

Cape York – Context and Consultation

Geo-economic context

- 2.1 Cape York, subject to current declared wild river areas, receives a tropical monsoonal climate that is characterised by a long, warm to hot dry season, and a shorter hot, humid, and intensive wet season, every year. This annual monsoon season is a major constraining factor on Cape York as it impacts on travel and many economic and social activities. It isolates most properties and communities for approximately four to five months due to flooded and boggy roads and air travel and freight can also be curtailed due to boggy airstrips and/or intensive thunderstorm activity. Delivery of food and mail supplies is regularly disrupted to virtually all areas.¹

Topography, soil and water

- 2.2 Extensive annual flooding during the ‘wet’ is normal for all watercourses on Cape York. In the lower parts of many catchments, floodwaters may extend for many kilometres across expansive flood plains. Other low lying or poorly drained areas also typically become seasonally inundated for many months.²
- 2.3 Balkanu Cape York Development Corporation Pty Ltd advised that broad scale irrigation is limited as there are few areas of arable soil on Cape York suitable for large scale irrigation, and added that the Commonwealth Scientific and Industrial Research Organisation (CSIRO) has identified that there are some areas on the west of Cape York with soils suitable for

1 Australia Zoo, *Submission 30*, p. 1.

2 Australia Zoo, *Submission 30*, p. 1.

irrigation, but that water supply is not likely to be sufficient to support irrigated crops in much of the area.³

- 2.4 Most of the topography west of the divide on Cape York is very flat and unsuitable for dams. The east side flows into the Great Barrier Reef world heritage area and therefore any proposal to impact on the flow of a river would be subject to Commonwealth legislation.⁴

Transport and infrastructure

- 2.5 Cape York's lack of development can make access to available services difficult. Roads are overwhelmingly classified as minor and unsealed,⁵ and only one Weipa airport has a scheduled service.⁶
- 2.6 The condition of Cape York's main road, the Peninsula Developmental Road, remains a barrier to development as repairs can only be made in the dry and, like other roads, it is inaccessible during the wet season. The region's tourism website advises that:
- When accessible OPEN to local large 4WD vehicles only - dirt road
- 4WD vehicles recommended. Conditions change with heavy rain
- road subject to closure. Drive according to prevailing conditions.
Dirt road can be slippery and boggy when wet.⁷
- 2.7 Mobile phone and internet coverage are available in most settled areas of the Cape, but beyond that, satellite phones are necessary due to the remoteness created by vast uninhabited distances.⁸
- 2.8 The majority of Cape York's communities rely on major diesel power generation systems with only the townships in the far south-east of the region connected to grid power.⁹
- 2.9 Under the Council of Australian Governments (COAG) Nation Building Program the Queensland and Commonwealth Governments have committed \$30 million to seal the Peninsula Developmental Road, the Wills Developmental Road, and upgrade remote community roads.

3 Balkanu Development Corporation, *Submission 6:1*, p. 6.

4 Balkanu Development Corporation Pty Ltd, *Submission 6:1*, p. 6.

5 Department of Infrastructure, Transport, Regional Development and Local Government, Northern Australia Statistical Compendium, s.l. Commonwealth of Australia 2009, p18. Cited by the Wild Rivers Interdepartmental Committee, *Submission 31*, p. vi.

6 Wild Rivers Interdepartmental Committee, *Submission 31*, p. vi.

7 <http://www.cooktownandcapeyork.com/roads#section> - Accessed 7 April 2011.

8 Cape York Sustainable Futures, *Submission 27*, p. 2.

9 Cape York Sustainable Futures, *Submission 27*, p. 2.

- 2.10 \$15 million of this is allocated to the Peninsula Developmental Road which is due for completion in late 2011, weather permitting.
- 2.11 Although expensive to construct, reliable, adequate, efficient and consistent transport systems are essential for significant business and industry development.¹⁰ The impact road upgrades can have is to be seen in the increased agricultural activity at Lakeland Downs and increased visitation and economic development activity in Cooktown since sealing of the Mulligan Highway was completed. Building approvals have jumped by some 150% in the period since, while some statistics indicate a jump in visitor numbers in the order of 40%.¹¹

Recommendation 2

- 2.12 **The committee notes the economic benefit of major infrastructure and investment programs and recommends that the Queensland and local governments in Cape York work with Infrastructure Australia and Regional Development authorities to progress these programs.**

Recommendation 3

- 2.13 **The committee further notes the Indigenous training and employment benefits of major infrastructure and investment programs and recommends that Queensland and Australian Governments ensure these opportunities are maximised.**

Land Tenure

- 2.14 The inalienable status of the variety of Indigenous land tenures recognises the communal nature of Indigenous land and of Indigenous peoples' historical and ongoing connection to and responsibility for that land. It also recognises the spiritual, cultural, social and health benefits of maintaining that connection through continuing presence and through structures of authority and responsibility. However the notion of inalienability is inherently at odds with the nature of "freehold land",

10 Cape York Indigenous Employment Strategy, November 2005. Kleinhardt-FGI Pty Ltd/Business Mapping Solutions Pty Ltd. *Committee exhibit*, p. 22.

11 The Cape York Peninsula Regional Economic & Infrastructure Framework Report 2007, *Committee exhibit*, p. 6.

which, as well as being of significant value as an economic asset, can also be alienated from its owner – i.e., allows the owner to sell the assets and access the embedded economic value.

