



## 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 26 April 2018 commencing at 12 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 line underneath.

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**

An apology has been received from Cr Sharon Parry.

**3. Declarations of Interest**

**4. Confirmation of Minutes**

A copy of the Minutes of the Reserve Trust Manager Meeting held on Thursday 22 March 2018 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Reserve Trust Manager Meeting held on Thursday 22 March 2018.

**5. Deputations**

**6.1 Use of Council Seal**

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**6. Committee Reports**

**6.1 Use of Council Seal**

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**RECOMMENDATION**

That Council, as Reserve Trust Manager for the Kingsford Smith Reserve (R82164), affix the Common Seal to the following document:

Three year lease between the Kingsford Smith Reserve Trust (R82164) and the Ballina Seagulls Rugby League Club (or other incorporated entity as directed by the Club) for lot 153 DP 1098090 (Owen/Bentinck Street, Ballina), at statutory minimum rental, commencing 1 March 2017 for a 3 year period, subject to the lease including a schedule of repair works to be carried out on the building.

Explanation:

Ballina Shire Council resolved at its January 2017 meeting to resume management of the lease for this premises (IC/10554) subject to clarification of the overall condition of the building and other matters.

Council staff on behalf of the Reserve Trust has been working with the Club to formalise building repairs and maintenance, implement inspection and maintenance programs, and pursue grant funding opportunities.

Accordingly, staff are of the view that the facility is able to be leased to the Club, subject to a special condition regarding the ongoing maintenance and repairs works being undertaken.

**Attachment(s)**

Nil

## 6.2 Crown Land Lease - Good Hydration Pty Ltd

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### 6.2 Crown Land Lease - Good Hydration Pty Ltd

**Delivery Program** Commercial Services

**Objective** To seek directions regarding the Crown Land Lease for Good Hydration Pty Ltd (Ballina Waterslide)

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#### **Background**

Ballina Shire Council is the Reserve Trust Manager for the Ballina Regatta Park Reserve Trust.

Good Hydration Pty Ltd has a lease with the Ballina Regatta Park Reserve Trust for Lot 2 DP 1051004, River Street Ballina that is due to expire on 31 May 2018.

Council resolved at its Ordinary Meeting of 14 December 2017 to extend the Ballina Pool Management Contract with Good Hydration Pty Ltd until the end of the 2019/20 swimming season. As the lease will expire before the management contract, it is proposed to obtain Minister of Crown Lands consent to enact holdover provisions in the Lease.

#### **Key Issues**

- Lease expiration

#### **Information**

The Ballina Regatta Park Reserve Trust has a lease with Good Hydration Pty Ltd for Lot 2 DP 1051004, River Street Ballina.

This is the site of the Ballina Waterslide.

The current lease with Good Hydration Pty Ltd is due to expire 31 May 2018 with no option. Council has agreed to extend the pool management contract with Good Hydration Pty Ltd for another two swimming seasons until the end of the 2019/20 swimming season.

Due to the anticipated commencement of the new Crown Lands Management Act, Council has been advised by the Crown that they do not feel it is appropriate to commence lease negotiations with the current Lessee at this time, as once the Act is in place tenure arrangements will change.

Essentially, the commencement of the new Act will enable Council to manage Crown Land under the provisions of the *Local Government Act 1993*.

In the circumstances, it is proposed to enact the holdover provisions in the Lease and allow the Lessee to hold a month to month tenancy.

These provisions must be approved by the Lessor (Ballina Regatta Park Reserve Trust) and the Minister.

**Legal / Resource / Financial Implications**

For the Lessee to remain in occupation of the premises on holdover provisions, the consent of the Lessor and the Minister is required.

The conditions of the holdover provisions will allow the Lessee to hold a month to month tenancy and continue to pay a monthly rental equivalent to one twelfth of the annual rent payable at the time of expiration of this current lease.

Either the Lessee or Lessor can issue one month's notice to terminate the arrangement.

