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May 22nd 2015

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## **RE: COAG Investigation into Indigenous Land Administration and Use**

Dear Sir

My name is Sharon Harwood. I am a qualified and practicing planner with more than 20 years' experience working with rural and remote communities on natural resource planning, community planning and development projects. I work at James Cook University in Cairns as a Senior Lecturer (Environmental and Regional Planning) and co-ordinate the Graduate Certificate Planning and Indigenous Communities.

I specialise in the implementation of community based planning processes and techniques in remote areas. My experience includes social impact assessments within the resources sector; development planning in remote areas, community planning, planning and development on Aboriginal and Torres Strait Island land and managing social planning and research projects.

I completed my PhD on community based development planning in the remote Arfak Mountains in West Papua and I continue to publish articles that describe the characteristics of remotely located communities and how to enhance planning and development opportunities in these unique locales. It is with this experience and background that I make the following submission for consideration by the Expert Indigenous Working Group.

I have read the submission that Jabalbina Yalanji Aboriginal Corporation have submitted to your working group. I agree with each and every statement made by the CEO Mr Jim Turnour. I will therefore try not to repeat the concerns that Jabalbina have identified for your consideration. What I would like to do is offer a range of solutions to the problems that Jabalbina and I am sure that many other RNTBC/PBC's will also identify.

It is my understanding that the aim of this investigation is to support Indigenous land owners and native title holders to be able to support their social, cultural, and economic aspirations. I will therefore begin with an overview of the aims of Indigenous Planning (according to Hirini Matunga 2013 – attached with this submission) – to in turn influence how land use outcomes 'should' be derived. I purposely use the normative term 'should' because I think that the current land use planning system across northern Australia is entirely inappropriate for application to lands that possess:

- **Strong cultural (spiritual and physical) values.** These values need to be protected and enhanced – as and where Traditional Owners determine. Unfortunately the land use planning systems across northern Australia do not adequately protect or acknowledge the existence of spiritual (ie non material) values, nor do the systems have an appropriate mechanism to safely (ie without disclosing the rationale behind the cultural value) identify and protect the range of cultural heritage values within the land use planning systems from the impacts of development. I refer you to the example of Queensland's Integrated Development Assessment System and the application of the *Aboriginal Cultural Heritage Act (2003)*. Cultural values can only be considered where a Cultural Heritage Plan has been prepared (and data about the cultural heritage values to be protected are publicly available). Notwithstanding the inadequacies of the single State Planning Policy which is simply unworkable and

in need of a thorough rethink, the issue is so complex and has been overlooked for far too long. The protection of cultural heritage is the most critical value to identify for Indigenous communities (discrete or otherwise) as they underpin the unique world views, beliefs and values that in turn describe the relationships within the family, clan and nation. Cultural heritage protection is critical to reinforcing identity through cultural practices, including institutions, ceremony and language. I was recently asked to speak to a Traditional Owners Negotiating Committee about land use planning – they wanted areas set aside for Cultural Heritage protection, but according to them, the state only wanted to talk about ‘cultural tourism’ ie using culture as an economic platform. The TO’s want areas set aside that are used exclusively for cultural reconnection for themselves, but the system is simply not accepting this as a legitimate use of the land and sea. Not everything has a financial value or is appropriate to be used for commercial gain. Protecting one’s identity is worth more than any economy could ever value, because without an identity you are nothing more than a homogenous being.

