



CAPE YORK LAND COUNCIL  
ABORIGINAL CORPORATION

ICN 1163  
ABN 22 965 382 705

Trevor Ruthenberg MP  
Chair of The Health and Community Services Committee  
Parliament House , George Street  
Brisbane Qld 4000

Dear Minister

**Re: The Nature Conservation Act and Other Legislation Amendment Bill (No 2)**

By email to [hcsc@parliament.qld.gov.au](mailto:hcsc@parliament.qld.gov.au).

Cape York Land Council (CYLC) and Balkanu Cape York Development Corporation (Balkanu) provide the following submissions in relation to the proposed amendments contained in the *Nature Conservation Act and Other Legislation Amendment Bill (No. 2) 2013* (the Bill).

We note that the Bill has been introduced to Parliament in order *to increase access to national parks and other public lands, achieve red tape reduction and streamline legislative process.*

CYLC and Balkanu are concerned that in order to achieve the stated objectives, there has been little regard for how this will impact upon Traditional Owners' rights and interests, and in many cases fear that the proposed changes will come at the expense of such interests, particularly in relation to national park (Cape York Peninsula Aboriginal Land).

National park (Cape York Peninsula Aboriginal Land) (NP CYPAL) is a form of Aboriginal land tenure specific to Cape York, where Traditional Owners have freehold title to the land and manage it jointly with the State Government. Both joint management partners have obligations to manage NP CYPAL in accordance with the respective Indigenous Management Agreements, as well as applicable legislation such as the *Nature Conservation Act 1992*. This legal reality, it appears, has not been sufficiently considered with the proposed amendments outlined in this Bill.

## 1. Notes regarding consultation

In the explanatory notes of the Bill, it is noted that confidential briefings were given to key stakeholders and that stakeholders were given the opportunity to provide feedback. The explanatory notes say that “no significant issues or concerns were raised by stakeholder groups on the majority of amendments”. However, CYLC representatives attended the confidential briefings and subsequently, with Balkanu, wrote to the State Government on two separate occasions outlining our concerns (letters were sent to the *Department of Aboriginal & Torres Strait Islander Affairs* on 21 June 2013 and 18 July 2013 concerning the proposed NCA amendments, and we were informed that the correspondence was passed onto the Department of National Parks, Recreation, Sports and Racing). The concerns we raised are not mentioned in the explanatory notes.

## 2. Inconsistency of proposed amendments with Fundamental Legislative Principles and *Legislative Standards Act 1992*

The Office of the Queensland Parliamentary Counsel (OQPC) has raised concerns that the proposed Bill is inconsistent with the Fundamental Legislative Principles (FLPs). CYLC and Balkanu agree with the assertions of the OQPC, and do not believe that sufficient regard has been given to the FLPs in accordance with section 4 of the *Legislative Standards Act 1992* (LSA). In addition to the comments made by the OQPC, Balkanu and CYLC make the following assertions in relation to the following issues:

### *a) Reducing the number of tenures under the NCA (namely in relation to provisions relating to Special Management Areas)*

Please see comments below relating to special management areas. In addition to the OQPC’s concern that the Chief Executive is able to override the express decision of Parliament to declare an area as national park, we outline our concern that this also gives power to the Chief Executive to declare an area of NP CYPAL as a special management area without requiring consultation with or the consent of the landowner. We assert that this is inconsistent with section 4(3)(b) of the LSA.

### *b) Streamlining Management planning processes under the NCA*

Please see comments below in relation to the proposed new management planning process. The OQPC has identified inconsistency with FLPs as there has not been sufficient regard to Parliament by allowing the exercise of administrative power in a manner that is unconstrained and not appropriately defined (for example the Minister’s ability to amend a management plan to reflect government policy changes without undertaking a full public notice process). We do not agree that government policy should be able to override in this way, and again assert that the proposed provisions relating to management plans for NP CYPAL adversely affect

the rights of Aboriginal landowners of NP CYPAL in a manner inconsistent with section 4(3)(g) of the LSA.

