

Wednesday 5 March 2014

Committee Secretary
Joint Select Committee on Northern Australia
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Canberra ACT 2601

By email: jscna@aph.gov.au

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RE: Inquiry into the Development of Northern Australia

Many thanks for your invitation of 20 January 2014 to make a submission to this Inquiry. As noted in earlier correspondence your original deadline of 17 January 2014 was extremely tight given existing commitments, so as agreed I now attach a submission prepared with Francis Markham provided to an extended submission date.

If further information is required please do not hesitate to get in touch

Yours sincerely

Attached: Inquiry into the Development of Northern Australia: A submission by Jon Altman and Francis Markham, The Australian National University, Canberra.

Inquiry into the Development of Northern Australia
A submission by
Jon Altman and Francis Markham
The Australian National University, Canberra

Our submission focuses on the Indigenous interest in the development of Northern Australia, while at the same time recognising that in today's interconnected and intercultural world Indigenous and non-Indigenous interests are very clearly interconnected, sometimes in harmony, sometimes in conflict. Nevertheless there seems to be a legitimate public policy rationale for focusing specifically on Indigenous interests including that Indigenous people own much of Northern Australia especially under land rights and native title laws and that they constitute a significant and growing proportion of the Northern Australian population. Historically the settler colonial development of the north has largely excluded Indigenous people so that today there are significant discrepancies in the socioeconomic status of Indigenous and other Australians evident everywhere in Australia but especially in remote and very remote Australia, the Australian Bureau of Statistics' geographical categories that encompass Northern Australia. In the context of today's dominant Indigenous policy paradigm of Closing the Gap one has to ask what prospects are there that the development of Northern Australia will contribute to this objective?

In this submission we seek to focus on three issues, land, people and resources that are of critical importance to the development of Northern Australia. In the last 12 months we have collaborated in a research project that has looked to use official information and GIS techniques to map Indigenous land in Australia and then to overlay this map over other information on population available in the census and natural resource endowments publicly available from a diversity of Commonwealth government agencies (see Data sources at end). In this submission we reproduce some of these maps focusing on the geographic jurisdiction Northern Australia as delineated by the Tropic of Capricorn.

Before turning to our maps and evidence-based commentary we want to make three broad opening observations.

First, we commend the major study by the Land and Water Taskforce *Northern Australia Land and Water Science Review 2009* to the Joint Select Committee on Northern Australia; we note that the Australian Academy of Science does likewise. While this comprehensive study of 1100 pages was never published in hard copy it remains available electronically with chapter summaries of particular value.¹ We partly note this as an intellectual disclosure of interest because one of us (Altman) was the lead author of *Chapter 7 Indigenous interests in land and water*.² We highlight this report and our specific chapter because we believe that despite its publication some four years ago it represents a significant summary of state of the art science and development thinking about Northern Australia.

¹ See http://www.regional.gov.au/regional/ona/nalwt_files/337388_NLAW_Review_2009.pdf accessed 28 February 2014.

² available at http://www.regional.gov.au/regional/ona/nalwt_files/Chapter_07-Indigenous_interests_in_land_and_water.pdf accessed 28 February 2014.

Second, we would like to emphasise that in our view the summary observations we make at pages 48–49 of Chapter 7 remain as relevant today as in 2009. In particular, we would like to emphasise the following summary point paraphrased from page 48: The delivery of sustainable benefit to Indigenous stakeholders will require recognition of the diversity of Indigenous circumstances and aspirations. The hybrid economy framework, inclusive of the customary or non-market sector, can help to identify current and potential opportunities for Indigenous economic development. Targeted resources are required for detailed place-based or regional studies that identify Indigenous peoples' needs and aspirations and establish the potential for sustainable expansion of activities where Indigenous actors enjoy comparative advantage. The diversity of Indigenous economic activities and interests need to be recognised and accommodated in any development planning for Northern Australia.

Third, focusing specifically on the Inquiry's Terms of Reference we note a tendency to interchange the words 'development' and 'growth'. In our view these two words connote very different concepts and a clear distinction is needed between them. Economic growth is generally associated with ever-expanding production converted to dollar terms and as measured by quantitative statistical indicators like gross domestic product in this case at the regional Northern Australia level. Such measures, unfortunately, also quantify the exploitation and depletion of non-renewable natural capital as a positive contributor to growth. Economic development on the other hand is a far more contested concept. As Edelman and Haugerud note in their introduction to *The Anthropology of Development and Globalization*³ development is an unstable term with many meanings. It connotes improvement in wellbeing, living standards and opportunities, but also refers to historical processes of commodification, industrialisation, modernisation and globalisation. Of particular importance is its qualitative focus on wellbeing that can be harmed by the negative impacts of resource extraction on cultural and environmental landscapes, even as GDP grows.⁴

The tension between these terms can be conceptually mediated by the emerging sub-discipline of ecological economics that holistically embeds economy in society in the environment. Ecological economics reminds us that in today's world of uncertainty about the environmental sustainability of market capitalism it might be sensible to employ heterodox approaches and techno-skepticism; to consider carefully the relationship between human and non-human worlds; to address questions of equity and environmental justice; to vigilantly deploy the precautionary principle; and to set a proper price on extraction, especially if risks are high. As ecological economist Joan Martinez-Alier observes all too often the real social and cultural costs of resource extraction, abstractly referred to as negative externalities, are shifted to the poorest and least powerful⁵, in the Northern Australia context, Indigenous people. We mainly make this comment because the Inquiry's first term of reference seems to focus unduly on extractive industries (tourism and defence aside) with emerging industries like the provision of environmental service and the production of ecological

³ Edelman, M. and Haugerud, A. (2005) (eds) *The Anthropology of Development and Globalization*, Blackwell Publishing, Oxford, UK.

