



## **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 8 April 2014 commencing at 5.00 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 flourish 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 Reserve 88004 - Ballina Shaws Bay Reserve Trust**

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### **4. Committee Reports**

#### **4.1 Reserve 88004 - Ballina Shaws Bay Reserve Trust**

**Delivery Program** Open Spaces and Reserves

**Objective** To provide the Trust with an update in relation to the outcome of negotiations between the Department of Premier and Cabinet, Crown Lands, the owners of Ballina Lakeside Holiday Park and Council staff in relation to the encroachments onto the Reserve, and seek further direction in relation to the resolution of the encroachments.

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#### **Background**

The encroachments onto the Reserve which are the subject of this report were considered by the Reserve Trust on 28 November 2012. A copy of that report and resultant resolution are included as attachments.

A summary of the resolution from that meeting was that the Reserve Trust would issue "Licences for Encroachment" to the affected mobile home owners, which would require the removal of the encroachments at the time of sale of the mobile dwellings.

This resolution was unsatisfactory to the affected residents of the park and further correspondence was then entered into between those residents, the local Member for Ballina, the Department of Premier and Cabinet and Crown Lands.

After negotiations at a senior level between the relevant parties, the Crown issued a Section 34A Licence to Danepond Pty Ltd (being the owner of the Ballina Lakeside Holiday Park) to cover the area of the encroachments. This Licence is for a three year term expiring on 20 February 2017 and makes express provision for the sale (including the encroachments) of the mobile dwellings. A plan of the area to which the Licence applies is attached.

The Crown has also commenced the process to obtain a valuation of the area subject to the Section 34A Licence and has requested the Reserve Trust to provide a resolution to enable the sale of that portion of Crown Land to Danepond Pty Ltd.

#### **Key Issues**

- Alienation of public land
- Final resolution of the issue of encroachments

### Information

The original report to the 28 November 2012 Reserve Trust meeting identifies the issues related to the southern boundary, with the Trust (i.e. Council) at that time resolving only to support Licences for Encroachment, requiring removal at sale.

Once that Reserve Trust decision was conveyed to certain mobile home owners, and their beneficiaries, it is understood that further representations were then made to parties such as the local member and the NSW Ombudsman, to overturn this decision.

The Regional Co-ordinator for the NSW Department of Premier and Cabinet (NSWDP&C) became actively involved in this matter and a number of discussions have been held with Danepond representatives. Ideally the optimum solution is for Danepond to relocate the dwellings and fixtures encroaching, back into the park. Danepond is still not prepared to undertake these works as relocation may require a major restructure of the park.

NSWDP&C has been promoting a proposal for Danepond to either lease or purchase the encroached area, at market value. Following months of negotiations between NSWDP&C and Danepond, the Crown has now issued a Section 34A Licence to move this matter forward.

### Section 34A Licence

Council, as the Reserve Trust, does not have the authority to issue a Section 34A Licence. The purpose of this class of Licence is to grant tenure to a user of Crown Land for a purpose, which is not in accordance with the reserve purpose.

In this situation, as the reserve purpose, the subject of the encroachments, is "public recreation" the Reserve Trust has no authority to issue a licence for encroachments, as an "encroachment" relating to a private structure is contrary to the purpose of "public recreation".

34A Licences are only able to be issued with the consent of the Minister for Lands. The reasons for the Minister's intervention by granting the licence in the current circumstances are unknown to Council, albeit that it can only be assumed that the licence has been issued to allow the on-selling of the mobile homes to proceed.

Council, as the Reserve Trust, is not a party to the Section 34A Licence, therefore the matters in that licence are now a consideration for Danepond and the Crown. The Section 34 Licence has overridden the original Reserve Trust decision to require the removal of any encroachments on sale.

### Encroachments

Danepond previously held a Section 34A Licence direct from the Crown to deal with encroachments on the western boundary of the caravan park. Danepond used the duration of that previous licence (2010-2012) to work with the affected mobile home owners on the western boundary to relocate the dwellings within the park.

#### **4.1 Reserve 88004 - Ballina Shaws Bay Reserve Trust**

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The western boundary encroachments were resolved (with the exception of one resident who has entered into her own licence directly with the Crown) and Danepond did not renew its licence for the western boundary.

