



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting Thursday, 21 November 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

21 NOVEMBER 2013

(1)

BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. EXECUTIVE MANAGER’S REPORT

Corporate Management

- 3.1 Trust Licence to Mullumbimby Tennis Association Inc over part Crown Reserve
31910 Mullumbimby Recreation Grounds2

4. LATE REPORT

Corporate Management

- 4.1 Early Bird Parking Butler Street Reserve Part of Park and Ride Trial Byron Bay
26/12/13 to 6/1/14 inclusive.....9

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CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORTS

Report No. 3.1. Trust Licence to Mullumbimby Tennis Association Inc over part Crown Reserve 31910 Mullumbimby Recreation Grounds

Executive Manager: Corporate Management

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

Andrew Erskine, Superintendent Open Space

File No: #E2013/57645

Theme: Corporate Management-Property, Procurements and Contract Services
Community Infrastructure – Renew and Maintain Existing Infrastructure

Summary: In 1999 the Mullumbimby Tennis Association Inc constructed the six (6) synthetic tennis courts, clubhouse and lighting on the Mullumbimby Recreation Grounds.

The Club has continually upgraded the courts, lighting, clubhouse and surrounds over past years.

At its Reserve Trust Committee Meeting on 31 October 2008 Council as Reserve Trust resolved [08-680] to enter into a five year Trust Lease with the Club. That Trust Lease expires on 31 October 2013 and the Club has requested an extension of tenure on similar terms and conditions to the existing Trust Lease. NSW Trade and Investment Crown Lands Division on behalf of the Minister for Regional Infrastructure and Services has provided in principle support for a Trust Licence for a term of up to ten (10) years.

10 RECOMMENDATION:

1. That the Reserve Trust not call tenders or conduct a similar competitive process to grant a trust licence over part Lot 389 DP 728162 being part Crown Reserve 31910 Mullumbimby Recreation Grounds, but instead direct negotiate with Mullumbimby Tennis Association Incorporated for the following reasons:

- Mullumbimby Tennis Association Incorporated is a community based incorporated not for profit organisation
- the land is zoned 6 (a) open space zone
- the land is a Crown Reserve for purpose of public recreation
- the expenditure the organisation has, and continues to spend, in building, maintaining and upgrading the tennis facility.

2. That Council, as Reserve Trust Manager, grant a trust licence to Mullumbimby Tennis Association Inc over part Lot 389 DP 728162 substantially in the form at Annexure 1(d) (#E2013/64325) on the following terms, subject to Ministerial consent:

- a) Term of five (5) years commencing 1 December 2013;
- b) Rent \$446.00 per annum excluding GST
- c) Rent rebate \$6,154.00 per annum excluding GST (Calculated on basis of Market rent \$6,600.00 per annum ex GST less Crown minimum rent \$446.00 per annum excluding GST);
- d) Licence fee and rent rebate to be adjusted accordingly if Crown minimum rent increases prior to commencement date of the licence; and
- e) Licensee to pay for all services, running costs and maintenance.

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3. That Council, as Reserve Trust Manager, authorise the General Manager to execute and affix the Seal to the 5-year Trust Licence with Mullumbimby Tennis Association Inc over part Lot 389 DP 728162 in accordance with Local Government (General) Regulations 2005.

5

4. That Council, as Reserve Trust Manager, authorise the General Manger to apply to the Crown Lands Division of NSW Trade and Investment for Ministerial consent to exercise the holding over clause in the current Trust Lease.

