



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 27 September 2018 commencing at 12.00 noon.**

Business

1. Acknowledgement of Country
2. Apologies
3. Declarations of Interest
4. Confirmation of Minutes
5. Deputations
6. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal flourish extending from the end of the signature.

Paul Hickey
General Manager

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1. Acknowledgement of Country
 2. Apologies
 3. Declarations of Interest
 4. Confirmation of Minutes
 5. Deputations
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1. Acknowledgement of Country

In opening the meeting the Mayor provided an Acknowledgement of Country.

2. Apologies

3. Declarations of Interest

4. Confirmation of Minutes

A copy of the Minutes of the Reserve Trust Manager Meeting held on Thursday 23 August 2018 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Reserve Trust Manager Meeting held on Thursday 23 August 2018.

5. Deputations

6.1 Use of Council Seal

6. Committee Reports

6.1 Use of Council Seal

Delivery Program Community Facilities

Objective To obtain Council and Reserve Trust approval to apply the Council seal.

RECOMMENDATION

That Council, as Crown Land Manager for the Ballina Coastal Reserve Trust (R1010068), affix the Common Seal to the following documents:

1. 12 month short-term Licence between Ballina Coastal Reserve Trust (R1010068) and Marine Rescue New South Wales for part Lot 7025 in DP 1064241 at a statutory minimum rental, commencing 1 July 2018 to 30 June 2019.
2. 12 month short-term Licence between Ballina Coastal Reserve Trust (R1010068) and Surf Life Saving Far North Coast Branch Incorporated for part Lot 402 in DP 755684 at a statutory minimum rental, commencing 1 July 2018 to 30 June 2019.

Explanation:

The NSW State Government has provided a 12 month transition period for councils managing Crown reserves under the Crown Land Management Act 2016, which commenced on 1 July 2018. Under the new framework, Council as Crown Land Manager can issue a short-term licence under s 2.20 of the Act for a maximum period of 12 months.

This approach is proposed as Council is not able to issue a lease at present due to the transitional arrangements associated with the Crown Land Management Act.

It is anticipated, that either before or on expiration of the temporary licence Council will be in a position to formalise a lease as previously resolved after satisfying legislative requirements.

The two buildings are the Marine Rescue Tower and the Shelly Beach Surf Club building.

Attachment(s)

Nil

6.2 Ballina Ocean Pool

6.2 Ballina Ocean Pool

Delivery Program Open Spaces and Reserves

Objective To seek direction from the Trust on the approach to involvement in the Ballina Ocean Pool project.

Background

In August 2018, the Ballina Ocean Pool Committee provided Council with draft engineering and ecological reports as well as a community and business impacts study relating to the Ballina Ocean Pool project. The Committee has indicated to Council that it is seeking to progress to the lodgement of an application with Council to seek the necessary planning approval for the project.

The Ocean Pool is proposed on a site at Shelly Beach generally in the location shown in Figure 1. It should be noted, however, that the final location for the proposed ocean pool is yet to be confirmed.

The area proposed for the ocean pool is located on Crown Land, including land within the Ballina Coastal Reserve. The Ballina Coastal Reserve is managed by Council as the Ballina Coastal Reserve Trust.

