

## **Cape York Peninsula Aboriginal freehold and national parks – Agreements and achievements 2005 - 2014**

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### **1. Introduction: 18 ILUAs, 3 million hectares**

From 2005 to 2014, Aboriginal Traditional Owners and the Queensland Government negotiated and entered into 18 Indigenous Land Use Agreements (ILUAs) through the Cape York Peninsula Tenure Resolution (CYPTR) Program.

The 18 ILUAs recorded the parties' agreement to the State transferring three million hectares of land to 17 Aboriginal Land Trusts and Corporations (the Aboriginal landholding bodies), as Aboriginal freehold land, and dedicating protected areas over parts of the land.

Nearly 1.4 million hectares of the transferred lands were within 16 existing national parks. Through these negotiations, these parks have been converted to national parks (Cape York Peninsula Aboriginal land) (CYPAL). Each national park (CYPAL) is managed jointly by the Aboriginal landholding body and the Queensland Parks and Wildlife Service (QPWS).

This paper outlines the legal framework, the negotiation process and the outcomes to date of the CYPTR Program. From the perspectives of QPWS and the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP), this paper discusses some challenges in implementing the agreements and some practical strategies used to address these challenges. Finally, the paper presents a case study of joint management in a national park (CYPAL).

### **2. Cape York Peninsula Tenure Resolution Program**

The CYPTR Program returns ownership and management of lands on Cape York Peninsula (CYP) to Aboriginal Traditional Owners while protecting environmental and cultural values in jointly managed national parks and in nature refuges.

The aims of the CYPTR Program are to deliver:

- ownership and management of land by Aboriginal Traditional Owners on CYP;
- sustainable economic development opportunities for Aboriginal people on CYP through land transfers and land management support;
- protection of CYP's significant natural and cultural values;
- joint management of national parks on CYP with Traditional Owners;
- employment of Aboriginal rangers and organisations to deliver park works and services;
- appropriate tenures for public roads, gravel resources, and other public purposes.

The CYPTR Program evolved from the 1990s onwards, through discussions between the Queensland Government, Balkanu Cape York Development Corporation (Balkanu), Cape York Land Council (CYLC), Traditional Owners, the Australian Conservation Foundation and others. It is underpinned by the Cape York Heads of Agreement, signed by representatives of Indigenous, conservation and pastoral sectors and the Queensland Government. This expressed the parties' shared vision of how environmental, economic and social outcomes would be achieved.

Despite the diverse and changing perspectives of those involved, from 2005 to 2014 there was enough common ground to deliver significant increases in the area of Aboriginal freehold land and protected areas on Cape York Peninsula.

### **3. Legal framework: ILUAs, IMAs and Conservation Agreements**

The ILUAs and protected area agreements negotiated under the CYPTR Program are based on provisions in the *Native Title Act 1993 (Cth)* (NTA), the *Nature Conservation Act 1992 (Qld)* (NCA) and the *Aboriginal Land Act 1991 (Qld)* (ALA). The NCA and ALA were amended in 2007 to provide the current legal framework, through the *Cape York Peninsula Heritage Act 2007*. This Act and other legislative amendments that have streamlined the CYPTR Program have had strong stakeholder support and bipartisan support in the Queensland Parliament.

#### 3.1 ILUAs

The parties to each ILUA were the native title parties who had been authorised by the native title group; the State of Queensland; and, in recent years, the Aboriginal landholding body to which the land was to be transferred. The ILUAs not only provided native title consent but also recorded each party's commitments in relation to land tenure changes; entering into and implementing other agreements; and funding.

The ILUAs were all Area Agreements under the NTA. For most of the areas, there was no native title determination before the ILUA was negotiated and for many there was also no native title claim. The native title groups and parties were identified through anthropological review and consultation with Aboriginal people.

An important feature of the CYPTR Program is that the parties have decided to negotiate an ILUA for each area without debating whether past tenures have affected native title or whether each proposed action is a Future Act that requires consent under the NTA. Despite differing views on whether some actions were Future Acts or not, the ILUAs itemised and recorded the parties' agreement to all the negotiated tenures, agreements and actions. This assisted the parties to devote most of their time and resources to negotiating practical outcomes rather than debating issues of native title law. The ILUAs provided native title consent to actions in case they were Future Acts.

