



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 22 February 2018

**held at Council Chambers, Station Street, Mullumbimby
commencing at 6.00pm**

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 'Mark Arnold'.

**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

BUSINESS OF MEETING

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

Corporate and Community Services

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|-----|--|----|
| 4.1 | Twenty (20) year lease to Byron Surf Life Saving Club..... | 4 |
| 4.2 | Twenty (20) year lease to Brunswick Surf Life Saving Club..... | 14 |

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 Twenty (20) year lease to Byron Surf Life Saving Club

Directorate: Corporate and Community Services

5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator

File No: I2018/26

Theme: Corporate Management
Governance Services

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Summary:

15 In January 2016 the NSW Government, in conjunction with Surf Life Saving NSW, adopted a standard surf life saving lease for a term of twenty years or longer. To reduce 'red tape', Council, when acting in capacity as Reserve Trust, received ministerial authorisation under s102A *Crown Lands Act 1989* to enter into a standard surf life saving lease without the need to obtain ministerial consent.

20 This report recommends that Council enter into a twenty (20) year standard surf life saving lease with the Byron Surf Life Saving Club ('the Club') for the permitted use of the Surf Life Saving Club and associated activities, including fundraising, with any proposed commercial operations to be subject to a separate written agreement.

25 The standard lease provides for:

- the Club to retain the live-in caretaker under a NSW Residential Tenancy agreement for the bona fide purpose of cleaning and on-site security of the surf club premises. This report recommends the Reserve Trust approves the caretaker living onsite; and
- the Club to take responsibility for all structural repairs and maintenance to the surf club premises. This report recommends the Reserve Trust enters into a separate agreement with the Club for the Club to take full responsibility for all structural works to the building, conditional on the Club notifying the Reserve Trust at least three months prior to structural works commencing; and
- the Reserve Trust to terminate the lease upon the Club being granted a Construction Certificate for works approved by development consent. This clause will ensure that the terms of any future lease remains relevant and appropriate to the Club and the Reserve Trust needs; and
- the Club pay annual rent to the value of minimum Crown rent advertised on commencement of the lease and each year of the lease term thereafter. The Club must insure all Club owned property and improvements, with the Reserve Trust being responsible for building insurance; and
- the Club to conduct fundraising activities for surf life saving and associated activities with all other commercial activities being subject to a separate written agreement.

50 In negotiating the lease Council gave notice to NTS Corp. Lot 10 DP 1049827 (the premises subject to the lease) is not subject to an unresolved Aboriginal land claim.

55 This report proposes the standard lease for a term of twenty (20) years to commence on 1 April 2018.

RECOMMENDATION:

1. That Council, as the Byron Coast Reserve Trust, authorise the General Manager, to provide written approval to the Byron Surf Life Saving Club ('the Club') to permit a caretaker to reside in the Club premises under a NSW Residential Tenancy Agreement.
2. That Council, as the Byron Coast Reserve Trust, authorise the General Manager, by written agreement, to transfer all Lessor responsibility for structural repairs and maintenance of the surf club building onto the Club as Lessee, conditional on the Lessee notifying the Lessor at least three months prior to structural works commencing.
3. That Council as the Byron Coast Reserve Trust, authorise the General Manager, to enter into a twenty (20) year standard surf life saving lease with the Club commencing 1 April 2018 with the following conditions:
 - a) the lease to terminate earlier if the Club is granted a Construction Certificate for works authorised by development consent; and
 - b) the Lessee pay annual rent equal to the value of Crown Lands minimum statutory rent advertised at the date of commencement of the lease and each year of the lease term thereafter; and
 - c) all establishment costs including registration costs are met by the Lessee.
4. That Council, as the Byron Coast Reserve Trust, publically advertise its intention to grant the lease for a period of fourteen (14) days.
5. That Council, as the Byron Coast Reserve Trust, on granting the lease, affix Council's seal to the lease.
6. That Council, as the Byron Coast Reserve Trust, authorise the General Manager, to forward an electronic copy of the executed lease to Crown Lands within fourteen (14) days of execution.

Attachments:

- 1 Letter to Byron Shire Council enclosed Ministerial Authorisation under s102A Crown Lands Act to grant standard surf life saving lease., E2018/8334 , page 10 [↓](#)
- 2 Section 102A Ministerial authorisation to grant standard surf life saving lease., E2018/8331 , page 12 [↓](#)

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Report

Background:

5 Council resolved in 2004 (RES04-413) to grant the Byron Surf Life Saving Club ('the Club') a five year lease. On termination of that lease Council then granted the Club consecutive one year temporary licences under direction from Crown Lands, while awaiting a state wide Surf Life Saving Policy to be adopted.

