



# Byron Shire Council



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 20 April 2017

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, reading "Mark Arnold".

Mark Arnold  
Acting 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**

**Corporate and Community Services**

- 4.1 Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves and  
Request for Tender - Commercial Activities Sub-Licenses. ....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 - CORPORATE AND COMMUNITY SERVICES**

**Report No. 4.1                      Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves and Request for Tender - Commercial Activities Sub-Licenses.**

**Directorate:** Corporate and Community Services  
**Report Author:** Paula Telford, Leasing and Licensing Coordinator  
**File No:** I2017/446  
**Theme:** Corporate Management  
                  Governance Services

**Summary:**

Council's current Sub-Licences for Commercial Activities expires on 31 August 2017. Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') requires Council to call an open tender before granting any Class 2 commercial activity sub-licence.

Prior to calling Tenders for Commercial Activities, Council has undertaken a process to review and amend the current Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves, which included a review of an amended draft Policy by a Working Group.

Council as the Reserve Trust at its meeting of 23 March 2017 (Resolution **17-047**), resolved to establish a Working Group, consisting of current licence holders, National Parks & Wildlife Services, Cape Byron Marine Parks, community representatives and other independent coastal activity experts to make recommendations on the Draft Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') prior to placing the Policy on public exhibition.

Amendments recommended by the Working Group are detailed in this report. Amendments include:

- changes to the crowns lands the Policy applies; and
- changes to the activities that can occur on Council managed and controlled Crown reserves without the need for approvals or licences; and
- changes to the types of Class 1 non-commercial activities that are permitted by a temporary licence and other Class 1 activities permitted only by a resolution of the Reserve Trust.

Amendments to Class 2 activities include;

- changes to the criteria that Council must consider before granting any Class 2 sub-licence; and
- changes to the general provisions for the operation of a Class 2 sub-licences to include a new term of six (6) years, clarifying when a sub-licence holder may transfer or assign rights of a sub-licence and make clear that a sub-licensee may only hold one type of Class 2 sub-licence at any one time; and
- change to the period a sub-licence can be terminated because of non-use; and
- changes to account for new sub-licence types.

In summary this report recommends that Council as the Reserve Trust Committee adopt the amendments to the Policy and places the Draft Policy on public exhibition for 28 days. Following adoption of the Policy, authorise the General Manager to use the open tender method to establish licences for Commercial Activities.

**RECOMMENDATION:**

**That Council as the Reserve Trust Manager, adopt:**

- a) **the recommendations of the Working Group detailed in the Report and incorporated into the Draft Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves at Attachment 1, and**

- i. **Set the maximum of Class 2 sub-licence surf schools at four (4); and**
  - ii. **Set the maximum surf school class size at ten (10); and**
  - iii. **Set the maximum number of Stand Up Paddle Board Schools operating in the Brunswick River at three (3).**
- b) **That Council adopt amendments to Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves as detailed in the attached Draft Policy and places the Draft Policy on public exhibition for a period of 28 days; and**
  - i. **should no submissions are received, that the Policy be adopted.**
  - ii. **should any submissions be received that the submissions be reported to Council.**
- c) **That Council as the Reserve Trust Manager authorise the General Manager to use the open tender method to establish sub-licences for Commercial Activities for Surf Schools, Personalised Surf Schools, Stand Up Paddle Board Schools, Sea Kayak Tours, Mobile Kiosk and Mobile Beach Locker Hire.**

**Attachments:**

- 1 DRAFT Amended Policy: Commercial Activities on Coastal & Riparian Crown Reserve Policy - ver 2.,  
5 E2017/23840 , page 12 [↓](#)

**Report**

Council as the Reserve Trust Manager, resolved at its meeting of 23 March 2017 (Resolution 17-047), that Council establish a working party, consisting of current licence holders, National Parks & Wildlife Services, Cape Byron Marine Parks, community representatives and other independent coastal activity experts to make recommendations on the Draft Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') prior to placing the Policy on public exhibition.

In accordance with resolution 17-047, Council convened a Working Group with two workshops being held on 22 March and 5 April 2017. The recommendations from the Working Group to amend the Policy are provided below:

Purpose of Policy 5.52

Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') guides Council's decision-making by determining the types of activities that can occur on Council managed and controlled Crown reserves.

The types of activities permitted under the Policy include:

- a) non-commercial activities permitted without the need for approvals or licence; and
- b) other non-commercial activities, called Class 1 activities, permitted only by issue of a temporary licence; and
- c) commercial activities, called Class 2 activities, permitted by grant of a sub-licence authorised by a Crown licence issued under section 34A of the *Crown Lands Act 1989* (NSW), ('the Act').

Proposed amendments provided by the Working Group to the Draft Policy include:

1. Item 1 Lands which the Policy applies:

- a. Item 1 is amended to remove Torakina Beach, being land under the control and management of the NSW Crown Holiday Parks Trust. The proximity of the Beach to the river mouth makes the location unsuitable for any Class 2 commercial activity; and
- b. New Item 1.2 allows for additional lands in RI 564194 to apply to the Policy

2. Item 2 Activities that can be regulated:

- a. New Item 2.3 provides that sponsorship advertisement in connection with Class 1 activities is permitted subject to expressed conditions.

3. Item 4 Activities not requiring a Temporary Licence or Approval:

- a. Item 4.1 is amended to list non-commercial activities that are permitted without the need to obtain an approvals or licence and includes:
  - i. Emergency Services performed by recognised Emergency Service Organisations;
  - ii. Passive Recreational Activities;
  - iii. Social Gatherings; and
  - iv. Volunteer Rescue Organisations – Training Days.
- b. The 'Spreading of Ashes' is removed because this activity requires Council approval.

4. Item 5 Activities requiring a Temporary Licence of Approval

a. Item 5.1 is amended to extend the types of Class 1 activities non-commercial permitted under clause 31 of the *Crown Lands Regulations 2006* (NSW) ('the Regulations') to include:

- i. access though a reserve;
- ii. advertising limited to Class 1 or Class 2 activity sponsorship;
- iii. catering;
- iv. emergency occupation;
- v. entertainment (non-commercial and consistent with use of the Reserve);
- vi. exhibitions (non-commercial for example sand sculptures);
- vii. filming;
- viii. functions limited to:
  - 1. educationally based community activities,
  - 2. fundraising activities by registered Charities,
  - 3. political functions,
  - 4. religious functions, and
  - 5. weddings.
- ix. markets; and
- x. sporting & organised recreational activities.

b. All other activities permitted under the *Regulation*, but not expressed in Item 5.1, may be possible only by resolution of the Reserve Trust. Class 1 activities will be approved only for a short period of time for example one day under Item 5.1 of the Policy.

5. Item 7 Matters to be considered in Issuing Class 2 Sub-Licences

a. Items 7 is amended to expressly list both the mandatory and qualitative criteria that Council must consider prior to the granting a Class 2 sub-licence to include:

i. Mandatory criteria:

1.	Instrument of Tender: <ul style="list-style-type: none"> <li>• A valid Australian Business Number (ABN);</li> <li>• Details of Organisational profile;</li> <li>• Referee details;</li> <li>• A statement if acting as an Agent or Trustee (if applicable); and</li> <li>• A statement if intending to sub-contract requirements (if applicable).</li> </ul>
2.	Details of Financial Viability.
3.	Details of Insurance or statement of ability to obtain required insurance.
4.	Statement of ability to meet minimum work health and safety requirements.
5.	Proof of holding relevant qualifications necessary to operate a business under the sub-licence.
6.	Statement of a commitment to ethical business practice principles.
7.	Conflict of interest declaration.

ii. Qualitative criteria and weighting.

