

SC6.3 Planning scheme policy 2 – Consultation and owner’s consent in Yarrabah

SC6.3.1 Purpose of the planning scheme policy

- (1) The purpose of the planning scheme policy is to outline the arrangements for obtaining owner’s consent in Yarrabah, and the need to consult with the Registered Native Title Body Corporates (RNTBCs) and Yarrabah Aboriginal Shire Council in certain circumstances (however for the purposes of this policy, consultation only addresses consultation with the RNTBCs).
- (2) This planning scheme provides Council with an opportunity to refer a development application to the RNTBCs for comment during the assessment process. In this manner, the policy provides a basis for consultation to allow RNTBCs to have a say on the appropriate use of their country.
- (3) The content of this policy applies only to development applications made under the planning scheme.
- (4) It needs to be note that the RNTBCs have specific owner’s consent rights for land that they are the trustee and hold Native Title rights for land that the Council is the Trustee.
- (5) There are two RNTBCs that have rights over land within the Yarrabah Aboriginal Shire Council Local Government Area, the Gunggandji-Mandigalbay Yidinji Peoples Prescribed Body Corporate, a Registered Native Title Body Corporate and the Gunggandji Peoples Prescribed Body Corporate, a Registered Native Title Body Corporate. Referred to in this policy as RNTBCs.

SC6.3.2 Provision of owner’s consent

- (1) Under the Sustainable Planning Act 2009, the Council is required to make decisions on development applications made under this planning scheme. In order for a development application to be considered ‘properly made’ under the Act, it must meet the mandatory information requirements, which require the provision of owner’s consent, in most circumstances. In addition, on land which is subject to Native Title, applicants must also address the requirements for consultation and negotiation under the *Native Title Act 1993*.
- (2) Where owner’s consent is required to support a development application made under this planning scheme, consent will be required prior to the lodgement of a properly made development application and the owner’s consent will be required from:-
 - (a) the Chief Executive Officer of Yarrabah Shire Council for land that Council is the trustee; or
 - (b) the Gunggandji-Mandigalbay Yidinji Peoples Prescribed Body Corporate Registered Native Title Body for the land that they are trustee for (refer to attached Yarrabah Southern DOGIT Transfer Plan); or
 - (c) the Gunggandji Peoples Prescribed Body Corporate Registered Native Title Body for the land that they are trustee for (refer to attached Yarrabah Northern DOGIT Transfer Plan).

SC6.3.3 Consultation with the Registered Native Title Body Corporate

- (1) This planning scheme seeks to recognise and facilitate consultation with RNTBCs in making land use decisions within Yarrabah.
- (2) To ensure effective consultation is undertaken when development is proposed on lands for which Council is not the trustee, the Council will consult with the relevant RNTBCs on whether the proposed use is appropriate, noting that owner’s consent will need to be obtained from the relevant RNTBCs prior to lodging of the development application. Where Council considers it relevant to seek the views of the relevant RNTBCs on development proposed for land for which Council is the trustee, consultation will be sought from the relevant RNTBC consistent with any ILUA agreement.

