

## **5.11. PORT DOUGLAS REEF MARINA STATUS REPORT**

**REPORT AUTHOR(S):** Linda Cardew, Chief Executive Officer  
**DEPARTMENT:** Office of the Chief Executive

### **RECOMMENDATION**

**On the basis of the information provided and the Minister's broad prima facie support for the approach undertaken in discussions with The Reef Marina (TRM) as detailed in the report, it is recommended that Council request officers to:**

- **request formal confirmation from the fishermen that Lot 96 on SP134234 and the adjoining portion of Lot 146 on Crown Plan SR861 is an acceptable location for the fishing industry;**
- **prepare a detailed proposal for the purchase by Council of the freehold title to Lot 96 on SP134234 including potential uses, all costs, source of funds, and planning opportunities and constraints;**
- **progress discussions with TRM requesting it relinquish a portion of Lot 146 on Crown Plan SR861 for the purpose of locating the fishing berths and providing water access to Lot 96;**
- **in the event discussions with TRM fail, that officers bring a report to Council recommending the compulsory acquisition of the necessary portion of Lot 146 Crown Plan SR861, lease land below the high water mark in accordance with the *Acquisition of Land Act 1967* to be incorporated into Lot 126 Crown Plan SR868 of which Council is Trustee; and**
- **that Council re-affirm its continued support for the Minister's direction that an alternative location for the fishermen be found "*and made operational*".**

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### **EXECUTIVE SUMMARY**

The purpose of this report is to advise all stakeholders and the community of the actions that have been undertaken by Council through the Mayor, and Council officers, to achieve an affordable, workable and practical alternative location in Port Douglas for the commercial fishing industry. This report does not comment on planning matters properly considered as part of the pre-lodgement enquiry.

In summary these actions have included:

- seeking advice from the Department Natural Resources and Mines (DNRM) on tenure options, including the potential for Council to purchase the freehold title to Lot 96 on SP134234 and the subdivision of a portion of the leased water body from Lot 146 on Crown Plan SR861 and subsequent lease by Council from DNRM for 50 years to ensure water access to Lot 96;
- on a without prejudice basis, a discussion presenting a proposal to TRM regarding the above (subject to Council approval), including the construction of the fishing berths by TRM, (23 November 2015); and
- discussions regarding the Port Douglas waterfront with the Minister for State Development and Minister for Natural Resources and Mines, Dr Anthony Lynham (5 November 2015) followed by a letter from the Mayor to Minister Lynham (4 December 2015) advising TRM's rejection of this proposal.

The response from the Minister to the Mayor dated 15 January 2016 provides prima facie support for Council's approach as above and encourages Council to continue to work with TRM to seek its surrender of a portion of the lease land below the high water mark [to secure access to fishing berths and to Lot 96].

## BACKGROUND

On 25 August 2014 the DNRM requested the views and the requirements of Council in respect of applications/proposal by TRM to freehold and purchase land above the high water mark and for a term lease for commercial purposes below the high water mark in relation to the Port Douglas waterfront. This matter was the subject of a report to the Closed Session of the Ordinary Meeting of Council on 7 October 2014; a workshop with Councillors followed by a delegation on 10 October 2014 from the Port Douglas Commercial Fishermen's Association and the Port Douglas Waterfront Protection Association. The delegation was attended and supported by the then Assistant Minister for Aboriginal Affairs and Member for Cook.

Council formalised its response to DNRM by resolution on 21 October 2014 (Item 4.1): <http://douglas.qld.gov.au/event/special-council-meeting-21-october-2014/>. In its response Council made specific representations to DNRM requiring public access to the foreshore, the need to support the commercial fishing industry of Port Douglas and the use by that industry of the public marine facility being the Port Douglas boat harbour.

Council received correspondence dated 15 June 2015 from the Minister's Office inviting Council's views in relation to the proposal for a Development Application approval over the waterfront site that is the subject of the land tenure applications by TRM and commenting that DNRM has been actively developing possible solutions to address the issues of enduring public access to the waterfront and ensuring the commercial fishing industry is not diminished as a result of the tenure applications made by The Reef Marina.

