer to a report titled "Market Licence – Artisan Market on Railway Park" and "Market Licence – Community Land" both in the Agenda for Council's Ordinary Meeting held today, 13 June 2013.

25 This report recommends the Reserve Trust Committee offer temporary market licenses for community and farmers markets held on Crown Reserves, in the form contained at Annexure 2(a) and 2(b) respectively, to the current licence holders/market managers for the period 1 April 2013 to 31 March 2014.

Financial Implications

35 The Reserve Trust Committee currently generates \$nil income from market licence fees.

The current fee for 2012/13 for Temporary Commercial Approved Activities is a \$220.00 application fee. Licence fee per day is scaled as follows:-

40 For 8-21 days \$210.00
For more than 21 days \$145.00

45 A once off Application fee of \$220 is applied, and the Market rent for the 52 farmer's market days will generate a \$7,540 in licence fee income per annum. The Market rent for the 12 community market days will generate a \$2,520 in licence fee income per annum, with an additional \$210 per market day payable for the allowable 2 x Extra Markets under the current Policy.

In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

- 50
- The estimated staff hours for the preparation of this report was approximately 6 hours.

Statutory and Policy Compliance Implications

ICAC Guidelines

5 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.

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

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

15 “*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.*”

20 “*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.*”

25 “*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.*”

Reserve Trust Handbook

30 The consent of the Minister for Crown Lands is required before granting a licence, unless the licence is a temporary licence (less than 12 months) issued under section 108 of the Crown Lands Act. The Reserve Trust Handbook requires the Minister to consider the following issues when deciding to grant a lease or licence (greater than 12 months):

- 35
- If the proposed lease or licence is in the public interest
 - If the purpose of the proposed lease or licence is compatible with the reserve purpose
 - The proposed term of the lease or licence
 - The environmental impacts of the activities permitted by the lease or licence

40

 - If the proposed lease or licence is proposed to be selected by public competition or, if not, the circumstance relating to the selection of the proposed lessee or licensee
 - If the proposed rent represents a proper return to the public for that use of the public land
 - If the proposed lease or licence contains provisions for the periodic updating or review of rent
 - If the proposed lease or licence contains clauses relating to:

45

 - The termination of the lease or license in the event of a revocation of the reserve
 - The indemnification of the Reserve Trust, the Crown, and the NSW Government against claims for compensation
 - Appropriate insurance provisions

50 The Reserve Trust Handbook also states:

“*The trust should generally invite competitive tenders or proposals in order to attract the best operator and financial return for the trust... For reserve trusts managed by a local council it is important to ensure a separation of council and reserve trust business. The lease/licence should only reflect the business of the reserve trust.*”

55

Crown Lands NSW Business Directive 2004

5 “Crown land shall only be made available for commercial leasing by way of public competition,
unless otherwise authorised by specific approval of the Minister or a Ministerial executive’s
delegate within Crown Lands NSW to proceed by way of private treaty”

10 There is, and must be, a general presumption in favour of Crown Lands NSW transacting
business with the private sector in an open and transparent manner in order to ensure probity,
integrity and impartiality. There must also be a presumption that a competitive, rather than
exclusive dealing process, ensures greatest value for money.”

Crown Lands Act 1989

108 Temporary licences

- 15 (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.
- 20 (2) A temporary licence may be granted subject to conditions and is also subject to such
conditions as may be prescribed.
- 25 (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.
- (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

- 30 (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:
- 35 (a) access through a reserve,
 (b) advertising,
 (c) camping using a tent, caravan or otherwise,
 (d) catering,
 (e) emergency occupation,
 (f) entertainments,
 (g) equestrian events,
 (h) exhibitions,
40 (i) filming (within the meaning of the Local Government Act 1993),
 (j) functions,
 (k) hiring of equipment,
 (l) holiday accommodation,
 (m) markets,
 (n) meetings,
45 (o) military exercises,
 (p) mooring of boats to wharves or other structures,
 (q) sales,
 (r) shows,
 (s) sporting and organised recreational activities,
50 (t) stabling of horses,
 (u) storage.

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(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.

5 (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.

10 Temporary licences allow the trust to permit short-term and generally low impact activities on the reserve without the Minister's consent. Under section 108 of the Crown Lands Act 1989, a reserve trust can grant temporary licences for purposes which may not always fall strictly within the permitted purpose for that reserve. The purposes for temporary licences are listed in Clause 31 of the Crown Lands Regulation 2006.

15 Ministerial consent is not required provided the temporary licence falls within a permitted purpose under Clause 31 of the Regulation and the term is for not more than one year.

Plans of Management - Crown Reserves

20 The Crown Lands Act 1989 does not specify when a plan of management is to be prepared. A reserve trust may, with the consent of the Minister, prepare a plan of management when it deems a plan to be appropriate. Once a plan of management has been approved and adopted by the Minister, the Crown Lands Act requires it is implemented.

25 The Plans of Management for Butler Street and Mullumbimby Reserves authorise the use of these Reserves for Markets and Crown Lands have approved the use of Bangalow Park Showground and Brunswick Memorial Park for Markets.

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Report No. 3.4. Brunswick Heads Tennis Courts maintenance and tenure
Executive Manager: Corporate Management
Report Author: Leslie Beardmore, Leasing and Licensing Coordinator
File No: #E2012/2726
Theme: Corporate Management - Property, Procurement and Contract Services

Summary: The Brunswick Heads Tennis Club is committed to the facility and seeks tenure of the facility and this report provides tenure options to Council.

Extensive repairs are required to reinstate the facility to a suitable standard including repairs to the clubhouse, fencing, lighting and resurfacing.

There are no Reserve Trust funds available.

RECOMMENDATION:

1. That the Reserve Trust write and thank the Brunswick Heads Tennis Club for their submission, contained at Annexure 3(a) (#S2013/975).
2. That the Reserve Trust note that urgent asset renewal works, estimated at \$25,000, are required to the club house building to address decaying infrastructure and safety issues in order to reduce public risk and the Reserve Trust's liability.
3. That the Reserve Trust advise the Brunswick Heads Tennis Club that the urgent asset renewal works to the club house building, estimated at \$25,000, is the first spending priority for any proposed capital works programme.
4. That the Reserve Trust note that there are no available Reserve Trust funds to contribute towards the asset renewal works outlined in this report.
5. That the Reserve Trust notify the Brunswick Heads Tennis Club that the Reserve Trust's preferred tenure arrangement is a 5-year trust lease agreement with the Brunswick Heads Tennis Club at minimum rent (currently \$444.00 per annum ex GST), with the Brunswick Heads Tennis Club paying for all services, running costs, and capital works programmes.
6. That the Reserve Trust notify the Brunswick Heads Tennis Club that, wherever possible, the Reserve Trust will provide support to the Brunswick Heads Tennis Club for grant applications, fundraising activities, and liaison with Crown Lands as might be required.
7. That the Reserve Trust seek in principal support from Crown Lands and Brunswick Heads Tennis Club for the preferred tenure arrangements, at item 5 above.

Attachments:

- Proposal from Brunswick Heads Tennis Club #S2013/975 [18 pages]Annexure 3(a)
- Condition Report by Programmed Facility Management #DM1234299 [25 pages]..... Annexure 3(b)
- Audit and costs by Programmed Facility Management #E2013/14095 [5 pages]Annexure 3(c)

Annexures 3(a) and (b): Due to the size of these documents they have been provided to Councillors on their Agenda CD only. They are also available for viewing on Council's website and as hard copies at community access points throughout the Shire.

