



BANA YARRALJI BUBU INC.
873 SHIPTONS FLAT ROAD
ROSSVILLE, QLD, 4875
E-MAIL: banayarralji@yahoo.com.au

August 2012

Dr Kathy Munro
Research Director
State Development, Infrastructure and Industry Committee

By e-mail: sdiic@parliament.qld.gov.au

Dear Madam

**RE: INQUIRY INTO THE FUTURE AND CONTINUED RELEVANCE OF GOVERNMENT
LAND TENURE ACROSS QUEENSLAND**

A. Cultural Hosting Enterprise Submission

Bana Yarralji has only very recently become aware of the nature and extent of the State Development, Infrastructure and Industry Committee inquiry (above), and hopes the Committee will be able to accept this letter and the attached article as a submission to the inquiry?

B. Cultural Hosting Enterprise Requests t

Bana Yarralji, drawing from all the experience, with all of the aspirations detailed in the background below;

a) is keen to explore options to see Aboriginal land trust lands currently being sought for commercial purposes (such as the lands Bana Yarralji is seeking commercial lease over) to be made more readily available as ordinary freehold (including possibly reducing current native title limitations(

b) is keen to explore prospects for Cape York Dreaming Track type ventures and investments of the kind originally being proposed by Balkanu Cape York Development Corporation enhanced, and cultural landscapes valued through effective visitor agreements of kind considered by Balkanu

c) would greatly appreciate opportunity to more fully participate, and perhaps nominate as a bit of a case study for the Committee review and/or future tenure reform, drawing on past, existing, and emerging experience .. in the hope of finding good/best solution for Bana Yarralji cultural enterprise and all such similar enterprise across Queensland

C. Cultural Hosting Enterprise Background

Bana Yarralji is an Aboriginal cultural/social enterprise seeking to apply business principles to see locally indigenous lore, language and people more fully restored to traditional country.

1. currently overseeing a 'Working on Country' ranger service 'on Aboriginal land trust lands(Jablabina Aboriginal land trust) in the Upper Annan River/Rossville area (south of Cooktown)
2. obtaining initial development approvals and subsequently constructing a Bana Yarralji ranger base and camp ground on country (with ablutions block, office block and facilities, on Aboriginal land trust lands) .. for which we were this year awarded a Queensland Reconciliation Award
3. participated within, substantially contributed to, and strongly supportive of the Balkanu Cape York Dreaming track branding, marketing, and infrastructure initiative which would have seen walking tracks and available visitor experiences in surrounding new National Parks, Aboriginal land trust lands (Nature refuge), and Upper Annan Aboriginal freehold lands greatly expanded, and visitor numbers hosted by Bana Yarralji increased above threshold minimum average of 40 visitors per month to be viable
4. accumulating > 3 years experience pursuing all the necessary tenure (commercial leases and home leases) and authorities under the Aboriginal Land Act, under the Native Title Act, and more ... to establish an effective, viable indigenous cultural hosting service in the Northern Wet Tropics region
5. currently negotiating with the relevant Aboriginal land trust (Jablabina Yalanji land trust) and on the verge of signing a Memorandum of Understanding providing in principle support, and laying out all the steps Bana Yarralji will have to undertake (from subdivisions, approvals, and indigenous Land Use agreements) before it will be able to obtain required commercial leases, home leases, and visitor hosting licences

[copy of the draft Memorandum of Understanding may be able to be provided, upon consultation/with consent of the Jabalbina Yalanji Aboriginal Land Trust]

D. Conclusion

Please, it would be greatly appreciated if the Committee is able to accept this rapidly prepared letter and attached article as a submission identifying traditional owner aspirations, tenure difficulties and strong wish to find better tenure options and potential for an emerging cultural hosting enterprise

With many thanks for the opportunity to put our hands up to contribute

Bruce White
Executive Assistant
On behalf of
Marilyn and Peter Wallace
Bana Yarralji Executive

On the ground: planning on Eastern Kuku Yalanji Country

Marilyn Wallace, Bruce White and Rowan Shee



Marilyn and Peter Wallace in front of self-built shed (under construction)

The Eastern Kuku Yalanji People are the original owners of all the lands, waters and seas within the catchments of the eastern flowing rivers between Port Douglas and Cooktown, on the sunrise side of the rainforested mountains that constitute north-east Queensland's Wet Tropics World Heritage Area (including the Daintree rainforests).

