



MINISTER FOR TOURISM AND CULTURE

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Dear Sir/Madam

INFORMATION NOTICE UNDER THE *HERITAGE ACT*

On 29 April 2016, the former Minister for Lands and Planning decided not to permanently declare the Kulaluk Lease Area in Darwin as a heritage place. This decision was subsequently appealed in the Northern Territory Supreme Court.

On 27 October 2016, Consent Orders were filed in the Supreme Court, allowing the appeal, and ordering that the decision that was the subject of the appeal be referred back to me as the Minister responsible for the administration of the *Heritage Act*.

I wish to inform you that after considering this matter carefully, and pursuant to section 35(1) of the *Heritage Act*, I have decided not to permanently declare the Kulaluk Lease Area as a heritage place.

The *Heritage Act* requires that I provide you with an information notice in relation to this matter, which is attached to this letter.

If you have any queries in relation to this matter, please contact Mr Michael Wells, Director, Heritage Branch, in my Department of Tourism and Culture, on telephone 8999 5036 or email michael.wells@nt.gov.au.

Yours sincerely

LAUREN MOSS

17 July 2017

INFORMATION NOTICE

I am providing this information notice in accordance with sections 35 and 94 of the *Heritage Act*.

Pursuant to section 35(1) of the *Heritage Act*, I have decided not to permanently declare the Kulaluk Lease Area as a heritage place.

In making this decision, I have considered:

- a letter dated 11 April 2016 from the Chairman of the Heritage Council to the former Minister, which included the Council's statement of heritage value for the Kulaluk Lease Area;
- 251 submissions from 225 individuals/organisations received during the public submission period;
- a report dated August 2014 from the Heritage Branch, now within the Department of Tourism and Culture;
- a report dated 31 May 2015 provided by a consultant, Dr David Ritchie, that was commissioned by the Heritage Council but not provided to the former Minister by the Council prior to him making his decision in April 2016 (the Ritchie Report);
- further correspondence received by my office from Dr Bill Day during March, April and May 2017; and
- a map showing the boundaries of the Kulaluk Lease Area, and the zoning of land in and around the Lease Area.

The following matters were raised by many of those who made a submission supporting the proposed declaration:

- the ecological value of the site, in particular the coastal mangroves;
- the 'natural beauty' of the site and its role as a 'green belt' in an urban area;
- concern that burial sites in the area will be affected by development; and
- the need to preserve the Lease Area in its current state by permanently declaring it as a heritage place to prevent further development.

Many of the submissions expressed a lack of confidence in the planning process.

However I note that the current Government has made a strong commitment to restoring community confidence in planning processes in order to deliver a better planning system that is transparent, effective and meets the needs of the Territory community.

The following matters were raised by those who made a submission objecting to the proposed declaration:

- that aspects of the statement of heritage value are open to debate;
- the current leaseholder is acting as a custodian for the cultural values of the site and is working with the Aboriginal Areas Protection Authority to protect sacred sites;

- the current leaseholder wishes to unlock the economic potential of the land, and should not be prevented from doing so by outsiders;
- the Lease was granted on terms that contemplated future development, and not on the basis that the land would be kept in its state as at the time of the grant; and
- heritage listing of the Lease Area is unnecessary to protect the heritage values associated with the grant of the lease because they do not relate to any physical characteristic of the land.

I note that the Ritchie Report invited the Council to find that the Kulaluk Lease Area meets the heritage assessment criteria covering cultural history (section 11(a)), special association with a community or cultural group (section 11(g)) and special association with the life or works of a person or group of persons of importance in the Territory's history (section 11(h)).

I have considered the statement of heritage value supplied by the Heritage Council in its letter of 11 April 2016, which reads as follows:

The Kulaluk Lease Area symbolises the first land grant made to the Larrakia people in acknowledgement of their longstanding traditional ownership and occupation of land and seas in the Darwin region. After an eight-year long struggle for recognition, it was the first land title granted to an Aboriginal group in an urban environment in Australia.

The Kulaluk Lease Area has a strong and special association with the Larrakia people for spiritual, cultural and social reasons. The site is associated with Bobby Secretary and other Larrakia elders who were at the centre of the struggle for Aboriginal land rights in the Northern Territory in the 1970s.

The Heritage Council's statement is consistent with the Ritchie Report.

I accept the Heritage Council's statement of heritage value and agree that the Kulaluk Lease Area meets the heritage assessment criteria described in sections 11(a), 11(g) and 11(h) for the reasons given.

I am therefore satisfied, pursuant to section 34(1) of the *Heritage Act*, that the Kulaluk Lease Area is of heritage significance.

The more difficult aspect of my decision is whether, having decided that the Kulaluk Lease Area is of heritage significance, I am satisfied it should be conserved by permanently declaring it as a heritage place. I note that the *Heritage Act* leaves that decision to me as the Minister responsible for the *Heritage Act*, rather than an independent body such as the Heritage Council. In making my decision, I am mindful of the role of the broader public interest in the appropriate development of urban land for the benefit of the community.

I am not satisfied that the Kulaluk Lease Area should be conserved by permanently declaring it as a heritage place, for the following reasons:

1. In terms of community concerns about the planning process, and the desirability of protecting and preserving green spaces and green belts throughout Darwin, I am aware that much of the Kulaluk Lease Area is zoned "Conservation" under the *Planning Act*, which serves to protect the natural and ecological significance of the area. I therefore consider that the processes

under the *Planning Act* are the appropriate place for these issues to be raised and debated, noting that these processes allow for public consultation prior to decisions being made. I further note that the *Waste Management and Control Act* also serves to assist in the protection of the environmental values of the area.

2. In terms of concerns raised in submissions about burial sites in the area being affected by development, I note that all Aboriginal archaeological places and objects within the Lease Area (including skeletal remains) are automatically protected by the *Heritage Act*, and furthermore all sacred sites are protected by the *Northern Territory Aboriginal Sacred Sites Act*. I therefore consider that such concerns can be adequately dealt with by existing legislative provisions, and a permanent declaration of the Kulaluk Lease Area as a heritage place is not necessary in order to respond to these concerns.
3. Although a declaration may have been made that authorised development on part of the Lease Area (pursuant to s.34(2)), for the reasons given above, I consider that such a declaration is unnecessary to conserve the area and that approval for future development of parts of the Lease Area are best dealt within pursuant to the *Planning Act*.

Although this does not form part of my reasons, I acknowledge the special association that the Kulaluk Lease Area has for the Larrakia people, Larrakia Elders central to the Aboriginal land rights struggle, and the wider Territory community and believe it is important that the Territory recognises its important role in our history.

Right of appeal

1. As an affected person within the meaning of section 93(2) of the *Heritage Act*, you may appeal against my decision to the Supreme Court on a question of law only.
2. Under Order 83 of the *Supreme Court Rules*, you must commence any appeal from my decision within 28 days after the date on which this notice is given to you.
3. An appeal is started by filing a notice of appeal in the Supreme Court in accordance with applicable rules of court.

For further information regarding the appeal process, please refer to Part 4.2 of Chapter 4 of the *Heritage Act*.