

Native Title Manager's Advice

Section 8.7 Crown Land Managers Act, 2016

Proposed Act or Dealing:	Extension to an existing SLSC and construction of a coastal protection works.
Land:	394 Barrenjoey Rd, Newport Lot 1 DP 1139445, Lot 7094 DP 1059297
Date of Advice:	22 March 2021
TRIM No:	

Summary of Advice

The proposed act complies with the applicable provisions of the *Native Title Act*.

Detailed Advice

1. Whether the proposed act affects native title rights and interests

The land is not 'excluded land' as defined in section 8.1 of the *Crown Land Management Act 2016*, therefore native title rights and interests may exist over the land. (Native title managers are not required to investigate or give advice in relation to whether native title has been extinguished.)

The proposed act may affect native title rights and interests, for the following reasons:

- The dealing will authorise construction works on the land.

2. Status of the Land

The land is Crown reserve gazetted on 18/11/1927 for the purpose of public recreation. An extract from the Crown Land Reserves Portal and current title search in relation to the land are attached.

3. Status of the proposed act under the Native Title Act

The proposed act is a *future act* that requires validation under the future acts regime before the act can be done.

4. Applicable subdivision of the future act regime

Subdivision J applies to the act. The applicable requirements are set out in the following table:

Subdivision J – Activities pursuant to reservations		
Section	Requirement	Requirement satisfied + comments
24JA(1)(a)	The reservation, proclamation, dedication, condition, permission or authority (the reservation) was created on or before 23 December 1996; and	Yes – the reservation was gazetted on 18 November 1927
24JA(1)(b)	The reservation was valid; and	Details of the reservation have been checked on the NSW Government Crown Land Manager Reserves Portal. There is no reasonable basis for inferring that statutory procedural requirements were not satisfied at the time.
24JA(1)(c)	The creation of the reservation was done by the Crown (the Commonwealth or State); and	Yes
24JA(1)(d)	The whole or part of any land or waters under the reservation was to be used for a particular purpose; and	Yes –public recreation
24JA(1)(e)	The later act is done in good faith:	Yes – the use as a surf lifesaving club is permitted under the <i>Crown Land Management Act 2016 – s 2.12</i>
	(i) under or in accordance with the reservation; or	Yes – the construction of coastal protection works is an ancillary to the reserved purpose
	(ii) in the area covered by the reservation, so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the reservation would have had.	Yes

5. Consequences of Subdivision J

Treatment of Acts Covered by Subdivision J	
24JB(1)	Validity The act is valid.
24JB(2)	Extinguishment <i>Extinguishment consequences – construction or establishment of public works</i> <ul style="list-style-type: none"> The act extinguishes any native title in relation to the land or waters on which the public work (on completion of its construction or establishment) is situated; and The extinguishment is taken to have happened when the construction or establishment of the public work began.

24JB(3)	<i>Extinguishment consequences – not public works</i> The non-extinguishment principle applies to the act.
24JB(4)	<i>Compensation</i> If in the future there is a successful native title determination and compensation is claimed, the native title holders will be entitled to compensation for the act. Compensation is payable by the person proposing to do the act, namely, Council.
24JB(6)	<i>Procedural rights</i> <i>Notification – public works</i> Council must notify any representative body, registered native title body corporate and registered native title claimant and give them an opportunity to comment on the act. <i>Notification – not public works</i> Notification is not required.

Definition of “public work” is as follows:

public work means:

- (a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
 - (i) a building, or other structure (including a memorial), that is a fixture; or
 - (ii) a road, railway or bridge; or
 - (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2—a stock-route; or
 - (iii) a well, or bore, for obtaining water; or
 - (iv) any major earthworks; or
- (b) a building that is constructed with the authority of the Crown, other than on a lease.

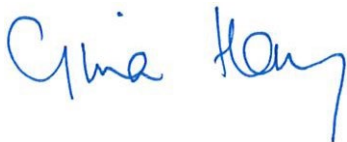
Note: In addition, section 251D deals with land or waters relating to public works.

6. Whether the applicable procedural requirements have been met:

Yes.

