



Date: Tuesday, 9 February 2021
Time: 9.00am
Location: Council Chambers
Administration Office
10 Furneaux Street, Cooktown

AGENDA AND BUSINESS PAPERS

Late Reports

Ordinary Council Meeting

9 February 2021

Linda Cardew
Chief Executive Officer

Order Of Business

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16 ORGANISATIONAL BUSINESS SERVICES - REPORTS

16.7 REQUEST FOR LETTER OF AUTHORITY FOR DEVELOPMENT PERMIT FOR A MATERIAL CHANGE OF USE

File Number: D21/2448
Author: Land Tenure and Native Title Coordinator
Authoriser: Heather Kelly, Director Organisational Business Services
Attachments: 1 Request - Letter of Authority  

PRECIS

Council has been requested to provide a 'Letter of Authority' advising that it has no objection to the lodgement of a Development Application for a Material Change of Use (MCU) for Lease D on Lot 1 CP889652. The letter of authority is required to be submitted with a copy of the proposed development application, as part of application for owner's consent, to the State Land Asset Management section of Department of Resources as the owner of the land. The MCU application is proposed to facilitate the use of the premises as an 'Aged Care Drop in Centre' with Queensland Health as the tenant.

BACKGROUND/HISTORY

On 2 December 2020, Council received a written request to provide the tenant of Lease D with a letter of Authority which was requested to be "simply advising that Council has no objection to the lodgement of a Development Application for a Material Change of Use over the property". A copy of that letter is attached to this report.

Lease D is a waterfront lease which sits on Lot 1 CP889652. Lot 1 CP889652 is held by Council as Deed of Grant in Trust land for 'Local Government purposes and for no other purpose whatsoever'.

The Lease commenced on 1 February 1996 and will expire on 31 January 2036. The lease area is currently used for multiple purposes including retail and facilities and services which are utilised by the commercial and tourist fishing trade and also contains a caretaker's residence.

Under the Lease, the permitted use states:

Charter boat facilities including booking office, a ramp, a floating pontoon, a caretaker's residence, wharfside seafood outlet, and wharfside souvenir and gift outlet featuring marine novelties, a fish processing unit, a marine fuel retail outlet, seafood storage and transportation including live fish and any commercial waterfront purpose subject to the Town Planning Scheme for the Shire of Cook.

Under the Cook Shire Council Planning Scheme, the building is zoned Community Facilities.

At its July 2012 Ordinary Monthly Meeting, Council adopted the *2012 Cooktown Foreshore and Webber Esplanade Master Plan* following extensive community consultation.

Resolution # 30294 - *That Council endorse the Cooktown Foreshore and Webber Esplanade Master Plan in principle as the strategic overall plan for future development.*

The Master Plan identifies the area surrounding Lease D as a Commercial Precinct with a focus on commercial and tourism operations.

Please note that as this Master Plan was adopted by Council there is a community expectation that it will be followed and considered in all project works, building and planning applications, particularly when a proposal or project falls outside the scope of the relevant foreshore precinct.

The Lessee of Lease D has advised Council that they wish to lodge a Development Application seeking a Development Permit Material Change of Use to facilitate a combined Community Use and Restaurant on the site. The Development Application requires that Owner's Consent be provided and that consent is provided by the State.

Prior to the State issuing the Owner's Consent, the State has requested that Council provide a Letter of Authority which authorises the Lessee to lodge the Development Application.

In the State policy titled 'Secondary use of Trust land under the Land Act SLM/2013/493', it states:

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A secondary use with a commercial component will only be considered where it is consistent with the current purpose of the trust land and does not overpower or dominate the trust land. Commercial uses should not unreasonably exclude the public and must not be the most substantial or significant use of the reserve. ... In simple terms, "commercial" may mean the exchange of money for goods and services regardless of what the money is used for.

