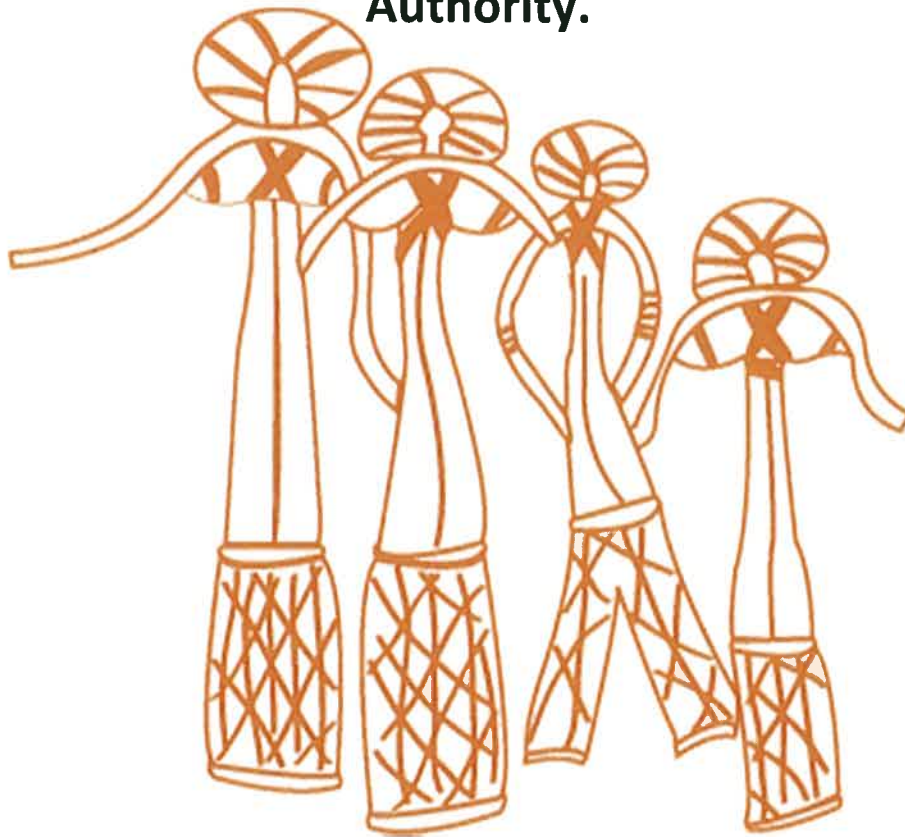


# **Inquiry into the Development of Northern Australia**

**A Submission by the Aboriginal Areas Protection  
Authority.**



**February 2014**

The Aboriginal Areas Protection Authority is a statutory body established to administer the *Northern Territory Aboriginal Sacred Sites Act*.

## **Introduction:**

There are significant development opportunities in Northern Australia associated with the region's natural resources and proximity to Asia. A key factor in developing the north is its remoteness, climatic conditions and a lack of infrastructure. These factors entail significant social and physical isolation of economic development opportunities in the Northern Territory but also in other parts of Northern Australia. Importantly Indigenous people are the predominant population in remote parts of Northern Australia. In the Northern Territory 43% of the Northern Territory is Aboriginal freehold land, which abuts 85% of the Northern Territory's coastline. This presents clear economic development opportunities for the Northern Territory's Indigenous population, particularly given the broad objectives of closing the gap. Importantly, the cultural disposition of Northern Indigenous people should be regarded as an opportunity in considering the development of Northern Australia, rather than as an impediment. This submission focusses on one aspect of that cultural context – being Aboriginal sacred sites, and addresses the terms of reference in terms of establishing a conducive regulatory environment.

## **Background:**

Sacred Sites are a cornerstone of Indigenous culture and knowledge in Northern Australia. They are an intrinsic part of a continuing body of practices and beliefs emanating from Aboriginal laws and traditions. Narratives associated with sacred sites anchor Indigenous cultural values such as customary responsibilities for land, kin relationships, the maintenance and transmission of land and sea based customary knowledge and resource use. Collectively this corpus of Indigenous knowledge is an untapped resource in terms of economic development in remote regions of Northern Australia. In the last two decades mainstream economic development initiatives have occurred around a burgeoning Indigenous art market, and Indigenous land management as highlighted by the Indigenous Ranger movement which engages in various fee for service activities associated with quarantine, border control and biodiversity management. In addition carbon projects such as the Western Arnhem Land Fire project and the Fish River Station Fire Abatement Carbon Project are realising economic returns for business models based on Indigenous knowledge systems. There is significant additional scope in harnessing Indigenous knowledge in economic development models specific to Northern Australia.

Sacred Sites in the Northern Territory are protected by the successful *Northern Territory Aboriginal Sacred Sites Act* ('Sacred Sites Act'). The purpose of the Act is to achieve a practical balance between the protection of sacred sites and the economic development aspirations of all Territorians. This Act defines processes for registering sacred sites and the provision of information about sacred sites – including locations and any information relating to customary sanctions or restrictions. Since its establishment in 1989, over 12,000 sacred sites have been recorded. A key process under the Act is the issuing of development specific sacred site clearances (known as Authority Certificates), and in the same period some 4700 such clearances have been issued. The Act contains appeal and review mechanisms for parties who are aggrieved by a decision made in accordance with the Act. These provisions have rarely been invoked which is a testament to the success of the legislation. A key element of the Sacred Sites Act is its ability to provide certainty for

development in the Northern Territory, and for custodians of sacred sites, and to minimise controversy amongst Aboriginal people and the broader community that occurs when sacred sites are damaged or compromised.

