COMPULSORY ACQUISITION OF NATIVE TITLE RIGHTS AND INTERESTS OVER LOT 16 AND 18 ON SP155099, PART OF CAIRNS ESPLANADE – DIV 5.

Liam Nicholas : 19/3/3-83: #2339503

RECOMMENDATION:

That Council instruct Preston Law on its behalf to proceed to compulsory acquire any and all native title rights and interests over Lot 16 and 18 on SP155099, Cairns Esplanade and to create a reserve for park and recreation purposes.

Furthermore, the Mayor and Acting 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, consideration of objections and the creation of a park and recreation reserve.

INTRODUCTION:

The Department of Environment and Resource Management in considering the proposed reservation for park and recreation purposes over part of the Cairns esplanade described as Lot 16 and 18 on SP155099.

BACKGROUND:

Lot 16 and 18 on SP155099 are currently held by Cairns Ports Limited as a perpetual lease which forms part of the esplanade facilities. Council’s has adopted the Land Management Plan for the esplanade and it is proposed that the subject lots become park and recreation reserve with Council as trustee.

In order to validly deal with the subject lots, native title is required to be assessed over the subject area.

COMMENT:

Precincts & Facilities

Precincts & Facilities as the asset owner have considered the options available, and recommend that the native title rights and interests over the subject area should be compulsorily acquired by Council so that the proposed reservation for park and recreation purposes over Lot 16 and 18 on SP155099 can proceed.
Property Services

There are four (4) options available to Council to address native title prior to any further dealings being progressed over the subject area:

1. Negotiate an Indigenous Land Use Agreement ("ILUA").
2. Compulsory acquire native title rights and interests over the subject area.
3. Lodge a non-claimant native determination application.
4. Reduce the trustee lease area to the area of the Reserve prior to the 1999 amendment.

Currently, no native title claim has been lodged over the subject area.

Section 24D of the Native Title Act 1993 (Cth) (NTA) allows governments, including local government to compulsorily acquire native title rights and interest over land provided that the acquisition is done for government purposes.

Council’s Native Title solicitor has recommended that compulsory acquisition of native title rights and interests should be commenced as it is the most expedient method of dealing with this matter.

The compulsory acquisition process will involve:

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), and the insertion of the Written Public Statement in the Cairns Post and Courier Mail.
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 is to proceed it is forwarded to the Department of Environment and Resource Management for approval, and if approved, the process is handed over to the Department of Environment and Resource Management for the gazettal of the compulsory acquisition.

At some future time Council may be subject to a claim for compensation in relation to the acquisition of native title rights and interests over the subject area. A claim for compensation cannot be made until such time as there is a determination of native title.

It may be possible to deal with the matter of compensation as part of the negotiation of a native title determination, if and when a claim is lodged.
CONSIDERATIONS:

Corporate and Operational Plans:
This links to the 2009/14 Corporate Plan in regard to building vibrant communities.

Statutory:
The compulsory acquisition of native title rights and interests will be progressed in accordance with the requirements of the *Native Title Act 1993 (Cth)* and the *Acquisition of Land Act 1967*, and the proposed reserve for park and recreation purposes.

Policy:
A similar approach has been used by Council to resolve the issues at Caddy Street Reserve at Wattle Street, Yorkeys Knob. The other options as included above may result in protracted actions and potentially will not achieve the desired outcomes.

Financial and Risk:
The costs associated with the acquisition process are within the existing budget allocation. Council may be subject to a future claim for compensation in relation to the acquisition of native title rights and interests. While there is some potential risk in the future of a claim for compensation, officer’s believe the likelihood of a claim is slight and the actual quantum of compensation could be met by a future budget allocation.

Sustainability:
Council has a licence agreement with FNQ Ports Corporation Ltd (formerly Cairns Port Authority) for the use of Lot 16 on SP155099 as part of the esplanade development.

The conditions of the licence require that Council undertake the necessary actions to obtain Lot 16 under an appropriate tenure. Lot 16 is also referred to in the Cityport Infrastructure Agreement which determines the infrastructure needs, inclusive of tenure of the Cityport and the Cairns CBD.

Tenure of both Lots 16 & 18 has been determined by the land management plan for the overall esplanade development as being reserve for park and recreation consistent with surrounding tenures.

CONSULTATION:

As per the comment section of this report.

OPTIONS:

1. That Council instruct Preston Law on its behalf to proceed to compulsory acquire any and all native title rights and interests over that Lot 16 and 18 on SP155099, Cairns Esplanade to validate future dealings (Park and Recreation Reserve).
Furthermore, the Mayor and Acting 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, consideration of objections and the creation of a park and recreation reserve.

2. That Council not proceed with the compulsory acquisition of native title rights and interests and that this matter continue to be unresolved.

CONCLUSION:

That Council concur with the recommendation subject of this report.

ATTACHMENTS:

1. Locality Map.
2. Aerial photograph of Lot 16 and 18 on SP155099, Cairns Esplanade.

L. Kirchner
Manager Administration Services

B. Grosser
General Manager Corporate Services
Attachment 1