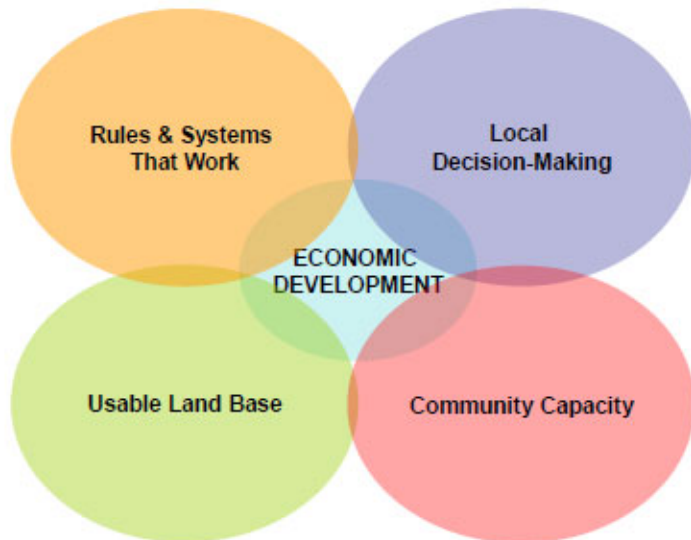


Statutory land use planning in Cape York

the make or brake of the local and regional economy

*Dr Sharon Harwood and Mr Ed Wensing (FPIA)
Centre for Tropical Urban and Regional Planning*



Overview

My particular research interests are about land use planning and economic development in Aboriginal settlements in Far North Queensland and Cape York Peninsula. Ed's particular research interests are on the intersections between contemporary and conventional land use and environmental planning and Aboriginal and Torres Strait Islander statutory land rights regimes and native title rights and interests.

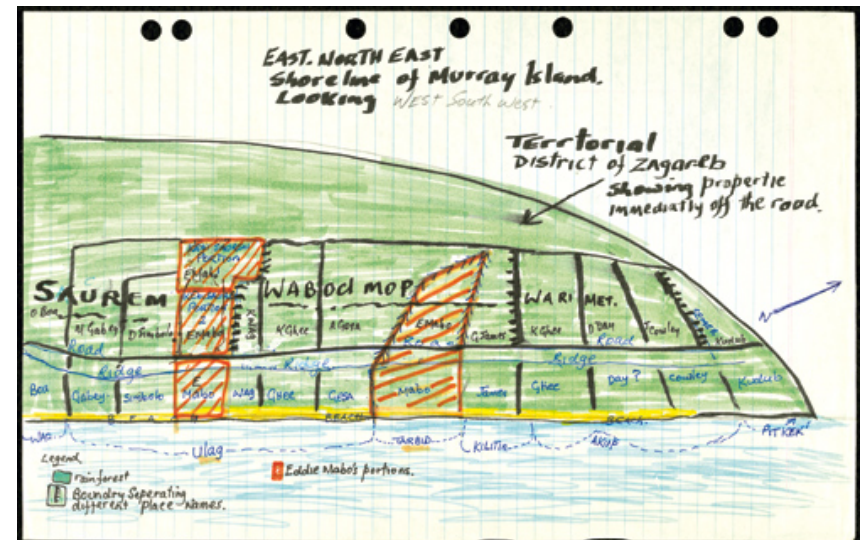
So far what we have found is:

1. There is a disjunct between the land administration system, statutory land use planning (at local, regional and state scales) and the aspirations of Aboriginal people for economic and cultural development, which is leading to conflicts.
 2. Ed and I have concluded that a place-based approach is critical to sorting through these conflicts. This is nothing new and for more than 10 years there have been calls for changes – with little response from the planning profession and even less response from state and local government authorities, until very recently.
- I would firstly like to demonstrate what I mean by a disjunct by using an example of Lot 6 on SP140905 – within the boundaries of Mapoon Aboriginal Shire Council.
 - I will then provide an overview of what we mean by place-based planning by using a diagram to describe the characteristics of the approach.
-

Defining the Disjunct

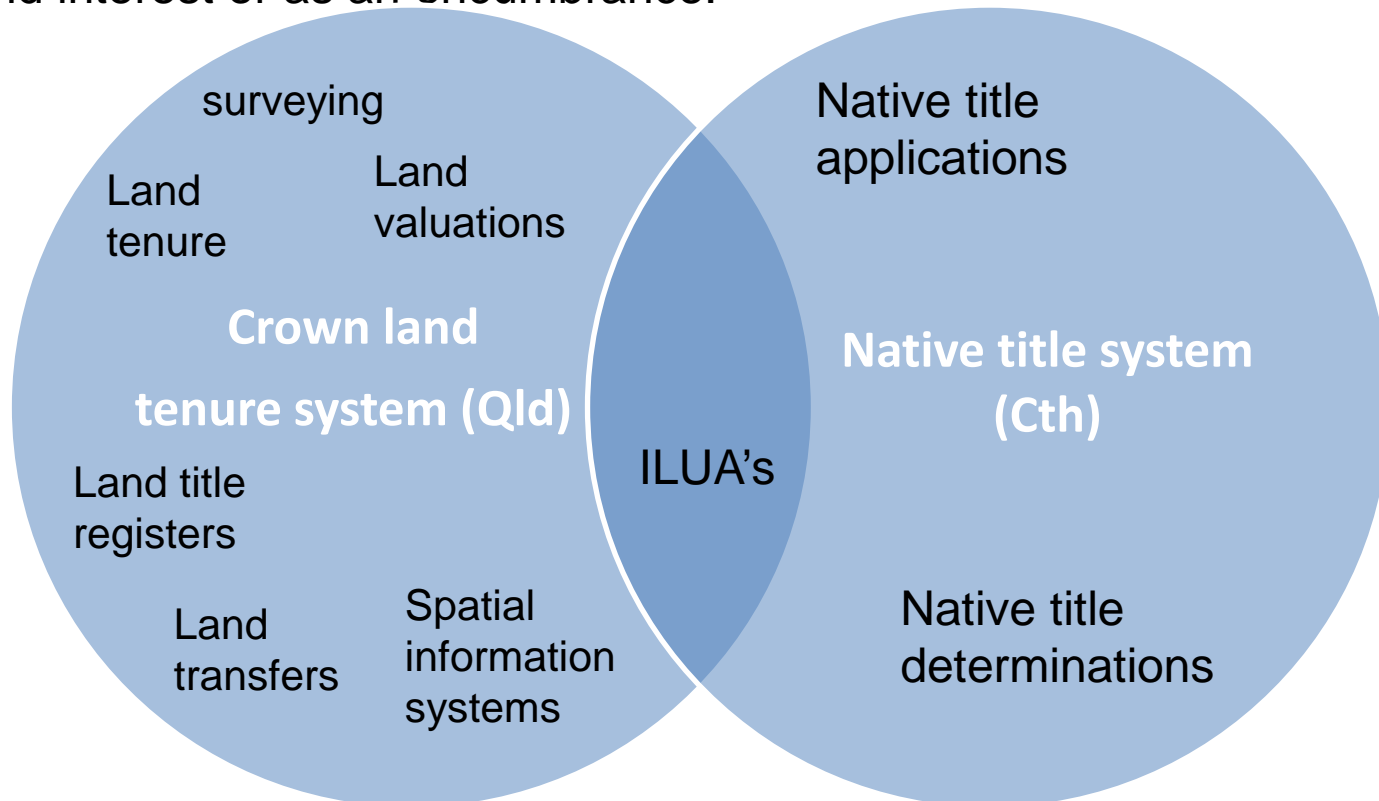
There are several systems at play – the Crown’s land tenure system (including land title registers, surveying and spatial information systems, land valuations); the native title system (including a system for registering applications, determinations and ILUAs); the Western land use planning systems (operating at state, regional and local levels) and Indigenous Planning systems.

These operate in an almost mutually exclusive fashion, yet all influence the ownership of land and how decisions are made about the use and preservation of resources contained on land parcels.

