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Your Ref:

Date 10<sup>th</sup> January 2014

The Honourable David Crisafulli MP  
Member for Mundingburra  
Minister for Local Government Community Recovery and Resilience  
PO Box 15216  
CITY EAST QLD 4002

Dear Minister.

**RE: ROAD BLOCKS TO LOCAL GOVERNMENT**

Over the first half of the Newman Government's first term there have been a number of regulatory reforms aimed at reducing red tape and the administrative burden. This has been greatly appreciated by Cook Shire and Local Government generally.

On many occasions during either conversations we have had or during your addresses to various forums you have asked to be given the "Road Blocks" so that you can work on breaking them down.

I have asked Council Officers to look realistically at the areas of Regulation/Government Policy that are truly inhibiting Council in its ability to provide effective services to the Cook Shire Community. Staff have provided me with the attached list which I forward for your consideration.

Any assistance you can give in resolving these issues will be much appreciated.

Regards

Peter Scott  
MAYOR  
COOK SHIRE COUNCIL

## **OBSTRUCTIONS (ROAD BLOCKS) FACING LOCAL GOVERNMENT IN CARRYING OUT ITS OBLIGATIONS UNDER VARIOUS LEGISLATION**

### **ROADS**

1. EPA does not favour dedicated roads through the Protected Area Estate – so when EPA objects to such a road opening, NR&M will not approve the road opening application: despite the fact that the Local Authority is the road authority for its local government area, not EPA.
2. Road reserves should be of sufficient width to encompass gravel deposits to enable those deposits to be used for road works in the area – EPA does not agree, so neither does NR&M. If gravel is not available in proximity to any needed road repair/construction, that work cannot be carried out.
3. Ditto for access to water – no water, no road works.

### ***ACTION REQUIRED***

4. ***Legislation needs to be amended to place Aboriginal freehold land and Protected Area Estate land in the same category as State leasehold land as regards access to gravel and water.***
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### **5. Council's current Policy on roads:**

#### **Public Access**

20-21 JULY 1999 RESOLUTION NO.19787

That Council's attitude/intent regarding river/creek/beach access etc is to request/require legal public access wherever possible. Council intends to request/require esplanades/access roads plus adjacent reserves (landing, recreation, etc) wherever possible. Any Council request/application should be processed with the foregoing in mind.

#### **Property Access**

21-22-23 AUGUST 2006 RESOLUTION NO.25275

Legal access must be created to any newly created parcel; to any reserves to be created; and to water and camping areas.

## **Northern Peninsula Road**

21-22-23 AUGUST 2006 RESOLUTION NO.25275

Council's stated policy position is that the main northern access road to the 'tip' should be improved to the best surface possible within budgetary constraints, whilst the Telegraph Track and roads to the east and west of the main northern access road should, generally, be maintained to a lesser standard to preserve the 'remote area experience' for those travellers who desire that experience. Furthermore, 'loop' tracks off the main northern access road should be legalized or created as necessary.

## **Esplanades Around Islands.**

15-16-17 JUNE 2009 RESOLUTION NO.28795

Council requires the provision of esplanades around the perimeter of all islands proposed to be regulated as Aboriginal land, prior to such regularisation.

## **Rural Road Corridor**

15-16-17 JUNE 2009 RESOLUTION NO. 28797

Council requires a road corridor 1 km wide wherever detailed design has not taken place and the State intends to undertake tenure resolution and include lands in either the Protected Area Estate or Aboriginal freehold tenure.

Moreover, Council will require a wider corridor as necessary for any future realignment or to encompass other resources such as water and gravel which cannot be located within a 1 km wide road corridor.

## **Stock Routes**

20 OCTOBER 2009 RESOLUTION NO. 28961

Council supports the concept of widening the road reserves associated with the Stock Route Network in its local government area to 1.6km, to cater for grazing on stock routes, in the event that leasehold land is to be converted to another tenure.

## ***ACTION REQUIRED***

- 6. The State needs to acknowledge the position taken by Council as outlined in the above Policies and make decisions in relation to the issues in accordance with the above Policies – that is, accept that Council is the road authority for the area, not EPA or NR&M.*

## **ACCESS TO THE COAST**

7. Public access must be provided/maintained to the coast. If one looks at a land tenure map of the Shire, one will see that there is virtually no public access to the coast.

8. Every time there is a land tenure dealing over land adjoining the coast line, Council requests a Community Purpose Reserve on the coast with dedicated access thereto.
9. EPA and/or the Traditional Owners object, so in almost every case, NR&M refuses to make such provision.

