



# Byron Shire Council



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 27 June 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, appearing to read "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**

4.1 Crown Lands Management Act Transition - Report No 4.....4

**Infrastructure Services**

4.2 Propopsed installation of signage in Apex Park from Positive Change For Marine Life..... 10

***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**                    **Crown Lands Management Act Transition - Report No 4**  
**Directorate:**                    General Manager  
5 **Report Author:**                Shannon McKelvey, Executive Officer  
   Paula Telford, Leasing and Licensing Coordinator  
   Ralph James, Legal Counsel  
   Michael Matthews, Manager Open Space and Resource Recovery  
10 **File No:**                         James Brickley, Manager Finance  
   I2019/696

**Summary:**

15 This report seeks a resolution on categorisation of Reserve R97139 South Beach Road Brunswick.  
It also confirms the cessation of Crown Reserve Trusts (and Reserve Trust Meetings) from 1 July  
20 2019 and provides an update on various aspects of the transition of management of Crown  
Reserves to management by Council under the Local Government Act.

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**RECOMMENDATION:**

25 **That, for R97139, Council apply to the Minister administering the Crown Lands Management Act 2016, for General Community Use categorisation (or if permitted to do so, for part General Community Use and part Park categorisation).**

REPORT

The Crown Land Management Act 2016 (CLM Act) provides a revised management structure for Crown Reserves. Council is currently known to be responsible:

- 5 (a) as Crown Land Manager, for 30 Crown Reserves (these are the reserves Council was formerly Reserve Trust Manager for);
- 10 (b) for management of a further 17 Crown Reserves (called 'devolved reserves') that have fallen to Council to be responsible for because they are not managed by anyone else;
- (c) for one Crown Reserve as a 'dedication' under the Trustees Act 1925.

15 Under the CLM Act, Council will now manage these reserves under the public land provisions of the Local Government Act (LG Act). As a result, the Council-managed Reserve Trusts that previously existed will cease from 1 July 2019.

20 This is the fourth report to Council on progress through the transition with updates on the matters listed. Update reports will continue to be provided to Council.

**1. Reserve R97139 – South Beach Road Brunswick Heads**

25 On 28 March 2019 Council considered a report related to a number of reserves and it recommended that Council confirm its categorisation of R97139 as General Community Use. For Reserve R97139 Council resolved to further consider categorisation at a strategic planning workshop (**Res 19-134**).

That workshop took place on 6 June 2019, with information provided on:

- 30 - Layout of the various Crown Reserves and road reserves in the South Beach Road area.
- Current community uses in the area, including the Surf Club, tower, scouts and tennis facilities, the Council-owned Community Centre and the location of bollards recently installed by Crown Lands (without prior notice to Council).
- 35 - Car parking in this area. This included information from desktop analyses that there are currently around 325 spaces (formal and informal) located on road reserves, Crown reserves or a mixture of both and that if most of the car parking spaces were moved back onto road reserves the number could reduce to around 190 spaces. Of course, there are a range of layout options in-between and the workshop confirmed that a decision on future car parking options in this South Beach Road area is not required at that time but instead, reviewing car parking could be one of the first actions contained in a future Plan of Management.
- 40

45 The recommended category for R97139 remains General Community Use for the reasons set out in the [March 2019 report](#), including that this category is consistent with the gazetted purpose for the reserve for 'public recreation' and it allows for the existing uses, such as the surf club and tennis facilities, to continue.

50 Since the March 2019 report, staff have received information from an officer at the Dangar office of DOI-CL that the administrative 'one purpose=one category' rule may be reviewed. However, at the time of publication of this report, confirmation had not been received from DOI-CL that it had been changed. In case it does change in the near future, staff are also recommending for R97139 a further part to the resolution to categorise it part General Community Use and part Park if permitted to do so. Having both options in the Council resolution and Council's application to the Minister,

means that the applications will not be delayed by having to wait for DOI-CL advice on their rule review. The relevant areas (if it becomes permissible) as shown below would be:

- 5 - General Community Use - yellow areas containing the existing open space, active areas, community uses and infrastructure;
- Park - green area containing beach accesses, passive recreation and vegetation.



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**2. Administrative Matters**

a) Cessation of Reserve Trusts

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From 1 July 2019, Council Reserve Trusts will cease to exist. For Byron Council, the only practical impact of this is that Council will no longer hold separate Reserve Trust Meetings. The Council decisions that in the past would have been made in Reserve Trust Meetings, will now simply be made in Ordinary Meetings. The newly adopted Code of Meeting Practice will apply.