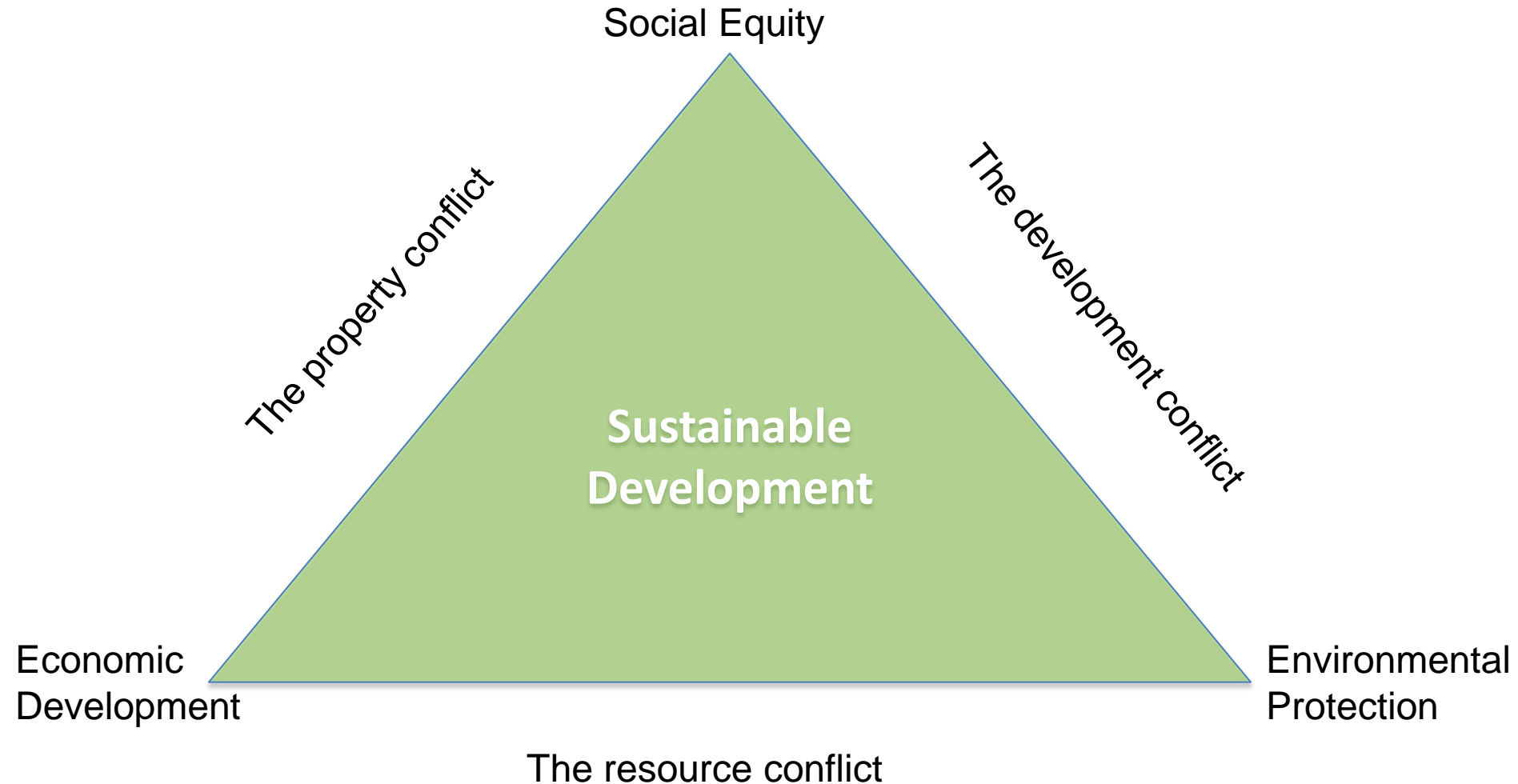


Land Administration

The Crown's land tenure system (including land title registers, surveying and spatial information systems, land valuations) and the native title system (including a system for registering applications, determinations and ILUAs). ILUA's and Native Title determinations are not listed on the land title register as a separate right and interest or as an encumbrance.



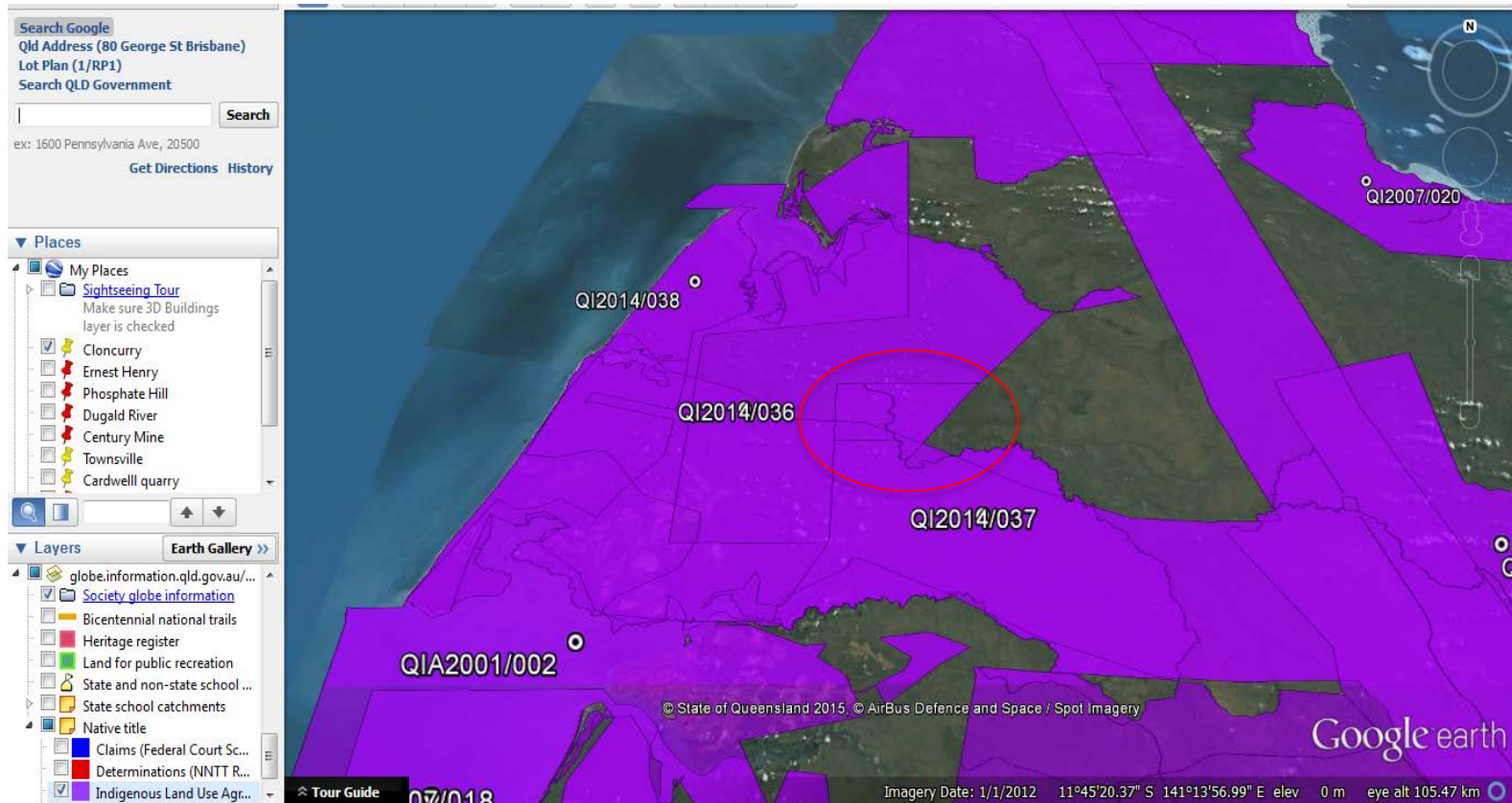
Western Land Use Planning



Indigenous Planning



Lot 6 on SP140905



Determination made on June 20 2014, RNTTPBC is Mokwiri Aboriginal Corporation

Tenure: freehold or freehold?

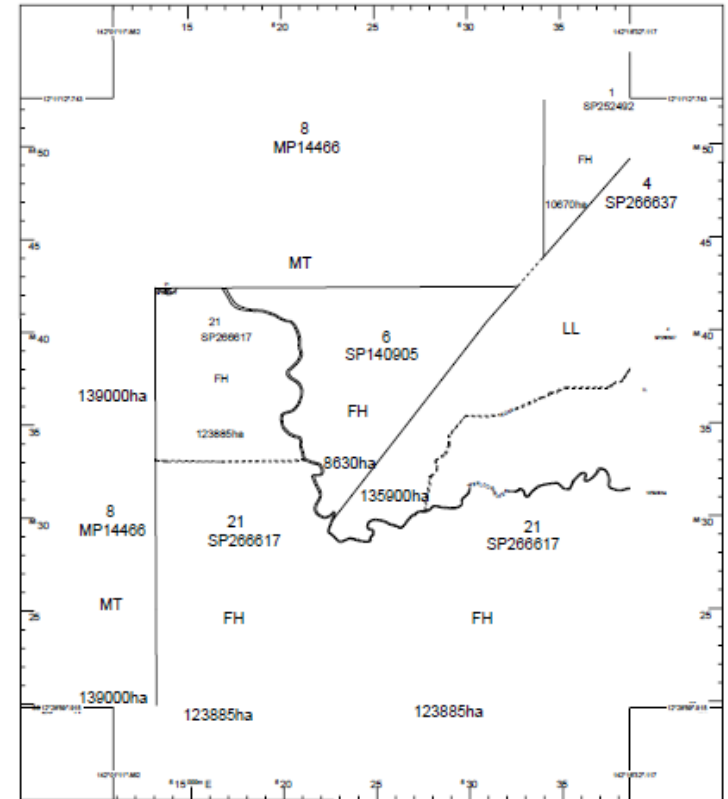
According to Queensland Globe the tenure of the lot is described as Freehold.

