



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 30 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.



Mark Arnold
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

30 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

5 4.1. Short Term 34A Licence Butler Street Reserve 2

Infrastructure Services

4.2. Authorisation to lodge licence application for infrastructure on Council
managed waterfront land, Brunswick Heads 6

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BYRON SHIRE COUNCIL

BYRON SHIRE RESERVE TRUST COMMITTEE MEETING

30 OCTOBER 2014

(2)

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CORPORATE AND COMMUNITY SERVICES – STAFF REPORT

Report No. 4.1. Short Term 34A Licence Butler Street Reserve

Director: Corporate and Community Services

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

10 **File No:** #E2014/69027

Theme: Community Infrastructure, Local Roads and Drainage

Summary: A report titled “Special Event Parking Area and Butler Street Reserve as Temporary Car Park Site, 2/12/14-04/01/15” is provided in the Agenda for Council’s Ordinary Meeting on 30 October 2014.

Council previously resolved **14-470** to apply for a two (2) year Licence with Crown Lands for use of part Butler Street Reserve as car park. The Reserve Trust provided its support of that application by resolution **14-496**.

An application has been sent to Crown Lands in accordance with both resolutions however it is unlikely it will be processed in time for the commencement of the park and ride on 29 December 2014.

This report seeks the Reserve Trusts support for Council to urgently apply for and enter into a short term 34A Licence with Crown Lands for use of part Butler Street Reserve for this year’s park and ride.

RECOMMENDATION:

15 That Council as Reserve Trust Manager of Byron Bay (R88993) Reserve Trust, confirm its support for Council to apply for and enter into a short term 34A Licence with NSW Trade and Investment Crown Lands Division for part of Butler Street Reserve to authorise car parking for a six (6) day duration as part of the park and ride.

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5 **Report**

Land Information

10 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

Gazetted – 17/08/1973

15 Gazetted purpose - public recreation

Byron LEP 2014 Zone – RE1 public recreation zone

At its Reserve Trust Committee Meeting on 9 October 2014, the Reserve Trust considered report titled “*Crown 34A Licence – Butler Street Reserve*” and resolved:

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14-496

25 *“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.”*

Staff have applied for the 34A licence with Crown Lands in accordance with resolution 14-496. This application may not be processed and a licence granted by Crown Lands in time for the park and ride commencement on Monday 29 December 2014.

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Council will consider a report at its Ordinary Meeting on 30 October 2014 titled “Special Event Parking Area and Butler Street Reserve as Temporary Car Park Site, 2/12/14-04/01/15”. That report seeks Council’s authorisation for an urgent application for a short term 34A Licence to Crown Lands, subject to the Reserve Trust considering this report and providing its support.

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This report seeks the Reserve Trusts support for Council to urgently apply for and enter into a short term 34A Licence with Crown Lands for use of part Butler Street Reserve for this year’s park and ride.

40 **Financial Implications**

There are no financial implications for the Reserve Trust.

Statutory and Policy Compliance Implications

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Crown Lands Act 1989 No 6

34 Powers of Minister in relation to Crown land

(1) The Minister may, in such manner and subject to such terms and conditions as the Minister determines:

50

- (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.

(2) (Repealed)

(3) The Minister may not, under subsection (1):

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- (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,

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- 5 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.
- (4) For the purposes of subsection (3) the relevant date:
- 10 (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
- 15 (e) for a lease is the date on which the lease is granted.
- (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
- 20 (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.
- (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
- 25 authorised by, and complies with, the terms of the special purpose lease.
- 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,
- 30 licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
- (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:
- 35 (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,
- 40 (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:
- 45 (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.
- (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.
- 50 (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:
- (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](#),
- 55 (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,

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- 5 (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,
- 10 (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:
- (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
- 15 (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
- (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.

- 20 (6A) Nothing in this section affects the operation of section 35.
- (7) In this section:

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

- 25 (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.
- (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.
- 30 (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.

