



Notice of Commercial Services Committee Meeting

A Commercial Services Committee Meeting will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **Wednesday 15 May 2019 commencing at 4.00 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 stroke underneath.

Paul Hickey
General Manager

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

An apology has been received from Cr Jeff Johnson.

2. Declarations of Interest

3. Deputations

4.1 Lennox Head Community Sports Club - King Street Lease

4. Committee Reports

4.1 Lennox Head Community Sports Club - King Street Lease

Delivery Program Commercial Services

Objective To determine if Council wishes to proceed with the King Street Lease for the Lennox Head Community Sports Club.

Background

Council considered a report on the proposed lease of part of the King Street, Lennox Head road reserve to the Lennox Head Community Sports Club (Club Lennox), at the 11 March 2019 Commercial Services Committee meeting.

The recommendation from that meeting, as resolved at the March 2019 Ordinary Council meeting, was as follows:

1. *“That Council authorizes the General Manager to finalise negotiations with Lennox Head Community Sports and Recreation Club Limited for a lease over a portion of the King Street road reserve consistent with the remaining lease term over 10 Stewart Street.*
2. *That Council applies a discount of 50.00% to the market rentals assessed for 10 Stewart Street and the portion of the King Street road reserve.*
3. *That Council authorizes the Council seal to be attached to the documents outlined above.”*

This report provides feedback following the exhibition period.

Key Issues

- Leasing of road reserve
- Community concerns
- Leasing matters and planning matters

Information

The operators of the Lennox Head Community Sports Club have held a lease over a portion of the King Street road reserve for a number of years.

The lease area extends over the northern part of the bowling greens and the associated curtilage of the greens (refer to Attachments 1 and 2).

The balance of the building and bowling greens is on Council owned community land.

The existing King Street lease expired in December 2018 and Club Lennox sought a new lease.

4.1 Lennox Head Community Sports Club - King Street Lease

Council resolved to offer a lease in line with the lease held for the Stewart Street land, being a five year lease.

As the King Street lease relates to a road reserve, a public notification process was undertaken as required by the NSW Roads Act 1993

During the exhibition period, due to the signage placed by Council on the property, the area leased was unclear and it appeared that the area included the car parking in King Street.

As per Attachments 1 and 2 this is not the case.

The King Street car parks are public car parks, albeit that a previous operator of the Sports Club was required to pay for the formalization of that parking based on earlier planning consents.

During the public notification process Council received several enquiries and written submissions about various aspects of the operations of the property.

Twelve objections were received from five residents in the locality (as per Attachment 3) and three letters of support (as per Attachment 4).

Matters raised in the objections included excess noise, patron behavior, activities outside of the building (such as the presence of food trucks and outside seating), development activity, car parking in King Street and the lease of public land in King Street.

Council provided a response to the submitters as per Attachment 5. The response provides information addressing the key issues raised by those who have raised concerns about how the club is operating.

With respect to the concerns, Council staff met with representatives of Club Lennox and requested information on current and future planned activities.

Council is now awaiting information in this regard, although it is suffice to say that the management has been undertaking an increased level of activities to assist with ensuring the financial sustainability of the club.

Section 156 of the Roads Act 1993 states as follows:

- 1. After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.*
- 2. If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.*

Club Lennox hold a lease with Council over Lot 1 DP 11905, 10 Stewart Street, Lennox Head (the building). This lease is due to expire 31 December 2024.

The proposed lease for the road reserve is over the northern part of the bowling greens and any restrictions placed on the lease need to take into consideration its current usage.

4.1 Lennox Head Community Sports Club - King Street Lease

The preference is to ensure that the King Street lease and the 10 Stewart Street lease both expire at the same time on 31 December 2024.

Legal / Resource / Financial Implications

The proposed lease area is part road reserve governed by the Roads Act.

Council has resolved to offer the lease at 50% of the market value as determined for Council by an external valuer. The same condition applies to the Stewart Street lease.

Consultation

Public exhibition of the proposed lease of part King Street Road Reserve was undertaken.

Council staff met with representatives of Club Lennox to discuss matters raised during the public exhibition process.

Options

The primary purpose of this report is to determine whether Council wishes to approve the King Street lease.

This is normally a relatively straight forward process and as per Attachments 1 and 2 to this report, as the bowling greens for the club are located on the road reserve, it is appropriate for Council to approve the renewal of that lease, otherwise Club Lennox will not be able to operate the greens.

The leased area does not include the public car parks and those parks remain available for the public and for customers of the club. Therefore the recommendation is to approve the renewal of the lease.

The real issued being raised in the submissions is how the club is now operating and the impact on neighbours.

The current King Street lease, along with the proposed new lease, state, in part, as follows:

Clause 6.01 – To use the premises only for the purpose of a bowling green, fencing, and lawn bowls related structures, and for no other purpose without the express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

Clause 6.02 – Not to carry on in part of the premises any annoying, noxious, offensive or illegal business, occupation or practice and the Lessee shall in the course of his permitted use keep noise, odours, vibration or otherwise to a minimum so as not to be an annoyance, nuisance, grievance, damage or to neighbouring area or people.

Clause 6.03 – Not to bring upon the premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use.

4.1 Lennox Head Community Sports Club - King Street Lease

As per these clauses there is a reasonably strong emphasis already in the lessee to minimise any adjoining impacts, albeit that that this only relates to the relatively small area of road reserve identified in the King Street road reserve.

