



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 20 March 2014

held at Council Chambers, Station Street, Mullumbimby
commencing at 2.00pm

Public Access relating to items on this Agenda can be made at 2.00pm 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 two working days prior to the Meeting.

Phillip Holloway
Acting General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(1)

BUSINESS OF MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
4. STAFF REPORTS

Corporate and Community Services

- 4.1. Durrumbul Community Preschool Association Inc over Part Crown Reserve
R55796 Durrumbul Public Recreation Reserve.....2

CORPORATE AND COMMUNITY SERVICES – STAFF REPORT

Report No. 4.1. **Durrumbul Community Preschool Association Inc over part Crown Reserve R55796 Durrumbul Public Recreation Reserve**

Director: Corporate and Community Services

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

Greg Ironfield, Acting Manager Sustainable Communities

File No: #E2013/62130

Theme: Children’s Services – Other Children’s Services
Property, Procurement and Contracts

Summary: Since occupying the Old Durrumbul Hall building in 1982, the Durrumbul Community Pre-school has had no formal tenure in place.

The declared purpose of the Reserve is Public Recreation. Crown Lands support the expansion of the Reserve purpose with the additional purpose of Community Purposes. This will allow trust tenure to be negotiated for the purpose of Community Pre-school.

This report demonstrates that it is in the public interest for the Reserve to be used for the additional purpose and seeks to formalise tenure with the Pre-school.

RECOMMENDATION:

1. That the Reserve Trust apply to NSW Trade and Investment Crown Lands Division to expand the purpose of Crown Reserve 55796 to include Community Purposes section 121A of the Crown Lands Act.

2. That the Reserve Trust confirm that it is in the public interest for Crown Reserve 55796 to be used for the additional purpose of Community Purposes as demonstrated in this report.

3. That the Reserve Trust not undertake a competitive process to establish the trust licence over part Lot 5 DP 832186 being part Crown Reserve 55796 Durrumbul Public Recreation Reserve for the following reasons:

a) Council’s Policy No. 3.44 Children’s Services provides that Council “*support several community preschools in the Shire by providing land and/or buildings for the delivery of services for children aged 3-5 years. Council’s involvement includes acting as Trustee of Crown Land, lease of operational and community land at nominal cost to the organisations, and the lease and maintenance of buildings. Services include Durrumbul Preschool.*”

b) Crown Reserve 55796 has a current purpose of Public Recreation with the additional purpose of Community Purposes being subject to approval by the Minister Crown Lands.

c) The maintenance and improvements made to the asset located on Crown Reserve 55796 made by Durrumbul Community Pre-school Association Inc.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(3)

d) Durrumbul Community Pre-school Association Inc is a community based not-for-profit organisation providing pre-school services.

5 4. That Reserve Trust grant a trust licence to Durrumbul Community Pre-school Association Inc over part Lot 5 DP 832186 substantially in the form at Annexure 1(c) (#E2013/64645) on the following terms, subject to consent by Minister Crown Lands:

- 10 a) Term of ten (10) years commencing 1 July 2014;
b) Rent \$15,000.00 pa ex GST;
c) Rent rebate of \$14,546.00 pa ex GST to Crown minimum rent, currently \$454.00 pa ex GST;
d) All licence preparation fees and charges are paid by Durrumbul Community Pre-school.

15

Attachments:

- 20 • Letter from Crown Lands dated 30 May 2013 #E2013/33914 [2 pages]Annexure 1(a)
• Email from Crown Lands dated 1 October 2013 #E2013/63932 [5 pages] Annexure 1(b)
• Draft trust licence #E2013/64645 [26 pages]Annexure 1(c)
• Market rental valuation #E2013/73717 [41 pages] Annexure 1(d)
• Email from Pre-school dated 17 October 2013 #E2013/67616 [1 page]Annexure 1(e)

25 *Annexures 1(c) and 1(d): Due to the size of these documents they have been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website and hardcopies are available at community access points around the Shire.*

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(4)

Report

Part Crown Reserve R55796 being part Lot 5 DP 832186 being Old Durrumbul Hall cnr Main Arm Road and Durrumbul Road, Main Arm.

