

TITLE: [E-CM] Jack Julius Park

SUBMITTED BY: Design

mhm



Behind the scenes
Providing support to make it happen

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Behind the scenes
4.1	Assurance
4.1.1	Governance - To provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

SUMMARY OF REPORT:

Council received notification from the Registrar General on 1 February 2017 that a caveat had been registered over Lot 66 DP 858466, being Jack Julius Park/Cudgen Foreshore Park, on the northern banks of Cudgen Creek, west of the Cudgen Creek bridge at Kingscliff. The caveator relies on a grant of native title in Kyogle to claim his interest in the parcel.

Lot 66 is Council owned Community land, being a parcel used as a park for the public benefit. Council has owned this parcel since the 1970's. The caveator is claiming ownership of the land on the basis of a grant of native title in Kyogle in 2007.

A claim of ownership over public land cannot arise from a grant of native title, particularly as the grant was over land in Kyogle, which establishes that there is no connection to the land at Kingscliff.

In this regard, it is necessary to lodge an Application for Preparation of a Lapsing Notice, which is a notice, to be prepared by office of the Registrar General, to be delivered to the caveator, that unless a court order is obtained by the caveator that validates the interest claimed, the caveat will lapse.

RECOMMENDATION:

That Council:

- 1. Approves the lodgement of an Application for Preparation of a Lapsing Caveat over Lot 66 DP 858466 being Jack Julius Park at Kingscliff; and**
- 2. Executes all documentation under the Common Seal of Council.**

3. **ATTACHMENTS 1 2, 3 and 4 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (h) **information concerning the nature and location of a place or an item of Aboriginal significance on community land**

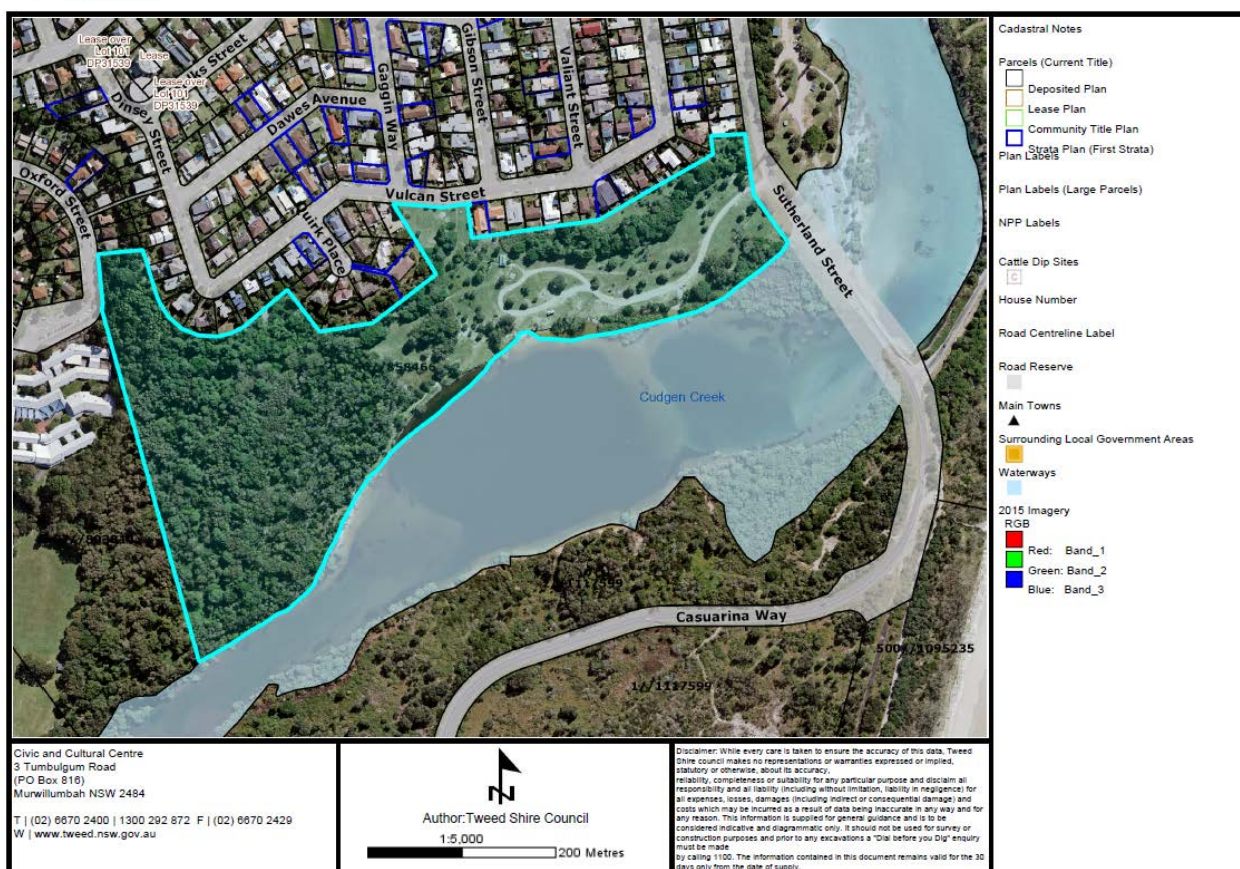
REPORT:

