



LAND USE PROGRAM

**LAND TENURE SYSTEMS AND ISSUES
OF
CAPE YORK PENINSULA**

M. Hardy, R. Nelson & Professor J.H. Holmes

Queensland Department of Lands
CYPLUS Taskforce
UniQuest - University of Queensland
1995

CYPLUS is joint initiative of the Queensland and Commonwealth Governments

**CAPE YORK PENINSULA LAND USE STRATEGY
(CYPLUS)**

Land Use Program

**LAND TENURE SYSTEMS AND ISSUES
OF
CAPE YORK PENINSULA**

M. Hardy
Queensland Department of Lands

R. Nelson
CYPLUS Taskforce

Professor J.H. Holmes
UniQuest - University of Queensland
1995

CYPLUS is a joint initiative of the Queensland and Commonwealth Governments

Recommended citation:

Hardy, M., Nelson, R. & Holmes, J.H. (1995). 'Land Tenure Systems and Issues in Cape York Peninsula'. (Cape York Peninsula Land Use Strategy, Office of the Co-ordinator General of Queensland, Brisbane, Department of the Environment, Sport and Territories, Canberra, Queensland Department of Lands and UniQuest - University of Queensland.)

Note:

Due to the timing of publication, reports on other CYPLUS projects may not be fully cited in the BIBLIOGRAPHY section. However, they should be able to be located by author, agency or subject.

ISBN 0 7242 6226 1

© The State of Queensland and Commonwealth of Australia 1995.

Copyright protects this publication. Except for purposes permitted by the *Copyright Act 1968*, no part may be reproduced by any means without the prior written permission of the Office of the Co-ordinator General of Queensland and the Australian Government Publishing Service. Requests and inquiries concerning reproduction and rights should be addressed to:

Office of the Co-ordinator General, Government of Queensland
PO Box 185
BRISBANE ALBERT STREET Q 4002

or

The Manager,
Commonwealth Information Services
GPO Box 84
CANBERRA ACT 2601

CAPE YORK PENINSULA LAND USE STRATEGY STAGE I

PREFACE TO PROJECT REPORTS

Cape York Peninsula Land Use Strategy (CYPLUS) is an initiative to provide a basis for public participation in planning for the ecologically sustainable development of Cape York Peninsula. It is jointly funded by the Queensland and Commonwealth Governments and is being carried out in three stages:

- Stage I - information gathering;
- Stage II - development of principles, policies and processes; and
- Stage III - implementation and review.

The project dealt with in this report is a part of Stage I of CYPLUS. The main components of Stage I of CYPLUS consist of two data collection programs, the development of a Geographic Information System (GIS) and the establishment of processes for public participation.

The data collection and collation work was conducted within two broad programs, the Natural Resources Analysis Program (NRAP) and the Land Use Program (LUP). The project reported on here forms part of one of these programs.

The objectives of NRAP were to collect and interpret base data on the natural resources of Cape York Peninsula to provide input to:

- evaluation of the potential of those resources for a range of activities related to the use and management of land in line with economic, environmental and social values; and
- formulation of the land use policies, principles and processes of CYPLUS.

Projects examining both physical and biological resources were included in NRAP together with Geographic Information System (GIS) projects. NRAP projects are listed in the following Table.

Physical Resource/GIS Projects	Biological Resource Projects
Bedrock geological data - digitising and integration (NR05)	Vegetation mapping (NR01)
Airborne geophysical survey (NR15)	Marine plant (seagrass/mangrove) distribution (NR06)
Coastal environment geoscience survey (NR14)	Insect fauna survey (NR17)
Mineral resource inventory (NR04)	Fish fauna survey (NR10)
Water resource investigation (groundwater) (NR16)	Terrestrial vertebrate fauna survey (NR03)
Regolith terrain mapping (NR12)	Wetland fauna survey (NR09)
Land resource inventory (NR02)	Flora data and modelling (NR18)

Physical Resource/GIS Projects	Biological Resource Projects
Environmental region analysis (NR11)	Fauna distribution modelling (NR19)
CYPLUS data into NRIC database FINDAR (NR20)	Golden-shouldered parrot conservation management (NR21)
Queensland GIS development and maintenance (NR08)*	
GIS creation/maintenance (NR07)*	

* These projects are accumulating and storing all Stage I data that is submitted in GIS compatible formats.

Research priorities for the LUP were set through the public participation process with the objectives of:

- collecting information on a wide range of social, cultural, economic and environmental issues relevant to Cape York Peninsula; and
- highlighting interactions between people, land (resource use) and nature sectors.

Projects were undertaken within these sector areas and are listed in the following Table.

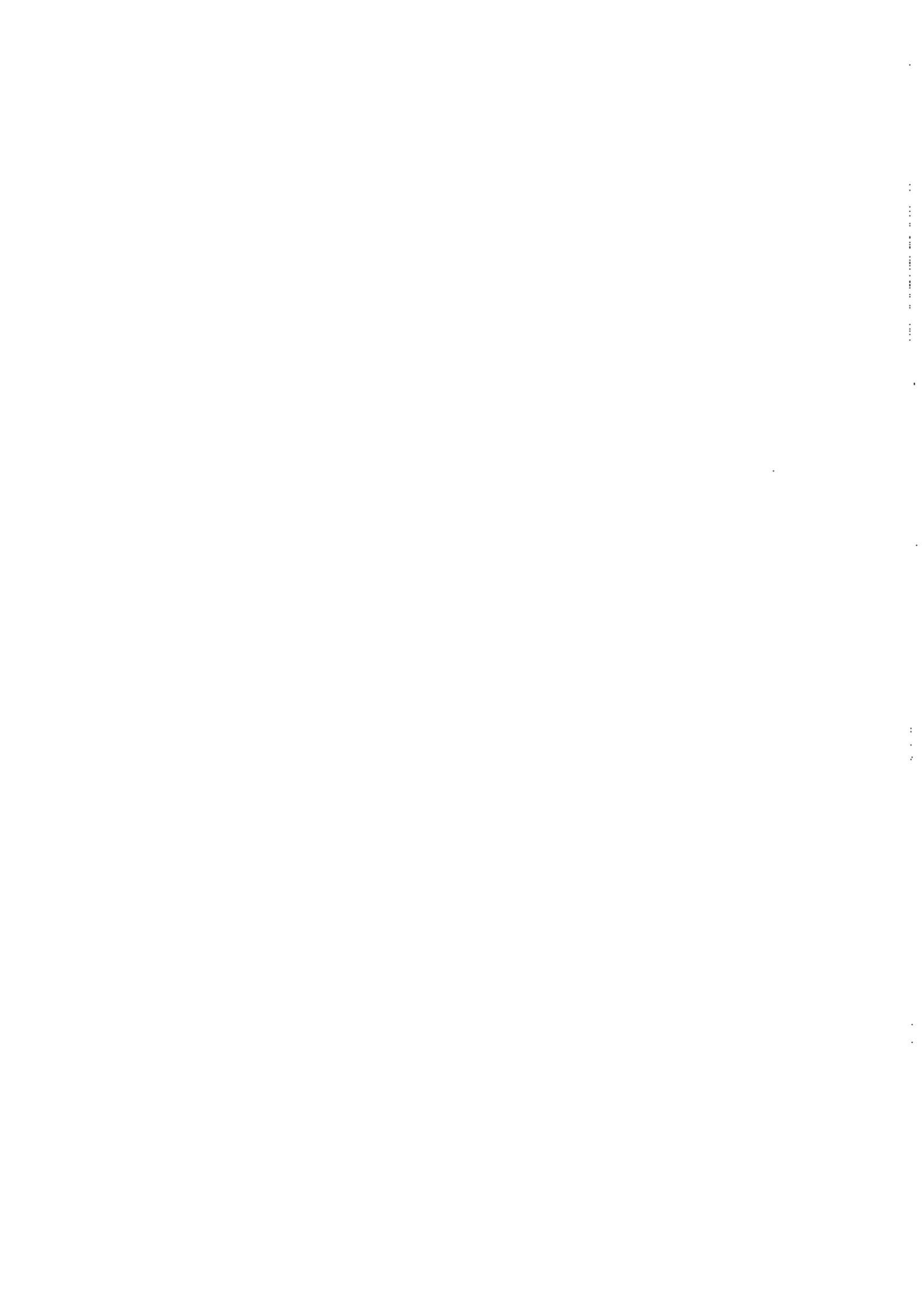
People Projects	Land Projects	Nature Projects
Population	Current land use	Surface water resources
Transport services and infrastructure	Land tenure	Fire
Values, needs and aspirations	Indigenous management of land and sea	Feral and pest animals
Services and infrastructure	Pastoral industry	Weeds
Economic assessment	Primary industries (non-pastoral, non-forestry)	Land degradation and soil erosion
Secondary and tertiary industries	Forest resources	Conservation and natural heritage assessment
Traditional activities	Commercial and non commercial fisheries	Conservation and National Park management
Current administrative structures	Mineral resource potential and mining industry	
	Tourism industry	

As a part of the public participation process, community and other groups associated with CYPLUS were invited to review all draft reports. These reviews were designed to correct any errors of fact (which were then modified in the final report) and to provide an opportunity for people to express their views of the information presented. The comments submitted to the CYPLUS process by various community groups and other interested persons in regards to the components of this project report are situated within an attachment to each part of this report.

TABLE OF CONTENTS

Each part of the two parts of the report is preceded by a detailed table of contents.

PART 1 - LAND TENURE IN CAPE YORK PENINSULA	i
By M. Hardy (Department of Lands) and R. Nelson (CYPLUS Taskforce)	
PART 2 - LAND TENURE ISSUES	45
By Professor J.H. Holmes (UniQuest - University of Queensland)	



The Purpose of the Land Tenure Project

The CYPLUS Land Tenure project was designed to provide information to the Land Use Program on the tenure types and boundaries, the general conditions of the tenure types and the restrictions that land tenure in the Peninsula has on land use. It was considered necessary to know and understand the traditional titles, interests and associations of Aboriginal and Torres Strait Islander people with the land. From these perceived needs, a set of desired outputs were established and the project divided into two entities in order to achieve these goals.

Desired Outputs

The outputs that interest groups within the CYPLUS process agreed to as relevant and as being capable of filling the information gap were:

- a GIS layer showing all tenure types (including marine tenure information), and marine zoning systems (GBRMPA zoning, DPI fish habitat reserve, etc);
- a statement of issues on land tenure, including a regional assessment of the extent of native title in Cape York Peninsula as determined by the Native Title Acts, and a report on the implications of native title for land use, resource management, and the land tenure system;
- a Department of Lands' policy paper on the nature, purpose and administration of existing land tenures in Cape York Peninsula.

The Structure of the Land Tenure Report

The CYPLUS Land Working Group agreed that the aims of this project would best be achieved by splitting the project into two parts.

The first part of the project, undertaken by Malcolm Hardy of the Queensland Department of Lands and Rachel Nelson from the CYPLUS Taskforce, explores the current system of land tenure in Queensland and the effect that the various tenure types may have upon land use. The impact of the various tenures upon native title is also examined within this section.

The second part of the project was conducted by Professor John Holmes of the University of Queensland. For this part, the consultant worked with interest groups involved in the CYPLUS process in identifying the issues considered important by those with a concern in the Peninsula. Representatives of these interest groups are recognised by the CYPLUS process as portraying a wide section of the interests present within Cape York Peninsula. Through a questionnaire, these groups described their aspirations and expectations about certain land tenure issues.

PART 1

**LAND TENURE
IN
CAPE YORK PENINSULA**

By

MALCOLM HARDY (Department of Lands)

and

RACHEL NELSON (CYPLUS Taskforce)

CONTENTS

	PAGE
EXECUTIVE SUMMARY	iv
ACKNOWLEDGMENTS	vii
1. INTRODUCTION - LAND TENURE IN QUEENSLAND	1
1.1 The tiers of government and their responsibilities	1
1.2 Categories of tenure	2
1.3 Understanding proprietorial and regulatory control systems	2
1.4 Land tenure in Cape York Peninsula	4
2. FREEHOLD, LEASEHOLD AND TRUST LANDS	5
2.1 Native title	5
2.2 Freehold	5
2.3 Leasehold	6
2.4 Inalienable freehold (including Aboriginal freehold)	10
2.5 DOGIT Deed Of Grant In Trust	11
3. RESERVED LAND	12
3.1 Conservation reserves	12
3.2 Forest and timber reserves	13
3.3 Special purpose reserves -	14
Departmental and official purpose reserves	
Public purpose reserves and public utility reserves	
Resource protection reserves	
Defence and other Commonwealth reserves	
Declared roads	
Council roads	
4. MINING TITLES	17
4.1 Background	17
4.2 Prospecting permit	17
4.3 Mining claim	18
4.4 Exploration permit	18
4.5 Mineral development licence	19
4.6 Mining lease	19
4.7 Petroleum permit	19
4.8 Special mineral development Acts	20
4.9 Mining titles versus tenure	21

5.	REGULATORY CONTROLS	22
5.1	World heritage and international agreement areas	22
5.2	National Estate areas	23
5.3	State Marine Park	24
5.4	Planning schemes and development controls	25
5.5	Cultural heritage	25
5.6	Fish habitat and wetland reserves	26
5.7	Beach protection	26
5.8	Land planning functions of public agencies	27
6.	IMPACT OF TENURES ON NATIVE TITLE	30
6.1	Decision in Mabo No. 2	30
6.2	Commonwealth <i>Native Title Act 1993</i> (the "NTA")	32
6.3	Effect of land tenure on native title	33
6.4	Conclusion	39
7.	BIBLIOGRAPHY	41
	Appendix 1 - Terms of Reference	42
	ATTACHMENT	43

EXECUTIVE SUMMARY

The CYPLUS Land Tenure project provides an introduction to the various forms of tenure within the Peninsula, the issues associated with the land tenure system and the effect of land tenure on the extinguishment of native title.

Types of Land Tenure

Land tenure is the means by which the right to use and occupy land is allocated to various individuals or organisations, with varying degrees of security of ownership. The three main categories of land tenure in the CYPLUS area are State Land (leasehold, reserves and departmental land), trusts and freehold.

As at December 1994, 57.2% of the CYPLUS area was under pastoral leases, compared to 53.4% of the whole of Queensland. This is the most significant tenure type within the Cape in regard to land area and number of properties. The other significant areas of tenure are Deed of Grant in Trust (DOGIT) and inalienable freehold tenure issued to Aboriginal and Torres Strait Islander peoples, being 14.5% of the total CYPLUS area and Conservation Reserves for the purpose of national parks being approximately 10% of the land area. Both these land tenures are proportionally greater than the respective percentages for the whole of Queensland.

The tenures of the remainder of the CYPLUS land area is divided as follows:

Freehold title	4.1% (17% for the whole of Queensland)
Other leases (special purpose lease, etc)	3.6%
Crown Reserves for public purposes	3.4%
Mining tenures	2.9%
State Forest and Timber Reserves	1.6%
Road Reserves and natural features	0.8%
Vacant Crown Land	0.7%
Other tenures	0.9%

Freehold title is the most complete form of private ownership. However, ownership by the titleholder is not absolute, as the Crown is empowered to withhold rights to minerals or petroleum. Leasehold is a lesser form of ownership as ownership is restricted by time and type of land use that can take place. Inalienable freehold is similar to freehold rights over land with the exception that it can not be transferred to anyone but the Crown.

A DOGIT also imparts freehold rights over a land area, similar to inalienable freehold, with the added ability to be able to subdivide the area and lease out sections for monetary return. In the case of Aboriginal DOGITs, the Aboriginal Council that holds the title to the tenure leases the land to individuals. Native title, unlike any other form of title, cannot be sold; it can only be surrendered to the Crown. Native title provides the titleholder to rights relating to land and water such as the right to traverse, camp, hunt, fish, collect natural materials, conduct ceremonies and burials, and the right to exclude others from the whole or particular parts of the land.

Effect of Land Tenure on Native Title

Since European settlement of Australia in 1788, land administration has been based on the belief that all land originally belonged to the Crown. In June 1992, a high court decision held that the native title over land on the Murray Islands in the Torres Strait which existed before European settlement had not been extinguished by the Crown occupation. This decision related to the whole of Australia and demonstrated that the Crown acquired a radical title to the land and not on absolute beneficial title.

Certain forms of land tenure allocated by the Crown since settlement can result in the extinguishment of native title. These include freehold (as long as it is not issued to an organisation of the Crown), constructed dedicated roads (yet to be tested in the courts), and land vested under the provisions of the Harbours Act 1955, including all land lying between high and low water mark, land under tidal navigable rivers and land lying under any bay, gulf, estuary, river, inlet, port or harbour in Queensland.

The extinguishment of the native title by other forms of tenure depends on whether the tenure was granted before or after 31 October 1975 and for what purpose the lease was granted.

Native title operates as a burden on the radical title of the Crown. The extent of the existence of native title in CYP is not known and will only be determined after careful consideration and research in relation to the existing and previous tenure that has existed over individual parcels of land.

Government Control of Land Use

The allocation of land owned by the Crown to private individuals and interests is accompanied by proprietorial and regulatory controls over the use of the land and natural resources. Proprietorial controls relate to the ownership of natural resources such as water, fauna and minerals. The government owns these resources unless it allocates them to a private person. Regulatory controls relate to the use of natural resources. Rather than the resource being allocated to a private person, restrictions are placed upon the landholder's use of the land and resource.

All land and waters within the CYPLUS region are affected to some extent by regulatory controls. The degree to which these controls affect land is dependent upon the tenure of the land. The types of regulatory controls that are in place over some lands and waters on the Peninsula include:

- World Heritage Management Plans for that part of the Wet Tropics Heritage Area near Cooktown and the Far Northern Section of the Great Barrier Reef Marine Park
- Restrictions on the 60 sites registered as National Estate areas
- The Cairns Marine Park Management Plan
- Local Government planning schemes and development controls

- Cultural heritage site protection legislation
- Regulations for the five Fish Habitat Reserves
- Beach Protection Authority requirements
- Land planning functions of the Department of Lands, Environment and Heritage, and Primary Industries

These regulatory controls are not a form of land tenure, but can directly impact on the type of land use allowed despite the existing or future land tenure.

ACKNOWLEDGMENTS

So many people gave up their time and knowledge in providing assistance with this report that those mentioned below only represent a small proportion of the people to whom we are indebted.

However, many special thanks go to the following for their help and contributions: Gary Smith (Dept of Minerals and energy, Jillian Comber (Dept of Environment and Heritage), Peter Harris (DEH), Nigel Hedgecock (DEH), Gary Cotter (Dept Of Lands), Graham McColm (DoL), Jurgen Pasieczny (Dept of Transport), Daryl Killin (Dept of Primary Industries - Forest Service), Annie Clark (DPI Fisheries), Bill MacDonald (DPI - Walkamin), Alistair Campbell (Dept of environment, Sport and Territories), and Michael Mulvaney (Australian Heritage Commission).

One of the authors, Rachel Nelson, wishes to highlight the help and guidance received from Mr John Lane of the CYPLUS Taskforce. His guidance throughout the CYPLUS project and during the production of this report, and all of his suggestions, contributions and constructive criticisms are gratefully appreciated.

1. INTRODUCTION

The following paper is a general discussion of land tenures in Queensland with particular reference to Cape York Peninsula.

These clarifying points are submitted for the purpose of incorporating this paper in the CYPLUS Stage 1 data base. The new *Land Act 1994* was implemented in late 1994. The general principles of land administration addressed in this Act are:

- * to use land in the best calculated way to serve the whole of the people,
- * to prevent monopolies in land,
- * to make land available in areas suitable for the requirements of applicants,
- * to ensure the steady flow of land back to the Crown (Government) to meet the progressive needs of land settlement, and
- * to manage land for sustainable resource use and development to ensure existing needs are met and the resources are conserved for the benefit of future generations.

These principles were highlighted in the Payne Report and the Wolfe Report.

The nature of Cape York Peninsula is significantly different to the State of Queensland as a whole, in terms of land tenure:

- * Freehold Land is dominated by a few large Deeds of Grant in Trust (DOGITs) with Aboriginal and Islander Communities;
- * State Land has proportionally more land in National Parks and much more land in Aboriginal and Torres Strait Islander Reserves. With the operation of the *Aboriginal Land Act 1991*, these Reserves are being transferred to nominated communities with "inalienable freehold" tenure. It should be noted that the population characteristics and distribution in Cape York Peninsula are also markedly different to that of the rest of Queensland (see CYPLUS Population Report - D. King).

1.1 The tiers of Government and their responsibilities

Australia operates under a federal system which came into effect on 1 January 1901. The Constitution specifies that decision-making about the use and management of land is a responsibility of the States. The Commonwealth's direct control over land use is more or less limited to those particular parcels which it acquires for given Commonwealth purposes including defence. The Commonwealth has a number of obligations arising from Acts of Parliament and international treaties or conventions; and it has also contrived to exercise considerable influence over the use of land by the indirect means of controlling financial grants to the States. The InterGovernmental Agreement on the Environment (IGAE) identifies the circumstances in which the Commonwealth have an interest in land use decision-making. Local government also makes decisions which influence the way land is developed; its authority derives from the States.

1.2 Categories of tenure

Land tenure is a means by which the right to use and occupy land is allocated to various individuals or organisations, with varying degrees of security of ownership. There is some confusion over the terms used to describe the different categories of land tenure. (There is even confusion over the term "tenure". Strictly, it refers only to secure occupation, such as is granted by a lease or freehold. However, in common usage, we also include non-secure forms of landholding such as reserve, permit to occupy and licence in the generic term "tenure").

The three main categories of land tenure that affect the CYPLUS area of Cape York Peninsula are freehold, trusts and State land (leasehold, reserves, departmental).

In this paper, the term **State land** is used instead to embrace all land which is not privately held as freehold, with **Crown lands** being an acceptable alternative term and "Crown land" being ambiguous and therefore unacceptable. According to S.5 of the *Land Act 1962*, the term "Crown land" embraces only those lands which are not freehold, leased, licensed or reserved. As **State land** includes leased State land, reserves and freehold land held by the Queensland Government, "Crown land" is a much narrower category than "State land". Of Queensland's area of 1.74 million square kilometres, State land totals some 1.5 million square kilometres or 81 % of the State's land mass.

The term "vacant Crown land" is often used to describe the category "Crown land", though it is not used in the Act. "Vacant" Crown land, the residual State land which has not been allocated, takes up about 3 % of Queensland.

Government land is a term used to embrace all State land except leased State land.

1.3 Understanding proprietorial and regulatory control systems

There is considerable confusion as to the meaning of the word "planning". The word is used to describe numerous different activities undertaken by various authorities for different purposes.

Controls by governments over the use of land and natural resources fall into two fundamentally distinct categories; proprietorial controls and regulatory controls.

1.3.1 Proprietorial controls

One form of control is **proprietorial** and amounts to control over the **allocation of a resource**. In the Australian political system, government is considered to own most natural resources unless or until it allocates them to some private person. Examples are:

- * water, the diversion of which is controlled by the Department of Primary Industries;
- * fauna, considered to be owned by the Crown and released under a permit system controlled by the Department of Environment and Heritage;

- * commercial timber, owned by the Crown (even when land is freeholded, until its value is paid to the Crown), represented by DPI
- * land itself, (until the "Mabo" decision) considered to be in State ownership until licensed, leased or freeholded. The "proprietor", the Crown, acts directly in a "landlord-tenant" relationship by allocating the land with appropriate conditions.

When the State allocates a resource, it may choose to allocate it only in part. The private grantee owns the resource only to the extent to which it is released by the proprietor. An example is that when land is allocated in freehold, the title reserves the rights to all minerals and petroleum to the Crown, even though most other resources pass to the purchaser. It is open to the Governor-in-Council (GIC), when issuing freehold titles, to make reservations of such resources as the GIC thinks fit: the power is not restricted to reserving minerals.

1.3.2 Regulatory controls

The other main type of control is regulatory. No resource is allocated; but restrictions are placed upon the method by which the resource is exploited or the way in which it is enjoyed. Examples include:

- * pollution limits for discharges to water, administered by DEH;
- * hygiene standards for game meats, administered by DPI;
- * vegetation protection orders over bushland, administered by local governments;
- * statutory (town) planning, also administered by local governments.

In effect, these controls are fettering the proprietorial rights which governments previously gave away to the private purchaser of the respective resource.

As society has become more complex, there has been a tendency to increase the weight of regulatory controls, because communities and therefore governments have realised that unfettered private control over resources has led to costs to the community, in economic, environmental and social terms.

