



Byron Shire Council



Agenda

Byron Shire Reserve Trust Committee Meeting

Thursday, 23 August 2018

held at Council Chambers, Station Street, Mullumbimby
commencing at 6:00pm

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 Parking of trailers used by Sea Kayak Sub-Licensees on Reserve 82000.....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 Parking of trailers used by Sea Kayak Sub-Licensees on Reserve 82000

Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Counsel
File No: I2018/1260
Theme: Corporate Management
 Corporate Services

Summary:

This report updates the Reserve Trust on the implementation of **Res 13-292** and seeks authorisation to enforce the terms of the sub-licences granted to Cape Byron Kayaks and Go Sea Kayaks.

On 13 June 2013 the Byron Coast Reserve Trust resolved (13-292) as follows:

COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER'S REPORT

Report No. 3.1. Commercial Trailer Parking on Crown Reserve, Byron Bay
File No: #E2013/26030

13-292 Resolved:

1. That the Reserve Trust endorse the proposal to provide parking on Crown Reserve 82000 for the placement of trailers used by the kayak businesses at two distinct sites, as shown by Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821).
2. That the provision of "No Stopping" at the two points of access as shown in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) be referred to the Local Traffic Committee for consideration.
3. That funds for the proposed works as per the details in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) come from Crown Reserves. (Woods/Richardson)

The motion was put to the vote and declared carried.

Byron Shire Reserve Trust Committee Meeting Minutes 13/06/13

Following the Reserve Trust resolution Council constructed concrete pads at two distinct sites to be used for the parking of sea kayak trailers. The parking of trailers on R82000 was required to overcome compliance issues of all day parking on Lawson Street.

The original intent of the Reserve Trust resolution was for the concrete pads to be installed for the purpose of kayak trailers parking.





It has been identified that more "permanent" structures have been placed on the concrete pads and that their use has gone beyond trailer parking and has become a business operation from the Reserve.

RECOMMENDATION:

That Council, as Reserve Trust manager:

- 1. Note the content of the report**
- 2. Direct that no action be taken to remove, or enforce removal, of the structures placed on the Reserve by Cape Byron Kayaks and Go Sea Kayaks.**
- 3. Authorise staff to take action to enforce the following terms of each of the sublicenses:**
 - i. 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 (Sch 2 (10))**
 - ii. No advertising is permitted on any uniforms or equipment used by a Sea Kayak business with the exception of the Sea Kayak business logo. Advertising of any kind is not permitted on shore based equipment. (Sch 2 (11))**
 - iii. Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time (Sch 2 (14), AND THAT Council, as Reserve Trust Manager, imposes the following conditions on each of the sub-Licences:**
 - a) That the structures be used only in a way consistent with the terms and spirit of Resolution 13-392 ie as storage for kayaks.**
 - b) That the structures must not be used for any commercial purpose including, but not limited to, as a ticket or booking office.**
 - c) That the structures must not be used to conduct the affairs of the Sea Kayak business other than for the distribution and collection of kayaks stored in the structure.**

Attachments:

- 1 Confidential - Sub-Licence to Go Sea Kayaks, S2017/21017
- 5 2 Confidential - Sub- Licence to Cape Byron Kayaks, S2017/20338
- 3 Report to Reserve Trust 13 June 2013 Kayak trailer parking on Clarkes Beach reserve, E2013/26030 , page 12  
- 4 Aerial of the concrete pads in operation as originally conceived, E2018/54540 , page 19  

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Report

Crown Reserve 82000 and sub-licences

- 5 Council manages Crown reserve R82000 as the Byron Coast Reserve Trust. Reserve R82000 being part Lot 10 DP 1049827 was gazetted on 30 October 1959 for the purpose of public recreation or conservation.
- 10 Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52') guides the types of activities that can occur on R82000. The Policy provides for temporary licences to be granted for certain non-commercial activities with sub-licences granted only for commercial activities that includes surf schools, personalised surf schools, sea kayak tours, stand up paddleboards, mobile kiosk and mobile beach locker hire.
- 15 Council also holds Trust Licence RI 564194 over part Lot 10 DP 1049827 that permits Council to grant sub-licences for business purpose being low impact commercial recreational activities. In accordance with terms of RI 564194 and Policy 5.52, Council ran a competitive tender in 2017 before granting sub-licences for sea kayak tours in the Byron Shire to Go Sea Kayak Byron Bay Pty Ltd and Byron Sea Kayaks Pty Ltd (t/a Cape Byron Kayaks).
- 20 Copies of the sub-licences issued to Go Sea Kayak and Cape Byron Kayaks are confidential attachments 1 and 2.
- 25 The sub-licences awarded to Go Sea Kayak and Cape Byron Kayaks expressly provide that:
1. 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 (Sch 2 (10))
 2. No advertising is permitted on any uniforms or equipment used by a Sea Kayak business with the exception of the Sea Kayak business logo. Advertising of any kind is not permitted on shore based equipment. (Sch 2 (11))
 - 30 3. Any other conditions that Council, as the Reserve Trust Manager, may impose from time to time (Sch 2 (14)).

