



# Byron Shire Council



## Agenda

### Byron Shire Reserve Trust Committee Meeting

Thursday, 1 February 2018

held at Council Chambers, Station Street, Mullumbimby  
commencing at 2.00pm

*Public Access* relating to items on this Agenda can be made at 2pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read "Ken Gainger".

Ken Gainger  
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

**Sustainable Environment and Economy**

- 4.1 Proposed Activity Byron Bay Surf Festival on Reserve 82000 Byron Bay Beach.....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 Activity Byron Bay Surf Festival on Reserve 82000 Byron Bay Beach**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Jess Gimore, Events Liaison Officer

**File No:** I2017/1680

**Theme:** Economy  
Economic Development

**Summary:**

This report has been prepared to inform the Reserve Trust, on the action taken by the Mayor to exercise his Mayoral Delegation from Council, to grant a conditional temporary licence for proposed activities on the Main Beach Reserve, Byron Bay, to be undertaken as part of the wider Byron Bay Surf Festival. The Festival is taking place throughout Byron Bay Township during the weekend of 23 – 25 February 2018.

The proposed activity does not fall within Council's Policy 5.52 *Commercial Activities on Coastal and Riparian Crown Reserves* and as such needs to be considered by Council 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*'.

A Report was not able to be provided to the Reserve Trust meeting date of 14 December 2017, and due to timing of the next available meeting date being 1 February 2018, and with the event scheduled to occur on 23-25 February 2018, the Mayor exercised his Mayoral Delegation to provide the applicants with a timely decision and certainty for the planning of the event.

The Memorandum exercising the Mayoral Delegation has been included at Attachment 1 to this Report, with the determination made under delegation being reproduced below:-

"That Council, as the Reserve Trust manager to grant a temporary licence in accordance with section 108 of the Crown Lands Act for the purpose Entertainment and Exhibition to Byron Bay Surf Festival Pty Ltd from Friday 23 February 2018 to Sunday 25 February 2018 on Crown Reserve 82000 (Apex Park, Denning Park, Main Beach and part Clarkes Beach) subject to receipt and favourable assessment of a full Event Application."

The assessment of the application is currently being undertaken by staff.

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**RECOMMENDATION:**

**That Council, as the Reserve Trust manager note the action taken by the Mayor under the authority of his Delegation of Functions.**

**Attachments:**

- 1 Byron Surf Festival 2018 - Signed memo from Mayor as Reserve Trust Manager approving Festival for 23 to 25 February 2018, E2017/115870 , page 9[1](#)



**Report**

This report has been prepared to inform the Reserve Trust, on the action taken by the Mayor to exercise his Mayoral Delegation from Council, to grant a conditional temporary licence for proposed activities on the Main Beach Reserve, Byron Bay, to be undertaken as part of the wider Byron Bay Surf Festival. The Festival is taking place throughout Byron Bay Township during the weekend of 23 – 25 February 2018.

The following information is provided on the proposed activities to occur as part of the Byron Bay Surf Festival on the Main Beach foreshore.

Figure 1 shows the area proposed to be used by the BBSF.



**Figure 1. Proposed area to be used by BBSF**

Event Overview

The multi-day BBSF has been held on the Byron Bay foreshore from 2011 – 2014, attracting up to 10,000 attendees annually. After a hiatus in 2015-16, Council approved the BBSF to be held from the 24 – 26 February 2017. BBSF have approached Council to have the event again in 2018.

The objective of the BBSF is to celebrate Australia's iconic surf culture, drawing from its rich local and national heritage while reflecting the values, creative energy and culture of the Byron region and community. In 2018 the BBSF will continue to support charities (Byron Youth Service, Uncle Project and SurfAid) and will be enhancing its sustainability initiatives by promoting and supporting environmental education, conscious consumption of sustainable brands, as well as personal, group and community health.

This event comprises over 30 different activities. Event sites include Main Beach foreshore, the Byron Bay Recreational Grounds and the Wategos Beach foreshore.

Main Beach Activities

The specific activities proposed on the Main Beach foreshore are open to the public at no charge (ie no entry fee) and include:

- Art and photography exhibition
- Outdoor film screening
- Short Film competition
- Beach clean-up
- 5 • Surf artisan stalls
- Surf and ocean-specific educational presentations
- Surf fitness workshops
- Board-shaper's exhibition
- Food stalls
- 10 • Live music.

The Event Management Plan also identifies that the event will require Council approvals for:

- Traffic Management Plan
- Waste Management Plan
- 15 • Noise Management Plan
- Risk Management Plan.

Temporary Licence

20 Land Information:

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

30 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*
- *Fundraising activities by Registered Charities*
- 35 • *Political Functions*
- *Religious Functions*
- *Weddings.*

40 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. However, under Section 108 of Crown Lands Act the activity could be licensed as an Exhibition or Entertainment.

45 The application for the proposed activities, in accordance with part Council resolution 14-286, is required to be determined by Council as the Reserve Trust Manager, in that, '*any applications that are not expressly referred to in the Policy will be considered at a meeting of Council*'.

