



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting Thursday, 12 December 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', enclosed in a rectangular box.

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

12 DECEMBER 2013

(1)

BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. REPORTS

Corporate and Community Services

- 3.1. Licence for temporary tenure of part Mullumbimby Civic Hall 2

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

12 DECEMBER 2013

(2)

CORPORATE AND COMMUNITY SERVICES – DIRECTOR'S REPORT

Report No. 3.1. **Licence for temporary tenure of part Mullumbimby Civic Hall**

Director: Corporate and Community Services

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

File No: #E2013/74089

Theme: Corporate Management-Property, Procurements and Contract Services

Summary: At its Ordinary Meeting on 10 October 2013 Council received a report on the fire that destroyed the Mullumbimby Neighbourhood Centre Annex building.

Council resolved [13-516] to provide temporary tenure for the Mullumbimby and District Neighbourhood Centre, in the front room of the Mullumbimby Civic Hall, to enable them to continue to provide accommodation for the Southern Cross Distance Education program, until the annex building has been reconstructed.

Draft tenure documents were forwarded to NSW Trade and Investment Crown Lands Division for approval in principle, which has now been received.

This report seeks Council's authorisation (as trustees of the Mullumbimby Literary Institute Site D1000362) to grant a licence over that part of the Mullumbimby Civic Hall being part of Dedication 1000362 for literary institute.

10 **RECOMMENDATION:**

- 15
1. **That Council, as trustees of the Mullumbimby Literary Institute Site D1000362, note this is a special meeting convened to consider the desirability to grant a licence (substantially in the form at Annexure 1(a) #E2013/73033) over that part of the Mullumbimby Civic Hall being part of Dedication 1000362 for literary institute, to Mullumbimby and District Neighbourhood Centre Inc (subject to Ministerial consent) on the following terms and conditions:**
- 20
- a) **Term of 12 months;**
b) **Rent equivalent to Crown minimum rent (currently \$451.00 per annum ex GST);**
c) **Permitted use - distance education by Southern Cross Distance Education.**
- 25
2. **That Council, as trustees of the Mullumbimby Literary Institute Site D1000362, note at least 14 days notice of this special meeting was published in two separate issues of a local newspaper.**
- 30
3. **That Council, as trustees of the Mullumbimby Literary Institute Site D1000362, confirm it is desirable to grant a licence outlined in 1 above to Mullumbimby and District Neighbourhood Centre Inc by a majority of not less than three-quarters of the members present.**
4. **That Council, as trustees of the Mullumbimby Literary Institute Site D1000362 call another special meeting to confirm this decision, to be held at least 1 month after this meeting by giving 14 days notice as in 2 above.**

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- 5 **5. That Council, as trustees of the Mullumbimby Literary Institute Site D1000362, authorise the General Manager to execute the Licence over part Lot 10 Section 8 DP 758725.**

Attachments:

- 10 • Draft licence agreement #E2013/73033 [26 pages].....**Annexure 1(a)**
 • Minutes 29 October 2013 #E2013/73781 [2 pages] **Annexure 1(b)**

15 *Annexure 1(a): 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 at community access points around the Shire.*

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BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

12 DECEMBER 2013

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Report

Land Information

- 5 Description: Part Lot 8 Section 8 DP 758725 at Dalley Street complex Mullumbimby being Crown Land (D540006)
- Dedication: Site for council chambers
- Gazetted: 16/10/25
- Owner: State of New South Wales (Crown Lands)
- Legislation: Crown Lands Act 1989
- 10 Reserve Trust: Nil
- Trust Manager: Nil
- Tenure: Crown Lease 453912 for business purposes dated 07/09/12 to Byron Shire Council - Approved Crown sub-lease to Mullumbimby & District Neighbourhood Centre Inc (MDNC) for community welfare services over neighbourhood centre and annex building only.
- 15
- Description: Part Lot 10 Section 8 DP 758725 at Dalley Street complex Mullumbimby being Crown Land (D1000362)
- Dedication: Site for literary institute
- 20 Gazetted: 1/11/29
- Owner: State of New South Wales (Crown Lands)
- Legislation: Trustees of School of Arts Enabling Act 1902
- Trustees: The Council of the Municipality of Mullumbimby appointed by gazette notification 13/12/29
- 25 Tenure: Board of Management

The Mullumbimby Civic Hall is primarily located upon Lot 10 Section 8 DP 758725 (Mullumbimby literary institute site) and encroaches the adjoining Lot 8 Section 8 DP 758725 (old Mullumbimby council chambers site).

30

At its Ordinary Meeting on 10 October 2013, Council considered a report titled "13.6. Mullumbimby and District Neighbourhood Centre - Annex Building Destroyed by Fire" (<http://www.byron.nsw.gov.au/meetings/2013-10-10-ordinary>) and resolved:

35 **13-516**

- 40 "1. That Council authorise the General Manager to take all necessary steps and actions to reconstruct the annex building destroyed by fire at Lot 8 DP 758725.
- 45 2. That Council authorise the General Manager to take all necessary steps and actions to provide temporary tenure for Mullumbimby and District Neighbourhood Centre, in the front room of the Mullumbimby Civic Hall, to enable them to continue to provide accommodation of Southern Cross Distance Education program, until the annex building has been reconstructed, subject to support from Crown Lands being received for this purpose.
3. That Council notify Crown Lands and Mullumbimby and District Neighbourhood Centre of its decision to reconstruct the annex building."

