

5.7. WANGETTI TRAIL TENURE ARRANGEMENT & UPDATE – SEPTEMBER 2022

REPORT AUTHOR Paul Hoyer, Manager Environment and Planning

MANAGER Rachel Brophy, Chief Executive Officer

DEPARTMENT Environment and Planning

RECOMMENDATION

That Council:

- 1. Enters into a joint trustee lease with Cairns Regional Council and the State of Queensland (represented by the Department of Tourism, Innovation and Sport) (trustee lessee) over part of reserve for recreation (recreation facility) purposes R899 described as lot 31 on SP129117 held under joint trusteeship with the Cairns Regional Council, subject the following terms and conditions:**
 - a) For purposes of construction of a recreation trail and associated infrastructure for the Wangetti Trail project;**
 - b) For a term of three years to commence on a date to be determined;**
 - c) The areas described as leases A and B on sketch plan PR151463_01 (copy at attachment 2) being part of lot 31 on SP129117;**
 - d) Rent \$1.00 if demanded; and**
 - e) Lessee being responsible for fees to register the trustee lease.**
- 2. At such time as all parties have entered into the trustee lease, Douglas Shire Council, as joint trustee, apply under the Land Act 1994 to resign as trustees of Lot 31 SP 129117 on reserve for recreation purposes R899.**
- 3. Delegates authority under s 257 of the *Local Government Act 2009* to the Chief Executive Officer to negotiate and finalise matters relating to the trustee lease, including negotiations for the operation and maintenance agreement for the Wangetti Trail.**

EXECUTIVE SUMMARY

The State Government has committed to a 94km Wangetti Trail which will be Queensland's first purpose-built walking and mountain biking track in a national park and will be one of Australia's leading adventure-based ecotourism experiences. The majority of the trail will be located within national park however, there are sections of the proposed trail within the Cairns local government area and the Douglas local government area.

Both Councils remain very supportive of the Wangetti Trail as a world class attraction for visitors and local residents alike.

Douglas Shire Council (Douglas), Cairns Regional Council (CRC) and the State government, represented by the Department of Tourism, Innovation and Sport (DTIS), have been in negotiations regarding tenure for the sections of Wangetti Trail that traverse through Council controlled land.

In 2021, DTIS presented two trustee leases for the construction of the Wangetti Trail sections within Council controlled land between Palm Cove and Wangetti for terms of three and five years for the Wangetti South project areas known as SP2 and SP3.

In July 2022, DTIS have informed Council that they wish to proceed with a trustee lease only over area SP2 with the trustee lease over area SP3 to be progressed at a later date. The SP2 lease area relates to a portion of the trail that is 1.6km long and located in the Cairns Regional Council Local Government Area.

Douglas and CRC (the Councils), jointly represented by Preston Law, have sought clarification from DTIS and its legal representative, Crown Law, in relation to the ongoing maintenance and operation of the trail after construction which was omitted from the proposed trustee leases. Key correspondence dates include:

- November 2020 – State Government wrote to Council seeking advice regarding landowners consent and proposed tenure & titling strategy for delivery of the Wangetti Trail.
- November 2021 - Councils provided draft copy of proposed lease to Crown law
- May 2022 - Councils provided a draft Operation and Maintenance Agreement to the State
- July 2022 – Crown Law advises Councils that, as the project is at a critical stage, that the State is seeking a 3 year lease over SP2 only.
- 29 July 2022 – the State Government rejected the Councils draft Operational and maintenance Agreement. At time of writing, neither Councils have an update on the ongoing maintenance responsibilities.

The Councils drafted an Operation and Maintenance Agreement for the State government's consideration in May 2022. On 29 July, 2022, Crown Law, on behalf of DTIS, advised the Councils that the State government would not enter into the proposed Maintenance and Operation Agreement.

DTIS noted that they are developing a strategy regarding the ongoing operation and maintenance of the trail and that considerations will take time given the nature of the land, the various underlying tenures and numerous interested government agencies.

DTIS have not made a final position clear to the Councils about the ongoing maintenance or operation of the trail, except to note that discussions are ongoing, and they require the leases prior to making a decision.

This report summarises considerations and officers' recommendations to enable the construction of the Wangetti Trail to commence while protecting the interests of both local governments.