As described below, it is noted that these clause 1 and 2 are not being adhered to.

Reserve Trust resolution

- 35 On 13 June 2013 the Reserve Trust resolved (13-292) as follows:

COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER'S REPORT

Report No. 3.1.	Commercial Trailer Parking on Crown Reserve, Byron Bay
File No:	#E2013/26030

13-292 Resolved:

1. That the Reserve Trust endorse the proposal to provide parking on Crown Reserve 82000 for the placement of trailers used by the kayak businesses at two distinct sites, as shown by Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821).
2. That the provision of "No Stopping" at the two points of access as shown in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) be referred to the Local Traffic Committee for consideration.
3. That funds for the proposed works as per the details in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) come from Crown Reserves. (Woods/Richardson)

The motion was put to the vote and declared carried.

Byron Shire Reserve Trust Committee Meeting Minutes 13/06/13

Attachment 3 is a copy of the report to the Reserve Trust Meeting 13 June 2013.

Following the Reserve Trust resolution (13-292) Council constructed concrete pads at two distinct sites to be used for the parking of sea kayak trailers. The parking of trailers on R82000 was required to overcome compliance issues of all day parking on Lawson Street. Attachment 4 is an aerial of the concrete pads and their initial usage.

The following is an extract from the staff report attachment 3.

This proposal involves paved areas built to suit the size required for the parking and for each to be north of the foot path. Each requires its own driveway crossing from the street. The localities are such that these driveways will have minimal, to no, impact on kerb side parking.

The Cape Byron Kayaks site (east) will utilise the existing driveway crossing currently available for their use as well as council service vehicle access.

The GoSea Kayak site (west) would utilise the bikeway access point directly opposite Cowper Street. This may require minor widening as well as relocation of the bike hand rails. This is considered to be an acceptable point of access as there is minimal movement of the kayak vehicles impacting on minimal bike usage at this point.

In both cases, though there is no parking restriction at these two kerb crossing points to ensure clear access, it is considered appropriate to provide such restrictions for both the operational benefit of the kayak businesses but also for free access by cyclists and service vehicles to the reserve. In this regard the restrictions could be provided by way of No Stopping signs or by the provision of kerb blisters.

The preferred locality is close to existing trees within the reserve. This will provide some shade to the trailers and the users of the kayaks as well as provide some visual shielding of the trailers.

The intent of the staff report and of the Reserve Trust resolution was to provide off-street (on Reserve) parking for kayak trailers. It was never the intent to enable the kayak operators to establish an ongoing presence on the Reserve by way of the permanent (although potentially movable) business related structures. It was not the intention to allow the parking of trailers on the Reserve together with other vehicles associated with the business. Nor was it the intention of the resolution to allow advertising and ticketing to take place on the Reserve.

The following is an extract from an email forwarded by staff to each of the kayak operators on 7 January 2013:

(Staff) met with Council's Community Infrastructure personnel and with Council's Manager Contracts and with Council's Superintendent Parks in relation to progressing the construction of an access loop on the reserve to enable the parking of your trailers..... One matter which was discussed was the need to remove the trailer at the end of operational hours..... the meeting felt that as the construction is to benefit the sub- licence holders there would really be no need to remove the trailers at the end of each day.

Please note that in the interim period you are permitted to park your trailers on the reserve but that they should be removed from the reserve, if access permits it at the end of each day.

Both Sub-Licensees have complied with Sub-License conditions by paying rent when due and payable and have provided insurances on request. Both seek Council approval before running additional tours and Council has received no complaints from the public, Cape Byron Marine Parks or National Parks and Wildlife Services about the sea kayak operations in the last twelve months.

Sea kayak trailers currently parked on Reserve 82000:

1. Go Sea Kayak



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The Go Sea Kayak structure extends beyond the concrete pad and remains onsite overnight.