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Report

Land

- 5 Property Address: Brunswick Heads Tennis Courts, South Beach Road, Brunswick Heads
Property Description: Part Lot 437 DP 839424
Part Crown Reserve R97139
Owner: Department of Primary Industries (Crown Land)
Trustee: Byron Coast Reserve Trust (also trustee for R140034, R140052, R82750,
R97066, part R82000)
10 Trust Manager: Byron Shire Council
Purpose of R97139: Public Recreation gazetted 20/01/1984
LEP Zone: 6(a) Open Space

Background

- 15 The Brunswick Heads Tennis Courts comprise two tennis courts, tennis clubhouse, lighting and fencing.

20 Brunswick Heads Tennis Club Inc ("the Club") has informally managed the facility since its inception in 1932.

At its Ordinary Meeting of 22 April 2010 Council considered a report "12.2 Tennis courts in Byron Shire" which noted the following in relation to Brunswick Heads Tennis Courts:

25 *Brunswick Heads Tennis Club Inc manage the facility on behalf of Council. There is no formal arrangement. Minor maintenance up to \$500 on the courts is attended to by the Club. All other maintenance is paid for by Council. The facility bookings are handled through a local ice cream shop and the shop takes a 10% commission on the bookings.*

30 *The Club is responsible for routine maintenance and Council recently contributed \$1,600.00 to repair the fencing. The courts are in good repair but will need resurfacing in 2-3 years time. The Club has public liability insurance for members and casual hirers. The Club pays all associated service fees and Council insures the facilities.*

35 In a meeting between staff and the Club in October 2012 members mentioned a law suit from some years ago when the courts were in a previous location and the fact that legal fees from that law suit are still outstanding but not being claimed. They confirmed that members currently mow around the courts and clean the courts at no cost to Council. The Club noted that they had some funds in their bank account.

40 In November 2012 a new Club Committee was voted in at an Extraordinary Annual General Meeting. In a letter to Council received 17 January 2013 (refer Annexure 3(a)) the Club stated its intention to "grow and sustain the Brunswick Heads Tennis Club to promote the game of tennis with upgraded quality facilities that is family friendly, fun and safe". The Club currently has less than 50 members.

Tenure

45 In recent years the Club has requested ongoing tenure by way of a temporary licence renewed annually without fee, as due to the size of their small membership they are unable to sustain lease payments of Crown minimum rent and the associated running costs of the facility on top of
50 paying public liability insurance for Club members. The temporary licence allows the court hire fees to be paid direct to Council with Council responsible for paying running costs.

55 Since the issuing of a temporary licence in June 2011, Council has met the cost of providing services to the facility (water and electricity) and the Club has collected court hire fees for depositing into Council's bank account.

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5 The Club currently manage the facility on behalf of Council under a temporary licence that expires on 31 July 2013 (or at such time as a lease is executed). Under the temporary licence arrangement, the Club pays for their own insurance to cover Club members. Casual hirers are covered by Council's insurance policy and are required to complete a "Checklist for Casual Hirers" form prior to being given access to the facility.

10 Network Video at Brunswick Heads has recently agreed to be the Club's booking agent: collecting court hire fees and ensuring casual hirers complete Council's "Checklist for Casual Hirers". The Club deposits court hire fees collected to Council's bank account at the end of each month after deducting 25% commission payable to Network Video under the Partnership Agreement between the Club and Network Video.

15 The Club states that it "*cannot make an informed and responsible decision on the choice between lease or licence*" for security of tenure without all information available such as recent condition reports, and a clear understanding of Council's financial and practical support.

Council should consider its options in relation to the lease or licence of the facility, detailed below:

20 1. Grant a Trust lease over the facility to the Club for a term of at least five (5) years at Crown minimum rent (currently \$444.00 per annum ex GST) with the Club to pay for services and associated running costs and the Club to receive court hire fees.

25 This option is subject to consent from the Minister Crown Lands, and will only be considered by Crown Lands where lessee is a charitable or non-profit organisation that is not conducting commercial activities or generating significant revenue from the use of Public Land. An assessment of the Club's activities and revenue will be made by Crown Lands.

30 2. Grant a Trust lease (subject to Ministerial consent) over the facility to the Club for a term of at least five (5) years at Market rent less 50% community rebate, with the Club to pay for services and associated running costs and the Club to receive court hire fees.

35 This option is subject to consent from the Minister Crown Lands, and likely to be the scenario supported by Crown Lands if option 1 above, is not approved. The 50% rebate only applies to the Market Rent for as long as the 50% rebate policy is place within Crown Lands.

40 3. Grant a Trust temporary licence over the facility to the Club at Crown minimum rent with the Club to collect court hire fees on Council's behalf as per current arrangements with Council paying all services and running costs.

45 This option is available to the Reserve Trust without seeking Ministerial consent from the Crown, but the term of the temporary licence can be no longer than 12 months.

The temporary licence may be renewed on an annual basis in accordance with Council's Policy 3.25 Community Halls and Sporting Facilities – Management by Community Groups where it states:

50 "*2.4 Facilities located on Crown land shall be managed by a group approved by Council and under the authority of a "temporary licence" under the Crown Lands Act and Regulations. The maximum licence term provided by the Regulations is twelve (12) months. Council shall allocate the licence and the General Manager shall determine renewal of the licence annually.*"

55

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However, the Policy does not account for a competitive and transparent process to establish licence agreements for tenure over facilities, and the arrangement cannot include any commitment from the Reserve Trust to the Club for any tenure beyond a 12 month period.

5

This option may provide issues for the Club when seeking grant funding.

4. Call for expressions of interest for management of the facility to establish a Trust lease for five (5) years, with the successful respondent to pay for services and associated running costs and to receive court hire fees.

10

Please note: the Clubhouse would need to be brought into a suitable standard of repair prior to considering this option. There are currently no Reserve Trust funds available for the cost of the works outlined below that are required to return the asset to a suitable conditions.

15

For Council's information, Option 1 above is the current tenure situation for Mullumbimby Tennis Association over the tennis facility at Mullumbimby Recreation Grounds which Council resolved in part in 2008 **(08-680)**:

20

"1. That, subject to Ministerial approval, Council, as the Reserve Trust Manager, authorise the General Manager to enter into a lease over part Lot 389 DP 728162 with the Mullumbimby Tennis Association based on the following terms:

25

- a. Term of five years*
- 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*
- d. Maintenance to be carried out by the tenant at the tenants cost*
- e. Provision of public liability insurance."*

30

The Reserve Trust should note that the Mullumbimby Tennis Association has a much larger membership - 150 active members and 100 social members – as noted in the 22 April 2010 report to Council.

35

Any decision to grant a Trust lease in Options 1, 2 or 4 will require Ministerial consent.

Option 2 will require a current market rental valuation to be undertaken.

Asset Renewal

40

As noted in the 22 April 2010 report to Council, Council contributed to repair the fencing in 2009/10 and the courts would need resurfacing in 2-3 years time.