	<i>Description</i>	<i>Weighting</i>
7.1	Demonstrate successful experience in the activity to a high standard.	20%
7.2	Demonstrate history and experience of environmentally acceptable	15%



	<i>Description</i>	<i>Weighting</i>
	operations.	
7.3	Demonstrate appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes, possible constraints and restrictions on operations.	20%
7.4	Demonstrate experience in meeting licence conditions, including the keeping of records and prompt payment of fees.	10%
7.5	Demonstrate knowledge and ability to provide appropriate safety requirements and duty of care responsibilities	15%
7.6	Demonstrate capability to provide interpretive and educational information that ensures clients are receiving instructions on minimal impact techniques, environmental protection and ethics of appropriate behaviour.	10%
7.7	Demonstrate compatibility with purpose of Crown, Cape Byron Marine Parks & National Parks & Wildlife Reserves, and the NSW Coastal Policy, and whether the proposed activity will promote and be ancillary to the use and enjoyment of the Reserves.	5%
7.8	Demonstrate the benefit of the activity provided to the wider Byron Bay community	5%

**6. Item 8 General Provisions for the Operation of Class 2 Sub-Licences**

- 5                   a. Item 8.3 is amended to allow for a maximum term of a sub-licence to be six (6) years; and
- 10                   b. Item 8.8 is amended to clarify the exceptions when a sub-licence can be transferred or assigned and includes only on the death of the sole or surviving sub-licensee or upon proof the sub-licensee is suffering hardship.
- 15                   c. Item 8.13 is amended to reduce the period a sub-licence can be unused before the sub-licence will lapse unless prior approval is granted by Council.
- d. New item 8.14 is added that provides a holder may be granted and hold separately one (1) surf school sub-licence concurrently with one (1) stand up paddle board school sub-licence, otherwise a holder may not hold more than one(1) sub-licence.

**7. Item 9 Licence and Performance Standards – Class 2**

- 20                   a. Item 9.1 lists the types of Class 2 activities that can be sub-licensed. The working party make the following recommendations:
- 25                         i. The Policy sets a maximum of four (4) Surf School sub-licences however Council has currently let five (5) surf schools sub-licences. The Working Group was divided on whether four or five surf school sub-licences should be let. Advice from Cape Byron Marine Parks suggested that it had no environmental concerns with the current five surf school sub-licences. NPWS recommended four sub-licences due to the popularity of the areas licenced and effect on amenities for other using the main beach area.
- 30                         Council recommends retaining the maximum of four (4) surf school sub-licences.



ii. Two (2) Personalised Surf School sub-licences are available. The Working Group recommend no change to the personalised surf school sub-licence numbers.

5                   iii. Two (2) Sea Kayak sub-licences are available. The Working Group agreed to recommend no change to sea kayak sub-licence numbers.

10                   iv. New Stand Up Paddle Board School ('SUP') sub-licences. SUP sub-licences will be issued only for the flat waters of the Brunswick River. In November 2016, Crown Lands Grafton Office, recommended that Council take control of one (1) SUP licences issued by Crown Lands, and two (2) issued by the NSW Crown Holidays Parks Trust. The Working Group suggested up to six (6) sub-licences should be offered to cover all current operators on the Brunswick River. Council recommends a maximum of three (3) SUP sub-licence is issued.

15                   v. Three (3) Mobile Kiosks (not motorised) and one (1) Mobile Beach Locker Hire sub-licences are available. The Working Group recommend no change to these sub-licence numbers.

20                   b. Item 9.1 details conditions of each sub-licence type. The working party made the following recommendations:

25                   i. Surf school student ratio of eight (8) students to one (1) instructor is an industry standard. The adopted Policy limits students to a maximum of ten (10) with two (2) instructors per class, limited to two (2) classes per day. The working party suggested, to ensure the viability of surf schools, that the number of students be increased to a maximum of sixteen (16) per class with two (2) instructors. NPWS rejected the proposal because of impact to the licensed area. Council recommends retaining the maximum of students per surf school to remain at ten (10) with two (2) instructors.

30                   ii. The Working Group recommended no change to the Personalised Surf Schools, Sea Kayaks or SUP student instructor ratio and number of classes per day.

35                   8. Schedules A to G.

40                   a. Schedules detail the terms of Class 2 sub-licences. The Working Group proposed to:

40                   i. Remove the requirement for a current advanced resuscitation certificate; and

45                   ii. Include Proof of current \$20 million public liability insurance and current \$5 million professional indemnity insurance and where applicable proof of current \$20 million product liability insurance; and

45                   iii. Require that a current working with children check is provided or proof of a current working with children check is included in current accreditation.

50                   This report recommends that the Reserve Trust Committee recommends to Council to adopt the amendments to the Policy and authorise the General Manager to use the open tender method to call for new Class 2 sub-licences for Commercial Activities.

## Financial Implications

### Sub-Licence Fees

- 5 Fees for all Class 2 sub-licences will be determined by Council as part of its 2017/2018 Revenue Policy and Fees and Charges. Current Class 2 sub-licence fees set out in the adopted 2016/17 fees and Charges are:

Activity	2016/17 Fee (\$)	Total Revenue (\$)
Surf School (5 sub-licences)	8,857	44,285
Personalised SS (2 sub-licences)	2866	5,732
Elite Surf Coaching	1,145	1,145
Sea Kayak (2 sub-licences)	40,552	81,104
		132,266

- 10 Although the adopted Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves set a maximum of four (4) surf school Class 2 sub-licences, Council has currently let five (5) sub-licences.

- 15 If the Reserve Trust adopts to retain only four (4) surf school sub-licences Council, revenue from the sub-licences would reduced on 2016/2017 fees and charges by \$8,857.00.

The current Class 2 sub-licence fees paid by the Operators holding a current sub-licence were determined by the last tender process.

- 20 Council on 20 April will consider a separate report on the Class 2 sub-licence fees for 2017/18.

## Statutory and Policy Compliance Implications

- 34A Special provisions relating to Minister's powers over Crown reserves
- 25 (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
- 30 (2) The following provisions apply in relation to the granting of a relevant interest:
- (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
- (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
- 35 (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
- (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
- 40 (c) the Minister is not to grant the relevant interest unless the Minister:
- (i) is satisfied that it is in the public interest to grant the instrument, and
- (ii) has had due regard to the principles of Crown land management.
- (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- (4) The proceeds from a relevant interest are to be applied as directed by the Minister.
- 45 (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:
- (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the [Public Reserves Management Fund Act 1987](#),
- 50 (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,

(c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of Local Land Services—a direction that the proceeds (or part of the proceeds) be paid to Local Land Services,  
(d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.

(6) The provisions of:

- (a) Divisions 3 and 3A apply in relation to a lease granted under this section, and
- (b) Division 4 apply in relation to a licence granted under this section, and
- (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and
- (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

(6A) Nothing in this section affects the operation of section 35.

(7) (Repealed)

(8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.

(9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

### **108 Temporary licences**

- (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.
- (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.