- 5 Owner – NSW Trade and Investment (Crown Lands)
Reserve Trust – Durrumbul Public Recreation Reserve Trust
Trust Manager – Byron Shire Council
Gazetted – 10/11/22
Gazetted purpose - public recreation
10 LEP Zone – 1(a) hatched general rural zone

History

The Durrumbul Community Pre-school was established in 1982 and has been occupying the Old Durrumbul Hall since that time without formal tenure.

- 15 The Preschool is licensed to operate Monday to Friday from 8.30am to 3.30pm during school terms. Durrumbul Community Pre-school is a community based non-profit incorporated association funded by the NSW Government Department of Education & Communities licensed to cater for 20 children per day.

- 20 The Pre-School's Statement of Philosophy includes:

“The pre-school educator is to be a guide and facilitator for the child's learning. Always aim to provide a nurturing and quality programme that offers a secure, caring and supportive environment designed to build on the unique strengths and interests of each child. Create an environment rich in diversity. Encourage full participation of children. Our commitment to providing quality care is our highest priority as is the importance of each child feeling safe. We recognise that children are part of a family and a local community.”

- 30 The Pre-school's curriculum follows the standards of the National Quality Framework for Early Childhood Education and Care implemented in 2009 by the Australian Government. The Pre-school has comprehensive policy and procedures in place.

- 35 Durrumbul Community Pre-school employs qualified staff with long-term experience in the field of early childhood.

Durrumbul Community Pre-school Association Inc. maintains Public Liability insurance for \$10,000,000 liability as required by their Licence.

- 40 The Pre-school encompasses the below listed infrastructure:

- Old Durrumbul Hall building-single storey, detached timber building approx 112m2 plus two (2) verandahs each approx 56m2
- 45 • Toilet block
- Two (2) garden sheds
- Ancillary – outdoor space including children's shaded play area with covered sandpit, fort with slide, swing set and monkey bars; grassed area; fully fenced
- No on-site parking – road reserve is used for parking by Pre-school clientele.

- 50 Since 1982, the Pre-school has made improvements to the buildings and grounds and maintains them to a high standard. They pay for all ongoing charges such as electricity and services and waste collection. There are no rates applicable, and there is no water supplied to the property.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(5)

At its Meeting on 30 November 2004, the Reserve Trust considered a report titled "3.3 Lease of Old Durrumbul Hall" which noted a request from the Pre-school for a lease. It was resolved:

04-966

- 5
- “1. That Council as the Byron Shire Reserve Trust (Durrumbul R55796 Public Recreation Reserve Trust) authorise the General Manager to enter into a three-year lease with Durrumbul Community Preschool Inc over Lot 5 DP832186 (Old Durrumbul Hall) with the following minimum conditions:
- 10
- Annual rent of \$350, increased by CPI on 1 July annually
 - All minor maintenance costs to be met by tenant
 - All lease establishment costs including valuation to be met by tenant
- 15
2. That Council as the Byron Shire Reserve Trust (Durrumbul R55796 Public Recreation Reserve Trust) authorises the attachment of the Council seal to the lease.
3. That Council recognise the difference between the rent charge of \$350 per annum (as increased each year by CPI) and the market rent as annual rebate in accordance with Crown requirements.”
- 20

A draft lease was prepared in accordance with resolution 04-966 and forwarded to the Pre-school and also to Crown Lands for approval. Correspondence from Crown Lands dated 3 February 2006 noted that the proposed purpose of the lease was not compatible with the purpose of the reserve.

25

Crown Lands subsequently advised in an email dated 3 March 2008 that the way to proceed with the tenure for the pre-school would be for the Pre-school to apply for a 34A licence from the Crown with the concurrence of the Reserve Trust.

30

At the Reserve Trust Meeting on 23 October 2008, the Reserve Trust considered a report titled "Durrumbul Pre-School – Old Durrumbul Hall – Part R55796" and resolved:

08-679

“That the Byron Shire Reserve Trust grant its concurrence to the submission of a direct application from the Durrumbul Community Preschool Association Inc to the Department of Lands for a Section 34A Licence Agreement over Pt Lot 5 DP 832186, being part of R55796.”

35

The Pre-school were advised of the above resolution in a letter dated 9 December 2008 for submitting with their application for a 34A licence to Crown Lands.