Council staff were not involved in the process of granting the Section 34A Licence for either the southern or western boundary encroachments. In subsequent communications with the NSWDP&C and Crown Land staff in relation to the current matter, Council staff was advised that the three year term granted by the Section 34A Licence is intended to be utilised to investigate the sale of the relevant portion of the reserve to Danepond, in an effort to permanently rectify the encroachments.

##### Disposal of Public Land

The process to be followed to dispose of Crown Land is extensive, with Crown Lands, providing an overview of the steps to be followed as per points one to eight.

- 1. The Trust will be required to make a decision to sell the land and document its reasons for selling the land.*
- 2. To satisfy Section 102(1) of the Crown Lands Act 1989, the Trust will be required to cause a notice of its decision to be published in a newspaper circulating in the district.*
- 3. Section 102(1)(c) of the Crown Lands Act 1989 requires that the Trust wait 14 days from the date of the publication before seeking Ministerial approval to sell the land.*
- 4. At the expiry of the 14 day public notice period, the Trust will be required to write to the Minister seeking consent to the sale.*
- 5. The Minister will consider the submission made by the Trust and, if in agreement, may decide to form an intention to consent to the sale. The intent of the Minister to consent to the sale is required to be advertised for a further 14 day period, this notice of intent is to be published in a newspaper circulating in the district.*
- 6. The Minister cannot make a final decision to sell the land until after the expiry of the second 14 day public notice period.*
- 7. The Minister has the ability under Section 106 of the Crown Lands Act 1989 to allocate the proceeds of the sale.*
- 8. The reservation over the subject lot is revoked upon conveyance of the sale pursuant to section 104 of the CLA. No advertising, approval or gazette action required.*

As part of the on-going negotiations with Danepond, the Crown is, or has, prepared a valuation for the relevant portion of the reserve.

At the date of preparing this report, the amount of that valuation is unknown.

#### **4.1 Reserve 88004 - Ballina Shaws Bay Reserve Trust**

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There also appears to be a question about the existence of either an Aboriginal Land Rights Claim or an Indigenous Land Use Agreement over the reserve. This matter will need to be further investigated by the Crown to see what implications a current claim or agreement may have if alienation of part of the reserve is contemplated.

The proposed sale of this portion of the reserve was previously identified as an option to rectify existing encroachments. This was not endorsed by the Reserve Trust. The Crown is aware that the Reserve Trust has not resolved to support a sale and the advice from Council staff is that this matter will need to again be resubmitted for determination. Ultimately the Crown as the owner of the land has the authority to override any Reserve Trust decision.

The benefits in allowing the sale to proceed are:

- it will allow the mobile home owners to sell their mobile homes for maximum value, as the encroachment issue will be resolved
- The area of the reserve over which the Section 34A Licence has been granted is approximately 750m<sup>2</sup> which, arguably, will not impact significantly on the remaining portion of the reserve. In this regard, it appears that the encroachments have existed since the mid 1990s and this area of the reserve has not been available to the public since that time. It is not an unreasonable outcome that the community should be reimbursed for public land that it does not currently have the benefit of using.

This outcome should be weighed against a desire to maintain public land for the benefit of the community in the ways intended by the reservation of Crown Land. Neither the community nor the Reserve Trust authorised the existing encroachments upon the reserve.

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

There are legal and financial implications relating to this matter. The sale will incur costs which should be borne by the owners of the Ballina Lakeside Holiday Park or the Crown. There is an opportunity to apply to the Crown for a portion of the sale proceeds to be given to the Reserve Trust for the improvement and maintenance of the remaining part of the reserve.

#### **Consultation**

Consultation was carried out with some of the mobile home owners at the time of the original report to the Reserve Trust. There has been extensive on-going discussions between a range of parties since the Trust resolution.

If the Reserve Trust resolves to agree with the proposed sale of that portion of the reserve, the proposal will be publically advertised for two separate periods of 14 days to enable submissions to be made by members of the public.

**Options**

1. The Council, as Manager of the Ballina Shaws Bay Reserve Trust may resolve to not support the request for a sale. This would require the owners of the Ballina Lakeside Holiday Park to either:
  - a. renew their Section 34A Licence with the Crown at the expiration of their current licence, and continue to licence that portion of the reserve, until such time as the Ballina Lakeside Holiday Park is able to deal with the encroachment. The matter relating to Ballina Lakeside Holiday Park's handling of the matter was also the subject of a Consumer Trader and Tenancy Tribunal hearing but the outcome of that hearing is unknown; or
  - b. rectify (remove) the encroachments. The Ballina Lakeside Holiday Park has previously advised that there is insufficient space in the park to relocate the encroaching dwelling, without the relocation impacting on other residents.

