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Negotiating Major Project Agreements: The 'Cape York Model

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Indigenous people in many parts of Australia are increasingly achieving opportunities to negotiate terms in relation to the development of major projects on their traditional lands. The legal and policy contexts within which these opportunities arise vary greatly. In some cases there is a legislative requirement to seek the consent of owners of Aboriginal land (as defined under relevant legislation), most obviously in the Northern Territory but also in relation to Aboriginal reserve lands under Queensland's *Mineral Resources Act 1989* . In other cases it is the exercise of native title rights which confer opportunities to influence the terms under which major projects are developed. Alternatively, Indigenous groups gain their opportunity not from any specific legislative framework, but as a result of political pressure and a growing recognition within mining corporations that it will be increasingly difficult for them to operate profitably unless they establish cooperative working relationships with local Indigenous interests.

These developments have led to a growing interest among Indigenous people, government, industry and academic analysts in processes which can be used to bring about negotiated project agreements between Indigenous people and developers and to produce agreements which meet Indigenous aspirations. Only a limited number of cases has been documented in the public sphere, however, with a recent paper on the process used to achieve the Yandicoogina agreement (Senior 1998) standing almost alone in this regard.[3] The limited extent of public information is not surprising, given that negotiation processes usually occur in confidence and that the individuals involved rarely have the time or opportunity to document their experiences. Yet this lack of information represents a significant problem for Indigenous organisations and communities, particularly those which have little experience in undertaking negotiations, as they must often identify successful models on the basis of trial and error without being able to draw on the experience of other Indigenous groups.

There is no suggestion here that a single 'best practice' model exists for project negotiations which should be adopted universally. Indeed, the opposite is the case given the great variety of contexts in which Indigenous people find themselves, the range of projects about which Indigenous groups have to negotiate and the diverse objectives they may wish to pursue.

One example of such differences involves the strength of the Indigenous negotiating position. This can be due to the legal context which applies in particular cases. Corporate policy, no matter how enlightened, is a much weaker basis on which to pursue Indigenous interests than a legal framework which enables landowners to prohibit or constrain resource development if they cannot achieve an acceptable outcome. In addition, Indigenous groups differ in terms of the human and financial resources at their disposal, because of differences in bargaining positions, in government policy and administrative arrangements, and in their own histories. Existing social and political structures and cultural practices also vary. Indeed as Lucashenko notes, heterogeneity is a defining characteristic of Indigenous Australia (1996) . Resource development projects are also highly varied in their scale, their proximity to Indigenous communities, their likely profitability, their duration, their potential impact on the environment and on cultural heritage, the time constraints faced by developers and the nature of the corporate structures they employ. Against this background it would be futile and counterproductive to promote a single, universal model. Rather, accounts and critical analyses of a large number of alternative approaches would allow Indigenous groups a wide range of options which can be adapted to suit their particular circumstances and objectives.

It is in this context that the current paper outlines a model for the negotiation of major project agreements developed over the last eight years by Cape York Aboriginal communities and the Cape York Land Council (CYLC), the Native Title Representative Body (NTRB) for Cape York. The fundamental objectives of the model are threefold:

- to place Aboriginal people in a position to make informed decisions relating to whether or not they wish to approve proposed developments or support existing mining operations (for instance, by consenting to the grant of additional mining leases);
- to put them in as strong a position as possible to maximise the financial and non-financial benefits they receive and minimise the costs they incur from any activities they support or projects they approve;
- to create a process which places as much control as possible in the hands of the traditional owners and other community members who will be affected by mining activities.

The model also has major advantages for the developer. Its inclusive and transparent nature minimises the possibility of any later legal or political disputes relating to the activities or projects involved. As a result it diminishes uncertainty, a critical outcome in relation to activities and projects which usually require investments in the hundreds of millions of dollars and in which many sources of uncertainty (for instance fluctuating markets or changing technology) cannot be negotiated so decisively. In addition, the model can, by facilitating Indigenous input, allow projects to be designed in ways which allow negative impacts to be avoided or mitigated, reducing future remediation costs for the proponent.

Before proceeding, a number of general points should be made about the way in which the model has been developed and applied.

First, in each case in which the model has been used the CYLC's participation has been at the invitation of traditional owners and communities affected by an existing or planned project.

Second, the model emerged in 1991–1992 as a response to a requirement for a negotiation process in relation to the Cape Flattery silica mine and has evolved over time. Subsequently, it has been applied to the Skardon River kaolin project agreement (1994), the Alcan bauxite project agreements (1997 and 1999) and negotiations with Comalco Ltd (which are still under way). The complete model represented below has been applied in the negotiations with Alcan and Comalco. In other words, the model has not been derived from a theoretical base or from 'first principles', but has been developed over time on the basis of practical experience and to meet the requirements of Cape York Aboriginal communities 'on the ground'. There is no doubt that it will continue to evolve to meet their changing needs.

Third, the model is not currently applied to all major project developments in the CYLC's region. Differences in the scale, impact and timing of some projects, and in the availability of resources have resulted in a different approach being adopted in certain cases (for example Chevron's PNG-Australia gas pipeline). Even here the model does represent a standard which is departed from on the basis of decisions that a different approach is required to maximise the available opportunities or to recognise the existence of specific constraints.

Fourth, the model is essentially a bipartite one, with only two sets of interests actively involved in the negotiation process–the developer, on the one hand, and the relevant Aboriginal community or communities and the CYLC, on the other. Government has

not been a significant participant in the negotiation processes which have occurred to date. State government acceptance of the outcomes negotiated has been essential in the cases of Cape Flattery and Skardon River. These agreements, negotiated under the provisions of Queensland's *Mineral Resources Act 1989* , are registered in the Mining Warden's court and have become part of the conditions attached to mining leases issued by the State government. Government co-operation will be required to fully implement the terms of the Alcan agreement and of any agreement reached with Comalco. In all cases, however, government involvement occurs after the main components of the agreements have been negotiated between the developer and Aboriginal interests. Where government is to be involved as an active participant in negotiations, modifications to the model might be required. [4]

The Cape York Region and the Cape York Land Council

Cape York Peninsula is a sparsely populated area comprising the most northern part of the state of Queensland. During recent decades the Indigenous population, decimated after European settlement by disease, dispossession and the violent attacks of settlers, has grown rapidly; today Indigenous people account for just over half of the area's total population of 25,000 people. Most Aboriginal people now reside in some 10 Aboriginal settlements, none of which has more than about 1,000 residents, and in small family-based homeland centres or 'outstations' established since the 1970s as people have sought to reoccupy their traditional lands.

Despite the impact of settlers, governments and missionaries, Aboriginal people retain important aspects of their traditional culture, spirituality and social structures. Census data indicate that two out of every three Aboriginal residents speaks at least one Aboriginal language; hunting and fishing are still an important source of food for many people (particularly on outstations); associations with particular areas of land are critical in defining identity and in creating a framework for social relations; and family or clan-based systems of kinship and reciprocity still constitute the core of social structures and the basis for much of economic and political life.

