



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 28 August 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

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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

28 AUGUST 2014

(1)

## 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.Crown Reserve 84627 Proposed Lease -  
Mullumbimby Golf Club Limited..... 2

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

28 AUGUST 2014

(2)

## CORPORATE AND COMMUNITY SERVICES – STAFF REPORT

**Report No. 4.1. Crown Reserve 84627 Proposed Lease - Mullumbimby Golf Club Limited**

**Director:** Corporate and Community Services

5 **Report Author:** Trish Kirkland, Manager Governance Services

**File No:** #E2014/14364

**Theme:** Property, Procurement and Contracts

**Summary:** Council in 1989 entered into a lease agreement with Mullumbimby Golf Club Limited for a period of 25 years.

That lease expired on 28 February 2014.

A twelve (12) month temporary trust licence has been issued to the Club to authorise their continued occupation of the land. It expires on 28 February 2015.

Mullumbimby Golf Club Limited has requested a new lease at Crown minimum rent, with the Club to continue paying all ongoing charges, repairs and maintenance for its continued use as a golf course.

This report recommends granting a new trust lease to the Club.

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### 10 **RECOMMENDATION:**

1. **That the Reserve Trust not undertake a competitive process to establish the trust lease over Lot 406 DP 728639 and Lot 51 DP 755692 being Crown Reserve 84627 Mullumbimby Golf Course Reserve for the following reasons:**

- 15
- a) **the maintenance and improvements undertaken to Crown Reserve 84627 by Mullumbimby Golf Club Limited**
  - b) **the use of the land as a golf course is consistent with the gazetted purpose of the Reserve**
  - c) **the Reserve Trust has not received interest from any other party to lease the golf course land**
  - d) **the Mullumbimby Golf Club own the adjacent land containing the club house and amenities**
- 20
- 25

2. **That the Reserve Trust grant a trust lease to Mullumbimby Golf Club Limited over Lot 406 DP 728639 and Lot 51 DP 755692 substantially in the form at Annexure 1(b) (#E2014/13975) on the following terms, subject to consent from the Minister Crown Lands:**

- 30
- a) **Term of ten (10) years commencing 1 October 2014**
  - b) **Rent \$6,600.00 pa ex GST**
  - c) **Rent rebate of \$3,300.00 pa ex GST**
- 35

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

28 AUGUST 2014

(3)

3. That all lease preparation costs and fees are paid by Mullumbimby Golf Club Limited in accordance with adopted fees and charges.

5 4. That the Council seal be affixed to the Lease of Lot 406 DP 728639 and Lot 51 DP 755692 upon its execution.

***Attachments:***

- 10
- **CONFIDENTIAL** Notes from Club #E2013/69427 [7 pages] ..... **Annexure 1(a)**
  - Draft trust lease-approval in principle #E2014/13975 [25 pages] ..... **Annexure 1(b)**

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

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

28 AUGUST 2014

(4)

## Report

### Land information

- 5 Whole of Crown Reserve 84627 (Mullumbimby Golf Course Reserve) being Lot 406 DP 728639 and Lot 51 DP 755692 located at 1600 Coolamon Scenic Drive, Mullumbimby NSW
- Owner – State of New South Wales (Crown Land)
- 10 Reserve Trust – Mullumbimby Golf Course Reserve Trust
- Trust Manager – Byron Shire Council
- Gazetted – 8/11/63
- 15 Gazetted purpose – public recreation
- LEP Zone – RE1 public recreation; RU1 primary production
- 20 Council entered into a lease agreement with Mullumbimby Golf Club Limited on 1 March 1989 for a term of 25 years at an annual rental of \$500.00. That lease expired on 28 February 2014.
- A twelve (12) month temporary trust licence has been issued to the Club to authorise their continued occupation of the land. It expires on 28 February 2015 or until such time as another trust tenure is in place.
- 25
- In a meeting with staff on 24 October 2013, the Club provided a brief history and outline of the Club's current status. This information is attached at Confidential Annexure 1(a). It was noted that the current membership of approximately 230 members needs to be increased in order to improve the Club's financial viability.
- 30
- Prior to that meeting, Council received a letter of support for the Club from Don Page MP noting that it is a great asset to the local community and any support that can be offered to the Club would be appreciated by the Club and the wider community.
- 35
- At that meeting with staff, the Club requested confirmation from Council regarding any available Section 94 funds to assist with future improvements to the course. Works for Mullumbimby golf course were not included in the original 2012 Byron Developer Contributions Plan nor were they included in amendment 1 or in draft amendment 2 and as such no funds are available. The Club did not make a submission during the public exhibition of amendment 2. Consequentially no works for the golf course have been included in the plan.
- 40
- Council's Section 94 Planner has advised that that the funding of any new works on the golf course via section 94 funding may push the cost per lot in the Mullumbimby catchment over the \$20,000 cap on contributions imposed by the Minister for Planning. If the cost per lot exceeds the \$20,000 cap then Council would have to cut existing works from the plan. Adding new works to the S94 plan will also increase Council's unfunded apportionment liability that notionally has to be paid from the general fund. It cannot be recommended to incorporate new works into the S94 plan without addressing the \$20,000 cap and Council's unfunded apportionment liability to the general fund created by adding new works to the plan.
- 50
- Mullumbimby Golf Club Limited has been established for 80 years. The original golf course was located at Mullumbimby Creek Road before securing the lease of the current site with the support of Council.