1.3.3 Convergence between proprietorial and regulatory controls

There are three main reasons why the fundamental distinction between the two forms of control is often confused:

- * there is an overlap in the considerations which must be taken into account when planning both the allocation and the use of a resource. Planners must assess similar features of the resource and evaluate similar environmental, economic and social trends;
- * regulatory controls may, through feedback, affect proprietorial allocation. Examples of this are:
 - hygiene standards for slaughtering kangaroos may be so onerous that it is not economically worthwhile to harvest the quotas that DEH is prepared to allocate;
 - a Crown reserve may be zoned as open space and this inhibits the State from selling it for a tourist project.

- * proprietorial controls may be conditional: for example, an industry might be given permission to divert water provided it meets defined standards for its effluent.

Despite convergence in these ways, the fundamental distinction between the two forms of control remains. And the results of planning for these two purposes need to travel down different routes within government.

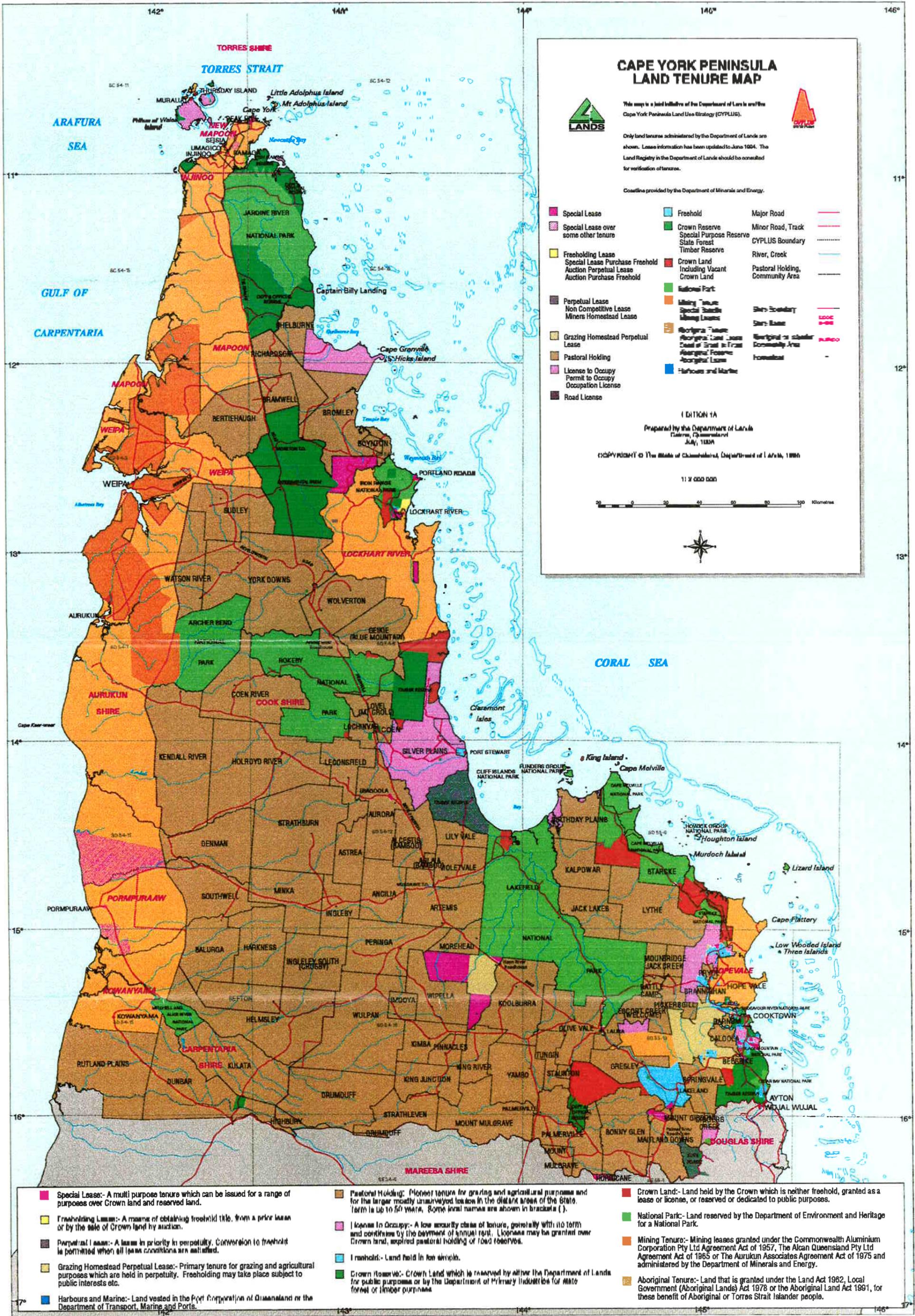
1.4 Land tenure in Cape York Peninsula

A breakdown of the major land tenure types within Cape York Peninsula into the percentage of land covered by each, provides an insight into the balance of land holdings. Pastoral leases are by far the largest tenure type within the Cape, with approximately 57.2% of the land area under this category. The other large areas of land tenure are Aboriginal and Torres Strait Islander lands, both DOGIT and inalienable freehold combined at 14.8%, and national parks encompassing approximately 10% of Cape York Peninsula. The remainder of the land area can be further divided as follows:

- Freehold	4.1%
- Other leases (special purpose lease, etc)	3.6%
- Crown reserves	3.4%
- Perpetual mining tenure	2.9%
- State forest and timber reserves	1.6%
- Roads and natural features (rivers, etc)	0.8%
- Crown land (vacant crown land)	0.7%
- Other	0.9%

The Queensland Government has recently announced the intended classification of parts of the Starcke and Silver Plains pastoral holdings to national parks or Aboriginal lands. As each of these properties is approximately 200,000 hectares each, such a change amounts to almost 3% of the land area in Cape York Peninsula changing tenure.

A Tenure Map showing the location of the types of land tenure within Cape York Peninsula has been compiled and is available for purchase from the State Government Department of Lands' offices Cairns and Brisbane.



CAPE YORK PENINSULA LAND TENURE MAP

This map is a joint initiative of the Department of Lands and the Cape York Peninsula Land Use Strategy (CYPLUS).

Only land tenures administered by the Department of Lands are shown. Lease information has been updated to June 1994. The Land Registry in the Department of Lands should be consulted for verification of tenures.

Coastline provided by the Department of Minerals and Energy.

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> Special Lease Special Lease over some other tenure Freeholding Lease Special Lease Purchase Freehold Auction Perpetual Lease Auction Purchase Freehold Perpetual Lease Non Competitive Lease Miners Homestead Lease Grazing Homestead Perpetual Lease Pastoral Holding License to Occupy Permit to Occupy Occupation License Road License | <ul style="list-style-type: none"> Freehold Crown Reserve Special Purpose Reserve State Forest Timber Reserve Crown Land Including Vacant Crown Land National Park Mining Tenure Special Statute Mining Lease Mining License Aboriginal Tenure Aboriginal Land Lease Land of Trust in Trust Aboriginal Reserve Aboriginal Lease Harbours and Marine | <ul style="list-style-type: none"> Major Road Minor Road, Track CYPLUS Boundary River, Creek Pastoral Holding, Community Area Shire Boundary Shire Base Municipal to Shire Community Area Homestead |
|---|---|--|

EDITION 1A
Prepared by the Department of Lands
Queensland Government
July, 1994

COPYRIGHT © The State of Queensland, Department of Lands, 1994

1:1 000 000



- | | | |
|---|--|--|
| <ul style="list-style-type: none"> Special Lease:- A multi purpose tenure which can be issued for a range of purposes over Crown land and reserved land. Freeholding Lease:- A means of obtaining freehold title, from a prior lease or by the sale of Crown land by auction. Perpetual Lease:- A lease in perpetuity. Conversion to freehold is permitted when all lease conditions are satisfied. Grazing Homestead Perpetual Lease:- Primary tenure for grazing and agricultural purposes which are held in perpetuity. Freeholding may take place subject to public interests etc. Harbours and Marine:- Land vested in the Port Corporation of Queensland or the Department of Transport, Marine and Ports. | <ul style="list-style-type: none"> Pastoral Holding:- Former tenure for grazing and agricultural purposes and for the larger mostly unimproved leases in the inland areas of the State. Term is up to 99 years. Some lease names are shown in brackets (). License to Occupy:- A low security class of tenure, generally with no term and continues by the payment of annual rent. Licenses may be granted over Crown land, expired pastoral holding or land freeholds. Freehold:- Land held in fee simple. Crown Reserve:- Crown Land which is reserved by either the Department of Lands for public purposes or by the Department of Primary Industries for MIMC (Mines and Minerals) or timber purposes. | <ul style="list-style-type: none"> Crown Land:- Land held by the Crown which is neither freehold, granted as a lease or license, or reserved or dedicated to public purposes. National Park:- Land reserved by the Department of Environment and Heritage for a National Park. Mining Tenure:- Mining leases granted under the Commonwealth Aluminium Corporation Pty Ltd Agreement Act of 1957, The Alcan Queensland Pty Ltd Agreement Act of 1965 or The Aurukun Associates Agreement Act of 1975 and administered by the Department of Minerals and Energy. Aboriginal Tenure:- Land that is granted under the Land Act 1962, Local Government (Aboriginal Lands) Act 1978 or the Aboriginal Land Act 1981, for these benefit of Aboriginal or Torres Strait Islander people. |
|---|--|--|

2. FREEHOLD, LEASEHOLD AND TRUST LANDS

2.1 Native Title

Since European settlement in 1788, land administration in Australia has been based on the assumption that all land belonged to the Crown until it had been allocated by leasehold or freehold. A decision of the High Court in June 1992 - *Mabo v. Queensland [No.2]* - held that, on a few defined islands in the Torres Strait, the "native title" which existed before that date had not in fact been extinguished by the act of claiming Australia for the English monarch. In other words, native title could still exist, although it did not negate the Crown's sovereignty and it was open to the sovereign State Governments to extinguish native title by:

- * valid legislation;
- * using the land in a manner inconsistent with native title.

Late in 1993, the Australian Government passed legislation regulating future dealings with native title land (*Native Title Act 1993*). The Queensland Government has introduced complementary State legislation (*Native Title (Qld) Act 1993* as amended). This adds a good deal of complexity to Queensland's land laws and it is not yet certain what the implications might be. However, native title can be seen as a pre-existing land tenure where the titleholders enjoy rights of land ownership in some way similar to freehold.

2.2 Freehold

Freehold title, often termed an "estate in fee simple", is the most complete form of alienation from the Crown available in Queensland's traditional administration. However, ownership by the title holder is not absolute as the Crown is empowered to withhold certain rights (termed "reservations" in a specific, technical sense). The right to any minerals or petroleum is withheld by the Crown and this exclusion is noted on the original **deed of grant** issued when the land is first granted as freehold (though it may not be detailed in the derivative **certificates of title**). About 17 percent (one sixth) of Queensland is freehold or in the process of freeholding. Dealings in freehold land are regulated by the *Land Titles Act*.

2.2.1 Freehold land and the Torrens title system

In line with the other States, Queensland uses the Torrens System whereby title and other dealings with freehold land are recorded in a central registry operated by the State. Private individuals, groups or corporations may own the freehold title of a parcel of land.

Sir Robert Torrens, a South Australian, was concerned at the plight of people who lost their properties because they could not establish beyond doubt their legal titles, so in the mid-1850s he devised a system known as the Torrens title system. This was based on the creation of a single certificate of title. The previous system relied upon tracing numerous deeds back to the original root of title so that ownership could be established beyond doubt (a system which still operates in the UK).

The Torrens title system was designed for simplicity of operation. It was quickly adopted by other Australian States.

It should be noted that the Torrens system acts only as a registry. The State guarantees that the title is valid and that it does not belong to someone else. The Government does not become involved in land dealings between individuals.

2.3 Leasehold

A leasehold is a lesser form of ownership (compared to freehold) as the right of ownership is restricted, usually by time (ie. a lease only runs for a set number of years) and land use (leases usually specify the type of activity that can take place, such as grazing). Both freehold and state land can be leased, although legislation often restricts or limits the extent to which some state lands can be leased out.

Dealings in State land are regulated primarily by the *Land Act 1994*. Some 72% of Queensland is State land which has been allocated to private persons in the form of perpetual lease, term lease, licence or permit. The Department of Lands manages some 37 000 leases, licences and permits covering about 20 different types.

Grazing is the primary land use on some 8 000 leased and licensed holdings of varying sizes totalling 136 million hectares, or about three-quarters of Queensland's land area.

Of these holdings, the category covering the largest area is **pastoral lease**. Pastoral leases are basically pioneer tenures from which other tenures are later derived as settlement intensifies. There are nearly 1 600 pastoral leases covering some 93 million ha or just over half the area of the State. They have an average size of 57 000 ha and generally occur in the more remote areas.

The Department of Lands also releases State land for residential, commercial and light industrial development. This is primarily aimed at ensuring a flow of developed allotments to meet needs in all parts of the State.

Land settlement - background information. Historically, the leasehold system of tenure has been used in Queensland to achieve progressive closer settlement. This was achieved by way of subdivision of properties previously managed at a lower intensity of use. As a pastoral lease expired, it would be split into two pastoral leases; as these expired they might be fragmented into several **grazing selections** (now called **Grazing Homestead Perpetual Leases**). In the higher rainfall areas near the coast, these have usually been eventually freeholded but elsewhere they have usually remained under perpetual lease.

Development of the new leasehold has been encouraged by imposing development conditions. In this way two objectives have been achieved: closer settlement and the development of the State.

Restrictions on the amount of land which could be held under certain tenures by one person and the exclusion of corporations from the closer settled areas resulted in what is sometimes referred to as the "family farm" policy. This has meant that family enterprises have occupied the closer settled areas, the main tenure being **Grazing Homestead Perpetual Lease**. The objective of this policy is to establish stability in the rural communities. This policy of social equity has been possible because of the leasehold system. When State land has been first released for pastoral lease, for example, it has been by ballot - not by allocation to existing landholders.

Closer settlement has virtually ceased at this time. Current land administration policy now encourages build-up to economic units, where previous subdivisions created undersized properties. This policy also recognises and addresses the land degradation problem from which undersized properties more often seem to suffer.

Leasehold tenure and resource sustainability. Current Government policy on land tenure is based on the recommendations of the Wolfe Report (1990). These recommendations reflect concepts of land sustainability, landcare, public interest, consultation and openness in decision making. Principles of sustainable development are being brought into the legislative and policy framework of all land managing authorities in Queensland. Lease conditions in future will incorporate landcare considerations.

The Department of Lands has recently reviewed the extent to which freeholding should be allowed. Once land is freeholded, the opportunity to use the strengths of the leasehold tenure system to address land sustainability - by appropriate lease conditions - is lost. In any application for conversion of tenure, the policy now is to assess (among other tests) the risk of land degradation and isolation.

The Department of Lands previously assessed carrying capacities primarily to determine rents for leases and also as a guide for graziers. However, the new rental system introduced in July 1993 is based on a % of the Unimproved Capital Value. Nevertheless, for land sustainability reasons there is still a need to ensure that the carrying capacity for any lease is accurate. Carrying capacities are being reviewed in certain regions (eg Mulga) to account for the losses in productivity caused by land degradation. It is now policy to encourage lessees to prepare land management plans (which specify preferred stocking rates and other landcare considerations) upon transfer of their leases to incoming purchasers. This will encourage the sustainable utilisation of the pastoral lands by making graziers aware of the limitations of their holdings, so helping to ensure that they do not overstock and degrade the land. It is not Government policy to enforce carrying capacities or land management plans, except in those (rare) occasions where the carrying capacity is formally included in the conditions of the lease.

It is now policy to make carrying capacities publicly available. This allows the market to properly assess the productivity of a property and the extent of degradation on it. At present the property market does not necessarily reflect the condition of the land. This may be due to a failure to appreciate the extent of productivity losses caused by land degradation. In such cases, buyers are believed to sometimes be forced to overstock to meet budget expectations that are based on wrong assumptions about carrying capacity.

Careful administration of leasehold tenures is seen as only part of the solution; public education is essential and this is best achieved through the landcare movement, supported by extension programs of the Department of Primary Industries.

Leasehold tenure contrasted with freehold tenure. The various forms of tenures have various rights or "interests" and various obligations attached to them. Listed in order of increasing private interest (or decreasing Crown interest), they are as follows:

- * "Vacant" State land (the individual enjoys the same rights as does every other citizen);
- * Permit to occupy (may be terminated at will by the Crown);
- * Licence (for a set period, often one year renewable, to allow an activity to occur, but conveys no exclusive possession);
- * Term lease, eg Special and Development Leases (for a set period, which is up to 50 years for a pastoral lease and up to 75 years for high-capital commercial leases. The new *Land Act 1994*, which is yet to become fully functional, states that the period allowed for a significant development or timber plantation may be up to 100 years);
- * Perpetual lease (which has no expiry date but, incidentally, cannot be held by a corporation);
- * Freeholding lease (for a property in process of freeholding); and
- * Freehold, inalienable freehold and native title.

Leases can be bought and sold by private agreement. The Minister's consent is needed for a transfer of a lease from one person to another but not for transfers of freehold.² The Minister's consent is rarely withheld. In the recent controversial Starcke case in Cape York Peninsula, it was in theory open to the Minister to decline to register a transfer of the lease to an overseas purchaser. However, to do so in the absence of a formal State policy to restrict ownership of State leases to Australians would open the Minister to criticism that he was being capricious and discriminatory.

Freehold is often regarded by people as giving absolute ownership of land. In precise terms, this is not so. No single person holding an estate in freehold has full ownership that will allow him to exercise all those rights that may be exercised by the ultimate owner - which in Australia, subject to native title, is the Crown. As evidence of this, the Crown in granting freehold title, reserves to itself certain rights, such as to minerals and petroleum, and these do not pass to the freehold owner. This entitles the State to issue mining rights or mining leases (which are *not* a form of tenure) to people to search for, and extract minerals. This reservation was later extended to include quarry materials. The issue of mining rights or mining leases is subject to land use zoning.

It is generally perceived that freehold tenure has two main advantages:

- * the use or development of land is not restricted by the Crown; and
- * windfall profits and capital gains are possible.

Any increases in the value of land - for example when population growth occurs and a use of higher intensity becomes possible - generally belong to the owner not the occupier. This type of profit where the owner of the land benefits from the community's changing needs and he or she makes no effort by way of building or development is referred to as **windfall profit**. For leasehold land, this profit accrues to the Crown. The crux of the desire for freehold in the growth areas of the State is the right to any windfall profit that may occur because of urban expansion (which a Crown lessee usually cannot collect).

The leaseholder's use and enjoyment of land is subject to other limitations, including:

- * the requirement to pay rent;
- * the use is limited to those purposes specified in the lease; and
- * on expiry of the term (in the case of term leases) the rights to another term may not be automatic (though pastoral lessees are entitled to automatic renewal if the Crown intends to lease the land again for the same purpose; that is, the Crown cannot issue the lease for grazing to someone else).

Otherwise, there are many similarities between the freehold and leasehold systems. The Crown can pass legislation which restricts rights on any tenure; for example, the right to clear trees. Further all occupiers, whether freehold owners or lessees, are obliged to pay rates to the local government. Their control over land use is less direct than the control which the Crown exercises when it allocates land but it is becoming stronger as modern planning schemes become more comprehensive.

Some lessees claim that leasehold is too insecure and does not allow them to invest in the improvement of the land with confidence. This lack of security is more apparent than real. A lessee is entitled to enjoy uninterrupted occupation of the lease during its term. However it is true that business (including pastoral business) will not invest if it really is insecure. Any lease must be long enough to cover the lifetime of the project and the Government must guarantee that it won't expropriate the lease or interfere during its currency.

An advantage of the leasehold system for business is that it does not have to pay the total cost of the land up front (though if it purchases a lease from someone else, it will have to pay that person for the leasehold). Also, because rents are considered to be an operating cost, they are tax-deductible whereas the cost of buying land is a capital cost and so is not tax-deductible.

As both lessees and freehold owners enjoy exclusive occupation (in the case of a lessee, of course, this is subject to the term, purposes and conditions of the lease), should the Crown require the land, it must acquire it either by negotiation or by resumption, paying adequate monetary compensation. In principle, a lease should sell for less than the value of a similar freehold property, because it conveys less complete ownership.

Similarities and differences between the tenures can be summarised as:

	LEASEHOLD	FREEHOLD
Conditions of Use imposed by the Crown	Yes	Not applicable
Development	Determined by Crown	Generally not applicable
Subject to statutory planning controls	Yes (except Crown itself)	Yes (except Crown itself)
Windfall profits	Not likely	Possible
Rent	Yes	Not applicable
Security of tenure	Renewal of term lease not automatic but generally secure	Yes
Increase in value to owner	Yes - improvements (usually) No - land value	Yes
Tree clearing	Controlled by Crown	No general controls by Crown (except mangroves and watercourses, by specific legislation) - but possible by local authorities
Rights to minerals	No	No
Cost of land	No (to original lessee, but yes subsequently)	Yes
Tax deduction for rent	Yes	Not applicable
Rates	Yes	Yes

2.4 Inalienable freehold

This form of tenure is granted by the Crown to individuals or corporate bodies. In so doing, the receiver of the land obtains what amounts to freehold rights over the land. The land may be leased to another person or corporate body, with the income from such an arrangement going to the holder of the inalienable tenure. However, ownership of the land cannot be transferred to any other party or individual except to the Crown, and if this occurs the market value of the land must be paid for such a transferral.

2.5 DOGIT (Deed of Grant in Trust)

The Crown may also grant a tenure title over an area of land to a corporate body in the form of a Deed of Grant in Trust (DOGIT).

This form of tenure imparts freehold rights over the land area to the holder of the grant, as in the case of an inalienable freehold tenure. However, the corporate body has the ability to subdivide the area of land and lease out sections for a monetary return, although the sale of all or part of the land is again not permitted.

In the case of Aboriginal DOGIT's, the Aboriginal council that holds the title to the tenure takes on the local government responsibilities towards the land. Because of this transfer of responsibilities, rates that are usually collected by local councils for the provision of such services as waste removal, may instead be collected by the holder of the tenure title.

3. RESERVED LAND

State land may be set aside or reserved for public purposes in the form of a national or environmental park, a State forest, a road or railway, or a Crown reserve for numerous purposes. About 7 percent of Queensland is reserved in these ways.

Reserved land is a form of tenure in as much as it establishes a primary use for the land and usually vests physical or day to day management of the land in some (usually public) authority.

The term derives from the practice of reserving land from sale in order to protect some features of the land for the good of the public. The term "public purpose reserve" is still commonly used.

State land can be reserved for a wide range of conservation, resource extraction, public use or operational purposes.

3.1 Conservation Reserves

The *Nature Conservation Act 1992* (which has yet to be made fully operational) defines eleven types of protected areas within the State of Queensland. These areas, because of distinctions between their goals and objectives, require different management practices and will therefore ultimately affect possible land uses in a variety of ways. The Act that currently oversees protected areas is the *National Parks and Wildlife Act, 1975 - 1982*.

The eleven classes of protected area within the *Nature Conservation Act 1992* include: national parks (scientific); national parks; national parks (Aboriginal land); national parks (Torres Strait Islander land); conservation parks; resources reserves; nature refuges; coordinated conservation areas; wilderness areas; World Heritage management areas; and international agreement areas.

These classes are assembled into groups that are given similar protection under the Act. Group 1 refers to the classes national park (scientific); national park; conservation park; and resource reserve. Group 2 covers land that is a national park (Aboriginal land) or a national park (Torres Strait Islander land). Group 3 covers nature refuges, coordinated conservation areas and wilderness areas. Groups 4 and 5 refer to World Heritage management areas and international agreement areas respectively. **The land areas that belong to either Group 1 or 2 are those that are strictly a form of land tenure; the other Groups represent a form of regulatory control over an existing tenure type.**

3.1.2 Group 1 - Protected areas (Crown land).

The protected areas under this grouping are all exempt from mining interests, excluding land situated in resource reserves.

Upon the dedication of land as a class within this group, the management intent for the area must be specified. If all, or part of, the protected area lies within a State Forest or Timber Reserve that is declared under the *Forestry Act 1959*, the declaration of the land as a protected area nullifies the previous tenure.

An interest in the land in any class of protected area can only be created under a licence, lease, permit or special authority, and only if such an interest is consistent with the management principles and conservation plan that has been established for that area. However, when a previous authority exists over land that is to be declared a national park, it may continue as stated within its terms until its expiration. Under certain sections of the *Lands Act 1994*, a special lease may be granted to lands within a protected area in this group, subject to set conditions.