The lease over the balance of the property, which expires 31 December 2024, has somewhat similar clauses as follows:

Clause 6.01 – To use the premises only for the purpose of a bowls and sports club and for no other purpose without the express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

Clause 6.02 – To conduct its activities in a reputable and proper manner and not to carry on in any part of the premises any annoying, noxious, offensive or illegal business, occupation or practice and the Lessee shall in the course of its permitted use keep noise, odours, vibration or otherwise to a minimum so as not to be an annoyance, nuisance, grievance, damage or to neighbouring area or people.

Clause 6.03 – Not to bring upon the premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use.

These clauses place the onus on the lessee to minimize any impact on the adjoining neighbours.

This also creates the difficulty for Council in trying to assess or determine what is reasonable.

Also, as per Attachment 5 to this report, patron behavior and outside activities, are typically a matter for Liquor and Gaming NSW.

Council staff, also as per Attachment 5, are following up with Club Lennox on the activities they have planned to ensure that appropriate planning consents are in place.

In respect to the recommendations for this report, for the King Street lease the options are to approve the renewed lease following the exhibition period, not approve the renewal, or to approve it with stricter lease conditions.

As the King Street lease is only for a relatively small portion of the entire property, and as it already includes conditions that place an emphasis on minimizing any impact on neighbours, the recommendation is to approve the renewal of the lease.

As to the concerns from the neighbours, the difficulty for Council is to ensure that there is the "right balance" between the club operating effectively and being financially sustainable, while at the same time minimising impacts on adjoining properties, particularly when Liquor and Gaming NSW has the main responsibility for regulating this use.

4.1 Lennox Head Community Sports Club - King Street Lease

It is understood that Club Lennox has already taken on feedback from the neighbours and is doing their best to minimize impacts, however some of the events being held are proving to be very popular and any well-attended activity will have traffic and parking impacts.

Council could very well flag that a future renewal of the Stewart Street lease may include conditions that only allow bowling on the outside greens or otherwise limit activities to avoid excess noise being generated from the club, although that lease does not expire until 31 December 2024 and such a restriction could be seen as being unreasonably restrictive.

In respect to a recommendation, the only realistic and reasonable option is to confirm that Council will continue to follow up all relevant planning matters to ensure that any activity at the club has planning approval and to work with Liquor and Gaming NSW to ensure that that agency also continues to monitor the operation of the club.

The level of compliance with the lease conditions by Club Lennox will be an important consideration for Council when the Stewart Street and King Street leases next expire, albeit that is not until 31 December 2024.

RECOMMENDATIONS

1. That Council authorises the General Manager to offer a new lease for the Lennox Head Community Sports Club for a portion of road reserve in King Street, Lennox Head, as per Attachments 1 and 2 to this report, with this lease to expire in line with the lease over 10 Stewart Street, Lennox Head (being the main clubhouse building site) on 31 December 2024.
2. That Council authorises the Council seal to be attached to all leasing documentation.
3. That in response to concerns raised by adjoining residents, Council confirms its commitment to:
 - a) ensuring that all appropriate planning consent conditions are in place for the operation of events at the Lennox Head Community Sports Club and
 - b) working with Liquor and Gaming NSW to monitor the operation of the Club and
 - c) monitoring the level of compliance by Club Lennox with the lease conditions and planning consent, with the level of compliance to form part of Council's evaluation for any future lease(s) renewal.

Attachment(s)

1. Club Lennox - Lease Plan
2. Club Lennox - Site Plan
3. Letters of objection - Club Lennox
4. Letters of support - Club Lennox
5. Letter to submitters

4.2 Policy (Review) - Mobile Vending on Public Land

4.2 Policy (Review) - Mobile Vending on Public Land

Delivery Program Strategic Planning

Objective To invite Council's further consideration of the Mobile Vending on Public Land Policy and Guidelines.

Background

Council resolved at the November 2017 Ordinary meeting resolved to adopt the Mobile Vending on Public Land Policy. The policy became operative on 1 February 2018.

The policy permits mobile food vending on public land such as roads and car parking areas and at specified locations (fixed sites) on public reserves or other specified locations.

Fixed sites are located in Missingham Park, Pop Denison Park and within The Coast Road road reserve adjoining the Sharpes Beach carpark.

With the experience of almost 12 months of operation of fixed mobile food vendors on public land, the Sharpes Beach location has been identified as an area that may not presently be suitable for ongoing operation of fixed mobile food vending businesses due to a lack of on site toilet facilities.

Site suitability is particularly important now that it is proposed to extend the fixed mobile food vending trading time period to 7am – 7pm (see further details later in this report).

At present the nearest public toilet facilities for food handlers/operators are located at Flat Rock carpark.

In accordance with the provision of the NSW Food Act 2003, Regulations and the food safety provisions of the Food Standards Code a food business must ensure that adequate toilets are available for the use of food handlers.

Toilets should be located, designed and maintained to enable and encourage food handlers to use them whenever they need to.

These facilities need to be on site and within a reasonable distance so that food handlers can readily get to the toilet in the time available for breaks.

Food businesses need to ensure that toilets that are not part of their food operations/mobile business are adequate to reduce and minimise contamination risks to food preparation.

The toilet facility and food handling matters are key issues that are considered further in this report.

With respect to the extent of mobile vending experienced under the policy to date, Table 1 contains a list of fixed site mobile food vending permits which have been issued since the adoption of the policy.

