

KUR-World

Appendix 3d

Native Title Tenure Assessment

Environmental Impact Statement





HopgoodGanim
LAWYERS

Legal Advice

Native Title Tenure Assessment

24 April 2017

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24 April 2017

Native Title Tenure Assessment: Reeve and Ocean's KUR-World Eco-resort Kuranda

1. Instructions

- 1.1 You have instructed us to undertake investigations of all possible grants which may have extinguished native title over any of the parcels of land described at paragraph 2.1, collectively referred to in this advice as the Land. The lots comprising the Land were taken from the Initial Advice Statement for KUR-World dated May 2016 (**IAS**). We have also independently confirmed that these are the only lots (apart from gazetted roads (formed and unformed) underlying the project area by searches using Mines Online mapping services provided by the Queensland Government.
- 1.2 We have assessed the parcels of Land in accordance with section 23B of the *Native Title Act 1993* (Cth) (**NT Act**) in an attempt to demonstrate the extinguishment of native title over the Land.

2. Executive Summary

- 2.1 We can confirm that native title has been extinguished over the following lots:
- (a) Lot 22 N157227 – freehold.
 - (b) Lot 17 N157227 – freehold.
 - (c) Lot 18 N157227 – freehold.
 - (d) Lot 2 RP703984 – freehold.
 - (e) Lot 1 RP703984 – freehold.
 - (f) Lot 19 N157452 – freehold.
 - (g) Lot 20 N157423 – freehold.
 - (h) Lot 95 N157452 – freehold.
 - (i) Lot 43 N157359 – freehold.
 - (j) Lot 129 NR456 – freehold.
 - (k) Lot 131 N157491 – freehold.
 - (l) Lot 290 N15748 – freehold.
- 2.2 We also confirm that native title has been extinguished over the roads within the Project area (please see paragraph 6).
- 2.3 Consequently, in our view, no native title negotiation need be entered into before the project may be developed on the land. Obviously indigenous cultural heritage work will need to be

undertaken regardless of the existence of native title, as indigenous cultural heritage is not tenure dependent.

3. Native Title Generally

- 3.1 On 3 June 1992, the High Court of Australia found in *Mabo v Queensland (No 2)* ((1992) 175 CLR 1) that Australian law recognises a form of native title.
- 3.2 In direct response to this High Court case, the Australian Parliament introduced the NT Act to govern native title in Australia.
- 3.3 The NT Act prescribes a regime by which persons claiming to hold native title may lodge a claim to that effect for determination; by which any future act affecting native title (such as the grant of mining tenements) may be validly undertaken; and by which registered claimants may be afforded certain procedural rights including the "right to negotiate".
- 3.4 In Queensland, there exists complementary legislation - the *Native Title (Qld) Act 1993 (NTQ Act)*. Under the NT Act and the NTQ Act, native title can be confirmed to have been either totally or partially extinguished by certain grants. These grants are called Previous Exclusive Possession Acts or Previous Non-Exclusive Possession Acts, respectively.
- 3.5 A grant will be a Previous Exclusive Possession Act and therefore will have extinguished native title where it:
- (a) is valid;
 - (b) took place on or before 23 December 1996; and
 - (c) consists of the granting or vesting of any of the following:
 - (1) a Scheduled Interest;
 - (2) a freehold estate;
 - (3) a commercial lease that is neither an agricultural lease nor a pastoral lease;
 - (4) an exclusive agricultural lease or an exclusive pastoral lease;
 - (5) a residential lease;
 - (6) a community purposes lease;
 - (7) what is taken by s 245(3) (which deals with the dissecting of Mining Leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection; or
 - (8) any lease (other than a Mining Lease) that confers a right of exclusive possession over particular land or waters,(section 23B(2) of the NT Act).
- 3.6 Previous Exclusive Possession Acts are considered to be so inconsistent with the continued enjoyment of native title rights that they completely extinguish native title. Once extinguished, native title cannot be revived (see section 237A of the NT Act).