Council considered the matter in Closed Session on 7 July 2015 and on the same day advised the Minister of Council's resolution (Agenda Item 8.2) [http://douglas.qld.gov.au/?wpfb\\_dl=2135](http://douglas.qld.gov.au/?wpfb_dl=2135).

On 14 July 2015, the Mayor wrote to the Minister to provide further information regarding Council's resolution including the comment that:

*"As noted in the Economic Analysis prepared by Economic Associates in 2008 as part of the master planning process "The Port Douglas Waterfront represents the focal point of activity in Port Douglas. The waterfront is the principal driver of the destination appeal of Port Douglas. It is the point from which tourists access the Great Barrier Reef, where recreational boat owners launch from and where commercial fishers base themselves. Without the waterfront it is likely that economic activity within Port Douglas would be significantly lower."*

On 27 July 2015 the Minister wrote to the Mayor in response to the Council resolution stating in part that:

*"The Department of Natural Resources and Mines (DNRM) continues to recognize the community significance of the Port Douglas Waterfront and the impact of any future development of the waterfront areas ..."*

*In addition to [The Reef Marina] providing evidence that a development approval is in place for the development of the application areas, TRM will be required to provide written confirmation from the council that such development does not diminish the viability of marine based industrial uses that directly serve the Port Douglas tourist and fishing operators and private boat owners, in line with one of the overarching principles of the Port Douglas Waterfront Masterplan.*

*TRM will also be required to provide written advice from the council that formalized public spaces and pedestrian paths/areas are made accessible to the public within waterfront areas via easements or TRM providing written evidence from the council confirming that public access areas, as requested by the council are provided for and evidenced in any development approval.”*

## COMMENT

### Meetings Held

Numerous meetings have since been held between the Mayor, Councillors and stakeholders to attempt to secure a suitable alternative site for the commercial fishing industry, however the matter remains unresolved. While the redevelopment of TRM is an initiative that Council readily supports, in its formal resolutions Council has expressed the view that its responsibility to the broader community also lies in its ability to secure public access to the waterfront and to advocate for the future and the retention of the commercial fishing industry in Port Douglas.

On 5 November 2015 the Mayor discussed aspects of the Port Douglas waterfront with Minister Lynham at the North Queensland Economic Summit in Cairns.

### Potential for Council to Purchase Lot 96 for Fishing Operations or Related Commercial Venture

On 19 November 2015 Council officers made enquiries of DNRM regarding Lot 96 on SP134234 and part of Lot 146 on plan Crown Plan SR861, with the intention of presenting a proposal to Council that it purchase the site to facilitate long term, affordable tenure for the fishing industry.

Council is Trustee of Lot 96 SP134234 which has an area of 3,727m<sup>2</sup> with the Purpose of Park and Recreation. If the fishermen were to relocate adjacent to this allotment and use part of the land for the operation of the fishing fleet, this use would be consistent with the existing land use.

Council can also apply to DNRM for the purchase of the freehold title to the allotment. Council would be dealt with “in priority” with a 50% discount on the purchase price based on the valuation. On purchase of the freehold Council would be free to lease the land to a commercial operator for the purposes of developing a commercial “Fishermen’s Wharf” or similar. DNRM has indicated its support should Council wish to purchase the freehold site.

It is **not** proposed that Council manage or be involved in a commercial fishing operation.

### Potential for Council to Lease of Part of Lot 146 CP861 to Secure Access

If a commercial fishing operation occupied Lot 96 (under a form of tenure with Council to be determined) with the fishing berths located in the water, adjacent to Lot 96 and within Lot 146 Crown Plan SR861, guaranteed access to the main water body would be required. While TRM has applied to purchase Lot 146 from the State Government, only the land above the high water mark can be sold. All water below the high water mark can only be leased from the State Government by TRM. At this point in time, if TRM agreed to relinquishing a portion of the leased (water) area, access to the main water body could be achieved by Council either:

- entering into a sub-lease with TRM, in which case the sublease lease could only be for 20 years; or
- entering into a lease arrangement with DNRM, in which case the lease would be for 50 years.

Of the two options, the second will incur substantially lower lease payments than the commercial rates expected to be charged under the first option, with the assurance of a 50 year lease as opposed to a 20 year sublease.

