



# Byron Shire Council



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 23 May 2019

held at Council Chambers, Station Street, Mullumbimby  
commencing at 2pm

*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 that reads "Mark Arnold".

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

**What is a "Conflict of Interests"** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

**Remoteness** – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Who has a Pecuniary Interest?** - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

**Relatives, Partners** - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. "Relative", in relation to a person means any of the following:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;

(b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

**No Interest in the Matter** - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

### Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

**Non-pecuniary Interests** - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

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## RECORDING OF VOTING ON PLANNING MATTERS

### Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
  - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
  - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

**BYRON SHIRE COUNCIL**  
BYRON SHIRE RESERVE TRUST COMMITTEE

**BUSINESS OF MEETING**

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

**General Manager**

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| 4.1 | Lease to Byron Bay Pre-School Inc.....                       | 4 |
| 4.2 | Temporary relocation of Community Markets to beachside ..... | 8 |

***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 - GENERAL MANAGER

**Report No. 4.1**                    **Lease to Byron Bay Pre-School Inc**  
**Directorate:**                    General Manager  
5 **Report Author:**                Paula Telford, Leasing and Licensing Coordinator  
**File No:**                            I2019/582

10 **Summary:**

The Byron Bay Pre-School Incorporated ('the Pre-School') holds a current lease over Crown Reserve R96998 under holding over provisions that will expire on 30 June 2019. The Pre-School has requested a new longer-term lease for eligibility for future relevant grant funding.

15 The report recommends that Council enter into a new five (5) year lease with the Pre-School for the purpose of early childhood education and care being compatible with the reserved Kindergarten purpose of the land.

20 This report recommends that Council provides financial assistance to the Pre-School by:  
a) Providing subsidised rent to the Pre-School; and  
b) Fully subsidising the cost of annual general land rates payable on the unimproved capital value of the land.

25 To ensure Council's building asset is maintained over the term of each lease, Council staff recommends that the lease places an obligation on the Pre-School to replace or repair all non-structural building defects identified in building audits obtained prior to commencement of the lease.

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**RECOMMENDATION:**

**That Council, as the Crown Land Manager, delegate to the General Manager the authority to enter into a new lease with the Byron Bay Pre-School Incorporated over Lots 9 -10 DP 47024 being Reserve R96998 as follows:**

- a) for a term of five (5) years;
- b) for the purpose of early childhood education and care;
- c) annual rent be initially set at the value of minimum Crown and thereafter increased by CPI all groups Sydney for the term of the lease;
- d) all lease preparation and registration costs to be met by the Lessee;
- e) the Lessee pay all outgoings other than annual general land rates;
- f) all maintenance to be carried out by the Lessee at the Lessee's cost; and
- g) the Lessor provide subsidised rent to the value of market rent as calculated at 6% of the land Unimproved Capital Value less rent payable by the Pre-School set at the value of minimum Crown rent.

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REPORT

Land:

5 Lots 9-10 DP 47024, 35 Marvell Street Byron Bay is Crown reserve R96998 gazetted on 1 June 1984 for the purpose of a kindergarten. Council was appointed the Crown Land Manager of R96998 on 7 October 1983.

10 The proposed five (5) year lease to the Byron Bay Pre-School Incorporated ('the Pre-School') for the purpose of early childhood education and care is consistent with the reserved purpose of the land for a kindergarten.

Proposed lease:

15 The Pre-School is a registered charity (24 821 183 036) and approved children's care provider (PR-00003407) and the holder of a current lease that expires on 30 June 2019. The Pre-School requests a longer-term lease for eligibility for relevant grant funding.

20 Council staff recommend that a five (5) year lease commencing 1 July 2019 is entered into with the Pre-School.

Future longer-term lease up to a maximum of 30 year will need to be expressly authorised by a Plan of Management that Council must have adopted for Reserve R96998 by 1 July 2021.