4.2 Policy (Review) - Mobile Vending on Public Land

Table 1 - List of Fixed Site Mobile Food Vending Permits Issued

Applicant Name / Location	Nature of Business	Period of Approval
Sharpes Beach		
Mr M Quinn S & M Espresso	Coffee	28/3/2018 – 30/6/2018
M/s L Terry	Ice Cream	28/3/2018 – 30/6/2018
Mr M Quinn S & M Espresso	Coffee	10/7/2018 – 30/6/2019
Mr A Stafford & Mr K Bezjak Lennox Smokin Barrel	Smoked Meat and BBQ	1/7/2018 – 30/6/2019
Missingham Park		
M/s J Moroney	Catering (slushies & candy)	14/9/2018 – 15/4/2018
M/s J Beetson-Mortimer	Catering (coffee, milkshakes, water, confectionary, packet chips)	14/1/2019 – 4/4/2019
Pop Denison Park – No applications received.		

The policy provisions, as they apply to fixed site mobile food vending, as opposed to vending from car parks and public roads (non-fixed site - moving vendors), are largely new provisions which became operative in February 2018.

The implementation of the policy has been monitored to ensure that both vendors and Council have had an opportunity to address issues of concern as they arose.

Subsequently a number of issues were identified which relate to both fixed and non-fixed site vending controls. These issues are considered to warrant Council's consideration prior to any new permits to operate being issued for the 2019/20 financial year.

Attachment 1 contains a copy of the Mobile Vending on Public Land Policy and Guidelines as adopted and in place at present.

Attachment 2 contains an amended Mobile Vending on Public Land Policy and Guidelines which retains reference to the Sharpes Beach site with key changes highlighted in yellow.

Attachment 3 contains a diagram which shows land tenure arrangements at Sharpes Beach and locations assessed for fixed site mobile food vending.

Attachment 4 contains an amended Mobile Vending on Public Land Policy and Guidelines which deletes reference to the Sharpes Beach site with key changes highlighted in yellow.

Key Issues

- Review of Mobile Vending on Public Land Policy and Guidelines
- Suitability of the Sharpes Beach site as a fixed mobile food vending site
- Public health

4.2 Policy (Review) - Mobile Vending on Public Land

Information

Table 2 contains details of the major changes proposed to the Mobile Vending on Public Land Policy and Guidelines and the reasons for the nominated change.

Table 2 - Proposed Changes to Mobile Vending on Public Land Policy

Change	Reasons
<p>Reorganisation of policy provisions including Guideline requirements to include general provisions as well as specific sections for fixed site and non-fixed site mobile food vending.</p>	<p>Designed to provide greater clarity and assist in the implementation of the policy.</p>
<p>Remove the no limit on vendor numbers able to be approved to trade from fixed site locations. Instead it is proposed to restrict the number of vendors per location to the number of designated site trading locations (Pop Denison Park – 2 Missingham Park – 3, and Sharpes Beach – 2 if Council retains this site.)</p>	<p>It is possible under the current policy provisions for Council to issue more approvals than there are sites available from which to trade. This situation could result in conflict between vendors for popular site locations. Whilst this situation has not yet arisen the policy change suggested is designed to reduce the risk of conflict occurring in the future.</p>
<p>Extending trading time for fixed site vendors. The current maximum 6 hours per day trading period is proposed to be replaced with a 7am to 7pm trading period.</p> <p>Note: this extends available vending time but vendors would not necessarily be required to trade for the full time period.</p>	<p>The 6 hour per day limit was introduced to allow different vendors to access specific sites during the trading day. Should Council support limiting fixed site vendors to the number of sites available then there would be little value in limiting trading to 6 hours per day.</p> <p>The maximum 6 hours per day vendor trading period is problematic from an enforcement perspective. The suggested 12 hour span is designed to provide vendors with a larger trading window. The hours proposed are those currently applicable to non-fixed site vendors which operate on, within, or adjacent to a residential zone.</p> <p>The 7am to 7pm span of hours is permitted for mobile food and drink outlets under the exempt development provisions of the SEPP Exempt and Complying Development.</p>
<p>Subject to the Council's determination of the ongoing suitability of the Sharpes Beach site it is proposed to implement an EOI process for all fixed site mobile food vending for periods after 30 June 2019. EOIs are proposed to be for periods ranging from 3 to 12 months. All EOI applications received will be reported to Council for determination. Should no EOIs be received then sites are proposed to be allocated under the existing annual permit system and terms of the policy as proposals are received.</p>	<p>Sharpes Beach is the most popular of the fixed mobile food vending sites. Moving to an EOI process is designed to ensure equity in the allocation of sites and a more reasonable return to Council for the trading concession.</p> <p>To ensure consistency of process all fixed site locations are proposed to be subject to the EOI process.</p>

4.2 Policy (Review) - Mobile Vending on Public Land

Change	Reasons
Subject to Council's determination of the ongoing suitability of the Sharpes Beach site and trading locations it is proposed to clarify the location of the Sharpes Beach fixed trading sites. This includes the 20 metre trading location flexibility provision.	The clarification of acceptable trading locations is required to ensure that correct permit types are issued and that traders do not locate outside of approved locations.
Provide flexibility to the maximum area permitted to be occupied by the mobile food vending vehicle (5m x 5m) by adding the words "or as otherwise approved through the EOI process". This will enable the Council to consider proposals on merit if submitted as part of an EOI.	In most cases 5m x 5m will be an ample area in which to locate the food vending vehicle (does not include the tow vehicle). Additional flexibility is considered desirable to cater for situations where for example the vehicle may exceed 5 metres in length. Such flexibility is proposed to be available to EOI submissions only.
Permit tables and chairs for fixed site mobile food vendors provided that they are located within the permitted trading area (generally 5m x 5m) or as otherwise approved as part of the EOI.	This provision is designed to improve customer and operator amenity. Currently no seating is permitted.
Permit shade structures for fixed site mobile food vendors subject to being located within the permitted trading area (5 x 5 metres or as otherwise approved through the EOI process) and not being freestanding. Shade structures such as awnings attached to the side of vending vehicles, as well as the total enclosure of the vending vehicle and serving area, are also proposed to be permitted (5 x 5 metres or as otherwise approved through the EOI process).	The policy currently does not permit the erection of awnings, marquees, pergolas or the like. Permitting shade structures directly attached to the trading vehicle is designed to improve the amenity of operators as well as customers.
Restrict signage to two non-moving signs each having a maximum area of 2m ² providing they are attached to the mobile food vending vehicle.	The policy currently does not have a size limit for signage nor does it prevent moveable signage being installed. All signage currently permitted by the vending permit must be directly attached to the mobile food vending vehicle. The proposed provision is designed to create a degree of uniformity for signage and limit the maximum size of signs. The provision would also prevent free standing signs (such as A - Frame signs).

