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The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

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RE: Submission to the Aboriginal and Torres Strait Islander Land (providing Freehold) and OLA Bill 2014

To Whom It May Concern

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

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

I completed my PhD on community based development planning in the remote Arfak Mountains in West Papua and I continue to publish articles that describe the characteristics of remotely located communities and how to enhance planning and development opportunities in these unique locales.

I would firstly like to thank the committee for the opportunity to make a submission to this very important Bill. It is my opinion that this Bill demonstrates the Newman government commitment to creating equal opportunities to access and create economic development in remote Indigenous communities. The comments contained within this submission, should be construed as constructive criticism with the intent to enhance economic development within remote communities in Queensland.

I respectfully acknowledge the contributions that other organisations and individuals make to this committee regarding the administration, consultation and processes associated with the extinguishment of Native Title and the intricacies of the free holding model. I make the following submission to the committee that is limited specifically to addressing issues associated with the land use plans and the allocation of freehold title to particular lots. My submission is based on how freehold land will be allocated and how this affects the realisation of home ownership, business opportunities and employment generation.

Summary of Comments:

- The Bill should provide for consistent terminology used by the Queensland Planning Provisions to describe the precise location of where free hold options will be made available ie Urban and Future Urban or Township Zone.

- The Bill and Newman Government policies address half of the solution to stimulating economic development within remote Indigenous communities. This Bill and the policy so far have focused upon providing home ownership that can be mortgaged and sold. However, a person needs a job to pay a mortgage and access to the implicit capital value of their land assets to increase growth and production rates. Job creation is not addressed adequately in either this Bill or any of the other interventions applied by the Newman government.
- One such intervention that can be used is the local planning scheme – it has been underutilised in the identification of economic opportunities.
- Absence of detail about Aboriginal Freehold Land outside of an Aboriginal Local Government Area, but within a LGA. There has been no provision within the Bill for freehold as an option for Land Trusts that hold land outside of an Aboriginal Local Government Area. I provide only one example – namely the Eastern Kuku Yalanji (EKY) nation, the territory of which is located within two non-Indigenous Shires that both have planning schemes governing development. This is an issue of equity to all Aboriginal people in Queensland and should be acknowledged and addressed directly.

General Comments:

The Bill provides a mechanism for free holding land that has been described as urban or future urban use in a land use plan. Statutory land use plans (pursuant to the Sustainable Planning Act 2009) have been developed for all communities on the Cape York Peninsula including Yarrabah. Of these statutory land use plans (as at 4th April 2014) only 9 have been released for public consultation and 2 have been adopted.

I will draw from my knowledge and understanding of Mapoon (draft), Wujal Wujal (adopted) and Hopevale (draft) planning schemes. In addition I would like to draw attention to an anomaly in the case of the Eastern Kuku Yalanji Lands that fall within Cook and Douglas Shires. Please note that the submission put forward by Bennett Walker to the discussion paper is not from Jabalbina acting as either the PBC or the Land Trust on behalf of the EKY people. This is not to say that the content of his submission is in anyway less valid, just cannot be viewed as representative of the entire EKY nation.

The statutory land use plans that have been developed for Hopevale, Mapoon and Wujal Wujal have applied the Queensland Planning Provisions (QPP). The QPP is a standardised template approach to planning scheme development used by all Local Government Authorities (LGA) in Queensland. The QPP makes provision for a range of land use definitions and zones, notwithstanding the defined activity groups.

Terminology: Urban and future urban

The Bill provides for freehold option on land located within townships only, which is *defined and identified in the relevant local planning scheme as urban or future urban use*. Of the three planning schemes that I reviewed for the purposes of this submission – none use the definition of urban to delineate a place or location from ‘non-urban’. The QPP provides for an administrative term ‘urban purposes’ – **for the purpose of priority infrastructure plans, urban purposes included residential (other than rural residential), retail, commercial, industrial, community and government related purposes**. But this definition does not translate to a specific location just a set of broad land use types that may or may not be applied in a land use plan for calculating and planning rates of infrastructure provision. The terms used in this definition do not align with the land uses, defined activity groups or zones applied in the local planning schemes or the QPP.

