

Dave Tollner's decision not to list Kulaluk lease, 300 hectares of Darwin land which holds a number of sacred sites, to be challenged in supreme court

Exclusive: Planning minister refusal to give Aboriginal land heritage listing to be challenged in court

By Helen Davidson in Darwin on 2 June 2016 in The Guardian Australia



The Northern Territory lands and planning minister, Dave Tollner, last month dismissed a recommendation to heritage list the Kulaluk lease, saying: 'A heritage listing would prevent future development and would not protect any historical association with the Aboriginal land rights movement.' Photograph: Mick Tsikas/AAP

Outgoing Northern Territory minister Dave Tollner's rejection of a recommendation to heritage list 300 hectares of Aboriginal land near Darwin will be challenged in the supreme court.

The Kulaluk lease, less than 20km from the Darwin city centre, has been at the centre of a bitter dispute between traditional owners and affected Indigenous residents over its proposed development.

Last month Tollner, the lands and planning minister as well as NT treasurer, rejected a recommendation by the Heritage Council to list the large tract of coastal land and mangroves, which also holds two Indigenous communities and a number of sacred sites and burial grounds.

On Thursday, the NT branch of the Environmental Defender's Office (EDO) served documents to the Northern Territory solicitor general to appeal Tollner's decision in the supreme court.

Principal lawyer David Morris told Guardian Australia the EDO would be challenging the lawfulness of Tollner's decision on behalf Donna Jackson, a Larrakia woman and member of the Larrakia Nation Aboriginal Corporation.

"Broadly speaking we say his decision was unlawful because it failed to consider certain matters as to the heritage significance of Kulaluk which we believe he should have," Morris said.

"The point we're litigating is necessarily confined because of what the act allows us to challenge. It's not on whether he's made a good or bad decision. We're challenging whether the decision was lawful or not."

The Gwalwa Daraniki Association, led by Helen Secretary, had pushed to develop large parcels of the Kulaluk land for the economic benefit of the communities. A section of it has already been developed and leased to a service station, chemist and McDonald's restaurant, and a number of deals have already been made with other developers.

An opposing group, the Larrakia Nation Aboriginal Corporation, had called for protection of the area, and spokeswoman Jackson queried Secretary's claims of economic necessity, saying there should already be enough money from current income streams. The group sought heritage listing to establish stronger safeguards but not completely block development.

The heritage council received more than 200 public submissions during its assessment process. An independent report was also prepared by the former chief executive of the Department of Lands and Planning NT, Dr David Ritchie, which found the area was historically and culturally significant, in part because of its place in Australia's fight for land rights.

However, Toller dismissed the council's recommendation, saying: "A heritage listing would prevent future development and would not protect any historical association with the Aboriginal land rights movement."

Flagging his position before he had seen the recommendation, Tollner said last month the NT government was "not in the business of heritage listing town camps".

In rejecting a recommendation, the minister is legally required to provide an information notice explaining his decision to affected parties.

In his reasons Tollner said he had considered submissions from supporters, who cited the ecological value of the area, concern for burial sites and its role as a "green belt".

However he also said aspects of the statement of heritage value were "open to debate" and listing the area would be "administratively problematic".

In rejecting the recommendation Tollner said concerns raised were already adequately protected by other legislation. He did not refer to the independent report prepared by Ritchie.

A directions hearing is scheduled for later this month.

- This article was amended on 2 June 2016 to reflect it is Tollner's decision that is being challenged in the supreme court and that documents were served to the solicitor general of the Northern Territory. Ed

[Note: the service station and discount chemist have never been part of the Kulaluk Lease Area. However, the McDonalds Restaurant was given a 99-year sublease in a secret agreement with the leaseholders negotiated by Marcia Langton . BD]