Eastern Kuku Yalanji Country is a rich, bioculturally diverse landscape interwoven with extensive networks of Aboriginal 'highways' that were once heavily used (MacCracken 1989), filled with large numbers of living areas that were once densely occupied (Horsfall & Hall 1990). The nature of this Country, and the associated resilience of Eastern Yalanji Lore, has insulated them from some of the very worst excesses of Queensland colonial history, but that history still has not been kind.

A 1978 Lutheran Church report describes a systematic policy and process of moving people: 'from their traditional hunting grounds, they were gradually herded into camps along or near the Bloomfield River. Finally they have been constricted within the confines of the 250 acre reserve at Wujal Wujal'. The depth of their feelings was ... expressed: 'we are like a crane standing on one leg ... on a little island' [Lutheran Church 1978].

Many other Eastern Kuku Yalanji people were forcibly moved to Aboriginal missions and reserves to the south (particularly Yarrabah and Palm Island). The

longstanding aspiration of the Eastern Kuku Yalanji People is to return to live and work on Country, to restore their Lore and care for their Country.

In 1994, the Eastern Yalanji People applied to the Federal Court of Australia to demonstrate that Native Title continues to exist within parts of their Country. Subsequent National Native Title Tribunal mediated negotiations between Eastern Yalanji representatives, the State, local authorities and others culminated in the 2007 Eastern Yalanji Indigenous Land Use Agreements (ILUAs). The ILUA's were hailed by then-Premier Peter Beattie as 'the most significant land agreement ever made in Queensland' [Queensland Government 2007]. One important ILUA outcome was the transfer of 65,000ha of land to Aboriginal freehold under the *Aboriginal Land Act 1991* in late 2011. While Eastern Yalanji Traditional Owners agreed as part of the ILUAs to manage 48,000ha of this land as a nature refuge, around 16,500ha of Aboriginal freehold land (the 'Pink Zone') is available to 'accommodate, as far as possible, the domestic, community and commercial infrastructure requirements of the Eastern Kuku-Yalanji People and associated services and activities' [Queensland Government Crown Law 2007], subject to planning approvals].

However, the development potential of the Pink Zone is severely constrained. Pink Zone land is essentially 'leftover', undeveloped because it is steep or swampy and isolated from services. Importantly, under Eastern Yalanji Lore, only the estate owners (at clan or family level) for particular Pink Zone areas have the right to develop these areas (or possibly allow others to develop them); the Pink Zone is distributed inequitably across Eastern Yalanji Country, with some clans and families having no Pink Zone land or land with severe physical constraints to development. About 75% of the Pink Zone is inside the Wet Tropics World Heritage Area, requiring IDAS referral to the Wet Tropics Management Authority (WTMA). Almost all is zoned Conservation, making almost all use and development impact-assessable. The FNQ Regional Plan 2009-2031 places southern areas in Cairns Regional Council within the Regional Landscape and Rural Production area. The Pink Zone is overwhelmingly covered with remnant vegetation, much classified as *endangered* or *of concern* under the *Vegetation Management Act 1999*.

Native title underlying the Pink Zone represents a further constraint on development. The Eastern Kuku Yalanji People's Registered Native Title Body Corporate (RNTBC) is the Jabalbina Yalanji Aboriginal Corporation, which is also the sole

grantee of the Jabalbina Yalanji Land Trust holding the Aboriginal freehold land on behalf of Eastern Yalanji Traditional Owners. Proposals to develop land generally affect native title (even when carried out by native title holders), requiring the RNTBC under the Native Title (Prescribed Body Corporate) Regulations 1999 to consult with native titleholders before consent is given. Jabalbina consults (as RNTBC) before giving owner's consent (as Land Trust) to Development Applications (DAs), requiring a consultation process even before a DA is lodged. Native title legal constraints are currently impeding Jabalbina from leasing land to individual or small native title-holding groups, hindering their ability to obtain security to develop land.