- **Environmental values** held by both Indigenous and non-Indigenous Australians on the same lands and waters. Unfortunately Indigenous people have NO power over decision making about environmental values and land tenure on their own land. I am in the process of writing a book chapter that compares how the Cape York Regional Plan and the Nunavut Regional Land Use Plan (Canada) are essentially the same. Both responses to protecting the cultural and environmental values from mining are to lock lands up in National Parks. It is essentially because this is the only land tenure that can exclude mining. But the downside of this is that hunting for cultural purposes and food becomes prohibited. Moreover, the ongoing maintenance of rock art is prohibited in a National Park – because it is seen as vandalism! Another point in case is a development application that has recently been lodged for ‘Indigenous Housing’ (definition under the Qld Sustainable Planning Act 2009 - SPA) on Eastern Kuku Yalanji (EKY) lands (Jabalbina Yalanji Aboriginal Corp is making the application on behalf of the Traditional Owners). The definition allows for the clearing of vegetation on Indigenous owned lands for the purposes of constructing a dwelling (under SPA). However for the EKY, they have an additional layer put back on them that prohibits the clearing of vegetation for a dwelling house if the land is subject to provisions of the *Wet Tropics Management Plan 1998*. Because the Wet Tropics World Heritage Area was listed for its natural, rather than cultural values, WTMA condition development to protect natural values as their primary consideration. They can also take enforcement action if clearing occurred in contravention of their permit conditions, despite the Sustainable Planning Act 2009 exemption. The government gives with one hand yet takes with another.
- **Economic Development Opportunities.** At present the range of economic development options for lands that are owned by Indigenous Australians is very limited. In particular the TONC that I spoke with this week were provided with a series of reports undertaken by ‘professionals’ in development. So far the only options identified were: forestry, quarrying materials, cattle production and eco-tourism. Seriously this is the full range. Then if you look to each and every statutory land use plan written for the discrete Aboriginal Shire Councils in Cape York – all lands that are outside of the urban footprint are either zoned for Environment Management and Conservation or Rural. Napranum permits Animal Husbandry and Cropping in their Rural Zone; Wujal Wujal permits tourism as a form of development in their Environmental Management and Conservation Zone – but then with the application of the State Planning Policy this permission is removed (and with the added impost of the Wet Tropics World Heritage Area nothing is permitted that requires clearing of any vegetation); Kowanyama has also used the Environmental Management and Conservation Zone to lands outside of the township – and permit Intensive animal husbandry, Intensive horticulture, Rural industry, Aquaculture and Cropping – everything else is Impact Assessable (this means tourism accommodation and any other form of development is impact Assessable and when the State Planning Policies are applied nothing will be permitted); Hopevale has had the Rural Zone applied to lands outside their township with the land uses of Cropping, Park, Permanent plantations, Substation and Utility installation (exempt) and Animal keeping, Aquaculture, Caretaker’s accommodation, Dwelling house, Emergency services, Intensive horticulture, Rural industry, Telecommunication facility and Wholesale nursery as code assessable development (this means these proposal must be assessed by the Local Government). More ironic is the fact that the Hopevale Congress does not want their lands that have been identified in the planning scheme to be used for future housing – as they would rather use it for agriculture...but cannot because the planning scheme won’t permit. Despite the Congress making a

submission to the draft planning scheme – their views were ignored. The point I am trying to make is that there is a standard set of land uses that are considered appropriate for development outside of the township – with no consideration of what the land is actually suitable for. There has been no intellectual rigour applied to the investigation of alternative development options for lands outside of the township zones. It is appalling to think that the land possesses no other values other than agricultural or utility and that due to the application of the state planning policies any development proposals outside of this range are essentially subject to a particularly demanding and resource consuming process that must argue that the mapping behind the state planning policies is incorrect or not applicable. Unfortunately all lands that are affected by these state planning policy maps essentially sterilises land for economic development. The only economic development option that is permitted is home ownership in the township areas. However, a focus upon housing in isolation to creating economic development opportunities that in turn create job opportunities will not create economic growth. To pay a mortgage requires a job, to have a job requires development, to have development means that land must be identified for development (not just housing). At present there has been less attention paid to creating the economic development opportunities via the planning scheme and the property system than there has upon private home ownership.

### **Time for a new approach to Indigenous Planning in northern Australia: Place Based Planning**

The concept of place is associated with the relationship between individuals, the space that they inhabit and the subsequent value that individuals associate with the attributes of that space. Place describes a space that is imbued with value and only the people who live within or are connected to the space know the spatial extent of the valued territory. This may be as a result of ongoing cultural rituals (including recreation) that evoke treasured memories, stories and behaviours. The extent of the spatial territory could also be defined by trade, kinship and land ownership (tenure) boundaries. Planning generally and within the bounds of the spatial territory of the place, requires an understanding of the assets that the area possesses and how (or if) these can be manipulated to create a better future.