4.2 Policy (Review) - Mobile Vending on Public Land

Change	Reasons
<p>Require the submission of a Waste Management Plan (WMP) for each fixed site mobile food vending proposal.</p> <p>Consideration of the WMP may also result in a charge being applied for the supply of additional commercial waste bins if deemed to be required.</p>	<p>Waste disposal issues associated with one of the Sharpes Beach vendors has been problematic from a volume perspective. The revised provisions are designed to address this issue.</p> <p>The popularity of the Sharpes Beach site has been such that Council has doubled the number of waste bins installed (2 to 4) considered to be mainly due to waste generated by fixed site mobile food vendor customers.</p> <p>There is also evidence of illegal dumping of commercial waste by one of the Sharpes Beach vendors within the Council waste bins at Sharpes Beach.</p>
<p>Change the wording for the time limit applicable to non-fixed site vendors (from "less than 45 minutes" to "not exceeding 45 minutes").</p>	<p>Clarification is designed to assist enforcement if required. This requirement has also been incorporated within the revised draft Guidelines applicable to non-fixed site mobile food vendors – refer item 1.2.</p>
<p>Change the wording for the <i>Proximity to Residential Buildings</i> (11.1) restriction applicable to non-fixed site vendors. Currently trading in front of residential buildings (house or apartment) or buildings that contain residential premises (mixed use sites) on the same side of the road as the building frontage is not permitted.</p> <p>It is proposed to change the requirement to one that would prevent "waiting for trade" in front of any residential building (house or apartment) or buildings that contain residential premises (mixed use sites) on the same side of the road as the building.</p>	<p>The existing provision would substantially prevent vehicles such as soft serve ice cream vendors from operating in residential streets. Alternatively it would require vendor vehicles to be located opposite residential premises (adjoining park or other non-residential land use) and customers to cross the road.</p> <p>Applying a restriction related to waiting for trade achieves the outcome intended by the restriction i.e. minimises impact on residential amenity and potentially also improves pedestrian safety.</p>
<p>It is proposed to change the provision relating to Serving of Food (3.1) which prevents selling with the serving window opening onto any part of a roadway to state that the serving window must not face the road carriageway.</p>	<p>The intent of the current restriction is for the serving window to face towards the footpath or non-carriageway area. The change in wording clarifies this requirement.</p>
<p>It is proposed to incorporate a permit condition which requires vendors to identify suitable toilet facilities for use by food handlers during hours of operation.</p> <p>In cases where a site does not have suitable permanent toilet facilities available (Sharpes Beach) the vendor would be required to meet the cost of suitable toilet facilities being provided (for example through temporary facilities).</p>	<p>Suitable toilet facilities are a requirement of the applicable food legislation.</p>

4.2 Policy (Review) - Mobile Vending on Public Land

The changes would enable the Sharpes Beach site to be retained as a fixed mobile vending location providing suitable trading locations can be identified. This issue is discussed in detail below.

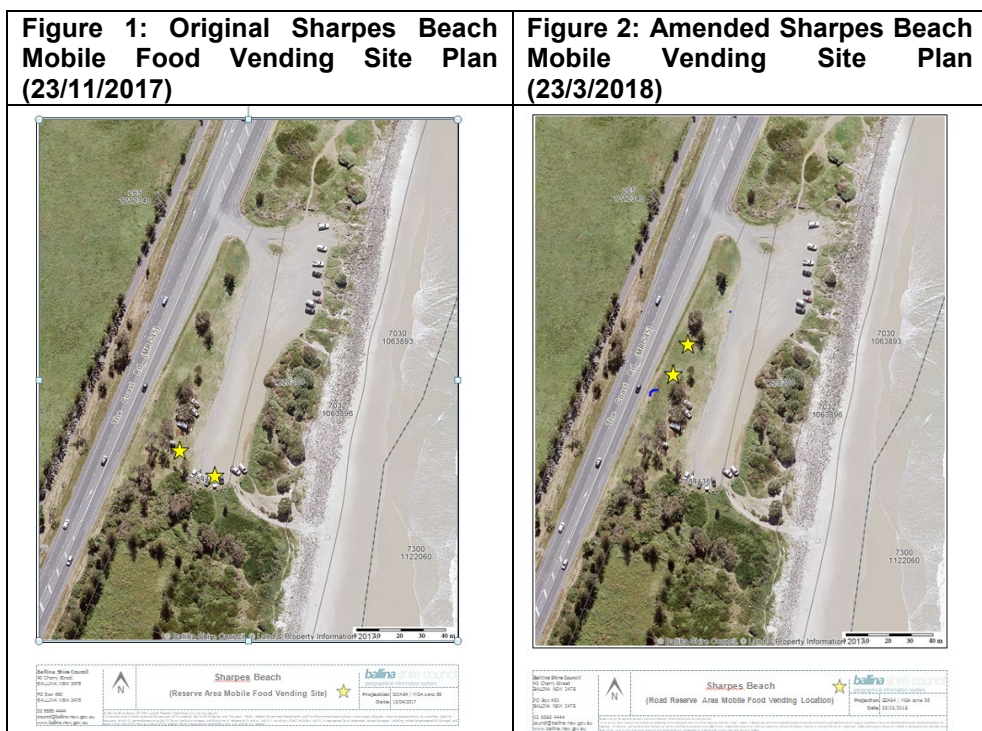
As an alternative, an option that removes the Sharpes Beach site from the policy is also canvassed below.