- 3.7 Tenures which may co-exist with native title are generally non-exclusive leases such as pastoral leases, pastoral development holdings, some special leases and term leases for grazing or pastoral purposes, occupation licences, permits to occupy, and so on. Such grants and interests may in many cases be Previous Non-Exclusive Possession Acts and will be confirmed to have extinguished native title to the extent of any inconsistency.
- 3.8 It should be noted that the existence of a native title claim over an area of land is not evidence for the existence or otherwise of native title. The existence of native title is a question of law to be determined by an assessment of the extent to which native title has been adversely affected or extinguished by adverse Crown action. A claim is an expression of interest by a native title group which is subject to detailed assessment by the State Government and ultimately the Federal Court. A native title group has a procedural right to negotiate under the NT Act in relation to land the subject of their native title claim where the grant of a mining tenement is proposed by the State.

4. Land Tenure

- 4.1 The tenures underlying the Land are comprised of:
- (a) 12 fee simple grants; and
 - (b) public works (formed and unformed roads).
- 4.2 These tenures are identified in the table at Schedule 1 and are shown on the maps at Schedule 2 and Schedule 3. We deal with both of these kinds of tenure in turn below.

5. Freehold Grants

- 5.1 Our research shows that all parcels of Land identified in Schedule 1 have been the subject of freehold grants by the State.
- 5.2 The grant of a freehold interest in fee simple is wholly inconsistent with the continued existence of native title.
- 5.3 Each lot was granted in freehold before 23 December 1996. Consequently, the granting of this interest meets the criteria outlined by Div 2B of Part 2 of the NT Act and thus is a Previous Exclusive Possession Act. Each grant is an act of extinguishment of native title.
- 5.4 We therefore confirm that native title has been extinguished over all 12 lots listed in paragraph 2.1 above.

6. Public Work – Roads

- 6.1 Pursuant to the State Road Policy 2015 (**Road Policy**), before 1 January 1994 the dedication of an area as a road is considered to be the establishment of a public work. This is therefore a previous exclusive possession act under s 23B(7) of the NTA and s 21 of the NTQA. The effect of this on native title is extinguishment.
- 6.2 As stated in the IAS, there are a number of unformed gazetted roads within the Project area for which we have been unable to find corresponding gazettes.
- 6.3 The Crown has pursuant to a letter of offer dated 14 March 2017 (attached at Schedule 3), agreed to close certain portions of roads within the Project area. These closures are shown on

the map at Schedule 3. This offer from the Crown does not require any native title conditions to be fulfilled prior to it being accepted. The Crown has therefore effectively indicated that it believes that the road areas (formed or unformed) are acts of extinguishment of native title. If the offer must have a native title condition if native title land is to be folded into the adjacent freehold land. The Crown has also confirmed orally that it considers that native title has been extinguished within those areas of the roads to be closed.

- 6.4 The only road with any issues at all from our analysis is Lot 1 on AP13706. The Road Policy sets out a procedure to be followed in correctly identifying whether a proposed dealing area was validly dedicated as a road. We have followed that procedure in order to confirm that the road identified satisfies the requirements of the Road Policy. This included:
- (a) obtaining a copy of the current survey plans and preceding plans for the lot; and
 - (b) obtaining the lease instrument and title search for the lot.
- 6.5 We were able to use the current and preceding plans and the title search to determine that the road was dedicated before 30 June 1995, and as such, confirming that native title has been extinguished.

7. Conclusion

- 7.1 We can confirm that native title has been extinguished on all lots comprising the Land as well as the various formed and unformed roads.