10

Attachments:

- Letter from Mullumbimby Tennis Assoc Inc #S2013/8852 [1 page].....**Annexure 1(a)**
- Email from NSW Trade and Investment Crown Lands Division #E2013/63928 [2 pages] **Annexure 1(b)**
- 15 • Current market rental valuation #E2013/65504 [75 pages]**Annexure 1(c)**
- Draft Trust Licence #E2013/64325 [29 pages]..... **Annexure 1(d)**

20 *Annexure 1(c) and 1(d): Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website and a hard copy available at access points throughout the Shire.*

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

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Report

Land Information

- 5 Part Crown Reserve R31910 being part Lot 389 DP 728162 being tennis courts and clubhouse part of Mullumbimby Recreation Grounds, Stuart Street, Mullumbimby.
Owner – NSW Trade and Investment (Crown Lands)
Reserve Trust – Mullumbimby (D540006) Reserve Trust
Trust Manager – Byron Shire Council
Gazetted – 22/12/00
10 Gazetted purpose - public recreation
LEP Zone – 6(a) Open Space Zone

15 In 1999 the Mullumbimby Tennis Association Inc known as Mullumbimby Tennis Club (the “Club”) constructed the six (6) synthetic tennis courts, clubhouse and lighting on the Mullumbimby Recreation Grounds. The construction was funded by s.94 contribution of \$50,000 from Council, Club fundraising of \$70,000 and a bank loan obtained by the Club of \$141,000. The bank loan was successfully repaid within the 10 year loan term.

20 In 2008 the Association resurfaced the six (6) courts funded by a grant from the Department of Sport and Recreation of \$14,000, Club fundraising of \$6,000, funding from Council of \$34,000 and a bank loan obtained by the Club of \$54,000 (for which Council acted as guarantor). The bank loan was repaid ahead of schedule.

25 The Club has continually upgraded the courts, lighting, clubhouse and surrounds over past years. All management and maintenance is carried out by the Club on a voluntary basis to ensure the courts are in prime playing condition.

30 At its Reserve Trust Committee Meeting on 31 October 2008 Council as Reserve Trust considered a report titled “3.2 Lease To Mullumbimby Tennis Association” (<http://www.byron.nsw.gov.au/meetings/2008-10-31-trust>) and resolved **08-680**:

- 35 “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:
- 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 tenant’s cost
 - e. provision of public liability insurance.
- 45 2. That Council authorise the General Manager to affix the Council Seal to the new lease over part Lot 389 DP 728162 in accordance with Regulation 400 of the Local Government (General) Regulations 2005.”

A Trust Lease was subsequently entered into for a five (5) year period. That Trust Lease expires on 31 October 2013.

50 In a letter dated 15 July 2013 Mullumbimby Tennis Association Inc requested an extension of their tenure at the facility upon expiry of their current Trust Lease under similar terms and conditions of the existing Trust Lease (refer Annexure 1(a)).

55 The Reserve Trust should note that there are additional plan requirements, under provisions of the Real Property Act 1900, for the leasing of part of a parcel of land for a term of five (5) years or less. It is preferable in this instance to consider the issue of a Trust Licence for the ongoing tenure by the Club.

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The Club's request for extension of tenure was submitted to NSW Trade and Investment Crown Lands Division for their consideration. In an email dated 1 October 2013 (Annexure 1(b)) the Crown provided in principal support to the issue of a Trust Licence for Clubhouse and Courts for a term of up to ten (10) years.

5

A draft Trust Licence for a term of five (5) years has been prepared (Annexure 1(d)) for the Reserve Trust's consideration including the following special conditions:

10

1. Casual hirers are required to complete the Licensor's "Checklist for Casual Hirers" form prior to being given access to the facility by the Licensee.

15

As a new Trust tenure has not been executed prior to the expiry of the current Trust Lease, the continued occupation of the premises by the Club can be authorised by exercising the holding over clause in the current Trust Lease. The Club has confirmed their agreement to exercise the holding over clause. Crown Lands require the Reserve Trust's formal request to exercise the holding over clause before they will provide Minister's consent to same. This is provided for in Recommendation 4.

20

A current market rental valuation (Annexure 1(c)) has been undertaken in accordance with the Crown's request to apply a market rental with an appropriate rebate and has assessed the current market rental as \$6,600.00 per annum excluding GST.

25

In addition to the valuation, the valuer commented that "the figures determined are quite low due to the ongoing cost of refurbishment/replacement as set out in the proposed licence. If funding for the ongoing cost of refurbishment/replacement was more secure then the rent may be higher, particularly if justified by a higher turnover."