The structure is used to store kayak equipment overnight and operates as a booking outlet and meeting place for people to gather before each tour. Two Go Sea Kayak vehicles park on the Reserve next to the trailer each day. Council recently requested two A-frame signs that advertised tours available and bookings be removed from R82000.

2. Cape Byron Kayaks



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The Cape Byron Kayaks construction rests on the concrete pad and remains on site overnight. The construction is used to store kayak equipment and operates as a booking outlet and gathering place before each tour. A-frame signs advertise the business and booking outlet.

10 **Proposed action**

The combined effect of the sub-licences, Resolution 13-292 and the matters set out below in Statutory and Policy Compliance Implications, the current operations (including conducting business and advertising) are not able to continue.

- 5 Given the intent of the original resolution, it is recommended that the structures are allowed to remain. That is that the concrete pads are to be used for the express purpose of kayak storage only.

That the clauses of the sub-licence should be enforced, including:

- 10
- No vehicles to be driven on the grassed area (sch 2(10))
 - No advertising on equipment (ie remove a-frames) (sch 2(11))
 - No business operation activities (Recommendation 3(iii))

Financial Implications

- 15 Council receives revenue from both Go Sea Kayaks and Cape Byron Kayaks – this is included at schedule 1 of attachments 1 and 2.

Any compliance action will be borne accommodated within the legal expenses accounts GL2865.19 (Public Order and Safety Operating Expenses - Local Court Prosecution Costs) or
 20 GL20001.1 (Legal Expenses - General Legal Expenses).

Statutory and Policy Compliance Implications

- 25 The subject land is zoned 7(f1) under Byron LEP 1988. Due to the permanence of these activities they do not fall within the provisions of Clause 48 as a Temporary Activity.

Byron Local Environmental Plan 1988

Current version for 5 May 2017 to date (accessed 27 June 2018 at 12:59)

Part 3 > Division 4 > Clause 48



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:
 - (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.
- (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:

Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale

Lot 358, DP 704247, Bangalow Road, Byron Bay.

- 30 The uses permitted with consent under the 7(f1) zoning table are also limited to the following.

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.

4 Prohibited

Any purpose other than a purpose specified in item 2 or 3.

This then takes one to Clause 65(2) and 65(2A) of SEPP Infrastructure 2007.

- 5 The activity including the positioning of the storage and hire facilities can only take place if the activity is permitted under a Plan of Management for the reserve. No Plan of Management currently exists for Reserve R82000. Council as the Byron Coast Reserve Trust must manage the reserve for the gazetted purpose of public recreation or conservation until a Plan of Management can be adopted for the reserve.

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65 Development permitted without consent

(1) Development for any purpose may be carried out without consent:

- (a) on land reserved under the *National Parks and Wildlife Act 1974*, or acquired under Part 11 of that Act, if the development is for a use authorised under that Act, or
- (b) on land declared under the *Marine Estate Management Act 2014* to be a marine park or an aquatic reserve if the development is for a use authorised under that Act, or
- (c) (Repealed)

(2) Development for any purpose may be carried out without consent:

- (a) on Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*, by or on behalf of the Centennial Park and Moore Park Trust, or
- (b) on trust lands within the meaning of the *Parramatta Park Trust Act 2001*, by or on behalf of the Parramatta Park Trust, or
- (c) (Repealed)
- (d) on land that is a Crown reserve—by or on behalf of a reserve trust that is constituted in respect of the reserve, the Minister administering the *Crown Lands Act 1989* or the Lands Administration Ministerial Corporation,

if the development is for the purposes of implementing a plan of management adopted for the land under the Act referred to above in relation to the land.

(2A) A reference in subclause (2) (d) to a Crown reserve is a reference to a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* (other than a reserve that is under the control of a council under section 48 of the *Local Government Act 1993*). To avoid doubt, a reference in that paragraph to a reserve trust that is constituted in respect of a reserve includes a reference to a reserve trust whose affairs are managed by a council.

Report No. 1. Commercial Trailer Parking on Crown Reserve, Byron Bay

Executive Manager: Community Infrastructure

Report Author: Michael King, Manager Infrastructure Planning

File No: E2013/26030

Theme: Community Infrastructure, Local Roads and Drainage

Summary: Council called for a report on a means by which parking could be provided upon Crown Reserve #82000 for the purposes of two kayak operators parking their trailers.