- 2.15 Indigenous land holding arrangements in Queensland primarily consist of Indigenous Deed of Grant in Trust (DOGIT) land. This is land granted as fee simple in trust under the *Land Act 1994* or the *Land Act 1962* (repealed) for the benefit of Indigenous inhabitants or for Indigenous purposes. Indigenous Shire Councils are the trustees of Indigenous DOGIT under the *Land Act 1994*, and may grant leases for public and private housing, and economic purposes under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* (Qld). There are 31 Indigenous communities on DOGITs in Queensland.¹²
- 2.16 A significant number of individual perpetual leases have also been granted throughout remote Indigenous townships under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (LHA), primarily located in Cape York.¹³
- 2.17 Commercial investors and banks require secure tenure for loans and business investments, and the COAG Closing the Gap National Partnership Agreements (NPAs) for Remote Indigenous Housing and Remote Service Delivery require secure land title to underpin government investment. Under these NPAs the Queensland Government committed to reform land tenure and administration to facilitate commercial investment and home ownership on Indigenous land.¹⁴
- 2.18 Consistent with these commitments, the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* were amended to allow long term leasing (up to 99 years) of Indigenous land for private residential and commercial purposes.¹⁵
- 2.19 The Queensland Government is also taking steps to improve land administration in Indigenous communities. It has established an interdepartmental agency, the Remote Indigenous Land and Infrastructure Program Office, to develop land administration systems in remote Indigenous communities. This includes, for each community, surveying the land, establishing statutory town planning schemes to guide land use and development, negotiating Indigenous Land Use Agreements

12 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 24.

13 Wild Rivers Interdepartmental Committee, *Submission 3*, p. 24.

14 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 24.

15 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 24.

to facilitate social housing and private leasing, and negotiating leases to secure government investments. This work is ongoing.¹⁶

- 2.20 Given that Aboriginal Shire Councils have a significant role in leasing and town planning functions, the Queensland Government through its Department of Environment and Resource Management (DERM) has established the Indigenous Land Trustee Service Support Unit to help build the capacity of Aboriginal Shire Councils to undertake their functions relating to private residential and commercial leasing. As well, Queensland's Department of Communities is developing programs and policies to support home ownership on Indigenous lands, including determining methods for the valuation of leased lands. It released a discussion paper on this topic in November 2010.¹⁷
- 2.21 Both the Commonwealth and Queensland Governments are addressing the economic barrier that inalienability creates by working to establish long term leasing provisions which protect and acknowledge underlying title and facilitate opportunities for home ownership and commercial development under relevant legislation. They are also supporting local government councils to capacity build their expertise in land administration and planning.

Industry sectors

Minerals and Mining

- 2.22 Cape York consists of four main geological regions with differing mineral prospectivity. They are the Carpentaria, Cohen, Quinkan, and Cairns regions.¹⁸
- 2.23 Weipa and Cape Flattery are the two major mining operations in Cape York. In 2006, Rio Tinto Alcan (RTA) contributed \$364 million to the Weipa economy, representing 77 per cent of Weipa's total economic output.¹⁹
- 2.24 Mining growth will depend on global demand, financial markets and a range of local factors. These include water availability, energy supply,

16 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 25.

17 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 25.

18 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 10.

19 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 14.

available skills, transport and infrastructure development, relationships with Indigenous communities, access to land, and government policy and incentives.²⁰

- 2.25 The mining industry has played a significant role in supporting Indigenous people across Australia through employment and cultural recognition programs and the payment of royalties, however some witnesses are not in favour of mining on their land. The Pormpuraaw community stated:

Consultations held over recent years by both the Council and PL&SM with the Traditional Owners and the general Pormpuraaw Community, have fully, unambiguously confirmed that all forms of mineral exploration and mining development - from initial exploration through to actual mining of found deposits, proposed for the Pormpuraaw DOGIT area, now and into the future - are and will continue to be unanimously opposed by Thaayorre and Mungkan Traditional Owners, and the Pormpuraaw Community as a whole.²¹

- 2.26 Mr David Claudie from Chuulangun Aboriginal Corporation made a similar comment:

One thing about our homelands is that we cannot have mines, because it is not a sustainable industry. Our principle is that we have to look after our country in order to benefit economically.²²

- 2.27 While mines will continue to operate in Cape York it is unlikely that the industry will provide a pathway to prosperity for every community.

Indigenous workforce participation in the mining industry

- 2.28 The major mining operations at Weipa and Cape Flattery are the biggest single contributor to Indigenous employment with more than 270 Indigenous staff employed directly.²³

- 2.29 Under the Australian Government and Minerals Council Memorandum of Understanding on Indigenous Employment and Enterprise (MOU), the Western Cape Regional Partnership Agreement was established. It is an agreement between four Cape York Indigenous Councils, the Minerals

20 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 12.

21 Ngamp inth Wantharr Yumpnham this is what we are going to do – Pormpuraaw Land & Sea Country Cultural and Natural Resource Management Plan 201-2015, *Committee exhibit*.

22 Mr David Claudie, *Committee Hansard*, Chuulangun, 8 March 2011, p. 1.

23 Queensland Government, *Submission 29*, p. 4.

Council of Australia, and the Australian and Queensland government. The Queensland Agreement is centred on Weipa and extends south to Aurukun and north to Mapoon.²⁴ It covers work readiness, transport to access employment, linking training to labour market participation, and supporting Indigenous business development.

Recommendation 4

- 2.30 **The committee recommends that the Commonwealth Government continues to partner with the mining industry to facilitate training and employment so that workforce participation in the industry becomes a mainstream employment option for Indigenous people.**

Agriculture

- 2.31 In Cape York, opportunities for medium to large scale agriculture are limited due to the moderate quality of soils and constraints imposed by annual flooding of alluvial areas adjacent to watercourses. Potential does exist for smaller market gardens, fruit orchards and other mosaic style activities. These are seen as particularly important for both providing economic benefits, and a regular supply of produce for local communities (as currently exists at Napranum near Weipa).²⁵
- 2.32 With its small internal market and distance to major external markets Cape York may have difficulty in sustaining not only competitive advantage, but also comparative advantage. That is, other regions closer to markets, with better supply chain links may be better placed to supply those markets. This has not been tested in the contemporary global environment and is a place to start in assessing industry feasibility.²⁶

Cattle Grazing

- 2.33 The cattle industry in northern Australia and Cape York is significant. It dominates the agricultural industry in the northern Australia region and has the potential for growth.²⁷

24 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 15.

25 Australia Zoo, *Submission 10*, p. 6.

26 Kleinhart Business Consultants – ‘Cape York Peninsula Regional Economic and Infrastructure Framework Report’ November 2007, p. 13.