### **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:
  - (a) access through a reserve,
  - (b) advertising,
  - (c) camping using a tent, caravan or otherwise,
  - (d) catering,
  - (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,
  - (m) markets,
  - (n) meetings,
  - (o) military exercises,
  - (p) mooring of boats to wharves or other structures,
  - (q) sales,
  - (r) shows,
  - (s) sporting and organised recreational activities,
  - (t) stabling of horses,
  - (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.
- (3) For the purposes of section 108 (4) of the Act, the prescribed

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# **BYRON SHIRE COUNCIL**

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## **Draft POLICY NO. 5.52**

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# **COMMERCIAL ACTIVITIES ON COASTAL AND RIPARIAN CROWN RESERVES**

# BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

## INFORMATION ABOUT THIS DOCUMENT

<b>Date Adopted</b>	16 August 2001	<b>Resolution No.</b>	
<b>Policy Responsibility</b>	Property Management		
<b>Review Timeframe</b>			
<b>Last Review Date:</b>	October 2011	<b>Next Scheduled Review Date</b>	

### 5 **Document History**

<b>Doc No.</b>	<b>Date Amended</b>	<b>Details Comments eg Resolution No.</b>
	30 November 2004	
#421342	15 December 2005	Res 05-930
#456736	15 August 2006	Res 06-499
#939163	3 March 2010	Res 09-1128
#1177191	8 December 2011	Res 11-1000

### **Further Document Information and Relationships**

<b>Related Legislation</b>	Crowns Lands Act Crowns Lands Regulation 2000 Local Government Act 1993 Local Government (General) Regulation 2005 National Parks and Wildlife Act 1974 National Parks and Wildlife Regulation 2009 Marine Parks Act 1997 Marine Safety Act 1998 Marine Parks Regulation 2009 Marine Parks (Zoning Plans) Regulation 1999 Food Act 2003
<b>Related Policies</b>	
<b>Related Procedures/ Protocols, Statements, documents</b>	Food Safety Plan (Code) #82795 Crown Licence Agreement RI 406617 for Commercial Activities – Appendix “C”

# BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

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**POLICY TITLE      COMMERCIAL ACTIVITIES ON COASTAL AND RIPARIAN  
CROWN RESERVES****FILE REFERENCE**      COR050504

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**1. PREAMBLE**

Byron Shire is endowed with a huge range of unique geographical and topographical features and richly biodiverse plant and wildlife both on land and in the sea. It is now recognised throughout the world as one of the most desirable places to visit with Byron Bay listed as “most preferred” destination by the world backpacker group of travellers.

Byron Shire’s “*Jewel in the Crown*” is our ribbon of beautiful, white sand beaches, crystal clear ocean and year round quality surf. Adventurous activities abound for people of all ages from the extremely challenging to those safe for young children. Our beaches and excellent surfing breaks are easily accessible to everyone.

With public demand for our beaches and reserves increasing rapidly, we must take every care to protect them and the safety and comfort of people who use them.

**2. MISSION STATEMENT**

Commercial activities on beaches and adjoining reserves must not diminish the recreational amenity of residents or visitors who are attracted to this Shire for its natural beauty and environment.

It is our special responsibility to ensure ecologically sustainable use and protection of the coastal zone for the benefit and enjoyment of future generations.

**3. OBJECTIVES OF THIS POLICY**

To retain coastal Crown reserves, that are under the care, control and management of Council, where authorised, as the Reserve Trust Manager, as places for passive and active recreation where appropriate for residents and visitors.

To set out what activities can be carried out on coastal Crown reserves with, and without, permission of Council, where authorised, as the Reserve Trust Manager.

To regulate the level of temporary business or commercial activity on coastal Crown reserves under the care, control and management of Council, where authorised, as the Reserve Trust Manager.

To provide criteria for determining applications to carry out commercial activities on coastal Crown reserves.

**4. DEFINITIONS**

For the purposes of interpreting this policy a list of definitions is provided as an appendix to this document.

**5. REVIEW**

This policy is subject to ongoing review at a minimum every twelve (12) months after adoption and as part of the preparation of Council’s Coastal Zone Management Plan for Byron Bay Embayment.

**6.**



**POLICY STATEMENT**

**1 Land to which this Policy Applies**

- 5            1.1      This policy applies to all beaches and adjoining parks that are coastal Crown reserves under the care control and management of Byron Shire Council, where authorised as the Reserve Trust Manager. The coastal Crown reserves are:

Reserve No.	Reserve Name	Beach Name	Purpose
R140034	Byron Coast Reserve	Seven Mile Beach	Public Recreation
R140052	Byron Coast Reserve	South Golden Beach	Public Recreation/Protection from Sand Drift
R82000	Byron Coast Reserve	Byron Bay Beach	Public Recreation
R97066	Byron Coast Reserve	Tallow Beach	Public Recreation/Protection from Sand Drift
R97139	Byron Coast Reserve	Brunswick Heads Beach	Public Recreation

**Council as authorised by Crown Licence Agreement RI 564194 for Commercial Activities**

R49122	Lighthouse Hill Reserve	Clarkes Beach	Public Recreation/Preservation of Native Flora
R82780	Crown Land	South Brunswick Heads Beach	Future Public Requirements
R755695	Crown Land	Suffolk Park Beach	Future Public Requirements
R755687	Crown Land	New Brighton Beach	Future Public Requirements
R755695	Crown Land	Belongil Beach	Future Public Requirements

- 10            1.2      Crown licence RI 564194 may provide for further licenced areas not listed above that apply to this Policy.

***Site maps for all the above reserves are attached to this policy.***

15            **2 Activities that can be regulated**

2.1 Activities Regulated by the *Crown Lands Act 1989* (NSW) include:

- 20            The only activities for which Council, as the Reserve Trust Manager, pursuant to Section 92 (5) of the *Crown Lands Act*, can issue a **temporary licence** under s108 of the *Crown Lands Act* for are the activities listed in clause 31 of the *Crown Lands Regulation 2006* (NSW) (as amended from time to time). This clause, as at the date of the policy, states as follows;

- 25            *"For the purpose of section 108 of the Act:*
- *Advertising*
  - *Camping using a tent, caravan or otherwise*
  - *Catering*
  - *Entertainments*
  - *Equestrian events*
  - *Exhibitions*
  - *Filming (within the meaning of the Local Government Act 1993)*
  - *Functions*
  - *Hiring of equipment*
- 30

- *Holiday accommodation*
- *Markets*
- *Meetings*
- *Mooring of boats to wharves or other structures*
- *Sales*
- *Shows*
- *Sporting and organised recreational activities*
- *Stabling of horses*

- (b) *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, and*
- (c) *unless it is revoked sooner or is granted for a shorter period, a temporary licence ceases to have effect one year after it is granted."*

### 2.2. Activities Regulated by the *Local Government Act 1993* (NSW) includes:

Council, as the Reserve Trust Manager, may grant an approval under Item 7 of Part F to the table to Section 68 of the *Local Government Act* on a Crown reserve for "use a standing vehicle or an article for the purposes of selling an article in a public place".

### 2.3. Council as the Reserve Trust Manager may, by resolution, in respect Class 1 Activities, grant approval for advertising as follows:

- (a) Approval will be by way of Class 1 Licence;
- (b) Advertising must only and directly relate to sponsorship of the activity covered by the Class 1 Licence;
- (c) Advertising must be of dimensions defined in the Licence;
- (d) Advertising must be placed on the land to which the Licence relates; and
- (e) Advertising must not be placed so as it might reasonably be expected to;
  - Distract drivers and/or pedestrians;
  - Impact on traffic flow or traffic management of the area of the activity or;
  - Obstruct the line of sight of either drivers or pedestrians; or
  - Incite or antagonise other persons by virtue of the message displayed.