In the past, the mineral resources of Cape York have been developed with scant regard for the interests of its Indigenous inhabitants. For example, reserves covering huge areas of land allocated for the use of Aboriginal people were revoked in the 1950s to make way for exploration and mining. As late as the mid 1970s, exploration and mining leases were being granted over Aboriginal reserve land against the express wishes of traditional landowners. In the 1990s this situation has changed significantly, in part because of the activities of the CYLC.

The CYLC was established in 1989 as a result of grass roots opposition to proposals to develop a space base on Cape York Peninsula without reference to the concerns and aspirations of Aboriginal people. The Council initially operated on a modest scale with a small office and a few part-time staff. From 1991 onwards it grew rapidly, particularly after Noel Pearson, who had helped establish the organisation while still studying at Sydney University, became its full time Executive Director. Now a substantial Indigenous organisation with a staff of about 30 people, it is the Native Title Representative Body (NTRB) for the Cape York region, assisting traditional owners seeking title under Queensland's *Aboriginal Land Act 1991* , and exerting significant influence both in relation to large-scale economic development projects and to resource management and planning forums such as the Wet Tropics Authority and the Cape York Peninsula Land Use Study (CYPLUS). The CYLC is managed by a salaried Executive

Director, under the immediate direction of an Executive Committee elected from a Governing Council. The Governing Council, headed by an elected Chairperson, consists of two representatives (one male, the other female) nominated by each Cape York Aboriginal community and two additional members representing Cape York people currently living outside the region. The membership of the Governing Council is ratified at the Land Council's annual land summit.

Despite its growth and the significant successes it has achieved, the CYLC has very limited resources relative, first, to its aspirations and its statutory responsibilities under the *Native Title Act 1993* (Cth) (NTA) and other legislation, and second, to the demands it faces in seeking to have an effective input into the myriad of government decision-making processes which affect Indigenous land interests in the Cape, and the range of development opportunities (and threats) which currently face Cape York. In particular, it is not funded to help negotiate agreements in relation to major commercial projects. In facing serious resource constraints the CYLC is of course no different to many of Australia's leading Indigenous organisations.

The 'Cape York Model'

The model can be broken up into seven general stages, some of which involve a number of distinct activities [5] .

Stage 1: Initiation of Process

Stage 2: Creating the Framework for Negotiations

Stage 3: Information Gathering and Community Consultation

Stage 4: Establishing a Negotiating Position

Stage 5: Conduct of Negotiations

Stage 6: Endorsement and Signing of Final Agreement

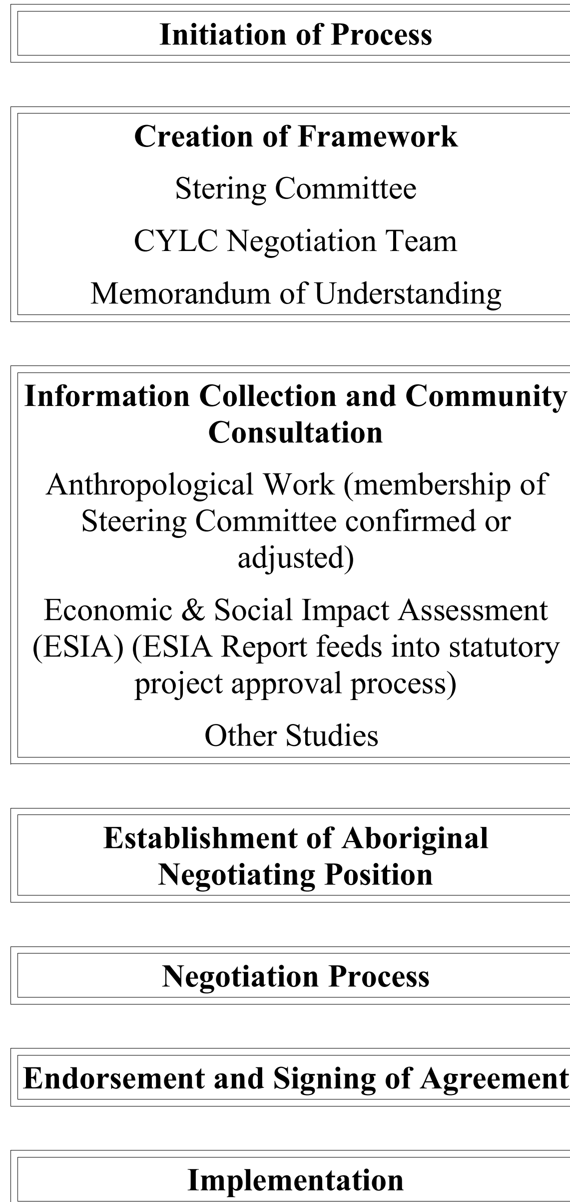
Stage 7: Implementation

Stage 1: Initiation of Process

The process of negotiation can be triggered in a number of ways. If a mining company applies for a lease over Aboriginal reserve land, then under the *Mineral Resources Act 1989* it must first seek the consent of the trustees of the land concerned. In the Cape Flattery and Skardon River cases, the Trustees used this as an opportunity to initiate a negotiation process, declining to provide their consent until they had an opportunity to equip themselves with relevant information, undertake a thorough community consultation process and negotiate an acceptable agreement with the developer. The trustees invited the CYLC to assist them in undertaking these activities. In other cases, where a statutory requirement for provision of consent to mining has not existed, the CYLC has approached developers and persuaded them that participation in a negotiation process has important advantages from a project developer's perspective; or developers have approached the CYLC and requested its assistance to initiate a dialogue with Indigenous groups in their area of operations.

Figure

The 'Cape York Model' for Major Project Negotiations



To date the model has not been used in a situation where negotiations have been triggered by the provisions of the NTA. In principle the model could be applied in such a situation, though the time limitations imposed by the NTA could cause major problems in applying it unless they were extended by agreement between the parties, or unless discussions between the developer and native title holders began well in advance of the issue of Section 29 notices by government. Otherwise, a maximum of only six months would be available for negotiation of an agreement. Even the Alcan process, regarded by all the participants as having moved rapidly and smoothly, took 12 months

to complete. The duration of such consultative processes highlights the serious consequences of the shortening of time frames for the right-to-negotiate which might result from the establishment of alternative state regimes under the *Native Title Amendment Act 1998.*

Stage 2: Creating the Framework for Negotiations

Three key activities occur during this phase. The first involves the creation of a representative structure which can provide overall direction to the negotiations. Discussions are held with leaders of community organisations and with individuals who are identified by the CYLC, on the basis of its existing knowledge, as senior traditional owners of the lands affected by the project concerned. A Steering Committee or similar structure is created with representation from the key organisations and traditional owner groups. For instance, one Steering Committee comprised five senior owners of the land area involved; the chairpersons of the community council and the outstation support organisation; and representatives of a range of specific community organisations, including the elders' group, the cultural resource management group, and the educators' group (the latter was included in an attempt to ensure that the interests of younger people received specific consideration). The composition of the Steering Committee reflected an acceptance that, while traditional owners of land subject to mining are most directly affected by a project and so have a right to substantial representation, major projects affect all the members of a community located nearby and so it is appropriate to have a broadly-based representation.

