Statutory Land Use Plans and Economic Development

Cape York Indigenous Communities
Cape York Aboriginal Shire Councils
Some Demographics

- Of the 14 communities in Cape York:
  - All but three are described as ‘very remote’ according to ABS
  - 96% born in Australia
  - Family type – 45.4% couple family with children, 33% one parent family and 17.4% couple no children
  - There were 4,483 residential homes in the 14 communities and 90% of these were rented**
  - With the exception of Torres Shire (which includes Thursday Island), 100% of the population was described as being within the ‘most disadvantaged’ quintile (SEIFA)
  - 56% received an income of less than $400 per week

** dubious statistics considering the land tenure in the cape
According to the Productivity Commission 2011:

Strategic areas for action

<table>
<thead>
<tr>
<th>Early child development</th>
<th>Education and training</th>
<th>Healthy lives</th>
<th>Economic participation</th>
<th>Home environment</th>
<th>Safe and supportive communities</th>
<th>Governance and leadership</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 Employment by full time/part time status, sector and occupation</td>
<td>8.2 Indigenous owned or controlled land and business</td>
<td></td>
<td></td>
<td>8.3 Home ownership</td>
<td>8.4 Income support</td>
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Home ownership is an important positive indicator of wealth and saving, while reliance on income support is correlated with the disadvantages that accompany low socioeconomic status, and can contribute to long term welfare dependency.
Land Use Planning

The term planning refers to the decision and planning processes that underpin change, or as Yiftachel (2006) suggests, planning describes the publicly guided transformation of space.

Planning is the process of managing change within communities, and is a human activity undertaken by humans for humans (Harwood definition).

Land use planning presupposes that an economy exists and therefore regulates development to ensure ‘sustainability’.
It is assumed that

- That there is a formal property system in place:
  - Land has been surveyed
  - Lot on title registered to the owner
  - Public infrastructure is linked to the owner of the lot (so LGA can lever funds and rates to support delivery of services)
Classification of Property

- Land is central to spatial planning.
- Each state and territory operate their own registers for the areas of land held under each tenure type that they administer.
- The duration of the estate may be limited or unlimited. Freehold estates are unlimited in duration, whereas non-freehold estates (leases) exist for a specified duration of time eg 10 or 99 years.
Freehold and non freehold

- Freehold means that the owner of the title has both ownership and possession.
- Non freehold means that the tenant under a lease has possession of the land, but not ownership. For the case of leasehold land a lease is treated as a lesser form of property right than a freehold estate even if the lease is for a long duration ie 100 years.
Land Tenure Northern Australia

Legend
- Forestry reserve
- Freehold (including Aboriginal freehold)
- Leasehold (including Aboriginal leasehold)
- Nature conservation reserve
- No data
- Other Crown land
- Water reserve
Aboriginal and Torres Strait Islander Freehold Land

Aboriginal and Torres Strait Islander Freehold title
Trustees must hold the land for the benefit of Aboriginal and/or Torres Strait Islander people particularly concerned with the land, their ancestors and descendants or the native title holders.
The title to the land is inalienable freehold, which means:
• the land can never be sold
• the land cannot be mortgaged
• there are restrictions regarding leasing on the land
• native title interests are not extinguished by the grant.

• These are not the same provisions contained within the Land Act 1994 regarding Freehold Land. This type of freehold land can be sold, mortgaged, native title rights are extinguished and restrictions on leases limited to planning scheme/legislative provisions.
Why two types of Freehold?

Fundamental difference between the two types of freehold is related to:
1. One is related to community based rights; and the other
2. Based on individual rights.

According to Assies 2009 – there are two competing perspectives or paradigms regarding the legalisation of land tenure: a **marketability-based approach** that views land in the first place as an economic asset and a **security-based or rights oriented approach** that regards land in the first place as a (means to achieve) human right(s), such as secure shelter and livelihood.
Differing conceptualisations of Development

**Western system:**
It is generally assumed that secured individualised land tenure is essential to gain economic growth and sustainable development.

**First,** the holder of the right to the land knows that he/she will be able to receive the benefits of any investments made in the land. Therefore leases have to be long term.

**Second,** secure individual land title is the main form of collateral taken by banks as security for loans, loans for investment and consumption purposes. These can be raised by mortgaging the land. As de Soto (2000) says, “land that cannot be mortgaged is dead capital”.