Nothing in this clause removes the necessity to obtain development consent for advertising signage where such development consent is required.

### 2.4. Council may grant a sub-licence authorised by a head Trust licence issued under Section 34A of the *Crown Lands Act 1989* (NSW) for permitted reserve uses of:

- Surf schools, personalised surf schools, sea kayak and stand up paddle board schools; and mobile kiosk and mobile beach locker hire.

## 3 Temporary Licences or Approvals to be obtained under this Policy

### 3.1. Any activity, including commercial and / or business activities (including any activity which involves a standing vehicle or any article to be used for the purposes of selling any article) cannot be carried out on a coastal Crown reserve where a notice is erected under section 632 of the *Local Government Act* about that activity, unless a temporary licence or approval has been obtained from the Council, as the Reserve Trust Manager, in accordance with that notice.

### 3.2. Activities on a coastal crown reserves are not limited to activities taking place wholly on the reserve but also include activities that involve crossing the reserve, or transferring people or items on, off or over the reserve. This includes the embarking or disembarking of people / items from or to water based activities adjoining the reserve. Council, as the Reserve Trust Manager, is entitled to require licensing of any activity or part of an activity involving a reserve.

#### 4 Activities not requiring a Temporary Licence or Approval

4.1 In accordance with clause 31 of the *Crown Lands Regulation*, Council, as the Reserve Trust Manager, has determined that the following activities can be carried out on coastal Crown reserves without the need to obtain a temporary licence or approval for non-commercial activities being:

- Emergency Services performed by recognised Emergency Service Organisations;
- Passive recreation activities;
- Social Gatherings; and
- Volunteer Rescue Organisation Training Days.

#### 5 Activities requiring a Temporary Licence or Approval

5.1 In accordance with clause 31 of the *Crown Lands Regulation*, Council as the Reserve Trust Manager, has determined that the following activities require a **Class 1** temporary Licence:

- access though a reserve;
- catering;
- emergency occupation;
- entertainments (non-commercial and consistent with the Reserve purpose);
- exhibitions (non-commercial and consistent with the Reserve purpose);
- filming;
- functions (limited to educational based community activities, fundraising by registered charities, political or religious functions and weddings); and
- sporting & organised recreational activities.

All other activities listed in clause 31 of the *Crown Lands Regulation* may be possible only by a Reserve Trust resolution.

Generally Class 1 activities will only be approved for a short term or temporary basis for example one day or less. An application fee must be paid for a **Class 1** application and a licence fee may apply.

5.2 Council, as the Reserve Trust Manager, will consider applications for filming (within the meaning of the *Local Government Act 1993*). Filming applications will be subject to the terms, conditions and fees outlined in Council Policy No. 3.41 "Filming on Council owned and controlled land".

5.3 All other activities that are of a commercial nature and conducted on a commercial basis require a **Class 2** sub-licence.

5.4 If any of the commercial activities requiring a **Class 2** sub-licence involve the use of a standing vehicle, or any article for the purpose of selling any article on a Crown reserve, then in addition to the temporary licence, an approval must be obtained from the Council, as the Reserve Trust Manager, under Item 7 of Part F of the table to Section 68 of the *Local Government Act*.

#### 6 Applications for Temporary Licences

6.1. All applications shall be in writing on the approved form, setting out the proposal in detail, the desired location (including the size of the area it is intending to occupy) and be accompanied by the appropriate application fee.

6.2. Any application for a temporary licence under this Policy that fails to meet the requirements of clause 6.1 shall be rejected with reasons given and returned to the

applicant by Council.

6.3. All applications for temporary licences under this Policy shall be assessed and determined by the General Manager of Byron Shire Council as the delegated officer of the Reserve Trust, or by his or her delegate, in consultation with representatives from, but not limited to, Crown Lands Division, Cape Byron Headland Trust and National Parks and Wildlife Service, where appropriate.

6.4. All applications for temporary licences are to be assessed and determined within a three month period from date of receipt.

## **7 Matters to be considered in Issuing Class 2 Sub-Licences**

Council, as the Reserve Trust Manager, will assess the information provided in applications for Class 2 sub-licences based on the following selection criteria:

### **7.1 Mandatory criteria:**

#### **7.1.1 Instrument of Tender:**

- A valid Australian Business Number (ABN);
- Details of Organisational profile;
- Referee details;
- A statement if acting as an Agent or Trustee (if applicable); and
- A statement if intending to sub-contract requirements (if applicable).

#### **7.1.2 Details of Financial Viability.**

#### **7.1.3 Details of Insurance or statement of ability to obtain required insurance.**

#### **7.1.4 Statement of ability to meet minimum work health and safety requirements.**

#### **7.1.5 Proof of holding relevant qualifications to operate the business purpose of the sub-licence.**

#### **7.1.6 Statement of a commitment to ethical business practice principles.**

#### **7.1.7 Conflict of interest declaration.**

### **7.2 Qualitative criteria:**

	Weighting
7.2.1 Demonstrate successful experience in the activity to a high standard.	20%
7.2.2 Demonstrate history and experience of environmentally acceptable operations.	15%
7.2.3 Demonstrate appropriate level of knowledge and understanding of local conditions, natural and cultural history, ecological processes, possible constraints and restrictions on operations.	20%
7.2.4 Demonstrate experience in meeting licence conditions, including the keeping of records and prompt payment of fees.	10%
7.2.5 Demonstrate knowledge and ability to provide appropriate safety requirements and duty of care responsibilities	15%
7.2.6 Demonstrate capability to provide interpretive and educational information that ensures clients are receiving instructions on minimal impact techniques, environmental protection and ethics of appropriate behaviour.	10%
7.2.7 Demonstrate compatibility with purpose of Crown, Cape Byron Marine Parks & National Parks & Wildlife Reserves, and the NSW Coastal Policy, and whether the proposed activity will promote and be ancillary to the use and enjoyment of the Reserves.	5%
7.2.8 Demonstrate the benefit of the activity provided to the wider Byron Bay community	5%

## **8 General Provisions for the Operation of Class 2 Sub-Licences**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

### 4.1 - ATTACHMENT 1

8.1. The general provisions listed in this clause will apply to all Class 2 sub-licences.

8.2 Class 2 sub-licence where Council is the Reserve Trust Manager will be issued for a maximum period of one (1) year.

8.3 Class 2 sub-licences where Council is authorised by Trust Licence RI 564194, will be issued subject to the Ministers consent, for a minimum term of one (1) year and a maximum term of six (6) years.

8.4 An open tender process will be used for all Class 2 sub-licences.

8.5 Class 2 sub-licence can be issued to a Holder being:

- (a) Individuals only; or
- (b) Individuals and companies (with personal guarantees by all directors); or
- (c) Companies only (with personal guarantees by all directors).

8.6 Where the licence is issued to a company then the company can only retain the licence so long as there is no change in the shareholding of the company.

8.7 A company licensee must advise Council (as the Reserve Trust Manager) by giving at least twenty eight (28) days written notice:

- (a) of any proposed changes in the shareholdings of the company, and
- (b) when those changes will take effect.

8.8 Class 2 sub-licences are not transferable in all circumstances. A Class 2 sub-licence may only be transferred or assigned only upon:

- (a) the death of a sole or surviving sub-licensee; or
- (b) proof a sub-licensee is suffering hardship.

Council retains discretion to permit the transfer or assignment of sub-licensee rights under a Class 2 sub-licence.

