



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 **Thursday 23 March 2017 commencing at 12 noon.**

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 horizontal line underneath.

Paul Hickey
General Manager

Table of Contents

1.	Apologies.....	1
2.	Declarations of Interest.....	1
3.	Deputations	1
4.	Committee Reports.....	2
4.1	Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement	2

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

2. Declarations of Interest

3. Deputations

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement

4. Committee Reports

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement

Delivery Program Community Facilities and Services

Objective To seek direction from the Reserve Trust in relation to a request for an extension of tenure relating to the private occupation of public land adjacent to Shaws Bay.

Background

The Council, in its capacity as Reserve Trust Manager for the Shaws Bay Reserve has licensed the encroachment of a verandah attached to a dwelling in the Ballina Lakeside Holiday Park since approximately 2007.

The dwelling (located as Site 58) is occupied by Mrs Trotter who has been a permanent resident of the Ballina Lakeside Holiday Park for many years. With respect to the encroachment, the dwelling occupied by Mrs Trotter contains a verandah which projects approximately 15.45m² into the Shaws Bay Crown Reserve. A map showing the location of the verandah within the reserve is contained in attachment one.

Special Condition 3 of Schedule 2 of the current licence agreement between the Trust and Mrs Trotter states that the licence is not renewable, and at the end of the agreement, the encroachment is to be removed. Staff wrote to Mrs Trotter advising of the upcoming expiration of the licence agreement, being 30 June 2017 and the impending requirement for removal of the structure.

Mrs Trotter provided the response contained in attachment two. In summary, Mrs Trotter is seeking an extension to the licence so that the verandah can be retained as well as a reduction in the applicable licence fee. This request has been made on compassionate grounds.

Key Issues

- Encroachments into public reserves
- Consideration of licence fees

Information

Encroachment

The encroachment has been attached to the dwelling for many years. Investigations have previously been made into moving the dwelling and verandah wholly inside the holiday park, however, due to regulations relating to spacing and layout within caravan parks, this is not a viable option for this dwelling.

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement

Since 2007, the licence agreements have provided for removal of the encroachment at the end of the licence term, but this requirement has not been enforced to date. Other conditions in the prior licence agreements include non-transferability of the agreement, and termination of the agreement upon sale or vacation of the premises by Mrs Trotter.

The most recent licence also contains a termination clause in the event of a determination of a land claim in accordance with the *Aboriginal Land Rights Act 1983*.

Ballina Shire Council is in the process of commencing implementation of embellishment works to the Shaws Bay Reserve in the general location of the encroachment. It does not appear that the presence of the structure will impact in the short term on the proposed works.

Given the history of the encroachment, it is not problematic to meet Mrs Trotter's request for a 12 month extension under the same terms and conditions as the existing licence.

Under an extended licence arrangement, consideration might also be given to the provision of security to the Trust for the removal of the structure, should Mrs Trotter not be able to arrange for the removal of the structure at the expiration of a new licence period.

In considering this, it is important to recognise that this approach may prove difficult for Mrs Trotter from a financial perspective.

Licence Fees

Mrs Trotter has requested a review of her licence fee as she is currently experiencing a time of financial hardship due to ill health.

The current rental amount paid is \$1,037.52. This amount represents a commercial figure which was calculated in 2007 on pro rata estimates of site fees which has increased in accordance with CPI over time.

The current fee for the 2016/17 financial year so far has not been paid.

Legal / Resource / Financial Implications

Encroachment

While ever the encroachment remains on the reserve, it is essential that lawful tenure be in place for the structure.

If the Reserve Trust resolves to allow the structure to remain, the options available are to offer a 12 month temporary licence, a three year licence or a further five year licence agreement. As Mrs Trotter has only requested a 12 month term, this would be the preferred option.

There are no significant resource implications in relation to any additional tenure term, as the tenure document is able to be prepared by staff and accommodated in existing budgets.

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement

If the Trust resolves not to allow the encroachment to remain, there is a risk that Mrs Trotter will not have the funds available to remove it. This may then require compliance action, the costs of which will need to be met by the Reserve Trust, with reimbursement pursued from Mrs Trotter.