25 Legislative authority to grant the proposed lease:

Clause 70 of the *Crown Land Management Regulations 2018* (NSW) provides limited exemptions for the granting of a lease over Reserve R96998 prior to adoption of a Plan of Management by Council. Exemptions will apply to the proposed lease because:

- 30
- i. the new lease will commence prior to 1 July 2021 being the date Council must have adopted a Plan of Management for Reserve R96998; and
  - ii. a lease was in force over the land immediately before 1 July 2018 for the purpose of early childhood education and care and no additional uses of the land will be permitted under the
  - 35 new lease; and
  - iii. the term of the lease is limited to five (5) years; and
  - iv. consent from the Minister for Crown Lands is not required.

Subsidies:

40 a) Rent:

45 Council's Children's Services Policy provides that Council will continue to support community pre-schools in the Shire by the provision of land and/or buildings for the delivery of services to children aged 3 – 5 years at nominal costs to the pre-school.

As a result, this report recommends that Council subsidise rent to the Pre-School in accordance with the following calculations at commencement of each lease term:

- 50
- i. Market rent is calculated at 6% of the Unimproved Capital Value (UCV) of the land;
  - ii. Rent payable by the Pre-School is set at the value of minimum Crown rent as determined by clause 38 of the *Crown Lands Management Regulations 2018* (NSW) and thereafter increased annually by CPI all Groups Sydney for the term of the lease; and

iii. Council subsidise rent to the value of Market rent less minimum Crown Rent (exclusive of GST); and

b) Outgoings payable by the Lessee:

5 Council's Policy 12/008 Section 356 Donations, Rates, Water and Sewerage Charges provides for financial assistance donations by Council to eligible not for profit organisations to cover general rates, fixed water and sewerage charges in accordance with section 356 of the *Local Government Act 1993* (NSW).

10 This report recommends that Council provide financial assistance to the Pre-School to cover 100% of the cost of annual general land rates payable on the unimproved capital value of the land with all other outgoings payable by the Pre-School.

15 Direct negotiation:

A proposed lease for a term of five (5) years or less need not be granted by a tender in accordance with section 46A(3) of the *Local Government Act 1993* (NSW). Council is authorised to directly negotiate with the Pre-School in this instance.

20 Asset maintenance:

25 To ensure the ongoing maintenance of Council's asset, all non-structural building defects identified in a relevant building audit will be listed in the lease with an obligation on the Lessee to repair. To ensure all listed defects are repaired, the Lessee must report annually to Council by 31 December on all repairs completed.

Native Title:

30 The proposed grant of a five (5) year lease to Byron Bay Pre-School Incorporated over Lots 9-10 DP47024 being Reserve R96998 may impact native title; however the act complies with the applicable provisions of the *Native Title Act 1993* (Cth) being a valid future act under s24JA.

35 As the proposed act does not involve the construction of a public work there is no notification requirement. Should native title be determined to exist, at a future date, Council may be liable for compensation under the provisions of the *Native Title Act 1993* (Cth) and *Crown Land Management Act 2016* (NSW) for the impact on native title rights and interests by the proposed act.

40 **STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.2	Support and facilitate accessible, high quality early childhood education and activities	2.2.2.1	Improve direct service provision and sector development to provide quality accredited early childhood education

***Legal/Statutory/Policy Considerations***

45 *Crown Land Management Regulation 2018* (NSW)

