Submission No. 628

A fair go for Cape York Aboriginal landholders

The creation of rights and opportunity from proposed amendments to Queensland's vegetation clearing laws

Cape York Land Council submission to the Agriculture and Environment Committee in response to the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (Qld). Prepared in consultation with Balkanu Cape York Development Corporation and Cape York Partnership.

Key Messages

The Bill is flawed and should not be passed in its current form because it:

1. proposes unfair and unreasonable constraints on development that will perpetuate Aboriginal social and economic disadvantage across Cape York;
2. proposes unnecessary regulation of vegetation clearing that could be achieved by improvements to existing mechanisms;
3. does not address vegetation clearing associated with mining despite mining's significant impacts on the environmental values the Bill is seeking to protect;
4. proposes simplistic and potentially counter-productive approaches to vegetation management and does not recognise the positive role of proactive land management and stewardship;
5. ignores native title rights and interests in assessing the impact of the proposed regulatory change;
6. proposes the regulation of vegetation clearing based on poor information and inaccurate mapping about the extent and quality of vegetation categories;
7. does not provide support for the identification of Indigenous land suitable for economic development activities, despite provision for this in the *Cape York Peninsula Heritage Act 2007*;
8. reduces rights for the management of Indigenous land for conservation purposes, such as environmental offsets and carbon sequestration, despite the clear potential for this;
9. does not provide compensation or appeal rights for Aboriginal land owners for the proposed loss of rights;
10. proposes an unfair and unreasonable approach in the reversal of the onus of proof; and
11. fails to accommodate the special circumstances of Indigenous land owners (including native title holders) who were denied access to property in their traditional lands in the period before the establishment of comprehensive vegetation clearing controls in Queensland.

Key Amendments Sought

We request that the Agriculture and Environment Committee recommend that the Bill be amended to:

1. not remove provisions which currently permit applications for the clearing of remnant vegetation for high value agriculture and irrigated high value agriculture on Cape York;
2. improve assessment processes and approval conditions for applications for vegetation clearing;
3. extend vegetation clearing regulations to include mining projects;
4. amend the definition of land "owner" in the *Sustainable Planning Act 2009* (Qld) to include registered native title claimants and native title holders who have the benefit of a positive determination of native title;
5. remove the provision that reverses the onus of proof and place responsibility for unlawful clearing with the "occupier" of the land;
6. establish a 10 per cent quota, similar to well-established principles and systems utilised world-wide in fisheries management, for the clearing of Aboriginal freehold land on Cape York for agriculture;

7. negotiate and settle compensation for the loss of private property (clearing) rights on the remaining 90 per cent of Aboriginal freehold land;
8. include provisions to conduct land assessments to identify Indigenous land suitable for economic development and provide a simplified development approval process for development of this land;
9. amend the *Cape York Peninsula Heritage Act 2007* (Qld)to improve provisions for Indigenous Community Use Areas, including to redefine these areas as Indigenous Economic Development Zones, and to support Aboriginal land owners to realise development opportunities; and
10. include provisions that require that the quality of vegetation mapping must be significantly improved before it can be used as the basis for vegetation regulation.

We also request that the Agriculture and Environment Committee conduct a public hearing in Cairns prior to completing its report to Parliament, and that this hearing must significantly involve Aboriginal land holders and other interested parties.

1 Introduction

Cape York Regional Organisations (CYROs), comprising the Cape York Land Council (CYLC), Balkanu Cape York Development Corporation, and the Cape York Partnership (CYP), support the rights and aspirations of Cape York's Aboriginal peoples to rise above passive welfare dependence and to fully engage in mainstream economic activities. This includes our support for the Aboriginal people of Cape York to manage the environmental values of their private land and our recognition of the important contribution of these environmental values to social, cultural and economic values. We also support the Bill's objectives to improve reef water quality, protect biodiversity and reduce carbon emissions.

The Queensland Government also supports Aboriginal peoples' aspiration for participation in the mainstream economy as demonstrated through its multiple statements, policies and programs.

Our concern is that the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (Qld) (the Bill) seeks an outcome that will undermine this shared vision for the Aboriginal people of Cape York.

The Bill, if passed, will substantially add to the already significant constraints on Cape York Aboriginal people's rights and aspirations to develop their land in a sustainable and responsible manner. It adds punitive layers of regulation upon already highly regulated Cape York land and fails to empower Aboriginal people to achieve sustainable economic development opportunities.

The Bill treats all of Queensland in the same way without recognising that some regions are undeveloped and need more sustainable development opportunities than other developed regions. Developed regions should take a greater share of the burden associated with the need to reduce vegetation clearing.

The opportunities for Aboriginal people in Cape York to use their traditional land have been, until recently, highly constrained in part by policy settings of the Queensland Government. Although the access of Aboriginal people to ownership of their traditional land in Cape York has significantly increased since the *Mabo* decision in 1992 and the *Aboriginal Land Act 1991* (Qld), this has not been accompanied by a regulatory regime that accommodates the special circumstances of Aboriginal land owners (including native title holders) who have "arrived late" at the development of their proprietary rights because of prior exclusion. Australian racial discrimination legislation provides no

remedy for this intertemporal form of indirect racial discrimination, when it is embodied in statute. In another context, policies with this effect have been described as "environmental racism".[1]

The massive proposed regulatory transfer of rights and loss of opportunity on private Aboriginal land must be reversed. There is opportunity within this Bill to create rights and opportunity within a framework of sustainable development.

