



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 10 December 2015

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

Public Access relating to items on this Agenda can be made at 2pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read "Ken Gainger".

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
BYRON SHIRE RESERVE TRUST COMMITTEE

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 Butler Street Reserve - Paid Parking and Market Licenses..... 4

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director or Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 Butler Street Reserve - Paid Parking and Market Licenses

Directorate: Corporate and Community Services

5 **Report Author:** Trish Kirkland, Manager Governance Services
Phil Warner, Manager Assets and Major Projects

File No: I2015/1092

10 **Theme:** Community Infrastructure
Projects and Commercial Opportunities

cSummary:

15 **This report provides an update on those parts of Council resolutions [15-369] and [15-378] regarding Butler Street Reserve Paid Parking and operation of the Byron Community Market and Byron Bay Farmers Market.**

20 **This report recommends the Reserve Trust grant a 12-month temporary licence to Byron Community Association Incorporated for the purpose of conducting a monthly Byron Community Market at Butler Street Reserve.**

RECOMMENDATION:

That the Reserve Trust resolve:

1. **Not to call a competitive process to establish a long-term Community Market Licence at Byron Bay.**
2. **Delegate the General Manager to grant a 12-month temporary Community Market Licence, under Section 108 of the Crown Lands Act 1989, commencing 1 April 2016 to the Byron Community Association Incorporated for the purpose of conducting a monthly Community Market at Butler Street Reserve.**
3. **Apply the market licence fees, to the Temporary Market Licence, in accordance with Council's adopted fees and charges.**

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Report

Butler Street Reserve - Paid Parking

- 5 At an Extraordinary Meeting held 30 July 2015, Council considered a report titled, "4.1 Byron Bay Parking Study – Pay Parking exemptions and Butler Street Reserve" and resolved [15-369].
- 10 1. *"That Council provide written advice to the Community Association and Farmers Markets that their temporary licence to occupy the Butler Street Reserve, Byron Bay may not be re-issued after its expiry on 31 March 2016 for the Butler Street Reserve location.*
 - 15 2. *That Council enter into discussions with the market operators to pursue an agreement on the future location of these markets.*
 3. *That Council offer assistance to the market operators in seeking and facilitating a suitable long term markets venue in or around Byron Bay."*

20 Subsequently Council staff continued liaison with the market operators regarding the potential impacts of construction of the Byron Bay Bypass and implications associated with the town centre paid parking initiative. Throughout these meetings the market operators maintained their preference for staying at the Butler St reserve.

25 At an Extraordinary Meeting held 13 August 2015, Council considered a Notice of Rescission Motion titled, "4.1 Byron Bay Parking Study – Pay Parking exemptions and Butler Street Reserve" and resolved [15-378], in part:

3. *That Butler Street Reserve:*

- 30 a) *Be made available as an all day car park, operating 6am to 6pm daily with an hourly rate of \$3.00 per hour, up to a maximum of \$20 all day, with the Shire Resident or Ratepayer and non Shire resident worker/volunteer exemption applying*
- b) *Be considered for continued use as a markets site.*

35 In accordance with the above part of Resolution 15-378, Council staff continued liaison with the market operators exploring mechanisms such as carpark layouts that would allow both carparking and the markets to operate.

40 A solution has been achieved whereby damaged sections of the surface of the reserve have been improved with a new application of gravel and the markets will continue to operate. The carpark will be closed during the periods of market operation.

Butler Street Reserve – Temporary Market Licenses

45 Byron Bay Community Markets, licence agreement expires 31/03/2016

50 Byron Bay Community Markets are held on the first Sunday of each month, as well as on the third Sunday in December and January. The temporary licence for the Byron Community Market accordingly provides for a total of 14 markets per annum. The Byron Community Market currently accommodates the equivalent of 360 market stalls based on an average 3 x 3 metre stall size.

55 Extensive discussions have occurred with Byron Community Association Incorporated, Stallholder Associations, and the wider community to reach an in principal outcome to extend the Byron Community Association Incorporated's tenure for a further 12 months – providing them the opportunity for continued Community Market operations at Butler Street under a co-exist model of

paid public car parking and monthly community markets. The period proposed for the temporary Community Market Licence, commencing 1 April 2016, corresponds with the estimated construction period for the Byron Bay Bypass.

5 The recently adopted Sustainable Community Market Policy requires all long-term market licenses to be established via a competitive process, and limits the granting of temporary market licenses to new markets and constrains how long those new markets can operate under temporary agreements to a maximum of three consecutive years.

10 This report recommends, as an exception to the new Sustainable Community Market Policy, that Council grant a new 12-month temporary licence to Byron Community Association Inc. to conduct a monthly Community Market at Butler Street Reserve commencing 1 April 2016.

