



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 22 March 2018

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 '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

- 4.1 Request for a Temporary Sub-Licence to permit equestrian activities access through part of Lot 428 DP 7292724

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 Request for a Temporary Sub-Licence to permit equestrian activities access through part of Lot 428 DP 729272**

5 **Directorate:** Corporate and Community Services
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2018/357
Theme: Corporate Management
10 Governance Services

Summary:

15 The Trustee for the Mclvor Family Trust trading as The Ranch Byron Bay, ('the Ranch'), through its manager Shanti Mclvor, has made an application for a licence for access through Lot 428 DP 729272 in Reserve R82780, for the purpose operating a commercial horse riding business on Tyagarah beach authorised by a Cape Byron Marine Park permit.

20 Reserve R82780 is not managed by Council. However, Council has authority under Crown licence RI 564194 to grant a temporary sub-licence for low impact commercial recreational activities including equestrian activities in Lot 428 DP 729272 being part of Reserve R82780.

25 Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves, ('the Policy') includes Lot 428 DP 729272. In accordance with the Policy the Reserve Trust must resolve to permit equestrian activities through Lot 428 DP 729272. Further, planning restrictions on land zoned No 7 (1f) (Coastal Land Zone) in the Byron 1988 Local Environmental Plan, will restrict the term of the licence to twelve (12) months.

30 In addition, to ensure the safety of the public and horses, this report recommends that a safe area for the parking of horse floats and the handling of horses is provided. The report recommends that commercial horse riding sub-licensees are given secure access through the chain gate at the southern end of South Beach Road at completion of the asphalt to provide a safe area for parking and unloading and loading of horses in the road reserve.

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RECOMMENDATION:

1. **That Council, as the Reserve Trust, authorise the General Manager to grant a sub-licence to The trustee for the Mclvor Family Trust, trading as The Ranch Byron Bay ('the Ranch Byron Bay') for a term of twelve (12) months for the purpose of access through Reserve R82780 being part of Lot 428 DP 729272 on condition:**
 - a) **The Ranch Byron Bay holds a current permit with Cape Byron Marine Parks during the term of the sub-licence; and**
 - b) **The Ranch Byron Bay takes all steps necessary to ensure all horse droppings are removed from the sub-licenced area during and at the end of each access session.**
2. **That Council, as the Reserve Trust, authorise the providing of a secure area for horse float parking and horse handling in the South Beach Road road reserve to commercial horse riding sub-licensees.**
3. **The sub-licence fee for the term of the temporary licence is set at a rate of minimum annual Crown Rent of \$472.00 (ex GST).**

ReportIntroduction

5 The trustee for the Mclvor Family Trust trading as The Ranch Byron Bay ('the Ranch Byron Bay') through its manager Shanti Mclvor has made an application to Council for a temporary licence for access through Reserve R82780 for the purpose of operating a commercial horse riding business on Tyagarah beach.

10 Horse riding on Tyagarah beach is permitted by a Cape Byron Marine Parks ('Marine Parks') permit. The Marine Parks permit restricts horse riding to the intertidal zone being below the high water mark. Horses are not permitted on the soft sand above the intertidal zone being land under the management and control of NSW National Parks & Wildlife Services.

15 Background

During 2004 the Marine Parks, in developing its Zoning and Operational Plans, consulted with Byron Shire Council regarding activities on beaches. As a result Council at its Ordinary Meeting of 23 November 2004 resolved in 074-920 that:

20 *"Council supports horse riding on Tyagarah Beach from 500 metres south of the Brunswick wall to 400 metres north of Belongil Creek subject to a management policy and licensing agreement with riding and licensing protocols to be developed in conjunction with Marine Parks Authority and the Department of Environment and Conservation".*

25 In response to Council's resolution, the Marine Parks has issued permits that allow groups of up to five horses per instructor, to be ridden in the intertidal zone (below high water) on Tyagarah beach for a maximum of two hours during a low tide. The permit requires horses to be controlled at all times, with extra caution exercised when in the vicinity of people or shorebirds or at known
30 locations of nesting birds.

The Ranch Byron Bay is required to obtain a valid permit from the Marine Parks.

35 Sub-Licensed activity

Reserve R82780 was gazetted on 9 August 1960 for the purpose of future public requirements. The Reserve is not managed by Byron Shire Council. However, Council has authority under Crown licence RI 564194 to grant temporary sub-licences for low impact commercial recreational activities including equestrian activities in Lot 428 DP 729272 being part of Reserve R82780.

40 Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves, ('the Policy') includes Lot 428 DP 729272. In accordance with the Policy the Reserve Trust must resolve to permit equestrian activities access through Lot 428 DP 729272.

45 Sub-Licensed area

Tyagarah beach is management by National Parks and Wildlife Services. The area below the intertidal zone is managed by Cape Byron Marine Parks. Access to Tyagarah beach for equestrian activities is through Lot 428 DP 729272.