A critical measure outlined in this submission is the establishment of a 10 per cent allocated quota for the clearing of Aboriginal freehold land on Cape York for agriculture and that appropriate water rights are attached to this quota.

This quota, once established, would operate like fisheries management quotas whereby once the total quota to take the resource is filled then no more fish are allowed to be caught, or in the case of trees on Aboriginal freehold land, no more land can be cleared (or water used). The quota would be established and protected over time until it is filled. It is important to understand that fisheries quota is a legal property right that can be traded or leased. The same principles would apply for establishing a quota system for the right to clear Aboriginal freehold land for agriculture.

In addition to establishing a fair and reasonable quota of 10 per cent to clear Aboriginal land for agriculture, there must be negotiated compensation settled for the loss of private property (tree clearing) rights on the remaining 90 per cent of Aboriginal freehold land on Cape York. The basis for calculation of this compensation could be the foregone opportunity cost of the rights for carbon (per tonne of avoided deforestation) and biodiversity affected by vegetation management legislation and regulation.

Compensation would be administered through a newly established Cape York Aboriginal economic empowerment and development fund with membership on a Board from all affected Cape York sub-regions.

2 Background

Land tenure on Cape York is predominantly either State land under a pastoral lease or national park tenure, or Aboriginal land under DOGIT or Aboriginal freehold tenure including Aboriginal freehold national park tenure. Other tenures include mining leases, public roads and freehold. Aboriginal land is held by a trustee, usually a Land Trust, an Aboriginal Corporation, or an Aboriginal Local Government, and the Aboriginal land estate continues to grow as additional land is transferred to Aboriginal land tenure.

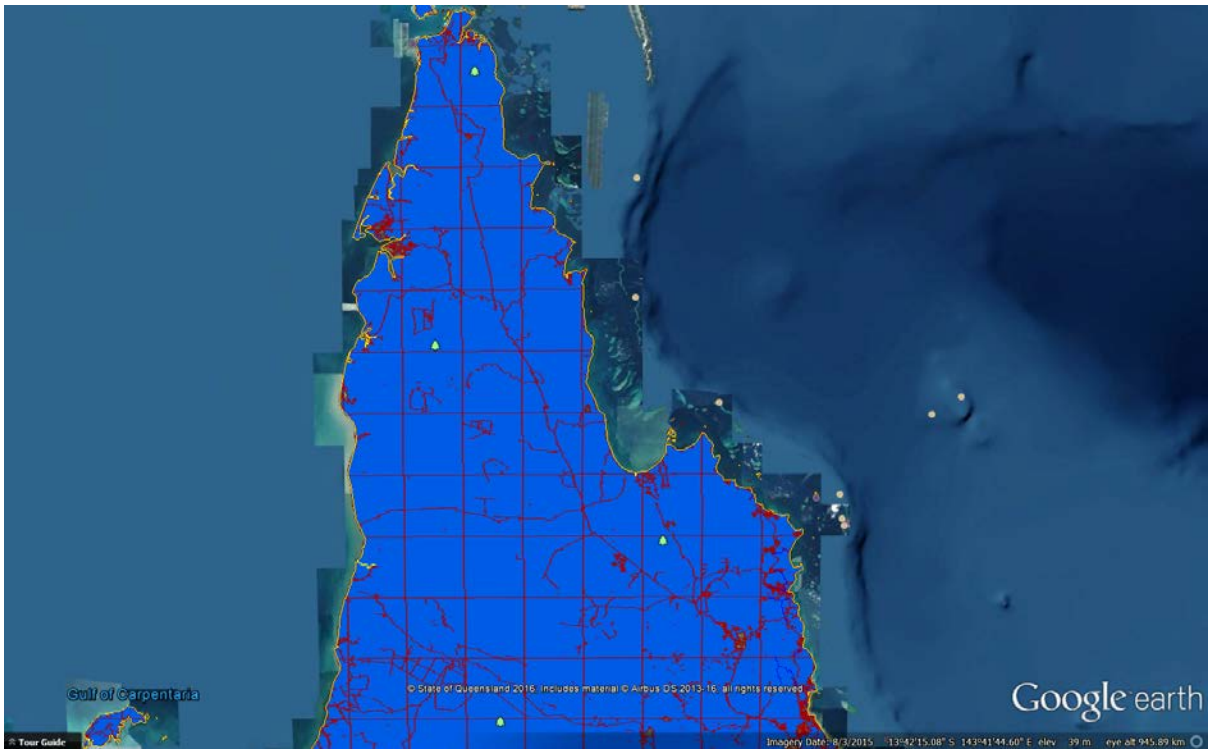
Native title has been determined or claimed across approximately 98% of Cape York. The current Cape York United Number 1 claim is anticipated to be finalised within two years and confirm that native title continues to exist over the vast majority of Cape York. That claim is registered on the Register of Native Title Claims under the *Native Title Act 1993* (Cth), and the registered native title claimants have significant procedural rights under the Act as a result.

State land and Aboriginal land tenures have not been cleared to any great extent so remnant vegetation constitutes about 98% of Cape York. Map 1 shows remnant vegetation as dark blue – almost all of the Cape shows up as dark blue except for road corridors. CYROs are aware that higher resolution maps show areas of regrowth vegetation and cleared areas, but these areas are so small that they are almost invisible to the naked eye when looking at a full page vegetation map of Cape

[1] See, for example, Godsil R., "Remedying environmental racism" (1991) 90 *Michigan Law Review* 394.

