



**Cape York Land Council Aboriginal Corporation**  
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Committee Secretary  
Select Committee on the effectiveness of the  
Australian Government's Northern Australia agenda  
Department of the Senate  
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Dear Committee Members

Please find attached a submission from the Cape York Land Council regarding the *Inquiry into the the effectiveness of the Australian Government's Northern Australia agenda*.

If you have any enquiries regarding this submission please do not hesitate to contact me.

Yours sincerely,

Richie Ah Mat  
Chair  
Cape York Land Council

## **Cape York Land Council submission to the Select Committee on the effectiveness of the Australian Government's Northern Australia agenda**

### **Executive Summary**

Cape York Land Council (CYLC) supports the Northern Australia agenda's objective to build a strong and prosperous economy for Northern Australia because this objective is shared for Cape York by CYLC and our sister organisations Cape York Partnerships (CYP) and Balkanu Cape York Aboriginal Development Corporation. We support the sustainable and responsible use of Cape York land to support social, cultural, environmental and economic wellbeing, and we recognise that the commercial use of Aboriginal land provides significant economic development potential for Cape York people.

Despite the Northern Australia agenda's positive objectives, we're disappointed at the overall rate of implementation and outcomes achieved to date, especially for Cape York, and consider this is partly because of the agenda's design and implementation model. The inquiry into and report by the Select Committee on effectiveness of the Northern Australia agenda's objectives, design, implementation and evaluation is timely and necessary, and provides a welcome opportunity for CYLC to provide feedback about how this important agenda could be improved and more effectively implemented.

It is critical to understand that Northern Australia is by and large an Indigenous domain characterised by Indigenous corporations holding the rights and interests of First Nations peoples, or in the process of winning these long overdue rights. The rights attached to this land, water and sea should never be considered as a public domain but rather as a private Indigenous domain in the process of being re-established. Indigenous people are now expressing their rights and aspirations for their future and it is up to policy frameworks, such as the Northern Australia agenda, to support the empowerment and development of First Nations. Unfortunately, the Northern Australia agenda process so far has failed to grapple with and understand this most fundamental truth about Northern Australia and its future.

In summary, CYLC recommends a number of changes to the design and implementation of the Northern Australia agenda. These include:

1. A National - Regional approach must be taken whereby the distinct regions of Northern Australia, and their character, issues, aspirations, constraints and opportunities are identified, and actions agreed in the context of national objectives and the National / State / Territory regulatory regime the region exists in. Cape York should be one such region, and the implementation of the Northern Australia agenda shaped to fit the region's context as an Indigenous domain with high environmental values, low socio-economic conditions and development opportunities mainly associated with agriculture, mining, tourism and eco-system services.
2. An Indigenous Development Strategy should be incorporated into the agenda in recognition of the extensive rights and interests that Indigenous people hold in land across Northern Australia. Indigenous rights and interests in land should be recast as opportunities rather than constraints or obstacles to be overcome, and existing constraints on the use of Aboriginal land should be removed as necessary and appropriate.
3. The need for suitable land arrangements to provide secure and certain foundations for land use and development must take primacy on the agenda. An integrated and comprehensive land administration system must be established across Northern Australia to enable this foundation. A land reform pilot should be trialled for Cape York to establish suitable land arrangements. Key arrangements would include:
  - a. The primary land tenure is Aboriginal freehold held by an Aboriginal corporation, inclusive of full rights to natural resources such as timber and gravel. Aboriginal freehold

- land is leased to third parties to create secure and tradeable tenure for commercial purposes.
- b. Secure and tradeable rights to other resources that do not run with land title, such as water and fish, are held in an Aboriginal reserve and allocated to Aboriginal corporations for their own use or may be traded with a third party.
  - c. Native title is determined on a regional basis and held and managed by RNTBCs. Native title holding corporations should also hold registered title to land and resources.
  - d. ILUAs are negotiated to provide simplified processes for native title consent.
  - e. Cultural heritage is protected through a cultural heritage protection protocol.
  - f. Economic, environmental, social and cultural values of Aboriginal land are quantified through land and resource assessments, and outlined in a Prospectus to attract investors.
  - g. Statutory land use plans are reviewed, using information from land and resource assessments, and appropriate land use zones are defined and allow for appropriate commercial land uses.
  - h. Indigenous Community Use Areas are declared, and statutory land use zones align with ICUAs so that development may proceed in these locations.
4. Much land in Northern Australia supports significant environmental values and this land's use is unlikely to change because of the ecosystem services / public good commodities it provides, such as biodiversity protection, clean air and clean water. Management of Aboriginal land to provide ecosystem services / public good commodities must be recognised as an emerging industry and treated as another form of commercial development. Provider – purchaser arrangements must be established of between Aboriginal land holders who manage their private land to provide environmental goods and services, and the Australian public (represented by governments) who consume, but currently do not pay for, the goods and services produced.
  5. Governance of Aboriginal land is delivered through Aboriginal local (clan), sub regional (RNTBC/Land Trust) and regional (Land Council) structures as appropriate according to the issue and the subsidiarity principle. For more information about governance see Pama Futures at: [https://issuu.com/cyoinstitute/docs/180312\\_capeyork\\_partnership\\_submiss?e=8659167/65731877](https://issuu.com/cyoinstitute/docs/180312_capeyork_partnership_submiss?e=8659167/65731877)
  5. The United Nations principle of Indigenous Peoples' Free, Prior and Informed Consent must be incorporated into Northern Australia decision making processes.

## **CYLC detailed response to the Inquiry Terms of Reference**

**That a select committee, to be known as the Select Committee on the effectiveness of the Australian Government's Northern Australia agenda, be established to inquire into and report on the effectiveness of the objectives, design, implementation and evaluation of the Australian Government's Northern Australia agenda, with particular reference to:**

### **Term of Reference (a) - facilitation of public and private investment in infrastructure and economic development**

#### ***ToR a.1 - Regional Approach***

CYLC, and our sister organisations Balkanu Cape York Aboriginal Development Corporation and Cape York Partnerships, recognise a significant problem with the Northern Australia agenda in that it is too general in approach and doesn't acknowledge or respond to differences between legislation and administrative regimes across Northern Australia's State and Territory jurisdictions, or between the regions within each State / Territory. There are some common legislative and administrative elements across Northern Australia, such as Commonwealth legislation including the *Native Title Act 1993* (Cth) and Commonwealth funding, that should be consistently applied in implementation of the agenda, but many other elements of the agenda can only be successfully addressed with reference to the particular State / Territory regimes and regional characteristics and issues.

