

SPECIAL COUNCIL MEETING	3.1
2 JUNE 2015	

PROPOSED MORTGAGE BY WESTPAC BANKING CORPORATION OVER TRUSTEE LEASES 715487882,715487893 & 715487898 (LEASES D, E, J) PART OF LOT 126 CROWN PLAN SP868 COUNTY OF SOLANDER PARISH OF SALISBURY

Robert Donovan, Property Officer, Rebecca Assman Manager Governance #455664

Darryl Crees; General Manager Corporate Services

RECOMMENDATION:

That Council

1. consent to the proposed Mortgage by Westpac Banking Corporation over Douglas Shire Council Trustee Lessees 715487882, 715487893 and 715487898 (Lessees D,E and J) Part of Lot No 126 Crown Plan SP868, County of Solander, Parish of Salisbury (subject to the Ministers approval)
2. advise the Minister of Department of Natural Resources and Mining of Council's decision as required under *The Land Act 1994 section 58 (1)*
3. advise the applicant that Council has consented to the Mortgage
4. advise the applicant that all fees and charges associated with the setting up of the Mortgage with Westpac banking Corporation be born by the Mortgagee
5. delegates authority to the Mayor and the Chief Executive Officer in accordance with section 257 of the *Local Government Act 2009* to negotiate, determine of resolve any and all matters associated with the Mortgage consent

EXECUTIVE SUMMARY:

Reef Marina Pty Ltd holds a special lease direct with the State Government over the Port Douglas Marina complex and in January 2015 secured a Planning Permit from Council for the construction of 30 new marina berths. They are in the process of financing this expansion and their financiers, Westpac Banking Corporation, have requested Council to consent to a mortgage over the three adjoining leases.

These leases are known as (Leases D, E and J) being Trustee Leases 715487882, 715487893 and 715487898, part of Lot No 126 Crown Plan SP868, County of Solander, Parish of Salisbury. Douglas Shire Council is the trustee for these leases and these leases were renewed on 4 November 2013 with an expiration date of September 2033. The leases to which Council has been requested to consent to the mortgage does not include the area known as the Port Douglas Slipway or Duck Pond.

It should be noted that when reviewing historical title searches, Douglas Shire Council has previously consented to Leasehold Mortgages on the leases subject to this request.

BACKGROUND:

During November 2013 Meridian Marinas Port Douglas Pty. Ltd renewed the above Trustee Leases for a further 19 years and 10 months, with an expiry date of 4 November 2033.

On 7 February 2014 the Trustee Leases with Douglas Shire Council were transferred to Reef Marinas Pty. Ltd.

In January 2015 a Planning Permit was issued by Douglas Shire Council for the construction of 30 new marina berths.

During the period since the transfer of leases to Reef Marinas, a substantial capital investment has been undertaken. With Council's consent to this Mortgage (over the above trustee leases), the expansion of the marina project will have the potential to boost employment and economic activity in Port Douglas and the surrounding areas. This boost will be due to the additional capacity attracting private vessels, super yachts and an increase in commercial operators, which also help increase visitor numbers to the region.

COMMENT:

The above lessees are within Lot 126 on SR868 and are in part of the area claimed by the Yirrganydji (Irukandji) people. However, the act of registering a mortgage over the land will not have any greater effect on native title than the granting of the lease. Therefore, the act of registering a mortgage is not a future act and does not require validation under the *Native Title Act 1994 (Cth)* ("NTA").

In any event, Council is not proposing the registration of the mortgage but consenting to the registration. The State of Queensland and/or the lessee would be responsible for addressing native title, if required under the *NTA*. Council is not required to notify the State or the lessee that a native title claim exists over the land. The claim was notified by the National Native Title Tribunal. The State has been joined as a respondent to the claim and it is expected that the Reef Marina Ltd Pty was also notified.

Extinguishment of Native Title will be considered once the State has provided its tenure analysis summary.

Under The Land Act 1994, section 58 (1): A trustee lessee may transfer, mortgage or sublease a trustee lease if the trustee lessee first obtains the written approval of the Minister and the trustee to the transaction. Therefore Council may make a decision on whether to consent to the proposed mortgage.