3.1.3 Group 2 - Protected areas (Aboriginal lands and Torres Strait Islander lands).

Land that has been dedicated as national park (Aboriginal or Torres Strait Islander land) is exempt from any mining interests that may have otherwise been proposed for that area. The dedication of land into national parks (Aboriginal and Torres Strait Islanders) must adhere to the plans and leasing arrangements as outlined in the Act.

The right of Aboriginal and Torres Strait Islander people to carry out traditional activities such as hunting, fishing and gathering within conservation reserves, was prohibited under the *National Parks and Wildlife Act 1975*, except where the authority was given for such activities to occur.

The *Nature Conservation Act 1992*, however, outlines management principles for this tenure of national parks that allows for the area "... to be managed, as far as is practicable, in a way that is consistent with any Aboriginal tradition (or Torres Strait Islander custom) applicable to the area, including any tradition (or Island custom) relating to activities in the area" (Section 18.2 and 19.2).

In other words, this Act makes it possible for Aboriginal and Torres Strait Islander people to work with government in determining which traditional activities may occur within this class of protected area, and then work towards a management plan for the area. If the land is to be leased back to the government as a national park, the right to carry out these established activities may become conditions within the lease.

3.2 Forest and timber reserves

State forests and timber reserves have been established within Queensland for several purposes. Timber reserves are primarily managed for the extraction of timber and quarry materials, whereas state forests incorporated a multiple-use perspective and include other activities such as recreation and the preservation of water catchment qualities. Perhaps because state forests are managed with a wider perspective as to possible uses, the tenure over these areas is more secure than that covering timber reserves. All state forests and timber reserves are declared under and administered according to the *Forestry Act 1959*.

The land areas covered by state and timber reserve tenures continue to be "owned" by the Crown; the Department of Primary Industries (Qld Forest Service) is vested with the responsibility for the management of these areas. However, leases may be granted over the reserve (for example a pastoral lease within a state forest or a special purpose lease within a timber reserve) yet such a sub-lease must not conflict with the original purposes of the particular reserve.

The two areas of land within Cape York Peninsula that are currently declared as state forests cover in total just under 200 square kilometres of Cape York Peninsula, while timber reserves cover an area of approximately 2 742 square kilometres of Cape York Peninsula, in total 1.6% of the region.

Within Cape York Peninsula, the land areas covered by state and timber reserves were set aside before current government policy on the logging and extraction of rainforest timbers. As such, the management of these reserves must adapt to incorporate this change in perspective towards the timber resource. The Queensland Government has recently announced that it intends to declare the Macillwraith Range Timber Reserve and adjacent areas as a national park.

3.3 Special purpose reserves

3.3.1 Departmental and official purpose reserves

Throughout the Peninsula, most State Government departments have authority and control over areas of land to assist the provision of the departments' operational needs. These parcels of land are usually situated in towns, the majority of which are, in general, small in area.

In holding the ownership to such a reserve, the Government department retains what amounts to a trusteeship over the land area.

As well as those small land areas of departmental and official purpose reserves situated within towns and communities, there are also several large reserves in Cape York Peninsula. Those areas managed by the Department of Environment and Heritage (DEH) are identified as having conservation values that require protective management.

These large areas include such reserves as the Heathlands reserve (south of the Jardine National Park) which covers 126 000 hectares, two areas at Iron Range, the first section approximately 8 760 hectares in area and the second 2 150 hectares, and the Palmer goldfields covering 16 200 hectares in extent.

As stated above, all of these areas are recognised as having significant natural or cultural conservation values. However, the designation of these lands as departmental and official purpose reserves acknowledges that other government departments also have interests within these areas, interests that they are unwilling to relinquish at present. For example, DPI has a continued interest in the Heathlands reserve for quarantine purposes, and DMB still holds interests in the two Iron Ranges reserves and the Palmer goldfields reserve for mineral exploration and extraction purposes, current or potential.

Another large departmental and official purpose reserve within the CYPLUS region is the area of land commonly known as Batavia Downs. The Department of Primary Industries, until recently, managed this area for research purposes. It has now been listed under the Government Land Management System as excess Government land.

3.3.2 Public purpose reserves and Public utility reserves

Both public purpose and public utility reserves are no longer issued by the Department of Lands as a type of reserve, however such reserves do still exist from previous listings.

The original intent of these reserves was to furnish the providers of infrastructure with land, to enable the provision of services for the community. Such reserves include camping grounds, stock routes and water reserves.

3.3.3 Resource protection reserves

Resource protection reserves are designed to protect a resource that currently is not subject to exploitation, but has been recognised as holding a value that may warrant its acquisition in the future. Such a reserve listing acts to control any potential damage that may occur over the area in which the resource is situated. Reserves that were departmental and official purpose reserves under the trusteeship of the Department of Environment and Heritage are now resource protection reserves under the *Nature Conservation Act 1992*.

3.3.4 Defence and other Commonwealth reserves

As mentioned earlier, land that is set aside for defence purposes in Cape York Peninsula is covered under a leasehold tenure. Lands under this tenure within the CYPLUS area are situated on Thursday Island and in Weipa, and as these are only defence depots, their individual areas are approximately 0.4 hectare each. The Airforce also has a depot at Weipa between 3 and 5 hectares in extent.

Approximately 30 kilometres from the township of Weipa the Scherger Air Base is currently being established. In total, the land area covered by this Base is close to 10 000 hectares. Within this total area, the land is divided into three zones, with the majority of the area designated as a buffer zone. This buffer surrounds the inner zone of the Base, which in itself is approximately 2 000 hectares in extent.

Some of the land for the new Scherger Air Base has been bought under a perpetual lease. For the remainder of the land, arrangements have been made with Comalco and the Napranum community for the use of those areas.

3.3.5 Declared roads

Declared roads within Queensland are covered under the *Transport and Infrastructure Roads Act 1991*. In Cape York Peninsula there are two main roads affected by this Act; the Peninsula Developmental Road, which runs from the Weipa boundary to Lakeland, and the Cooktown Developmental Road, from Lakeland to Cooktown. There are small sections of road above and below Cooktown (Endeavour Valley Road and Shiptons Flat Road respectively) and a small section on Thursday Island (Thursday Island Road), also declared under this Act.

3.3.6 Council roads

Roads within the Peninsula, excluding those listed above, were historically recognised as municipal roads, but today the terminology used is "Council roads". These roads include every other public road within the Peninsula, and their maintenance is the responsibility of the Local Council through which shire a section of the road is situated.

4. MINING TITLES

4.1 Background

Mining titles, although not strictly a form of land tenure, are an important form of land use in Cape York Peninsula. Deposits of bauxite, silica, heavy mineral sands (rutile, ilmenite and zircon), gold, silver and copper in Cape York Peninsula, have at some point in time, all received expressions of interest from the mining industry (see Stock & Lane, 1994).

A description of the types of mining titles that have already applied to, or may in the future, affect such deposits in Cape York Peninsula, are provided within the *Mineral Resources Act 1989*. Such forms of 'tenure' include a prospecting permit, a mining claim, an exploration permit, a mineral development licence, and a mining lease. One particular mineral deposit will not necessarily be influenced by every category within the Act, however an overview of all possible titles that may affect the land upon or within which the mineral is deposited is required so that the mining title can be incorporated into the planning and management of land use.

Mining titles do not change the land tenure that is current over an area of land. Similarly, they do not transfer ownership of any land to the holder of the mining title. The purpose of mining titles are for granting an authorised person the right of access to minerals within an area of land, as all minerals are retained by the Crown regardless of the tenure that the land is covered by.

Under the *Nature Conservation Act 1992*, a mining interest cannot be granted over land that forms part of a protected area. The classes of protected areas to which this stipulation applies include National Park (Scientific); National Park; National Park (Aboriginal land); National Park (Torres Strait Islander land); or Conservation Park (see Section 27 [1]).

4.2 Prospecting permit

A prospecting permit is granted to those wishing to either undertake small scale fossicking operations or serious miners who use this permit as a step to other mining licences and claims. The permit allows for the exploration of a stated mineral or minerals for a period of three months and, as a general rule, the land area specified within the permit for such purposes, usually does not exceed 300 ha. To obtain such a permit, a performance security (or bond) may be charged to ensure that any damage caused by the prospecting activities is rehabilitated.

Land owners must receive notice of the permit holders' intention to enter their land before such entry occurs.

As with all forms of mining titles, any minerals discovered or recovered by the holder of a prospecting permit are the property of the Crown. It is only upon the payment of royalties to the Crown that the ownership of any recovered minerals is transferred to the prospector.

4.3 Mining Claim

A mining claim is sought by those wishing to obtain the right to extract a mineral or minerals (except coal) from a small area of land, approximately 1 ha in area, for a period of five years or less. The authorised person within the claim is allowed to do this by prospecting or hand mining activities, however, the use of explosives is permissible if so stated within the claim. There are restrictions outlined within the *Mineral Resources Act 1989* concerning the siting of land upon which this form of mining title is granted that are not considered within a prospecting permit.

In an effort to prevent large mining operations being conducted under a mining claim title, the Act states that no person shall have either direct or indirect interests in more than two mining claims (see Section 4.8(1)).

The payment of a performance security deposit (or bond) for the mining claim is required before the claim is granted as is a compensation payment to the land owner. An annual rental amount must also be paid by the holder of the claim. The holder must make these payments, and any others such as local authority rates and charges that are considered to become their responsibility.

4.4 Exploration permit

An exploration permit is currently issued subject to native title, and allows the permit holder to investigate and collect data to determine the existence and potential value of minerals within a certain area. Under the Act, an exploration permit is entitled to cover no more than the area of land over which the particular mineral or minerals is found. This means the area is variable and determined on a case by case basis.

As in the case of a mining claim, a security deposit must be paid before the permit is granted. The holder is also required to pay an annual rental amount determined by the size of land covered in the permit. In the event of damage to the land, the permit holder may be required to pay the amount of compensation set by the Wardens Court.

An exploration permit can be granted for a maximum period of five years. Any renewal times must, when combined with the original term, equal a sum of five years or less. A condition within the Act states that full particulars of the exploration activities must be provided to the Minister as required (see Section 5.15 (1a)). If the sought after minerals are discovered in payable quantities, such a find must be reported to the Minister within fourteen days. The time limitations and reporting conditions for exploration permits is designed to ensure that viable finds are exploited as soon as practical and to prevent a permit holder from "sitting" on a valuable resource.

Under the Act, the holder of the exploration permit is given first priority to obtain approval to extract any minerals that have been discovered.

4.5 Mineral Development Licence

A mineral development licence enables the extraction of a mineral or minerals already specified within an exploration permit. In most instances the licence is current for a period of no more than five years, however this term can be renewed, again for a period of no more than five years. This stipulation encourages licence holders to apply for a mining lease if a long term operation is required for the extraction of the mineral. This is a title granted to enable work to be done in order to prove the viability of a find before a commitment is made to commercial production.

Before the licence is granted a security deposit must be paid. Under the Act, further security payments can be imposed upon the holder during the term of the licence. The need for such an initial payment is an "insurance" towards rectifying any damage caused by the mineral development activities. It can be assumed that further payments are required when it becomes obvious that the damage caused by the activities of the mineral development licence is going to be substantial. An annual rental is also charged to the holder of a mineral development licence.

The land owner also has the option of petitioning for a compensation payment, if it is felt that the damage caused warrants this course of action.

4.6 Mining Lease

A mining lease is granted for a term approved by the relevant authorities, for the extraction of mineral/s from an area of land over which the applicant currently holds a prospecting permit, an exploration permit or a mineral development licence. Unlike a mineral development licence, the term of a mining lease is geared towards enabling long term extraction of the mineral resource. This is the commercial production title.

The requirements for a security deposit and a rental fee are similar to those of a mineral development licence. An amount of compensation to be paid to a land owner is set to cover any foreseeable damage. This is determined by the Wardens Court and is paid before the lease is granted. As well as these costs, the lease holder is responsible for the payment of local authority rates and charges that are deemed to be their obligation to pay. Upon the payment of designated royalties, the extracted minerals become the property of the lease holder.

4.7 Petroleum permit

The procedure for granting a petroleum lease is different to that followed for the granting of a mining title. For this reason, and the fact that traditionally the area covered by a petroleum lease could be quite large, the establishment of a separate Act to authorise and oversee extraction of petroleum has been necessary.

The *Petroleum Act 1923 - 1983* is designed to give permit holders the exclusive right to prospect for and obtain petroleum, upon and under land of an area no greater than 260 square kilometres, for a period of two years. This initial term may be extended for a further two years.

For a security provision of at least \$10 000 (Section 30.1), an annual rent of \$20 per square kilometre (Section 32.1a), and a specified amount of compensation (Section 59.1), the permit holder gains certain rights to and responsibilities towards several resources other than the petroleum, in order to pursue petroleum exploration and extraction activities. Amongst these are the right to water from private lands, the right to cut timber, and the right to remove stock from the land, subject to conditions and the above payments (Section 23).

As in the case of minerals, to transfer ownership of the petroleum from the Crown to the permit holder, royalty payments must be made. These are set at 10% of the value of the petroleum at the wellhead and are to be paid to the State (Section 40A.1).

4.8 Special mineral development Acts

The provisions within the early mining Acts (*Mining Act 1898 - 1965* and *Mining Act 1968 - 1986*) were often inadequate for the large operations that companies were interested in establishing for mineral exploration and extraction within Cape York Peninsula. An illustration of this inadequacy was obvious in the size limitation imposed within the Acts concerning the land area available for mining purposes. This was set at a magnitude of no greater than 320 acres

To alleviate this problem special mineral development Acts such as the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957*, the *Alcan Queensland Pty Limited Agreement Act 1965* and the *Aurukun Associates Agreement Act 1975*, were entered into as agreements between the mining company and the government. Within these Acts, conditions on royalty payments, extent of mining lease and the length of the term of the lease differed between agreements.

Upon the commencement of the *Mineral Resources Act 1989*, the agreements entered into under the above Acts were deemed mining leases. Following this, the special Agreement Acts became subject to not only the conditions and provisions of the original Agreement Act, but also those stated within the new *Mineral Resources Act*. However, if any of the earlier stated conditions and provisions were found to be inconsistent with the new guidelines, the new Act has determined that the earlier conditions and provisions are to prevail to the extent of the inconsistency (see Clause 3, Schedule 2).

4.9 Mining titles versus tenure

Although the mining titles described above do acknowledge certain rights and entitlements over land areas to the holder of the particular permit, lease or licence, the *Mineral Resources Act 1989* clearly states in Section 1.11 that "the grant of a prospecting permit, mining claim, exploration permit, mineral development licence, or mining lease... does not create an estate or interest in land". In other words, ownership of land, whether it be freehold, leasehold or any other form of land tenure, is not transferred to the mineral title holder.

Hence, mining rights within the CYPLUS area of Cape York Peninsula are *not* a form of land tenure and the ownership of the land remains with the original tenure holder as does the form of tenure it is covered by. The mining titles discussed above only transfer the ownership of the minerals, and the right to use and occupy land under certain conditions in order to realise this extraction and ownership.

5. REGULATORY CONTROLS

The land use controls discussed in this section are not a form of land tenure. They provide a system of regulation of land use without affecting the tenure of the land or ownership of the land. The differences between regulatory and proprietary (tenure) controls on land use are discussed in Section 1.3.

5.1 World Heritage and international agreement areas

5.1.1 World Heritage management areas

World Heritage management areas are land areas which hold such high values of heritage significance that Australia, through the Commonwealth Government, has an international obligation under the World Heritage Convention to protect and conserve such properties. There is no impediment to existing land uses, unless they threaten the universal natural and cultural values of the property.

Before the declaration of an area of land as a World Heritage management area, the Minister must advertise a description of the affected lands, a proposed management intent, a call for submissions from interested parties, and specify the closing date for such submissions.

For each World Heritage management area in Australia, management plans have been produced or are planned. These plans, taking into account considerations of any submissions from the public, must be approved through the mechanisms outlined in the *Nature Conservation Act 1992*. Management plans, and the arrangements within them, will vary between places.

The declaration and subsequent planning of World Heritage management areas does not affect ownership or tenure of the land. Nor does listing affect land use unless such use is incompatible with the obligations and regulations of the *World Heritage Properties Conservation Act*.

Areas declared as World Heritage management areas within the CYPLUS region include sections of the Wet Tropics and Great Barrier Reef World Heritage Areas.

5.1.2 Wet Tropics World Heritage Area

The Wet Tropics Heritage Area stretches from Townsville to Cooktown, therefore part of the listed area is situated within the CYPLUS region. The Wet Tropics region of north Queensland is recognised as providing habitats for many rare and restricted species of flora and fauna, having a high diversity of both plants and animals, and containing a significant record of Aboriginal lifestyle and culture within a rainforest habitat.

As mentioned above, the listing of a World Heritage management area does not affect land tenure or ownership, however some areas of land north of the Bloomfield River to Mt Amos, within the Wet Tropics World Heritage Area, have had and may have their tenure status changed in recognition of their world heritage values.

For all land owners, the listing of an area of land as a Wet Tropics Heritage Area contains certain regulations concerning the use of the land. The Commonwealth Government has the power to halt activities that are felt to be incompatible with the areas values, although such a power is very rarely exercised.

At present the Wet Tropics Management Authority is working upon a new management plan for these important ecosystems. This plan aims to vest with the Authority greater management control and regulatory powers over listed areas of land.

5.1.3 Great Barrier Reef Marine Park

The Great Barrier Reef Marine Park is probably the best known regulatory control over activities in Cape York Peninsula. It is bordered on its eastern side by a cadastral line on the ocean (at the edge of the outer reef), and the coastal boundary is marked by the low water mark on the shore. In some places the inshore boundary is also marked by a cadastral line further out to sea. This Park has been established under Commonwealth legislation, and is the responsibility of the Great Barrier Reef Marine Park Authority (GBRMPA).

For management and planning purposes the Great Barrier Reef Marine Park is broken into four sections; Mackay/Capricorn section, Central section, Cairns section, Far Northern section. Of these zones, a part of the Cairns section and all of the Far Northern section lie within the CYPLUS region. The GBRMPA carries out its duties in the four sections of the Park by regulating activities such as specified within the Park's zoning provisions. These zoning regulations have been established to achieve the set management objectives for the region, in a nutshell - to provide for the protection, wise use, understanding and enjoyment of the Reef -and in doing so may restrict use and development options within the area. GBRMPA is currently undertaking a review of the Zoning plan for the Far Northern section.

In addition to its Marine Park designation, the Great Barrier Reef is also a declared World Heritage management area.

5.1.4 International agreement area

The same procedure for declaring a region as a World Heritage management area is generally followed for the declaration of an area of land as an international agreement area. At present, there are no international wetland sites or biosphere reserves in the CYPLUS region.

5.2 National Estate areas

The Register of the National Estate is an inventory which comprises either areas of land or a particular site deemed to hold natural or cultural heritage values. Sites that may be listed on the Register include areas containing natural, historic and Aboriginal places of significance. Within Cape York Peninsula there are approximately 60 such registered sites.

Owners of a listed area are not legally constrained by such inclusion on the Register in any of their dealings with their land. The Commonwealth Government does not acquire any purchase, management or entry rights over the area upon listing, nor is the land owner required to provide public access to a listed site.

Listing of a site on the Register of the National Estate places constraints upon the actions of the Commonwealth Government only, under Section 30 of the *Australian Heritage Commission Act 1975*. However, this constraint may affect the actions of other governments and organisations which require Commonwealth approval.

Examples of sites listed on the Register of the National Estate within the Peninsula include; North-East Cape York (1 700 000 ha), Cape Bedford - Cape Flattery (70 000 ha), and Quinkan Country - near Laura (100 000 ha) which are large sites, and Annan River Road Bridge, Alexandra Stamper Mill Complex, Weipa Shell Mounds, and Beriehaugh Dry Vine Forest which are all small specific sites.

The Australian Heritage Commission is the Commonwealth body responsible for the administration of the National Estate.

5.3 State Marine Park

State Marine Parks are administered under the Queensland *Marine Parks Act 1982*, by the Queensland Government through the Department of Environment and Heritage. The boundaries of a State Marine Park extend from the highest astronomical tide seaward to the 3 nautical mile limit of Queensland waters. Between the low water mark and 3 nautical miles there may be an overlap with the Great Barrier Reef Marine Park. The highest astronomical tide is used, rather than the mean high water spring tide to ensure that complete intertidal systems, such as mangrove communities, are included within the marine park.

State Marine Parks are marine and coastal areas set aside to protect their conservation, recreation, scientific, educational and cultural significance. They do not alter the tenure of an area but are more a regulatory planning control over the waters and seabed, and are managed principally through a system of zoning and permits.

The marine park zoning plans are subordinate legislation which specify what activities may occur with each zone identified in the plan. The zoning plan generally has a spectrum of zones offering varying degrees of protection to the marine resources. For instance, no extractive use is permitted in a National Park Zone, while most activities, including commercial and recreational fishing, are accommodated within a General Use Zone, either as of right or subject to a permit. A management plan may also be prepared under the Marine Park Regulations for specific sites within the marine park.

Parts of the Cairns Marine Park are situated within the CYPLUS region. They are very small and all abut the Cairns section of the GBRMP. A proposal is currently being considered for the declaration of a Cape York State Marine Park along a significant section of the Cape York Peninsula east coast. These areas would abut the Far Northern section of the GBRMP and planning is progressing in conjunction with a Current Zoning review for the Far Northern section.

5.4 Planning schemes and development controls

Councils within the Peninsula have their own planning schemes and zoning plans that affect all leasehold and freehold land within their shire. Such plans are designed to regulate activities upon such lands and, as stated earlier, in doing so impinge upon the proprietary rights of the private owner.

These planning schemes and zoning plans may differ in some aspects between the shires within the Peninsula. Cook Shire has recently prepared and publicly exhibited a new planning scheme for the whole shire. The shire of Aurukun, on the other hand, has yet to establish formal planning schemes and development controls for activities within the shire, particularly as most land tenure is, at present, held by the Council. However, the formation of a corporate plan for this shire is currently underway.

5.5 Cultural heritage

Sites of cultural heritage within the Peninsula are protected under two pieces of legislation; the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* and the *Queensland Heritage Act 1992*.

The *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* provides a blanket protection to cultural heritage sites, and as such preserves places of both Aboriginal (eg. rock art sites) and historic (eg. old mine sites) cultural heritage importance. Within the CYPLUS region such sites as middens, art sites, camp sites and story sites are registered under this Act.

Land owners are required to bring the existence of any site which may warrant such protection as afforded by the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* to the attention of the Department of Environment and Heritage. Officers of this department will then assess the significance of the site and make management recommendations to ensure its perpetuation. As this Act protects only the specific area upon which the site is situated, compatible activities can be given the authority to continue to occur within close proximity of the site. However, if land owners knowingly damage a site of cultural heritage importance, they may face prosecution. Penalties can include a term of imprisonment.

It must be remembered that, as this Act is the basis for the creation of an inventory of cultural heritage sites which is continually being upgraded, the number of sites within the Peninsula protected through this Act is constantly expanding.

The *Queensland Heritage Act 1992* applies to specific buildings or an entire land parcel that has been nominated and included under this protective legislation. Within the Peninsula such sites as the Telegraph Station at Musgrave, the Cooktown cemetery and the Palmer goldfields are protected via this Act.

Sites that receive such listing remain the property of the owner; the State, through the Department of Environment and Heritage, does not assume ownership rights over the site upon listing. A permit is required before a private owner may carry out any form of major

renovation upon a building listed under this Act. Because of this, the activities that may be proposed for the land area upon which the building is situated may be limited in their extent, and consequently the value of the property may be reduced. For example, a tourist resort may not be an appropriate option for a site which includes a building that is recognised as being of cultural heritage importance under the Act.

5.6 Fish habitat and wetland reserves

Fish habitat and wetland reserves are declared under the *Fisheries Act 1994*. Fish habitat reserves are designed to give the highest level of protection possible to the tidal wetlands and fish and marine products within them. Wetland reserves enforce a regulatory control over land users in that they provide protection to areas of tidal wetlands, although fish and marine products within these areas are not protected by this type of reserve. In many instances, these reserves are often declared for the purpose of acting as a buffer between areas of high development and areas protected as fish habitat reserves. Responsibility for both reserves rests with Queensland's Department of Primary Industries - Fisheries.

