

REPLACEMENT REPORT

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

22 [CNR-CM] Jack Evans Boat Harbour Plan of Management - Land Tenure

SUBMITTED BY: Recreation Services

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.2 Places
- 3.2.7 Parks and Gardens - To provide and manage quality and accessible public parks and gardens for the enjoyment and wellbeing of the community and visitors to the Tweed.

ROLE: **Provider**

SUMMARY OF REPORT:

Council has resolved to prepare a Plan of Management for the Jack Evans Boat Harbour (JEBH) in consultation with the community. The previously resolved scope of the draft plan of management includes Crown land where Council is not Crown Land Manager. A meeting has been held on 23 May 2019 with representatives from the NSW Department of Industry (DoI) – Crown Lands with regard to land tenure across the site. Subsequent to the advice received, direction is sought from Council in relation to the land tenure in the precinct.

In determining the scope of the Draft JEBH Plan of Management, several matters require consideration including land tenure, land categorisation, reserve purposes, Aboriginal Land Claims and procedural timeframes.

NSW DoI – Crown Lands have advised that Council cannot compile a plan of management over Crown land where Council has not been appointed Crown Land Manager. Accordingly it is recommended that Council determines whether to request the Minister to appoint Council as Crown Land Manager of Crown reserves which are currently not managed by Council within the area that will be subject to the Plan of Management. Alternatively, the proposed scope for the draft plan of management can be amended to exclude the Crown land where Council has not been appointed Crown Land Manager.

Should Council resolve to request the Minister that Council be appointed as Crown Land Manager of Crown reserves which are currently not managed by Council, notification to the Minister is required regarding the initial categorisation of each of the Reserves in order for Council to comply with section 3.23 of the *Crown Land Management Act 2016*.

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Further, during the meeting with NSW DoI – Crown Lands, procedural requirements related to land subject to Aboriginal land claims was discussed. Council has received feedback from the NSW Aboriginal Land Council regarding the Draft JEBH Plan of Management and land subject to an Aboriginal Land Claim in the area has been excluded from the Plan. However subsequent advice from the NSW DoL –Crown Lands is that there is no need to seek claimant Aboriginal Land Council consent or concurrence to prepare a Plan of Management over Crown lands subject to an undetermined Aboriginal Land Claim(s) and that there is no impediment to appointing Land Managers over Crown lands subject to ALC as long as the appointed land manager is made aware of the claim and the restrictions that the claim imposes.

RECOMMENDATION:

That Council determines its preferred option from those detailed within the report.

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REPORT:

Background

Jack Evans Boat Harbour (JEBH) Reserve Trust resolved at its meeting on Thursday 18 May 2017 that a plan of management is prepared for the JEBH in consultation with the community.

The main issues that could influence the proposed timeline of the preparation of the Plan of Management were reported to the JEBH Reserve Trust meeting on Thursday 15 February 2018. The main issues involved:

- Consultation with the Aboriginal Advisory Committee regarding 'Goorimahbah – Place of Stories'
- Land Tenure
- Divergence of views between community stakeholders
- Homeless use of the park
- Cross border impacts with the Gold Coast City Council
- State Government development plans for Crown Land surrounding JEBH
- The proposed all access playground
- The RSL cenotaph and the RSL's expectations
- The existing aquatic hire operation and conflicts with use of the area by cross border time share resorts.

Land Tenure

JEBH comprises several separate Crown Reserves however Tweed Shire Council is not nominated Crown Land Manager for all of these. Council has no power to authorise any third party use or occupation of the Crown Reserves of which it is not Crown Land Manager. Additionally, the 'Reserve Purpose' of these reserves varies which has implications for the potential use of the land as any proposed use needs to be consistent with the reserve purpose.

The following map shows Crown Reserves in the JEBH precinct managed by Tweed Shire Council. Red denotes land where Council is Crown Land Manager. Blue denotes land devolved to Council under section 48 of the LG Act. It is noted that in the case of devolved land, Council maintains the site, however has no management control and for example, cannot issue leases or licences. Uncoloured areas are either State managed Crown Land or are not Crown Land thereby under Council or private ownership.

