



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting Thursday, 19 September 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.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

19 SEPTEMBER 2013

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BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. EXECUTIVE MANAGER’S REPORTS

Corporate Management

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

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CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORTS

Report No. 3.1. Temporary Market Licence for Beachside Artisan Markets to Byron Bay Community Association Inc

Executive Manager: Corporate Management

5 **Report Author:** Leslie Beardmore, Leasing and Licensing Coordinator

File No: #E2013/40399

Theme: Corporate Management - Property, Procurements and Contract Services

Summary: Byron Bay Community Association Inc has applied for a temporary licence to hold a Beachside (Artisan) Market on 3 separate dates in 2014.

Byron Bay Community Association Inc has previously applied for, and been granted licences for the same Market at the same location in 2010/2011, 2011/2012 and most recently January 2013, April 2013 and September 2013.

This report recommends that Council grant a temporary licence for the Beachside Artisan Markets for 2014.

10 **RECOMMENDATION:**

1. That Council, as the Reserve Trust Manager, resolve not to call a competitive process to establish a licence to conduct Beachside (Artisan) Markets on R82000 until such time as the draft Market Policy is adopted.

15 2. That Council, as Reserve Trust Manager, authorise the General Manager to issue a temporary licence to the Byron Bay Community Association Inc for a beachside (artisan) market to be held once in January 2014, April 2014 and September 2014.

20 3. That a temporary licence commercial activity fee for use of Council owned and controlled land be charged and the bond be waived. In accordance with Council's fees and charges, an application fee of \$220.00 and licence fee \$305.00 per market are to be charged.

25 **Attachments:**

- Byron Beachside Market Application 2014 #E2013/38953 [9 pages]Annexure 1(a)
- Draft temporary licence Beachside Artisan Market #E2013/41495 [31 pages] Annexure 1(b)
- 30 • Site Map for Byron Beachside Artisan Market #E2013/54462 [1 page].....Annexure 1(c)

Annexure 1(b): Due to the size of this document it has been provided to Councillors on their Agenda CD only. It is also available for viewing on Council's website and as a hard copy at community access points throughout the Shire.

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

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Report

Beachside Market

- 5 Beachside Markets to be held on Denning Park, Byron Bay part of Crown Reserve R82000 Byron Bay Beach Reserve
Reserve Trust - Byron Coast Reserve Trust
Purpose – Public Recreation
Gazetted – 30/10/59
- 10 Owner – NSW Trade & Investment-Crown Lands Division
Trust Manager – Byron Shire Council
Zoned – 7F1 – Coastal Lands
Plan of Management – no adopted Plan of Management

15 History

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

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

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

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

Licence Date	Licensee	Term
15/11/2010	Byron Bay Community Association Inc.	1 day – 29 December 2010 Alternate date – wet weather 5 January 2011
29/03/2011	Byron Bay Community Association Inc	1 day – 23 April 2011 Alternate date – wet weather 26 April 2011
24/09/2011	Byron Bay Community Association Inc	3 days – 4 January 2012, 7 April 2012, 29 September 2012 (with alternate dates for wet weather)

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

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Day of:	Alternate day in event of bad weather:
Wednesday 2 January 2013	Tuesday 8 January 2013
Saturday 30 March 2013 (Easter)	Tuesday 2 April 2013 (Easter)
Saturday 28 September 2013	Tuesday 1 October 2013

5

This request was the subject of a report to Council's Reserve Trust Committee Meeting on 25 October 2012 titled "3.1. Temporary Market Licence – Byron Bay Community Association Inc", Council as Reserve Trust manager resolved (**12-827**):

10 "1. That Council, as the Reserve Trust manager, resolve not to call a competitive process to establish a licence to conduct Beachside Artisan Markets on R82000 due to the following circumstances:

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

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

25 2. That Council, as Reserve Trust Manager, authorise the General Manager to issue a temporary licence to the Byron Bay Community Association Inc for a beachside (artisan) market to be held once in January 2013, March 2013 and September 2013.

30 3. That a non-commercial temporary licence fee for use of council owned and controlled land be charged and the bond be waived. The charges to apply are an application fee of \$170.00 and licence fee \$320.00 per market."