Considering the Crown's ability to issue Section 34A Licences without regard to the resolution of the Reserve Trust, it is considered impractical to not provide a resolution to enable the process to sell the encroachment area to Danepond.

2. Alternatively, the Council, as Manager of the Ballina Shaws Bay Reserve Trust may resolve to support the sale.

Overall, option two is considered to be an acceptable option in all the circumstances, as a transfer of the land to the proprietor of the caravan park will give a final resolution to this matter. This said, it must be acknowledged that this course of action will be inconsistent with the decision of the Reserve Trust made at its meeting in November 2012.

If the sale option is ultimately pursued, the transferred land should be consolidated in title with the freehold land currently forming part of the caravan park. That is, it should not remain as a separate allotment. The onus would then rest with Danepond Pty Ltd to determine whether the relevant consents/approvals under which it operates require adjustment.

Finally, this report is prepared on the basis of a presumption that Danepond has both the inclination and the capacity to acquire the subject land at market value. As Council has not been involved in the negotiations relating to this matter, Danepond's position is not well understood.



**RECOMMENDATIONS**

1. That Council, as Manager of the Ballina Shaws Bay Reserve Trust (Reserve 88004) supports the sale of part of the reserve located adjacent to the southern boundary of the Ballina Lakeside Holiday Park, as described in the Section 34A Licence agreement and illustrated in the plan accompanying this report (approximately 750m<sup>2</sup>).
2. Approval is granted for the use of the Council Seal upon any documents required to effect the sale.
3. The Reserve Trust's preference is that the transferred land is to be consolidated in title with the freehold allotment, within which the Ballina Lakeside Holiday Park operates.
4. That all costs associated with the sale and transfer of the land are to be borne by the Holiday Park proprietor or Crown Lands.
5. That the Reserve Trust requests that the proceeds from the sale of the land are transferred to the Trust for the purpose of embellishing the remaining part of the reserve.

**Attachment(s)**

1. Resolution from and report to Reserve Trust Meeting 28 November 2012
2. Diagram of Licence Area
3. Survey of encroachments

MINUTES OF THE RESERVE TRUST MANAGER MEETING  
OF THE BALLINA SHIRE COUNCIL  
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS  
40 CHERRY STREET, BALLINA,  
ON 28/11/12 AT 4.00 PM

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5.2 Ballina Lakeside Holiday Park - Encroachments

RT281112/4 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

That Council as Manager of the Ballina Shaws Bay Reserve Trust (Reserve 88004) approves a Licence for Encroachments with the owner of site 58, and, subject to Crown consent, said Licence shall be non-transferable, and should the owner of the house on site 58 or their personal representative decide to sell the mobile home located upon site No. 58 at the Ballina Lakeside Caravan Park, that the encroachment must be removed from the Crown Reserve. Subject to the matters referenced in this point, approval is granted for the use of the Council Seal upon the Licence for Encroachment.

FOR VOTE - All Councillors voted unanimously.  
ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Keith Johnson

RT281112/5 RESOLVED

(Cr Robyn Hordern/Cr Susan Meehan)

1. The Reserve Trust approves the creation of Licences for Encroachment, which also requires the removal of any encroachments at time of sale of the houses. If this option is pursued then approval is granted for the use of the Council Seal upon the Licences for Encroachment.
2. That clear signage be established ensuring that public access to the foreshore of Shaws Bay is clearly marked.

FOR VOTE - All Councillors voted unanimously.  
ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Keith Johnson

**Cr Ben Smith** – declared a non significant non pecuniary interest in Item 5.3. (Nature of Interest: his partner is an employee of Ballina RSL Club – he will be remaining in the meeting while the matter is discussed and voting on the matter).

5.3 Richmond River Foreshores - Proposed Land Swap

A **Motion** was moved by Cr Sharon Cadwallader and seconded by Cr Paul Worth)

1. That Council, as the Reserve Trust Manager, provides in principle support for the proposed land swap and re-alignment of the boundary between the RSL Park (Lot 546, DP 821,908) and land owned by the Ballina RSL Club (Lot , DP 866,388) as detailed within this report.
2. That the cost of the land swap be shared evenly between Council, as the Reserve Trust Manager and the Ballina RSL Club.