York. So Cape York people have enjoyed very few opportunities to benefit from development of their land and water resources for agricultural and other economic activity.

The population of Cape York includes a majority of Aboriginal people, most of who live in discrete towns on Aboriginal land. The dire social and economic circumstances of many Aboriginal people living in these remote communities is well documented, with employment, health and safety, education, and other indicators of wellbeing well below national averages. A dependence on welfare and other government transfers is considered to be a major contributor to this disadvantage. Participation in the mainstream economy is identified as a key strategy to close the disadvantage gap. The productive and sustainable use of land is essential to enable Aboriginal participation in the mainstream economy, and consequential improvements in Aboriginal wellbeing.



Map 1 – Remnant vegetation on Cape York.
Remnant vegetation shown as dark blue

3 Issues

Constraints on land use for agricultural purposes

Land use for agriculture, including high value agriculture, must be a foundation for economic activity and development on Cape York, as it is or has been for most parts of Australia where development has occurred. If the sustainable development aspiration shared by Cape York's Aboriginal people and the Queensland Government is to be realised then land use must not be unreasonably constrained by regulations such as those proposed by the Bill. This applies equally to Aboriginal land and other land tenures across Cape York (Indigenous or not) given that economic activity anywhere on Cape York, such as on pastoral lease land, often results in employment, and/or business and services opportunities for Aboriginal people.

Our concern is that the Bill would virtually extinguish any opportunity for land use for additional agriculture on Cape York because:

1. the proposal to remove provisions which currently permit applications for the clearing of remnant vegetation for high value agriculture and irrigated high value agriculture will affect

almost all land on Cape York given that almost all Cape York land is covered in remnant vegetation (see Map 1). The impact of this proposal will have a greater impact on economic activity in the Cape York region than the rest of Queensland because of the very high percentage of remnant vegetation in Cape York compared to the rest of Queensland. This is an unfair impediment on a region which is already struggling with very high levels of unemployment and low levels of economic activity. For example, in Hope Vale, which has good soils and water resources, this Bill would, if passed, restrict the expansion of current agricultural activities, including the banana farm, as well as new agricultural activities that are currently being planned.

2. the proposal to reinstate the regulation of clearing of high-value regrowth on freehold and Indigenous land will apply to most of the land area that is not remnant vegetation or under infrastructure such as roads or housing, and require this land to be managed according to a code. This will affect the relatively small areas of regrowth around Aboriginal towns that is currently unregulated and the most readily suitable to be developed for agriculture. The code may reduce the regrowth areas available for development even further by requiring an exchange area of land to be set aside equal to the area of land to be cleared. But in many cases Aboriginal people have already given 50% of their land to conservation in return for achieving Aboriginal freehold land for economic development.
3. the proposal to extend the protection of regrowth vegetation along watercourses in all reef catchments, including watercourses in Eastern Cape York, will restrict development even further for communities including Wujal Wujal, Hope Vale and Lockhart River. The maps of proposed areas of regrowth vegetation along watercourses show that even stream orders 1 and 2, which are no more than ephemeral drainage lines, are caught up by this proposal.
4. finally, the proposal to reinstate the requirement to obtain a riverine protection permit to destroy vegetation in watercourses under the Water Act adds an additional layer of technical and procedural complexity to development application processes.

The consequences of this Bill, therefore, may be to stop virtually any new agricultural enterprise on Cape York despite its significant potential for Aboriginal participation in the mainstream economy. Many other economic activities that require even moderate land clearing will also be stopped. The Bill, by default, proposes the perpetuation of Aboriginal disadvantage as an acceptable trade-off for imposing public good conservation objectives over private land. Aboriginal people and other landholders on Cape York are underwriting these public good conservation objectives through the loss of their private property rights, with no recourse to appeal or process to determine potential compensation.

Aboriginal people deserve an opportunity to use their land as the basis to sustainably develop, and if they are to lose their right to benefit from their private interests in land in order to promote a public good then the public need to understand this and compensate Aboriginal people for this removal of rights.

Contradiction of Aboriginal development aspirations

Aboriginal people, CYROs, the Queensland Government, the Australian Government and the broader Australian society support Aboriginal empowerment and development. There is widespread and bipartisan political support for the vision articulated by Noel Pearson and many other Australian political leaders that Aboriginal people deserve a meaningful place in modern Australia and this includes the right of this and future generations of Aboriginal people to participate in the mainstream economy as a means to improve their wellbeing. However, the constraints on the use of Aboriginal land, and other land on Cape York, for agricultural purposes contemplated by the Bill represents a false economy and deep contradiction between policy objectives and reality in Queensland.

The combination of land tenure, land ownership, land use planning (including vegetation management), native title, limited investment in information, infrastructure and corporate governance, limited access to finance and other issues have effectively stymied the realisation of Aboriginal sustainable development based on land use. The aspiration for development has already been stymied by the disjointed, capricious and siloed approach taken to land regulation in the Cape by successive Queensland governments and the sustainable development aspiration will never be achieved if the same approach continues.