SC6.3.4 What the RNTBC may consider during consultation

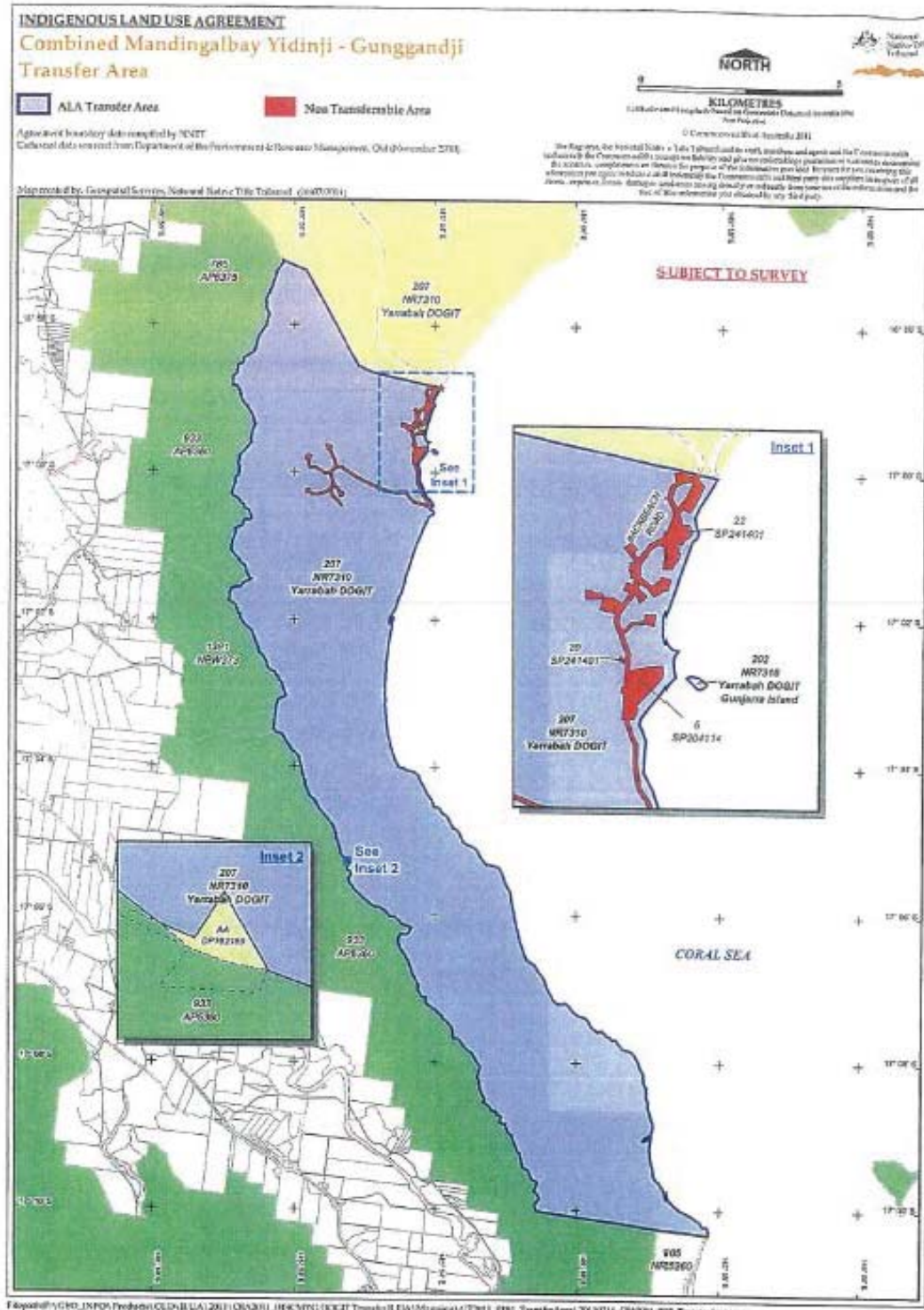
- (1) Where advice is sought from the RNTBC, the RNTBC will act on behalf of the traditional owners to ensure a proposed development considers traditional customs, cultural heritage, and the protection of country.
- (2) The RNTBC may consider the following information when providing advice or comments on a development application:
 - (a) Any relevant documents and management plans;
 - (b) Any relevant operational or conservation plans;
 - (c) Special places or features that are important to the community;
 - (d) Protecting traditional customs and interests;
 - (e) Any 'country based plan' prepared by the relevant RNTBC; and
 - (f) Any other information that is important to the protection of culture and country.

SC6.3.5 Advice timeframes for development that RNTBCs are not the trustee

- (1) A response from a RNTBC must be given to Council within 20 business days or a timeframe agreed with Council after the advice has been referred to them.
- (2) Council may choose to use, or alternatively not use, part or all the information provided in the response from the RNTBC. Should the response from the RNTBC request that a development application be refused, Council as the assessment manager will be required to assess the development on its own merit.
- (3) The information provided by the RNTBC will help Council determine whether to approve or refuse a proposed development, or what conditions may need to be included.

YARRABAH SOUTHERN DOGIT TRANSFER

(iii) James Jeffrey and Vance Gordon jnr over Lot 20 on Plan SP241401;



YARRABAH NORTHERN DOGIT TRANSFER