30

The valuation assumes that no rates or land tax contributions are currently levied on the subject premises and that this will remain unchanged under the proposed licence.

35

Councils current maintenance of this facility

The tennis club have proved to be self managing, with all upgrades and maintenance organised by their committee. The standard of the facility is high with best practice processes used in the maintenance of the courts. For Council's Community Infrastructure department, this is an ideal situation where intervention and draw on Council resources is virtually nil while the community benefits from the well run and resourced centre.

40

The recently endorsed Sports Field User Policy will have no impact on current management of the facility as tennis courts were specifically excluded from the policy via resolution.

If opportunities for sponsorship were presented to the club resultant funds should be channelled back into the maintenance of the facility.

45

Financial Implications

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

50

As part of their request for extension of tenure, the Mullumbimby Tennis Association Inc has offered to continue to pay for services and maintenance.

Statutory and Policy Compliance Implications

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 or licence the property in accordance with that purpose.

Crown Lands Act 1989 No 6

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

- 5
- 10 (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:
- 15 (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,
- 20 (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.
- 25 (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.
- 30
- (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- 35 (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
- 40 (b) may be specific, approving of a particular contract of sale, lease or licence.
- (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.
- 45 (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.
- 50 (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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Crown Lands Division – Rent concessions and hardship relief for Crown land tenure holders

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.

5

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

10

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

15

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

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.

20

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

- clearly demonstrate the activities of the organisation are of benefit to the welfare of the community to justify a rebate of market rental.

25

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

30

d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

Level of Rebate:

35

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.

40

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

“14.5 How Reserve Trusts prepare a Lease or Licence”

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

45

“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.”

50

“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.”

55

“14.6 Content of the document”

Rent and Rent Review: - at page 14-10

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

Relevant factors to consider include:

- *The permitted use under lease*
- 5 • *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.”*

Local Government Act 1993

10 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:

*“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**”.*

15

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.

20

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.”

25

“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.”

30

“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.”

35

“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.”

40

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.

45

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LATE REPORT

**Report No. 4.1. Early bird parking Butler Street Reserve part of Park and Ride Trial
Byron Bay 26/12/13 to 6/1/14 inclusive**

Executive Manager: Corporate Management

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

File No: #E2013/72441

Theme: Corporate Management, Property, Procurements and Contract Services
Community Infrastructure, Local Roads and Drainage

Summary: Council is considering a Park and Ride proposal for a twelve (12) day trial commencing Boxing Day 26 December 2013. Various reports and resolutions have considered potential costs, problems and benefits of such a service.

Most recently Council resolved in part **13-467** "g) investigate the option of using Butler Street Reserve for early bird parking on the days it is available".

This report confirms NSW Trade and Investments Crown Lands Division's requirements in order for Council to progress the early bird parking proposal.

A separate report on the Trial Park and Ride is included in the Ordinary Meeting Agenda for 21 November 2013.

10 **RECOMMENDATION:**

Subject to Council resolving to adopt recommendations on the Trial Park and Ride (including early bird parking at Butler Street Reserve) at its Ordinary Meeting on 21 November 2013:

- 15
1. That Byron Bay (R88993) Reserve Trust confirms its support of the Trial Park and Ride proposal including the early bird parking proposal for Butler Street Reserve for early bird parking for 9 of the 12 day duration of the Trial Park and Ride over Christmas/New Year 2013/14.

20

 2. That Byron Bay (R88993) Reserve Trust confirms its support to enter into a Licence with NSW Trade and Investment Crown Lands Division for part Butler Street Reserve to authorise the short term use of early bird parking as outlined in 1 above.

25

 3. That Byron Bay (R88993) Reserve Trust authorise the General Manager to complete and lodge the Application for Licence over Crown Land with NSW Trade and Investment Crown Lands Division for the use of part Butler Street Reserve as outlined in 1 above.

30

 4. That Byron Bay (R88993) Reserve Trust authorise the General Manager to execute and affix the Seal (if required) to the Licence over part Butler Street Reserve being Lot 389 DP 728537 in accordance with Local Government (General) Regulations 2005.