⁴ This issue is discussed at greater length in Altman, J.C. (2011) 'The Draft Indigenous Economic Development Strategy: A Critical Response, CAEPR Topical Issue No. 3/2011 available at: http://caepr.anu.edu.au/sites/default/files/Publications/topical/TI2011_3_Altman_IEDS_Response.pdf accessed 28 February 2014.

⁵ Martinez-Alier, J. (2002) *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*, Edward Elgar, Cheltenham, UK.

services like fresh water, clean air and carbon abatement and sequestration relegated to ‘other industries’.

We turn now to a series of empirical observations that bifurcate Australia into Northern Australia and the rest of Australia to conform to the Joint Select Committee’s terms of reference. Some of the maps and tables reproduced are updates of information that we provided in Submission No. 25 to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Native Title Amendment Bill 2012.⁶

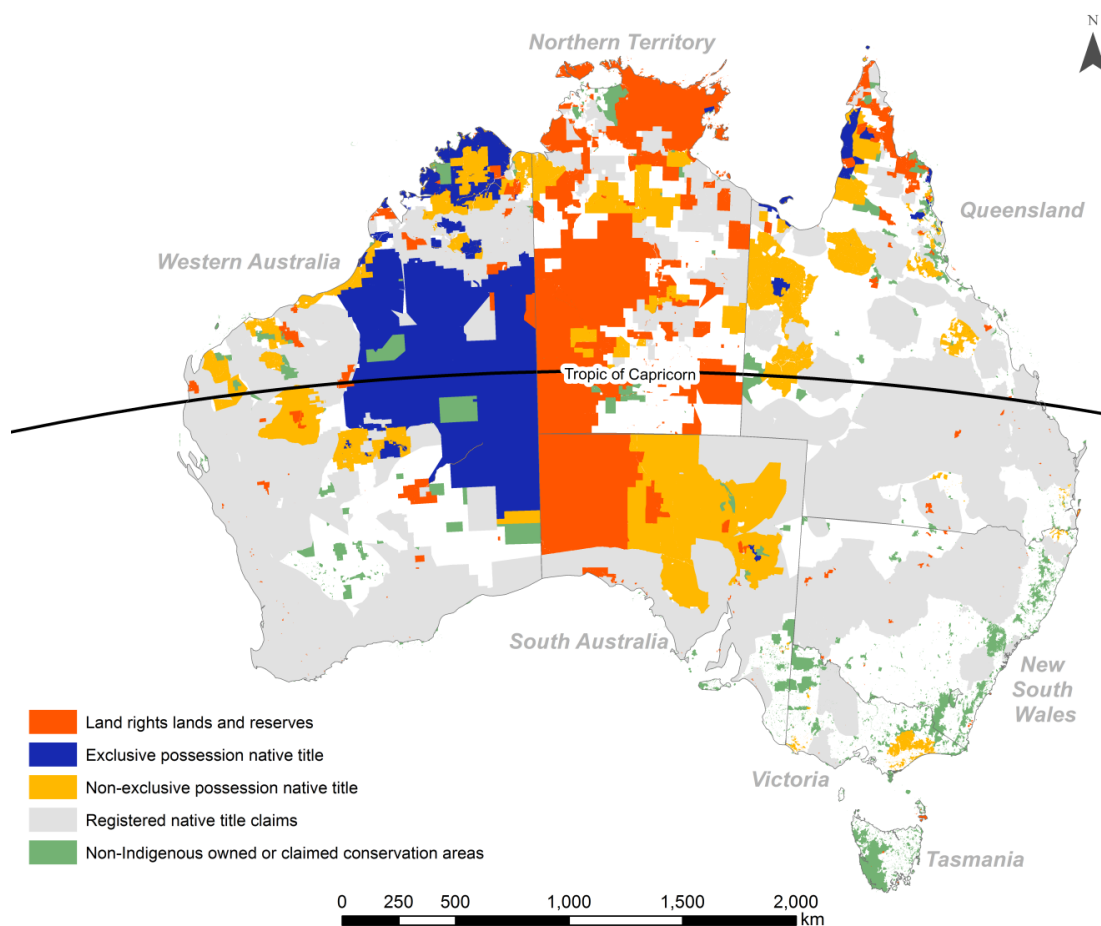


Figure 1: Indigenous land interests under three tenures.

In Figure 1 we show the extent of Indigenous land interests at 31 December 2013 in Northern Australia. We distinguish three principle forms of Indigenous tenure, land rights and native title exclusive and non-exclusive possession. As a general rule property rights are most clearly defined and strongest in the first, land rights, especially in the Northern Territory where traditional owners are afforded free prior and informed consent rights. Property rights are weaker in land where native title has been determined exclusive and weaker again in areas of non-exclusive or shared

⁶ Available at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/native%20title%20bill/subs/sub%20025.pdf accessed 28 February 2014.

native title rights. We refer to these three forms of tenure as lands of confirmed Indigenous interest. This map includes land claimed or scheduled under land rights law (an estimated 969,000 sq km), 92 determinations of exclusive possession totaling 752,000 sq km and 142 determinations of non-exclusive possession totaling 825,000 sq km. These three categories total 2.5 million sq km or roughly 33 per cent of terrestrial Australia.

Lands of confirmed Indigenous interest are spatially concentrated in Northern Australia. Northern Australia itself accounts for 39 per cent of the Australian continental landmass. More significantly, as shown in Table 1, lands of confirmed Indigenous interest account for 48 per cent of the 3 million sq km of Northern Australia.

