



Cook Shire
COUNCIL

Date: Tuesday, 17 May 2016
Time: 9:00am
Location: Administration Centre
10 Furneaux Street
Cooktown

AGENDA AND BUSINESS PAPERS

Late Reports

Ordinary Council Meeting

17 May 2016

Tim Cronin
Chief Executive Officer

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11 INFRASTRUCTURE SERVICES - REPORTS

11.1 REPORT ON CAPE YORK WEEDS AND FERAL ANIMALS INCORPORATION

File Number: D16/6002

Author: Senior Biosecurity Officer

Authoriser: Robert Uebergang, Director Infrastructure Services

Attachments: 1 Attachment to Report on status of CYWAFAP Inc

PRECIS

1. There have been several claims from Cape York Weed and Feral Animals Incorporated (CYWAFAP Inc.) that the group known as CYWAFAP was an unincorporated entity in its own right and that the CYWAFAP Inc. is an incorporated association linked to this group and they claim they have a right to the equipment purchased with the funding provided to CYWAFAP.
2. The attached document provides evidence that refutes these claims and that Council is the legal owner of the said equipment.
3. A brief history of CYWAFAP is also provided as background to the new Councillors.

BACKGROUND/HISTORY

In 1998 Cook Shire Council was successful in gaining funding under the Cape York Natural Heritage Trust (CYNHT) Plan to undertake the "Cape York Weeds and Feral Animals Project" (CYWAFAP Project) to be implemented across Cape York Peninsula (CYP) in cooperation with all landholders and land managers in the region. The project (Project CY98.19) commenced in January 1999 and ran for 3 years. Cook Shire Council (CSC) was the proponent of the project; all agreements and payments were to CSC, signed by the CEO at the time; all purchasing and hiring of staff was through CSC. Initially the project manager reported to the CSC Pest Management Committee and this committee acted as an approval agency for the project recruitment and purchasing. Later a regional committee, with representatives from other councils, and stakeholder groups was established. It was called the Cape York Peninsula Pest Advisory Committee (CYPPAC), which was formed to give direction to the CYWAFAP Project.

In 2002 a follow on project, called "Strategic Pest Management and Community Capacity Building in Cape York Peninsula" (Project CY01.23) was funded from the QNHT Funding Program, with CSC again as the proponent and responsible authority for delivering the project. The name and branding of CYWAFAP Project was retained for the delivery team as it had become well known and accepted especially in Indigenous communities and pastoral holdings.

During 2003 the CYWAFAP Project group expanded its role and began taking on contract work and other funding for offshoot projects. As a result the name was changed to the Cape York Weeds and Feral Animals **Program**, thereby allowing the acronym to remain the same and the logo only required minimal alternations.

In 2005, under NHT2, CYWAFAP Program successfully tendered to conduct the Weeds and Feral Animals Sub-Program and was also linked to several other NHT funded projects on CYP. Once again Cook Shire were the proponent and receiver of the funding, and several employees of the program gained permanent employment status with Cook Shire Council, reflecting the on-going commitment of Council and the faith that the group could become self sustaining as they moved

into delivering accredited training courses and gained regular contract work. During the same year CYPPAC expanded its Terms of Reference and its stakeholder membership and changed its name to the Cape York Peninsula Pest management Advisory Group (CYPPMAG) to reflect its role as the peak community based body in the region for providing advice on pest management issues. In 2005/2006 less than half the operating budget of CYWAFAP came from the NHT funded project. In 2006/07 the NHT Extension funded an activity called “Weeds and Feral Animal Management Services” through an agreement between the state of Queensland (acting through the Cape York Development Association) and CSC.

In 2008/09 funding for an Activity Agreement under Caring for Country program (CY TCSC 01) was received by CSC to continue the activities of CYWAFAP.

A new agreement under Caring for Our Country funding for the Cape York Weeds and Feral Animals Program was signed in 2010 between the State of Queensland represented by the department of Environment and Resource Management and CSC.

