ORDINARY MEETING
27 MAY 2009

COMPULSORY ACQUISITION OF NATIVE TITLE RIGHTS & INTERESTS
PART OF LOT 234 ON SP122860, WATTLE STREET, YORKEY'S KNOB – DIV. 8

Allan Simpson :19/15/1-18: #2054770

RECOMMENDATION:

That Council make application to the Minister for Natural Resources, Mines and Energy to compulsorily acquire any and all native title rights and interests over part (about 8,640m²) of Lot 234 on SP122860, Wattle Street, Yorkeys Knob.

Furthermore, Council delegate authority to the Mayor and Chief Executive Officer in accordance with Section 472 of the Local Government Act 1993 to finalise any and all matters (including execution) associated with the matter of the compulsory acquisition of native title rights and interests over the subject part of Lot 234 on SP122860.

INTRODUCTION:

The matter of the compulsory acquisition of native title rights and interests over part (about 8,640m² - see Attachment 2) of Lot 234 on SP122860, Wattle Street, Yorkeys Knob has been on-going for sometime.

This was initiated to progress the proposed lease to the Northern Beaches Judo Club Inc. over part of the subject land, however the Club recently requested that Council amend their proposed lease area from the whole of the reserve, to the area of the building only. Council resolved at its meeting of 22 April 2009 to amend the lease area.

It has also been determined that the acquisition of native title rights and interests continue to ensure that Council is able to deal with any future leasing of the subject part of the reserve should it be required. At this time Council’s Sport & Recreation section as the internal asset owner has no intention of developing that portion of the land.

Council has undertaken its obligations in regard to the requirements of the Acquisition of Land Act 1967 and in accordance with the 15/3/2007 and 30/8/2007 delegations to the Mayor and the Chief Executive Officer, on the 9/2/2009 it was approved to proceed with the compulsory acquisition of native title rights and interests over the subject part of Lot 234.

Preston Law on Council’s behalf lodged the relevant documentation with the Department of the Environment and Resource Management (“DERM”) to finalise the acquisition process.
DERM has now written to Preston Law suggesting that Council’s resolutions of 15/3/2007 and 30/8/2007 do not expressly state that Council resolves to make application to the Minister to acquire the native title rights and interests.

Resolution 15/3/2007

“That Council instruct MacDonnells Law on its behalf to proceed to compulsory acquire any and all native title rights and interests over that part of Lot 234 on SP122860, Wattle Street, Yorkeys Knob (Reserve 1893) included into the reserve in 1999 to validate future dealings (trustee leasing), and that they seek to recover any costs incurred by Council from the Department of Natural Resources and Water.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the Local Government Act 1993 to deal on any and all matters associated with the proposed compulsory acquisition of native title rights and interests, including but not limited to the service of the Notice of Intention to Resume, attendance at any required objection meeting, and consideration of objections”.

Resolution 30/8/2007

“That Council prepare and negotiate an Indigenous Land Use Agreement (“ILUA”) to deal with native title rights and interests over that part of Lot 234 on SP122860, Wattle Street, Yorkeys Knob invalidly dedicated as a Reserve for Park and Recreation in 1996 by the Department of Natural Resources and Water.

Furthermore, the Mayor and Chief Executive Officer being delegated authority pursuant to section 472 of the Local Government Act 1993 to deal on any and all matters associated with the proposed ILUA, and should negotiations on the ILUA not progress satisfactorily, that the Mayor and Chief Executive Officer be authorised to finalise the compulsory acquisition of native title rights and interests process in accordance with their delegation of 15th March 2007.”

BACKGROUND:

Lot 234 on SP122860 is a Reserve for Park and Recreation purposes R1893 (“Caddy Reserve”), held in trust by Council from the Crown.

Council at its meeting of 28/8/2003 resolved to lease the whole of Lot 234 on SP122860, Wattle Street, Yorkeys Knob to the Northern Beaches Judo Club Inc. and a draft lease was submitted to DERM for consideration.

In 2007 DERM subsequently advised that native title rights and interests may continue to exist over that part of Lot 234 which had been included into the parcel from the adjoining Wetland Reserve in 1999, and that they would not approve the trustee lease unless native title was addressed.

At the time of amendment of the reserve in 1999 native title should have been addressed by DERM, therefore the reserve amendment was not validly made under the Native Title Act 1993 (Cth).
Council proceeded to address native title in accordance with its resolutions of the 15/3/2007 and 30/8/2007.

**COMMENT:**

**Property Services**

The compulsory acquisition process involves:

1. Issue of the Notice of Intention to Resume and the Statement of Reasons to the North Queensland Land Council (the representative body for the Cairns area) as there is currently no native title claim over the subject area.

2. Completion of the statutory notification period (30 days) under the *Acquisition of Land Act 1967*, and the receipt of any enquiries or objections, and attendance at an objection meeting.

3. Consideration of objections.

4. If the compulsory acquisition proceeds it is forwarded to DERM for approval, and if approved, the process is handed over to DERM for the gazettal of the compulsory acquisition.

This issue and objections part of the process has been undertaken on two (2) occasions by Council due to a number of reasons.

**CONSIDERATIONS:**

**Corporate and Operational Plans:**

This links to the 2008/09 Operational Plan in regard to the Level of Service under Corporate Performance’s role regarding the leasing of Council owned or controlled lands.

**Statutory:**

The acquisition process will be in accordance with the requirements of the *Acquisition of Land Act 1967*.

**Policy:**

N/A

**Financial and Risk:**

Council is assuming all costs associated with this matter to ensure that it is able to provide tenure over the land in the future if required. There may also be future costs associated with compensation, however at this time this is not known as there is no claim over the subject land.
Sustainability:

N/A

CONSULTATION:

As per the comment section of this report.

OPTIONS:

1. That Council make application to the Minister for Natural Resources, Mines and Energy to compulsorily acquire any and all native title rights and interests over part (about 8,640m²) of Lot 234 on SP122860, Wattle Street, Yorkeys Knob.

   Furthermore, Council delegate authority to the Mayor and Chief Executive Officer in accordance with Section 472 of the Local Government Act 1993 to finalise any and all matters (including execution) associated with the matter of the compulsory acquisition of native title rights and interests over the subject part of Lot 234 on SP122860

2. That Council advise the Department of Environment and Resource Management that it no longer wishes to proceed with the compulsory acquisition of native title rights and interests over part of Lot 234 on SP122860, Wattle Street, Yorkeys Knob.

CONCLUSION:

That Council concur with the recommendation subject of this report.

ATTACHMENTS:

1. Aerial photograph of Lot 234 SP122860.

2. Plan showing area of proposed compulsory acquisition hatched.

L. Giacomi

Property & Administration Team Leader

L. Kirchner

Manager Corporate Performance

B. Grosser

General Manager Corporate Services
Area to be Added
(A-B-C-D-E-F-G-A) Abt 8640 m²