

ORDINARY MEETING  10 FEBRUARY 2015	5.4
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NATIVE TITLE DETERMINATION APPLICATION QUD 602/2012 YIRRGANYDJI (IRUKANDJI) PEOPLE AND NATIVE TITLE DETERMINATION APPLICATION QUD 673/14 CAPE YORK UNITED #1 PRE NOTIFICATION

**Robert Donovan: Property Officer #438864**

**Darryl Crees: General Manager Corporate Services**

**RECOMMENDATION:**

**That Council receive and note report.**

**EXECUTIVE SUMMARY:**

The National Native Title Tribunal has advised Council of the applications by the Yirrganydji People and the Cape York United People to have the Federal Court recognise their traditional rights and interest over the claimed allotments.

Yirrganydji People's claim was filed in the Federal Court on the 29 October 2012, which in broad terms depicts the area including land and waters from the southern end of the Port Douglas Shire Local Government Area between Port Douglas and Wangetti (Attachment 1).

The Cape York United People claim was filed in the Federal Court on 12 December 2014 with interest over 79,412 square kilometres in the Northern Cape York Area of which 380 square kilometres of the Douglas Shire Local Government area is included in the Application area. (Attachment 2). The Native Title Tribunal has advised that they are completing a tenure analysis for the claim area which overlaps with Council's Local Government area which will take a minimum of four weeks to complete.

This report is for information only.

**BACKGROUND:**

**NATIVE TITLE DETERMINATION APPLICATION QUD 602/2012 YIRRGANYDJI (IRUKANDJI) PEOPLE.**

Yirrganydji People lodged a Native Title Determination Application in the Federal Court on 20 December 2012. Douglas Shire Council is entitled, as the local government of the area, to become a party to the Application (Attachment 3).

Council received the Native Title Determination Application on 9 October 2014 which was outside of the notification period. It was necessary for Council to make an application to the Federal Court to join the claim as an interested party. It is important that Council take necessary steps to join the Native Title Determination Application in order to ensure that Council's interest, including land interest, infrastructure and statutory jurisdiction are adequately acknowledged in any determination of native title.

Preston Law was retained by Council to lodge on behalf of Douglas Shire Council an Interlocutory Application to join as a party to the Yirrganydji People Native Title Determination Application.

Council staff completed work on the application to establish if a “public work” had been either completed or commenced prior to 23 December 1996.

Under the Native Title Act 1993 a “public work” means;

*Any of the following that is constructed or established by or on behalf of the Crown, or a local government or other statutory authority of the Crown, in any of its capacities:*

*a building, or structure (including a memorial), that is a fixture; or*

*a, road, railway or bridge; or*

*where the expression is used in or for the purpose of Division 2 or 2A of Part 2A stock route; or*

*a well, bore for obtaining water; or*

*any major earthworks; or*

*a building that is constructed with the authority of the Crown, other than on a lease.*

Staff have completed preliminary investigations to establish if a “public work” had been undertaken on the claimed allotments. However further investigations may still be required to extinguish native title.

On the 20 January 2015 the Interlocutory Application was heard before Deputy District Register Fewings of the Federal Court. At the proceedings, no other party objected to the Council being joined as a respondent to the proceedings.

Deputy District Register Fewings made the following orders;

- 1 That Douglas Shire Council be made a respondent party to the Application in accordance with *section 84(5) of the Native Title Act 1993 (Cth)*
- 2 There is no order as to costs.

As a number of the respondent parties have claimed native rights and interest within the Determination Area the native title claim is not likely to progress until the competing claims of native title between the Applicant and those respondents are resolved. Once the Statement of Claim and Reply have been exchanged, the Court anticipates that mediation would commence in an attempt to finalise the issue.

#### **NATIVE TITLE DETERMINATION APPLICATION QUD 673/14 CAPE YORK UNITED #1 CLAIM – PRE NOTIFICATION.**

Cape York United Number 1 Claim lodged a Native Title Determination Application in the Federal Court 12 December 2014. This is only a Pre-notification of the claim. The Application may not be notified for up to 6 months. On notification a Form 5 Notice of Intention to become a party to the claim will be lodged in the Federal Court. Once the 3 month notification period has ended, the Federal Court will make orders determining the parties to the Application and commence case management of the Application.

Preston Law was retained by Council to lodge the Form 5 Notice of Intention on behalf of Douglas Shire Council.

**COMMENT:**

Staff will complete investigations in establishing that a “public work” had been either completed or commenced prior to 23 December 1996. Both the above applications will take some time to be finalised.

**PROPOSAL:**

This report is for Councils information purposes only.

**CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:**

This report has been prepared in accordance with the following Corporate Plan 2014-2019 Actions:

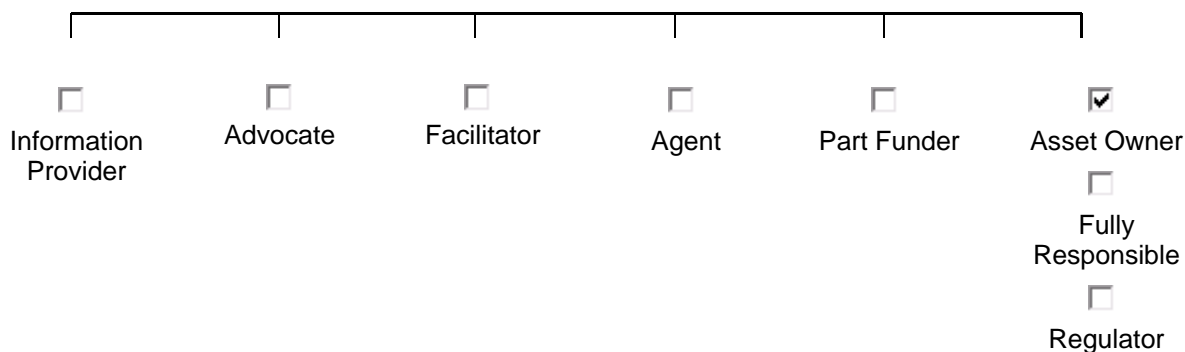
*5.2.1 Provide Councillors and community with accurate, unbiased and factual reporting to enable accountable and transparent decision-making*

*5.1.2 Implement a robust enterprise risk management culture to identify and manage potential risks.*

**COUNCIL'S ROLE:**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

**Asset Owner:**

Meeting the responsibilities associated with owning or being the custodian of assets such as infrastructure.

**FINANCIAL/RESOURCE IMPLICATIONS:**

Preston Law will make a joint funding application to the Commonwealth Attorney General's Department for funding for the period 1 January to 31 December 2015 at no cost to Council.

**RISK MANAGEMENT IMPLICATIONS:**

Preston Law has considerable experience in Native Title matters therefore by retaining Preston Law for both Native Title Determination Applications, the potential risk of loss of Council infrastructure and/or property is being mitigated.

**SUSTAINABILITY IMPLICATIONS:**

**ECONOMIC:** With Douglas Shire Council joining as a party to the Application, this will ensure that Council's interest, including land interest, infrastructure and statutory jurisdictions are adequately acknowledged in any determination of native title.