27 Wild Rivers Interdepartmental Committee, *Submission 30*, p. 31.

- 2.34 In its submission, Australia Zoo said that cattle grazing typically involves free range breeding on uncleared country, but that clearing for grazing has been minimal, and has often been unsuccessful due to vigorous sucker regrowth over subsequent wet seasons.²⁸
- 2.35 The only abattoir currently in operation on the Cape is at Seisia in the far north. This provides an important local meat supply and employment for Northern Peninsula communities. An additional abattoir is currently being developed at York Downs via Weipa, and a fledgling live cattle export industry has commenced, with cattle being exported from Weipa in 2009 from York Downs and other cattle properties.²⁹
- 2.36 Continued growth of the beef industry is likely due to a promising export outlook. Further growth can be achieved by investment in finishing cattle (fattening the cattle to market size) and processing meat in the north, and broadening farming business to include mixed crop-livestock systems based on irrigated pasture, fodder and other crops. Growth of the industry will also depend upon an increased water allocation and improved infrastructure.³⁰
- 2.37 The Indigenous Land Corporation (the ILC) acquires and grants land to Indigenous corporations to build a secure and sustainable land base for Indigenous people. Properties are acquired for a range of reasons, including to: create or expand Indigenous businesses; generate employment; deliver social services; and protect significant environmental and cultural heritage values.
- 2.38 Further to land acquisitions and grants in the Cape York region, the ILC is involved with key land management projects in the region, including the Cape York Indigenous Pastoral Project. The ILC is currently assessing the proposed development of Billy's Lagoon as an ILC-operated pastoral business.³¹

Tourism

- 2.39 The culture rich landscape and vast expanse of Cape York challenges and inspires travellers to this region. However tourism is seasonal and subject to factors such as global economic conditions, fuel prices and extreme weather events, and the fact that the average traveller chooses to be self

28 Australia Zoo, *Submission 10*, p. 2.

29 Australia Zoo, *Submission 10*, p. 2.

30 Wild Rivers Interdepartmental Committee, *Submission 30*, p. 32.

31 Indigenous Land Corporation, *Submission 14*, p. 4.

sufficient. Between 60,000 and 70,000 people visit Cape York each year. Compared to Uluru (350,000) and Kakadu (160,000) these are small numbers.³² Whilst tourism is an important contributor to the Cape York economy, it is a limited one. Mass tourism is not a feasible option for the Cape York Peninsula.³³

- 2.40 The Queensland Government's own *Cape York Peninsula and Torres Strait Tourism Development Plan 2008-2011* recognises that whilst there are very real economic benefits that tourism is capable of generating, communities across Cape York are at different stages of understanding the tourism industry.³⁴

During the inquiry, the Queensland Government announced its Sustainable Cape Communities initiative which includes the establishment of mentor networks to foster strong partnerships between corporate Australia, Indigenous communities and existing aspiring Indigenous entrepreneurs.

Recommendation 5

- 2.41 **The committee recommends that the Queensland Government's mentors support network initiative be linked to Commonwealth Government initiatives for Indigenous small business development in business, tourism and administration.**

Population and the labour market

- 2.42 Cape York is large and underdeveloped. It comprises 15 per cent of the area of Queensland, yet supports only 0.3 per cent of the State's population. Its residents are amongst the most disadvantaged in Queensland. Eighty three per cent of Cape York's population is in the most disadvantaged quintile (lowest 20 per cent of the State), while none are in the most advantaged quintile. Fifty-four per cent of Cape York's people aged 15 years and over have a gross weekly income of less than \$400 per week, compared with 40 per cent for the rest of Queensland.³⁵

32 Balkanu Cape York Development Corporation P/L, *Submission 6*, p. 18.

33 Wild Rivers Interdepartmental Committee, *Submission 30*, p. 29.

34 http://www.tq.com.au/tqcorp_06/fms/tq_corporate/destinations/tnq/plans_and_strategies/Cape%20York%20and%20Torres%20Action%20Plan/TQ_CapeYork_6pp.pdf Accessed 4 April 2011.

35 Wild Rivers Interdepartmental Committee, *Submission 31*, pp. v-vi.

- 2.43 Institutional capacity and ability to engage with governance processes is low. This disadvantage is compounded by limited access to a range of services as well as 'soft' and 'hard' infrastructure. This relative economic disadvantage exists in all income bands.³⁶
- 2.44 After New South Wales, Queensland has the second largest estimated resident Indigenous population. At 146,000 this is 28 per cent of the total Indigenous population of Australia.³⁷
- 2.45 In the Cairns region, 7 per cent of the population is Indigenous, more than double the state average of 3.3 per cent.³⁸ Within that 7 per cent, there is a 19 percent unemployment rate, which is about twice the average of the Cairns region.³⁹
- 2.46 Of Cape York's 14,406 inhabitants, 55 percent are Indigenous, compared with the Queensland state average.⁴⁰

Workforce participation in Cape York

- 2.47 Employment across the Cape York region (as of the most recent 2006 census) was dominated by public administration (approximately 2300 jobs). Other public services such as health care and social services provided approximately 800 jobs, and manufacturing provided approximately 700 jobs.⁴¹
- 2.48 Education and training (approximately 500 jobs), construction (approximately 400 jobs), retail trade (approximately 400 jobs), accommodation and food services (approximately 400 jobs), and agriculture, forestry and fishing (approximately 300 jobs), rounded out the main sources of employment in Cape York.⁴²
- 2.49 Within these industry sectors, Indigenous people in Cape York were predominantly employed in public administration. Of the 2300 people employed in this sector, nearly 1800 were Indigenous. Health care and social assistance is the second largest employer of Indigenous people, with approximately 500 Indigenous people employed. This is followed by

36 Wild Rivers Interdepartmental Committee, *Submission 31*, p. vi.

37 Professor Jon Altman, *Submission 15*, p. 3.

38 Cairns Regional Council, *Submission 13*, p. 1.

39 Ms Katrina Houghton, Cairns Regional Council, *Committee Hansard*, Cairns, 8 March 2011, p. 33.

40 Wild Rivers Interdepartmental Committee, *Submission 31*, p. v.

41 Wild Rivers Interdepartmental Committee, *Submission 31*, pp. 27-28.

42 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 28.