If TRM does not agree to relinquishing a portion of the lease area, Council has options available to it under the *Acquisition of Land Act 1967* and can incorporate this portion of land into Lot 126 Crown Plan SR868 of which DSC is Trustee which can be leased out by Council.

### Construction of the Fishing Berths

Finally, with regard to the construction of the fishing berths, TRM was always to be responsible for the delivery of marine infrastructure to service the tourism, fishing and private boating community. The provision of berths is part of the solution, and an approach that accords with the Minister's direction that an alternative location for the fishermen be found *and made operational* [emphasis added].

### 'Without Prejudice' Meeting with TRM

With the above in mind, the Mayor requested a meeting on a without prejudice basis with Mr Andrew Hooper-Nguyen, principal of TRM on 23 November 2015. The Mayor proposed the above three actions as a way of settling the need to secure a suitable site for the fishermen (subject to Council approval) and making the location operational (as directed by the Minister).

### In Summary this Proposal Provides:

- 1) a secure waterfront site (ie Lot 96), owned by Council, from which commercial fishing operations may be based, or on which a "Fishermen's Wharf" operation may be established by an operator who would lease from Council;
- 2) guaranteed 50 year water access to Lot 96 at a modest rental from DNRM; and
- 3) the fishing industry with berths located within the leased water area.

Funding for the purchase of Lot 96 by Council would be derived from the payment to be made by the State Government to Council for the freeholding of the other sites, which the State Government expects to be re-invested in the Port Douglas waterfront.

### The Benefits of this Proposal are Expected to be:

- 1) by owning Lot 96 in freehold Council will be positioned to enter into an appropriate, cost effective lease arrangement with either the fishermen or an investor/developer for the fishermen, giving security of tenure to the fishing industry;
- 2) a direct lease of a portion of the water within Lot 146 by Council from DNRM for 50 years for a modest rental achieves a better outcome for the fishing industry than a sublease on commercial terms from TRM for 20 years;
- 3) the construction of the berths within Lot 146 by TRM and handover to Council will enable TRM to satisfy the Minister's requirement that:

*"TRM will be required to provide written confirmation from the council that such development does not diminish the viability of marine based industrial uses that directly serve the Port Douglas tourist and fishing operators and private boat owners, in line with one of the overarching principles of the Port Douglas Waterfront Masterplan"; and*

- 4) the resolution of this issue in accordance with the proposal opens up a way forward for TRM and its development.

### Outcome of the Meeting

The Reef Marina rejected this 'without prejudice' proposal in its entirety.

### Further Communication with the Minister

On 4 December 2015 the Mayor wrote to Minister Lynham seeking his support for Council's genuine attempt to bring this matter to a conclusion in a way that delivers benefits to all stakeholders.

The Mayor's letter (Attachment 2) included the following statements:

*"As Mayor, I continue to be concerned about the failure to arrive at a consensus regarding the relocation of our commercial fishermen and the security of the fishing industry as an integral part of the Port Douglas waterfront. There are many stakeholders with diverse interests and no overarching, cohesive plan to conclude this matter.*

*While the redevelopment of the Reef Marina is an initiative that Council readily supports, Council's responsibility to the broader community also lies in its ability to secure ongoing, appropriate public waterfront access in line with standards expected and enjoyed by other communities around Australia, and in ensuring the retention of the decades-old fishing industry for which Port Douglas is famous.*

*While the planning matters directly related to the Reef Marina are dealt with on a separate basis, there is a need to examine the potential use of land of which Council is Trustee, which is not in the control of the Reef Marina, ie Lot 96 on SP134234, immediately adjacent to the Reef Marina's leasehold site. Our discussions with officers at DNRM indicate that it is unlikely that there would be an impediment to Council purchasing Lot 96.*

*On Monday 23 November 2015 I met with the principal of the Reef Marina, Andrew Hooper Nguyen, and Council's CEO to discuss what I consider to be a very practical solution. That is that subject to a formal Council resolution, Council purchase Lot 96 from the State Government at the appropriate value and that payment be made from the funds to be received by Council in relation to the proposed freeholding, thus returning the funds to the state. In conjunction, prior to the freeholding of the Marina lease, there is currently the opportunity to subdivide a small portion of the adjacent leased area intended to house the fishing fleet berths from Lot 146 on plan CP861, with that leased area of approximately 2000m<sup>2</sup> to be included into the Port and Harbour Reserve of which Council is already Trustee.*