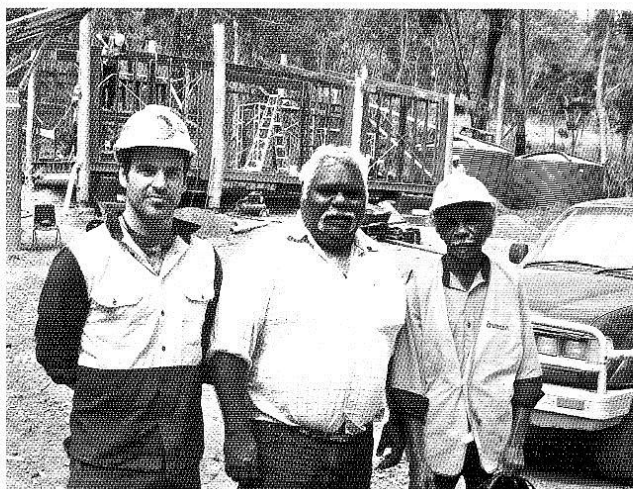
These cumulative factors give the Eastern Yalanji Pink Zone a relatively high level of planning regulation. However, many Eastern Yalanji People lack the resources (particularly finances to engage specialist consultant planners, draftspeople, engineers etc) and experience dealing with government regulation. Jabalbina itself has severely limited expertise and resources to assist Eastern Yalanji People. Some of the highest levels of planning regulations are therefore placed before people who are least able to deal with it.

Difficulties in negotiating through the planning system will delay and may prevent some Eastern Yalanji people from returning to live and work on Country, nullifying the central ILUA outcome. Others will more likely bypass the planning system and return to Country anyway; this likelihood is increased by the cultural priority to return and occupy Country (for example under a tarpaulin or corrugated iron shelter), as well as a perception of the planning system as another government barrier aimed at preventing native titleholders returning to Country. This increases the prospect of poorly planned, poorly constructed development, tending to rural ghettos, defeating the very purpose of the planning system.

Case study: 'Cape York's most expensive loo'

Since the 2007 ILUAs' promise of 16,500 hectares of Aboriginal freehold land available for Aboriginal community development, many Eastern Yalanji people have shown strong interest in almost immediately returning and make a living on Country. Only one family organisation, Bana Yarralji Bubu Inc, has so far managed to find its way through the complex web of lores, laws and planning regulations to actually lodge a DA to legitimise construction of a toilet facility critical to living permanently on, caring for, and conducting commercial activities from Aboriginal freehold within the Eastern Yalanji ILUA area.

Part of the Bana Yarralji plan was to establish accommodation for Elders to return to Country and the development of a caravan park catering to visitors to their 'Garden of Eden' in the northern-most portion of the Wet Tropics World Heritage Area. (ABC Tropical North Radio, 11 March 2011) A suitable site (an ex-cattle yard) on Aboriginal freehold

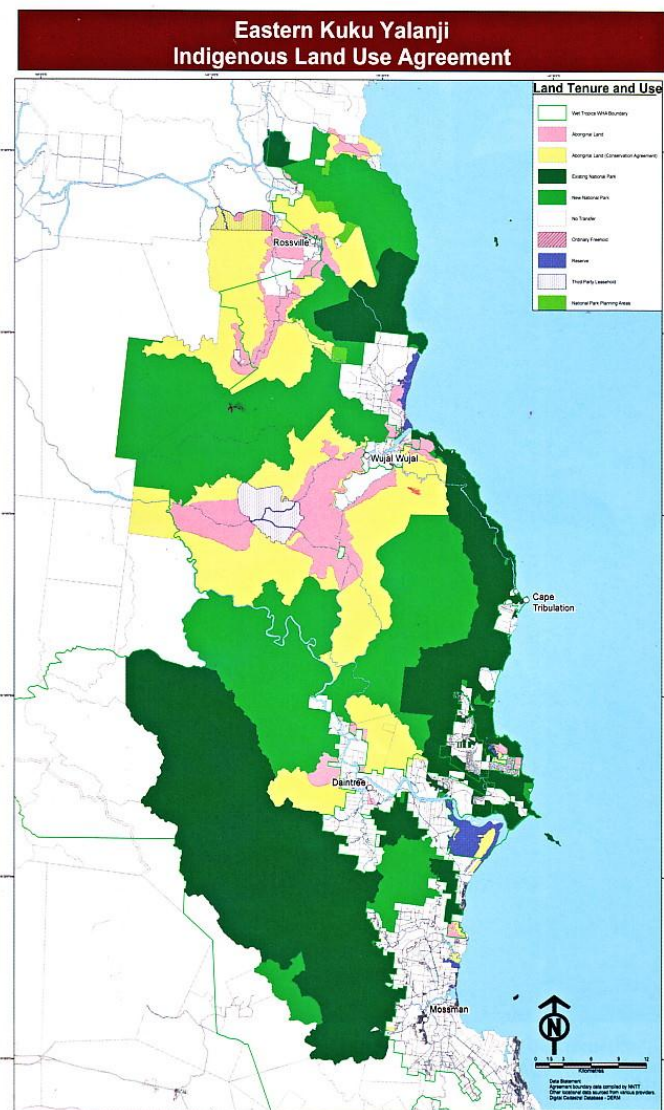


was chosen by a family Elder to commence the move back to Country. A site plan was hand sketched to represent the future of the selected land and favours were drawn upon to erect the initial dwellings (without architectural plans).