### **3. Inconsistency of proposed amendments with existing Indigenous Management Agreements for existing national parks (Cape York Peninsula Aboriginal Land)**

CYLC and Balkanu express concern that proposed amendments to the *Nature Conservation Act 1992* (NCA) are inconsistent with specific provisions of existing Indigenous Management Agreements (IMAs) for NP CYPAL. Under section 15 of the NCA, NP CYPAL is to be managed according its management principles and in accordance with the IMA that the State Government has with the Aboriginal landowner.

Proposed amendments to the management principles, management planning provisions and the introduction of Special Management Areas are inconsistent with provisions of IMAs that are currently in place with numerous Aboriginal landowners of NP (CYPAL).

If the proposed amendments were to be enacted, Aboriginal landowners with existing IMAs would be in a position where their legislative obligations under the NCA would be inconsistent with their contractual obligations under their IMA. CYLC seeks clarification from the State Government on its position of how these proposed changes to the NCA will affect the management of NPs (CYPAL) with existing IMAs.

Native title holders for existing NPs (CYPAL) have provided native title holder consent to a particular management model of NP CYPAL through authorisation under an Indigenous Land Use Agreement. CYLC is concerned that the cumulative effects of the proposed amendments to the NCA present a material change to that management model, yet native title holders of NP (CYPAL) have not provided their consent to such change, nor have they been consulted.

### **4. Broadening the object of the *Nature Conservation Act 1992***

#### *Clause 24*

At the proposed new section 4(a), CYLC and Balkanu support the concept of amending the object of the NCA to include '*the involvement of indigenous people in the management of protected areas in which they have an interest.*' However we assert that the term *interest* should be defined as an interest under Aboriginal Tradition or Island custom. We therefore proposed the following wording for the new section 4(a) of the NCA:

*'the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.'*

However we also express concern that there is little practical detail in the Bill to ensure that including this new object actually means something. Indeed, the

inclusion of other objectives relating to *'the use and enjoyment of the community'* and *'the social, cultural and commercial use of protected areas'* are represented in operable parts throughout the Bill, even at the expense of indigenous involvement in NP CYPAL (for example the amendment to include additional national park management principles facilitating recreation and tourism overrides the requirement for NP CYPAL to be managed in accordance with Aboriginal Tradition).

## 5. Changing the management principles of national parks (Cape York Peninsula Aboriginal Land)

### *Clause 116*

Inclusion of further management principles for national parks at section 17 of the NCA directly impacts the management principles of NP CYPAL, yet no Aboriginal landowners and joint management partners of NP CYPAL have been consulted with in relation to this change. We note that such an amendment would be inconsistent with the current clause 3.4 of existing IMAs.

Amendments to section 17 will impact upon the current section 19AA of the NCA and cause a diminished impetus for NP CYPAL to be managed in a way that is consistent with Aboriginal tradition. We do not believe it is appropriate for management principles that facilitate recreation and tourism to supersede the application of the current subsection 19AA(2) for management of NP CYPAL. NP CYPAL is Aboriginal freehold land with potential for a determination of exclusive native title rights. The requirement for NP CYPAL to be managed according to Aboriginal Tradition is fundamental, and the principal upon which Traditional Owner involvement in joint management is based. We also assert that this proposed change is inconsistent with the FLP in section 4(3)(j) of the LSA, namely *'to have sufficient regard to Aboriginal tradition and Island custom.'*

We propose that the requirement for NP CYPAL to be managed according to Aboriginal Tradition should only be subject to the cardinal principle for management of national parks, with all other national park management principles to then apply, including the two new management principles proposed in this Bill. CYLC and Balkanu propose that an amendment to section 19AA of the NCA be included in the Bill to reflect this. The proposed amendment is at **Attachment A**. CYLC and Balkanu assert that including this amendment would allow the proposed changes to national park management principles to be done in accordance with section 4(3)(j) of the LSA and give a practical application to the broadened objective of the act to include *'the involvement of indigenous people in the management of protected areas in which they have an interest.'*

Please see comments on special management areas below in relation to the new subsection 17(1A).

## **6. Reducing the amount of tenures under the NCA**

### **-Regional Parks**

We note that under the Bill conservation parks and resources reserves have been abolished and rolled into a new class of protected area known as regional parks that will allow for the commercial use of natural resources. CYLC seeks clarification from the State on what these uses may be, and notes that the proposed amendments do not include a process of consultation with and agreement of Traditional Owners.