40

Current

The matter was followed up with Crown Lands in early 2013 when it came to our attention that the occupation of the Pre-school had not been authorised under provisions of section 34A of the Crown Lands Act.

45

The matter was placed on the agenda for the next Crown Lands Meeting between Council staff and Crown Lands.

50

At that Meeting on 13 May 2013, Crown Lands advised that Council as Reserve Trust Manager should be seeking to enter into a 34A licence agreement with the Crown as they do not support a direct relationship between the Pre-school and the Crown as provided in resolution 08-679.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(6)

In a letter dated 30 May 2013 [Annexure 1(a)] Crown Lands advised that after a further review of the matter, the Minister has provided support for Council as Reserve Trust Manager to expand the reserve purpose with the additional purpose of Community Purposes under provisions of section 121A of the Crown Lands Act. This additional purpose is compatible with the declared purpose of the reserve, being Public Recreation and is considered to be consistent with the principles of Crown Land management.

To commence this process, Council as Reserve Trust Manager is required to:

1. Demonstrate that it is in the public interest for the Reserve to be used for the additional purpose; and
2. Negotiate under provisions of section 102 of the Crown Lands Act a draft Trust tenure for Community Pre-school to the Durrumbul Community Pre-school Association Inc.

In determining the public interest the Trust should consider:

- How the additional purpose meets the objectives of the NSW State Plan 2021 (e.g. Regional Economy),
- The potential the proposed additional purpose will bring to the local and broader community,
- The extent to which the proposed additional purpose will meet current and future community needs/requirements,
- The nature of the objectives which support the proposed additional purpose (e.g. any Council planning, community consultation for the site or location, etc), and
- The impact to the community if the proposed additional purpose is not undertaken (e.g. cultural, financial, legal, and social).

The expansion of the reserve purpose for the additional purpose of Community Purposes and negotiating tenure for the Durrumbul Community Pre-school is supported by the Council's Sustainable Communities staff as it provides an essential community service that has a demonstrated need and support within the community. Council does not have the funding or resources to offer such a service in the current budget.

Supporting the additional purpose and establishment of tenure for the Durrumbul Community Pre-school is consistent with Council's Community Strategic Plan 2022 at:-

Community Outcome SC1 to 'Support communities to achieve equitable access to an appropriate range and level of whole of life services such as healthcare, education and housing' progressed via Community Strategy SC1.2 to 'Provide accessible facilities that support leisure, learning and recreation for people of all ages.

Community Outcome SC2 to 'Achieve active participation in local and regional community life' progressed via Community Strategy SC2.3 to 'Facilitate positive family and community influences on child development'.

Council's Community Strategic Plan 2022 (the "CSP") was developed being mindful of key regional and state plans that shape and guide the region and the impact they have on the Shire. The CSP aligns with the current NSW State Plan 2021 through the Northern Rivers Regional Action Plan. The additional purpose is consistent with Priority 5 of the Action Plan to 'Build service capacity and support vulnerable groups in the community' through the action of 'Build the capacity of the non government sector to deliver community Services'.

Council's Policy No. 3.44 Children's Services provides that Council "support several community preschools in the Shire by providing land and/or buildings for the delivery of services for children aged 3-5 years.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(7)

This report determines that it is in the public interest for the Reserve to be used for the additional purpose of Community Purposes (in this case - a community pre-school) as highlighted in the information above.

- 5 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 Pre-school.
- 10 In an email dated 1 October 2013 (Annexure 1(b)) Crown Lands advised that the Minister is willing to support the issue of a Trust Licence for Community Pre-school for a term of up to ten (10) years. A draft Trust Licence has been prepared for the Reserve Trust's consideration at Annexure 1(c) for a term of ten (10) years.
- 15 A current market rental valuation of the draft Trust Licence area has been undertaken and is attached at Annexure 1(d) assessing the current rental as \$15,000.00 pa ex gst. The valuation allows the Reserve Trust to apply a market rental with appropriate rebate to the Trust Licence.
- 20 The Pre-school have confirmed their request for tenure at a peppercorn rent in an email dated 17 October 2013 (Annexure 1(e)). They will be required to pay all services, running costs and maintenance under the Trust Licence. The proposed rent is Crown minimum rent being \$454.00 pa ex gst.