30 Current

On 11 June 2013, Council received an application for a temporary licence from Byron Bay Community Association Inc for a beachside (artisan) market at Denning Park on the following dates:

35

Day of:	Alternate day in event of bad weather:
Friday 2 January 2014	Wednesday 8 January 2014
Saturday 19 April 2014 (Easter)	Tuesday 22 April 2014 (Easter)
Saturday 27 September 2014	Tuesday 30 September 2014

40

The market hours of operation will be 8.00am-4.00pm with set up from 6.00am.

45 The Rural Fire Service will be the "Charity of the Day" for all of the markets and each market will also have a second "Charity of the Day" - The Lions Club in January, (to be advised) in April; and Liberation Larder in September.

50 Other market events in the Shire scheduled for the above dates are the New Brighton Farmers Market which takes place each Tuesday morning, the Bangalow Farmers Market which takes place every Saturday morning, the Mullumbimby Farmers Market which takes place every Friday morning and the Mullumbimby Community Market which is on the third Saturday of each month. There are no other artisan style markets on the dates proposed.

Council as Reserve Trust Manager has the discretion to issue temporary licences for the purpose of markets in accordance with Section 108 of the Crown Lands Act.

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

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

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

Other regular events include the NAIDOC Celebration, Reclaim the Night, Byron Breast Cancer Support Group's Breast Cancer Day, Schoolies Safety Hub, Carols by the Sea and the New Year's Eve Family Event.

Other applications for temporary licences received this year include the Byron Bay Surf Festival, the Byron Bay CSG Free Declaration Day, Byron Bay Film Festival's beachside screening, a Westpac Life Saver Helicopter Charity fundraiser, a PCYC fundraiser, six film/photo shoot applications, approximately sixty weddings and generally no more than ten other types of activities (fundraising, memorial services and private functions etc).

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

At its Ordinary Meeting held 18 April 2013, Council considered a report titled "12.9 Market Policy Review Project Reference Group" and resolved:

13-173:

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).*
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:*
 - 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*
 - 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*

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- 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*
- h) *In relation to the most recent draft markets policy put on display in 2011, specifically the advice should address the following:*
- 10
- (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*
- (ii) *is it possible that the market management be limited to not for profit community groups*
- (ii) *is it a legal requirement that market management no longer provide priority to locally grown, home produced goods etc*
- 15
- (iv) *is the proposed restriction in section 3.4 of the draft policy legally enforceable"*

The councillor workshop called for at resolution item 2 was convened on 22 August 2013 with a report to Council's Ordinary Meeting on 29 August 2013 regarding the formation of a Markets Policy Review Project Reference Group.

20 It is recommended in this report that Council resolve not to call a competitive process to grant the temporary Beachside (Artisan) Market License until such time as the draft Market Policy is adopted, and to grant a temporary licence for the three dates in 2014.

Council's adopted Fees and Charges will apply.

25 The current fee for 2013/14 for a Temporary Commercial Approved Activity on Council owned or controlled land is \$220.00 application fee and licence fee per day of \$305.00 for 1-7 days.

30 This report recommends the granting a temporary beachside (artisan) market licence, in the form contained at Annexure1(b).

This temporary licence agreement is based on a new temporary market licence template considered by the Reserve Trust on 13 June 2013.

35 **Financial Implications**

A once off Application fee of \$220.00 is applied, and the Market rent for the 3 market days will generate \$915.00 in licence fee income.

40 **Statutory and Policy Compliance Implications**

ICAC Guidelines

45 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:

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

"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.

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Direct negotiations can unfairly exclude capable firms and employ staff, pay taxes and contribute to the economy.”

5 *“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.”*

10 *“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

15 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):

- 20
- 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

25

 - 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

30

 - If the proposed lease or licence contains clauses relating to:
 - 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
- 35

The Reserve Trust Handbook also states:

40 *“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.”*

Crown Lands NSW Business Directive 2004

45 *“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”*

50 *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.”*

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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.
- 5 (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.
- 10 (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

- 15 (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,
20 (d) catering,
(e) emergency occupation,
(f) entertainments,
(g) equestrian events,
(h) exhibitions,
25 (i) filming (within the meaning of the Local Government Act 1993),
(j) functions,
(k) hiring of equipment,
(l) holiday accommodation,
(m) markets,
30 (n) meetings,
(o) military exercises,
(p) mooring of boats to wharves or other structures,
(q) sales,
(r) shows,
35 (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.
- 45

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 50 31 of the Crown Lands Regulation 2006.

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.