Figure 1 also provides information about Indigenous land interest in over 300 native title claims registered with the National Native Title Tribunal. The outer boundaries of these claims cover 3.2 million sq km but recent history indicates that determinations, especially of non-exclusive possession, rarely include the entire claim area. Again focusing on Northern Australia, information in Table 1 shows that Indigenous lands interests in Northern Australia could expand to nearly 76 per cent in the unlikely event that native title were determined to exist for the spatial entirety of all claims. Registered native title claims entail a number of legal rights pre-determination, in particular the right to negotiate about the granting of exploration licenses, the granting of mineral leases and compulsory acquisitions.

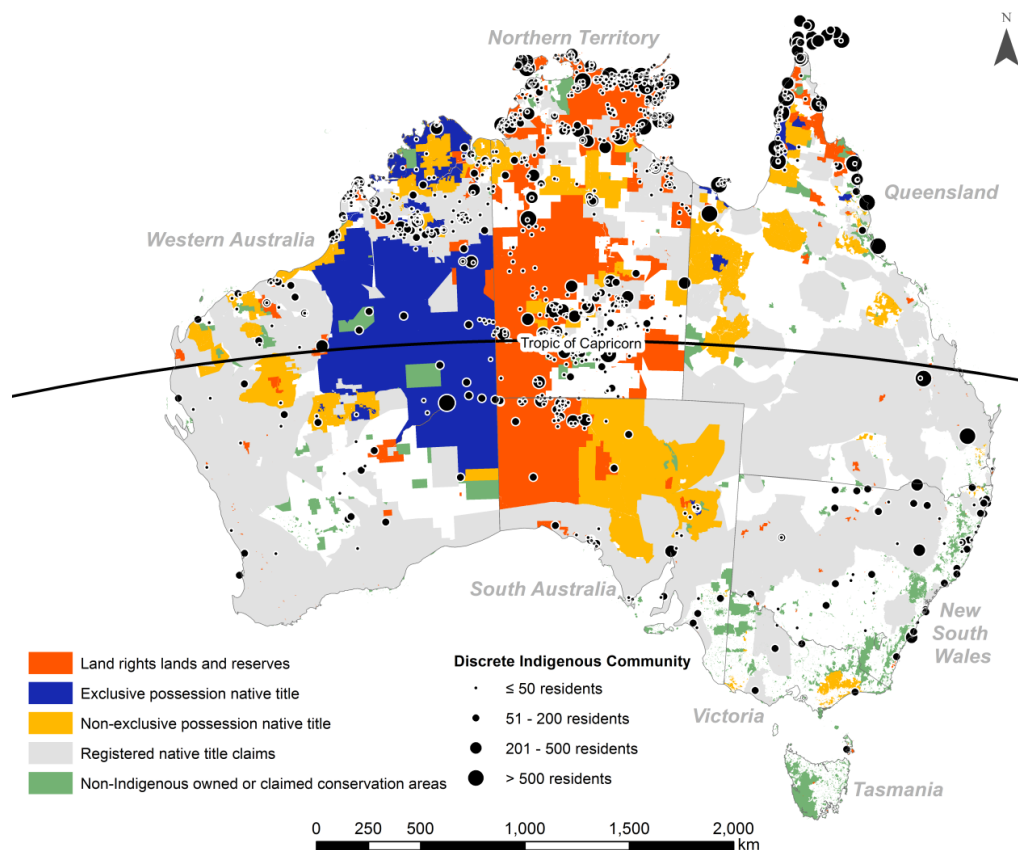


Figure 2: Discrete Indigenous communities (2006) on Indigenous lands

Turning now to population, according to the 2011 Census Northern Australia is home to 1,055,000 people (4.7% of Australia's population), 159,000 (15.0%) of whom are Indigenous accounting for 24

per cent of Australia's total Indigenous population (666,000 people). Figure 2 shows the distribution of discrete Indigenous communities according to the latest available data from the Community Housing and Infrastructure Needs Survey (CHINS) conducted in 2006 by the ABS. While these data are eight years old they are the best available; they indicate 1187 discrete Indigenous communities in Australia, with 989 either on or within 1 km of Indigenous land. Discrete Indigenous communities are concentrated in Northern Australia, with 73 per cent of Indigenous communities located north of the Tropic of Capricorn. The vast majority of Northern discrete Indigenous communities are also in close proximity to Indigenous-owned land, with 87 per cent of Northern communities located on or near Indigenous-owned land, compared with 74 per cent for the rest of Australia.

In Table 1 we summarise information from the previous two maps. There are some cross-tabulations between land and population that are of development significance. First, while it appears that Indigenous people only constitute a small proportion of the population holding much land, in reality they constitute a far more significant proportion of the non-urban population, over 70 per cent in the Northern Territory. Second, the proportion of the population that is Indigenous varies markedly depending on form of tenure. On land held under land rights law and where exclusive possession native title is determined, the Indigenous share of the population is over 80 per cent. On the other hand where land is determined non-exclusive native title the Indigenous share of the population drops to 25 per cent; and where there are registered claims the proportion is 11 per cent. Depending on what form determinations take might influence the proportion of the population that is Indigenous and this has clear ramifications for what form development might take, especially where land owners have a right to determine access.

Table 1: Indigenous land interests and population

	Area (km ²)	Area (%)	Population	Indigenous population	% population Indigenous
Northern Australia	3,004,451	100.0	1,055,304	158,565	15.0
Land rights & reserves	592,829	19.7	56,031	48,796	87.1
Exclusive possession NT	443,458	14.8	10,969	8,939	81.5
Non-exclusive possession NT	405,213	13.5	7,076	1,788	25.3
Registered claims	831,637	27.7	355,156	38,990	11.0
Non-Indigenous owned or claimed conservation areas	79,935	2.7	5,641	1,084	19.2
Remainder of Northern Australia	651,378	21.7	620,431	58,969	9.5

Overlaps removed between tenure types to ease interpretation. Population estimates derived from 2011 ABS estimated resident populations pro-rated using Mesh Block and SA1 census count weights.