To address this problem, implementation of the Northern Australia agenda should be redesigned so that a National - Regional model is adopted. In a National – Regional model the broad aspirations and objectives of the Northern Australia agenda, and the elements of the model that are common across Northern Australia would be outlined at the national level. The national level would also describe additional elements of the model that should be articulated in greater detail at the regional level. A regional profile should then be developed for each Northern Australia region that describes the particulars of the State / Territory regimes that regulate development, and the issues particular to that region. Maybe around ten regions should be identified across Northern Australia. In addition, a Regional Implementation Plan should be developed identifying actions to address common issues such as native title, plus the matters specific to each region.

Addressing regionally specific matters would be articulated with reference to the State / Territory statutory regime that applies, and an understanding of the characteristics and issues of the region. Because most land use and development assessment processes are regulated by State / Territory legislation it is critical that the Queensland, Northern Territory and Western Australia governments commit to addressing the matters within their area of responsibility and this may include legislative and policy reforms. Without suitable commitment from State and Territory governments the Northern Australia agenda will fail. A National – Regional approach must be adopted even if this requires adjustment of States' current processes.

For example, Cape York is clearly recognised as a Northern Australia region, so a Northern Australia agenda Cape York Profile and Implementation Plan should be prepared. The Cape York Profile should articulate the characteristics of Cape York that require specific attention, such as:

- Cape York is subject to Queensland's statutory regime so legislation and regulation apply here that do not apply in most other Northern Australia regions, such as the *Vegetation Management Act 1999* (Qld), *Aboriginal Cultural Heritage Act 2000* (Qld), *Aboriginal Land Act 1991* (Qld), the Cape York Water Resource Plan, the Great Barrier Reef Marine Park Management Plan, and unique to Cape York, the *Cape York Peninsula Heritage Act 2007* (Qld);

- Cape York land tenures are predominantly Aboriginal land tenures, pastoral leases and national parks so land use and development must take place in the context of the statutory regime that regulates land use on these tenures;
- Cape York has low levels of native title extinguishment and high levels of Aboriginal cultural heritage so these matters must always be addressed before land uses may occur;
- Cape York has a majority Aboriginal population that experiences high levels of social and economic disadvantage that must be resolved;
- Cape York has significant environmental values that require protection, so development will have to be compatible with protecting and maintaining these values;
- Cape York has no major population centres and development is likely to be based on land uses, such as agriculture, mining and tourism, rather than urban based developments based on service delivery, such as medical research or delivery of education services.

Based on these few examples it is clear that the character of Cape York and its development approach should be different even to a nearby region such as North Queensland, or a region in another State such as the Kimberley. Implementation of the Northern Australia agenda would be greatly enhanced with the adoption of a National – Regional model and the development of Regional Profiles and Implementation Plans.

A detailed regional and subregional approach has been recently articulated by the people of Cape York in the Pama Futures 2018 submission to the Australian Government (CYP and CYLC 2018). Pama Futures calls for a clear shift to an empowerment and development agenda for Cape York First Nations to lead their own development with the support of government partners firmly behind them rather than placing hurdles in front of them. The Northern Australia agenda is compatible with Pama Futures and should align closely with it. For more details about Pama Futures see:

[https://issuu.com/cyinstitute/docs/180312\\_capeyork\\_partnership\\_submiss?e=8659167/65731877](https://issuu.com/cyinstitute/docs/180312_capeyork_partnership_submiss?e=8659167/65731877)

### ***ToR a.2 - Indigenous Development Strategy***

Most of northern Australia is an Indigenous domain where Indigenous people hold registered tenure of the land, or have determined, claimed or can effectively assert native title rights and interests. The Northern Australia agenda has not fully come to grips with this reality or been designed to successfully deal with Indigenous people and their contemporary interests in land and development. Instead, a more southern Australia, management and protection era, business as usual approach has been adopted that seeks to manage around Indigenous issues rather than recognising the potential of Indigenous people and their land, and how this could lead the Northern Australia agenda. Because of this, the current design of the Northern Australia agenda can only be of limited success, especially for its most disadvantaged citizens.

A different approach must be taken in Northern Australia that recognises the modern reality of Indigenous land ownership, and the extent of their other rights and interests and aspirations to participate in the modern mainstream economy. The objectives of the Northern Australia agenda should overtly change to focus on enabling the use of Indigenous land and resources, and using this means of production as a key strategy to develop Northern Australia and provide benefits to Indigenous people as both the owners of land and as suppliers of labour and knowledge. This should be prioritised above providing jobs for Indigenous people in third party projects, or identifying ways for third parties to access Indigenous land for projects that do not involve Indigenous people to any great extent and their benefit is mainly in the form of compensation.

The Northern Australia agenda therefore should be augmented by an Indigenous Development Strategy that identifies ways in which Indigenous people can be proactive proponents of, or key partners in, development on land (and sea) where they hold interests, and generate their own benefits from ongoing participation in development and use of their own land as a means of production. This is in contrast to the current implicit strategy in the Northern Australia agenda to

provide Indigenous benefits simply through passive non-participation in land use and development, such as through native title compensation payments. Amongst other things, the Indigenous Development Strategy should identify statutory and administrative reforms to remove unnecessary constraints and other actions as necessary to enable the use of Indigenous land, as discussed in ToR a.3 below.

CYLC has witnessed a maturing and increased competency of Cape York Indigenous people and corporations to be successfully involved in mainstream development. Cape York Aboriginal corporations recognise the value and potential of the 5.7 million hectares of Aboriginal freehold tenure they hold. Aboriginal service delivery businesses now exist, providing services from road works to land management to catering. Some Cape York land holding corporations are now investigating ways in which their land could be used for horticulture, whilst others hold aspirations to develop cultural tourism or fishing businesses. A Northern Australia Indigenous Development Strategy should identify how these land assets and emerging and potential Indigenous businesses could be supported and engaged in northern development. This would be a major step forward from token Aboriginal jobs in non-Indigenous developments, or Aboriginal people receiving passive income for providing native title consent and moving out of the way of development activities.

Each proposed Regional Profile and Implementation Plan therefore needs to incorporate an Indigenous Development Strategy that focusses on development opportunities for Aboriginal land and people.

***ToR a.3 – A comprehensive and integrated land administration system:***

No single reform action alone will facilitate the commercial use of Cape York land, or any land in Northern Australia. A systems approach must be taken to land use and governance so that a functional system may be implemented with each element of the system capable of fulfilling its role and complementing the role of each other element in the system. Progress and development may only ever occur where such a system exists, such as is evidenced by the comprehensive and integrated system that facilitates development in southern Australia.

