Broadwater Marine Project
Native Title Assessment

Prepared by MORENCO Consultancy Services PTY LTD for the Department of State Development Infrastructure and Planning

20 June 2013
Prepared by: Morencio Consultancy Services Pty Ltd
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Project Overview
MORENCO Consultancy Services PTY LTD has been engaged by the Department of State Development, Infrastructure and Planning to:

1) Confirm the accuracy of the previously completed Native Title Assessment for the Broadwater Marine Project;

2) Locate and analyse documentation from previously unknown sources to confirm if any public work extinguishes native title in relation to Lot 1 on SP104014;

3) Undertake an assessment of issues of Native Title for sea bed leases for the cruise terminal and its infrastructure;

4) Outline the process to resolve Native Title and Cultural Heritage for the Broadwater Marine Project; and

5) Prepare a consolidated final Native Title Assessment Report for the Broadwater Marine Project.

The native title assessment component of this report will identify areas where native title may continue to exist within the proposed Cruise Ship Terminal and Development Opportunity Zone.

The native title assessment involves a two part process with the first being a land tenure investigation to determine the effect of validly granted historical tenures on native title rights and interests. The second component of the native title assessment involves the identification of any valid public works (a valid public work extinguishes native title) within the proposed Cruise Ship Terminal and Development Opportunity Zone that meets the requirements of sections 23B(7), 253 and 251D of the Native Title Act 1993 (Cth) and section 21 of the Native Title (Queensland) Act 1993.

Note: Any future land dealings over areas where native title may continue to exist must comply with state and federal native title legislation and is considered a future act under the Native Title Act 1993 (Cth).

In the instance where native title may continue to exist, an Indigenous Land Use Agreement (ILUA) with the relevant traditional owner group would be required prior to the state government issuing a term lease over the area.

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Native Title Assessment Area

The land and waters the subject of this native title assessment include:

Lands

(A map of the land component of the assessment area is located on the following page)

1) Lot 1 on CP908847 - 37.15 Ha.
   Wave Break Island
   (Reserve for Beach Protection and Coastal Management Purposes)

2) Lot 528 on WD6624 - 20.95 Ha.
   Doug Jennings Park
   (Reserve for Port and Harbour Purposes)

3) Lot 1 on SP104014 - 8.81 Ha.
   Muriel Henchman Park
   (Reserve for Park and Recreation Purposes)

4) Lot 530 on WD6522 - 3.4 Ha.
   (Unallocated State Land)

5) Lot 381 on WD5096 - 0.69 Ha.
   (Unallocated State Land)

6) Lot 273 on WD3813 - 0.55 Ha.
   (Unallocated State Land)

Waters

7) That area of the Southport Broadwater within the Native Title Assessment area as delineated by a red line on the Native Title Assessment Map located on page 22.
Native Title and Extinction Explained

Exclusive Native Title
The Federal Court can determine that exclusive native title rights and interests continue to exist over all or part of a claim area. These rights include the right to possession, occupation, use and enjoyment to the exclusion of all others. See 'No Extinction' below.

Non-Exclusive Native Title
The Federal Court can determine that non-exclusive native title rights and interests continue to exist over all or part of a claim area. These rights can include the right to hunt, fish on land or waters and the right to take natural resources for personal, communal and non-commercial purposes. See 'Partial Extinction' below.

Full Extinction
Full extinguishment of native title by laws or acts which create rights in third parties occurs where the continued enjoyment of all native title rights is inconsistent with the legal rights and interests created by executive or legislative acts.

"...where the law or act creates a right of exclusive possession in third parties in respect of a parcel of land the subject of native title." Wilson v Anderson and ors [2002] HCA 29

Action required: No further action is required in relation to native title over an area where full extinguishment has occurred.

Partial Extinction
Native title is considered to be a bundle of rights. Partial extinguishment occurs when there has been a law or act that affects these rights but the act does not completely extinguish them. The 'exclusive' native title rights, such as those to control access to land, speak for country, or make decisions in relation to the land are usually extinguished in areas where partial extinguishment has occurred.

Where there has been partial extinguishment, the recognition of native title rights and interests over an area is expressed in a Federal Court determination as a list of rights, for example, the right to hunt, fish on land or waters and the right to take natural resources for personal, communal and non-commercial purposes. Western Australia v Ward (2002) 191 ALR 1 (Miriwung Gajerrong).

Action required: Where there has been partial extinguishment of native title, native title will still need to be addressed where the proposed future act would affect any remaining native title rights.

No Extinction
For land where:
  a) there has been no previous laws or act that are inconsistent with native title; or
  b) there is a current native title claim where s.47 of the Native Title Act 1993 (Cth) is invoked over claimant occupied Unallocated State Land, claimant occupied Aboriginal land or Reserves and any claimant held Pastoral Lease.