10 In January 2016 the NSW Government, in conjunction with Surf Life Saving NSW, adopted a standard surf life saving lease for a term of twenty (20) years or longer.

15 To reduce 'red tape', the Minister for Primary Industries and Minister for Lands and Water, Niall Mark Blair MLC granted Byron Shire Council, when acting in capacity as Reserve Trust Manager, the right to enter into a twenty (20) year standard surf life saving lease with the Club without the need to obtain ministerial authorisation under s102A *Crown Lands Act 1989* (NSW) but only if:

- 20 a) a standard surf life saving lease agreement is entered into,
- b) the agreement is consistent with the recreation purpose of the reserve and compliant with all relevant legislations,
- c) that Native Title is not affected and all Native Title notification requirements are applied,
- d) that no lease be granted if the land is affected by an unresolved claim under the *Aboriginal Land Rights Act 1983*,
- 25 e) that Council advertise for at least fourteen days a notice of intention to grant a 20 year standard lease to the Club; and
- f) that Council provide an electronic copy of the executed lease within fourteen days of execution to Crown Lands.

30 To ensure ongoing occupation and use of surf club premises by the Club, it is proposed that the Byron Coast Reserve Trust enter into a standard surf life saving lease for a term of 20 years with the Club for the permitted use of the Surf Life Saving Club and associated activities including fundraising, but with any proposed commercial Operations to be subject to a separate written agreement.

35 Conditions of the section 102A authorisation

- a) Standard lease agreement

40 A standard 20 year surf life saving lease has been negotiated to commence 1 April 2018 for the permitted use of the Surf Life Saving Club and associated activities including fundraising and any commercial operations to be the subject of an additional written agreement. The standard lease will provide for:

- 45 • Clause 9.1(j) permits the current live-in caretaker to remain residing in the surf club premises under a NSW Residential Tenancy agreement for the bona fide purpose of keeping the club premises and grounds clean and tidy and the provision of on-site security. To permit lawful occupation by the live-in caretaker, the Reserve Trust must provide written approval to the Club and the Club must obtain all necessary approvals for the lawful occupation of the premises.
- 50 • Clause 11.1(b) provides for the Reserve Trust as Lessor, by written agreement, to transfer all responsibilities for structural repairs and maintenance to the Club building onto the Club as Lessee. The transfer of responsibility will permit the Club to take full control of all repairs and maintenance to the building. It is proposed that the Reserve Trust enter into a separate written agreement with the Club to transfer to the Club all responsibility for all structural
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maintenance and repairs to the Club building conditional on the Club notifying the Reserve Trust at least three months prior to structural works commencing.

- 5 • Special condition 15(a) provides that the lease will terminate upon the Club being granted a Construction Certificate for works approved by development consent. This clause will ensure that the terms of any future lease will remain relevant and appropriate to the Club and Reserve Trust needs.
- 10 • annual rent payable is equal to the value of Crown Lands minimum statutory rent advertised at the date of commencement of the lease and each year of lease term thereafter.
- 15 • the Lessee to insure all Club owned property and improvements with building insurance being the responsibility of the Reserve Trust.
- the Club to conduct fundraising activities for surf life saving and associated activities with all other commercial activities, being subject to a separate written agreement.

20 b) Purpose of reserve

Crown Reserve 82000 being Lot 10 DP 1049827 is managed by Council as the Byron Coast Reserve Trust. The Reserve was gazetted on 30 October 1959 for the purpose of 'public recreation'. The recreation purpose of the reserve is consistent with the purpose of the standard 20 year lease being for surf life saving and associated activities, including Club fundraising.

25 c) Native Title

30 Lot 10 DP 1049827 is identified as extinguished lands in schedule F of NI2006/004 registered Indigenous Land Use Agreement called the Bundjalung People of Byron Bay (ILUA 2). Council provided notice to NTS Corp on 14 December 2017 of the Byron Coast Reserve Trust's intention to enter into a 20 year standard life saving lease with the Club.

35 d) Unresolved Aboriginal land claim

Lot 10 DP 1049827 is not subject to an unresolved Aboriginal land claim.

e) Public notification

40 Council must publically notify, for at least fourteen (14) days, of the intention of the Byron Coast Reserve Trust to grant a twenty (20) year lease to the Club. Notification will commence following the Reserve Trust resolution to this report.

f) Crown notification

45 Council must forward an electronic copy of the executed lease to Crown Lands within fourteen (14) days of execution.

Financial Implications

50 The standard lease provides for annual rent at the commence date, and each year of lease term thereafter, to be set at the value of the Crown Land minimum statutory rent advertised by the Department of Industry in January of each year.