8.9 Class 2 sub-licence conditions will use industry standards, where applicable.

8.10 Class 2 sub-licensee and their employees, agents or contractors must provide a current working with children check or provide a copy of their current accreditation that includes a reference to a current with working with children check.

8.11 Class 2 sub-licences will, generally only be issued for beach or water based and non-mechanised activities.

8.13 Should a Class 2 sub-licence holder fail to operate a licence for a continuous period exceeding one (1) month, then the licence will lapse, unless Council, as the Reserve Trust Manager, has provided prior approval.

8.14 A Holder may be granted, and hold separately, one (1) surf school sub-licence, concurrently with one (1) stand up paddle board school sub-licence, otherwise a Holder may not hold more than one(1) sub-licence.

8.14 No motorised craft will be approved for Hire.

### 9 Licences and Performance Standards – Class 2

9.1. The maximum number of Class 2 sub-licences to be issued annually is detailed in the following table.

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## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

Activity	Number of sub-licences	Student / Instructor Ratio	Maximum Students	Frequency (Number of Classes per day)
Surf Schools	Four (4) only.	8 students to 1 instructor. 9 students to 2 instructors.	10	Two (2) classes per day with one (1) class from each school is permitted at the same time.
Personalised Surf Schools	Two (2) only.	2 students to 1 instructor.	2	
Sea Kayaks	Two (2) only.	8 kayaks to 1 instructor.	18 kayaks	
Stand Up Paddle Board Schools	Three (3) only.	8 students to 1 instructor.	8	

Class size for the above activities may be increased only on application by the NSW Department of Education, or any other higher learning institution and Licensee's must comply with Education Department guidelines. For example, surf schools, one instructor in charge of ten (10) students and one instructor or group leader in charge of remaining students, to a maximum of 20 students on the beach at any one time.

Activity	Number of sub-licences	Conditions
Mobile Kiosk (non-motorised)	Three (3) only.	At designated operational locations.
Mobile Beach Locker Hire	One (1) only.	A designated operational location.

9.2. Council, as the Reserve Trust Manager, reserves the right to issue none or less than the proposed number sub-licences for each Class 2 activity type.

9.3. Operating requirements have been developed for Class 2 activities is set out in the Schedules "A" to "F" in this Policy.

9.4 Council, as the Reserve Trust Manager, must determine any amendment to the number and/or type of Class 2 sub-licences issued. This determination is to be made after consultation with the Council Committee, if any, established to review the management of commercial activities on coastal crown reserves.

### 10 Temporary Licences and Performance Standards – Class 1

10.1. Class 1 temporary licences will be issued on an as required basis, as determined by Council, as the Reserve Trust Manager.

10.2. Operating requirements for Class 1 temporary licences will be listed in the licence as provided by Council, as the Reserve Trust Manager.

### 11 Granting of New Temporary Licences

11.1 The granting of a new temporary licence to replace a temporary licence that has expired, vacated or relinquished will be dependent on satisfactory compliance with both the letter and spirit of the licence conditions and this Policy, and the standards of performance. Accordingly, the following will apply:

11.1. Strict compliance with the policy and licence conditions is required.

11.2. The granting of a new temporary licence will be dependent on the licensee showing a satisfactory standard of performance in all areas.

11.3. Breaches of temporary licence conditions, or lapses in standards, may result in licence cancellation.

# BYRON SHIRE COUNCIL

11.4. Council, as the Reserve Trust Manager, reserves the right not to grant new temporary licences to replace any expired temporary licences.

11.5. If a Class 2 sub-licence becomes vacant, Council, as the Reserve Trust Manager, reserves the right to determine how it wishes to allocate that vacant sub-licence, if and when a decision is made to issue a new sub-licence. Options that Council, as the Reserve Trust Manager will consider include, but are not limited to the calling of tenders or expressions of interest for the sub-licence.

## 12 Appeals against refusals to issue a Class 2 Sub-Licence

12.1. Any applicant for a new Class 2 sub-licence under this Policy may appeal to the Council, as the Reserve Trust Manager, if the application is refused. Such an appeal must be made in writing, attaching all relevant documentation, and within 28 days of the date of the refusal.

12.2. The hearing, management and determination of any appeals as per clause 12.1 will be a matter for the General Manager of Byron Shire Council, as the delegated officer of the Reserve Trust, to determine.

## 13 Nature and Determination of Fees and Charges

13.1. Council, as the Reserve Trust Manager, must determine the fees and charges in accordance with this Policy as part of Council's Integrated Planning and Reporting Framework.

13.2. Council, as the Reserve Trust Manager, must determine at a minimum, the following fees;

- (a) Class 1 Temporary Licence – Application Fees;
- (b) Class 2 Sub-Licences – Application Fees; and
- (c) Class 2 Sub-licences – Annual Licence Fees.

13.3. Application fees are payable for all Class 1 and Class 2 licences, with the exception when an existing Class 2 sub-licence holder has a new Class 2 sub-licence issued based on the conditions of the existing Class 2 sub-licence.

13.4. Class 2 sub-licence fees may be paid annually or monthly in advance.

13.5. Fees will be determined taking into account, and not limited to, the following:

- nature of the activity;
- scale of its operation;
- use and impact on the coastal Crown reserve; and
- impact on the community both beneficial and detrimental.

13.6. A performance bond will be required for licensees who have not held a licence previously with Council. Bonds may also be required for existing licensees at the discretion of Council, as the Reserve Trust Manager.

13.7. All fees are payable unless subsidised by Council, as the Reserve Trust Manager, or its delegated officer, in accordance with Council policy and approved delegations. This clause 13.7 does not apply to Class 2 sub-licences.

## 14 Breaches and Unlicensed Activities

14.1. Where there is any breach of any licence conditions, including unlicensed activities, Council, or as Reserve Trust Manager, is to take all necessary action to remedy the breach. This includes, but is not limited to, the issuing of penalty notices, the taking of



injunction proceedings and other legal action, and where appropriate, the removal of the activities from the coastal Crown reserve by an employee of the Council, or a Police Officer.

5      **15      Revoking of Temporary Licences**

15.1. Council, as Reserve Trust Manager, reserves the right to revoke any licensed activities for management reasons including, but not limited to, environmental protection, public safety, and changes in policy or legislation.

15.2. The licence may also be terminated in the following circumstances:

- a) if any fees payable, or any part thereof are in arrears for 30 days, whether formally demanded or not;
- b) if the Licensee breaches any conditions of this Policy or the temporary licence;
- c) if the Licensee has committed an act of bankruptcy; and
- d) if the Licensee commits an unlawful act or breaches the requirements of any other relevant Authority.

15.3. If a license is to be terminated due to the circumstances set out in this clause, the Council, as the Reserve Trust Manager, may terminate the temporary licence by:

- a) notifying the Licensee to that effect; or
- b) restricting the Licensee from operating the activity on the coastal Crown reserves, by force if necessary; or doing both.

15.4. If a breach of a condition in the licence is witnessed and recorded by a Council Officer, written notice may be forwarded to the operator. Council, as the Reserve Trust Manager, reserves the right to issue verbal warnings for minor deviations from the licence.

15.5. A Licensee has a right to appeal a written notice within 28 days of receipt. The General Manager has the authority to determine whether or not the notice should be waived based on the appeal.

15.6. If a Licensee receives two written notices, within a three year period, the Council, as Reserve Trust Manager, will advise in writing that any further breach within three years of the first notice will result in the termination of the licence. If three notices are issued within a three year period, the licence is terminated from the time of the third notice, subject to clause 15.7 below.

