



Message Stick



Feature Article by WTMA

FEATURE ARTICLE BY THE CSIRO



MESSAGE

chair

CULTURAL HERITAGE
MANAGEMENT PLAN

PRESERVING
YOUR PRIVATE
COLLECTIONS



MESSAGE STICK

MessageStick is published by the North Queensland Land Council Native Title Representative Body Aboriginal Corporation (ICN 1996)

The contents of Message Stick are copyright to NQLC and should not be reproduced in whole, or part, without the written consent of the NQLC CEO.

Message Stick is not for resale.

Any information is correct at time of writing.

The publisher apologises for any images used that contain deceased individuals or cultural sites of significance.

Message Stick is made possible from funding provided by the Department of Prime Minister and Cabinet.

Any queries regarding Message Stick, please contact the editor Michelle Liddy on 1800 814 779 or mliddy@nqlc.com.au.

contents

- 03 | MESSAGE FROM THE CHAIR
- 04 | UPDATE FROM THE CEO
- 06 | ENGAGEMENT & DEVELOPMENT SUPPORT TEAM UPDATE
- 08 | FEATURE ARTICLE FROM WTMA
- 12 | PRESERVING YOUR PRIVATE COLLECTIONS
- 14 | CULTURAL HERITAGE MANAGEMENT PLAN
- 16 | FEATURE ARTICLES BY CSIRO
- 21 | MY INTERNSHIP WITH NQLC





MESSAGE FROM THE

Chair

I'd like to commence by acknowledging the traditional custodians of the lands on which your land council, the NQLC represents, their elders, past, present and emerging. I would also like to acknowledge the passing of your people, of our people, in our footprint and their contribution and input into their families, clans, tribe and organisations. Ensuring their legacy lives on through the foundations they have laid in Native Title and their determined lands. These last months in particular have been some of sorrow as I have lost some very close family members.

We recently learned of the loss of a great woman. Known as the Mother of Native Title, Bonita Mabo. Mrs Mabo was an activist and reconciliation advocate in her own right who was the wife of the land rights champion Eddie "Koiki" Mabo. She made a powerful contribution to reconciliation in Australia – both in supporting her husband's work and through her individual efforts as an

educator and advocate. She will be sadly missed.

I welcome you to the December 2018 edition of Message Stick. During 2018, fellow directors and myself attended several external meetings and events in addition to our scheduled Board of Director Meetings. Highlights include the Nywaigi People's Native Title Consent Determination in April; the National Native Title Conference in June, which included Terry O'Shane, Alwyn Lyall and Professor Megan Davis' presentation on the Uluru Statement; the National Aboriginal and Torres Strait Islander Women's Conference in July, of which myself and fellow female directors Patricia Dallachy, Angie Akee and Tracy Heenan attended. It was so wonderful to share in the experiences and knowledge of our fellow women from around the country. There was also the GARMA Festival in August, Girramay's second Native Title Consent Determination in August; and the numerous meetings

attended in my role as member of the Traditional Owner Leadership Group (TOLG).

A key area that we have been focusing on this year is with the Wet Tropic Regional Agreement. In October this year I attended the 2018 Rainforest Aboriginal People's Regional Forum where the focus was to consider the updating of the Wet Tropic Regional Agreement, originally established in 2005, as well as reviewing the Wet Tropics Management Plan. Myself and fellow members of the TOLG led the forum. The TOLG was established during the first Rainforest Aboriginal People's Regional Workshop held last year and is comprised of myself and fellow NQLC Directors Terry O'Shane and Alwyn Lyall, the Indigenous Advisory Members for the Wet Tropics Management Authority (WTMA) (Phil Rist, Leah Talbot, John Locke, Joann Schmider, Dennis Ah Kee and Seraeah Wyles) and the former Aboriginal Director of Terrain NRM

(Allison Halliday). As one of the original signatories in 2005, Victor Maund, fellow NQLC Director saw the need to revive the intent of the Agreement and has been championing this project for a long time.

The vision of the Board for the last three years has been the push for economic development within our PBCs. We have had a number of events run by our Economic and Development Support Team throughout the year and by the time you read this, we will have had the PBC Regional Forum. The Forum is being hosted by the Department of

Prime Minister and Cabinet (PM&C), supported by the NQLC and the National Native Title Council. The aim of the Forum is to contribute to the long-term capacity of PBCs to become self-sufficient and take advantage of economic opportunities. The two days will include sessions with PM&C, Office of the Register of Indigenous Corporations (ORIC), Indigenous Land Council (ILC) and Indigenous Business Australia (IBA). Look out for our next edition of Message Stick in March for an update on how the Forum went.

In closing, I would like to extend my praise to the traditional owners and NQLC members within our footprint for their continued support, determination and passion at making a better future for ourselves, and our young ones. May you all have a wonderful Christmas with your loved ones; I look forward to representing you in the New Year.

Kaylene Malthouse.

UPDATE FROM THE *ceo*



Welcome to the December 2018 edition of Message Stick. 2018 has been another full one for the NQLC as we continue to make positive gains in the native title space.

2018 saw Native Title Consent Determinations for both the Nywaigi People and the Girramay People; a new claim filed on behalf of the Wakaman People; and work continues at a steady pace on our current active matters, along with a number of new matters going through the research phase. It is encouraging to see that many claims are now achieving consent determinations at a far more efficient pace than in previous years – despite most matters now being more complex than those that have been resolved to date. Although,

as previously mentioned there is the downside of the State slowing down its assessment of connection material. This has been ongoing for some years now and affects the speed with which native title matters can proceed. In addition it seems that the State wants to raise the bar in terms of evidence needed to satisfy them for negotiating claims.

As previously reported, 2018 also saw NQLC's continued recognition as a Native Title Representative Body (NTRB) for another three years, until 30 June 2021. This is a positive endorsement of the great work being done so I'd like to congratulate the Board and Staff again on this great achievement.

In addition to our core functions

of progressing native title claims, researching potential claims, supporting PBCs, and developing future act agreements the NQLC has continued to play an active part in the Queensland Representative Body Alliance (QRBA) and the National Native Title Council (NNTC). The Chair, senior staff and myself have engaged in a number of meetings and workshops held by these groups during 2018. Both bodies continue to represent our interests strongly on the political stage.