*By transferring control of both land and the relevant portion of the water to Council, the future of the fishing fleet can then be secured under the control of local government as the most appropriate entity. In the absence of control of both, there will be no long term security of tenure, and uncertainty regarding cost. Council is the only entity that is positioned to address both. The Fishermen's Association has agreed to move to this location.*

*With regard to the construction of the berths, the Reef Marina was always to be responsible for the delivery of that infrastructure to a specification and standard that meets the needs of the fishermen. I see this ongoing responsibility as an integral part of the solution, and an approach that accords with the Minister's direction that an alternative location for the fishermen be found and made operational.*

*Although the above will be at a commercial cost to the Reef Marina, I raised with Mr Hooper Nguyen that delays in achieving a satisfactory outcome also incur substantial costs. There will also be significant costs for Council however I believe that this is a long term solution that will offer the community a very satisfactory outcome, and will enable rapid progression of other aspects of the Reef Marina's development.*

*Unfortunately my proposal was not accepted by Mr Hooper Nguyen and I now request your consideration of this "without prejudice" position, put forward in a genuine attempt to resolve this matter in a most practical manner."*

On 15 January 2016 the Minister replied to the Mayor's correspondence of 4 December 2015 (Attachment 3) expressing his views as in the following extract:

*"I am supportive of the council exploring with DNRM the option to include Lot 96 into the adjoining Port and Harbour Reserve, described as Lot 123 on Plan SP134234, currently under Council's control. In principle I would also consider the inclusion of Lot 96 in the adjoining Port and Harbour Reserve. For that part of the lease land below the high water-mark desired by the council, I encourage you to continue to work with TRM so seek a surrender of that part of the lease. As previously advised, DNRM cannot reallocate land that is currently leased to another party. If the council and TRM cannot agree on the surrender of that part of the lease land below the high-water mark, the council can consider its options under the Acquisition of Land Act 1967.*

*I am encouraged that the council and TRM are discussing workable options to meet the Port Douglas community's aspirations for the redevelopment of the Port Douglas Waterfront. Officers of DNRM are available to assist the council and TRM with advice on land tenure and allocation matters."*

## PROPOSAL

The purpose of this report is to advise all stakeholders and the community of the actions being undertaken by Council through the Mayor, to achieve a workable and practical alternative location in Port Douglas for the fishing industry.

On the basis of the information provided and the Minister's broad prima facie support for the approach undertaken as detailed, it is proposed that officers:

- request formal confirmation from the fishermen that Lot 96 on SP134234 and the adjoining portion of Lot 146 on Crown Plan SR861 is an acceptable location;
- prepare a detailed report proposing Council purchase the freehold title to Lot 96, including potential uses, all costs, source of funds and planning opportunities and constraints;
- progress discussions with TRM requesting it relinquish a portion of Lot 146 for the purpose of locating the fishing berths and providing water access to the Lot 96;
- in the event discussions with TRM fail, that officers bring a report to Council recommending the compulsory acquisition of the necessary portion of lease land below the high water mark in accordance with the *Acquisition of Land Act 1967*; and
- that Council continue to support the Minister's direction that an alternative location for the fishermen be found "*and made operational*".

## FINANCIAL/RESOURCE IMPLICATIONS

This report carries no financial implications. The report is a status report only. Any proposed future expenditure will be subject of a subsequent report to Council.

## RISK MANAGEMENT IMPLICATIONS

The actions undertaken and as detailed in this report are intended to mitigate the following risks:

- loss of the fishing industry in Port Douglas
- delays to the progression of the redevelopment of the waterfront caused by the failure to relocate the fishing industry
- failure to secure affordable, long term waterfront access to the waterfront for the fishermen

## SUSTAINABILITY IMPLICATIONS

**Economic:** The actions detailed provide an effective and realistic mechanism to secure the fishing industry and its access to the waterfront, and proposes positive action to support economic benefits expected to be delivered by both TRM and the co-location of the fishermen via a secure, affordable form of tenure.