education and training with approximately 170 Indigenous people employed, manufacturing, with approximately 120 Indigenous people employed, and agriculture, forestry and fishing, with approximately 110 Indigenous people with jobs.⁴³

Workforce Capacity

2.50 Balkanu Cape York Development Corporation said in its submission that

Cape York is suffering from an education crisis. Literacy and numeracy levels are considerably below those enjoyed in the broader community and for many people English is a second language. The rate of illiteracy in Cape York is unknown, but it would be fair to say that an overwhelming majority of indigenous people in the region would have only a rudimentary English literacy, if anything.⁴⁴

2.51 The committee took evidence from Mr John Smith of Island and Cape, a locally owned Cairns-based grocery company with seven retail stores in the Torres Strait and Cape York region. Island and Cape has a 70 per cent Indigenous workforce. Mr Smith advised that the lack of skilled workforce was a barrier to employment. Island and Cape address this through certified training.⁴⁵

Consultation and consent on the *Wild Rivers Act 2005* (Qld)

2.52 The issue of consultation is a key driver of objections to the *Wild Rivers Act 2005* (Qld) (the Act). Some held the view that there had been no consultation at all. Mr Larry Woosup stated:

...this wild river thing is just a top-down approach. All of a sudden this legislation is declared. There is no consultation... It happened in the middle of the night. That is why there are some unhappy people around the cape.⁴⁶

2.53 In contrast others said that there had been consultation. The Carpentaria Land Council Aboriginal Corporation (CLCAC) said that in April 2006 it

43 Wild Rivers Interdepartmental Committee, *Submission 31*, p. 28.

44 Balkanu Cape York Development Corporation P/L, *Submission 6*, Attachment A, p. 13.

45 Mr John Smith, *Committee Hansard*, Cairns, 8 March 2011, p. 44.

46 Mr Larry Woosup, *Committee Hansard*, Weipa, 30 November 2010, p. 97.

made submissions on behalf of the Traditional Owners in respect of each of the proposed declarations following consultation with the Traditional Owners and, where relevant, native title claimants. The CLCAC itemised those who consented:

The Gangalidda and Garawa Peoples, as Traditional Owners, and as the largest property holder in the area covered by the proposed Settlement Creek declaration area, advise of their overwhelming support of the declaration of both Settlement Creek and Gregory Rivers as Wild Rivers.

The Waanyi People, as Traditional Owners, and as property holders in the area covered by the proposed Gregory River declaration area, advise of their overwhelming support of the declaration of the Gregory River as a Wild River.

The Kurtjar People support of the declaration of the Staaten River as a Wild River.

The Kukatj People support of the declaration of the Morning Inlet as a Wild River.⁴⁷

- 2.54 The Queensland Government advised that its wild rivers policy consultation paper was circulated to key stakeholder representative groups including native title bodies and other peak Indigenous groups (Carpentaria, Cape York, and far north Queensland land councils, Balkanu Cape York Development Corporation and the Queensland Indigenous Working Group), conservation groups, Queensland Resources Council and AgForce. The Queensland Government advised that “Submissions from these and other key stakeholder groups were considered in the drafting of the Wild Rivers Bill 2005⁴⁸
- 2.55 Each of the consultation reports are publicly available on the Queensland Government’s website. The Wenlock Basin Wild River Declaration Consultation Report states that the Queensland Government sought advice from the Human Rights Equal Opportunity Commission and was referred to the *Engaging the Marginalized: Partnerships Between Indigenous Peoples, Governments and Civil Society* paper”. It then says that Departmental staff actively sought and followed advice from local Indigenous people, Traditional Owners and Indigenous organisations in regards to who to speak with, and what forms of engagement were appropriate. It says that Departmental officers conducted numerous meetings on country with Traditional Owners and Indigenous communities. Traditional Owners, people within Indigenous
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47 Carpentaria Land Council Aboriginal Corporation, *Submission 24*, p. 3.

48 Queensland Government, *Submission 29*, p. 13.

communities, clan groups, interest groups and peak bodies were all engaged, and consulted about the wild river declaration process. Follow-up meetings were also held after the close of the formal submissions period to ensure that the consultation with Traditional Owners and other stakeholders was comprehensive and effective.⁴⁹

- 2.56 Despite this, many thought that although consultation occurred, it took the form of delivering information rather than sitting down with people to work through issues, problems and solutions. It was this lack of engagement that has led to perceptions that decision making powers about land have been taken away. Miss Tracey Ludwick states:

They may have come here. They may have talked to the people, but they did not ask the people what they wanted. They just came in here....They are the people making decisions across my land, my aunties' land and my brothers' land, and we do not have a say in it.⁵⁰

- 2.57 Although land holders have a role under the Act, their consent is not required for a declaration to be made. This arrangement is akin to the range of planning and conservation legislation throughout Australia. However many groups believed that land holder consent was required under the Act through its native title provisions, through provisions under the *Native Title Act 1993* (Cth), and through Article 19 of the United Nations Declaration of the Rights of Indigenous peoples (DRIP).
- 2.58 While the DRIP sets important principles for the fundamental human rights of Indigenous people, it is not legally binding and does not have a technical effect on Australian law.

Conclusions

- 2.59 The committee acknowledges the concerns raised during the inquiry about consultation under the Act.
- 2.60 The committee was presented with evidence that in some cases the QLD Government consulted and engaged effectively with stakeholders. The several amendments of the Act after consultations has demonstrated that the Queensland government has effected negotiated outcomes. In addition, declarations have been varied as a result of consultation. For example, the High Preservation Area at Breakfast Creek (Stewart Basin

49 <http://www.derm.qld.gov.au/wildrivers/wenlockbasin/declaration.html> Accessed 4 April 2011.

50 Ms Tracey Ludwick, *Committee Hansard*, Weipa, 30 November 2009, p. 17.

Declaration) was originally proposed at 1km but was reduced to 500m after consultation with Traditional Owners. Consultation can and does work but it requires both the Queensland Government and stakeholders ensuring that consultation and engagement is effective.

