Regional native title claims and large infrastructure agreements - on the way to a regional treaty?

National Native Title Conference 2017
‘Our land is our birth right: MABO 25 & beyond’
Adam McLean
Barrister and former PLO of Cape York Land Council (CYLC)

Adam will provide an introduction to the Cape York Regional Claim and a background to the Peninsula Developmental Road Infrastructure Agreement
Dion Creek
A traditional owner from Coen in Cape York
Founder and Director Kalan Enterprises a non-profit indigenous enterprise that works in the construction, environment and cultural heritage areas

Dion was part of the group that negotiated the PDR Infrastructure agreement and he will provide an outline of the ILUA and the ILUA in action
Background
Single claim for Cape York
At 2014 after 23 years 45% - 5 years the remainder (55%)

NCY #1, #2
20/6/14
1/7/11
3 years

Kuuku Ya’u
25/6/09

Wuthathi People #2
23/5/02
Bromley determined
May 2015

Wik and Wik Way People
3/10/00,
13/10/04,
29/7/09,
11/10/12

Kuanyama People
22/10/09,
5/12/12

Strathgordon Mob
26/7/07

Hopevale
8/12/97

Single claim
11/12/14

Eastern Kuku Yalanji People
19/12/07

Western Yalanji people
24/9/13
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 December 2014</td>
<td>One Claim- Lodged</td>
</tr>
<tr>
<td>6 February 2015</td>
<td>One Claim- Registered</td>
</tr>
</tbody>
</table>

**Cape York United Number 1 Claim FC No QUD673/2014 referred to as One Claim**

Now One Claim is registered virtually all land and inland waters will are within a native title determination or a registered claim.

In addition, title to large parts of Cape York is in Aboriginal Hands as Aboriginal Freehold.

Essentially, once you pass north across the Daintree River you are on some form of Aboriginal Land.
Key Principle

Traditional owners for each area continue to speak for their traditional country according to their traditional laws and customs

[not the applicants which is important in discussions re McGlade decision]
• The One Claim gives Traditional Owners power/leverage where none existed before.
• This is so for many activities proposed on the Cape including mining, tourism, cultural heritage and in this case the Peninsula Developmental Road.
Example Proposed development, mine etc
Prior to lodging the One Claim in 2014, the traditional owners and CYLC were aware of the QLD Government’s intention to upgrade the Peninsula Developmental Road (PDR). First Tranche of funding was $260M
Peninsula Developmental Road
The upgrade will still leave 200km of unsealed road.
Including the road to the tip and all the feeder roads to towns such as Pormpuraaw the total bill will exceed $1 Billion.
It is important to get it right now.
Cape York Land Council’s position:

1. In upgrading the PDR the State are taking out bends etc so they are creating new roads and they need to get permission from the traditional owners BEFORE they upgrade.

2. Also need traditional owner Cultural and heritage permission.

3. After a small fight the State agreed to negotiate a indigenous Land Use Agreement (ILUA).
Meetings were held of the relevant traditional owners and a steering committee formed and negotiations began.
Traditional Owner requests were fair and reasonable including:

- Contracts for Cape Indigenous Corporations employing Cape York Tos
- Cultural Heritage protection
- Jobs and training
- Traditional Owner say on Environmental protection,
- Protection of Indigenous rights and interests in land,
- Compensation
Key Agreement elements
Agreement Elements

• Traditional Owners achieved key results in Cultural heritage and environmental protection, jobs, training etc

• Key element - sub-contracting opportunities
• 20% + to Indigenous subcontractors was locked in to the ILUA and all head contractors are contractually bound to comply
• 50% + for all maintenance contracts
• It is reviewed each year but can only go UP
Kalan Enterprises was the brainchild of the late Anne Creek; Coen and Cape York leader who helped forge land rights outcomes and social change for the people of Cape York. Anne worked to establish Kalan as a sub-regional organisation to create opportunities for Traditional Owners to look after their land.

Kalan is the Kaantju word for the Ghost Gum tree, and is also a water hole and Sacred Site on Kaantju lands where it is believed a specific Ghost Gum created a water hole and has stood vigil still today over that water to protect it.
This is a major project for Cape York.
• Road closed - 5 months each year
• Towns and communities isolated
• Even when open as it is a dirt road it an take 18 hours to drive from one end to the other
• Requiring a 4 wheel drive
Business Opportunities

• The PDR ILUA has resulted in over 20% of the contract direct costs being directed to indigenous businesses

• Outline below the Kalen Enterprise Story with respect to the PDR ILUA
Some of Kalan’s project include

Kalan Enterprises
4 November 2015

Looking for an adventure in CULTURE.... You’ll find it right here in Kaantju Land - www.kalan.org.au
#TraditionalOwner - Southern Kaantju
• In addition to the other programs, in 2014 Kalan began building its capacity to be able to bid on road building projects as part of the PDR project.
• In 2015, 2016 and 2017 Kalan has been successful in its bids and has completed Road building projects including seal, crushing gravel.
Kalan welcomes new employee Laine Gibson from the community of Hopevale. Laine represents Kalan Enterprises on the Musgrave Road Building Team. As Kalan grows we will continue to fulfil our objective to give OUR MOBS JOBS!
We are back on the road providing more indigenous real-job opportunities! Kalan won the contract to crush the gravel for the bitumen of 22km of new road from Coen south. Well done Team!

Kalan Road Crew working at Souraya Hill (north of Coen) making final preparations before bitumen seal commences in a couple of days time. Coen PDR -- Coen People Delivering Roads. That's what it's all about!
Louican a Southern Kaantju Traditional Owner was put in the hot seat this week and is delivering in spades. Here he is pushing a gravel pit for the Peninsula Development Road project. Awesome work Louican!
In 2016 the Department of Transport and Main Roads, and Cape York Land Council Aboriginal Corporation won the QLD Government Reconciliation Award – partnerships- for the Peninsula Developmental Road Agreement.
Procurement process

The one of the key elements of the PDR ILUA is the opportunity for local Indigenous businesses to be able to tender for work.
The End