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Figure 1: Crown Reserves in Jack Evans Boat Harbour precinct managed by Tweed Shire Council. (Source: Crown Land Manager Reserves Portal – NSW Crown Lands. Please note that R1012191 around the harbour shore is incorrectly excluded).

It is noted that the NSW Department of Industry – Crown Lands and Water (“the Department”) previously advised on 24 May 2018:

"Council cannot compile a Local Government Act plan of management over land that Council is not currently the Trust manager of. Council can request to be appointed over the land. This will depend on current land negotiations with the LALC."

(It is noted that the new Crown Lands Management Act 2016 came into force on 1 July 2018 and under the new Act, any land where Council was ‘Reserve Trust Manager’, Council is now ‘Crown Land Manager’.)

This matter was reported to Council on 19 July 2018 seeking confirmation regarding the land that will be subject to the proposed JEBH Plan of Management and sought to rectify any associated land tenure matters.

At the Council meeting on 19 July 2018, Council resolved to defer this item in order to receive clarification from the Department on the matter. A response was received 29 March 2019 addressing each of the points of the Council resolution on 19 July 2018 which are as follows:

1. *Whether it is possible for Council to create a Plan of Management for the Jack Evans Boat Harbour Precinct under the Crown Land Management Act given it is advised by staff it is not possible under the Local Government Act, due to Council not being the designated Crown Land Managers for all Reserves in this Precinct.*

Department response:

Council is not able to prepare a POM under the provisions of the Crown Land Management Act 2016 (CLM Act) for reserves which are not under a Reserve Trust of which Council is appointed to manage.

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Currently, under the provisions CLM Act, Tweed Heads Jack Evans Boatharbour Reserve Trust (Trust), remains in place as a transitional trust until 1 July 2019, when it will be abolished and Council will be directly appointed as Crown Land Manager of the current managed reserves.

Council must be the appointed Crown Land Manager of the identified Crown lands in the Precinct before it may consider the preparation of a POM under the provisions of the Local Government Act 1993.

- 2. If it is possible for Council to initiate the Plan of Management under the Crown Land Management Act (CLMA), then Council writes immediately to the Department of Industry - Crown Lands and requests their support in preparing a plan for the Jack Evans Boat Harbour Precinct under the CLMA.*

Department response:

Any proposed POM for Council managed reserves should be prepared under the provisions of the Local Government Act 1993.

- 3. The current status of Aboriginal Land Claim 24855 lodged by New South Wales Aboriginal Land Council and provision of all the relevant information of the lands subject to the Land Claim.*

Department response:

Aboriginal Land Claim 24855 was lodged by the New South Wales Aboriginal Land Council on 6 May 2010 over Lot 702 DP 720453 and Lot 703 DP 877250 and as at today's date has yet to be determined.

The Department offered to meet with Council to discuss the matter. A meeting was held on 23 May 2019. Officers from the Department confirmed that Council is not able to prepare a plan of management for reserves that Council has not been appointed to manage.

The Department recommended that Council requests to be appointed Crown Land Manager of the reserves in the JEBH precinct which it is not currently Crown Land Manager.

Further, the Department stated that Council may be required to enter into a lease agreement with the Department, if Council is not appointed Crown Land manager and Council wishes to regulate land use, maintain or further embellish the parklands which is what is proposed for Goorimahbah – Place of Stories. Charges to Council for the lease would apply at market rates.

Scope of the Plan of Management and Initial Categorisation

At its meeting on 17 April 2019 Council resolved that the scope of the Draft JEBH Plan of Management is as shown below in Figure 2.

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Figure 2: Scope of proposed Jack Evans Boat Harbour Draft Plan of Management per Council meeting 17 April 2019.

Given the advice from the Department, Table 1 below lists Crown Land Manager appointments and Crown Reserve amendments that are required should the scope of the Draft Plan of Management reflect Figure 2. It is noted that these amendments were recommended by the Department in February 2017.