Different systems will need to be designed according to the different State / Territory legislation regimes, in combination with the Commonwealth legislation regime, and application of the system will vary from region to region according to the characteristics of the region. Committing resources and taking actions to address single issues, such as land tenure or water rights or corporate governance, will be wasted if not coordinated and complementary to a predesigned comprehensive system. Commitment is necessary from all levels of government because all elements of an integrated system must be capable and effective if any of the system is to successfully operate.

Fortunately, across much of Cape York and Northern Australia, many elements of an effective system already exist, and in many places the effort and resources required to achieve a fully functional integrated system would be minimal. The reason why more land use is not happening in these places is because some elements are still missing or have not reached a necessary quality threshold, so the system, although close to complete, is still incomplete and therefore ineffective.

CYLC and our sister organisations recognise that a complete and integrated land administration system is essential to progress the development aspirations of Cape York Aboriginal people, and to this end within Cape York Partnerships' Pama Futures agenda is the Investment Ready Tenure program. The Investment Ready Tenure program is identifying areas of Cape York with development potential, such as the Starke and Scherger areas, and taking actions to address any remaining land administration issues that are necessary to create an environment where development may progress smoothly. The Northern Australia agenda should support implementation of the Investment Ready Tenure program, and take learnings from it that could be incorporated into other Northern Australia programs and systems to facilitate development.

### *Cape York Reform Pilot*

To test the effectiveness of an integrated system a trial should be conducted on Cape York. \$10.6M was made available under the Northern Australia agenda for land tenure reform projects and CYLC's proposed integrated system would fit that criteria. Cape York is an ideal location for where tenure reforms could be piloted and the benefits of these reforms for Aboriginal and non-Aboriginal investors demonstrated. As outlined above, CYLC and our sister organisations have well-developed knowledge about land reforms necessary to establish arrangements that will facilitate development and implementation of the Northern Australia agenda on Cape York. CYP's Pama Futures Investment Ready Tenure program is essentially a land tenure reform project so CYLC requests to partner with the Northern Australia agenda to identify suitable pilot projects for Cape York that result in areas of Aboriginal freehold tenure being made ready for investment and development. More details of a comprehensive and integrated land administration system that should be piloted for Cape York are as follows:

#### ***Secure and tradeable title to land and water:***

##### *Land tenure*

The Northern Australia White Paper correctly identifies that *"the north will never reach its potential without secure, tradeable titles to land and water."* This statement is as equally correct and applicable to Cape York and Aboriginal land as it is for the rest of Northern Australia and non-Aboriginal land. On Cape York progress has been made to secure tradeable title to land and water, but much more needs to be done to fully realise this objective and realise Cape York's potential.

Since 1991 Aboriginal freehold land-owning corporations in Queensland have had powers to create secure and tradeable interests for third parties through the grant of leases using provisions of the *Aboriginal Land Act 1991 (Qld)* (ALA), and registration of leases on the Queensland Land Title Register. These powers were enhanced in 2015 with removal of the requirement for Ministerial approval for the grant of leases. Aboriginal freehold does not extinguish native title, and a lease of Aboriginal freehold provides an ideal platform for investment and development because leases can be for periods of up to 99 years, to any person, for any purpose, may be renewed, may be mortgaged, and may be traded through transfer to another party.

The granting of Aboriginal freehold tenure, given its leasing potential, is therefore one of the keys to unlocking the potential of Cape York. It logically follows that policy frameworks, such as the Northern Australia agenda, must unequivocally support transfers of land to Aboriginal freehold tenure for Cape York, and other parts of North Queensland. Approximately one third of Cape York land has so far been transferred to Aboriginal freehold tenure, significantly improving development potentials for Cape York and its people. However, substantial areas of land identified as transferrable remain to be transferred, and additional areas, including State land, should be identified for transfer and transferred as soon as possible. To achieve transfers to Aboriginal freehold the Northern Australia agenda should promote, accelerate and expand Queensland's State Land Dealing and *Aboriginal Land Act 1991* transfer processes.

##### *Removing unnecessary restrictions on pastoral land*

According to the Northern Australia White Paper, *"in northern Queensland, 56 per cent of the land (683,495 km<sup>2</sup>) is held under pastoral lease"*, and that *"The Commonwealth Government supports northern jurisdictions removing unnecessary restrictions on pastoral leases. This will make the land tenure system simpler for all leaseholders and investors. Pastoral leases that provide longer tenure and broader forms of economic activity will attract more investment to the north and create a more resilient and diversified northern economy. If pastoralists are allowed to do more with their land (such as tourism or horticultural activities) and have longer and more secure tenure (such as 99-year leases), then they have more incentive to invest."* (White Paper page 36)

A large percentage of Cape York is currently rolling-term pastoral leases over State land. The land use conditions of pastoral leases are specific to pastoralism and related activities, and broader land use activities may generally not occur on pastoral land, despite economic opportunities existing in the land. Native title coexists with pastoral leases in most cases, so amendment to expand the conditions of a pastoral lease requires an Indigenous Land Use Agreement (ILUA) to provide consent for the State to make the requisite amendments. However, despite pastoralists wanting to expand the conditions of their leases, the negotiation of an ILUA to allow for pastoral lease amendments has so far been beyond the interest of the State, or the capacity of any Cape York pastoral lease holder.

CYLC considers that a more prospective alternative approach to remove unnecessary pastoral lease restrictions would be to transfer the underlying ownership of pastoral land from the State to Aboriginal freehold tenure held by an Aboriginal corporation, on the condition that any existing pastoral lease is converted to a lease under the *Aboriginal Land Act 1991*. The conditions of the new ALA lease could then allow commercial land use activities in addition to pastoralism, such as tourism, timber harvesting or small retail outlets. These additional activities could be undertaken by the pastoralist or through a sublease to a third party. Lease terms could also be extended to 99 years to create greater certainty for the lessee and confidence to invest. An ILUA would also be required to provide native title consent for the grant of the lease over Aboriginal freehold land, but negotiation of this ILUA would be much easier because native title parties, as members of the land holding corporation, would benefit directly from the lease in the form of native title compensation and lease rental.