The Engagement and Development Support Team are working on a number of important projects in the region including working closely with the Wet Tropic Management Authority (WTMA) and other agencies on the review of the Wet



NQLC Annual General Meeting



Tropics Management Plan and the Wet Tropics Regional Agreement. The Team is also doing some great work with the Commonwealth Scientific and Industrial Research Organisation (CSIRO) on the Northern Australia Water Resource Assessment. For more information on these projects please refer to the EDST Update on page 6 and the feature articles by WTMA on page 8 and CSIRO on page 16.

In November, NQLC held its Annual General Meeting (AGM) in Cairns. The first AGM since the endorsement of changing the “adjourn to next week” rule for general meetings. This meant that as a quorum was not reached within the first hour of the meeting, the meeting was adjourned to one hour later, rather than one week later. This worked very well and meant that those people who had taken time out of their Saturday to attend the AGM were not required to return again the following week. NQLC Deputy Chair Phil Rist chaired the AGM on behalf of Kaylene Malthouse, who was unable to attend the meeting due to sorry business. A special thanks to all the members, directors and staff who took time out of their weekend to attend. This shows your focus and

determination so a big thank you all.

At the end of this year, NQLC will be saying farewell to long time staff member Danny O’Shane. Uncle Danny has dedicated 18 years of service to the NQLC and has been witness to almost every single native title consent determination since NQLC’s inception. Uncle Danny has been a long time advocate for Indigenous rights. Standing up for injustice is in the O’Shane blood. His mother was a member of the Aboriginal and Torres Strait Islander Advancement League who with many others, including Mr Koiki Mabo, campaigned to bring about the 1967 referendum. He has been there since the birth of native title and the wealth of knowledge and experience that Uncle Danny has will be greatly missed. Behind his intelligence and fierce strength to stand up for injustice, he is a caring family man and a great mate to all of us here at NQLC. To say the least, Danny will be greatly missed. We wish him all the very best in his hard earned retirement.

In closing I wish to again this year extend my thanks to the fabulous team at the NQLC for their tireless enthusiasm, efforts, and commitment to achieving positive

outcomes for the region’s Traditional Owners; to the NQLC Board of Directors for their strong support and encouragement throughout the year; and most importantly to the region’s Traditional Owners for their tenacity and strength throughout the very difficult process of achieving recognition of their birthright. May you all have a safe and restful Christmas break with your loved ones.

Steve Duck-Sbury

PBC Support Unit Update

PBC REGIONAL FORUM

PBC delegates from near and far will be arriving in Cairns on the 4-5 December 2018 for the PBC Regional Forum hosted by the Department of Prime Minister and Cabinet (PM&C).

The 'power packed' two days will contribute to the long-term capacity of PBCs to become self-sufficient and take advantage of economic opportunities. The two days will include sessions with PM&C, Office of the Register of Indigenous Corporations (ORIC), Indigenous Land Council (ILC) and Indigenous Business Australia (IBA).

The Regional Forum supports our PBCs to network with others to share information and experiences and provides an array of information on training opportunities, land management strategies and wealth growth. There is also a session to provide PBCs with updates on the reforms to the *Native Title Act* and the technical review of the *CATSI Act*.

PBC SUPPORT FUNDING

Most of the 2017/18 PBC Support Funding acquittals are done and dusted and the PBC team have been doing the 'hustle' to get out the 2018/19 Process Agreements and payments. The 1st release acquittal for the 2018/19 funding period will be due on Friday 18 January 2019. We will be issuing the acquittal spreadsheet to PBC's in the second week in December and we are happy to provide support to the PBC to complete the acquittal if required.

PBC SUPPORT

The PBC team has provided administrative foundational support over the last three months, which has led us on field trips to Charters Towers, Croydon, Mt Garnett and Innisfail. Additionally, the PBC team has assisted with AGMs, capacity building opportunities and will be focusing in the next six months on providing operational, governance and economic development support. If you would like to meet with us, please contact us. The PBC team look forward to more road trips to your PBC in the New Year.

Don't forget our contact details: pbcsupport@nqlc.com.au or freecall 1800 814 779.

The PBC team wish you all a safe and Merry Christmas and look forward to 2019.

Leah Saltner
Coordinator, PBC Support Unit



FAME Unit Update

The core function of the FAME Unit has historically been to process future act notifications. This continues as core business and in the 2017/18 period, we received and processed a total of 2,105 notices – of which 124 were related to exploration or mining. This financial year we have received 878 notices which required 1662 letters to be sent to affected groups, 55 of which were related to exploration or mining.

The future act notices prompt a range of varied requests for legal advice and representation in dealing with the future act proponent, which the FAME Unit readily responds to. Future act notices can often be leveraged to negotiate broader benefits than merely compensation and cultural heritage compliance and so, apart from advising and representing PBCs and native title claim groups on future acts specifically affecting them, the FAME Unit is also leading a number of projects, including:

- (a) Small Scale Miners ILUA re-negotiations;
- (b) CHMAs for large infrastructure projects;
- (c) tenure resolution ILUAs;
- (d) an aggregated carbon project;
- (e) medium sized RTNs for tin, sand and gold mining;
- (f) NNTC/CSIRO Indigenous land and water enterprises project;
- (g) WTMA statutory plan review and Regional Agreement 'refresh';
- (h) ILUA and agreement implementation focusing on financial and cultural heritage non-compliance;
- (i) structuring advice aligned to business opportunities for PBCs;
- (j) many smaller scale mining RTNs;
- (k) pastoral access ILUA negotiations; and
- (l) tailored strategic and business planning.

The FAME Unit also assists PBCs and native title claim groups implement, and secure proponent compliance with, future act agreements and the Native Title Protection Conditions (NTPCs). There has been a marked increase of requests for cultural heritage inspections under the NTPCs for which the FAME Unit is providing additional support to some groups. FAME Unit is also assisting groups in relation to the escalation of financial non-compliance through debt recovery and escalation to the Department of Natural Resources Mines and Energy.

See the articles from Wet Tropic Management Authority and CSIRO about the consultation that has occurred in the latter half of this year.