In the following set of maps we look to explore the resource endowments of Northern Australia at a very macroscopic scale. Each map has continental coverage and uses official information publicly available from government agencies (see Data Sources at end). But in each case we do two things. First as in earlier maps we distinguish Northern Australia from the Rest of Australia using the Tropic of Capricorn as the divider. And second we provide a template of what we term Indigenous land interests (land rights and determinations of exclusive and non-exclusive possession) and overlay this over a series of resource maps.

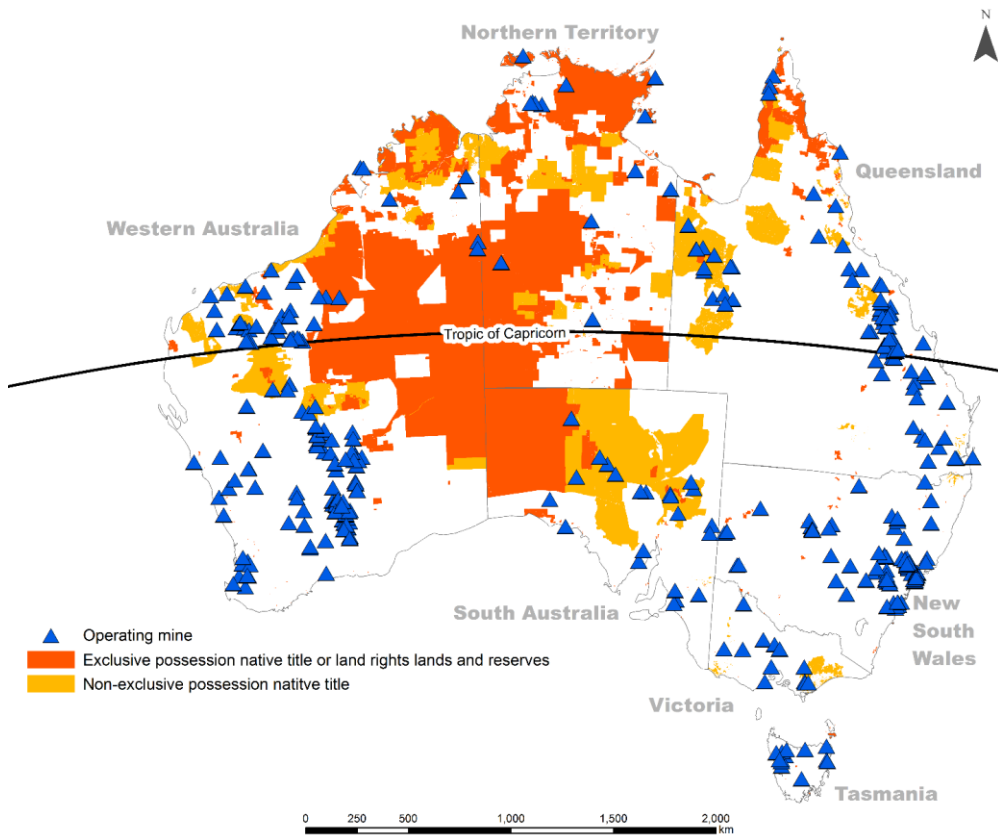


Figure 3: Operating mines (2013) and Indigenous land interests

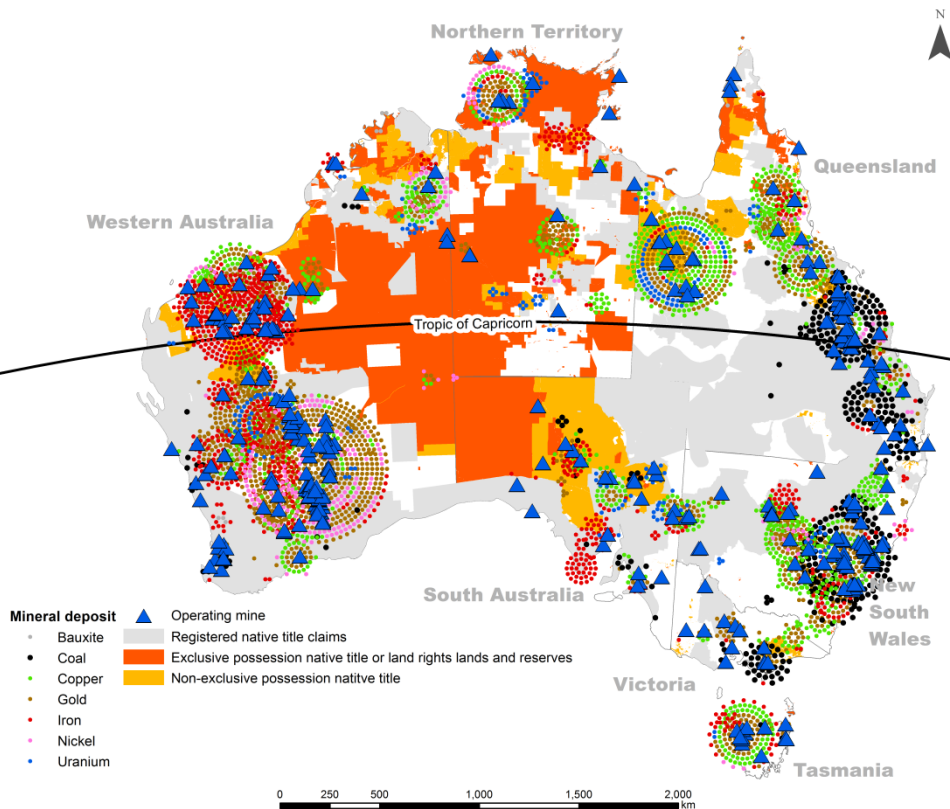


Figure 4: Operating mines, known mineral deposits (2013) and Indigenous land interests