50 A Report was not able to be provided to the Byron Shire Reserve Trust meeting date of 14 December 2017, and due to timing of the next available meeting date being 1 February 2018, and with the event scheduled to occur on 23-25 February 2018, the Mayor exercised his Mayoral Delegation to provide the applicants with a timely decision and certainty for the planning of the event.

The Memorandum exercising the Mayoral Delegation has been included at Attachment 1 to this Report, with the determination made under delegation being reproduced below:-

5        “That Council, as the Reserve Trust manager to grant a temporary licence in accordance with section 108 of the Crown Lands Act for the purpose Entertainment and Exhibition to Byron Bay Surf Festival Pty Ltd from Friday 23 February 2018 to Sunday 25 February 2018 on Crown Reserve 82000 (Apex Park, Denning Park, Main Beach and part Clarkes Beach) subject to receipt and favourable assessment of a full Event Application.”

10      The assessment of the application is currently being undertaken by staff.

**Financial Implications**

15      Byron Bay Surf Festival Pty Ltd would be charged the adopted fee for a *Commercial Temporary Activity*, which is currently \$232.00 for the application fee and \$323.00 per day (for 1 to 7 days) for the licence fee.

Additionally, event organisers will be charged fees in accordance with Council’s adopted Fees and Charges for their:

- 20
  - Traffic Control Plan
  - Waste management
  - Occupation Certificate
  - Any relevant building or health inspections.

25      In the assessment of the event application a bond for any clean up and/or remediation of the Reserve will be considered and negotiated with the event organisers.

**Statutory and Policy Compliance Implications**

30      Delegation of Functions – Mayor

Council has delegated to the Mayor the following power and function:-

“*Making a decision on Council’s behalf where the Mayor considers that an urgent decision is required for the efficient and effective administration of the Council.*”

35      This power and function is subject to the following condition, limitation or restriction:-

- *“The urgency of the matter must mean that it cannot wait to be determined at the next available Council meeting and it is not reasonable or practicable to call an Extraordinary meeting.*
- *Must be reported to the next available Council meeting.”*

Clause 31 Temporary licences

40      “(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:

- 45
  - (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,
  - 50      (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 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**

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:

- *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:

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



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

## 4.1 - ATTACHMENT 1

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### Byron Shire Council - Memorandum

**MEMO TO:** Acting General Manager - Mark Arnold  
**COPY TO:** Legal Counsel – Ralph James  
**MEMO FROM:** Mayor - Simon Richardson  
**SUBJECT:** Byron Bay Surf Festival  
**DATE:** 15 December 2017  
**RECORD NO:** E2017/114415

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The multi-day Byron Bay Surf Festival (BBSF) has been held on the Byron Bay foreshore from 2011 – 2014, attracting up to 10,000 attendees annually.

BBSF have approached Council to hold the event again in 2018.

The objective of the BBSF is to celebrate Australia's iconic surf culture, drawing from its rich local and national heritage while reflecting the values, creative energy and culture of the Byron region and community. In 2018 the BBSF will continue to support charities (Byron Youth Service, Uncle Project and SurfAid) and will be enhancing its sustainability initiatives by promoting and supporting environmental education, conscious consumption of sustainable brands, as well as personal, group and community health.

BBSF seek the grant a temporary licence for proposed activities at Main Beach Byron Bay as part of the wider Byron Bay Surf Festival which is taking place throughout Byron Bay Township during the weekend of 23 – 25 February 2018.

Section 226 (d) of the *Local Government Act* permits the Mayor to exercise, in case of the necessity, the policy-making functions of the governing body of the Council between meetings of the Council.

A report to the Reserve Trust was prepared and was intended to be put before the governing body of Council on 14 December 2017. The General Manager, whose responsibility it is to compile the meeting agenda, did not include the report in the meeting agenda. Indeed there was no Reserve Trust meeting on 14 December 2017.

It is necessary for the BBSF to continue its preparations for the 2018 event including the preparation of its event application and advertising and promotion of the event.

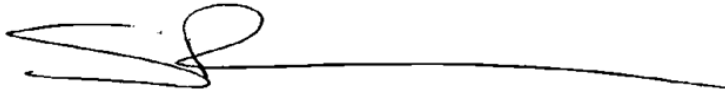
Given that the next meeting of the governing body of Council is not until 1 February 2018, I deem it as a necessity that the Mayor exercise his between meetings role and grant the temporary licence.

Accordingly, I exercise my role, pursuant to section 226 (d) of the *Local Government Act* as follows:

**That Council, as the Reserve Trust manager grants a temporary licence in accordance with section 108 of the Crown Lands Act for the purpose Entertainment and Exhibition to Byron Bay Surf Festival Pty Ltd from Friday 23 February 2018 to Sunday 25 February 2018 on Crown Reserve 82000 (Apex Park, Denning Park, Main Beach and part Clarkes Beach) subject to receipt and favourable assessment of a full Event Application.**

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I propose to report the above exercise of my role to the Ordinary Meeting on 1 February 2018.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a long horizontal line.

Cr. Simon Richardson  
Mayor  
Byron Shire Council.