



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 22 May 2014

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

*Public Access relating to items on this Agenda can be made at the commencement of the Meeting. Requests for public access are to be made to the General Manager or Mayor no later than 12.00 midday one working day prior to the Meeting.*

A handwritten signature in black ink, appearing to read 'Ken Gainger', written in a cursive style.

Ken Gainger  
General Manager

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## 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)

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## 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

22 MAY 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. Mullumbimby Museum - Trust Licence part Public Recreation Crown Reserve 31910 .....2

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MAY 2014

(2)

## CORPORATE AND COMMUNITY SERVICES – STAFF REPORT

**Report No. 4.1. Mullumbimby Museum - Trust Licence part Public Recreation Crown Reserve 31910**

**Director:** Corporate and Community Services

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

**File No:** #E2014/19593

**Theme:** Property, Procurement and Contracts

**Summary:** The Mullumbimby Museum is the former Mullumbimby Post Office building. It was relocated to its current site (Mullumbimby Recreation Ground) in 1984 by Brunswick Valley Historical Society Inc for the purposes of a museum. The museum has been occupying the Reserve since that time without formal crown tenure.

A draft Crown Trust licence has 'in principle' support from the Brunswick Valley Historical Society Inc and NSW Trade & Investment, Crown Lands Division.

This report recommends the Reserve Trust grant a Trust licence to the Society, subject to Ministerial consent, to formalise their occupation of the crown reserve.

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### 10 **RECOMMENDATION:**

1. **That the Reserve Trust not undertake a competitive process to establish the trust licence over part Lot 389 DP 728162 being part Crown Reserve 31910 Summers Park Reserve for the following reasons:**

- 15 a) **Brunswick Valley Historical Society Inc owns the building;**  
b) **Brunswick Valley Historical Society Inc is a not-for-profit organisation;**  
c) **maintenance and improvements to the building and land by Brunswick Valley Historical Society Inc since occupying the site in 1984.**

20 2. **That the Reserve Trust grant a Trust licence to Brunswick Valley Historical Society Inc over part Lot 389 DP 728162 substantially in the form at Annexure 1(a) (#E2014/18916) on the following terms, subject to consent by Minister Crown Lands:**

- 25 a) **Term of five (5) years commencing 1 July 2014;**  
b) **Rent \$4,700.00 pa ex GST;**  
c) **Rent rebate of \$4,246.00 pa ex GST to Crown minimum rent, currently \$454.00 pa ex GST;**  
d) **All licence preparation costs, services, expenses and maintenance are paid by Brunswick Valley Historical Society Inc.**

### 30 **Attachments:**

- 35 • Proposed Trust licence #E2014/18916 [27 pages].....**Annexure 1(a)**  
• Market rental valuation #E2014/918 [66 pages]..... **Annexure 1(b)**  
• Letter from BVHS Inc #S2013/13777 [3 pages].....**Annexure 1(c)**  
• Letter from Council to BVHS Inc #E2013/74706 [2 pages]..... **Annexure 1(d)**  
• In principle support from Crown #S2014/3327 [1 page].....**Annexure 1(e)**

40 *Annexures 1(a) and 1(b): 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 a hardcopy viewed at community access points around the Shire.*

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

22 MAY 2014

(3)

## Report

### Land Information

- 5 Part Crown Reserve R31910 being part Lot 389 DP 728162 being Summers Park Reserve also known as Mullumbimby Recreation Ground, corner Myokum and Stuart Streets, Mullumbimby  
Owner – NSW Trade and Investment (Crown Lands)  
Reserve Trust – Mullumbimby R31910 Reserve Trust  
Trust Manager – Byron Shire Council  
Gazetted – 22/12/2000  
10 Gazetted purpose - public recreation  
LEP Zone – 6(a) open space zone

### Background

- 15 The former Mullumbimby Post Office building was purchased by Brunswick Valley Historical Society following a tender in 1984 for the purpose of a museum. The building was relocated to its present site on Summers Park Reserve in 1984 and has been occupying the Reserve since that time without formal tenure.

### Current

- 20 NSW Trade and Investment, Crown Lands Division has requested tenure be formalised for the occupation of the land only.

- In order to determine the current market rent, a rental valuation (on the land only) was conducted by an independent valuer and is attached at Annexure 1(b). The current market rental valuation is determined as \$4,700.00 per annum plus GST and outgoings.  
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A draft Trust licence was prepared and forwarded to the Brunswick Valley Historical Society Inc for their 'in principle' agreement to enter into the Trust licence.

- 30 The Society's response to the draft Trust licence is attached at Annexure 1(c) in which they accepted 'in principle' agreement to enter into the Trust licence and requested some amendments. Their amendments were addressed by way of letter (Annexure 1(d)) noting that Council will be requesting the maximum rental subsidy available so that rent to be paid under the Trust licence by the Society will be the equivalent of Crown minimum rent.

- 35 The draft Trust licence was forwarded to Crown Lands Division for their 'in principle' support noting the request for maximum rent rebate and removal of the clause 32(b) relating to improvements so that the building can be relocated if ever required in the future.

- 40 Crown Lands Division provided their 'in principle' support (Annexure 1(e)) to the draft Trust licence subject to the Society providing evidence of its not-for-profit status to the Reserve Trust.

- The Society's Certificate of Incorporation (confirming its not-for-profit status) was attached to their response to the draft Trust licence at Annexure 1(c).  
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The proposed Trust licence is attached at Annexure 1(a).

## 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 Trust licence. All rental rebates are recorded and reported to Crown Lands under the financial reporting requirements of the Trust Handbook.

- The licensee is to pay all services, expenses and maintenance under the Trust Licence.  
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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
- 25 (d) the Minister has consented in writing to the proposal.
- (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
- 30 (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.
- 35 (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- (4) If the application for consent proposes a sale, lease, easement or licence, the Minister's consent:
- 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.
- 45 (5) If the application for consent relates to a mortgage, the Minister's consent can only be given to the specific terms of the mortgage.
- (6) In giving consent, the Minister may:
- 50 (a) vary the terms and conditions to which the sale, lease, easement, licence or mortgage is to be subject, and
- (b) impose such other terms and conditions as the Minister thinks desirable.
- (7) The Minister may, at any time, wholly or partly withdraw the consent or vary its terms, but only if to do so would not prejudice the rights of third parties.



# BYRON SHIRE COUNCIL

## 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.

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

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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

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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.

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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.

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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

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

### Level of Rebate

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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.

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

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### The Department of Lands Trust Handbook March 2007

“14.5 How Reserve Trusts prepare a Lease or Licence”

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

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*“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.”*

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

“14.6 Content of the document”

Rent and Rent Review: - at page 14-10

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# BYRON SHIRE COUNCIL

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

*Relevant factors to consider include:*

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

## ICAC Guidelines

10 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

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

20 *“Doing business with government is a key driver of economic activity and many private firms and not-for-profit organisations rely on access to government contracts in order to stay in business. Direct negotiations can unfairly exclude capable firms and employ staff, pay taxes and contribute to the economy.”*

25 *“Obtaining best value for public money is a fundamental principle of public sector work. When it is known that there are other proponents who could feasibly compete for a contract, agreeing to direct negotiations with a single proponent increases the risk that the agency may not obtain best value for money. When a proponent does not have to compete for contracts there is a higher risk that the proponent may unjustifiably increase profit margins, exaggerate expenses or otherwise boost returns on the contract.”*

30 *“Furthermore, when an agency restricts the number of parties with which it does business, it also limits the number of potentially useful ideas, solutions and options that it has access to.”*