Council received notification from the Registrar General on 1 February 2017 that a caveat had been registered over Lot 66 DP 858466, being Jack Julius Park/Cudgen Foreshore Park, on the northern banks of Cudgen Creek, west of the Cudgen Creek bridge at Kingscliff. This notice and a copy of the registered caveat are attachment 1 to this report.

The plan below shows the location of the affected land:



Jack Julius Park/Cudgen Foreshore Park



The Caveat

A caveat is a mechanism to protect or claim an interest, generally a legal or equitable interest, in land that is owned by someone else, by virtue of an unregistered dealing. Common examples of caveatable interests include the interest of a purchaser under a contract for the sale of the land pending the registration of a Transfer following completion of a contract, or the interest of a mortgagee, whether the mortgage is registered or not registered on the title.

A caveat can be lodged by any person who considers they have a caveatable interest in land, as it will be registered on the Register of Folios held by the Registrar General only, it is not necessary for the title deed to be produced for a caveat to be registered.

The requirements for a caveat fall within the *Real Property Act 1900*, where in Part 7, Division 3, in section 74F(1), it is stated that:

"Any person who, by virtue of any unregistered dealing or by devolution of law or otherwise, claims to be entitled to a legal or equitable estate or interest in land under

the provisions of this Act may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person claims to be entitled.”

The Registrar-General's responsibility as to the lodgement of a caveat is an administrative role only, he is not required to be satisfied that the caveator is in fact entitled to the interest claimed.

The Supreme Court is vested with the jurisdiction to determine whether or not the caveator has the interest they claim to have.

The Registrar-General relies on the registered proprietor of the land to respond to protect its own interest in the land, that is, to seek an order from the Supreme Court that the interest claimed under the caveat is valid or not.

Alternatively, the registered proprietor can lodge an Application for a Lapsing Caveat, which when issued by the Registrar-General to the owner of the land, is served on the caveator, who can then seek an order from the Supreme Court that the interest is valid and the caveat can remain.

This is the action sought by Council, as the onus to take action in the Supreme Court falls to the caveator, not with Council.

Interest claimed

In this instance, the caveator is claiming an “Interest in Fee Simple Title”, that is, a claim of ownership of the land, on the basis of the grant of native title in 2007 over land in Kyogle Shire. It is apparent that the caveator is utilising the outcome of a claim for native title, under the provisions of the Commonwealth *Native Title Act 1993*, to claim ownership of land under the *Real Property Act 1900*, utilising a mechanism under the latter Act to protect an interest in land that is not relevant to the grant of native title.

A grant of native title recognises the connection of an Aboriginal group to the land, that the land had been continually used for cultural or traditional purposes, this was established in the Kyogle native title grant. Such a grant does not facilitate a claim of ownership of land, particularly land that is outside the land subject of the native title grant.

It is understood that the caveator is not recognised by the local Aboriginal community as having any right to claim native title rights over land in the Tweed Shire local government area. Minutes of the Aboriginal Advisory Committee meeting of 16 June 2017 of the discussion of this matter show that the Committee resolved as followed:

"LA.1 Jack Julius Park Caveat – Nela Turnbull

Nela Turnbull advised that council has received a notice that a caveat has been lodged over Jack Julius Park, Kingscliff. Nela provided advice that council is dealing with the matter at hand, however, they have decided to defer this matter and seek further advice from the AAC.