Notification – see attached notice to NTS Corp dated 22/03/2021

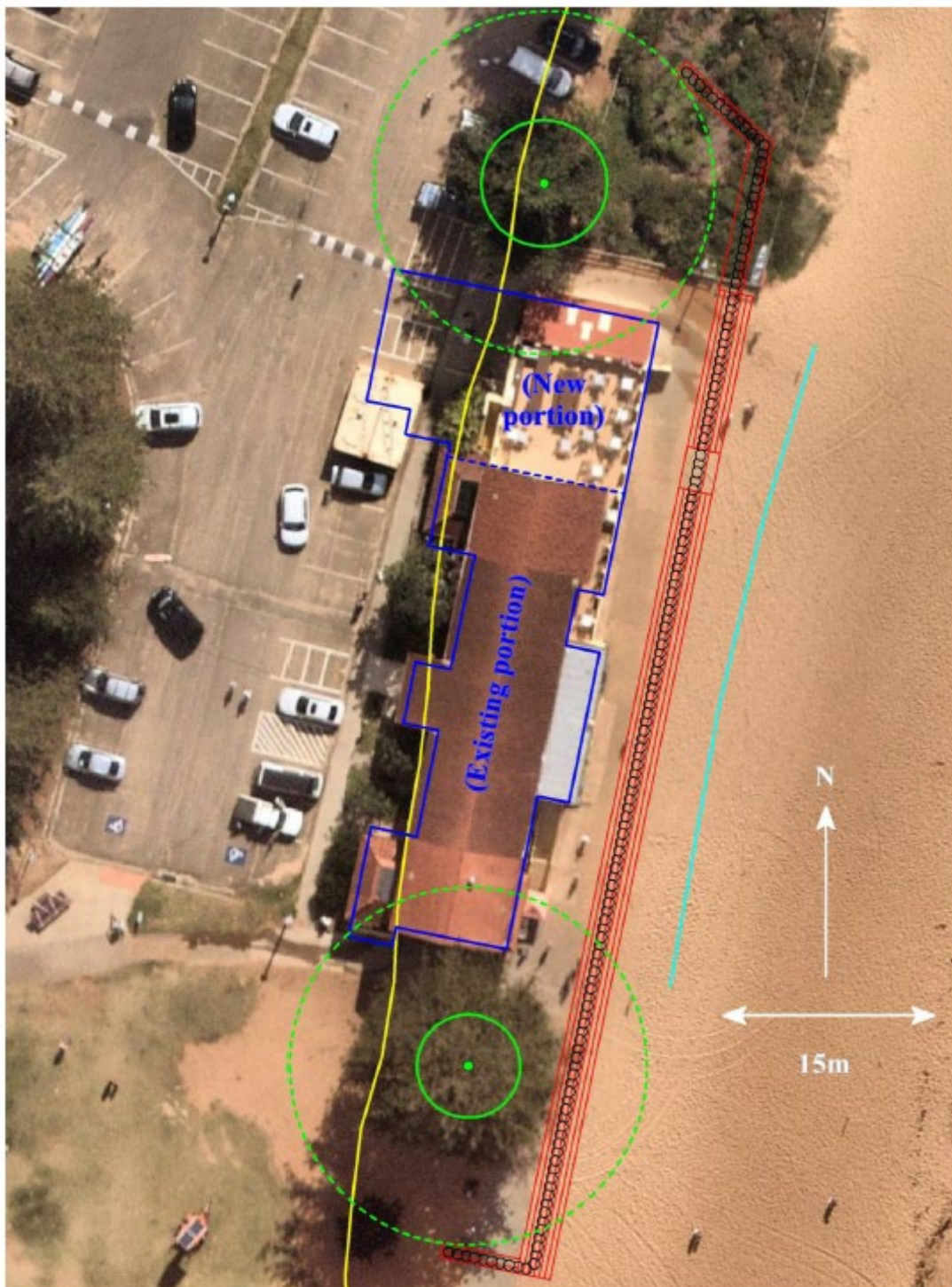
Opportunity to comment: yes. No comments were received.