Each ILUA recorded the parties' agreement to the State transferring land to one or more Aboriginal landholding bodies as Aboriginal freehold land. In nearly all ILUAs, the parties also agreed to dedicate national parks (CYPAL) and/or nature refuges over parts of the land. The ILUAs recorded native title consent to the Aboriginal landholding bodies entering into protected area management agreements with the Queensland Government. Some of the ILUAs included native title consent to leases or licences between the landholding bodies and third parties.

#### 3.2 IMAs

Most of the ILUAs negotiated under the CYPTR Program provided consent to the State and an Aboriginal landholding body entering into an Indigenous Management Agreement (IMA) for a national park (CYPAL). The native title group agreed through the ILUA to exercise their native title rights and interests in the national park (CYPAL) in accordance with the provisions of the IMA.

National parks (CYPAL) are significantly different from national parks on Aboriginal land in other jurisdictions in Australia. The underlying tenure is inalienable Aboriginal freehold land, but the land is not leased to the State to be dedicated as a national park. Instead, the State and the Aboriginal landholding body enter into an IMA that governs how the park is to be managed.

The statutory basis for IMAs and national parks (CYPAL) is in the ALA and NCA. A national park (CYPAL) must be managed in accordance with the IMA, the ILUA, the management principles set out in the NCA and any approved management plan for the park. Key legislative provisions are summarised on the next page.

Through the IMA, the Aboriginal landholding body and State government set out how they will: consult with each other about park management; manage and present the park; employ and train people to work in the national park (CYPAL); contract work out (including to the landholding body) and increase Traditional Owners' roles in park management.

*Main statutory provisions for IMAs and national parks (CYPAL)*

- If an Aboriginal landholding body and the State agree that an area is to become a national park (CYPAL), they must enter into an IMA (ALA s169).
- The IMA must state that the land will be managed as a national park (CYPAL), set out how the park is to be managed and comply with other requirements listed in section 170 of the ALA.
- The IMA must be registered on the title of the Aboriginal land and is binding on the Aboriginal landholding body and everyone with an interest in the land (ALA s172).
- The transfer of the land to an Aboriginal landholding body is subject to a condition that the land must become a national park (CYPAL) (ALA s173(3) and NCA s42AC(2)(a)).
- Once the IMA has been signed and the land has been transferred, the Minister must recommend a regulation to dedicate the land as national park (CYPAL) (NCA s42AA-42AC).
- A national park (CYPAL) must be managed in accordance with the IMA, the ILUA, the management principles set out in the NCA and any management plan (NCA s15).
- National parks (CYPAL) are to be managed according to the management principles for other national parks, plus they must “be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area” (NCA s20).

### 3.3 Conservation Agreements

Some of the ILUAs negotiated under the CYPTR Program provided native title consent to the State and an Aboriginal landholding body entering into a Conservation Agreement for a nature refuge, declared under the NCA. In these ILUAs the native title group agreed to exercise their native title rights and interests in the nature refuge in accordance with the Conservation Agreement.

## **4. Negotiation process**

Over several years the State Government acquired properties for inclusion in the CYPTR Program, through voluntary sale by the previous owners at market prices. The properties were acquired on the basis of their natural and Aboriginal cultural, social and economic values. All existing national parks in the region were also included in the program, for conversion to national parks (CYPAL).

The Queensland Government contracted Balkanu to support and provide legal advice to Traditional Owners in the negotiations. Assisted by anthropological advice, a representative Traditional Owner negotiating committee was formed for each negotiation. State representatives and the negotiating committee met and held field inspections, to negotiate protected area boundaries, financial commitments, the terms of the ILUA and any other required tenures and agreements.

In some cases there was an existing Aboriginal corporation or land trust for the area. In other cases, Traditional Owners formed a new Aboriginal corporation to be the landholding entity, and developed rules consistent with traditional lore and custom.

There have been challenges in each negotiation. Cadastral boundaries do not match clan boundaries, so negotiations often involve several clan groups. This complicates the process of identifying native title group members and appropriate membership of new landholding bodies. Anthropological advice and detailed consultation has helped address these issues, but cannot resolve all concerns.

For each negotiation, when the native title group and parties had been confirmed and agreements had been negotiated, the native title group met to consider the agreements. At the authorisation meeting, the native title group was advised and assisted by anthropologists and CYLC legal officers engaged by Balkanu, with funding provided by the State. After considering the agreements in detail, each native title group authorised their native title parties to enter into the ILUA.