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Report No. 3.2. Schoolies Safety Hub Apex Park Byron Bay Beach Reserve – Owner's Consent to Lodge Development Application

Executive Manager: Corporate Management

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

File No: #E2013/54240

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Theme: Corporate Management-Property, Procurements and Contract Services

Summary: Mr J Gudgeon on behalf of the Safety Response Working Group is requesting owner's consent to lodge a development application for the placing of temporary structures at Apex Park, on Byron Bay Beach Reserve, for the Schoolies Safety Response between 15 November and 2 December 2013. Council is Reserve Trust Manager for this reserve.

Owner's consent is required from the Minister of NSW Trade and Investment – Crown Lands Division to lodge the development application.

This report recommends that the Reserve Trust Committee support the development application for the placing of temporary structures, as part of the Schoolies Safety Response, at Apex Park on Byron Bay Beach Reserve, and authorise the General Manager to apply to the Crown Lands Division of NSW Trade and Investment for owner's consent to lodge the development application.

RECOMMENDATION:

- 10 1. **That, as Reserve Trust Manager of the Byron Coast Reserve Trust, the Reserve Trust Committee:**
- a) **support the development application as shown at Annexure 3 (#E2013/56356);**
- and
- 15 b) **authorise the General Manager to apply to the Crown Lands Division of NSW Trade and Investment for owner's consent to lodge the development application as shown at Annexure 3 (#E2013/56356).**
- 20 2. **That the applicant on behalf of the Safety Response Working Group pay the \$65.70 application fee to Crown Lands Division to make application for the granting of owner's consent to lodge the development application.**

25 **Attachments:**

- Development Application #E2013/56356 [25 pages] **Annexure 3**

30 *Annexure 3: Due to the size of this document it has been provided to Councillors on their Agenda CD only. It is also available for viewing on Council's website and as a hard copy at community access points throughout the Shire.*

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Report

Land Information

- 5 Part Crown Reserve R82000 known as Byron Bay Beach Reserve
Owner – Crown Lands
Manager – Byron Coast Reserve Trust
Trust Manager – Byron Shire Council
Gazetted – 30/10/1959
10 Gazetted purpose – public recreation
Plan of Management – no

15 On 30 August 2013 a Development Application (refer Annexure 3) was received from the applicant on behalf of the Safety Response Working Group for the placing of temporary structures, as part of the Schoolies Safety Response, at Apex Park on Byron Bay Beach Reserve.

20 As Council is not the owner of the land, consent to lodge the Development Application must be given by Crown Lands Division of NSW Trade and Investment. Request for owner's consent involving Crown Reserves must be accompanied by a statement of support and clear authorisation to make an application for owner's consent from the Reserve Trust Manager.

25 The Safety Response Working Group is made up of a number of stakeholders, including Byron Youth Service, NSW Police (Byron Bay), Byron Liquor Accord, North Coast Area Health Service, BUDDI, Byron United, Holiday Letting Organisation Byron Inc (HLO), Byron Visitor Centre, Byron Shire Council staff, Red Frogs and YWAM. It was created in 2009 in response to concerns about the safety risks to both schoolies and the community. The aim of the Working Group is to provide a safe and secure environment in Byron Bay during the end of year school leavers' celebrations.

30 The proposed development is part of the response to safety concerns and relates to the setting up of a safety hub (marquees) on Apex Park. The safety hub will remain on the reserve from 15 November to 2 December 2013, and will be staffed with volunteers 24 hours a day. It is a place where schoolies can go and be safe, relax, listen to music, play games, and receive safety information. There has been a safety hub operating on Apex Park during Schoolies since 2009,
35 approved through the temporary licensing process for use of a Council managed Crown Reserve, and it has had a positive influence in mitigating the impact of schoolies behaviour on the local community. This year, in addition to issuing a temporary licence for use of the reserve, a Development Application has been received, which requires owner's consent to lodge the Development Application.

40 The estimated cost of the proposed development is \$3,000.00, which is being paid for by the applicant on behalf of the Safety Response Working Group. They will also be paying for the cost of the Development Application and the temporary licence. The Development Application fee is \$575.00. The temporary licence fees are \$170.00 application fee and \$100.00 per day licence
45 fee for 18 days bringing the total to \$1,970.00.

50 There is a fee of \$65.70 payable to Crown Lands Division to make application for the granting of owner's consent to lodge a development application. It is recommended that the applicant on behalf of the Safety Response Working Group also pay this application fee.