Figure 3 (above) shows some metadata from 2013 on currently operating mines. Mines are under-represented in Northern Australia. Just 30 per cent of operating mines in Australia (118 of 399 mines) are located in Northern Australia, although Northern Australia accounts for 39 per cent of Australia’s terrestrial area. Northern Australian mines are mostly located in areas where Indigenous exclusive land ownership is less extensive, such as the Pilbara, and South Eastern and Western Queensland.

Mineral deposits metadata (Figure 4) tend to follow the same spatial pattern with some key mineral basins evident, mainly on land where there is limited Indigenous exclusive land ownership. In this figure we also show areas of registered native title claims to indicate that procedural rights to negotiate might be triggered in these jurisdictions. There is possibility that Indigenous lands are prospective but that they have been under-explored compared with more settled areas, even of Northern Australia.

Figures 5, 6, 7 and 8 focus on environmental values.

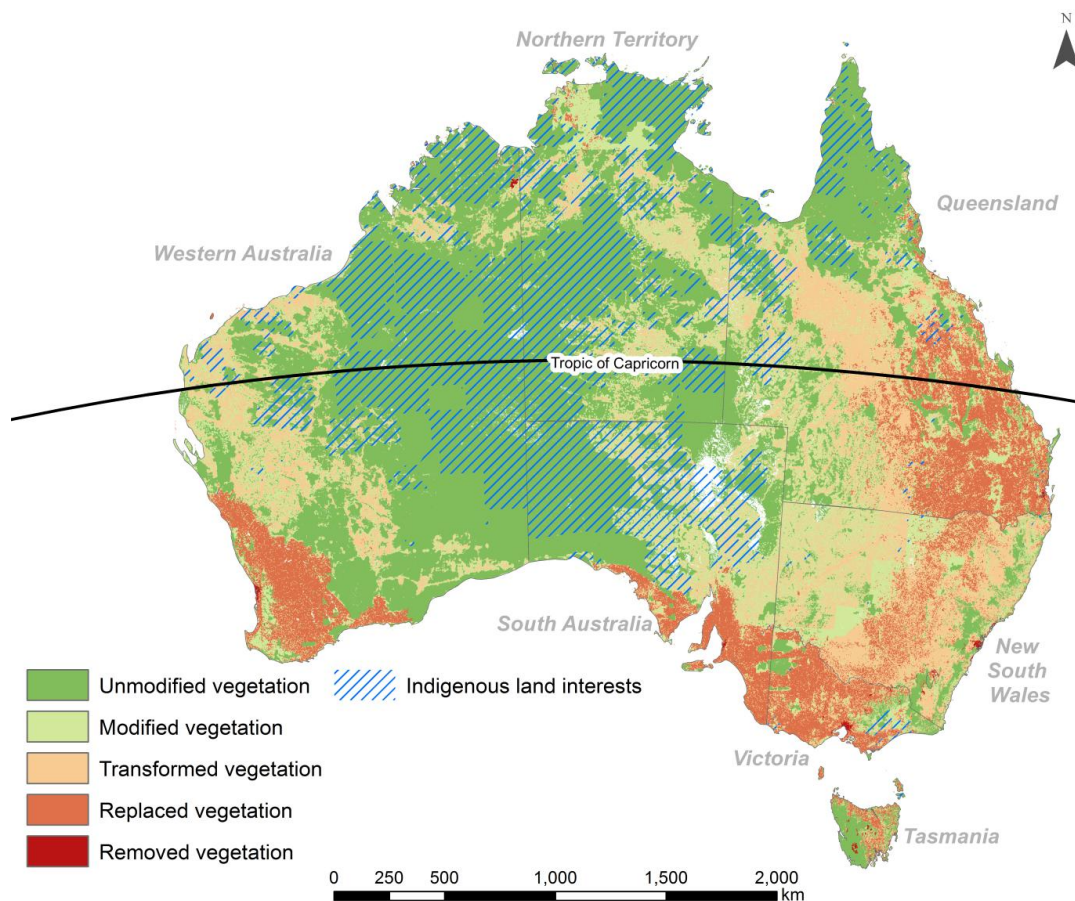


Figure 5: Vegetation condition (2006) and Indigenous land interests

Figure 5 (above) shows that except in eastern Queensland the vegetation of much of Northern Australia is relatively intact. This can be interpreted as a consequence of little intensive development. Intense development and population concentration as Figure 5 shows are usually linked to removed, replaced or transformed vegetation. Importantly, some of the least modified

vegetation in Northern Australia is evident on today's Indigenous land mainly because historically this has been land of low agricultural (and hence commercial) value.