The Club's proposal at Annexure 3(a) identifies the following maintenance required at the facility with estimated costs and potential Tennis Australia rebates:-

45

	<u>Estimated cost</u>	<u>Rebate available</u>
Fence needs to be replaced	\$26,700	Fencing & lighting up to \$2,000
Surface cover needs resurfacing	\$40,000	Resurfacing up to \$2,400 to \$9,600
Lighting system needs to be upgraded	to be advised	Fencing & lighting up to \$2,000
Clubhouse repairs	\$25,000 (urgent works as per Council's condition report)	
	Or \$55,698 (total works as per Council's condition report)	
Totals	\$122,398	\$13,600 (maximum rebate available)

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55

In late January 2012 the Club reported timber rotting, rain leaking through roof and walls, and rusted electricity boxes. As a result, staff commissioned a property condition report (refer Annexure 3(b)).

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The report stated that:

5 *“extensive remedial work will be required to bring this building back to a suitable standard of repair externally. Discussions should be required to determine the feasibility of the repairs when compared to a knockdown and replacement of a portable structure.”*

10 The report provided an estimate for the works in the sum of \$55,698.50 (refer Annexure 3(c)), from which staff assess approximately \$25,000 at a minimum is required to address the decaying infrastructure in the building, as well as safety issues to remove risk to the public and minimise the Reserve Trust’s liability.

Council may wish to consider their options in relation to the Clubhouse facilities:

- 15 1. Demolition of the clubhouse facilities; or
2. Repair to the clubhouse facilities – works could be apportioned over a number of years in line with urgency of works required.

20 The Reserve Trust should note that development in this area of Brunswick Heads may be restricted by the Development Control Plan 2010 in so far as building within the Coastal Erosion zone *“must be designed to be relocated or demolished, or to cease operation, should the erosion escarpment come within 50 metres.”*

25 As noted in the 22 April 2010 report to Council, Council contributed \$1,600.00 from the general fund to repair the fencing in 2009/10 and the courts would need resurfacing in 2-3 years time. Capital expenditure on the facility since 2002 totals almost \$9,000.00, funded from the general fund.

30 It would appear that prior to June 2011, the Reserve Trust was not collecting any income from the facility and Council was paying for maintenance from the general fund. The Club was paying for services (water and electricity).

35 Since the inception of a temporary licence in June 2011, Council’s general fund has met the cost of providing services to the facility (water and electricity) and the Club has collected court hire fees for depositing into the Reserve Trust bank account.

40 For the current 2012/13 year electricity costs to Council has been \$1,169.22 and court hire fee income to Reserve Trust has been \$1,607.22. The Club estimates \$4,000 in court hire income for this financial year.

45 The estimated cost to reinstate the facility to a quality standard including clubhouse, fencing and resurfacing is approximately \$122,398. A quote for lighting has not been received. There are no funding options available to the Reserve Trust to undertake the asset renewal works required.

Financial Implications

The financial implications are as detailed in the report.

50 In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

- The estimated staff hours for the preparation of this report was approximately 5 hours.

Statutory and Policy Compliance Implications

Council's adopted Policy 3.25 Community Halls and Sporting Facilities – Management by Community Groups.

5 The land is a Crown Reserve, the purpose for which it is reserved being Public Recreation. Council, as Reserve Trust Manager, is only allowed to lease the property in accordance with that purpose.

10 Crown Lands Act 1989

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.
- 15 (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.
- (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.

20

102 Consent of Minister to sale, lease, easement, licence or mortgage

- (1) A reserve trust may not sell, lease or mortgage land, or grant an easement or a licence (except a temporary licence) in respect of land, comprising the whole or any part of the reserve unless:
 - 25 (a) the trust has decided that it is desirable to do so on the terms and conditions specified in the decision,
 - (b) in the case of a proposed sale, the trust has caused a notice to be published in a newspaper circulating in the locality of the land setting out the date and the terms and conditions of the trust's decision, the location of the land and other prescribed
 - 30 (c) the trust has (in the case of a proposed sale, not earlier than 14 days after the publication of the newspaper notice) applied to the Minister in writing for consent, giving full details of the proposal, and
 - (d) the Minister has consented in writing to the proposal.
- 35 (2) The Minister may not give a consent under subsection (1) (d) to:
 - (a) a sale,
 - (b) a lease for a term exceeding 5 years, or
 - 40 (c) a lease for a term that, by the exercise of an option, could exceed 5 years, unless at least 14 days have elapsed since notice of intention to give the consent has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.
- (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- 45 (4) If the application for consent proposes a sale, lease, easement or licence, the Minister's consent:
 - (a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or
 - (b) may be specific, approving of a particular contract of sale, lease or licence.
- 50 (5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.
- (6) In giving consent, the Minister may:

- (a) vary the terms and conditions to which the sale, lease, easement, licence or mortgage is to be subject, and
(b) impose such other terms and conditions as the Minister thinks desirable.
- (7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.

Crown Lands Regulation 2006

31 Temporary licences

- (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,
 - (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,
 - (l) holiday accommodation,
 - (m) markets,
 - (n) meetings,
 - (o) military exercises,
 - (p) mooring of boats to wharves or other structures,
 - (q) sales,
 - (r) shows,
 - (s) sporting and organised recreational activities,
 - (t) stabling of horses,
 - (u) storage.
- (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.
- (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.

The calling of an expression of interest for the lease of this facility will be conducted in accordance with Council's Purchasing and Tender Guide.

The Department of Lands Trust Handbook March 2007

"14.5 How Reserve Trusts prepare a Lease or Licence"

Other Points to be kept in Mind: – at page 14-9:

"Rent should reflect a commercial approach, having regard to the purpose of the lease, site value and ownership of existing improvements. Reserve trusts are encouraged to seek advice from the Local Department of Lands office or have an independent valuation undertaken to determine the market rent of the proposed lease site."

"Where nominal rental is imposed because the lessee/licensee is a charitable or non-profit organisation, such rental should generally not be less than the statutory minimum rental (currently \$425.00 per annum) applicable to tenures under the Crown Lands Act 1989. The discount given to the lessee/licensee is to be specified in the agreement."

“14.6 Content of the document”
Rent and Rent Review: - at page 14-10

“The rent or licence fee should normally be a commercial market rent.

5 *Relevant factors to consider include:*

- *The permitted use under lease*
- *The value of the part of the reserve being used*
- *Who owns the building or improvements to be used by the lessee*
- *Costs to be incurred by the trust.”*

10

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.

15

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

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

20

“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.”

25

“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.”

30

“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.”

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Report No. 3.5. Old School House Ewingsdale Maintenance and Tenure

Executive Manager: Corporate Management

Report Author: Greg Ironfield, Acting Manager Sustainable Communities
Trish Kirkland, Manager Property Contracts and Information Services

5 **File No:** #E2013/17760

Theme: Corporate Management - Property, Procurements and Contract Services

Summary: The current tenants Byron Emergency Accommodation Project Inc "BEAP" have leased the Old School House Ewingsdale since at least 1992.

Since expiry of the lease on 30 June 2011, BEAP have continued to occupy the premises without an appropriate tenure being in place.

Crown Lands are not supportive of any occupation of the building – temporary or otherwise – due to building non-compliance and significant maintenance issues.

Crown Lands anticipate that the Reserve Trust bring the building into compliance and appropriate condition for occupation, and then to seek market value rental. The building is included in Council's list of properties with heritage significance.

