Submission No. 078
11.1.13

JAMES COOK UNIVERSITY AUSTRALIA
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Infrastructure, Planning and Natural Resources Committee
Queensland Parliament
Parliament House
Cnr George and Alice Streets Brisbane Qld 4000
IPNRC@parliament.qld.gov.au

Cairns Campus
PO Box 6811 Cairns Qld 4870 Australia
Telephone (07) 4042 1111
International +61 7 4042 1111
www.jcu.edu.au

Dr Sharon Harwood MPIA CPP
Senior Lecturer
College of Marine and Environmental Sciences

Date: Monday 18th of January 2016

RE: Submission to the Queensland Infrastructure, Planning and Natural Resources Parliamentary Committee

To Committee Members

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 currently hold the position of Chair of the Tropical North Queensland branch of PIA and I work at James Cook University in Cairns as a Senior Lecturer (Social, Environmental and Regional Planning) and co-ordinate the Graduate Certificate Planning and Indigenous Communities and the Master of Tropical Urban and Regional Planning.

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 land and managing social planning and research projects. I continue to present at conferences, and publish book chapters and journal articles that describe the characteristics of remotely located communities and how to enhance planning and development opportunities in these unique locales. It is with this background and experience that I make this submission to the Infrastructure, Planning and Natural Resources Parliamentary Committee.

Thank you for the opportunity to provide evidence to the Parliamentary Committee on the draft *Planning Bill 2015* and the draft *Planning Regulations 2016*.

I would firstly like to take this opportunity to commend the Queensland government for their inclusion of Section 5 (Advancing the Purpose of the Act), and Sub-Section (2)(d), which reads as follows:

> *(2) Advancing the purpose of this Act includes-*
> *(d) Valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition.*

This is the first time in the history of planning in Australia that Aboriginal and Torres Strait Islander people and their knowledge, culture and tradition have been explicitly acknowledged, valued and protected in any piece of planning legislation. This inclusion makes me very proud to be a planner in the state of Queensland and very proud that Queensland is the first State in Australia to do so. As a consequence of this inclusion in the *Planning Bill 2015*, I make the following submission for further consideration by the Parliamentary Committee.

I have sought the advice and counsel of both Hirini Matunga, Professor of Maori and Indigenous Development from Lincoln University (New Zealand) and Ed Wensing FPIA (Adjunct Associate Professor, James Cook University) in the writing of this submission. We believe that it is critical to create a parallel process of Indigenous Planning[1] within and beside the mainstream approach to the planning, use and management of the Indigenous Estate in Queensland. In this context, the aim of planning is to improve the lives of Aboriginal and Torres Strait Islander people in Queensland and enhance the quality of their traditional lands and resources. This aim is entirely consistent with the purpose of the *Planning Bill 2015*. However, it is important to understand that each tribe, clan, language group, community or family of Aboriginal or Torres Strait Islander people in Queensland have their own unique identity and their own rights, interests, values, needs and aspirations, just the same as other non-Indigenous groups, communities or families have their own unique identities. This means that each tribe, clan, language group or community will have their own a set of values for making decisions about land use and management. We need to respect the fact that Indigenous communities have been doing their own planning for many thousands of years. The point here, is to understand that Indigenous people have their own world views driven by a different set of cultural values and norms, and the State's planning system has to adapt to take these matters into consideration in a fair and equitable manner.

The *Planning Bill 2015* and the draft *Planning Regulations 2016* must therefore be sufficiently flexible to provide a place for Indigenous knowledges, culture and traditions and their approaches and practices in planning to evolve and fit within the broader planning and development system that operates within Queensland. The below diagram highlights the relationship:

According to Hirini Matunga (2013:6) Indigenous Planning includes four components:

1. The existence of a group of people, e.g. tribe, clan or nation, who are linked by ancestry and kinship connections;
2. An inextricable link between the people and with traditionally prescribed custodial territory that the group claim as theirs (irrespective of the title – refer to Attachment B for overview of Jabalbina Yalanji Aboriginal Corporation submission to Douglas Shire Council to see how this can/should be addressed in a planning scheme), i.e. lands, waters, resources and environments.
3. An accumulated knowledge system about the place, environment, resources, its history including a set of ethics that governs the interactions between people, place, environment and/or land.
4. A culturally distinct set of decision making practices and approaches that includes how these are applied to actions and activity agreed upon by the kinship group through their own institutional arrangements.

These four components underpin community based planning. The ultimate goal of Community Based Plan (CBP) is self-determination, i.e. using community knowledge, values, practices and approaches to enhance their collective (and individual) social, economic, cultural and environmental wellbeing.

[1] Refer to Attachment A for reasons why I use the terms 'Indigenous Planning' and 'Indigenous Estate' and what they refer to.

For Indigenous Planning to be truly successful, then the priority must be for Aboriginal and Torres Strait Islander people to define their community through the mapping of their future and the development of their own planning approaches and tools to create and consolidate this future. This can only occur when mainstream planning creates a conceptual, and in this particular instance, a procedural space by legitimising Indigenous planning as a parallel tradition that is 'allowed' to have its own history, focus, goals and approaches. The very tricky part and unfortunately the mismatch we currently face between Section 5(2)(d) of the *Planning Bill 2015* and Schedules 2 and 3 of the draft *Planning Regulations 2016* does not permit the parallel tradition to evolve and develop.

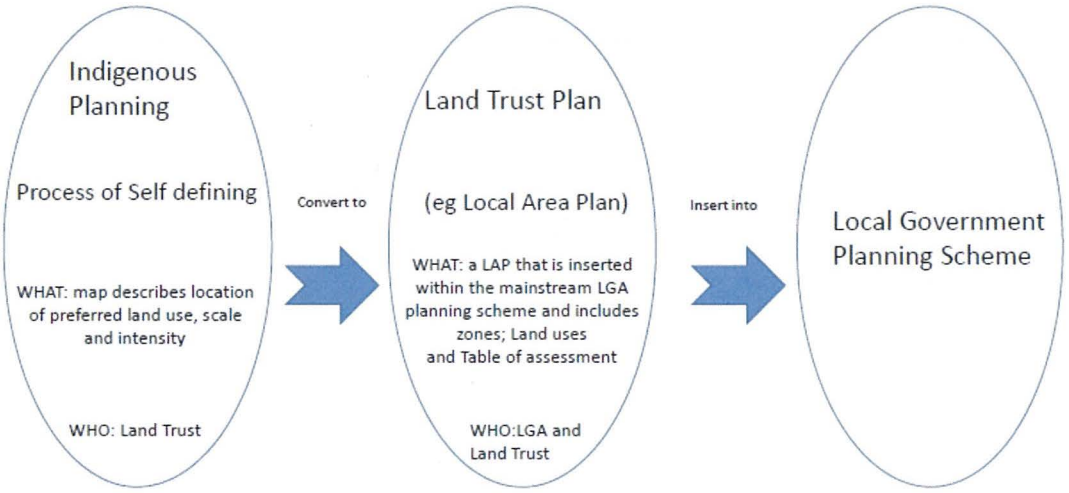
In my earlier submission (dated 20 October 2015 to the Queensland Government on the draft Planning Bill – Attachment A), I outlined how a parallel planning process that respects Indigenous planning could be incorporated into the mainstream planning system. In particular, I suggested that it is necessary to create new land use zonings that could be applied by the Aboriginal Land Trusts on their land. I notice that these are not included in the draft *Planning Regulations 2016*. There is an opportunity here for the Committee to build on s.5(2)(d) of the Bill. Having included this provision in the Bill, it would be of great assistance to the planning fraternity, as well as to the Aboriginal Land Trusts, if some additional provisions could be included in both the Bill and the Regulations.

Firstly, it is important that the provisions in s.5(2)(d) be retained. As stated above, this is a significant step in the right direction toward acknowledging that Aboriginal and Torres Strait Islander people's knowledge, culture and tradition are valued and respected by the wider community.

Secondly, Section 5(2)(d) needs to be 'operationalised' within the Bill. It needs to be geared to `advancing' the purpose that is outlined in Section 3 of the Bill – otherwise it stands alone without any mechanisms to make the intention of clause 5(2)(d) a practical and positive reality. Therefore Section 5.2.d needs a mechanism/s for advancing section 3 – but through an indigenous lens – through the process of self- definition - hence Indigenous planning –

My suggestion is that the new provisions be inserted into the Bill that would enable community based planning to occur at the Land Trust level. The Bill needs to reflect the fact that this local level planning needs to be driven by the relevant Aboriginal and/or Torres Strait Islander community, but would need the assistance of the local Shire Council. I am suggesting a collaborative approach be undertaken. The processes for local area planning that I envisage could occur are depicted in Diagram 1 below.

Diagram 1. Indigenous planning: processes for enabling Indigenous communities to self-define their goals, incorporate into a Local Area Plan which could be incorporated into the Local Government Planning Scheme where it applies to Aboriginal/Torres Strait Islander Land Trust land



Thirdly, the Regulations relating to zoning need to include some new zoning provisions that will better reflect Aboriginal and Torres Strait Islander people's land use aspirations on Land Trust lands and on lands subject to native title but may not be Land Trust land. These will need to be developed in consultation with Aboriginal and Torres Strait Islander people and the Land Trusts because they should reflect their land use and management aspirations.