Throughout the CYPLUS region of Cape York Peninsula there are five designated fish habitat reserves. These are Princess Charlotte Bay, Silver Plains, Temple Bay, Escape River, and Nassau River. Under the Act, these five reserves incorporate land below the high water mark unless any of that land has been alienated or licensed from the Crown prior to the date of the region's reserve status declaration. Each reserve covers various landforms within their listing, associated with this form of regulatory control.

The listing of these areas does not prohibit all human activities within their boundaries. Such operations as boating and various forms of fishing, crabbing, and yabby pumping are permissible in the reserves, and with the authorisation of a permit, the construction and maintenance public works can also occur. However, any activity that is deemed harmful to the reserve or is carried out without a permit is strictly prohibited.

At present, there are no wetland reserves within the CYPLUS region of Cape York Peninsula, however proposals have been put forward.

5.7 Beach protection

The Beach Protection Authority is the controlling body vested with the responsibility of conserving the coastal fringe. The coastal lands of Cape York Peninsula have been designated by the Authority as erosion prone areas. Such a designation is an assessment of the erosion potential of the beach areas, and gives the Authority the power to give advice on proposed works in these areas.

The level of power and control vested within the Authority, unlike other forms of regulatory controls, is dependent upon the tenure title of the land. Only where the land is unoccupied Crown land (therefore not under freehold, leasehold or a permit to occupy tenure) does a potential development that will interfere with the sand and overall beach environment require the permission of the Authority. When a development is proposed for land under a freehold, leasehold or permit to occupy tenure, the Authority may act in advisory capacity only.

A further designation of the coastal zone that does place powers with the Beach Protection Authority for freehold and leasehold land, is a coastal management control district. Such a designation requires that any subdivisions within the district, a building consent, or re-zoning plans by the local council must be with the advice of the Authority. This level of designation was designed to control the impacts of urban sprawl along Queensland's coastline, at present there are no such designations on Cape York Peninsula.

5.8 Land planning functions of public agencies

In addition to regulations, land use planning and control can also be exercised through the operation of management plans. These sometimes have a statutory or legal basis and maybe a condition of leasehold. Management plans can be typically used by public agencies who hold and manage significant areas of land. Private landholders also undertake such planning at the property scale. The Landcare scheme is such an example.

5.8.1 Department of Lands

The Land Planning function of the Department of Lands was established as a response to the allocation of over 40 coastal sites in Queensland for tourism projects during the late 1980s, with only a handful proceeding to development. Irrespective of how strong or comprehensive statutory planning instruments may be, the Minister of Lands requires competent, multi-disciplinary advice before releasing property from the Crown estate or changing tenure from one form to another.

The Department of Lands, as part of its stewardship role over Crown land, exercises the following proprietorial controls through the Land Planning function, which are not found in regulatory controls:

- * strategic influence: governments can influence patterns of development of communities or of a resource if they control the resources being developed, without having to compensate for private property rights;
- * sustainability: resources typically have been wasted if allocated without restraint;
- * sovereignty: the State requires resources for its own operations and also for purposes which are non-economic and hence cannot adequately be managed through market forces;
- * State-wide perspective: State-owned resources are under the control of State departments and their respective ministers are accountable to the Parliament of Queensland for their disposal, not to a local forum.

Some practical weaknesses of the statutory planning system as it now exists are addressed in the new *Development and Environment Planning Act*, but even in light of the proposed Integrated Development Approval System (IDAS) devolution of responsibilities to local governments, proprietorial controls exercised by State Government agencies may still need to be retained to guide land use and land management.

5.8.2 Department of Environment and Heritage

All protected areas and national parks are required to have management plans. However, with the introduction of the *Aboriginal Land Act 1991* and the consequent growth in land claims within the CYPLUS region, the preparation of management plans for the Peninsula's national parks by the Department of Environment and Heritage, has been deferred until these land tenure issues have been resolved.

At present, DEH continues to manage protected areas to maintain the *status quo*. Management activities such as the implementation of fire regimes and weed and feral animal control are undertaken within the parks of the Peninsula. Each park has its own fire regime plan which is revised annually, however, weed and animal control is site specific within areas.

The production of future management plans by DEH will involve a formal and structured process and include a significant degree of public participation.

5.8.3 Department of Primary Industries - Forest Service

All State forests and timber reserves within Queensland are managed for multiple use by the Department of Primary Industries Forest Service according to the *Forestry Act 1959*. For those forests and reserves within Cape York Peninsula however, detailed management plans have yet to be established.

The approach taken to accommodate the multiple use of the State's forests and timber reserves is described as Management Priority Area (MA) Zoning. This process involves three steps; identify competing and potentially conflicting uses of the land, identify the capabilities of the land within the area in question, and finally zone the land according to what its capabilities are in regard to the desired activities. In following the MA Zoning procedure the Forest Service aims to effectively maximise management opportunities within forest and timber reserves.

A prime example of the Forest Service's multiple use management role is portrayed within the Wet Tropics World Heritage Area, a portion of which is situated in the CYPLUS area. Within this area, the Forest Service is responsible for road maintenance, visitor facilities and site inspections, and the overseeing of permit applications for scientific research.

To further their management role of the State forests and timber reserves of Queensland, the Forest Service is undergoing structural change. In January 1995 the current Forest Service agency will be separated into two sections. The aim of these two sections will be to contribute different management objectives to the management and use of Queensland's forests.

The two sectors will comprise a Natural Resource Management (NRM) group that will remain a part of DPI, combined with components from water and fisheries bodies, and a separate Forest Corporation (FC) group. The NRM will deal with non-commercial issues in forestry, whereas the FC will continue to be involved with the commercial aspects of the forest industry. However, in maximising the economic benefits to the State, the FC will be obliged to work within the limitations imposed by the NRM upon harvesting operations.

To carry out these duties, new Acts have been proposed for the two groups. The NRM will work under a Natural Resource Planning and Management Act with the FC adhering to a Forestry Corporation Act. Until such time as these Acts are put in place, both groups will continue to work under the *Forestry Act 1959*, however it has been suggested that the objectives proposed within the new Acts will become the working ethos for both agencies.

5.8.4 Department of Primary Industries - Land Services

Agricultural extension officers within DPI perform an essential advisory role to land owners in the Peninsula. However, in relation to banana horticulture, the DPI - Land Services has a regulatory role to help it meet the objectives of the *Plant Protection Act 1989*.

A project run by DPI currently underway in the CYPLUS region is the Banana Replacement Program. This program has been established for an initial 3 year period in an effort to curb the spread of the disease Black Sigatoka. As this disease is present year round in banana plants upon various islands within the Torres Strait, the area between approximately Cooktown and Bamaga has been declared a buffer zone, within which all banana plantings must be imported from areas to the south of this zone.

Pastoralists within the Peninsula also obtain advice from the Land Services Division of the Department of Primary Industries. However, unlike horticultural activities, there are no direct regulations in place for grazing activities. Officers of the division provide assistance and advice to pastoral operators through the implementation of several programs and/or models that have been developed. Such programs include "Grass-check" (a pasture monitoring program), a process that involves local consensus data (LCD) to assist the development of management practices for landowners with similar property characteristics, and the model "Breed Cow" which enables pastoralists to make a comparison of breeding and herd management strategies.

DPI - Land Services are also involved in cases where other departments refer to them for advice. For example, tree-clearing proposals are passed to DPI from the Department of Lands to obtain recommendations for future management. Although the division does not recommend the practice of tree-clearing within the Peninsula, recommendations for fencing off streams and regrowth control techniques are amongst the suggested management practices put forward to landholders.

6. IMPACT OF TENURES ON NATIVE TITLE

The assessment contained within this section is based on the provisional Tenure Map that has been prepared by the Cape York Peninsula Land Use Strategy (CYPLUS).

This assessment will, by necessity, not give a complete picture as to whether native title has in fact been extinguished by a previous tenure at some time in the past. This is because the map supplied only relates to current tenure status. Similarly, in this regard, the map does not contain any information as to when the "current" tenures were granted. Therefore, it will not be possible to determine in relation to an area where native title may apparently still survive, for example in an area of National Park, whether or not there has been a previous tenure (such as a pastoral lease) that may have had the effect of extinguishing native title over that area. Alternatively, a mining lease granted between 31 October 1975 and 1 January 1994 will not extinguish native title. However, a mining lease granted before 31 October 1975 may have the effect of extinguishing native title depending on the terms of the lease. Queries regarding mining leases granted before 31 October 1975 should be referred to the Aboriginal and Torres Strait Islander Land Interest Program (ATSILIP) within the Department of Lands.

In addition, when considering whether or not a tenure may have had the effect of extinguishing native title, it is important to consider that there are two regimes that apply in different circumstances.

Firstly, it is necessary to consider the effect of the common law on native title. Secondly, it is necessary to consider the regime established under the *Native Title Act 1993 (Commonwealth)* (the "NTA"). It is generally accepted that the common law, embodied in the decision in *Mabo and others v Queensland (1992) 175 CLR 1* (Mabo No.2), applies to dealings in land before the operation of the *Racial Discrimination Act 1975 (Commonwealth)* (the "RDA") on 31 October 1975. After 31 October 1975 the regime established under the NTA applies to dealings in land.

6.1 Decision in Mabo No. 2

The High Court of Australia in Mabo No.2 held that the Meriam People were entitled, as against the whole world, to the possession, occupation, use and enjoyment of most of the lands of the Murray Islands.

The basis of the decision was that the doctrine of *terra nullius* (ie., land belonging to no one) did not apply to Australia. Rather, when the Crown acquired sovereignty over Australia it acquired a radical title to the land and not an absolute beneficial title as had previously been thought.

Native title to particular land (whether classified by the common law as proprietary, usufructuary or otherwise), its incidents and the persons entitled thereto are ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land. In essence, native title operates as a burden on the radical title of the Crown.

Native title may be defined as a bundle of rights relating to land and water. Native title may include amongst other things:

- (a) The right to traverse and camp;
- (b) The right to hunt and fish, and other bush tucker;
- (c) The right to collect materials, such as timber, bark, stone, ochre, clay, resin, grass and so forth for making weapons, tools and ceremonial articles;
- (d) The right to conduct ceremonies, including burials; and
- (e) The right to exclude others from the whole or particular parts of the land.

Native title can be possessed by a community, group or individual depending on the content of traditional laws and customs. Native title also requires a connection with the land which may be physical or spiritual but is dependant on tradition, laws and customs. In this regard, it is important to note that within any culture traditions are dynamic and change as they are handed down from generation to generation.

Native title is unlike other forms of title in that it is not possible to sell native title. Native title, as a burden on the radical title of the Crown, can only be surrendered to the Crown.

However, the Crown's acquisition of sovereignty has exposed native title to extinguishment by a valid exercise of sovereign power inconsistent with the continued right to enjoy native title. Justice Brennan observed in *Mabo No. 2*, at pages 69-70:

"Where the Crown has validly alienated land by granting an interest that is wholly or partially inconsistent with the continuing right to enjoy native title, native title is extinguished to the extent of the inconsistency. Thus native title has been extinguished by grants of estates of freehold or of leases but not necessarily by the grant of lesser interests (e.g., authorities to prospect for minerals).

"The extinguishing of native title does not depend on the actual intention of the Governor in Council (who may not have adverted to the rights and interests of the indigenous inhabitants or their descendants), but on the effect which the grant has on the right to enjoy the native title. If a lease be granted, the lessee acquires possession and the Crown acquires the reversion expectant on the expiry of the term. The Crown's title is thus expanded from the mere radical title and, on the expiry of the term, becomes a plenum dominium.

"However, where the Crown has validly and effectively appropriated land to itself and the appropriation is wholly or partially inconsistent with a continuing right to enjoy native title, native title is extinguished to the extent of the inconsistency. Thus native title has been extinguished to parcels of the waste lands of the Crown that have been validly appropriated for use (whether by dedication, setting aside, reservation or other valid means) and used for roads, railways, post offices and other permanent public works which preclude the continuing concurrent enjoyment of native title. Native title continues where the waste lands of the Crown have not been so appropriated or used or where the appropriation and use is consistent with the continuing concurrent enjoyment of native title over the land (e.g., land set aside as a national park)."

In other words whether or not native title has been extinguished under the common law will depend on whether or not the Crown has validly granted an interest to a third party that will give them a legal interest over the land which is inconsistent with the right to continue to concurrently enjoy native title, such as a freehold or most leasehold title. On the other hand, where the Crown has appropriated land to itself native title is extinguished where the use of that land is necessarily inconsistent with the right to continue to concurrently enjoy native title.

Inconsistent usage is not relevant where the legal interest granted, for example by a freehold or leasehold title, vests in the grantee a legal right to enjoy the land over all others.⁵ The grant of a freehold extinguishes native title because any native title holders continuing to maintain a connection with the land only do so with the licence of the freeholder. The same would apply to most leasehold interests depending on the terms and conditions.

6.2 Commonwealth Native Title Act 1993 (the "NTA")

As mentioned above, the regime established under the NTA is generally considered to apply only after the commencement of the RDA, on 31 October 1975. The purpose of the NTA is to validate what would otherwise be invalid grants in land by reason of the existence of native title and the provisions of the RDA. Those provisions make discrimination unlawful and provide for equal rights irrespective of race.

In essence, the NTA provides, amongst other things, that despite the fact that the Crown may have unlawfully dealt with native title land between 31 October 1975 and 1 January 1994 by granting third parties interests in that land, such invalid acts are validated by the NTA, subject to the payment of compensation. Whether and/or to what extent native title is extinguished by a tenure or interest in land granted between 31 October 1975 and 1 January 1994 depends on the form of tenure at issue. The effect of the NTA on the individual tenures listed on the provisional Tenure Map, should they have been granted or issued between 31 October 1975 and 1 January 1994, is outlined below in each particular instance.

The State of Queensland is constrained by Section 109 of the Constitution to ensure that any laws it enacts are consistent with Commonwealth law. As a result, the State must operate in accordance with the parameters set by the NTA in developing complementary legislation to deal with native title. Any attempt by the State to extinguish native title contrary to the NTA would be illegal. As a corollary of this, from 1 January 1994 acts outside the regime established by the NTA do not extinguish native title.

The *Native Title (Queensland) Act 1993* was passed in the Queensland Parliament but was not proclaimed. In late 1994, the *Native Title (Qld) Act 1993* as amended was proclaimed. In accordance with the NTA, the Queensland legislation enables the validation of past acts which might otherwise be invalid due to the existence of native title in conjunction with the operation of the RDA. It also provides for the establishment of a State system for the determination of native title claims and claims to compensation for the extinguishment or impairment of native title.

6.3 Effect of land tenure on native title

There are twelve forms of tenure and title illustrated on the Tenure Map. These tenures and titles are as follows:

- (i) Special Lease (SL);
- (ii) Freeholding Leases (including Special Lease Purchase Freehold, Auction Perpetual Lease and Purchase Freehold);
- (iii) Perpetual Leases;
- (iv) Grazing Homestead Perpetual Lease (GHPL);
- (v) Pastoral Holdings (PH);
- (vi) Licences to Occupy (including Permit to Occupy, PO, and Occupational Licences, OL);
- (vii) Road License;
- (viii) Freehold;
- (ix) Crown Reserves (including Special Purpose Reserves, State Forests and Timber Reserves);
- (x) Crown Land (including VCL);
- (xi) National Parks; and
- (xii) Mining Title.

It is proposed to deal with each of the above tenures in turn and examine the impact they are considered to have on native title. In addition, it is proposed to address issues relating to native title and dedicated roads, and native title in relation to the land under the sea within Queensland waters (ie., an "onshore place" within the provisions of the NTA).

6.3.1 Special lease (SL)

As mentioned above, the effect a tenure will have on native title will usually depend on whether it was granted before 31 October 1975 or after that date. Whether or not a special lease will extinguish native title will depend on when it was issued, and for what purpose.

The generally held view is that a special lease issued before the operation of the RDA (ie before 31 October 1975) will extinguish native title. This is because it gives the grantee rights to exclusive possession of the area of the lease and those rights are necessarily inconsistent with the continuing concurrent enjoyment of native title rights and interests.

However, after 31 October 1975 the effect a special lease has on native title rights and interests is controlled by the operation of the NTA, which provides in Section 11(1) that native title *"is not able to be extinguished contrary to this Act"*.

The NTA provides that a lease issued between 31 October 1975 and 1 January 1994 will have the effect of extinguishing native title if it is for commercial; residential; pastoral or agricultural purposes. However, if the lease is for a purpose other than the foregoing, native title will only be extinguished to the extent of any inconsistency it may have with the rights conferred on the lessee. In other words, after 31 October 1975 native title may survive, at least in part the grant of a special lease, if that lease is not granted for commercial, residential, pastoral or agricultural purposes.

In addition, should the SL have been granted from the Crown in any capacity to the Crown native title would not be extinguished.

6.3.2 Freeholding leases

A freeholding lease granted before 31 October 1975 will have had the effect of extinguishing native title as it would necessarily involve the granting of exclusive possession in the grantee.

Likewise, between 31 October 1975 and 1 January 1994 a freeholding lease will extinguish native title so long as they are granted for commercial, residential, pastoral or agricultural purposes. However, should a freeholding lease have been granted by the Crown in any capacity to the Crown native title would not be extinguished.

6.3.3 Perpetual leases and Grazing Homestead Perpetual leases

Native title is generally considered to have been extinguished by the grant of a perpetual lease and the same considerations apply as to special leases.

6.3.4 Pastoral holdings

The Queensland Government has received advice from the Crown Solicitor to the effect that the better view in law is that a pastoral lease has the effect of extinguishing native title. This again is because a pastoral lease necessarily involves giving the grantee exclusive possession over the area of the lease. The right to exclusive possession is inconsistent with the right to continue to concurrently enjoy native title as it vests in the grantee the right to exclude others from the area of the lease.

This is also the view held by other State Governments. The Commonwealth NTA is predicated on the assumption that a pastoral lease will extinguish native title if issued between 31 October 1975 and 1 January 1994. The issue whether or not a pastoral lease issued before 31 October 1975 does actually extinguish native title is a matter, like many others, that is yet to be decided by the Federal Court in the claim brought by the Wik People against the State of Queensland.

However, the better view is that native title is extinguished by the grant of a pastoral lease issued before 31 October 1975. This is a view strongly held by the Queensland Government.

6.3.5 Licence to occupy (PO and OL)

Whether or not a PO or an OL have had the effect of extinguishing native title before 31 October 1975 is a question of fact to be decided in each individual case.

The mere grant of either a PO or an OL before 31 October 1975, unlike the grant of freehold for example, will not in itself have the effect of extinguishing native title. A PO or an OL will have the effect of extinguishing native title if the actual use the land is put to is necessarily inconsistent with the right to continue to enjoy native title rights and interests over the same area of land.

In other words, if an OL, for example, is granted with a condition that the licensee can construct a homestead on the area native title might be extinguished but only if the homestead is actually constructed in accordance with the terms of the OL. Consequently, if an OL, for example, is granted but never taken up, native title will not be affected. Similarly, if the terms of an OL provide for a use consistent with the continuing concurrent enjoyment of native title rights native title will continue to survive.

However, under the NTA a PO or an OL granted after 31 October 1975 will not have the effect of extinguishing native title. The NTA provides that if a PO or an OL are granted between 31 October 1975 and 1 January 1994 the non-extinguishment applies. This effectively means that native title is suppressed to the extent it is inconsistent with the operation of the PO or the OL (with compensation payable). Once the PO or the OL expires native title re-emerges as a full title.

Where the non-extinguishment principle applies, the rights of the grantee prevail over and totally suppress the native title rights for the duration of the grant and for any legitimate extensions and renewals of the grant but only in those instances where the mutually competing rights are wholly inconsistent. Native title rights are revived on the expiry of the grant by reason of the provisions of the NTA.

6.3.6 Road Licenses

A road licence, which is effectively a lease, issued prior to the operation of the RDA has the effect of extinguishing native title. This is because the grant of a road licence necessarily involves the granting of exclusive possession to the grantee.

By reason of the provisions of the NTA a road licence granted between 31 October 1975 and 1 January 1994 will extinguish native title in its entirety if it was granted for commercial; residential; pastoral or agricultural purposes. This is likely to be the case. However, if the licence is granted for a purpose other than the foregoing, native title will be extinguished only to the extent of any inconsistency it may have with the rights conferred on the lessee. In other words, as with special leases above, after 31 October 1975 native title may survive the grant of a special lease, at least in part, if that lease is not granted for commercial; residential; pastoral or agricultural purposes.

6.3.7 Freehold

The grant of freehold title before 31 October 1975 has the effect of extinguishing native title.

Similarly, between 31 October 1975 and 1 January 1994 a grant of freehold will extinguish native title.

However the grant of freehold by the Crown in one capacity to the Crown in another capacity, between 31 October 1975 and 1 January 1994, does not have the effect of extinguishing native title. Furthermore, the grant of freehold under legislation that is wholly for the benefit of Aboriginal peoples or Torres Strait Islanders will not extinguish native title (such as a deed of grant in trust granted under the *Land Act 1962* in accordance with the provisions of the *Aboriginal Land Act 1991*).

6.3.8 Crown reserves

Prior to 31 October 1975 native title will generally not be extinguished by the reservation of land for the purpose of a State Forest or timber reserve. The rationale behind this is that the continuing concurrent enjoyment of native title rights is not inconsistent with the reservation of land, for example, as a timber reserve.

However, it is arguable that the use of the reservation, prior to 31 October 1975, for its gazetted purpose (ie., logging and clearing of the timber reserve) may well have the effect of at least impairing native title. Whereas the logging and clearing of an area of land within a timber reserve may extinguish a native title right to exclusive possession to that area "as against the whole world", as was the case of the Murray Islanders in *Mabo and Others v The State of Queensland* (Mabo No 2), because such logging would be inconsistent with the continuation of such native title rights, it may not be inconsistent with a continued native title right to hunt or walk across the land.

Consequently, whether or not a reservation has extinguished native title will depend on whether or not that reservation has been used for its gazetted purpose and whether or not that use of the reservation is inconsistent with the continued right to enjoy whatever native title right is in issue over that area of land.

The question of whether or not native title has been extinguished by the reservation of an area of land will, on the assumption that there has been no prior extinguishing tenure over the same area of land, depend on the facts and circumstances of each individual reservation. For example, if an area has been reserved for sewerage treatment purposes and used for such purposes with the construction of a plant area etc., native title will have been extinguished. However, the mere reservation of an area of land without further ado, prior to 31 October 1975, will not extinguish native title. Certainly, an Aboriginal reserve would not extinguish native title as the purpose of the reserve would not be considered inconsistent with the continuing enjoyment of native title.

The NTA provides that the reservation of an area of land between 31 October 1975 and 1 January 1994 will not extinguish native title. The NTA provides that native title is deemed to co-exist with the reservation for its duration and any legitimate extensions and renewals of the grant.

However, the non-extinguishment principle applies to a reservation. Consequently, where the continued right to concurrently enjoy native title is wholly inconsistent with the use of the reserve, or part of the reserve, for its gazetted purpose native title is suppressed for the time being but will revive at a later date.

6.3.9 Vacant Crown Land

Native title may be assumed to continue to survive over an area of Vacant Crown Land.

However, as mentioned above, a tenure history search over the relevant area of Vacant Crown Land may reveal that the area was subject to a previous tenure before being returned to Vacant Crown Land. It may be that the previous tenure that had existed over the area would have had the effect of extinguishing native title.

6.3.10 National parks

Prior to 31 October 1975 native title may also be assumed to exist over national parks. The use of an area as a national park is not inconsistent with the continued right to exercise and enjoy native title rights. However, native title may be extinguished over an area of the National Park that has been developed in a way that is inconsistent with the continued right to enjoy native title (the building of ranger quarters etc.).

After 31 October 1975 and before 1 January 1994 the NTA provides that the reservation of an area as a national park will not extinguish native title. The NTA provides that the non-extinguishment principle applies. However, again, it may be that a tenure previously granted over the area of the national park would have had the effect of extinguishing native title.

6.3.11 Mining tenures

A mining lease issued before 31 October 1975, that confers exclusive possession on the lessee, has the effect of extinguishing native title. However, it is of crucial importance to consider the actual terms of the lease document to ensure that the lease is a proper lease and not a lesser form of tenure. An exploration permit would not be inconsistent with native title and, therefore, would not have the effect of extinguishing native title.

A mining lease issued between 31 October 1975 and 1 January 1994 does not extinguish native title and the non-extinguishment principle applies. In other words, native title is suppressed for the duration of the mining lease where it is inconsistent with the rights and interests conferred by the terms of the mining lease, and will revive at the expiry of the mining tenure.