This report provides information on the current tenants, condition of the property, scope of works required and recommendations to call for expressions of interest for capital investment and rental return for the reserve trust and Crown Lands consideration.

RECOMMENDATION:

- 10
1. That Council, as Reserve Trust Manager, issue a written notice to vacate part Lot 377 DP 47409 being 34 William Flick Lane, Ewingsdale (providing one month's notice) to the current tenants, Byron Emergency Accommodation Project Inc.

15

 2. That Council, as Reserve Trust Manager, commission a market rental valuation and prepare an expression of interest capital works investment and 10-year leasing arrangements over part Lot 377 DP 47409 being 34 William Flick Lane, Ewingsdale NSW.

20

 3. That Council, as Reserve Trust Manager, receive a report on the expression of interest process outcome for consideration.

25

 4. That Council, as Reserve Trust Manager, send a copy of this report and subsequent resolution/s to Crown Lands for their information.

Attachments:

- 30
- Visual Building Inspection Report 19 May 2009 #DM857035 [15 pages].....**Annexure 4(a)**
 - Building Condition Audit 2013 #E2013/14763 [39 pages]..... **Annexure 4(b)**
 - Letter from BEAP dated 16 May 2013 #E2013/31302 [2 pages].....**Annexure 4(c)**

Annexures 4(a) and (b): Due to the size of these documents they have been provided to Councillors on their Agenda CD only. They are also available for viewing on Council's website and as hard copies at community access points throughout the Shire.

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Report

Land Information

- 5 Council Parcel No. 66820
- Description: Part Lot 377 DP 47409 being 34 William Flick Lane, Ewingsdale NSW known as Old School House Ewingsdale incorporating house and fenced yard
- Owner: Crown Land
- Reserve: Ewingsdale Reserve Trust R97213
- 10 Trust Manager: Byron Shire Council
- Gazetted: 6/4/84
- Gazetted purpose: Community Purposes and Public Recreation
- Allowable uses: Use by a recognised charitable or non profit organisation for a community service, facility and/or use
- 15 LEP Zone: 1(b1) agricultural protection
- Plan of Management: There is no plan of management for this Reserve.

Current Tenants

- 20 Byron Emergency Accommodation Project Inc, (BEAP) currently provides crisis, medium and long term accommodation for up to 40 homeless individuals, including families, women with children and single people aged 18 years and over. BEAP supports 60 people at any one time, either in-house or through its outreach programs. BEAP has served the Northern Rivers of NSW for nearly 30 years, helping victims fleeing domestic violence, suffering mental health issues and
- 25 addiction.

BEAP operates:

- A Crisis Refuge centre 24/7, offering shelter from overnight to up to 3 months.
- 4 medium term houses and manages 2 houses for North Coast Community Housing.
- 30 • 2 units housing women with children for up to 2 years.
- Assertive outreach support for all clients and follow-up support for clients who have left the service. BEAP operates on an abstinence model.

- 35 The demand for the services listed above has been on the increase in the past 5 years and there is currently a waiting list of 25 people awaiting accommodation (some of which are currently living in tents).

- 40 Ewingsdale House is set up as a share house for people recovering from substance dependence and addiction and has been assisting people experiencing homelessness in recovery for over 20 years. During that time, hundreds of people have been given much needed shelter and support while living at Ewingsdale, many who have gone on to be community leaders, secured paid work, undertaken training and development and also volunteer work.

- 45 Ewingsdale tenants receive weekly case management from BEAP case workers to aid in their re-assimilation into the local community. Ewingsdale tenants must partake in volunteer work and/or paid employment during their time in supported accommodation. This is a vital step for the Ewingsdale tenants. Often clients have come directly from drug rehabilitation services or from BEAP refuge and are trying on new life skills for the first time in decades.

- 50 Ewingsdale House is crucial for clients to gain confidence in themselves. The affordable rent enables tenants to save money for a bond. It's also a condition of stay that they integrate into networks such as 12 step programs to support them during their time at Ewingsdale and when they leave. Tenants can stay at Ewingsdale House for up to 12 months. By this time, clients have been assisted by case workers to develop healthy strategies for their independent future.

55

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BEAP is funded by the NSW Department of Family and Community Services and North Coast Community Housing. BEAP is managed by a full time co-ordinator, a part time (3 days) finance officer and part time (1 day) administrative assistant. There are 4 casual case workers that work from the Crisis Refuge covering the hours of 9am to 6pm everyday. The staff report to a management board of volunteers every 2 months.

Condition of property

A Visual Building Inspection Report commissioned by staff on 19 May 2009 (following consistent requests for maintenance by the tenants) rated the building as poor to average. The report is attached at Annexure 4(a).

Between 2009 and 2011 minor works were undertaken in an attempt to bring the building in line with BCA Standards including: rear stairs rebuilt, work on roof and guttering, tree work and servicing of smoke detectors/fire alarms, bathroom grouting.

In June 2011 Property Branch requested Society and Culture to relocate the tenants for approximately three months whilst further works could be carried out to bring the building to an acceptable condition. To date, the property has not been vacated for works to take place.

A Building Condition Audit was commissioned in January 2013 and is attached at Annexure 4(b). The report re-confirmed there are a number of areas of non-compliance with the Building Code of Australia (BCA) that need addressing as well as major maintenance such as exterior repainting, sub floor debris, electrical, full kitchen and bathroom refurbishment, general exterior grounds, roof guttering replacement and asbestos materials on site.

Council should note an asbestos audit has been undertaken on this building resulting in no asbestos being detected in the building. The backing to the external power box contains asbestos material and is considered a low risk. The current OSMS has been inspected and the system is in good working order.

Scope of works

The below scope is a summary of the required repairs itemised in the Building Condition Audit. Please refer to the Audit report at Annexure 4(b) for detailed pricing and defects.

- Installation of hard wired smoke alarms.
- Installation of new illuminated exit signs.
- Replacement of existing glazing to all windows.
- Installation of roof insulation.
- Replacement of insect screens to doors and windows.
- Painting to exterior of building.
- Installation of roof safety anchor points.
- Installation of commercial grade gutter guard.
- Installation of PVC ducting to electrical wiring.
- Removal and replacement of front fencing to heritage standard.
- Replacement of front screen door.
- Replacement of timber posts to veranda.
- Replacement of corroded ant caps.
- Replacement of some fascia sections.
- Removal of redundant grease trap.
- Patch and paint kitchen wall.
- Repairs to downpipe supports.
- Replacement of power pole.
- Sand and finish to floor boards.

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- Internal painting to all areas.
- Installation of power points to bedrooms and kitchen.
- Removal of existing bathroom fixtures and fittings including shelving and benches, water proofing, tiling, floor covering, replace with new to BCA standards.
- 5 • Removal of existing laundry fixtures and fittings including shelving, benches, water proofing tiling and painting, floor covering, replace with new to BCA standards.
- Replace damaged flooring in bedroom.
- Various repairs to existing light fittings.
- Recommend closure of existing fire place and replace with alternative heat source e.g. gas
- 10 heater or reverse cycle air conditioning.
- Replacement of locks to doors.