### ***ACTION REQUIRED***

- 10. The State must provide Community Purpose Reserves on the coast and dedicated road access thereto in all land dealings when requested to do so by Council – EPA must not have veto rights.***
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### **CREATION OF COMMUNITY PURPOSE RESERVES**

11. Given the position taken by EPA and NR&M above, it is virtually impossible to achieve the creation of a new reserve in a land tenure dealing.
12. Even when one is created as a result of an Indigenous Land Use Agreement (“ILUA”), it is created between EPA/NR&M/Traditional Owners, with no involvement of Council – i.e. Council is not a Party to the ILUA: e.g. the creation of the Coen Bend Community Purpose Reserve; the proposed Letter Box Creek Reserve; etc.
13. Despite the fact that there was a registered ILUA providing for the creation and use of the Coen Bend Reserve, EPA/NR&M did nothing to create the reserve until advised that Council was taking legal advice on the question of whether Council had an action against the State and the Traditional Owners for failing to create the reserve.
14. The ILUA, Council was told, required certain works on the reserve. When Council requested details of the works, Council was told it could not be advised, as Council was not a Party to the ILUA which was a confidential document!!!
15. When told good luck with that, as Council is not bound by an ILUA to which it is not a signatory, a list of works was eventually provided by EPA.
16. Again when told good luck with that, as Council is not bound by an ILUA to which it is not a signatory, EPA changed its position from the works are required by the ILUA, to the position that the works are authorised by the ILUA.
17. EPA/NR&M were then told that any works on the reserve are subject to consideration by Council and subject to the usual budgetary restraints.

***ACTION REQUIRED***

- 18. Council to be involved in all negotiations relating to the establishment of Community Purpose Reserves (to be vested in Council), and be a signatory in relation to any associated ILUA.***
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**ABORIGINAL CULTURAL HERITAGE**

19. The issue of whether the Coen Bend Reserve will be reduced in size because of claims by the Traditional Owners that there are Aboriginal cultural heritage issues around the falls; and instead converted to Aboriginal freehold land, is another issue.
20. Council takes the position that Aboriginal cultural heritage is not a trigger for tenure change – Aboriginal cultural heritage is protected by legislation regardless of tenure: i.e. the legislation is tenure neutral.

***ACTION REQUIRED***

- 21. The State to acknowledge and accept that Aboriginal cultural heritage is not a trigger for tenure change, as it is protected by specific legislation; and so instruct its Officers.***

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## **DEVELOPMENT OF RESERVES FOR COMMUNITY USE**

22. It is extremely difficult and frustrating when one cannot carry out simple necessary development on reserves for the benefit of the community.
23. Take public toilet facilities and the Annie River Reserve as an example.
24. The Annie River Reserve is a reserve in Council's trusteeship in a remote location in Council's local government area – at the bottom of Princess Charlotte Bay. Native Title is extinguished over the reserve by a previous act of Government.
25. The Easter public holiday is the peak use time for the reserve, when some hundred or so people could utilise the reserve as a base for fishing and crabbing expeditions in the river systems and the Bay.
26. However, if Lakefield National Park is not open to the public over the Easter public holiday period, the number of visitors to the Annie River Reserve could swell to the hundreds if not thousands.
27. During the wet season the reserve is not accessible because of flood waters and/or flood damaged roads – say four months of the year.
28. For the rest of the year, with the exception of the Easter period, there is, because of its remote location, very limited visitation – from zero to a dozen or so, from time to time.
29. Council conducts clean-ups at the reserve.
30. Council is concerned at the public health issue of people using the reserve when no toilet facilities are provided.
31. Some years ago Council intended to allocate money to erect a public toilet facility on the reserve.
32. *However, Council was told that any such facility had to provide for peak usage and be flood protected. Council stopped costing the project when it passed something like the quarter of a million dollar mark.*
33. It is ridiculous that a basic toilet facility cannot be provided on the reserve for use by occasional visitors.
34. The foregoing applies to all reserves – the Annie River Reserve was used as an example.

### ***ACTION REQUIRED***

35. ***Revisit the legislation relating to the provision of basic amenities on remotely located Community Purpose Reserves.***

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## **VEGETATION MANAGEMENT ACT**

36. Another example is where a reserve is created and vested by the State as a result of negotiations by the parties and the entering into and registration of an ILUA: e.g. the Crooked Creek Reserve for Sport and Recreation Purposes.
37. Vegetation Management Act restrictions which take a large amount of time to resolve (when, in fact, they can be resolved), despite the fact that most of the site is vacant land.