- 2.61 While stakeholder views about the extent and nature of consultation were varied, effective and meaningful engagement with Indigenous people is essential to the ongoing operation of the Act.
- 2.62 This chapter makes a number of recommendations on how all parties including the Queensland Government could work together to develop policy solutions to ensure consultation and engagement is effective.

Recommendation 6

- 2.63 **The committee recommends that the QLD Government strengthen its consultation and engagement framework for the *Wild Rivers Act 2005* (Qld). The committee notes that the establishment of Indigenous reference committees group under the Cape York Sustainable Communities initiative is intended to address this and to work directly with Indigenous stakeholders on improving the wild rivers consultation process.**

Speaking for country and “own representative institutions”

- 2.64 Several times the committee heard contested authority to speak for country, most notably during the March 2011 hearings in Cairns, when the committee received a letter and maps from the Lama Lama Land Trust in which it advised that the Kulla Land Trust is made up of four clan groups Kaanju, Umpila, Lama Lama and Ayapathu⁵¹. Concerning the Kulla Land Trust submission to the inquiry (sub 28), it said:

...We are concerned that the decision to provide a submission, and its drafting was made ...without consultation or consent from the wider Lama Lama clan group and this may not be in our best interests as traditional owners⁵²

- 2.65 The following day, the committee Chair advised Kulla Land Trust of this complaint. Its response was:

51 *Committee exhibit*, Lama Lama Land Trust letter 7 March 2011, p. 1.

52 *Committee exhibit*, Lama Lama Land Trust letter 7 March 2011, p. 2.

it is not correct for you to describe Lama Land Trust as being consistent with Kulla Land Trust. There is an overlapping membership...⁵³

2.66 The committee makes no judgement about these statements. However they do indicate how vexed the issue of right to speak for country is.

2.67 Despite an elected Shires' authority to speak for its constituents, some felt that their shire had no right to speak for them. Miss Tracey Ludwick and Mrs Marilyn Wallace stated:

"When it comes to land, I do not think it is appropriate for people to make a decision as a community, because we have traditional owner groups who are not people of the same clan. If you go to somewhere like Hope Vale, there are 13 different clans down there. In a community council you cannot make decisions on other people's land. That would be disrespectful to those people. That is the customary Aboriginal way of doing things. We have a different perspective on land. To us, land does not just mean money and the economy; it means a whole lot of other things."⁵⁴

With the Cook shire, we recognise them as our shire but they do not speak on behalf of us.⁵⁵

2.68 The authority of registered Native Title Representative Bodies (NTRBs) established under the *Native Title Act 1993* (Cth) to speak on behalf of others who identified as traditional owners was also questioned. Mr David Claudie, Mr Jimmy Richards and Ms Gina Castelain stated:

But, to consent, I have to get the consent from the native title representative body's groups that they set up, which do not belong to these homelands. That is not right.⁵⁶

So it is actually giving us, the Indigenous people down the bottom, the rights to speak for that country, whereas native title will not, because they ask you to draw that line⁵⁷

The way things have been established under the Native Title Act is not in line with our traditional way of decision making processes⁵⁸

53 *Committee Hansard*, Cairns, 7 March 2011, p. 6.

54 Miss Tracey Ludwick, *Committee Hansard*, Weipa, 30 November 2010, p. 18.

55 Mrs Marilyn Wallace, *Committee Hansard* Cairns, 8 March 2011, p. 59.

56 Mr David Claudie, *Committee Hansard*, Chuulangun, 7 March 2011, p. 2.

57 Mr Jimmy Richards, *Committee Hansard*, Chuulangun, 7 March 2011, p. 13.

58 Ms Gina Castelain, *Committee Hansard*, Chuulangun, 7 March 2011, p. 3.

- 2.69 An expert on land law, Dr Chris McGrath, acknowledged that Native Title issues are very complicated. He said:

I am aware of the minefield that ultimately results when you try to define who is the traditional owner for particular land. I cannot really go further than saying that I think there is a minefield there, but probably no more of a minefield than the native title legislation already has, because that is often so difficult and there are often competing claims, as you know. It is a very problematic issue.⁵⁹

Conclusions

- 2.70 The complexity and variety of local government, legislative and tenure frameworks laid over the top of traditional boundaries and governance frameworks makes the issues of authority to speak for country complex and vexed. Traditional laws and customs define native title rights and interests, which means that they often do not correspond with common law property rights.⁶⁰
- 2.71 In respect of the wild river areas, the committee notes and approves of the Queensland Government's Sustainable Cape Communities Initiative, announced during the inquiry; and in particular the establishment of Indigenous Reference Committees. Minister Jones stated they 'will be established to ensure members can directly advise the Minister about declaration proposals as well as their community's aspirations for future economic development'.⁶¹
- 2.72 The committee considers that Indigenous Reference Committees have considerable potential as a consultation mechanism and would like to see the reports made available to all Indigenous communities in Queensland.

Recommendation 7

- 2.73 **The committee recommends that the Indigenous Reference Committee framework be developed and extended to service Indigenous peoples throughout Queensland on issues relating to economic development.**

59 Dr Chris McGrath, *Committee Hansard*, Canberra, March 23, 2011, p. 2.

60 *Australian Native Title Law*, Melissa Perry and Stephen Lloyd, p. 13.

61 Hon. Kate Jones MLC, Minister for Environment and Resource Management, 'New Wild Rivers initiative gives power to Indigenous Cape Communities', *Media Release*, 9 March 2011.

It is important that all stakeholders be engaged in this process and endorse the framework.