Professor Matunga suggests the following:

- Indigenous Ecological Sustainability Plans – prepared `beyond the Act' by Indigenous communities as represented by their Land Trust against the backdrop of Sections 3, 4,and 5 of the Planning Bill but referred to in the Regulations. These are similar to the New Zealand equivalent of the Iwi Management Plans in the *Resource Management Act 1991* and the *Conservation Act 1987* in New Zealand.
- That these IES plans become the reference point/s for both State and Local Government to give effect to Section 5(2)(d) and Indigenous perspectives on Section 3, 4 and 5 of the Bill.
- That the Minister propose State Planning Instruments and/or Policies in the Regulations to cover both `Guidelines for engaging with Indigenous Communities' and Guidelines for giving effect to s.5(2)(d).

There are also some additional matters the Committee will need to consider.

Support for Land Trusts. Planning does not only occur at a Local Government level. Indigenous communities and organisations, especially the Land Trusts also plan and have a plethora of statutory and administrative responsibilities that they must also undertake. The Land Trusts are established under Queensland legislation, but they are not well resourced to undertake the full range of responsibilities that come with being landholders for their communities and as significant stakeholders in the Queensland planning system. The Land Trusts require the support of the Queensland Government if they are to operate effectively within the reformed system. The support they require includes support for policy development, plan development, corporate governance and capability training, and administrative support. .

There is an inherent problem with the ***Local Government Act 2009*** **and its provisions for rating** Aboriginal Freehold Land (AFL) (Aboriginal Land Act 1991). If the land is zoned 'Rural' it is more likely that the relevant LGA can levy rates upon the use of the land for 'commercial purposes', and apply the market (alienable) land value. If the land is zoned Environmental Conservation and Management the range of commercial options becomes limited. So there is a need for a 'Country' zone that would enable a more 'fit for purpose' approach to both land use planning and management as well as serve to create a policy for the remission of rates on Aboriginal Freehold Land in Queensland.

An additional oversight in the planning system for Land Trusts that within the purview of the **Wet Tropics World Heritage Management Plan**. Currently, there is a lack of integration between the Wet Tropics World Heritage Management Plan and the Sustainable Planning Act. Despite Indigenous Housing being an exempted land use activity under the SPA, the Wet Tropics Management Agency Management Plan (1998) requires that this development be regulated according to the provisions contained in a very old and outdated management plan. All local governments are required to update their plans every 10 years – yet this outdated 20 year old Management Plan and its antiquated provisions are creating an additional impost upon the realisation of development opportunities on AFL in the Wet Tropics region. The Management Plan MUST be updated to reflect the changes in both the listing of the Wet Tropics (now acknowledging its Indigenous cultural heritage values) and the change in land tenure to AFL.

In my previous submission, I drew attention to a workshop with a range of Indigenous planning stakeholders in the Cairn region that was hosted by James Cook University in July 2015. The outcomes of that workshop were documented into the following Table. I wish to draw these to the attention of the Committee for consideration. I would be happy to elaborate on these matters when I appear before the Committee.

1.1 What is not working in the Planning System?

Outcome	Recommendation for incorporation into the Planning Reform
1. Relationship between ILUA and Planning Schemes	a) Amend land title registration system to include the Land use components of ILUA's on to the land title; b) Amend the planning process (IDAS forms) and the plan making process to address the contents of ILUA's; and c) Ensure all registered ILUA's are compliant with the outcomes of the relevant planning scheme.
2. Lacks in-depth site suitability of development potential for 'non-urban' areas	Plan making process (Planning 101) that affects all AFL lands is required to undertake in-depth analysis of land cover attributes and site suitability analysis that delivers the 5 goals of Indigenous planning namely: • Environmental protection; • Economic development and growth; • Cultural protection and enhancement; • Social cohesion and well-being; and • Political autonomy.
3. Lack of in-depth understanding of community values for use and preservation of land	Community consultation in plan preparation and development assessment is meaningful, transparent, accountable, locally driven and culturally appropriate.
4. QPP only has 2 Zones for non-urban land – needs to include zone for 'country'	Amend the QPP to create a range of zones and land uses for lands outside the township zone.
5. Too much emphasis on environment and SPP and not enough on land use planning for development	Investigate all land cover attributes on AFL to include cultural heritage; economic development as well as social cohesion and well-being. At present far too much emphasis is placed on environmental protection at the expense of achieving social wellbeing.
6. SPP's and overlays sterilise development on 'non-urban' lands	SPP layers (Natural Hazards) cover all of Cape York Peninsula, but communities have been adapting to natural hazards since time immemorial. The SPP's are costly to address and where multiple layers exist one mitigation will counter (nullify) another SPP mitigation. Jabalbina recently undertook an analysis of SPP layers on their AFL lands in the Douglas Shire. Lots (509 and 411 on SR828) were originally surveyed more than 50 years ago and were settled by Eastern Kuku Yalanji (EKY). These lands were abandoned (the Mission removed the people from these lands) and they have recently been handed back to Jabalbina as AFL. According to the QPP requirements these lots would incur 7 overlays (acid sulphate, landscape, natural areas, hillslopes, bushfire, flood inundation, and potential landslip); in addition the state (SARA) has mapped two SPP's over these potential 7 – this means a potential total of 9 overlays on these lots. This essentially means that the land will not be able to be developed, despite the excellent size (1012m2) and the fact that the State of Queensland thought they were good enough to be handed back to the EKY as AFL.

7. Public notification for remote lots too onerous	Amend the Planning Bill to permit the submission of a Public Notification and CONSULTATION Proposal for AFL lands that is both reasonable and relevant.
8. Too hard, too complex, too expensive and too confusing	Address the disjuncts throughout the entire planning and development system that affect development on AFL.
9. No resourcing of PBC's /LT to facilitate DA or assess DA for owners consent	Resource PBC's and Land Trusts to facilitate development assessment on AFL to in turn supply evidence of Owners Consent to the LGA Assessment Manager.

1.2 What do the Land Trusts and the PBCs want from the Planning System?

Outcome	**Recommendation for incorporation into the Planning Reform**
1. Become an agency with Statutory basis	a) Create a piece of legislation or statutory guideline that describes the process that Land trusts and PBC's must follow to assess Development Applications on AFL to create evidence of Owners Consent; b) Create a schedule of fees (for all external investors) for applications requiring Development Assessment on AFL by the PBC/Land Trust; and c) The State of Queensland must resource the above recommendations.
2. Planning must incorporate/include Indigenous ways of planning within the broader system that includes traditional mechanisms of and governance systems	a) Land Use planning (planning processes including statutory instruments) that occurs on or affects AFL will ensure that the 5 goals of Indigenous Planning are addressed to the satisfaction of the PBC/Land Trust; b) Traditional knowledge is acknowledged as a legitimate 'way of knowing' to address for addressing land use strategies; and c) Governance systems that reflect traditional knowledge are created to guide (plan making and land use strategies) and decision making.
3. Some cases apply Western system where economic development = individual/private 4. Other cases Indigenous system where matter is communal in nature	Economic growth (the capacity to develop traditional lands), the distribution of benefits from development (how to accrue to the Traditional Owners and at the same time reward individual effort and enterprise) – must be internally considered as opposed to being determined by either industry, government or the courts.
5. Relationship between ILUA, Native Title rights and interests in planning scheme are consistent and process coherent	Amend the system to address and remove disjuncts.
6. Decision making is devolved to the local level where most	Include the principles of subsidiarity whereby decisions are made at a scale that is most appropriate. The planning

appropriate for decisions (e.g. bushfires @ 1:100,000)	system is designed to suit local and state government agendas and not at the level where decisions regarding land uses are most felt ie PBC/Land Trust.

1.3 What is a suitable process for your PBC/Land Trust?

Outcome	Recommendation for incorporation into the Planning Reform
1. Based on a sound purpose and goals including i. Social cohesion ii. Cultural heritage iii. Economic development iv. Environment and delivers political autonomy	Process delivers political autonomy for communities rather than current focus on smart growth and economic efficiencies of local, State and federal government owned infrastructure. If the focus is on political autonomy at a local level then efficiencies (social and individual well-being) will be created therefore reducing current expenditure on inefficient infrastructure and services such as health. The planning system must achieve social, cultural, economic and environmental goals as defined by the community not through externally derived benchmarks (eg Comprehensive and Adequate Representative system, EPBC or state Interests/Regional Plans).
2. Respects Indigenous knowledge and traditional knowledge/Lore's and allocated appropriate resources enable PBCs/Land Trusts to work with/in this	Lores and customs regarding appropriate areas and resources (values) to acknowledged and used to drive the planning outcomes for AFL. PBC/Land Trust can use these to make decisions about development on AFL that identifies the appropriate location, scale and intensity of development.
3. PBC's/Land Trusts to make Statutory Land Plans	PBC/Land Trust should be provided with the resources and ability to create their own land use plans that are in turn recognised through statutes (refer to 1.1.1 above) and used in IDAS.
4. Mechanisms for Private capital	An ability to seek a joint venture with entities on AFL.

Finally, I would like to acknowledge the commitment to date of the Queensland Government to working with Indigenous people and communities in making the necessary changes to remove the structural impediments to achieving self-determination and economic development on the Indigenous estate. I hope that the contents of this submission will assist the Parliamentary Committee in furthering this commitment.

With kindest regards

Dr Sharon Harwood

ATTACHMENT
TO
SUBMISSION NO. 078

Attachment A:

Submission of Dr Sharon Harwood to the Planning Reform Team October 2015

JAMES COOK UNIVERSITY AUSTRALIA
Celebrating 2012 25 YEARS Cairns Campus

To: bestplanning@dilgp.qld.gov.au

Date: October 20th 2015

Cairns Campus
PO Box 6811 Cairns Qld 4870 Australia
Telephone (07) 4042 1111
International +61 7 4042 1111
www.jcu.edu.au

Dr Sharon Harwood MPIA CPP
Senior Lecturer
College of Marine and Environmental Sciences
P + 61 7 4232 1703
M + 61 429 006 431
E sharon.harwood1@jcu.edu.au

RE: Submission to the Planning Bill 2015

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 currently hold the position of Chair of the Tropical North Queensland branch of PIA and I work at James Cook University in Cairns as a Senior Lecturer (Social, Environmental and Regional Planning) and co-ordinate the Graduate Certificate Planning and Indigenous Communities and the Master of Tropical Urban and Regional Planning.