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To assess an application for use of trust land, the following five (5) criteria can be used:

- *Strategic value -the proposed use should be appropriate to the strategic value of the land's capabilities;*
- *Consistency with primary use (if applicable) -the proposed use should be consistent with the designated purpose of the trust land and should also facilitate or enhance, not diminish, the purpose of the trust land;*
- *Commerciality -the strength of the commercial motive behind the proposed use and whether it will have a negative effect on the public interest, needs consideration;*
- *Exclusivity -refers to secondary occupation which excludes use by the wider community; and*
- *Incremental progression and forward planning -the proposed use may contribute to an incremental chain of events that lead to a final outcome quite different from that initially intended*

PROPOSED USE

The Development Application describes the proposed use as follows:

The proposed development is seeking approval to continue using the restaurant and combining it with a community use on the subject site. The restaurant space has been vacant for over three (3) years, where 1770 restaurant previously utilised the site. This is a reflection of the current market conditions which is evidence that the space has not been able to attract a new restaurant operator, and therefore an alternative use in the form of a Community Use is applied for whilst still maintaining the restaurant use in place, in case things change and can revert back to a restaurant without delay. This also provides the opportunity to have two (2) tenants sharing the space with the community use using the space from 8am till 5pm Monday to Friday, and the Restaurant from 6pm to 11pm Thursday to Sunday.

Considerable correspondence has been shared between the Lessor, their prospective tenant and Council officers and the Lessor and prospective tenant have advised that the proposed use is an 'Aged Care Drop in Centre'.

It is again noted that an Aged Care Drop in Centre or any other non-commercial community activity, does not align with the intent of the Commercial Precinct of the 2012 Cooktown Foreshore and Webber Esplanade Master Plan or any of the purposes mentioned in the permitted uses of Lease D.

This report is not seeking that Council consider the Development Application, but does require that Council consider the provision of a letter of authority in circumstances where the proposed use does not reflect the community expectation of use of that space, does not comply with the 2012 Foreshore Master Plan as developed with the community, and does not comply with the Permitted Use of the Lease.

LINK TO CORPORATE PLAN

Key Strategy Priority: Environment – Respect for the unique natural environment of the Cape, its history and the provision of sustainable, safe access for the enjoyment of the Cape’s communities and visitors.

Env 3: Appropriate consideration is given to planning and development controls, design guidelines, traditional ownership and sustainable development principles when making planning decisions.

CONSULTATION

Consultation has been undertaken with:

- Director of Infrastructure
- Director of Organisational Business Services
- Director of Community Economy and Innovation
- Manager Planning and Environment
- Land Tenure and Native Title Coordinator

LEGAL IMPLICATIONS (STATUTORY, BASIS, LEGAL RISKS)

The following have been considered:

- *Land Act 1994*
- State Policy - *Secondary use of Trust land under the Land Act SLM/2013/493*
- Cook Shire Planning Scheme
- 2012 Cooktown Foreshore and Webber Esplanade Master Plan

POLICY IMPLICATIONS

There are no policy implications.

FINANCIAL AND RESOURCE IMPLICATIONS (BUDGETARY)

There are no financial implications.

RECOMMENDATION

That having considered the Lessee's proposed use of Lease D on Lot 1 CP889652, the Cook Shire Planning Scheme, the Cooktown Foreshore and Webber Esplanade Master Plan, and the Permitted Use of the Lease, Council does not issue a letter of authority.



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Our Ref: M6-20

2 December 2020

Chief Executive Officer
Cook Shire Council
10 Furneaux Street
Cooktown, QLD, 4895

Attention: Planning Department

Dear Sir/Madam,

**SUBJECT: REQUEST FOR LETTER OF AUTHORITY
OWNER'S CONSENT APPLICATION – STATE LAND ASSET MANAGEMENT**

We act on behalf of our client, J&A Williams in submitting the following request to obtain a 'Letter of Authority' from Cook Shire Council, to submit as part of the application for owner's consent to the State Land Asset Management, Department of Natural Resources, Mines and Energy.

This letter is required as part of the consent request application process, where we simply require a letter from Cook Shire Council advising that they have no objection to the lodgement of the subsequent development application which seeks a Development Permit for a Material Change of Use over the subject allotment under the *Planning Act 2016* located at Webber Esplanade to facilitate a combined Community Use and Restaurant use on site.

If you have any questions, please do not hesitate to give our office a call on 0411 344 110 or email us at admin@uitownplan.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ramon Samanes'.

Ramon Samanes
Director, U&I Town Plan