The Queensland Government, to support Aboriginal empowerment and development in Cape York, needs to amend the Bill to proactively identify areas where economic activities, including clearing land for agriculture and other purposes, may take place. This will, by necessity, require the collation of information about environmental, social, economic and cultural values and potentials on Cape York, and the subsequent identification of areas that could be sustainably developed and areas that should be subject to greater protection. If an informed and participatory process was followed to identify these areas then it is likely that Aboriginal interests will support the outcomes of the process, including the negotiated inclusion of additional areas in the public conservation estate.

Mining remains unaffected by the Bill

Mining is responsible for the clearing of large areas of vegetation throughout Queensland, including Cape York, and in some instances occurs within watercourses causing significant impact to nearby and downstream water quality. Examples include the huge areas of vegetation clear-felled for bauxite mining on western Cape York and the extensive in stream mining projects in the Palmer – Mitchell river systems. Yet despite these impacts mining remains exempted from the regulation of the Bill, the *Vegetation Management Act 1999* (Qld) and the *Sustainable Planning Act 2009* (Qld).

Mining is critical to the economy of Queensland including Cape York. Whether it should be excluded from the regulation of the Bill is another matter. The consequence, however of its exclusion from the regulation of the Bill is perverse. Mining, including low economic value small scale mining, is permitted to clear vegetation, damage biodiversity, degrade reef water quality and contribute to carbon emissions on land that is not even owned by the miner, when the Bill proposes that an Aboriginal land owner is not permitted to clear vegetation on their land for an economic purpose. The Bill even continues to allow that a miner may clear vegetation on Aboriginal land for mining purposes, but the Aboriginal land owner cannot clear their own land to grow food. A current example is the Queensland Government's proposal to grant a bauxite mining lease over Aboriginal freehold land owned by Ngan Aak-Kunch Aboriginal Corporation to Glencore International which will result in thousands of hectares being cleared, but the Bill seeks to prevent Ngan Aak-Kunch from developing their land for the benefit of the Aboriginal people of Aurukun.

The Bill is selective in the way it which it impacts different sectoral interests with Aboriginal land owners being the most heavily impacted sector. This is unfair and unreasonable.

Simplistic approach to achieving environmental outcomes

The Bill assumes that simply ceasing vegetation clearing will automatically result in the improvement of reef water quality, protect biodiversity and reduce carbon emissions. It assumes that taking a "wilderness" approach where nature is left to run its course without human intervention automatically results in improved environmental outcomes. CYROs acknowledge that vegetation management contributes to achieving these outcomes but the Bill is blind to the fact that the Australian environment, and the services it provides is, in many areas, the product of Aboriginal land management and stewardship.

For example,

- biodiversity is protected and enhanced by the creation of microhabitats as a result of land management practices such as traditional burning, and without this dynamic management particular species may dominate the ecosystem to the detriment of other species;
- biodiversity is protected and enhanced by the active management of pests and weeds, but this management is less likely to occur on land which does not support economic activity; and
- actively growing trees sequester greater amounts of carbon than mature trees, and land can be managed to promote actively growing trees for food or timber production, and for conservation outcomes.

The Bill could better achieve its intended outcomes if it provided for active and informed human management of the landscape, including for agriculture, than the blanket ban on vegetation clearing that it currently proposes. Queenslanders, including Indigenous Queenslanders, are capable of land management that achieves economic and environmental outcomes if the regulatory regime provides for holistic land management rather than providing for the exclusion of human activity from the landscape.

Regulation based on inadequate information

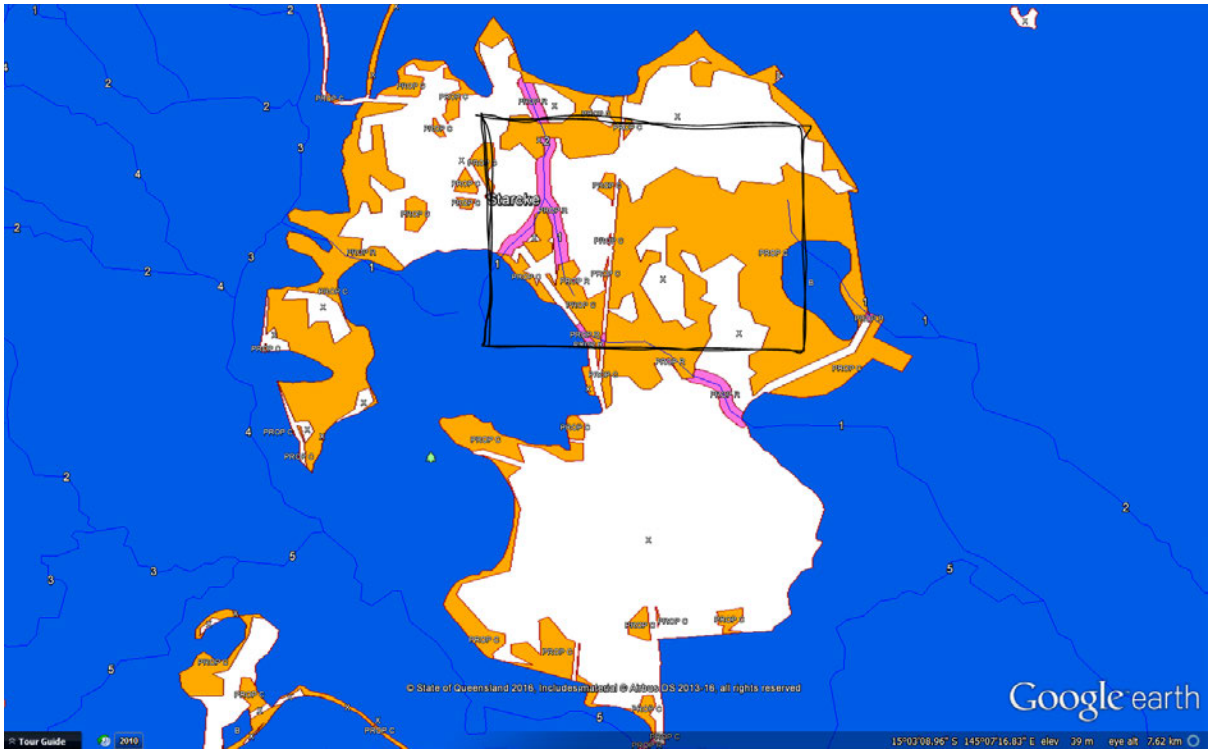
The mapping which is used to identify the zones of remnant, regrowth and watercourse vegetation is flawed and incomplete and in no way appropriate to use as the basis for a regime for the regulation of vegetation clearing. The mapping has not been ground-truthed and yet it is to be relied upon to guide vegetation regulations and the enforcement of these laws as they apply to private land.