**Consultation**

Council staff have been in discussions with Good Hydration Pty Ltd.

**Options**

1. Provide approval from the Ballina Regatta Park Reserve Trust for the enactment of Clause 25 of Registered Lease AM585871W to Good Hydration Pty Ltd until the end of the 2019/20 swimming season in line with the Ballina Pool management Contract. This option is recommended for the sake of consistency as Council has agreed to extend the Ballina Pool Management Contract with Good Hydration Pty Ltd until the end of the 2019/20 swimming season.
2. Not approve the extension. This option is not recommended for the reason outlined in option one.

**RECOMMENDATION**

That Council, as the Ballina Regatta Park Reserve Trust, provides approval for the enactment of Clause 25 of Registered Lease AM585871W to Good Hydration Pty Ltd until the end of the 2019/20 swimming season in line with the Ballina Pool Management Contract.

**Attachment(s)**

Nil

### 6.3 Lighthouse Parade, East Ballina - Easement

### 6.3 Lighthouse Parade, East Ballina - Easement

**Delivery Program** Asset Management

**Objective** To seek direction from the Reserve Trust regarding the proposal to grant an easement for street lighting on Lighthouse Parade, East Ballina

#### Background

Recent community infrastructure and improvement projects have resulted in increased public use of the Lighthouse Beach and Shaws Bay area. This has identified the need for public lighting to be installed adjacent to the walkway along Lighthouse Parade between the Surf Club and the Marine Rescue Tower. Figure 1 shows the land between the Surf Club and Marine Rescue Tower.



Figure 1 – Lighthouse Parade between Ballina Surf Club and Marine Rescue Tower

### **6.3 Lighthouse Parade, East Ballina - Easement**

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The Ballina Surf Club was constructed in 2013 and provided an additional 76 car parking spaces and enhanced access to Lighthouse Beach.

The Marine Rescue Tower was constructed in 2017 and provided an additional 30 new car parking spaces, the provision of enhanced access to North Wall and improved access to the public reserve on the eastern side of Shaw Bay.

There are currently embellishment and water quality improvement works being undertaken in the Shaws Bay public reserve area.

All these works attract additional visitors to enjoy the public reserve and recreation at Lighthouse Beach, Shaws Bay and surrounds. The shared path along Lighthouse Parade is very well used and street lighting will provide enhanced amenity and safety for users.

#### **Key Issues**

- To allow electricity to be provided for this public safety street lighting project, an easement is required to be granted to Essential Energy.

#### **Information**

The creation of an easement is necessary as Lighthouse Parade is constructed within a public reserve and not located within a dedicated public road. Essential Energy require the consent of the Reserve Trust for this to proceed.

Consultation has occurred with Department of Industry Crown Lands staff who have advised that as the easement and installation of electricity is being provided only to service the public (i.e. not residential or commercial gains are being provided), the Trust is able grant the easement on behalf of The State of NSW under the provisions of s102 Crown Lands Act 1989 without need for acquisition compensation.

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

Usually, where an easement is granted, the entity receiving the benefit of the easement is required to pay compensation. However, as this easement will only provide public benefit, no compensation is required to be paid.

There are additional steps in notifying the proposed easement and installation of public infrastructure in relation to Native Title considerations; however it is anticipated that this notification will not impact the proposal.

This project is in the current delivery program with funding in the 2017/18 and 2018/19 budgets.

#### **Consultation**

Statutory notification will occur if the Reserve Trust resolves to proceed with the project.



### **6.3 Lighthouse Parade, East Ballina - Easement**

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#### **Options**

1. Authorise the granting of the easement to allow installation of public safety street lighting along Lighthouse Parade. Based on the information contained in this report, this is the recommended option.
2. Do not authorise the granting of the easement along Lighthouse Parade.