We know this to be incorrect, but the land administration system represents Aboriginal Freehold Land as Freehold land – the two systems of land tenure are quite different. Aboriginal Freehold is not inalienable and cannot be made subject to mortgage.

I have not been successful in gaining access to the REAL tenure database to identify lands owned by Aboriginal Land Trusts.

This lot is subject to an exclusive possession native title determination.

(Coconut on behalf of the Northern Cape York #2 Native Title Claim Group v State of Queensland [2014] FCA 629).



STANDARD MAP NUMBER
7375-21342

SmartMap
An Online Platform of
Spatial Information Services
Based upon an extension from the
Digital Cadastral Data Base

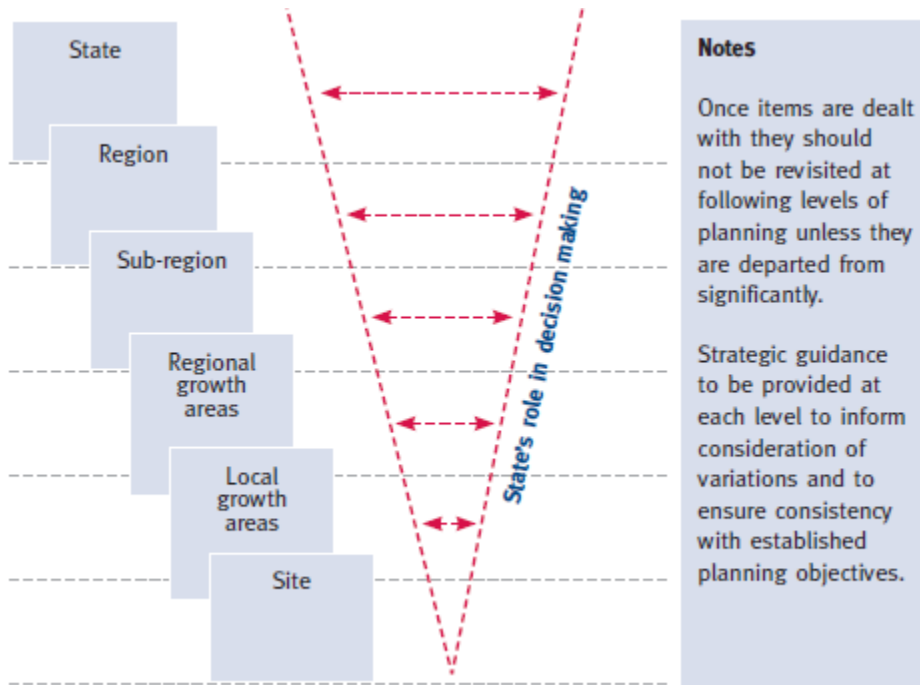
SUBJECT PARCEL DESCRIPTION	CLIENT SERVICE STANDARDS
DCSR: 14/08/08 Lot/Office: 8614/088 Area/Volume: 8630ha Tenure: FREEHOLD Local Government: MURCHISON ABORIGINAL SHIRE Locality: MURCHISON County: CLAYTON RIVER Region/Parish: 8114/003	(PRINTED 14/08/2018 15:46:02) DCSR: 15/06/2018 (Code with an area less than 5,000ha are not shown) Users of the information recorded in this document (the information) accept all responsibility and the associated risk for use of the information and do not accept any responsibility for any errors or omissions made in relation to this property. Details: Description of Interest: Freehold and Other (2018/18) (see office 14/08/08) Information on or available to relation to the information, and, to the extent permitted by law, results in a list of appropriate details to conditions, accuracy, reliability, completeness or currency and of details for any errors, omissions and omissions, errors, losses, damages and expenses that may be incurred by the user of the information in relation to the information. For further information on SmartMap, please visit http://www.qld.gov.au/smartmap/

GDA



(c) The State of Queensland,
(Department of Natural
Resources and Mines) 2015.

Sustainable Development SPA style



Explanation of terms used in *ecological sustainability*

For section 8—

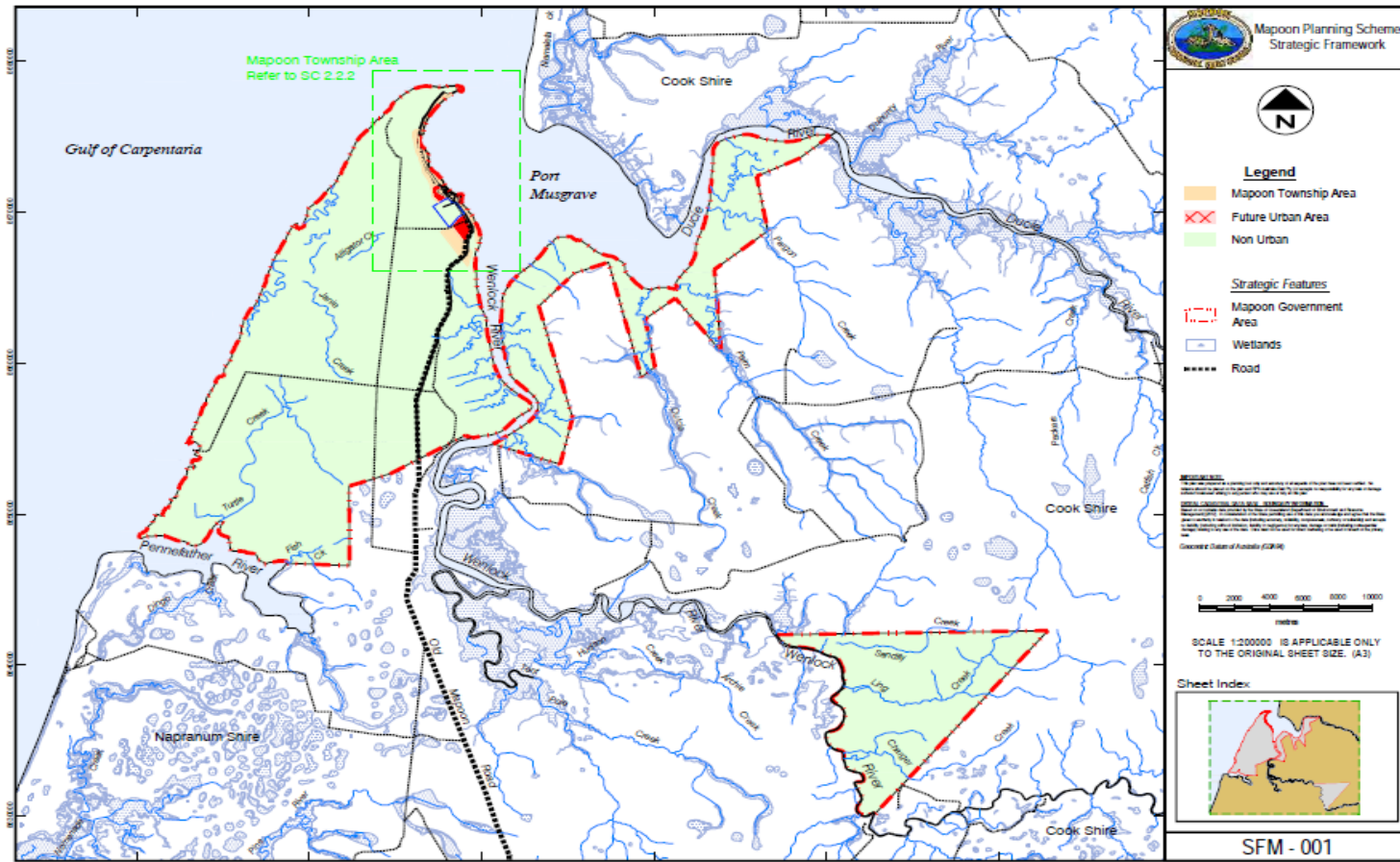
- (a) ecological processes and natural systems are protected if—
 - (i) the life-supporting capacities of air, ecosystems, soil and water are conserved, enhanced or restored for present and future generations; and
 - (ii) biological diversity is protected; and
- (b) economic development takes place if there are diverse, efficient, resilient and strong economies (including local, regional and State economies) enabling communities to meet their present needs while not compromising the ability of future generations to meet their needs; and
- (c) the cultural, economic, physical and social wellbeing of people and communities is maintained if—
 - (i) well-serviced and healthy communities with affordable, efficient, safe and sustainable development are created and maintained; and
 - (ii) areas and places of special aesthetic, architectural, cultural, historic, scientific, social or spiritual significance are conserved or enhanced; and
 - (iii) integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction are provided; and
 - (iv) potential adverse impacts on climate change are taken into account for development, and sought to be addressed through sustainable development, including, for example, sustainable settlement patterns and sustainable urban design.