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 land and managing social planning and research projects. I continue to present at conferences, and publish book chapters and journal articles that describe the characteristics of remotely located communities and how to enhance planning and development opportunities in these unique locales. It is with this background and experience that I make this submission about the proposed Planning Bill 2015 for Queensland. This submission is made in two distinct Sections and is entirely centred upon the recognition of the distinct culture and traditions that Australian Aboriginal and Torres Strait Islanders have with their ancestral lands and waters. The first Section of the submission is related to the fundamental changes required to the Purpose of the Bill (Chapter 1, Sections 3 and 4) and the second is related to issues associated with the broader planning system that affects development on lands that are owned and controlled by Australian Aboriginal and Torres Strait Islander entities in the state of Queensland.

Before I proceed, it is important to clarify terms that I apply in this submission:

1. Use of the term Indigenous. According the Wensing (2010) there are differing usages of the terms "Aboriginal and Torres Strait Islander", "Aboriginal" and "Indigenous". The use of the term 'Indigenous' has evolved through international law and acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The term "Indigenous" is therefore, best used in international settings, recognising the international diversity of Indigenous peoples around the World. Within Australia, it is most appropriate to use terms that further specify identity. In Australia at the national level it has long been appropriate to specify that we have Aboriginal and Torres Strait Island nations and peoples, recognising that there is a collective dimension to their livelihoods.
2. James Cook University policy does not condone the use of the term Indigenous. This was because all races of colour and ethnicity were placed under the one word, *Indigenous*. This not only created confusion but also disrespect to these two very distinct groups, Australian Aboriginal and Torres Strait Islander peoples. It is imperative that the specific groups are named, Australian Aboriginal and Torres Strait Islander, and one does not place all groups under the word *Indigenous*. The policy at JCU maintains that it is appropriate to refer to Australian Aboriginals and Torres Strait Islanders as First

Nations peoples. It is derogatory to write or say *ATSI*, because they are two distinct groups. Also note the noun in the plural to reflect the two distinct cultural groups, for example, *Australian Aboriginal and Torres Strait Islander peoples, cultures* etc.

3. Despite the above, I use the term Indigenous Estate (after Joe Morrison of the Northern Land Council 2015) to *refer to lands that are subject to a Native Title determination, ILUA and/or have been transferred to an Aboriginal Land Trust/Prescribed Body Corporate as Aboriginal Freehold Land*. This is not the technically correct term used throughout the Australian and International literature (as stated above), however, it is the term used most frequently by the Queensland Government. My point being is that the Queensland Government need to decide whether or not they will continue to use the term Indigenous or instead follow the practice of other institutions in acknowledging the two distinct groups within Australia.

The first and most fundamental amendment to the Planning Bill 2015 requires an explicit recognition of the distinct culture and traditions that Australian Aboriginal and Torres Strait Islanders have with their ancestral lands and waters. The planning reform should apply the following test (Legislative Standards Act 1992) to the proposed Bill and demonstrate how this has been addressed:

Legislative Standards Act 1992 Section 4, (3):
Whether legislation has sufficient regard to rights and liberties depends on whether for example the legislation:

(j) has sufficient regard to Aboriginal tradition and Island custom

At present there is no such provision with the proposed draft Planning Bill. Therefore there is no mandate to specifically create a planning and development system that openly acknowledges the inherent relationship between the culture and traditions of Aboriginal and Torres Strait Islander people and the inextricable link with their lands and waters. Until such time as there is an open and explicit recognition of this relationship, then the planning and development system will not only create legally 'invisible' land owners, but the development future of northern Australia will forever be hampered by a series of disjuncts between the Australian Aboriginal and Torres Strait Islander world view and that of the mainstream planning system – which will serve to achieve nothing but ongoing conflict. It is simply unethical to ignore this very significant relationship between Aboriginal and Torres Strait cultures and their ancestral land and waters. If this is not addressed within the Planning Bill 2015, then planning approaches will perpetuate the 'cultural blindness' that currently pervades the Queensland planning and development system.

I therefore propose the following amendment for Chapter 1 Section 3 (in bold):

3 Purpose of the Act

1) The purpose of this Act is to facilitate ecologically sustainable development that includes:
    a. **The relationship between the culture and traditions that Australian Aboriginal and Torres Strait Islanders have with their ancestral lands and waters is identified, maintained and enhanced; and**
    b. The protection of ecological processes and natural systems of local, regional, State and wider levels; and
    c. Economic growth; and
    d. The maintenance of the cultural, economic, physical and social wellbeing of people and communities.

It is not appropriate to have Australian Aboriginal and Torres Strait Islander peoples connection to their Country *assumed* to be considered as part of (d). Communities in Queensland are neither homogenous in terms of their culture nor do they experience the same levels of social wellbeing. However, most importantly the connection between the culture, tradition and lore with the lands and waters that Australian Aboriginal and Torres Strait Islanders identify with requires an entirely different approach (a parallel tradition of planning) to both the substantive and procedural matters associated with land use planning on the Indigenous Estate.

Statutory Land Use Plans that have been written and endorsed for application to Aboriginal Shire Councils in Queensland have not had the necessary mandate to ensure that plan outcomes reflect this connection between culture and traditions with ancestral lands and waters. Therefore the plans have essentially been forcing a 'one size fits all' model of planning to Aboriginal (and Torres Strait Islander lands and waters once plans are endorsed) communities that reflect the 'Anglo American' way of planning. Queensland requires the opportunity to apply a different approach to land use planning on the 'Indigenous Estate' that explicitly acknowledges the relationship between culture, traditions and lore with the lands and waters within this Estate. The approach I am suggesting is consistent with New Zealand's approach whereby the planning system internalises Australian Aboriginal and Torres Strait Islander traditions of planning within the entire planning system. It is my opinion that we are all seeking the same goal, but go about this in an entirely different way and these ways of being and doing should be recognised and legitimised through the planning system.

Jon Altman (2014) maintains that if all native title claims are successful, as much as 70 per cent of Australia would be under some form of Indigenous title with potentially 40 per cent of the Indigenous population living on these lands. It is therefore an urgent imperative that Queensland's planning and development system reflects the lore, customs and traditions of its owners if development of Australia, and in particular northern Australia, is to occur.

I therefore propose the following amendment for Chapter 1 Section 4 (in bold)

(4) For Subsection (1) –

a) **The relationship between the culture and traditions that Australian Aboriginal and Torres Strait Islanders have with their ancestral lands and waters is maintained and enhanced if –**

    (i) Environmental quality, social cohesion and wellbeing; economic growth and development and cultural protection and enhancement of the Indigenous Estate are achieved in accordance with the respective culture and traditions of the owners of the ancestral lands and waters.

b) Ecological processes and natural systems are protected ecological processes and natural systems are protected if—
    (i) the life-supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and
    (ii) biological diversity is protected; and

c) economic growth takes place if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) that allow communities to meet their needs but do not compromise the ability of future generations to meet their needs; and

d) the cultural, economic, physical and social wellbeing of people and communities is maintained if—
    (i) well-serviced, healthy, prosperous and liveable communities with affordable, efficient, safe and sustainable development are created and maintained; and
    (ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and
    (iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided; and
    (iv) potential adverse impacts on climate change are taken into account for development, and sought to be addressed through sustainable development (like sustainable settlement patterns and sustainable urban design).

Section 2 of the Submission

The following submission (parts of which have been submitted to the Parliamentary Committee for Planning Reform in September 2015) is limited specifically to addressing issues associated with the broader planning system that affects development on lands that are owned and controlled by Indigenous entities in the state of Queensland. The following range of amendments describe what I believe are important to meeting the aspirations for economic, social and cultural development on Aboriginal Freehold Land (hereafter referred to as AFL). This section of the submission is structured in five parts, namely:

1. Outcomes that the Planning System must achieve for the Indigenous estate.
2. A description of the components that form the planning system that influences development on lands that are owned and controlled by Indigenous corporate entities (for instance Land Trust and Prescribed Body Corporate) and Aboriginal Shire Council's. This is an entirely different system to that applied to non-Indigenous land owners and entities.
3. Part 3 broadly describes the disjunct between and within the components of the Queensland planning system that influences development on the Indigenous estate and how this system impairs the realisation of social, cultural and economic development goals.
4. Part 4 outlines the findings from a workshop held at James Cook University on the 21st of July 2015 – refer to Section 4 of this submission for outcomes (attended by representatives of Prescribed Body Corporates (some in possession of Aboriginal Freehold Land and others awaiting Land Transfers), representatives of Jabalbina (a Land Trust that is also a Prescribed Body Corporate), three qualified and practicing planners and a representative of an Aboriginal think tank policy organisation. This section also includes a range of recommendations planning reform.
5. Part 5 details the specific actions and amendments that are required to be undertaken by the state government as part of the planning reform to achieve equity for all Queenslanders specifically as this relates to accessing social, cultural and economic development on Aboriginal Freehold Land.