#### **RECOMMENDATIONS**

1. That Council, as the Ballina Coastal Reserve Trust (R1010068) authorises the granting of the easement to Essential Energy to allow installation of public safety street lighting along Lighthouse Parade.
2. The Council seal is authorised to be applied to any documents required to give effect to this resolution.

#### **Attachment(s)**

Nil

## 6.4 Markets on Public Land - Produce Stall Missingham Park

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### 6.4 Markets on Public Land - Produce Stall Missingham Park

**Delivery Program** Strategic Planning

**Objective** To update the Reserve Trust on progress of the market mediation process and seek direction on the continued operation of a single produce stall adjacent to Missingham Park car park.

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#### **Background**

In February 2017 Council, in its capacity as Reserve Trust Manager for Commemoration Park and Missingham Park, considered the operation of markets within these reserves.

The Trust's considerations included licensing arrangements for the Ballina Farmers Market and a single market (or produce stall) operated by A & J Smith. The Trust resolved at the time to issue licences permitting both operators to trade as follows (Minute No. RT230217/2):

1. *That the Trust authorises the General Manager to negotiate with Mr Burless regarding the operation of the Ballina Farmers Market on Commemoration Park for a period of three years, consistent with the sentiments expressed in this report.*
2. *That a temporary licence be granted to Mr and Mrs Smith to operate a single market stall on Saturday mornings at the refurbished Missingham Park carpark site for a period of twelve months.*
3. *That no market activities or stalls, aside from those authorised under points 1 and 2 and where food or produce is to be sold as part of an approved event or festival, be authorised in the Missingham Park and Commemoration Park locality for a period of three years or the Ballina Farmers Market ceases to operate on the land.*
4. *Once negotiations are complete, that Council authorises the Council seal to be attached to the licences.*

This resolution specified that the Smiths were to be provided a temporary market licence for 12 months. Following this period no other market activities or stalls (aside from those where food or produce is to be sold as part of an approved event or festival) would be able to operate in the Missingham Park and Commemoration Park reserves for a period of three years or until the Ballina Farmers Market ceases to operate on the land.

The issue of a 12 month licence for the Smith's produce stall was considered to be a transitional arrangement that would allow the Smiths to find another outlet for their produce.

Prior to the expiry of this 12 month licence Council received a market application in December 2017 from the Smiths to operate their produce stall for a further 12 months. The proposal involved the continued operation of the produce stall (sale of fruit and vegetables) at the Missingham Park car park site between 5.30 am and 11.30 am on Saturdays.

On 22 February 2018 the Reserve Trust considered the market application involving the operation of the single market or produce stall by A & J Smith.

## 6.4 Markets on Public Land - Produce Stall Missingham Park

The Trust resolved as follows (Minute No. RT220218/3):

1. That the Trust contact the Ballina Farmers Market Manager and express support for welcoming an application by A & J Smith to rejoin the Ballina Farmers Market on Sunday based on their current mode of operation.
2. That until such time as A and J Smith rejoin the Ballina Farmers Market that they are allowed to continue to trade on Saturday in their current location, for a maximum period of three months.
3. That the Trust mediate to ensure that point one above occurs.

In response to the above a temporary licence for the operation of a single produce stall has been issued to A & J Smith.

The location of the land the subject of the above outlined considerations is shown in Figure 1.



**Figure 1: Site Locality Plan - Commemoration Park and Missingham Park Car Park Ballina**

Council staff have taken steps to action the Trust's resolution. However, this has not resulted in agreement between the parties.

This report seeks to provide an update to Council on the process undertaken by staff and seek further direction from the Trust in relation to this matter.

The report is being presented prior to the expiry of the three month period referenced in the Trust's recent resolution to enable suitable advance notice of the Trust's position to be given to the Smiths

### Key Issues

- Framework for market operation
- Use of public land
- Economic development opportunities

### Information

By way of context, the Ballina Farmers Market is a private business. The Trust has enabled a private business (being the Ballina Farmers Market) to operate on public land (Commemoration Park) for a fee. This is akin to the use of public land by other commercial entities such as eco-tourism operators or fitness trainers. As such, it is important to recognise that the Ballina Farmers Market is not operated on behalf of Council.