PROPOSAL:

That Council consent to the Mortgage over Trustee Lessees 715487882, 715487893 and 715487898 (Lessees D, E and J) Part of Lot No 126 Crown Plan SP868, County of Solander, and Parish of Salisbury.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:

This report has been prepared in accordance with the following Corporate Plan 2014-2019 actions:

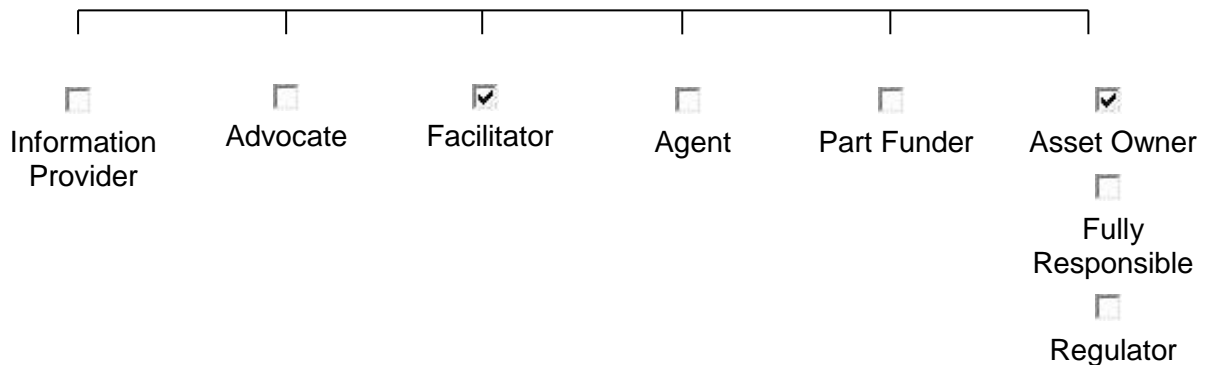
2.2.1 Develop business initiatives to support commercial development and investment within the Shire.

2.2.5 Expand tourism and agricultural business opportunities and benefits through collaborative planning and promotion.

COUNCIL’S ROLE:

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council’s involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:



Facilitator:	Bringing people together to develop solutions to problems.
Asset Owner:	Meeting the responsibilities associated with owning or being the custodian of assets such as infrastructure.

FINANCIAL/RESOURCE IMPLICATIONS:

Reef Marina Pty. Ltd. is responsible for all fees and charges associated with the setting up of the Mortgage with Westpac banking Corporation. No financial implications to Council.

RISK MANAGEMENT IMPLICATIONS:

N/A

SUSTAINABILITY IMPLICATIONS:

ECONOMIC: There is the potential for the business community of Port Douglas and surrounding areas to receive a financial boost to the local economy.

ENVIRONMENTAL: N/A

SOCIAL: The expansion of the marina project has the potential to boost employment and economic activity in Port Douglas and surrounding areas.