6.3.12 Dedicated roads

The Queensland Government has received advice from the Crown Solicitor to the effect that native title has been extinguished over roads dedicated before 31 October 1975 by reason of the vesting provisions contained within Section 362 of the *Land Act 1962*.

In addition, by reason of the provisions of the NTA, native title will be extinguished over the area of a road dedicated between 31 October 1975 and 1 January 1994 where that part of the dedicated road has actually been constructed or used as a road. In relation to the remaining part of the unconstructed or unused part of the road, the balance can be used after 1 January 1994 for road purposes. Road purposes include such things as the additional construction of road or the erection of roadside power poles, which will validly extinguish native title.

Whether or not a road has been properly dedicated is determined by reference to the existing Department of Lands policy relating to road dedications.

6.3.13 Land under the sea within Queensland waters

The Queensland Government has received advice from the Crown Solicitor to the effect that the vesting provisions within the *Harbours Act 1955* have the effect of extinguishing native title over:

- (i) All land in Queensland lying between the high and low water mark;
- (ii) All land lying under tidal navigable rivers within the State of Queensland; and
- (iii) All land lying under any bay, gulf, estuary, river/creek, inlet, port or harbour which are within the State of Queensland.

Whether or not an area of water lies within the State of Queensland is determined by detailed reference to Section 14 of the *Seas and Submerged Lands Act 1973*. However, it could be confidently stated an area of water such as Trinity Inlet, for example, fell within Queensland waters for the purposes of Section 14 of the *Seas and Submerged Lands Act 1973*.

6.4 Conclusion

As is apparent, whether or not native title has been extinguished by the grant of a previous tenure involves not only careful consideration and research in relation to the existing tenure, but also involves consideration of any previous tenure that may have existed over the area.

Consideration has also to be given to when the tenure was granted. A mining lease issued before 31 October 1975 may have the effect of extinguishing native title, whereas a mining lease granted between 31 October 1975 and 1 January 1994 will not.

In addition, although it is possible to obtain advice as to whether or not native title has been extinguished by a previous grant (such as a pastoral lease), or by the operation of a particular piece of legislation (such as the *Land Act 1962*), it is not possible to conclude with absolute certainty that a certain form of tenure, or provisions within an Act, will actually have had the effect of extinguishing native title. For example, although the view of the law is that pastoral leases extinguish native title, a view strongly supported by the Queensland Government, the issue as to whether or not a pastoral lease actually has had the effect of extinguishing native title is still a live issue before the Federal Court in the Wik Peoples claim against the State of Queensland. Similarly, legal advice received in relation to Roads, for example, has yet to be tested in the courts.

In those circumstances, it is important that the brief assessment of native title contained in this report not be taken to indicate with any certainty that native title has been extinguished in any particular instance.

In particular, before a more definite assessment could be provided it would be necessary to examine each tenure individually to determine whether or not the actual terms of a grant were sufficient to extinguish native title. It would also be necessary to consider, in relation to certain forms of tenure such as reservations, whether or not the reservation has been used for its gazetted purpose and whether or not that use is inconsistent with the continuing concurrent enjoyment of native title.

(This Report is not a definitive legal statement of the status of native title on Cape York vis a vis various tenure grants in land and should not be treated as such. Further advice should be sought from the Aboriginal and Torres Strait Islander Land Interests Program (ATSILIP) to ascertain whether or not native title has been extinguished in relation to any particular area.)

7. BIBLIOGRAPHY

Aboriginal Land Act 1991

Alcan Queensland Pty Limited Agreement Act 1957

Aurukun Associates Agreement Act 1975

Australian Heritage Commission Act 1975

Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957

Commonwealth Native Title Act 1993

Commonwealth Racial Discrimination Act 1975

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

Fisheries Act 1976 - 1982

Forestry Act 1959

Land Act 1962

Land Act 1994

Marine Parks Act 1982

Mineral Resources Act 1989

Mining Act 1898 - 1965

Mining Act 1968 - 1986

National Parks and Wildlife Act 1975 - 1982

Nature Conservation Act 1992

Payne, W., 1959, Progressive Land Settlement in Queensland (Commission of Inquiry), Brisbane.

Petroleum Act 1923 - 1983

Plant Protection Act 1989

Queensland Heritage Act 1992

Seas and Submerged Lands Act 1973

Stock, E. and Lane, M., 1994, CYPLUS report - Mining Industry, unpublished.

Transport and Infrastructure Roads Act 1991

Wolfe, P., Wright, R. and Murphy, D., 1990, Report of a Review of Land Policy and Administration in Queensland, Department of Lands, Brisbane.

TERMS OF REFERENCE

- Prepare a policy statement on the nature, purpose and administration of the land tenure system.
- Assist CYPLUS Taskforce to prepare a report that fully describes the existing land tenure system in Cape York Peninsula, and overviews processes implementing change to land tenure.
- Prepare a regional assessment and report on the implications of native title for land use and tenure systems.

ATTACHMENT

The following attachment incorporates responses from community and other groups associated with the CYPLUS process in regards to this project. These comments were circulated to the author (where possible) to assist in the revision of the draft report.

From these responses, issues of fact were amended within the final report. Sections of the following comments also portray the views of the respondent and their 'constituency' (if available) in regards to the information presented by the report.

The Cape York Peninsula Land Use Strategy recognises that various and contrasting opinions exist within the wider community. The inclusion of all responses made in relation towards the information within this report, indicates that the CYPLUS process has been, and continues to be, inclusive of all points of view presented by the community.

Comments Received from the Cape York Land Council

Typed verbatim. Issues raised that were amended within the final report have not been repeated here.

At page 8, 1.4, there is a break down of land tenure types in Cape York Peninsula. The break down is very superficial and appears to be the main piece of information contained within the Report. One would have hoped that a report of this type would have investigated with much more vigour the types of land tenure and effect of those types of land tenure within Cape York Peninsula.

We have concerns about the classification of DOGIT lands in a category other than freehold. The Deeds of Grant in Trust to a trustee on behalf of aboriginal persons resident in or with traditional affiliations to areas such as for example Lockhart River, are grants of freehold for the benefit of the aboriginal people concerned. The fact that the lands are held on trust does not denigrate from the fact that the estate held is an estate in freehold. It may be better to classify DOGIT lands as a particular type of freehold, being a sub category of freehold generally.

PART 2

LAND TENURE ISSUES

By
PROFESSOR J.H. HOLMES
(UniQuest - University of Queensland)

TABLE OF CONTENTS

EXECUTIVE SUMMARY	47
1.0 INTRODUCTION	49
1.1 Consultancy Brief	49
1.2 Survey Procedure	49
1.3 Interpretation of Responses to Questionnaire Survey	50
2.0 RESULTS	53
2.1 Analysis of Responses on Preferred Options	53
2.2 Issues Needing Urgent Attention or of Long-Term Significance	55
Table 1: Summary of Results	57
Table 2: Preferred Options of Interest Groups Compared with Lands Department's Present Policy	61
Table 3: Structured Overview of Response Patterns	66
Table 4: Six Matters Requiring Urgent Attention	68
Table 5: Six Matters of Long Term Significance	69
Table 6: Issues Needing Urgent Attention or of Long-Term	70
APPENDIX 1	71
Letters and Questionnaire Forwarded to Interest Groups By Consultant (16 pages)	
APPENDIX 2	
Letters and Comments from Interest Groups Attached to Questionnaires	
APPENDIX 3	
TERMS OF REFERENCE	

EXECUTIVE SUMMARY

The consultancy brief is to identify issues relating to land tenure, and to compare community views and aspirations with government policy statements.

In pursuit of these goals, the consultant attended a meeting of all interest groups in Cairns, also attended by the Lands Department representative, at which a draft questionnaire was discussed, amended and extended. It was agreed that the questionnaire would provide the focus for responses, with the responsibility resting with the representatives of the seven interest groups to ensure that the views of their 'constituencies' were fully communicated. Most responses are clearly based upon extensive consultation and/or policy statements previously agreed upon.

The questionnaire covered 21 separate issues, of which 15 related primarily to pastoral leases, two to freehold title, two to National Parks and two other matters. Respondents were also asked to identify and rank the six issues demanding urgent attention and the six of greatest long-term significance. For each issue, usually five alternative policy directions were offered.

There is near-unanimity that lease subdivision is the most important immediate and long-term issue, but with a strong difference of opinion on this issue, with three groups endorsing no further subdivision and three groups seeking approval of subdivisions, also including some cases where criteria of economic viability are not met.

Other issues considered to be of either immediate or long-term importance include: Aboriginal rights in pastoral leases; measures to preserve valued species and habitats on pastoral leases; land management planning on leases; clearing controls; and tenure options for pastoral leases purchased for Aboriginal peoples.

Only on three items was there unanimous or near-unanimous agreement. All agreed that there is value in pursuing land management plans (but there was clear disagreement on whether these should be compulsory). All except the mining group agreed that pastoral leases should be primarily for pastoral plus some incidental, complementary uses, and that present legislation on access to freehold lands should be retained. Only the Cairns and Far North Environmental Centre (CAFNEC) was opposed to the concept of a limited set of approved commercial ventures in National Parks, while on this issue, the Cape York Land Council (CYLC) was concerned that these be closely tied to Aboriginal needs.

Apart from these four matters, the responses revealed strongly held divergent views on tenure, with the most persistent divergence being between the Cape York Peninsula Development Association Inc (CYPDA)/Cape York Peninsula Pastoral Advisory Group Inc (CYPPAG) on one hand and CAFNEC/CYLC on the other. This was revealed on seven matters relating to the property rights of the pastoral lessees, involving: procedures for approving alternative, third-party use; for excising small land parcels; for subdividing pastoral leases; for preserving valued species and habitats; for recognising Aboriginal rights; for land management planning; and for specifying matters to be included in this planning. In all cases, the former two groups consider that all these matters should require the approval of the lessee, while the latter two groups agree upon an alternative course of action which

removes this right. A similar pattern of divergence is revealed concerning control on plant introductions, on opportunities for further freeholding of land, and on the adequacy of current legislation for land rehabilitation.

While not quite so clearly structured, there was a comparable response pattern concerning clearing controls and concerning Aboriginal rights in National Parks. A diverse mix of viewpoints emerged concerning other matters in the questionnaire, namely: a differentiated policy on subdivision near population centres; access to riparian lands; management of riparian lands with public access; access across pastoral leases; tenure options for pastoral leases purchased for Aboriginal peoples; and the possibility of a new form of public tenure to accommodate multiple private use.

These results suggest the possibility of a two-pronged strategy in initiating this component of Stage 2. Firstly, for those issues on which there is a well-structured divergence of opinions, there is evidence that most of these issues have already been well canvassed in various public arenas, and also that they are largely tied to Statewide land tenure policies, wherein the CYPLUS process can only have modest input. For these issues it may be appropriate to adopt a low-key approach, with only modest expectations of any resolution of differences in Stage 2.

On the other hand, on those issues where there is near-unanimity, or else a currently diffuse set of views, there are clearly opportunities for constructive initiatives. This is particularly the case on issues which are only now emerging into the public arena but are likely to loom larger in the foreseeable future. Among these are questions about access to and management of riparian lands, subdivision policy near population centres, commercial activities in National Parks and possible public tenures to accommodate multiple private use.

There may well be advantages in using Stage 2 of CYPLUS as a forum focussing on these issues. This may lead to constructive initiatives of value in formulating a land use strategy, but also of wider significance as an input to the process of shaping land tenure directions for the State as a whole.

This is not intended to imply that the pivotal land tenure issues, on which strong divergent opinions exist, should not receive attention in Stage 2.

Concerns were expressed by one interest group during the drafting of this report that certain issues had not been adequately addressed in the survey. As a result of this, the Consultant undertook to carry out a supplementary survey before the end of 1994 to address the outstanding issues. A questionnaire was compiled for the survey, however, as the interest groups involved revealed differing viewpoints about the need for a supplementary survey, the survey was unable to be completed and the results not made available for this report.

1.0 INTRODUCTION

1.1 Consultancy Brief

Within the Land Tenure Project, the consultant was briefed to undertake two tasks, namely:-

1. 'Identify issues relating to land tenure for consideration in Stage 2.'
2. 'Compare community views and aspirations about land tenure with government policy statements from action 4.'

1.2 Survey Procedure

Given the very limited time and modest funds for the project, it was proposed at the outset that the identification of issues and elicitation of community views should be undertaken through the interest groups, via their representatives, as recognised by CYPLUS. To ensure that this approach was acceptable to community and interest group representatives, the consultant prepared a letter and draft questionnaire which was forwarded to CYPLUS on 10 August 1994, for circulation to interest group representatives. See Attachment A.

The purpose behind this prompt distribution of a draft questionnaire was to provide interest groups with early notice of the purpose, proposed content and suggested procedure for the survey, in sufficient time to enable first-hand reactions and feedback to the consultant at the meeting of the Land Working Group, scheduled for 31 August, 1994. This meeting was attended by representatives of all interest groups.

At this meeting, extended discussions relating to land tenure issues were pursued, with G. Cotter representing the Department of Lands and with J Holmes, the outside consultant. Discussion covered all relevant matters presented in the Lands Department policy paper and in the draft questionnaire. Minutes of this meeting are available from CYPLUS.

Although not shown in the minutes, at this meeting the consultant emphasised that he saw his task as directed solely towards eliciting, in as comprehensive manner as possible, the views of interest groups on all major land tenure issues and reporting these views accurately. All responses received would be included in the report to CYPLUS, with the consultancy report being directed towards providing a systematic structured overview of these responses. The responsibility, therefore, rested with the representatives of interest groups to ensure that the views of those whom they represented were comprehensively and reliably reported. Where a diversity of views within any interest group clearly existed, these should be presented in the responses to questionnaires.

The consultant emphasised that the responses provided by the designated representatives were to be regarded as the primary sources of information. However, to ensure that an opportunity was still provided for alternative viewpoints to be expressed, the way was left open for individuals to make their own independent submissions. These would not have the same status as the responses from the representatives of interest groups. The consultant would have to make a judgement on how best to communicate these individual viewpoints.

However, no separate individual responses were received. Accordingly, this report is based entirely on the responses forwarded by representatives of interest and community groups. These responses are shown in full in Table 1, and all comments in Attachment B, which also contains any information supplied on how responses were compiled.

1.3 Interpretation of Responses to Questionnaire Survey

Some preliminary assessment is needed on the extent to which the views presented in the survey represent the considered opinion of the 'constituencies' covered by each respondent. These are two matters to be considered namely:-

- The extent to which the respondent has been able to ascertain the view of the 'constituency' by using a combination of consultation and reliance on previous formal agreed-upon policy decisions; and
- The extent to which the issues raised in the questionnaire have already been adequately canvassed within the interest groups, enabling a considered view to have evolved.

On the first point, Attachment B shows that CYPDA, CAFNEC and CYLC provide descriptions of their procedures for consultation and for utilising previous sources of policy development on the issue of land tenure. CYPDA has attempted a formal consultation procedure with a selected group of eight 'representative' members, whose individual responses are fully reported. Although not shown in their written response, it is known that the CYPAG has also engaged in a round of discussions with representative members. Consultative procedures are not shown for the Cook Shire Council (CSC) or the Aboriginal Co-ordinating Council (ACC) while Paul Warren, representing Comalco and the Queensland Mining Council, makes it clear that his comments are personal and may not reflect the interests of the mining representatives.

The consultant is fully aware of the problems encountered by some respondents in engaging in effective consultations with far flung 'constituencies', sometimes with divergent views, to be undertaken with limited time and resources. This needs to be taken into account in interpreting the responses. With further discussions and within-group consultation, changes might occur in the identification of preferred options. Of course, this is a desirable outcome in a process of ongoing consultation of the type being considered by CYPLUS Stage 2.

The second point, also concerning the reliability and stability of responses, relates to the extent to which the issues included in the questionnaire have or have not already been a matter for debate within the various 'constituencies' such that a consensus view, if achievable, has been found. Some of the issues have already been in the public arena for quite some time and on these most groups now have a clearly stated position. This would appear to be the case on matters such as subdivision of pastoral leases, public access and Aboriginal access on pastoral leases, policy on freeholding and Aboriginal rights within National Parks. Other issues have been much less prominent, and positions may not yet have been fully thought through. Such may well be the case, for example, on the management of riparian lands, on a more relaxed subdivision policy near major population centres, and on the possibility of a new form of public tenure to accommodate multiple private uses.

It is also obvious that all responses are not equal in status in shaping land tenure policies. On land tenure matters generally, Aboriginals and pastoralists can claim a strong involvement, not only by their holding of land title, embracing most of the Peninsula, but also because their livelihoods and lifestyles are closely interwoven with control over land resources. Concerning pastoral leases, which are the prime focus in this consultancy report, the legal context is based upon a two-party 'contract' between lessor (the State) and lessee (the pastoralists) with little attention to the rights of other parties. Increasingly, pastoral land administration is confronted with a delicate task in balancing the rights of titleholders with the wider social and environmental issues which also must be taken into account, with these wider responsibilities being partly represented by other interest groups, and partly unrepresented within the present CYPLUS consultation process.

In addition, the relative weight to be awarded to the issues of each interest group does need to be varied according to context, both within and among the various types of tenures. Pastoralists' views carry much more weight on matters relating to pastoral leases than to other tenures. Also, within the pastoral leasehold areas, pastoral interests deserve much greater attention on the more productive than on marginal lands. Similarly, Aboriginal interests have recently been afforded considerable weight within National Parks, but again, there is a contextual differentiation according to the degree of continuing attachment to these lands, relative to other values.

So far as is reasonable the consultant seeks to avoid attaching any weightings to the seven sets of responses received. The recognition of differential weightings will be a critical issue in Stage 2 of the CYPLUS programme. However, as is shown below, in reporting the findings in a simple clearcut manner, for certain purposes, the consultant gives more attention to four sets of responses, namely from CYPDA, CYPPAG, CAFNEC and CYLC.

The consultant does so for two reasons:-

Firstly, these four interest groups have undertaken an intensive round of consultation with their 'constituencies' and:

Secondly, they do provide clearly articulated views which enable identification of major areas of agreement or disagreement on land tenure issues.

On some, but not all, basic issues, there is a fundamental divergence of views between CYPDA and CYPPAG on the one hand, and CAFNEC and CYLC on the other. The degree of agreement or disagreement between these four interest groups is likely to provide the fulcrum around which issues of land tenure/land use/land management will be resolved. This, therefore, can be used in order to provide some structure in interpreting the results of this survey, as is shown below.

Because of its multifaceted 'constituency', Cook Shire needs to straddle several of the major issues, as is suggested by its multiple responses. These do need careful scrutiny, but are not readily incorporated into the overall interpretive structure presented here. Also ACC tends to adopt a distinctive 'middle ground' position on several issues, which merit careful attention, but are not readily included within the structured analysis shown in Table 3.

The response from the mining representative also has rather distinctive characteristics. In any case, Paul Warren clearly states that his reply is a personal one and 'may not reflect the interests of the mining representatives'. Accordingly, in Tables 2 and 3, I have not included the mining response, where mining is the only supporter of a particular option. (An exception is made on the issue of access which is clearly a matter of concern to mining).

2.0 RESULTS

2.1 Analysis of Responses on Preferred Options

A full report on detailed responses is provided in Table 1 and Attachment B. Table 1 is a direct transfer of responses from the returned questionnaires. By presenting the results in this tabular form, the primary information is reduced from the 98 pages of returned questionnaires to the 4 pages of Table 1. In this format direct comparisons of response patterns can readily be made.

Because of space constraints, the questions and the response options have had to be markedly abbreviated. The full text of each question and each response option is to be found in Attachment A, which presents the questionnaire used in the survey. Also, for ease of interpretation, the seven interest groups have been awarded alternative identifiers, as follows:-

Dev	: CYPDA	(Development Association)
Pas	: CYPPAG	(Pastoral Advisory Group)
Mine	: Comalco/Queensland Mining Council	
Cook	: CSC	(Cook Shire Council)
Env.	: CAFNEC	(Cairns and Far North Environment Centre)
Land	: CYLC	(Land Council)
Cord	: ACC	(Aboriginal Co-ordinating Council)

The above sequential ordering has been deliberately chosen to place the more development-oriented interest groups at one end of the spectrum and the environment and Aboriginal interests at the other end. This facilitates a visual scanning of response patterns in Table 1.

In Table 1, note that CYPDA consistently provides a rank-ordering of the responses. Certain other respondents also, at time, provide a partial rank-ordering of most preferred options, while Cook Shire chooses two options to six of the questions.

With only one or two exceptions, it seems that the stated options encompassed all those worthy of consideration. Only on five occasions did any respondent utilise the "other" option, presented at the end of each question. In all cases, the details on this alternative option have been spelt out in the commentaries, which are presented in their entirety in Attachment B. This attachment should be fully consulted in conjunction with any study of responses in Table 1. It should be recognised that four respondents have gone to considerable trouble to provide supplementary commentaries and reasons for responses in relation to most questions. These four are: CYPDA, CYPPAG, CAFNEC and CYLC. It is the view of the consultant that these commentaries can provide valuable input into Stage 2 of the CYPLUS programme. However, it lies outside of the present consultancy brief to engage in any attempt to further the process of interpretation and reconciliation, which clearly belongs to Stage 2.

Table 2 largely reproduces the information presented in Table 1, but in a condensed format which enables a more ready comparison of any similarities or differences in responses.

Also, for each item in Table 2, the current policy of the Department of Lands (if any) is shown, immediately below the summary responses of the interest groups. For further details on Land policy, please refer to the reports already prepared by Lands Department officers. For certain items, policy details have been taken from the following:

<u>Reference Number</u>	<u>Land Policy Title</u>
PUX/900/046	Pastoral leases - Application for new lease - exceptional circumstances
PUX/900/048	Tree clearing permit - General policy
PUX/900/062	Priority leasing - Granting special leases without public competition
PUX/900/090	Private subdivision of Crown leases
PUX/900/094(B)	Property management planning - Encouragement
PUX/900/124	Renewal and conversion of tenure, the location and degradation tests
PUX/900/135	Tenure for tourist development on islands
PUX/953/001	Assessing proposed planning instruments
PUX/953/013	Development of Crown land
PUX/900/019	Introduction and sale of non-indigenous plants with pest potential in Queensland

Table 3 is intended to provide a simplified, structured overview of the response patterns, with the structure being largely tied to the extent and direction of divergent opinions between CYPDA with CYPAG, on the one hand, and CAFNEC with CYLC, on the other hand. As already pointed out, this is done solely for the purpose of elucidating the main issues which are likely to need attention in Stage 2.

It is noteworthy that there is unanimous support on only one issue, namely that there is some value in pursuing land management planning (but this does not extend to making it compulsory). There is also near-unanimity on two other major issues, namely in the specification of approved uses on pastoral leases and on the rights of freehold titleholders to control access. On both of these issues, only the mining interest group presents a dissenting view.

That is the full extent of consensus. On the most basic tenure issues, there is evidence of a clearly structured divergence of viewpoints, with this structure being best revealed by identifying those issues where CYPDA and CYPAG are in agreement on the one option, while CAFNEC and CYLC agree on another option, seemingly incompatible with that preferred by the former two interest groups. This is a consistent theme, with 10 items out of the 22, shown in Table 3, conforming to this structure.

In Table 3, Group C comprises those matters which directly relate to the property rights of the pastoral leases, dealing either with the entitlement of the lessee to make independent decisions about the management and use of resources of the lease or with the right of the lessee to exercise control over the future use and disposal of the land title. On the management aspect, there are clear philosophical differences about the decision process relating to preservation of valued habitats and species, about land management planning and about Aboriginal access. Concerning future use and disposal of land, these are parallel differences about how to provide for non-pastoral uses by third parties, about excision of land

parcels and about possible subdivision into smaller holdings.

There are three other matters relating to other titleholders as well as to pastoral lessees, on which a comparable divergence of opinion is revealed. This is shown as Group D in Table 3. They relate to prohibitions on plant introductions, provisions for freeholding and requirements for land rehabilitation.

A further two items reveal a response structure broadly similar to that shown in Groups C and D. On one of these items, namely controls on clearing, both CYPDA and CYLC move towards a shared 'middle ground' position, also adopted by the mining interest and CSC Concerning Aboriginal rights in National Parks. CYPDA is again in the 'middle ground' along with CSC and ACC.

It seems likely that for a high proportion of the items shown in Group C and D, the viewpoints of the various interest groups are firmly held, and it will be quite a challenge to achieve a reasonable consensus in Stage 2. On the other hand some movement may be possible in the two items covered in Group E.