With respect to the Trust's February 2018 resolution, the following section provides an update on parts 1 and 3 of the resolution. Item 2 of the resolution is addressed subsequently.

#### *Items 1 and 3 of the Reserve Trust Resolution*

Items 1 and 3 of the Trust's February 2018 resolution are as follows:

- 1. That the Trust contact the Ballina Farmers Market Manager and express support for welcoming an application by A & J Smith to rejoin the Ballina Farmers Market on Sunday based on their current mode of operation [and]*
- 3. That the Trust mediate to ensure that point one above occurs.*

In response to the above, staff informed both the Smiths and the Ballina Farmers Market of the Trust's resolution. Both parties were invited to attend a meeting facilitated by staff or an independent facilitator. It was anticipated that this meeting would outline the process for a market stall application to be made by the Smiths to operate at the Ballina Farmers Market and the conditions for stall operation.

This invitation was declined by the Ballina Farmers Market licensee who indicated that the Smiths are welcome to apply for a market stall at the Ballina Farmers Market at any time through the normal application process.

Due to previous grievances that had been raised by the Smiths in regard to dealing with the Ballina Farmers Market licensee directly, an alternative contact was provided to the Smiths to undertake the stall application process.

Staff have met with representatives from the Ballina Farmers Market who indicated that the Smiths have contacted Ballina Farmers Market and been provided with the stall application form/s. It is understood that at the time of writing this report (16 April 2018) that a stall application from the Smiths has not yet been received by the Ballina Farmers Market.

As the Smith's market licence expires on 26 May 2018, it could eventuate that the Smith's stall application has not been received or finalised by the Ballina Farmers Market by this date.

In processing the stall application it may be determined by the Ballina Farmers Market that the Smith's market stall is unable to operate under their current mode of operation at the Ballina Farmers Market (as requested in part 1 of the resolution).

Direction is sought from the Trust about the preferred course of action having regard for this potential circumstance (see the discussion of item 2 of the Trust resolution below).

## 6.4 Markets on Public Land - Produce Stall Missingham Park

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The Ballina Farmers Market is considered a business run by an external operator to which the Reserve Trust has provided a licence for the occupation of Crown Land for an activity conducted in accordance with Council's Markets on Public Land Policy and Guidelines.

Once the Reserve Trust grants a licence for a community or business purpose, and particularly where that use is also regulated by legislation and Council policy, the Reserve Trust is providing legal authorisation for the use of public land for the licensee to undertake their activity. This arrangement is a contractual arrangement, and providing the licensee complies with the legislation and the policies, the Reserve Trust is not able to impose additional requirements or conditions relating to the licensee's business.

Matters relating to the Ballina Farmers Market stall holder application process, the type of produce sold by market stalls, or the selection of individual stallholders are considered to be part of the licensee's market business model and not ones that are subject to direction by the Reserve Trust (aside from being within broad parameters set by the Trust in issuing the licence).

It is considered to be beyond the powers of the Reserve Trust (under the terms of the licence) to require further mediation/negotiation between the Smiths (or any other stallholder) and the Ballina Farmers Market entity where there is otherwise no breach of the licence conditions identified.

The operation of the Smiths stall at the Ballina Farmers Market is ultimately a matter for two private businesses to resolve, noting that the Trust has now sought on several occasions to encourage resolution of the points of difference between the parties.

### *Item 2 of the Reserve Trust Resolution*

Part 2 of the Trust's resolution states "*that until such time as A and J Smith rejoin the Ballina Farmers Market that they are allowed to continue to trade on Saturday in their current location, for a maximum period of three months*".

A and J Smith have previously requested, in a market application to Council, a further 12 months to operate a single market stall adjacent to the Missingham Park carpark. After consideration of this matter by the Trust in February 2018, a three month licence was provided to accommodate part 2 of the resolution. This licence is soon to expire and as such direction is sought from the Trust regarding the extension of this licence.