*Access to secure water is a prerequisite for agricultural development*

Tradeable title to water is also a key to unlocking the potential of Cape York and Northern Australia. The recently approved Cape York Water Resource Plan, prepared pursuant to the *Water Act 2000* (Qld) provides a positive step in this direction by establishing water rights for Aboriginal people under the Cape York Peninsula Heritage Act (CYPHA) Reserve. The CYPHA Reserve contains a potential annual quantity of 485,300 ML of water, which represents approximately 94% of unallocated water available for use on Cape York. Water in the CYPHA Reserve is divided between 15 Cape York river catchments and amongst Cape York native title and Aboriginal land holding corporations in each catchment, proportional to the area of land where they hold interests. CYPHA Reserve water may be used directly by the Aboriginal corporation or it may be traded with a third party or as part of a lease of Aboriginal freehold. With the approval of the Cape York Water Resource Plan and the commencement of the CYPHA Reserve, almost all land users on Cape York will need to trade with their local Aboriginal corporation to access water to support their economic activities.

Despite the CYPHA Reserve's positive intentions, issues remain that must be addressed. For example, one critical matter regards the Jeannie River and Watson River catchments where no water is available under the CYPHA Reserve because of significant pre-existing allocations. Because of the lack of water availability any further land use in these catchments will be severely restricted. This is an acute issue in the Jeannie River catchment because the best agricultural soils on Cape York exist in this catchment, including large areas of previously cleared Aboriginal freehold land held by an Aboriginal corporation with aspirations to use the land for high value irrigated horticulture.

However, the lack of water in CYPHA's Jeannie River reserve means that no water is available for irrigation, so this Aboriginal land cannot be used for its best possible use, and Aboriginal economic development aspirations will be thwarted as long as water is not available. Aboriginal corporations have lobbied the Queensland Government to make more water available for allocation to the CYPHA Reserve for the Jeannie River catchment to no avail. The Northern Australia agenda must target specific examples such as this to overcome unreasonable constraints to land and water use. Commonwealth investment in resource assessment and resource planning would be one obvious way of overcoming this type of issue. For example, previous Commonwealth investment in land and water resource assessments in the Flinders and Gilbert River catchments enabled the Queensland



Government to issue new water licences and several thousand mega litres of irrigation water in these catchments to facilitate irrigated agriculture. This issue is further discussed below.

***An equitable and fair allocation or reserve of resource rights for First Nations based on their interests in land, water and sea:***

Economic development based on land use is often dependent upon not only holding secure tenure but also having rights to the resources inherent in the land. Land transfers to Aboriginal freehold tenure therefore must also include the transfer of resource rights that run with land title, such as timber, gravel and other resources with economic potential so that the resources can be used for commercial purposes by the Aboriginal trustee corporation, or be leased to a third party.

Resource rights not attached to land tenure, such as water or fish, should be managed whereby a significant proportion of the total allowable take of the resource is held in a reserve for Aboriginal people. A portion of the reserve should then be allocated to Aboriginal corporations or business operators for their use directly or to be traded with third parties. As discussed above, the Cape York Water Resource Plan's CYPHA Reserve is an example of such a system, whereby Cape York Aboriginal land holding corporations are entitled to most unallocated water in their river catchment and can choose to use the water for their own projects, or trade it with a third party.

The Commonwealth Government's management of the Torres Strait tropical rock lobster fishery is another example whereby a significant percentage of the total allowable catch of lobsters is reserved for Traditional Inhabitant fishers. The Torres Strait tropical rock lobster fishery is currently providing significant, and growing, employment and economic activity for Traditional Inhabitants, and demonstrates the potential of the holding and use of resource rights by Indigenous people.

The Northern Australia agenda should invest in a comprehensive review of Aboriginal land holdings to identify where resource rights have been unreasonably withheld or could be further extended, and then take steps to transfer these important assets to the rights holder so that they may be used for commercial purposes such as gravel extraction, sustainable timber harvesting, or native food production. Similarly, allocation systems for resources that do not run with the land tenure, such as water or fish, should be reviewed to ensure that they are available for access by Aboriginal people. This is also directly in line and consistent with the recent expansion of the statutory role of the Indigenous Land Corporation to become the Indigenous Land and Sea Corporation and its stewardship of the Aboriginal and Torres Strait Islander Land Account under this expanded purpose.

***Accelerating and completing native title determinations, including for the sea:***

***Native Title Determination Applications***

The Northern Australia White Paper holds an aspiration that all native title claims are finalised within a decade. CYLC has an aspiration to have completed native title determinations for all of Cape York within a much shorter time frame, possibly by the end of 2020, and to this end CYLC is currently prosecuting the Cape York United Number One claim. This native title determination application includes all land on Cape York that has not previously been the subject of a native title determination (except for one relatively small area around Weipa).

Native title determinations create certainty for native title holders and prospective land users about where native title exists and needs to be addressed in development processes, and the establishment of Registered Native Title Bodies Corporate (RNTBCs) provide a responsible entity for native title dealings. The completion of the Cape York United Number One Claim will conclude any uncertainty about the existence of native title across Cape York, will simplify addressing native title in development processes, and will potentially recognise the commercialisation of native title rights. CYLC considers that the regional approach to native title claims demonstrated by the Cape York United Number One Claim provides an example that the rest of Australia can learn from, and

contributes to the “streamlining” of native title claims aspired to in the Northern Australia White Paper.

In addition to the land-based Cape York United Number One Claim, CYLC has also lodged native title determination applications for parts of Cape York sea country, and our intention is to lodge claims over all Cape York sea country in the near future. These claims will seek to ensure that native title certainty, procedural efficiency and commercial rights are established for Cape York marine areas. CYLC notes that the use of marine resources has received little attention in the Northern Australia agenda to date but considers that a greater emphasis should be placed on marine resources because of their significant potential to support economic activity. CYLC is aware of the economic activity generated by Torres Strait Traditional Inhabitants through their participation in commercial fishing, pursuant to their native title determination, and we recognise that these activities could be replicated across Northern Australia to the benefit of Indigenous people and northern Australians more generally.

#### *Transferable interests in native title*

CYLC notes the Northern Australia White Paper’s aim “to assist Indigenous landowners and businesses to create, on a voluntary basis, transferable interests that can be used as collateral for commercial loans, without extinguishing native title. Modern, flexible arrangements would allow Indigenous landowners to expand activities on land which has exclusive native title. For the first time, exclusive native title could itself be used to attract commercial loans and support new partnerships with investors. The Government will explore these options further, consulting with native title holders, jurisdictions and the financial sector.” CYLC supports this aim but to date is not aware of any actions to implement it. CYLC encourages that this action should be explored further and will participate in any process to consider how to achieve this aim.