**Clause 70 Exemption from operation of section 3.22 of Act for granting licences and leases during initial period**

- 5 (1) This clause applies to a council manager of dedicated or reserved Crown land during the initial period referred to in section 3.23 of the Act (the **pre-POM Crown land**) until whichever of the following occurs first:
- (a) the council adopts its first plan of management for the land for the purposes of section 3.23 of the Act,
- (b) the land is classified as operational land with Minister's consent under section 3.22 of the Act.
- 10 (2) The council manager is exempt from the operation of section 3.22 of the Act in respect of the following:
- (a) the granting of a short-term licence over pre-POM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the Act,
- (b) the renewal of an existing lease or licence over pre-POM Crown land for a term not exceeding the maximum term if there are no additional permitted uses of the land,
- 15 (c) the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if:
- (i) there was a lease or licence in force over the land immediately before 1 July 2018, and
- (ii) there are no additional permitted uses of the land,
- 20 (d) the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if:
- (i) the lessee or licensee is an emergency services organisation (within the meaning of the State Emergency and Rescue Management Act 1989), a not-for-profit organisation or a community group, and
- (ii) the Minister consents to the granting of the lease or licence,
- 25 (e) the granting of a new lease over pre-POM Crown land for a term not exceeding the maximum term if:
- (i) the negotiations between the council and the lessee in relation to the granting of the lease were commenced and, in the opinion of the Minister, substantially completed before 1 July 2018, and
- 30 (ii) the Minister consents to the granting of the lease,
- (f) the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if the lease or licence could, in the opinion of the Minister, have been granted immediately before 1 July 2018 under a plan of management in force immediately before that date.
- 35 (3) In this clause:
- existing lease or licence** means a lease or licence in force immediately before 1 July 2018.
- maximum term** of a lease or licence means a term (including any option for the grant of a further term) of:
- 40 (a) 21 years in the case of the following:
- (i) the renewal of an existing lease as referred to in subclause (2) (b),
- (ii) the granting of a new lease as referred to in subclause (2) (c),
- (iii) the granting of a new lease or licence as referred to in subclause (2) (f), or
- 45 (b) 5 years in any other case.

**Financial Considerations**

The unimproved value of Lots 9-10 DP 47024 is currently \$1.86 million.

50 This report is proposing that Council provides subsidised rent under the lease to the value of 6% of the unimproved capital value of the land (\$111,600) less rent payable by the Pre-School at the value of minimum Crown rent (\$490) equals a total subsidy for year one at \$111,110.

55 Total rent over the term of the lease is \$2,450 plus annual CPI increases. The Pre-School must pay all outgoings except the value of annual general land rents.

**Consultation and Engagement**

Nil.

**Report No. 4.2**                    **Temporary relocation of Community Markets to beachside**  
**Directorate:**                    General Manager  
**Report Author:**                Paula Telford, Leasing and Licensing Coordinator  
**File No:**                         I2019/708

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**Summary:**

10 Council resolved (**19-062**) to close Reserve R88993 known as the Butler Street reserve after the community market on 7 July 2019 for a period of approximately six months to coincide with construction works associated with the Butler Street bypass project.

15 The proposal is to temporarily relocate monthly community markets to Lot 10 DP 1049827 being Reserve R82000 managed by Council as a Crown Land Manager.

20 As the Crown Land Manager, Council is permitted to grant a short-term licence for the prescribed purpose of a market over Lot 10 DP 1049827 prior adopting a Plan of Management for the land under the exemption provided by clause 70 of the *Crown Land Management Regulations 2018* (NSW)

25 The proposed short-term licence to be granted to the Byron Community Association Incorporated will be for the prescribed purpose of holding a community market on the first Sunday of each calendar month and the third Sunday in December and January on part of Lot 10 DP 1049827 during the hours of 8am to 11am.

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**RECOMMENDATION:**

**That Council as the Crown Land Manager for Lot 10 DP 1049827 being Reserve R82000, delegate to the General Manager the authority to grant a short-term licence to the Byron Community Association Incorporated ('BBCA') on the following terms:**

- a) term six (6) months;
- b) for the purpose of a community market to be held on the first Sunday of each calendar month during the term of the licence plus the third Sunday in December and January;
- c) annual rent be set at \$1 if required;
- d) that all special conditions included in the BBCA licence permitting community markets in the Butler Street Reserve are included in the short-term licence.
- e) that clear vehicular and pedestrian access is retained from Lawson Street to each sea-kayak trailer;
- f) that the market traffic management plan for the site reflects requirements in e) above; and
- g) that market stalls are located a discrete distance (as determined at the discretion of the Market Manager) from both sea kayak operators so as to not impeded with the commercial nature of sea kayak operations.

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**REPORT**

5 Council resolved (19-062) to close Reserve R88993 known as the Butler Street reserve following the community market on 7 July 2019 for a period of six months to coincide with construction works associated with the Butler Street bypass project. The closure requires the temporary relocation of the monthly community markets.

Proposed market site:

10 Lot 10 DP 1049827 ('the Land') being Reserve R82000 is Crown land managed by Council. The Land has been recognised as the most suitable site to relocate the community markets from the Butler Street Reserve.