4.2 Ballina Lakeside Holiday Park - Encroachments

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4.2 Ballina Lakeside Holiday Park - Encroachments

**Delivery Program** Open Spaces & Reserves

**Objective** To advise the Reserve Trust of encroachments from the Ballina Lakeside Holiday Park onto the adjacent Shaws Bay Crown Reserve and to seek direction on the management of the encroachments.

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**Background**

A number of houses located in the Ballina Lakeside Holiday Park encroach onto the adjacent Shaws Bay Crown Reserve. The issue of encroachment has now come to a head with residents wishing to sell their homes. The residents have requested that Council, as Reserve Trust Manager, endorse the sale of the houses with the encroachments.

The purpose of this report is to provide details of the two different situations relating to encroachments and to seek a resolution to these matters.

**Key Issues**

- Encroachments on Crown Reserve

**Information**

Encroachment – Western Boundary

Encroachments on the western boundary of the Ballina Lakeside Holiday Park have been managed to date by providing short term leases to the owners of the encroaching houses, which has then provided them with time to remove the encroachments.

Attachment One shows a survey plan of the western boundary of the Ballina Lakeside Holiday Park dated 19 January 2001. Site 58 is marked on the plan and is the only encroachment left on this boundary. All other encroachments have now been removed.

The encroachment from site 58 consists of a deck that has been added to a house. The lease for this encroachment has expired and as yet Council has not been able to resolve this matter. The house owner has not responded to any of the three letters sent regarding the matter. The Crown has formally advised the following in relation to the encroachment from site 58:

- The lease for this encroachment is not renewable
- An Aboriginal land claim has been placed over the Crown land (Reserve 88004)
- Subject to resolution of the Reserve Trust, Council as Reserve Trust Manager can apply for a 'Licence for Encroachments' for a further term (NB if so, the draft agreement must be submitted to the Crown for review before execution); and

### 4.2 Ballina Lakeside Holiday Park - Encroachments

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- If not applying for a Licence for Encroachments, then the Reserve Trust must submit a report to the Crown on the condition of the affected part of the Reserve and provide an explanation why tenure is not required.

In this case a licence could be prepared to manage the encroachment however if the owner of site 58 wishes to sell the house they will need to remove the encroachment as the licence is not transferable.

#### Encroachments – Southern Boundary

Attachment Two shows the encroachments on the southern boundary of the Ballina Lakeside Holiday. No licences are in place for these encroachments, primarily due to Council not being fully aware of the encroachments on this side of the park.

Owners of two of the houses encroaching on the Shaws Bay Reserve now wish to sell their houses but cannot do so while the encroachments are in place. Licences could be created to manage the existing encroachments but as the licences are not transferable they are of no benefit to people wishing to sell.

A letter has been received from The Honourable Andrew Stoner MP following representations on this matter from the owner of the Holiday Park and from the Hon. Don Page MP concerning a proposed boundary adjustment of the Ballina Lakeside Holiday Park to rectify the encroachments. A copy of this letter is included in this report as Attachment Three. This letter is somewhat ambiguous in that it is not clear that sale of the land is supported, albeit that it appears Mr Stoner has no objection to the sale.

#### Discussion

The residents of most of the houses that encroach on the Crown reserve are elderly and needing to sell their properties to enable them to move into supported living facilities. The inability to sell their houses is delaying this process and causing family distress. This matter is further complicated by the fact that the land is owned by the Ballina Lakeside Holiday Park and the houses are owned by the individual tenants.

There are two options available for tenants wishing to sell their properties. The first option is to relocate the house so that it is contained wholly within the Ballina Lakeside Holiday Park. This may be achieved if enough space is available within the Park to accommodate the relocated house. The cost of the relocation would need to be covered by the tenant or the owners of the Holiday Park. The cost of relocating the house is not known but would require the disconnection and reconnection of services as well as relocation of the buildings. The second option is to undertake a boundary re-alignment that would include all of the houses within the Ballina Lakeside Holiday Park.

The required boundary re-alignment would be minimal and would be enough to include only the encroachments. The approximate area included in this realignment would be approximately 500 square metres, albeit that a survey has not yet been completed. Overall the impact on the reserve is considered to be marginal as the encroachments are not impacting on the use of this large reserve.