However, all of the local planning schemes use and apply a Township Zone that provide for a range of specific land uses or defined activity groups. The QPP provides for ‘Defined activity groups’ – whereby a group may incorporate several uses for example Industrial activities includes such uses as Agricultural supplies store, Bulk landscaping supplies, Low impact industry, Marine industry, Medium Impact Industry, Service station and Transport Depot.

The QPP makes provision for the planning scheme to be written to apply the activity groups provided (in the QPP) or that they may create their own. However the uses that are lumped within a group must be consistent with the land uses and their associated definitions provided for in the QPP. The Table of Assessment in some of the planning schemes that have been written for Aboriginal Shire Councils have used defined activity groups whereas others have used specific land uses.

The Hopevale Planning scheme makes reference to an area described as ‘future urban’ whereas the Mapoon planning scheme uses the term ‘emerging community’. Both planning schemes are referring to future development– ie areas that will be used in the future to accommodate growth of the township.

The relevance of this to the Bill is that the terminology applied in the planning schemes is different to that in the Bill. I think it would be more appropriate to use consistent terminology between the two processes so that it is clear that land within the Township zones is the only locations that will be considered for potential freehold options.

Freehold for Housing or for Economic Development?

While I note that the purpose of this Bill is to remove barriers to home ownership and drive economic development in these communities, there needs to be careful consideration of the later purpose. In my previous submission to the State Development, Infrastructure and Industry Committee, I outlined the reasons why ordinary freehold is important to driving economic development. However, a focus upon housing in isolation to creating economic development opportunities that in turn create job opportunities will not create economic growth. What I mean by this is that having freehold land for a house means that the owner may monetise their assets in the form of raising a mortgage on the implicit capital value of the land and house asset. This Bill in combination with the range of policy reforms that the Newman government have created will enable home ownership to be accessed, but not necessarily economic growth or development. To pay a mortgage requires a job, to have a job requires development, to have development means that land must be identified for development (not just housing). At present there has been less attention paid to creating the economic development opportunities via the planning scheme and the property system than there has upon private home ownership.

I have undertaken a quick review of how each of the local planning schemes in Hopevale, Mapoon and Wujal Wujal has treated land uses to demonstrate what I mean. The table below highlights the different approaches undertaken by each local government with respect to land use rights within the Township Zone.

Please note that Wujal Wujal created their Township Zone Table of Assessment by focusing on specific land uses within precincts (identified on the basis of common land uses such as community purposes, residential, business etc). The Hopevale planning scheme lists the level of assessment by land uses and precincts within the Township zone. Mapoon adopted an entirely different approach to development assessment categories by listing a combination of land uses and defined activity groups within the Township Zone Tables of Assessment. To provide a basis of comparison I have listed all land uses applied in all three planning schemes and then provided the level of assessment required. This table provides an example of how economic development may occur within the Township zones of each community.

Please note that each of the local planning schemes has done an excellent job of identifying where housing will be located (mostly self assessable). It is my opinion that far more could have been achieved to identify where economic development can occur relative to where people live. The Centre of Tropical Urban and Regional Planning is currently undertaking an analysis of how the planning schemes provide for economic development in both Hopevale and Mapoon and will release the results in August of this year.

The land use rights attached to a piece of land are granted via the local planning scheme. Two issues arise relative to this notion. One being that there will not be an even distribution of free holding options for development provided to each Land Trust within a LGA, rather only those that has land within the Township zone. Secondly the economic value of the land in other non-Indigenous communities (remote and otherwise) is relative to (amongst other things) the land use rights inferred through a local planning scheme. Where the land use rights are Self and Code Assessable and Exempt, the value can be more readily calculated. However, where the land use is Impact Assessable – the economic value of the land is less certain (as it does not exist until after an approval has been granted by the Local Government).

