

Your Ref: SEDA MCUI1599/2016 (D#785631)
Our Ref: J000049:NQL:KLG
Date: 24 August 2016

Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Attention: Ms Jenny Elphinstone, Senior Planner

Dear Madam,

Re: Application for Undefined Use ("Mowbray Adventure Park") on land located at Andreasson Road, more particularly described as Lots 1 – 6 on C2254, Lot 87 on SR370 and Lot 90 on SR678

I refer to the above-described Application lodged with Council via Smart EDA under cover of letter dated 22 July 2016, and Council's notice the Application is "Not Properly Made" provided by letter dated 23 August 2016.

Council has advised the Application is "Not Properly Made" pursuant to Section 261 of the *Sustainable Planning Act 2009* for a number of reasons, set out below. The Applicant's response to these reasons is also provided for consideration.

Issue 1:

The detail of the application nominates the use of road area for private use (access paths and road) being access between Lots 4 to 6 on C2254 and Lot 90 on SR678, and the road area between Lot 5 on C2254 and Lot 87 on SR370.

The Form 1 has not included these areas and the application is considered to be piecemeal in this respect.

The Douglas Shire Planning Scheme includes roads and waterways. Any part closure of road reserve to facilitate private use and ownership is the Applicant's responsibility. The application seeking such closure needs to be lodged with the Department of Natural Resources and Mines.

Applicant Response:

Application material submitted to Council, including the Planning Report and Annexures and IDAS Form 1, identified freehold allotments under control of NQL as being subject of the Development Application. The Applicant only intends for that land, namely, those freehold lots, to be "utilized" for proposed purposes and subject to conditions imposed upon any approval granted for same.

Use of road reserves for purposes other than those associated with their intended access function (ie, paths and access to properties) is not proposed.

It is not intended to permanently close and / or purchase the road reserves in question pursuant to the *Land Act (Qld)*; further, it is not intended to inhibit or obstruct potential public use of these roads, albeit noting their unconstructed state.

The Application is not reliant upon these areas for anything other than access to various existing allotments, specifically Lot 3, and then 'crossings' to Lot 90 and Lot 87 from the main area of Lots 1 - 6; this does not, on its face, seem contrary to the ordinary and intended function of roads and road reserves, constructed or otherwise.

Any 'tracks' or 'paths' shown on preliminary concept plans as impacting or touching road reserves for purposes of the Application will be reconfigured to avoid the road reserves prior to any subsequent Application being lodged for assessment. Council may confirm this by imposition of condition on any approval granted.

Crossings to access allotments adjacent road reserves will be constructed to an appropriate standard, in compliance with reasonable engineering and practical requirements, in the context of site conditions and constraints. As a single vehicular access is proposed to the site (adjacent Lot 3), the Applicant does not propose formalization of roads within existing reserves to provide vehicular access; however, use of the reserves for ordinary purposes including property access is considered reasonable and does not require (in the usual course) "Owners Consent" from the State. This position has been confirmed within a number of Planning & Environment Court Judgements, including *Gibway Pty Ltd v Caboolture Shire Council* [1987] 2 Qd R 65 and *Kenlynn Hospitality Pty Ltd v Bundaberg City Council* [2007] QPELR 37. A similar position appears to have been taken in *Savage & Savage Resorts Pty Ltd v Cairns Regional Council* [2015] QPEC 37, albeit in regards consent of a Body Corporate in a common property situation.

It is not anticipated that Council will require formalization of all roads per the road reserve arrangement, given the low-key nature of the use proposed, and potential for increased environmental impacts given road reserve alignments through vegetation and marine plant areas.

It is also noted that the concept plans presented with the subject Application are substantially the same as plans presented to both Council and the State in 2015 with requests for Pre-Lodgement Advice. Neither Council nor the State, in advice subsequently provided, raised this as an issue for resolution in advance of any Application being lodged. It would be anticipated that if road closures and / or consent for 'use' of roads for access purposes was necessary, it would have been raised as part of these discussions and advice provided as a matter for attention prior to submission of any Application for assessment.

Issue 2:

No owner's consent, in the form of ownership or resource entitlement, has been included in the application for these areas. It is noted that the Applicant has Road License tenure over Lot 1 on RL4536 and Lot 1 on RL4535. The license limits development to fencing. The existing licenses cannot be construed as provision of ownership or consent for the purpose of the application lodged.

Applicant Response:

Road Licences referenced in Issue 2 above are not included in the "land" the subject of the Application. Furthermore, it is noted the licences may be revoked on notice pursuant to relevant licence terms at any stage; in addition, the Application seeks a Preliminary Approval only, which will not permit the "use" applied for to occur. Prior to commencement of the use (which may only occur following assessment of the subject application, and a subsequent application for Development Permit) the road licences will be relinquished and / or cancelled as required.