Further, Table 1 below also lists the recommended initial categorisation as required to be provided to the Minister to ensure that Council complies with section 3.23 of the CLM Act, Council must assign one or more categories of community land referred to in section 36 of the Local Government Act 1993, to each crown reserve for which it is manager. The primary consideration for categorisation of land is that the category assigned must be **most closely related to** the Crown Reserve Purpose.

Table 1: Recommended Crown Reserve Appointments/Amendments

In Ebenezer Park, Lot 7339 DP 1166191 (shaded in gold) to be added to Reserve 57974 and Council be appointed Crown Land Manager of Lot 7339. Part Crown Reserve 57974 is shaded in green.


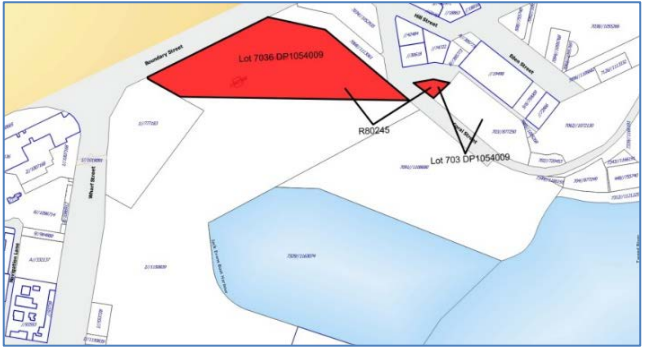

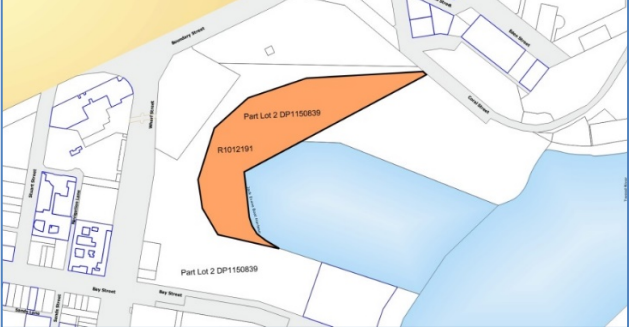
Reserve Purpose: Access; Public Recreation; Quarry.

Proposed category: Park



Figure 3: Lot 7339 DP 1166191 Part Crown Reserve 57974

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<p>Council be appointed Crown Land Manager of Crown Reserve 55246 (mapped in purple).</p> <p><u>Reserve Purpose:</u> Public Recreation; <u>Proposed category:</u> Park</p>	 <p>Figure 4: Crown Reserve 55246</p>
<p>Council be appointed Crown Land Manager of Reserve 80245 over Lot 7036 DP 1054009 and Part Lot 703 DP 877250</p> <p><u>Reserve Purpose:</u> Public Recreation; <u>Proposed category:</u> Park</p>	 <p>Figure 5: Crown Reserve 80245</p>
<p>Part Lot 7091 DP 1108680 and part Lot 7329 DP 1163074 (currently part of Crown Reserve 755740) be added to Reserve 1012191 and Council be appointed Crown Land Manager of these Lots within Reserve 1012191. As discussed with the Department, the request should exclude the training walls along the south east boundaries.</p> <p><u>R 755740</u> <u>Reserve Purpose:</u> Future Public Requirements</p> <p><u>R 1012191</u> <u>Reserve Purpose:</u> Access and Public Requirements, Rural Services, Tourism Purposes and Environmental and Heritage Conservation.</p> <p><u>Proposed category:</u> Park/ Natural Area (Watercourse)</p>	 <p>Figure 6: Lot 7091 DP 1108680 and Lot 7329 DP 1163074 Part Crown Reserve 755740</p>  <p>Figure 7: Crown Reserve 1012191 currently Council Managed.</p>

Should Council resolve to not request to be appointed as Crown Land Manager of the Crown land in the JEBH precinct it is currently not manager for, it is recommended the scope of the draft JEBH Plan of Management be amended to exclude the land not under Council management listed in Table 1.