Ecological sustainability is a balance that integrates (SPA 2009) —

- (a) protection of ecological processes and natural systems at local, regional, State and wider levels; and
- (b) economic development; and
- (c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.

Mapoon Aboriginal Shire Council Planning Scheme

Adopted in December 2014



In the Mapoon Aboriginal Shire Council planning scheme, the area is described as within the Environmental Management and Conservation zone. This means that the area is available for cropping and animal husbandry... but then have a look at how the zone code plays out..

Table of Assessment

5.5.3 Table – Environmental Management & Conservation Zone

Use	Level of assessment	Assessment criteria
Animal Husbandry	Self assessment	
	All circumstances	Environmental Management & Conservation Zone Code
Animal Keeping	Code assessment	
	All circumstances	Environmental Management & Conservation Zone Code
Carpark	Self assessment	
	If located in the Recreation/Historic Precinct	Environmental Management & Conservation Zone Code
Cemetery	Code assessment	
	All Circumstances	Environmental Management & Conservation Zone Code
Cropping	Self assessment	
	All Circumstances	Environmental Management & Conservation Zone Code
Home Based Business	Code assessment	
	If: Located within an existing Dwelling House or Dwelling Unit	Environmental Management & Conservation Zone Code
Substation, Telecommunications Facility, Utility Installations	Code assessment	
	If provided by a public sector entity	Environmental Management & Conservation Zone Code
Market	Code assessment	
	If located in the Recreation/Historic Precinct	Environmental Management & Conservation Zone Code
Park	Self Assessment	
	All Circumstances	Environmental Management & Conservation Zone Code
Permanent Residential Accommodation Activities, being only: • Caretakers Accommodation; • Dwelling House	Code Assessment	
	If: • located in the Recreation/Historic Precinct; or • for a Dwelling House where replacing/improving an existing structure	Environmental Management & Conservation Zone Code
Impact assessment		
Any other use not listed in this table. Any other undefined use.		The planning scheme

6.2.3.2 Purpose for Environmental Management & Conservation Zone Code

- (1) The purpose of the Environmental Management & Conservation Zone Code is to provide for the protection and maintenance of areas identified as supporting significant biological diversity and ecological integrity;
- (2) The local government purpose of the code is to:
 - (a) ensure that all areas contained within the zone are primarily protected from inappropriate development, to ensure that the ecological and important cultural values of these areas (for example the Mapoon Mission) are maintained in perpetuity
 - (b) Where development occurs, any such development recognises and addresses the physical and environmental constraints of the land.
- (3) The Planning Scheme further divides the Environmental Management and Conservation Zone into the following:
 - (a) Recreation & Historic Precinct
 - (b) Water Infrastructure Precinct

6.2.3.3 Overall Outcomes for Environmental Management & Conservation Zone Code

- (1) The overall outcomes sought for the zone are as follows:
 - (a) Areas identified as having significant environmental values for biological diversity, water catchment, beach protection or coastal management are protected from the negative impacts of development;
 - (b) Development acknowledges and is responsive to the natural features of the site such as vegetation, coastal protection, slope and flooding;
 - (c) The scenic amenity of land in the Environmental Management and Conservation Zone is not diminished by development;
 - (d) Activities undertaken by recognised traditional owners in accordance with traditional owner custom and practise maybe considered;
 - (e) Animal Husbandry can occur anywhere within the zone where the activities maintain the integrity of the Water Infrastructure Precinct;
 - (f) Low intensity development based on the appreciation of the significant values of the area maybe facilitated where a demonstrated community need exists and is consistent with the management intent for the area;
 - (g) Opportunities for economic development relating to mineral resources or extractive industries within the zone maybe established where the environmental, cultural and community values are able to be addressed;
 - (h) Nature based tourism, outdoor recreation and community activities are considered suitable

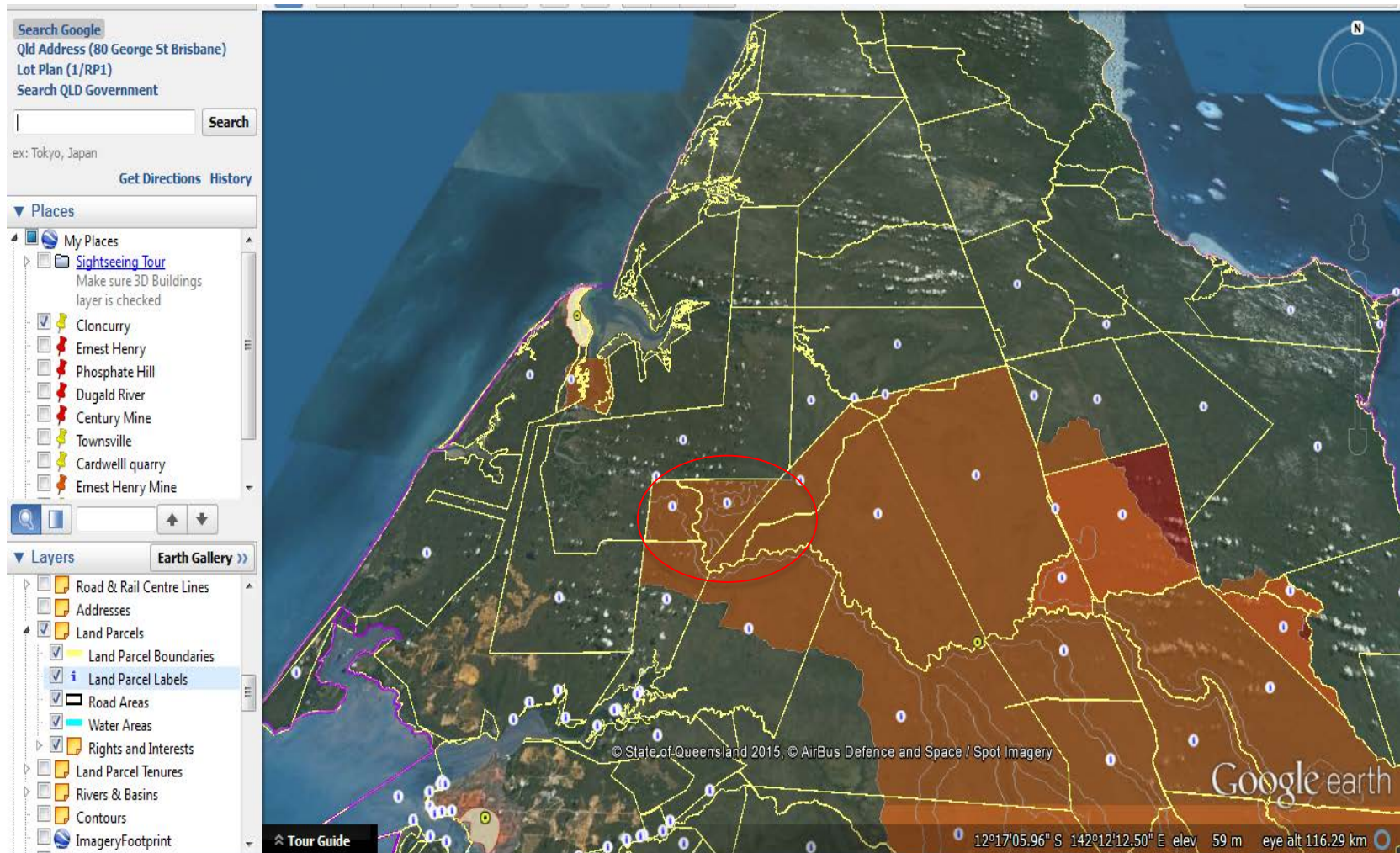
Permitted Economic Activity at the local level

- According to the zoning – you can run cattle, do intensive cropping and have a park without triggering council assessment. However, animal keeping, cemetery and utilities (only where provided by public sector as opposed to private) are Code Assessable. Despite the fact that the native title determination specifically says that traditional owners can be buried on this land.
 - Note, it also says that mineral resources or extractive industry may also occur...
 - None of the uses that are listed in the Zone code (such as nature based tourism, outdoor recreation and community activities or indeed mineral resources and extractive) match with the Table of Assessment.
-

The impact of the Cape York Regional Plan?