Sharpes Beach Sites

The Reserve Trust at its meeting on 22 March 2018 gave consideration to the location of mobile food vending sites within the Sharpes Beach carpark. This issue arose as a consequence of the property owners not providing their consent to the then proposed locations for fixed site mobile food vendors within the leased portion of the carpark.

The Reserve Trust subsequently recommended to Council that the vending location be moved to within The Coast Road road reserve, which adjoins the leased car parking area.

Figures 1 and 2 below show the original and subsequently amended Sharpes Beach locations.



Approvals under the provisions of s138 of the Roads Act have subsequently been issued in respect to the relocated vending sites at Sharpes Beach.

One issue requiring address is that at times, food vendors have been identified as not trading from the road reserve in the approved locations

Resolution of this issue requires vending areas to be delineated on site such that food vehicles park parallel to the road pavement. To do so would significantly increase the visual exposure of vending vehicles along an iconic section of The Coast Road.

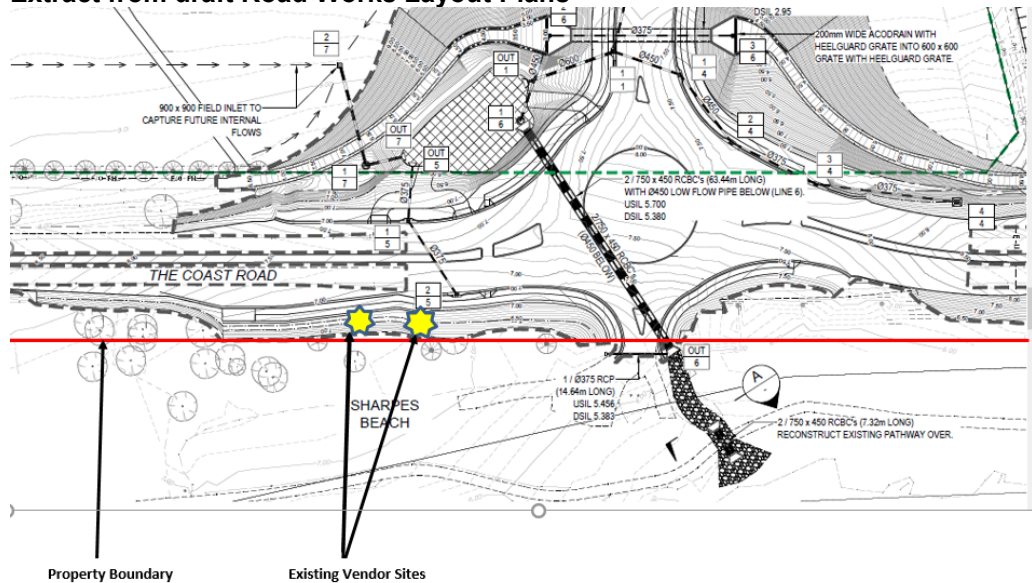
4.2 Policy (Review) - Mobile Vending on Public Land

It may also reduce the amenity of business owners and customers due to the closer proximity to the road and serve to encourage passing motorists to stop on the road verge.

It is likely that within the next six month period the construction of a new roundabout will commence on The Coast Road and impact on the entrance arrangements for the Sharpes Beach car park as well as the width of the footpath verge. During the construction period the available road verge will change significantly and no longer be available to accommodate fixed site mobile food vendor locations. The road works can be expected to take up to six months to finalise.

Draft road work plans showing the extent of works proposed within the road reserve adjoining the existing Sharpes Beach car park have recently been submitted to council. An extract from the draft plan appears below.

Extract from draft Road Works Layout Plans



Having regard for the road construction it is recommended that Council not issue permits for fixed mobile vending at Sharpes Beach for the duration of The Coast Road road works associated with the Skennars Head Expansion Area development.




Additional issues with the Sharpes Beach site have included a shortage of waste bins (resolved), dust from the car park, lack of public toilet facilities and various food vendor non-compliance issues (resolved).

These matters as well as the perceived increased use of the Sharpes Beach car park, since the opening of the coastal shared pathway, have brought into question the current suitability of the Sharpes Beach site to support fixed-site mobile food vending.

A number of alternative fixed site mobile food vending location options have been examined for the Sharpes Beach site as indicated within Attachment 3 and Table 3.