CYLC also submits that the solution to achieve “transferable interests that can be used as collateral for commercial loans, without extinguishing native title” already exists in Queensland – that is, where exclusive native title rights and interests have been determined, transfer the tenure of the land to Aboriginal freehold (if it has not already been transferred) and grant leases under the ALA. Leases under the ALA may be mortgaged and thereby used as collateral for commercial loans. In addition, arrangements could be put in place whereby the Aboriginal corporation as trustee and lessor of the land is required to hold a percentage of proceeds from leases so that, if necessary, it could pay out a loan where the lessee has defaulted (and cancel the lease) so that lenders have no concerns about being able to recoup their commercial loans. Alternatively, the Aboriginal corporation could be the provider of vendor finance for commercial loans, underwritten by a government administered fund. CYLC and our sister organisations have been considering such arrangements for a long period of time and are keen to engage with Northern Australia agenda processes to “explore these options further.”

#### *Indigenous Land Use Agreements to simplify native title consent*

CYLC strongly agrees with the Northern Australia White Paper intention that “the Commonwealth Government will work with the Northern Territory, Queensland and Western Australian Governments to support ... the negotiation of Indigenous Land Use Agreements (ILUAs). This will facilitate further economic development and commercial activity on Indigenous land in northern Australia.” (White Paper p28)

CYLC recognises the critical role that ILUAs must play in supporting land use in northern Australia because of the extent of native title rights and interests. In Cape York for example, native title is estimated to exist in about 98% of land, so the creation of new interests in land, such as through the grant of a lease, or the construction of infrastructure, will usually require native title consent through an ILUA. CYLC also recognises the procedural difficulties often associated with ILUAs, and that these difficulties can present an obstacle that may even stop a project from being pursued or proceeding.

CYLC supports the negotiation of ILUAs that provide simplified processes for native title consent so that native title holders are meaningfully engaged in negotiations and retain the right to provide or withhold consent, but also where the time, expense and difficulty associated with negotiation processes for project proponents is more reasonable. These simplified process ILUAs should be proactively negotiated for areas with good prospects for development where native title exists, such as in and around towns and land identified as suitable for agriculture or tourism. Under contract from the Queensland Government, CYLC has supported the negotiation of two “simplified process Town ILUAs” on Cape York, and both ILUAs have facilitated land use activities in these towns through the simplified native title consent processes they provide. CYLC’s involvement in negotiation of an ILUA to provide consent for activities associated with redevelopment of the Peninsula Development Road on Cape York, a Northern Australia agenda initiative, is another example of an improved native title consent process facilitated by CYLC.

A simplified process ILUA template could be developed to serve as the starting point for negotiations with Traditional Owner groups regarding whether they want to enter into such an ILUA to facilitate land use on their traditional country. With the successful negotiation of two such ILUAs already, and involvement in negotiation of several more, CYLC could be engaged to develop a draft template which could ultimately be used to facilitate native title consent processes and support land use throughout northern Australia.

***Cultural heritage protection:***

In addition to the need for native title consent through an ILUA, land use projects also have a duty of care to protect and manage Aboriginal cultural heritage values in the course of implementing the project. To facilitate practical procedures to protect and manage cultural heritage that are clear and achievable by land users a cultural heritage management protocol must be developed. A cultural heritage management protocol will facilitate appropriate developments, satisfy the land users duty of care, and ensure good relationships are maintained between land users and Traditional Owners. The cultural heritage management protocol could be an attachment to the simplified process ILUA template proposed above, but also apply in areas where native title has been extinguished. CYLC has produced such a protocol that could be considered for standard use across Cape York and other parts of Queensland.

***Land and resource assessments:***

The Northern Australia White Paper identifies that the *“Northern Territory Government is investing \$12 million to map, describe and report on the land, soil and water resources suitable for agricultural use across a range of land tenures including pastoral leasehold land, Aboriginal Land Trusts, Crown and private land. The information will provide greater investor confidence and de-risk potential developments. The Commonwealth Government will consider enhancing this programme to help attract more investment to and in the north.”* (White Paper p34)

CYLC considers that the Northern Australia White Paper correctly identifies that *“Information on basics such as land tenure, water availability and soils is often poor”*, and that the paucity of information is not confined to the Northern Territory because it is equally the case in Cape York. To facilitate the use of Aboriginal land on Cape York resource assessments are essential to describe and report on economic potentials of the land, soil, water, timber, gravel and other resources, and environmental values requiring protection. Such assessments would be equally essential for other land in northern Australia. Comprehensive assessments of the social, cultural, economic and environmental values of land and resources across Cape York should be conducted, particularly on Aboriginal freehold land, so that the level of information about land, its values and resources is significantly increased.

Comprehensive land and resource assessments would serve a number of purposes including to properly inform statutory land use planning about land values, and therefore what land zonings

should be. In the absence of such information, commercial land use opportunities are suppressed because statutory land use plans adopt a precautionary approach to the zoning of land and the uses it may be put to. This issue is a major impediment to land use and development on Cape York because statutory land use plans, in particular local government planning schemes and the Cape York Regional Plan, have established land use zones across Cape York that act to constrain the use of land for economic purposes in favour of public good conservation objectives. It is correct that Cape York has extensive areas of land with high environmental values that must be protected. However, it is also correct that land with lower environmental values and commercial use potential exist, but these areas are as equally constrained by statutory land use plans as high value environmental areas. Land and resource assessments would help to bring an informed balance to statutory land use plans and identify zones where well managed commercial land uses could occur.

Land and resource assessments would also provide the basis for a "Prospectus" for each Aboriginal land holding corporation to promote the resources of their land with commercial potential. The Prospectus would identify and verify, for example, hectares of grazing and cultivatable land, megalitres of water, cubic metres of timber and gravel, tonnes of carbon sequestration and abatement potential, tourism potential, etc of the land held by the corporation. Without such a Prospectus and scientifically verified information about economic potentials it is difficult to attract investors. With such a Prospectus, Aboriginal corporations could be proactive in promoting use of their land for various purposes and seek expressions of interest from third parties to take up leases or enter into joint ventures with the corporation to realise economic opportunities.

In addition to identifying the economic potentials of changed land uses, land and resource assessments would also identify Aboriginal land that should be managed to maintain its current social, cultural and environmental values. The prevailing public opinion is that use of this land should not change because it provides significant ecosystem services and public good commodities such as clean air, clean water flows to the Great Barrier Reef lagoon, biodiversity protection, and carbon sequestration. However, Aboriginal freehold is privately owned land, not a public resource. If there is demand for such public good commodities, then because they are the product of Aboriginal land management practices, such as fire, erosion, pest and weed control, the owners of the private land should be contracted by the public purse to provide these public goods and services. Therefore, public good conservation and ecosystem services must be treated as a form of development if Indigenous people are to be given a fair return for fixing their rights for this purpose, and resource assessments are essential to the process of achieving Aboriginal land holders' free, prior and informed consent to using their land for public good conservation.