15.7. Licensee granted a one (1) year, Class 2 sub-licence, the issuing of two written notices in that period will result in termination of the licence.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

### SCHEDULE 'A' SURF SCHOOL

#### 1 **Introduction:**

A Surf School provides beginner and intermediate surf lessons to individuals and groups in licensed reserves.

#### 2 **Fees:**

A Surf School sub-licence fee is published annually in Council's Fees and Charges.

#### 3 **Qualifications:**

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR Current Bronze Medallion (SLSA proficient annually) OR Ocean Rescue Award (RLSS proficient annually) AND
- 3.1.2 Minimum - Level 1 Surf Coaching Accreditation from an Australian Nationally Recognised Training Institution;  
(Note: Level 1 Accreditation insures basic coach education and annual coach education updating and requires mandatory updating of resuscitation, first aid and rescue certificates); AND
- 3.1.3 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.4 Current Working with Children Check in accord with relevant Child Protection Legislation.

#### **Risk Management Protocol**

The following equipment is to be provided on the beach at every Surf School class:-

- 3.1.5 A Mobile Telephone;
- 3.1.6 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, during each licence period);
- 3.1.7 "Soft Safes" surfboards with soft fins used at entry level;
- 3.1.8 Instructor's rescue board on beach;
- 3.1.9 Flags denoting area colour coding exclusively on flags; and
- 3.1.10 Drinking water.

#### **Insurance Cover**

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

- 4 A maximum of four (4) Surf Schools shall be sub-licensed to operate in coastal Crown reserves under control of the Byron Shire Council, as the Reserve Trust Manager and other lands included in RI 564194, and only one class from each Surf School shall be permitted in the reserve, in the lesson area at the same time.
- 5 A maximum of ten (10) students, only two (2) schools per day from each Surf School in the reserve, in the lesson area, at one time.
- 6 Class sizes may be increased when a Surf School is requested by the State Education Department or higher learning institutions but must comply with State Education Department guidelines, (i.e. one instructor in charge of seven (7) students and one instructor or group leader in charge of remaining students, to a maximum of 40 students from each Surf School, on the beach, at any one time.) Byron Shire Council, as Reserve Trust Manager, must be advised in writing in advance of such a request.
- 7 A Surf School must operate at a minimum distance of 100 metres from any other sub-licensed Surf School.
- 8 No Surf School shall operate from the western side of the Byron Bay Surf Club to a line extending from Middleton Street.
- 9 No Surf School will have priority over any other Surf School in the licensed areas. A Surf School must liaise with other sub-licensed Surf Schools to ensure only one class from each school is in the reserve, in the lesson area at one time.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

- 10 A Surf School must not interfere with other beach users, or enjoy exclusive use rights over any licensed area.
- 5 11 A Surf School must have distinctive garments for each student and instructor; and
- 10 11.1 Students from each Surf School must be identifiable and distinguishable from any other type of sub-licensed Surf School;
- 10 11.2 Instructors from each Surf School must be easy to identify from a distance and be distinguishable from other sub-licensed school;
- 15 11.3 Each Surf School must have clear and visible colour coding exclusively on all garments, beach flags and surf boards;
- 15 11.4 Surf Schools must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 15 11.5 All students must wear a leg-rope that is attached to the surf board.
- 12 12 Surf Schools must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 20 13 A Surf School must maintain a close liaison with the Surf Life Saving Officers, if on duty, at a particular beach to be used by a Surf School.
- 25 14 All participants in a Surf School must be educated in the prohibition of surf craft in flagged areas on the beach under control of Surf Life Saving Officers.
- 25 15 A Surf School class must be cancelled if conditions are unsafe or if a surf carnival or other major event is being held. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 30 16 No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 35 17 No advertising is permitted on the beach or on any uniforms or equipment used by a Surf School with exception of the Surf School business logo. Advertising of any kind is not permitted on shore based equipment such as flags.
- 35 18 Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 40 19 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

### SCHEDULE 'B'

### PERSONALISED SURF SCHOOL

#### 1 **Introduction:**

A Personalised Surf School provides individualised one on one surf lessons to members of the public.

#### 2 **Fees:**

A Personalised Surf School sub-licence fee is published annually in Council's Fees and Charges.

#### 3 **Qualifications:**

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR  
Current Bronze Medallion (SLSA proficient annually) OR  
Ocean Rescue Award (RLSS proficient annually) AND
- 3.1.2 Minimum - Level 1 Surf Coaching Accreditation from an Australian Nationally Recognised Training Institution;  
(Note: Level 1 Accreditation insures basic coach education and annual coach education updating and requires mandatory updating of resuscitation, first aid and rescue certificates); AND
- 3.1.3 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.4 Current Working with Children Check in accord with relevant Child Protection Legislation.

#### **Risk Management Protocol**

The following equipment is to be provided on the beach at every Personalised Surf School class:-

- 3.1.5 A Mobile Telephone;
- 3.1.6 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, during each licence period);
- 3.1.7 "Soft Safes" surfboards with soft fins used at entry level;
- 3.1.8 Instructor's rescue board on beach;
- 3.1.9 Flags denoting area colour coding exclusively on flags; and
- 3.1.10 Drinking water.

#### **Insurance Cover**

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

4 A maximum of two (2) Personalised Surf Schools shall be sub-licensed to operate in coastal Crown reserves under control of the Byron Shire Council, as the Reserve Trust Manager and other lands included in RI 564194, and only one class from each Personalised Surf School shall be permitted in the reserve, in the lesson area at the same time.

5 A maximum of two (2) students, only two (2) schools per day from each Personalised Surf School in the reserve, in the lesson area, at one time

6 A Personalised Surf School must operate at a minimum distance of 100 metres from any other sub-licensed Surf School.

7 No Personalised Surf School shall operate from the western side of the Byron Bay Surf Club to a line extending from Middleton Street.

8 No Personalised Surf School will have priority over any other sub-licensed Surf School in the licensed areas. A Personalised Surf School must liaise with other sub-licensed Surf Schools to ensure only one class from each school is in the reserve, in the lesson area at one time.

9 A Personalised Surf School must not interfere with other beach users, or enjoy exclusive use rights over any licensed area.

10 A Personalised Surf School must have distinctive garments for each student and instructor; and

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## 4.1 - ATTACHMENT 1

- 5      10.1 Students from each Personalised Surf School must be identifiable and distinguishable from any other Personalised Surf School;
- 10      10.2 Instructors from each Personalised Surf School must be easy to identify from a distance and be distinguishable from any other type of sub-licensed school;
- 10      10.3 Each Personalised Surf School must have clear and visible colour coding exclusively on all garments, beach flags and surf boards;
- 10      10.4 Personalised Surf Schools must use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 10      10.5 All students must wear a leg-rope that is attached to the surf board.
- 11      11 A Personalised Surf School must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 15      12 A Personalised Surf School must maintain a close liaison with the Surf Life Saving Officers, if on duty, at a particular beach to be used by a Surf School.
- 20      13 All participants in a Personalised Surf School must be educated in the prohibition of surf craft in flagged areas on the beach under control of Surf Life Saving Officers.
- 20      14 A Personalised Surf School must be cancelled if conditions are unsafe or if a surf carnival or other major event is being held. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 25      15 No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 30      16 No advertising is permitted on the beach or on any uniforms or equipment used by a Personalised Surf School with exception to the Personalised Surf School business logo. Advertising of any kind is not permitted on shore based equipment such as flags.
- 30      17 Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 35      18 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

### SCHEDULE 'C'

#### STAND UP PADDLE BOARD SCHOOL

**1 Introduction:**

A Stand Up Paddle Board School provides an opportunity for any member of the public to experience the sport of stand up paddle boarding in enclosed flat waters of the Brunswick River.