Julia (Jules) Taylor
Coordinator, FAME Unit

FEATURE ARTICLE BY:

**WET TROPICS**

MANAGEMENT AUTHORITY



Attendees at the Rainforest Aboriginal People's Regional Forum, Mission Beach

2018 Rainforest Aboriginal People's Regional Forum, Wet Tropics

The second Rainforest Aboriginal People's Regional Forum was held at Mission Beach on the 19-20 October 2018 to consider the refresh of the Regional Agreement and the review of the Wet Tropics Management Plan.

More than 80 participants from the Wet Tropics region, representing registered native title applicant groups, Registered Native Title Bodies Corporate (RNTBCs), Cultural Heritage Bodies, Land Trusts, Aboriginal corporations and the original Regional Agreement signatories, willingly gave their valuable time, thoughts and ideas at this two-day regional forum.

The forum was led by a Traditional Owner Leadership Group (TOLG) which was established at the first Rainforest Aboriginal People's Regional Workshop in 2017 at Palm Cove. The TOLG includes three board members of the North Queensland Land Council (NQLC) (Kaylene Malthouse, Alwyn Lyall and Terry O'Shane), the Indigenous Advisory Members for the Wet Tropics Management Authority (the Authority) (Phil Rist, Leah Talbot, John Locke, Joann Schmider, Dennis Ah Kee and Seraeah Wyles) and the Aboriginal Director of Terrain NRM (Allison Halliday). Agency assistance is provided by senior staff from the NQLC, WTMA and Terrain NRM.



Refreshing the Regional Agreement

The Regional Agreement was signed in the Wet Tropics region in 2005 to provide a framework for the involvement of Rainforest Aboriginal people in the management of the World Heritage Area. While some aspects of the Agreement have been implemented many priorities are still outstanding.

In 2017, the TOLG was asked by participants at the Palm Cove workshop to refresh the Regional Agreement, without losing the original intent endorsed by Elders of 18 tribal groups.

The 2018 forum provided a chance for TOLG to provide an update on the work they had undertaken over the last twelve months since the 2017 workshop. The TOLG presented their draft TOLG Terms of Reference, Operational Guidelines, Work Plan and a proposed structure for an Implementation Agreement to refresh the Regional Agreement.

A general consensus was reached by the floor that the direction proposed by the TOLG and the documents produced were on the right track. Rainforest Aboriginal representatives at the forum endorsed TOLG to continue its good work until the Implementation Agreement was negotiated with partners and a Rainforest Aboriginal parties expertise based committee is established to then put the Agreement into practice.

The Wet Tropics Management Plan review

At the forum, The Authority provided an update on the Wet Tropics Management Plan review process, which initially commenced in 2017. The Wet Tropics Management Plan 1998 is subordinate legislation in place to protect the World Heritage Area through a zoning scheme and permit system. It regulates activities which may have an impact on World Heritage values and integrity.

Feedback from the phase one consultation process in 2017 highlighted the need for a more comprehensive and strategic management document for the World Heritage Area. As a result, the new Plan will be produced in two parts:

Wet Tropics Management Plan		
	Part A	Part B
What is it?	Outlines the strategic and broader management functions of the Authority	Regulates activities within the World Heritage Area
Effect	Non-statutory	Statutory
How it will be used	Provides a ten-year strategic plan for the Authority that will inform the community of how we will deliver our organisational priorities	Provides direction on allowable uses and activities in the World Heritage Area, and guides decisions to issue permits and enter into cooperative management agreements

Participants at the 2018 Regional forum endorsed the following components for Part A of the Plan:

Ten Year Outcome – By 2030 Rainforest Aboriginal people's rights, interests, traditions and culture are embedded in World Heritage management and with aspirations for Traditional Owner led management livelihoods and wellbeing			
Strategy 2 Support Rainforest Aboriginal People – Promote and incorporate the rights, interests and aspirations of Rainforest Aboriginal people in the management of the World Heritage Area.			
Action 2.1 – Implement a rights-based approach to World Heritage management in the Wet Tropics	Action 2.2 – Support and coordinate implementation of a refreshed Regional Agreement	Action 2.3 – Empower Rainforest Aboriginal people's well-being and livelihoods	Action 2.4 – Support Rainforest Aboriginal people to uphold and strengthen their custodial relationships between their peoples and customary landscapes

The Authority continues to collaborate with Rainforest Aboriginal people to increase understanding of rights-based approaches in the management of the Wet Tropics World Heritage Area. This involves being sensitive to both the natural and cultural values of the Area and identifying effective approaches that will ensure rights issues are appropriately considered and embedded in all of the Authority's programs.

Feedback from forum participants

At the end of the two day forum, Rainforest Aboriginal people and partners were given an opportunity to share how they felt about the forum and what they got out of it.

Most people agreed that they came along not really knowing what to expect. Many people didn't know about the TOLG although now had a better understanding of who TOLG was and what their role was. Participants also said it was good to be part of a group that was there to work together to get positive results.

Some forum participants identified that they needed to start including young people in this process as they will be the ones to carry this important work on and pass it on to the next generations. Young people also know how to get the message out through social media.



Brian Singleton (WTMA) with some of the original signatories to the Wet Tropics Regional Agreement (2005).

Attendees from Government agencies were impressed with the collaborative effort of all forum participants, which achieved some really good outcomes over the two days. Some partners said it was the best Traditional Owner forum they had ever attended and others acknowledged the passion, commitment and very strong voice of Elders, like Victor Maund, who signed the Regional Agreement 13 years ago and had kept it alive for all of these years.

Where to from here?

The TOLG will continue to negotiate the Implementation Agreement in collaboration with the Authority, NQLC, Terrain NRM and other partners.

Regular TOLG updates will be published in the quarterly Rainforest Aboriginal News and via email. One of the challenges presented from the forum participants was to the TOLG to communicate on a more regular basis.

The TOLG will present a final draft version of the Implementation Agreement at the next Rainforest Aboriginal People's Regional Forum, currently proposed for April or May 2019.

For further information on the TOLG or the refresh of the Regional Agreement please contact:

Alicia Haines - Ph: 07 4241 0510, email: alicia.haines@wtma.qld.gov.au

For further information on the Wet Tropics Plan Review please contact:

Eli Taylor - Ph: 07 4241 0505, email: eli.taylor@wtma.qld.gov.au

PRESERVING YOUR PRIVATE COLLECTIONS

One wet summer about 10 years ago, I watched the storm water creep up the gutter towards my house. Three days of rain, a backed up storm drain on the corner and every room in my house was flooded with almost half a meter of water. The cleanup wasn't too bad, except when I found a crate that I hadn't touched in years that was full of my Grandparents and Great-Grandparents old photos, certificates, ration cards from World War II and other things that tell the story of my family. The responsibility to protect and care for these things for the next generations, was mine. After all of the time spent finding these records, it is very important to care for them as best as we can.