RECOMMENDATION:

1. That the Reserve Trust endorse the proposal to provide parking on Crown Reserve 82000 for the placement of trailers used by the kayak businesses at two distinct sites, as shown by Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821).
2. That the provision of No Stopping at the two points of access as shown in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) be referred to the Local Traffic Committee for consideration.
3. That funds for the proposed works as per the details in Council Plan #2130/SK2 (Annexure 1(b), #E2013/34821) come from Crown Reserves.

Attachments:

- Council Drawing #2130/SK1 Proposed Access Loop #E2013/34820 [1 page]**Annexure 1(a)**
- Council Drawing #2130/SK2 Access and Paved Areas for Each Operator #E2013/34915 [1 page]
..... **Annexure 1(b)**
- Site Analysis by the Two Kayak Operators #E2013/34822 [1 page]**Annexure 1(c)**

Report

A report to the Byron Shire Reserve Trust Committee meeting held 1 December 2011 considered "Commercial Activities". It was resolved:

5 Res 11-1000:

1. *That Council, as Reserve Trust Manager, recommend to Council:*

10 a) *That Council adopt the amendments to Policy 5.52 – Commercial Activities on Coastal and Riparian Crown Reserves as detailed at Annexure 1(a) (#939163), to enable the calling of Tenders for Commercial Activities, and that public comment not be sought on the amended Policy.*

15 b) *That Council call tenders to establish sub-licences for Commercial Activities for Commercial Surf Schools, Personalised Surf Schools and Sea Kayak Tours.*

20 **2. That report be provided to the Reserve Trust Committee in relation to the position, access, design and an indicative costing for the provisions of trailer parking for Sea Kayak operators on R82000 at Byron Bay Main Beach adjacent to the Clarkes Beach Car Park.**

This report addresses part 2 of res 11-1000.

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Figure 1: Locality of kayak operations upon Reserve #82000



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Within the report of 1 December 2011, the following advice in regards to trailer parking on the reserve was stated:

35 *"Council's current Sea Kayak sub-licensees pay \$20,000 and \$30,000 per annum respectively for their sub-licences. They have requested that Council consider parking options for their trailers. Having a dedicated parking area on the Reserve would alleviate the parking issue. They would be required to remove their trailers at the end of each day. A further report would be prepared for the Reserve Trust Committee in relation to position,*

access, design and indicative costing in relation to an area of the Reserve being utilised for parking of the Sea Kayak Tour operators' trailers."

5 Further in the report, the following advice was stated in regards to funding of any works to provide trailer parking:

10 *"As the income is generated on Crown reserves, they are only able to be expended in relation to maintenance and development of those reserves. There is currently approximately \$400,000 held in the Crown Reserve of which approximately \$60,000 per annum is income raised by Commercial Activities. It is proposed that Reserve Funds be utilised to provide trailer parking upon the Main Beach Reserve adjacent to the Clarkes Beach car park for the Sea Kayak Operators. A further report will be provided to the Reserve Trust Committee in relation to position, access, design and indicative costing to construct the parking area."*

20 Ongoing compliance issues remain relating to the parking of the trailers along the kerb side of Lawson Street.

Between 26 July 2008 to date, 34 infringements have been issued.

25 One of the operators appeared before the Byron Bay Local Court on 8 December 2011 in respect of the offence of "Disobey No Parking sign".

The operator entered a plea of guilty. The offence was found proved but dismissed pursuant to the provisions of Section 10 of the Crimes (Sentencing Procedure) Act.

30 In taking that course the Court indicated that it had regard to undertakings which had been foreshadowed.

The operator foreshadowed that it would undertake as follows:

- 35
1. the company will ensure that all vehicles and trailers associated with the company will comply with the posted parking restrictions on Lawson Street, Byron Bay
 - 40 2. the company will ensure that kayak trailers are removed from the northern side of Lawson Street, Byron Bay prior to posted parking restrictions coming into effect
 3. the company will not park any vehicles and trailers associated with the company on Clarkes Beach Reserve under any circumstances
 - 45 4. the company will bring the terms of these undertakings to the attention of all of its officers and employees

50 Notwithstanding the Undertaking being foreshadowed and having received the benefit of the proposed undertaking on sentence, it has never been signed by the operator and its terms have not since been complied with.

