

**ENVIRONMENTAL PROTECTION AGENCY
DIRECTOR-GENERAL'S GENERAL BRIEFING NOTE**

Noted / Approved / Not Approved	15507
Signature	Date: 15/5/07

TITLE: Lizard Island National Park – Clynder Development Application

DATE: 30 April 2007



1. RECOMMENDATION

- That the Director-General **note:** the status of Clynder's development application to construct a tourist facility (house, caretaker's cottage and road) within the sub-lease area on Lizard Island National Park; and the intention to further consult with the Cape York Land Council (CYLC).

2. ISSUES

- Dr Ted Christie's Memorandum of Advice dated 3 April 2007 states that further consultation is required with the CYLC in relation to Clynder's development application.
- Dr Christie advised that a timeframe for further consultation could not be stipulated.
- In letter dated 5 April 2007, the Chairman of the CYLC was invited to attend a telephone conference with QPWS to discuss the process and timeframe for further consultation.
- A telephone conference with CYLC is scheduled for Friday, 4 May 2007.
- It is in the interests of all parties that full and proper consultation occurs with the CYLC. If this does not occur the CYLC may again successfully seek judicial review - on the basis of a denial of procedural fairness.

3. BACKGROUND

- In 1983 a sub-lease under the *Land Act 1962* was granted to Clynder Pty Ltd (Clynder) over an area of 2,027m² on Lizard Island for tourist and recreational purposes. The sub-lease was (and is) subject to the provisions of the *National Parks and Wildlife Act 1975* (NPW Act).
- In or about 1994 Clynder made an application under the NPW Act to construct a tourist facility within the sub-lease area. A decision was made to grant a permit under the NPW Act.
- The decision was subject to judicial review. On appeal, the decision was quashed and the court ordered that the decision be made (again) in accordance with s.25 of the NPW Act.
- In 2002 Clynder formally requested re-consideration of the development application.
- In accordance with Memorandum of Advice of Dr Ted Christie of 11 March 2003 QPWS provided Clynder with Terms of Reference (ToR) specifying the matters to be addressed in the development application, including matters of indigenous cultural heritage.
- In letter dated 20 April 2006 Clynder was reminded of the necessity to provide evidence of agreement with the CYLC in relation to the development application.
- September 2006 Clynder submitted a "FINAL" response to the ToR stating that *"it has been decided not to contact the [CYLC] about the revised architectural drawings for the house and caretaker's cottage."*
- November 2006 QPWS consulted with CYLC and invited comments by 15 December 2006.
- February 2007 CYLC requested further details about the development application. CYLC also advised CYLC had no record of Clynder consulting CYLC for a number of years.
- March 2007 QPWS sought legal advice from Dr Ted Christie. Dr Christie's Memorandum of Advice was received on 3 April 2007.
- 5 April 2007 QPWS provided CYLC with further particulars to facilitate full and proper consultation. QPWS also canvassed the need to establish a process and timeframe for further consultation, hence the proposed meeting on 4 May 2007.

3. CONSULTATION

- Consultation with Dr Ted Christie, CYLC and Clynder is ongoing.

CTP149-Sch4-Signature
[Redacted Signature]

Executive Director

Date: 2/5/07
Executive Director's comment:

Director-General's comments

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Tina Taylor

From: Alan Feely
Sent: Thursday, 19 April 2007 2:02 PM
To: Tina Taylor
Subject: re Lizard is

Hi, can youm pls put together a briefing note for DG re how we deal with CYLC and likely timeframes, he is keen to finalise, don't submit till I get back, ie I will sign, ta Al

Alan Feely
Executive Director, Parks
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Enquiries Alan Feely
Telephone (07) 3227 7082
Your reference
Our reference BNE 1724 Pt3

2 May 2006

Mr Steven M. Wilson
Clynder Pty Ltd
GPO Box 669
Brisbane Qld 4001

Dear, Mr Wilson

Lizard Island National Park, proposed tourist facility development

I refer to your letter of 19 April 2006 and your meeting with Mr Alan Feely, Executive Director, Parks on 6 April 2006 regarding the proposed tourist facility on Lizard Island National Park. As Mr Feely is delegate on this matter, I have forwarded your proposal to him for consideration.

A preliminary assessment of the draft Response to the Terms of Reference and the Environmental Management Plan for the proposed development on Lizard Island has been completed. I understand that Mr Feely has written to you seeking additional information on the development, including details of agreements reached with the Cape York Land Council.

I am keen to resolve outstanding matters relating to your application for a tourism facility on Lizard Island National Park. However, a decision on this matter is dependent on the availability of complete information which addresses the environmental, social and economic impacts of the proposed facility on the national park.

Should you wish to discuss this matter further, Mr Alan Feely can be contacted on Ph (07) 3227 7082.

Yours sincerely

James Purtill
Director-General

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Queensland
Government

Enquiries Alan Feely
Telephone (07) 3227 7082
Your reference
Our reference BNE 1724 Pt3 BNE2006/5169

Queensland Parks and Wildlife Service

An entity of the
Environmental Protection Agency

20 April 2006

Mr Steven M. Wilson
Clynder Pty Ltd
GPO Box 669
Brisbane Qld 4001

Dear, Mr Wilson

Lizard Island National Park, proposed tourist facility development

I refer to our meeting on 6 April 2006 regarding the proposed construction of a tourist facility on a sublease within Lizard Island National Park. At the meeting you provided several documents including architectural drawings of the house and caretakers cottage, a draft response to the Terms of Reference (ToR) and a draft Environmental Management Plan for the proposed development. I understand that the Cultural Heritage Management Plan is being prepared and will be provided separately.

I have undertaken a preliminary review of the documents and believe that the response to the ToR and Environmental Management Plan are generally adequate. However Section 2.3 *Indigenous Cultural Heritage Issues* is obviously 'work in progress' and components of Section 5 *Aesthetics and Scenic Beauty: Visual Impacts* where detailed information on visual assessment points and the air photo interpretation are still missing, require finalisation to meet the March 2003 ToR requirements and hence enable me to make a decision.

In addition to the requirements set out in the ToR relating to cultural heritage, I also require copies of the agreements that you have reached with the Cape York Land Council regarding the proposed development on the sublease. In the absence of any agreement that is conclusive, I will be obliged to contact them and other relevant parties to the Supreme Court cases on this matter to ascertain their present attitude to your proposal.

As noted during our meeting, the legislation governing the management of Aboriginal cultural heritage has changed. As your proposal may impact on cultural heritage values, you are advised to check current requirements under the *Aboriginal Cultural Heritage Act 2003*, administered by the Department of Natural Resources, Mines and Water.

Finally, as noted in my letter dated 14 March 2003, it is noted that your proposal is located within the boundary of the Great Barrier Reef World Heritage Area, and may trigger

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provisions of the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*.

Should the Commonwealth consider your development a 'controlled action' you may have additional statutory obligations in relation to this project. To facilitate the time taken to decide your application, it is recommended that you notify Environment Australia of your intention to build a tourist facility within the World Heritage Area.

I will continue the assessment of the material provided to date, but obviously cannot finalise it until the matters described above have been attended to. I understand my staff have been in contact with your consultants on these matters and that they are progressing them.

Yours sincerely

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Alan Feely
Executive Director, Parks

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