In 2011 a contract with Agreement Code CY011 was signed between Cape York Natural Resource Management Ltd. And CSC for delivery of a set of activities as detailed in the Schedule submitted with the funding application. A similar agreement was signed in 2013, and although the “Consultancy Agreement” was between CYNRM and CYWAFAP, the document was signed by a CSC Director.

Due to the lack of on-going funding and the inability to secure sufficient private works Council resolved to wind up CYWAFAP in January 2014. Employees on contract were terminated and permanent employees were offered other positions in Council (only one took up this offer) or made redundant. CYWAFAP closed mid 2014.

At no time was CYWAFAP (either versions) nor CYPPAC/CYPPMAG incorporated or registered as associations or independent not-for-profit organisations.

Throughout this entire period Cook Shire Council has provided a high degree of in-kind support (which has been reported on project proposals; in fact it has been a requirement for receiving funding; and grant acquittals). CSC has also contributed funding in cash for the CYWAFAP group to carry out weed and feral animal control on behalf of CCSC so that it met its statutory obligations. When the program closed this amounted to \$275,000pa.

Issue surrounding CYWAFAP Inc. claim to the equipment used by CYWAFAP purchased with grant funds.

On several occasions the Chair of CYWAFAP Inc. and their Operations Manager, have claimed that equipment previously the property of CYWAFAP, in particular Quikspray units and quad bikes are the property of the community as CYWAFAP was a community based group and an entity in its own right and that Council should “return” the equipment to the “community” namely the not-for-profit CYWAFAP Inc. group.

A extensive search of TRIM and archived documents on the CYWAFAP server was conducted to ascertain the original status of the Cape York Weeds and Feral Animals Project, its later evolution into Cape York Weeds and Feral Animals Program and its relationship to Council. Any funding Agreements that were located were checked to ascertain the rightful owner of any equipment purchased and any intellectual property generated during the project.

LINK TO CORPORATE PLAN

4.1.1 Provide, to a standard that ensures (at a minimum) legislative compliance:

- a) Sustainable financial and administrative management of the Shire's municipal and community resources.
- b) A sound annual budget which ensures adequate funding and reserves to provide for Council's future financial obligations.
- c) Appropriate corporate governance.

CONSULTATION

Corporate Services.

LEGAL IMPLICATIONS (STATUTORY, BASIS, LEGAL RISKS)

There is a possibility that that CYWAFAP Inc. could challenge the legitimacy of the claim to equipment and rights to the intellectual property and data collected under the CYWAFAP.

POLICY IMPLICATIONS

Asset Disposal Policy

Enterprise Risk Management Policy

FINANCIAL AND RESOURCE IMPLICATIONS (BUDGETARY)

Operational budget.

RECOMMENDATION

That a letter be sent to CYWAFAP Inc. stating Council's position as per below.

1. All funding was provided to Cook Shire Council as the responsible party for delivering the projects and activities stated in the Agreements/Contracts with Government Departments or their representatives. Council chose to retain the name of the group delivering those activities for operational reasons, not because the group was an entity;
2. Any equipment or materials purchased using grant funds is rightfully and legally the property of Council providing it is used for similar activities to what it was purchased for;
3. Council owns the Intellectual Property generated during the delivery of the various projects.

A search of Council's record management system TRIM and archived documents on the CYWAFAP server was conducted to ascertain the status of the Cape York Weeds and Feral Animals Project and its relationship to Council. Documented evidence can be produced if required to support the following information.

Note: Text in italics is a direct quote from the evidence document.