A further risk to the Reserve Trust is if the structure is allowed to remain, and Mrs Trotter leaves the site without removing the structure. In this circumstance costs associated with removal may fall to the Trust without any way to recoup the costs.

Should the Trust resolve to allow the structure to remain, a way to avoid this would be to request Mrs Trotter to pay a security bond to cover the estimated costs of removal in the event it was required.

It is acknowledged Mrs Trotter may not be able to meet such a cost.

Licence Fees

The licence fee is currently \$1,037.52 and any reduction would not pose a significant financial burden on the Trust. However, the Trust will need to consider if it is appropriate to allow the use of part of a public reserve for a private purpose at a reduced or peppercorn fee.

A reduction in the applicable licence fee is not recommended on the basis that it is difficult for the Trust to be an arbiter in relation to health matters as they relate to financial hardship, and the conditions associated with the retention of the verandah within the reserve are well established.

To assist Mrs Trotter in meeting the licence fees, a payment plan based approach could be applied if the Trust considers this appropriate.

Consultation

Staff have met with Mrs Trotter, and consulted with relevant Crown Lands staff. Consideration has also been given to the planned implementation of Council's Shaws Bay Precinct upgrades.

Options

1. Allow the verandah encroachment to remain on the reserve for a further period.

If this option is preferred, the following matters will need to be considered:

- i. Length of any new tenure agreement. Mrs Trotter has requested a further 12 months extension to her current tenure.
- ii. Security for the removal of the structure in the future. A quote would need to be obtained to provide a cost estimate for removal, however it is anticipated the costs could range between \$5,000 and \$10,000.
- iii. Appropriate licence fees. The options include charging rental consistent with the previous ten years, providing a rebated rental to

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement

statutory minimum rental, or rebating the rental to peppercorn rental.

2. Not allow the verandah encroachment to remain.

As the encroachment does not currently impact significantly on the overall amenity of the Reserve, it does not impede the proposed embellishment works in the Reserve in the short term and considering Mrs Trotter's circumstances, there does not appear to be a substantial negative impact by allowing the verandah encroachment to remain for a further set period.

The recommended approach is to allow the structure to remain for a further 12 months, with application of the licence fee in line with previous years (being \$1,037.52 plus CPI).

Given the financial impact in the circumstances associated with providing security for costs for the removal of the structure, it is considered reasonable that the Trust does not seek a bond or the like for removal of the structure at the cessation of the licence at this time.

However, it is recommended that the Trust formally advises the proprietor of the Ballina Lakeside Holiday Park of the encroachment, the limited licence term and the expectation that should the ownership of the dwelling change, the verandah located within the Crown Reserve is to be removed.

RECOMMENDATIONS

1. That the Trust allows the verandah encroachment to remain for a further period of 12 months through the issue of a temporary licence under the same terms and conditions as the existing licence agreement.
2. That the Trust notifies the proprietor of the Ballina Lakeside Holiday Park of the requirement for removal of the verandah encroachment in the event that ownership of the dwelling changes.

Attachment(s)

1. Site Plan - Verandah and Dwelling
2. Request for Continuation of Licence - Site 58 Ballina Lakeside Holiday Park - 35 Fenwick Drive East Ballina - (Florence) Jill Trotter

4.1 Shaws Bay Reserve Trust (R88004) - Extension of Licence Agreement



Site 58 Ballina Lakeside Ho/PK
35 Fenwick Dr. EAST BULLINA
19/12/16

Attention: Amy Cahill

Dear Amy,

I am writing to advise that I am hoping to continue the lease arrangement up to and beyond June 2017.

However due to ill health and ongoing Radiotherapy I find that my expenses on the Aged Pension are being stretched to the limits.

Would it be possible to pay a minimum rate for the next 12 months to extend the lease on that portion of my verandah so that I may enjoy it whilst I am here before I go into a Permanent Care Facility.

Yours Sincerely
(Florence) Jill Trotter

JTrotter