55 The standard surf life saving lease will generate income commencing at \$486.00 excluding GST per annum for Crown Reserve R82000.

Statutory and Policy Compliance Implications

Crown Lands Act 1989 (NSW)

s102A Minister's consent not required for certain leases, licences or easements

- 5 (1) This section applies to a reserve trust managed by any of the following:
 - (a) a trust board or a corporation (other than a council) that has been appointed under section 93 or 95, but only if the land comprising the reserve for which the reserve trust has been appointed as trustee is being used, occupied or administered by a government agency (other than Local Land Services),
 - 10 (b) a council that has been appointed under section 95.
- (2) Despite any other provision of this Part, a reserve trust to which this section applies is not required to obtain the Minister's consent under section 102 to grant a lease or licence in respect of land comprising the whole or any part of the reserve for which the reserve trust has been appointed as trustee, or to grant an easement in connection with any such lease or licence (a **related easement**), if:
 - 15 (a) the reserve trust has been authorised by the Minister, by notice in writing, to grant the lease, licence or related easement without the Minister's consent, and
 - (b) the lease, licence or related easement is granted in accordance with the Minister's authorisation, and
 - 20 (c) the reserve trust complies with the requirements of the Minister's authorisation and the provisions of this section.
- (3) The Minister's authorisation:
 - 25 (a) may relate to any specified reserve (or class of reserves) for which the reserve trust has been appointed as trustee or generally to all reserves for which it has been appointed as trustee, and
 - (b) may specify the circumstances in which a lease, licence or related easement may be granted by the reserve trust without the Minister's consent, and
 - (c) may apply generally in relation to the reserve trust or may be limited in its application by reference to specified exceptions or factors, and
 - 30 (d) is subject to such terms and conditions as the Minister considers appropriate.
- (4) Without limiting subsection (3), the Minister may, in authorising a reserve trust to grant leases, licences or related easements without the Minister's consent:
 - 35 (a) specify the purposes, and the terms and conditions, of any such lease, licence or easement, and
 - (b) limit the term of any such lease, licence or easement, and
 - (c) require the reserve trust to follow certain procedures in relation to the granting of any such lease, licence or easement, including procedures for public notice and consultation, procedures for tendering and procedures for dealing with objections to the proposed lease, licence or easement, and
 - 40 (d) require the reserve trust to provide the Minister with such information as may be required by the Minister before or after any such lease, licence or easement is granted, and
 - (e) require the reserve trust to submit any proposal for such a lease, licence or easement to the Minister before it is granted, and
 - 45 (f) require the reserve trust to indemnify the Crown against any liability or claim for compensation that may arise as a result of the granting of any such lease, licence or easement.
- (5) A reserve trust must, within 14 days of granting a lease, licence or related easement in accordance with the Minister's authorisation under this section, notify the Minister of the grant and the terms of the lease, licence or easement.
- 50 (6) The Minister may, in making any decision in relation to an authorisation under this section, take into account such matters as the Minister thinks appropriate, including the performance of the trust board, corporation or council concerned in managing:
 - 55 (a) the affairs of the reserve trust or any other reserve trust that the trust board, corporation or council is managing or has previously managed, or

- (b) in the case of a reserve trust managed by a council—any public land within the meaning of the *Local Government Act 1993*.
- 5 (7) The Minister may, for the purposes of this section, request any information about a council, including information about a council's performance, from the Minister administering the *Local Government Act 1993* and that Minister is authorised to provide any such information.
- (8) Nothing in this section authorises a reserve trust to sell or mortgage land, or to grant a lease, licence or related easement for a term exceeding 21 years, without the consent of the Minister under section 102.
- 10 (9) An authorisation by the Minister under this section may be varied or revoked by the Minister at any time by notice in writing given to the reserve trust concerned.
- (10) Any lease, licence or easement granted by a reserve trust:
- 15 (a) without the Minister's consent under section 102, or
- (b) otherwise than in accordance with the Minister's authorisation under this section, has no effect except in such cases as the Minister may determine.
- (11) For the purposes of the *Residential (Land Lease) Communities Act 2013*, a lease or licence granted by a reserve trust as provided by this section is taken to be a lease or licence to which the Minister has given consent.