Aboriginal Land Claim 24855 and Reserve 80245

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Land north of Coral Street is subject to Aboriginal Land Claim 24855 which is yet to be determined. The land claim includes Lot 702 DP 720453, Lot 703 DP 877250 and Lot 7089 DP 1095268. Council is Crown Land Manager of the land except for the triangle shaped eastern section of Reserve 80245 within Lot 703 shown in Figure 5.

A courtesy letter was sent to the NSW Aboriginal Land Council (NSWALC) seeking feedback as to whether NSWALC had any concerns related to the adoption of a plan of management over the land subject to Aboriginal Land Claim 24855. The following is noted from the NSWALC response:

Up to this point in time the position of NSWALC has generally been that the land claims should be determined prior to any consent to Council taking management control under the Local Government Act. As a next step I am likely to be required to provide a full response through our legal officers. Additionally, I note for your reference that ALC 24855 was lodged by NSW ALC on behalf of Tweed-Byron Local Aboriginal Land Council (T-BLALC) and any amendment to the claim would require the resolution of T-BLALC Board.

On 17 April 2019, Council resolved to exclude all lots subject to the Aboriginal Land Claim. This was based on the NSWALC response and previous advice from the Department that consent is required from the claimant, NSWALC, for the adoption of a plan of management. It is noted that the land claim at the site is unlikely to be determined prior.

At the meeting held 23 May between Councillors and officers from the NSW Department of Industry – Crown Lands, clarification was sought on whether in order for Council to be appointed Crown Land Manager or for the adoption of a plan of management for land that is subject to an Aboriginal Land Claim, consent (not merely notification) was required from the claimant Aboriginal Land Council. Council followed up with a letter requesting written confirmation and is in receipt of the response below:

"I refer to the attached letter and your previous email on this matter, I have consulted with the Aboriginal Land Claims Unit and the Council Crown Land Managers team and advise the following:

There is no need to seek claimant Aboriginal Land Council consent or concurrence to prepare a Plan of Management over Crown lands subject to an undetermined Aboriginal Land Claim(s). A POM will not affect the validity of the claim nor does a POM materially harm the land. Additionally any Aboriginal Land Council will be afforded an opportunity to comment on the POM through the consultation process.

The only time a POM may impact on the land is when the Land Manager implements activities identified in the POM – at this stage the consent of the claimant LALC should be sought. I note with the case identified that an ALC has been previously refused. The claim is assessed on the conditions that existed on the land at the time of claim. It is also worth further noting the majority of the land subject to the ALC is currently under Council Management.

There is no impediment to appointing Land Managers over Crown lands subject to ALC as long as the appointed land manager is made aware of the claim and the restrictions that the claim imposes."

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With consideration to the advice from the [NSW Department of Industry – Crown Lands](#) and the fact that Council is required to have a compliant plan of management for all Crown land that they manage as community land by 30 June 2021, Council has an option to include the land subject to Aboriginal Land in the JEBH Plan of Management or to develop a separate Plan of Management. Further the advice reiterates that the Aboriginal Land Claim will not be affected by any Plan of Management nor by Council being appointed Land Manager. The Land Claim will be assessed on the conditions of the land that existed at the time the Claim was made. A Plan of Management will not materially affect the land nor the claim, unless an ‘action’ from the Plan of Management is enacted over that land subject to the Land Claim without the agreement of the Aboriginal Land Council.

However, with consideration to the previous consultation with the NSW Aboriginal Land Council and their response, Council may wish to consider excluding the land subject to the Native Title Claim from the Jack Evans Boat Plan of Management and develop a separate plan of management over this land in consultation with the NSW Aboriginal Land Council. Feedback from the community already provided could also be used to inform the development of such a Plan of Management. This would allow Council to meet its requirements to have a compliant plan of management for the land by 30 June 2021, prepare a plan in consultation with the NSW Aboriginal Land Council and also minimise the impact on an adopted plan of management for the main elements of Jack Evans Boat Harbour, should the claim be granted.