BACKGROUND

Douglas and CRC are joint trustees of the affected Council controlled land, being reserve for recreation (recreation facility) purposes R899 (reserve R899), located in the local government areas for Cairns and Douglas, described as:

- lot 31 on SP129117 (Cairns);
- lot 32 on SP165924 (Douglas); and
- lots 3, 4, 5, 6, 7 and 39 on SP309107 (Douglas).

Lot 31, the subject of this report recommendation, is located in the CRC area. Douglas Shire Council is a joint trustee as a result of the reserve being in the former Douglas Shire Council area before boundary changes in 1995. Douglas was not removed as a trustee whilst CRC were added as a trustee. This has likely occurred because Douglas never actively resigned as a trustee of the reserve (Lot 31).

The majority of the trail will be located within national park however, there are sections of the proposed trail within the Cairns local government area that are to be constructed within reserve R899 that require the Councils as joint trustees to enter into a trustee lease with DTIS. The SP2 area is within lot 31 on SP129117 and is shown as leases A and B on sketch plan PR151463_01 (refer to Attachment 2). Other sections of the trail traverse land where Douglas Shire is the sole trustee and freehold land. This report only deals with the trail in SP2.

The length of the trail within the reserve and affected by this matter is 1.6km and is located between Buchan's Point and Ellis Beach in the Cairns Regional Council Local Government Area.

The Councils have been in negotiations with DTIS since November 2020 regarding the alignment of the Wangetti Trail and the associated tenure considerations. Prior to 2021, the Councils understood the proposal to be that the State government would enter into a long-term trustee lease for the sections of trail that traverse through reserve R899.

In 2021 DTIS, through its legal representative Crown Law, presented the Councils with two short term trustee leases relating to sections of trail in what is known as the Wangetti South project area. The trustee leases were for two sections:

- SP2 – Palm Cove to Ellis Beach – three year term for 7km of trail located in the Cairns local government area in part of lot 31 on SP129117, shown as leases A and B on the sketch plan at attachment 2; and
- SP3 – Ellis Beach to Wangetti – five year term for 27km of trail mostly located in the Douglas local government area, which will now progress at a later date.

At this time the Councils, via both Crown Law and directly with DTIS officers, sought clarification on the State Government's intention for dealing with operation and maintenance of the trail once constructed.

In May 2022, the Councils attempted to expedite the negotiations by preparing a draft Maintenance and Operation Agreement for the State government's consideration.

On 29 July 2022 the State Government responded to the Councils advising that the draft Maintenance and Operation Agreement was not accepted by the State government, and cited the following:

“Councils’ concerns about the ongoing operation and maintenance of the trail within the reserve are noted. The State Government is developing a strategy regarding the ongoing operation and maintenance of the trail. The considerations will take time given the nature of the land, the various underlying tenures and numerous interested government agencies. Discussions about this are ongoing and a final decision has not yet been made. It is unlikely that the strategy will be finalised before possession for construction for SP2 is needed in September 2022”.

In this correspondence, the State Government also clarified that due to project delays, the State government wishes to only progress with the trustee lease for SP2 within lot 31 at this time and will continue negotiations with the Councils as joint trustees for SP3 once construction for SP2 has commenced.

The State Government proposed two amended clauses in the draft trustee lease to address the Councils' concerns regarding maintenance and operation, those being:

1. Amending the draft trustee lease to provide that the trail may not open to the public until an agreement has been entered into with respect to the operation and maintenance of the trail by the government department or agency with responsibility for the trail to take effect when the trustee lease ends; and
2. Amending the draft trustee lease to provide that if such an agreement is not entered into by the date that is 12 months after the trustee lease ends, DTIS will remove the trail and restore the area, as close as practicable, to its original condition.

Officers consider the proposal to be at odds with normal practice, where maintenance and operation agreements are resolved prior to construction commencing. The proposal could disadvantage the Councils in future negotiations where refusal to agree to State Government maintenance and operation requirements could leave the Councils being seen as complicit in the removal of the trail due to refusal to agree to unsatisfactory maintenance and operation terms. Furthermore, the proposal is likely to be enforceable and financially open ended.

