



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 9 October 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

9 OCTOBER 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. Crown 34A Licence - Butler Street Reserve..... 2

**CORPORATE AND COMMUNITY SERVICES – STAFF REPORT**

**Report No. 4.1. Crown 34A Licence - Butler Street Reserve**

**Director:** Corporate and Community Services

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

**File No:** #E2014/60393

**Theme:** Local Roads and Drainage

**Summary:** During the Summer period 2013/14 Council entered into a short-term 34A Licence with the Crown for the duration of the trial park and ride, to use part of the Butler Street Reserve for parking.

Since that time Crown Lands have given further consideration to the continued use of Butler Street Reserve for parking. Crown Lands have advised in correspondence dated 18 July 2014 that they will consider a 2-year term 34A licence application from Council (with support from the Reserve Trust) for the investigation, consultation and trial of car parking on the Reserve.

This report seeks the Reserve Trusts support for Council to apply for and enter into a 34A Licence with Crown Lands for use of part Butler Street Reserve for this purpose.

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10 **RECOMMENDATION:**

**That Council, as the Reserve Trust Manager of Byron Bay (R88993) Reserve Trust, confirm its support for Council to apply for and enter into a 34A Licence with NSW Trade and Investment Crown Lands Division for part Butler Street Reserve to authorise car parking.**

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# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

9 OCTOBER 2014

(3)

## Report

### Land Information

- 5 Part Crown Reserve R88993 being part Lot 389DP 728537, part Lot 390 DP 728538 and part Lot 391 DP 728539 known as part Butler Street Reserve, Byron Bay.  
Owner – NSW Trade and Investment (Crown Lands)  
Reserve Trust – Byron Bay (R88993) Reserve Trust  
Trust Manager – Byron Shire Council
- 10 Gazetted – 17/08/1973  
Gazetted purpose - public recreation  
Byron LEP 2014 Zone – RE1 public recreation zone

- 15 At its Reserve Trust Committee Meeting held on 21 November 2013, the Reserve Trust considered a report titled “4.1 Early Bird Parking Butler Street Reserve Part of Park and Ride Trial Byron Bay 26/12/13 to 6/1/14 inclusive” and resolved:

### **13-620**

- 20 “Subject to Council resolving to adopt recommendations on the Trial Park and Ride (including early bird parking at Butler Street Reserve) at its Ordinary Meeting on 21 November 2013:
1. That Byron Bay (R88993) Reserve Trust confirms its support of the Trial Park and Ride proposal including the early bird parking proposal for Butler Street Reserve for early bird parking for 9 of the 12 day duration of the Trial Park and Ride over Christmas/New Year 2013/14.
  2. That Byron Bay (R88993) Reserve Trust confirms its support to enter into a Licence with NSW Trade and Investment Crown Lands Division for part Butler Street Reserve to authorise the short term use of early bird parking as outlined in 1 above.
  3. That Byron Bay (R88993) Reserve Trust authorise the General Manager to complete and lodge the Application for Licence over Crown Land with NSW Trade and Investment Crown Lands Division for the use of part Butler Street Reserve as outlined in 1 above.
  4. That Byron Bay (R88993) Reserve Trust authorise the General Manager to execute and affix the Seal (if required) to the Licence over part Butler Street Reserve being Lot 389 DP 728537 in accordance with Local Government (General) Regulations 2005.”
- 40 At its Ordinary Meeting on 21 November 2013, Council considered report titled “12.4. Park and Ride trial – Byron Bay 26/12/13 to 6/1/14 inclusive” and resolved **13-625** to conduct the Trial Park and Ride (including early bird parking at Butler Street Reserve).

- 45 In accordance with resolution **13-620**, Council entered into a 34A Licence with the Crown for the duration of the park and ride trial to use part Butler Street Reserve for parking. The Licence provided the short term occupation subject to a number of conditions including that all vehicle parking shall be free of charge. The Reserve Trust should note that Crown Lands determined the market rent for the Licence at \$26,000.00. As the proposal was part of a trial Park and Ride Service, the Crown determined only to apply the Statutory Minimum Rent of \$446.00 per annum ex GST to support the trial.
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- 55 Following the trial park and ride event in 2013/14 Summer period and requests from business owners for additional parking areas in Byron Bay for their staff, Council made enquiries with Crown Lands regarding the terms and conditions that might be considered by Crown Lands for a twelve (12) month parking trial on Butler Street Reserve.

# BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

9 OCTOBER 2014

(4)

In correspondence from Crown Lands dated 18 July 2014 in response to that enquiry, Crown Lands advised:

- 5 *“In regard to BSC’s request for a twelve (12) month car parking trial within the subject reserve. I understand that BSC in its capacity as the local government authority is responsible for the provision of and operation of car parking facilities. Crown Lands are aware of the limited parking in the Byron Bay CBD and BSCs efforts to secure further parking for the local and broader community.*
- 10 *As such, it would be practical for BSC to acquire the subject land pursuant to the provisions of the Lands Acquisition (Just Terms Compensation) Act 1991. Acquisition will secure further designated parking in the CBD and BSC’s long term interest in the subject land.*

- 15 *As a precursor to the consideration of any in principle support to the acquisition, Crown Lands is willing to offer BSC a Licence for Investigation under provisions of section 34A CLA for a term of two (2) years with the application of statutory minimum rent for the first twelve months or for the period of investigation whichever is the lesser and market rent for the second twelve months or from commencement of car parking trial.*

- 20 *The Licence will allow BSC to legally occupy the subject land to undertake the relevant investigations and community consultation in the first twelve (12) months or lesser if 12 months not required and undertake the trial in the second twelve (12) months or from commencement date of trial is prior to 2nd 12 month period, subject to the investigations and consultations supporting the trial.*

- 25 *This licence will be subject to the usual legislative and policy requirements being addressed, confirmation of support from the Byron Bay (R88993) Reserve Trust and BSC resolution accepting the Licence and acquisition of the subject land should the investigations indicate that that part of the reserve is no longer required for its purpose.”*
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The above advice has been further discussed with Crown Lands where they have verbally indicated that the “market rent” for the second twelve month period would be on the basis of a percentage of the revenue derived for the trial. The amount indicated was 50%.

- 35 The amount of rental proposed for the first twelve month period being the investigation period would be at minimum Crown Rent, currently \$456.00 per annum ex GST. This amount is proposed to allow Council to complete and consult on the Byron Bay Town Centre Master Plan. The trial car park would commence after the investigation period of twelve months, or sooner if Council completed the investigation prior to the first twelve months. The trial car park period
- 40 would be at “market rent”.

- Council will consider a report at its Ordinary Meeting on 9 October 2014 titled “*Crown 34A Licence - Butler Street Reserve*”. That report seeks Council’s acceptance of the proposed 34A Licence and authorisation to enter into the 34A Licence with Crown Lands, subject to the Reserve Trust considering this report and resolving to support Council entering into a 34A Licence with Crown Lands.
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## **Financial Implications**

- 50 There are no financial implications for the Reserve Trust.

## **Statutory and Policy Compliance Implications**

Crown Lands Act 1989 No 6

- 55 34 Powers of Minister in relation to Crown land

# BYRON SHIRE COUNCIL

- (1) The Minister may, in such manner and subject to such terms and conditions as the Minister determines:
- (a) sell, lease, exchange or otherwise dispose of or deal with Crown land, or
  - (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land, on behalf of the Crown.
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- (2) (Repealed)
- (3) The Minister may not, under subsection (1):
- (a) sell or exchange Crown land,
  - (b) lease Crown land for a term exceeding 5 years, or
  - (c) lease Crown land for a term that, by the exercise of an option, could exceed 5 years, unless the relevant date for the sale, exchange or lease is at least 14 days after notice of intention to sell, exchange or lease the land 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.
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- (4) For the purposes of subsection (3) the relevant date:
- (a) for a sale or exchange by private treaty is the date on which the Minister enters into a contract to sell or exchange the land,
  - (b) for a sale by auction is the date of the auction,
  - (c) for a sale by tender is the closing date for tenders,
  - (d) for a sale by ballot is the closing date for nominations for the ballot, and
  - (e) for a lease is the date on which the lease is granted.
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- (5) If, under subsection (1), Crown land:
- (a) is offered for sale by auction and is not sold at the auction,
  - (b) is offered for sale by tender and no tender is received or accepted, or
  - (c) is offered for sale by ballot and no nomination of the ballot is received or accepted, subsection (3) does not apply to a sale of the land by private treaty.
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- (6) This section does not authorise the sale of Crown land which is reserved for a public purpose.
- (7) Crown land the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.
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## 34A Special provisions relating to Minister's powers over Crown reserves

- (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
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- (2) The following provisions apply in relation to the granting of a relevant interest:
- (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
    - (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
    - (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
  - (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
  - (c) the Minister is not to grant the relevant interest unless the Minister:
    - (i) is satisfied that it is in the public interest to grant the instrument, and
    - (ii) has had due regard to the principles of Crown land management.
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- (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- (4) The proceeds from a relevant interest are to be applied as directed by the Minister.



# BYRON SHIRE COUNCIL

(5) Without limiting subsection (4), any such direction by the Minister may include any of the following:

- 5 (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the [Public Reserves Management Fund Act 1987](#),
- 10 (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,
- (c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of a livestock health and pest authority—a direction that the proceeds (or part of the proceeds) be paid to that livestock health and pest authority,
- 15 (d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.

(6) The provisions of:

- 20 (a) Divisions 3 and 3A apply in relation to a lease granted under this section, and
- (b) Division 4 apply in relation to a licence granted under this section, and
- (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and
- 25 (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

(6A) Nothing in this section affects the operation of section 35.

(7) In this section:

30 **Crown reserve** means land that is, or is part of, a reserve within the meaning of Part 5, and includes:

- (a) land within a travelling stock reserve, or
- (b) land within any other reserves for public purposes under the control of trustees or other authorities.

35 (8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.

40 (9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.