As stated in previous reports to the Trust, issuing an additional licence for a single farm produce stall in the same vicinity as the Ballina Farmers Market is likely to cause a number of social and economic issues. These include:

- The potential for such an approach to ultimately undermine the establishment of a long term farmers market in Ballina if there is a precedent set that allows other traders to set up market stalls on weekends in the vicinity of Commemoration Park.
- The missed opportunity for Council to consolidate and grow farmer's market activity in the Missingham Park and Commemoration Park vicinity that Council has been working to achieve for at least the last 10 years. (Invitations for registrations of interest for a market operator to manage the original Missingham Farmers Market were originally advertised in 2007 and 2008).

## **6.4 Markets on Public Land - Produce Stall Missingham Park**

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- The Ballina Farmers Market licensee and associated stallholders lack of confidence in the long term viability of the Ballina Farmers Market due to Council's direct involvement in market management matters.
- Potential customer confusion resulting from two farmer's market activities occurring in the same vicinity, further exacerbated by the promotion that each market conducts.
- Loss of income for stallholders (both for the Smith's produce stall and those stallholders associated with the Ballina Farmers Market) due to a split in potential customer base.

Given the time that has been allowed for the Smiths to find an alternative outlet for their produce (15 months) and the social and economic considerations outlined above, it is recommended that the Trust does not grant a further licence to the Smiths for the operation of their produce stall at Missingham Park.

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

From a legal perspective, it is open to Council as Trust Manager to support or decline the market application.

With respect to finances, the current fee paid by the Smiths of \$320 per quarter for the use of the Missingham Park site would no longer be received if the stall no longer operates. Alternatively site fees currently paid by the Ballina Farmers Market for the use of public land could be lost if the licensee decided the current location of the Ballina Farmers Market market is no longer viable.

If the Trust chooses to enable the continued operation of the produce stall, it will require the preparation of a licence. This work can be accommodated within existing resources.

### **Consultation**

No community consultation has been undertaken in relation to this matter. This is on the basis that the Ballina Farmers Market operates in accordance with Council's Markets of Public Land Policy (which has been subject to public exhibition) and the situation essentially involves the commercial arrangements of two private businesses under the terms of the policy.

### **Options**

1. Provide a licence to the Smiths to operate their produce stall at Missingham Park.

The market application form submitted to Council by the Smiths in December 2017 was for a 12 month period to operate from Missingham Park. The Trust resolved in February 2018 to provide a three month licence to the Smiths.

It is open to the Trust to issue a further licence for a period of up to nine additional months to forefill the period originally requested.

## **6.4 Markets on Public Land - Produce Stall Missingham Park**

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This option is not recommended as issuing a further licence to the Smiths creates a situation where there is uncertainty and confusion about market activity in the Missingham Park and Commemoration Park locality. It is also counter to the Trust's original position on this matter as resolved in February 2017.

In the event that the Trust wishes to grant a licence, this can be done under prior licence terms in a manner consistent with Council's Markets on Public Land Policy. No significant physical constraints have been identified as a basis for declining the issue of a licence.

2. Do not issue a new licence to the Smiths to operate their produce stall at Missingham Park.

This option is recommended as it supports the consolidation of a growing, diverse and externally managed farmers market operation that has been difficult to achieve in the shire in the past.

The effect of this approach would be that the Smiths will be able to trade from the Missingham car park site until the expiry of their current three month licence on 26 May 2018.

3. Defer the matter.

The Trust may defer consideration of the matter to seek additional information. Such information could be obtained through a briefing or via a further report.

Given the historical circumstances associated with this matter and the previous decision of the Trust, deferral is not recommended.

### **RECOMMENDATION**

That the Trust declines the grant of a new licence to A & J Smith for the operation of a single produce stall at Missingham Park.

### **Attachment(s)**

Nil