Contact details


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Legal Advice

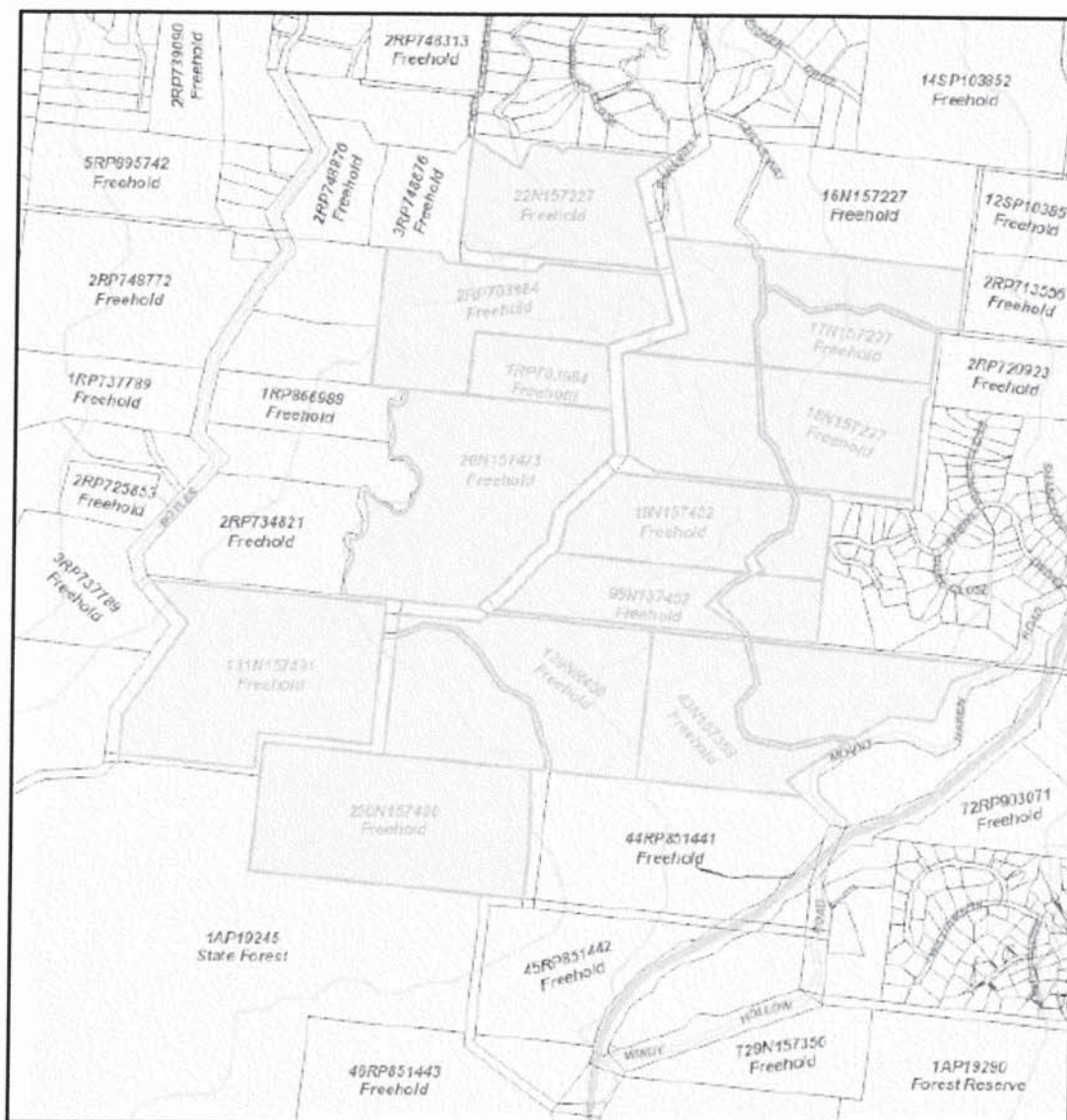


Schedule 1 – Tenure Table

No	Lot on Plan	Tenure	Holder	Date created	Comments and Native Title Status
1.	Lot 22 N157227	Fee simple	R & O Pty Ltd	18.02.1927	Freehold
2.	Lot 17 N157227	Fee simple	R & O Pty Ltd	19.09.1945	Freehold
3.	Lot 18 N157227	Fee simple	R & O Pty Ltd	07.07.1947	Freehold
4.	Lot 2 RP703984	Fee simple	R & O Pty Ltd	28.06.1940	Freehold
5.	Lot 1 RP703984	Fee simple	R & O Pty Ltd	02.03.1901	Freehold
6.	Lot 19 N157452	Fee simple	R & O Pty Ltd	17.02.1900	Freehold
7.	Lot 20 N157423	Fee simple	R & O Pty Ltd	25.09.1970	Freehold
8.	Lot 95 N157452	Fee simple	R & O Pty Ltd	02.01.1906	Freehold
9.	Lot 43 N157359	Fee simple	R & O Pty Ltd	03.06.1912	Freehold
10.	Lot 129 NR456	Fee simple	R & O Pty Ltd	04.09.1911	Freehold
11.	Lot 131 N157491	Fee simple	R & O Pty Ltd	01.12.1948	Freehold
12.	Lot 290 N157480	Fee simple	R & O Pty Ltd	29.03.1920	Freehold

Schedule 2 – Map of the Land

KUR-World Land Tenure



MinesOnlineMaps

Created By: Author

Created On: 12/04/2017 2:23:39 PM

Print Template: A4 Portrait

All enquiries and feedback:

email: MinesOnlineMaps@dnrm.qld.gov.au

Selected Features

(see page 2 for a complete legend)