**2 Fees:**

A Stand Up Paddle Board School sub-licence fee is published annually in Council's Fees and Charges.

**3 Qualifications:**

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR  
Current Bronze Medallion (SLSA proficient annually) OR  
Ocean Rescue Award (RLSS proficient annually); AND
- 3.1.2 Minimum - Level 1 Stand Up Paddle Instructor (Enclosed Flat Water) Accreditation from an Australian Nationally Recognised Training Institution; AND
- 3.1.3 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.4 Current Working with Children Check in accord with relevant Child Protection Legislation.

**Risk Management Protocol**

The following equipment is to be provided on the beach with every class:-

- 3.1.5 A Mobile Telephone;
- 3.1.6 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, each licence period);
- 3.1.7 A Stand Up Paddle Board School Instructor must be clearly identifiable by apparel or craft;
- 3.1.8 All life jacket and other safety regulations must be adhered to; and
- 3.1.9 All personalised safety apparel, hard hats, safety vests or shirts must clearly distinguish a Stand Up Paddle Board School from any other Stand Up Paddle Board School.

**Insurance Cover**

- 3.1.10 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.11 Minimum \$5 million Professional Personal Indemnity.

**4** That a maximum of three (3) Stand Up Paddle Board Schools is available to operate in the flat waters of the Brunswick River.

**5** Sub-Licence conditions provide for a maximum of:

- 5.1 Eight (8) students to one (1) instructor to a maximum of eighteen students in any one class; and
- 5.2 The instructor must accompany all students while in on the Brunswick River; and
- 5.3 Two (2) Stand Up Paddle Board classes per day; and
- 5.4 One (1) Stand Up Paddle Board class from each Stand Up Paddle Board School is permitted in the reserve, in the lesson area at the same time.

**6** A Stand Up Paddle Board School must not operate less than 300m from the Brunswick River mouth.

**7** A Stand Up Paddle Board School must operate at a minimum distance of 100 metres from any other Stand Up Paddle Board School.

**8** No Stand Up Paddle Board School will have priority over any other Stand Up Paddle Board School in the licensed area. A Stand Up Paddle Board School must liaise with the other sub-licensed Stand Up Paddle Board Schools to ensure only one class from each school is in the reserve, in the lesson area at one time.

**9** A Stand Up Paddle Board School must not interfere with other reserve users, or enjoy exclusive use rights over any licensed area.

**10** A Stand Up Paddle Board School must have distinctive garments for each student and instructor; and

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

- 5      10.1 Students from each Stand Up Paddle Board School must be identifiable and distinguishable from any other Stand Up Paddle Board School;
- 10.2 Instructors from each Stand Up Paddle Board School must be easy to identify from a distance and be distinguishable from the other sub-licensed activity;
- 10.3 Each Stand Up Paddle Board School must have clear and visible colour coding exclusively on all garments and boards;
- 10.4 All students must wear a leg-rope that is attached to a stand up paddle board.
- 10      11 A Stand Up Paddle Board School must keep and retain records of all students and daily signed logs, such records to be made available for inspection to Council as required.
- 15      12 A Stand Up Paddle Board School class must be cancelled if conditions are unsafe. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 13 No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 20      14 No advertising is permitted on any uniforms or equipment used by an A Stand Up Paddle Board School with exception to the A Stand Up Paddle Board School business logo. Advertising of any kind is not permitted on shore based equipment.
- 25      15 Any class area or parking area must be kept in a clean and tidy condition free from litter and refuse at all times.
- 16 Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

### SCHEDULE 'D'

### SEA KAYAK

#### 1 **Introduction:**

Sea Kayak provides adventure tours to individuals and groups in licensed area.

#### 2 **Fees:**

A Sea Kayak sub-licence fee is published annually in Council's Fees and Charges.

#### 3 **Qualifications:**

- 3.1.1 Current Surf Rescue Certificate (SLSA Community Award) OR  
Current Bronze Medallion (SLSA proficient annually) OR  
Ocean Rescue Award (RLSS proficient annually); AND
- 3.1.2 First Aid Senior Certificate (St Johns, TAFE, NSW Ambulance, Red Cross); AND
- 3.1.3 Certificate of Operation under Part 4, Division 3 or the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth); AND
- 3.1.4 Current Working with Children Check in accord with relevant Child Protection Legislation.

#### **Risk Management Protocol**

The following equipment is to be provided on the beach with every class:-

- 3.1.5 A Mobile telephone;
- 3.1.6 A First Aid Kit (to be audited each quarter to the satisfaction of the Byron Bay Surf Lifesaving Club and reviewed by Council, as the Reserve Trust Manager, each licence period);
- 3.1.7 All Sea Kayak (maximum of eighteen (18)) craft must be licensed by the NSW Roads & Maritime Services with licence numbers clearly displayed on each craft;
- 3.1.8 For safety purposes the Instructor's or Tour Guide's Sea Kayak craft must be distinctly marked for quick identification as the instructors kayak craft;
- 3.1.9 All life jacket and other safety regulations must be adhered to; and
- 3.1.10 All personalised safety apparel, hard hats, safety vests or shirts that clearly distinguish one Sea Kayak tour from any other sea kayak activity.

#### **Insurance Cover**

- 3.1.11 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND
- 3.1.12 Minimum \$5 million Professional Personal Indemnity.

4 A Maximum of two (2) Sea Kayak sub-licences is available to operate in open waters of licensed reserves.

5 Sub-Licence conditions provide for a maximum of:

- 5.1 Eight (8) students to every one (1) instructor, to a maximum of eighteen (18) kayaks in any one tour; and
- 5.2 Two (2) Sea Kayak tours in open waters of reserve areas; and
- 5.3 One (1) Sea Kayak tour in the flat waters of the Brunswick River; and
- 5.4 One (1) Sea Kayak tour from each Sea Kayak operator is permitted in the reserve, in the lesson area at the same time.

6 No Sea Kayak will have priority over any other sub-licensed Sea Kayak when using the parks or beaches. Sea Kayak operators are encouraged to liaise with other Sea Kayak operators, to ensure that only one class from each operator is in the reserve, in the lesson area at one time.