The Steering Committee, advised by the CYLC's negotiating team, plays a critical role by controlling the overall direction of the negotiation process, providing political legitimacy to that process, and guiding and facilitating the work of researchers and consultants (see below). Because of its critical role, the Steering Committee is established as early as possible in the process. Ensuring that its membership is appropriately representative can create problems in the absence of detailed anthropological information, but because of its importance it is preferable to get the Committee established on an interim basis, rather than wait until all the relevant information is available. The Steering Committee can be restructured at a later date if additional information indicates that this is desirable, an outcome which did occur in one community where only limited anthropological work had been conducted previously. The anthropological report commissioned by the CYLC revealed the existence of affected groups not represented in the original Committee membership, and additional members were coopted to remedy the deficiency.

Because of time constraints and limited funding, it is impossible to have constant interaction between the community as a whole and land council staff, negotiators and consultants, though, as discussed later in the paper, such interaction certainly occurs at key stages of the process. The Steering Committees, while based to some extent on non-indigenous notions of representation, are created by the communities themselves and provide a practical means of ensuring that Indigenous priorities drive the negotiations.

The second activity involves the appointment of a CYLC negotiating team which will provide the Steering Committee with the advice and technical support it requires during the negotiation process. To date the negotiating teams have consisted of the Executive Director or Chairman of the CYLC, a legal adviser (external to the CYLC in earlier negotiations, its Principal Legal Officer in later ones), and the Senior Consultant responsible for the extensive information collection and community consultation

exercise which precedes negotiations (see next section). The inclusion of this latter individual in the negotiating team helps to ensure that the outcomes of the consultations flow directly into the negotiation process. (As discussed below there are other structural aspects of the model which also ensure that this occurs.) The Senior Consultant who has participated in most of the processes to date has a background in mineral economics, adding to the breadth of technical expertise available to the Steering Committees. This expertise is supplemented as required by specialist consultants retained by the CYLC in areas such as environmental protection, cultural heritage management and legal drafting.

The third activity, added to the process as part of the Alcan and Comalco negotiations, involves the conclusion of a Memorandum of Understanding between the CYLC and the project proponent or mine operator. The memorandum establishes the 'rules of the game' in relation to the negotiation process, setting out in broad terms the goals of the parties. In particular it identifies the negotiators for both sides and specifies protocols for communication between the mining company and the community, establishes an agreed time frame on a 'best endeavours' basis, indicates what steps will be involved in the process and what studies and other activities these will require, and deals with funding of the process and with confidentiality. In relation to the last point, confidentiality provisions would normally apply to all parties, including traditional owners. This may place some limitation on their legal enforceability, given the large number of people who may be involved, but it does not usually undermine the main rationale for confidentiality provisions, which is to ensure that negotiations do not occur in the glare of the media.

As mentioned above, the CYLC is not funded by government to undertake negotiations on major projects. At the same time availability of adequate funding is critical to a successful negotiation effort. Specifically, when negotiations have progressed to an advanced stage and the 'hard' issues are being addressed, lack of funds can critically weaken negotiating positions, creating substantial pressure on Indigenous people to compromise so as to reach an agreement before funds are exhausted. In practice the response of Indigenous groups may be to use funds designated for other purposes to avoid compromising their bargaining position. This is a poor option because it may undermine critical elements of other community activities and create difficulties in meeting the accounting requirements of funding agencies. In any case it may provide only a breathing space rather than a solution. Thus, it is essential that funding arrangements be put in place at the beginning of the process to ensure that negotiations can be carried through until the end. The issue of funding for negotiations, including the implications of accepting financial assistance from project developers, is discussed in detail in a later section of the paper.

While the negotiation of a memorandum of understanding absorbs resources and can take a significant amount of time, it helps to avoid difficulties and tensions later in the process (and so saves both time and money) by ensuring that the parties have common expectations and an agreed upon set of ground rules from the outset. Ground rules in relation to channels of communication, for example, can help avoid 'divide and rule' tactics which some mining companies have a tendency to use, communicating preferentially with limited groups of Aboriginal people and offering them substantial benefits in order to gain their support for an agreement which represents a poor outcome for the community as a whole. Conclusion of a memorandum also removes any doubt as to the obligations of the parties, and its negotiation can be an important 'barometer' of good faith and of negotiating styles, providing a useful indication of what to expect when the main phase of negotiations commence.

Stage 3: Information Gathering and Community Consultation

The specific activities involved in this stage will depend on the nature of the project or activity involved. For instance, in the case of a new project the proponent will be required to undertake an environmental impact assessment (EIA) as part of the statutory approval process. This will usually yield extensive information on potential environmental impacts and on mitigation strategies which the Aboriginal community can use. On the other hand, when little relevant information is available in relation to existing mining operations which were not required to go through an EIA procedure when they were approved, studies may have to be commissioned to generate the information the Aboriginal community needs to address environmental management issues during the negotiation process.

In all cases, however, two major types of preparatory activity are undertaken. First, anthropological work is conducted. This is necessary to ensure that the CYLC has correctly identified the full range of Indigenous interests affected by a project and the people who can 'speak for country' in Aboriginal law and custom, and that these interests are adequately represented in the Steering Committee. It also identifies the estate groups affected by the project, the membership of these groups and the identity of key individuals within them for the consultants who will conduct community consultations (see below). This information allows the consultants to identify the population which should, ideally, be consulted, to identify key individuals who must be consulted, and to develop consultation strategies which can be effective while also recognising constraints of time and money. Finally, the anthropological work helps provide the basis on which the CYLC and the Aboriginal community will warrant that any agreement reached between them and the proponent has the approval of the appropriate Aboriginal people. Where agreements provide a basis for investing large sums of capital and/or involve resolution of native title issues, provision of such a warranty is obviously of critical importance to the proponent.

The second major type of preparatory work involves the conduct of an Economic and Social Impact Assessment (ESIA) (Holden and O'Faircheallaigh 1995 , Howitt 1996, O'Faircheallaigh 1999). This involves a process designed both to establish the impacts associated with, or likely to be associated with, a project and to express the aspirations and concerns of the Aboriginal community in relation to that project. The inclusion of 'Economic' in the phrase Economic and Social Impact Assessment is deliberate. The intention is not only to document social impacts and recommended mitigation strategies, as tends to occur with conventional social impact assessment undertaken as part of statutory approval processes. It is also to examine the extent to which Aboriginal people have shared in, or may be able to share in, economic benefits generated by major projects and to identify ways in which their share of benefits can be enhanced.