Financial Implication

55 The Development Application fee of \$575.00, the costs of the proposed development (estimated at \$3,000.00) and the application and licence fees of \$1,970.00 will be paid for by the applicant on behalf of the Safety Response Working Group.

There is a fee of \$65.70 payable to Crown Lands Division to make application for the granting of owner's consent to lodge a development application, which will also be paid for by the applicant on behalf of the Safety Response Working Group.

5 **Statutory and Policy Compliance Implications**

Crown Lands Act 1989

92 Reserve trusts

- 10 (1) The Minister may, by notification in the Gazette, establish and name a reserve trust and appoint it as trustee of any one or more specified reserves or any one or more parts of a reserve.
- 15 (2) A reserve trust established under subsection (1) is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notification of its establishment.
- 20 (3) The Minister may, by notification in the Gazette:
(a) dissolve a reserve trust, or
(b) alter the corporate name of a reserve trust, or
(c) revoke the appointment of the reserve trust as trustee of any one or more specified reserves or any one or more parts of a reserve.
- 25 (4) A reserve trust has the functions conferred on it by or under this Act.
- (5) A reserve trust is charged with the care, control and management of any reserve (or any part of a reserve) of which it is appointed trustee.
- 30 (6) The affairs of a reserve trust are to be managed:
(a) by the Minister, or
(b) if a trust board is appointed under section 93—by the trust board, or
(c) if a corporation is appointed under section 95—by the corporation, or
(d) if an administrator is appointed under section 117—by the administrator.
- 35 (6A) In this Division, a reference to a **reserve trust manager** is a reference to the Minister (to the extent that the Minister is responsible for managing the affairs of a reserve trust), or any such trust board, corporation or administrator.
- 40 (6B) There can be more than one reserve trust manager for a reserve trust with the function of managing the affairs of the reserve trust allocated between them by the Minister in accordance with the following provisions:
- 45 (a) The Minister can allocate the exercise of functions in respect of different aspects of the affairs of the reserve trust or different parts of the reserve to different reserve trust managers, as specified in the allocation or as determined by the Minister, with those functions to be exercised in accordance with such arrangements (if any) as may be determined by the Minister.
- 50 (b) The Minister is the reserve trust manager for any aspect of the affairs of a reserve trust or any part of the reserve not allocated to another reserve trust manager and is accordingly allocated the function of managing the affairs of the reserve trust in respect of any such unallocated aspects of those affairs or unallocated parts of the reserve.

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- (c) A reserve trust manager has the function of managing the affairs of the reserve trust only to the extent of the allocated functions and is, for the purposes of this or any other Act or law, the reserve trust manager to that extent only.

5 (6C) (Repealed)

- (7) If a reserve trust is appointed as trustee of more than one reserve (or more than one part of a reserve), a reference in this Part to the reserve (or part of the reserve) in relation to the reserve trust includes a reference to any one or more of the reserves (or any one or more of the parts of the reserve) of which the reserve trust has been appointed as trustee.

Environmental Planning and Assessment Regulation 2000

49 Persons who can make development applications

15 (cf clause 46 of EP&A Regulation 1994)

- (1) A development application may be made:
- (a) by the owner of the land to which the development application relates, or
 - (b) by any other person, with the consent in writing of the owner of that land.
- (2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority or for a development application for public notification development if the applicant instead gives notice of the application:
- (a) by written notice to the owner of the land before the application is made, or
 - (b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.
- (3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.
- (3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.
- (4) Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.
- (5) In this clause:

35 **public authority** includes an irrigation corporation within the meaning of the Water Management Act 2000 that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

public notification development means:

- 40 (i) State significant development set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to State Environmental Planning Policy (State and Regional Development) 2011 but it does not include development to the extent that it is carried out on land that is a state conservation area reserved under the National Parks and Wildlife Act 1974,
- 45 or
- (ii) State significant development on land with multiple owners designated by the Director-General for the purposes of this clause by notice in writing to the applicant for the State significant development.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

19 SEPTEMBER 2013

(13)

Report No. 3.3. South Golden Beach Hall – Application for Crown Reserve

Executive Manager: Corporate Management

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

Colin Sims, Project Coordinator Property

Leslie Beardmore, Leasing and Licensing Coordinator

5

File No: #E2013/54026

Theme: Corporate Management-Property, Procurements and Contract Services

Summary: In accordance with council resolution **12-471** and consultation with Crown Lands, this report recommends that Council apply for the establishment of a Reserve Trust and to be appointed the Reserve Trust Manager of Crown Lot 464 DP846618 (South Golden Beach Hall).

