



TWEED
SHIRE COUNCIL

Chairman: Tr K Milne

Trustees: P Allsop
R Byrnes
C Cherry (Deputy Chairman)
R Cooper
J Owen
W Polglase

Agenda

Tweed Reserves Trust Meeting Thursday 15 December 2016

held at **Harvard Room, Tweed Heads Administration
Building, Brett Street, Tweed Heads** commencing at
5.00pm

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Items for Consideration of the Trust:

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CONFIRMATION OF MINUTES

- 1 [CONMIN-RT] Confirmation of Minutes of Ordinary Tweed Reserve Trust Meeting held Thursday 27 October 2016

SUBMITTED BY: Corporate Governance



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
-

SUMMARY OF REPORT:

The Minutes of the Ordinary Tweed Reserve Trust Meetings held Thursday 27 October 2016 are attached for information and adoption by the Trust.

RECOMMENDATION:

That the Minutes of the Ordinary Tweed Reserve Trust Meetings held Thursday 27 October 2016 be adopted as a true and accurate record of proceedings of that meeting.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice Version 2.5.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Attachment 1

Minutes of the Ordinary Tweed Reserve Trust Meeting held Thursday 27 October 2016 (ECM 4280840).

REPORTS THROUGH THE EXECUTIVE MANAGER OF THE TRUST

REPORTS FROM DIRECTOR ENGINEERING

- 2 [E-RT] Murwillumbah Reserves Trust lease to CWA Murwillumbah Evening Branch - Queen Street, Murwillumbah

SUBMITTED BY: Design

Validms



Supporting Community Life

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
2.1 Foster strong, cohesive, cooperative, healthy and safe communities
2.1.3 Provide opportunities for residents to enjoy access to the arts, festivals, sporting activities, recreation, community and cultural facilities
-

SUMMARY OF REPORT:

The Country Women's Association Murwillumbah Evening Branch ("CWA") leases the building located on Queen Street, Murwillumbah known as the Baby Clinic. The CWA has requested approval to exclude use of the car park at the rear of the building on Queen Street, Murwillumbah to members of the public by fencing off the car park, so that only users of the building can park there.

Further, the stairs between the building, providing access to the rear of the buildings and car park, appear to have attracted unsociable behaviour, including a proliferation of graffiti on the leased building, and a place for homeless people to shelter. The CWA requests that the Trust approves the 'gating' of the stairs to stop these activities from continuing.

The terms of the lease have been reviewed and this report is to discuss and consider the terms of the lease and how they can be applied in these circumstances.

RECOMMENDATION:

That the Reserves Trust:

1. Approves the request from The Country Women's Association Murwillumbah Evening Branch (CWA) installing gates and fencing within the leased premises, Lot 11 Section 16 DP 758739.
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- 2. Requires that the CWA obtains the necessary approvals and undertakes installation of the gates and fencing at their own cost.**
- 3. Ensures that the CWA keeps public access available within the leased premises during daylight hours.**

REPORT:

The Country Women's Association Murwillumbah Evening Branch ("CWA") has requested that they be able to exclude use of the car park at the rear of the building on Queen Street, Murwillumbah to members of the public by fencing off the car park, so that only users of the building can park there.

Further, the stairs between the building, providing access to the rear of the buildings and car park, appear to have attracted unsociable behaviour, including a proliferation of graffiti as well as becoming a place for homeless people to shelter. The CWA is requesting the Trust to approve the 'gating' of the stairs to stop these activities from continuing.

The terms of the lease have been reviewed and this report is to discuss and consider the terms of the lease and how they can be applied in these circumstances.

Term

The lease commenced on 1 July 1999 and will expire on 20 June 2019.

Clause 5 (g)

This clause provides, as follows:

"To allow members of the public to have full access to the space surrounding the Leased Premises but this right shall not entitle any unauthorised person or persons to enter upon the Leased Premises."

Clause 5(i)

This clause requires the Lessee to:

"To make adequate provision for the thorough cleaning and safeguarding of the building on the Leased Premises and its immediate surrounds".