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From 1 July 2019 all assets, liabilities, tenures and contracts of existing Reserve Trusts automatically transfer to Council as a Crown Land Manager, and all current leases and licences granted by the Reserve Trust continue under the CLM Act for the remainder of the term. Where a Reserve Trust is listed on a certificate of title, Department of Industry Crown Lands (DOI-CL) will notify the NSW Land Registry on Council's behalf and apply to have the Reserve Trust removed and replaced by the Crown Land Manager's name. Council has met the requirement to notify all current lessees of the appointment of Council as the Crown Land Manager.

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b) Accounting for assets on Crown Reserves in Council's accounts

Council is required to include in its accounts, the Crown Reserves it is responsible for. In anticipation of the change, Council did a complete review in 2017 to ensure that most Crown Reserves and assets were included in Council's accounts, or, where applicable, they were excluded consistent with accounting rules. As previously reported, last year DOI-CL notified Council for the first time of two new reserves that they had previously omitted from their mapping. These will be brought into Council accounts this financial year.

Councils will no longer be required to report annually to DOI-CL on accounting for Crown Reserves. However, accounting for Crown Reserves will continue to be subject to annual audit by the NSW Auditor-General, and Council will review administrative accounting systems to ensure they are in line with any audit requirements.

NSW councils have been asked as part of their 2018/2019 audit program to prepare for the auditors a Position Paper on the impacts and resulting accounting arising from the introduction of the Crown Lands Management Act, which staff have commenced work on.

c) Council classification and categorisation of reserves under the LG Act

This work is progressing well and has so far been the subject of two Councillor workshops and three Council reports. For some reserves, this process has not been straight forward as historical anomalies, previously missing information or reserve-specific issues have been identified as research into individual Reserves progresses.

It is also anticipated that DOI-CL may shortly update some of the administrative processes they originally put in place. If that occurs, that might impact on the application already lodged but more guidance from DOI-CL is needed before that is known.

d) Council will need to prepare and adopt a, compliant, LG Act Plan of Management (PoM) for each Reserve by 30 June 2021.

The actual work on PoM's cannot be started until the applications to DOI-CL for classification and categorisation are complete. However, planning to prioritise the PoMs and resource this work is progressing.

So far, the indications are that Council will be directed to follow the DOI-CL administrative process for many PoMs, which will not involve public consultation. This will be likely for reserves where there is no change in purpose, use or actions on the reserve. DOI-CL will provide Council direction on the level of public consultation that will be required for other PoMs as part of their response to Council's categorisation applications.

PoMs are key strategic documents that govern the future use of the reserves they cover. If actions, uses or dealings (eg leases, licences, uses or works) are not authorised by a PoM, they will not be able to be conducted on the reserve (without amending the PoM which can be a lengthy process with costs). So, taking the time required to prepare the initial PoMs as best as possible will be important but this could cause delay to some projects for new or expanded activities or projects on reserves.

There is real potential for tension to arise between getting PoMs done fast (to minimise delay to projects) and getting them as well as possible while meeting all consultation requirements. This is a factor that will need to be considered in the prioritisation and resourcing of work to prepare PoMs.

5 Staff have also been explaining this issue to Crown Reserve user groups and asking groups to give Council as much notice as possible if they are considering any new or upgraded activities or facilities on any Crown Reserves. Council wants to avoid situations where a user group has been given grant funding, but because they had not let Council know about their plans, the group can't actually do the work because it is not authorised in a compliant PoM.

10 Council is committed to doing its best to get through the transition work as quickly and well as possible, but this is additional work imposed on Council without additional staff resources to complete it. To minimise potential delay to projects as much as possible, a combination of approaches will be taken to manage the work, with some Crown Reserve PoMs likely to be given high priority (which will cause delay to other Council work) and the rest of the Crown Reserves work being delayed until it can be resourced.

15 e) Once a compliant PoM is in place, Council will generally not be required to seek DOI-CL's approval for dealings on Crown reserves

20 This means that Council and community will have more autonomy to decide how to use the Crown Reserves that Council are responsible for. This return of decision making to locals is positive and once PoMs are in place (provided an action is consistent with the PoM) not having to seek DOI-CL's approval will remove some of the current red-tape and delay that causes.

25 With the additional decision-making power will come corresponding responsibility for the outcomes of those decisions, including the possibility of liability for compensable damages arising from those Council decisions. This means that local councils might become responsible for types of compensation, which have until now rested with State Government. Council is currently reviewing insurance policies and the Northern Rivers Joint Organisation Regional Risk Group has been informed that this is a matter also being investigated by the local government mutual insurer that many councils are party to.

30 f) Councils are required to employ or engage an accredited native title manager to ensure compliance with native title obligations when managing Crown reserves.

35 To date, State Government has been primarily responsible for complying with Native Title Act obligations over Crown Land. This responsibility has been now been shifted to local government for those Crown Reserves managed by councils. Native Title interests are extremely important as are the processes that must be followed to meet requirements under the Native Title Act. So far, four Council officers have received training to become accredited 'Native Title Managers' to enable Council to meet statutory obligations, and over the coming year, when DOI-CL make the training available, two more staff will be trained.