The *Wild Rivers Act 2005* (Qld) and Indigenous economic development

- 2.74 The *Wild Rivers Act 2005* (Qld) (the Act) is designed to protect and conserve environmental values by regulating and limiting the impacts of human activity to ensure ongoing generational benefit.
- 2.75 The Act is a framework which regulates development under a suite of laws in Queensland including the *Sustainable Planning Act 2009* (Qld), the *Vegetation Management Act 1999* (Qld) and the *Water Act 2000* (Qld).
- 2.76 The committee heard from people who were unsure as to what developments were permitted under the legislation, and from others who felt that they understood it but were under-resourced to develop projects in wild river areas.
- 2.77 Some were concerned that not enough scientific rigour had been used in consideration of the extent of High Preservation Areas and Preservation Areas.
- 2.78 Principle 15 of the United Nations Rio Declaration on Environment and Development⁶² says:
- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- 2.79 Some groups believed that the high preservation area (HPA) was one kilometre uniformly across all declared areas. This is not the case. Furthermore, the HPAs' extent have been varied after consultation. For example at Breakfast Creek (Stewart Basin Declaration) the HPA was proposed as 1km but was reduced to 500m after consultations with Traditional owners, and the extent of the Embley Range special feature (Wenlock declaration) was reduced after consultation with TO's and other landholders.⁶³

62 <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> Accessed 4 April 2011.

63 http://www.derm.qld.gov.au/wildrivers/wenlock_hydro.html Accessed 4 April 2011.

Capital for developments

- 2.80 Witnesses noted that, even with an understanding of the complex development processes, lack of resources and capital were significant barriers to the extent that some might give up altogether. Miss Tracey Ludwick stated:

They will not personally have the money. They can go for funding. We have quite a few trusts around that people can get funding out of. With a lot of those trusts that are setup by the mining companies, we cannot get money out of them for businesses anyway because they are charitable trusts, so we still have to go to the bank or to the government and put in applications there to get money for small projects. And then we have to get these consultants into the cape to administer the money. We have to get corporations involved to house the money.

Wild rivers has just added to the difficulties of the Indigenous people of Cape York in trying to find some sort of opportunity to get out of poverty.

The reality of Cape York is that at least 90 per cent of people are on CDEP – that is \$240 a week....

They cannot walk into a bank and say, 'Here, I'll mortgage my house.' What house? We do not own homes up here – maybe a few people do, but we do not own homes. I cannot mortgage my car; it is still on a lease...For their funding submissions, you have to have two degrees to be able to fill out one of those. That is what stops people: you go and you see this five-, 10- or 15-page submission guideline.⁶⁴

Conclusions

- 2.81 The committee acknowledges the Queensland Governments Sustainable Cape Communities initiative announced during the inquiry, in particular its commitment to review the existing planning and development framework to ensure it does not act to limit economic growth in the region and where appropriate, to simplify processes.
- 2.82 The committee also notes that this commitment includes working directly with local government councils and Indigenous Reference Groups to ensure more representative consultation mechanisms, to enable local, on

64 Miss Tracey Ludwick, *Committee Hansard*, 30 November 2010, Weipa, p. 19.

the ground input to regional development planning, and to capacity build Indigenous stakeholders.

- 2.83 The committee also notes the initiative's commitment to foster economic development opportunities for Indigenous stakeholders and private enterprise through a mentor support network.

Recommendation 8

- 2.84 **The committee recommends that the Queensland Government provides information to Indigenous communities and individuals which assists them to step through the operation of the *Wild Rivers Act 2005 (Qld)* and other conservation and land management legislation.**

The *Wild Rivers Act 2005 (Qld)* and mining

- 2.85 Cape Alumina said that Act had a significant impact on its operations in western Cape York and had rendered its Pisolite Hills bauxite mining project unviable under forecast economic conditions.⁶⁵
- 2.86 Cape Alumina also said that the projects' Indigenous Land Use Agreement (ILUA) was at an advanced stage of negotiation with the Traditional Owners as well as other aboriginal stakeholders in the region and provided for employment, business development and training opportunities for the Traditional Owners and for their participation in decision making that might have an environmental or cultural impact on the project area.⁶⁶
- 2.87 In relation to the Pisolite Hills Project, the Queensland Government's submission advised that:

The exploration permits that were held by the company extended over areas that included high preservation areas, and though they could continue to apply to mine over areas outside of the high preservation area, the scope of their project was changed by the declaration. As the mine proposal was at the exploration stage, it had not yet received an approval to mine, and there was no guarantee that such an approval would be granted. Due to the presence of rare and threatened species on and adjacent to an area known as the Coolibah Springs on the lease area, the project

65 Cape Alumina, *Submission 30*, p. 1.

66 Cape Alumina, *Submission 30*, p. 3.

would need to satisfy requirements under other legislation including the *Environmental Protection Act 1994* and the *Environment and Biodiversity Protection Act 1999* (Cwth).⁶⁷

- 2.88 The Queensland Resources Council said that it was concerned about the future of resource industry projects in the Lake Eyre Basin subject to the Queensland government's declaration proposals for the Cooper Creek, Georgina and Diamantina Rivers. It noted that BHP Billiton's Cannington mine proposal to extend the life of the mine to 2022 will generate an additional 140 employees during the construction phase, as well as 60 full-time jobs during operation.⁶⁸
- 2.89 The Queensland Government advised in its submission that 37 mining exploration permits have been issued since the wild rivers declarations and that this is indicative of an industry confident that, in the more than 80 per cent of the wild river area where mining can occur, it is worth continuing to explore for resources. It said two mines have been approved in wild river areas – the Legend phosphate mine, and the Lady Annie Mine, both in the Gregory wild river area. It said wild rivers pose no threat to development that does not have detrimental impact on the rivers.⁶⁹

Conclusions

- 2.90 The Act and other legislation regulate mining projects because they are designed to do so. Mining companies need to work with governments to find ways to develop sustainable mining practices.
- 2.91 In the context of this inquiry, it has been noted that participation in the mining industry ought not to be regarded as the only pathway to Indigenous economic development.

The *Wild Rivers Act 2005* (Qld) and tourism

- 2.92 Ms Gina Castelain of Wik Projects, a tourism venture in the Arukun region, said that the wild rivers legislation is not an impediment.

