

5.9. REVIEW JOINT TRUSTEE ARRANGEMENTS WITH JABALBINA YALANJI ABORIGINAL CORPORATION - LOT 900 SP238233 BLUE POOLS

**REPORT AUTHOR(S)
GENERAL MANAGER** Robert Donovan, Senior Property Officer
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DEPARTMENT Governance

RECOMMENDATION

That Council:

- 1. commences formal discussions with Jabalbina Yalanji Aboriginal Corporation concerning Council relinquishing Joint Trusteeship of Lot 900 SP238233;**
- 2. subject to a favourable outcome of item 1, undertakes public consultation in regard to the potential relinquishing of the Trusteeship to Jabalbina;**
- 3. requires officers to bring a further report to Council detailing progress of the discussions with Jabalbina and the outcome of the community consultation;**
- 4. 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 known as the Blue Pools. This joint trusteeship was part of the ILUA entered into with the State, Council, and the Traditional Owners. The Blue Pools Land Management Plan (LMP) is due for renewal.

Council commenced negotiations with Jabalbina concerning the LMP about 18 months ago but these talks were put on hold due to native title issues. Officers are now in a position to recommence these talks and is seeking approval to consult with both Jabalbina and the boarder community concerning the future of the LMP.

BACKGROUND

The existing Blue Pools Land Management Plan (LMP) was undertaken by the old Douglas Shire and completed by Cairns Regional Council post amalgamation. The LMP was approved in March 2013. It was due for review in 2016.

Council officers and Jabalbina commenced reviewing the LMP about 18 months ago. During these initial discussions there was some consideration given to Council relinquishing the joint trusteeship and handing over full trusteeship to Jabalbina. The Jabalbina CEO indicated that their Board was interested in this proposal.

In February 2016 Council was advised by the National Native Title Tribunal that Cape York United had lodged Claim No QUD673/2014, in which Lot 900 SP238233 known as Blue Pools was included. As a result of this claim being lodged the review of the LMP was put on hold.

In February 2017 the Full Federal Court's decision in *McGlade* cast uncertainty over the validity of existing ILUAs and those awaiting registration. The decision overturned common practice and held that all persons comprising the native title claimant - with no exceptions - were required to sign the document in order for it to constitute an ILUA and be effectively registered.

Acknowledging the impact of this decision on the validity of persisting future acts, a Bill was urgently introduced to amend the Native Title Act 1993 (Cth) (NT Act) and rectify the uncertainties created by the decision. A Senate Committee report tabled on 20 March 2017 recommended the passing of the Bill, with particular amendments. Following a great deal of public scrutiny, political frustration, and a number of amendments, the Bill was passed on 14 June 2017.

The passing of the Bill effectively removed the Cape York United Claim over the Blue Pools and discussions can now recommence with Jabalbina. The matter was discussed informally at Council's Operational BAMA working group meeting 20 June 2017. There was again in-principle support expressed by the Jabalbina CEO for the concept of Council relinquishing the joint trusteeship and passing management of the allotment to Jabalbina.

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 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.

The Department of Natural Resources and Mines (DNRM) has indicated that, as there was extensive public consultation prior to the implementation of the LMP, in addition to the discussions with Jabalbina, the State would require Council to undertake public consultation prior to agreeing to the surrender of the trusteeship.

Subject to the *Land Act 1994*, surrendering the trusteeship would provide Jabalbina the freedom to manage the Blue Pools and it is considered that they are best placed to apply appropriate levels of control and access to Blue Pools area.

PROPOSAL

That Council considers relinquishing joint trusteeship of Lot 900 SP238233 subject to Jabalbina agreeing to takeover as sole Trustee and the outcomes of public consultation.

FINANCIAL/RESOURCE IMPLICATIONS

Community consultation was undertaken during the development and implementation of the existing Blue Pools LMP. The State will expect a similar type consultation to occur to obtain the community's views concerning the proposed relinquishment of joint trusteeship. A consultant may be appointed to conduct the public consultation process. Costs are unknown at this stage but approximately \$15,000 was expended on the consultation for the development of the existing LMP.

RISK MANAGEMENT IMPLICATIONS

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

SUSTAINABILITY IMPLICATIONS

Economic:	Nil
Environmental:	The Aboriginal Cultural Heritage Act 2003 establishes 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 are also having an adverse impact on the natural environment.
Social:	Blue Pools is an Aboriginal Story place associated with woman's business and which has healing powers. The custodians are woman 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.

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: BAMA Working Group
External: Nil

COMMUNITY ENGAGEMENT

At the request of the State extensive consultation will have to be undertaken. This will be developed as required.

ATTACHMENTS

Nil