

Our ref RZB:427703/1
Your ref

19 April 2023

The Acting Director
Heritage Branch
Department of Territory Families, Housing and Communities
PO Box 37037
WINNELLIE NT 0820

Attention: Dr David Steinberg

BY E-MAIL ONLY: david.steinberg@nt.gov.au

Dear David

PROVISIONAL DECLARATION OF HERITAGE PLACE – CITY OF DARWIN & HERITAGE COUNCIL NT

1. We are instructed to act for City of Darwin.
2. We refer to the letter from the Chairperson of Heritage Council Northern Territory (**the Council**) dated 14 April 2023. We are writing to you in accordance with the invitation contained in the final paragraph of that letter.
3. By way of background:
 - 3.1 we note that our client has been invited to make a submission “*as to whether The Esplanade should be permanently declared as a heritage place under the Heritage Act 2011*”. We also note that “*the Minister for Arts, Culture and Heritage has signed an instrument provisionally declaring The Esplanade as a heritage place*”.
 - 3.2 the Council’s letter does not indicate when the nomination that triggered the provisional declaration and the request for submissions was lodged or by whom it was lodged;
 - 3.3 a search of the ‘Northern Territory (NT) Heritage Register’ reveals that a heritage nomination was lodged in respect of ‘The Esplanade’ on 12 November 2021, which nomination was subsequently accepted by Council on 3 December 2021;¹
 - 3.4 accordingly, our client assumes that this is the nomination that underpins the recent declaration and request;
 - 3.5 if that is correct then we note that section 23(1) of the *Heritage Act 2011* (NT) (**Act**) mandates that Council must undertake the assessment of the heritage significance of a place or object within the ‘assessment period’ (which is a 6-month period commencing from the date that the nomination is accepted by Council);
 - 3.6 we do note that section 23(2) of the Act provides the ability for the Council to extend the assessment period. Subsection (2) provides that:

¹ http://www.ntlis.nt.gov.au/heritageregister/?p=103:303:::NO:P303_PLACE_ID:356979

“...the Council may extend the assessment period if:

(a) the Council and the owner of the place or object agree to do so; or

(b) the Council is satisfied it is not possible to complete the assessment in the period because of:

(i) the remoteness of the place or object; or

(ii) other reasons it considers appropriate.”

- 3.7 further, if the Council determines to extend the assessment period pursuant to subsection 23(2)(b), then the Council must comply with subsection 23(4) which provides:

(4) If the Council extends the period other than with the agreement of the owner of the place or object, it must:

(a) give written notice to the owner of the extension and the reasons for it; and

(b) complete the assessment as soon as practicable.

- 3.8 for all intents and purposes, our client is the relevant “owner” of ‘The Esplanade’ area (as set out in the survey plans provided with the letter);

- 3.9 our client has reviewed its records and has instructed us that it has never received any communication from the Council advising it of the 2021 nomination, or seeking its agreement to extend the assessment period (pursuant to subsection 23(2)(a)) beyond the initial 6 month assessment period, nor has our client received any communication from the Council notifying it of any decision pursuant to subsection 23(2)(b) to extend the assessment period (together with its reasons for that decision); and

- 3.10 finally, we have been unable to locate copies of the relevant gazettes relating to any interim declaration by the Minister.

4. If the above chronology / assumptions are correct, then our client is extremely disappointed that the first it heard from the Council was the letter of 14 April 2023, particularly given that the vast area encompassed by the nomination and our client’s substantive interest in that area.

5. It is our opinion based on the chronology / assumptions set out above that the nomination of 12 November 2021 has now lapsed. It is further our opinion that there is no live/valid nomination that could be the basis for the Council to commence any consultation process, or for that matter for the Minister to make a provisional declaration.

6. In the event that the above chronology / assumptions are correct, our client requires the Council to confirm that the nomination of 12 November 2021 has lapsed, immediately withdraw its request for submissions and, further, to do all things necessary for the Minister to revoke the provisional declaration.

7. Conversely, in the event that any of the above chronology / assumptions are incorrect, then We request that the Council urgently advise us as to whether any of the assumptions above are incorrect (and provide documentary evidence to substantiate what it is asserted has occurred). Without seeking to be exhaustive, we request that Council provide:

- 7.1 a copy of the nomination lodged on 12 November and accepted by Council on 3 December 2021;


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- 7.2 in the alternative, if the Council asserts that its assessment was carried out on its own initiative, all documents confirming that the Council made such a determination;
- 7.3 copies of all correspondence issued by Council to our client relating to an extension of the assessment period; and
- 7.4 copies of all relevant gazettals made.

We are instructed to require your response by **COB on Friday, 21 April 2023**. Our client reserves the right to take whatever steps necessary to protect its position after that time without further notice.

We await your response.

Yours faithfully



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