- Then we start to add other layers – such as the Cape York Regional Plan, which in turn, triggers the *Regional Planning Interests Act 2014* (Qld) (<http://www.dlg.qld.gov.au/planning/regional-planning/regional-planning-interests-act.html>)and it becomes a designated precinct .
 - This means that the area can no longer be used for cropping or mineral resource development.
 - Consequently, the land is only zoned for animal husbandry.
-

Designated Precinct



About the CYRP

The Cape York Regional Plan (CYRP) was prepared as part of the Queensland Government's overall land use planning responsibility to guide the economic, social and environmental outcomes of development on the Cape (State of Queensland 2014). The plan is regarded by the State Government as one of its 'new-generation' regional plans and is aimed at creating strategic, long-term land use certainty in the region, especially for economic development.

The Plan's Vision is that:

The people of the region, industry and government work collaboratively to support sustainable economic development of the region, providing benefits for communities through employment opportunities, access to services and new local industry.

The region's unique and diverse environmental values are protected and enhanced, with the liveability of the region's towns improved through increased prosperity. Sustainable economic development, protection of environmental areas and enhancement of the cultural values of Indigenous people culminate in Cape York's distinctive regional identity. (State of Queensland 2014:17)

Our Analysis

The CYRP identifies areas that possess significant biodiversity values and or areas of cultural heritage. These are mapped in the ‘Significant Environmental Area’ (SEA) land use category and affects land that has been determined by the Federal Court of Australia to be subject to native title rights and interests. There are no strategies in the CYRP that describe how these lands should be managed or by whom. Moreover, an additional overlay is applied to the SEA that is referred to as a ‘Designated Precinct’. In instances where this precinct is mapped, subsequent land use prohibitions are placed on land uses such as broad acre cropping, mining resource activities and dams. In this particular instance, there is no way of identifying which areas are specifically set aside for cultural heritage protection or for environmental purposes as they are simply bundled together.

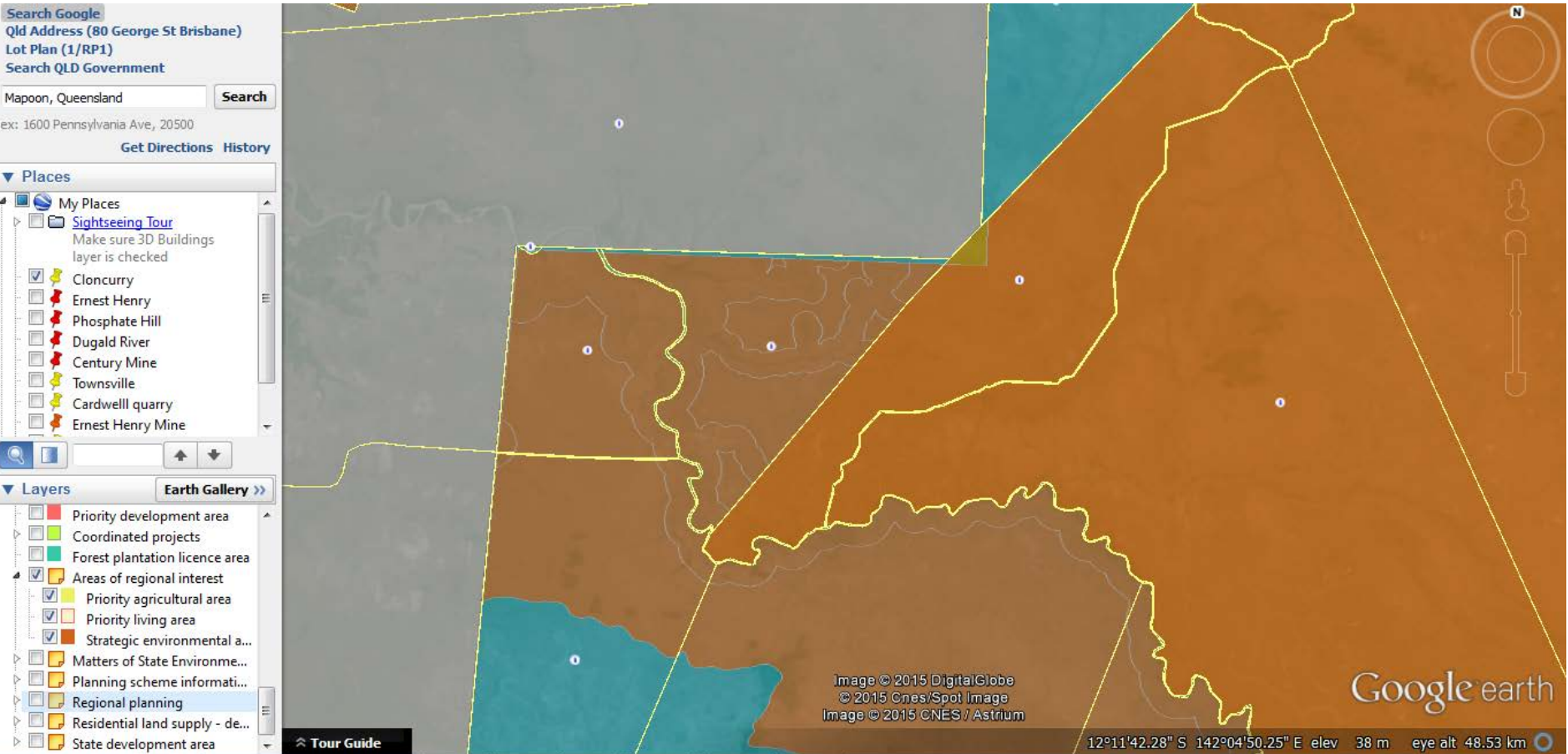
The CYRP does not identify specific opportunities for Aboriginal communities to develop their traditional lands. Nor does the CYRP suggest any new industry development; rather it recommends building upon the existing private industries such as mineral resources, agriculture, tourism and micro-enterprises. The CYRP also suggests that public sector employment will remain an important source of employment in the region.

Normalisation via planning

In the Foreword to the CYRP, the then Premier of Queensland states that the government was determined to ensure that it will do whatever it can to address economic disadvantage on the Cape, especially in the Indigenous communities. The Premier also stated that the Government will make ‘every effort to normalise the economy in Cape York and provide Indigenous communities with an opportunity for jobs, home ownership, hope and economic growth’ (State of Queensland 2014:2). Normalisation in this context infers assimilation, a single and uniform approach to regional planning and development through the pursuit of existing industry development.

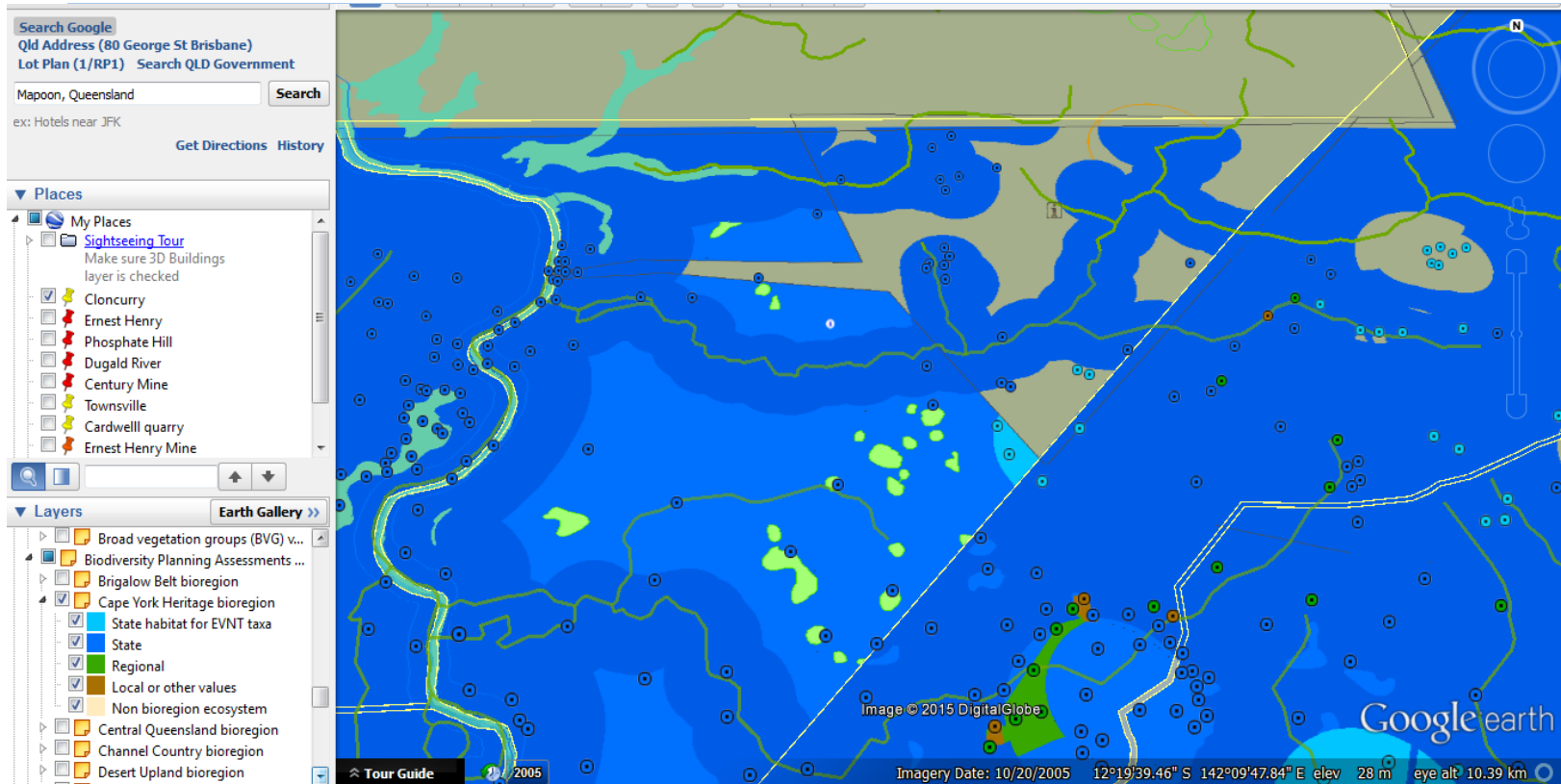
However, our analysis of the CYRP demonstrated that there are no specific policies or strategies for addressing the current goals and aspirations of the Indigenous people of the region or the disadvantages they currently experience. In sum, the intent of the CYRP is to determine how the state will manage its own economic development intentions for the Cape and it remains oblivious to the needs of the local Indigenous population.