As a result, CRC officers proposed that, if required, Cairns Regional Council considers the option of vacating the office as trustee of this reserve should the parties be unable to agree on terms relating to the ongoing operation and maintenance of the Wangetti Trail before expiry of the trustee lease. In the case of Douglas Shire Council, it is proposed that the process for vacating the office as trustee of the reserve commences once the trustee lease has been finalised. Council as a joint trustee would need to apply under the *Land Act 1994* to resign as trustees of Lot 31 SP 129117 reserve for recreation (recreation facility) purposes R899, noting that resignation takes effect on the earlier of the following days:

- the day agreed by the Minister; or
- the day stated by the Minister in a notice given to the trustee; or
- the day that is one year after the day the trustees' notice of resignation was given to the Minister.

COMMENTS

Douglas Shire Council has been a strong advocate for the Wangetti Trail project and was instrumental in the development of the concept. Currently Council is a joint trustee of part reserve R899, which is not in the Douglas Shire Council area and has not been since boundary changes in the 1990s. Douglas, as a joint trustee, is ultimately responsible for the use and maintenance of the land and without a binding agreement after construction, it is possible the Councils could be left with maintenance of the sections of the trail within the reserve.

The section of trail in the SP2 trustee lease area is limited to approximately 1.6km of trail which is a minor risk for the Councils as joint trustees, which CRC officers estimate to be under \$10,000 per annum for operations and maintenance. However, as the extent of future sections of trail within reserve R899 is unconfirmed, there is a risk in the unknown and considerations for the Councils to be aware of for future negotiations for trustee lease SP3.

Noting the correspondence from the State Government dated 29 July 2022 stated the intent to have possession of the site in September 2022, officers understand that a timely resolution of the matter is crucial.

To protect the interests of both Councils, while still supporting the commencement of construction of Wangetti Trail SP2, Douglas and CRC officers are recommending a two-phased approach to resolving the matter. It is recommended that, due to the minimal financial risk associated with the small length of trail in lot 31 on SP129117, the Councils accept the proposed trustee lease for the SP2 area, also noting that the Development Approval for construction of the trail conditions the applicant to maintain and operate the trail.

To add further security for the Councils, it is also recommended that the Councils pursue the option to resign as trustees of reserve for recreation (recreation facility) purposes R899. CRC will commence this process if a satisfactory agreement for maintenance and operation of the trail prior to expiry of the proposed trustee lease does not occur.

It is proposed that Douglas Shire Council commence the process to resign once the trustee lease has been entered into by all parties. This action would remove maintenance responsibilities from Council as a joint trustee for a reserve outside the Douglas Shire local government area.

PROPOSAL

It is proposed that Council:

1. Enters into a joint trustee lease with Cairns Regional Council and the State of Queensland (represented by the Department of Tourism, Innovation and Sport) (trustee lessee) over part of reserve for recreation (recreation facility) purposes R899 described as lot 31 on SP129117 held under joint trusteeship with the Cairns Regional Council, subject the following terms and conditions:
 - a) For purposes of construction of a recreation trail and associated infrastructure for the Wangetti Trail project;
 - b) For a term of three years to commence on a date to be determined;
 - c) The areas described as leases A and B on sketch plan PR151463_01 (copy at attachment 2) being part of lot 31 on SP129117;
 - d) Rent \$1.00 if demanded; and
 - e) Lessee being responsible for fees to register the trustee lease.
2. At such time as all parties have entered into the trustee lease, Douglas Shire Council, as joint trustee, apply under the Land Act 1994 to resign as trustees of Lot 31 SP 129117 on reserve for recreation purposes R899.
3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to negotiate and finalise matters relating to the trustee lease, including negotiations for the operation and maintenance agreement for the Wangetti Trail.

The proposed trustee lease will be prepared in accordance with the requirements of the *Local Government Act 2009* and associated regulation, *Land Act 1994* and the *Native Title Act 1993* (Cth).

FINANCIAL/RESOURCE IMPLICATIONS

The financial impact on Council in endorsing the recommendation of this report is expected to be nil, other than Officers time to continue progressing the project. If Council remains as a trustee of the reserve, then Council may be liable for maintenance of the trail in the reserve which is estimated at \$10 000.00 per annum. The Councils legal fees up to \$10,000.00 for trustee lease negotiations are payable by DTIS as trustee lessee.