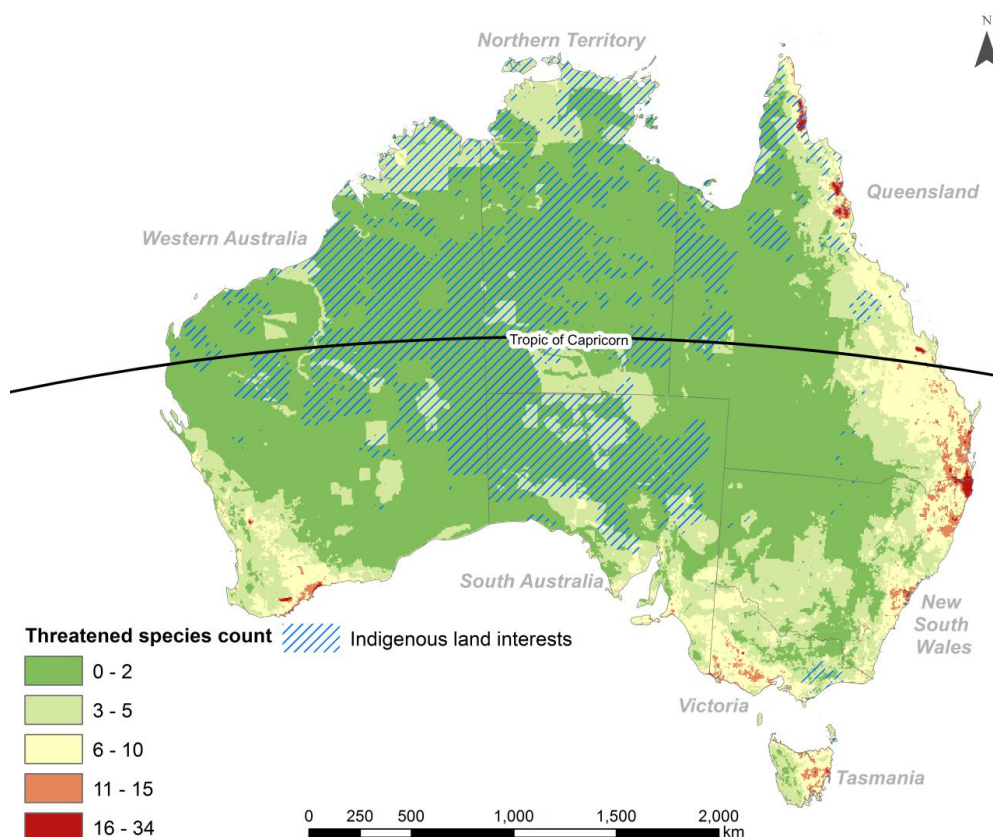


Figure 6: Threatened species count (2008) and Indigenous land interests

Figure 6 tells a similar story this time focusing on threatened species counts. We again emphasise that in this exercise we are using official statistics that many reputable biological scientists would challenge. Nevertheless the same pattern emerges. First, threatened species counts are lower in Northern Australia. And second threatened species on areas of Indigenous land interest are lower again. As a general rule the greater human population density and the intensity of land use the higher the threatened species counts.

Figure 7 illustrates the condition of the riparian zones of rivers so crucial to biodiversity and water quality. What is very clear from this map is that the condition of riparian zones in the tropical regions of Northern Australia show relatively low river disturbance in marked contrast to the high river disturbance evident in the south east and south west of Australia, especially along the Murray Darling system. Much Indigenous land is in desert Australia where questions of riparian condition are largely irrelevant, but what is clear is that the riparian condition of rivers on Indigenous lands is relatively undisturbed although this is not to suggest in any way that these jurisdictions are threat free.