Compared with the previous three groups in Table 3, Group F generally focuses on issues which have received little attention so far, but are likely to loom larger in the near future. I offer the opinion that for some interest groups, a firm viewpoint has yet to emerge on many of the items in this group. In Stage 2 of CYPLUS there could well be an opportunity for a constructive exchange of ideas on several matters in Group F in an attempt to achieve a common position, reflecting a broad consensus, even if unanimity still remains beyond reach.

2.2 Issues Needing Urgent Attention or of Long-Term Significance

The final two questions were designed to elicit views on the importance of the issues covered in Questions 1 to 21. In Question 22, respondents were asked to select 6 issues requiring urgent, immediate attention, and were also given the option of ranking these in order of priority. In Question 23, respondents were asked to undertake a similar exercise focussing, however, on issues of longer-term significance.

For the 6 groups which responded to these two questions, detailed responses are shown in Tables 4 and 5. Four interest groups provided a ranking as shown in the two tables. However CAFNEC and ACC presented unranked lists. Cook Shire Council did not provide a response to these two questions.

Table 6 shows all issues which received at least three mentions, with the issues listed in order of frequency of total mentions. Lease subdivision is clearly regarded as a very high priority issue, both immediately and in the long term, with a score of 10 mentions out of a possible 12. All groups list it as a long term issue. It is commonly listed as the issue of highest priority. As is shown earlier, this is an issue on which a clearcut division of opinion exists between those proposing a fairly open handed approach to subdivision and those opposed to any further subdivision.

Aboriginal access on pastoral leases, together with measures to preserve valued habitats and

species on leases rank next in importance, both with eight mentions, the former being regarded as more urgent and the latter of longer term significance. Again, on these two matters, there is a strong division of opinion concerning the extent to which the lessee retains powers of decision. Exactly the same divisions appear on the next two higher priority issues: land management planning and clearing controls on leases.

Thus there is a close correspondence between those matters regarded as of highest immediate and long-term importance and those matters on which there is a strong division of opinion between the various interest groups. This poses a very distinct challenge in deciding on an appropriate format for the consultation process to be undertaken in Stage 2. If a strategy is adopted of giving prime attention to the issues of highest concern, then this will have to be handled in a very sensitive way, in an attempt to find some common ground among these divergent interests.

At the same time, considerable progress might well be made on other matters, currently awarded a lower priority by the various interest groups. On these matters, positions may well be more fluid, and the consultation process may act as a useful vehicle for developing fresh approaches. This may well be the case on such matters as: riparian access and management; zoning near population centres; private uses in National Parks; and a new public tenure to accommodate private uses. In these areas the CYPLUS consultation process might lead to useful initiatives, applicable beyond the Peninsula.

At the same time, the consultation process will need to address those issues which are given high priority, and on which differing viewpoints clearly exist. This report is designed to provide a detailed statement on the views expressed by the interest groups, as well as an overview which elicits the structured nature of these viewpoints. It is recognised that a more detailed examination of individual aspects could be undertaken but this is best left to those who will be making use of this material.

Concerns were expressed by one interest group during the drafting of this report that certain issues had not been adequately addressed in the survey. As a result of this, the Consultant undertook to carry out a supplementary survey before the end of 1994 to address the outstanding issues. A questionnaire was compiled for the survey, however, as the interest groups involved revealed differing viewpoints about the need for a supplementary survey, the survey was unable to be completed and the results not made available for this report.

Table 1: Summary of Results

Note: Questions and response options are highly abbreviated. See Attachment B for full wording in Questionnaire. Where 'X' is used, the 'X' indicates the organisations only preference. Where numbers are used, 1 indicates first preference, and 5 indicates the least preferred use.

	Dev	Pas	Mine	Cook	Env	Land	Cord
Pastoral Leases							
Q1. Approved Uses							
(a) Pastoral only	3						
(b) Also complementary uses	1	1			X	X	X
(c) With Lands Dept permit	4			X			
(d) Graduated approach	5		2	X			
(e) Convert to general leases	2	2	1				
Q2. Third Party Uses							
(a) Not allowed	4				X	X	X
(b) Lands Dept permit	5						
(c) Lessee can negotiate	2		3	X			
(d) Only if lessee agrees	3		2	X			
(e) Solely at discretion of lessee	1	X	1				
Q3. Land Excisions							
(a) Lands Dept resumption	2		4				X
(b) With advisory committee	4		3		X	X	
(c) With lessee having first right	3		2				
(d) Only with lessee approval	1	X	1	X			
Q4. Lease Subdivision							
(a) No further subdivision	4				X	X	X
(b) Limited approvals	3		X				
(c) Only where viable	2			X			
(d) Also on other grounds	1	X		X			
Q5. Subdivision Near Centres							
(a) Yes		X		X			
(b) No	X		X		X	X	X

Table 1: Summary of Results (cont)

	Dev	Pas	Mine	Cook	Env	Land	Cord
Pastoral Leases (cont)							
Q6. Riparian Access							
(a) Open access	5						
(b) Routes, some notification	3		1				
(c) Zoned	2	X	2	X	X	1	X
(d) Lands Dept approval	4						
(e) Approval of lessee	1		3	X		2	
Q7. Riparian Management							
(a) By lessee (no fees)	2						
(b) By lessee with fees	4		1			2	
(c) By Lands Dept with fees	1		2	X			X
(d) By other agency	3					1	
(e) Other (see commentaries)			X			X	
Q8. Public Access							
(a) Open, along tracks	5						
(b) Designated sites and routes	2		2		X		
(c) Funds for maintenance	3		1				X
(d) Lands Dept permit	4						
(e) At discretion of lessee	1	X		X		X	
Q9. Clearing Controls							
(a) Near-total prohibition	5				X		X
(b) Tight controls	3		2				
(c) Plans, avoid sensitive areas	1		1	X		X	
(d) Permits, guidelines	2	X	3				
(e) No controls	4						
Q10. Plant Introductions							
(a) Prohibition	2		2		X	1	X
(b) Limited prohibition	1	X	1	X		2	
(c) Geographically selective	3						
(d) No controls	4						

Table 1: Summary of Results (cont)

	Dev	Pas	Mine	Cook	Env	Land	Cord
Pastoral Leases (cont)							
Q11. Habitat Preservation							
(a) Lease covenants, compensation	3		X		2	1	X
(b) Only with lessee agreement	1	X		X		2	
(c) Only on lessee initiative	2						
(d) No formal procedures	4						
(e) Other (see commentary)					1		
Q12. Aboriginal Access							
(a) Legislated access rights	4		X		X	X	
(b) Parallel native title	3				X		
(c) By formal negotiation	2			X			X
(d) Informal arrangements	1	X					
Q13. Land Management Plans							
13.1 Any value?							
(a) Yes	X	X	X	X	X	X	X
(b) No							
13.2 Compulsory?							
(a) Yes	X	X	X	X	X		
(b) No	X	X					
Q14. Matters in Land Plans							
(a) All seven listed items			X		X	X	X
(b) First five items				X			
(c) Other (see commentaries)	X	X					
Q15. Aboriginal Pastoral Leases							
(a) Continue pastoral lease	1	X		X		3	X
(b) Queensland Abor freehold	2					2	
(c) NT Abor freehold	3		X			1	
(d) New, limited tenure	4		X				
(e) Other (see commentaries)					X		

Table 1: Summary of Results (cont)

	Dev	Pas	Mine	Cook	Env	Land Cord
Freehold Tenure						
Q16. Private freeholding						
(a) No more	5		-		X	X X
(b) Limited: urban	4		-			
(c) Limited: capital intensive	1	X	-	X		
(d) Larger areas	3		-	X		
(e) More liberal approach	2		-			
Q17. Public Access on freehold						
(a) No change to present	1	X		X	X	X X
(b) Similar to lease title	2		X			
(c) Differentiate Abor & non-Abor	3					
National Parks						
Q18. Aboriginal Rights						
(a) Aboriginal Title	5		X		X	X X
(b) Full recognition of Abor rights	4					
(c) Some conservation controls	1			X		X
(d) Limited Abor rights	3					
(e) No Abor rights	2	X				
Q19. Commercial Ventures						
(a) Yes	X	X	X	X		X
(b) No					X	
(c) Other (see commentary)						X
Other Issues						
Q20. New Public Tenure						
(a) Yes	X	X		X		X
(b) No			X		X	X
Q21. Land Rehabilitation						
(a) Legislation adequate	X	X	-	X		X
(b) Not adequate			-		X	X

Table 2: Preferred Options of Interest Groups Compared with Lands Department's Present Policy

Note: For each item, the policy position of the Lands Department is shown separately, immediately below the preferred responses of the interest groups.

Pastoral Leases

- | | | |
|-------|--|------------------------------|
| 1. | <u>Approved uses:</u> | |
| | (b) Pastoral plus incidental complementary uses | Dev, Pas, Env,
Land, Cord |
| | (e) General use leases, control by local govt. | Mine, (Pas). |
| <hr/> | | |
| | (d) Pastoral plus incidental complementary uses (informal policy) | |
| | | |
| 2. | <u>Third-party non-pastoral uses:</u> | |
| | (a) Not allowed | Env, Land, Cord |
| | (e) At discretion of lessee who sets fees etc | Dev, Pas, Mine. |
| <hr/> | | |
| | (-) Issue special lease open to public competition: priority to existing lessee in special circumstances | |
| | | |
| 3. | <u>Excision of land parcels for special private uses:</u> | |
| | (a) Resumption with pastoral compensation | Cord |
| | (b) As above but with community approval process | Env, Land |
| | (d) Must have approval of both lessee and Lands Dept. | Dev, Pas,
(Cook). |
| <hr/> | | |
| | (d) Must have approval of both lessee and Lands Dept | |
| | | |
| 4. | <u>Further subdivision of pastoral leases:</u> | |
| | (a) No further subdivision | Env, Land, Cord |
| | (d) Approval, including some non-viable leases | Dev, Pas, Cook. |
| <hr/> | | |
| | (c) Approval if shown to be viable | |

Table 2: Preferred Options of Interest Groups Compared with Land Department's Present Policy (cont)

5.	<u>Special subdivision policy near population centres:</u>	
(a)	Yes	Pas, Cook
(b)	No	Dev, Mine, Env, Land, Cord.
(-)	No specified policy, but could possibly be approved for 'other substantive reasons consistent with department's objectives'	
6.	<u>Access to riparian lands:</u>	
(b)	Zones, some with access, others restricted	Pas, (Cook), Env, Land, Cord.
(e)	Access only with approval of lessee	Dev, (Cook).
(c)	Zones, some with access, others restricted (intended policy)	
7.	<u>Management of riparian lands with public access:</u>	
(c)	By Lands Dept. with fees	Dev, Cook, Cord.
(d)	By some other agency	Land
(e)	Other	Pas, Env.
(-)	policy not yet determined	
8.	<u>Public access across pastoral lease:</u>	
(b)	Designated routes and places, only	Env
(c)	Negotiated routes with some public funding	Mine, Cord.
(e)	Solely at discretion of lessee	Dev, Pas, (Cook), Land.
(e)	Solely at discretion of lessee (legislated provision)	

Table 2: Preferred Options of Interest Groups Compared with Land Department's Present Policy (cont)

9.	<u>Controls over clearing:</u>	
(a)	Near-total prohibition	Env, Cord
(c)	Controlled by management plan, avoiding sensitive area	Dev, Mine, Cook, Land.
(d)	By permit and with general guidelines	Pas
(d)	By permit and with general guidelines (local guidelines being developed)	
10.	<u>Controls over plant introductions:</u>	
(a)	Complete prohibition	Env, Land, Cord
(b)	Limited prohibitions	Dev, Pas, Mine, Cook.
(b)	Limited prohibitions	
11.	<u>Preservation of valued species and habitats:</u>	
(a)	Orders in lease covenants, with compensation	Mine, Land, Cord
(b)	As above but only with agreement of lessee	Dev, Pas, Cook
(c)	Other (remove from pastoral tenure)	Env
(b)	As above but only with agreement of lessee (Nature Conservation Act)	
12.	<u>Aboriginal access:</u>	
(a)	Legislated access rights for traditional uses	Mine, (Env), Land
(c)	Selective formal recognition by negotiation	Cook, (Env), Cord
(d)	Informal arrangements, reasonable access	Dev, Pas
(-)	No policy but could be considered in approval of any lease dealing	
13.1.	Do you see any value in land management plans?	
(a)	Yes	Dev, Pas, Mine, Cook, Env, Land, Cord

Table 2: Preferred Options of Interest Groups Compared with Land Department's Present Policy (cont)

13.2	Should land management planning be compulsory?	
(a)	Yes	Mine, Cook, Env, Land, Cord
(b)	No (but compulsory in certain cases (Q13.3))	Dev, Pas
<hr/>		
(b)	No (but compulsory in certain cases)	
14.	<u>Matters to be incorporated into land management plans:</u>	
(a)	All seven matters listed	Mine, Cook, Env, Land, Cord.
(b)	First five items	Cook
(c)	Other (supportive) responses	Dev, Pas.
<hr/>		
(a)	All seven matters listed	
15.	<u>Land tenures for pastoral leases acquired for Aboriginal peoples:</u>	
(a)	Continue with pastoral lease tenure	Dev, Pas, Cook, Cord
(c)	Aboriginal non-transferable freehold	Land
(e)	(To be decided by Aboriginal owners)	Env
<hr/>		
(-)	Outside the powers of the Lands Department	
Freehold Tenures		
16.	<u>Freeholding procedures for private uses:</u>	
(a)	No further freeholding	Env, Land, Cord
(c)	Limited freeholding for capital projects	Dev, Pas, (Cook)
<hr/>		
(c)	Limited freeholding for capital projects	
17.	<u>Public access rights on freehold land:</u>	
(a)	No change to present legislation	Dev, Pas, Cook, Env, Land, Cord
(b)	Negotiated route with some public funding	Mine
<hr/>		
(a)	No change to present legislation	

Table 2: Preferred Options of Interest Groups Compared with Land Department's Present Policy (cont)

National Parks

18. Aboriginal rights in National Parks:

(a)	Aboriginal title with joint management	Mine, Env, Land
(c)	State title with some limits on Aboriginal activities	Dev, Cook, Cord
(e)	No special recognition of Aboriginal rights	Pas

(-) Outside the powers of the Lands Department

19. Commercial ventures in National Parks:

(a)	Yes	Dev, Pas, Mine, Cook, Cord
(b)	No	Env, Land

(-) Outside the powers of the Lands Department

Other Issues

20. New form of public tenure to accommodate multiple private uses:

Yes		Dev, Pas, Cook, Land
No		Mine, Env, Cord

No policy under current consideration

21. Adequacy of legislation and implementation for land rehabilitation:

Adequate		Dev, Pas, Cook, Cord
Not adequate		Env

Outside the powers of the Lands Department

Table 3: Structured Overview of Response Patterns

(A) <u>Unanimity:</u>	
Q13.1	Do you see any value in pursuing land management plans. (All say 'yes').
(B) <u>Near Unanimity:</u>	
Q1	Pastoral leases are for pastoral uses plus incidental, complementary use. (All except Mine).
Q17	No change to present legal provisions concerning traffic access to freehold land. (All except Mine).
(C) <u>Disagreement between Dev/Pas and Env/Land, focussing primarily on the property rights of pastoral lessees*:</u>	
Q2	Additional third party private uses (solely at discretion of lessee).
Q3	Excision of land (only with approval of lessee).
Q4	Possible approval of proposals for subdividing pastoral leases.
Q11	Preservation of valued habitats (only by agreement with lessee).
Q12	Aboriginal access to pastoral leases (informal arrangements).
Q13.2	Land management planning (should not be compulsory).
Q14	Do not accept the precise specification of matters listed for land management planning.
(D) <u>Disagreement between Dev/Pas and Env/Land, focussing on other land policy matters*:</u>	
Q10	Only a limited set of prohibitions on plant introductions.
Q16	Some opportunities for freeholding, even if limited.
Q21	Current legislation for land rehabilitation is adequate.

Table 3: Structured Overview of Response Patterns (cont)

(E)	<u>Structured spectrum of responses:</u>
Q9	Controls over clearing on pastoral leases.
Q18	Aboriginal rights in National Parks.
(F)	<u>Diverse mix of viewpoints:</u>
Q5	Special subdivision policy near population centres.
Q6	Access to riparian lands.
Q7	Management of riparian lands with public access.
Q8	Public access across pastoral leases.
Q15	Land tenure for pastoral leases acquired for Aboriginal peoples.
Q19	Commercial ventures in National Parks.
Q20	Possible new form of public tenure to accommodate multiple private uses.

* In sections C and D, the Dev/Pas viewpoint is presented.

**Table 4: Six Matters Requiring Urgent Attention
Ranked in Order of Priority (Question 22)**

Rank	Development	Pastoral	Mining	Environment (not ranked)	Land Council	Abor. Coord. Council (not ranked)
1	4 Lease subdivision	4 Lease subdivision	14 Items in land management	4 Lease subdivision	9 Lease subdivision	Clearing controls
2	8 Access on leases	19 Commerce in NP	13 Land management	8 Access on leases	12 Aboriginal access	13 Land management
3	12 Aboriginal access	Nat. Park Funds*	11 Preserve habitat	9 Clearing controls	- Land degradation	11 Preserve habitat
4	3 Excise land parcels	18 Aboriginals in NP	9 Clearing controls	10 Plant introductions	11 Preserve habitat	12 Aboriginal access
5	15 Aboriginal tenures	20 New tenure: private uses	21 Land rehabilitation	11 Preserve habitat	13 Land management	10 Plant introductions
6	6 Riparian access	12 Aboriginal access	7 Riparian management	12 Aboriginal access	18 Aboriginal right in NP	6 Riparian access

**Table 5: Six Matters of Long Term Significance
Ranked in Order of Significance (Question 23)**

Rank	Development	Pastoral	Mining	Environment (not ranked)	Land Council	Abor. Coord. C'tee (not ranked)
1	4 Lease subdivision	4 Lease subdivision	13 Land management	1 Approved uses	* Aboriginal tenure	4 Lease subdivision
2	13 Land management	5 Subdivision near towns	14 Items in land management	4 Lease subdivision	4 Lease subdivision	5 Subdivision near towns
3	15 Aboriginal tenures	19 Commerce in N.P.	11 Preserve habitats	9 Clearing controls	- Land degradation	8 Access on leases
4	3 Excise parcels	20 New tenure: private uses	20 New tenure: private uses	11 Preserve habitat	11+ Preserve habitat	9 Clearing controls
5	11 Preserve habitat	6 Riparian access	4 Lease subdivision	12 Aboriginal access		10 Plant introductions
6	9 Clearing controls	15 Aboriginal tenures	3 Excise land parcels	13 Land management		12 Aboriginal access

* Includes Questions 12, 15 and 18.

+ Wider concern about value of Cape York as an area of significant biodiversity.

Table 6: Issues Needing Urgent Attention or of Long-Term Significance

Question #	Brief Title	Number of Mentions		
		Urgent Attention	Longer-Term	Total
4	Lease subdivision	4	6	10
12	Aboriginal access	5	3	8
11	Habitat preservation	4	4	8
13	Land management plan	3	3	6
9	Clearing controls	3	3	6
15	Aboriginal pastoral leases	1	3	4
8	Public access (leases)	2	1	3
18	Aboriginal in N.P.	2	1	3
3	Land excisions	1	2	3
20	New public tenure	1	2	3

APPENDIX 1**Letters and Questionnaire Forwarded to Interest Groups By Consultant**

This attachment comprises the following items:-

1. Initial letter together with draft questionnaire circulated in early August 1994 to interest groups. Note that only the first two pages of a seven page item is included in this attachment. The remaining pages comprised a draft only of the proposed questionnaire. (2 pages)
2. Letter from consultant, dated 1 September 1994, forwarded as an introduction to the questionnaire. (2 pages)
3. Questionnaire. (14 pages)



CYPLUS Land Use Program

Community Views and Aspirations about Land Tenure

This letter is to CYPLUS working groups and community interest groups, from John Holmes, who has been commissioned to ascertain your views on land tenure issues.

During September I will be seeking detailed responses from all interested parties, asking you to highlight land tenure issues of major concern to you, and seeking your views on how these issues can best be resolved. By the end of October, I hope to provide a full report to CYPLUS, which will provide an accurate statement on these views. Also to be included will be your reactions to the Department of Lands' policy paper, which is expected to be available very soon.

I plan to be in Cairns on 31st August, to meet with the working group responsible for land-related issues. It will help matters if this preliminary notice is circulated in advance, so that members of the working group can make helpful suggestions concerning the way to proceed with this survey, including additional matters of concern which should be included.

I plan to proceed as shown below:

1. Community Responses to Lands Department policy paper. Once this paper is released, I will try to prepare a set of questions which can be used as a basis for framing your response to this paper. Also, of course, I am happy to receive responses in any form you wish to use. All responses will be included, in full, as an appendix to my consultancy report. I will try to provide a structured report on the general thrust of responses to the Lands Department policy paper.
2. Community Responses to Consultancy Survey. I will seek to obtain your views on a wide range of issues relevant to land tenure, which are currently of concern throughout Australia. The main purpose of this exercise will be towards the following goals:
 - (a) How best to satisfy the reasonable interests and expectations of the titleholder(s) to the land.
 - (b) At the same time, how to recognise and satisfy the interests of other parties, especially relating to access.
 - (c) Also to ensure that the broader, longer-term 'public interest' is adequately recognised on such matters as sustainable land use and preservation of biodiversity.
 - (d) How best to facilitate desirable land use change, ensuring a balanced approach between the interests of the existing titleholder and the interests of others who can reasonably expect to gain access, generally to smaller parcels of land than currently covered in single pastoral leases.
 - (e) Whether new forms of tenure are needed, particularly a possible new tenure, capable of accommodating various private interests, on marginal lands where titleholders have difficulty in gaining a reasonable income from broad-acres uses, such as cattle grazing.

In order to address these issues, I will ask for your views on a series of specific matters. For each of these matters I will list a set of alternative "solutions", generally covering those which have been adopted or seriously considered somewhere in Australia. Most of these matters relate to pastoral leases, which occupy the largest proportion of the peninsula. However, there will also be sections dealing with Aboriginal lands, National Parks, Other Crown or Government-held land and freehold land.

A draft outline of major matters and possible options is provided below:

Approved Uses on Pastoral Leases:

- (a) Pastoral uses only.
- (b) Pastoral uses plus incidental non-pastoral uses complementary to pastoralism.
- (c) Additional uses allowable, but only following Lands Department approval involving issue of licence or permit.
- (d) A graduated approach to approval of additional uses, involving a sequence of licences, permits and special leases.
- (e) "Open go" with pastoral leases being converted to general use leases, with land use controls not being tied to land tenures, but to local government regulation.
- (f) Other suggestions.

Procedures for Approving Non-Pastoral Commercial Uses Complementary to Pastoralism:

These are generally broad-acre uses such as ecotourism, recreational hunting or alternative uses of natural resources.

- (a) Not allowed.
- (b) Approvals by permit or licence at discretion of Lands Department, to be available to *bona fide* applicants, under stated conditions.
- (c) Approvals by Lands Department, but with titleholder having some negotiating powers, including right of first refusal.
- (d) Approvals by Lands Department but conditional on agreement with pastoral titleholder.
- (e) To be solely at discretion of titleholder, who also can set a fee and specify conditions.
- (f) Any other options.

C.Y.P.L.U.S. LAND USE PROGRAM

Community Consultation on Land Tenure Issues

At the meeting of the Land Working Group, on 31st August, it was agreed that the consultation on land tenure issues should be channelled through the representatives of the Community and Interests Groups. These representatives will take the responsibility for providing an informed response to the matters raised in the enclosed structured questionnaire. Where there is a more than one significant viewpoint expressed by those represented by any Community or Interest Group, every endeavour should be made to incorporate these viewpoints within the single, consolidated response to the questionnaire. This should enhance the value of the responses, as they can be regarded as a reasonably authoritative, representative statement of the views of people associated with each interest group.

The attached questionnaire has been amended to incorporate the suggestions presented at the meeting of 31st August. This questionnaire is being circularised by C.Y.P.L.U.S. However, responses should be sent directly to the consultant to the project:

Professor John Holmes
Department of Geographical Sciences and Planning
The University of Queensland. Q. 4072

Phone: (07) 3656515 (w); (07) 371 2638 (h)
Fax: (07) 3656899

I would like to receive responses by the end of September, preferably to allow some time for a further round of "rapid-fire" consultation on any issues which pop up from the first round of responses. As I emphasized at the meeting, it may well happen that one interest group wishes to draw attention to a specific issue and to present a view on that issue. For completeness in the survey, the same issue should also be presented to all other groups, for their opinions to be registered.