Tenure

15 Council records indicate that BEAP have leased the Old School House Ewingsdale since at least 1992.

At its Reserve Trust Committee Meeting on 5 November 2002, after considering a report, Council resolved **02-1182**:

20 “1. *That Council, as the Byron Shire Reserve Trust (Ewingsdale Reserve Trust - reserve trust no. 97213) authorises the General Manager to attach the Council seal to the three-year lease to the Committee for Byron Emergency Accommodation Project of 1586m² of the Old School House site, Ewingsdale (part Lot 377 DP 47409).*

25 2. *That the budget be amended to recognise the subsidy provided (\$8,840 per annum).”*

At its Reserve Trust Committee Meeting on 13 June 2006, after considering a report which recommended Council advertise for expressions of interest to occupy the premises, Council

30 resolved **06-344**:

“1. *That Council enter into a three plus two year lease option at Council discretion with the current tenant under similar conditions to those currently in place.*

35 2. *That Council write to the current tenant expressing regret over any concern caused by the report of 13 June 2006”*

A further report was considered by the Reserve Trust Committee at its meeting on 28 August 2007 to apply the Council Seal to the lease documents executed as per resolution 06-344.

40 The two (2) year option of this lease expired on 30 June 2011. The lease does not provide hold over provisions.

45 Crown Lands are not supportive of any occupation of the building – temporary or otherwise – until the building has been repaired, and the Property Branch are supportive of this position due to the risks and issues for the Reserve Trust with BCA non-compliance and no appropriate tenure arrangements in place.

50 With regard to future tenure arrangements, Crown Lands indicated that the building needs to be brought up to an acceptable condition to generate a maximum return to the Reserve Trust. In a meeting between Crown Lands and Council staff on 13 May 2013, Crown Lands advised that the appropriate process is to have the property’s market value established – for its allowable uses – and then to call a competitive process for the lease agreement with the market valuation set as the annual lease fee. Any consideration, by Crown Lands, of rental rebates would be made once

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the Reserve Trust has decided on the preferred tenant. Uses must be consistent with the Gazettal purpose.

Consultation with BEAP

5 The services offered to vulnerable people in our community by BEAP are essential. Council does not have the capacity to offer the services currently undertaken by this community organisation. In recent correspondence BEAP have indicated that they would put forward a submission to Council in the expression of interest process mentioned above, and they would be willing to contribute annual rent to ensure the ongoing use of the Ewingsdale House.

10 It is important to note that BEAP are not in a strong financial position and that they would likely request the consideration of a rental subsidy, and that Council if the request is considered favourably, would need to recognise this as a section 356 donation.

15 BEAP indicated in their letter (refer Annexure 4(c)) that the increase expected to their rent may lead to changes in the way they use the house. A different model will be considered in order to cover some of the additional rental cost. The model would be based on a high use/high impact Emergency Crisis Accommodation for men. The impact of this is unclear until the model is developed, pending the outcome of the rental assessment. It may mean additional people in the house.

20 In the recent correspondence BEAP have indicated that if the cottage was unavailable for 3-6 months, that they would prefer the work not commence until July 2014 due to extensive changes to Specialist Home Services by the State and Federal Governments. Due to the extent of repair work required, and the need to develop and enter into a new lease agreement, it is not recommended by staff to extend the current arrangements or defer the works.

25 It is strongly recommended that a notice to vacate (one months notice) will need to be issued to the current tenants to vacate the property, and that this notice is issued immediately due to the inherent risks associated with the continued occupation of the property in its current condition and without appropriate tenure able to be established.

30 There is currently no funding available to the Reserve Trust to undertake the capital works required to restore this asset to an appropriate condition, and it is therefore recommended in this report that the Reserve Trust call an expression of interest for capital investment and market rental lease – for a use consistent with the Gazetted Purpose of Community Use and Public Recreation. Crown Lands have indicated that they are open to this option – with capital works costs in the vicinity of \$300,000, a 10-year lease is an appropriate term.

35 Following the process outlined above will enable BEAP the opportunity to be considered for a new lease for the property. It will also enable the Reserve Trust to consider the level of financial investment available in the community, and what level of support, if any, Council might consider supporting organisations/groups for the use of the cottage.

40 This report also enables the Council the opportunity to assess its position in relation to the cost of maintaining community infrastructure on Crown reserves. The management and maintenance of this valuable community asset will need to improve so that Council as the Reserve Trust Manager is not in a similar situation in the years down the track. Adequate rental income needs to cover the maintenance costs for the building, and if the rent is subsidised, Council must record the subsidy as a section 356 donation to ensure that the donation funds are transferred to the Reserve Trust to maintain the property.

Financial Implications

The financial implications of the works required, market rental valuation and any rental subsidy will be included in the report on the expression of interest process.

5

In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

- The estimated staff hours for the preparation of this report was approximately 6 hours.

10

Statutory and Policy Compliance Implications

The land is a Crown Reserve, the purpose for which it is reserved being community purpose. Council, as Reserve Trust Manager, is only allowed to lease the property in accordance with that purpose.

15

Crown Lands Act 1989 No 6

102 Consent of Minister to sale, lease, easement, licence or mortgage

20

- (1) A reserve trust may not sell, lease or mortgage land, or grant an easement or a licence (except a temporary licence) in respect of land, comprising the whole or any part of the reserve unless:

25

- (a) the trust has decided that it is desirable to do so on the terms and conditions specified in the decision,
- (b) in the case of a proposed sale, the trust has caused a notice to be published in a newspaper circulating in the locality of the land setting out the date and the terms and conditions of the trust's decision, the location of the land and other prescribed particulars,
- (c) the trust has (in the case of a proposed sale, not earlier than 14 days after the publication of the newspaper notice) applied to the Minister in writing for consent, giving full details of the proposal, and
- (d) the Minister has consented in writing to the proposal.

30

35

- (2) The Minister may not give a consent under subsection (1) (d) to:

- (a) a sale,
- (b) a lease for a term exceeding 5 years, or
- (c) a lease for a term that, by the exercise of an option, could exceed 5 years, unless at least 14 days have elapsed since notice of intention to give the consent has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

40

- (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.

45

- (4) If the application for consent proposes a sale, lease, easement or licence, the Minister's consent:

- (a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or
- (b) may be specific, approving of a particular contract of sale, lease or licence.

50

- (5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.

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(36)

- 5
- (6) In giving consent, the Minister may:
- (a) vary the terms and conditions to which the sale, lease, easement, licence or mortgage is to be subject, and
 - (b) impose such other terms and conditions as the Minister thinks desirable.
- (7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.

Crown Lands Division – Rent concessions and hardship relief for Crown land tenure holders

10 Rebates apply to annual market rentals and are subject to meeting eligibility criteria. Under the Crown Lands Act 1989, the level of rebate granted cannot fall below the statutory minimum rent and is subject to quarterly CPI adjustments.

Under the regulation the following holders who may be granted a rebate of rent are defined as:

- 15
- a) an eligible pensioner whose holding is occupied as his or her sole place of residence (or is an adjunct to that place of residence) and is not used for any commercial purpose
 - b) a community service, sporting or recreational organisation:
 - 20 i) that is a holder of an authority under the Charitable Fundraising Act 1991, or
 - ii) that is incorporated under the Associations Incorporation Act 1984, or
 - 25 iii) that the Minister is satisfied is a non-profit organisation, whose holding is used as a help or service facility of benefit to the general community or as an active sporting, passive recreational or youth advancement facility of general benefit to a local community.