4.2 Ballina Lakeside Holiday Park - Encroachments

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There would be costs associated with a boundary adjustment and the land would need to be purchased by the owner of the Ballina Lakeside Holiday Park. The sale of this land may also be complicated by an Aboriginal Land Claim which may add costs to the purchase of the land.

**Legal / Resource / Financial Implications**

There are legal and financial implications relating to this matter. The encroachments are contrary to the *Crown Lands Act 1989* and the cost of any boundary realignment will incur costs.

**Consultation**

Consultation has been carried out with the some of the house owners that have residences that encroach on the Crown reserve, the manager and the owner of the Ballina Lakeside Holiday Park.

**Options**

Site 58 Encroachment

1. Council as Manager of the Ballina Shaws Bay Reserve Trust can pursue the owner of the house on site 58 and enforce the removal of the encroaching veranda on the basis of the executed lease agreement.
2. Alternatively, as suggested by the Crown, Council as Manager of the Shaws Bay Reserve Trust can negotiate a Licence for Encroachments with Mrs Trotter, and forward the draft agreement to the Crown for consideration.

This is the recommended option. Subject to Crown consent, the Licence for Encroachments could be structured such that it is (i) non-transferable; and (ii) that if the mobile home situated on site 58 is sold within the licence period, the veranda, or encroaching part, is to be removed from the Crown Reserve and the agreement terminated. If the Reserve Trust Committee agree to this recommendation, a market rental determination will be required for the approximate 15.45m<sup>2</sup> area of the encroachment.

Southern Encroachments

1. Council as Manager of the Ballina Shaws Bay Reserve Trust may resolve to not support the request for a boundary re-alignment and so require the owners of houses to remove the encroaching portions of the house from the Crown reserve. The advice from the Ballina Lakeside Holiday Park is that this is not feasible as there is insufficient space in the park, without the relocation impacting on other residents.
2. Alternatively, Council as Manager of the Ballina Shaws Bay Reserve Trust may resolve to support a boundary re-alignment. If the boundary re-alignment is supported this will enable the land sale and boundary re-alignment process to commence.

### 4.2 Ballina Lakeside Holiday Park - Encroachments

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Overall option two is considered to be the preferred option in that it will allow the elderly residents to sell their properties, it appears to have no strong objection from the State Government and the sale will not impact on the overall use of the reserve.

Any sale would need to be at an independently valued price and the recommendation is to obtain an external valuation. It is uncertain whether the Ballina Lakeside owners are prepared to purchase the land at the market price and if they are unwilling to proceed then the fall back position is to approve licences for the encroachments. This will not allow the sale by the home owners to proceed, however it will formalise the existing encroachments. This will then be a matter for the Lakeside Holiday Park owners and tenants to resolve.

Finally Section 377 of the Local Government Act does not allow the sale of land to be delegated by a council. As this is a meeting of the Reserve Trust, if the decision to sell is supported, a further report will need to be submitted to an Ordinary meeting of Council confirming the Reserve Trust's position.

#### RECOMMENDATIONS

1. That Council as Manager of the Ballina Shaws Bay Reserve Trust (Reserve 88004) approves a Licence for Encroachments with the owner of site 58, and, subject to Crown consent, said Licence shall be non-transferable, and should the owner of the house on site 58 or their personal representative decide to sell the mobile home located upon site No. 58 at the Ballina Lakeside Caravan Park, that the encroachment must be removed from the Crown Reserve. Subject to the matters referenced in this point, approval is granted for the use of the Council Seal upon the Licence for Encroachment.
2. That Council as Manager of the Ballina Shaws Bay Reserve Trust (Reserve 88004) supports the re-alignment and sale of a minimum area of the southern boundary adjoining the Ballina Lakeside Caravan Park that ensures all existing Crown Reserve encroachments are contained within the Ballina Lakeside Caravan Park. The area of this realignment and sale is estimated to be approximately 500 square metres.
3. That all costs associated with the boundary re-alignment and sale are the responsibility of the owner of the Ballina Lakeside Caravan Park, with an independent valuation to be obtained to ensure that the sale price is at market value. Any agreement to sell the land will need to be ratified at an Ordinary meeting of Council, due to the Reserve Trust Committee not having delegated authority to sell land due to the limitations of Section 377 of the Local Government Act.
4. That should the owner of the Ballina Lakeside Caravan Park decline the option to purchase the land then Council, as the Reserve Trust, approves the creation of Licences for Encroachment, which also requires the removal of any encroachments at time of sale of the houses. If this option is pursued then approval is granted for the use of the Council Seal upon the Licences for Encroachment.