"Leased Premises"

The term "Leased Premises" is defined in Clause 1 of the lease as:

"Leased Premises" means all that piece or parcel of land described in the Schedule hereto and the building and other improvements erected on the land so described".

The Schedule

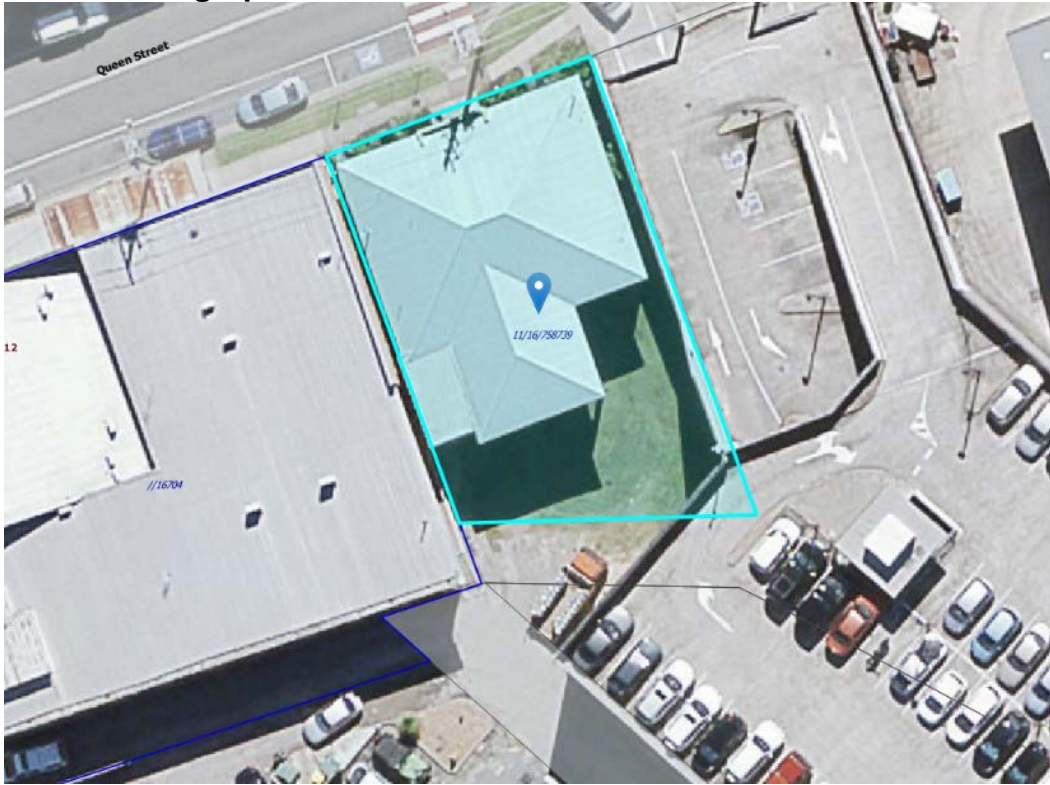
The Schedule describes the Leased Premises as:

"ALL THAT piece or parcel of land situate in the town and Parish of Murwillumbah County of Rous having an area of 512.2 square metres being Allotment 11 of Section 16 DP758739 having a frontage to Queen Street of 90.91 links comprised in Reserve 81328 notified on the Ninth day of January 1959 for "Baby Clinic and Resting Place".

Clause 9 (a)

This clause states the Lessor (Council as Trust Manager of Reserve 81328) covenants with the Lessee..."(a) for the quiet enjoyment of Leased Premises".

Aerial Photograph of Lot 11 Sec 16 DP 758739



Discussion

The description of the "Leased Premises" includes the land and buildings within Lot 11, so it includes the stairs and the rear car park, the subject of the CWA's request.

As clause 5(g) provides a qualifier to the full access to members of the public, by the inclusion of "*shall not entitle any unauthorised person or persons to enter upon the Leased Premises*", this can be interpreted as providing the Lessee, the CWA, to have the discretion to take action to not allow those persons they consider as 'unauthorised'.