Action required: native title will need to be addressed.
Tenure and Public Works Investigation

The Native title Assessment consists of two processes developed to identify areas where native title rights have been extinguished within the Native Title Assessment Area, they are:

**Tenure and Usage Assessment**
This process involves the identification of current and historical tenures and their subsequent effect on native title rights. This includes a usage assessment, where required, to identify any extinguishment of native title rights through the use of the area i.e. improvements constructed on a pastoral lease authorised through the instrument of lease.

**Public Works Assessment**
This process involves the identification of works undertaken by, or on behalf of, the Crown that have extinguished native title rights i.e. reclamation of lands, construction of car parks, and toilet blocks on reserves.

**Lot 1 on CP908847 - Wave Break Island**
- Total area 37.15 ha
- The gazettal of the current Reserve for Beach Protection and Coastal Management Purposes occurred on 22.08.1997.

**Conclusion**
Native title has been fully extinguished over all of Lot 1 on CP908847 through the construction of the southern and northern rock protection walls and the reclamation works undertaken by the Gold Coast Waterways Authority to create Wave Break Island during the Nerang River entrance relocation.

(refer to Annexures A2-A6)
LOT 1 ON CP908847 - WAVE BREAK ISLAND

LEGEND
- NATIVE TITLE EXTINGUISHED
- NATIVE TITLE STILL EXISTS
- NATIVE TITLE ASSESSMENT AREA
- DEVELOPMENT AREA BOUNDARY

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Lot 528 (part) on WD6624 – Doug Jennings Park

- Area 20.85 ha
- Plan WD6278 dated 08.09.1987 depicts this area as being vested in the Gold Coast Waterways Authority although no reference to the gazetted date could be located.
- The gazetted of the current Reserve for Port and Harbour (Associated Park, Kiosk and Recreation) occurred on 24.03.1990.
- Trustee Lease 709414105 for the kiosk and caretakers residence was issued by the Gold Coast Waterways Authority (via Ministerial approval) on 21.10.2005 for a term of 10 years and will require renewal prior to expiry on 16.09.2015.

Conclusion

Native title has been fully extinguished over all of Lot 528 on WD6624 through the construction, establishment, maintenance and operation of the following public works:

- Excavation, reclamation and dredging works carried out during the Nerang River entrance relocation;
- The construction of the southern training wall of the Nerang River entrance including reclamation works carried out of the western side of the Lot; and
- Adjacent lands (internal to Lot 528 or WD6624) the use of which was necessary for, or incidental to, the construction, establishment or operation of the works.

(refer to Annexures A2-A6 and C2)
Lot 1 on SP104014

- Total area 8.81 ha
- The gazettal of the current Reserve for Park and Recreation Purposes occurred on 07.12.1974.

Conclusion

Native title has been fully extinguished over part (2.075 ha) of the Lot through the construction, establishment, maintenance and operation of the following public works:

- The access roads, car park, toilet block and boat ramp located at the southern end of the Lot adjacent to SeaWorld (2 ha);
- The car park located approximately 500m north of the Sea World complex (0.036 ha); and
- The car park located approximately 850m north of the Sea World complex (0.039 ha).

Native title continues to exist over the remainder of the Lot (abt. 6.71 Ha.).

(Annexures C1-C2)
Lot 530 on WD6522

- Total area 4.23 ha
- Formerly described as Lot 9 on US131533.
- Permit to Occupy PO 6992 (2.40 ha) issued on 01.10.1992 (no term) to National Australia Trustees Ltd (Trustee for Sea World Property Trust) used as additional car parking for Sea World and members of the public.
- Part of this Lot (1.3 ha) was previously dedicated (23.05.1968) as a Reserve for Local Government (Sewage) Purposes under the control of the Gold Coast City Council.

Conclusion
Native title has been fully extinguished over the entire Lot through construction, establishment, maintenance and operation of the following public works:

- Major earth works and reclamation works undertaken on the western and southern areas of this Lot by the Gold Coast City Council; and
- Sewage works constructed on the northeastern areas of this Lot by the Gold Coast City Council.

(Annexures B1-B5)
Lot 381 on WD5096  
- Total area 0.693 ha  
- Formerly wholly located within Lot 273 on WD3813  
- Special Lease SL31536 for Reclamation, Manufacturing and Business purposes  
  issued over the area 01/10/1967.  
- No evidence of public works identified over this area

Conclusion
Partial extinguishment of native title rights and interests. Non-Exclusive native title rights and interests continue to exist over this area.
Lot 273 on WD3813
- Total Area 0.546 ha
- Special Lease SL31536 for Reclamation, Manufacturing and Business purposes issued over the area 01/10/1967.
- No evidence of public works identified over this area

Conclusion
Partial extinguishment of native title rights and interests. Non-Exclusive native title rights and interests continue to exist over this area.

