

5.5. JOINT TRUSTEE ARRANGEMENTS WITH JABALBINA YALANJI ABORIGINAL CORPORATION LOT 900 SP238233 BLUE POOLS

REPORT AUTHOR(S)	Robert Donovan, Senior Property Officer
GENERAL MANAGER	Darryl Crees, General Manager Corporate Services
DEPARTMENT	Governance

RECOMMENDATION

That Council:

- 1. progresses the relinquishment of the joint Trusteeship of Lot 900 SP238233 by advising Jabalbina Yalanji Aboriginal Corporation that Council supports their development of a new Land Management Plan and relevant community consultation as advised by the Department of Natural Resource (DNRM) and as required by the *Land Act 1994*;**
- 2. delegates authority to the Chief Executive Officer, in accordance with section 257 of the *Local Government Act 2009*, to progress all matters associated with these discussions.**

EXECUTIVE SUMMARY

Council and Jabalbina Yalanji Aboriginal Corporation (Jabalbina) are joint trustees to Lot 900 SP238233 Flame Tree Road, known as the Blue Pools. This joint trusteeship was part of the Indigenous Land Use Agreement (ILUA) entered into with the State, Council, and the Traditional Owners.

At the Ordinary Council Meeting on 11 July 2017 Council resolved to commence formal discussions with Jabalbina concerning Council relinquishing Joint Trusteeship of Lot 900 SP238233 and, subject to a favorable outcome of recommendation 1, undertake public consultation in regard to the potential relinquishing of the Trusteeship to Jabalbina. It was also resolved that officers would provide a further report to Council detailing progress of the discussions with Jabalbina.

BACKGROUND

Following the Council meeting on 11 July Jabalbina was advised in writing of Council's resolution. Subsequent to this the CEO of Jabalbina had discussions with the Jabalbina Yalanji Aboriginal Corporation Board who agreed to consider Council's proposed relinquishment of the Trusteeship.

A meeting was arranged by Council Officers at the site on Monday 25 September 2017. Attendees included:

- Traditional Owners
- Jabalbina representatives
- Douglas Council's Mayor and Councilors
- Council Executive Officers and staff
- Prestons Law representative (to advise on legal questions)

The meeting was a great success with many Traditional Owners attending. The attendees discussed Council's proposal to relinquish the joint trusteeship and potential paths for moving the process forward. The Traditional Owners indicated that they wished to work with Jabalbina on the proposed changes to the Trusteeship and in the future management of the site.

On 15 November 2017 Council officers were advised by the CEO of Jabalbina that the Traditional Owners had written to him requesting that Jabalbina work in partnership with them to facilitate the transfer and future management of the Blue Pools Reserve. The Jabalbina Board has agreed to work with the Jalunjiwarra Traditional Owners on this project.

The Department of Natural Resources and Mines (DNRM) has indicated that, should the Trusteeship change, a new Land Management Plan (LMP) will have to be developed and public consultation will be required.

Officers propose that, rather than Council undertaking the community consultation process, that Jabalbina and the Traditional Owners consult with the community during the development of the new LMP. It is considered that, as Jabalbina will have ownership of the new LMP, and the document will reflect the desires and expectations of the Traditional Owners, Jabalbina would be best placed to take the lead in undertaking the public consultation associated with the development of the new LMP.

COMMENT

Blue Pools is an Aboriginal Story Place associated with "woman's business". The Blue Pool site has been registered on the Aboriginal Cultural Heritage Register and provisions exist in the *Aboriginal Cultural Heritage Act 2013* to address activities that may harm Aboriginal Cultural Heritage. The Act provides for the protection of cultural heritage and establishes the fundamental rights of Aboriginal People to access and manage their heritage.

Section 50 of the *Land Act 1994* enables a trustee to give written notice to the Minister that it wishes to surrender its trusteeship of a reserve. There are no other requirements in the legislation.

It is considered that Jabalbina and the Traditional Owners are best placed to apply appropriate levels of control in regard to the Blue Pools Reserve. Subject to the provisions of the *Land Act 1994*, and subject to the approval of the Minister, Council's surrender of the trusteeship will provide Jabalbina with the freedom to manage the Blue Pools Reserve.

PROPOSAL

That Council endorses Officer's proposal to enable Jabalbina and the Traditional Owners to undertake the public consultation required for the development of the new Land Management Plan for the Blue Pools area.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications anticipated with this proposal.

RISK MANAGEMENT IMPLICATIONS

By relinquishing joint trusteeship of Blue Pools Council will no longer be involved in the management of the area.

SUSTAINABILITY IMPLICATIONS

Economic: Nil

Environmental: The *Aboriginal Cultural Heritage Act 2003* establishes the blanket protection of cultural heritage, and recognizes the fundamental right of Aboriginal people to assess and manage their cultural heritage. Current levels of visitation, while relatively low, are not only in conflict with Aboriginal cultural values, but may also have an adverse impact on the natural environment.

Social: Blue Pools is an Aboriginal Story place associated with woman's business. The custodians are women from the Kuku Yalanji clan within whose traditional country it is located. It is considered that the Kuku Yalanji clan are best placed to manage the Blue Pools Reserve.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 4 - Engage, Plan, Partner

4.1.2 - Undertake community engagement activities that are clearly identified and are appropriate in relation to the project.

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.

CONSULTATION

Internal: Chief Executive Officer
Manager Governance

External: Jalunjiwarra Traditional Owners.
Jabalbina
Prestons Law
DNRM

COMMUNITY ENGAGEMENT

At the request of DNRM community consultation will be undertaken during the development of a new LMP.

ATTACHMENTS

Nil