25 In light of the following factors it is recommended to be appropriate for the Reserve Trust to enter into a Trust Licence with this organisation without entering into a competitive process:-

- Durrumbul Community Pre-school Association Inc is a community based Inc not for profit organisation.
- the land is a Crown Reserve for purpose of public recreation, with additional purpose of community purposes to be approved as part of the Trust Licence tenure negotiation.
- the expenditure the organisation has, and continues to spend, in maintaining the pre-school;
- Council's Policy No. 3.44 Children's Services provides that Council "*support several community preschools in the Shire by providing land and/or buildings for the delivery of services for children aged 3-5 years. Council's involvement includes acting as Trustee of Crown Land, lease of operational and community land at nominal cost to the organisations, and the lease and maintenance of buildings. Services include Durrumbul Preschool.*"

40 As part of Council's asbestos management plan, an inspection was undertaken on 19 December 2012 and reported that the asbestos or ACM identified at the subject site is presumed asbestos and is found in a good condition. As such, there is an overall moderate health risk to persons in these areas onsite. Friable asbestos was not identified during the audit. A copy of the asbestos management plan report has been provided to Durrumbul Community Pre-School Inc for their information.

45 There has been no recent Visual Building Inspection Report commissioned by Council.

Financial Implications

50 The Reserve Trust rental income will be limited to Crown Land minimum (currently \$454.00 per annum ex gst) 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.

55 The licensee is to pay all services, expenses and maintenance under the Trust Licence.

All licence preparation costs including the market valuation are to be on-charged to the Licensee at cost plus 10% in accordance with Council's adopted fees and charges.

Statutory and Policy Compliance Implications

5

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

10 Crown Lands Act 1989 No 6

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

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

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,

30

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

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

35

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

40

(a) may be general, authorising the proposal subject to such conditions, restrictions, reservations and covenants, and in such manner and within such time, as the Minister thinks desirable, or

(b) may be specific, approving of a particular contract of sale, lease or licence.

(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

50

(b) impose such other terms and conditions as the Minister thinks desirable.

(7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.

BYRON SHIRE COUNCIL

121A Minister may authorise reserve to be used for additional purpose

- (1) In this section, **declared purpose** has the same meaning as in section 112A.
- 5 (2) The Minister may, by order published in the Gazette, authorise a reserve specified in the order to be used for a purpose that is additional to the declared purpose of the reserve.
- (3) The Minister may not authorise a reserve to be used for any such additional purpose unless the Minister is satisfied that:
- 10 (a) the additional purpose is compatible with the declared purpose of the reserve, and
- (b) the use of the reserve for the additional purpose is consistent with the principles of Crown land management, and
- (c) it is in the public interest for the reserve to be used for the additional purpose.
- 15 (4) The Minister is to consult the following persons or bodies before making an order under this section in relation to a reserve:
- (a) the person or body managing the affairs of the reserve trust (if any) appointed as trustee for the reserve,
- (b) if the reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible.
- 20 (5) Failure to comply with subsection (4) does not affect the validity of the order.
- (6) An order under this section may relate to any number of reserves or to a specified group of reserves.
- 25

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.

30

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

- a) an eligible pensioner whose holding is occupied as his or her sole place of residence (or is an adjunct to that place of residence) and is not used for any commercial purpose
- 35 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
- 40 iii) that the Minister is satisfied is a non-profit organisation, whose holding is used as a help or service facility of benefit to the general community or as an active sporting, passive recreational or youth advancement facility of general benefit to a local community.

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

45

- 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.

- 50 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
- 55 d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(10)

Level of Rebate

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

- 5 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

- 10 "14.5 How Reserve Trusts prepare a Lease or Licence"
Other Points to be kept in Mind: – at page 14-9

- 15 *"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."*

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

"14.6 Content of the document"

- 25 Rent and Rent Review: at page 14-10

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

Relevant factors to consider include:

- 30
 - *The permitted use under lease*
 - *The value of the part of the reserve being used*
 - *Who owns the building or improvements to be used by the lessee*
 - *Costs to be incurred by the trust."*

Council's adopted Children's Services Policy No. 3.44 states the following:

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

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.

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

20 MARCH 2014

(11)

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.”*