### **-Special Management Areas**

#### *Clause 116 and 139*

It is noted that these proposed amendments to the NCA will replace the tenures of national parks (scientific) and national parks (recovery) with special management areas that can be declared over national parks (as well as NP CYPAL).

The inclusion of subsection 17(1A) allowing special management areas to be declared on national parks (in accordance with the new sections 42A and 42B) appears to allow the Chief Executive to also declare special management areas (SMAs) over NP CYPAL without application of the applicable management principles and without any requirement for consent or consultation with the Aboriginal landowners.

Allowing the Chief Executive the power to declare an SMA over NP CYPAL is a substantial departure from the current management model of existing NP CYPAL and it is ambiguous in terms of how this provision would apply in relation to an IMA. CYLC and Balkanu seek clarification from the State as to how these provisions relate to NP CYPAL and the IMAs that govern their management. Balkanu and CYLC do not support the inclusion of these provisions in relation to NP CYPAL as they stand, and suggest that they should be amended to make the consent of the Aboriginal landowner a requirement, and that the declaration of an SMA be listed as a Significant Activity under the IMA.

## **7. Removal of the requirement for a Management Plan to be developed for national park (Cape York Peninsula Aboriginal Land)**

#### *Clause 67 - 72*

The State currently has contractual obligations to prepare a management plan for NPs CYPAL in existing IMAs (see clauses 3.5, 3.6, 4.2 of most existing IMAs) and in accordance with a particular process that is consistent with current legislative requirements (see clause 11 of existing IMAs).

The proposed amendments to the management planning process give the Minister the unilateral power to decide whether a management plan is required for a particular park, and replaces the requirement for a management plan with that of a management statement. Balkanu and CYLC seek further information as to how

the proposed new management planning provisions of the NCA apply in contrast to contractual obligations under existing IMAs. It is Balkanu and CYLC's position that the State is contractually obliged to prepare management plans for existing NPs CYPAL and that they should continue to be compulsory for future NP CYPAL (noting that preparing a management plan for an aggregation of parks is possible), as this provides all parties with the highest level of certainty on future park management issues.

In the alternative, Balkanu and CYLC make the following assertions in relation to the proposed new management planning process:

- a) management statements provide a reduced level of certainty in relation to future park management noting that they will only be required to be 'considered', rather than the current requirement that NP CYPAL 'must [be] manage[d] in accordance with' a management plan;
- b) proposed new section 111 and 113-113C should explicitly state that preparation of a Management Statement for NP CYPAL must be prepared jointly with the Aboriginal landowner, and approved in accordance with the IMA. It should also give detail on the process of its development;
- c) proposed new section 112(2) should require the Minister to at least consult with the Aboriginal landowner and consider its views before making a determination that a management plan is required for a particular NP CYPAL. There should also be a requirement for the Minister to consult with and consider the views of relevant Traditional Owners before making a determination that a management plan is required for other protected area tenures (noting the new object of the Act to include 'the involvement of indigenous people in the management of protected areas in which they have an interest'); and
- d) proposed new sections 120A to 120C should explicitly state that any amendment to a management plan for a NP CYPAL should be consistent with the IMA and require the consent of the Aboriginal landowner.

## **8. New offence for selling meat or other products sourced from dugong or turtle**

### *Clause 61*

In light of the recent decisions in *Akiba v State of Queensland* (No 2) [2010]1[1] and *Akiba v Commonwealth* [2013]2[2], the proposed amendment to insert a new

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1[1] *Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland* (No 2) [2010] FCA 643

offence at section 88BA for selling meat or other products sourced from dugong or marine turtle from commercial premises is likely to constitute a future act and diminish the rights of native title holders on the Cape York Peninsula.

Under section 24HA of the *Native Title Act 1993* the non-extinguishment principle would apply for the purposes of the amendment and the state government would be required to pay compensation to native title holders in accordance with Division 5 of the Act.