15 The recently adopted fixed Market License Fee structure, as below, will apply to the proposed new 12-month licence agreement.

Licences - Markets Activities on Crown Reserves		
<i>(Sustainable Community Market Policy, and S.108, S.102 Crown Lands Act)</i>		
<u>Licence Fees</u>		
Application fee	1199.2	225.00
0 to 50 stalls x number of market days	1193.1	120.00
51 to 100 stalls x number of market days	1193.1	180.00
101 to 150 stalls x number of market days	1193.1	240.00
151 to 200 stalls x number of market days	1193.1	300.00
201 to 250 stalls x number of market days	1193.1	360.00
251 to 300 stalls x number of market days	1193.1	420.00
301+ stalls x number of market days	1193.1	480.00
Bond	1193.1	P.O.A

20 Byron Bay Farmers Market, licence agreement expires 31/03/2016

25 Byron Bay Farmers Market is held on Thursday of every week. The temporary licence for Byron Farmers Market approves a maximum of 52 markets per year. The Byron Community Market currently accommodates the equivalent of 70 market stalls based on an average 3 x 3 metre stall size.

30 Discussions are still ongoing with the Byron Bay Farmers Market Incorporated about the best solution for their weekly Farmers Market.

Financial Implications

35 The proposed new temporary licence for Byron Community Market operations will generate approximately \$6,720 in revenue for the Butler Street Crown Reserve. The one off application fee will apply of \$225.

Statutory and Policy Compliance Implications

Sustainable Community Market Policy

40 The Policy requires all long-term market licenses to be established via a competitive process, and limits the granting of temporary market licenses to new markets and constrains how long those new markets can operate under temporary agreements to a maximum of three consecutive years.

45 ICAC Guidelines

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.

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The “*ICAC Guidelines for managing risks in direct negotiations*, May 2006”, states

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

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“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.”

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

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“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.”

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Reserve Trust Handbook

The consent of the Minister for Crown Lands is required before granting a licence, unless the licence is a temporary licence (less than 12 months) issued under section 108 of the Crown Lands Act. The Reserve Trust Handbook requires the Minister to consider the following issues when deciding to grant a lease or licence (greater than 12 months):

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- If the proposed lease or licence is in the public interest
- If the purpose of the proposed lease or licence is compatible with the reserve purpose
- 35 • The proposed term of the lease or licence
- The environmental impacts of the activities permitted by the lease or licence
- If the proposed lease or licence is proposed to be selected by public competition or, if not, the circumstance relating to the selection of the proposed lessee or licensee
- If the proposed rent represents a proper return to the public for that use of the public land
- 40 • If the proposed lease or licence contains provisions for the periodic updating or review of rent
- If the proposed lease or licence contains clauses relating to:
 - The termination of the lease or license in the event of a revocation of the reserve
 - The indemnification of the Reserve Trust, the Crown, and the NSW Government
 - 45 against claims for compensation
 - Appropriate insurance provisions

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The Reserve Trust Handbook states:

“The trust should generally invite competitive tenders or proposals in order to attract the best operator and financial return for the trust... For reserve trusts managed by a local council it is important to ensure a separation of council and reserve trust business. The lease/licence should only reflect the business of the reserve trust.”

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55 Crown Lands Act 1989

108 Temporary licences

(1) A reserve trust may, in respect of the whole or any part of a reserve, grant temporary licences for grazing or any other prescribed purpose.

5 (2) A temporary licence may be granted subject to conditions and is also subject to such conditions as may be prescribed.

(4) A temporary licence ceases to have effect on the expiration of the prescribed period after it is granted unless it is revoked sooner or is granted for a shorter period.”

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Crown Lands Regulation 2006

31 Temporary licences

(1) For the purposes of section 108 (1) of the Act, in addition to grazing, the purposes for which a temporary licence may be granted by subclause (m) markets.

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(2) For the purposes of section 108 (2) of the Act, in addition to any other condition subject to which a temporary licence is granted, the licence is subject to the condition that the relationship of landlord and tenant is not created between the parties.

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(3) For the purposes of section 108 (4) of the Act, the prescribed period for the expiration of a temporary licence is one year following the date on which it is granted.

25 Temporary licences allow the trust to permit short-term and generally low impact activities on the reserve without the Minister’s consent. Under section 108 of the Crown Lands Act 1989, a reserve trust can grant temporary licences for purposes which may not always fall strictly within the permitted purpose for that reserve. The purposes for temporary licences are listed in Clause 31 of the Crown Lands Regulation 2006.

30 Ministerial consent is not required provided the temporary licence falls within a permitted purpose under Clause 31 of the Regulation and the term is for not more than one year.