

Supplementary Report PPSNTH-36 (DA2020/0220) Calypso Caravan Park

Council provides the following information to address the outstanding issues, and now advise Council is in a position for the NRPP to reconsider determination of this development application.

Council has provided a copy of:

- NSW Crown Land - Land Owner's Consent
- The legal advice requested by the panel, which Council consents to being disclosed.

The land is identified as being a 'domestic waterfront precinct' and the land owner's consent cannot be assumed under the Crown Land Management Act. Land owner's consent has been obtained to ensure that the application has been properly made.

Council has obtained legal advice in regard to a number of matters raised by the Panel – including whether the Crown's power as landowner to provide approval to lodge the development application are limited for this DA as well as due to the existence of native title on the land.

The legal advice provides that there is nothing in the Environmental Planning and Assessment Act 1979 that limits or qualifies a Panel's power to determine a development application over land in respect of which negotiations for the preparation of an ILUA have not been finalised.

Additionally, the Environmental Planning and Assessment Act 1979 nor any other legislation fetters the discretion of a landowner to provide consent to the lodgement of a development application, including where native title rights and interests have been determined to exist.

Reference is made in the land owner's consent about and easement which provides the Port Authority legal access over the land to their wharf and Council's Property Officer has been in discussion with the Port Authority to amend the restriction to allow the Port Authority access and easements for services in line with the proposed access arrangements.

It is proposed that an additional draft advice be included in the terms of point 5 of the land owners consent letter so that the future development of the park is in line with the consent requirements i.e. ***Irrespective of any development consent or any approval given by other public authorities, any work or occupation of Crown land cannot commence without a current tenure from the Department authorising such work or occupation or the current Crown land manager.***

The legal advice and letter of land owner's consent has been disclosed to NTSCORP Limited following the uploading of this information to the Planning Portal.

In response the submission from NTScorp Council's position is that the determination under the Environmental Planning and Assessment Act 1979 Act is not an act under the Native Title Act. Any works after that could be deemed an act which will be made clear on the consent by inserting the abovementioned additional advice.

Pat Ridgway, Senior Development Planner

Clarence Valley Council