10 **RECOMMENDATION:**

1. That Council apply to NSW Trade & Investment Crown Lands Division to establish a Reserve Trust for Lot 464 DP 846618 for use of the Crown Reserve as a community centre.

15

2. That Council apply to NSW Trade & Investment Crown Lands Division to be the Reserve Trust Manager of the newly established Reserve Trust.

20

3. That upon establishment of the Reserve Trust and appointment as Reserve Trust Manager, Council apply to NSW Trade & Investment Crown Lands Division to revoke the 34a licence currently held by Council.

25

4. That the Reserve Trust recommend to Council, that Council amend the section 94 plan to reallocate the section 94 plan funding of \$84,000 from 'acquisition of land' to 'hall improvements' for South Golden Beach Hall.

Attachments:

- 30
- Owner's consent from Crown Lands Division dated 28/08/12 #E2012/3043 [2 pages]..... **Annexure 2(a)**
 - Notice of Determination of Development Application 16/11/12 #A2012/8830 [6 pages] **Annexure 2(b)**
 - Authority to Commence Works from Crown Lands Division 04/02/13 #E2013/7429 [2 page] **Annexure 2(c)**
 - Notice of Determination of Construction Certificate 8/3/2013 #A2013/5316 [8 pages]..... **Annexure 2(d)**

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

19 SEPTEMBER 2013

(14)

Report

Land Information

- 5 Part Crown Reserve R88045 being Lot 464 DP 846618 known as South Golden Beach Hall
Owner – NSW Trade & Investment (Crown Lands)
Reserve Trust – nil
Trust Manager – nil
Gazetted – 11/12/1970
Gazetted purpose – future public requirements
10 Tenure – 34a Licence to Byron Shire Council from Crown Lands for the purpose of Community
Centre commencement date 1/12/2000
Plan of Management – no

Reserve Trust

- 15 At its Ordinary Meeting on 9 June 2011, Council considered a Notice of Motion “8.1. South
Golden Beach Hall Acquisition” (www.byron.nsw.gov.au/meetings/2011-06-09-ordinary) and
resolved:

11-455

- 20
“1. That Council ascertain and report back to Council, as to whether Section 94 funds (South
Golden Beach/New Brighton/Ocean Shores Open Space/other categories) can be used for
Land Acquisition.
- 25 2. That, if point 1 is found to not be possible, Council consider incorporating into the new Draft
Section 94 Plan, Acquisition of the land for Community Centre at South Golden Beach, as
per the staff report, 9 June 2011 (page 6, line 36,).
- 30 3. That if point 1 is found possible, Council recommence negotiations with the relevant state
government body regarding the acquisition of Lot 464DP 846618, for the purpose of
securing tenure over the parcel of land containing the South Golden Beach Community
Centre and playground.
- 35 4. That Council, if the relevant state government body indicates support for the transfer of
ownership, receive a market appraisal and valuation of the land in question.
5. That this market valuation be brought to Council.
- 40 6. That Council seek clarification from the relevant state government body as to the possibility
of securing a long term lease.
7. That the report include the history of expenditure and its effectiveness on the site.”

11-456

- 45 “Resolved that Council also consult with the South Golden Beach Hall Committee and Crown
Lands Division of DPI to consider a Crown Trust to manage the land.”

- 50 To address item 6 of resolution 11-455 Council wrote to NSW Trade & Investment - Crown Lands
Division on 2 May 2012 and Crown Lands advised they would consider application for a lease on
a Reserve Trust appointment request.

- In response to resolution 11-456 Crown Lands advised they would only consider Reserve Trust
application from Council.

55

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

19 SEPTEMBER 2013

(15)

At a meeting between Crown Lands and Council staff on 13 May 2013, Crown Lands confirmed previous conversations that the best path forward is for Byron Shire Council to make an application to establish a Reserve Trust for Lot 464 and for Byron Shire Council to apply to be the Reserve Trust Manager.

5 It was agreed in that meeting that Council would write to Crown Lands confirming the above and that the next step is for a report to the Reserve Trust to consider the advice and obtain a resolution to proceed with this direction.