The proposal removes any perceived obstacles related to the relocation of the fishermen and provides an opportunity for TRM to move forward with other aspects of its development.

**Environmental:** Nil

**Social:** A secure, long term alternative location for the fishermen will support family and community sustainability.

## **CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE**

This report has been prepared in accordance with the following:

### **Corporate Plan 2014-2019 Initiatives:**

2.3.3 Support and explore appropriate commercial uses of Council – controlled land, adding to the visitor experience and supporting the local economy;

4.2.2 Provide leadership to secure beneficial, social, environmental and economic outcomes for the Shire; and

4.2.3 Work with regional, state, national and international stakeholders to promote beneficial partnerships to support strong, resilient and sustainable communities.

### **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:

### **CONSULTATION**

**Internal:** Consultation with Property and Planning officers has been undertaken.

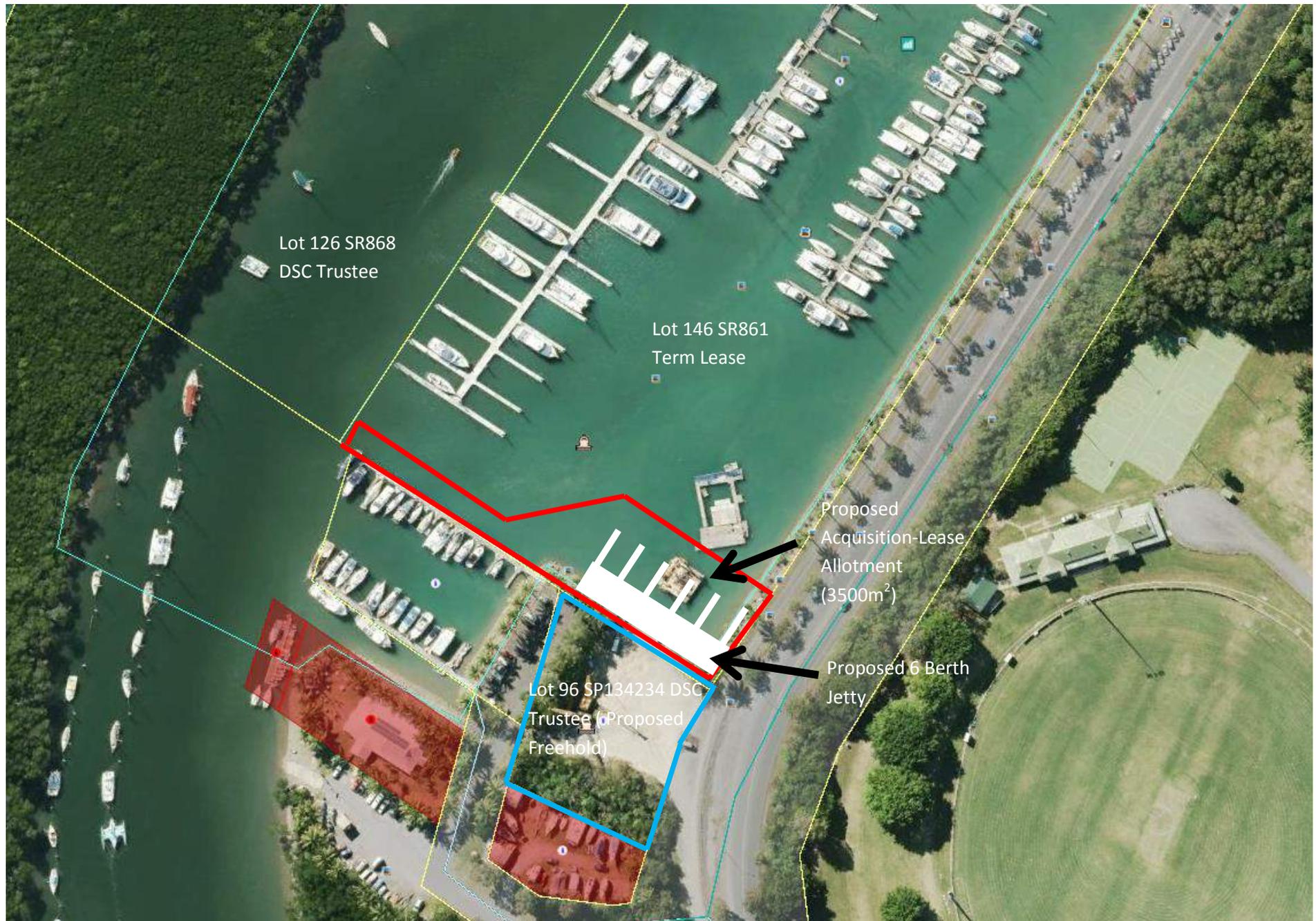
**External:** The Reef Marina, and the Minister and Department of Natural Resources and Mines have been consulted in relation to this proposal.