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INFRASTRUCTURE SERVICES – STAFF REPORT

Report No. 4.2. Authorisation to Lodge Licence Application for Infrastructure on Council Managed Waterfront Land, Brunswick Heads

Director: Infrastructure Services
Report Author: Andy Erskine, Superintendent Open Space
File No: #E2014/62188

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Theme: Infrastructure Services, Open Space and Recreation

Summary: Council has been successful in gaining a grant of \$63,000 from RMS for installation of a floating pontoon at Sonny Coles boat ramp, Brunswick Heads. The grant is 75% of the anticipated cost.

This report seeks approval from the Public Recreation Reserve Trust to authorise the General Manager to lodge an application for licence from Crown Lands for waterfront infrastructure on Council managed lands within Brunswick Heads.

RECOMMENDATION:

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That Brunswick Heads (R80457) Public Recreation Reserve Trust authorise the General Manager to complete and lodge the application for a licence over Crown Land with NSW Trade and Investment Crown Lands Division for all of Council’s waterfront infrastructure on Council managed lands within Brunswick Heads.

20

Attachment “A”

25

- Brunswick Heads (R80457) Public Recreation Reserve Trust

5 **Report**

Land Information

10 Crown Reserve R80457 being Lot 11 DP 1067553 being Brunswick Boat Ramp Precinct
Owner – NSW Trade and Investment (Crown Lands)
Reserve Trust – Brunswick Heads Public Recreation Reserve Trust
Trust Manager – Byron Shire Council
Gazetted – 21/03/1958
Gazetted purpose - public recreation
15 LEP Zone – 5(a) special uses zone – river oriented facilities

On 9 June 2011 Resolution 11-486 was adopted:

20 **11-486 Resolved** that in relation to Crown Land within the Byron Shire (that is not under Council control or management), Council does not continue undertaking maintenance works unless it is on a full cost recovery basis.

25 The site of the Brunswick boat ramp is Council managed Crown Land, unlike much of the adjacent shoreline managed by Northcoast Holiday Parks, consequently the proposal is not subject to resolution 11-486.

Crown Licence for Waterfront Structures

30 Staff seek a resolution from the Reserve Trust to apply for a licence for all public waterfront structures on Council managed Crown land within R80457 at Brunswick Heads. Council does not currently hold this licence and consequently there are liability issues associated with the boat ramp and associated infrastructure. The cost of application for this licence is \$383.60. Council is required to complete an Application for Licence over Crown Land for the issue of a Licence direct from Crown Lands.

35 The Crown has previously advised that Council should take the opportunity to apply for a licence over all public waterfront structures, incorporate the whole structures and obtain the Reserve Trust's support via resolution. However, the work to complete this is substantial and at this stage, it is recommended to only apply for a licence for all structures in R80457 within Brunswick Heads.

40 **Financial Implications**

45 Cost for application of Crown licence for waterfront structures is \$383.60; this can be paid for out of the project budget (if adopted). The annual rental for the licence is as yet unknown.

The report that follows this to the Ordinary Meeting seeks approval to fund the remaining capital required for installation of the floating pontoon from Sports field Upgrades.

50 **Statutory and Policy Compliance Implications**

The development application for the installation of the pontoon will be assessed under part 5 of the EP&A Act and will require the approval of Marine Parks.

Crown Lands Act 1989

55 34 Powers of Minister in relation to Crown land

- (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

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- 5 (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land, on behalf of the Crown.
- (2) (Repealed)
- (3) The Minister may not, under subsection (1):
- 10 (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.
- 15 (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,
20 (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.
- (5) If, under subsection (1), Crown land:
- 25 (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.
- (6) This section does not authorise the sale of Crown land which is reserved for a public purpose.
- 30 (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.
- 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**.
- 35 (2) The following provisions apply in relation to the granting of a relevant interest:
- 40 (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
- 45 (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,
- 50 (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.
- (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- 55 (4) The proceeds from a relevant interest are to be applied as directed by the Minister.
- (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:

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- 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,
- 15 (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,
- (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
- (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.
- 25 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.
- (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.
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5 Attachment "A" - Brunswick Heads (R80457) Public Recreation Reserve Trust