**4.2 Ballina Lakeside Holiday Park - Encroachments**

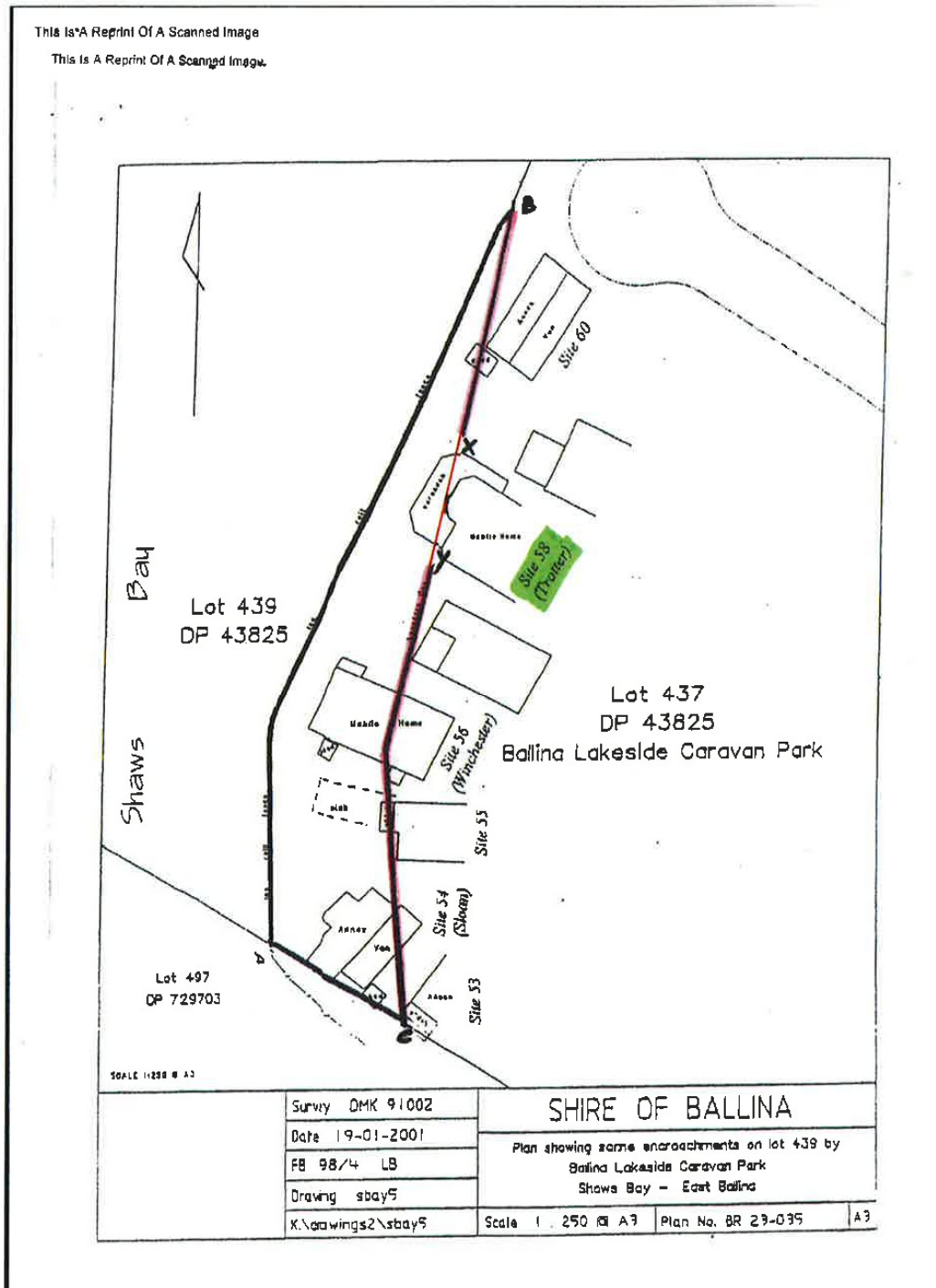
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**Attachment(s)**

1. Survey - Western Boundary Ballina Lakeside Holiday Park
2. Survey - Southern Boundary Ballina Lakeside Holiday Park
3. Letter - Hon. Andrew Stoner MP