### **ATTACHMENTS**

Attachment 1 - Site plan

Attachment 2 - Letter dated 4 December 2015 from Mayor, Cr Julia Leu to Minister for State Development and Minister for Natural Resources and Mines, Dr Anthony Lynham

Attachment 3 - Letter dated 15 January 2016 from the Minister for State Development and Minister for Natural Resources and Mines, Dr Anthony Lynham to the Mayor, Cr Julia Leu.



**Office of the Mayor**

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

YOUR REF:  
OUR REF: JFL:sr

E-mail: [Julia.Leu@douglas.qld.gov.au](mailto:Julia.Leu@douglas.qld.gov.au)  
Mobile: 0488 987 066

The Hon Anthony Lynham  
Minister for State Development  
Minister for Natural Resources and Mines  
PO Box 15216  
CITY EAST QLD 4002  
Via e-mail: [sdnrm@ministerial.qld.gov.au](mailto:sdnrm@ministerial.qld.gov.au)

4 December 2015

Dear Minister Lynham

**RE: Port Douglas Waterfront**

Thank you for the opportunity to discuss aspects of the Port Douglas Waterfront redevelopment with me at the Northern Queensland Economic Summit held last month in Cairns.

As Mayor, I continue to be concerned about the failure to arrive at a consensus regarding the relocation of our commercial fishermen and the security of the fishing industry as an integral part of the Port Douglas waterfront. There are many stakeholders with diverse interests and no overarching, cohesive plan to conclude this matter.

While the redevelopment of the Reef Marina is an initiative that Council readily supports, Council's responsibility to the broader community also lies in its ability to secure ongoing, appropriate public waterfront access in line with standards expected and enjoyed by other communities around Australia, and in ensuring the retention of the decades-old fishing industry for which Port Douglas is famous.

While the planning matters directly related to the Reef Marina are dealt with on a separate basis, there is a need to examine the potential use of land of which Council is Trustee, which is not in the control of the Reef Marina, ie Lot 96 on SP134234, immediately adjacent to the Reef Marina's leasehold site. Our discussions with officers at DNRM indicate that it is unlikely that there would be an impediment to Council purchasing Lot 96.

On Monday 23 November 2015 I met with the principal of the Reef Marina, Andrew Hooper Nguyen, and Council's CEO to discuss what I consider to be a very practical solution. That is that subject to a formal Council resolution, Council purchase Lot 96 from the State Government at the appropriate value and that payment be made from the funds to be received by Council in relation to the

proposed freeholding, thus returning the funds to the state. In conjunction, prior to the freeholding of the Marina lease, there is currently the opportunity to subdivide a small portion of the adjacent leased area intended to house the fishing fleet berths from Lot 146 on plan CP861, with that leased area of approximately 2000m<sup>2</sup> to be included into the Port and Harbour Reserve of which Council is already Trustee.

By transferring control of both land and the relevant portion of the water to Council, the future of the fishing fleet can then be secured under the control of local government as the most appropriate entity. In the absence of control of both, there will be no long term security of tenure, and uncertainty regarding cost. Council is the only entity that is positioned to address both. The Fishermen's Association has agreed to move to this location.

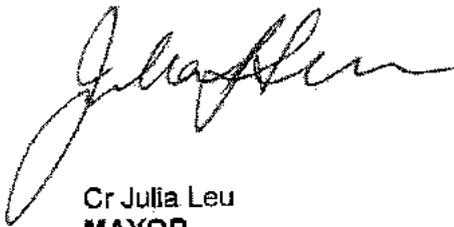
With regard to the construction of the berths, the Reef Marina was always to be responsible for the delivery of that infrastructure to a specification and standard that meets the needs of the fishermen. I see this ongoing responsibility as an integral part of the solution, and an approach that accords with the Minister's direction that an alternative location for the fishermen be found and made operational.