The land and resource assessments should be conducted through the compilation of existing information, identification of information gaps, and conducting research as necessary to fill gaps. CYLC, Balkanu and Cape York Partnerships are well placed to coordinate and lead land and resource assessments, and the preparation of a Prospectus for each Cape York land holding corporation, because of our familiarity with Cape York land and existing relationships and support services to Aboriginal land holding corporations. Other entities would also need to contribute to the assessments including the State Government and research institutions that hold relevant information. The Northern Australia Environmental Resources Hub could be a useful partner in the resource assessment process, building on their current work such as landscape-scale studies covering savanna and freshwater ecosystems and biodiversity, land and water planning for new developments such as agriculture and infrastructure, and Indigenous land management including Indigenous Protected Areas.

Based on the identified scope of what is needed for land and resource assessments across Northern Australia it is clear that current funding allocated to this critical initiative under the Northern Australia agenda is too low and must be increased.

***Land use planning:***

*Statutory land use plans and legislation must enable and support real economic opportunity for First Nations*

The land and resource assessments described above should be used as the primary source of information for a review of statutory land use plans, including Cape York local government planning schemes and the Cape York Regional Plan prepared pursuant to the *Planning Act 2016* (Qld), with the intention of amending these plans and the land use zoning regimes they establish to identify land which could be used for different commercial purposes. For example, due to the absence of land and resource information and consequent application of the Precautionary Principle, all of Aurukun Shire (with the exception of the town area) is zoned Conservation and Environmental Management, and this zoning currently disqualifies almost all commercial land uses. However, with better information, it is likely that land use zonings could be amended as appropriate in some places to allow for commercial use of land, such as under a Rural zoning.

The Northern Australia agenda has made significant investment in an assessment of the Mitchell River catchment on Cape York and found that *“Preliminary analyses of land suitability and water capture and storage options indicates the ability to support a further 60,000-80,000 ha of irrigated agriculture in the catchment, drawing on water stored in new in-stream or off-stream dams.”* Similarly, the Northern Australia White Paper identifies that *“Western Cape York comprises a large number of small catchments, each of which discharges significant quantities (1,000–4,000 GL) of water, very little of which is currently captured and stored. Large in-stream or off-stream dams in Cape York catchments could potentially supply water sufficient to irrigate up to 60,000 ha, for which adequate soil is also available. However, these river systems contain areas of environmental significance, which will be an important consideration in the development of water infrastructure.”* (White Paper p44).

Despite these Cape York economic development opportunities and the Northern Australia agenda’s aspirations and investments to support development, the current versions of statutory land use plans and resource management legislation such as the *Vegetation Management Act 1999* (Qld) will generally prevent the realisation of development potentials in the Mitchell River, western Cape York catchments and other parts of Cape York, particularly on Aboriginal land. For example, the Aurukun Aboriginal freehold land holding corporation, Ngan Aak Kunch, is unable to make use of the *“significant quantities of water and adequate soils”* on its land referred to in the White Paper because the Aurukun planning scheme would not permit a change in land use to irrigated agriculture, and the *Vegetation Management Act 1999* would prevent the clearing of any vegetation.

Similar issues exist across most Aboriginal land on Cape York. However, CYLC is confident that comprehensive resource assessments would find areas where soils and water are suitable and the environmental values are not so high to preclude well managed development. In light of this scientifically based information planning scheme zonings should be amended and vegetation clearing laws more reasonably applied so that Cape York Aboriginal people can make use of their land in economically viable and environmentally sustainable ways, and contribute to the development of northern Australia.

***No Indigenous Community Use Areas have been declared***

When the issue of virtually all Cape York Aboriginal land being constrained from use by statutory land use plans and resource management legislation is raised with the Queensland Government its response has been that Aboriginal land holders should make use of the *Cape York Peninsula Heritage Act 2007* (Qld) (CYPHA) provisions for the declaration of Indigenous Community Use Areas (ICUAs).

However, not one ICUA has ever been declared on Cape York since the CYPHA was enacted in 2007, partly because processes in the CYPHA to have an ICUA declared are too onerous and some mechanisms established by the CYPHA to consider ICUA applications do not exist, such as the Cape

York Peninsula Region Scientific and Cultural Advisory Committee. To address this critical matter the CYPHA should be reviewed and amended as soon as possible to provide more effective processes to identify areas of Aboriginal land suitable for more intensive land uses and the declaration of ICUAs. Once again, the proposed land and resource assessments would be very informative for the identification of these areas.

Despite previous commitments to review the CYPHA the Queensland Government has taken no actions to do so. To support the Northern Australia agenda the Commonwealth Government should encourage and support the Queensland Government to be proactive in reviewing the CYPHA, supporting Cape York land holders to identify areas suitable for ICUAs, making ICUA declarations, and supporting Aboriginal local governments to amend their planning scheme to align with ICUAs so that statutory constraints on the use of commercially prospective Aboriginal land are removed.

Ideally, if the scientific findings of resource assessments supported it, an ICUA or ICUAs should be declared in the vicinity of each Cape York Aboriginal community, and subsequent use of these areas would provide jobs and sustainable economic activities across Cape York. We do not anticipate that ICUAs would extend over large areas and best practice management practices would be applied so that environmental impacts would be minimal. The declaration of ICUAs would make a significant contribution towards achieving the Northern Australia agenda's aspirations for Cape York and contribute to other government initiatives such as Closing the Gap.

The Commonwealth Government could also consider the design of an alternative policy instrument based on the principles of ICUAs in Queensland to achieve the objectives of the Northern Australia agenda. For example, special economic zones could be created to align with ICUAs to prioritise public investment in economic infrastructure, as well as a favourable tax treatment regime to attract private investment and finance.

**Governance:**

Cape York Aboriginal people have legally recognised rights and interests over approximately 98% of Cape York land in the form of Aboriginal freehold tenure, and/or a native title determination or claim. Aboriginal tenure and native title rights and interests coexist in many places. The rights and interests are usually held by either an RNTBC or a Land Trust, or ideally an RNTBC that also acts as a Land Trust. Being an RNTBC and / or Land Trust obliges the corporation to fulfil statutory responsibilities associated with these roles, and to remain compliant with corporate regulations.

Project proponents who wish to access and use land where an Aboriginal corporation holds native title or tenure interests rely upon the corporation to follow certain procedures, such as seeking native title consent or the creation of third-party interests in the form of a lease, and to undertake other administrative actions such as collecting and distributing benefits from land use to their constituents. These procedures can be onerous and challenging for Aboriginal corporations because of a lack of governance and operational capacity, and/or infrastructure such as an office. Where Aboriginal corporations struggle to satisfy required procedures and take necessary actions then access to and use of Aboriginal land or land where native title exists by a project proponent will be compromised.