**The Hon Niall Blair MLC**Minister for Primary Industries
Minister for Lands and Water

B15/5678

Mr Ken Gainer
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482Dear Mr Gainer *Ken*

Following extensive consultation with coastal councils and the surf life saving movement, I have decided to authorise those council-managed reserve trusts to grant leases to surf life saving clubs (surf clubs) without the need to seek my consent.

I enclose the instrument of authorisation, which is provided under the provisions of s. 102A of the *Crown Lands Act 1989* (the Act) (Ministerial Authorisation).

The *Crown Lands Management Review* (2015) recommended a range of reforms to improve the management of Crown land. Of significance to my decision, it identified the need to cut red tape and eliminate duplication of process in the current Crown land management system.

The package I am releasing will provide security of tenure for surf life saving clubs into the future, and allow them to focus on their important role of saving lives on our beaches. It will also serve to reduce the costs and red tape involved, for both reserve trusts and surf clubs, in negotiating tenure for the occupation of Crown land by surf clubs.

I enclose the following three documents that form the basis of the package:

1. A position statement that is clear about government support for a sustainable surf life saving movement in NSW, and that states the NSW Government's position on the key issues arising from the use of Crown land by surf clubs.
2. A standard surf life saving club lease for use by council-managed reserve trusts when they are authorising the use of Crown land by surf clubs.
3. The Ministerial Authorisation which avoids the need for Council to get Minister's consent to a surf club lease when they use the standard surf life saving club lease.

Councils are still able to seek Ministerial consent to grant leases for surf clubs on Crown reserves under s. 102 of the Act. Any such request will be dealt with by the Department of Primary Industries – Lands (DPI Lands) in the usual manner and will join the queue of consent applications.

GPO Box 5341, Sydney NSW 2001

Phone: (61 2) 8574 7190 Fax: (61 2) 9339 5560 www.nsw.gov.au/ministercontactform/minister-blair

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The Hon Niall Blair MLC

It is important that the conditions contained in the Ministerial Authorisation are strictly complied with. To assist in this, I encourage you to familiarise yourself with the provisions of s. 102A of the Act. Any surf life saving club lease granted by a council-managed reserve trust has no effect if it is inconsistent with the Ministerial Authorisation, unless the Minister has given consent under s. 102 of the Act.

I am pleased to deliver this initiative as a clear indication of the commitment of the Baird government to a strong and sustainable surf life saving movement in NSW and to its promise to find positive and practical ways to reduce red tape.

Should you wish to discuss this matter further, I have asked David McPherson, Group Director Regional Services DPI Lands, to be available. Mr McPherson may be contacted by email at david.mcperson@crowland.nsw.gov.au or by telephone on (02) 4925 4112.

Yours sincerely



The Hon Niall Blair MLC
Minister for Primary Industries
Minister for Lands and Water

Encls.

21 JAN 2016



Section 102A Authorisation

under the

Crown Lands Act 1989

I, NIALL MARK BLAIR, MLC, the Minister for Primary Industries, and Minister for Lands and Water, authorise Byron Shire Council acting in its capacity as reserve trust manager to grant leases for the permitted use of surf life saving club and associated activities in pursuance of section 102A of the *Crown Lands Act 1989*, subject to the conditions outlined below in Schedule 1.

Dated this Twenty First day of January, 2016.

NIALL MARK BLAIR, MLC
Minister for Primary Industries
Minister for Lands and Water

Schedule 1

1. This instrument authorises council-managed reserve trusts to grant leases for the permitted use of "surf life saving clubs and associated activities". The leases must comply with the terms of this instrument.
2. The council-managed reserve trust must ensure that:
 - (a) The lease is consistent with the standard surf life saving club lease, with only those changes that are permitted by the completion notes in the standard surf life saving club lease.
 - (b) The standard surf life saving club lease is consistent with the declared purpose of the Crown reserve.
 - (c) The standard surf life saving club lease complies with all requirements of the Act and all other relevant legislation (other than the requirement to obtain the Minister's consent under section 102 of the Act).