An inventory of the land cover attributes is necessary in order to make decisions about what and how the people who inhabit the region believe is an appropriate or inappropriate manipulation of these attributes. Remembering that place is about a space that is imbued with value. It is the values of the people who are connected to the space that are the very essence of planning and decision making. More often than not the planning procedure for remote settlements starts at the spatial extent of a geopolitical jurisdiction then proceeds to land tenure to determine the range of acceptable land uses and permitted development strategies. The current approach to land use planning approach does not consider the people, or the spatial territory that they identify with, or the land cover attributes that they value and the range of uses that are appropriate to develop. Current planning practices tend to focus on enhancing administration procedures to capture efficiencies and financial savings for the centralised government.

The components of a place based approach to planning are:

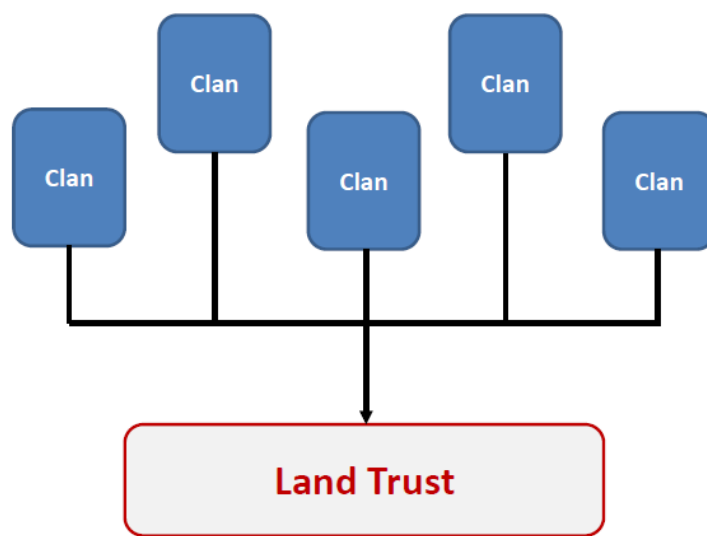
1. **People** – within a settlement or are connected to and with a space, which possess unique individual and shared collective values, beliefs, attitudes and norms.
2. **Spatial territory** that the people have imbued with value. This may be a water catchment, social/economic networks, kinship ties or government jurisdiction.
3. **Land cover attributes** - the physical state of the earth's surface and immediate subsurface in terms of the natural environment.
4. **Land uses** - the human perception and manipulation of a land cover type. Land use involves the manner in which the biophysical attributes of the land are perceived by humans, and the purpose for which the manipulation is subsequently used.

I strongly support the existence of statutory land use plans as these protect development rights of both the developer and the affected community and establish clear and legal boundaries about what is appropriate and inappropriate development. However, I think that land use planning and specifically the outcomes of such processes should be reconsidered and more specifically that planning for, with and by Indigenous communities must be decided (and created) at the level that it is delivered. I therefore propose a model that sees the Land Trusts/PBC/RNTBC creating their own land use plans for the Place (ie Country and Traditional Owners) that

they are answerable to. The diagram below (Figure 1) illustrates the relationship between the Land Trust /PBC/RNTBC and the various clans. The Land Use Plan for the Land Trust /PBC/RNTBC that I am suggesting acts as a strategic and corporate plan that guides governance matters related to land use and administration – identifies development that is appropriate and inappropriate, areas where NO development can occur and on matters that can be negotiated and upon which terms negotiations will be made.

It is difficult to determine the range of uses that will gain competitive advantage within the marketplace. Therefore the community will need to adapt an approach that defines the impact parameters (maximum level of permitted disturbance of land cover elements) in combination with a range of appropriate land uses (those uses contained within the Assessment Tables of a statutory land use plan). This approach is the best way to adapt to new knowledge or new land uses that no one has thought of before.

The approach is premised upon the notion that the Clan determine the range of appropriate and inappropriate levels of impact to areas within their direct responsibility. That a range of potential uses that meet the impact parameter requirements can be identified and those future uses that are not identified will be assessed according to their ability to meet the criteria. In town planning language this means ‘performance based planning’ whereby a set of criteria is established that defines the acceptable impacts and that undefined uses will be assessed according to their ability to be within these or can mitigate any potential impacts.