50 This report addresses in part, item 2 of the above resolution regarding the temporary tenure of part of the Mullumbimby Civic Hall (the front room) by Mullumbimby and District Neighbourhood Centre Inc (MDNC) for a term of 12 months at Crown minimum rent whilst the Annex Building is reconstructed. The proposed temporary arrangement will allow MDNC to continue to provide accommodation for the Southern Cross Distance Education program.

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The proposed temporary arrangement has the support of the Mullumbimby Civic Hall's Board of Management, see Annexure 1(b) attached.

5 Draft tenure documents (sub-lease and licence) were forwarded to NSW Trade and Investment Crown Lands Division for approval in principle under the provisions of the Crown Lands Act and Trustees of School of Arts Enabling Act.

10 In an email to Council dated 8 November 2013, Crown Lands provided their in principle support to the draft sub-lease and licence, subject to some minor alterations.

As the tenures are administered under different Acts, the requirements for Minister's consent are different.

15 Licence over that part of the Mullumbimby Civic Hall being part of Dedication 1000362 for literary institute

20 There are particular requirements including "special general meetings" and notice of these meetings to be advertised. Please refer to the Statutory and Policy Compliance Implications section of this report for further information.

At least 14 days notice of the meeting must be published in two separate issues of a local newspaper. The notice must specify the purpose of the meeting.

25 Notice of this meeting was published in the Byron Shire News on Tuesday 19 November 2013 and Tuesday 26 November 2013.

The draft licence at Annexure 1(a) has Crown Lands in principle support.

30 Crown Lands Division have advised that provisions exist for the transfer of the literary institute site to be administered under the Crown Lands Act 1989, as the Trustees of School of Arts Enabling Act 1902 is outdated. Staff will begin this process in 2014 and provide a further report to Council on the matter.

35 Sub-lease over that part of the Mullumbimby Civic Hall being part of Dedication 540006 for council chambers

40 Council will consider a separate report on the sub-lease for that part of the council chambers dedicated site that is part of the Mullumbimby Civic Hall at its Ordinary Meeting on 12 December 2013.

Financial Implications

The rental income will be limited to Crown Land minimum for the term of the licence.

45 Statutory and Policy Compliance Implications

Trustees of School of Arts Enabling Act 1902

5 Mode of obtaining power to sell etc

50 (1) Any trustees desiring to sell, lease, or mortgage any lands or any part thereof, may, by giving fourteen days' notice by advertisement in two separate issues of a newspaper circulating in the district in which such lands are situate, convene for the special purpose of considering the desirability of such sale, lease, or mortgage, a meeting of the members of the institution for which such lands are reserved, dedicated, granted, or held.

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5 (2) If at such meeting a resolution to the effect that it is desirable to sell, lease, or mortgage such lands is duly passed and carried by a majority of not less than three-fourths of such members present at such meeting, the trustees may, by giving fourteen days' notice as aforesaid, convene for the special purpose of confirming such resolution a second meeting of such members.

(3) Such second meeting shall be held not less than one month from the date of holding the meeting first abovementioned.

10 (4) At such second meeting such resolution may be confirmed by a resolution duly passed and carried by a majority of not less than three-fourths of such members present at such second meeting.

6 Application for Minister's consent

15 Such trustees may also apply to the Minister on a full statement to the Minister of the facts relating to the proposed sale, lease, or mortgage, for the Minister's consent thereto in writing.

7 Consent

20 (1) The Minister may in any case give consent, either as to the whole, or as to part of any lands in respect of which any application is made, and may at any time withdraw consent, either wholly or partially, or vary the terms and conditions thereof, if the Minister can do so without prejudice to the rights of third parties.

25 (2) In the case of an application for leave to sell or lease any lands, the Minister may give consent either generally by authorising the sale or lease of such lands subject to such conditions, restrictions, reservations, and covenants, and in such manner and within such time, as the Minister may think desirable, or by approving of particular contracts of sale or lease.

30 (3) In the case of an application for leave to mortgage any land, such general authority shall not be given, but the terms of the proposed mortgage shall in each case be submitted to the Minister for approval, and the Minister's consent shall not, unless under circumstances which in the minute of approval the Minister certifies to be exceptional, be given to a mortgage of any lands for more than one half of their estimated value.

8 Sale, lease, and mortgage

35 (1) After the confirmation of such resolution as aforesaid and after obtaining the written consent hereinbefore mentioned, and not otherwise, the trustees may sell, lease, or mortgage the lands, in respect of which such resolution was passed and consent given, according to the terms of such consent;

40 Provided that where the Minister has given consent generally, as in the next preceding section provided, no lands shall be sold or leased in pursuance of such consent, unless in each case the price agreed upon or rent reserved has been submitted to and approved of by the Minister.

(2) A mortgage under this Act may contain a power of sale.