For example, parts of Starke Station on Cape York have been cleared, parts have been cleared and regrown, and parts are remnant vegetation. However the mapping on the DNRM website supposedly showing cleared, regrowth and remnant vegetation bears little resemblance to the actual vegetation on the ground. Cleared areas are shown as regrowth, regrowth is shown as cleared, remnant is shown as regrowth. See Maps 2, 3, 4 and 5.

This mapping in its current form cannot possibly be relied upon by the State as the basis for a regulatory regime and nor can it, therefore, be relied upon by the landowner as the basis for managing their land. The onus and responsibility for using accurate, clear and complete information to establish and enforce land clearing regulations should always rest with the regulating authority.

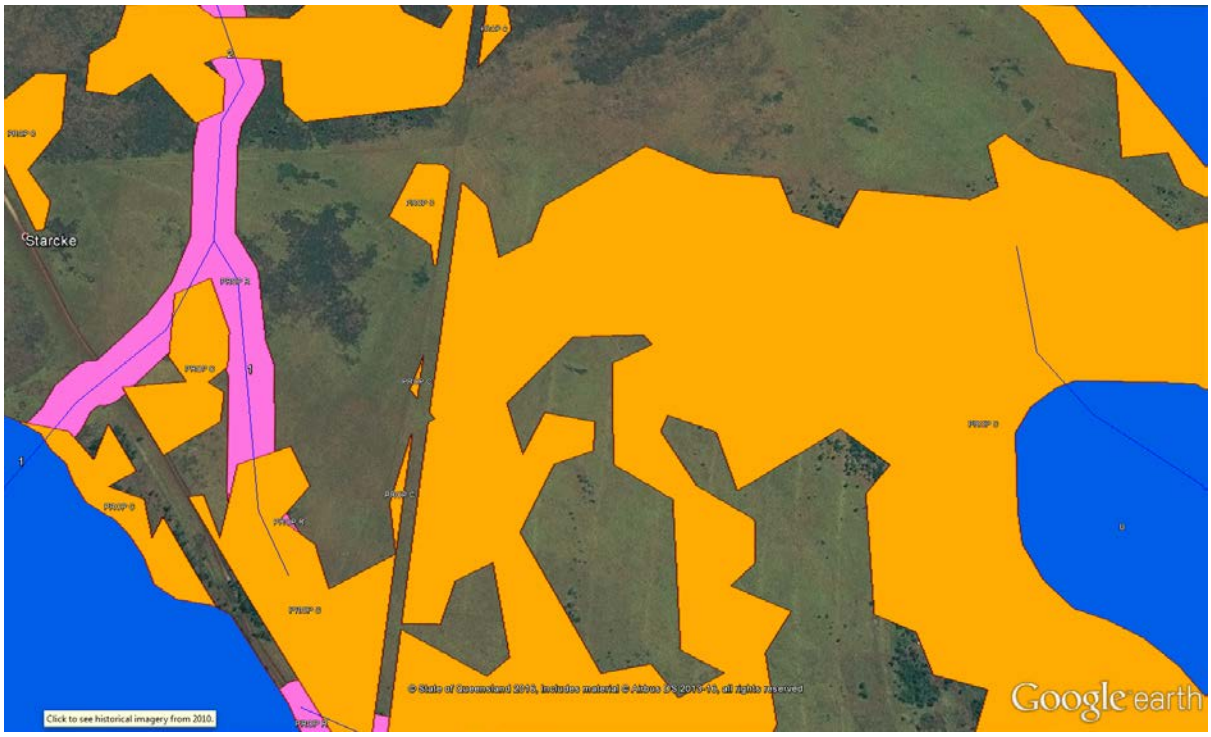
The State must invest in more reliable information gathering and ground-truthing of vegetation categories before the Bill could be further progressed.

Map 2 – Current vegetation regulation around Starke Station
Remnant vegetation shown as dark blue, vegetation not regulated by VMA shown as uncoloured satellite photo image.



Map 3 – Proposed vegetation regulation around Starke Station
Remnant vegetation shown as dark blue, high value regrowth vegetation shown as orange, reef regrowth remnant vegetation shown as pink, vegetation not regulated by VMA shown as white. The area described by the sketched black line is shown in Maps 4 and 5.