4.1 Reserve 88004 - Ballina Shaws Bay Reserve Trust

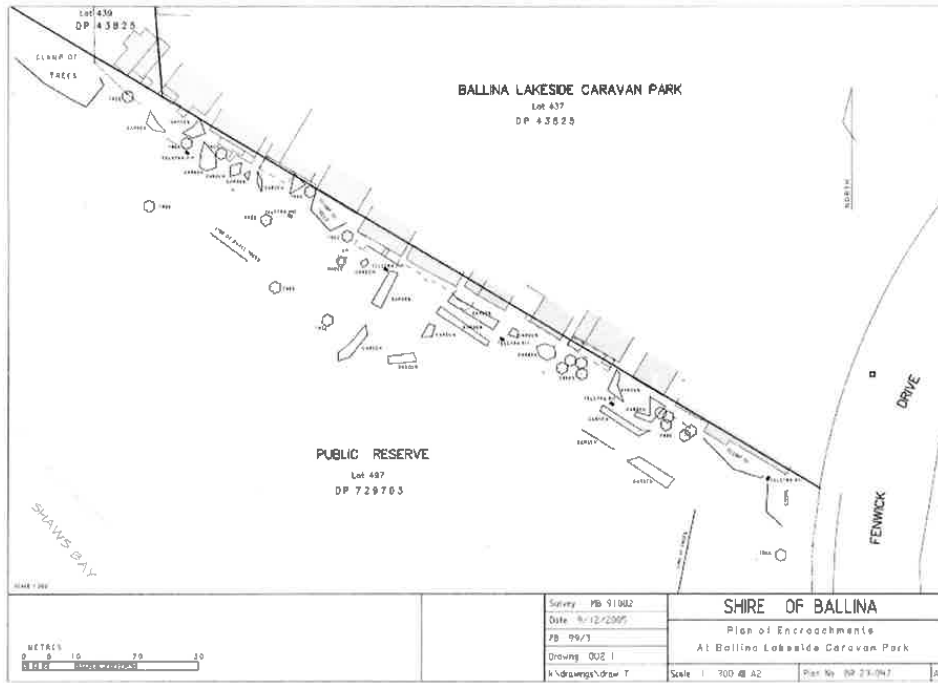
4.2 Ballina Lakeside Holiday Park - Encroachments.DOC





4.1 Reserve 88004 - Ballina Shaws Bay Reserve Trust

4.2 Ballina Lakeside Holiday Park - Encroachments.DOC



4.2 Ballina Lakeside Holiday Park - Encroachments.DOC



**The Hon. Andrew Stoner MP**  
Deputy Premier  
Minister for Trade and Investment  
Minister for Regional Infrastructure and Services

IM12/9651

The General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

RECORDS SCANNED  29 MAY 2012 Doc No..... Batch No.....
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24 MAY 2012

Dear Sir

I refer to recent representations by the Hon. Don Page MP, Member for Ballina, Minister for the North Coast and Minister for Local Government concerning a proposed boundary adjustment by the Ballina Lakeside Holiday Park to rectify encroachments onto a Crown reserve.

Mr Elton Stone, a director of Danepond Pty Ltd, park owner of the Holiday Park, has written seeking a boundary adjustment to assist resolving encroachment issues that would allow residents of the park to on-sell their properties.

The relevant Crown reserve is under the care, control and management of Ballina Council as Reserve Trust Manager. I note that Council's Manager of Open Spaces and Reserves has written to Minister Page indicating in principle support, subject to Trust resolution, for a boundary adjustment to rectify the encroachments.

A Reserve Trust is able to sell or lease an area of the reserve it manages with my consent as the Minister administering the *Crown Lands Act 1989* (the Act). It will be necessary for the Trust to comply with the provisions of Section 102 of the Act if it resolves to proceed with this course of action.

The Trust will need to demonstrate that the proposal to sell or lease the land enjoys community support and does not unreasonably reduce the public right of access and enjoyment of the reserve.

I have asked that Mr Brad Crispin, Group Leader Property Services and Natural Resources be available to discuss this matter further with you. Mr Crispin may be contacted on 02 6640 3432 or email [Brad.Crispin@lands.nsw.gov.au](mailto:Brad.Crispin@lands.nsw.gov.au)

Yours sincerely

The Hon. Andrew Stoner MP  
Deputy Premier  
Minister for Trade and Investment  
Minister for Regional Infrastructure and Services

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