The ESIA is undertaken under the control of the Steering Committee and proceeds as follows. Consultants are appointed by the Steering Committee on the advice of the CYLC. Draft terms of reference are drawn up on the basis of the consultants' prior experience, revised after discussion with the CYLC and the Steering Committee (and possibly also with the proponent), and approved in final form by the Steering Committee. The Committee continues to exercise control throughout the process, both of the overall direction of the work and, if it feels necessary, the conduct of research in the community. As an example of the latter, on one occasion a Steering Committee was

unhappy at the way in which certain sensitive issues were being addressed by one consultant, and it required that a different approach be adopted. (For a general discussion of the issue of Indigenous control over social impact assessment processes, see Ross 1990 ; O'Faircheallaigh 1999).

The terms of reference set out the areas of economic and social impact which will be subject to research, and raise issues to be canvassed with the community. They are not intended to restrict the scope of the ESIA. Rather they provide a basis on which to proceed; it is expected that other issues will emerge as the research progresses.

Desk-based research and fieldwork are undertaken to develop a profile of the community and, in particular, to identify categories of people who may be affected differently by the project. Government and company documents are used to establish basic information in relation to the company involved, the project and its existing (or potential) impact. This work can be critical not only in providing information to community members, but also in placing the CYLC in a position to offer advice in relation to alternative negotiating positions and strategies.

Consultation then begins. It involves a series of meetings with specific groups within the community, most obviously groups associated with particular areas of land but also, for example, Aboriginal mine workers, partners of mine workers, young people, and community rangers whose responsibilities in relation to cultural heritage and environmental management give them a specific interest in certain mining impacts. In many cases individual discussions are held with key people within clan groups. The guiding principle in organising consultations is to ensure that their nature and timing reflect Indigenous preferences as closely as possible, given the available resources. The nature of those preferences vary depending on the communities and the groups involved. In some cases people have preferred to use estates as the basis of consultation, with individuals sharing attachments to particular areas of land coming together, often in a series of meetings, to identify issues, debate options and reach common positions of particular relevance to their estate. In other cases two estate groups which have close 'company' ties may wish to be consulted together, or members of a wider language group may wish to meet as a unit.

Limited resources represent a real constraint on the extent to which preferred consultation models can be applied. Most obviously, it is often not feasible to involve those members of a group who live outside the region because of the cost involved, a situation which can cause considerable uneasiness among community members and some suspicion among those who cannot attend. A fall back position is to involve a few senior people from outside the region who can at least provide symbolic representation and report back to others when they return home, and to fly in additional people at key points in the process, for instance, when the Steering Committee is formed and at the conclusion of an agreement.

The consultation meetings and discussions are used to document the actual or likely effects of project operations, as experienced or anticipated by community members. Frequently people's experiences are being documented for the first time, and the information they provide often offer profound insights into the effects of resource development and their implications for the negotiations. The consultations are also used to identify people's concerns and aspirations and to establish their priorities in relation to the project concerned, and to provide them with the information gained from desk-based research and initial field work. Provision of information by the consultants often elicits requests for further information from community members and triggers provision

of additional information by them for the consultants.

Additional desk-based research may be undertaken in response to specific requests for information or to issues raised by community members and not included in the original terms of reference. Initial proposals developed are aimed at maximising benefits and minimising costs associated with the project. These are discussed with groups and individuals in the community. In some cases alternative approaches are devised which appear more likely to satisfy the (at times conflicting) aspirations of various groups. Identification of such alternatives may create further demands for information required to establish their feasibility.

A draft ESIA report is prepared, workshopped in the Steering Committee and discussed in community meetings to ensure that it accurately and fully reflects community perspectives. A final report is then provided to the CYLC and the Steering Committee. This includes a community profile, factual information about the company and the project, an extensive and detailed discussion of impacts to date and of people's concerns and aspirations, a series of recommendations which offer concrete strategies for dealing with concerns and pursuing aspirations, and a summary of advice to the negotiating team. The report will usually also suggest a monitoring program for ongoing measurement and review of social and economic impacts (see for example Holden 1996 ; Holden and O'Faircheallaigh 1995 ; Howitt 1996 ; O'Faircheallaigh 1996a).

In some recent projects the conduct of the community-controlled ESIA has been integrated with the statutory approval process. As part of the latter, the proponent retains a firm, normally a major corporate engineering/ environmental consulting firm, to prepare an impact assessment study (Environmental Impact Statement or EIS under federal legislation, Impact Assessment Statement or IAS under Queensland legislation). The impact assessment study is then used by government when deciding whether or not to approve the project. In the past such studies (and statutory impact assessment processes more generally) have been seriously deficient in their treatment of Indigenous issues. Indeed, in some cases they have failed to address them in any substantive way (see, for example, Dames and Moore 1994 ; for a more general discussion of the inadequacies of statutory impact assessment processes from an Indigenous perspective see Lane and Dale 1995) .

When negotiating the Alcan project, the Queensland government, the CYLC and Alcan agreed that the component of the IAS dealing with Indigenous issues would be compiled by the Aboriginal community's own consultants, who would prepare a version of their ESIA Report, appropriately modified for public consumption, for inclusion in the overall IAS. This allowed the community to have a significant input into the statutory approval process, assured government and the proponent that they would not be accused of failing to adequately address Indigenous issues, avoided duplication of cost for the proponent, and avoided a situation in which the community might have been consulted by two different groups in relation to the same project.

While the conduct of anthropological work and of an ESIA are standard, it may also be important to undertake other preparatory work in particular circumstances. For instance, where mining operations are long established and substantial impacts have occurred on cultural heritage and the environment, specific studies may be needed in these areas to document impacts and to develop strategies for minimising these in the future.

Stage 4: Establishing a Negotiating Position

At this stage a draft Aboriginal negotiating position is prepared by the CYLC based on the aspirations and concerns documented in the ESIA and any other relevant reports. This expresses the position which the Aboriginal community wishes to put to the mining company as a starting point for negotiations. While comprehensive in terms of the issues it addresses, it is not a complex document. Rather it sets out in language which is neither technical nor legalistic the community's objectives in relation to the range of issues arising from the ESIA. The draft position is discussed by the Steering Committee and in community meetings and approved, subject to revisions if necessary. It is then provided to the company as a definitive statement of the Aboriginal community's position.

The establishment of a comprehensive and explicit Aboriginal negotiating position on the basis of extensive community consultations is at the heart of the process and has a range of important benefits.