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Southport Broadwater Area

Conclusion
Native Title has been fully extinguished over part of this area through the construction, maintenance and operation of the following public works:

- Excavation and dredging works carried out during the Nerang River entrance relocation;

- Dredging works carried out by the Gold Coast City Council to maintain boating channels within the Broadwater area.

There are areas within the Broadwater where native title may still exist. See Native Title Assessment Map on page 21.

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## Native Title Assessment Summary Table

<table>
<thead>
<tr>
<th>Lot</th>
<th>Plan</th>
<th>Current Description</th>
<th>Area (Ha)</th>
<th>Tenure Assessment</th>
<th>Public Works Assessment</th>
<th>Native Title Conclusion</th>
<th>ILUA required for future use of the area</th>
<th>Additional Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CP008847</td>
<td>Reserve for Beach Protection and Coastal Management (Wave Break Island)</td>
<td>37.15</td>
<td>Yes</td>
<td>Yes</td>
<td>native title fully extinguished</td>
<td>No</td>
<td>native title has been fully extinguished via public works</td>
</tr>
<tr>
<td>523</td>
<td>WD6623</td>
<td>Reserve for Port and Harbour Purposes</td>
<td>29.62</td>
<td>Yes</td>
<td>Yes</td>
<td>native title fully extinguished</td>
<td>No</td>
<td>native title has been fully extinguished via public works</td>
</tr>
<tr>
<td>1</td>
<td>SP104014</td>
<td>Reserve for Park and Recreation Purposes</td>
<td>8.81</td>
<td>Yes</td>
<td>Yes</td>
<td>native title has been fully extinguished over part of this Lot and partially extinguished over the balance of the Lot</td>
<td>Yes (part of Lot)</td>
<td>native title has been fully extinguished over part of this Lot via public works</td>
</tr>
<tr>
<td>530</td>
<td>WD6522</td>
<td>Unallocated State Land</td>
<td>4.23</td>
<td>Yes</td>
<td>Yes</td>
<td>native title fully extinguished</td>
<td>No</td>
<td>native title has been fully extinguished via public works</td>
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<tr>
<td>381</td>
<td>WD5096</td>
<td>Unallocated State Land</td>
<td>0.693</td>
<td>Yes</td>
<td>Yes</td>
<td>non-exclusive native title continues to exist over the area</td>
<td>Yes</td>
<td>no evidence of public works identified over this Lot</td>
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<tr>
<td>273</td>
<td>WD3813</td>
<td>Unallocated State Land</td>
<td>0.546</td>
<td>Yes</td>
<td>Yes</td>
<td>non-exclusive native title continues to exist over the area</td>
<td>Yes</td>
<td>no evidence of public works identified over this Lot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Broadwater Area</td>
<td></td>
<td></td>
<td>Yes</td>
<td>native title has been fully extinguished over part of this Lot</td>
<td>Yes (part of area)</td>
<td>native title has been fully extinguished over part of this area via public works</td>
</tr>
</tbody>
</table>
Summary of Extinguishment within the Native Title Assessment Area

TOTAL AREA OF EXTINGUISHMENT
Abt 392.9 Ha.

TOTAL AREA OF PARTIAL EXTINGUISHMENT
Abt. 1.24 Ha.

TOTAL AREA OF NO EXTINGUISHMENT
Abt 213.7 Ha.

1. Extinguishment area of the Broadwater within the Native Title Assessment Area = abt 311.5 Ha.

2. Area of the Broadwater within the Native Title Assessment Area where no extinguishment has occurred = abt 213.7 Ha.

3. Extinguishment area of Lot 1 on CP908847 – Wave Break Island = 37.15 Ha (Lot is wholly within the Native Title Assessment Area).

4. Extinguishment area of Lot 528 on WD6624 = 20.95 Ha (Lot only partially within the Native Title Assessment Area).

5. Extinguishment areas of Lot 1 on SP104014:
   - Northern area: Abt. 0.039 Ha
   - Central area: Abt. 0.036 Ha
   - Southern area: Abt. 2 Ha

   Total of the 3 areas: Abt. 2.1 Ha.

6. Partial extinguishment area of Lot 1 on SP104014 = 5.71 Ha.

7. Extinguishment area of Lot 530 on WD6522 = abt 3.4 Ha (Lot only partially within the Native Title Assessment Area).

8. Partial extinguishment area of Lot 381 on WD5096 = abt 0.69 Ha (Lot is wholly within the Native Title Assessment Area).

9. Partial extinguishment area of Lot 273 on WD3813 = abt 0.55 Ha (Lot is wholly within the Native Title Assessment Area).