Date	Information	Ref doc	Relevant issues
25/9/1998	Announcement of NHT funding by Senator Hill	Newspaper	<i>The \$1.7 million includes a \$1.2 million grant to Cook Shire Council to launch a major assault on weeds and feral animals on the Peninsula.</i>
3/12/1998	Evidence that CSC were the recipient of the NHT funding for the original CYWAFAP Project	Project Agreement between State of Queensland and Cook Shire Council for the Cape York Weed and Feral Animals Project (Project CY98.19)	Agreement is with Cook Shire Council as the recipient of the funding for the project. On signing CSC's authorised representatives agree to the terms and conditions of the funding. Recipient is defined as the <i>organisation or group responsible for carrying out the project as set out in the Funding Application and being a part to this Agreement.</i>
15/12/1998	Draft Terms of Reference for the Cape York Peninsula Pest Advisory	Fax from ReSolve North	<i>CYNHT funded CSC to undertake "Cape York Weeds and Feral Animals Project" to be implemented (CYWAFAP) to be implemented across CYP in cooperation with all landholders and land managers in the region.</i>
			<i>The role of the Cape York Peninsula Pest Advisory Committee (CYPPAC) is to provide a forum for all stakeholders to discuss and give direction to the Cape York Weeds and Feral Animals Project (WAFAP).</i>
17/2/1999	Date CYWAFAP commenced	QNHT Instalment Request (2 nd)	Date project actually commenced was 17/2/1999
	Name of grant recipient		<i>Name of Recipient: Cook Shire Council Signed by Hans Looser as Project Leader for Organisation, and Brian Ledwidge as Authorised Office Bearer</i>
17/5/1999	Control of Pest Management Committee by Council	Minutes of Pest management Committee Meeting – Monday 17 th May 1999	Mayor opened the meeting; J Giese and J Adcock were present Council meeting required to progress full time admin position Project Manager to be authorised to sign Council purchase orders
20/6/1999	Establishes CSC CEO contact for CYNHT funding	Letter from CYNHT enclosing cheque for	Letter address to CEO; Remittance Advice made out to Cook Shire Council Ends: <i>I wish you every success with your project</i>

Date	Information	Ref doc	Relevant issues
		progress payment	
22/7/1999	Purpose of CYPPAC	Letter to QPWS inviting to attend first meeting of CYPPAC	<i>The CYPPAC is being established to oversee the implementation of the Cape York Weeds and Feral Animals Project (CYWAFAP) funded by Cape York Natural Heritage Trust and administered by the Cook Shire Council.</i>
	Establishing link between CYPPAC and CSC		<i>Cook Shire is looking forward to hearing from you and sharing resources and ideas on Weeds and Feral Animals Project.</i> Signed by CSC CEO
15/6/1999	Evidence that CSC was very much a part of CYWAFAP	Letter from CYNRM	Feedback from Chair of Local Govt Association of Tasmania: <i>He was critical of the fact that Local Government appeared to be giving little consideration or input into the NHT process. He was pleasantly surprised to hear the Cook Shire Council was much involved in the NHT Plan with membership of the Cape York Regional Advisory Panel and had also submitted projects.</i>
22/7/1999	Evidence that CSC was controlling the CYWAFAP	Fax to Weipa Realty	Application for a house in Weipa from Cook Shire Council to accommodate an employee of the CYWAFAP.
Sept 1999	Evidence that CYPPAC was managed under CSC	Letters to Rural Lands Protection Board & AQIS	Letters inviting representatives to CYPPAC meetings signed by CSC CEO
29/9/1999	Evidence that CSC was the proponent and manager of the CYWAFAP	NHT Continuing Project Renewal (for 1999-2000) and Progress Report	Name of Organisation given as Cook Shire Council Signed by CSC CEO
	Evidence that John Giese and Ian Adcock were operating as Councillors of Cook Shire Council when providing guidance/oversight of CYWAFAP	Minutes of Pest Management Standing Committee Meeting 15 November 1999	Cllr Ian Adcock and Cllr John Giese recorded as moving and seconding motions related to reports and business of CYWAFAP
18/11/1999	Evidence of CSC being the legal entity of the CYWAFAP	Supply Agreement between NHT CYWAFAP and Corsair Management Services Pty	Signed and accepted by CEO CSC on behalf of NHT CYWAFAP