Although the above will be at a commercial cost to the Reef Marina, I raised with Mr Hooper Nguyen that delays in achieving a satisfactory outcome also incur substantial costs. There will also be significant costs for Council however I believe that this is a long term solution that will offer the community a very satisfactory outcome, and will enable rapid progression of other aspects of the Reef Marina's development.

Unfortunately my proposal was not accepted by Mr Hooper Nguyen and I now request your consideration of this "without prejudice" position, put forward in a genuine attempt to resolve this matter in a most practical manner.

Thank you for your consideration of this matter and please do not hesitate to contact me directly on (07) 4099 9403 or email [julia.leu@douglas.qld.gov.au](mailto:julia.leu@douglas.qld.gov.au) at your convenience.

Yours faithfully



Cr Julia Leu  
MAYOR  
DOUGLAS SHIRE COUNCIL

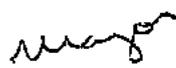


The Hon Dr Anthony Lynham MP  
Minister for State Development and  
Minister for Natural Resources and Mines

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CTS 29490/15

Level 17 QMEC Building  
61 Mary Street Brisbane QLD 4000  
PO Box 15216 City East  
Queensland 4002 Australia  
Telephone +61 7 3499 8215  
Email [sdnrm@ministerial.qld.gov.au](mailto:sdnrm@ministerial.qld.gov.au)  
Website [www.dnrm.qld.gov.au](http://www.dnrm.qld.gov.au)

Councillor Julia Leu  
Mayor  
Douglas Shire Council  
PO Box 723  
MOSSMAN QLD 4873

Dear Councillor Leu 

Thank you for your letter of 4 December 2015 about the Port Douglas Waterfront. I also appreciated the opportunity to discuss aspects of the Port Douglas Waterfront redevelopment with you at the North Queensland Economic Summit held last month in Cairns.

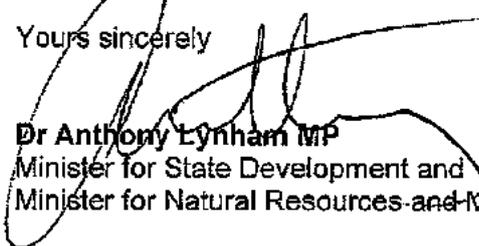
I am advised that officers of the Department of Natural Resources and Mines (DNRM) wrote to the Douglas Shire Council (the council) on 27 November 2015 outlining the land tenure options to assist in examining available land to support the commercial fisherman. The options provided were particular to the council's reserve for park and recreation purposes described as Lot 96 on Plan SP134234 (Lot 96) and part of lease land below high water-mark being Lot 146 on plan SR861, currently leased by the Reef Marina (TRM).

I am supportive of the council exploring with DNRM the option to include Lot 96 into the adjoining Port and Harbour Reserve, described as Lot 123 on Plan SP134234, currently under the council's control. In principle, I would also consider the inclusion of Lot 96 in the adjoining Port and Harbour Reserve. For that part of the lease land below high water-mark desired by the council, I encourage you to continue to work with TRM to seek a surrender of that part of the lease. As previously advised, DNRM cannot reallocate land that is currently leased to another party. If the council and TRM cannot agree on the surrender of that part of the lease land below high-water mark, the council can consider its options under the *Acquisition of Land Act 1967*.

I am encouraged that the council and TRM are discussing workable options to meet the Port Douglas community's aspirations for redevelopment of the Port Douglas Waterfront. Officers of DNRM are available to assist the council and TRM with advice on land tenure and allocation matters.

If you have any questions about my advice to you, Mr Kev Allan, Acting Executive Director, Natural Resources, North Region, Department of Natural Resources and Mines will be pleased to assist you and can be contacted on telephone 4222 5588.

Yours sincerely

  
Dr Anthony Lynham MP  
Minister for State Development and  
Minister for Natural Resources and Mines