The submission concludes that significant reform of the Queensland planning system as a whole is required to accommodate the development aspirations of Indigenous people for the lands and waters that they own and control. As such a long term commitment is required. Practically I am seeking a staged commitment to:

1. Incorporation of key concepts and provisions within the new Planning Bill to better reflect Queensland Indigenous communities (see Part 1);
2. Preparation of statutory guidance to improve planning practice addressing the estate;
3. Administrative amendments and tools to better support current planning and development initiatives; and
4. Commitment to consider and explore the value of specific and focused legislation to address planning and development for the Indigenous estate in Queensland.

Part 1. Outcomes that the Planning System MUST achieve for Indigenous owned and controlled lands

I have provided five outcomes that MUST be used to measure the planning reform performance against. These outcomes are derived from Joe Morrison's (CEO of Northern Land Council) key note address at the Developing Northern Australia Conference on July 22nd 2015, and are as follows:

1. Communities must be able to use their underlying communal title to create opportunities for economic development.
2. Create a governance system that integrates the management and use of the Indigenous estate with the broader non Indigenous property development and governance system. This governance system must integrate Traditional knowledge within the non-Indigenous planning and development frameworks. The reform must deliver a system that achieves political autonomy for decision making on the Indigenous estate.
3. Economic development must be capable of being financed from WITHIN the Indigenous estate. The current land administration system assumes a dependence upon external capital investment and stifles the inherent innovation and entrepreneurial potential within Indigenous communities.
4. The MOST critical outcome that the reform MUST achieve is an explicit and transparent process that promotes opportunities for development on Indigenous owned and controlled lands through a

vigorous investigation that identifies the range of land cover attributes on the Indigenous estate. Decisions about appropriate land uses can only be made after this investigation has been undertaken.

5. Meaningful, transparent, accountable, locally driven and culturally appropriate community consultation is critical to identifying and protecting the range of land cover attributes that underpin sustainable economic development on the Indigenous estate.

The remainder of this submission describes the current administration system (laws, regulation, policies and procedures) that affects the realisation of economic development on the Indigenous estate in Queensland. It must be noted and acknowledged by the Queensland government that the provisions of the Planning Bill that relate to the Indigenous estate are part of a much larger, broader and complex system that affects the realisation of development opportunities. To reform only one piece of legislation (ie the Planning Bill) will achieve very little in terms of the above five stated outcomes.

Part 2. The current planning system as it applies to Aboriginal Freehold Land

2.1 Planning 101

The consultation documents provided by the Department suggest the removal of sections of the SPA that outline 'Planning 101'. However I do not believe that the Queensland system has grasped 'Indigenous Planning 101' so therefore object to its removal. More specifically, the Queensland planning system is predicated upon the norms and values of the Anglo American capitalist system, whereby land is used for economic development purposes (including housing for the housing development industry). The norms that typically drive planning in Anglo American plans are (after Taylor 2003):

- Planning to protect and enhance amenity and the aesthetic quality;
- Planning to encourage development or regeneration of certain localities;
- Planning to achieve a more just distribution of environmental goods;
- Planning that incorporates social equity and social inclusion;
- Planning for the public interest;
- Planning collaboratively; and
- Planning for sustainable development.

What we do not know is whether or not these norms are shared by or are different to, the normative values that underpin planning on and for the Indigenous estate. Once these have been operationalised then the planning system should respond accordingly.

The *Sustainable Planning Act 2009* (SPA) and the Queensland Planning system reflect the dominant Anglo American norms that define capitalism via the development of land and property. These are typically premised on the following:

- Individualised property ownership (as opposed to collective or communal);
- Land can be alienated or used as collateral (sold or traded on an open market);
- Location theory (Industrial location theory whereby lower transport costs equates to profit maximisation);
- Smart growth planning models (ie urban growth boundaries to protect environmental values and rural production from sub-urban development); and
- Infrastructure efficiencies (public utilities such as sewerage, waste management, potable water, power and telecommunications).

The current planning system and therefore Planning 101 in Queensland applies the above mentioned principles. However what we are not seeing in the current range of planning schemes that affect AFL is a strategic assessment and subsequent provision of the range of pre development conditions that underpin economic development in a locale. The role of state intervened planning is to influence the pre-conditions for development such as (Lennon 2008):

- Infrastructure provision;
- A quality living environment;
- Appropriately skilled and flexible workforce;

- Building relationships between business, government, research and learning institutions to support innovation; and
- Support and responsive governance structures.

In research (Harwood et al 2012) that I have been involved in – we examined the extent to which social equity is applied in a decision making process associated with identifying regional priorities to address economic inequalities to inform plan strategies. We found that the views and perceived development priorities of the remotely located Aboriginal stakeholders were largely neglected and ignored in the consultation phase. Instead the demand for greater protection of environmental assets by the city based informants dominated the regional plan outcomes. It is essential that the norms and values of the community that own and control the land are applied to drive both the planning process and its associated outcomes.

2.2 Land Tenure

Land use planning legislation, practice and process in Queensland has been historically and primarily designed to respond to the two predominant land tenure types in Queensland– those being Freehold and Leasehold. The Queensland planning legislation including the since repealed *Integrated Planning Act 1997* (IPA) and the current SPA have been amended over time to include some exemptions and exceptions for lands described as AFL such as clearing exemptions for Indigenous Housing. However, in the most SPA responds to planning and development on Freehold and Leasehold Land. Other tenures such as State Forests and National Parks have been specifically exempted from the planning and development regulatory framework.

More recently there has been a significant area of land in Queensland that has been transferred from Unallocated State Land, Deed of Grant in Trust, Reserves and Leasehold Land to Aboriginal Freehold Land. AFL attracts a range of additional considerations within the planning system such as the creation of a legal entity to represent the land interests (a Land Trust – under Queensland legislation) and another to represent the Native Title holder's rights and interests (Prescribed Body Corporate pursuant to Commonwealth Native Title legislation). In some instances the two entities have combined to form one body see for instance Hopevale Congress Aboriginal Corporation and Jabalbina Aboriginal Corporation, and in other instances the two (a Land Trust and a Prescribed Body Corporate) are two separate and sometime disparate entities. These entities operate significantly different to that of a non-Indigenous profit generating Corporation as they have additional internal consultation protocols to follow when determining the appropriateness of a development proposal on AFL at a particular site, and at a particular scale and intensity.

2.3 ILUA's, Leases and Development Applications

Native Title holders may also enter into Indigenous Land Use Agreements (ILUA) with a proponent of development where this development constitutes a Future Act (pursuant to the Commonwealth *Native Title Act 1993*). These agreements are not registered on the land title register, and are not required to be compliant with the provisions of the relevant local government Planning Scheme. There are a proliferation of ILUA's that are being made on behalf of the Native Title holders with no consideration of whether or not the development is actually legally able to be commenced (SPA or otherwise). See for instance the ILUA for the Wik Timber Holdings and the Ngan Aak-Kunch (Q12015_004). The area of land that is subject to this ILUA falls within the Aurukun Aboriginal Shire Council is zoned Environmental Management and Conservation in its Planning Scheme and is Forestry is inconsistent with the provisions of the planning scheme.

The lease system and associated governance between a proponent and a Land Trust is unlike the Leasehold system where the land is owned by the state and the state has resourced a series of policies and pieces of legislation to ensure consistent application of procedures – for example the process associated with gaining a 'Resource Entitlement'. Leasehold Land is also typically and in the most designated as 'Rural' in most planning schemes – as these lands were originally and historically designated for the purposes of advancing the Queensland agricultural industry. The planning system works well for this particular relationship between tenure (Leasehold) and planning designation (Rural), but does not work well for lands owned and controlled by Aboriginal entities. Therefore the planning and development system must be 'fit for purpose' for all tenures not just land owned by the state government.

2.4 Lot size

The sizes of the lots that have been transferred from USL or Leasehold lands to AFL have been very large to date. By this I mean that the lot size for lands outside of the township zones in Aboriginal communities and in Rural/Conservation zones in mainstream local government areas (see for instance Jabalbina Aboriginal Corporation holdings in Douglas and Cook Shire Council) are typically greater than 50ha in size. For instance the lot size of the Rural area outside of the township zone in Hopevale Aboriginal Shire Council is 110,000ha (Lot 35 SP232620), outside of Lockhart River township zone is 349,000ha (Lot 16 SP104551); and outside of Mapoon township zone is 31,400ha (Lot 2 SP252512). An analysis of AFL lands in Cape York will demonstrate that the range of lot sizes is limited to very large sizes. This has a range of implications for current planning practice such as placement of Public Notification signs and the associated expense of the Public Notification process relative to a 800m2 lot in inner city Brisbane with only one road frontage and three adjoining land owners to notify. Other implications include the considerations (planning reports and development application fees) for development on these large lots that typically triggers the State Planning Policies (SPP's) on each lot. This means that if a proponent wants to develop a small portion of a large lot that is not subject to SPP overlays (but the balance is subject to the SPP) then they must still pay all relevant fees (SARA and Impact Assessable) and provide a range of reports to demonstrate that the development complies with 'standard' state department conditions. This is because the trigger for assessment is whether or not an SPP is on the subject lot, not where the development is proposed to occur on the subject lot. The only other way around this process is to apply to do a Reconfiguration of a Lot (ROAL) and pay an exorbitant amount for a city based surveyor to create a new lot title. Once the proponents have the ROAL in place then they must apply for the proposed development on the new lot.