HOW CAN I BEST PRESERVE MY MATERIALS?

There are many things to consider when it comes to looking after family records for future generations. Keeping papers dry and mould free is key to preserving them, but this can be a difficult thing when living in the tropics. Plastic is the best way to seal a document from the elements and there are many different products available, such as Polyethylene Bags that protect from the damaging effects of handling, dust, pollution and moisture.

Sealing paper records or documents in a water tight slip is a great way to preserve for the long term - but what if you want to show materials to family and open

the packaging? Plastic storage tubs are good for holding albums and folders of records that can be accessed regularly, but because they are often not water or air tight - items should still be wrapped in plastic where possible.

Don't forget, even inside an airtight/watertight container, mould can still breed. Did the documents have any dirt or marks on them? Was there any moisture on them? They need to be as clean and dry as possible if you want to ensure their longevity.

Another thing to keep in mind is that staples and metal clips will corrode after a couple of years in North Queensland. Plastic coated

Avoid storing your materials with metal, which can cause damage to your documents.



paper clips and copper staples won't damage your records and can still stop important pages from being separated. Letter files can also separate sections of documents without stapling and damaging delicate originals.

Photocopying can be a good idea, particularly if people are handling the papers, but over time some carbons can fade. And making copies of copies of copies, can greatly diminish the quality, sometimes even making it unreadable (see example pictured). The best way of preserving the quality of records

is by digitising them. This is ideally done using a good quality document scanner, but if you don't have access to one - even taking a photo of the document with a good quality camera or smart phone is also a great idea. Be sure to store your electronic files securely and where possible, always back-up your electronic files. There are online storage services such as Google Drive and Dropbox, where you can save documents on a 'cloud server' if you don't have a personal computer. You can also save documents onto a USB/flash drive to give to family members. Digital files can be printed over and over again, without losing any quality.



Plastic is the best way to seal a document from the elements and there are many different products available, such as Polyethylene Bags that protect from the damaging effects of handling, dust, pollution and moisture.

PRIVATE COLLECTIONS WITH NQLC

'Private Collections' are documents and records belonging to Traditional Owners that are carefully protected by being copied and archived at NQLC. NQLC Members and

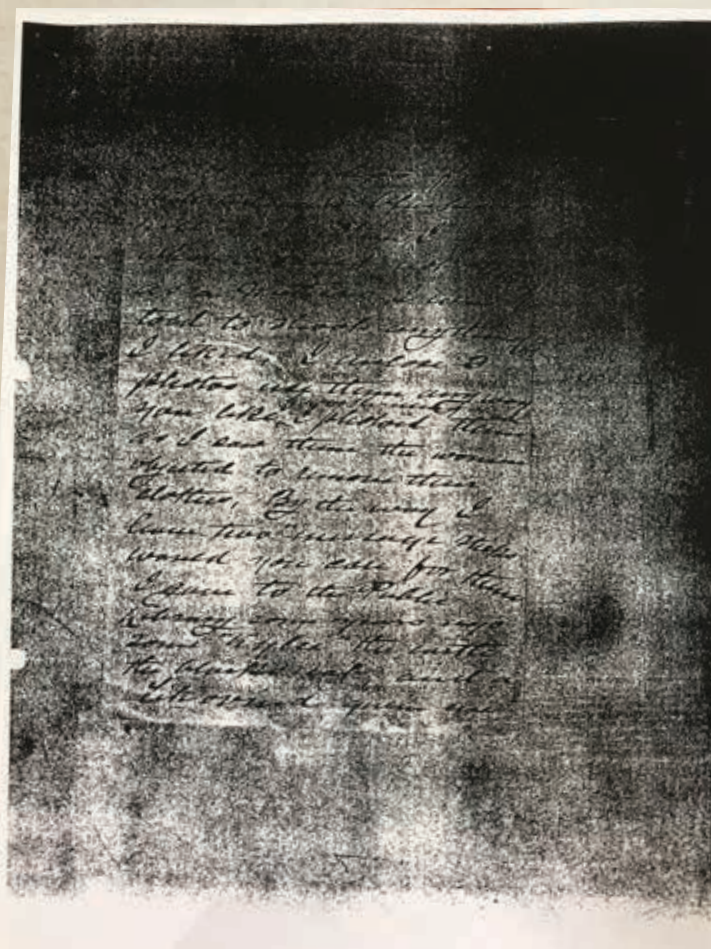
Traditional Owners can store copies of their family records with NQLC securely in a special, limited access, climate controlled facility at our head office in Cairns. The only people who can access these collections are the anthropologists and the person who provided it to NQLC. High quality scans are taken and each item is individually recorded so nothing can be lost or separated. The contributor gets a list of everything that has been archived on their behalf in a detailed receipt of materials.

NQLC is honoured to store and protect these family histories on behalf of the Traditional Owners within our region. Records and documents of family histories should be cared for as best as possible for the future.

If you would like more information on storing your private collections with NQLC, please contact the Research Unit.

Written by:

Shelique Young
Administration Officer,
NQLC Research Unit



An example of what a copy, of a copy, of a copy can turn into. If the original, or even a copy of an original, was scanned electronically - all subsequent copies could be printed without losing any of its quality.

CULTURAL HERITAGE MANAGEMENT PLAN

Recent cases and proposed legislative changes

Where there is a registered native title claim or determination the Aboriginal Party for the purposes of a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Cultural Heritage Act 2003 (Qld)* (ACHA) is clear. Confusion and angst however arises where there is:

- a) no current claim;
- b) there has never been a claim; or
- c) there has been a determination that native title has been extinguished.

In those cases, 'the last man standing rule' may apply which has been subject to recent court decisions and also proposed legislative changes. These recent decisions and cases are discussed in more detail below.