10 Council wrote to Crown Lands on 21 May 2013 confirming the above advice and seeking their direction as to the application process.

Development Application and Funding

15 At Council's Ordinary Meeting of 30 June 2011 (www.byron.nsw.gov.au/meetings/2011-06-30-ordinary) Council resolved to adopt the 2011-2012 Budget.

11-546 Resolved in part:

20 "2. That Council adopt the 2011/2012, as amended, including the budget adjustments indicated in table 5 and 6 of this report."

In this budget three amounts of money were set aside under Planned Maintenance on page 56 of the report for ongoing maintenance of the South Golden Beach Community Centre.

- 25
- Cladding \$30,000.00,
 - Compliance Issues \$30,000.00, and
 - Hall Renovations \$50,000.00

30 The cladding and compliance issues form part of the annual planned community building asset maintenance program, whilst the hall renovation was included at the request of the South Golden Beach Community Centre Section 355 Committee to undertake modifications to the existing building to improve booking potential.

35 At its Ordinary Meeting on 11 August 2011 Council considered report "12.5. PLANNING - Resolution 11-455 S94 funds for South Golden Beach Hall Acquisition" (www.byron.nsw.gov.au/meetings/2011-08-11-ordinary) addressing resolution 11-455 items 1, 2 and 7 and concluded that items 1, 3, 4 and 5 were not possible at that time, and resolved:

40 **11-568**

"That Council note the report and the action to be undertaken to enact Part 2 of Resolution 11-455."

45 In order to expend the budget items set aside in the 2011/2012 budget South Golden Beach Community Centre Section 355 Committee undertook the appropriate procurement process and engaged a consultant to provide a concept design, site plan and detailed documentation. The scope of works includes the hall modifications, external cladding and changes to meet outstanding compliance issues.

50 Council has received copies of the South Golden Beach Community Centre Section 355 Committee minutes confirming their support for the development and seeking Council and Crown Lands consent to the applications.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

19 SEPTEMBER 2013

(16)

Under the licence agreement signed with the NSW Trade and Investment (previously Department of Land and Water Conservation) on 12 June 2001, Byron Shire Council cannot make improvements or alterations without the Minister's consent.

5 45. Construction of Improvements permitted with Consent

(b) The Holder will not construct effect erect or undertake any improvements on the Premises other than with the prior consent of the Minister in writing.

10 At its Ordinary Meeting on 28 June 2012, Council considered report "12.10. South Golden Beach Community Centre - Owners Consent to Lodge Development Application" (www.byron.nsw.gov.au/meetings/2012-06-28-ordinary) and resolved:

15 **12-471**

"Resolved that Council authorise the General Manager to apply to the Crown Lands Division of NSW Department of Primary Industries for owners consent to lodge the development application and other related applications as shown at Annexure 42 (#1241899)."

20 In accordance with 12-471 Council wrote to Crown Lands Division on 5 July 2012 applying for owners consent to lodge the development application and other related applications.

25 In a letter dated 28 August 2012 Crown Lands Division provided their landowner's consent to lodge (refer Annexure 2(a)), noting that if any modifications are made to the application, it is Council's responsibility to ensure the modified development remains consistent with the landowner's consent.

30 Notice of Determination of the Development Application was issued on 16 November 2012 (Annexure 2(b)).

As required by the landowner's consent provided by Crown Lands Division, a copy of the development consent was forwarded to Crown Lands Division on 22 November 2012.

35 Authority to commence works pursuant to 34a Licence with the Crown, was issued by Crown Lands Division on 4 February 2013 (Annexure 2(c)).

Notice of Determination of Construction Certificate was issued on 8 March 2013 (Annexure 2(d)).

40 Since that time, the section 355 committee have been working with the consultant to reduce the overall project costs. Several meetings between staff and the committee has progressed the required actions and the final stages of documentation and cost estimates are now due from the committee.

45 Current adopted works budget is:

\$60,000 special rates maintenance program for outstanding compliance issues and replacement of external cladding of the hall

\$50,000 community halls grant reassigned to South Golden Beach Hall

50 \$110,000

\$50,000 S94 extended covered verandas for South Golden Beach Hall

\$160,000 Total currently available (less expenditure to date)

55

At this stage, it is anticipated that the current budget will be insufficient. Further funding potential of \$84,000 exists in the section 94 plans but would require consideration by Council to reallocate the section 94 plan funding from 'acquisition of land' to 'hall improvements' for South Golden Beach Hall. A separate report to Council to amend the section 94 plan will be required. The section 94 plan will need to be amended in accordance with Part 4 of the Environmental Planning and Assessment Regulation 2000. Following public exhibition and adoption of the amended contributions plan the additional \$84,000 would be available for this project.