Date	Information	Ref doc	Relevant issues
		& Ltd	
6/3/2000	Evidence that the CYWAFAP was CSC's project	Letter from Minister Hill addressed to the Project Manager at Cook Shire Council	States <i>Your organisation's project, Cape York Weeds and Feral Animals Project will receive Commonwealth Government funding of \$1,035,500 for 1999/2000 from the Natural Heritage Trust.</i>
12/12/2001	Evidence that second NHT funded project called Strategic Pest management and Community Capacity Building in Cape York Peninsula was submitted and conducted by CSC	Correspondence from CSC CEO to CYNHT Coordinator	Refers to the Shire's project application, CY01.23 – Strategic Pest Management and Community Capacity Building in Cape York Peninsula. Note: this project followed on from the Cape York Weeds and Feral Animals Project, but the group remained known CYWAFAP to avoid confusion among stakeholders. When I took over as acting project manager in 2002 I renamed the group Cape York Weeds and Feral Animals Program , in recognition that the initial Project had been completed.
2001/2002	Identify that CSC is the	Project Agreement for CY01.23	NHT funding agreement is between the State of Queensland and Cook Shire Council; by accepting the offer CSC agreed to abide by the Terms and Conditions of Funding, all the reporting requirements as specified in the Project Schedule and any Contract Conditions that were identified in the Project Schedule. Schedule 2 requires that the grant shall be used to undertake the action as specified in the project application.
29/11/2006	Evidence that NHT Extension funded project <i>The provision of Weed and Feral Animals Management Services</i> was submitted and conducted by CSC	Activity Agreement – July 2006 for 2006-2007 Financial Year	Agreement is between the State of Queensland, acting through the Cape York Development Association, and Cook Shire Council (as the Organisation)
30/6/2008	Evidence that Cook Shire was the Proponent for the Caring for our Country funding for 2008-09	Activity Agreement CY TCSC 01	Agreement is between the State of Queensland, as represented by the Dept of Natural Resources and Water (NRW), and Cook Shire Council (as the Proponent)
26/11/2010	Evidence that Cook Shire was the Proponent for the Caring for our Country funding for 2010-11	Activity Agreement CSC TABL 01	Agreement is between the State of Queensland, as represented by the Dept of Environment and Resources Management (DERM), and Cook Shire Council (NRM Delivery Organisation)

Date	Information	Ref doc	Relevant issues
1/9/11	Evidence that Cook Shire is was the Delivery Organisation for the funding provided for Cape York Weeds and Feral Contract 2011-2012	Activity Agreement Code CY011	Agreement is between Cape York Natural Resource Management Ltd. (CYNRM) and Cook Shire Council (NRM Delivery Organisation)
8/1/13	Evidence that Cook Shire is was the legal entity for the Consultancy Agreement for the funding provided for Cape York Weeds and Ferals Program 2012-2013	Activity Agreement Code CY011	The Consultancy Agreement is made between Cape York Natural Resource Management Ltd. (CYNRM) and Cape York Weeds and Feral Animal Program (Consultant), however the ABN and address given are those of Cook Shire Council. The agreement is signed by Ian McCrae. There could be some issues surrounding the legality of this agreement.
December 2013	Clarification on relationship between CYWAFAP, Council, EMT & CYWAFAP management chain of command	Planning & Environment Report to Council – CYWAFAP Monthly Report	<i>Clarification received to date: In relation to CYWAFAP, Council, EMT & CYWAFAP management chain of command have clarified the following to date: CYWAFAP is a completely integrated Council operation that has the delegated authority to operate autonomously in relation to day to day operations under the CYWAFAP Project Manager, however its overarching governance, policy, procedures and employment is directed by and sits completely within established CSC structures and management.</i>

Other evidence that the CYWAFAP Project/Program was linked directly to Council

Sign at Byerstown Range Lookout – *Help Protect Cape York Peninsula; Stop Weed Spread Now!* has logos from CYWAFAP, CSC, Caring for our Country and Australian Govt shield. Sates on bottom: For more information or to report weed sightings contact your local Council Pest management Officer on 07 4069 5444. At the time of printing Cook Shire Council's Pest management Officer (s) were integrated into CYWAFAP (i.e. there was no separate position within Council).