First, it ensures that the perspectives and priorities of Indigenous people, rather than those of the developer, form the starting point for the negotiating process. The Indigenous position may, of course, be strongly contested by the developer, but it is always easier to defend a position which is clearly and strongly articulated as the first step in a negotiating process than to establish such a position in response to an agenda set by another party.

Second, in all subsequent discussions and negotiations the Aboriginal negotiating position represents a clear point of reference against which to gauge progress (or lack of it) and to test alternative proposals emanating from within the community, from its advisers or from the developer. It thus helps to ensure that the negotiation process is transparent and that community members are in a good position to make informed decisions. This greatly simplifies the task of achieving 'informed consent' for any agreement eventually hammered out between the negotiating teams. We return to these points in subsequent sections.

Third, the process leading to the establishment of a single, clear negotiating position involves a great deal of discussion and debate in the community. This helps to create an awareness of the issues at stake and to mobilise support for the community's negotiating effort. It also creates an opportunity to address any internal differences before negotiations with the developer commence. All of this helps to strengthen the community's negotiating position and its capacity to sustain that position under pressure.

At the same time as the negotiating position is established, the community decides who it wishes to conduct face-to-face negotiations with the mining company. To date this has involved combining the CYLC's negotiators with a number of traditional owners and community leaders chosen from the Steering Committee. Cost and the practical requirements of an effective negotiating effort dictate that this group be kept relatively small. Its task is to pursue the Aboriginal negotiating position, not to make decisions about varying that position or about accepting or rejecting a final position. Decisions of this sort are referred back to the Aboriginal community.

Stage 5: Conduct of Negotiations

Serious negotiations usually commence once the project developer or operator has responded to the Aboriginal negotiating position. Because each negotiation tends to display a unique dynamic, it is difficult to generalise about the way in which they are

conducted. For instance, negotiations on new projects facing tight construction deadlines linked to specific market opportunities are likely to develop quite differently to those involving existing projects which continue to function while negotiations are under way. Significant differences can also result from the attitude of traditional owners and community leaders. In some cases they may wish to be directly and extensively involved in negotiations; in others they may prefer the CYLC to deal with the detail and involve them only in relation to major issues.

In broad terms, however, the negotiations usually proceed through three phases, the first of which is largely technical. In the first phase extensive and detailed discussions occur after negotiating positions have been exchanged, as each side seeks to clarify the other's position, establish where there is common ground, and explore ways of achieving the objectives of each side which are more acceptable (or less objectionable) to the other. These activities are essentially technical, in that they do not involve decisions as to whether to depart from the basic negotiating position or about trade-offs between different components of that position. This first phase usually involves heavy input from the CYLC negotiators. Given that the community's negotiating position is clearly articulated, there is generally no need for the negotiators to seek further instructions, and communication with the Aboriginal community tends to involve provision of progress reports and reaffirmation of community support for the negotiating team. A need for more substantial involvement by community members may arise in some circumstances, for instance if the corporate participants do not understand or accept the way in which Indigenous negotiating positions have been established and seek to discredit them on the basis that they represent the priorities of the negotiators rather than of the community.

At the end of the first phase both sides tend to have a clear understanding of the other's position, many technical and procedural issues have been addressed, and the nature and extent of outstanding issues is clear. The second and critical phase is political in character. 'Bottom line' decisions have to be made, trade-offs between the community's various demands have to be considered, and principal-to-principal negotiations are required to achieve break-throughs on 'hard' issues. At this stage the CYLC's non-Aboriginal negotiators adopt a less active role, though they continue to provide advice. Negotiations mainly involve face-to-face contact between the full Aboriginal negotiating team, other community members and the project developer or operator. (The concluding session of one negotiation involved more than 30 Aboriginal people in direct discussions with company officials.) Assuming that the negotiation process is successful, this phase results in agreement in principle between the two sides on the key elements of the deal. Importantly, the contingent nature of any agreement reached at this stage is stressed by the Indigenous negotiators–they cannot enter into binding commitments without the formal approval of the Indigenous community and in particular of the traditional owners whose estates are or will be most directly affected.

The key elements of the deal are then referred to community meetings for consideration. If they are approved they may immediately be incorporated in a 'Heads of Agreement', especially where developers of new projects need to define their financial obligations in order to secure development funding.

The third phase now begins as this broad agreement is translated into a legally-binding document containing the level of detail which will later be needed to allow effective implementation and which is required to ensure that the rights and obligations of the parties are sufficiently specified as to be capable of protection or enforcement in law. This phase is also largely technical and much of the work again falls on the CYLC

negotiators, as successive drafts of (often lengthy and technical) contracts are exchanged and agreement is gradually achieved on the detail of a draft final agreement.

Stage 6: Endorsement and Signing of Final Agreement

Consideration of the draft final agreement involves its discussion in a community meeting or series of meetings, leading to its endorsement or to instructions for the negotiators to return to the table and make another attempt to shift the developer's position closer to that of the community's. The Aboriginal negotiating position is enormously helpful at this point of the process. First, the Aboriginal negotiating team and the CYLC advisers have a clear view of the extent to which the document they are recommending achieves the goals established in the negotiating position. They are unlikely to refer a draft agreement to the community unless it represents substantial progress towards those goals, and when they do so there is a strong likelihood that it will be accepted. This has in fact proved to be the case in practice.

Second, each component of the negotiating position can be compared with relevant sections of the draft final agreement, allowing people to see very easily how much has been achieved in relation to the goals which they themselves had earlier established. This enhances transparency and facilitates consideration of what is on offer. Items where people's goals have largely been achieved can be 'ticked off'. Discussion can then focus on the remaining issues where compromise has been required to achieve agreement. The extent of the compromise is clear by reference to the original negotiating position. The advisability of compromise can be assessed by relating this information to the gains which are available in areas where the community has fully achieved its objectives.

Once a final document has been approved, care needs to be taken to ensure that an appropriate symbolic, ceremonial event is organised, a point also noted by Senior (1998) in his discussion of the Yandicoogina process. Particularly where Aboriginal people have long been ignored by mining interests and have suffered the consequences of mining while gaining few of its benefits, the signing of an agreement is an occasion of considerable pride for traditional owners and community leaders, but also of sadness since some of those who experienced the bad times are no longer alive to experience the better times. In this context it is important to mark the occasion appropriately. Failure to conduct such an event can lead to considerable resentment even where there is strong support for the substance of the final agreement. It is sometimes difficult to get company officials to appreciate this point.

Stage 7: Implementation

Very little happens automatically as a result of an agreement being signed. Structures need to be created, roles allocated and resources applied if the provisions of an agreement are actually to be put into practice. For example, if community members have been guaranteed job opportunities on the project or its young people have been offered scholarships, the community will have to make sure that people know about these opportunities and actually take them up. If the community has membership on advisory or coordinating committees which help manage environmental and heritage aspects of the project, it will have to select representatives and put arrangements in place to ensure that these people have access to technical support and are aware of community interests and concerns. If the community has agreed to enter into a joint venture with the

developer, it will have to organise an appropriate business structure (such as an Aboriginal corporation) and obtain funding to meet its share of the costs of setting up the business. If royalties are being received from the project, the community will have to decide how these should be spent and how decisions should be made about their use.