2.5 Spatial information systems: AFL is NOT Freehold

The free to use Queensland Globe and indeed the publicly available land tenure database describe all AFL in Queensland as Freehold. This infers that the AFL is the same as Freehold, when in fact it shares no characteristics of Freehold title. As previously mentioned there are two predominant types of tenure in Queensland, one being Freehold where the owner owns and possesses the land and can exclude all others from enjoying the benefits of their land; and the other is Leasehold where the state possesses and the tenant can exclude. AFL is in fact a social tenure whereby the ownership is vested in a group of people that are connected through kinship ties. The ownership structure has been subjected to a corporatisation process whereby a Board is created to make decisions on behalf of their kin (shareholders), the shareholders may exclude non shareholders, but all shareholders retain the right to use and enjoy the lands. It is simply LEGALLY incorrect to use the term Freehold and this should be IMMEDIATELY rectified. All AFL must be described pure and simple as AFL throughout all government spatial databases.

The planning process is driven by tenure. If the land is owned (ie possessed) by an individual then this determines who the owner is and whether or not a Resource Entitlement is required prior to the Assessment Manager approving a development application. The Land Trust owns the land on behalf of their respective families, clans and tribes and can only sign as the 'owner of the land' once they have consulted with the relevant PBC and an ILUA has been created where and if the proposed development constitutes a Future Act. If true equity between land owners is to be gained then the Assessment Manager must have proof of the following prior to providing a Decision Notice:

1. PBC approval (to ensure that the Native Title holders approve of the development on the lot);
2. Relevant ILUA (that represents the Native Title holders and the proponents' agreement – plus consistency with the relevant planning scheme).

This infers that the Land Trust must have a governance system in place to:

1. Assess the development for 'appropriateness'(commensurate with the process associated with a Resource Entitlement); and
2. Create a Lease agreement between the Land Trust and the proponent on the relevant AFL.

Part 3. Disjuncts within the components of the Queensland Planning System

This section provides an overview of the disjuncts between the four components of the Queensland planning system. In essence we have identified four sub components of the Queensland planning system that influence development on AFL in Queensland. Those being: the Crown's land tenure system (including land title

registers, surveying and spatial information systems, land valuations); the Commonwealth Native Title system (including a system for registering applications, determinations and ILUAs); the Western land use planning systems (operating at state, regional and local levels) and Indigenous Planning systems.
These operate in an almost mutually exclusive fashion, yet all influence the ownership of land and how decisions are made about the uses of land and preservation of resources contained on land parcels. The following sections define the systems at play and the implications of the disjunct.

3.1 Land Administration

There is an inter related, yet at the same time exclusive relationship between the Crown's land tenure system (including land title registers, surveying and spatial information systems, land valuations) and the native title system (including a system for registering applications, determinations and ILUAs).

3.2 Western land use planning systems (ie Queensland)

This system presupposes that ecological sustainability is embodied within the planning system that seeks to balance environment, economic development and social values. However, our research indicates that most AFL possesses an overwhelming array of environmental values that preclude the realisation of any economic development or social well-being outcomes.

3.3 Indigenous Land Use Planning system

There are five goals sought from Indigenous Planning – as opposed to the three outlined in section 3.2. These goals are (after Matunga 2013):

- Environmental protection;
- Economic development and growth;
- Cultural protection and enhancement;
- Social cohesion and well-being; and
- Political autonomy.

These goals have a set of procedures and substantive matter that should be addressed in a comprehensive land cover attribute analysis of AFL. However, this is yet to be undertaken for the Indigenous estate. Statutory land use plans that have been undertaken for Aboriginal Shire Councils were not designed or funded to examine the five goals of Indigenous Planning. Rather the emphasis was upon the application of smart growth models to achieve efficiencies for the construction and maintenance of state owned infrastructure. This has resulted in the lands outside of the township areas as possessing a limited range of development opportunities.

3.4 Defining the Disjuncts

The abovementioned systems operate in a mutually exclusive manner and as such:

- DO NOT provide opportunities to use communal title for economic development;
- DOES NOT provide a conducive environment to support a coherent governance system to guide the planning, management and use of the Indigenous estate. Nor do any of these systems enable or acknowledge the integration of Traditional Knowledge systems within non Indigenous planning and development frameworks;
- DOES NOT foster innovative and entrepreneurship within a community to create, control, plan, own or manage development on the Indigenous estate. Rather it creates dependency upon external sources of capital to drive large mega resource industry style developments that do not and have never provided for employment or business development in Indigenous communities (see for instance Taylor et al 2011, Harwood 2012, Carson et al 2010).
- DOES NOT examine the land cover attributes to support planning decision making. Rather all lands outside the township zone in any local government planning scheme are either Environmental Management and Conservation or Rural (with a very limited range of rural development opportunities). See for instance the Hopevale Aboriginal Congress submission to the Queensland government that seeks a greater scope of development in the Rural zone of the Hopevale Aboriginal Shire Council Planning Scheme (submitted at Public Display stage).
- DOES NOT apply appropriate consultation methods to ascertain aspirations for:
    - Cultural heritage protection and enhancement;
    - Social cohesion and well-being;

- Economic development and growth; OR
- The identification of preferred land uses and mechanisms to support locally owned, controlled, planned and managed development.

Part 4 JCU Workshop Integrating Indigenous Planning into the Queensland Planning reform agenda

On July 21 2015 James Cook University hosted a workshop with a range of Indigenous planning stakeholders in the Cairns region. These stakeholders have not been identified within this submission, however each attendant has been provided with a copy of the results of the workshop and will decide whether or not they want to use these to make their own submission.
This section converts the outcomes of this workshop to recommendations to implement in the Planning Reform process.

4.1 What is not working in the Planning System?

Workshop Outcome	Recommendation for incorporation into the Planning Reform
1. Relationship between ILUA and Planning Schemes	a) Amend land title registration system to include the Land use components of ILUA's on to the land title; b) Amend the planning process (IDAS forms) and the plan making process to address the contents of ILUA's; and c) Ensure all registered ILUA's are compliant with the outcomes of the relevant planning scheme.
2. Lacks in-depth site suitability of development potential for 'non-urban' areas	Plan making process (Planning 101) that affects all AFL lands is required to undertake in-depth analysis of land cover attributes and site suitability analysis that delivers the 5 goals of Indigenous planning namely: • Environmental protection; • Economic development and growth; • Cultural protection and enhancement; • Social cohesion and well-being; and • Political autonomy.
3. Lack of in-depth understanding of community values for use and preservation of land	Community consultation in plan preparation and development assessment is meaningful, transparent, accountable, locally driven and culturally appropriate.
4. QPP only has 2 Zones for non-urban land – needs to include zone for 'country'	Amend the QPP to create a range of zones and land uses for lands outside the township zone.
5. Too much emphasis on environment and SPP and not enough on land use planning for development	Investigate all land cover attributes on AFL to include cultural heritage; economic development as well as social cohesion and well-being. At present far too much emphasis is placed on environmental protection at the expense of achieving social wellbeing.
6. SPP's and overlays sterilise development on 'non-urban' lands	SPP layers (Natural Hazards) cover all of Cape York Peninsula, but communities have been adapting to natural hazards since time immemorial. The SPP's are costly to address and where multiple layers exist one mitigation will counter (nullify) another SPP mitigation. Jabalbina recently undertook an analysis of SPP layers on their AFL lands in the Douglas Shire. Lots (509 and 411 on SR828) were originally surveyed more than 50 years ago and were settled by Eastern Kuku Yalanji (EKY). These lands were abandoned

	(the Mission removed the people from these lands) and they have recently been handed back to Jabalbina as AFL. According to the QPP requirements these lots would incur 7 overlays (acid sulphate, landscape, natural areas, hillslopes, bushfire, flood inundation, and potential landslip); in addition the state (SARA) has mapped two SPP's over these potential 7 – this means a potential total of 9 overlays on these lots. This essentially means that the land will not be able to be developed, despite the excellent size (1012m2) and the fact that the State of Queensland thought they were good enough to be handed back to the EKY as AFL.
7. Public notification for remote lots too onerous	Amend the Planning Bill to permit the submission of a Public Notification and CONSULTATION Proposal for AFL lands that is both reasonable and relevant.
8. Too hard, too complex, too expensive and too confusing	Address the disjuncts throughout the entire planning and development system that affect development on AFL.
9. No resourcing of PBC's /LT to facilitate DA or assess DA for owners consent	Resource PBC's and Land Trusts to facilitate development assessment on AFL to in turn supply evidence of Owners Consent to the LGA Assessment Manager.
10. Aboriginal people are 'legally invisible' in land use planning e.g. refer to Nature Conservation Act for model where Aboriginal people are visible	Ensure Indigenous people are 'legally visible' in Land Use Planning. Apply the following test (*Legislative Standards Act 1992*) to the proposed Bill and demonstrate how this has been incorporated into the proposed Planning Bill. Namely Section 4, (3): Whether legislation has sufficient regard to rights and liberties depends on whether for example the legislation: (j) has sufficient regard to Aboriginal tradition and Island custom The *Nature Conservation Act (1992)* was identified by the workshop participants as having demonstrated that the state is capable of incorporating Aboriginal tradition and Island custom into legislation (see for instance Section 18 (3) of the *Nature Conservation Act 1992*)

4.2 What does the Land Trust and the PBC want from the Planning System?

Workshop Outcome	Recommendation for incorporation into the Planning Reform
1. Become an agency with Statutory basis	a) Create a piece of legislation or statutory guideline that describes the process that Land trusts and PBC's must follow to assess Development Applications on AFL to create evidence of Owners Consent; b) Create a schedule of fees (for all external investors) for applications requiring Development Assessment on AFL by the PBC/Land Trust; and c) The State of Queensland must resource the above recommendations.
2. Planning must incorporate/include Indigenous ways of planning within the broader system that includes traditional mechanisms of and governance systems	a) Land Use planning (planning processes including statutory instruments) that occurs on or affects AFL will ensure that the 5 goals of Indigenous Planning are addressed to the satisfaction of the PBC/Land Trust;

	b) Traditional knowledge is acknowledged as a legitimate 'way of knowing' to address for addressing land use strategies; and c) Governance systems that reflect traditional knowledge are created to guide (plan making and land use strategies) and decision making.
3. Some cases apply Western system where economic development = individual/private 4. Other cases Indigenous system where matter is communal in nature	Economic growth (the capacity to develop traditional lands), the distribution of benefits from development (how to accrue to the Traditional Owners and at the same time reward individual effort and enterprise) – must be internally considered as opposed to being determined by either industry, government or the courts.
5. Relationship between ILUA, Native Title rights and interests in planning scheme are consistent and process coherent	Amend the system to address and remove disjuncts.
6. Decision making is devolved to the local level where most appropriate for decisions (e.g. bushfires @ 1:100,000)	Include the principles of subsidiarity whereby decisions are made at a scale that is most appropriate. The planning system is designed to suit local and state government agendas and not at the level where decisions regarding land uses are most felt ie PBC/Land Trust.