Strategic Environmental Area



This is a designation under the CYRP

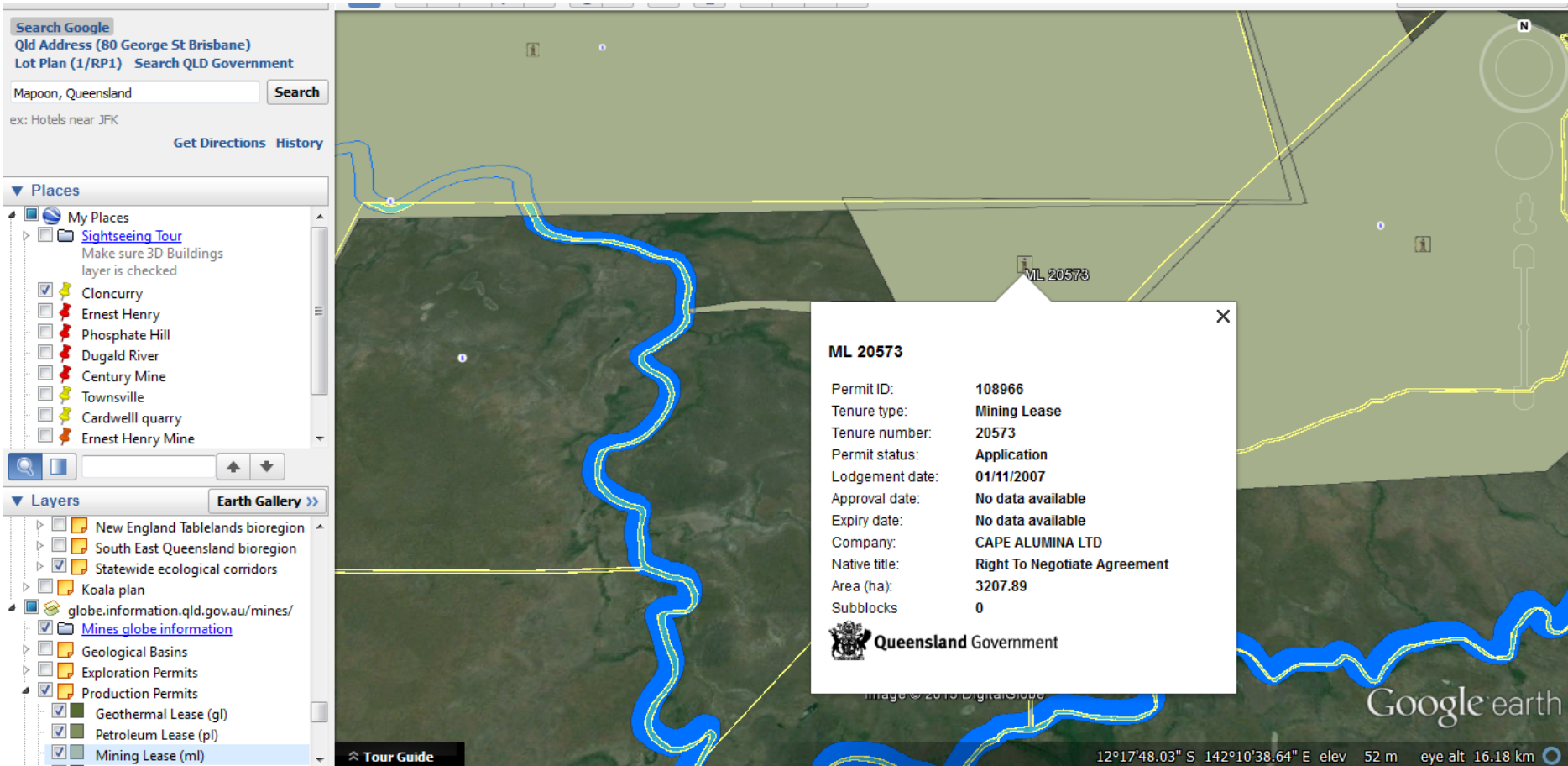
Other values: State



Regulated vegetation – note that the ‘blue’ areas now show the real extent of the strategic environmental areas – in addition to those listed under the Cape York Heritage Bioregion. This partly explains why it is a designated precinct.

The ‘grey’ colour shows the mining lease boundary – note where the environmental significance stops and starts – interesting that it coincides with a tenure boundary.

Just to add to the confusion



Search Google
Qld Address (80 George St Brisbane)
Lot Plan (1/RP1) Search QLD Government

Mapoon, Queensland Search

ex: Hotels near JFK

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Make sure 3D Buildings layer is checked
- Cloncurry
- Ernest Henry
- Phosphate Hill
- Dugald River
- Century Mine
- Townsville
- Cardwell quarry
- Ernest Henry Mine

Layers Earth Gallery >>

- New England Tablelands bioregion
- South East Queensland bioregion
- Statewide ecological corridors
- Koala plan
- globe.information.qld.gov.au/mines/
Mines globe information
- Geological Basins
- Exploration Permits
- Production Permits
- Geothermal Lease (gl)
- Petroleum Lease (pl)
- Mining Lease (ml)

ML 20573

ML 20573

Permit ID:	108966
Tenure type:	Mining Lease
Tenure number:	20573
Permit status:	Application
Lodgement date:	01/11/2007
Approval date:	No data available
Expiry date:	No data available
Company:	CAPE ALUMINA LTD
Native title:	Right To Negotiate Agreement
Area (ha):	3207.89
Subblocks	0

Queensland Government

Google earth

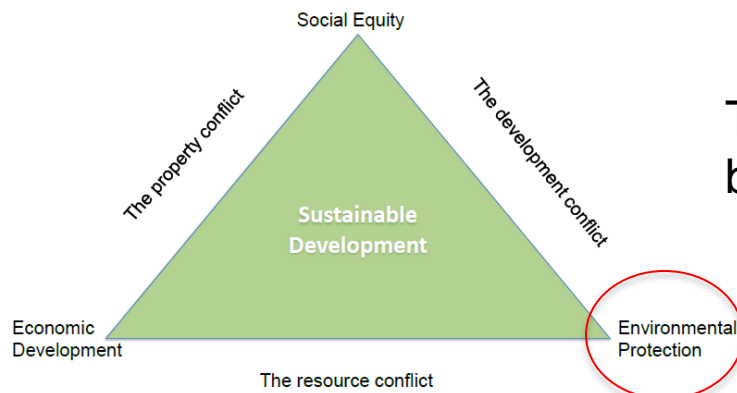
12°17'48.03" S 142°10'38.64" E elev 52 m eye alt 16.18 km

A mining lease does appear to exist over the land – but given the previous slide unlikely to be permitted to be developed

So what does this mean?