It is not easy to pay attention to implementation issues when a community is in the throes of a negotiation process or even when an agreement is finally achieved. Negotiations require a lot of expense, effort and emotional energy on the part of Aboriginal communities, their leaders and their advisers. When the final negotiating session has finished, and a signing ceremony has been held, there is a natural tendency for the community to sit back and wait for the benefits of the agreement to start rolling in. The work of ensuring that such benefits actually materialise, however, is only beginning as the ink dries on the agreement. It does not matter how appropriate a model a community uses or how good an agreement it achieves–unless the agreement is actually put into practice, its efforts will be poorly rewarded. Implementation is therefore a crucial issue in relation to any negotiation process (Ivanitz 1998 ; Mulvihill and Keith 1989).

The significance of this point has become more evident in Cape York once agreements have moved into the implementation phase. As this has occurred greater emphasis has been placed on ensuring that the agreement itself contains some of the fundamental requirements to ensure effective implementation, and in particular that its provisions are unambiguous and concrete yet sufficiently flexible to allow for the unexpected; that it provides for funding of implementation activities and initiatives; and that it creates structures (such as a joint Aboriginal community–mining company co-ordination committee) whose *primary* purpose is to ensure that implementation occurs as planned.

The earlier in the process attention is paid to implementation issues, the easier it is to ensure that it occurs effectively. Thus it is essential that, while agreements are being negotiated, people think carefully about how they will be implemented and how the cost of implementation will be met. Yet during negotiations there are many other urgent issues which occupy people's attention and absorb resources. Ensuring that implementation issues are not ignored until after an agreement is signed and that implementation is funded in a just and sustainable manner represents one of the main challenges facing Aboriginal communities and their advisers.

General Issues Arising from the Model

Resources

The process outlined above is resource intensive, particularly as a result of the need to conduct community consultations at various points in the process, to commission consultancies and, more generally, to ensure access to information and to retain expert advice.

Ensuring sufficient funds is by no means easy. The CYLC provides considerable support through the general infrastructure of its staff and facilities, but it is not funded by government to meet the major direct costs involved in commercial negotiations. In the earlier Cape York project negotiations most of the funding had to come from the communities involved, which imposed significant hardships on them. More recently, substantial funds (though by no means enough to cover all costs) have been provided by the project developer or operator. This arrangement has its own drawbacks, however, particularly in that mining company funding may run out at a key stage in the

negotiations. As noted earlier, this may place the Aboriginal community under pressure to compromise on key issues so that an agreement can be completed before funds are exhausted.

There is no evidence that the use of mining company funds has compromised the independence of CYLC staff or consultants, a potential drawback associated with the use of company funding. There has been no indication at all, for instance, that consultants have been inclined to 'pull their punches' or, it should be added, that the companies involved have tried to persuade them to do so. This outcome reflects structural factors which mean that the Aboriginal community does not have to rely on the willingness or capacity of individual consultants, or on the ethical standards of proponents, to maintain the consultants' professional independence. In particular, there is little direct contact between the consultants and the company providing the funds because of the mediating role of the Steering Committee and the CYLC. Further, the appraisal of the performance of consultants, which greatly affects their prospects for future employment, is conducted by the Steering Committee, the CYLC and the wider Aboriginal community, not the proponent.

ATSIC has recently provided funding to assist a number of negotiations in Cape York as well as some others elsewhere in Queensland, most notably in the Century agreement. As well, ATSIC may provide some further support in situations where developers have shown a willingness to bear a significant part of the costs. ATSIC's resources are limited, however, and there are many competing demands on them. Both the state and federal governments derive very substantial financial benefits from mines established on Aboriginal land which has led to a strong argument that they should facilitate project development by providing an ongoing source of funding for negotiations. This could take the form, for example, of a fund which received a proportion of statutory royalties from mines operating on Aboriginal land. Appropriate mechanisms could be put in place to ensure that such a fund did not become a vehicle for politically-motivated government intervention in negotiations. To date, however, federal and state governments have shown little inclination to take an initiative of this kind.

When considering the costs involved in the Cape York model, a number of other important points need to be borne in mind. Most importantly, to date the investment of resources involved has paid very substantial dividends. This investment helps to ensure strong community support and access to information and to expertise. There is a direct relationship between these factors and the sorts of outcomes achieved from a negotiation process. In the Cape Flattery negotiations, for instance, the Hope Vale community achieved one of the highest non-statutory royalty rates for an operating mine on Aboriginal land in Australia. The increased royalty it obtained over the first six months of a new 21 year mining agreement was sufficient to repay its entire expenditure on the negotiations. The community also achieved significant progress towards non-financial goals in areas such as cultural heritage protection, environmental management and access to country. It is not possible to achieve outcomes of this sort without making a substantial investment.

Second, a major reason why the process is resource intensive is because of the focus placed on ensuring that informed consent is achieved from the full range of affected Aboriginal interests (see next section). Informed consent is critical to the stability of an agreement and also of the company's investment. It must be obtained if the parties are not to find themselves, at a later date, embroiled in expensive disputes and litigation. Achieving a community's informed consent is not cheap, especially in a cross-cultural

context, but money spent here can save a great deal of money later on.

Third, where it proves impossible to obtain the financial resources required the process can be adapted accordingly. Less extensive consultation can be conducted, or certain steps in the process can be omitted (such as the negotiation of a memorandum of understanding). The benefit of the model in this situation is that it creates an awareness of exactly what is being lost by such adjustments and allows, to the extent possible, development of strategies to deal with this.

Informed consent

Informed consent represents a critical issue in relation to negotiations between mining companies and Indigenous people. For the mining company, a major reason for entering into negotiations is to achieve a warranty (from the native title holders and also in some cases from the NTRB) against possible future legal actions which might adversely affect its operations. The value of any such warranty depends on the extent to which all relevant native title parties are involved in providing it, and on the degree to which they do so on the basis of full and correct knowledge of the implications of the proposed development, of what they are providing to the company, and of what they are achieving in return. Otherwise, some native title parties may later mount legal challenges on the basis that they were misled as to the ramifications of the development project and the agreement. An additional consideration for the NTRB is that its credibility is at stake both with its own constituency and in relation to future negotiations with other developers.

A failure to adequately inform or consult interested Aboriginal parties can thus have serious ramifications for all those involved. A number of major issues must be addressed in seeking informed consent from Aboriginal people affected by a large project. The first is that the composition of the relevant Aboriginal 'constituency' may not be obvious because of uncertainty about the scope of impact, the relationship between specific groups of people and particular areas of land, and the legacy of earlier dispossession and dislocation which affects many parts of Cape York.