After authorisation, the parties signed the ILUA and the IMA and the State delivered the deeds for the Aboriginal freehold land. The landholding body then signed any other agreements, e.g. licences. The State created the protected areas by regulation and lodged the ILUAs for registration.

Due to the extensive consultation with Traditional Owners prior to ILUA authorisation, consensus was reached in each case, so the risk of ILUAs not being registered was considered very low. For this reason it was feasible to transfer the lands and create the protected areas before the ILUAs were registered. All ILUAs completed under this program have been registered.

## **5. Completed land dealings**

The CYPTR Program has delivered an increase in land under Aboriginal ownership, both within and outside protected areas. The 18 ILUAs completed between 2005 and 2014 resulted in:

- 17 Aboriginal freehold transfers outside national parks (1.1 million hectares);
- 16 existing national parks converted to national park (CYPAL) (nearly 1.4 million hectares);
- 5 new national parks (CYPAL) (about 560,000 hectares);
- 6 regional parks (resource use areas) (about 110,000 hectares), agreed to become national parks (CYPAL) when no longer required for gravel or mineral resource use; and
- 17 nature refuges on Aboriginal freehold (nearly 260,000 hectares).

The land transfers from 2005 to 2014 have resulted in these practical benefits for Aboriginal people.

- Eleven Aboriginal landholding bodies are managing 21 national parks (CYPAL) and one other national park jointly with QPWS. Each of these landholding bodies receives annual funding under IMAs to deliver some park works and services. This funding is providing for employment of Aboriginal rangers and support officers, purchase of equipment for land management and a range of running costs. Regular meetings and dedicated support officers enable the Aboriginal landholding bodies to make park management decisions jointly with QPWS.
- Each of the 11 landholding bodies also receives annual funding for learning programs. This has supported many Aboriginal people to complete accredited training courses, increasing land management and related skills.
- Fourteen Aboriginal landholding bodies own Aboriginal freehold lands outside national parks. Of these, most have been able to attract some financial and technical support from government and non-government organisations for land management, on the basis that they have demonstrated their commitment by entering into agreements for nature refuges and parks.

## **6. Challenges and strategies**

In 2008, when the first two national parks (CYPAL) had been created, QPWS staff presented a conference paper identifying the following challenges for joint management of parks:

- resourcing and building the capacity of landholding bodies;
- securing economic opportunities for Traditional Owners;
- involving geographically dispersed Traditional Owners;
- developing and implementing effective joint decision-making processes;
- making decisions in accordance with Aboriginal Tradition.

Experience since 2008 has confirmed that these are key issues for implementing the ILUAs, IMAs and other agreements. QPWS, DATSIP and Aboriginal landholding bodies have developed several practical strategies to address these challenges and are continuing to work together on solutions.

### 6.1 Resourcing, building capacity and developing economic opportunities for landholding bodies

Aboriginal landholding bodies who own land underlying national parks (CYPAL) have at least one regular income stream, namely the State's commitment in the IMA to provide a set amount of funding annually for park works and services. The definition of park works and services in the IMA is broad and includes supporting the functions of the landholding body under the IMA. This is intended to enable those landholding bodies to meet essential costs, including insurance premiums.

Other landholding bodies do not have this income stream and therefore have a greater need to secure additional resources to enable them to manage their land and meet their aspirations.

It is not possible to underestimate the complexity and cost of managing large, remote areas of land, particularly when many decisions require consultation and agreement with many individuals. This is a perennial challenge for all government land management agencies and all landholders.

A cooperative approach to seeking additional funding for Aboriginal land management and exploring economic opportunities for Aboriginal landholding bodies achieved some good results on CYP. Nearly all the landholders under the CYPTR Program secured funding for land management projects from Australian and Queensland Government programs between 2011 and 2014. A few secured income from commercial enterprises such as grazing and gravel extraction licences, through CYPTR Program ILUA negotiations. Several received financial or technical assistance from philanthropic groups. One Aboriginal corporation has established a carbon offsets project.

Under the CYPTR Program, DATSIP assists landholding bodies to meet regularly, develop good governance practices and develop their capacity as owners and managers of Aboriginal freehold land. QPWS also supports regular meetings as discussed below. Regional organisations such as Balkanu and CYLC also assist as resources allow. Most of the landholding bodies require support in the medium to long term, to maintain good governance and land management practices, to pursue economic opportunities and develop financial sustainability.

Achieving long-term economic and environmental sustainability remains a major issue for all Aboriginal landholding bodies under the CYPTR Program and all levels of government. A cooperative approach to increasing resources and capacity is the most effective approach.