15 The Land is listed in Schedule G of the Indigenous Land Use Agreement (Area Agreement) known as *ILUA 2*. In accordance with the ILUA, the Land is surrendered land pursuant to ss24EF(1)(d), 24CG(2) of the *Native Title Act 1993* (Cth) with an accompanying statement that all Native Title rights and interests are extinguished in respect of the Land.

Proposed market footprint:

20 The proposed footprint for the community markets on the Land will extend south of the surf club to the Clarkes Beach car park and accommodate 290 individual stalls.

25 The proposed footprint incorporates the part of Reserve R82000 occupied by sea kayak operators. As a result a special condition will be included in the proposed short-term licence that will require the Market Manager to ensure:

- a) clear vehicular and pedestrian access is retained from Lawson Street to each sea kayak trailer; and
- 30 b) that the market traffic management plan for the site reflects requirements in a) above;
- c) that market stalls are located a discrete distance (as determined by the discretion of the Market Manager) from both sea kayak operators so to not to impede with the commercial nature of the sea kayak operations.

35 Proposed licence:

40 Section 2.20 of the *Crown Land Management Act 2016* (NSW) authorises Council as the Crown Land Manager to grant a short-term licence for a term not exceeding twelve months for the prescribed purpose of a market. Council is authorised to grant the short-term licence prior to having an adopted Plan of Management for the Land in accordance with clause 70 of the *Crown Land Management Regulations 2018* (NSW).

45 Policy 5.52 Commercial Activities on Coastal and Riparian Reserves applies over the Land. In accordance with the Policy a resolution of Council as the Crown Land Manager is required to permit a market licence to be granted over the Land.

This report seeks a resolution of Council as the Crown Land Manager for the Land to grant a short-term licence to the Byron Community Association Inc having the following terms and conditions:

- term six months to commence 4 August 2019;
- 50 • purpose community markets to be held on the first Sunday of each calendar month and the third Sunday in December and January during the hours of 8am to 11am with setup time not to commence before 7am;
- annual rent be set at \$1 if required; and
- that all special conditions attached to the current BBKA community market licence for the
- 55 Butler Street Reserve are included in the proposed short-term licence.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

**5 Legal/Statutory/Policy Considerations**

***Crown Land Management Act 2016***

*Section 2.20 Short-term licences over dedicated or reserved Crown land*

- 10 (1) *The regulations may make provision for or with respect to the following concerning short-term licences over dedicated or reserved Crown land:*
- (a) *any purposes for which the licences may be granted (prescribed purpose),*
  - (b) *any conditions to which the licences are subject (prescribed condition),*
  - (c) *the maximum term for which licences may be granted (prescribed maximum term).*
- 15 (2) *The Minister may grant a short-term licence over dedicated or reserved Crown land for any prescribed purpose.*
- (3) *A short-term licence may be granted even if the purpose for which it is granted is inconsistent with the purposes for which the Crown land is dedicated or reserved.*
- 20 (4) *A short-term licence may be granted subject to conditions specified by the Minister and is also subject to any prescribed conditions.*
- (5) *A short-term 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.*
- (6) *A short-term licence ceases to have effect when the prescribed maximum term after it is granted expires, unless it is revoked sooner by the Minister or is granted for a shorter term.*
- 25 (7) *Sections 2.18 and 2.19 do not limit the circumstances in which short-term licences can be granted under this section.*

***Crown Land Management Regulations 2018***

- 30 *Clause 70 Exemption from operation of section 3.22 of Act for granting licences and leases during initial period*
- (1) *This clause applies to a council manager of dedicated or reserved Crown land during the initial period referred to in section 3.23 of the Act (the pre-POM Crown land) until whichever of the following occurs first:*
- 35 (a) *the council adopts its first plan of management for the land for the purposes of section 3.23 of the Act,*
  - (b) *the land is classified as operational land with Minister's consent under section 3.22 of the Act.*
- 40 (2) *The council manager is exempt from the operation of section 3.22 of the Act in respect of the following:*
- (a) *the granting of a short-term licence over pre-POM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the Act,*

***Financial Considerations***

45 Nil.

***Consultation and Engagement***

50 Nil.