**Third,** if individuals have secure property rights over land, they will be likely to take care of it. It is an asset that they will be keen to see increase in value in order that it will generate a higher income stream for themselves and their heirs.
Statutory Land Use plans

• In January 2005 Queensland Aboriginal Councils started transition to full shire council status.

• The Local Government Reform Commission in 2007 reviewed the governance arrangements to facilitate increased accountability and sustainability, improved decision making and efficient service delivery while also maintaining cultural identity.

• The preparation of the first planning schemes (statutory) for each of these communities commenced in 2011.

• All prepared under the Queensland Planning Provisions – a standardised system that describes the types of zones that can be applied and the correlating uses that can occur within each zone.
Where are they at?

- Kowanyama - approved to adopt
- Wujal Wujal - approved to adopt
- Napranum - with the Minister seeking approval for public notification
- Arukun - with the Minister seeking approval for public notification
- Hope Vale has completed public notification (with one submission from Congress);
- Mapoon about to go on public notification
- Pormpuraaw - being finalised to go to the minister for public notification
- TSIRC, Lockhart and Yarrabah are draft at this time.
Napranum
Napranum: Economy

• Preferred activities: agriculture, construction, tourism and extractive resources.
• There are no commercial or retail business or activities within the shire with the exception of the community farm.
• Strategic intent is to support activities that contribute to the local economy including traditional activities and non traditional such as agricultural and tourism. So that people continue traditional and cultural practices.
• ‘Development does not stop opportunities for or prevent local people from hunting, fishing, gathering or growing food or from continuing to manage country’.
Main issue is expansion: There is no where within the township boundary to expand to.

Rural (as opposed to country) Appropriate uses: animal husbandry, cropping, caretakers accommodation and dwelling house.

All other uses (eg multiple dwellings, tourism etc) impact assessable
Maybe this might explain...
Mapoon

- Economic Opportunity: township area – local business, industry and tourism activities
- Low key tourism (e.g., recreational fishing, short term accommodation) is a significant growth opportunity. Development of Arts and Cultural centre. Fisheries, horticultural activities and timber milling opportunities are to be explored.
Environmental Management and Conservation Zone

- There is no ‘rural’ zone for land outside of the township zone – rather EMC zone
- Preferred development: animal husbandry, animal keeping, car park, cemetery, cropping, home based business, telecommunications substation, market, Park, permanent residential development (care takers and dwelling house).
- All other development – impact assessable.
Kowanyama
Kowanyama township
Kowanyama Township

‘Kowanyama is the only town in our local government area, and has little room to grow because of flooding, bushfire, important scrub and spiritual places surrounding it in all directions so we need to use the town land wisely’. 
3.4.6 Outstations, homelands and camping grounds

3.4.6.1 Element

Outstations and homelands\textsuperscript{13} are a part of caring for country. They are an important part of our life, helping our people to keep connected to country, monitor our lands and keeps people off the streets.

Camping grounds are the only sort of controlled tourist accommodation outside of our town. They are also one of the most important ways that our community makes money from tourism.

3.4.6.2 Specific outcomes

Outstations and homelands are an important part of our life and are protected for future use. They do not grow much bigger than their current size. New outstations are allowed as long as they have small buildings and do not harm country.

Camping grounds are protected as small tourist accommodation areas in the same spots outside of our town. No new camping sites are supported. Camping grounds are shown in Strategic Framework Map SFM-004 of the red part of the scheme (Schedule 2).

3.4.6.3 Land use strategies

Locations of outstations, homelands and camping grounds are shown in Strategic Framework Map SFM-004, in the red part of the scheme (Schedule 2).
Kowanyama

- Essentially development is not encouraged outside of the township.

The local government purpose for the environmental management and conservation zone code is to protect our connection to country. We also want to stop the town from growing into country to keep our country looking the same for future generations of our people – in its natural state and without development. We want to protect animal habitat and natural features, but also allow grazing and farming to continue where it does not damage country.