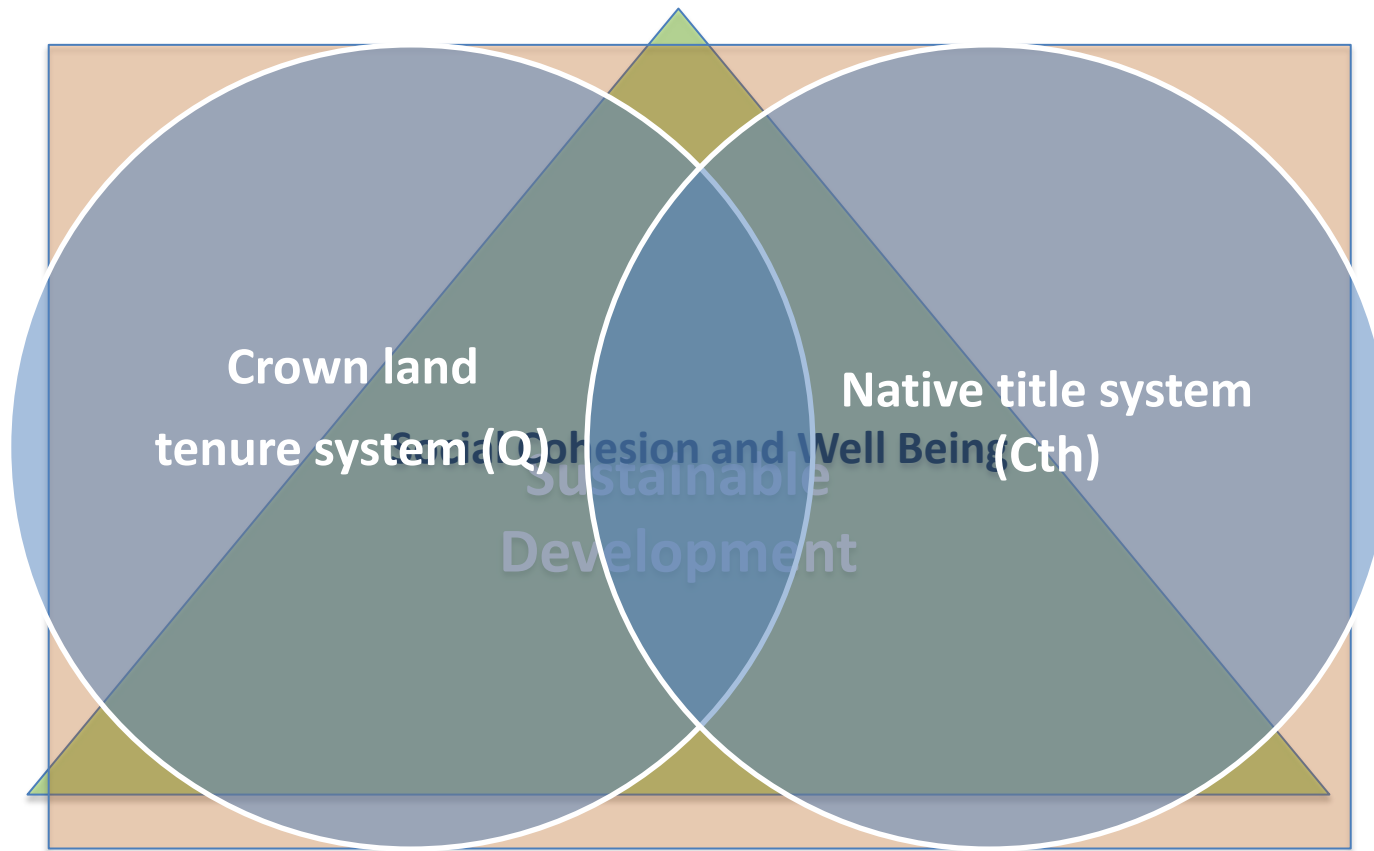
So to sum up, at the local level the land and its attributes are considered to be of 'general ecological significance', then when the regional layers are added, the land and its attributes become a regional planning interest and a designated precinct – no economic development other than what the planning scheme permits as self assessable can occur. Then we add the state significance and we see two things: (1) that the environmental values run on a straight line that happens to correlate with land title/tenure boundaries rather than the natural features; and (2) that this layer further reduces the economic potential within lot 6.

This means that the land is set aside for environmental values. We are not privy to the full contents of any of the ILUA's for over this land or the intentions of the Traditional Owners. However, what is clear is that the Western planning system may be placing arbitrary boundaries or barriers to the development aspirations of the land's native title holders. Native title across the Cape are therefore being made to bear the environmental conscience of the nation.....