## 9. Organisations in support of these submissions

These submissions have been prepared by Balkanu Cape York Development Corporation and Cape York Land Council, however directors/ executive committee members from the following Cape York Aboriginal corporations who will be substantially affected by the proposed amendments to the NCA have also been consulted with and support the submissions as they relate to NP CYPAL:

- a) **Rinyirru (Lakefield) Land Trust (Rinyirru).** Rinyirru is the Aboriginal landowner of the second largest national park in Queensland and the most visited national park in Cape York and are concerned about the NCA changes as they relate to management plans.
- b) **Olkola Aboriginal Land Trust (Olkola).** Olkola is the Aboriginal landowner of Alwal NP CYPAL and is soon to become the Aboriginal landowner of another large area of proposed NP CYPAL in central Cape York. Olkola is particularly concerned at the complexities that will arise in having two substantially different IMAs and the manner in which they will operate in relation to the proposed NCA amendments;
- c) **Cape Melville, Flinders & Howick Islands Aboriginal Corporation.** CMF&HIAC is likely to become the Aboriginal landowner of 3 NPs CYPAL by the end of 2013 (Cape Melville, Flinders Group and Howick Group National Parks) and is concerned about how the proposed amendments to the NCA will impact on their future role in joint management; and
- d) **Buubu Gujin Aboriginal Corporation.** BGAC is likely to become the Aboriginal landowner of 4 NP CYPAL by the end of 2013 (Jack River, Melsonby (Gaarraay), Mount Webb and Starcke National Parks) and is also concerned about how the proposed amendments to the NCA will impact on their future role in joint management.

Further supplementary material to these submissions may also be submitted on Monday 16 September 2013 that we request the Committee to consider in conjunction with these submissions. If you have enquiries about the contents of

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2[2] Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia [2013] HCA 33

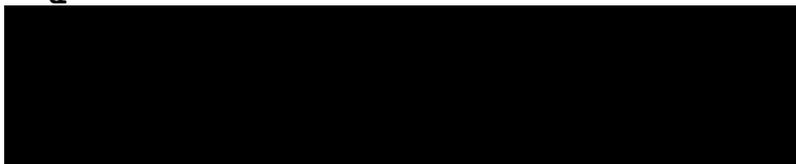
these submissions please contact Philip Duffey on 4053 9222 or  
[pduffy@cylc.org.au](mailto:pduffy@cylc.org.au).

Regards



Peter Callaghan  
Chief Executive Officer Cape York Land Council

&



Terry Piper  
Chief Operating Officer - Balkanu Cape York Development Corporation

## Attachment A

### Proposed new section 19AA - Management principles of national parks (Cape York Peninsula Aboriginal land)

(1) A national park (Cape York Peninsula Aboriginal land) is to be managed:

- (a) to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values; and
- (b) as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

(2) The management principle mentioned in subsection (1)(a) is the cardinal principle for the management of national parks (Cape York Peninsula Aboriginal land).

(3) Subject to subsection (1) and (2) a national park (Cape York Peninsula Aboriginal land) is to be managed to:

- (a) present the area's cultural and natural resources and their values;
- (b) ensure that the only use of the area is nature-based and ecologically sustainable;
- (c) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural values; and
- (d) provide opportunities for ecotourism in a way consistent with the area's natural and cultural values.

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17 September 2013

Dear Sir

**RE: Nature Conservation Act and Other Legislation Amendment Bill (No.2)**

We refer to the submissions contained in our letter sent on 13 September 2013 in relation to this Bill.

We have subsequently identified an additional matter of concern, that we ask the Committee to consider notwithstanding that the date for submissions has now passed.

In relation to the provisions regarding the reduction of the State's exposure to liability arising out of incidents that occur on Queensland Parks and Wildlife Service (QPWS) managed land, we note that "Indigenous landholders" with whom an Indigenous Management Agreement (IMA) has been entered into, fall within the proposed definition of "official" in new section 142(7) and thus have the same protection against liability as the State.

However, there is a gap in terms of native title holders who may therefore be left exposed to liability, in circumstances where the State has immunity. We understand that it is proposed that all Cape York national parks will eventually be covered by an IMA. However, it is likely to be a number of years before that happens and in the interim period, native title holders who have contractual arrangements with the State in terms of management (such as the Eastern Kuku Yalanji) may be left exposed to liability.

We submit that the liability exclusion should also include native title holders.

Please do not hesitate to contact us if you have further queries.

Yours sincerely

Peter Callaghan  
CEO, Cape York Land Council