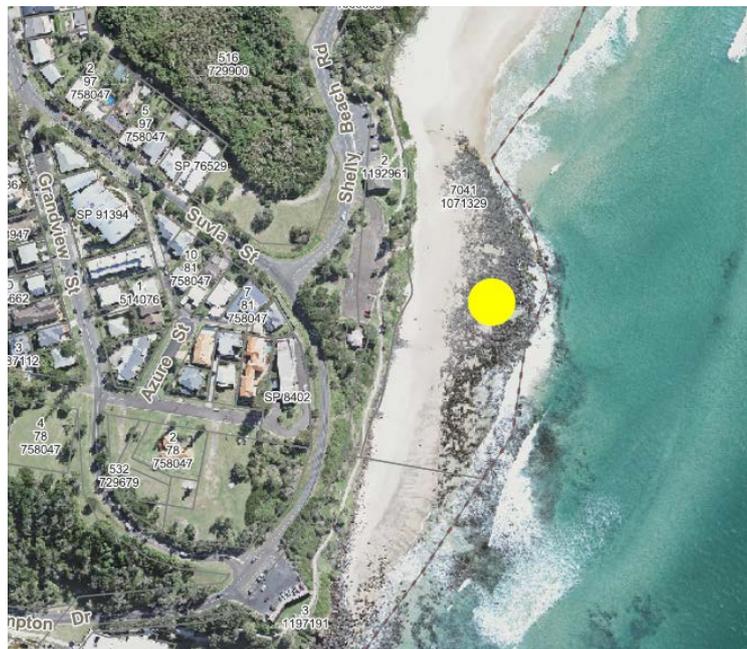


Figure 1: General location for proposed Ballina Ocean Pool at Shelly Beach Ballina (indicated by yellow dot)

The Reserve Trust last considered the Ballina Ocean Pool project in November 2015 where the Trust resolved as follows [Minute No. RT111115/3]:

That Council, acting as the Ballina Coastal Reserve (R1010068) Trust, resolves that the Ballina Ocean Pool Committee Inc is established as a Committee of Council, with the terms of reference for the Committee as follows:

6.2 Ballina Ocean Pool

Terms of Reference – To oversee and implement the actions necessary to allow a planning application to be lodged with Council for the establishment of an ocean pool at Shelly Beach, Ballina. The Committee is to be set up on the basis that the ocean pool will be constructed through funding sources other than Council, and the pool is to be designed to ensure that nil, or minimal maintenance, is required for the facility on an on-going basis.

The Ballina Ocean Pool Committee was subsequently formed as a Committee of Council under Section 355 of the *Local Government Act 1993*.

In April 2017, the Council accepted grant funding in the amount of \$50,000 for the project offered by the NSW State Government [Minute No. 270417/30]. This money is being held by Council, with the Ocean Pool Committee being able to draw on the funds to complete investigations and reporting. Council has not allocated any of its own funds to the project to date.

It is understood that the Committee has been advancing the reporting being undertaken based on the availability of this grant funding. However, a full acquittal of the funds is yet to be received by Council to confirm the expenditure to date.

As can be seen from the above, the Ocean Pool project has involved both Council and Council as Trust Manager for the Crown Land on which the project is proposed.

Since the last time the Reserve Trust considered the project, the *Crown Land Management Act 2016* has commenced operation (as at 1 July 2018). Given this, it is considered prudent for Council as Reserve Trust Manager to consider the status of the project under the terms of the new Act.

The purpose of this report is to provide the Trust with an overview of the status of the project and seek direction on the further involvement of the Trust in the project.

Key Issues

- Extent of Reserve Trust involvement in the Ballina Ocean Pool project
- Crown Land management requirements
- Address of Native Title considerations

Information

Given that the area proposed for the location of the Ocean Pool is within the Ballina Coastal Reserve (wholly or at least in part), the Trust needs to give consideration to whether it is in agreement with the lodgment of an application for planning approval. That is, a clear decision is required as to whether the Trust endorses lodgment of a planning application as the Crown Land Manager.

The Trust (and Council) also needs to give consideration to the extent to which staff resources should be applied to the Ocean Pool project. For example, progression to an application for planning approval will require that staff liaise with the Department of Industry – Crown Lands to determine the Department's requirements and obtain appropriate Crown consent for an application.

Staff will also need to liaise with the Ocean Pool Committee in relation to technical documentation and Crown Land management processes, and to confirm the final planned location for the pool (including confirmation of the applicable land management arrangements).

It may also be necessary for staff to engage with other Government agencies or Members of Parliament to address technical and procedural issues associated with the management of the Crown Land.

In particular, it would be beneficial for staff to engage with the Ocean Pool Committee in advance of the lodgement of a planning application to ensure that the documentation prepared and ultimately submitted suitably addresses the applicable planning requirements. That is, technical issues should be resolved in advance of the development assessment process as far as possible.

Further, the Trust and Council are required to consider Native Title implications associated the Ocean Pool project. This responsibility rests with directly with Council and the Trust under the *Crown Land Management Act*. To properly address this matter, it is recommended that the Trust and Council obtain legal advice to assist in the assessment of Native Title implications. It is also recommended that such advice is sought before the project progresses to a planning application as Native Title has the potential to significantly impact on the nature and scope of the project.