<table>
<thead>
<tr>
<th>Use</th>
<th>Level of assessment</th>
<th>Assessment criteria</th>
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</thead>
<tbody>
<tr>
<td>Rural Activities other than:</td>
<td>Exempt</td>
<td>If a site more than 500 metres from the Kowanyama Airport Non-directional Beacon (NDB) shown on Planning Scheme Map PSM-003 in the red part of our scheme (Schedule 2.5).</td>
</tr>
<tr>
<td>(a) Intensive animal husbandry</td>
<td>Self assessment</td>
<td>If on a site less than 500 metres from the Kowanyama Airport Non-directional Beacon (NDB) shown on</td>
</tr>
<tr>
<td>(b) Intensive horticulture</td>
<td>Housing activities code – AO17</td>
<td></td>
</tr>
<tr>
<td>(c) Rural Industry</td>
<td>Planning Scheme Map PSM-003 in the red part of our scheme (Schedule 2.5).</td>
<td></td>
</tr>
<tr>
<td>(d) Aquaculture</td>
<td>The planning scheme</td>
<td></td>
</tr>
<tr>
<td>(e) Cropping Dwelling house</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other use not listed in this table. Any use listed in the table and not complying with the criteria in the level of assessment column. Any other undefined use.</td>
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</tbody>
</table>
Development...in town

Kowanyama has approached the land shortage and range of hazard constraints by ‘Going up not out’.
So what does this mean?

- All development is focused on infill within townships.
- The vast majority of the land within the townships is inalienable freehold.
- This means that only the Council who may own some alienable freehold or the Land Trust can authorise or conduct development.
- The Land Trust may lease Aboriginal or Torres Strait Islander freehold land to another entity for up to 10 years. If more than 10 years, then a Business Plan is required for the approval by the Minister for a period of up to 30 years. By way of comparison a Home ownership lease can be granted for up to 99 years by a Land Trust.
- All planning schemes mention tourism as an economic activity. However none of these activities are either code assessable or self assessable development – this means lengthy and involved application and assessment phases.
- Not specifically mentioned is the matter of cultural heritage. There is a piece of legislation that can be triggered if there is an approved cultural heritage management plan. However, there are no such statutory plans related to any of the communities. Therefore planning scheme policies set out procedures for consultation and the protection of cultural heritage.
The standardised system

• Predetermined land use definitions (by the state) that are appropriate to the two or three zone types (Township, Rural or Environmental Management and Conservation) – do not permit the tailoring of development to suit community aspirations. For instance the use of the term Rural to describe land that is outside of the township zone – as opposed to ‘Country’, or the range of permitted rural activities within the rural zone – that are not culturally, contextually or site suitable for the region. Its ‘forcing a square peg into a round hole’ type planning.

• Development such as tourism is sought as an economic activity for some communities in the lands described in the non township zones yet this is an inconsistent activity within the standardised system.

• The range of defined land uses is limited to those that are deemed to be appropriate for the entire state (eg Brisbane) and no further definitions may be created or used. This in turn means that an ‘undefined’ land use activity (ie one that defies to be defined by the standard range of land uses) becomes impact assessable. This adds time and considerable cost to the assessment phase. This also means that there a so many definitions such as wineries and wind farms – that are inapplicable.
Its chicken and egg stuff

- The majority of people within the 14 communities earn less than $400 per week and pay on average $53 per week in rent. The house is owned by either a Housing Co-op (underwritten by the Commonwealth), the state government or the Council.
- The cost to build a home in a remote community is about $350,000 to $400,000 to construct. The question becomes who can afford to own and build a $400,000 home on less than $400 per week? Really why would you??
- If there are no individual home owners that are linked up to the public utilities – then there is no way that rates can be leveraged to an individual property owner.
- This in turn means that the community remains dependent upon capital transfers from the cities to maintain their infrastructure development such as waste, water and social housing.
- Creating resilient and sustainable communities in remote locations means that they need to access development to pay for their infrastructure. This can only occur if there is suitable land for development.
- Develop the economy first, jobs come after (and the ability to pay for a mortgage) then home ownership…not home ownership then economic development – it just won’t work!!
Economic Participation

- The strategic areas for economic development within Indigenous communities in Australia by the Commonwealth government include: Employment (full or part time), Indigenous owned or controlled land and business, home ownership and income support.
- There is a complete lack of understanding about development including costs, site suitability (supply), market assessments (demand for available products) and how this transpires in remote locations. The current situation applies inappropriate models and makes these legally binding.
- Urban based economic theories do not apply to remote locations. New approaches to economic development is ESSENTIAL to create and guide development. For instance development in urban and rural areas typically occurs on alienable freehold land (ie funded through loans accessing implicit capital value of the land). What we need to know is what types, scales and intensities of development can be created and sustained on inalienable freehold land with limited lease durations? (not too many I suspect)
- I think…we need to investigate a system that permits the Land Trusts to be permitted to sell a certain percentage of their land to ‘outside’ investors to kick start these economies. Jobs cannot be created without investment in development. If there is no accessible capital in the community then it needs to be brought in. OR the welfare income support system can/will prevail.
Questions