Status of intellectual property and capital equipment purchased with NHT funds by Cook Shire Council for the Cape York Weeds and Feral Animals Project and following pest management projects funded by the State and Federal Governments under various other programs

A search of TRIM and archived documents on the CYWAFAP server was conducted to ascertain the ownership status of equipment purchased for use in the Cape York Weeds and Feral Animals Project and follow on projects. Documented evidence can be produced if required to support the following information.

Note: Text in italics is a direct quote from the evidence document.

Date	Information	Ref doc	Relevant issues
3/12/1998	Evidence that Cook Shire is the rightful owner of any intellectual property acquired for the project	Project Agreement for the Cape York Weed and Feral Animals Project (Project CY98.19)	Agreement is between State of Queensland and Cook Shire Council, with Cook Shire Council as the recipient of the funding for the project. <i>Title to and intellectual rights in all Project Material shall be vested in the Recipient.</i> The State and Commonwealth Govts are granted a nonexclusive, royalty free licence to use, reproduce, adapt, commercialise and exploit any intellectual property created by the project.
2001	Evidence that Cook Shire is the rightful owner of any intellectual property acquired for the project	Project Agreement for Project CY01.23	Agreement is between State of Queensland and Cook Shire Council, with Cook Shire Council as the recipient of the funding for the project. <i>Title to and intellectual rights in all Project Material shall be vested in the Recipient.</i>
30/6/2008	Evidence that Cook Shire is the rightful owner of any intellectual property acquired for the project	Activity Agreement CY TCSC 01	Agreement is between the State of Queensland, as represented by the Dept of Natural Resources and Water (NRW), and Cook Shire Council (as the Proponent) <i>19.1 Title to and Intellectual Property Rights in all Activity Material under this Agreement vest in the Proponent on its creation.</i>
26/11/2010	Evidence that Cook Shire is the rightful owner of any intellectual property acquired for the project	Activity Agreement CSC TABL 01	Agreement is between the State of Queensland, as represented by the Dept of Environment and Resources Management (DERM), and Cook Shire Council (NRM Delivery Organisation) <i>19.1 Title to and Intellectual Property Rights in all Activity Material under this Agreement vest in the NRM Delivery Organisation on its creation.</i>
1/9/11	Evidence that Cook Shire is the rightful owner of any capital items acquired for the project	Activity Agreement Code CY011	Agreement is between the Cape York Natural Resource Management Ltd. (CYNRM) and Cook Shire Council (NRM Delivery Organisation) <i>19.1 Title to and Intellectual Property Rights in all Activity Material under this Agreement vest in the NRM Delivery Organisation on its creation.</i>
8/1/13	Intellectual Property Rights	Activity Agreement Code CY011	The Consultancy Agreement is made between Cape York Natural Resource Management Ltd. (CYNRM) and Cape York Weeds and Feral Animal Program (Consultant), however the ABN and address given are those of Cook Shire Council. The agreement is signed by Ian McCrae. There could be some issues surrounding the legality of this agreement. Section 7 assigns all IP rights to CYNRM, excluding any material that existed prior to this agreement. It could be argued that very little IP was attributed during the period of this agreement if in fact the agreement is legal.