It is estimated that the initial cost of legal advice in relation to Native Title will be in the order of \$10,000 to \$15,000. It should also be recognised that this cost could significantly increase depending on the nature of the issues arising once Native Title is examined more closely.

It is suggested that the Ocean Pool Committee be asked to meet this cost through the State Government grant funds that are currently being held by Council for the project (assuming sufficient funding remains once the costs for the studies undertaken by the Committee to date are met).

In summary, if the Trust wishes to endorse further progression of the Ballina Ocean Pool project (in line with its earlier decision on the matter), then it is important to recognise that this will require the application of additional staff resources and that there are potentially funding implications as the project advances.

Legal / Resource / Financial Implications

The Trust and Council have been engaged in the Ocean Pool project on the basis of a minimal allocation of staff resources and no direct project funding.

Council's responsibilities as Trust Manager for the Ballina Coastal Reserve require certain matters to be considered when the Trust endorses a project on the land. This inevitably has resourcing implications for Council.

At present, if the Trust continues to support the project, it is expected that this will require increased staff time dedicated to the project.

6.2 Ballina Ocean Pool

As indicated it is also expected that initial legal advice will incur a cost of \$10,000 to \$15,000 and this may increase depending on the outcomes of the initial advice.

It should be recognised that the available grant funding presently is \$50,000 with a portion of this already having been spent (although Council is yet to receive confirmation of expenditure to date from the Ballina Ocean Pool Committee despite the Committee having been asked for this on several occasions).

Consultation

The Trust has not undertaken any direct community engagement with respect to the project.

However, the Ocean Pool Committee has undertaken a survey and prepared an associated report.

Council also examined the ocean pool concept as part of the Ballina Major Regional Centre Strategy. The strategy includes action A1.2 to facilitate the construction of an ocean pool at a convenient, cost effective and achievable location.

This action is identified in the strategy as a facilitate and advocate action rather than a direct delivery of infrastructure.

Options

It is open to the Trust to support the Ballina Ocean Pool proposal, to withdraw support or to defer a decision on the matter.

Given the Trust's previous decision to support the formation of the Ballina Ocean Pool Committee and hence advance the project, and the applicable action in the Ballina Major Regional Centre Strategy, affirmation of the Trust's support for the project is the recommended approach.

This will have the effect of providing the Trust's agreement for the lodgement of an application that seeks planning approval and for other staff activities associated with Council's Crown Land management responsibilities.

However, it is important to recognise that continued support for the project will result in the need for Council to commit additional staff resources to address the project relative to the *Crown Land Management Act*.

This includes the need to address Native Title.

In relation to Native Title, it is recommended that the Trust seeks legal advice to assist the Trust and Council in addressing this issue with the initial cost to be met from grant funding available for the Ocean Pool project (assuming the Ballina Ocean Pool Committee is in agreement with this approach and sufficient funds remain available).

Alternatively, the Trust could withdraw its support for the project.

6.2 Ballina Ocean Pool

As Council is the Crown Land Manager, this would likely make advancing the project further very difficult. Without the Trust's agreement, the project would be reliant on the Department of Industry – Crown Lands becoming more directly involved. This approach is not recommended.

Deferral of the matter is not recommended unless the Trust would like additional information before making its decision.

RECOMMENDATIONS

1. That the Ballina Coastal Reserve Trust endorses the lodgement of an application to seek the necessary planning approval for the Ballina Ocean Pool project at Shelly Beach, Ballina, subject to the application being inclusive of appropriate planning and technical assessments.
2. That the Ballina Coastal Reserve Trust endorses the application of staff resources to address the applicable requirements of the *Crown Land Management Act 2016* in relation to the Ballina Ocean Pool project.
3. That the Trust obtains legal advice addressing Native Title in relation to the Ballina Ocean Pool proposal before an application for planning approval is lodged with Ballina Shire Council.
4. That the cost for the Native Title legal advice be met from grant funding provided by the NSW Government for the Ballina Ocean Pool project. If the available funding is not sufficient to meet the cost of the advice or the Ballina Ocean Pool Committee objects to this approach, the matter is to be reported back to the Trust for further consideration.

Attachment(s)

Nil