Such organisations must comply with the following criteria in order to be considered for a rebate of market rental. They must be:

- using the holding for the specified purpose, and
 - 30 • clearly demonstrate the activities of the organisation are of benefit to the welfare of the community to justify a rebate of market rental.
- c) an owner or occupier of residential property that is accessible only by water and whose holding contains a structure that is used for the purposes of obtaining access to the property and is not used for any commercial purpose
 - 35
 - d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

40 Level of Rebate

Eligible pensioners whose holding is their sole place of residence are entitled to a 50% rebate of market rent provided the statutory minimum rent is met.

45 Community service, sporting and recreation organisations may be eligible to receive a rebate of up to 50% of market rent, depending on the nature of their operations. Rebates for these organisations are considered on a case-by-case basis.

The Department of Lands Trust Handbook March 2007

50 “14.5 How Reserve Trusts prepare a Lease or Licence”
Other Points to be kept in Mind: – at page 14-9

55 *“Rent should reflect a commercial approach, having regard to the purpose of the lease, site value and ownership of existing improvements. Reserve trusts are encouraged to seek advice from the*

BYRON SHIRE COUNCIL

Local Department of Lands office or have an independent valuation undertaken to determine the market rent of the proposed lease site.”

5 *“Where nominal rental is imposed because the lessee/licensee is a charitable or non-profit organisation, such rental should generally not be less than the statutory minimum rental (currently \$425.00 per annum) applicable to tenures under the Crown Lands Act 1989. The discount given to the lessee/licensee is to be specified in the agreement.”*

10 *“14.6 Content of the document”*
Rent and Rent Review: - at page 14-10

*“The rent or licence fee should normally be a commercial market rent.
Relevant factors to consider include:*

- 15
- *The permitted use under lease*
 - *The value of the part of the reserve being used*
 - *Who owns the building or improvements to be used by the lessee*
 - *Costs to be incurred by the trust.”*

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

30 *“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.”*

35 *“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.”*

40 *“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.”*

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Report No. 3.6. Lease over part Crown Reserve R96998 known as Cavanbah Centre to Byron Bay Pre-School Incorporated

Executive Manager: Corporate Management

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

File No: #E2012/12110

5

Theme: Corporate Management - Property, Procurements and Contract Services

Summary: Since occupation of the site in 1986 by Byron Bay Pre-School Inc. there has been no formal Trust tenure for the Cavanbah Centre endorsed by the Minister.

This report provides a history of the Cavanbah Centre and recommends a Trust lease be entered into with Byron Bay Pre-School Inc. for their continued occupation of the Centre.

RECOMMENDATION:

- 10 1. That the Reserve Trust not call tenders or conduct a similar competitive process to grant a lease over Lot 9 DP47024 and Lot 10 DP 47425, known as the Cavanbah Centre, but instead negotiate with Byron Bay Pre-School Incorporated for the following reasons:
- 15
- Byron Bay Pre-school Inc is a community based incorporated not for profit preschool.
 - the land is zoned 2 (a) residential zone
 - the land is a Crown Reserve for purpose of "Kindergarten"
 - the expenditure the organisation has, and continues to spend, in building,

20 maintaining and upgrading the building

 - Council's Policy No. 3.44 Children's Services provides that Council "*support several community preschools in the shire by providing land and/or buildings for the delivery of services for children aged 3 – 5 years. Council's involvement includes acting as Trustee of Crown Land, lease of operational and community*

25 *land at nominal cost to the organisations, and the lease and maintenance of buildings. Services include Cavanbah Preschool.*"
- 30 2. That Council, as Reserve Trust Manager, grant a Lease to Byron Bay Pre-School Incorporated over Lot 9 DP 47024 and Lot 10 DP 47425 substantially in the form at Annexure 5(b)(E2013/8784) on the following terms, subject to Ministerial consent:
- a) Term of five (5) years commencing 1 July 2013;
 - b) Rent \$444.00 per annum excluding GST (Market rent \$40,000.00 per annum);
 - c) Rent rebate \$39,556.00 per annum;

35 d) All lease preparation and registration costs are to be met by the lessee;

 - e) Lease fee and rent rebate to be adjusted accordingly if Crown minimum rent increases prior to commencement date of the lease; and
 - f) Insert new clause in Schedule 3 Special Conditions:
- 40 (i) In addition to the general requirement to repair as per Clause 40, the Lessee will undertake the following repairs to ensure compliance with the Building Code of Australia (BCA):
- Exit signage does not meet current requirements;

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- Separate hand washing facilities have not been provided to the back kitchen;
- Access to kitchen does not appear to be restricted by a childproof gate;
- Sanitary facilities are not accessible from the outdoor play area;
- Screening or partitioning of toilet facilities not provided as per part F BCA

5

(ii) Such repairs as listed above are to be completed during the term of the lease to the satisfaction of the Lessor.”

10 3. That Council, as Reserve Trust, affix the Seal to the 5-year Trust Lease with Byron Bay Preschool Incorporated over Lot 9 DP 47024 and Lot 10 DP 47425.

Attachments:

15

- Letter from Byron Bay Pre-School Inc. #E2012/22981 [2 pages] **Annexure 5(a)**
- Draft Lease #E2013/8784 [27 pages] **Annexure 5(b)**
- Current market rental valuation #E2013/8822 [66 pages] **Annexure 5(c)**
- Visual Building Inspection Report #S2012/2185 [46 pages] **Annexure 5(d)**

20

Annexures 5(b), (c) and (d): Due to the size of these documents they have been provided to Councillors on their Agenda CD only. They are also available for viewing on Council's website and as hard copies at community access points throughout the Shire.

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Report

Land Information

5 Reserve 96998 – Lot 9 DP 47024 and Lot 10 DP 47425 known as Byron Bay Pre-School
“Cavanbah Centre” at 35 Marvel Street, Byron Bay encompassing an area of approximately 1214
square metres.

Purpose – Kindergarten gazetted 07/10/1983

Owner – Crown Land

10 Trustee – Byron Bay (R96998) Kindergarten Reserve Trust

Trust Manager – Byron Shire Council

Plan of Management – no

LEP Zone – 2(a) Residential Zone

15 History

Byron Bay Pre-School Incorporated operates two childcare facilities – “Cavanbah” and
“Coogera”.

20 The “Cavanbah” Centre operates at 35 Marvel Street, Byron Bay situated on a Crown Reserve
for which Council is the Reserve Trust Manager and the “Coogera” Centre is located in Council’s
purpose built Suffolk Park Integrated Childcare Centre at Suffolk Park on community land. Byron
Bay Pre-School Inc is managed by a voluntary parent committee and abides by its Mission
Statement and internal policies and procedures. Byron Bay Pre-School Inc has one director, an
office administrator and a cleaner for both centres.

25 The ongoing tenure of the Cavanbah Centre (the Centre) by Byron Bay Pre-School Inc is the
subject of this report.

30 The land upon which the Cavanbah Centre is located is Crown Reserve gazetted on 07/10/1983
for the purpose of Kindergarten with Byron Shire Council appointed as Trust Manager of the
Reserve.