4.3 What is a suitable process for your PBC/Land Trust?

Workshop Outcome	Recommendation for incorporation into the Planning Reform
1. Based on a sound purpose and goals including i. Social cohesion ii. Cultural heritage iii. Economic development iv. Environment and delivers political autonomy	Process delivers political autonomy for communities rather than current focus on smart growth and economic efficiencies of local, State and federal government owned infrastructure. If the focus is on political autonomy at a local level then efficiencies (social and individual well-being) will be created therefore reducing current expenditure on inefficient infrastructure and services such as health. The planning system must achieve social, cultural, economic and environmental goals as defined by the community not through externally derived benchmarks (eg Comprehensive and Adequate Representative system, EPBC or state Interests/Regional Plans).
2. Respects Indigenous knowledge and traditional knowledge/Lore's and allocated appropriate resources enable PBCs/Land Trusts to work with/in this	Lores and customs regarding appropriate areas and resources (values) to acknowledged and used to drive the planning outcomes for AFL. PBC/Land Trust can use these to make decisions about development on AFL that identifies the appropriate location, scale and intensity of development.
3. PBC's/Land Trusts to make Statutory Land Plans	PBC/Land Trust should be provided with the resources and ability to create their own land use plans that are in turn recognised through statutes (refer to 4.1.1 above) and used in IDAS.
4. Mechanisms for Private capital	An ability to seek a joint venture with entities on AFL.

4.Other Comments

Workshop Outcome	Recommendation for incorporation into the Planning Reform
1. External/Internal PBC/LT – cost of transactions	Cost of transactions – this infers that the external cost of transactions associated with the current disjuncts makes

	development very costly. For instance the cost of making a development application for a camping ground on AFL (Lot 6 SP140905) in Mapoon Aboriginal Shire Council would include 7 SARA (SPP) layers, application fee for LGA Assessment Manager (Impact Assessable), planning consultant, waste water engineer, road engineer (including soil and erosion plan), water license is in the realms of about $75,000 (approx – and not including the ILUA costs and compensation payable to Native Title holders for not being able to exercise their NT rights and interests on the portion of the Lot). Whereas the total capital cost of the development would be about $120,000. It is simply too expensive to do development on AFL within the current planning system.
2. Sort out internal conflict who can speak for, develop on what land	Conflict about who can speak for which country and associated spatial extent is a major issue for Land Trusts to sort through. While Native Title recognises NT rights and interests it did not sort out who can speak for which portion of land (or part of which lot) and how to address lands that were used by many families within a clan. This is creating great angst for Land Trusts as they try to create governance systems for decision making. These internal costs of transaction need to be addressed by both the government and the PBC/Land Trust. The Federal government created a half-baked NT system that granted rights and interests to a community based on an Anglo American set of norms about property with little consideration of how this wold affect property rights, development and the relationship between the PBC (as the holder of the NT rights and interests) and a Land Trust (that holds the interests of both Traditional Owners and Historic residents). This situation MUST be addressed as a matter of priority.
3. Land Tenure – AFL (infers rights) as does Native Title.	Native Title infers rights but the relationship between the property rights and the land tenure system is tenuous at best. This disjunct must be addressed.
4. Land handed back possesses lower economic development potential than township	The land that has been handed back has lower economic value (refer 4.1.6 above) than land in the township zone. The economic development potential of non-urban lands MUST be addressed through comprehensive assessment of land cover attributes and site suitability for range of land uses.
5. Too much complexity in the system – how can average person (or Indigenous) able to sort through legislation	Address the disjuncts in the entire system to create a coherent framework that enables planning and development to occur in an efficient and appropriate manner.
6. Impost of Regional Plans	Development in Cape York is not only subject to statutory land use plans created by Local Governments, but more recently the Cape York Regional Plan has been introduced to represent additional state interests (in the form of Regional Planning Interests legislation). The Regional Plan did not identify new development opportunities, instead it created additional impediments. Provisions of the CYRP are inconsistent with local aspirations (see for instance how the Mapoon Aboriginal Shire Council planning scheme categorises the environmental values as opposed to how the CYRP legislates state and regional values on Lot 6 SP140905). This is a top down approach to planning and development simply creates additional costs and restrictions. This plan should be repealed in its entirety, and a place based regional plan created in its stead.

4.5 Summary

The results of this workshop and associated recommendations may be considered by the Parliamentary Committee as being beyond its scope. However, amending the land use planning system alone will not create development opportunities on AFL. The entire planning and development system in Queensland that affects development on AFL must be considered as a whole system to in turn understand the nature of the relationship between its components. The interconnectedness of the components must be fully appreciated to understand how 'tinkering' with one part will affect the functioning of another.

Part 5. Additional Recommendations for inclusion in the Planning Reform

The following set of recommendations for Planning Reform reflects my own planning experiences and knowledge.

1. Create a Purpose of the proposed Planning Bill that addresses the 5 goals of Indigenous Planning:
    a) Environmental protection;
    b) Economic development and growth;
    c) Cultural protection and enhancement;
    d) Social cohesion and well-being; and
    e) Political autonomy.
2. Recognise the implications of the SPP and its associated layers in inhibiting development on AFL. This disjunct can be resolved through a detailed analysis of land cover attributes to determine the REAL spatial extent of the overlays for example risk of natural hazard. More importantly the SPP weighs heavily on environmental values assuming uniform application. Further there is no consideration of :
    2.1. Cultural Heritage protection and management. The *Aboriginal Cultural Heritage Act 2003* is a toothless tiger. This Act MUST be reassessed to include the PBC as the mechanism for determining whether or not cultural heritage exists and whether the proposed development will permanently alienate these values or if mitigation measures can ameliorate impacts.
    2.2. Social Cohesion and Well-being. If the proposed development does not contribute to or enhance social cohesion and well-being then it should be refused. An appropriate entity (PBC/Land Trust) must be charged with overall responsibility for determining the extent to which a proposal enhances or diminishes these values.
3. Creating Better Planning processes through preparing a Statutory Guideline to direct Planning Authorities when preparing Planning Instruments addressing Indigenous owned and controlled land: It should cover topics including:
    a. Role and Consideration of ILUA's/Relationship to SPA;
    b. Implications of tenure in particular AFL;
    c. Appropriate Consultation / Engagement practices and principles from Indigenous Communities; and
    d. Approach to State Interests (SPP layers) and approach to large expansive areas.
4. Improve efficiencies and effectiveness in plan making and development assessment through including:
    a. A purpose of the Act; and
    b. A purpose that addresses the values and aspirations of all Queenslanders including Indigenous people in remote locations.
5. Categories of development do not require amendment. Simply remove 'Development Compliant' and continue with Exempt, Self-Assessable, Code Assessable and Impact Assessable. The intent to change names without function is simply change for the sake of it.
6. Retain rules of Assessment and Decision Making in the Act, but include benchmarks, enhanced policy and public interest matters into the procedures.
7. I strongly support the commitment of the Queensland Government to improved Community Engagement. As such engagement can only occur when a 'community' understands what planning is, the plans strive to achieve and what it means for them as individuals and as a collective. Engagement involves all of the community including engaging with the disengaged in the purpose, process, and identification of strategies to address the purpose, evaluation of alternatives and a selection of preferred strategies. Unfortunately the proposal put forward in the Planning Reform process indicates that engagement is about Notification with limited opportunities to influence either the plan or the outcomes.