7 Sea Kayak tour must not interfere with other reserve users, or enjoy exclusive use rights over any licensed area.

#### 8 **Approaching Marine Mammals**

- 8.1 Sea Kayak operators will comply with the *National Parks and Wildlife Act 1974* (NSW) as amended and the *National Parks and Wildlife Regulation 2009* (NSW) as amended for the interaction with marine mammal.
- 8.2 Sea Kayak operators will liaise with the National Parks and Wildlife Service ('NPWS') on a regular basis and comply with any requests or directions from the NPWS by necessity.
- 8.3 Sea Kayak operators will inform all participants of each tour of conditions 8.1 and 8.2 (approaching marine mammal) before departing the beach.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

- 5      **9** All licensed Sea Kayak operator must have distinctive garments for each student and instructor; Students from each Sea Kayak business should be identifiable and distinguishable from any other Sea Kayak business;
- 10      9.1 Instructors from each Sea Kayak operator should be easy to identify from a distance and be distinguishable from other Sea Kayak operators; and
- 15      9.2 Each Sea Kayak operator should have clear and visible colour coding exclusively on all garments, beach flags and kayaks; and
- 20      9.3 Sea Kayak operators should use bright colours on all garments and other apparel when on the beach to assist in easy and quick identification.
- 25      **10** Sea Kayak operators are to keep and retain a record of clients and daily signed logs, such records to be made available for inspection by Council, as required.
- 30      **11** A Sea Kayak tour must be cancelled if conditions are unsafe. All reasonable directions from Surf Life Saving Officers, NSW Police Force Officers or Council Officers must be complied with.
- 35      **12** No vehicles are to be driven on any licensed area including the beach or in any grassed reserve under the control of Byron Shire Council.
- 40      **13** No advertising is permitted on any uniforms or equipment used by a Sea Kayak business with exception of the Sea Kayak business logo. Advertising of any kind is not permitted on shore based equipment.
- 45      **14** Any class area or parking area is to be kept in a clean and tidy condition free from litter and refuse at all times.
- 50      **15** No vehicles to be driven on the beach.
- 55      **16** Any other conditions that Council, as the Reserve Trust Manager may impose from time to time.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

### SCHEDULE 'E' MOBILE KIOSK

1. **Introduction:**

A Mobile Kiosk serves food that is not potentially hazardous such as pre-packaged foods like soft drinks, ice creams and packaged confectionery.

2. **Fees:**

A Mobile Kiosk sub-licence fee is published annually in Council's Fees and Charges.

3. **Insurance:**

3.1.1 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act); AND

3.1.2 Minimum \$5 million Professional Personal Indemnity; AND

3.1.3 Minimum \$20 million Product Liability.

1. A Mobile Kiosk may operate daily with the hours as specified by the sub-licence.

2. A Mobile Kiosk is a non-motorised unit that may only operate within licence areas as specified by the sub-licence.

3. A Mobile Kiosk must not operate from a fixed location but maintain a regular route within the licenced area as specified in the sub-licence.

4. A Mobile Kiosk sub- licensee must supply a suitable non-motorised unit for use for the carrying, storage and sale of foodstuffs and be approved by Council's Environmental Health Officers before use. Suitability of the unit is at the discretion of Council.

5. A Mobile Kiosk sub- licensee must comply with the *Food Act 2003* (NSW) and *Regulations* and adopt Council's Food Code.

6. A Mobile Kiosk sub- licensee must provide for sale only pre-packed foodstuffs for example soft drink cans, ice blocks and packaged confectionery.

7. A Mobile Kiosk sub- licensee may sell sunscreen products approved by the Cancer Council of NSW. This excludes all fixtures and structures such as umbrellas, sun shades or similar that restricts movement by people on the coastal Crown reserve.

8. A Mobile Kiosk sub- licensee or any of his / her employees shall have attained a current 'Bronze Medallion in Surf Life Saving' and a senior level 'First Aid Certificate' which is current before commencing trade on any coastal Crown reserve.

9. A Mobile Kiosk sub- licensee must provide suitable containers for the collection of garbage and must actively encourage all customers to dispose of litter in a responsible manner.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

### SCHEDULE 'F'

#### MOBILE BEACH LOCKER HIRE

1. **Introduction:**

A Mobile Beach Locker Hire is aimed at providing 7 days public access to safely store their personal chattels while at the beach.

2. **Fees:**

A Mobile Beach Locker Hire sub-licence fee is published annually in Council's Fees and Charges.

3. **Insurance:**

3.1.1 Minimum \$20 million Public Liability Insurance (such a policy to note the interests of the principal – i.e. Byron Shire Council, and the Minister Administering the Crown Lands Act);

3.1.2 Minimum \$5 million Professional Personal Indemnity; AND

3.1.3 Minimum \$20 million Product Liability.

4. A Mobile Beach Locker sub-licence is the right to operate a locker business only no other services or goods are to be offered for sale or hire.

5. A Mobile Beach Locker Hire sub-licensee must at their own cost, provide all equipment necessary to officially carry out a mobile beach locker business and must remove all such equipment on the termination of the Licence.

6. The Mobile Beach Locker Hire sub-licensee may operate daily with the hours as specified by the sub-licence.

7. The Mobile Beach Locker Hire sub-licensee may only operate from fixed location as specified by the sub-licence.

8. A Mobile Beach Locker Hire sub-licensee must be legally operated in a businesslike and efficient manner.

9. A Mobile Beach Locker Hire sub-licensee must ensure not display advertising matter other than reasonably necessary to identify the business and the service provided.

10. A Mobile Beach Locker Hire sub-licensee must ensure that all equipment and structures associated with the locker business is well maintained and all approvals are obtained under relevant laws.

11. While a Mobile Beach Locker Hire sub-licensee has discretion to make changes to their business, the sub-licensee must at all time reasonably have regard to the nature of the service being provided.

12. No tickets, pamphlets or other material with potential to become litter can be used in connection with the operation of the business unless authorised by the sub-licensor.

13. All material used for the operation of the Mobile Beach Locker Hire or ancillary to the business must not be stored on the beachfront when not in operation. The lawful parking of associated trailers and vehicles must be the responsibility of the Licensee.

14. A Mobile Beach Locker Hire sub-licensee must not use any public address or other sound amplification system in association with the provision of the service.

15. A Mobile Beach Locker Hire sub-licensee must not drive a vehicle onto the designated beach area in a way that poses a risk to any person of the public walking on a footpath, the Licensee must take all necessary risk management steps to prevent any injury to persons or property.

16. Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time.

APPENDIX "A"

DEFINITIONS

5 In this Policy:

*Approved form* means a form determined by the Byron Shire Council for the purposes of this policy in relation to which this expression is used.

*Coastal Crown reserves* means the reserves identified within this Policy.

10 *Council* means the Byron Shire Council.

*Educationally based community activities* mean organised activities for the purpose of providing and distributing educational information.

*Holder* means the person named as the sub-licensee in a Sub-Licence.

15 *Passive Recreational Activities* means passive recreational / leisure activities undertaken by people on an informal basis.

*Political Functions* means organised gatherings of people, for the purpose of expressing political beliefs.

*Religious functions* mean organised gatherings of people, for the purpose of expressing religious beliefs.

20 *Social Gatherings* means small gatherings of people, meeting on an informal and social basis.

*Sporting events – organised* means events organised on a not-for-profit and community oriented basis, where prizes are distributed on an amateur basis.

*Weddings* – means weddings that constitute gatherings of ten or more people that then impact on the management and use of the reserve.

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#### 4.1 - ATTACHMENT 1

5





# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1





## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**437**

**2** DP 573835

DP 708338

**9**

DP 93040

DP 72038

SP 90496

DP 1113326

**Unidentified**

**7018**

**1057431**

**1**

**RI 564194 - Suffolk Park Beach**

**Legend**

RI 564194 - Suffolk Park Beach

Cadastral

**N**

1:3,865

0 60 120 180 240

Meters

Coordinates: GDA 1994 MGA Zone 56

Prepared by: Licences & Searches

19 October 2016

**NSW** GOVERNMENT

**Department of Industry**

**Lands**

The information provided in this map has been provided in good faith. Whilst all effort has been made to ensure the accuracy and completeness of this information, the provider takes no responsibility for errors or omissions nor any loss or damage that may result from the use of this information.

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# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1





# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## 4.1 - ATTACHMENT 1