The ACHA provided that the last man standing provision apply if there is not and never has been a native title holder for the area. Previously this provision was treated as though it was referring to native title holders as registered native title holders in accordance with the *Native Title Act 1993 (Cth)* (NTA) however in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 231 (Nuga Nuga) the Court pointed out that the ACHA did not say **registered** and took a much more broad view which was more akin to Traditional Owner and which reached back in time to include times from days prior to the Mabo decision or the NTA.

In August 2018 the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) circulated proposed amendments to the ACHA to include at Section 34(1)(b) an additional word **registered** in the criteria. This would have taken us back to the pre Nuga Nuga position.

This additional word has been proposed to address the outcome of the Nuga Nuga decision where the Court's ruling effectively meant that the last man standing rule could rarely, if ever be applied. What area of land in Australia would have in the past be devoid of native title groups. This amendment was proposed to address that eventuality so that in the event that there has been no claim, or that there has been a determination that native title has been extinguished that there are protections for those native title groups and that they have rights in relation to the protection of Aboriginal cultural heritage. These amendments have yet to be made and the decision in Nuga Nuga remains for the time being.

Instead of using a band-aid the State should be looking to get rid of the last man standing altogether

Timing for this rule has now also been tested in the recent case of *Mirvac Queensland Pty Ltd v Chief Executive, Department of Aboriginal and Torres Strait Islander Partnerships* [2018] QSC 248 (Mirvac v DATSIP). In this case an application by a property developer Mirvac Queensland Pty Ltd (Mirvac) was considered who applied under the *Judicial Review Act 1991 (Qld)* s20(1) for a review of a DATSIP decision not to approve a CHMP pursuant to s107(3) of the ACHA and sought to set aside the decision.

The Supreme Court of Queensland directed DATSIP to approve a CHMP, quashing the earlier decision of the Chief Executive of DATSIP to refuse approval.

Mirvac v DATSIP highlighted a shortcoming in the ACHA whereby if an Aboriginal Party as is a 'native title party' because they are a registered native title claimant under the NTA and the claim fails, they remain an Aboriginal Party able to undertake cultural heritage planning,

until such time as a subsequent native title claim is accepted for registration. In this case Mirvac developed a CHMP with the applicant to a former claim and then a subsequent claimant over **a very small part** of the proposed development area.

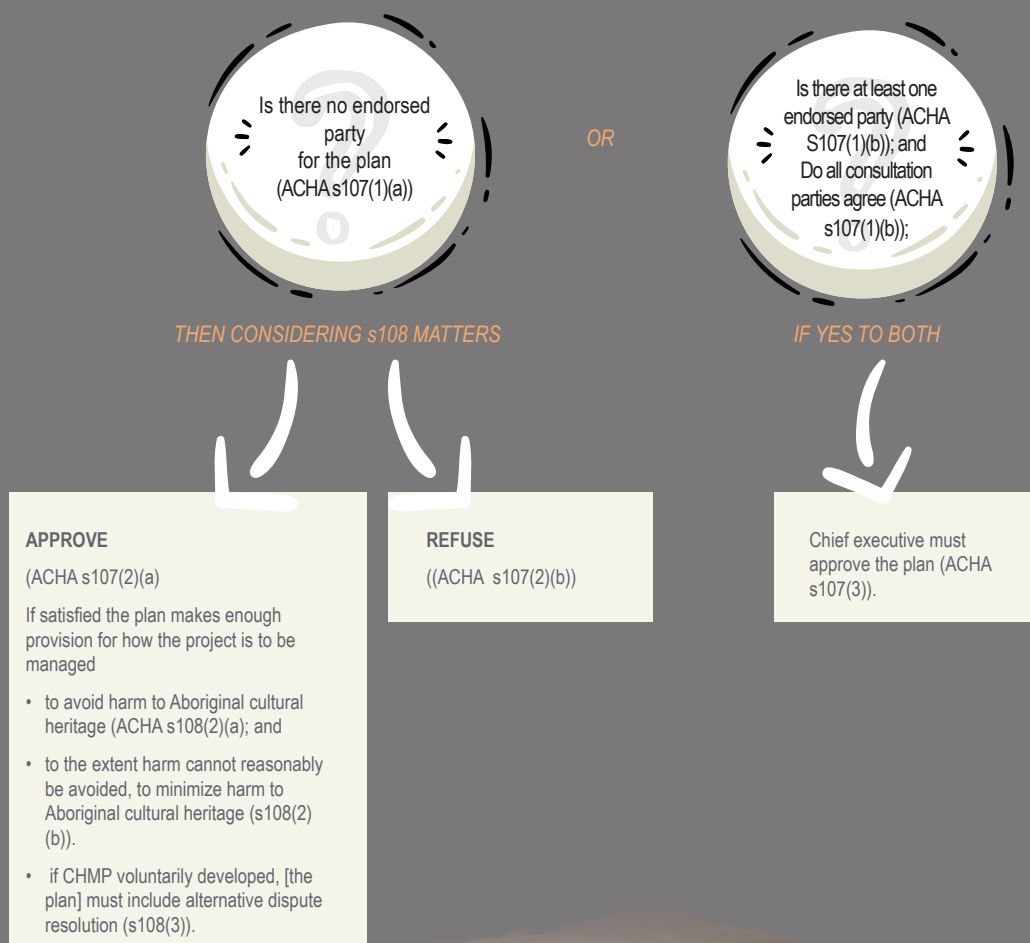
Whilst the parties agreed that after the date of the new claim the former applicant was no longer a native title party or an Aboriginal Party for the purposes of the ACHA as they no longer met the statutory definition of Aboriginal Person. Justice Bond observed that the provisions of ACHA s107(3) obliged the Chief Executive to approve the CHMP as there was **at the time the CHMP was put forward for registration** an Endorsed Party [being the former applicants] and the consultation parties had agreed. A flow chart for a determination by the Chief Executive has been included here.

As you can see, understanding who has standing to be able to negotiate a CHMP may not be straight forward where there is no claim or determination. NQLC can provide assistance to groups for the negotiations of CHMPs for areas where there are no current claims or determinations or where there has been a determination that native title has been extinguished. NQLC do not however receive notification of a proposed CHMP so if there is one that may impact on your country that is not already subject to a claim or determination, please contact the NQLC's Future Acts, Mining and Exploration (FAME) Unit at fameunit@nqlc.com.au.