Cr Cherry asked for the AAC's guidance on their preferred process for Council to deal with issues of this nature. It was suggested that the AAC be consulted and will provide their advice on an individual case basis.

Moved: Joyce Summers

Seconded: Jackie McDonald

RESOLVED that the AAC Committee supports council's action in seeking the removal of the caveat on Jack Julius Park as it is not a caveatable interest."

The caveator states in Schedule 1 of the caveat, that he is claiming an "Interest in Fee Simple Title" by virtue of a Federal Consent Order ILUA, NCD 2007/001 dated 29 November 2007.

Lot 66 is Council owned Community land, vested in Council as a public reserve, so held by Council for the benefit of the public.

As the ownership interest over Lot 66 claimed by the caveator relies on a grant of native title in Kyogle, this interest cannot be a consequence of that grant nor extend to a claim of ownership of the subject parcel. As noted above in section 74F(1) of the *Real Property Act*, the interest claimed in the caveat must arise from the provisions of that Act, not any other piece of legislation.

Actions taken in response to the Caveat

When Council received the Notice of the Caveat in February, 2017, a Request was lodged with the Land & Property Information (LPI) requesting the removal of the caveat, pursuant to section 32(6) of the *Real Property Act* 1979, which provides:

"That the Registrar-General shall have, and shall be deemed always to have had, power to cancel in such manner as the Registrar-General considers proper and recording in the Register that the Registrar-General is satisfied does not affect the land to which the recording purports to relate."

This Request attracted an LPI requisition on 20 March 2017, which stated:

"the Supreme Court alone has the jurisdiction to determine whether or not the caveator has the interest they claim to have. The role of the Registrar-General with respect to caveats is an administrative function only. In fact, the Registrar-General is not required to be satisfied that the caveator is in fact entitled to the estate or interest claimed in the caveat or otherwise as to the validity of the caveat."

A copy of the Request and LPI response are confidential attachments to this report.

In this regard, the Request has been withdrawn and it is necessary for the Application for a Lapsing Notice to be lodged to initiate the removal of the caveat. An Application was lodged, but attracted a further LPI requisition, as it was necessary for the Application to be executed under the Common Seal of Council, hence the necessity for this report.

Should the caveat be ignored and allowed to remain on title, it can be implied that Council accepts that claim of ownership of the land. As Council has owned the land for over 40 years, for the benefit of the public, the implied acceptance of a claim of ownership by an individual should not be supported.

It is recommended that Council approve the lodgement of the Application for a Lapsing Notice and to sign all documentation under common seal to establish a public position by Council that recognises its obligations to protect the land for the benefit of the public.

OPTIONS:

1. To lodge the Application for Preparation of a Lapsing Caveat; or

2. To ignore the caveat and risk the implication that Council accepts the claim of ownership of public land.

CONCLUSION:

It is recommended that Council approve the lodgement of the Application for a Lapsing Notice to facilitate the removal of the caveat. Such action expresses Council's recognition and acknowledgement of its obligations to continue to hold the land for the benefit of the public and not allow the private claim of ownership to hold any traction.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No budgetary implications are expected to arise as a result of this report, other than the administrative costs arising from the preparation of documents to remove the caveat.

c. Legal:

If the caveat remains on title it can be implied that Council supports a claim of ownership of the land by an individual which conflicts with Council's ownership of the land as a public reserve for the public benefit.

d. Communication/Engagement:

Inform - We will keep you informed.

Consult – We will listen to you , consider your ideas and concerns and keep you informed.

A Council officer presented details of the caveat and the caveator to the June meeting of the Aboriginal Advisory Committee. As noted in the body of the report, the Committee resolved to support Council's actions to remove the caveat.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1: Notice of Caveat from LPI (ECM 4406062)

(Confidential) Attachment 2: LPI Requisition relating to Request (ECM 4457244)

(Confidential) Attachment 3: Notice of Withdrawal (ECM 4515100)

(Confidential) Attachment 4: LPI Requisition relating to Lapsing Notice (ECM 4518885)