Whilst no costing has been undertaken on Council controlled land from Ellis Beach north to the Mowbray River (as the alignment is not finalised), estimates for depreciation have been completed for the Mowbray North section (Mowbray River to Port Douglas). Based on the last trail alignment provided by the State, depreciation is estimated at \$253 000.00 per annum and Operation and Maintenance at \$144 000.00 per annum. This expense is not accounted for in Douglas current budget and will have a negative impact on future budget outcomes.

RISK MANAGEMENT IMPLICATIONS

The recommendation of this report has considered both financial and reputational risks for the Councils. The recommendation allows for the State Government to progress construction for the section between Palm Cove and Ellis Beach and removes Douglas from any liability associated with the trail in SP2.

If Council was to take no action, then the State Government may not be able to proceed with construction of the trail in SP2. This is unlikely as CRC have already resolved to enter into a lease to allow construction and since the construction areas are within the CRC local government area there would be little impediment to the State proceeding to enter into a lease with CRC.

Agreements on the model for construction and ongoing maintenance for the remaining areas where the trail crosses Council and freehold tenure are yet to be determined. There is a significant risk that if the State Government does not allow for the ongoing maintenance and operational cost of the Wangetti Trail, then the condition of the trail will deteriorate and this may lead to a decline in visitor numbers to Douglas.

Officers will continue to negotiate with the State Government, in good faith to ensure that every effort is made to see the Wangetti Trail project succeed.

SUSTAINABILITY IMPLICATIONS

Economic: Council, as an advocate for the project, is supportive of the economic benefit that will be generated for the region from the Wangetti Trail.

Environmental: DTIS has obtained Development Approval for the construction of the Wangetti Trail south project area which documents all relevant environmental considerations.

Social: The Wangetti Trail south project area consists of a proposed walking and mountain biking trail approximately 34 kms in length stretching from Palm Cove to Wangetti. Located within the Macalister Range National Park and the Wet Tropics World Heritage Area, this section will feature a public camping site and a beach link to Ellis Beach. This section of the trail will provide employment and traineeships for locals and traditional owners including cultural monitoring onsite to protect items of cultural significance found during construction and will deliver further community benefits to the region once operational.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 2 - Fostering Sustainable Economic Growth

A robust economy is at the heart of a thriving community and enables investment in environmental protection. While our remoteness is a key attribute, it also presents challenges for attracting new business and investment. We must also meet the challenges of fierce competition in the tourism sector.

Council will partner with industry to build, diversify and promote the Douglas economy. Council will design and deliver infrastructure, strategies and services that support the local economy and businesses.

Goal 2 - We will work with partners to promote the Shire as the World's leading sustainable tropical destination and encourage business investment.

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - We will conduct Council business in an open and transparent manner with strong oversight and open reporting.

Operational Plan 2022-2023 Actions:

Continue to support and partner with the State for the development of the Wangetti Trail - Finalise infrastructure requirements, preferred route, and land tenure for the Mowbray North section.

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:

Custodian	Council owns and manages infrastructure, facilities, reserves, resources and natural areas. In fulfilling its role as custodian, Council will be mindful of the community, the economy, the environment, and good governance.
------------------	---

CONSULTATION

Internal: Councillor Workshop on 20 September 2022.

External: CRC, as joint trustee, has been consulted in the preparation of this report and recommendation and it is intended a similar recommendation will be presented to the CRC for consideration. The key difference in the recommendations is that CRC only resign as a joint trustee of the reserve if they are unable to agree on terms relating to the ongoing maintenance and operation of the Wangetti Trail after the expiry of the lease.

COMMUNITY ENGAGEMENT

The State Government has held multiple rounds of community consultation on the Wangetti Trail project including a first round from 8 April to 31 May 2019, and following months of intensive fieldwork, planning and investigations a second round from 3 August to 11 September 2020 when members of the community were again invited to submit their ideas and comments on the trail.

ATTACHMENTS

1. Attachment 1- Aerial photo showing proposed leased areas [5.7.1 - 1 page]
2. Attachment 2 - Sketch plan P R 151463 01 [5.7.2 - 3 pages]

Attachment 1 - aerial photo showing proposed leased areas (approx)



Attachment 2 - sketch plan PR151463_01