Written by: Julia (Jules) Taylor
Coordinator, FAME Unit

Checklist

IF: a sponsor purporting to act under ACHA s107 (1) gives the Chief Executive a CHMP;
THEN: at the time the CHMP was given to the Chief Executive, they must determine whether:



CSIRO ASSESSES THE WATER RESOURCES OF THE MITCHELL RIVER CATCHMENT

The Northern Australia Water Resource Assessment (NAWRA) was completed by CSIRO in June 2018 and was recently released by the Commonwealth Government. NAWRA included a study of the Mitchell catchment, and CSIRO researchers have now given community and Traditional Owner briefings in Kowanyama, Mareeba and Cairns, as well as in other rivers in the Northern Territory and Western Australia.

NAWRA is part of initiatives from two Commonwealth Government White Papers, one about Developing Northern Australia and the other about Agricultural Competitiveness. White Papers are public documents that show government thinking and direction about the future.

NAWRA investigates what the opportunities and risks are for water resource development to enable regional economic development. In particular it looked at irrigated agriculture. In the Mitchell catchment, the NAWRA team looked at:

- soil and water resources
- options for catching and storing water
- the kind of crops that might grow and provide a financial return
- potential environmental, social and economic impacts and risks.

NAWRA doesn't advocate for or propose irrigation, dam or other water resource development. Instead its role is to show what might be possible. Some NAWRA information might encourage further development (e.g. show where good soil or water is), some information might discourage it (e.g. show how difficult and/or expensive it might be to capture and store water). All NAWRA information is public - everyone can access, take, and use information in ways that allow them to better participate in discussions about development.

NAWRA information is big scale – catchment scale - and so not detailed enough to use to make decisions on local individual properties. To make sure there are no gaps in the data and maps, NAWRA considers all the land surface in the Mitchell catchment. This includes areas like National Parks where development is not currently allowed and unlikely to occur in future.



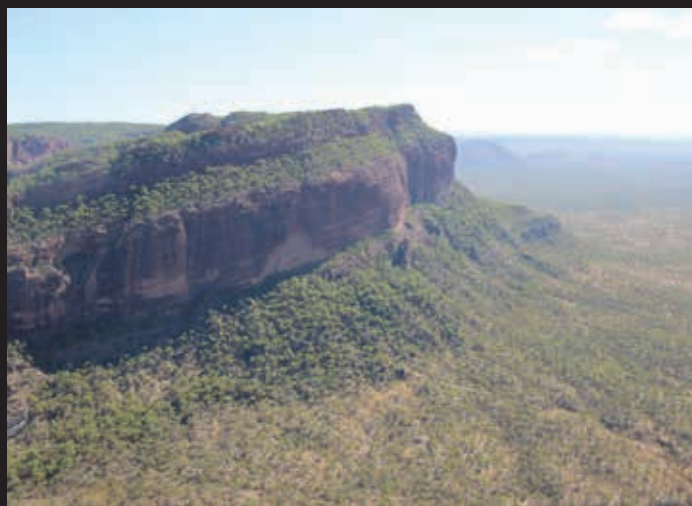
NAWRA does not replace existing approvals. All Commonwealth and Queensland State Government planning and approvals processes (environment, cultural heritage, water, etc.) still apply. NAWRA supports better government water resource planning and allocation with new hydrological models and also enables Traditional Owner understanding of how the water planning process works.

So, what did the Assessment say about the Mitchell catchment?

The Mitchell River has the largest outflow of any river in northern Australia. Rainfall is highly seasonal compared to southern Australia, and the river itself varies even more than rainfall because of very high evaporation rates, runoff and streamflow. That streamflow is hard to capture or store offstream because about 80% of it flows out in the highest 10% of days. Only a small proportion of this flow could be pumped out. So, the overall flow of the Mitchell River is big and there is a lot of soil suitable for irrigated cropping (up to about 3 million hectares). But when you look at what water is available to be pumped and how you could store that water, the picture of what is possible changes a lot.

NAWRA investigated all possible water sources and storage options (including desalination) in terms of both opportunities and risks. These risks included potential ecological and associated cultural impacts on downstream and upstream environments. Three of the ways that water could be captured and used in the Mitchell catchment are:

1. Groundwater. This is lowest cost and lowest risk and could support up to 3000 hectares. The more productive groundwater systems are in the lower parts of the Mitchell catchment.
2. Water harvesting (i.e. pumping water from a large river into an offstream storage such as a ringtank). This could physically support up 200,000 ha, of one dry season crop per year in 85% of years but would need a high value crop to get a high return on investment (big pumps that can pump flood flow fast are very expensive).
3. Large dams. Potential dams on each of the major rivers in the Mitchell catchment (the Palmer, Mitchell, Walsh and Lynd) could collectively supply about 2800 gigalitres in 85% of years - enough water to irrigate about 140,000 ha of sugarcane.



Since European settlement over 200 years ago, only about 30,000 ha of irrigated agriculture has been created in northern Australia west of the Great Dividing Range. So the large areas identified above in the Mitchell are technically possible, but are unlikely to occur any time soon. This is because of things like cost, lack of infrastructure such as flood-proof roads and bridges, complexity, and the need for new farming systems to be developed.

Smaller scale irrigated agriculture (e.g. several hundred hectares) can be achieved through groundwater, water harvesting into offstream storages, and farm-scale earth embankment gully dams. These could be scattered across the landscape as 'mosaic irrigation' for a high value commercial crop or a fodder crop to improve cattle condition and potentially allow pastoralists to access higher value markets. Ecological impacts from this scale of development are likely to be relatively small and localised compared with larger developments.

Economically, large dams generated the largest economic activity, with the four large dams mentioned above potentially enabling \$1.5 billion of economic activity per year and the generation of about 7250 direct and indirect jobs. But they would cost about \$2.75 billion and would result in considerable ecological impacts.

NAWRA also showed that large dams can differ a lot in terms of quantities of water (referred to as yield) and the types and degrees of impacts. For example, dams at the headwaters of the Mitchell catchment, such as the existing Southedge Dam or the potential Nullinga Dam, can only supply a relatively modest amount of water. But they have a much lower ecological impact than larger dams further downstream. NAWRA provides a unique, public, and developer-independent means for testing future claims from development project proponents about infrastructure costs, dam water yields, crop yields and potential impacts.

