



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 25 August 2016

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.

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL
BYRON SHIRE RESERVE TRUST COMMITTEE

BUSINESS OF MEETING

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

Sustainable Environment and Economy

- 4.1 Proposed Placemaking Activity on Council Managed Coastal and Riparian Crown Reserve (Denning Park)4

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.1 Proposed Placemaking Activity on Council Managed Coastal and Riparian Crown Reserve (Denning Park)

Directorate: Sustainable Environment and Economy
Report Author: Sarah Workman, Tourism Officer
 Greg Smith, Team Leader Planning Services
 Paula Telford, Leasing and Licensing Coordinator

File No: I2016/774

Theme: Economy
 Economic Development

Summary:

This report recommends that the Reserve Trust support this 2016 Byron Bay Town Centre Placemaking Seed Fund project and grant a temporary licence for the proposed placemaking activities on Council Managed Coastal and Riparian Crown Reserve (Denning Park), as part of the Byron Bay Town Centre Placemaking Seed Fund program.

RECOMMENDATION:

1. **That the Reserve Trust Manager of Byron Coast Reserve Trust, the Reserve Trust Committee grants a temporary licence under section 108(1) of the *Crown Lands Act 1989 (NSW)* for the prescribed purpose of entertainment or exhibition to Circus Arts PARK & FLY a community circus to be held in Denning Park Crown Reserve 82000 between 14 November 2016 and 14 February 2017.**
2. **That the Reserve Trust Committee determine that the Commercial Temporary Activity daily fee of \$151.00 per day be capped at 22 days, providing a total fee of \$3,322.00.**

Attachments:

- 1 Confidential - FINAL proposal - Circus Arts PARK & FLY project: 2016 Byron Bay Town Centre Placemaking Seed Fund (2 August 2016), E2016/72555

Report

This report recommends granting an exemption to Council's Commercial Activities on Coastal and Riparian Crown Reserves Policy to enable the proposed placemaking activities at Denning Park, Byron Bay detailed in this report.

Background

At its Ordinary Meeting on 10 December 2015, Council resolved to proceed with the development of a Byron Bay Town Centre Placemaking Seed Fund (PSF) program and allocated \$60,000 for a range of projects to initiate the revitalisation, beautification and activation of the town centre (15-673).

Staff called for 'Request for Proposals' on 18 January 2016 and applications closed on 11 April 2016, with 28 proposals/applications received. An assessment panel was formed to assess the applications, resulting in seven approved projects.

Event overview and Denning Park Activities

The complete proposal provided by Circus Arts is attached at Annexure 1. To summarise *Circus Arts PARK & FLY* is a community circus and performance space featuring a high flying trapeze for use by the general public from 14 November 2016 to 14 February 2017. The program includes:

1. 1.5 hour flying trapeze classes
2. Flying trapeze single swings
3. FREE flying trapeze shows every Friday and Saturday evening
4. An outdoor community meeting space with seating for the general public to gather, watch, create and share
5. Roving circus entertainment every weekend
6. *The Catch Stage* busking pitch for street shows on Friday, Saturday and Sunday afternoons

This project is also in alignment with the Byron Bay Town Centre Masterplan's long term objectives for Denning Park which is a catalyst site for activation and change. These objectives include:

1. Creating an inter-generational space for children and youth through to the elderly
2. Providing a greater array of active uses for all ages along the foreshore
3. Aiding space linking from East to West along the foreshore

The location of the project is provided in the map below. Please refer to the site labelled 1.



Community Benefit

- 5 Circus Arts Byron Bay are committed to providing additional community benefit. Once all operating expenses are met, Circus Arts will donate five per cent of all profits to the Beautify Byron Fund to create additional beautification and revitalisation projects for the Byron Bay town centre.

Temporary Licence

10

Land Information:

Description: Lot 10 DP 1049827, Bay Street Byron Bay
 Reserve: R82000 Byron Bay Beach
 Owner: NSW Department of Primary Industries – Crown Lands
 15 Trustee: Byron Coast Reserve Trust
 Trust Manager: Byron Shire Council
 Gazetted Purpose: Public Recreation

- 20 Crown Reserve 82000 is included in Council's Policy 5.52 *Commercial Activities on Coastal and Riparian Crown Reserves*. Section 5 of this policy outlines what activities Council may issue a temporary licence over this area for. These activities are:

- *Sporting Events – Organised*
- *Educationally based community activities*
- 25 • *Fundraising activities by Registered Charities*
- *Political Functions*
- *Religious Functions*
- *Weddings*

- 30 The proposed activity does not fit into any of the categories in Section 5 of the Policy that Council may issue temporary licences for, and therefore cannot be licensed by staff under delegation.