4.2 Policy (Review) - Mobile Vending on Public Land

Table 3 – Alternative Sharpes Beach Fixed Site Mobile Food Vending Locations

Trading Location Options	Comments
	<p>Area 1 - Sites located north of Surf Life Saving tower. Maximum width between rock bollards and lease boundary approx. 13 to 15m. Length of coffee cart and tow vehicle 11m approx.</p> <p>Locations not supported given potential conflict with vehicles, pedestrians and cycles.</p> <p>Sites also exposed and subject to potential dust nuisance in peak periods.</p> <p>Drainage work proposed along northern edge in conjunction with roundabout works.</p>
	<p>Area 2 - Sites located south of Surf Life Saving tower. Width approx. 15 metres.</p> <p>Locations not supported due to conflicts with area required for surf life saving purposes and potential conflict with vehicles, pedestrians and cycles.</p> <p>Sites also exposed and subject to potential dust nuisance in peak periods.</p>
	<p>Sites located at the southern end of the car park within the leased area.</p> <p>These sites are the preferred sites for fixed mobile food vending. Sites do not conflict with car parking area vehicle traffic. Use of these sites would require consultation / agreement of the property owners.</p>

If Sharpes Beach is to remain identified as a fixed mobile food vending location, trading sites will need to be confirmed.

It is recommended that the location and form of such sites be further considered as part of the planning for car parking and facility upgrade works at Sharpes Beach.

If Council proceeds with an EOI process for future fixed mobile food vending operations, the location for the vendors could be further addressed through the EOI terms and framework.

Legal / Resource / Financial Implications

Reviewing the provisions of the Mobile Vending on Public Land Policy and Guidelines is in line with Council's legal responsibilities under the provisions of the Local Government Act.

The review and associated public notification, if endorsed by Council, is able to be undertaken within existing allocated resources.

In terms of financial implications the 2018/19 fee applicable to Mobile Vending Location Specific sites (fixed sites) consists of a \$99 application fee and an annual \$1330 permit fee or \$340 for a non – fixed site permit.

The removal of the Sharpes Beach fixed vending sites would result in a potential annual reduction in income of \$2,660 based on 2018/19 charges.

The future move to an EOI process for the awarding of trading concessions in 2019/20 has the potential to improve the financial returns to Council from fixed site mobile food vending.

With respect to future fees, it is recommended that Council increases the annual permit fee for fixed vending to \$2500 (exclusive of GST) to better reflect the economic value associated with the commercial trading of this type on public land. This fee would apply in cases where Council has not issued a fixed mobile food vending permit through and EOI process. This fee increase forms part of the recommendations below.

No other changes to the fees as previously proposed for 2019/20 are recommended.

Consultation

At this stage no formal consultation with mobile food vendors has taken place.

A number of conversations have occurred with the current Sharpes Beach vendors to discuss issues related to non-compliance and broader policy restriction concerns.

Discussions have also taken place with the operator of the Coffee Cart at Sharpes Beach regarding the EOI proposal and the likely impact on trading associated with proposed road works.

Options

1. Maintain the status quo and propose no immediate changes to the Mobile Vending on Public Land Policy and Guidelines.

This option is problematic as it does not address concerns raised with respect to the Sharpes Beach fixed mobile food vending sites. Of particular concern is the lack of public toilet facilities and the associated contravention of food legislation. Additional concerns relate to the suitability of the location of current vending sites at Sharpes Beach as well as the impact of proposed road works on such sites.

4.2 Policy (Review) - Mobile Vending on Public Land

This option would also continue the approach of not limiting the number of Mobile Food Vending permits that may be issued for any of the three fixed site locations.

In addition, a decision would need to be made as to whether all provisions of the current policy should be more rigidly enforced, and whether those vendors who have demonstrated an inability to comply with all current policy provisions should be licensed in 2019/20, assuming they choose to reapply.

Given the issues raised in this report, this option is not recommended.

2. Place on public exhibition amendments to the Mobile Vending on Public Land Policy and Guidelines as detailed in Attachment 2.

Amending the policy in line with comments made within this report, as highlighted in yellow in Attachment 2 and monitoring the operation of existing vendors may facilitate the ongoing use of the Sharpes Beach site by fixed site mobile food vendors providing suitable public toilets are provided.

Council would, however, need to ensure that the trading locations for the Sharpes Beach vendors are consistent with the permits issued.

At present the Roads Act permits issued for the Sharpes Beach fixed sites only relate to the road reserve and not the leased area as previously discussed.

In addition the road reserve area is shortly anticipated to be impacted by road works and will then be considered to be unsuitable for food vending trading purposes.

Adoption of this option will necessitate the Council nominating alternative trading sites for use during the road works period or determining that the Sharpes Beach site is unsuitable for the period during which road works are taking place. It is recommended that trading not be permitted during the construction period.

Subject to suitable trading sites being nominated an EOI process for Sharpes Beach sites could still be undertaken with the trading period to commence once road works have been finalized and Council has made a decision about the approach to, and extent of, upgrade works to be undertaken in relation to the Sharpes Beach car parking area.

In this regard, an EOI process could be advanced during the upcoming road construction period (whilst there is a break in the provision of permits). Importantly, if the key issues are not resolved to Council's satisfaction, Council is not obligated to provide any permits for fixed site vending.

This option is recommended as it allows Council and vendors to further consider vending sites through an EOI process.

An EOI process also removes the potential for conflict during the road construction period and provides time for Council and vendors to further examine options to address existing public toilet limitations at the site.

4.2 Policy (Review) - Mobile Vending on Public Land

In the event that the Council wishes to pursue this option, it is also recommended that Council engage with the owner of the land leased by Council for the car park in relation to the placement of mobile vendors on the land.

Under this approach, it is recommended that Council does not issue new permits for vending operation at Sharpes Beach. Current permits expire on 30 June 2019. Future permits would be addressed through the recommended EOI process.