**ENVIRONMENTAL:** N/A

**SOCIAL:** N/A

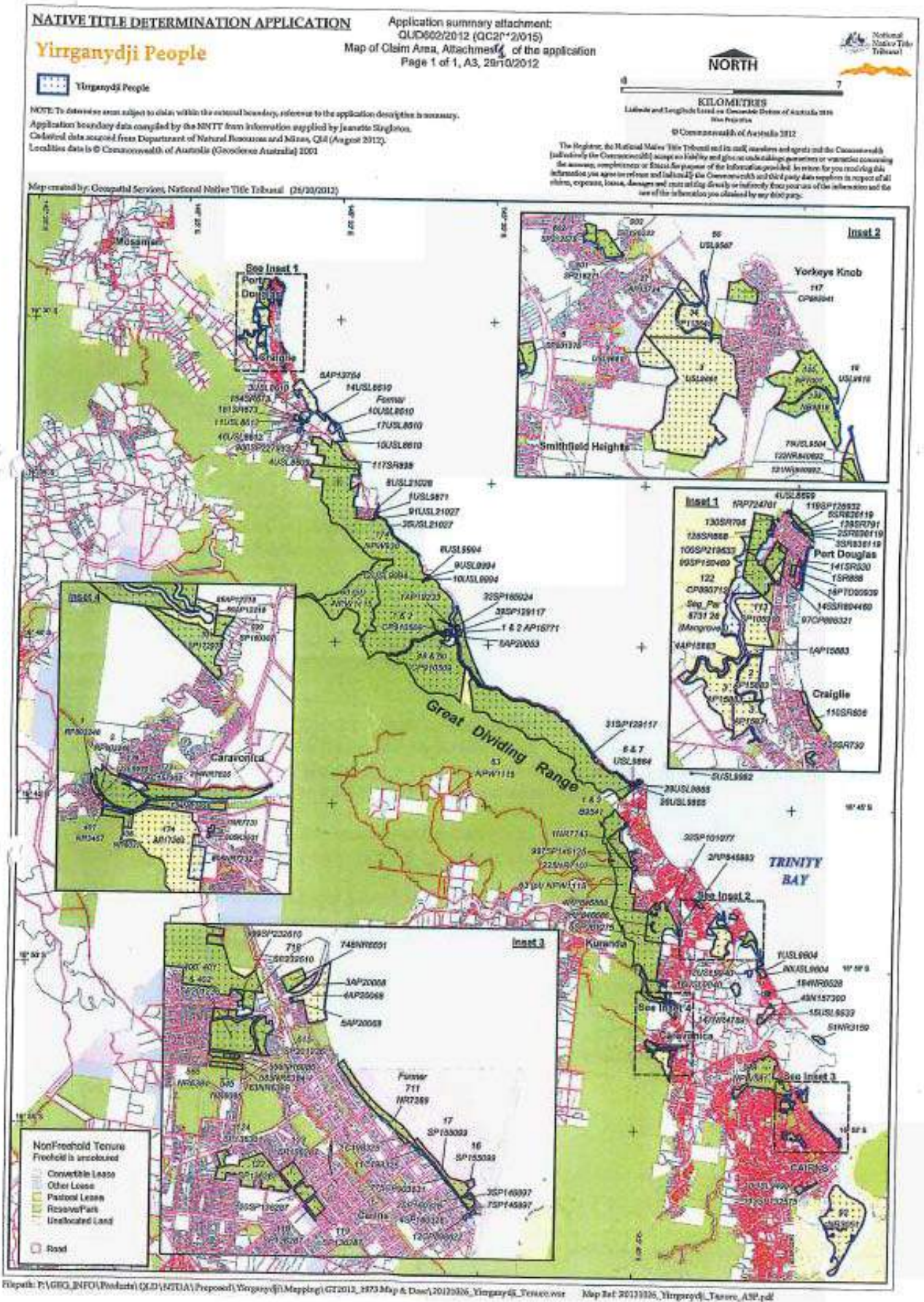
**INTERNAL/EXTERNAL CONSULTATION:**

General Manager Corporate Services  
Manager of Governance  
Manager of Water and Waste Water  
Governance Officer  
Team Leader of Public and Natural Areas  
Team Leader Reticulation  
Team Leader Waste Water  
Department of Natural Resources and Mines

**ATTACHMENTS:**

Attachment 1 Map of Yirrganydji People Claimed Area  
Attachment 2 Map of Cape York United No. 1 Claim Area.  
Attachment 3 Yirrganydji People Claim – External Boundary Description

Attachment 1 Map of Yirrganydji People Claimed Area



Attachment 2 Map of Cape York United No. 1 Claim Area.

Schedule contract attachment:  
QUD67302014 (QC2014/006),  
Claim Group Description, Attachment A of the Application,  
Page 1 of 1, 12/12/2014

ATTACHMENT "2"  
MAP OF CLAIM AREA



## Attachment 3 Yirrganydji People Claim – External Boundary Description

RNTC attachment: GJ0602/2012 (QC2012/016)  
External Boundary Description, Attachment B1 of the application  
Page 1 of 1, A4, 29/10/2012

18

## Yirrganydji (Irukandji) People Claim

"Attachment 3"

## External Boundary Description

The application area covers all the land and waters contained within the land parcels in the following table:

100SP219633	105AP7001	Former 10USL8610	10USL9490
10USL9994	110SR606	113SP105910	113SP132575
117CP865041	117SR898	118SP136287	119SP126932
119SP136287	11C196325	11USL8612	120SP136287
121NR840892	122CP890712	122NR840892	122SP136287
123SP136287	124SP136301	125SR730	126SR868
129SR791	129USL9970	12CP898622	12USL9940
12USL9994	130SR796	139NR3818	141SR530
145SR804460	147NR4789	14USL8610	15USL8610
15USL9633	161SR673	164SR673	16SP155099
16USL9616	16USL9940	174AP17383	174NPW930
17SP155099	17USL8610	184NR6528	18PTD20939
1AP15771	1AP15883	1AP19233	1B9541
1C198325	1CP910509	1NR7743	1RP724761
1RP802246	1SR886	1USL9604	1USL9871
225NR7107	254NR7826	26USL9865	27AP13734
29USL9865	2AP15771	2AP15883	2B9541
2CP910509	2RP802246	2RP846883	2SP160326
2SR836119	2USL9661	31SP129117	32SP101077
32SP166924	33SP172978	34SP113641	36USL21027
39SP129117	3AP15871	3AP15883	3AP20068
3RP846886	3SP146897	3SR836119	3USL8610
3USL9661	400SP201236	401SP201236	402SP201236
406NR8027	407NR3457	46USL8612	48CP910509
49N157300	4AP15883	4AP20068	4RP846888
4SP160326	4USL8609	4USL8699	50CP910509
50USL9567	514NPW581	51NR3159	546NR6086
566NR6384	566NR6086	586NR6384	5AP13754
5AP20053	5AP20068	5SP201275	5SR836119
5USL9992	616SP201236	6USL9864	Former
			711NR7289
718SP232610	734NR7826	746NR6651	75USL9604
763NR6396	772C157302	775CP903631	7NR7731
7SP146897	7USL9864	802SP212575	805K3531
806NR7732	80USL9604	88AP12218	
89AP12218	8USL21028	8USL9994	900SP227933
901SP218271	903SP196222	91USL21027	
92NR3051	97CP896321	997SP148125	999SP160307
999SP232610	99SP150469	9USL9994	

That part of 63NPW1115 east of the watershed of the Great Dividing Range.  
DCDB segment 8731, parcel 26 (Mangroves) as at 1 August 2012.