8. The current planning reforms do not address the disjuncts as outlined in this submission. Consideration needs to be given to the governance and probity issues faced by Land Trusts as the legal entities representing land owners for the Indigenous estate.
9. Legislation with a Better structure: It would seem obvious that the current system is yet to understand 'Indigenous Planning 101' and until such time as the Act, the practice and the profession can demonstrate an understanding of core matters and key elements as outlined in this submission then I OBJECT to its removal from the proposed Bill.
10. Owners Consent MUST be provided at the time of making the application. Proof must be included in the IDAS forms at the time of lodgement, particularly as this relates to AFL for all the reasons identified in previous sections of this submission.
11. Consideration of a Planning Tribunal for appeals relating to development applications on AFL.
12. Support for Land Trusts. Planning not only occurs at a Local Government level. Indigenous organisations and people also plan and have a plethora of statutory and administrative responsibilities that they must also undertake. The Queensland government must provide support to these entities by acknowledging their existence and responsibilities in the planning system. The Queensland government must provide support and assistance to the Land Trusts to operate within the reformed system including policy support, tools, training, resourcing and guidance.
13. There is an inherent problem with the *Local Government Act (2009)* and its provisions for rating Aboriginal Freehold Land (Aboriginal Land Act 1991). If the land is zoned 'Rural' it is more likely that the relevant LGA can levy rates upon the use of the land for 'commercial purposes', and apply the market (alienable) land value. If the land is zoned Environmental Conservation and Management the range of commercial options becomes limited. So there is a need for a 'Country' zone that would enable a more 'fit for purpose' approach to both land use planning and management as well as serve to create a policy for the remission of rates on Aboriginal Freehold Land in Queensland.
14. An additional oversight in the planning system for Land Trusts that are subject to the Wet Tropics World Heritage Management Plan is a complete lack of integration with the current provisions of SPA. Despite Indigenous Housing being an exempted land use activity by SPA, the Wet Tropics Management Agency Management Plan (1998) requires that this development be regulated according to the provisions contained in a very old and outdated management plan. All local governments are required to update their plans every 10 years – yet this outdated 20 year old Management Plan and its antiquated provisions are creating an additional impost upon the realisation of development opportunities on AFL in the Wet Tropics region. The Management Plan MUST be updated to reflect the changes in both the listing of the Wet Tropics (now acknowledging its Indigenous cultural heritage values) and the change in land tenure to AFL.

Concluding remarks

This submission has detailed a range of recommendations for consideration in the overall Planning Reform process that addresses the functions of the entire land, planning and development systems that AFL and Land Trusts operate within. The Queensland government have three options to consider as part of their planning reform to achieve equity and access to social, cultural and economic development on Aboriginal Freehold Land, namely:

1. **Reform the entire land administration, planning and development system affecting development on AFL;**
2. **Amend the proposed Planning Bill to include the range of responsibilities that are incumbent upon Land Trusts as outlined in this submission. This includes the purpose of the Act, planning process, plan making, community engagement and decision making; OR**
3. **Create a separate piece of planning legislation for all lands and waters that are owned and controlled by Aboriginal corporate entities.**

The current system is NOT fit for purpose to deliver economic development on the Indigenous estate in Queensland and as such the reform must addresses these disjuncts.

Finally, I would like to acknowledge the commitment to date of the Queensland Government (notably Director General of DILGP Mr Greg Chemello) to working with Indigenous Communities to make the necessary changes to remove the structural impediments to achieving self-determination and economic development on the Indigenous estate. I hope that the contents of this submission will assist DILGP in furthering this commitment.

With kindest regards

Dr Sharon Harwood

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.

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Attachment B:

Submission of Jabalbina Yalanji Aboriginal Corporation RNTBC to Douglas Shire Council on the preliminary draft planning scheme June 2015

Jabalbina

Jabalbina Yalanji Aboriginal Corporation RNTBC
ABN 79 611 886 178 ICN 7002
Jabalbina Yalanji Land Trust
ABN 54 650 095 845

15th June 2015

Ms Linda Cardew
Chief Executive Officer
Douglas Shire Council
Mossman QLD

Dear Ms Cardew,

Jabalbina Submission to Draft DSC Planning Scheme

Jabalbina would firstly like to thank you for providing a copy of the draft Douglas Shire Planning Scheme prior to public notification, and to thank you and the Mayor Julia Lue for attending the meeting at Jabalbina on the 26th of May and listening to our concerns in relation to the proposed Planning Scheme. At that meeting you requested that we provide comments to the draft Douglas Planning Scheme in writing.

We believe the new planning scheme provides an opportunity to break new ground and position Douglas Shire as a leader in recognising Traditional Owners in a local government planning scheme. If this is to be achieved however, there is a need for the plan to be revised to fully recognise the Eastern Kuku Yalanji Native Title Determination and Eastern Kuku Yalanji Indigenous Land Use Agreements (ILUAs).

The Eastern Kuku Yalanji People's Native Title rights and Aboriginal Freehold land are part of a broad package contained in 15 ILUAs agreed in 2007 between the Eastern Kuku Yalanji People and other parties including the State of Queensland, local governments, service providers and leaseholders. The ILUAs cover an area of 230,000ha, including the area over which Native Title rights have been determined and the Aboriginal Freehold land. Jabalbina was established through the ILUAs as the Eastern Kuku Yalanji People's Registered Native Title Body Corporate under the *Native Title Act 1993* and primary Land Trust holding Aboriginal Freehold land under the Queensland *Aboriginal Land Act 1991*.

The extent of the Eastern Kuku Yalanji Aboriginal Freehold Pink Zone reflects the final negotiated position reached in the 2007 Eastern Kuku Yalanji ILUAs following 14 years of negotiation between the Eastern Kuku Yalanji People, Queensland Government, Wet Tropics Management Authority and Douglas and Cook Shire Councils. Of the 230,000ha area claimed by the Eastern Kuku Yalanji People, around 165,000ha became or remained national park or reserve. Of the 63,000ha handed back to Eastern Kuku Yalanji as Aboriginal Freehold Land, 48,000ha is dedicated as a nature refuge under the Nature Conservation Act 1992 and has no effective development potential except for uses ancillary to conservation, such as a ranger base. The remaining 15,000ha of Aboriginal Freehold land is the Pink Zone, the area made available for residential and economic development for the benefit of the Eastern Kuku Yalanji People. The Eastern Kuku Yalanji People negotiated this outcome based on the belief that they would indeed be able to return to their country to live and to derive economic benefits from this land (refer to attached map).

PO Box 7279
CAIRNS 4870
Ph: (07) 4051 1400
Fx: (07) 4051 4361
admin@jabalbina.com.au
www.jabalbina.com.au

As Trustees of Eastern Kuku Yalanji Peoples' traditional estate, Jabalbina's vision is to be caring custodians of bubu (land) so Bama benefit culturally, economically, academically and socially, while enhancing Eastern Kuku Yalanji tribal lore and cultural values.

It is critically important that parties to these ILUAs including local governments recognise and respect these aspirations and the outcomes of the 2007 Native Title determination and the subsequent ILUA's. At present the Draft Douglas Shire Planning Scheme does not do this. It is particularly important that the lands that fall within the Aboriginal Freehold Pink Zone are to be available for a range of residential and economic land uses to reflect the aspirations of the Eastern Kuku Yalanji People.

Eastern Kuku Yalanji Bama are already overwhelmingly dissatisfied at the small size of the Pink Zone relative to surrounding conservation tenures and oppose measures that effectively further reduce the area of the Pink Zone. Jabalbina is concerned that the very small good living areas identified on Local Plan Map Sheet LPM-005 may become the only areas in which Bama are able to develop bayans for temporary occupation (outstations) or permanent occupation (dwellings) and businesses, with the impact-assessment process elsewhere effectively preventing development. This would reduce the development potential of the remainder of the Pink Zone to that of the Yellow Zone (nature refuge). Jabalbina submits that this nullifies a central agreement in the 2007 Eastern Kuku Yalanji ILUAs to provide the Pink Zone as an area for Yalanji people to fulfil aspirations for living and economic development on their Country.

The identified good living areas in the draft planning scheme reflect pilot community development plans developed by WTMA and Jabalbina in 2010-11. These pilots involved Traditional Owners at family level identifying their family aspirations to develop camping, residential and business facilities, and WTMA agreeing to make these aspirations effectively self-assessable under the Wet Tropics Management Act subject to Activity Guidelines providing for the manner of development. The development permitted under these pilots (a total of 12 structures as well as improvements to existing bayans on the Burungu Aboriginal Corporation lease, reflected in Table 7.2.1.10.b of the Planning Scheme) reflects the aspirations of a small group of Eastern Kuku Yalanji families who participated in the pilot community development planning process, and in no way covers the breadth of aspirations of the entire Eastern Kuku Yalanji People. The pilot community development planning good living areas are therefore not appropriate for use in the Planning Scheme to distinguish between areas where uses are self-assessable and impact-assessable.

Jabalbina understands that there will be certain legislative provisions such as the State Planning Policies (pursuant to the *Sustainable Planning Act 2009*) and the *Wet Tropics Management Plan 1998* that will need to be complied with in addition to the provisions of the Planning Scheme. However we are not prepared to agree any reduction in the spatial extent of Eastern Kuku Yalanji lands in the Pink Zone to be available for residential and economic development.

Within this context we make the following specific comments regarding the draft Planning Scheme and Jabalbina interests:

1. **Create a Local Plan for all Eastern Kuku Yalanji Aboriginal freehold land within the Pink Zone**
We believe that the Eastern Kuku Yalanji People and their lands should have a Local Plan that reflects the spatial extent of the Pink Zone to reflect the intent of the ILUA's and makes provision for residential and economic development opportunities.

Jabalbina seeks to have a Local Plan that specifically addresses the aspirations of the Eastern Kuku Yalanji People to return to their country to achieve residential and economic development created by Douglas Shire for inclusion in the Planning Scheme. We believe that the proposed Local Plan

PO Box 7279
CAIRNS 4870

Ph: (07) 4051 1400
Fx: (07) 4051 4361

admin@jabalbina.com.au
www.jabalbina.com.au

should be restructured to include the range of Eastern Kuku Yalanji aspirations as Objectives and that a series of precincts should be created that are specific to each clan area.

By supporting this approach the Douglas Shire would be recognising the unique role of Eastern Kuku Yalanji people as the first residents of the now Douglas Shire. The council would also be giving genuine expression to the Eastern Kuku Yalanji Native Title Determination and ILUAs to which the Douglas Shire is a party.