- (d) The standard surf life saving club lease either does not affect native title or is a valid future act under native title legislation.
 - (e) The requirements of the native title legislation have been followed in the granting of the standard surf life saving club lease, including but not limited to any notification requirements.
 - (f) The standard surf life saving club lease is not granted on land affected by an unresolved land claim under the *Aboriginal Land Rights Act 1983*.
 - (g) In relation to a standard surf life saving club lease for a term exceeding 5 years (including any option), 14 days have elapsed since notice of intention to grant the standard surf life saving club lease 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.
3. An electronic copy of the negotiated standard surf life saving club lease must be provided to Crown Lands within 14 days of execution, but failure to do so will not be a failure to comply with the terms of this instrument.
4. In this instrument:
- a. "native title legislation" means the *Commonwealth Native Title Act 1993* and the *Native Title (New South Wales) Act 1994*;
 - b. "standard surf life saving club lease" means the lease in the form attached to this instrument at schedule 1;
 - c. "the Act" means the *Crown Lands Act 1989*;
 - d. "the Minister" means the Minister administering the Act.
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Report No. 4.2 **Twenty (20) year lease to Brunswick Surf Life Saving Club**
Directorate: Corporate and Community Services
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2018/103
5 **Theme:** Corporate Management
 Governance Services

Summary:

10 In January 2016 the NSW Government, in conjunction with Surf Life Saving NSW, adopted a standard surf life saving lease for a term of twenty years or longer. To reduce 'red tape', Council, when acting in capacity as Reserve Trust, received ministerial authorisation under s102A *Crown Lands Act 1989* to enter into a standard surf life saving lease without the need to obtain ministerial
15 consent.

20 This report recommends that Council enter into a twenty (20) year standard surf life saving lease with the Brunswick Surf Life Saving Club ('the Club') for the permitted use of the Surf Life Saving Club and associated activities, including fundraising, with any proposed commercial operations to be subject to a separate written agreement.

The standard lease provides for:

- 25 • the Club to take responsibility for all structural repairs and maintenance to the surf club premises. This report recommends the Reserve Trust enters into a separate agreement with the Club for the Club to take full responsibility for all structural works to the building, conditional on the Club notifying the Reserve Trust at least three months prior to structural works commencing; and
- 30 • the Reserve Trust to terminate the lease upon the Club being granted a Construction Certificate for works approved by development consent. This clause will ensure that the terms of any future lease remains relevant and appropriate to the Club and the Reserve Trust needs; and
- 35 • the Club pay annual rent to the value of minimum Crown rent advertised on commencement of the lease and each year of the lease term thereafter. The Club must insure all Club owned property and improvements, with the Reserve Trust being responsible for building insurance; and
- 40 • the Club to conduct fundraising activities for surf life saving and associated activities with all other commercial activities being subject to a separate written agreement.

45 Council consulted with NTS Corp. Lot 10 DP 1049827 (the premises subject to the lease) is not subject to an unresolved Aboriginal land claim.

50 This report proposes the standard lease for a term of twenty (20) years to commence on 1 April 2018.

RECOMMENDATION:

1. That Council as the Byron Coast Reserve Trust, authorise the General Manager, by written agreement, to transfer all Lessor responsibility for structural repairs and maintenance of the surf club building onto the Brunswick Surf Life Saving Club ('the Club') as Lessee, conditional on the Lessee notifying the Lessor at least three months prior to structural works commencing.
2. That Council as the Byron Coast Reserve Trust, authorise the General Manager, to enter into a twenty (20) year standard surf life saving lease with the Club commencing 1 April 2018 with the following conditions:
 - a) the lease to terminate earlier if the Club is granted a Construction Certificate for works authorised by development consent; and
 - b) the Lessee pay annual rent equal to the value of Crown Lands minimum statutory rent advertised at the date of commencement of the lease and each year of the lease term thereafter; and
 - c) all establishment costs including registration costs are met by the Lessee.
3. That Council as the Byron Coast Reserve Trust publically advertise its intention to grant the lease for a period of fourteen (14) days.
4. That Council as the Byron Coast Reserve Trust, on granting the lease, affix Council's seal to the lease.
5. That Council as the Byron Coast Reserve Trust authorise the General Manager, to forward an electronic copy of the executed lease to Crown Lands within fourteen (14) days of execution.

Attachments:

- 5 1 Letter to Byron Shire Council enclosed Ministerial Authorisation under s102A Crown Lands Act to grant standard surf life saving lease., E2018/8334 , page 20 [↓](#)
- 2 Section 102A Ministerial authorisation to grant standard surf life saving lease, E2018/8331 , page 22 [↓](#)

Report

Background:

5 Council resolved in 2004 (RES04-413) to grant the Brunswick Surf Life Saving Club ('the Club') a five year lease. On termination of that lease Council then granted the Club consecutive one year temporary licences under direction from Crown Lands, while awaiting a state wide Surf Life Saving Policy to be adopted.

