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RE: Submission to the Parliamentary Committee: Queensland Planning Reform

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 to the Parliamentary Committee for Planning Reform in Queensland.

The following submission to the committee 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 to justify the range of amendments that I believe are important to meeting the aspirations for economic, social and cultural development on Aboriginal Freehold Land (hereafter referred to as AFL). My submission is structured in five parts, namely:

1. Outcomes that the Planning System must achieve for the Indigenous[1] 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.

[1] The use of the term 'Indigenous estate' in this submission is used to refer to lands that are subject to a Native Title determination, ILUA and/or have been transferred to an Aboriginal Land Trust as Aboriginal Freehold Land. This is not the technically correct term used throughout the Australian and International literature, however, it is the term used most frequently by the Queensland government. Statutory land use planning schemes are currently being prepared for Torres Strait Islands therefore my own professional work experience is limited to Australian Aboriginal lands.

3. The third section 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. The fourth section 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 for inclusion by the Parliamentary Committee to amend the planning system.
5. The fifth section 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 legislation to better reflect Queensland Indigenous communities;
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.

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

I have provided five outcomes that the parliamentary committee MUST 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.

Section 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.

Section 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. The James Cook University Centre of Tropical Urban and Regional Planning researchers in collaboration with PSA Consulting are currently seeking funds to support the refinement of what we refer to as a 'work in progress' analysis that unpacks the planning and development system on AFL in Queensland. 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. We have developed a schematic overview of the four systems and associated disjuncts and would be more than happy to present this to a hearing of the Parliamentary Committee for Planning Reform.

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.

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

On July 21 2015 James Cook University (Dr Sharon Harwood) and PSA Consulting (Mr Malcolm Griffin) 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 for the Parliamentary Committee to implement in this reform.

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	Economic growth (the capacity to develop traditional lands), the

system where economic development = individual/private 4. Other cases Indigenous system where matter is communal in nature	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.

4.4 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.

6. Additional Recommendations to the Parliamentary Committee

The following set of recommendations to the Parliamentary Committee 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, 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 'Planning 101' let alone '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. 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 to the Parliamentary Committee that addresses the functions of the entire land, planning and development systems that AFL and Land Trusts operate within.

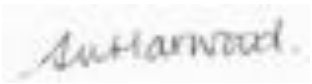
The Queensland government have three options to consider as part of their planning reform to achieve equity and access to social, cultural and economic development on Aboriginal Freehold Land, namely:

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.**

James Cook University (Centre of Tropical Urban and Regional Planning) has developed an overview of the disjuncts within: 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. I would be more than happy to deliver a seminar to the Parliamentary Committee that includes a range of case studies in Cape York to demonstrate the extent of these disjuncts.

Finally, the current system is NOT fit for purpose to deliver economic development on the Indigenous estate in Queensland and as such the Parliamentary Committee must ensure that the reform addresses these disjuncts.

Regards



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