I would like to have your responses presented in a manner so that they can be incorporated, without any amendment, into the final report. I have left space under each item to allow written statements to be included, expanding upon your group's response to each issue. If a lengthy response is appropriate, requiring more space than available on that page, I suggest that the following procedure be adopted, for consistency.

- Include these lengthier statements as an attachment at the end of the questionnaire.
- Within this attachment, identify this larger written response using Question Number and abbreviated Issue as an identifier, e.g.

Question 4. Subdivision of Pastoral Leases.

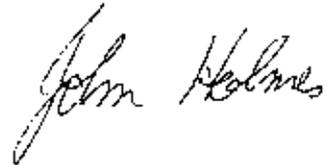
- In the blank space on the main questionnaire write: See attachment

If I do receive responses from individuals I will have to make a judgment on what to do with them. It is my inclination not to include them as documents in the reports, as this is contrary to the agreed procedure. If done on a selective basis, it could lead to an undesirable bias in the reporting procedure. However, I remain open to the possibility that ideas from individual responses (if any are received) could be incorporated into my own analysis of the information obtained in the survey.

Please note that, rather than seeking a separate structured response to the Lands policy documents, prepared by Gary Cotter and Malcolm Hardy, I have instead incorporated a few relevant items into the general questionnaire, e.g. land management plans.

In any case, the draft questionnaire seemed to go a long way towards encompassing all major identified issues.

Please do not hesitate to contact me on any matters needing clarification or on which you wish to make suggestions.



John Holmes
1st September, 1994

C.Y.P.L.U.S. Land Use Program:

Questionnaire to Community Groups or Interest Groups on Land Tenure Issues

Note: In responding to each set of options, choose between two possible response modes, according to appropriateness. The most common mode is to select only one option, indicated by a tick (✓) in one box only. The other mode is to use a numbering system to indicate first preference, and numbering only those options which you consider acceptable, continuing through 2, 3, 4, etc. It is left to you to decide which mode to use.

There are also some questions where a number of items are listed; against each item you are asked to indicate either "yes" or "no", by ticking the appropriate boxes.

Please indicate the name of
the community group or interest group
responding in this questionnaire:

.....
Contact Person:.....

Telephone:.....

SECTION A: PASTORAL LEASE TENURES

Please tick the box which best represents your views or, alternatively, rank in order, from 1 upwards in order of preference. Only number those which would be acceptable.

Question 1: Approved Uses on Pastoral Leases where Proposal is Initiated by Titleholder:

- Pastoral uses only.
- Pastoral uses plus incidental non-pastoral uses complementary to pastoralism.
- Additional uses allowable, but only following Lands Department approval involving issue of licence or permit.
- A graduated approach to approval of additional uses, involving a sequence of licences, permits and special leases according to the nature of these uses, and their level of linkage to pastoralism.
- Pastoral leases being converted to general use leases, with land use controls not being tied to land tenures, but to local government regulation.
- Other suggestions (please indicate).

Question 2: Procedures for Approving Non-Pastoral Commercial Uses Complementary to Pastoralism where Proposal is Initiated by a Third Party (not the Titleholder):

These are generally broad-acre uses such as ecotourism, recreational hunting or alternative uses of natural resources.

- Not allowed.
- Approvals by permit or licence at discretion of Lands Department, to be available to *bona fide* applicants, under stated conditions.
- Approvals by Lands Department, but with titleholder having some negotiating powers, including right of first refusal.
- Approvals by Lands Department but conditional on agreement with pastoral titleholder.
- To be solely at discretion of titleholder, who also can set a fee and specify conditions.
- Any other options.

Comments:

Question 3: Procedure for Excising Parcels of Land from Pastoral Leases, to Accommodate Uses Not Complementary to Pastoralism:

Examples include roadhouses, small resorts, mariculture ventures, crocodile farms, horticulture ventures, residential and other urban needs. Note: It is assumed that major ventures, requiring considerable land tracts will be accommodated by the venturers purchasing entire leases and then negotiating development rights with government. However, the land demands for smaller ventures are not appropriately met by purchase of entire pastoral leases. Keep in mind that Lands Departments have retained this resumption right in some other states, e.g. Western Australia, but that this right was relinquished in Queensland some time ago. The Wolfe Committee recommended that this right will be needed to facilitate development in remote areas. Some options are:

- Resumption rights to be held by Lands Department with compensation for loss of pastoral values (as with resumption for public uses).
- As with above, but with a committee comprising government and community representatives advising the department on approvals and setting conditions.
- As with (a) or (b) but with titleholder having first right of refusal in purchasing the land parcel.
- Able to proceed only with approval of both titleholder and Lands Department.
- Any other options. (Please specify)

Comments:

Question 4: Subdivision of Pastoral Leases into Smaller Pastoral Leases in Remote Areas:

Some pastoralists wish to have their leases subdivided, for various reasons. Options include:

- No further approvals of subdivision into small leases.
- Limited approvals, in special circumstances only.
- Approval of any subdivision proposal, providing each separate lease is shown to be economically "viable".
- Approval of subdivision proposals, including some where leases are not "viable", but can be justified on other grounds.
- Other options. (Please specify)

Comments:

Question 5: Subdivision of Pastoral Leases Close to Population Centres:

A case can be made for a different policy on subdivision of lands within close distance of population centres, most notably Cooktown and Weipa.

Yes No
 Should there be a separate policy for these areas?

If "yes", please provide some suggested policy directions.

Question 6: Access to Riparian Lands

The riparian lands of the peninsula are highly valued for pastoral, recreation, conservation and Aboriginal uses. These streamside lands are coming under increasing pressure and, in due course, will need some management, including possible controls over access and use. Some options are:

- Open access by the public to any riparian lands, without any controls or notifications.
- Open access, but along designated routes and, in some cases, with requirement to notify titleholder and/or Lands Department.
- Zoned riparian lands, some with public access and others with highly restricted access.
- Access only with approval of Lands Department.
- Access only with approval of titleholder.
- Other options.

Comments:

Question 7: Management of Riparian Lands with Public Access:

- Management responsibilities and costs to be met by titleholder (fees).
- To be met by titleholder (with fees being chargeable).
- To be met by Lands Department (with right to change fees)
- To be met by some other agency, e.g. local government (with right to charge fees)..
- Other options.

Comments:

Question 8: Public Access Across Pastoral Leases:

- Open access along any track (as has long been the case in New South Wales Western Division).
- Access to permanent waters and to designated sites of public interest, with route to be decided at discretion of titleholder or by Lands Department if titleholder does not specify a route(as is currently being developed in Northern Territory).
- Access along a limited set of designated routes, negotiated between Lands Department and lessees, with some funds for route maintenance (as in South Australia).
- Access by general permit granted by Lands Department (as proposed in Wolfe Report).
- Access entirely at discretion of titleholder.
- Other options.

Comments:

Question 9: Controls over Clearing:

- Total prohibition on vegetation clearing, save only for essential needs, such as buildings, fences, yards, small holding paddocks, etc.
- Tight controls on clearing, with approvals only for selected cropping and pasture improvement programmes.
- Controlled clearing tied to an approved property management plan, and with prohibitions on clearing sensitive areas or valued habitats.
- Clearing by permit only, but approvals to be made only in response to applications and in relation to a broad set of guidelines, e.g. not within a set distance of a watercourse.
- No clearing controls.
- Other options.

Comments:

Question 10: Controls over Plant Introductions:

Concern has been expressed on the possible impact of plant introductions which might become widespread weeds. In South Australia, for example, there are restrictions on plant introductions onto pastoral leases. Options include:

- Complete prohibition on any further plant introductions, focussing on those likely to become pests.
- Enforcement of a limited set of prohibitions, based on a specified list of unwanted plants.
- Geographically selective prohibitions, with, for example, tighter restrictions on more pristine and sensitive catchments, mainly in northern peninsula.
- No controls
- Other options.

Comments:

Question 11: Preservation of Valued Species and Habitats:

There is growing recognition that, in Australia's pastoral lands, there are preservation values which cannot be fully accommodated in National Parks and other reserves. It is proposed that agreements be reached with lease titleholders to meet goals of preservation. Some options are:

- Preservation orders, involving grazing restrictions, over valued habitats to be incorporated into lease covenants, with compensation for any loss of grazing capacity and additional management costs.
- Preservation orders as in (a) but only by agreement with lessee.
- Preservation agreements only on the initiative of lessee.
- No formal procedures in leases.
- Other options.

Comments:

Question 12: Aboriginal Access for Traditional Purposes:

- General legislated provisions to allow access for traditional purposes, with limits only at artificial waters and other improvements, as in current legislation in Northern Territory, Western Australia and South Australia.
- Formal recognition of access rights by award of a parallel native "title", without any loss of rights by existing lessee.
- Selective formal recognition of access rights, by negotiation.
- Informal arrangements with general expectation that reasonable access will not be impeded.
- Other options.

Comments:

Question 13: Land Management Plans:

There is a growing interest in property management plans. Within this planning framework, of particular interest are land management plans. For details see pages 29-34 of Gary Cotter's draft study of the Pastoral Industry. In some areas, banks are considering making loans, only if a property management plan has been prepared. The Queensland Minister for Lands was considering making these plans compulsory wherever any lease transaction had to receive Lands Department approval. However he has recently decided against pursuing this requirement. Nevertheless property management planning is sure to become more frequent, and does have particular relevance in Cape York Peninsula, because lease areas are exceptionally large and do incorporate a diversity of values, in addition to pastoral values. This raises a series of questions:

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Do you see any value in pursuing land management plans? |
| <input type="checkbox"/> | <input type="checkbox"/> | Should land management planning be compulsory on all pastoral leases? |
| <input type="checkbox"/> | <input type="checkbox"/> | If not compulsory on all leases, should it nevertheless be made compulsory in certain cases? |

If "yes", please indicate the circumstances in which land management planning should be required. Also add any general comments about the need (or otherwise) for such planning.

Comments:

Question 14: Matters: to be Incorporated in Land Management Plans:

If land management planning were to be formally adopted for some (or all) pastoral leases, please indicate which matters should be incorporated into these plans.

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Planning of improvements, especially waters, yards, fences. |
| <input type="checkbox"/> | <input type="checkbox"/> | General plans on stocking levels for specific areas and land types. |
| <input type="checkbox"/> | <input type="checkbox"/> | Strategies for overcoming land degradation problems |
| <input type="checkbox"/> | <input type="checkbox"/> | Details on areas available for clearing and areas not to be cleared. |
| <input type="checkbox"/> | <input type="checkbox"/> | Management of riparian lands. |
| <input type="checkbox"/> | <input type="checkbox"/> | Formal agreement on management of areas of high nature conservation value. |
| <input type="checkbox"/> | <input type="checkbox"/> | Formal agreements on management of areas/sites of high cultural value (including Aboriginal sites). |
| <input type="checkbox"/> | <input type="checkbox"/> | Others (please specify). |

Comments:

Question 15: Land Tenures on Pastoral Leases Acquired for Aboriginal Peoples:

- Continue with pastoral lease tenure.
- Convert to Queensland Aboriginal freehold tenure.
- Convert to a new tenure similar to Northern Territory Aboriginal freehold, involving more rights over minerals and mining.
- Convert to a new tenure, involving a more limited set of rights to Aboriginal titleholders and incorporating some access rights to the general public.
- Other options.

Comments:

SECTION B: FREEHOLD TENURES

Question 16: Freeholding Procedures for Private Uses

(Note: Freeholding options for Aboriginal lands are covered in Question 15)

- No further private freeholding on the peninsula. Very limited award of special leases over small land parcels, e.g. to accommodate some urban residential and commercial needs.
- Very limited freeholding, only to meet needs stated in (a).
- Limited provision for freeholding of lands used for capital intensive projects, e.g. stand-alone resorts, roadhouses, intensive agriculture. Restricted only to lands directly needed for the venture.
- Approvals by Minister of Lands of freeholding of areas up to a few hundred square kilometres where investment in improvements meets certain minimum limits (as occurred for example with Line Hill and Starcke).
- More liberal provision for freeholding (please specify).
- Other options. (Please specify)

Comments:

Question 17: Public Access Rights on Freehold Land (Aboriginal and Non-Aboriginal):

Currently, the public has no access rights to any land held in freehold title. Access is only by permission of titleholder(s).

- No change to present legal provisions.
- Access broadly similar to your recommendation for lease land (See Question 8).
- Differential access provisions for Aboriginal compared with non-Aboriginal freehold. If so, please give detailed proposals.

Comments:

SECTION C: NATIONAL PARKS**Question 18: Aboriginal Rights in National Parks:**

- Aboriginal title with negotiated joint management agreements.
- Crown title, but with formal recognition of Aboriginal traditional rights and Aboriginal participation in management. No controls over Aboriginal activities.
- As in (b) but with limits on Aboriginal activities where conservation values are under threat.
- Limited recognition of Aboriginal rights with no formal management role.
- No special recognition of Aboriginal rights.
- Other options.

Comments:

Question 19: Permits, Licences and/or Franchises in National Parks:

It is argued that some Peninsula National Parks readily lend themselves to a limited set of commercial ventures, which could reduce the burden on the public purse while also providing a boost to the local economy and enhancing the recreational values of the parks. This is especially so in very large parks such as Lakefield and Rokeby-Croll. Possible ventures could include: minimal impact accommodations such as camping facilities and lodges, safari, birdwatching, boating, collecting seeds and general tours; grazing permits.

Yes No

- Do you see any role for approved private ventures in National Parks?

If "yes", give details on most appropriate privately-run ventures, and suggest appropriate forms of agreement.

SECTION D: OTHER ISSUES

Question 20: Possible New Forms of Public Tenures:

In recent years, government departments have acquired ownership of former pastoral leases, most commonly in the Northern Territory. In Cape York Peninsula, Heathlands and Batavia Downs are held by government agencies, while Starcke is in the process of being acquired. In each case, various options need to be considered. According to individual circumstances, land acquired may be allocated to a variety of new tenures and uses. For example, there could be a mix of National Parks, reserves, Aboriginal lands and other lands set aside for development. One further possibility, which is increasingly likely, is that some of this land will remain publicly owned, but with opportunities for private activities, including, for example, grazing licences, permits for safari or other ecotourism ventures, leases or franchises on small resorts or other facilities. This leads to a series of questions:

- | | | |
|--------------------------|--------------------------|--|
| Yes | No | |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you see any scope for a public form of land tenure, specially designed to accommodate rights of public access together with opportunities for multi-purpose private uses? |

If "yes", please suggest some appropriate forms of land use, together with suggestions on how these uses could best be accommodated, e.g. licences, permits, franchises, leases?

Question 21: Responsibility for Land Rehabilitation:

Some members of the working group have voiced concerns about responsibilities for rectifying damage created by a previous occupant, e.g. unexploded ammunition. Other damage could be from mining and toxic waste. This raises various questions.

- | | | |
|--------------------------|--------------------------|--|
| Yes | No | |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you believe that present legislation and current implementation are adequate? |

If "no", please identify specific issues needing attention and make proposals on how these should be attended to.

Question 22.

Please identify no more than 6 of the matters, covered in the previous 21 questions, which you regard as of the highest priority, demanding urgent immediate attention. Also indicate whether these are listed in order of importance, or in no specific order.

	<u>Question No.</u>	<u>Brief Title</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

Yes

No

Are these listed in order of importance with 1 being the most important?

Question 23:

Also please identify no more than 6 of the matters, covered in the 21 questions, which you regard of greatest long term significance in shaping land ownership, management and use on Cape York Peninsula. (These may or may not be the same as in Question 22.)

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

Yes

No

Are these listed in order of importance with 1 being the most important?

Final Comments: As a result of completing this questionnaire, do you now have some further comments to make, relating to the issues raised herein, or generally dealing with land tenures?

Thank you for your help in the study,

John Holmes
Professor of Geography
The University of Queensland 4072

Note: I can be contacted directly on (07) 365 6515 (work) or (07) 371 2638 (home). Fax number is (07) 365 6899. □

APPENDIX 2

Letters and Comments from Interest Groups Attached to Questionnaires

This attachment comprises the following items:-

1. Full list of comments received by respondents to selective survey of CYPDA members, compiled by David Hurse, together with David's covering letter. (8 pages)
2. The full response from CYPAG which comprises information on the preferred option for each question, together with comments and with Bob Wincen's covering letter. (5 pages)
3. Transcription of comments included in questionnaire returned by Paul Warren, representing mining interests. Paul has made comments only in relation to questions 13, 18, 19, 20 and 21 as well as a final comment. (1 page)
4. Transcription of comments included in questionnaire returned by Cook Shire Council, in relation to questions 5, 19 and 20. (1 page)
5. Separate commentary sheet provided by CAFNEC (4 pages)
6. Separate commentary sheet provided by CYLC, together with covering letter. (9 pages)



CAPE YORK PENINSULA DEVELOPMENT ASSOCIATION INC.

Phone (070) 53 7321

44 Miles Street,
Cairns, Q. 4870.

also

PO Box 187,

Mareeba, 4850

Professor John Holmes,
Department of Geographical Sciences and Planning,
The University of Queensland,
Queensland, 4072.

Dear Professor Holmes,

Please find attached CYPDA's corporate response to the Questionnaire on Land Tenure Issues.

So that the reply would be as representative as possible we distributed the Questionnaire to 8 members selected for their diverse backgrounds and points of view. Each respondent appeared to take pains to fill in their answers, and one made a joint reply with four other people.

We collated the replies, and dissected the relative degree of importance attached by the respondents to each of the issues raised in the questions. There was a fair degree of uniformity in the answers.

I have attached a list of all the comments which people attached to their replies.

Hoping that this is satisfactory,
Yours faithfully,

David Hurse.

c.y.p.l.u.s. Land Use Program

Comments offered on Questions by Respondents.

Question 1.

No Comments

Question 2.

No Comments

Question 3.

A respondent selected answer "1" but strongly agreed with "4". The comment is "with the titleholder having first right of approval of ownership".

Question 4.

A respondent selected answer 4 and commented: "The viability of a Lease is very hard to determine. Some work needs to be done on the different soil types and their fertility. Smaller Leases with more fertile soils are going to be more viable than bigger Leases with their higher running costs".

Question 5.

A respondent selected "yes" and commented "Titleholder has first right of approval as in question 3".

Another selected "yes" and said "there are thousands of acres of undeveloped land within an hours drive of Weipa. Over the years Weipa employees have been investing money in small blocks down south. If they could have invested in several thousands acres in the Peninsula, the money would have stayed in the North and this would have helped to create a live cattle export market".

Question 6.

Selected answer "5" and made the comment: "some people only have river water"; and another

"access should be to owner only".

Yet another selected boxes 3 and 5 and stated "Management will be needed. The custodian (titleholder) has a vested interest in the preservation of riparian lands. Rather than paying an outside body to control access and use, the custodian could, within guidelines agreed upon by the titleholder and the Lands Department, determine access and use of these lands. The titleholder is in the best position to observe any negative effects on the environment, and to act immediately to restrict access until the effect has been fully assessed".

Another selected box 5 and expressed strong concern "that the titleholder may have liability in the event of accident etc."

Question 7.

The group who made a joint reply select "other options" and commented: "User pays, if it has to be public access" however they proceeded to comment further that they were not happy to put forward the suggestion of "user pays".

Another selected boxes "2" and "3" commenting: "if the titleholder is unwilling to manage riparian land with public access, then the Lands Department will have to appoint their own representative to do this".

Question 8.

Comment: "It should be up to the discretion of the titleholder whether they want the public wandering over their property, as there is no way that the Lands Department can control the public from 100 miles away".

Another: "I am tired of cleaning up after people, repairing fences and putting out fires. The public show an increasing lack of discipline in their treatment of other people's property".

Question 9.

No comments.

Question 10.

Comment: "O.K. if the D.P.I. has approved plants as being suitable for Pasture improvement"

Question 11.

No comment.

Question 12.

Comment: "Titleholders to have the say, but request reciprocal rights, i.e. if ATSI people wish to come on our land we should be able to go on their land."

And another: "should be left entirely with the lessee".

Question 13.

Comment: "where intense development is going to take place, e.g. clearing, pasture improvement, dam building".

And another "In certain cases, such as Bank Loans or large scale clearing a Land Management Plan could be put in place if requested".

And more: "acceptable for absentee owners, non-productive land & control feral animals weeds & diseases".

Question 14.

Comment: "Seasonal conditions must be taken into account. If the last three options are included it is going to make the drawing up of a Land Management Plan extremely complicated, time consuming and costly".

Question 15.

Comment: "If aboriginal titleholders are agreeable and only want to use their lands for traditional purposes, they could, with mutual agreement, grant relevant leases (mining, grazing tourism etc.) to interested parties."

Another: "If Pastoral Leases get up-graded to another form of Lease, then Aboriginal Leases should

also get up-graded. There should be no distinction between black and white Leases".

And another: "While it remains a Pastoral Lease the Lessee should adhere to the same restrictions and conditions as everyone else in respect of improvements, rates and rents, and forfeit the Lease after the same time-lapse if rates and conditions aren't met."

Question 16.

Comment: "Should include more reasonable monetary conditions relative to the natural resources available to the titleholder. Cost of freeholding is too high. (More and more conditions to meet, and less and less advantages)".

Question 17.

No Comments.

Question 18.

From person "strongly" in favour of "5".
"Pastoral Leases extinguish Native Title, and National Parks belong to all Australians".

Another Box "5": "National Parks are for everyone. There is no such thing as traditional hunting any more. Aborigines should adhere to rules and regulations on Parks the same as everybody else. They should extinguish traditional hunting in National and Marine Parks."

And another : "National Parks are for all Australians".

Question 19.

Comment: "The sooner we have private enterprise (not Government) in National Parks, the better. Take the burden off the tax payer and the local authorities. Elliot Falls and Heathlands are good examples for Private Enterprise."

Another: "Could include accommodation, organised tours, feral animal control, but with conditions to apply. e.g. under the control of D.E.H. equal right of access without special recognition of

Aboriginals, and always providing that the rights of neighbours are protected.

And another: "Yes for everything, except grazing permits, unless they are neighbouring properties with special permits to retrieve their cattle."

And yet again: "Grazing, provided long term leases are made available.. Contractors to be allowed in under supervision for the destruction and sale of Feral animals e.g. pigs and brumbies...Camping facilities for Safaris etc. Recreational fishing should be allowed for, but fish should be eaten on the Park - no fish to be taken out."

Question 20.

Selected "yes", commented "Suggest before any decisions are made on the types of usage, that a tender for expressions of interest be called for, and from the replies ascertain what would be the most appropriate way to proceed."

Another "yes" says: "A Special Lease over a period of time with options of renewal or Freeholding, whatever the case may be".

Another "yes" "All the above examples, again providing for equal rights and protection of neighbours."

Question 21.

No comments.

Question 22.

No comments.

Question 23.

No comments.

Final Comments.

"Group Comment" "Kendal River and Holroyd River Landowners will write to John Sherrington re:
 (1) This should have been a survey of all Graziers.
 (2) Very limited time to complete it.
 Concern over John Holmes comment about whether or

not to include comment from individuals.

Another comment: "If subdivision was allowed in certain areas there would be more landholders with more intense farming and grazing, more control over the land. As it is now, thousands of tons of fodder are burnt each year with fire breaks and uncontrolled fires. The natural grasses with a bit of supplement could be cut and baled and make full use of the pastures. With the Peninsula rainfall, most of the country grows a terrific body of grass which is wasted each year. With large properties, they can afford to burn for a fresh shoot, whereas a smaller property would have to utilise all its grass."

Again: "It would appear to me that any study of this nature that does not include questions seeking reactions to mining, or exploration for minerals is rather short-sighted and futile.

And finally: "Equal rights for Black and White Pastoralists".

I have included all the comments that were made without editing as I did not want to interfere with the meaning that commentators wished to convey. I hope that this is all of some help,

Sincerely,

David Hurse.
Liaison Officer.



CAPE YORK PENINSULA PASTORAL ADVISORY GROUP INC.



TO : Professor John Holmes
University of Queensland

DATE: 11/11/94

FAX No: 07 365 6899

PAGES: 5 including cover

FROM : Bob Wincen

FAX/PHONE: 070 965739

John,

Attached is CYPAG's response to your questionnaire, plus our suggestions for further questions on issues of importance that your paper does not address.

As you are aware we are particularly concerned at the number of questions which are directed at pastoral leases.