Alternatively, Council could permit existing vendors to continue to trade at Sharpes Beach on a week to week basis with pro rata fees payable until construction work on either The Coast Road or the car park area upgrade commences. This would be based on current circumstances including limitations in the availability of toilet facilities as outlined earlier in this report.

If Council wishes to permit ongoing trade on a week to week basis this should be incorporated into the final resolution of the Council.

3. Place on public exhibition amendments to the Mobile Vending on Public Land Policy and Guidelines as detailed in Attachment 4 which excludes reference to the Sharpes Beach site.

Under this option, the Sharpes Beach site would be excluded from the policy having the effect of stopping further mobile food vending from occurring at the site. Vendors would cease operation at the site on expiry of their permits on 30 June 2019 or earlier if construction work commences before this time.

This option is not recommend on the basis that future trading in the location may be possible upon the resolution of the key issues identified.

The recommended EOI process and adoption of option 2 provides an opportunity for the key issues to be further considered whilst also allowing Council to still decline proposals if not satisfied with what is ultimately proposed.

Under this option or option 2, Council could also resolve to delete other mobile food vending sites from the policy or reduce the number of sites at specific locations. For example Council could resolve to reduce the number of vending sites located at Missingham Park from three to one and require that this change be incorporated within the policy.

4. Place on public exhibition amendments to the Mobile Vending on Public Land Policy and Guidelines which removes the provisions related to fixed site mobile food vending.

The implications of this option are that reference to fixed site vending at Sharpes Beach, Pop Denison Park and Missingham Park would be removed from the Policy and the Policy and Guidelines would be amended to remove reference to fixed site mobile food vending.

This option is not supported as fixed site mobile food vending in appropriate locations has the potential to provide the community with enhanced amenities and council with an additional source of revenue.

4.2 Policy (Review) - Mobile Vending on Public Land

5. Defer consideration of this report pending a Councillor briefing or further information being provided.

A Councillor briefing on the policy was held on 2 May 2019. However, should Councillors require additional information on any aspect discussed within this report then it is appropriate that this report be either deferred for a further Councillor briefing, or an additional report for the Council's consideration.

This option is not recommended prior to the public exhibition of any amended policy.

RECOMMENDATIONS

1. That Council adopts the amendment of the Mobile Vending on Public Land Policy and Guidelines as contained within Attachment 2 including references to the Sharpes Beach Site for fixed mobile vending purposes. Final locations for vending at Sharpes Beach are to be determined through an expression of interest process.
2. That Council place the amended Mobile Vending on Public Land Policy and Guidelines on exhibition for public comment, with any submissions received to be resubmitted back to the Council. If no submissions are received then no further action on the content of the policy is required.
3. That Council commences an expression of interest process for all fixed mobile food vending sites subject to point 4.
4. That the expression of interest process for Sharpes Beach be made available to potential vendors after Council has confirmed a timeframe for The Coast Road construction works to be undertaken and Council has made a decision on the scope of works and timing for the Sharpes Beach car parking area upgrade.
5. That no further permits be issued for fixed mobile food vending at Sharpes Beach until the expression of interest process is complete.
6. That Council engages with the landholder of the car park lease area in relation to the making of provision for fixed mobile food vending sites within the lease area.
7. That Council applies a fee of \$2,500 for fixed mobile food vending sites for the 2019/20 year (being the fee that will apply to any permits not issued through an expression of interest process).
8. That public notice of the fee set out in point 7 be provided in accordance with Section 610F of the *Local Government Act* and be included in Council's fees and charges document for 2019/20.
9. That existing Mobile Vending on Public Land Permit holders be advised of the exhibition of the amended policy and be invited to make comment.

Attachment(s)

1. Adopted Mobile Vending on Public Land Policy
2. Draft Amended Mobile Food Vending on Public Land Policy (Inclusive of Sharpes Beach Vending Sites)
3. Sharpes Beach Land Tenure and Sites Investigated for Fixed Site Mobile Food Vending
4. Draft Amended Mobile Food Vending on Public Land Policy (Excluding Sharpes Beach Vending Sites)

4.3 Kentwell Community Centre - Leasing Update

4.3 Kentwell Community Centre - Leasing Update

Delivery Program Commercial Services

Objective To provide Council with an update on the leasing proposals and to seek approval for leasing office space to The Family Centre.

Background

Council has previously received reports in regards to leasing space within the Kentwell Community Centre, Treelands Reserve, Ballina.

The most recent recommendation from Council's 4 December 2018 Commercial Services Committee meeting, as resolved at Council's December 2018 Ordinary meeting was as follows:

- 1. That to maximise the range of services offered from the Kentwell Community Centre, Council accepts the leasing proposals from Tweed Byron Ballina Community Transport and CPL as outlined in this report.*
- 2. That the proposed leases be publically notified in accordance with the requirements of Section 47 and/or 47A of the Community Land Provisions of the Local Government Act 1993.*
- 3. That should no written objections be received during the notification period, the General Manager be authorised to finalise negotiations and execute all relevant lease documentation and attach the Council seal to same in accordance with the terms of the Local Government Act 1993 and associated Regulation.*
- 4. That Council offer the space vacated by the Tweed Byron Ballina Community Transport to The Family Centre.*
- 5. That Council receive a report on expanding the Kentwell Centre to facilitate more community groups.*

This report provides an update on the leasing arrangements and seeks Council approval for the leasing of the office space to The Family Centre.

Key Issues

- Tenants and use of the facility

Information

In accordance with points one to three of the December 2018 resolution, leasing proposals were publicly notified for the Tweed Byron Ballina Community Transport ("TBBCT") and CPL.