This reasoning can be extended to the obligation arising from clause 5(i), to '*safeguard the building*'. Following are photographs of the graffiti on the walls next to the stairs and rear of the building, as well as on the wall of the neighbouring building:



Rear of CWA building from car park



Beneath the stairs of neighbouring building, view from car park



Beneath the stairs of neighbouring building, view from car park



Beneath the stairs of neighbouring building, view from car park



The walls of the CWA building next to the stairs to the rear car park



The walls of the CWA building next to the stairs going down to the rear car park



Looking up the stairs from the car park



Looking down the stairs, going down to the rear car park



Graffiti on the neighbouring wall going down the stairs to the rear car park



Graffiti on the neighbouring wall going down the stairs to the rear car park



Graffiti on the neighbouring building, at the bottom of the stairs

Due to the proliferation of graffiti, not just on the CWA building wall, but on the neighbouring wall, the request from the CWA appears justifiable.

To enable the CWA to 'safeguard' the building, it is recommended that the Reserves Trust grants approval for the Lessee to fence off the parking area and install gates on the stairs of the building, at their own cost.

As Council is the Trustee and Lessor, it is obliged to facilitate the "quiet enjoyment" by the Lessee during the term of this lease and to consider granting approval.

Graffiti

The types of graffiti on the CWA and neighbouring building, appear to be 'tags' and 'slogans', as defined in Council's "Graffiti Vandalism Management Policy", and are illegal, as the defacement of the buildings with the graffiti occurred without the consent of the landowner, that is, the Crown through Council as Trust Manager.

It is recommended that the graffiti be dealt with in accordance with Council's "Graffiti Vandalism Management Policy". A copy is attached to this report.

The policy provides that Council shall manage graffiti vandalism in accordance with where it occurs and provides that;

“Graffiti vandalism removal on Council property.

Graffiti vandalism on Council property in High Profile Areas will be acted on within two (2) working days. All other Council property areas will be acted on within ten (10) working days of notification subject to budget constraints.

Graffiti vandalism removal on government and agency property

Council will contact the appropriate department or agency and advise them of the graffiti vandalism incident within five (5) working days of notification.

Council will record the date and time of a graffiti vandalism notification to each government and agency.

Council will offer to treat the graffiti vandalism on a cost recovery basis as part of the notification”.

As the CWA building is owned by the Crown, but within a Crown Reserve under Council's control as Trustee, then Council can determine whether it shall bear the cost of the removal of the graffiti, as part of its responsibility as Trustee.

OPTIONS:

1. To approve the installation of gates and a fence within Lot 11 Section 16 DP 758739 to alleviate anti-social behaviour within the land and buildings by the Lessee, subject to:
 - The CWA obtains all necessary approvals and bears all costs to do so.
 - The CWA ensures public access remains available during daylight hours.
2. To not approve the installation of gates and a fence by the Lessee.
3. To offer to treat graffiti vandalism on a cost recovery basis as part of notification to the Crown as owner of the building.

CONCLUSION:

To enable the CWA to fulfil its obligations under the lease to safeguard the building, and the Trust Manager as Lessor, its obligation for quiet enjoyment, it is recommended that the Reserves Trust:

1. Approves the request to install gates and fencing within the leased premises.
2. Requires that the CWA obtains all necessary approvals and bears all costs to do so.
3. Ensures public access remains available during daylight hours.

That the Trust abides by the Graffiti Vandalism Management Policy and offers to treat graffiti vandalism on a cost recovery basis as part of notification to the Crown as owner of the building.

COUNCIL IMPLICATIONS:

a. Policy:

Graffiti Vandalism Management Policy v1.0.

b. Budget/Long Term Financial Plan:

It is intended to treat the graffiti vandalism on a cost recovery basis. No costs shall be borne by the Trust in relation to the installation of the gates and fence.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

No public consultation required as a result of this report.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Graffiti Vandalism Management Policy (ECM 3663798).