40 It will take time for local government to build up experience and expertise in this area. The new requirements on local government to resource and prepare Native Title advice internally, is additional work that Council will carry out with existing staff resources. This could potentially cause slight delay to other work but, this will be mitigated as more staff are trained to complete this work.

45 DOI-CL are currently still providing local government with some limited support with regard to Native Title advice but have advised that "over time, the department's engagement with councils is expected to diminish". As a result, building Council's internal capacity quickly is a priority and Byron is working with adjoining NRJO and MIDJO councils to share and collectively build resources.

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**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>	2.3	Provide accessible, local community spaces and facilities	2.3.8	Meet requirements for the transition of management of Crown Land to Council under the Crown Lands Management Act 2018	2.3.8.1	Complete required applications to Minister for initial classification and categorisation of applicable reserves and one-off applications

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

From 1 July 2019, when making decisions about Crown Reserves, Council must comply with the requirements of the Crown Lands Management Act 2016, Local Government Act 1993 and Commonwealth and NSW Native Title legislation. The new regime has imposed additional responsibilities and obligations on local government. Council is doing its best to absorb the additional work but it will have an impact on other areas and potentially on works or projects. Council now has additional statutory requirements it must comply with before being able to undertake or authorise projects on Crown Reserves.

**15 *Financial Considerations***

There are no budget implications arising from this report.

**20 *Consultation and Engagement***

Staff know how much community value Crown Reserves and acknowledge that it is important to provide community access to clear information about what the transition involves and means for different users.

25 So far, the limited staff resources have been focused on getting the work done to submit the required applications to the Minister. Once this is done, while Council is waiting on responses from DOI-CL, staff will develop a detailed communications plan and shift focus to providing more information for the community and user groups.

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**STAFF REPORTS - INFRASTRUCTURE SERVICES**

**Report No. 4.2 Propopsed installation of signage in Apex Park from Positive Change For Marine Life**

5 **Directorate:** Infrastructure Services  
**Report Author:** Kate Akkerman, Waste Education and Compliance Officer  
**File No:** I2019/875

10 **Summary:**

15 The purpose of this report is to update on recent progression of Positive Change for Marine Life's (PCFML) proposed installation of education signage in Apex Park, Byron Bay and seek direction on next steps.

20 Council resolved (Resolution **15-020** attached) in February 2015 to install an educational sign in Apex Park in partnership with PCFML. In line with part 3 of the resolution, Staff referred the proposal to the Byron Bay Town Centre Masterplan Committee. One committee member supported the project and five did not support the project due to the upcoming design works along the foreshore. After informing PCFML of this result they have contacted Council asking if the project can be revisited.

25 PCFML did have \$1,400 grant funding to contribute to the project but this money has been re-directed due to the time constraints of the grant. In line with part 4 of the resolution, this project will result in additional costs that need to be considered. We estimate a cost of \$10,000 - \$15,000 for full installation.

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**RECOMMENDATION:**

1. **That PCFML's current proposal for installation of education signage in Apex Park is considered as part of the foreshore design process scheduled for 2019-20 financial year.**
2. **That PCFML be invited to participate in the foreshore design process as a key stakeholder.**
3. **That any costs to Council not funded by allocated budgets be reported back to Council for approval.**

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REPORT

Council resolved (Resolution 15-020) in February 2015 that:-

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1. Council supports the installation a Healthy Marine Environment education sign at Apex Park, Main Beach, Byron Bay through an educational awareness partnership with Positive Change for Marine Life.

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*The aim of this partnership is to promote actions that will ensure a healthy marine environment in Byron Bay. This will ensure a reduction in the level of waste collected at Main Beach to achieve economic, social and environmental benefits.*

15

2. The partnership to investigate and facilitate the following elements:

- i. Statistical collection and analysis of marine debris;
- ii. Monitoring and evaluation of littering at Main Beach;
- iii. Identification of the positive benefits and/or challenges in maintaining a healthy marine environment;
- iv. Installation of signage and other park infrastructure (e.g. seating, recycle and wastage bins) to support a public education campaign promoting a Healthy Marine Environment;

20

3. Council refers this motion to be considered in the Byron Bay Town Centre Masterplan process.

25

4. Any proposals resulting from this partnership resulting in additional costs to council outside allocated budgets to be reported back to council for approval.

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Staff worked in close collaboration with PCFML since this resolution, satisfying all but the installation of signage and other park infrastructure. An initial proposal for signage and infrastructure was put on hold until mid-2017 due to a lack of funding for the project from PCFML.

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In mid-2017 PCFML received funding from a Keep NSW Beautiful grant to assist in the installation of one sign in Apex Park and presented a proposal to Staff to progress the installation of a *Healthy Marine Environment education sign* in Apex Park (location in the middle of the grassed area across from Fish heads/Beach Hotel).