To enable Council to deal with the land subject to the Native Title Claim in its entirety, Council would be required to request to be appointed as Crown Land Manager of Part Lot 703 within Reserve 80245 shown in Figure 5.

OPTIONS:

Option 1

That Council:

1. Supports the scope of the proposed Draft Jack Evans Boat Harbour Plan of Management to include the Jack Evans Boat Harbour Waterway, Chris Cunningham Park, Goorimahbah, Ebenezer Park and land north of Coral Street excluding land subject to Aboriginal Land Claim 24855 as resolved at its meeting on 17 April 2019;
2. Requests the Minister for Water, Property and Housing that Council be appointed Crown Land Manager of Crown land outlined in the following table; and

Lot/DP	Crown Reserve	Initial Category
Lot 7339 DP 1166191	To be added to R57974	Park
Lot 7034 DP1052935 & Lot 7068 DP 1113061	R55246	Park
Lot 7036 DP 1054009 and part Lot 703 DP 877250	R80245	Park
Lot 7091 DP 1108680 & Lot 7329 DP 1163074 Excluding the training walls	R755740	Park/ Natural Area (Watercourse)

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3. Provides notice to the Minister for Water, Property and Housing of the initial categories assigned to each of the Crown Reserves Council is requesting to be appointed Crown Land Manager to comply with Section 3.23 of the *Crown Land Management Act 2016*.
4. Prepares a separate Plan of Management over the land subject to Aboriginal Land Claim 24855 in consultation with the NSW Aboriginal Land Council

Option 2

That Council:

1. Supports the scope of the proposed Draft Jack Evans Boat Harbour Plan of Management to include the Jack Evans Boat Harbour Waterway, Chris Cunningham Park, Goorimahbah, Ebenezer Park and land north of Coral Street excluding including land subject to Aboriginal Land Claim 24855
2. Requests the Minister for Water, Property and Housing that Council be appointed Crown Land Manager of Crown land outlined in the following table; and

Lot//DP	Crown Reserve	Initial Category
Lot 7339 DP 1166191	To be added to R57974	Park
Lot 7034 DP1052935 & Lot 7068 DP 1113061	R55246	Park
Lot 7036 DP 1054009 and part Lot 703 DP 877250	R80245	Park
Lot 7091 DP 1108680 & Lot 7329 DP 1163074 Excluding the training walls	R755740	Park/ Natural Area (Watercourse)

3. Provides notice to the Minister for Water, Property and Housing of the initial categories assigned to each of the Crown Reserves Council is requesting to be appointed Crown Land Manager to comply with Section 3.23 of the *Crown Land Management Act 2016*.

Option 3

That Council amends the scope of the proposed Draft Jack Evans Boat Harbour Plan of Management to only include Crown land to which Council is currently Crown Land Manager.

CONCLUSION:

The previously resolved scope of the draft plan of management for JEBH includes Crown land where Council is not Crown Land Manager.

A meeting has been held with representatives from the NSW Department of Industry – Crown Lands where Council was advised that Council cannot compile a plan of management over Crown land where Council has not been appointed Crown Land Manager. Accordingly it is recommended that Council determines whether to request the Minister appoint Council as Crown Land Manager of Crown reserves which are currently not managed by Council within the nominated scope of the Plan of Management and to determine whether to develop a separate Plan of Management for the land subject to Aboriginal Land Claim or incorporate that land into the broader Jack Evans Boat Harbour Plan of Management.

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Alternatively, the proposed scope for the draft plan of management can be amended to exclude the Crown land where Council has not been appointed Crown Land Manager.

Should Council resolve to request the Minister that Council be appointed as Crown Land Manager of Crown reserves which are currently not managed by Council, notification to the Minister is required regarding the initial categorisation of each of the Reserves in order for Council to comply with section 3.23 of the *Crown Land Management Act 2016*.

COUNCIL IMPLICATIONS:

a. Policy:

Community Engagement Strategy v2.0
Crown Lands Management Act 2016
Local Government Act 1993

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate - We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

A comprehensive community engagement process is being undertaken in the development of the Draft Plan of Management.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