The Commonwealth and Queensland Governments should support Aboriginal corporations to have capacity to deal in land and satisfy statutory procedures that regulate the use of land. Additional training will be a key part of this support so that Aboriginal corporations can efficiently and effectively satisfy their responsibilities under their constitution and legislation such as the *Native Title Act 1993* (Cth), *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), *Aboriginal Land Act 1991* (Qld), *Aboriginal Cultural Heritage Act 2003* (Qld), *Cape York Peninsula Heritage Act 2007* (Qld), *Planning Act 2016* (Qld), etc. Practical support should also be provided in the form of office infrastructure and operational staff to undertake administrative actions.

One important factor that influences and complicates the governance of Aboriginal land is that governance is not the sole responsibility of Aboriginal rights and interest holding corporations. For example, when native title consent for a project is sought it is not the RNTBC that decides whether native title consent should be given, this responsibility in fact resides with the Traditional Owners of the land affected by the proposed project. Usually there are multiple Traditional Owner groups within the jurisdiction of a single RNTBC. The RNTBC's role is to ensure the correct Traditional Owner group is identified, informed about and engaged in the process, and that the Traditional Owners undertake a valid decision-making process about the proposal. An effective system of governance is therefore also required at the local Traditional Owner group level, and if this does not exist then decision making about land use and development is problematic.

At the other end of the scale, some land use matters require a regional level response, such as a possible declaration of a Cape York World Heritage Area, a review of the Cape York Regional Plan, or the management of the Great Barrier Reef. In such cases, several sub regional Aboriginal corporations and multiple local Traditional Owner groups will be affected and will need an overarching regional governance structure to manage and coordinate their interests and response. The logical regional structure is a Land Council, such as Cape York Land Council, because of the existing understanding of and alignment with the interests of the Aboriginal people within the region. The subsidiarity principle must therefore be applied and decisions about land use made at the appropriate local, sub-regional or regional level of Aboriginal governance.

The Northern Australia White Paper states that *"The Commonwealth Government will provide \$20.4 million to better support native title holders to effectively engage with potential investors. This includes direct funding for native title corporations to manage native title on behalf of native title holders, and measures to improve the long-term capacity of the bodies. The funding will ensure corporations move beyond basic compliance to active engagement in development."* CYLC supports the intentions of this commitment but, as per the discussion above, it should be expanded and delivered as part of a package to support an integrated local – sub-regional – regional Aboriginal governance regime. As part of its Pama Futures proposal, Cape York Partnership has articulated such a tri-level governance regime for Cape York. This structure should be supported for Cape York and considered by the Northern Australia agenda as a pilot for application across the rest of northern Australia. Structural reforms to the current governance arrangements to enable empowerment development of First Nations are discussed extensively in both the 2018 Pama Futures Submission as well as the 2015 *Empowered Communities; Empowered Peoples Design Report*.

***An integrated system for governance and land administration is essential infrastructure to enable and regulate development in Northern Australia:***

No single action alone will facilitate the commercial use of Cape York land, or any land in Northern Australia. A systems approach must be taken to land use and governance so that a comprehensive system is implemented with each element of the system capable of fulfilling its role and complementing the role of each other element in the system. Progress and development may only ever occur where such a system exists, such as is the case for the advanced system that enables and regulates development in southern Australia.

Using Cape York Aboriginal land as an example, key elements of the system would include:

1. Secure and tradeable land title where the primary land tenure is Aboriginal freehold held by an Aboriginal corporation, and this land is leased by the corporation for appropriate commercial purposes, such as pastoralism, tourism, horticulture, gravel extraction, timber harvesting, etc.
2. Secure and tradeable land title also includes full rights to natural resources, such as timber and gravel.

3. Secure and tradeable water rights are allocated to Aboriginal corporations, where water may be used directly by the corporation, or included with a lease of Aboriginal land, or traded with a third party.
4. Secure and tradeable rights to other resources that do not run with land title, such as fish, are held in an Aboriginal reserve and allocated to Aboriginal people willing to make commercial use of the resource, or may be traded with a third party.
5. Native title is determined on a regional basis and held and managed by RNTBCs. The same corporation should also hold registered title to land and resources within the RNTBC's area of jurisdiction.
6. ILUAs are negotiated to provide simplified processes for native title consent considerations. These ILUAs are based on a template so that all native title holders follow similar processes and receive similar benefits from providing consent.
7. Cultural heritage is protected in development processes in a consistent way through a cultural heritage protection protocol.
8. The economic, environmental, social and cultural values of Aboriginal land are described, qualified and quantified through land and resource assessments. The values and development opportunities are outlined in a Prospectus prepared for each Aboriginal land holding corporation and used to help attract investors.
9. Statutory land use plans are reviewed, using scientifically based information from land and resource assessments, and appropriate land use zones are defined and allow for appropriate commercial land uses.
10. Indigenous Community Use Areas are declared under the CYPHA, and statutory land use zones align with ICUAs so that development may proceed in these locations. Additional incentives such as special tax arrangements or priority investment zones should also be considered for ICUAs.
11. Where it is identified that environmental values of Aboriginal land are too great to allow changed land uses, and this land provides public good commodities / environmental services such as clean air and clean water, then Aboriginal land owners are contracted by the public to manage the land so that it continues to provide the public good outcomes.
12. Governance of Aboriginal land, including decisions about how it is used and managed, is delivered through Aboriginal local (clan), sub regional (RNTBC/Land Trust) and regional (Land Council) corporate structures as appropriate according to the issue and the subsidiarity principle.

**Term of Reference (b) - economic and social benefit arising from that investment for Northern Australians, in particular First Nations people**

To date, Cape York Aboriginal people have enjoyed very limited tangible economic or social benefit from the Northern Australia agenda. There has been very little Northern Australia agenda direct investment in Cape York, and investments in other initiatives are unlikely to provide much benefit to Cape York without a redesign of the agenda and its implementation, as proposed in this submission.

Unfortunately implementation of the Northern Australia agenda has facilitated no jobs in new industries, economic activities or projects on Cape York, there has been no Northern Australia Infrastructure Fund investment in Cape York projects or infrastructure, there is no tropical medicine or agricultural research occurring on Cape York, no increase in regional agricultural or mining exports has occurred, there has been no increase in Aboriginal business owners or activity, and Aboriginal home ownership has not increased.