50 Access through Lot 428 DP 729272 is via a designated track approximately 110 meters in length. The track is maintained Byron Shire Council. The track is used regularly by private recreational horse riders and others. Council has no issues with horses using the track but is concerned about the spread of weeds from horse droppings. It is recommended that a sub-license granted to the

Ranch Byron Bay expressly requires the sub-licensee to take all steps necessary to prevent or remove all horse droppings in the sub-licensed area.

5 Entrance to the access track is via South Beach Road Brunswick Heads being approximately 300 metres south of the completion of the asphalt road surface to a point just before the gate preventing access into National Parks and Wildlife Services managed lands.

10 The below map displays, Lot 428 DP 729272 as outlined in black with the access track shown in orange. The track ends at the intertidal zone point on Tyagarah beach and beyond this point access is authorised by a permit issued by Cape Byron Marine Parks.



15 Parking and handling of horses

The parking of horse floats and the unloading and loading of horses on South Beach Road has been a concern of locals.

20 In response, and to ensure the safety of horses and the public, it is recommended that the current chain gate at the southern end of South Beach Road, at completion of the asphalt, is locked with keys available to holders of sub-licences for equestrian activities being:

- 25 1. Cape Byron Seahorses Riding Centre managed by Jo-Ann Allchin; and proposed
- 2. The Ranch Byron Bay managed by Shanti McIvor.

30 This will allow sub-licensee access through the chain gate to a safe area within the South Beach Road road reserve for the parking and horse handling. The safe area is shown in red below.



Land Zoning Implications

5 Lot 428 DP 729272 is zoned No 7 (1f) (Coastal Land Zone) in the Byron 1988 Local Environmental Plan. The zoning prohibits all activities except:

10 *Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.*

15 Essentially all commercial recreational type activities for example equestrian activities or commercial water based activities are prohibited in the zone 7 (f1) (Coastal Land Zone).

Clause 48(1) of the Byron 1988 LEP does permit temporary use of land zoned 4(f1) for development not being designated development, for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year only if:

- 20 a) such land is vested in the Crown, a Minister of the Crown or the Council, and
- b) the development does not involve the erection of permanent structures ancillary to the use of that land.

25 Lot 428 DP 729272 is vested in the Crown or a Minister of the Crown and access through Lot 428 DP 729272 does not require the construction of any permanent structures.

In summary, although equestrian activities is a prohibited activity in zone 7 (f1), clause 48(1) of the LEP 1988 does allow temporary use of the land for equestrian activities.

30 **Financial Implications**

35 On the basis that the only purpose of the temporary licence is provide The Ranch Byron Bay access across Lot 428 DP 729272 for the purpose of conducting a commercial horse riding business on Tyagarah beach under Marine Parks permits, it is recommended that the fee for the temporary licence be set at a rate of minimum annual Crown Rent of \$472.00 (ex GST).

Statutory and Policy Compliance Implications

Crown Lands Act 1989

108 Temporary licences

- 5 (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.
- (2) A temporary licence may be granted subject to conditions and is also subject to such conditions as may be prescribed.
- 10 (3) A temporary licence may not be granted for any purpose for which an authority, permit, lease or licence may be granted under the *Fisheries Management Act 1994*.
- (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.

Crown Lands Regulation 2006

31 Temporary licences

- 20 (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 are as follows:
 - (a) access through a reserve,
 - (b) advertising,
 - (c) camping using a tent, caravan or otherwise,
 - (d) catering,
 - 25 (e) emergency occupation,
 - (f) entertainments,
 - (g) equestrian events,
 - (h) exhibitions,
 - (i) filming (within the meaning of the *Local Government Act 1993*),
 - (j) functions,
 - 30 (k) hiring of equipment,
 - (l) holiday accommodation,
 - (m) markets,
 - (n) meetings,
 - (o) military exercises,
 - 35 (p) mooring of boats to wharves or other structures,
 - (q) sales,
 - (r) shows,
 - (s) sporting and organised recreational activities,
 - (t) stabling of horses,
 - 40 (u) storage.
- (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.
- 45 (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.

Zone No 7 (f1) (Coastal Land Zone)

1 Objectives of zone

The objectives of the zone are:

- 50 (a) to identify and protect environmentally sensitive coastal land,
- (b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,
- (c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and

(d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.

2 Without development consent

Nil.

5 **3 Only with development consent**

Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.

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48 Temporary use of certain land

15 (1) Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development) within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:

- (a) such land is vested in the Crown, a Minister of the Crown or the Council, and
- (b) the development does not involve the erection of permanent structures ancillary to the use of that land.

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(2) Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the erection of permanent structures ancillary to the use of that land:

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Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale
Lot 358, DP 704247, Bangalow Road, Byron Bay.