Second, the cross-cultural context can create particular problems. Many of the CYLC consultants and negotiators who are responsible for disseminating information, canvassing options and seeking approval for negotiating position are non-Aboriginal; almost all are unable to speak local Aboriginal languages. They must seek to communicate information which is often highly technical to Aboriginal people who often have limited formal education and for whom English is frequently a second language and in some cases a third or fourth one. Aboriginal people in their turn must try to convey information and insights to non-Aboriginal consultants who lack the cultural and linguistic knowledge to readily absorb them. The potential for people to be speaking at cross purposes is obvious. More seriously, unless a concerted effort is made to ensure otherwise, there is a possibility that Aboriginal perspectives will be subsumed given that the overall context within which mining projects are conceived, promoted and evaluated is derived from the dominant non-Aboriginal society.

A major advantage of the Cape York model is that it provides a strong basis for seeking to involve all relevant parties and to ensure that the consents and warranties they provide are fully informed. The anthropological work, the operation of the Steering Committee, the ESIA and the process for obtaining approval for the negotiating position and any final agreement provide a substantial degree of assurance that all interested

parties will be incorporated. The ESIA ensures that information on the project and on the options which people face in relation to it is widely disseminated and that Aboriginal people have been given extensive opportunities to articulate their aspirations and concerns, seek additional information and themselves feed information into the consultation process. The ESIA, combined with the preparation of the Aboriginal negotiating position and its endorsement by the community, means that people should have a clear understanding of the basis on which they enter negotiations. The capacity to compare the position achieved on each major issue in the negotiations with the position on that same issue contained in the initial Aboriginal negotiating position allows people to see exactly what the negotiating team has succeeded in 'winning' and what they have not been able to achieve. Community ratification of a draft agreement on the basis of its relationship to the original negotiating position represents the final step in the process of obtaining informed consent.

To phrase this somewhat differently, the Cape York model focuses heavily on being inclusive and transparent. As such it maximises the possibility, within the constraints created by limited resources and the need to work in a cross-cultural context, that by the time a final agreement is signed relevant parties will have provided their consent in an informed manner.

Issues of Timing

Issues of timing are critical when a model of the sort illustrated above is actually put into practice. In an ideal world sufficient time would be available to complete each stage of the process before beginning the next. For example, the anthropological work would be completed before the ESIA commenced, ensuring that the ESIA consultants had access to the information they needed to ensure that that community consultations are appropriately targeted and comprehensive. Similarly, the ESIA would be completed before negotiations commenced, ensuring that the negotiating team had access to comprehensive information on the project and on the Aboriginal community's aspirations and concerns in relation to it.

There may be little difficulty in achieving such an 'ideal' sequence in relation to existing mining operations where the operator can continue to extract minerals in the quantities required while preparations and negotiations proceed. This has, in fact, been the situation in a number of cases to which the Cape York model has been applied. Where a new project is being developed, however, the time constraints facing developers, and the time lines specified for statutory project approval processes, may appear to render a sequential approach impractical. The project as a whole may have to be completed within a tight time-frame in order to meet contractual obligations or grasp market opportunities; developers may need to achieve certain milestones before the next stage of the project proceeds. For instance, agreement-in-principle with Aboriginal people may be required before major project financing can be arranged. Similarly, there may need to be an interface with statutory project approval processes which have pre-determined time frames (see above). In some cases there may also be considerations arising from wider Indigenous political agendas, such as when additional benefit can be gained by announcing the successful conclusion of a particular negotiation at a strategic point in time.

In certain cases time constraints suggested by developers or by administrative or legislative frameworks can be ameliorated in practice. As indicated earlier, the time pressures potentially associated with the right-to-negotiate provisions of the NTA may

be eased substantially by undertaking substantial components of the process prior to the issue of Section 29 notices. Time frames associated with some statutory processes may, on examination, owe more to arbitrary administrative decisions or to bureaucratic caution rather than to 'real' considerations affecting project economics. They may be extended as a result of negotiation based on the capacity of Aborignal organisations to create problems for government and developers by refusing to participate in community consultations required before statutory project approvals can be given. In effect, the time frames are often negotiable.

Where 'real' time constraints do exist, however, the obvious response is to seek ways in which stages of the model that would normally be sequential are allowed to overlap. For instance, studies may commence before the memorandum of understanding has been finalised. The anthropological work may be completed in stages, with the ESIA consultants being given general advice as to the estates affected and the groups involved so that work on organising consultations can begin prior to receiving details of the various groups. Negotiations may also commence prior to the completion of the ESIA, either on the basis of preliminary advice from the consultants about key issues which are emerging from the consultations and community attitudes to them, or on the basis that negotiations can commence on matters which are clear cut, and turn later to issues on which additional research, consultation and community discussion are required. In relation to this latter point, issues relating to recognition of Indigenous title to land and to financial compensation may be clear cut (and of critical importance to both parties). These may be 'fast-tracked' in the negotiations. In the meantime, preparation may continue in relation to more complex issues which require research and 'internal' negotiations between sections of the community, for example, environmental management regimes.

Each of these strategies carries with it a degree of risk, most obviously in that acting without complete information involves a chance that actions will be taken which are then difficult to reverse if additional information indicates that an alternative course of action would have been preferable. For instance, a group may be inappropriately included in the consultations because of insufficient information on the scope of project impacts and/or on links between that group and a particular estate. It may be extremely difficult to subsequently exclude such a group, yet its inclusion may cause a negative response from other groups. Where negotiations commence on one set of issues ahead of the rest, there is a danger that Aboriginal bargaining power will be reduced because the developer has achieved its key objectives in the early phase of negotiations. Alternatively, opportunities for trade-offs which would have secured an optimal outcome may be lost because the issues involved have been negotiated in isolation.

While recognising these risks, it should be stressed that adapting the process so as to comply with company time lines can also allow Indigenous people to make substantial gains. A developer facing large losses if a project is delayed will usually be happy to offer a quid-pro-quo in return for a demonstrated capacity by Aboriginal people to modify negotiation processes so as to save time. Gains achieved in this way may also create wider benefits by establishing specific precedents which can be used in other negotiations but also by promoting a view of Aboriginal people and their Representative Bodies as pragmatic and flexible, encouraging other project developers to deal with them.

The benefit of a model of the type outlined above is that it both assists in identifying those areas in which it may be possible to save time, highlights the potential drawbacks

associated with doing so, and provides a basis for developing strategies to minimise any potential disadvantages.