35 Pre-school records provide that the Cavanbah Centre was originally established by the Byron
Bay Pre-School Inc with Council support after obtaining grant funding of \$84,000 for 70% of the
building. The expected total cost was \$114,000. The Management Committee undertook a fund
raising effort and raised the remainder of the cost of the new building. Building commenced in
1984 with completion in 1986. When the Cavanbah Centre opened in 1986 there were 87
children enrolled. A Commonwealth Employment Program grant provided for the employment of
6 workers for a total of 28 weeks costing \$111,627.

40 The Centre is a community based not-for-profit pre-school partially funded by the NSW
Government, with the balance of funding sources from School (term) fees and general
fundraising by the pre-school. The Centre provides high quality care and education and is
approved by the NSW Department of Education and Communities for up to 40 children aged 3 to
45 under 6 years.

50 The Centre is licensed by the NSW Department of Human Services to provide for a maximum of
40 children aged 3 to under 6 years. The Centre operates 2 units each with 20 children. Each
unit is staffed by experienced, qualified and dedicated staff made up of 1 teacher, 1 educator and
1 support worker. The education is a play-based curriculum following the National Early Years
Learning Framework incorporating “being, belonging, becoming”. Parenting courses and
parenting information for parents are also provided through the pre-school.

55 Byron Bay Pre-School Inc. maintains Public Liability and Professional Indemnity insurance for
\$20,000,000 liability.

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The Centre encompasses the below listed infrastructure:

Building

- 5 - Single storey, detached brick building
- Concrete slab on ground floor
- Colorbond metal roof
- Plasterboard linings/ceiling
- Aluminium framed windows
- 10 - Vinyl and tile floor coverings

Approximate gross building areas:

Main: 294 m2
Verandahs/Porch: 168 m2

15 Ancillary

- outdoor area consisting of children's play area with sandpit, basic play equipment and two (2) shaded play areas
- brick retaining walls
- fencing on the premises boundaries
- 20 - concrete footpaths and paving
- nil on-site car parking

Byron Bay Pre-School Inc. has funded all capital upgrade costs on the building and maintains it to a high standard. They pay for all ongoing charges such as rates, services, security and insurance. The Pre-School's accounts show that they have spent \$75,531 on building and ground upgrades/repairs between 01/01/2008 and 30/06/2012. General ongoing repairs and maintenance for the financial year ending 30/06/2012 totalled \$2,977. Maintenance and upgrade works currently underway at the Cavanbah Centre include bathroom works, landscaping and carpet refurbishment at an expected cost of \$11,000.

30 NSW Trade and Investment Crown Lands Division (Crown Lands) notes there has been no Trust tenure endorsed by the Minister. A number of draft Trust tenures have been given Approval in Principle by the Minister, however, no executed documents have been received for the Minister to provide endorsement. Council records indicate the following tenure history:

35	01/07/2003 to 30/06/2008	Trust lease	Executed but not endorsed
	01/07/2008 to 30/06/2010	nil lease/licence	
	01/07/2010 to 30/06/2011	Trust licence	
	01/07/2011 to 30/06/2012	nil lease/licence	
40	01/07/2012 to 30/06/2013	Trust licence	

45 Crown Lands have advised that until such time as a Trust lease is in place, Council should continue to issue a temporary Trust licence under provisions of section 108 of the Crown Lands Act 1989.

Current

50 A recent Visual Building Inspection Report (refer Annexure 5(d)) rates the Centre as good in comparison to other structures of similar age, construction and level of maintenance. This report also noted a number of building compliance matters to be addressed as follows:-

- Access for disabled does not meet current BCA or access code requirements. Non compliance noted in regards to access into and within the building, signage and tactile indicators and sanitary facilities **;
- Exit signage does not meet current requirements;
- 55 • Separate hand washing facilities have not been provided to the back kitchen;

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- Access to kitchen does not appear to be restricted by a childproof gate;
- Sanitary facilities are not accessible from the outdoor play area;
- Screening or partitioning of toilet facilities not provided as per part F BCA.

5 **The Disability Standards 2010 were introduced in conjunction with an updated Building
Code of Australia (BCA) on 1 May 2011. These Standards are the minimum requirements
for new buildings and buildings undergoing significant upgrade in Australia. It is likely that
any existing buildings built before 1 May 2011 will not comply with these new access
requirements. Council should note that it is only mandatory for a building to be upgraded to
10 meet the Disability Standards where a building is being upgraded which requires a building
approval and the upgrade is initiated by the building owner or lessee of the whole building.

As part of Council's asbestos management plan, an inspection was undertaken on 30 January
15 2013 and reported that no asbestos or ACM was identified within the boundaries of the subject
site. It also noted that areas that have not been accessed or sampled may still contain asbestos
or ACM. A copy of the asbestos management plan report has been provided to Byron Bay Pre-
School Inc. for their information.

20 Council recently issued, under delegated authority, a temporary Trust licence to Byron Bay Pre-
School Inc. for the purpose of pre-school and associated activities as authority to occupy the
Cavanbah Centre until such time as a Trust lease is in place. The temporary Trust licence
expires on 30 June 2013.

25 Byron Bay Pre-School Inc. has requested a new lease agreement in a letter to Council dated 23
November 2012 (refer Annexure 5(a)). They undertake to continue paying ongoing costs and
have requested the rent remain at a level similar to that of the current rent being Crown minimum
rent adjusted by CPI.

30 Staff have had a market rental valuation conducted to determine the market rent, valuing the
current market rental for the pre-school at \$40,000.00 per annum plus GST if applicable. A copy
is provided at Annexure 5(c).

35 Byron Bay Pre-School Inc. has been paying nominal rent since 2003 and undertake to continue
paying ongoing costs. The proposed rent is Crown minimum rent being \$444.00 per annum
excluding GST, in light of the following factors:-

- Byron Bay Pre-School Incorporated is a community based incorporated not for profit
Preschool.
- the land is zoned 2 (a) residential zone
- 40 • the land is a Crown Reserve for purpose of "Kindergarten"
- the expenditure the organisation has, and continues to spend, in building, maintaining and
upgrading the building
- Council's Policy No. 3.44 Children's Services provides that Council "*support several
45 community preschools in the shire by providing land and/or buildings for the delivery of
services for children aged 3 – 5 years. Council's involvement includes acting as Trustee of
Crown Land, lease of operational and community land at nominal cost to the organisations,
and the lease and maintenance of buildings. Services include Cavanbah Preschool.*"

50 The activities of the Pre-school are not determined by Crown Lands to be of a commercial nature,
and it is a consideration of the Reserve Trust to decide if it is desirable to enter into a lease with
this organisation without entering into a competitive process. In a meeting between Crown Lands
and Council staff on 13 May 2013, Crown Lands agreed in principal to the proposed annual lease
fee at Crown minimum rent and the proposed lease term of 5 years.

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A draft Trust lease has been prepared and reviewed by Crown Lands. Minor amendments were made by Crown Lands and they have indicated the Minister is willing to support the amended draft lease at Annexure 5(b). A copy of the draft Trust lease, this report and its resolution, and the market rental valuation, will accompany our request to Crown Lands for approval in principle confirming the Trust's decision that it is desirable to enter into a lease, provided they resolve to do so.

Proposed lease term 5 years

Commencement date 1 July 2013

10 Annual lease fee \$444.00 excluding GST (Market Rent \$40,000.00)

Rent rebate \$39,556.00

All lease preparation and registration costs to be met by the lessee.