40

The proposal provided limited detail of the structure itself. On-going collaboration between Staff and PCFML has continued since that time, with Staff requesting further information (including drawings and dimensions) on exact detail of the sign. At the end of February 2018, staff received a revised final drawing with estimated dimensions for the sign (see attached proposal and figure below).



Rough dimensions were proposed at approximately 1.5-2.0 metres high by 1.4 metres wide. This is a significant sized structure for such a prominent area with a substantial impact on the amenity of Apex Park. It also poses a potential public safety risk.

- 5 In line with part 3 of the resolution, Staff referred the proposal to the Byron Masterplan Guidance Group. A summary of the group's response to the proposal is provided below:

PCFML Signage Proposal

- 10
- 1 supporter
  - 5 non-supporters at this time (feedback outlined below)
  - 1 declined to comment

Feedback on proposal

- 15
- Hoping for a cohesive design along the foreshore
  - This would place unnecessary design constraints on the architect for the foreshore
  - Safety concerns
  - Extremely important area – proposals like this need more consideration
  - What is going to be on the sign? Needs to fit with bigger picture plans for the foreshore
  - Another sign is not going to stop people using the place as a rubbish dump, as stated in the proposal
  - Apex Park is extremely busy and congested – the area needs to be simplified, not additional signage added
  - The seating will be an ugly eyesore
  - Proposal is ok to the eastern side of the surf club up to Clarke's beach
  - This money could be better utilised – total bill of min \$5,000 and PFCML only contributing \$1,400
  - Anything approved should at most be temporary until we come up with a final plan for the area
  - The timing is wrong – when we are looking at the beachfront PCFML could be invited to share their ideas
  - Too strong a statement with too many different design elements that may not flow into future plans
  - Totems conflict with other designs that have been put forward to this group and indicates a need for greater cohesion
- 20
- 25
- 30
- 35

The draft 2019-20 budget includes allocation for landscape design plans to be done for the foreshore area – including Apex Park. Council has also applied for grant funding for this project, with anticipated notification of success or otherwise in July 2019.

- 40 It is recommended that the PCFML proposal be considered as part of this foreshore design process, rather than installed immediately, based on:-
- the feedback from the masterplan group
  - the significant size of the structure in the Shire's most prominent position
  - the volume of requests Council receives for signage in Apex Park
  - the desire for a cohesive, well-designed foreshore space that strategically balances signage with public amenity.
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STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.2	Restore degraded areas and habitats that have or provide significant or high environmental and or community value	3.1.2.1	On ground actions to maintain and expand restoration of HEV sites on Council owned or managed lands

5 **Legal/Statutory/Policy Considerations**  
Crown Land Management Act 2016 (NSW)

2.23 Minister taken to give consent for certain development applications over dedicated or reserved Crown land

- 10 (1) This section:
- (a) applies in relation to dedicated or reserved Crown land for the purposes of the Environmental Planning and Assessment Act 1979 (and any instrument made under that Act), and
  - (b) has effect despite anything in that Act (or any instrument made under that Act).
- 15 (2) The Minister is taken to have given written consent on behalf of the Crown (as the owner of dedicated or reserved Crown land) for its Crown land manager or the holder of a lease or licence over the land to make a development application relating to any of the following kinds of development:
- 20 (d) the erection of signage approved by the manager or the repair, maintenance or replacement of signage erected with the manager's approval,
- (4) Any regulations made for the purposes of subsection (3) (b) may exclude the whole or any part of a kind of development specified by subsection (2).
- 25 (5) To avoid doubt, the Minister's consent on behalf of the Crown (as the owner of dedicated or reserved Crown land) to lodgement of a development application in respect of that land is required for the carrying out of any development to which subsection (2) does not apply.

30 **State Environmental Planning Policy (Infrastructure) 2007**  
**Schedule 1: Exempt Development - general**

**General Provisions: Signs**

Existing signs—maintenance, replacement or change in display if existing sign is exempt under this Policy

Identification, directional, community information or safety signs but not including roof-top signs or commercial advertising or signs associated with the use of road infrastructure (including signs associated with level crossings)

- Must not involve a change in area, form or shape.
- Surface area must not exceed 3.5m<sup>2</sup>.
- Must be located wholly within property boundary or be attached to existing boundary fence and not projecting more than 100mm from fence.
- Obtrusive effects of outdoor lighting must be controlled in accordance with AS 4282–1997, Control of the obtrusive effects of outdoor lighting.

**Financial Considerations**

35 It is estimated that the total cost could be in the order of \$10,000 - \$15,000 and is unbudgeted. Actual costs will be dependant on a certified engineering design that ensures its structural stability.

**Consultation and Engagement**

To be determined