NAWRA emphasised that community perspectives are crucial to the future of the Mitchell. Understanding how diverse stakeholder, investor and developer perspectives interact will be very important in building and maintaining social license to operate for developments.

- Article and images provided by the CSIRO.



TRADITIONAL OWNER PARTICIPATION IN THE MITCHELL WATER RESOURCE ASSESSMENT

Traditional Owner participation was a crucial part of the Northern Australia Water Resource Assessment (NAWRA) carried out over the last 2.5 years by the CSIRO.

NAWRA Traditional Owner participation was governed by CSIRO ethics, free, prior and informed consent, and by MOUs with native title corporations and claimant group representatives. Discussions focused on elected corporation board Directors, as well as representatives from claimant groups, with intellectual property retained by participants.

During the project, some of the questions asked were:



- Why is water important?
- What are key ways to use groundwater and river water?
- What are the best ways to get and store that water?
- Who should be involved in making decisions about water?
- What needs to change to get that involvement?
- What plans do the Indigenous people have for business development that will need water?

NAWRA is not a development proposal and did not try to generate formal, Traditional Owner group-endorsed positions about development options. It also did not survey the wide array of Indigenous residents in these areas who may not have formally recognised cultural ties. Rather, it shows the importance of the perspectives of Traditional Owners holding native title and land rights in the focal catchments. It highlights their values, rights, interests and development objectives, as well as emphasising their key role in contemporary debates about development options.

CSIRO's Dr Marcus Barber led the Indigenous component of NAWRA. He said the strength of Indigenous peoples' cultural connections and traditional ownership of land and natural resources means that they have crucial roles as primary managers of Australia's estate.

"This status also means they are key co-investors in future development," Marcus said.

"In general, Northern Australia is a water-limited environment, and so Indigenous Traditional Owners also need to be primary participants in water and development planning processes."

Dr Pethie Lyons, based in CSIRO's Cairns laboratory, led Indigenous engagement in the NQLC area of the Mitchell catchment.

"Should development of water resources occur, Mitchell Traditional Owners generally preferred harvesting of floodwaters to fill offstream storages, supported by limited groundwater extraction. Large instream dams in major rivers were consistently the least preferred option," said Pethie.

The Assessment recognised that cross-group and catchment-scale conversations were crucial to future steps.

Indigenous people have business development objectives designed to create opportunities for existing residential populations and to aid the resettlement and return of people currently living elsewhere.

"Our wetlands provide bush tucker for future generations, when we die we want our kids living like that. Not living off white man's tucker, (but) free tucker. Got to have water or this country would be dead." - NAWRA Mitchell catchment Traditional Owner participant.

"We need State, Federal and local governments to take us seriously to develop Traditional Owner economic opportunities. We need investment in our region that includes Traditional Owners." - NAWRA Mitchell catchment Traditional Owner participant.

After the release of the NAWRA findings in August, Traditional Owners from across the Mitchell catchment were able to hear directly from the NAWRA project team in briefings during November, including from Ian Watson, Cuan Petheram, Andrew Taylor, Marcus Barber and Pethie Lyons. All the briefings lasted over three hours and gave much opportunity for discussion. . Key discussion points included the options for water capture and storage, agricultural enterprise development (including native bush foods), environmental and cultural health, and the vital role of Indigenous Knowledge in future decisions. Enabling Traditional Owner employment and Traditional Owner return to country were actively discussed as key goals. The NAWRA team very much appreciated the chance to hear from Traditional Owners and to answer questions. Traditional Owners praised the meetings as constructive, informative and useful.

NAWRA produced lots of reports and data products. Some key ones for the Mitchell include the Summary report (24 pages) the catchment report (500 pages), and the Indigenous technical report (200 pages). All information and data gathered is now public and can be accessed via the website www.csiro.au/NAWRA to help inform the community discussion.

- Article and images provided by the CSIRO.

MY AURORA INTERNSHIP AT NQLC

By Bethany Butchers

My Aurora internship at North Queensland Land Council (NQLC) was an incredibly valuable and positive experience. I found out about the Aurora Internship Program through the Law School at my University and was very eager to undertake an internship in an area of law that interests me and in relation to a social justice issue that I am passionate about. It was also a perfect opportunity to gain placement hours required for my Practical Legal Training as part of my Diploma of Legal Practice.

I cannot recommend NQLC Cairns highly enough, as a host location for an Aurora internship. The office is filled with kind, energetic, passionate and supportive staff. I was made to feel welcome and appreciated and the work environment was very pleasant. I believe the culture of the office was very conducive to inciting the best work from staff and recognising the importance of balancing work-life commitments. To me, working at NQLC Cairns would be the dream job!

Coming into the internship, I had no prior experience in native title law. This was not an issue, as everyone at NQLC, including my supervisor, Greg Bell, were invested in my internship and provided me with opportunities to learn and to meaningfully participate. Native title is undeniably a complex, multifaceted area of law. In my four-week internship, whilst I learned so much, I definitely only learned a tiny fraction of this area of law.

Being placed in the legal unit, the focus of my internship was on current and prospective native title claims. Interning at NQLC was a particularly great experience for me, as I possess a Social Science degree, majoring in Human Geography and the Environment. Working in the legal unit in relation to claims, I observed how closely the anthropologists and lawyers work together to produce material to substantiate native title claims. I learned once a claim is lodged in the Federal Court, the National Native Title Tribunal will then apply the registration test, and if it passes, certain benefits are provided to the claim group whilst the claim remains on foot. Failing the registration test is not automatically a barrier to obtaining native title, however a registered claim may appear stronger. As there is a current preference to deal with native title claims by consent in the Court, the next step is to convince the State of connection. This step is important and can often involve a back-and-forth between the claimant and the State, to update the evidence required to convince the State to agree to a consent determination. A lot of work is required at this stage, and during my internship, a lot of the work I did related to this stage.

In the office, I read a range of native title materials, conducted legal and policy research and analysis, made summaries in relation to key cases and documents, prepared and edited affidavits and interlocutory applications, interpreted Indigenous Land Use Agreement clauses, researched Prescribed Body Corporates (PBCs & the Body required to manage Native Title once a Determination is made) and PBC rule books, rewrote documents and letters, edited interview transcriptions, drafted a brief to counsel, prepared for meetings and attended various meetings with relevant stakeholders and Traditional Owners.