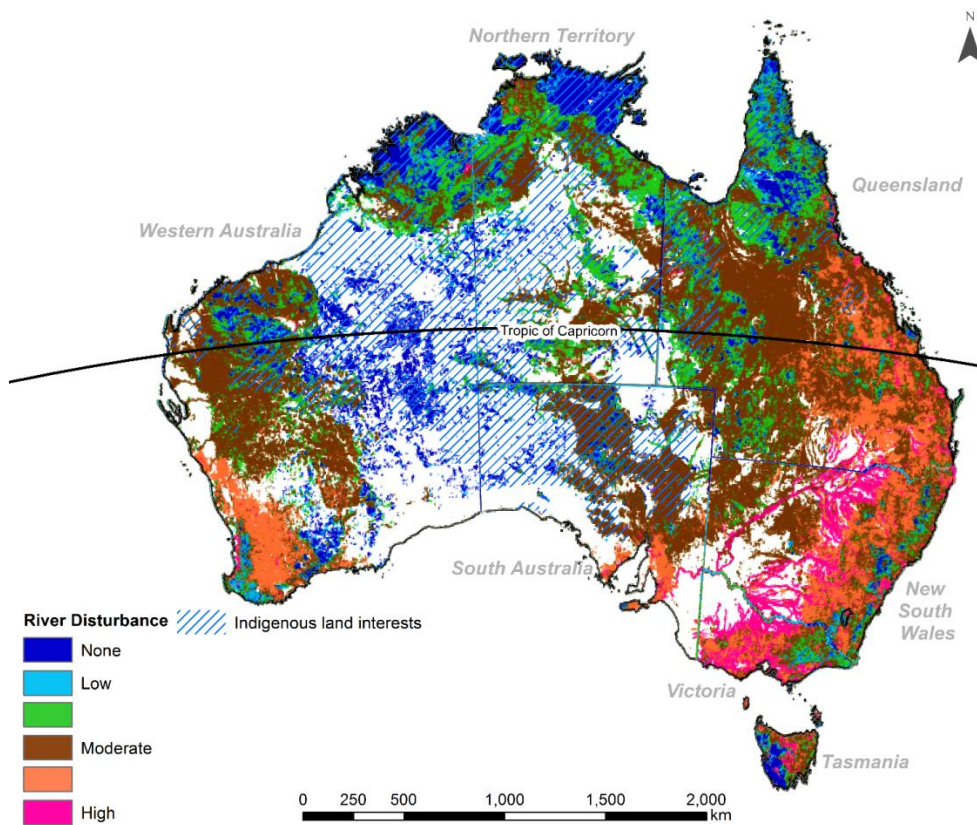


Figure 7: River disturbance (2002) and Indigenous land interests

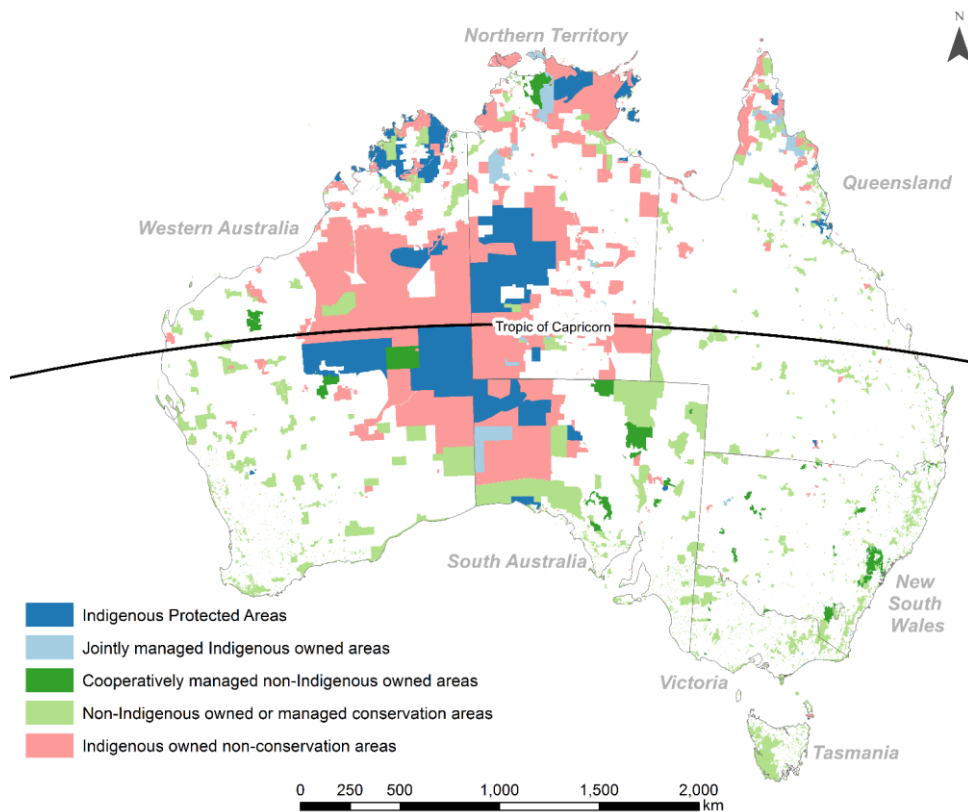


Figure 8: Indigenous and national conservation lands (2013).

The environmental value of Indigenous land is seeing more and more incorporated into the Australian National Reserve System (the conservation estate) especially since the mid-1990s. In 1996 the Howard Government established an Indigenous Protected Areas program that allows traditional owners of land to enter agreements with the Australian government to promote biodiversity and cultural resource conservation. Environmental agencies are keen to expand the conservation estate cost effectively, while traditional owners are keen to either maintain the environmental and cultural values of their land or actively engage in their rehabilitation where damaged by postcolonial invasive threats including feral animals and exotic weeds.

Figure 8 (above) shows the extent of this coverage, there are currently 60 protected areas declared covering 15.5 per cent of the Australian land mass, while a further 170,000 sq km of the conservation estate is either jointly managed Indigenous land or co-managed by traditional owners on state land. Spatial information is currently available for 58 Indigenous Protected Areas; it shows that 26 out of 58 declared Indigenous Protected Areas are in Northern Australia with an acreage of 51 per cent of the total. What is significant about this figure is that there is potential for much more Indigenous land to be included in the conservation estate if traditional owners so wish as Indigenous Protected Areas, jointly managed areas or cooperatively managed areas especially where there is non-exclusive native title determination.

Analysis and recommendations

Our submission is largely positivist and seeks to assist the Inquiry into the development of Northern Australia with information on land tenure, populations and resources. We end with a few interpretative observations for consideration by the Joint Select Committee on Northern Australia bearing in mind that 48 per cent of Northern Australia is under some form of Indigenous tenure and that this proportion is likely to increase. We also provide several generic rather than specific recommendations.

- 1 History tells us that any development of Northern Australia will be slow and difficult and increasingly complex as diverse stakeholder groups use available political institutions, lobby groups and social movements to articulate their views on development, itself a highly contested notion. The size, remoteness and climatic inhospitability of much of Northern Australia results in it being uncompetitive in many industries and only competitive in some. The challenge to 'develop the North' is likely to increase as market and political imperatives combine to see a shift to rigorous commercial assessment of opportunity and less direct and indirect taxpayer subsidy of northern industry. The decisions by Woodside to abandon plans for a major LNG project at James Price Point and by Rio Tinto Alcan to mothball its alumina refinery at Gove are instructive in this regard.
- 2 At present legal Indigenous land interests cover nearly half of Northern Australia and this proportion is set to expand. This suggests that whatever form development takes in Northern Australia it will need to be carefully negotiated with land owners. We make two observations here. First, Indigenous land owners enjoy differential property rights across Northern Australia ranging from the free prior informed consent rights enjoyed under Northern Territory Land Rights law to far weaker rights of consultation afforded those with non-exclusive native title determination. It is likely that there will be growing political pressure from Indigenous stakeholders for property rights to be strengthened as

demonstrated in the Wild Rivers debate in Cape York in recent years. Second, the need to negotiate with traditional owners suggests that there is a critical and growing role for Land Councils, Native Title Representative Bodies and Prescribed Bodies Corporate in representing land owners in dealings with often powerful corporate and state interests. **It is recommended** that Indigenous property rights are strengthened across Northern Australia to the minimum standard of free prior informed consent that accord with the UN Declaration on the Rights of Indigenous Peoples and that additional resources be earmarked to enhance the capacity of Indigenous mediating institutions.