Importantly, the licences continue to be relied upon at this stage for fencing for security purposes. The Applicant continues to attempt to restrict access to these private properties, albeit noting that restriction is quite often breached by parties using Lot 87 and Lot 90, in particular, for informal fishing, recreation, dumping and / or boat ramp purposes. None of these uses is consented to by the Applicants' as landowners, however, in current situations fencing is necessary to try to restrict access as much as possible.

It is acknowledged that licences cannot be construed as provision of ownership.

The Applicant re-confirms that the road reserves are not proposed for development, nor for private land use. However, road reserves would ordinarily be expected to be 'connection' or 'access' points to allotments adjoining same, and it is for those purposes only that road reserves will be utilized in conjunction with development as proposed.

Issue 3:

The application identifies existing boat ramps on Lot 87 on SR370 and Lot 90 on SR678. Council has no knowledge of formal boat ramps on either of these lots. It is noted that the submitted

land survey, having been undertaken in 2003 and updated in 2004, does not detail the inclusion of any boat ramp on either Lot 87 or Lot 90. There is no demonstration in the application of any legal use rights or continuing rights.

The application seeks a new boat ramp on Lot 87 on SR370 and the "use" of a boat ramp in Lot 90 on SR678. It is understood that in both instances the "ramp" will include private land, road and waterway. The road is State land and the waterway unallocated State land. The descriptions of these areas, where the boat ramps will be situated other than on private land, need to be included in the application.

Applicant Response:

For clarity, the Applicant confirms references within Application material to "boat ramps" were only references to current, informal and potentially illegal "boat ramps" used by trespassers across the property historically.

It is not proposed to formalize or establish any boat ramps for the subject use.

Mowbray River Education access points referenced in the Application material, on both Lot 90 and Lot 87, are intended to be wholly located within the subject property boundaries. At this preliminary stage, it is anticipated the "Access" will be controlled onto a viewing platform wholly within the property boundaries, and not involve construction or specific land use activities on publicly controlled Esplanade, Waterway or Mangrove area.

It is understood that any private use of publicly controlled land requires appropriate consent and development approval/s.

At this point, it is not intended to apply for any such consent or approval/s; rather, this primary land use approval, which may be progressed without any formal 'use' on publicly controlled land, will be progressed. If at a later date, access to the River 'directly' is pursued, separate and appropriate approvals will be sought at that stage.

Issue 4:

Owner's consent needs to be provided in regards to the boat ramp areas where these are situated in areas other than on private land. Council would take no responsibility for private infrastructure where it is proposed on road or waterways, such as the instances proposed.

Applicant Response:

As confirmed above, no formalized "boat ramp" areas are proposed.

It is noted the "existing boat ramps" referenced in the Application are referenced within the Traffic Impact Assessment, and identified on a plan within that Assessment at Annexure 9. As

noted above, these are existing "informal" boat ramps, and are not proposed for formalization nor continued use in association with the subject application.

The intention to not undertake development or construction of infrastructure within marine areas is confirmed within SDAP Code Compliance attached to the Planning Report.

Action to Progress:

Council's correspondence of 23 August 2016 advises that:

"The following must be undertaken in order to make the application a properly made application:

- A. *All proposed areas for which the use is proposed must be included in the application with description either by title reference or where part of a lot / road / waterway by a surveyed metes and bounds description.*
- B. *Provide owner's consent for all lands / roads / waterways for which the application applies."*

Further to responses provided to Issues above, the Applicant confirms:

- A. The proposed use is only intended to be undertaken on freehold land under control of NQL Properties, as Applicant, namely:

Lots 1 – 6 on C2254

Lot 87 on SR370

Lot 90 on SR678.

This information is confirmed on IDAS Form 1 and the Planning Report lodged with Council in July 2016.

Development on Road Reserves is not proposed, other than development considered an ordinary consequence of the purpose and 'function' of road reserves, namely property access for both vehicles (albeit service only on road reserves between Lots 1 – 6, Lot 87 and Lot 90), and pedestrians.

Development on Esplanades, Waterways or Marine Plant areas is not proposed; all "marine" education or viewing areas will be constructed within the property boundaries of lots identified above.

- B. Owners consent for the land the subject of the Application has been tendered with the Development Application lodged by Smart EDA in July 2016.

Conclusion

On behalf of the Applicant, the above response to the notice of "Not Properly Made Application" dated and received 23 August 2016 is submitted. We look forward to receiving Council's Acknowledgement Notice for the Application as soon as possible.

Kind regards,



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