For my business it is positive because it actually supports us and our values. It is in line with our objectives and our values about looking after these rivers. Right now it is positive. We have got plans to build a second boat. We have got plans at the moment to

67 Queensland Government, *Submission 29*, p. 34.

68 Queensland Resources Council, *Submission 11*, p. 11.

69 Queensland Government, *Submission 29*, p. 2.

build lodges as well for the fishing clients. To run a business is not easy. You have to go through approvals, council permits. The numbers of hoops you have to jump through to set up any business is not easy; not everyone can do it. Luckily for us we have got good advisers. We have people who support our vision. So, yes, right now it is actually in line with our values.⁷⁰

The *Wild Rivers Act 2005* (Qld) and cattle

- 2.93 In relation to pastoral operations, the wild river declarations affect a number of ILC land interests on Cape York Peninsula. All or part of the following ILC-acquired properties fall within current wild rivers areas:
- Geikie Station;
 - Merepah Station;
 - Silver Plains; and
 - Bulimba.
- 2.94 Geikie, Silver Plains and Bulimba have been divested to local Indigenous groups, but the ILC continues to operate a pastoral business on Bulimba. The ILC holds title to Merepah and operates a pastoral business on the property.
- 2.95 On 6 May 2009, the ILC applied to the Queensland Department of Environment and Resource Management (DERM) for approval to clear vegetation and construct fence lines traversing a number of watercourses in the Archer Basin wild river area. This application was assessed against Part P of the *Wild Rivers Code* and was approved in full on 16 July 2009.
- 2.96 In Brisbane on Thursday 9 March the committee asked the ILC what effect that the Act would have on its Billy Lagoon Project near Napranum. The ILC replied:
- Our initial investigations have revealed that the Wild Rivers declaration is not expected to significantly disadvantage the proposed establishment of a cattle business and training facility at Billy's Lagoon⁷¹

The *Wild Rivers Act 2005* (Qld) and Natural Resource Management

- 2.97 The Queensland Government's Wild River Rangers program was universally well regarded. Although not directly connected to the Act, this

70 Gina Castelain, *Committee Hansard*, 7 March 2011, Chuulangun, p. 8.

71 Letter from ILC *Committee exhibit*, 15 April 2011.

initiative is linked to it and some have leveraged off this program and other natural resource management programs into capacity building their communities. Mr David Claudie stated:

We set up ranger programs and we do get employment. We got a capacity from the federal government's working on country program to employ three and then we got the wild rivers one, with another three there, so that is six. We have an IPA here, which is 200,000 hectares of our whole 840,000 hectares, and we used that as a base for what we achieve in terms of land management and towards setting up businesses and working relationships between us and businesses on a big scale in Queensland or, for that matter, all over Australia.⁷²

Conclusions

- 2.98 There are many barriers to Indigenous economic development in Cape York (and Queensland). Apart from the underdeveloped nature of the region, barriers to development are capacity constraints in Indigenous communities and community organisations. Addressing poor education and literacy levels, workplace readiness and participation and organisational governance and expertise will greatly assist people to make choices about their own livelihoods and opportunities.
- 2.99 A diverse, integrated economy is inherently more robust and sustainable than an economy that comprises a restricted number of sectors. A diverse economy is less prone to seasonality, provides greater economies of scale offers more opportunities to small business, provides more choice of employment and enables transfer of skills and technology.⁷³
- 2.100 With so many factors affecting Indigenous economic development in Queensland, it is imperative and urgent that Indigenous people be supported to engage in analysing opportunities in community, hybrid and mainstream economies determining and participating in capacity building their own future. Tracey Ludwick summed this up in evidence: 'The approach should be from the grassroots up, not from the top down.'⁷⁴

72 Mr David Claudie, *Committee Hansard*, 8 March 2011, Chuulangun, pp. 1-2.

73 Balkanu Cape York Development Corporation P/L, *Submission 6:1*, p. 3.

74 Miss Tracey Ludwick, *Committee Hansard*, 30 November 2010, Weipa, p. 17.

Opportunities

Current economic conditions

- 2.101 The economy in Cape York is very different to the rest of the Queensland and Australian economies. It does not have the breadth of inter-related industries that would typically trade with each other and sustain a basic level of economic activity. Rather, it largely depends on trade with the remainder of Australia for goods and services that would usually be internally generated.⁷⁵
- 2.102 This is reflected in the employment profile of the Cape. The most jobs, both generally and in the Indigenous population, are in public administration and public services such as health. The most private sector jobs are in mining.⁷⁶
- 2.103 One effect of this is that establishing and running a business is much more difficult than in cities and towns. Mr David Donald, a tourist operator in the Cape, described it as follows:
- The cape is so far away from everyone. People drop in for a couple of hours or a couple of days and then go back to the wilds of Brisbane and Canberra. They have absolutely no comprehension of what it is like to live here and to run a business here. We do not just go down to the corner store and buy things. We have to source stuff from Cairns, which is 850 kilometres away – things like that. We have transport difficulties. The roads close for four months of the year and we cannot get things even. We are looking at a totally different situation and almost a totally different country to what normal society operates under.⁷⁷
- 2.104 This economic isolation has two effects. Firstly, unemployment rates are higher in the Cape. The Department of Education, Employment and Workplace Relations stated in evidence that official unemployment rates in some communities are as high as 27 per cent.⁷⁸ In addition, it is accepted by Cape York locals that the real unemployment rate is much higher than the official figure.⁷⁹

75 Mr Andrew Tongue, Department of Families, Housing, Communities and Indigenous Affairs, *Committee Hansard*, Canberra, 26 November 2010, p. 3.

76 Wild Rivers Interdepartmental Committee (WRIC), *Submission 31*, pp. 27-28.

77 *Committee Hansard*, Weipa, 30 November 2010, p. 9.