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Report

Land Information

- 5 Part Crown Reserve R88993 being part Lot 389 DP 728537 being part of Butler Street Reserve, Byron Bay.
Owner – NSW Trade and Investment (Crown Lands)
Reserve Trust – Byron Bay (R88993) Reserve Trust
Trust Manager – Byron Shire Council
- 10 Gazetted – 17/08/1973
Gazetted purpose - public recreation
LEP Zone – 6(a) Open Space Zone

- 15 Council is considering a Park and Ride proposal for a twelve (12) day trial commencing Boxing Day 26 December 2013. Various reports and resolutions have considered potential costs, problems and benefits of such a service.

- 20 At its Ordinary Meeting on 19 September 2013, Council considered a report titled “13.3. Report of the Transport Advisory Committee Meeting held on 27 August 2013” that included Committee Recommendation titled “Committee Recommendation TrAC 4.2.1” (<http://www.byron.nsw.gov.au/meetings/2013-09-19-ordinary>) and resolved

13-467

- 25 *“That in relation to Report 4.2 “ Trial Holiday Park and Ride Service, Byron Bay 2013/14 (Community Infrastructure E2013/50037), Council adopt: Committee Recommendation TrAC 4.2.1 That Council:*
- 30 a) *Note the estimated operational cost of providing a park and ride service over twelve (12) days commencing from 26 December 2013*
- b) *Note the need for communication and marketing*
- c) *Acknowledge the potential for revenue to subsidise the service*
- d) *Note the upcoming stakeholder meeting in relation to part 4 of resolution 13-243*
- 35 e) *Note the potential to use the rail corridor for park and ride that avoids conflict for traffic on Shirley Street*
- f) *Note that the Committee recommends a coupon only parking system, as per New Years Eve, for the 12 day duration of the park and ride period*
- g) *Investigate the option of using Butler Street Reserve for early bird parking on the days it is available*
- 40 h) *Authorise staff to investigate and report back to Council quotations for delivery of a park and ride service and identifying a budget source.”*

This report addresses part (g) of the above resolution.

- 45 Parking is not a prescribed activity within the meaning of the Crown Lands Act so staff are unable to issue a temporary licence under delegated authority.

50 We have sought the advice of Crown Lands in relation to using Butler Street Reserve for car parking for 9 of the 12 day duration (market days have been excluded) of the Trial Park and Ride over Christmas/New Year 2013/14, and the mechanism by which the use will be authorised in accordance with the Crown Lands Act.

- 55 With the exception of Thursday 26 December 2013, Thursday 2 January 2014 and Sunday 5 January 2014, Butler Street Reserve be used for early bird, all-day parking. The following information was submitted to Crown Lands to assist with their assessment:

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- 5 i. each day, allow vehicle access between 8am and 10am, close access between 10am and 3pm and provide egress between 3pm and 6pm only.
- 5 ii. line mark parking bays (300 spaces) and parking management plan (yet to be drafted) including signage etc.
- 5 iii. parking to be provided free of charge to the general public.
- 10 iv. Trial Park and Ride proposal strongly supported by Mayor, General Manager, Minister for Local Government, and the Roads Minister.
- 10 Information on the current parking cost for Main Beach car park and current developer contribution costs for car spaces was also submitted to Crown Lands to assist them with the rent determination.
- 15 The proposed use of Butler Street Reserve for early bird parking will not require development consent as it is a temporary use, no period on any one occasion exceeds 7 days and is within land zoned 6(a). Refer extract from Byron LEP in Statutory and Policy Compliance Implications section of this report.
- 20 In an email from NSW Trade and Investment Crown Lands Division received 6 November 2013, Crown Lands have provided their in principle support to the proposal, subject to:
- consent for the proposal from the Byron Bay (R88993) Reserve Trust,
 - minimal impact and/or development of the reserve,
 - 25 • the impact and/or development is temporary,
 - parking is free of charge and is open to the general community of New South Wales, and
 - Council enter into a Short Term Licence direct with the Department.
- 30 Crown Lands have determined the market rent for the Licence at \$26,000.00. As the proposal is included in the Trial Holiday Park and Ride Service, they are willing to apply the Statutory Minimum Rent, currently \$446.00 per annum ex GST, to the Licence, to support the trial.
- 35 In order to commence the authorisation of the proposal by way of Licence, we are required to complete an Application for Licence over Crown Land including a letter of support from Byron Bay (R88993) Reserve Trust for the proposal and issue of Licence direct from Crown Lands.

