



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 12 June 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.

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

BUSINESS OF MEETING

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

Corporate and Community Services

- 4.1. Durrumbul Hall 355 Committee - Owners Consent to Lodge Development Application2

CORPORATE AND COMMUNITY SERVICES – STAFF REPORT

Report No. 4.1. Durrumbul Hall 355 Committee - Owners Consent to Lodge Development Application

Executive Manager: Corporate and Community Services
Report Author: Leslie Beardmore, Leasing and Licensing Co-ordinator
File No: #E2014/33248

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Theme: Property, Procurement & Contracts

Summary: Durrumbul Community Centre Section 355 Management Committee is requesting owner’s consent to lodge a development application for removal of one tree on Durrumbul Public Recreation Reserve for which Council is the Reserve Trust Manager.

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

This report recommends that the Reserve Trust Committee support the development application for removal of one tree and authorise the General Manager to apply to the Crown Lands Division of NSW Trade and Investment for owner’s consent to lodge the development application.

RECOMMENDATION:

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1. That as Reserve Trust Manager of the Durrumbul Public Recreation Reserve Trust, the Reserve Trust Committee:

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- a) support the development application from Durrumbul Community Centre Section 355 Management Committee as shown at Annexure 1 (#E2014/33286); and**
- b) authorise the General Manager to apply to the Crown Lands Division of NSW Trade and Investment for owner’s consent to lodge the development application as shown at Annexure 1 (E2014/33286).**

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2. That the Durrumbul Community Centre Section 355 Management Committee pay the \$65.70 application fee to the Crown Lands Division to make the application for the granting of owner’s consent to lodge the development application.

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Attachments:

- Development Application #E2014/33286 [6 pages] **Annexure 1**

BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

12 JUNE 2014

(3)

Report

Land Information

5 Part Crown Reserve R55796 known as Durrumbul Public Recreation Reserve

Owner: Crown Lands

Manager: Durrumbul Community Centre Section 355 Management Committee on behalf of Durrumbul Public Recreation Reserve Trust

10 Trust Manager: Byron Shire Council

Gazetted: 20/11/1922

Gazetted purpose: Public recreation

Plan of Management: No

15 Durrumbul Community Centre Section 355 Management Committee is established under Section 355 of the Local Government Act 1993. The Committee's Terms of Reference include:-

20 *To promote optimum usage of the Hall and its surrounds, to care for and maintain the facility through responsible day to day management, to ensure the safety of the patrons of the Hall and its surrounds.*

25 On 20 May 2014 a Development Application (refer Annexure 1 (#E2014/33286)) was received from the Durrumbul Community Centre Section 355 Management Committee for the removal of one tree next to Durrumbul Hall located on part of Durrumbul (R55796) Public Recreation Reserve.

The reasons for request to remove the tree are listed as:

- 30
- The tree is within 3 metres of/or overhanging a dwelling.
 - The tree is interfering with, or may interfere with, the efficiency of a solar appliance.
 - The tree is located 2.6 metres from a septic system.
 - The tree is within 600mm of a water tank.

35 Council staff have requested a copy of meeting minutes from the Durrumbul Community Centre Section 355 Management Committee that confirm they are agreeable to the lodgement of the Development Application.

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

45 There is a fee of \$65.70 payable to Crown Lands Division to make application for the granting of owner's consent to lodge a development application. It is recommended that Durrumbul Community Centre Section 355 Management Committee pay this application fee.

50 A credit card authorisation for payment of the development application fee has been made by Durrumbul Community Centre Section 355 Management Committee and is being held by Council pending owner's consent.

Any procurement activities relating to the works must be conducted in accordance with Section 355 Guidelines and Council's Tender and Purchasing Guide.

Financial Implications

5 There is a fee of \$65.70 payable to Crown Lands Division to make application for the granting of owner's consent to lodge a development application.

Statutory and Policy Compliance Implications

Crown Lands Act 1989

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92 Reserve trusts

- 15 (1) The Minister may, by notification in the Gazette, establish and name a reserve trust and appoint it as trustee of any one or more specified reserves or any one or more parts of a reserve.
- 20 (2) A reserve trust established under subsection (1) is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notification of its establishment.
- 25 (3) The Minister may, by notification in the Gazette:
- (a) dissolve a reserve trust, or
 - (b) alter the corporate name of a reserve trust, or
 - (c) revoke the appointment of the reserve trust as trustee of any one or more specified reserves or any one or more parts of a reserve.
- (4) A reserve trust has the functions conferred on it by or under this Act.
- 30 (5) A reserve trust is charged with the care, control and management of any reserve (or any part of a reserve) of which it is appointed trustee.
- (6) The affairs of a reserve trust are to be managed:
- 35 (a) by the Minister, or
 - (b) if a trust board is appointed under section 93—by the trust board, or
 - (c) if a corporation is appointed under section 95—by the corporation, or
 - (d) if an administrator is appointed under section 117—by the administrator.
- 40 (6A) In this Division, a reference to a **reserve trust manager** is a reference to the Minister (to the extent that the Minister is responsible for managing the affairs of a reserve trust), or any such trust board, corporation or administrator.
- (6B) There can be more than one reserve trust manager for a reserve trust with the function of managing the affairs of the reserve trust allocated between them by the Minister in accordance with the following provisions:
- 45
- 50 (a) The Minister can allocate the exercise of functions in respect of different aspects of the affairs of the reserve trust or different parts of the reserve to different reserve trust managers, as specified in the allocation or as determined by the Minister, with those functions to be exercised in accordance with such arrangements (if any) as may be determined by the Minister.

BYRON SHIRE COUNCIL

- 5 (b) The Minister is the reserve trust manager for any aspect of the affairs of a reserve trust or any part of the reserve not allocated to another reserve trust manager and is accordingly allocated the function of managing the affairs of the reserve trust in respect of any such unallocated aspects of those affairs or unallocated parts of the reserve.
- 10 (c) A reserve trust manager has the function of managing the affairs of the reserve trust only to the extent of the allocated functions and is, for the purposes of this or any other Act or law, the reserve trust manager to that extent only.
- (6C) (Repealed)
- 15 (7) If a reserve trust is appointed as trustee of more than one reserve (or more than one part of a reserve), a reference in this Part to the reserve (or part of the reserve) in relation to the reserve trust includes a reference to any one or more of the reserves (or any one or more of the parts of the reserve) of which the reserve trust has been appointed as trustee.

Environmental Planning and Assessment Regulation 2000

20 **49 Persons who can make development applications**

(cf clause 46 of EP&A Regulation 1994)

- (1) A development application may be made:
- 25 (a) by the owner of the land to which the development application relates, or
(b) by any other person, with the consent in writing of the owner of that land.
- (2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority or for a development application for public notification development if the applicant instead gives notice of the application:
- 30 (a) by written notice to the owner of the land before the application is made, or
(b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.
- 35 (3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.
- (3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.
- 40 (4) Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.
- 45 (5) In this clause:
- 50 **public authority** includes an irrigation corporation within the meaning of the Water Management Act 2000 that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

BYRON SHIRE COUNCIL

public notification development means:

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