On 10 October 2012 Council informed the applicant by email that:

55 *"Your current sub-licence agreement with Council has no restriction for parking on the reserve. There is an outstanding resolution for Council to consider a report on the provision of trailer parking on the reserve. This matter is with our Community Infrastructure division for*

action. Your previous request dated 3 August 2012 was forwarded to Community Infrastructure for a response. I will also forward your email of today's date to Community Infrastructure for a response."

5 On 2 January 2013 Council informed the applicant by email that:

"I confirm that if you can physically get your trailer onto the reserve (as your 28/12 email suggests you can) that is where you should be parking (during operational hours....)"

10 In a later conversation Council indicated that it would be appropriate if the trailer remained parked on the reserve overnight should its removal from the reserve at the end of operating hours be blocked.

Council has made it very clear since October 2012 that parking was available on the reserve, thereby obviating the need to park on the street.

15 On 2 January 2013 Council confirmed that the Rangers had been instructed not to infringe the trailer whilst further inquiries take place as to the status and content of the sub-licence.

20 Thereafter, as there appeared to be a readily available interim solution, Council informed the operators that it intended to withdraw the instructions to the Rangers in relation to the trailer should it be parked on the street outside posted times as and from (and including) Monday, 7 January 2013.

Recently one operator requested Council review and withdraw four Penalty Notices, being:

- 25
1. 27 December 2012 disobey no parking sign Lawson Street
 2. 28 December 2012 disobey no parking sign Lawson Street
 3. 20 January 2013 disobey no parking sign Lawson Street
 4. 02 February 2013 disobey no parking sign Lawson Street

30 Two of the offences (3 and 4) occurred in 2013 at a time after Council had given instructions to the Rangers and advice to the operators. Notwithstanding the withdrawal of the instructions, Council considered that it remained the case that the whole parking issue was under discussion and that exceptional circumstances probably existed for offences 3 and 4 to be withdrawn, but that those
35 circumstances did not exist for offences 1 and 2.

40 There have been several recent meetings between the two kayak operators and Council staff regarding the design of a trailer parking area on the Reserve. Most recently an on-site meeting with Community Infrastructure design staff has been held to discuss in detail a means of satisfying their requirements.

Options for Parking Kayak Trailers

45 There are a number of options available for the trailer parking, proposed either by staff or the kayak operators. They include:

1. remove the parking restrictions along the north side of Lawson Street – currently 'No parking / 1.00am to 5.00am'
- 50 2. provide exemptions to the parking restrictions along Lawson Street to the kayak operators
3. provide an indented (bus bay) parking area for the sole use of the kayak operators
4. provide designed sheds that are lockable and potentially for multi-purpose use on the reserve (one at each of the two locations)
5. provide a paved area to cater for both operators at the one locality within the reserve
- 55 6. provide a paved area for each operator separately upon the reserve
7. allow parking of the trailers upon the reserve without, any paved area being provided

Points 1 – 4 above are not addressed within the context of this report. However, in brief, there are no provisions within the traffic/parking regulations in NSW for restricted on-road parking being made available for the sole use of commercial enterprise, other than for the use of taxi services as a transport provider.

5

Consideration of the sole use of a commercial enterprise would be contrary to Council's Enforcement Policy, which is to the following effect:

10

"The decision as to the appropriate action will not be influenced by:

- 1. the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;"*

15

Activities, as it is referred to in the Enforcement Policy, would include the commercial activities of the kayak operators.

20

Further, if an indented (bus bay) kerb side area were to be provided, the same regulations for kerb side parking apply – other than if it was built for the purpose of buses, taxis or emergency services.

25

As for point 4 above, this is a matter for any future consideration in terms of the ongoing commercial arrangements for the use of the Crown Reserve. The Site Analysis (Annexure 1(c)) provided by the two operators shows the locality of their operations and issues for such a proposal as this.

Points 5 and 6 are dealt with in more detail below.

30

Options for Paved Parking on the Crown Reserve

Options 5 and 6 have been investigated and discussed with the kayak operators further. Option 7 above is considered undesirable, as this will lead to the deterioration of the grassed areas. This means the loss of grass, thus creating an area that could become sloppy in wet periods and loose gravel trip hazards during dry periods.

35

Paved area to cater for both operators at the one locality

As a starting point for discussion with the kayak operators, a preliminary design of a paved parking area was carried out as an extension of the Clarks Beach car park – refer to Council drawing number 2130/SK1 at Annexure 1(a).