10 In January 2016 the NSW Government, in conjunction with Surf Life Saving NSW, adopted a standard surf life saving lease for a term of twenty (20) years or longer.

15 To reduce 'red tape', the Minister for Primary Industries and Minister for Lands and Water, Niall Mark Blair MLC granted Byron Shire Council, when acting in capacity as Reserve Trust Manager, the right to enter into a twenty (20) year standard surf life saving lease with the Club without the need to obtain ministerial authorisation under s102A *Crown Lands Act 1989* (NSW) but only if:

- 20 a) a standard surf life saving lease agreement is entered into,
- b) the agreement is consistent with the recreation purpose of the reserve and compliant with all relevant legislations,
- c) that Native Title is not affected and all Native Title notification requirements are applied,
- d) that no lease be granted if the land is affected by an unresolved claim under the *Aboriginal Land Rights Act 1983*,
- 25 e) that Council advertise for at least fourteen days a notice of intention to grant a 20 year standard lease to the Club; and
- f) that Council provide an electronic copy of the executed lease within fourteen days of execution to Crown Lands.

30 To ensure ongoing occupation and use of surf club premises by the Club, it is proposed that the Byron Coast Reserve Trust enter into a standard surf life saving lease for a term of 20 years with the Club for the permitted use of the Surf Life Saving Club and associated activities including fundraising, but with any proposed commercial Operations to be subject to a separate written agreement.

35 Conditions of the section 102A authorisation

- a) Standard lease agreement

40 A standard 20 year surf life saving lease has been negotiated to commence 1 April 2018 for the permitted use of the Surf Life Saving Club and associated activities including fundraising and any commercial operations to be the subject of an additional written agreement. The standard lease will provide for:

- 45 • Clause 11.1(b) provides for the Reserve Trust as Lessor, by written agreement, to transfer all responsibilities for structural repairs and maintenance to the Club building onto the Club as Lessee. The transfer of responsibility will permit the Club to take full control of all repairs and maintenance to the building. It is proposed that the Reserve Trust enter into a separate written agreement with the Club to transfer to the Club all responsibility for all structural maintenance and repairs to the Club building conditional on the Club notify the Reserve Trust at least three months prior to structural works commencing.
- 50 • Special condition 15(a) provides that the lease will terminate upon the Club being granted a Construction Certificate for works approved by development consent. This clause will ensure that the terms of any future lease will remain relevant and appropriate to the Club and Reserve Trust needs.
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- annual rent payable is equal to the value of Crown Lands minimum statutory rent advertised at the date of commencement of the lease and each year of lease term thereafter.

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- the Lessee to insure all Club owned property and improvements with building insurance being the responsibility of the Reserve Trust.

- the Club to conduct fundraising activities for surf life saving and associated activities with all other commercial activities, being subject to a separate written agreement.

10

b) Purpose of reserve

Crown Reserve R97139 being Lot 427 DP 729272 is managed by Council as the Byron Coast Reserve Trust. The Reserve was gazetted on 20 January 1984 for the purpose of 'public recreation'. The recreation purpose of the reserve is consistent with the purpose of the standard 20 year lease being for surf life saving and associated activities, including Club fundraising.

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c) Native Title

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Lot 427 DP 729272 is subject to a Native Title consideration.

Council consulted with NTS Corp in accordance with s24JA of the *Native Title Act* on the proposal that the Byron Coast Reserve Trust enter into a 20 year standard surf life saving lease with the Club. Council has received written confirmation from NTS Corp that they received no further submissions regarding the proposed lease.

25

d) Unresolved Aboriginal land claim

Lot 427 DP 729272 is not subject to an unresolved Aboriginal land claim.

30

e) Public notification

Council must publically notify, for at least fourteen (14) days, of the intention of the Byron Coast Reserve Trust to grant a twenty (20) year lease to the Club. Notification will commence following the Reserve Trust resolution to this report.

35

f) Crown notification

Council must forward an electronic copy of the executed lease to Crown Lands within fourteen (14) days of execution.

40

Financial Implications

The standard lease provides for annual rent at the commence date, and each year of lease term thereafter, to be set at the value of the Crown Land minimum statutory rent advertised by the Department of Industry in January of each year.

45

Initial rent on commencement of the lease is \$486.00 per annum excluding GST.

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The lease revenue sits with the Reserve Trust and must be used to maintain reserve trusts under council control.

