

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

TITLE: Lizard Island – Clynder Application – Instrument of Delegation

DATE: 27 June 2007

1. RECOMMENDATION

- That the Director-General: **sign** the attached Instrument of Delegation (Attachment 1) to enable the Executive Director, Parks Division, to make a decision in relation to the application submitted by Clynder Pty Ltd to construct a tourist facility within sub-lease area 8759, Lizard Island National Park, pursuant to the *National Parks and Wildlife Act 1975* (NPW Act); and **note** the status of this matter.

2. ISSUES

- At all relevant times Lizard Island was, and continues to be, a national park.
- In 1976 a special lease was granted over Lot 4 on CP 856826 on Lizard Island to Lizard Island Pty Ltd for a period of 75 years for tourist and recreation purposes.
- In 1983 a sub-lease over part of Lot 4 was granted to Clynder Pty Ltd (Clynder).
- Clause 14(b) of the sub-lease states that the Lessee "*shall obtain all necessary permits required by law... and in particular the permit of the Director of National Parks and Wildlife.*"
- Section 183 (4) of the *Nature Conservation Act 1992* (NCA) states that the Director of National Parks and Wildlife is taken to be a reference to the Chief Executive of the Environmental Protection Agency.
- Under section 8 of the NPW Act the Director of National Parks and Wildlife may delegate all or any of his "powers, authorities, functions, and duties" under that Act to any person (other than the power to delegate).
- The attached Instrument of Delegation delegates all such powers, etc. to the Executive Director, Parks Division to enable a decision to be made in relation to the application submitted by Clynder Pty Ltd to construct a tourist facility within sub-lease area 8759, Lizard Island National Park.

3. BACKGROUND

- On 28 September 2006 Clynder submitted a revised application to construct a tourist facility within the sub-lease area, comprising a tourist accommodation house, caretaker cottage and road.
- On the advice of Counsel, further consultation was undertaken with the Cape York Land Council (CYLC) in relation to the aboriginal cultural heritage aspects of the application.
- On 5 June 2007 a site inspection on Lizard Island was attended by officers of QPWS, Mr Steve Wilson and associates of Clynder, representatives of CYLC, and Traditional Owners.

Sch3(8)(1) breach of confidence

- Aboriginal cultural heritage forms part of the "natural condition" of the national park and as such is a relevant consideration in making a decision in relation to the development application.
- QPWS is awaiting confirmation from the CYLC that all relevant aboriginal groups have been consulted in accordance with the relevant protocols and that the matter of native title has been fully addressed.
- Following discussions with Corporate Counsel, it is advised that the Statement of Reasons for the decision be considered by Crown Law (or Counsel) – given that this matter was the subject of judicial review 7 years ago and there is a possibility that judicial review proceedings may be commenced in relation to a future decision concerning this matter.

3. CONSULTATION

- Consultation with Corporate Counsel, Dr Ted Christie (Counsel), CYLC and Clynder is ongoing.

CTPI 49-Sch4 - Signature

Date: 2/7/07

Executive Director

Executive Director's comment:

Terry - delegation is only for the NPW Act, ie the old Act.

ATTACHMENT 1
GENERAL BRIEFING NOTE

TITLE: Lizard Island National Park – Clynder Application – Instrument of Delegation

Instrument of Delegation

Released under RTI Act 2009 - NPSR

INSTRUMENT OF DELEGATION
National Parks and Wildlife Act 1975
Nature Conservation Act 1992

I, Terry Wall, Chief Executive of the Environmental Protection Agency, and taken to be the Director of National Parks and Wildlife for the purpose of the *National Parks and Wildlife Act 1975*, delegate all of my powers, authorities, functions and duties under that Act (other than the power to delegate) to the Executive Director, Parks Division, Environmental Protection Agency.

Made this 6TH day of JULY 2007.

CTPI 49-Sch4 - Signature

Terry Wall
Chief Executive
Environmental Protection Agency

Released under RTI Act 2009 - NPSR

Tina Taylor

From: Tina Taylor
Sent: Monday, 2 July 2007 2:44 PM
To: Paul Michaels
Subject: RE: Lizard Island development

Paul

Alan Feely has endorsed the following information:

- In 1997 a permit was granted by the Queensland Parks and Wildlife Service to Clynder Pty Ltd (Clynder) to construct a small-scale tourist facility on Lizard Island in accordance with Clynder's lease for tourist purposes, which has been in existence for more than 20 years over approximately 2ha of land on the island.
- The decision to grant the permit was subject to judicial review proceedings commenced by the Cape York Land Council (CYLC) and Mr Gordon Charlie. In 2000 the Supreme Court of Appeal quashed the decision and ordered that the permit application be decided in accordance with the *National Parks and Wildlife Act 1975 (NPW Act)*.
- This application has been the subject of revisions and ongoing negotiations between Clynder and the CYLC on behalf of the relevant aboriginal groups. As at 2 July 2007 a decision has not been made, and further timeframes cannot be provided as the NPW Act does not provide a timeframe within which a decision must be made.

Tina Taylor
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From: Paul Michaels
Sent: Friday, 29 June 2007 3:39 PM
To: Tina Taylor
Subject: FW: Lizard Island development

Paul Michaels
Media Manager
Environmental Protection Agency
(07) 3227 6688
Paul.Michaels@epa.qld.gov.au

From: Paul Michaels
Sent: Friday, 29 June 2007 3:17 PM
To: Alan Feely
Subject: Lizard Island development

Al.

Clive Cook said this had to go to you...

David Sexton from The Cairns Post just rang with an enquiry about a proposed development on Lizard Island. Deadline for response is 4pm today.

He said a development was mooted in the mid 90s but fell by the wayside; he's heard the developer is looking at it again. His questions to us are:

- Are we aware of any proposals for development on Lizard Island?
- Has the EPA received a new development application?
- Who is the developer?
- What environmental evaluation would need to be done?

Paul Michaels
Media Manager
Environmental Protection Agency
(07) 3227 6688
Paul.Michaels@epa.qld.gov.au

Released under RTI Act 2009 - NPSR

Spoke to Alan; suggested comments.
2/07/07.

Paul

The relevant information is provided below.

- In 1997 a permit was granted by the Queensland Parks and Wildlife Service to Clynder Pty Ltd (Clynder) to construct a small-scale tourist facility on Lizard Island in accordance with Clynder's lease for tourist purposes, which has been in existence for more than 20 years over approximately 2ha of land on the island.
- The decision to grant the permit was subject to judicial review. In 2000 the Supreme Court of Appeal quashed the decision and ordered that the permit application be decided in accordance with the *National Parks and Wildlife Act 1975 (NPW Act)*.
- This application has been the subject of ongoing negotiations and revisions by Clynder. As at 2 July 2007 a decision has not been made, and further timeframes cannot be provided. The NPW Act does not provide a timeframe within which a decision must be made.

DRAFT

Tina Taylor
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