Date	Information	Ref doc	Relevant issues
3/12/1998	Capital Items	Project Agreement for the Cape York Weed and Feral Animals Project (Project CY98.19)	<p>Agreement is between State of Queensland and Cook Shire Council, with Cook Shire Council as the recipient of the funding for the project.</p> <p><i>As part of the management of the Project, the Recipient must retain a register of all capital items purchased showing purchase price and date, and depreciation value. Once the project has been completed, capital items purchased with QNHT Funding Program funds shall be;</i></p> <ul style="list-style-type: none"> • <i>If the total residual value of all items is over \$5000, sold and the proceeds returned to the Funding Manager; or retained by the Recipient only if written approval is gained from the Funding Manager.</i> • <i>If the total residual value of all items is \$5000 or less, the value may be written off and the assets retained by the Recipient.</i> <p><u>NOTE:</u> Although written approval was not specifically obtained to retain the equipment purchased with the QNHT funds it can be assumed as the equipment was needed to conduct some of the work proposed in the following project approved for NHT funding (CY01.23).</p>
2001/2002	Capital Items	Project Agreement for CY01.23	<p>NHT funding agreement is between the State of Queensland and Cook Shire Council, with CSC as the Recipient.</p> <p><i>The Recipient is to maintain a register of all capital items purchased showing purchase price and date, and depreciated value. On completion of the Project, capital items purchased with QNHT Program funds shall be;</i></p> <ul style="list-style-type: none"> • <i>written off and retained by the recipient, if the total residual value of the capital items is \$5000 or less;</i> • <i>sold and the proceeds returned to the Funding Manager if the total residual value of the capital items is over \$5000; or alternatively the Capital Items may be retained by the Recipient but only if prior written approval is obtained from the Funding Manager.</i> <p><u>NOTE:</u> Although written approval was not specifically obtained to retain the equipment purchased with the QNHT funds it can be assumed as the equipment was needed to conduct some of the work proposed in the following project approved for Government funding.</p>

Date	Information	Ref doc	Relevant issues
30/6/2008	Evidence that Cook Shire is the rightful owner of any capital items acquired for the project	Activity Agreement CY TCSC 01	Agreement is between the State of Queensland, as represented by the Dept of Natural Resources and Water (NRW), and Cook Shire Council (as the Proponent) <i>17.2 Unless otherwise directed by NRW, Capital Items required for Activity implementation and acquired with Funds, shall be deemed to be the property of the Proponent, provided that they are used to advance the objectives of this Agreement as applicable following completion of the Activity.</i>
26/11/2010	Evidence that Cook Shire is the rightful owner of any capital items acquired for the project	Activity Agreement CSC TABL 01	Agreement is between the State of Queensland, as represented by the Dept of Environment and Resources Management (DERM), and Cook Shire Council (NRM Delivery Organisation) <i>16.2 Unless otherwise directed by DERM, Capital Items required for Activity implementation and acquired with Funds, shall be deemed to be the property of the NRM Delivery Organisation, provided that they are used to advance the objectives of this Agreement as applicable following completion of the Activity.</i>
1/9/11	Evidence that Cook Shire is the rightful owner of any capital items acquired for the project	Activity Agreement Code CY011	Agreement is between the Cape York Natural Resource Management Ltd. (CYNRM) and Cook Shire Council (NRM Delivery Organisation) <i>16.1 Unless otherwise directed by CYNRM, Capital Items required for Activity implementation and acquired with Funds, shall be deemed to be the property of the NRM Delivery Organisation, provided that they are used to advance the objectives of this Agreement as applicable following completion of the Activity.</i>

Prepared by Cathy Johnson

Senior Biosecurity Officer and ex CYWAFAP Manager

17 March 2016

14 CONFIDENTIAL SECTION**RECOMMENDATION**

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 275 of the Local Government Act 2009:

14.9 RENEWAL OF SPECIAL LEASE 14/49900 - LOT 201 ON SURVEY PLAN 154004 - LAKELAND CAMPING RESERVE, RESERVE 77-045

This matter is considered to be confidential under Section 275(e) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with contracts proposed to be made by Cook Shire Council.