



## **Notice of Reserve Trust Manager Meeting**

A Reserve Trust Manager Meeting will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **Tuesday 4 March 2014 commencing at 4.45 pm.**

### **Business**

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal stroke underneath.

Paul Hickey  
**General Manager**

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1. Apologies
  2. Declarations of Interest
  3. Deputations
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**1. Apologies**

**2. Declarations of Interest**

**3. Deputations**

#### 4.1 Shelly's on the Beach - Land Acquisition

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#### 4. Committee Reports

#### 4.1 Shelly's on the Beach - Land Acquisition

**Delivery Program** Commercial Services

**Objective** To obtain formal concurrence from Ballina Coastal Reserve for the compulsory acquisition of Crown Land - Shelly's on the Beach

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#### **Background**

Shelly's on the Beach Café ("Shelly's") is situated on a beachfront site at Shelly Beach, East Ballina. The café footprint is partly on Council operational land (Lot 1 DP 1095427 – 260.3m<sup>2</sup>) and partly upon the Crown Reserve (Reserve No. 1010068 – 81.7m<sup>2</sup>).

A number of reports have been placed before Council and the Reserve Trust regarding land tenure arrangements for Shelly's on the Beach.

The last report to the Reserve Trust on this matter was on 28 November, 2012, where at the Trust endorsed the recommendation to increase the licensed area from 81.7m<sup>2</sup> to 148.45m<sup>2</sup> to accommodate a proposed new building to be constructed on the site by the licensee, Fishheads.

Crown Lands subsequently refused the proposal to increase the licensed area and construct the new building over the land. The Crown advised that the only way Fishheads' development proposal could proceed would be if Council purchased the portion of land currently under licence and any additional land required.

At the Commercial Services meeting of 26 February, 2013 Council resolved to proceed with the compulsory acquisition of 148.45m<sup>2</sup> to accommodate a proposed new building to be constructed on the site by the licensee, Fishheads. The actual resolution is as follows.

1. *"That Council approves the purchase of part or all of the residual crown land as detailed in this report for the purposes of allowing the Shelly's on the Beach Café tenure arrangements to be finalized.*
2. *That Council authorizes the extension of the current lease term remaining for Shelly's on the Beach from 12 to 20 years, with options to re-assess the rental value to market at least every five years.*
3. *The funding of this purchase is to be from Council's Commercial Opportunities Reserve.*
4. *That Council authorizes the Council seal to be attached to the lease documentation, the sale contract, plans of subdivision and associated documentation."*

Fishheads subsequently revised their building plans and reduced the amount of Crown land required from 148.45m<sup>2</sup> down to 129m<sup>2</sup> thereby also reducing

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the purchase price of the land. This amendment and the formal resolution for Council to purchase the land was dealt with by a Mayoral Minute at the Council meeting of 24 October, 2013.

1. *"That Council authorizes acquisition by compulsory process of the land required to allow the expansion of the Shelly's on the Beach Café, as previously resolved by resolution 280213/30, being 129 square metres, Part Lot 402 DP 755684, Shelly Beach Road, East Ballina.*
2. *That Council authorizes the General Manager to make an application to the Minister for Local Government and/or the Governor for the compulsory acquisition of land for the expansion of the Shelly's on the Beach Café, being 129 square metres, Part Lot 402 DP 755684, Shelly Beach Road, East Ballina.*
3. *That Council authorizes the Council seal to be attached to any documents relating to this acquisition."*

Following on from negotiations with Crown Lands, the terms and conditions for the compulsory acquisition have been agreed. Crown Lands has signed a plan of acquisition which has been registered with the LPI, and the subject land is now known as Lot 1 in DP 1192961.

As part of the acquisition process, Council must also obtain permission from the Office of Local Government ("OLG") to purchase the land. The relevant application has been completed and lodged with the OLG.

The OLG has subsequently requested additional information including formal concurrence from Council as Reserve Trust Manager for the Ballina Coastal Reserve and holder of Licence No. 495417 agreeing to the proposed acquisition. Accordingly this report seeks the Trust's formal concurrence to the proposed acquisition.

### **Key Issues**

- Concurrence of Ballina Shire Council as Reserve Trust Manager of Ballina Coastal Reserve Trust and holder of Licence No. 495417 for the compulsory acquisition of a portion of Crown land known as Lot 1 in DP 1192961.

### **Information**

The background section of this report provides all relevant information in respect to this acquisition. This is now a procedural report to obtain Reserve Trust concurrence for the acquisition.

### **Legal / Resource / Financial Implications**

Council has resolved to acquire the subject portion of Crown land and has reached agreement with Crowns of Lands as to the amount of compensation.

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The concurrence of Council as Reserve Trust Manager for the Ballina Coastal Reserve and holder of Licence No. 495417 is required as the Trust has interests in the portion of land to be acquired. Licence No. 495417 is held for "Business Purposes" and provides Council with the authority to sub-licence surf schools and the like to use Crown land.

### **Consultation**

Council has been consulting with Crown Lands and the Office of Local Government regarding the compulsory acquisition process.

### **Options**

1. Ballina Shire Council as Reserve Trust Manager for the Ballina Coastal Reserve and holder of Licence No. 495417 agrees to the compulsory acquisition by Ballina Shire Council of a portion of Crown land previously known as Part Lot 402 in DP 755684 and now known as Lot 1 in DP 1192961.

This option is recommended as Council resolved on 24 October, 2013 to proceed with the compulsory acquisition of the subject portion of Crown Land.

2. Ballina Shire Council as Reserve Trust Manager for the Ballina Coastal Reserve and holder of Licence No. 495417 not agree to the compulsory acquisition of a portion of Crown land previously known as Part Lot 402 in DP 755684 and now known as Lot 1 in DP 1192961.

This option is not recommended as it is inconsistent with Council resolution of 24 October, 2013 to proceed with the compulsory acquisition of the subject portion of Crown Land.

Finally Section 377 (1) of the Local Government Act lists the items that cannot be delegated by a Council. Clause (h) of that Section identifies that "the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)" cannot be delegated.

This means the Reserve Trust Committee, as a Committee of Council, does not have authority to resolve to actually compulsory acquire the land as Council delegations to this Committee exclude all matters listed in Section 377. Therefore the resolution that follows has been worded for the Reserve Trust to provide its concurrence to the Council's decision to acquire the subject land.

**RECOMMENDATION**

That Ballina Shire Council as Reserve Trust Manager of the Ballina Coastal Reserve and holder of Licence No. 495417 grants their concurrence to Ballina Shire Council ("the Council") for the compulsory acquisition of Lot 1 DP 1192961 Shelly Beach Road, East Ballina, as previously resolved by the Council.

**Attachment(s)**

Nil