# BYRON SHIRE COUNCIL

The Club own the adjoining land upon which the clubhouse and car park are located.

5 The Club pays all maintenance and running costs associated with the use of the land as a golf course. This includes maintaining all fencing, mowing all areas to the surrounding roads and ensuring that all drains throughout the course are kept clear to channel storm water from the roads and low lying areas. Course maintenance is their major cost and they employ two full-time greenkeepers. All work associated with running and managing the Club, as well as some maintenance, is carried out by volunteers. The Club continue to apply for grant funding on a regular basis, although they have been overlooked in recent funding allocations.

10 In a letter to Council the Club requested a new lease and offered to continue paying all ongoing charges such as water and electricity, as well as repairs and maintenance for its continued use as a golf course. However, they requested to only pay a rent per annum based on the applicable minimum Crown rent for that period.

15 As required by the Crown, a market rental valuation has been commissioned and the market rental valuation determined the market rent at \$6,600 per annum ex GST. The net rental income will be created to Crown Reserve 84627 (Mullumbimby Golf Course) and become available for asset maintenance costs and expenses in the future.

20 The Club's request for a new lease was referred to Crown Lands for 'in principle' support, prior to the lease being considered by the Reserve Trust. Council in referring the lease sought advice on the request for an extended term and for a rental rebate, noting the Club's not-for-profit status and lack of significant commercial revenue generation.

25 Crown Lands provided in principle support for the following:

- offer for a term of up to ten (10) years
- accept determination of initial market rent, as assessed by the independent valuer, and
- application of a rebate of 50% to the initial market rent.

30 The Club has expressed disappointment with the proposed trust lease. In particular they are concerned that:

- future rent will be determined at market value taking into account improvements to the land;
- the term of the lease does not provide them with incentive to invest time and money in the future of the Club; and
- they will require further assistance to pay the rent even with the 50% rebate.

40 In addition to this Council has since provided further advice to the Club that it has not been levied General Rates for the occupation of the Crown Reserve during the previous lease term in accordance with the terms and conditions of the lease. In this regard, the proposed Trust lease will also require the Club to pay levied General Rates. Based on 2013/2014 values, the General Rates would be approximately \$3,600 for this year. The Club may be eligible for a donation under Council's Policy "Section 356 Donations – Rates, Water and Sewerage Charges".

45 The Club have received a copy of the Section 356 Policy and prepared an application for donation.

50 The Club are accepting of the current Crown Lands trust lease, but remain somewhat concerned about its potential impact on their financial status.

55 In light of the following factors it is considered appropriate that the Reserve Trust not undertake a competitive process to establish a new trust lease with Mullumbimby Golf Club Limited over Mullumbimby Golf Course (Crown Reserve 84627):



# BYRON SHIRE COUNCIL

- the maintenance and improvements undertaken to Crown Reserve 84627 by Mullumbimby Golf Club Limited
- the use of the land as a golf course is consistent with the gazetted purpose of the Reserve
- 5 • the land adjacent to the Reserve, on which the clubhouse and amenities are located, is owned by the Mullumbimby Golf Club.

## **Financial Implications**

- 10 The Reserve Trust rental income will be \$6,600.00 per annum ex GST (50% rebate to be applied) for the term of the lease in accordance with the Crown Lands Policy on Rental Concessions for Crown Lands Tenures. Rent thereafter will be subject to the relevant Crown Lands rebate policy of the day. Net rental income will be accounted for in Reserve 84627.
- 15 All rental rebates are recorded and reported to Crown Lands under the financial reporting requirements of the Reserve Trust Handbook.

The lessee is to pay all services, expenses and maintenance under the Trust lease.

- 20 All lease preparation costs including market valuation are to be on-charged to the Lessee at cost plus 10% in accordance with Council's adopted fees and charges. This equates to \$2,057.00 for reimbursement of the market valuation and \$400.00 lease preparation fee.

## **Statutory and Policy Compliance Implications**

- 25 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

- (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:
- 35 (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,
- 40 (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
- 45 (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,
- 50 (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.



# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

28 AUGUST 2014

(7)

- (3) The Minister's consent may relate to the whole or part only of the land with which the application is concerned.
- 5 (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
- 10 (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.
- 15 (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.
- 20 (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.

## Crown Lands Division – Rent concessions and hardship relief for Crown land tenure holders

25 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.

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

- 30 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
- b) a community service, sporting or recreational organisation:
- 35 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.
- 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
- 50 d) a local council whose holding is used to provide facilities, without charge, for the benefit of the general community.

Level of Rebate

5 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.

10 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

15 "14.5 How Reserve Trusts prepare a Lease or Licence"  
Other Points to be kept in Mind: – at page 14-9

20 *"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."*

25 *"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

30 *"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*
- *Who owns the building or improvements to be used by the lessee*
- *Costs to be incurred by the trust."*

35 ICAC Guidelines

40 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

45 *"It is not acceptable to automatically reappoint an incumbent whose fixed term contract is about to expire."*

50 *"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."*

55 *"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."*

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

28 AUGUST 2014

(9)

*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.”*

- 5 *“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.”*

## Local Government (General) Regulation 2005

### 10 400 Council seal

(2) The seal of a council may be affixed to a document only in the presence of:

- 15 (a) the mayor and the general manager, or  
(b) at least one councillor (other than the mayor) and the general manager, or  
(c) the mayor and at least one other councillor, or  
(d) at least 2 councillors other than the mayor.

20 (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.

25 (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.