Map 4 – Close up view of part of Starke Station
Note the completely cleared areas in the centre of the image, regrowth vegetation in the top left and what appears to be remnant vegetation bottom right.



Map 5 – Proposed vegetation regulation for part of Starke Station
Remnant vegetation shown as dark blue, high value regrowth vegetation shown as orange, reef regrowth remnant vegetation shown as pink, vegetation not regulated by VMA shown as uncoloured satellite photo image.

Map 3 shows the extensive vegetation clearing restrictions proposed by the Bill on one of the few areas of Aboriginal land that is currently available for agriculture and other economic activity.

A comparison between maps 4 and 5, which cover the same area, reveals that some completely cleared areas are proposed to be regulated as high value regrowth vegetation, some regrowth vegetation is proposed to be unregulated vegetation, and some of what appears to be remnant vegetation is proposed to be regulated as regrowth vegetation. It is obvious these proposed vegetation management categories bear no resemblance to reality on the ground and confirm that the mapping is incorrect and has not been ground-truthed. This mapping must not be used as the basis for a regulatory system.

Note also the uncertainty and risk that a land manager is exposed to by this mapping, and the regulatory regime it supports, because the complex and irregular sizes and shapes of the vegetation categories would make it impossible to know where you were on the ground, and what category vegetation was in. The size, shape and fragmentation of the vegetation categories also makes land use in the unregulated vegetation areas very impractical and unviable.

The vegetation maps must be reviewed to ensure their accuracy and to simplify their application on the ground before the Bill should progress.

Reversal of the onus of proof

The Bill proposes to reintroduce Reverse Onus of Proof provisions which place the responsibility for unlawful clearing with the ”occupier” of the land, such as the owner or lessee, in the absence of evidence to the contrary.

This is a fundamental breach of the rights of all Australians to the presumption of innocence and the requirement for a prosecutor to prove guilt. Innocence until proven guilty is a cornerstone of the Australian and Queensland justice system and a fundamental legislative principle. Reversing the onus of proof cannot be justified for vegetation management and it reveals a very concerning attitude towards the rights and liberties of Queenslanders in general.

This issue alone is sufficient reason that the Bill must be not be passed in its current form. Prosecution under the *Vegetation Management Act 1999* (Qld) must retain the fundamental principle that the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt, and that the accused person bears evidential onus in relation to defences or excuses. Valid reasons to reverse these principles in relation to vegetation management have not been provided.

The impacts of vegetation clearing on traditional Aboriginal interests in land

We consider that the Bill should not remove provisions which currently permit applications for the clearing of remnant vegetation for high value agriculture and irrigated high value agriculture, at least in undeveloped regions such as Cape York, because of the impact this will have on Aboriginal economic development opportunities. We also recognise, however, that vegetation clearing has significant impacts on traditional Aboriginal interests in land such as hunting and gathering, traversing country and cultural heritage. These interests are obviously and permanently damaged where vegetation is cleared.

These traditional Aboriginal interests in land are not adequately protected by Queensland planning laws because the *Sustainable Planning Act 2009* (Qld) does not require the consideration of

Aboriginal interests, including cultural heritage values such as scarred trees, in development assessment processes.

We consider that the most effective and appropriate way to ensure that Aboriginal interests are adequately considered in the assessment of development applications which propose vegetation clearing is to amend the definition of land "owner" in the *Sustainable Planning Act 2009* (Qld) to also include native title parties where a native title claim has been registered or native title determined. Native title parties would then have to provide owner's consent before the development application could be approved. The requirement to provide owner's consent would provide Traditional Owners with an opportunity to identify the impacts the vegetation clearing would have on traditional Aboriginal interests, including cultural heritage, and how these impacts could be avoided or mitigated. We regard the present exclusion of native title holders and registered native title claimants from the definition of "owner" as a matter of serious concern, demonstrating a policy of less favourable treatment of native title holder than the owners of freehold in Queensland.

4 Solutions

Whilst we support the Queensland Government to improve reef water quality, protect biodiversity and reduce carbon emissions these objectives can be achieved:

- by maintaining existing vegetation clearance regulatory mechanisms for Aboriginal land and other land on Cape York,
- establishing a sustainable quota of 10 per cent for the clearing of Aboriginal freehold land for agriculture,
- negotiating compensation for the loss of private property (clearing) rights on the remaining 90 per cent of Aboriginal freehold land on Cape York and for compensation to be used and held for Aboriginal economic empowerment and development,
- supporting Aboriginal land owners to identify where land could be cleared, how it could be cleared, and how impacts could be mitigated so as to not have significant impacts on reef water quality, biodiversity and carbon emissions,
- by supporting Aboriginal land owners with alternative options for economic development and incentives to not clear vegetation as a form of compensation for their loss of private property rights proposed by the Bill,

so that the purpose of the *Vegetation Management Act 1999* (Qld) to *"…regulate the clearing of vegetation in a way that… allows for sustainable land use"* is achieved.

Improve existing regulatory mechanisms

Land use on Cape York, whether Aboriginal land, pastoral lease or other State land, is already significantly constrained by environmental factors including seasonal extremes of wet and dry, unsuitable terrain, soil fertility and access to water, so vegetation clearing pressure is already naturally suppressed on Cape York. Aboriginal land on Cape York is already overregulated and the clearing of vegetation is already highly restricted even where viable economic development opportunities exist. The vegetation clearing restrictions proposed by the Bill are an unnecessary "belt and braces" approach, and the environmental outcomes sought by the Bill can be achieved by making use of and improving the existing regulatory mechanisms.