### ***ACTION REQUIRED***

- 38. Revisit the Vegetation Management Act and include Community Purpose Reserves as a tenure where the Act does not apply.***
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## **COMMUNITY PURPOSES**

39. Prior amendments to the Land Act changed the Community Purposes listed in Schedule 1 and took out operational type uses – e.g. water purposes, sewerage purposes; refuse purposes; depot purposes; etc. The Act should be amended to reinstate the uses which were community purposes under the previous Act.

### ***ACTION REQUIRED***

- 40. Amend the Land Act to include the Schedule 1 from the previous superseded Land Act.***

## **PROVING NATIVE TITLE EXTINGUISHMENT TO THE SATISFACTION OF THE STATE**

41. The State is overly cautious in its Work Procedures in relation to native title, particularly in relation to extinguishment.
42. A case in point. Council is desirous of establishing a Waste Transfer Station on a depleted quarry site; has made application to cancel the current reserve; revert the land to Unallocated State Land; and consider an offer from the State to purchase the site in fee simple.
43. Native title must be addressed.
44. Council contends that native title has been extinguished by legally carried out ‘major earthworks’.
45. The relevant site is a Reserve for Gravel Purposes Gazetted on 19 March 1887 and placed in the Trusteeship of Council on 17 February 1917.

46. The gravel resource has been exhausted. Where there was once a substantial hill, there is now a level site.
47. The gravel extraction was carried out by or on behalf of Council from 1917 to the early 1980's, for use on the local road network; and probably the Cooktown to Laura rail line; and the World War II Cooktown airstrip.
48. No paper records have been located.
49. Aerial photography dated 1930, 1983, and 2013 has been provided to the State showing the progression of extraction from the 1930's to the early 1980's, and the current condition of the site.
50. The extraction carried out in accordance with the purpose of the reserve extended over the whole of the reserve site and constituted 'major earthworks'.
51. Council contends that native title has been extinguished over the whole site – where once there was a substantial hill there is now a level site.
52. To date, the State has not accepted that native title has been extinguished.

### ***ACTION REQUIRED***

53. ***State to revisit the Native Title Work Procedures in relation to extinguishment to cater for an obvious case of extinguishment such as outlined above.***

### **ENABLE LOCAL GOVERNMENT TO MAKE DECISIONS AND IMPLEMENT THEM FOR THE BENEFIT OF THE COMMUNITY WITHIN URBAN AREAS.**

54. Councils should have more autonomous authority within defined urban areas to implement decisions made for the greater benefit of the community without the requirement to obtain development permits from State Agencies.
55. A case in point, Council wishes to trim 0.739 ha of mangrove habitat. The area constitutes approximately 0.2% of the mangrove habitat on the southern stretch of the Endeavour River (approximately 370 ha) and adjoins an existing cleared site on an existing permit.
56. The area of concern is adjacent to the main recreational parkland (Lions Park) in the central waterfront area of Cooktown. The park is very popular with local residents and tourists and is the location of the weekly Cooktown Markets.
57. The area is also very popular with local indigenous and non indigenous residents and tourists for fishing.



58. A child's playground located in the park is approximately 10 metres from the area subject to the trimming application.
59. The purpose of the application is public safety through vector control for flying foxes and mosquitoes.
60. Crocodiles are also moving into the area as the roosting flying foxes are providing a convenient food source. This is creating an imminent risk to the public.
61. Three (3) crocodiles have been captured and removed from the immediate area very recently.
62. As a result of the trimming the historical viewshed from the Cooktown main street and esplanade would be partially restored. Whilst this is not the primary reason for the trimming of mangroves it is seen as beneficial for the economy of Cooktown that is primarily structured around the history of the area.
63. Officers from the Department of Agriculture, Fisheries and Forestry and Department of State Development Infrastructure and Planning have indicated that an application will not be approved citing that aesthetics is not a sufficient reason to trim mangroves.
64. At a pre lodgement meeting Officers from the Department of Agriculture, Fisheries and Forestry advised Council that alternative safety measures such as moving the play ground or fencing off the area.
65. At a pre lodgement meeting Officers from the Department of Agriculture, Fisheries and Forestry advised that an application would also require a report/advice from professionals on vector management specifically for Flying foxes and crocodiles.
66. At a pre lodgement meeting Officers from the Department of Agriculture, Fisheries and Forestry advised although not supported if the application were successful there would be a \$110,00 financial offset or equivalent in vegetation required.
67. The Cook Shire Council was faced with a problem, determined a low cost solution with low environmental impact to mitigate the problem but is faced with the high costs of consultants to provide information supporting an application that may not be successful. If the application is successful even higher financial burdens to offset the trimmed mangroves.

### ***ACTION REQUIRED***

68. ***State to consider providing exemptions to Local Government for the need for Development Permits for low impact works within defined urban areas.***