Section 108 of *Crown Lands Act* permits the Reserve Trust to grant a temporary licence for the purpose of Exhibition or Entertainment as detailed under the Statutory and Policy Compliance Implications.

5 This application is reported to the Reserve Trust for their consideration in accordance with part Council resolution 14-286, *'any applications that are not expressly referred to in the Policy will be considered at a meeting of Council'*.

10 Temporary use of certain land permitted without consent

The location of the proposed use is within Zone No. 7(f1) (Coastal Land Zone) under Byron Local Environmental Plan 1988 (LEP). Subclause 48(1) of the LEP states that despite any other provision of the LEP, *a person may without the consent of Council carry out development on land for any purpose within Zone No. 7(f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar if such land is vested in the Crown, a Minister of the Crown or the Council and the development does not involve the erection of permanent structures ancillary to the use of that land.* If the criteria contained in this subclause can be satisfied the development may be carried out without development consent.

20 **Financial Implications**

Capped daily fee for over 21 days use

25 Due to an unforeseen oversight uncovered while finalising the project, temporary daily licence fees were overlooked as part of the advice provided to Circus Arts during the budget development phase. To remedy this, it is proposed that the fees applicable under the temporary licence for the flagship placemaking seed fund project be capped at \$3,322. The Circus Arts PARK & FLY activities will take place 5 days per week for 12 weeks, which in total exceeds 21 days of use and triggers the \$151 per day Council licence fee (in addition to the application fee of \$229.00). To
30 enable this project to take place, and given the other fees and charges being applied to the activity, it is proposed that this daily licence fee rate be capped at 22 days x \$151 per day, totalling a licence fee of \$3,322.

35 Staff are not looking to set a precedent, as all Placemaking Seed Fund applicants have budgeted for all Council fees and charges in their proposals. The capping of the temporary licence fees will allow the project to proceed to the next stage of approvals and implementation.

It should also be noted that Circus Arts will be charged other fees in accordance with Council's adopted Fees and Charges for the following:

- 40
- Traffic Control Plan
 - Waste management
 - Occupation Certificate
 - Any relevant building or health inspections

45 **Statutory and Policy Compliance Implications**

Clause 31 Temporary licences

"(1) *For the purposes of section 108 (1) of the Act, in addition to grazing, the purposes for which a temporary licence may be granted are as follows:*

- 50
- (a) *access through a reserve,*
 - (b) *advertising,*
 - (c) *camping using a tent, caravan or otherwise,*
 - (d) *catering,*

- 5 (e) emergency occupation,
 (f) entertainments,
 (g) equestrian events,
 (h) exhibitions,
 (i) filming (within the meaning of the Local Government Act 1993),
 (j) functions,
 (k) hiring of equipment,
 (l) holiday accommodation,
 10 (m) markets,
 (n) meetings,
 (o) military exercises,
 (p) mooring of boats to wharves or other structures,
 (q) sales,
 (r) shows,
 15 (s) sporting and organised recreational activities,
 (t) stabling of horses,
 (u) storage.
- 20 (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.*
- 25 (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."*

Byron Shire Council Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves

30 Section 4 of Council's Policy 5.52 *Commercial Activities on Coastal and Riparian Crown Reserves* defines what activities Council has determined may be carried out on a coastal Crown reserve without requiring the issue of a temporary licence. These activities are:

- 35 • *Emergency Services performed by recognised Emergency Service Organisations;*
 • *Social Gatherings;*
 • *Spreading of Ashes; and*
 • *Volunteer Rescue Organisations – Training Days*

Section 5 of this same Policy outlines what activities Council may issue a temporary licence over this area for. These activities are:

- 40 • *Sporting Events – Organised*
 • *Educationally based community activities*
 • *Fundraising activities by Registered Charities*
 • *Political Functions*
 • *Religious Functions*
 45 • *Weddings*