40

It provides for a drive-through area to the west of the car park and for two parking spaces for the kayak trailers. There are lockable gates at both the entry and exit to ensure it remains for the sole purpose of the operators. It has limited impact on existing car parking.

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The area provides for a concrete pavement, rather than asphalt. This is to avoid break up of the pavement caused by diesel drippings from the motors of the vehicles used by the operators. A coloured concrete could be used if desirable.

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Whilst the initial intent was for concrete in view of the operators' vehicles also parking in the area, it may be preferable to cater solely for the parking of the trailers, with the vehicles towing them being removed once the trailers are in place.

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Operator comments:- they believe that this proposal is unsatisfactory as it is bad business to have two operators so close together when competing for business.

This option was referred to the Crown Lands Department and it was endorsed.

The other option as described below was not referred to them. However, it is expected that as they endorsed the proposal with more impact on the reserve, they are likely to endorse the option with lesser impact.

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Paved area for each operator separately

In view of the operator's desire to be separated, and preferably to be at their current locations, the option of two paved areas is presented for consideration - refer to Council drawing number 2130/SK2 at Annexure 1(b).

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This proposal involves paved areas built to suit the size required for the parking and for each to be north of the foot path. Each requires its own driveway crossing from the street. The localities are such that these driveways will have minimal, to no, impact on kerb side parking.

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The Cape Byron Kayaks site (east) will utilise the existing driveway crossing currently available for their use as well as council service vehicle access.

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The GoSea Kayak site (west) would utilise the bikeway access point directly opposite Cowper Street. This may require minor widening as well as relocation of the bike hand rails. This is considered to be an acceptable point of access as there is minimal movement of the kayak vehicles impacting on minimal bike usage at this point.

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In both cases, though there is no parking restriction at these two kerb crossing points to ensure clear access, it is considered appropriate to provide such restrictions for both the operational benefit of the kayak businesses but also for free access by cyclists and service vehicles to the reserve. In this regard the restrictions could be provided by way of *No Stopping* signs or by the provision of kerb blisters.

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The preferred locality is close to existing trees within the reserve. This will provide some shade to the trailers and the users of the kayaks as well as provide some visual shielding of the trailers.

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Operator comments:- this proposal is preferred by the kayak operators. The precise location of the paved pads can be determined within the approximate locality as shown on the plans in consultation with the operators.

Other matters for consideration

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There are a number of other matters that may have a direct impact, or at least an indirect impact, on the proposal to park the kayak trailers and/or vehicles upon the reserve.

Paid Parking

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Council is to consider a report into implementing a broader paid parking scheme for Byron Bay later this year. One area for consideration is the extension of paid parking along the length of Lawson Street, up to the intersection with Massinger Street and the Clarkes beach access road. Whilst this does not at this time have a direct impact on the kayak operators, it will become an issue for them if they expect to continue parking on the road area.

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Angle parking

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As part of the paid parking proposals for Byron Bay, angle parking along one side of Lawson Street is being investigated. The manner in which this may be able to be implemented is not yet determined, but any proposal for angle parking along the north side of Lawson Street will impact on the current operations of the kayak businesses.

Pedestrian/cyclist safety

Any increase in vehicular movement across a footpath area and/or in a reserve is a matter for consideration. In this instance, there is expected to be minimal movement of vehicles and thus minimal conflict with cyclists and pedestrians.

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Jarjum Playground

A number of years ago a proposal for a playground (Jarjum Playground) were planned for Reserve 82000 in the area west of the Clarkes Beach car park. Whilst these plans did not progress to development of the playground, should consideration in the future be given to it, the proposed areas for the kayak parking should have no impact on the proposal.

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Financial Implications

In accordance with Resolution 13-137 the following information is provided to Council in all reports prepared for the 9 May, 13 and 27 June 2013 Ordinary Meetings:

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- The estimated staff hours for the preparation of this report was approximately 7 hours.

As per the report to Council on 1 December 2011, any funding source for any works that Council will resolve on for this matter will come from the Crown Reserve.

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Detailed estimates of the costs of the various options for providing paving on the reserve have not been carried out to-date. Detailed estimates for the various options are not yet available. However, preliminary estimates for the options described above, are:

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Plan Number	Estimate (preliminary)
Council Drawing #2130/SK1	\$40,000
Council Drawing #2130/SK2	\$10,000

Though detailed estimates are not provided to-date, the proportional differences of these estimates give a clear indication of the differences between the two options.

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Statutory and Policy Compliance Implications

Nil

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