



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 2 August 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 blue ink, which appears to read "Mark Arnold".

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL
BYRON SHIRE RESERVE TRUST COMMITTEE

BUSINESS OF MEETING

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

Corporate and Community Services

- 4.1 Request for Sub-Licences for access through Lot 407 DP 729057 and Lot 428 DP 729272 for Horse Riding Guided Tours4

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 Request for Sub-Licences for access through Lot 407 DP 729057 and Lot 428 DP 729272 for Horse Riding Guided Tours

Directorate: Corporate and Community Services

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2018/1264

Theme: Corporate Management
Corporate Services

Summary:

In 2017 Council granted both Zephyr Horses and Cape Byron Seahorses Riding Centre twelve (12) month sub-licences for access through Crown lands to conduct commercial horse guided tours on Tyagarah Beach. Zephyr Horses and Cape Byron Seahorses Riding Centre have requested new sub-licences for another twelve (12) months for the term 1 July 2018 to 30 June 2019.

Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves, ('the Policy') includes both Lot 407 DP 729057 (Zephyr Horses) and Lot 428 DP 729272 (Cape Byron Seahorses Riding Centre). In accordance with the Policy the Reserve Trust must resolve to permit equestrian activities through Lot 407 DP 729057 and Lot 428 DP 729272. Further, planning restrictions on land zoned No 7 (1f) (Coastal Land Zone) in the Byron 1988 Local Environmental Plan, will restrict the term of the licence to twelve (12) months.

Council is proposing that the new sub-licences will require sub-licensees to be responsible for the reporting all erosion issues, the carrying out of maintenance as agreed by Council and Crown Lands and the collecting of all horse droppings on the access track during and after each tour.

RECOMMENDATION:

1. That Council, as the Byron Coast Reserve Trust, authorise the General Manager to grant a new twelve (12) month sub-licences to Zephyr Horses for the purpose of access through Lot 407 DP 729057 on condition:
 - a) That Zephyr Horses holds current permits with Cape Byron Marine Parks throughout the term of the sub-licence; and
 - b) That Zephyr Horses takes all steps necessary to ensure horse droppings are removed from the sub-licensed area during and at the end of each access session.
2. That sub-licence fee for the term of the sub-licence is established by Council's fees and charges for the same term.
3. That Council, as the Byron Coast Reserve Trust, authorise the General Manager to grant a new twelve (12) month sub-licences to Cape Byron Seahorses Riding Centre for the purpose of access through Lot 428 DP 729272 on condition:
 - a) That Cape Byron Seahorses Riding Centre holds current permits with Cape Byron Marine Parks throughout the term of the sub-licences; and
 - b) That Cape Byron Seahorses Riding Centre takes all steps necessary to ensure horse droppings are removed from the sub-licensed area during and at the end of each access session.
4. That sub-licence fee for the term of the sub-licence is established by Council's fees and charges for the same term.

Report

Introduction:

5 Byron Shire Council is the holder of Trust Licence RI 564194 that permits Council to grant sub-licence for Business Purposes (Low Impact Commercial Recreational Activities) in licensed areas.

10 In 2017 Council granted two temporary sub-licences to Zephyr Horses and Cape Byron Seahorses Riding Centre, under the authority of RI 564194 for access through Crown lands being Lot 407 DP 729057 Zephyr Horses and Lot 428 DP 729272 Cape Byron Seahorses Riding Centre to conduct commercial horse guided tours on Tyagarah Beach. Both sub-licences expired on 30 June 2018.

15 Zephyr Horses and Cape Byron Seahorses Riding Centre have requested new sub-licences for another twelve month term, i.e. 1 July 2018 to 30 June 2019.

Background:

20 In 2004 the Marine Parks, in developing its Zoning and Operational Plans, consulted with Byron Shire Council regarding activities on beaches. As a result Council at its Ordinary Meeting of 23 November 2004 resolved in 074-920 that:

25 *“Council supports horse riding on Tyagarah Beach from 500 metres south of the Brunswick wall to 400 metres north of Belongil Creek subject to a management policy and licensing agreement with riding and licensing protocols to be developed in conjunction with Marine Parks Authority and the Department of Environment and Conservation”.*

30 In response to Council’s resolution, the Marine Parks has issued permits that allow groups of up to five horses per instructor, to be ridden in the intertidal zone (below high water) on Tyagarah beach for a maximum of two hours during a low tide. The permit requires horses to be controlled at all times, with extra caution exercised when in the vicinity of people or shorebirds or at known locations of nesting birds.