Comparable legislation in Northern Australia being the West Australian *Heritage Act* and the Queensland *Aboriginal Cultural Heritage Act*, do not offer the same certainty to development as the Sacred Sites Act. Both Acts require proponents to be responsible for carrying out surveys and negotiating agreements. The Sacred Sites Act provides an indemnity to proponents provided they comply with the conditions set by the sacred site clearance issued under the Act. The lack of criteria for minimum standards to be negotiated in agreements under the Queensland and Western Australian Acts does affect the certainty gained by proponents and it is noteworthy that the West Australian *Heritage Act* continues to be subject to significant criticism from Indigenous Western Australians.

### **Sacred Sites and the Development of Northern Australia:**

It is essential that the importance of sacred sites and their protection be recognised in any proposals to develop Northern Australia. Failure to do so will signal the exclusion of Indigenous interests from the development agenda and minimise opportunities for Indigenous economic development. Indigenous opposition to development on the basis of the existence of sacred sites is often cited as an indicator of an Indigenous anti-development agenda. This is not the experience of the Aboriginal Areas Protection Authority which has been involved in negotiating the coexistence of sacred sites with development in the Northern Territory for thirty five years. Typically Indigenous people are concerned to protect sacred sites, but are not opposed to development. Notably if sound principles of development are applied then obstacles posed by sacred sites are significantly minimised, and where such obstacles do exist then innovative solutions can be developed. Importantly, consideration of sacred site issues at the planning stage of any project will identify constraints, if any, at the outset.

Consultation with Indigenous people is critical in Northern Australia to identify any competing land use values that may exist in relation to any development. Such consultation can also form the basis for discussion about opportunities that may exist for Indigenous economic engagement within the context of the project. It is noteworthy that in 25 years the Authority has issued 4700 Authority Certificates which is a testament to the success of this regime and refused a mere 73 Authority Certificates applications on the basis that a solution could not be found. No applications have been refused within the past three years.

Agencies that have responsibility for Indigenous representation are typically Land Councils established under the *Aboriginal Land Rights Act*. Given the scale of Indigenous landholdings in the Northern Territory it is essential that such interests are recognised in proposals to develop the north.

There is much criticism of the *Aboriginal Land Rights Act* and the *Native Title Act* and the Sacred Sites Act for the perception that these legislative regimes stifle development. There is no doubt room for improvement in how these and other regulatory frameworks operate and intersect. However, a key driver of Indigenous opposition to specific developments is a lack of consultation of Indigenous interests, and a lack of equitable inclusion in the

development of such initiatives. It is therefore of the utmost importance that Indigenous needs and aspirations are factored in to any plans to develop Northern Australia. Indeed, many Indigenous people and organisations have development aspirations for their own land that could be usefully harnessed in broader proposals for Northern Development.

All development in Northern Australia must be cognisant of the largely Indigenous cultural context within which it occurs and in particular should minimise impacts on sacred sites. In seeking to establish the necessary social and physical infrastructure in Northern Australia to take advantage of emerging markets in Asia, there are significant opportunities for the engagement of Indigenous people in the areas of tourism, mining, agriculture and development of transport corridors..

### **Tourism:**

Some sacred sites in the Northern Territory are restricted in access however, many are not. Currently many sacred sites are developed for their tourism appeal, particularly within the national park system. The Northern Territory, and other parts of Northern Australia, boasts world class rock art assets and the development of suitable transport corridors in remote parts of Northern Australia will enable tourism. Custodians of such places must be supportive of any ventures associated with sacred sites and this can be mediated through the Sacred Sites Act. In addition tourism models that utilise new technology can form the basis of economically sustainable ventures that minimise the performative aspects of traditional cultural tourism initiatives.

### **Mining:**

The Northern Territory boasts significant mineral reserves. Typically Indigenous people are not opposed to mining; however there is a significant history of inadequate outcomes for Indigenous people from their engagement with the mining industry. Examination of the circumstances of engagement between the resources sector and Indigenous people will lead to improvement in outcomes for all parties.

### **Agriculture:**

The CSIRO undertook an extensive study of northern development in 2009 entitled '*Sustainable development of northern Australia: A report to Government from the Northern Australia Land and Water Taskforce*'. This study should form a reference for the current enquiry into the Development of Northern Australia. A key finding from this report was that the current irrigated agriculture in the north represents approximately one third of the capacity of this region based on current water availability. In addition to broadacre agriculture there are likely to be opportunities on a smaller and more localised basis, and opportunities based on the cultivation and harvest of wild species. There are currently several initiatives of this nature in operation in the Northern Territory.

### **Transport Corridors:**

The development of transport corridors will enhance access to resources, but should also be considered in terms of the capacity to create opportunities for Indigenous people in remote regions. Significantly access is restricted in many parts of the Northern Territory on a seasonal basis, with many remote communities isolated for significant periods during wet season flooding. The development of adequate transport corridors should be undertaken in a strategic manner to develop local infrastructure as well as servicing major projects.

### **Conclusion:**

Significant development opportunities exist in Northern Australia, particularly given the proximity of the region to Asia, and the nature of emerging Asian markets as a result of shifting demography. However, a key challenge will be to ensure that any Northern Development plan accounts for the significant disadvantage of Indigenous people in Australia's north and addresses ways in which such disadvantage can be overcome. Importantly, Indigenous knowledge may play a valuable role in the development of Northern Australia and should not be regarded as an impediment. The protection of sacred sites, as enshrined in the Northern Territory Aboriginal Sacred Sites Act, is a key mechanism for maintaining social harmony in the context of development.

### **Contact:**

Dr Ben Scambary  
Chief Executive Officer  
Aboriginal Areas Protection Authority

[  
|