Statutory and Policy Compliance Implications

Crown Lands Act 1989 (NSW)

s102A Minister's consent not required for certain leases, licences or easements

- 5 (1) This section applies to a reserve trust managed by any of the following:
 - (a) a trust board or a corporation (other than a council) that has been appointed under section 93 or 95, but only if the land comprising the reserve for which the reserve trust has been appointed as trustee is being used, occupied or administered by a government agency (other than Local Land Services),
 - 10 (b) a council that has been appointed under section 95.
- (2) Despite any other provision of this Part, a reserve trust to which this section applies is not required to obtain the Minister's consent under section 102 to grant a lease or licence in respect of land comprising the whole or any part of the reserve for which the reserve trust has been appointed as trustee, or to grant an easement in connection with any such lease or licence (a **related easement**), if:
 - 15 (a) the reserve trust has been authorised by the Minister, by notice in writing, to grant the lease, licence or related easement without the Minister's consent, and
 - (b) the lease, licence or related easement is granted in accordance with the Minister's authorisation, and
 - 20 (c) the reserve trust complies with the requirements of the Minister's authorisation and the provisions of this section.
- (3) The Minister's authorisation:
 - 25 (a) may relate to any specified reserve (or class of reserves) for which the reserve trust has been appointed as trustee or generally to all reserves for which it has been appointed as trustee, and
 - (b) may specify the circumstances in which a lease, licence or related easement may be granted by the reserve trust without the Minister's consent, and
 - (c) may apply generally in relation to the reserve trust or may be limited in its application by reference to specified exceptions or factors, and
 - 30 (d) is subject to such terms and conditions as the Minister considers appropriate.
- (4) Without limiting subsection (3), the Minister may, in authorising a reserve trust to grant leases, licences or related easements without the Minister's consent:
 - 35 (a) specify the purposes, and the terms and conditions, of any such lease, licence or easement, and
 - (b) limit the term of any such lease, licence or easement, and
 - (c) require the reserve trust to follow certain procedures in relation to the granting of any such lease, licence or easement, including procedures for public notice and consultation, procedures for tendering and procedures for dealing with objections to the proposed lease, licence or easement, and
 - 40 (d) require the reserve trust to provide the Minister with such information as may be required by the Minister before or after any such lease, licence or easement is granted, and
 - (e) require the reserve trust to submit any proposal for such a lease, licence or easement to the Minister before it is granted, and
 - 45 (f) require the reserve trust to indemnify the Crown against any liability or claim for compensation that may arise as a result of the granting of any such lease, licence or easement.
- (5) A reserve trust must, within 14 days of granting a lease, licence or related easement in accordance with the Minister's authorisation under this section, notify the Minister of the grant and the terms of the lease, licence or easement.
- 50 (6) The Minister may, in making any decision in relation to an authorisation under this section, take into account such matters as the Minister thinks appropriate, including the performance of the trust board, corporation or council concerned in managing:
 - 55 (a) the affairs of the reserve trust or any other reserve trust that the trust board, corporation or council is managing or has previously managed, or

- (b) in the case of a reserve trust managed by a council—any public land within the meaning of the *Local Government Act 1993*.
- 5 (7) The Minister may, for the purposes of this section, request any information about a council, including information about a council's performance, from the Minister administering the *Local Government Act 1993* and that Minister is authorised to provide any such information.
- (8) Nothing in this section authorises a reserve trust to sell or mortgage land, or to grant a lease, licence or related easement for a term exceeding 21 years, without the consent of the Minister under section 102.
- 10 (9) An authorisation by the Minister under this section may be varied or revoked by the Minister at any time by notice in writing given to the reserve trust concerned.
- (10) Any lease, licence or easement granted by a reserve trust:
- 15 (a) without the Minister's consent under section 102, or
- (b) otherwise than in accordance with the Minister's authorisation under this section, has no effect except in such cases as the Minister may determine.
- (11) For the purposes of the *Residential (Land Lease) Communities Act 2013*, a lease or licence granted by a reserve trust as provided by this section is taken to be a lease or licence to which the Minister has given consent.

**The Hon Niall Blair MLC**Minister for Primary Industries
Minister for Lands and Water

B15/5678

Mr Ken Gainer
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482Dear Mr Gainer *Ken*

Following extensive consultation with coastal councils and the surf life saving movement, I have decided to authorise those council-managed reserve trusts to grant leases to surf life saving clubs (surf clubs) without the need to seek my consent.

I enclose the instrument of authorisation, which is provided under the provisions of s. 102A of the *Crown Lands Act 1989* (the Act) (Ministerial Authorisation).