- 3 Much of the recent development debate in Australia has been limited to a focus on mining and commercial agriculture versus conservation and environmental services industries. In some cases these are seen as embodying a tradeoff especially in iconic places like Kakadu National Park where coincidentally the Ranger Uranium Mine is currently closed due to a toxic spill. Australia's current high dependence on mineral commodity exports is over-influencing national discourse on ecologically sustainable development options. The exhaustive Land and Water Taskforce report of 2009 that we refer to above made two things quite clear. First in terms of gross acreage mineral extraction leaves a limited footprint, although this is clearly influenced by the nature of mineral extraction and processing. Second, Northern Australia constitutes a series of niches where particular industries enjoy comparative advantage be it mining, agriculture, pastoralism, tourism, carbon farming or the production of ecological services. Over twenty years ago, in 1991, Australia addressed the question of a National Strategy for Ecologically Sustainable Development through an intergovernmental process. We seemed to have addressed such issues of national importance in a more sanguine manner in those days; **it is recommended** that the concept of ecologically sustainability inform any plans for development in Northern Australia.
- 4 A cursory glance at our maps indicates that Northern Australia is in far better environmental shape than the more developed south east and south west of the continent. Arguably environmental degradation in these regions was due to the absence of scientific information about the adverse impacts of over-exploitation and the absence of appropriate regulatory institutions. This is very apparent, for example, in the over-allocation of fresh water in the Murray Darling Basin region. As the Academy of Science notes in its submission, and we concur, there is considerable historical and comparative scientific information that should inform any development strategies for Northern Australian. While there is an adage that suggests that 'history shows that we do not learn from history' this needs to be seriously challenged to ensure that we learn both from the southern experience and historical failures like Humpty Doo rice project. It would be counter to the national (and global) interest if the mistakes of Southern Australia were replicated in Northern Australia. **It is recommended** that this Inquiry (and the development of a White Paper this year) properly engage with available science; and that where there is uncertainty, the precautionary principle is deployed.
- 5 We note much debate in public and policy discourse about the purported impediments created by statutory forms of Indigenous land tenure, most recently articulated by Adam Giles, MLA the Chief Minister of the Northern Territory in his Ministerial Statement Indigenous Economic Development on 12 February 2014. In our view such institutional barriers are often highly abstracted and generalized rather than real. It is important to note what has been achieved in terms of natural and cultural resource management under

restricted common property regimes that would have been impossible with individualized freehold tenure. What are regarded as an impediment or weakness by some stakeholders might be regarded as strengths by others. Hence land rights allow traditional owners to control what happens on their land and to amalgamate lands into environmental commons as Indigenous Protected Areas. In some regions like Arnhem Land more jobs have been created for local people in provision of environmental services than in mining and mineral processing at major mines. **It is recommended** that proper account is taken of the environmental benefits of land rights and native title alongside any benefits that might accrue to land owners from mining and other forms of intensive commercial land use.

6 Finally as we noted at the outset it is important that we do not conflate progress and development with economic growth; and that we broaden our notions of what constitutes development. As Robert Costanza and his colleagues have recently argued in January 2014 that such indicators are dangerously inadequate as measures of quality of life.⁷ In the Indigenous policy context there is an over-arching focus on statistical social indicators and Closing the Gap as the comparative means to measure progress. But there is a real possibility that such measures might improve at a national level while Indigenous people's wellbeing declines at a regional or local level. **It is recommended** that place based approaches to economic development planning are adopted that highlight both realistic assessment of production possibilities based on the theory of competitive advantage and Indigenous aspirations in all their diversity.

Data sources

Land rights data courtesy of Northern Territory Department of Lands, Planning and Environment; Queensland Department of Natural Resources and Mines; South Australian Department of Planning, Transport and Infrastructure; Victorian Department of Sustainability and Environment; Western Australian Department of Indigenous Affairs; Geoscience Australia; Indigenous Land Corporation; PSMA Cadlite. Native title determination and registered claims data courtesy of the National Native Title Tribunal. Discrete Indigenous Communities data courtesy of the Australian Bureau of Statistics and the former Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs. Conservation area data courtesy of the Commonwealth Department of the Environment. Population statistics are derived from the Australian Bureau of Statistics Estimated Resident Population 2011 Census. Mine and mineral deposit data are courtesy of Geoscience Australia. Vegetation condition data are courtesy of Bureau of Rural Sciences. Threatened species estimates are courtesy of the Commonwealth Department of Agriculture, Forestry and Fisheries. The River Disturbance Index, developed by Stein, Stein and Nix⁸ was provided the Commonwealth Department of Environment. Indigenous Protected Area data was provided by the Commonwealth Department of Environment. Joint- and co-managed area data were constructed by the authors based on a variety of sources, primarily provided by the Commonwealth Department of Environment and the Australian Institute of Aboriginal and Torres Strait Islander Studies.

⁷ Costanza, R. et al. (2014) 'Time to leave GDP behind', *Nature*, volume 505, pp. 283–285 available at: <http://www.nature.com/news/development-time-to-leave-gdp-behind-1.14499>

⁸ Stein, J.L. Stein, J.A. and Nix, H.A. (2002) 'Spatial analysis of anthropogenic river disturbance at regional and continental scales: identifying the wild rivers of Australia', *Landscape and Urban Planning* volume 60, pp. 1–25.