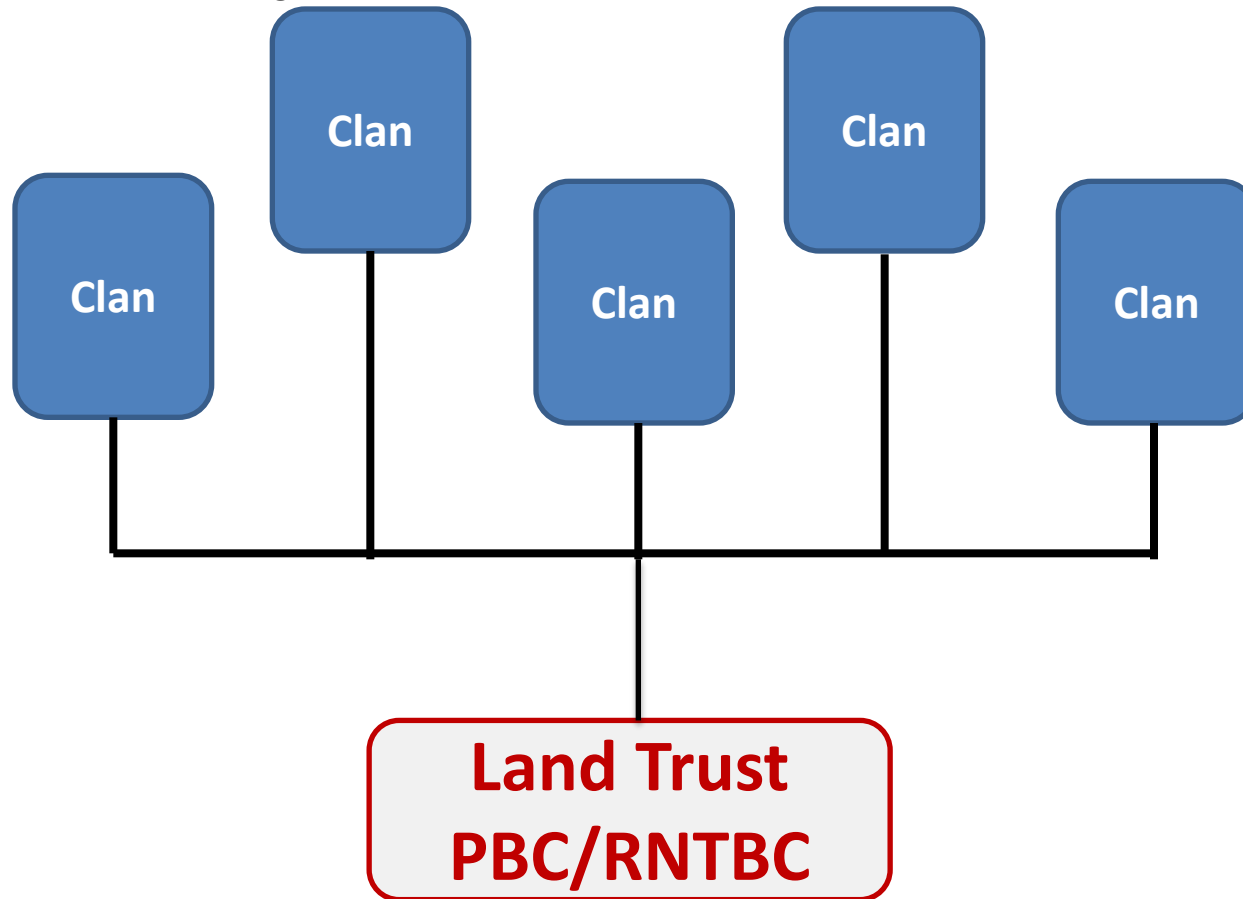


This also means that there is indeed no balance

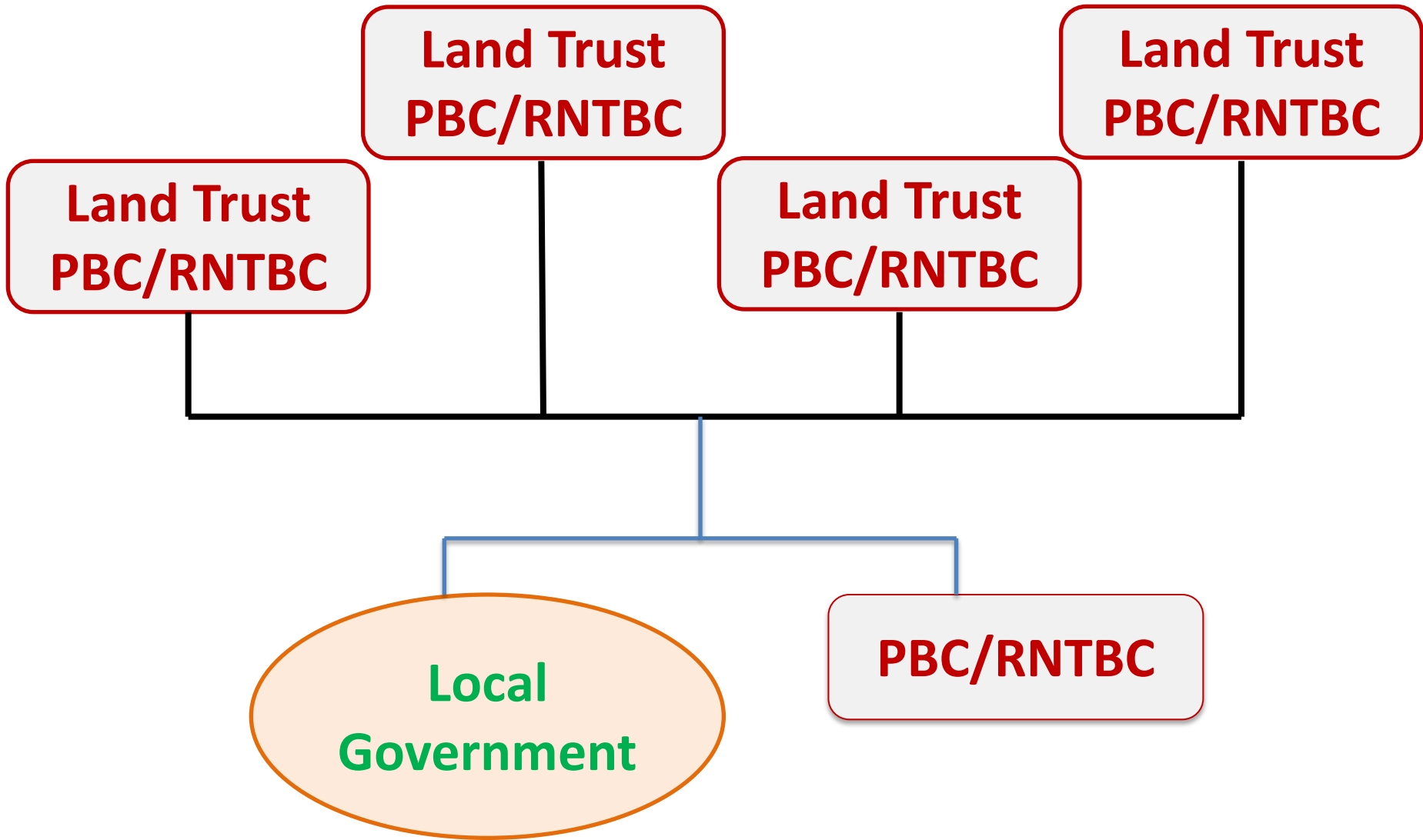
So how do you fit a square peg into a triangle and two round holes?



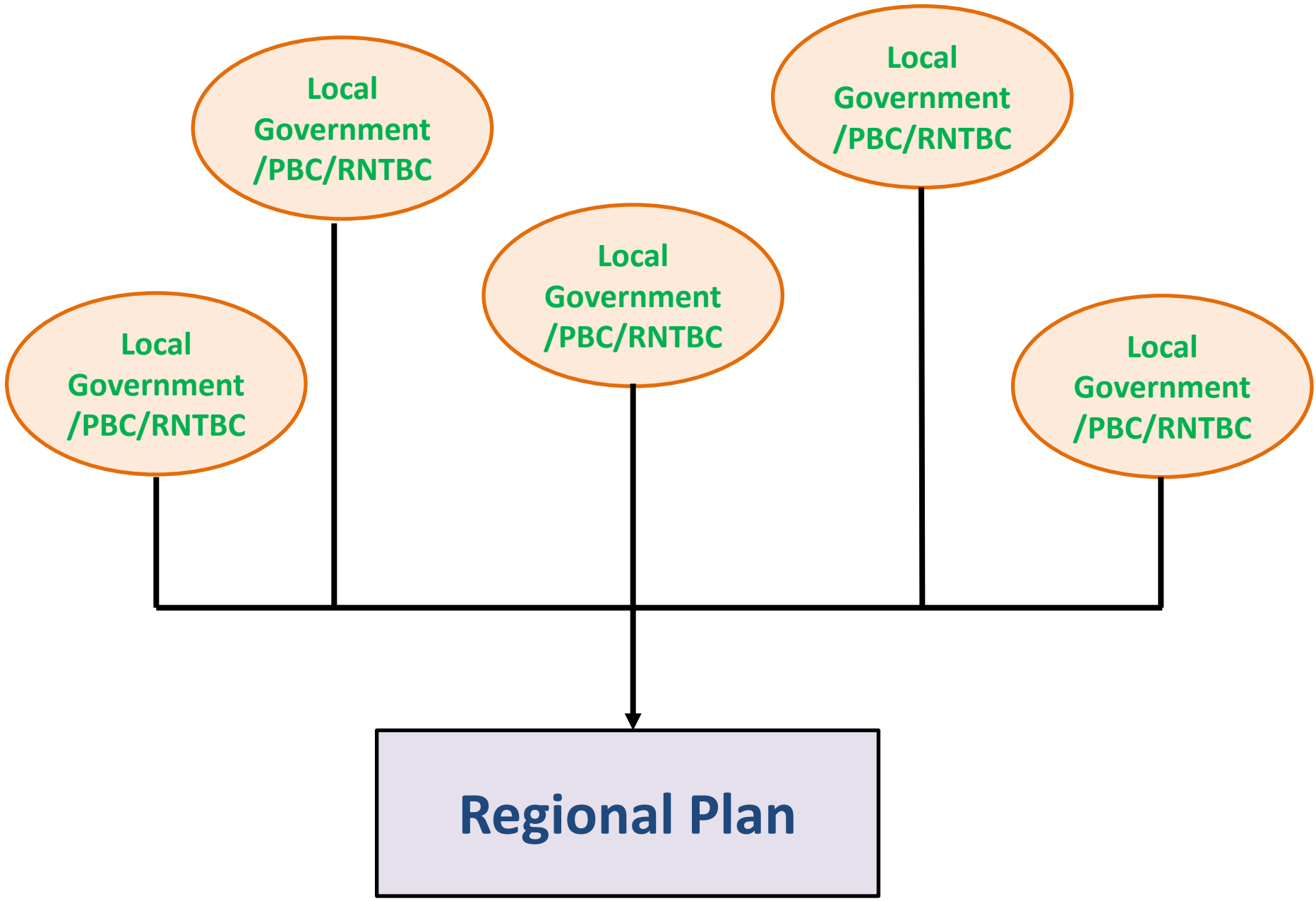
Place-based Planning



- Participatory Mapping at Clan Level
- Collation of land uses and impact parameters to frame land use plan at Land Trust Level/PBC/RNTBC



- Identify synergies within each Land Trust/RNTBC Land Use Plan (create Local Area Plans)
- Create Land use zones, use and development codes to reflect the synergies.
- Create Precinct plans within each Local Area Plan to enhance and protect the unique characteristics of each Clan and their traditional lands



Concluding observations

It is clear to us as professional planners and planning academics that there are clear disjuncts emerging between land administration, land use planning and native title outcomes.

These disjuncts can be identified in three distinct areas:

- **Procedural** – in relation to the processes for the preparation of formal planning documents at state, regional and local scales and how native title holders/registered native title claimants and other Aboriginal and Torres Strait Islander people with other interests are (or are not) being adequately involved in their preparation.
- **Substantive** – in relation to the actual land use content of formal planning documents and how the land use and occupancy rights, interests, values, needs and aspirations of native title holders/registered native title claimants are being accommodated.
- **Decision-making** – in relation to the development of ILUAs by native title holders, either as part of consent determinations or as part of land use planning processes. Our concern here is that the point at which native title holders are entering into ILUAs, they may not have been able to undertake their own internal land use and occupancy planning to determine their own land use requirements on their terms, rather than being forced into agreeing to something to meet the immediate requirements of reaching a consent determination.

We firmly believe further careful research is required to develop better and more accommodating synergies between land administration, land use planning and native title outcomes for better futures for Aboriginal and Torres Strait Islander people.

The slide features a decorative border of large, 3D green question marks with a slight shadow, arranged in a grid-like pattern around the central text. There are four question marks in each of the four corners and one in the center of each side.

Contact: sharon.harwood1@jcu.edu.au

Questions