The *Crown Lands Management Review* (2015) recommended a range of reforms to improve the management of Crown land. Of significance to my decision, it identified the need to cut red tape and eliminate duplication of process in the current Crown land management system.

The package I am releasing will provide security of tenure for surf life saving clubs into the future, and allow them to focus on their important role of saving lives on our beaches. It will also serve to reduce the costs and red tape involved, for both reserve trusts and surf clubs, in negotiating tenure for the occupation of Crown land by surf clubs.

I enclose the following three documents that form the basis of the package:

1. A position statement that is clear about government support for a sustainable surf life saving movement in NSW, and that states the NSW Government's position on the key issues arising from the use of Crown land by surf clubs.
2. A standard surf life saving club lease for use by council-managed reserve trusts when they are authorising the use of Crown land by surf clubs.
3. The Ministerial Authorisation which avoids the need for Council to get Minister's consent to a surf club lease when they use the standard surf life saving club lease.

Councils are still able to seek Ministerial consent to grant leases for surf clubs on Crown reserves under s. 102 of the Act. Any such request will be dealt with by the Department of Primary Industries – Lands (DPI Lands) in the usual manner and will join the queue of consent applications.

GPO Box 5341, Sydney NSW 2001

Phone: (61 2) 8574 7190 Fax: (61 2) 9339 5560 www.nsw.gov.au/ministercontactform/minister-blair

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The Hon Niall Blair MLC

It is important that the conditions contained in the Ministerial Authorisation are strictly complied with. To assist in this, I encourage you to familiarise yourself with the provisions of s. 102A of the Act. Any surf life saving club lease granted by a council-managed reserve trust has no effect if it is inconsistent with the Ministerial Authorisation, unless the Minister has given consent under s. 102 of the Act.

I am pleased to deliver this initiative as a clear indication of the commitment of the Baird government to a strong and sustainable surf life saving movement in NSW and to its promise to find positive and practical ways to reduce red tape.

Should you wish to discuss this matter further, I have asked David McPherson, Group Director Regional Services DPI Lands, to be available. Mr McPherson may be contacted by email at david.mcperson@crowland.nsw.gov.au or by telephone on (02) 4925 4112.

Yours sincerely



The Hon Niall Blair MLC
Minister for Primary Industries
Minister for Lands and Water

Encls.

21 JAN 2016



Section 102A Authorisation

under the

Crown Lands Act 1989

I, NIALL MARK BLAIR, MLC, the Minister for Primary Industries, and Minister for Lands and Water, authorise Byron Shire Council acting in its capacity as reserve trust manager to grant leases for the permitted use of surf life saving club and associated activities in pursuance of section 102A of the *Crown Lands Act 1989*, subject to the conditions outlined below in Schedule 1.

Dated this Twenty First day of January, 2016.

NIALL MARK BLAIR, MLC
Minister for Primary Industries
Minister for Lands and Water

Schedule 1

1. This instrument authorises council-managed reserve trusts to grant leases for the permitted use of "surf life saving clubs and associated activities". The leases must comply with the terms of this instrument.
2. The council-managed reserve trust must ensure that:
 - (a) The lease is consistent with the standard surf life saving club lease, with only those changes that are permitted by the completion notes in the standard surf life saving club lease.
 - (b) The standard surf life saving club lease is consistent with the declared purpose of the Crown reserve.
 - (c) The standard surf life saving club lease complies with all requirements of the Act and all other relevant legislation (other than the requirement to obtain the Minister's consent under section 102 of the Act).

- (d) The standard surf life saving club lease either does not affect native title or is a valid future act under native title legislation.
 - (e) The requirements of the native title legislation have been followed in the granting of the standard surf life saving club lease, including but not limited to any notification requirements.
 - (f) The standard surf life saving club lease is not granted on land affected by an unresolved land claim under the *Aboriginal Land Rights Act 1983*.
 - (g) In relation to a standard surf life saving club lease for a term exceeding 5 years (including any option), 14 days have elapsed since notice of intention to grant the standard surf life saving club lease 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.
3. An electronic copy of the negotiated standard surf life saving club lease must be provided to Crown Lands within 14 days of execution, but failure to do so will not be a failure to comply with the terms of this instrument.
4. In this instrument:
- a. "native title legislation" means the *Commonwealth Native Title Act 1993* and the *Native Title (New South Wales) Act 1994*;
 - b. "standard surf life saving club lease" means the lease in the form attached to this instrument at schedule 1;
 - c. "the Act" means the *Crown Lands Act 1989*;
 - d. "the Minister" means the Minister administering the Act.
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