15 The building compliance matters noted in the Visual Building Inspection Report at Annexure 5(d) should be addressed by Byron Bay Pre-School Inc during the term of the new lease so as not to impact financially on Council. It is recommended the following new clause be inserted into the draft Lease as follows:

20 "In addition to the general requirement to repair as per Clause 40, the Lessee will undertake the following repairs to ensure compliance with the Building Code of Australia (BCA):

- (i) Exit signage does not meet current requirements;
- (ii) Separate hand washing facilities have not been provided to the back kitchen;
- (iii) Access to kitchen does not appear to be restricted by a childproof gate;
- (iv) Sanitary facilities are not accessible from the outdoor play area;
- 25 (v) Screening or partitioning of toilet facilities not provided as per part F BCA,
Such repairs as listed above are to be completed during the term of the lease to the satisfaction of the Lessor."

30 This report recommends that Council as Reserve Trust Manager grant a new five (5) year lease agreement with Byron Bay Pre-School Incorporated, subject to Ministerial consent.

Financial Implications

35 The Reserve Trust rental income will be limited to Crown Land minimum for the term of the lease. All rental rebate's are recorded and reported to Crown Lands under the financial reporting requirements of the Trust Handbook.

40 In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

- The estimated staff hours for the preparation of this report was approximately 5 hours.

Statutory and Policy Compliance Implications

45 The land is a Crown Reserve, the purpose for which it is reserved being a Kindergarten. Council, as Reserve Trust Manager, is only allowed to lease the property in accordance with that purpose.

Crown Lands Act 1989 No 6

102 Consent of Minister to sale, lease, easement, licence or mortgage

- 50 (1) A reserve trust may not sell, lease or mortgage land, or grant an easement or a licence (except a temporary licence) in respect of land, comprising the whole or any part of the reserve unless:

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- 5 (a) the trust has decided that it is desirable to do so on the terms and conditions specified in the decision,
- (b) in the case of a proposed sale, the trust has caused a notice to be published in a newspaper circulating in the locality of the land setting out the date and the terms and conditions of the trust's decision, the location of the land and other prescribed particulars,
- 10 (c) the trust has (in the case of a proposed sale, not earlier than 14 days after the publication of the newspaper notice) applied to the Minister in writing for consent, giving full details of the proposal, and
- (d) the Minister has consented in writing to the proposal.
- (2) The Minister may not give a consent under subsection (1) (d) to:
- 15 (a) a sale,
- (b) a lease for a term exceeding 5 years, or
- (c) a lease for a term that, by the exercise of an option, could exceed 5 years, unless at least 14 days have elapsed since notice of intention to give the consent has been published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.
- 20 (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- (4) If the application for consent proposes a sale, lease, easement or licence, the Minister's consent:
- 25 (a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or
- (b) may be specific, approving of a particular contract of sale, lease or licence.
- 30 (5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.
- (6) In giving consent, the Minister may:
- 35 (a) vary the terms and conditions to which the sale, lease, easement, licence or mortgage is to be subject, and
- (b) impose such other terms and conditions as the Minister thinks desirable.
- (7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.
- 40

Children's Services Policy No. 3.44

The recommendation is supported by Council's Children's Services Policy No. 3.44 adopted 29 March 2005, as stated:

45 "OBJECTIVES

1.1 *To play a major role within the community in supporting the provision of services which address the care, support and education of children in Byron Shire.*

50 1.2 *To ensure that Children's Services provided by Council continue to effectively meet the needs of children and their carers in Byron Shire.*

POLICY STATEMENT

55 *Byron Shire Council is committed to ensuring the availability of a diverse range of responsive and quality children's services to the community by provision of land, buildings and office space,*

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employment of staff, auspicing of government funds, providing financial advice and participating in management of individual services.

CURRENT INVOLVEMENT

5 Community Preschools

Council continues to support several community preschools in the shire by providing land and/or buildings for the delivery of services for children aged 3 – 5 years. Council's involvement includes acting as Trustee of Crown Land, lease of operational and community land at nominal cost to the organisations, and the lease and maintenance of buildings. Services include Federal
10 Community Preschool, Lillypilly Preschool at Brunswick Heads, Ocean Shores Community Preschool, Bangalow Long Day Care Centre, Durrumbul Preschool, Cavanbah Preschool and Periwinkle Preschool."

Crown Lands Division – Rent concessions and hardship relief for Crown land tenure holders

15 Rebates apply to annual market rentals and are subject to meeting eligibility criteria. Under the Crown Lands Act 1989, the level of rebate granted cannot fall below the statutory minimum rent and is subject to quarterly CPI adjustments.

20 Under the regulation the following holders who may be granted a rebate of rent are defined as:

- a) an eligible pensioner whose holding is occupied as his or her sole place of residence (or is an adjunct to that place of residence) and is not used for any commercial purpose
- 25 b) a community service, sporting or recreational organisation:
 - i) that is a holder of an authority under the Charitable Fundraising Act 1991, or
 - ii) that is incorporated under the Associations Incorporation Act 1984, or
 - 30 iii) that the Minister is satisfied is a non-profit organisation, whose holding is used as a help or service facility of benefit to the general community or as an active sporting, passive recreational or youth advancement facility of general benefit to a local community.

Such organisations must comply with the following criteria in order to be considered for a rebate of market rental. They must be:

- 35
 - using the holding for the specified purpose, and
 - clearly demonstrate the activities of the organisation are of benefit to the welfare of the community to justify a rebate of market rental.
- c) an owner or occupier of residential property that is accessible only by water and whose holding contains a structure that is used for the purposes of obtaining access to the
40 property and is not used for any commercial purpose
- d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

45 Level of Rebate

Eligible pensioners whose holding is their sole place of residence are entitled to a 50% rebate of market rent provided the statutory minimum rent is met.

50 Community service, sporting and recreation organisations may be eligible to receive a rebate of up to 50% of market rent, depending on the nature of their operations. Rebates for these organisations are considered on a case-by-case basis.

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The Department of Lands Trust Handbook March 2007

“14.5 How Reserve Trusts prepare a Lease or Licence”

Other Points to be kept in Mind: – at page 14-9

5 “Rent should reflect a commercial approach, having regard to the purpose of the lease, site value and ownership of existing improvements. Reserve trusts are encouraged to seek advice from the Local Department of Lands office or have an independent valuation undertaken to determine the market rent of the proposed lease site.”

10 “Where nominal rental is imposed because the lessee/licensee is a charitable or non-profit organisation, such rental should generally not be less than the statutory minimum rental (currently \$425.00 per annum) applicable to tenures under the Crown Lands Act 1989. The discount given to the lessee/licensee is to be specified in the agreement.”

15 “14.6 Content of the document”
Rent and Rent Review: - at page 14-10

“The rent or licence fee should normally be a commercial market rent.
Relevant factors to consider include:

- 20
- The permitted use under lease
 - The value of the part of the reserve being used
 - Who owns the building or improvements to be used by the lessee
 - Costs to be incurred by the trust.”

25 Local Government Act 1993

Section 55 of the Local Government Act, 1993 – What are the requirements for tendering? At (3) specifically states that the tendering requirements do not apply to the following contracts:

30 “a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term **exceeding 5 years to a body that is not a non-profit organisation**”.

ICAC Guidelines

35 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.

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

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

45 “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.”

50 “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.”

55 “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.”

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Local Government (General) Regulations 2005

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.

5