A visioning process for the commercial development of the land also had to be undertaken and submitted to the new Jabalbina Yalanji Land Trust. This process entailed consulting with the Nyunkalwarra Elders around the region to gain approval under Aboriginal Lore; it entailed multiple and increasingly-frustrating meetings being held with Jabalbina representatives; it entailed further meetings of Nyunkalwarra elders on country (with much emotional intensity). Extensive legal advice had to be commissioned by both Jabalbina and Bana Yarralji to enable the vision to be properly realised. Even as the plan was being developed, the assistance of the Centre for Appropriate Technology had to be obtained to produce a range of compliance related strategic plans, site plans and architectural drawings for the ablutions facility. Pro bono assistance was sought from

Peter Wallace ... this time with Centre for Appropriate Technologies' Andre Grant and Thomas Nunn in front of the ablutions/toilet facility under construction. Designed by Aurecon and build assisted by Engineers Without Borders

Final ablutions block with a community satellite phone in the foreground



international legal firms such as Norton Rose and international engineering firms such as Aurecon, plus voluntary assistance from Engineers Without Borders. It is estimated that well over \$140,000 worth of professional and specialist assistance was obtained just to support the DA.

After long and extended efforts Bana Yarralji is now a partial success story, having negotiated Aboriginal Lore and planning and development laws to gain development approval. The entire process took over four years and the end result is a constructed toilet facility plus small demountable office on the selected land. There is no lease arrangement between Jabalbina and Bana Yarralji for the toilet block, nor has approval to permanently occupy or to operate a commercial camp ground been obtained as the planning system (including referral agencies) does not permit this type of development within the designated zones.

The experiences of Bana Yarralji clearly demonstrate that the Queensland planning system has not been designed with the intent of facilitating Aboriginal people's participation in the mainstream economy or to permanently reside on their Country in a culturally appropriate manner. Having said this, Bana Yarralji has highlighted the inadequacies of the system and a review is being conducted by DLGP, Cook Shire and Cairns Regional Council to consider how the rights and interests of Aboriginal and Torres Strait Islanders can be integrated into development and environmental conservation regulations.

Bana Yarralji members and other Eastern Yalanji people believe that community development planning funded by WTMA should remove the need for a Wet Tropics permit for most development and to make dwelling houses self assessable. Cape York Land Council is working to remove the legal impediment to Jabalbina leasing Pink Zone parcels to native titleholders. However, more resources will be required to enable Eastern Yalanji people to return to live, work and care for their Country.

Marilyn Wallace is Executive Officer and Bruce White, Assistant, at Bana Yarralji Bubu Inc.

Rowan Shee is Planning and Development Coordinator at Jabalbina Yalanji Aboriginal Corporation.



References:

ABC Tropical North Radio, Pat Norish interviewing Sustainable Futures, Wilderness Society and Marilyn Wallace 11 March 2011.

Lutheran Church of Australia (Queensland) 1978, 'Report of Visitation, 11-29 June'.

Horsfall, N & Hall, J 1990 'People and the Rainforest: an Archaeological Perspective' in L.J. Webb & J. Kikkawa (eds) Australian Tropical Rainforest: Science - Values - Meaning CSIRO, Melbourne.

Queensland Government 2007, 'Premier and Eastern Kuku Yalanji People celebrate land agreement', Premier's Press Release. Retrieved from: <http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=51330>.

Queensland Government Crown Law 2007, Cooperative Management Agreement for the Pink Zone between the Land Trust and Agnes Walker, Eileen Walker, Hazel Douglas, John Walker Jnr and Peter Fischer on their own behalf and on behalf of the Eastern Kuku-Yalanji People and the Prescribed Body Corporate and Burungu Aboriginal Corporation and Bana Mindilji Aboriginal Corporation and the Wet Tropics Management Authority and State of Queensland.

McCracken, CR 1989 'Some Aboriginal Walking Tracks and Camp sites in the Douglas Shire, North Queensland'. Queensland Archaeological Research Vol 6.