Maintaining community participation

The Cape York Model as a whole is structured to ensure maximum community participation in the negotiation process. Ensuring that the community stays involved at every stage still poses a challenge because of the cost of travel and communication in Cape York and the limited resources available to the CYLC. Problems do not tend to arise during the preparatory stages or while the negotiating position is being developed because there is intense interaction between CYLC staff and consultants and a large number of community members. Because there are fewer opportunity for contact during the 'technical' phases of the negotiating process, which can be prolonged, some community members may feel at this stage that they are not being involved. Ironically, it is in part the very strength of the model which creates this situation–the community's negotiating position is so well defined that there is little obvious need for the negotiators to refer back to it. In this situation the Steering Committee has a key role to play, as do land council field staff, assuring community members that the relative paucity of contact does not represent any substantive problem in relation to the course of the negotiations.

The concept of 'community' and the negotiation process

The concept of 'community' is used widely (and has been used in this paper) to describe the Indigenous participants in negotiation processes. It is essential to recognise that this concept, which indicates a substantial degree of coherence and similarity of interest, may in reality be problematic when applied to some of the Indigenous groups which negotiate with mining companies. Quite apart from the range of interests and views found in any 'community', Indigenous or non-indigenous, many of the towns or villages in which Aboriginal people live in Cape York were created by missionaries and/or state governments with no reference to the wishes of their Indigenous inhabitants, or to Indigenous social and cultural factors. In several cases numerous distinct social and linguistic groups have been forcibly relocated to a single settlement, giving little basis for regarding these groups as sharing a single and coherent 'community interest'. To cite just one factor which can create a divergence of interests, settlements may include traditional owners of the land which is being or will be mined and other groups whose traditional lands are distant from mining operations and will be unaffected by them.

When planning and conducting a negotiation process, it is essential to recognise the multiplicity of interests within any Indigenous population and respond to it in a proactive manner, rather than to assume that a 'community interest' exists which can be 'discovered' through a consultation process. The model outlined earlier facilitates a proactive approach in a number of ways.

First, the ESIA process can be utilised to identify different categories of people who are affected, or may be affected, differently by the resource project. This in turn forms a basis on which to identify specific groups and interests within the Indigenous population and to establish their distinct aspirations and concerns. Second, the Steering Committee or equivalent body can be constituted so as to provide representation to as many of these specific groups and interests as possible.

Third, the consultation process can be used to give all relevant groups and interests an

opportunity to articulate their (possibly conflicting) positions on key issues, and then to assist them to identify strategies and positions which allow any conflict to be managed, if not resolved. Such strategies might involve, for example, the development of agreed protocols about decision-making on key negotiation issues. For instance, it might be accepted that traditional owners should have the final say in relation to environmental and cultural heritage issues affecting their land, but that all community members have an equal say on issues related to social impact mitigation and infrastructure provision. Another important strategy is to work on developing a consensus regarding access to any benefits generated by a negotiated agreement. By way of illustration, access to business development opportunities might be made available to all residents, whereas a component of royalty payments might be invested specifically for the benefit of the traditional owners of mined land.

I do not suggest for a moment that it is easy or simple to ensure that divergent interests are articulated and that strategies are developed to manage conflict. Indeed in some cases the most difficult negotiations are those among Indigenous people themselves, rather than between them and the project developer. It is tempting to delay dealing with these difficult 'internal' negotiations given the often urgent need to prepare for negotiations with the developer or with government. Unless the need to deal with them is clearly recognised and integrated into models of project negotiation, however, the prospects for achieving positive agreements will be substantially reduced. Also, the chances of achieving successful implementation of agreements will be dramatically reduced–conflicts which are not identified and managed may remain dormant while the need to maintain a 'united front' in negotiations with the developer is at a premium, but they are likely to emerge as soon as the ink on an agreement is dry.

The Model's Capacity to 'Deliver',

Any evaluation of a negotiating model must rest to a substantial degree on the outcomes achieved relative to the goals established by Aboriginal people.

It is difficult to document outcomes relative to objectives because both the negotiating positions established by Aboriginal groups in Cape York and the content of agreements reached with mining companies are confidential. Still, the following points can be made. The model has to date facilitated the negotiation of four agreements which are comprehensive in scope and substantial in terms of the financial and other benefits they offer, relative even to agreements negotiated under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). Cape York agreements contain some of the highest non-statutory royalties applied to mining on Indigenous land anywhere in Australia. They are also distinctive in terms of the extent and the specific and binding nature of their employment and training provisions, and in the degree of participation they allow Aboriginal landowners in the management of issues which are of particular significance to them, such as environmental protection and cultural heritage management. On a more specific note, the ESIA undertaken for the Hopevale–Cape Flattery negotiations has been published (Holden and O'Faircheallaigh 1995), and the major features of the Cape Flattery Agreement are widely known. A comparison of the ESIA and the Agreement shows that the issues raised by Hopevale people through the ESIA were addressed in a very substantive way in the Agreement (O'Faircheallaigh 1999).

Thus, in the Cape York context, the model has demonstrated its capacity to deliver major benefits to Indigenous people. It does so in a way which gives them a high degree of control over the process, a critical issue in a context where an inability to exert

control over issues and processes which affect them has been the hallmark of Indigenous relationships with the wider non-indigenous society.

NOTES

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2. Professor Ciaran O'Faircheallaigh works in the School of Politics and Public Policy at Griffith University in Brisbane. He has acted as a consultant and negotiator for the Cape York Land Council since soon after its inception, and performed these roles in relation to the projects discussed in this paper. E-mail address: Ciaran.Ofaircheallaigh@mailbox.gu.edu.au

3. The existing literature tends to focus on the content of agreements which emerge from negotiation processes (Holden and Duffin 1998 ; O'Faircheallaigh 1995 ; Stephenson 1997) or on the legal context within which they occur (Horrigan and Young 1997 ; Keith 1997). There has also been some general discussion on requirements for successful negotiation outcomes (O'Faircheallaigh 1996b), and on process issues relating to negotiation of regional agreements (O'Faircheallaigh 1998). There are very few examples of a complete model which can be applied in pursuing negotiated project agreements; one such model is the focus of this paper.

4. Since the purpose of this paper is to outline the model of project negotiations developed to date, the issue of what modifications might be required is not pursued in detail here. Nonetheless, two areas in which government involvement could have major implications are discussed towards the end of the paper. The first is access to funding, where government participation could have a positive effect; the second involves time frames, where the involvement of a third party bound by public sector accountabilities could reduce the capacity of Indigenous communities and project developers to negotiate mutually acceptable time frames and achieve important trade offs in the process.

5. For ease of presentation and discussion these stages are described here as distinct from one another and as together forming a linear process, but this will rarely be the case in practice. For example, the anthropological work is both critical and time consuming, and while it is included here in Stage 3, 'Information Gathering and Community Consultation', it may well commence during Phase 2; as well, additional anthropological work may be required immediately prior to Stage 6, 'Endorsement and Signing of Final Agreement'. Information gathering and community consultation, while concentrated in Stage 3, will also occur at least intermittently during Stages 2, 4 and 5.

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