### 6.2 Making decisions jointly and in accordance with Aboriginal tradition

In the IMAs, the State and landholders commit to regular meetings, formal notifications and other methods of mutual consultation and decision-making. QPWS facilitates and funds quarterly meetings with the executive committee of each Aboriginal landholding body, to make decisions

jointly about park management. Formal and informal consultation and decision-making occurs between meetings. Teleconferences and funding for phone calls (e.g. by phone cards) help Traditional Owners and QPWS keep in touch when travel is not feasible. Fully funded on-country meetings at least once a year help Traditional Owners connect with each other and country.

QPWS and Aboriginal landholders have jointly developed new procedures for making decisions about fire and pest management, permits, training and a range of activities. These procedures or protocols help QPWS and Traditional Owners to consult each other and make decisions more effectively and in accordance with Aboriginal tradition.

Traditional Owners aim to increase their roles and in time take the lead in park management and decision-making. DATSIP and QPWS aim to help Aboriginal landholding bodies to develop their capacity to do so. In order to help this process and not to hinder it, government agencies also need to go through internal change, develop new procedures, re-prioritise resources and improve their own cross-cultural capacity. Such change takes time, but there has been good progress overall.

Traditional Owners, DATSIP and QPWS staff members are working together more, building each other's knowledge and capacity, and increasingly are making decisions together rather than apart. Regrettably, there are a few locations where conflicts have slowed the process. The improvements in joint decision making and practical outcomes are measurably greater where there is good cohesion and cooperation both within and between Aboriginal and government organisations.

## **7. Case study: Rinyirru (Lakefield) National Park (CYPAL)**

- Originally dedicated as Lakefield National Park in 1975, to conserve rich wetlands, their catchments and many cultural values (including occupational and ceremonial sites).
- The land (544,000 hectares) was transferred to Aboriginal freehold land held by the Rinyirru (Lakefield) Land Trust and dedicated as Rinyirru (Lakefield) NP (CYPAL) in 2011.
- Shared vision: "The Land Trust and the Department aim to provide the best practice joint management of the NP(CYPAL) so our lands and culture stay healthy for our children and for the benefit of all the people of Queensland."
- QPWS and the Rinyirru (Lakefield) Land Trust jointly manage the park in accordance with the NCA, the IMA, the Rinyirru Management Statement and various protocols.
- Quarterly joint management meetings are held to discuss and make park management decisions
- Staffing:
  - 11 full-time rangers employed by QPWS (5 being Indigenous);
  - 4 Indigenous rangers engaged by the Land Trust to work on a casual project basis using Park Works and Services funds allocated under the IMA.
- Park management activities
  - Mustering and removal of cattle
  - Boundary fence construction
  - Feral pig control
  - Weed management
  - Fire management
  - Visitor education
  - Campground maintenance
  - Park management meetings
- What is working well and why

- Relationships between QPWS and Land Trust rangers are strong, built on trust and respect
- QPWS rangers work alongside the Land Trust rangers providing support and encouragement, which builds great team spirit
- The on ground training, mentoring and encouragement for all rangers working on this park results in real outcomes
- The Rinyirru people want to work on country and manage this land as a park
- There is strong support and mentoring from the older Traditional Owners to get young people back on country
- There are sufficient resources under the IMA combined with park revenue funds (from camping permits and gravel resources) to enable the Land Trust to employ four rangers continuously, working 10 day shifts from early May until December each year
- A crew leader has been engaged to supervise and mentor the Indigenous rangers
- Work undertaken is noticed and appreciated
- Pride is taken in work completed
- There is a cohesive group of active Land Trust executive members leading and setting the direction of the Land Trust
- Joint management meetings are well attended
- The Land Trust has a very capable and enthusiastic support officer
- The Land Trust has an efficient and supportive financial administrator.
- There is strong commitment from QPWS rangers and other staff to making the joint management arrangements work
- Future opportunities
  - Land Trust to invest or participate in businesses which offer cultural experiences within the park
  - Develop a cultural heritage management strategy
  - Get involved with cultural interpretation of the park
  - Investigate feasibility of carbon farming opportunities
  - Source additional income for extra projects and a permanent Land Trust ranger team
- QPWS looks forward to continuing to work in partnership with the Rinyirru (Lakefield) Land Trust to protect the natural and cultural values of this area for future generations.