4.3 Kentwell Community Centre - Leasing Update

No objections were received and Council is working with the organisations to finalise the leasing documents. Both TBBCT and CPL will take up occupation of their leased spaces within the next month.

In accordance with point four Council offered The Family Centre the office space that is to be vacated by TBBCT.

Following negotiations The Family Centre accepted the proposal put forward and in accordance with the Local Government Act 1993 the lease was exhibited. No objections were received and approval is now sought to finalise lease documentation for The Family Centre.

St Andrews Ballina currently have a lease over Activities Room Two that expired on 5 May 2019. They have formally requested to renew their lease with a three plus a two-year option.

St Andrews has been in occupation of this room since the building opened and has been an excellent tenant providing respite services to the community.

Approval is sought to finalise negotiations with St Andrews and commence the notification process in accordance with the Local Government Act 1993.

Upon completion of the leasing arrangements with all parties the building will be fully tenanted with TBBCT occupying the eastern wing and reception area, The Family Centre in Office One, CPL in the Kentwell Room and St Andrews in Activities Room Two.

This is a good outcome as there is a diverse range of excellent service providers to the community from the one building.

Council's Community Facilities Section is currently investigating options for the future expansion of the Kentwell Community Centre in accordance with the December 2018 resolution.

Legal / Resource / Financial Implications

The land is classified as Community Land and as such is required to comply with the provisions of the Local Government Act 1993.

If Council approves The Family Centre lease the various terms for the tenants are as follows:

- TBBCT – Five plus five years – Eastern Wing and Reception
- The Family Centre – Five years – Office One
- St Andrews – Three plus two years – Kentwell Room
- CPL – Two plus two years – Activities Room Two

Consultation

Council staff have consulted with all four proponents.

Options

The options available include:

Option one - Council accepts the leasing proposal from The Family Centre for the office space. Council also resolves to offer St Andrews a new lease for Activities Room Two.

This option is recommended as it provides both The Family Centre and St Andrews the opportunity to deliver services to the community based on agreed rentals for the space.

Option two - Council does not accept the leasing proposals and calls for expressions of interest for the occupation of the office space and Activities Room Two.

This option is not recommended, as St Andrews has been an excellent tenant and both proponents offer community services that support the purpose of the Kentwell Community Centre.

The financial arrangements have not been included in this report as they are commercial in confidence. The revenue is consistent with Council's Long Term Financial Plan. Further details can be discussed in a closed session of Council, if required.

RECOMMENDATIONS

1. That Council authorises the General Manager to accept the leasing proposal from the Family Centre for the office space at the Kentwell Community Centre.
2. That Council authorises the General Manager to offer St Andrews a new three plus two-year lease for Activities Room 2 at the Kentwell Community Centre. The proposed lease to St Andrews is to be notified in accordance with the requirements of Section 47 and 47A of the Community Land Provisions of the Local Government Act 1993. Should no written objections be received the General Manager is authorized to finalise negotiations.
3. The Council seal is authorised to be attached to all relevant documentation as per points one and two.

Attachment(s)

Nil

4.4 Expression of Interest - Shelly Beach Cafe Site

4.4 Expression of Interest - Shelly Beach Cafe Site

Delivery Program Commercial Services

Objective To provide Council with information on the Expression of Interest process for the Shelly Beach Cafe site.

Background

Following the termination of the previous lease for the property known as the Shelly Beach café site, Council resolved to call expressions of interest for a new lessee.

An expression of interest (EOI) process commenced on 27 February 2019 seeking parties to lease and develop the site described as Shelly Beach Café at Lot 3 DP 1205999, Shelly Beach Road, East Ballina.

Four proponents submitted an EOI by the close of exhibition. Three proponents have been invited to make a presentation to Council in a confidential session at this meeting outlining their vision for the site and their experience.

Key Issues

- Experience
- Financial capacity to undertake capital works and pay rent
- Timeframe for operation
- Vision and theme

Information

Council received four submissions and based on the evaluation criteria three proponents have been shortlisted. The three proponents have been invited to provide a presentation to Council in the confidential session at this meeting.

The three parties have submitted proposals that address the main points of the evaluation criteria, which is:

1. At least five years' experience in developing and/or owning or operating a café or restaurant
2. Development concept plan for the site including design theme, building layout, seating capacity, building elevations, perspectives, weather proofing, colours, finishes etc
3. Proposed lease terms including rental
4. Business plan including target market, marketing, cuisine theme, opening days and hours
5. Financial capacity to construct and pay the rental negotiated.

4.4 Expression of Interest - Shelly Beach Cafe Site

Legal / Resource / Financial Implications

Council will need to allocate funding to remove the concrete slab as well as address the stormwater pipe that currently traverses the site to ensure the property is suitable for development. This is currently being investigated by Council's Civil Services Division.

Due to the commercial in confidence nature of the applications it is recommended that Council move into confidential session for the proponents to provide an overall of the proposals and to enable Councillors to discuss any confidential aspects.

Consultation

Council has conducted a public EOI process seeking proponents to lease and develop the Shelly Beach Café Site.

Options

This report is for information only, with a confidential report included later in this agenda.

RECOMMENDATION

That Council notes the contents of this report in respect to the expression of interest process for the Shelly Beach Café site.

Attachment(s)

Nil

5. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

5.1 Expression of Interest - Shelly Beach Cafe Site Proposals

Refer to Item 4.4 of this agenda.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

5.1 Expression of Interest - Shelly Beach Cafe Site Proposals

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest due to the ongoing commercial negotiations and the inclusion of personal and private information relating to the proponents.