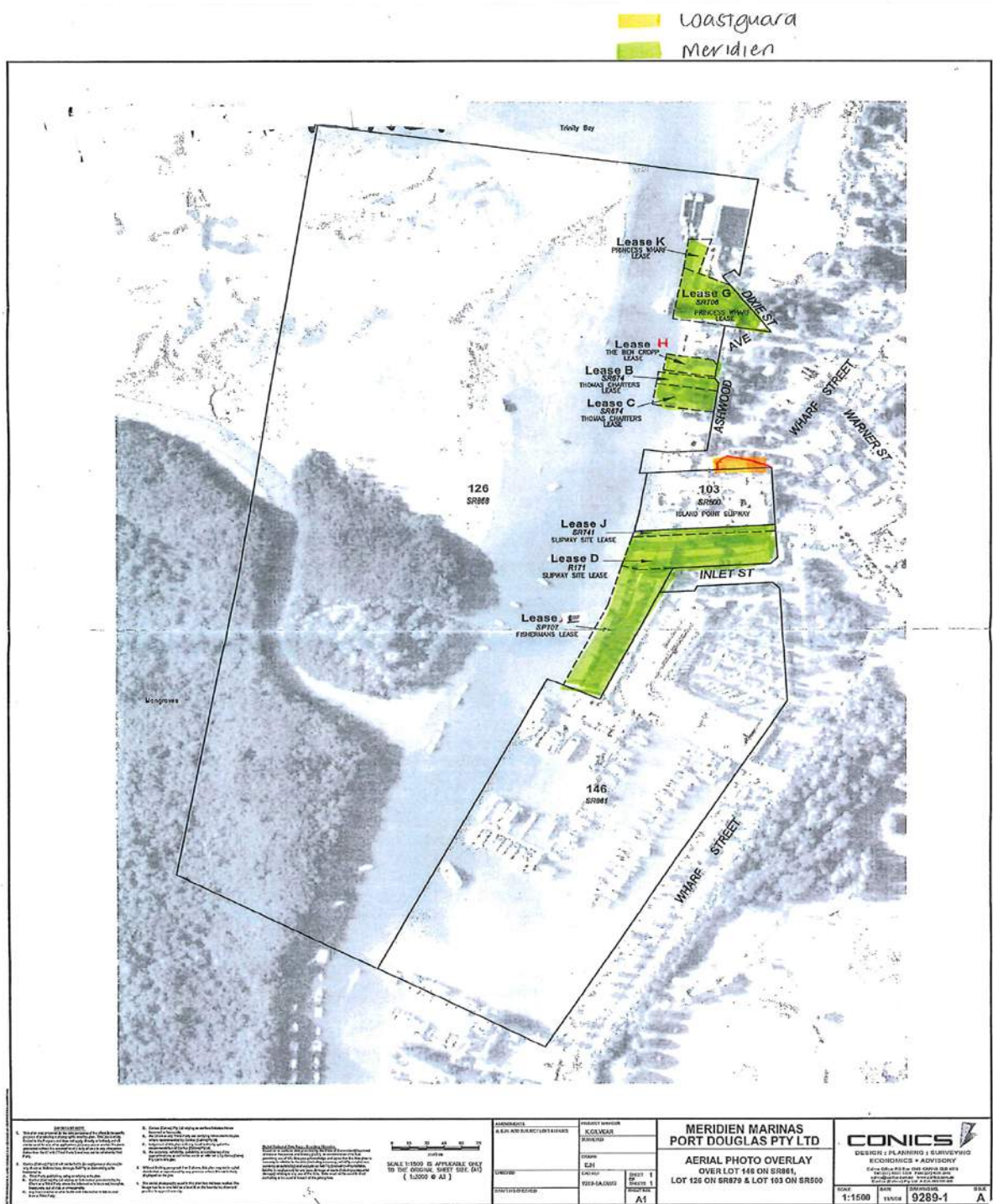
INTERNAL/EXTERNAL CONSULTATION:

Department of Natural Resources and M: Advice on Mortgage tenure
Preston Law: Advice on Native Title

ATTACHMENTS:

Attachmen1 Locality Plan
Attachment 2; Mortgage request from HWL Ebsworth Lawyers

Attachment: 1 Locality Plan



Attachment 2: Mortgage request from HWL Ebsworth Lawyers

HWL
EBSWORTH
LAWYERS

Our Ref: MAL:RMS:554528

5 May 2015

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Dear Darryl

Trustee: Douglas Shire Council
Trustee Lessee: The Reef Marina Pty Ltd ACN 165 492 606
Trustee Lease: Lease No. 715487882, 715487893, 715487898 (Lease D, E and J on CP SR868)
Premises: Port Douglas Marina, Wharf St and Inlot Rd, being Lot 202 on SP 249722

We act for Westpac Banking Corporation (**Westpac**).

Westpac requires a mortgage from the above Trustee Lessee over its interest in the above-described Trustee Lease of the Premises.


A copy of the proposed mortgage is **attached** (the **Mortgage**).

Pursuant to clause 11.1 of the Mandatory Standard Terms of the Trustee Lease, if the Trustee Lessee wishes to mortgage its interest in the Premises, it must first obtain the consent of the Trustee and the Minister.


Accordingly, we hereby request the Trustee's consent to the Mortgage. We confirm we have also requested the consent of the Minister.

Please advise the Council's requirements to providing its consent, or otherwise, please provide a signed Form 18 Consent to the Mortgage (**enclosed**).

Yours sincerely


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