There have been some Cape York road improvements which may have contributed to an increase in tourism associated with road travel, and potentially there may be some future benefits to Cape York Aboriginal people through CRCNA research into agriculture, aquaculture production techniques and



building 'on Country' native food production. However further investment and land reforms will be necessary to realise the full potential of tourism, agriculture, aquaculture and native food production. The Northern Australia agenda must also ensure its investments support ongoing economic and social benefits from established and proven Cape York industries such as pastoralism by supporting the land reforms outlined in this submission and making investments in infrastructure, such as a live cattle export facility at Weipa.

As outlined in this submission under ToR (a), moving from land rights to land reform must necessarily be the starting point for progress on Cape York and enabling development to provide economic and social benefits for Cape York Aboriginal people. The Northern Australia agenda should be the catalyst and agent for these land reforms and provide resources for their implementation. However, the Northern Australia agenda has not articulated what these land reforms must be or taken actions to implement the reforms, and this is partly because what is required varies in some ways from State to State and from region to region, hence the need for a regional approach. The reforms outlined in this submission under ToR (a) describe the integrated land administration system that must be implemented for Cape York before any significant developments based on land use, and economic and social benefits for Cape York Aboriginal people, may occur.

**Term of Reference (c) - funding models and policy measures that capture the full value of existing and emerging industries**

Development in Northern Australia, especially on Aboriginal land, is often constrained by environmental values of the land, so the full value of existing and emerging industries is constrained. The environmental values of Aboriginal land provide significant public good in the form of biodiversity protection, carbon sequestration, clean air, clean water etc. However, it is not widely recognised that these public good outcomes are the result of Aboriginal land management practices.

Because they produce public good commodities, Aboriginal land management practices should be considered a form of emerging industry and invested in with public resources. In other words, the Northern Australia agenda should facilitate the Australian public and Aboriginal land owners entering into a purchaser – provider arrangement where the Australian public purchase clean air, clean water etc from Aboriginal land owners who produce these commodities through their land management practices. Under such an arrangement, Aboriginal land management for ecosystem services and public good commodities would be recognised as an emerging industry and correctly treated as a form of commercial development. Managing Aboriginal land to produce public good conservation outcomes must be treated as a form of development on Indigenous land and recompensed as such.

Carbon sequestration and emissions abatement is another emerging industry that has significant potential for success in Northern Australia. However, current funding models and policy measures have done little to secure benefits from the carbon industry for Cape York's Aboriginal people. Instead, much of the industry has been captured by multinational corporations and most benefits are enjoyed by people who are not from Northern Australia rather than the Indigenous people who act as the underwriters. The Northern Australia agenda should recommend a review of the carbon industry model so that more of the benefits from this industry remain in Northern Australia and accrue to Aboriginal people where their land is providing carbon sequestration and emission abatement services.

**Term of Reference (d) - measures taken to develop an appropriately skilled workforce**

On Cape York, insufficient measures have been taken to develop Indigenous workforce skills for the types of industries that are being promoted by the Northern Australia agenda and are prospective

for Cape York, such as food and agribusiness, resources and energy, and tourism and hospitality. As discussed in this submission, land and sea management for the delivery of ecosystem services and the production of public good commodities is also an emerging potential industry on Cape York so workforce skills should be developed in this area as well. Developing Aboriginal workforce skills should occur in parallel to land reforms so that a skilled workforce is available to engage in commercial land use activities as soon as land becomes available to be used.

Development on Cape York will also rely on appropriately skilled Indigenous governance structures, such as RNTBCs and Land Trusts, to facilitate the use of Aboriginal land through the negotiation of ILUAs, the granting of leases, land use planning, land management, the distribution of benefits, etc as well as compliance with corporate governance requirements. Measures should be taken to identify skills required by Aboriginal corporations that function as RNTBCs, and / or land owners, and / or cultural heritage bodies. A training package should be developed and delivered to these corporations to ensure that they are capable of competently fulfilling all their functions. CYLC already supports training and capacity building for RNTBCs and should be engaged to assist in the development and delivery of additional training for Cape York Aboriginal corporations in support of the Northern Australia agenda.

#### **Term of Reference (e) - emerging national and international trends and their impact on the Northern Australia agenda**

##### *Producing environmental commodities as a form of commercial activity*

Environmental conservation and climate change mitigation actions are an emerging national and international trend that have significant impact on the Northern Australia agenda. For example, statutory constraints on clearing vegetation on Cape York support objectives to maximise carbon sequestration and minimise carbon emissions to assist Australia to meet its greenhouse gas emission targets. However, land clearing constraints also severely constrain Aboriginal peoples' agricultural and other land use and development aspirations on Cape York.

Similarly, much Northern Australia land is engaged in carbon farming and trading schemes that seek to abate carbon emissions and maximise sequestration. Carbon farming has become firmly established as commercial activity whereby land owners are paid for sequestering carbon and mitigating emissions. This growing commercial activity indicates the emerging trend towards the purchase of ecosystem services and public good commodities and the Northern Australia agenda should be broadened to recognise this trend and identify supporting investment sources. Indeed, this is one of the most prospective commercial activities for Northern Australia.

##### *The Principle of Free, Prior and Informed Consent*

The Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly on Thursday, 13 September 2007. UNDRIP **Article 19 provides that** *"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."*

Since 2007 FPIC has strengthened as an accepted national and international principle and is now being incorporated into policy in Australia, including into legislative and administrative measures associated with land management and use. The Northern Australia agenda should ensure that its design and implementation comply with the FPIC principle, not only to support the interests of Northern Australia's Indigenous people, but also because national and international investors wish to ensure that their projects and activities satisfy their social and cultural responsibilities so that their reputation as good corporate citizens is maintained. To ensure the design of the Northern Australia agenda satisfies the FPIC principle the Northern Australia Indigenous Reference Group should be

involved front and centre in the review of the agenda and the IRG's comments incorporated into the Northern Australia agenda design. If a complete redesign is necessary then a shift to a new co-design process must commence as soon as possible.

In Australia, FPIC is usually demonstrated at the project level through an ILUA between the land use proponent and the Traditional Owners of the land. On Cape York CYLC has supported the negotiation of "process ILUAs" to provide simplified processes for native title consent for future acts associated with land use and development. The consent process agreed in these ILUAs provide advantages for Traditional Owners and development proponents over the process required under the *Native Title Act 1993*. To ensure compliance with the FPIC Principle the Northern Australia agenda should, amongst other things, support the negotiation of more process ILUAs across Northern Australia. The success of ILUAs negotiated by CYLC, such as for the upgrade of the Peninsula Development Road and the granting of leases in Aboriginal towns, provide evidence of the success of this approach.