Once the final documentation is received from the committee, staff will be in a position to establish a pre-tender cost estimate and final consent approvals (if required) to progress a report to Council and then proceed to open public tender phase of the project.

Financial Implications

NSW Trade & Investment Crown Lands Division have confirmed that there are no fees applicable for applying to establish the Reserve Trust or for applying to become Reserve Trust Manager of the newly establish Reserve Trust.

Statutory and Policy Compliance Implications

Crown Lands Act 1989

Division 4 Formation of reserve trusts

92 Reserve trusts

- (1) The Minister may, by notification in the Gazette, establish and name a reserve trust and appoint it as trustee of any one or more specified reserves or any one or more parts of a reserve.
- (2) A reserve trust established under subsection (1) is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notification of its establishment.
- (3) The Minister may, by notification in the Gazette:
 - (a) dissolve a reserve trust, or
 - (b) alter the corporate name of a reserve trust, or
 - (c) revoke the appointment of the reserve trust as trustee of any one or more specified reserves or any one or more parts of a reserve.
- (4) A reserve trust has the functions conferred on it by or under this Act.
- (5) A reserve trust is charged with the care, control and management of any reserve (or any part of a reserve) of which it is appointed trustee.
- (6) The affairs of a reserve trust are to be managed:
 - (a) by the Minister, or
 - (b) if a trust board is appointed under section 93—by the trust board, or
 - (c) if a corporation is appointed under section 95—by the corporation, or
 - (d) if an administrator is appointed under section 117—by the administrator.
- (6A) In this Division, a reference to a **reserve trust manager** is a reference to the Minister (to the extent that the Minister is responsible for managing the affairs of a reserve trust), or any such trust board, corporation or administrator.
- (6B) There can be more than one reserve trust manager for a reserve trust with the function of managing the affairs of the reserve trust allocated between them by the Minister in accordance with the following provisions:
 - (a) The Minister can allocate the exercise of functions in respect of different aspects of the affairs of the reserve trust or different parts of the reserve to different reserve trust managers, as specified in the allocation or as determined by the Minister, with those functions to be exercised in accordance with such arrangements (if any) as may be determined by the Minister.
 - (b) The Minister is the reserve trust manager for any aspect of the affairs of a reserve trust or any part of the reserve not allocated to another reserve trust manager and is

BYRON SHIRE COUNCIL

accordingly allocated the function of managing the affairs of the reserve trust in respect of any such unallocated aspects of those affairs or unallocated parts of the reserve.

- (c) A reserve trust manager has the function of managing the affairs of the reserve trust only to the extent of the allocated functions and is, for the purposes of this or any other Act or law, the reserve trust manager to that extent only.

5

(6C) (Repealed)

- (7) If a reserve trust is appointed as trustee of more than one reserve (or more than one part of a reserve), a reference in this Part to the reserve (or part of the reserve) in relation to the reserve trust includes a reference to any one or more of the reserves (or any one or more of the parts of the reserve) of which the reserve trust has been appointed as trustee.

10

95 Appointment of corporation to manage reserve trust

- (1) The Minister may, by notification in the Gazette, appoint:

(a) a council,

(b) a corporation constituted by or under an Act providing for the holding, managing of or dealing with church property, or

15

(c) any other corporation (including the Ministerial Corporation), to manage the affairs of a reserve trust.

- (2) A corporation so appointed has power to accept the appointment and to exercise all the functions of a manager of a reserve trust despite the provisions of the Act by or under which the corporation is constituted.

20

(2A) A corporation may be appointed as the manager of a reserve trust for such term as may be specified in the notification of appointment or by any subsequent notification.

(2B) The term of office of a corporation that has been appointed as the manager of a reserve trust may be extended by the Minister from time to time by a further notification in the Gazette.

25

- (3) A council may not be appointed to manage a reserve trust if the reserve is wholly or partly within the area of another council, except with the consent of the other council.

(4) A document is sufficiently executed by a reserve trust managed by a corporation if it is executed under the seal of the corporation instead of the seal of the trust.