Financial Implications

40 As the proposal is included in the Trial Holiday Park and Ride Service, Crown Lands have applied the Statutory Minimum Rent to the Licence, currently \$446.00 per annum ex GST.

There is an application fee of \$32.80 to be paid upon lodgement.

Statutory and Policy Compliance Implications

- 45 Crown Lands Act 1989 No 6
- 34 Powers of Minister in relation to Crown land
- (1) The Minister may, in such manner and subject to such terms and conditions as the Minister determines:
- 50 (a) sell, lease, exchange or otherwise dispose of or deal with Crown land, or
- (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land, on behalf of the Crown.
- (2) (Repealed)

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- (3) The Minister may not, under subsection (1):
- (a) sell or exchange Crown land,
 - (b) lease Crown land for a term exceeding 5 years, or
 - (c) lease Crown land for a term that, by the exercise of an option, could exceed 5 years, unless the relevant date for the sale, exchange or lease is at least 14 days after notice of intention to sell, exchange or lease the land 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.
- (4) For the purposes of subsection (3) the relevant date:
- (a) for a sale or exchange by private treaty is the date on which the Minister enters into a contract to sell or exchange the land,
 - (b) for a sale by auction is the date of the auction,
 - (c) for a sale by tender is the closing date for tenders,
 - (d) for a sale by ballot is the closing date for nominations for the ballot, and
 - (e) for a lease is the date on which the lease is granted.
- (5) If, under subsection (1), Crown land:
- (a) is offered for sale by auction and is not sold at the auction,
 - (b) is offered for sale by tender and no tender is received or accepted, or
 - (c) is offered for sale by ballot and no nomination of the ballot is received or accepted, subsection (3) does not apply to a sale of the land by private treaty.
- (6) This section does not authorise the sale of Crown land which is reserved for a public purpose.
- (7) Crown land the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.
- 34A Special provisions relating to Minister's powers over Crown reserves
- (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
- (2) The following provisions apply in relation to the granting of a relevant interest:
- (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
 - (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
 - (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
 - (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
 - (c) the Minister is not to grant the relevant interest unless the Minister:
 - (i) is satisfied that it is in the public interest to grant the instrument, and
 - (ii) has had due regard to the principles of Crown land management.

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(3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.

(4) The proceeds from a relevant interest are to be applied as directed by the Minister.

5 (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:

- 10 (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the [Public Reserves Management Fund Act 1987](#),
- 15 (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,
- 20 (c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of a livestock health and pest authority—a direction that the proceeds (or part of the proceeds) be paid to that livestock health and pest authority,

(6) The provisions of:

- 25 (a) Divisions 3 and 3A apply in relation to a lease granted under this section, and
- (b) Division 4 apply in relation to a licence granted under this section, and
- (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and
- 30 (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

(6A) Nothing in this section affects the operation of section 35.

35 (7) In this section:

Crown reserve means land that is, or is part of, a reserve within the meaning of Part 5, and includes:

- 40 (a) land within a travelling stock reserve, or
- (b) land within any other reserves for public purposes under the control of trustees or other authorities.
- (8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.
- 45 (9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

Local Government (General) Regulations 2005

50 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.

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Byron Local Environmental Plan 1988

48 Temporary use of certain land

- 5 (1) Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development) within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:
- 10 (a) such land is vested in the Crown, a Minister of the Crown or the Council, and
(b) the development does not involve the erection of permanent structures ancillary to the use of that land.
- 15 (2) Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the erection of permanent structures ancillary to the use of that land:
- Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale
- Lot 358, DP 704247, Bangalow Road, Byron Bay.