Inclusion of Eastern Kuku Yalanji Aboriginal Freehold Pink Zone land within the Pink Zone in the Conservation Zone of the draft Douglas Planning Scheme, the Daintree River – Bloomfield River Local Plan – General conservation precinct – does not reflect the aspirations of the Eastern Kuku Yalanji People to achieve residential and economic development. This submission therefore proposes a new approach rather than making specific detailed comments on the current provisions of the Daintree River – Bloomfield River Local Plan for use and development of Aboriginal Freehold land. With respect to the specific comments on the draft plan structure and content, please note the following:

2. Strategic Intent:

The Strategic Intent needs to be amended to reflect the aspirations of the Eastern Kuku Yalanji, specifically the desire to return to country and to derive economic benefits from the utilisation of land and sea resources. The 6 themes within the Strategic Intent describe what the Douglas Shire Planning Scheme intends to achieve. However the aspirations of the native title holders have not been specifically noted or acknowledged. For instance Section 3.2 provides an overview of the Douglas Profile – the regional context; physical setting; environment; history; people and settlements; economy; transport; infrastructure and community services. With the exception of one sentence in 3.2.1.4 Historical context there is no mention of the very significant past and present context of the Eastern Kuku Yalanji People within this Shire. Moreover, there is no mention within the people and settlement section of how the Eastern Kuku Yalanji people compare to other non-Aboriginal residents. This would in turn substantiate strategies to improve Eastern Kuku Yalanji social cohesion and well-being; enhance their cultural heritage or the improvement of economic circumstances that they currently experience.

In section 3.2.2.2 Reinforcing Douglas Shire Sense of Place and Identity (2) states: 'At a shire wide scale the topography, creeks and rivers and the coastline contribute significantly to the Shire's sense of identity'. However, most of these attributes are either owned by or subject to native title interests vested in the Eastern Kuku Yalanji People. These physical attributes along with the cultural values that the Eastern Kuku Yalanji People have been custodians of for these areas are neither acknowledged nor addressed in any of the land use strategies.

The same section (3.2.2.2) describes how the 'Shire will continue to grow whilst retaining the unique characteristics of individual communities through local variation in development requirements'. This will apparently be undertaken through tailor made local plans. However, there are no such Local Plans contained within this Draft Planning Scheme that are tailor made for the Eastern Kuku Yalanji People, their clan areas or their traditional lands.

The Draft Planning Scheme provides for economic opportunity through tourism and primary production, but none of these opportunities have been provided for on Eastern Kuku Yalanji lands.

Housing Choice (3.2.2.5) does not acknowledge Indigenous Housing or Bayan as part of the product range.

3. Embedding Eastern Kuku Yalanji aspirations throughout the Themes

By this we mean that the Eastern Kuku Yalanji people seek many of the same outcomes for their lands and waters that are described within the various themes. However at present the draft Planning Scheme briefly describes the Eastern Kuku Yalanji within the element 'Strong Communities

PO Box 7279
CAIRNS 4870

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admin@jabalbina.com.au
www.jabalbina.com.au

and Identity' – in a rather disjointed manner. This subset of an element describes the Eastern Kuku Yalanji in very narrow terms i.e. recognition of traditional knowledge (applied in limited circumstances), sites of cultural heritage identified and protected and an ability to care for, work on and live on Country in the good bush living precincts in *certain* areas north of the Daintree River. There is no mention of the Eastern Kuku Yalanji's contribution to the broader Douglas shire community on matters related to the application of traditional ecological knowledge to solve land management problems experienced on lands not owned by the Eastern Kuku Yalanji. There is also no mention or acknowledgement of the work that the Eastern Kuku Yalanji do on the lands that they manage as a Nature Refuge (areas and features that contribute to the 'Sense of Place' within Douglas Shire).

We suggest the following amendments to be made to the Themes:

Theme 1 Settlement Pattern should be amended to include:

(6) The rights and interests of Native Title land holders are recognised through provision for Indigenous Housing and seasonal camps (Bayan) on Aboriginal Freehold Land within the Pink Zone.

Then create an Element under this section:

3.4.8 Element – Recognition of the Rights and Interests of Native Title Holders

(1) Overview of the Clans, native title determination outcomes and land transfer – the spatial extent and history within Douglas Shire (forthcoming: by Jabalbina).

(2) All possess the desire to return to their Country to practice their culture and strengthen their identity.

(3) The intent of the Pink Zone is to provide for a range of residential and economic land uses to reflect the aspirations of the Eastern Kuku Yalanji People. The ILUA's reflect these agreements and the draft Douglas Planning Scheme supports the Eastern Kuku Yalanji People in their return to Country.

3.4.8.1 Specific Outcomes

(1) The range of agreed land uses contained within the ILUA's are reflected in the land use planning scheme definitions and zones applied to lands identified in the Pink Zones.

(2) Culturally appropriate housing is facilitated in the Pink Zone Area and is reflected in a Local Plan.

(3) A Local Plan has been created to reflect the Eastern Kuku Yalanji aspirations to return to country and derive economic benefits from their lands and waters.

3.5 Theme 2 – Environment and Landscape Values

Insert as (1) The Aboriginal cultural heritage values of the Wet Tropics bioregion are acknowledged, protected and enhanced. The Aboriginal Rainforest People of the Wet Tropics of Queensland have lived continuously in the rainforest environment for at least 5 000 years and this is the only place in Australia where Aboriginal people have permanently inhabited a tropical rainforest environment.

Insert 3.5.2 Element – Aboriginal Cultural Heritage Values

(1) Jabalbina is registered as the Cultural Heritage Body for Eastern Kuku Yalanji Peoples' traditional estate under the *Aboriginal Cultural Heritage Act 2003.*

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(2) In November 2012 the Australian Government announced the inclusion of the national Indigenous heritage values as part of the existing National Heritage Listing for the Wet Tropics of Queensland.

3.5.2.1 Specific Outcomes

(1) The cultural heritage values of the Wet Tropics bioregion are protected and enhanced through the implementation of Jabalbina's cultural heritage management plan. *(In relation to the scheme not yet developed but will be over the life time of the draft planning scheme)*

3.6 Theme NRM – note that these themes are in the most consistent with what Jabalbina strives to achieve on their lands. This section does not acknowledge the role that Jabalbina has regarding the management of their traditional lands. There is also a section missing that acknowledges Traditional Ecological Knowledge and the creation of partnerships between organisations to enhance opportunities for co-management of lands.

Theme 4 strong Communities and Identities:

Specific comments –

(1) There are no procedures or mechanisms outlined within the draft planning scheme that addresses how Aboriginal cultural heritage will be identified, protected and retained. Jabalbina and Douglas Shire Council need to work together to create a management plan to address this.

There are no strategies contained within the draft Planning Scheme to address (5) the removal of social and economic disadvantage. Jabalbina would argue that the current range of land use opportunities provided for in the draft Planning Scheme on Aboriginal Freehold Land exacerbates disadvantage.

3.7.4 Element Sense of Place, community and Identity – none of the matters discussed in this section relate to Aboriginal sense of place, community and identity.

3.7.5 Element – Housing Choice and affordability – no mention of Indigenous Housing or Bayan development on Aboriginal Freehold Lands.

3.7.6 Element – Cultural and Landscape Heritage – refers to the built environment and does not consider any Aboriginal cultural heritage matters.

3.7.8 Element Strengthening Indigenous Communities – none of the matters described in this section address social and economic disadvantage, environmental management of lands and waters, cultural heritage protection and management, the relationship between Jabalbina and Douglas Shire Council and economic development opportunities. The Eastern Kuku Yalanji people seek to make a living from their land (i.e. free of government welfare) – this means that the planning scheme must make provision for business development on Country and within the Pink Zone. Section 3.7.8 talks about creating economic opportunities but there are no such opportunities or outcomes provided for on any Eastern Kuku Yalanji lands in the draft Douglas Planning Scheme.

3.8 Theme – Economy – there are no specific provisions or references made to reflect the range of development opportunities that <u>should</u> be made available to Eastern Kuku Yalanji people on their traditional lands.

3.9 Theme Infrastructure and Transport – there are no specific provisions or references made to reflect the range of infrastructure to support Eastern Kuku Yalanji development on their traditional lands.

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4. Inconsistent nomenclature referring to the Traditional Owners within Douglas Shire.
Terms such as Indigenous (capitalised) is applied in international settings, recognising the international diversity of Indigenous peoples around the world. Within Australia, it is most appropriate to use terms that further specify identity. At the regional and community level it is appropriate to use regionally or locally specific terms of identity. The draft Douglas Shire Planning Scheme uses a combination of all three terms (indigenous, Aboriginal and Torres Strait Islander, Aboriginal) plus an additional reference to 'First People'. Jabalbina recognises that other Traditional Owner groups have interests in the western and southern parts of Douglas Shire; however it is appropriate to refer to Eastern Kuku Yalanji people throughout the entire Eastern Kuku Yalanji ILUA area as well as areas between the ILUA area and coast, comprising the majority of the Douglas Shire.

Conclusion and Proposed Workshop
Thank you again for the opportunity to comment on the Draft Douglas Shire Plan prior to its release. In order to address concerns raised in this submission, Jabalbina proposes a workshop involving Council, Jabalbina and James Cook University who have provided some technical advice towards this submission. In particular, the workshop could develop provisions for the suggested Local Area Plan for the Eastern Kuku Yalanji Aboriginal Freehold Pink Zone.

Please do not hesitate to contact me should you wish to discuss any matter raised in this submission email ceo@jabalbina.com.au or phone 07 4051 1400.

Sincerely

Mr Jim Turnour

CEO Jabalbina

PO Box 7279
CAIRNS 4870
Ph: (07) 4051 1400
Fx: (07) 4051 4361
admin@jabalbina.com.au
www.jabalbina.com.au