I do not know how to solve the problem of uneven distribution of land use rights in a LGA. This is something that will have to be examined closely with respect to Land Trust areas within LGA’s – something that is not yet complete across Cape York as some Native Title determinations are yet to be completed.

However I do believe that more can be achieved through the land use plans to create incentives to create economic development develop through the creation of Use and Development Codes (pursuant to SPA). These are not evident in any of the local planning schemes so far. For instance in Mapoon, the Strategic Intent of the Land Use Plan states that fisheries, eco-tourism, forest practice and timber mill, horticulture are the key economic platforms for the shire. Yet no provision is made for these land uses in any of the Tables of Assessment, specific locations where these activities may occur or within any development code. This suggests that the background research into these economic activities has not been well thought out and is simply a suggestion. What is required is a thorough review of the potential for each land use within the Shire and for the land use plan to identify the areas that the land use will enable an economically viable industry to establish.

Land use	HopeVale	Mapoon	Wujal Wujal
Market	Exempt	Exempt (1 day/week) Red Beach only	Exempt (1 day/week) and Code Assessable (conditions)
Substation	Exempt	Exempt	Impact
Telecommunication facility	Exempt	Code Assessable	Impact Assessable
Utility installation	Exempt	Exempt	Exempt
Advertising Device	Self assessable	Impact	Self Assessable
Car park	Self assessable	Code Assessable	
<i>Dwelling unit</i>	<i>Self assessable</i>	<i>Self assessable</i>	<i>Self, Code Assessable precinct dependent</i>
Food and drink outlet	Self assessable	Code Assessable	Self, Code, Impact Assessable (thresholds apply)
Home based business	Self assessable	Code Assessable	Self and Code Assessable
Office	Self assessable	Code Assessable	Self Assessable
Shop	Self assessable	Code Assessable	Self, Code Assessable precinct dependent, thresholds apply
Service Industry	Self assessable	Code Assessable	Code Assessable
Caretakers accommodation	Code Assessable	Code Assessable	Self, Code Assessable precinct dependent
Funeral parlour	Code Assessable	Impact Assessable	Impact Assessable
Service station	Code Assessable	Code if Airport and Industry Precinct , Red Beach – conditions apply – otherwise Impact	Code Assessable (precinct dependent)
Veterinary services	Code Assessable	Code Assessable	Self, Code, Impact Assessable (precinct dependent, thresholds apply)
Short term accommodation	Code Assessable	Code Assessable (Red Beach only)	Self, Code, Impact Assessable (precinct dependent, thresholds apply)
Major Electrical infrastructure	Impact Assessable	Code (Airport and Industry Precinct)	Impact Assessable
Animal Keeping	Impact Assessable	Code Assessable (High Rise)	Impact Assessable
Business activities	Impact Assessable	Code Assessable (Red Beach)	Impact Assessable
High Impact Industry	Impact Assessable	Code (Airport and Industry Precinct)	Impact Assessable
Hostel	Code Assessable	Code Assessable (Red Beach)	Impact Assessable
Industrial Activities	Impact Assessable	Code Assessable (Airport and Industry Precinct , Red Beach – conditions apply)	Impact Assessable
Agricultural Supplies Store	Self Assessable (Industry precinct) Impact elsewhere	Code Assessable (Airport and Industry Precinct , Red Beach – conditions apply)	Self, Code Assessable (thresholds apply)