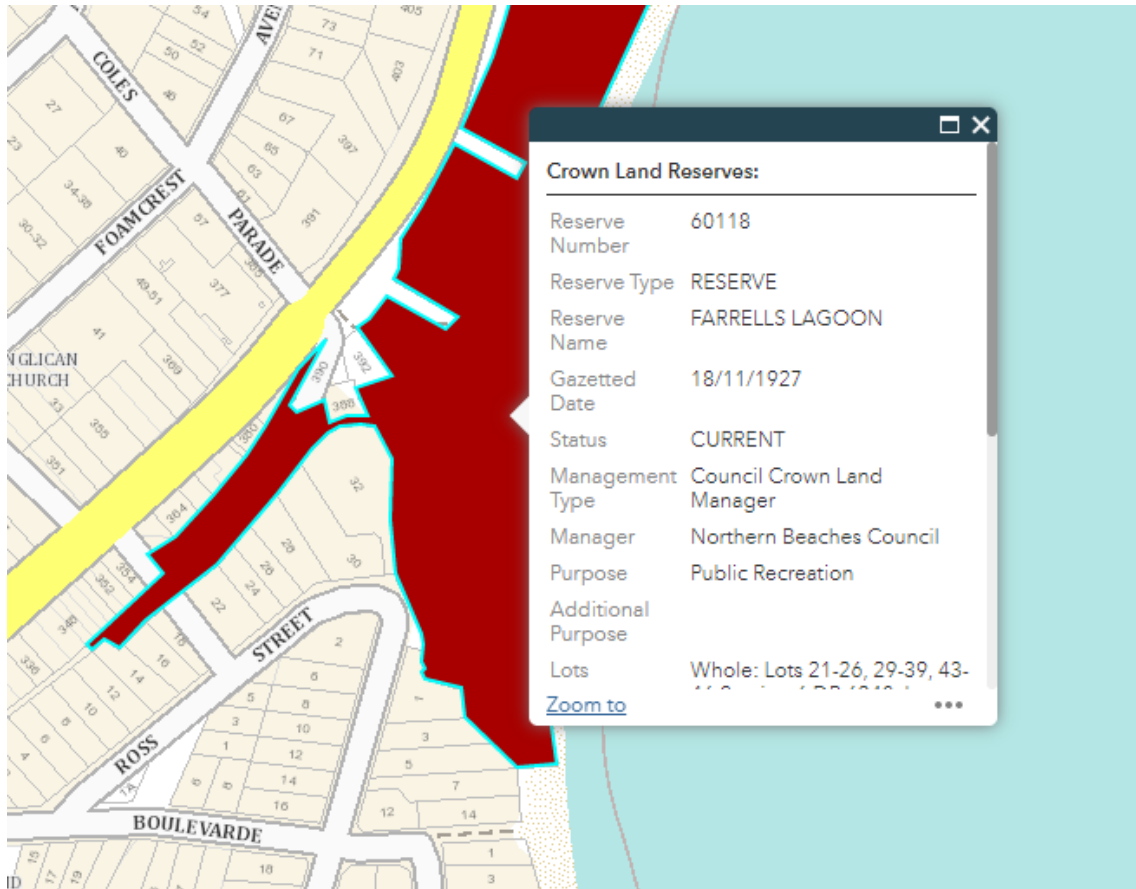


Gina Hay
Native Title Manager

Attachments:

- 1 Extract from Coastal Engineering report detailing the extent of the works.
- 2 Extract from Crown Land Manager Reserves Portal
- 3 Govt Gazette/HLRV search





For Public Recreation.

METROPOLITAN LAND DISTRICT, AND WARRINGAH SHIRE.

No. 60,118. County of Cumberland, parish of Narrabeen, containing an area of 4 acres 0 roods 19 $\frac{1}{4}$ perches. The Crown Lands within boundaries of Certificate of Title, Vol. 3,152, Fol. 159, allotments 21 to 32, 35 to 41, and 43 to 46 (all inclusive) of section 6, deposited plan 6,248 in the Registrar-General's Department. Plan Ms. 6,941 Sy.
[Ms. 1927-7,594]