Scale 1:23,956

0 0.2 0.5 0.7 1.0
Kilometres

Geocentric Datum of Australia 1994 EPSG: 4203

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Schedule 3 – Roads



Queensland
Government

Department of
Natural Resources and Mines

Author: Janelle Shore
File/Ref number: 2015/007052, 7095, 7096, 7097, 7099, 7100 & 7101
Your Ref: 15-004
Directorate/Unit: State Land Asset Management
Phone: (07)40285024

14 March 2017

Reever and Ocean Pty Ltd
c/- Cardno (Qld) Pty Ltd
PO Box 1619
CAIRNS QLD 4870

Attention: Dominic Hammersley

Dear Sir

Applications for permanent road closure adjoining/intersecting Lots 17, 18 & 22 on N157227, Lots 1 & 2 on RP703984, Lot 19 on N157452 and Lot 20 on N157423, locality of Myola

Applicant: Reever and Ocean Pty Ltd ACN 168 166 416

Reference is made to previous correspondence and it is advised that approval will be sought for the permanent closure of the area of road shown on RPS Drawing PR121778-10B, excluding the northern section of the road running north-south within Lot 17 on N157227, for inclusion into your client's adjoining freehold land, described as Lots 17, 18 & 22 on N157227, Lots 1 & 2 on RP703984, Lot 19 on N157452 and Lot 20 on N157423, for the issue of 5 x Deeds of Grant, subject to the terms and conditions as set out in the attached **Agreement to Offer permanent road closure** and compliance with the requirements of offer to Reever and Ocean Pty Ltd ACN 168 166 416.

The attached agreement duly signed, together with payment of all required monies, being the amount of \$33,129.48, must be returned to the Department **by close of business on 11 April 2017**, otherwise this offer lapses. Business days include those days that the Department office is normally open and excludes weekends and public holidays.

All other conditions of this offer, including payment of the balance amount on the offer account, (i.e. less any of the required money paid) being the amount of \$164,904.80, must be satisfied **by close of business on 14 June 2017** otherwise this offer lapses.

If you believe you will be unable to comply with any of the conditions of this offer by the specified date, you should apply in writing for an extension of time. Any application for an extension of time should be made before the offer lapses and must address the following -

- what action you have taken to comply with the offer conditions; **AND**
- why the conditions cannot be complied with by the due date; **AND**

Postal:
DNRM Townsville
PO Box 5318
Townsville Qld 4810

Telephone: (07)40957024
Fax: (07)4447 9199

- the time for which the extension is requested, including reasons for the amount of time required.

If you **do not apply** for an extension of time and **the offer lapses**, a new application and application fee will be required. If you make a new application, the matter will be re-investigated and a new decision will be made that will include re-assessment of the land value and all conditions and requirements applicable to the dealing. This re-assessment may also result in the application being refused.

Note - Section 442 of the Land Act states that if an offer is not accepted in writing within the stated time, the offer lapses. An application to extend the stated time may be made at any time before the time passes.

Once the stated time has passed, an application may only be made within 42 days after the time has passed. Where an application is made after the stated time has passed but within the following 42 day period, the time can only be extended where exceptional circumstances exist.

No applications for extension of time made after the 42 day period referred to in Section 442 will be considered.

If you wish to discuss this matter please contact Janelle Shore on (07)40285624.

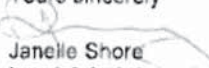
All future correspondence relative to this matter is to be referred to the department at the address below or by email to Townsville.SLAMS@dnrm.qld.gov.au (please no larger than 4MB). Any hard copy correspondence received will be electronically scanned and filed. For this reason, it is recommended that any attached plans, sketches or maps be no larger than A3-sized.

You may wish to seek your own legal advice with regard to this offer.

Please quote reference number 2015/007092, 7095, 7096, 7097, 7099, 7100 and 7101 in any future correspondence.

You can track the progress of your lodged land application on the DNRM webpage - <https://dashboard.dnrm.qld.gov.au/services>

Yours sincerely


Janelle Shore
Land Administration Officer
State Land Asset Management
Land Services
North Region

encl - RPS Drawing PR121778-10B
- Agreement to Offer permanent road closure - Requirements and notification of acceptance of offer form
- Offer Account No. 631035
- Form 1 Transfer x 7

Road closure