35 Both Zephyr Horses and Cape Byron Seahorses Riding Centre hold valid permits from the Marine Parks.

Sub-Licensed activity:

40 Council’s Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves, (‘the Policy’) includes both Lot 407 DP 729057 and Lot 428 DP 729272. The Policy provides Council as the Byron Coast Reserve Trust must resolve to permit equestrian activities access through Lot 407 DP 729057 and Lot 428 DP 729272.

Sub-Licensed area:

45 Tyagarah Beach is managed by National Parks and Wildlife Services. The area below the intertidal zone is managed by Cape Byron Marine Parks and Crown lands. Access to Tyagarah beach for the equestrian activities is required through Lot 407 DP 729057 and Lot 428 DP 729272.

50 a) Lot 407 DP 729057

55 Zephyr Horses requires access through Lot 407 DP 729057. The access track passes over a large dune and through dune vegetation of grasses, banksia and casuarinas to the ocean. The track goes up a slow incline on the landward side and then down a sand track on the seaward side.

Access track though Lot 407 DP 729057 in orange.



Zephyr Horses undertook urgent stabilisation repairs to the seaward side of the access track in December 2017 to the satisfaction of both Council and Crown Lands. Recent inspections of the access track revealed that the seaward side of the track has lowering and recommended ongoing monitoring. The landward entrance to the track has been stabilised by installation of pine timber posts designed to create regular steps with logs and large branches placed on either side of the track.

Under the proposed new twelve month sub-licence Zephyr Horses remains responsible for reporting all erosion issues, the carrying out of maintenance as agreed by Council and Crown lands and the collecting of all horse droppings on the access track during and after each tour.

b) Lot 428 DP 729272

Cape Byron Seahorses Riding Centre requires access through Lot 428 DP 729272. The access track is approximately 110 meters in length and is monitored and maintained Byron Shire Council. Entrance to the access track is via South Beach Road Brunswick Heads approximately 300 metres south of the completion of the asphalt road surface. The access track is regularly used by many private recreational horse riders who hold valid permits issued by Cape Byron Marine Parks.

Access track though Lot 428 DP 729272 in orange.



Under the proposed new twelve month sub-licence Cape Byron Seahorses Riding Centre is responsible for reporting all erosion issues, the carrying out of maintenance as agreed by Council and Crown lands if required and the collecting of all horse droppings on the access track during and after each tour.

Land Zoning Implications

Both Lot 407 DP 729057 and Lot 428 DP 729272 are zoned No 7 (1f) (Coastal Land Zone) in the Byron 1988 Local Environmental Plan. The zoning prohibits all activities except:

Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.

Essentially all commercial recreational type activities for example equestrian activities or commercial water based activities are prohibited in the zone 7 (f1) (Coastal Land Zone).

Clause 48(1) of the Byron 1988 LEP does permit temporary use of land zoned 4(f1) for development not being designated development, for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year only if:

- a) such land is vested in the Crown, a Minister of the Crown or the Council, and
- b) the development does not involve the erection of permanent structures ancillary to the use of that land.

Both Lot 407 DP 729057 and Lot 428 DP 729272 are vested in the Crown or a Minister of the Crown and neither access track requires the construction of any permanent structures.

In summary, although equestrian activities are a prohibited activity in zone 7 (f1), clause 48(1) of the LEP 1988 does allow temporary use of the land for equestrian activities.

Financial Implications

Council's adopted 2018-19 fees and charges establish a sub-licence fee for Beach Access Commercial Horse Riding at \$1,600 per annum including GST. The granting of sub-licenses to Zephyr Horses and Cape Byron Seahorses Riding Centre will result in additional \$3,200 Trust income.

Statutory and Policy Compliance Implications

Zone No 7 (f1) (Coastal Land Zone)

1 Objectives of zone

The objectives of the zone are:

- (a) to identify and protect environmentally sensitive coastal land,
- (b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,
- (c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and
- (d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.

2 Without development consent

Nil.

3 Only with development consent

Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.

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48 Temporary use of certain land

(1) Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development) within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:

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- (a) such land is vested in the Crown, a Minister of the Crown or the Council, and
- (b) the development does not involve the erection of permanent structures ancillary to the use of that land.

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(2) Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the erection of permanent structures ancillary to the use of that land:

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Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale
Lot 358, DP 704247, Bangalow Road, Byron Bay.