Whilst I worked on a number of matters inside the office, NQLC provided me with many amazing opportunities to step outside the office. I visited a number of different locations, such as Kuranda, Mareeba, Yarrabah and Wujal Wujal. Each of these opportunities allowed me to meet wonderful and wise individuals and learn something new about their land and culture. They were refreshing experiences and it was fantastic to enjoy their beautiful country.

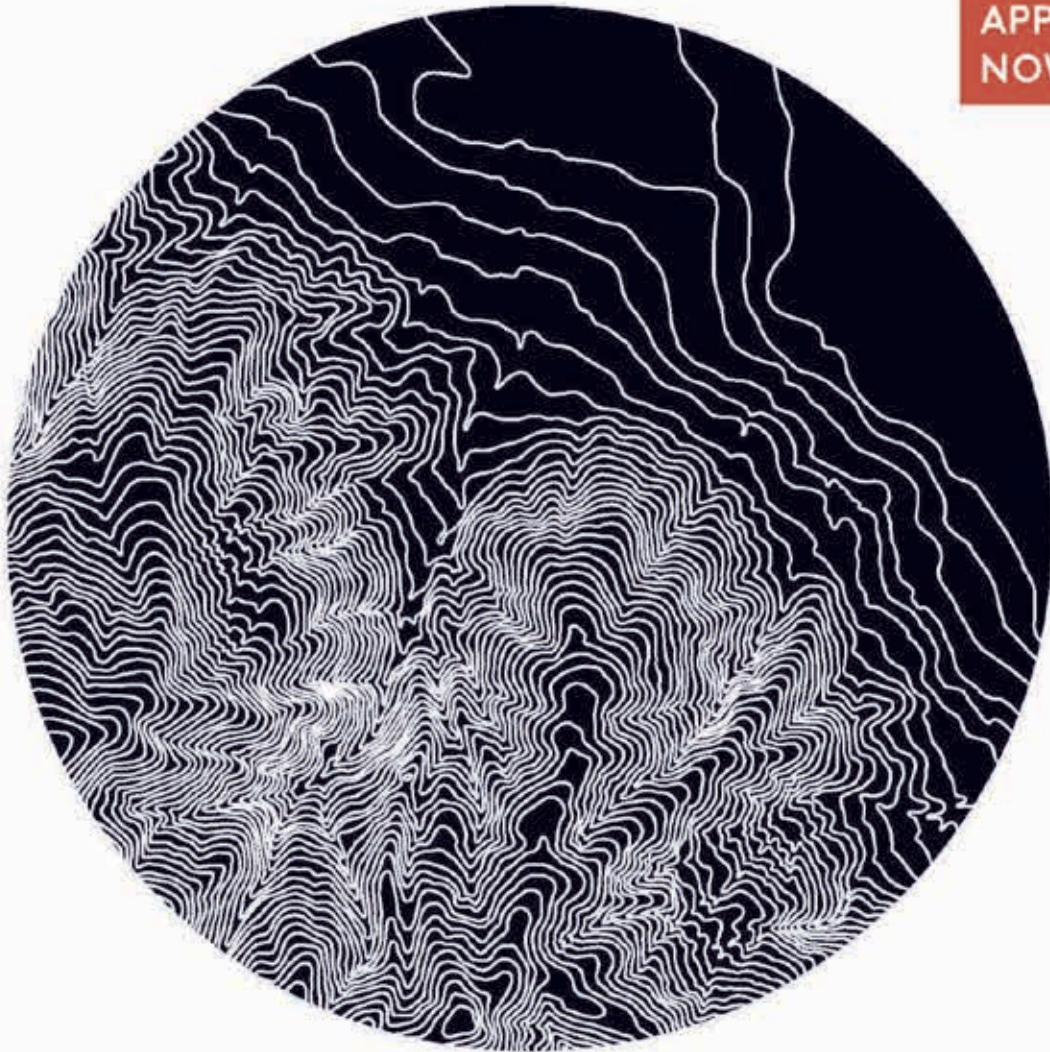
The expenses associated with travelling to another State and spending four weeks living away from home on an unpaid internship can be quite stressful. I cannot thank the Lisa Wright Scholarship administered by the NNTT enough, for providing me with funding for my internship. The generous funding took away all monetary related stresses and allowed me to relax and enjoy Far North Queensland. I am extremely grateful for the funding, which covered my flights, accommodation, all my living expenses and further enabled me to partake in a range of activities, and explore Cairns. North Queensland is beautiful and full of vibrant landscapes, culture and community.

Overall, the combination of being in sunny Cairns, in an incredibly supportive office, with the opportunities to step outside the office and meet with Aboriginal people, and Traditional Owners, on their land, was an experience that far exceeded any expectations I could have had and most definitely contributed to my career trajectory and desire to work in the native title sector. Whilst energising, my experience was also quite sobering, to witness the need for the native title and also the shortcomings of the legal regime, which do not adequately address land rights belonging to Aboriginal and Torres Strait Islander people.

I absolutely encourage anyone and everyone to apply for an Aurora internship- you will not regret it! For more information, visit: <http://auroraproject.com.au/about-applying-internship>.

Review by Bethany Butchers, originally featured on The Aurora Project website.
Printing with the approval of both The Aurora Project and Bethany Butchers.

APPLY
NOW!



encounters

FELLOWSHIPS 2019

Are you an Aboriginal or Torres Strait
Islander person with ambitions in the
cultural heritage and creative sectors?

Apply now for a once-in-a-lifetime
paid scholarship program with
leading museums and galleries in
Australia and the United Kingdom.

nma.gov.au/fellowships
or phone Lorna (02) 6208 5178

ENTRIES CLOSE 24 DECEMBER 2018





From all of us
at NQLC, have a
wonderful and safe
festive season with
your family and
loved ones.

See you in 2019!

Cairns – Head Office

61 Anderson Street Cairns Qld 4870
PO Box 679 Cairns North Qld 4870
Tel: 07 4042 7000 / Fax: 07 4042 7070

Branch Office – Townsville

Suncorp Tower, 61-73 Sturt St Townsville Qld 4810
PO Box 5296 Townsville Qld 4810
Tel: 07 4421 5700 / Fax: 07 4421 5717