78 Ms Joanne Wood, *Committee Hansard*, Canberra, 26 November 2010, p. 21.

79 WRIC, *Submission 31*, p. 67.

- 2.105 Secondly, there are few local jobs for Indigenous school leavers and they must often leave the area if they want paid employment. This then means that local communities lose potential future leaders. Councillor Joseph Elu, Mayor of the Northern Peninsular Area Regional Council (NPARC), stated in evidence:

The thing is there are not many jobs here. To educate kids to a level of parity with kids elsewhere in Queensland or around Australia, most of them will have to leave here to find jobs ... Kids look out the window and see most of their uncles and aunties wandering the streets without jobs and on the dole. They say, 'Why should I get educated if I am going to end up out there?' Some kids go through it and find work with the council here for a bit and then they have to go to Cairns or Townsville, or wherever, to find work. The system here is only feeding the system outside. It is about those kids who see their uncles and aunties wandering around out there. If you are born in a house where your parents are unemployed and their parents were unemployed for umpteen years, you get the message that employment is not worth anything to you.⁸⁰

- 2.106 This then makes it difficult to address skill shortages. The Director of NPARC, Mr Alex Barker, stated that there was a \$2 million project to renovate a local school, but all the workers were sourced externally.⁸¹
- 2.107 By definition, regional areas will generally have a narrower skill base than centres of economic activity. The question is whether they have a sufficient nucleus of skills to be self-sustaining and Cape York falls short of this.
- 2.108 The committee is of the view that Indigenous people are well placed to determine for themselves how to balance their customary activities and their participation in the market. Chuulangun Aboriginal Corporation exemplified this hybrid economy.

Supporting the Cape York economic development plan

- 2.109 During evidence, Ms Katrina Houghton from the Cairns Regional Council stated that the challenges in Indigenous development vary greatly from area to area. She also stated that, as a local body, the Council would

80 *Committee Hansard*, Bamaga, 1 December 2010, p. 13.

81 *Committee Hansard*, Bamaga, 1 December 2010, p. 23.

benefit from having a strategy, endorsed at a higher level, that would give them some direction for local action:

... there is no real localised economic development strategy for the Indigenous community ... There is the Indigenous employment strategy at the federal level; however, it does not break it down into local government areas to provide us with recommendations that we may be able to pass on to the community ... We would make it a priority to provide an opportunity to have a local employment strategy for this particular region.

... Essentially, the challenges and opportunities that face the Indigenous community differ in every local government area. The challenges that Indigenous Australians face in inner city Brisbane are very different to what they are facing in Cairns. From attending several Indigenous forums and the like, we have found that there is not a real direction in that community and we feel that a local Indigenous economic development strategy would help to provide that support to that community.⁸²

2.110 The committee received two other viewpoints on local Indigenous development plans. Mr David Galvin from the Indigenous Land Corporation stated that the value of such a plan largely depended on its content and whether it had an active role: 'There are a lot of good plans sitting on shelves, as they say'.⁸³ The committee appreciates this advice. One way of making a plan relevant would be to properly consult with Indigenous communities in developing it.

2.111 The Queensland Government was very supportive of developing a plan for Cape York. Mr John Bradley from the Department of Environment and Resource Management stated:

We would like to, with assistance and input from the Commonwealth government, focus on preparing a very clear, strategic economic development plan for Cape York which increases the impetus of economic development, but does so on a basis of recognising Indigenous communities' economic aspirations.⁸⁴

2.112 On the same day as this hearing, the Queensland Government announced its Sustainable Cape Communities Initiative, which includes an economic development plan for Cape York and a focus on nature-based

82 *Committee Hansard*, Cairns, 8 March 2011, pp. 32-33.

83 *Committee Hansard*, Cairns, 8 March 2011, p. 83.

84 *Committee Hansard*, Cairns, 8 March 2011, pp. 48-49.

opportunities that capitalise on the region's natural values.⁸⁵ One of the themes of this inquiry is that these natural values have been preserved and enhanced by the Act. The committee supports this initiative and is of the view that the Commonwealth should work co-operatively with the Queensland Government in developing the Initiative. A regional plan will be able to target issues relevant to each locality and maximise program effectiveness.

Recommendation 9

- 2.113 The Commonwealth support the Queensland Government in developing its strategic regional economic development plan for Cape York under its Sustainable Cape Communities initiative.**

Partnerships

- 2.114 The role of government in Indigenous economic development is to be a facilitator. Although Indigenous communities benefit from public sector employment and participating in the customary sector, they will have more choices and will have a larger role to play in society if they increase their private sector employment as well. In evidence, Mr Gerhardt Pearson of Balkanu Cape York Development Corporation stated that this was one of their aims.⁸⁶ He also stated that governments should focus on co-ordinating partnerships:

Because you have the money, the programs and the truckloads of bureaucrats, the government's role must not be one where you disempower the community in bringing solutions. Your role is to assist in coordinating the partnership between the corporates, the philanthropics, the community and us.⁸⁷

- 2.115 Governments already conduct some of this work, or at least recognise that they should do so. For example, the Commonwealth's draft Indigenous Economic Development Strategy discusses developing partnerships with the private sector to find mentors for Indigenous business people and to match employment supply with demand.⁸⁸ The Queensland Government

85 Hon. Kate Jones MLC, Minister for Environment and Resource Management, 'New Wild Rivers initiative gives power to Indigenous Cape Communities', *Media Release*, 9 March 2011.

86 *Committee Hansard*, Cairns, 29 November 2011, p. 14.

87 *Committee Hansard*, Cairns, 29 November 2011, p. 14.

88 Australian Government, 'Indigenous Economic Development Strategy: Draft for consultation', May 2010, < <http://resources.fahcsia.gov.au/IEDS/> > viewed 11 April 2011.

has helped establish an arts hub and arts fair to build the profile of Indigenous artists.⁸⁹

- 2.116 The Queensland Conservation Council recommended that governments should support the creation of more business hubs, particularly in cultural and conservation economies.⁹⁰ This is clearly an area of comparative advantage for Indigenous people, although business hubs could be created in other industries if Indigenous people preferred.
- 2.117 The committee would like to see the Commonwealth and Queensland governments do more to support Indigenous business hubs and other types of partnerships because this would be a vocational, hands-on way for Indigenous people to pick up relevant skills and advice. Further, this is sought after by one of the main Indigenous development bodies in the region and is seen by Indigenous people themselves as a priority. The Queensland Government's Sustainable Cape Communities initiative would be a suitable vehicle for achieving this.

Recommendation 10

- 2.118 **In consultation with Indigenous communities, the Queensland Government increase opportunities for Indigenous business partnerships under its Sustainable Cape Communities initiative.**

89 Submission 29, p. 40.

90 Submission 19, pp. 2-3.