Existing regulatory mechanisms include:

- the current *Vegetation Management Act 1999* (Qld) requires an application for the clearing of land for agriculture to be subject to assessment under the *Sustainable Planning Act 2009* (Qld) which requires consideration of the subject land's environmental values including matters of State interest, and provides for the rejection of an application if impacts to environmental values are significant;

- the Cape York Regional Plan declared a large Strategic Environmental Area across much of Cape York which highly restricts land use and vegetation clearing across much (although not all) Aboriginal land on Cape York; and
- local government planning schemes identify land use zones in Aboriginal Local Government Areas, and identify most land in most Aboriginal LGAs as an Environmental Management and Conservation Zone which provides for *"…the protection and maintenance of areas identified as supporting significant biological diversity and ecological integrity."*

The combination of existing regulatory mechanisms referred to above, plus other applicable State and Commonwealth legislation, can be used to effectively manage the clearing of vegetation without the additional restrictions on property use rights proposed by the Bill.

We share concerns about the broad-scale clearing of land that has occurred across Queensland, including the recent broad scale clearing carried out by some landholders. This clearing could have been readily managed under current laws through better information about the environmental values of the land, more rigorous assessment of the impacts of clearing, and stricter conditions of approval to manage or mitigate impacts within a sustainable development framework.

Balancing economic, social, cultural and environmental factors, and thereby achieving sustainable development for Cape York, will significantly depend upon comprehensive, scientifically founded information about land and its values. Without this information the "precautionary principle" will continue to be applied through the discretionary and lazy design and application of environmental regulations, such as the vegetation clearing controls proposed by the Bill.

Government resources should be invested in better identification of environmental values, innovative land management approaches and the strengthening of assessment and approval conditioning processes rather than blanket statutory restrictions which remove any opportunity for sustainable development. Sustainable development and improved reef water quality, biodiversity protection and reduced carbon emissions are not mutually exclusive on Cape York.

Establish a sustainable quota of 10 per cent for the clearing of Aboriginal freehold land on Cape York

More than 148 major fisheries around the world, including Australia, are sustainably managed through a quota system whereby a total allowable catch (TAC) for each fishery is set and then turned into quota rights that can be traded or leased by individual fishers as individual transferable quota.

Using the well-established principle of quota management in fisheries, there should be a sustainable limit, 10 per cent, applied to vegetation clearing on Cape York Aboriginal freehold land for agriculture and that this TAC equivalent measure is converted into a total quota for use by Aboriginal landholders to develop their land for agriculture. Individual landholders would be able to pursue agricultural development within the 10 per cent limit. The principle of individual transferable quotas could also be readily applied.

Aside from using these quota rights for agriculture, the right to clear areas of land within the quota could be used for other purposes, including for trading or leasing into emerging markets for carbon and biodiversity.

Negotiate compensation for the loss of private property (clearing) rights on the remaining 90 per cent of Aboriginal freehold land on Cape York and for compensation to be used for Aboriginal economic empowerment and development

Overall, carbon storage and sequestration services from Aboriginal land are delivering an enormous benefit to Australia and the world, yet no recognition is given to their private ownership. Through the proposed land-clearance laws and other legislation and regulation, Aboriginal people's private property rights are being restricted to a point equivalent to compulsory resumption, with no scope for appeal or compensation at fair market value – in effect, annexation.

Australian Governments are currently leveraging off the carbon storage and sequestration services provided by forests on privately owned land, including the very significant land owned by Indigenous people where remnant vegetation is still intact. Aboriginal landholdings on Cape York are providing, a much-needed, but grossly under-valued and unrecognised service in the Australian, Queensland and international push to mitigate emissions of greenhouse gases. The Australian Government has previously been able to achieve a net increase in GHG emissions of only 4.2 per cent (over 1990 levels) because of the contributions of land-use and forestry, including land clearance laws (Cape York Institute for Policy and Leadership 2009).

There must be recognition and fair and reasonable compensation for the carbon rights resumed on Indigenous land through Queensland land clearance laws. The Australian and Queensland Governments should estimate and negotiate an ecosystem service payment (for both carbon and biodiversity ecosystem services) to Cape York Aboriginal landholders for the laws and regulations placed over private Aboriginal freehold land for carbon and biodiversity objectives that are made in the name of the public good.

The compensation would be administered through a newly established Cape York Aboriginal economic empowerment and development fund with membership on the Board from all affected Cape York sub-regions.

Meanwhile, Australia is continuing to provide significant funding to avoid deforestation in other countries, including the International Forest Carbon Initiative, which supports international efforts to reduce deforestation, with a focus on Indonesia and Papua New Guinea – while in Australia the carbon benefits from land held by Indigenous people have been acquired, at significant cost to current landholders and their future generations.

Refocus ICUAs as Economic Development Zones to support Aboriginal land owners to identify and realise sustainable land use opportunities including high value agriculture

The *Vegetation Management Act 1999* (Qld) and the *Cape York Peninsula Heritage Act 2007* (Qld) recognise that Aboriginal development aspirations will be constrained by vegetation clearing restrictions and make provision for clearing for a special Indigenous purpose, including within an Indigenous Community Use Area (ICUA). We strongly support the preparation of ICUAs because they are an expression of sustainable land use and management for agriculture, animal husbandry, aquaculture or grazing activities, and identify how the dual objectives of environmental protection and sustainable development can be achieved.