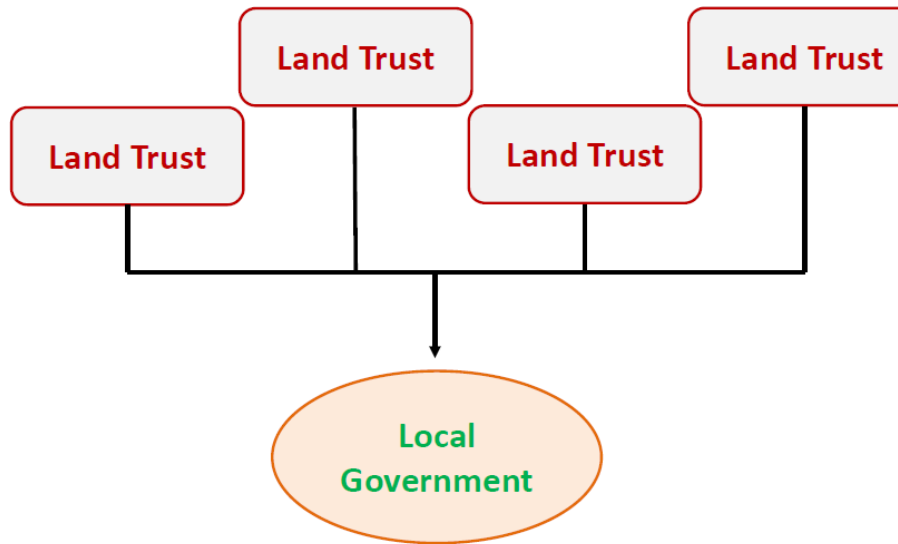


- Participatory Mapping at Clan Level
- Collation of land uses and impact parameters to frame land use plan at Land Trust Level

Figure 1 – Planning at the level where decisions are made

The below diagram illustrates how the combined land use plans within a Local Government Area can be used to underpin the development of a Local Government strategic land use plan.

Irrespective of how the Land Trust/PBC/RNTBC is organised (some are Local governments others like Jabalbina that operate as both the Land Trust and the PBC), decisions about land use and development will be made at this level (eg ILUA’s). It would simply assist the decision making by having a strategic land use plan that represents the views and aspirations of the affected Traditional Owners for the way in which their lands and waters are used and managed. For the example of Jabalbina for instance, their nation is split over three local government boundaries and therefore three planning schemes determine appropriate development for their Aboriginal Freehold Land, despite the agreements made in the ILUA’s. These planning schemes do not represent the views and aspirations for future land use and development for this nation. It would be far less stressful and resource consuming if Jabalbina had their own strategic land use plan and were able to make decisions about what development is appropriate and inappropriate within their nation, rather than the current situation where they have to be fluent in all THREE very different planning scheme approaches to determining development for ONE nation.



- Identify synergies within each Land Trust Land Use Plan
- Create Land use zones, use and development codes to reflect the synergies.
- Create Precinct plans to address unique uses or impact parameters to each Land Trust

Figure 2 – Planning at local government level that reflects the aspirations of the communities.

In conclusion I think that the planning system that affects development decisions on Indigenous owned lands and waters must be decided and created at the level that it is to be delivered. It is essential that any and all land use planning systems that influences development on Indigenous owned lands and waters addresses (Matunga 2013): cultural protection and enhancement; political autonomy and advocacy; environmental quality and quantity; social cohesion and wellbeing, and economic growth and distribution. It is also essential that the planning process that underpins the final plan considers the people, the place, the land cover attributes and the land uses. Moreover, land tenure reform (if at all) can only come AFTER these values have been identified and protected and enhanced. It is far too simplistic to think that economic development for Indigenous people will only come with tenure reform to Freehold status and subsequent home ownership.

Finally, the comments provided within this submission are those of the author and do not necessarily represent the views of James Cook University. Please contact the author, Dr Sharon Harwood directly should you wish to discuss the contents of this submission.

Regards

Dr Sharon Harwood