Land use	HopeVale	Mapoon	Wujal Wujal
Bulk Landscape Supplies	Self Assessable (Industry precinct) Impact elsewhere	Code Assessable (Airport and Industry Precinct , Red Beach – conditions apply)	Self, Code, Impact Assessable (thresholds apply)
Child Care Centre	Code Assessable (community purpose precinct) Impact elsewhere	Code Assessable (Red Beach) Impact elsewhere	Code Assessable
Community Care Centre	Exempt (community purpose precinct) Impact elsewhere	Code Assessable (Red Beach) Impact elsewhere	Code Assessable
Community Residence	Code Assessable (residential precinct) Impact elsewhere	Code Assessable (Red Beach) Impact elsewhere	Self, Code Assessable precinct dependent
Community Use	Exempt and Code Assessable precinct dependent	Code Assessable (Red Beach) Impact elsewhere	Self, Code Assessable (thresholds apply)
Dual Occupancy	Self and Code Assessable precinct dependent	Code Assessable	Self, Code Assessable precinct dependent
Dwelling House	Self Assessable	Self Assessable	Self, Code Assessable precinct dependent
Emergency Services	Exempt (community purpose precinct) Impact elsewhere	Code Assessable	Self, Code Assessable precinct dependent
Hardware and trade supplies	Self Assessable (industry precinct) Impact elsewhere	Code Assessable (Red Beach) Impact elsewhere	Self, Code, Impact Assessable (thresholds apply)
Low-impact industry	Self Assessable (industry precinct) Impact elsewhere	Code Assessable (Airport and Industry Precinct , Red Beach – conditions apply)	Self, Code, Impact Assessable (thresholds apply)
Multiple Dwelling	Code Assessable(residential) Impact elsewhere	Code Assessable	Code Assessable
Park	Exempt (open space and recreation precinct)	Exempt if no vegetation clearing	Exempt
Place of Worship	Exempt (community purpose precinct) Impact elsewhere	Code Assessable	Self and Code Assessable – precinct and thresholds apply
Residential Care Facility	Self and Code Assessable precinct dependent	Code Assessable	Self Assessable (precinct dependent)
Retirement Facility	Code Assessable (residential) Impact elsewhere	Code Assessable	Self Assessable
Roadside Stalls	Impact Assessable	Impact Assessable	Code Assessable
Temporary Use	Impact Assessable	Impact Assessable	Exempt
Warehouse	Self Assessable (industry precinct) Impact elsewhere	Code Assessable (Red Beach) Impact elsewhere	Self and Code Assessable – precinct and thresholds apply

Table 1. Comparison of Township Zones Table of Assessment in Hopevale, Mapoon and Wujal Wujal Shires.

Note: Housing (Dwelling or Unit) is Self Assessable in each of the planning schemes Township Zones

Aboriginal Freehold Land not located within a Discrete Aboriginal LGA

The Bill provides well for those Aboriginal people who live within the 34 identified communities. What is still outstanding is a discussion about how to facilitate the same opportunities for Aboriginal people who live on Aboriginal Freehold Land that does not fall within a discrete Aboriginal LGA. I use the example of the EKY people as most of their land (with the exception of the 11km² in Wujal Wujal Shire Council) falls within Cook and Douglas Shires. It is essential that all Aboriginal people are afforded the same opportunity to access and create economic development opportunities through land tenure reforms. For example the Land Use Plan for Wujal Wujal states that all future population growth will be accommodated outside of the shire area of responsibility. This means that future generations of EKY will have to reside outside of their Country. This is simply untenable and must be addressed as a matter of priority. Wujal Wujal Planning Scheme 2013:4)

Due to lack of suitable land for residential purposes, in the future, the local people will be required reside outside of the centralised township, and into their homelands which include Middle Camp, Ayton, Degarra, and the 'southern lots'. Most of these areas are located outside the Wujal Wujal local government area.

These other areas within their homelands have not been considered for the opportunity to purchase AFL as Freehold land, nor is additional social housing being provided in these locations as they are not within a discrete Aboriginal community. In addition all of the land that is suitable for economic development in Wujal Wujal shire lies outside of the 'Township zone' and is affected by conservation overlays that in turn make all economic development impossible to achieve.

I have not undertaken a review of how much land that is described as Aboriginal Freehold Land (AFL) or will be designated as AFL in the future to provide this committee with precise figures on land area and population that are affected by this omission. However I think it is something that the committee should acknowledge and address directly.

In conclusion I think that the Newman government should be congratulated for creating equal opportunities to access economic development for Aboriginal and Torres Strait Islander people in Queensland. Achieving economic development in remote communities is not an easy or simple task to achieve in one policy. However demonstrating a commitment to equality is certainly a step in the right direction.

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

Regards



Dr Sharon Harwood