However, ICUAs should be refocussed and recognised as Indigenous Economic Development Zones and potentially cover far larger areas than previously envisaged. Public conservation on the private land within these areas (including the retiring of tree clearing rights for public good conservation objectives) could be treated as a form of economic development and subject to normal negotiation and agreement making processes.

Amongst other things, the preparation of ICUAs requires:

- evidence that there is no suitable alternative site for the development;
- evidence that the development cannot be carried out without the proposed clearing;

- details about how adverse impacts of the proposed clearing will be minimised or mitigated;
- details about how vegetation will be rehabilitated on the land the subject of the application if the development does not happen or ends;
- the nature and extent of any other thing done or proposed to be done in addition to the development that has had, or may have, a beneficial impact on the natural values of the indigenous community use area or land in its vicinity; and
- details of a business plan, for activities related to the development, showing information about the viability of the activities.

The collation of this information for the preparation of an ICUA requires a significant investment of time and energy to research existing data, and may require primary research into environmental values. Although Aboriginal land owners have good knowledge of the suitability of their land for various purposes, and how to manage land to protect its values, the resources required to support the preparation of an ICUA is generally not available. Government should support Aboriginal land owners to prepare ICUAs so that land may be used for sustainable development. Over time, as land uses generate income, the need for government support for Aboriginal land owners will decline.

The Bill should include amendments to the *Cape York Peninsula Heritage Act 2007* (Qld) to improve the preparation and approval of ICUAs, and expand the scope of the land uses provided for by ICUAs to also include non-agricultural activities.

Support Aboriginal land owners with alternative options for economic development

The Bill's preparation was driven by concerns about clearing land for agricultural purposes and the impact this has on environmental values. However, using Aboriginal land for agricultural purposes is, in many areas, the most prospective option for Aboriginal participation in the mainstream economy. If the Queensland Government intends to remove this opportunity for Aboriginal economic participation through the imposition of the Bill, then it must provide Aboriginal people with alternative options for participation in the mainstream economy.

This requires a thorough and well-designed approach to assess and identify the social, cultural, environmental and economic values inherent in land, and then the identification of suitable uses and management strategies to mitigate significant harm to these values. The preparation of improved versions of ICUAs are the starting point for informing Aboriginal people and the Queensland Government about the economic potentials of Aboriginal land.

The Queensland Government must recognise and support a new land services economy which provides incentives to not clear land, such as payments for the public conservation services provided by uncleared Aboriginal land, and promote the utilisation of Aboriginal land for existing conservation economy opportunities, such as environmental offsets and carbon sequestration. This Bill removes the opportunity for private landholders to permanently retire the right to clear land for agriculture as part of potential future carbon agreements. ICUAs could potentially identify what land could be used for conventional economic purposes such as agriculture, and what land could be used for conservation economy purposes. In this way objectives for both environmental protection and economic participation could be achieved and result in sustainable development.

The Queensland Government must acknowledge and address the fact that this Bill would impact the rights of Aboriginal land owners in Cape York to use and potentially clear their land for agriculture. The restriction of the opportunities inherent in current private property rights has a real economic cost that must be addressed. Support for Aboriginal land owners to identify what their land could be used for, and implementation of these uses would be a big step in the right direction. If the

Queensland Government is unwilling to provide this support then the Bill should not be applicable to Aboriginal land.

6 Conclusion

The Bill will suppress the opportunity for Aboriginal people in undeveloped regions like Cape York to use their land for agricultural and other economic purposes which require vegetation clearing. As such, the Bill will have the effect of perpetuating Aboriginal disadvantage. The private property rights of Aboriginal people and other affected Cape York landholders will have been fettered for an unsubstantiated public purpose, without compensation or appeal, to benefit the wider Queensland community, Australia and the world.

The Bill is flawed in its current form and the CYROs urge the Queensland Government to consider measures that recognise and address the sustainable development challenges, including:

- proposals to invest in the assessment and identification of the social, cultural, economic and environmental values of Aboriginal land, and
- establishing a sustainable quota of 10 per cent, using the well-established principles in fisheries management, for the clearing of Cape York Aboriginal freehold land for agriculture,
- negotiate compensation for the loss of private property (clearing) rights on the remaining 90 per cent of Aboriginal freehold land on Cape York and for compensation to be used and held for Aboriginal economic empowerment and development,
- rework ICUAs as Indigenous economic development zones.

We offer to work with the Queensland Government to develop amendments to the Bill so that it will achieve its objectives to improve reef water quality, protect biodiversity and reduce carbon emissions in a way that also allows for and supports sustainable Indigenous development and participation in the mainstream economy on Cape York. These objectives are not mutually exclusive.

We have a clear understanding of the amendments required to the *Vegetation Management Act 1999* (Qld)*, Sustainable Planning Act 2009* (Qld)*, Cape York Peninsula Heritage Act 2007* (Qld) and other legislation to achieve these important outcomes and will raise these matters with the Agriculture and Environment Committee at our next opportunity.

References

Cape York Institute for Policy and Leadership 2009, *The economic potential of emerging markets for carbon and biodiversity for Cape York Indigenous people*, Cape York Institute Discussion Paper, Cairns.