Pastoralists, as stakeholders in Cape York Peninsula, have their views on their land tenure, it is presumptuous for other parties, particularly those that are not stakeholders, to suggest changes to pastoralists land tenure.

Many of the alternative replies suggested in the questionnaire offer simplistic solutions which could be selected by respondents without realizing the full implications of the result. We are concerned at the possible influence this factor could have on the outcome of the survey.

We are also interested to see how the questions on the other issues we have raised are addressed.

Yours sincerely,

Bob Wincen
Liaison Officer

CHAIRMAN

Mr Alan Holmes
PO Box 555
MAREEBA QLD 4880
Phone (070) 92 3848

LIAISON OFFICER

Mr Bob Wincen
PO Box 414
MALANDA QLD 4885
Phone (070) 96 5739

SECRETARY

Mrs Judith Irwin
PO Box 189
COOKTOWN QLD 4871
Phone (070) 69 5478

CYPLUS LAND USE PROGRAM
LAND TENURE QUESTIONNAIRE COMMENTS

- QUESTION 1. First preference is Box 2. Second preference Box 5.
- COMMENT These types of conditions should apply to all classes of Land Tenure including National Parks and Aboriginal Title.
- QUESTION 2. First preference is Box 5.
- COMMENT All classes of tenure should be able to grant approval to allow alternative land uses on their land.
- QUESTION 3. First Preference is Box 4.
- COMMENT All classes of tenure should be able to grant approval to allow alternative land uses on their land.
- QUESTION 4. First preference is Box 4.
- COMMENT Other grounds could include excise of 'home area' for residential or commercial purposes. i.e. Tourism base accommodation.
- QUESTION 5. First preference is Yes.
- COMMENT Provision made to excise parcels of land from all classes of tenure to allow people to live in the region. Potential uses are hobby farms/grazing, fishing/hunting, weekenders, access to rivers/beach etc. Allow people to pursue rural lifestyle.
- QUESTION 6. First preference is Box 3.
- COMMENT A combination of Box 3 and Box 5 would be the only practical solution. This is the same as Question 8, Box 3. If applied to pastoral leases should also apply to all classes of tenure. Freehold, Aboriginal Land and National Parks. Merely zoning an area as special purpose only succeeds in causing problems. Procedures and funding must be put in place for management.
- QUESTION 7. Box 5, Other options is the only possible choice.
- COMMENT Boxes 1 to 4 are not practical solutions to implement. This is an over simplified academic question.
- Areas would need individual management plans, access guidelines and resourceing structures. User pays system for public access would have to charge realistic fees to cover management and cost of collection.
- QUESTION 8. First preference is Box 5.
- COMMENT Public access needs to be defined before agreement could be reached on allowing permission. Box 1 is over simplified and misleading, open access is not available "along any track in NSW Western division." If applied to pastoral leases must also apply to all other classes of land tenure.

QUESTION 9. First preference is Box 4.

COMMENT This is the current position.

QUESTION 10. First preference is Box 2.

COMMENT Conditions are already placed on pastoral leases, similar conditions should also be placed on other classes of land tenure.

QUESTION 11. First preference is Box 2.

COMMENT If applied to pastoral leases should apply to all classes of land tenure.

Would prefer to see wording of question to be "by negotiation" rather than "by agreement" with leasee".

QUESTION 12. First preference is Box 4.

COMMENT This reflects the current situation.

QUESTION 13. Box 1. Yes. Box 2. No. Box 3. Yes.

COMMENT All classes of tenures should have identified land management guidelines. Should be an integral part of development plans.

QUESTION 14. This question pre-empts the findings of Question 13.

COMMENT It would be desirable for all classes of land tenure to have management plans appropriate to their prime use in place. This should apply to all tenures. All landholders have a "duty of care" to neighbouring landholders and should be responsible for controlling the spread of fires, feral animals and weeds to adjoining properties. As described in Mal Hardy's Discussion Paper on Land Tenure, Appendix A, There is considerable confusion as to the meaning of the word "planning". The word is used to describe numerous different activities undertaken by different authorities for different purposes. Controls fall into two categories "Proprietorial and Regulatory". Proprietorial relates to ownership and Regulatory relates to use of a Resource. Clearly management plans cannot be discussed in such a simplistic manner, the purpose of the plan must be defined. Formal agreements would come at a cost for establishment and monitoring. Who will bear this cost?

QUESTION 15. Box 1.

COMMENT Terms and conditions of leases to remain the same for all leaseholders. Change of tenure would mean a loss to the productive capacity of the region. Land tenure on the basis of race is unacceptable. Conversion from other forms of tenure to freehold title should be on a standard basis for all parties. Generally freehold is granted over small areas to provide security of tenure where extensive investment is undertaken.

QUESTION 16. Box 3.

COMMENT Freeholding of Aboriginal lands was treated in a very simplistic manner in Question 15. The issue has much wider ramifications none of which were mentioned.

QUESTION 17. Box 1.

QUESTION 18. Box 5

COMMENT National Parks are conservation areas for the protection of species and habitat for the benefit of all citizens. If areas are to be set apart for special purposes for privileged members of society, those areas should have a separate designation.

QUESTION 19. Yes.

COMMENT National Parks have sufficiently demonstrated that they are unable to fund the management of the natural resources of the Parks let alone business enterprises. Land should be excised or granted special long term sub-leases in larger parks to allow investment in tourism facilities, infrastructure, tourism bases, camping areas. Proceeds to go back to park management. Long term sub-leases over areas of natural grasslands to allow low impact infrastructure such as fencing to be established to control grazing.

QUESTION 20. Yes.

COMMENT Secure long term sub-leases or permits to allow commercial interests to establish tourism or support services related industry infrastructure. Permits or franchises to allow minimum impact activities such as ecotourism activities, walking trails, trail rides, etc.

QUESTION 21. Yes.

COMMENT Current legislation would seem to be adequate if implemented.

QUESTION 22. Priorities for urgent attention in order of priority.

1. Q.4. Sub-division into smaller holdings.
2. Q.19 Tourism infrastructure in National Parks.
3. Q.00 National Parks contribute funds to local economy.
4. Q.18 Aboriginal rights in National Parks defined.
5. Q.20 Possible new forms of Land Tenure.
6. Q.12 Informal arrangements for aboriginal access.

QUESTION 23. Issues of long term significance.

1. Q. 4 Sub-division into smaller holdings.
2. Q. 5 Sub-division near population centres.
3. Q.19 Tourism infrastructure in National Parks.
4. Q.20 Possible new forms of public tenure.
5. Q. 6 Management of riparian lands.
6. Q.15 Aboriginal land tenure issues need to be addressed.

FINAL COMMENTS

These comments are more to deal with questions that have not been addressed in the survey.

- * The purpose of CYPLUS NRAP was to identify the natural attributes of Cape York. The questions on declaring parts of pastoral holdings as conservation areas should be balanced by questions such as :-

Should any of the large areas of natural grazing land of no specific conservation value presently held by National Parks be returned to productive use?

Should National Park boundaries be re-drawn to fit with natural geographical boundaries?

National Parks do not contribute to Local Government for upkeep of access roads, cost of road upkeep is there fore borne by other ratepayers. Should they pay rates or some other form of compensation to the local economy?

- * As noted in the comments there are few questions on Aboriginal Land issues.

This is the most controversial issue in Cape York Peninsula at the present time.

The question of how Aboriginal Land Tenure and management fits in with other land tenures will become increasingly important in the future.

Should Aboriginal Land pay rent and rates to Local Authorities?

Should they remain as part of the current Local Authority areas?

Should they be subject to Local Authority by-laws and regulation?

Should public thoroughfares be able to traverse Aboriginal lands?

Sub-leases of DOGIT land are at the "discretion of the Minister".

Should Aboriginal's be given control of their lands?

Should Aboriginal land be allowed to be owned by individuals?

- * Mining is not considered a Tenure. In Cape York mining industries control vast areas of land and other uses are excluded.

Should alternative land uses be allowed on mining land?

Should other types of long term sub-leases be made possible on land reserved for mining?

Miners do not appear to be burdened with the responsibility of "land care" and control of wildfires, feral pests and weeds or the impact of their land management (lack of) practices on adjoining properties.

- * Questions should be asked on how National Heritage, World Heritage, and Wet Tropics Management Authority responsibilities can be best accommodated within the present framework of land tenure. How should these bodies, as well as National Parks be made responsible for their impact on neighbouring properties?

Land Tenure Questionnaire

Comments from Paul Warren: Comalco - Q.M.C.

Question 13: Land Management Plans:

The only way to start making some properties viable is to establish a land management plan. Without management plan land will suffer from possible land degradation which we don't need to see any more.

Question 18: Aboriginal Rights in National Parks:

Time to make them work.

Question 19: Permits, Licences and/or Franchises in National Parks:

- * Minimal impact tourism.
- * Eco-tourism - with Aboriginal involvement.
- * Private ventures (outside) split profits 50/50 with title holders.

Question 20: Possible New Forms of Public Tenures:

I would leave this to be decided at a later date with the title holders.

Question 21: Responsibility for Land Rehabilitation:

Do not know - especially if this is relating to pastoral leases. Mining legislation is in place for mining leases.

Final Comments

As the majority of this questionnaire relates to pastoral leases I think there may be benefit for some questions directed to other land tenure types. More effort (questions) could be put on land rehabilitation and land management issues.

Land Tenure Questionnaire

Comments from Cook Shire Council

Question 5: Subdivision of Pastoral Leases Close to Population Centres:

Refer to relevant sections of Council's current and proposed Town Planning Scheme Provisions and RE Subdivisions in Rural Zones

Question 19: Permits, Licences and/or Franchises in National Parks:

All the above - In accordance with accepted commercial practice. (e.g. Kakadu, Uluru, Undara etc.)

Question 20: Possible New Forms of Public Tenures:

- Camping and recreation areas
- Pastoral holdings - grazing
- Ecotourism ventures on appropriate areas

* Please provide additional examples *

 *cafne c*
po box 323
north cairns
qld 4870
cominos house
27-29 greenslopes st
tel: 070 321 746
fax: 070 533 779
email: pagasus:cafne c

Prof John Holmes
Department of Geography and Planning
University of Qld
Qld 4072

10 October 1994

Dear Prof Holmes,

EVPLUS Project - Land Tenure Issues

Please find enclosed the environment sector's response to the questionnaire. We have used the pre-prepared form for our responses and detailed below further comments on questions where we have felt these are necessary. The numbering below refers to your question numbers.

1. Our response to this question on the attached form is for the situation where leases are not owned under European law by Aboriginal traditional owners.

We feel we need to differentiate between pastoral leases owned by Aboriginal people and those which are not. Ownership by Aboriginal people is dual, in that it is ownership under both European law and Aboriginal law.

We support cultural, traditional and spiritual uses by Aboriginal people and that these be determined by traditional owners where leases are owned by Aboriginal people.

Decisions must be made on the basis of the most appropriate land use, including conservation. Land tenures must adequately reflect this and for this reason we do not generally support multiple land use within pastoral leases.

2. Where leases are not owned by Aboriginal people, general rights to access and use for cultural and traditional purposes should be embodied in the lease document and the details subject to negotiation between the titleholder and traditional owners.

Subject to the above we do not agree that commercial non-pastoral uses initiated by third parties should be permitted.

3. Excising parcels of land from pastoral leases to accomodate uses not complementary to pastoralism must be subject to environmental and social impact studies which is then the basis for deciding whether to

proceed.

CAFNEC

These uses must also be complementary to a regional land use strategy and plan that may develop from the CYPLUS process. Once these procedures are addressed, then we support the second option as indicated on our response.

4. We do not support the subdivision of pastoral leases into smaller pastoral areas until a complete assessment of the suitability of pastoralism on Cape York Peninsula has been completed. Suitability must refer to :

- * Economic viability
- * Ecological viability
- * Assessments of preferred land use options such as conservation in areas of conservation value, cultural purposes and the protection and long term maintenance of wilderness.
- * Analysis of comparative advantages across regions.

5. Comments above in question 4 apply.

6. See option marked.

7. Responsibility for management of riparian lands should involve both the titleholder and Government agencies in a joint effort. This should include the right to charge access fees.

We suggest that sub-regions according to catchments are the best option.

8. See answer marked. We also refer to our previous comments about access by Aboriginal people. The sites where access is to allowed should be subject to a period of community comment.

We support the principle that leases are crown land and do not confer on leaseholders the same rights as freehold land. These leased lands are publically owned lands.

9. Land clearing on Cape York Peninsula is inappropriate and un-necessary.

10. See answer marked. It is apparent we are unable to manage existing problems and it is unwise to introduce more of these potential problems. Evidence suggests that the majority of plant introductions for pasture improvement have failed.

11. See answer marked. We believe that land use allocation and tenure needs to reflect the best land use option. If this is conservation, pastoral lease tenure is inappropriate.

In the event that pastoralism is deemed appropriate, we support option one

12. See answers marked. We support both one and two in parallel.

13. Management planning for pastoral leases on Cape York Peninsula is crucial. The following items should be the focus :

- * Conservation of biodiversity and protection of ecological integrity
- * Maintenance and enhancement of natural resources including biological diversity, fresh water, soils etc
- * Advancement of the rights and aspirations of Aboriginal people.

We believe that management plans should be compulsory over all pastoral leases and that titleholders are adequately funded in order to complete them.

14. See items marked. See our earlier comments regarding land clearing.

15. We are unable to answer this question as we believe this is a question for Aboriginal traditional owners.

16. See answer marked.

17. See answer marked.

18. See answer marked.

19. See answer marked.

20. Acquisition of former pastoral leases should be gazetted claimable to Aboriginal traditional owners. Following this ownership, management arrangements to be negotiated with traditional owners with an emphasis on conservation.

21. Land rehabilitation

Present legislation and current implementation of land rehabilitation are not adequate. Statutes such as the Mineral Resources Act, Nature Conservation Act, the Contaminated Land Act, the Lands Act to name four are either inadequate or not enforced.

Specific issues that need attention are : weed and feral animal control, erosion control and rehab, toxic site rehab.

We support public resourcing for titleholders to address and implement rehabilitation measures within the overall context of property management planning.

22. See responses

23. See responses

Final comments

We believe the crucial issue to be addressed is inappropriate land use allocation and the need to develop tenure arrangements that reflect preferred land uses. We do not support the view that because a land use has been dominant in the past, it necessarily follows that it should be dominant into the future.

Cape York Peninsula is an area of high conservation and cultural value where decisions must be made as to the best ways to protect these values. This will almost certainly require changes to land use allocation through tenures.

A further issue that needs to be addressed is the need for Governments to take an active role in land use allocation and management to ensure this is being carried out in the national and public interest. In the past we have seen a devolution of wide powers to leaseholders over what is essentially crown land held on behalf of the public.

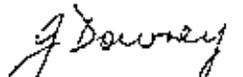
We strongly support the rights and aspirations of Aboriginal traditional owners and that land tenure arrangements need to be negotiated with these owners.

Other

This document has been prepared following discussions with management committee members and staff of CAFNEC. We have also incorporated as far as possible the views of the Arid Lands Coalition. This coalition is made up of a number of environment groups around Australia and is co-ordinating the conservation sector's response to the National Rangelands Strategy. CAFNEC is a full member on this coalition. We have also attempted to incorporate the views expressed at a conservation groups conference held in Cairns on the weekend of 24/25 September. The proceedings of this are presently being prepared.

Please do not hesitate to contact us if you have any queries.

Yours sincerely,


Jim Downey

Cape York Peninsula Co-ordinator



CAPE YORK LAND COUNCIL

38 Grafton Street, P.O. Box 2496, Cairns, Q. 4870
Phone: (070) 51 9077 Fax: (070) 51 0097

Prof John Holmes
Professor of Geography
University of Queensland 4072

Dear Professor Holmes

CYPLUS Land Use Survey

I enclose the original of the Cape York Land Council's response to your survey which we faxed to you last week.

In compiling our report, we have distributed copies of the questionnaire to members of the CYPLUS Aboriginal Reference Group (Regional ATSIC Commissioner, Representative of ATSIC Regional Council, Aboriginal Coordinating Council, Tharpuntoo Legal Service).

Within the Land Council itself, we have consulted with our Executive Director, Noel Pearson, our senior solicitor and a junior legal adviser. These employees of the Land Council are acting within the framework of delegation of authority by the Executive to Noel Pearson.

It should be noted that the broad thrust of policy directions followed in response to the paper have been set down by previous Cape York Land Summits attended by from 300 to 500 Aboriginal people each year on Cape York. The meetings are held over a period of about five days out bush. They are the culturally appropriate manner in which policy is developed and endorsed, and always include strong representation of traditional land owners.

This year's Summit will take place from 24 to 28 October and will include further development and refinement of the traditional owner's wishes in respect to land acquisition and management.

Yours sincerely

Joan Staples
CYPLUS Coordinator

11 October 1994

CYPLUS Land Use Program: Land Tenure Issues

Attachment to questionnaire

Section A: Pastoral Lease Tenures

Land Council response to this questionnaire is difficult because we are in a changing situation as more pastoral leases are acquired by Aboriginal people. In many cases, our response to pastoral tenure questions is different, if we consider the situation of Aboriginal pastoral leases. We have endeavoured to cope with this by including comment.

Question 3 Procedure for excising parcels of land from pastoral leases, to accommodate uses not complimentary to pastoralism.

From an Aboriginal perspective excision should only occur with approval of both title holder and the Lands Department. However, in most circumstances the title holder and the Lands Department would be in agreement. Therefore, the question of resumption should have community input. The option to include a committee comprising government and community representatives advising the department on approvals and setting conditions would not seem to enable the committee to advise on a no-development option, ie whether the excision should occur at all. The suggestion that the Lands Department should be able to have control over this resumption right in order to facilitate development in remote areas may run counter to Aboriginal interests.

Question 6 Access to Riparian Lands.

The question correctly notes that the riparian lands of the Peninsula are highly valued. In this context it is important to note section 212 of the Native Title Act 1993. This section deals with the confirmation of existing public access to an enjoyment of waterways, beds and banks or foreshores of waterways, coastal waters, beaches or areas that were public places at the end of 31 December 1993.

The Queensland Government argues that the control of waterways and riparian lands passed to the current lease holders and that native title has been extinguished in these areas. This is a

position that is not supported by the Cape York Land Council. Indeed, it is a position that has little support in the judgment by the High Court in *Mabo (NO 2)*.

Irrespective of who may control the land, it is clear that there will be increasing pressure and that the need for management and controls over access and use is paramount. In this particular context two choices would be that access only with approval of title holder and that riparian land would be zoned according to a public participation process that would leave some lands with public access and others with highly restricted access.

Once again, it is important to note that from a perspective of the native title holders, access to riparian lands is perceived as a native title right. The most important point is that the riparian lands are preserved and protected.

Question 7 Management of riparian lands with public access.

Once again, in the context of the native title, the question of public access would depend on the native title holders. The management costs associated with the protection and conservation of riparian lands should be met by either the title holder or another agency such as a Local Government Authority, which would include an Aboriginal Local Government Authority, with a right to charge fees. The use of and access to areas of public reserve over land that is either pastoral lease or pastoral lease held by Aboriginal people or pastoral lease that has been converted in to native title should not be borne by the owners but should be borne via a users pays mechanism.

Question 8 Public access across pastoral leases.

The question of access is quite difficult. At a special meeting of the Cattleman's Union, Cape York Peninsular Branch, at Coen, on Thursday 4 August 1994; a resolution was passed in the following terms:

That pastoral lease holders are entitled to enjoy their rights, industry and lifestyle. That Aboriginal people are entitled to enjoy their rights, industry and culture. That all pastoral leases should be secure against native title claims, provided:

That Aboriginal people be entitled to access to their traditional lands for traditional purposes, and that these rights extend to pastoral leases where that access does not diminish the rights of the pastoral lease holders;

That government is obligated to preserve and protect these rights through legislation;

That where ever possible, pastoral lease holders and Aboriginal people with traditional interests resolve issues and conflict through direct negotiations in good faith.

Therefore, this meeting resolves that Queensland and Commonwealth Governments act directly to give assurance and to enact appropriate legislation to recognise these principles, and to provide security for people living in Cape York Peninsular.

It would appear that open access to any pastoral lease for the general public, given the possibility of a significant site by Aboriginal people seems undesirable. Once again it would appear that the access at the discretion of the title holder would be a preferred option within the context that Aboriginal people who are exercising a native title right would be entitled to access. Conversely one of the significant issues is exclusion of public to areas and sites that are particularly significant. In relation to permanent water and designated site of public interest in conflict situations between Aboriginal and Non Aboriginal people the Aboriginal interests should be paramount.

Question 9 Controls over clearing.

The suggestion of controlled clearing tied to an approved property management plan and with prohibitions on clearing sensitive areas and valued habitats should also include areas of particular significance by local Aboriginal people.

Question 10 Controls over plant introductions.

The primary concern would be to completely prohibit further plant introductions and enforcing a limited set of prohibitions as a second preference. One of the most important aspect of plant infestations is that the people who must pay to remove and deal with these problems are unlikely to be those who have caused the problem in the first place.

Question 11 Preservation of valued species and habitats.

The question of preservation of biodiversity and habitats poses a particular burden on Aboriginal people who have native title rights to hunt, fish and gather. In this particular case consent must be given by the Aboriginal people to restrict their native title rights and interests. It must be recognised that such a voluntary restriction is not extinguishing or impairing their rights, merely it is a recognition of the need to voluntarily limit a right and interest in a short term.

Question 12 Aboriginal access for traditional purposes.

Aboriginal native title and the right of the Aboriginal people to customary and traditional law has now been recognised by High Court. Reference is made to question 8 where the resolution passed at the Coen meeting in August is quoted.

In this particular case, legislative provisions are one option. There has been general recognition that the Western Australian legislation provides for a form of statutory title that would enable Aboriginal people to continue their access. However, the Western Australian legislation also purported to extinguish native title and has been challenged in the Hight Court. Western Australian legislation will undoubtedly fail. There is an important need for greater provision for traditional people to be allowed access to land not in traditional hands. One possible suggestion is by way of excision legislation which would enable particular parts of pastoral leases to be excised for the purpose of Aboriginal occupation. There are significant problems with this. Nevertheless is remains an option.

The Wik federal court action will assist in the determination of the extent to which pastoral leases extinguish native title. From the perspective of an Aboriginal organisation there is an important need to protect and preserve and enhance the rights of Aboriginal access to pastoral leases for the purposes of carrying out traditional activities. In such a situation, while legislative provision for access may be the highest form of access it is clear that informal arrangements with a commensurate building of trust between the parties is also an appropriate option.

Question 13 Land management plans.

There is considerable value in pursuing land management plans which would be compulsory on all pastoral leases. This refers in part to question 1 and the need to examine whether the land currently under pastoral tenure should remain so. One of the important requirements is that pastoral activities in Cape York Peninsular fulfil the expectations and criteria of ecologically sustainable development. In addition pastoralism must be aware of Aboriginal expectations both as pastoralists and as sustained use pastoralists.

It is clear that management plans are necessary not only to address the current problems of soil degradation and erosion, which are currently causing significant environmental and social problems in the area, but also to assist all members of the Cape York community in assessing the value of pastoralism and the value of other activities to the regional economy.

It is the experience of Aboriginal pastoralists, having recently acquired properties, that significant expense and energy must be expended in order to develop land management plans. This is primarily due to the significant degradation of the properties.

Lease transactions involving the Lands Department and banks should both require the development of management plans.

Question 15 Land tenures on pastoral leases acquired for Aboriginal people.

The question of land tenures for pastoral leases that have been acquired by Aboriginal people must be determined by reference to the Aboriginal people who have acquired the property. Some Aboriginal people may wish to continue the pastoral lease tenure. While others may wish to convert it to freehold tenure or, under the provisions of the Native Title Act, into native title. One of the

most important aspects of native title lands is that they cannot be traded bought or sold by other people. All options should be considered. However, it is also clear that Aboriginal people wish to be more involved in dealing with rights to minerals and mining. The Native Title Act contains provisions for Aboriginal people to be involved in negotiations prior to the issue of mining exploration licenses.

Under the Northern Territory Land Rights Act, Aboriginal people may only have a veto right at the initial exploration stage. It is important for Aboriginal people to maintain strong control over any activity that is undertaken on Aboriginal land.

SECTION B: FREEHOLD TENURES

Question 16 Freeholding procedures for private uses.

It is noted that freeholding option for Aboriginal lands are covered in question 15. Aboriginal expectations for Cape York are wide reaching in that it is always a potential for Aboriginal people to purchase property in Cape York Peninsular.

In the context of non Aboriginal lands there should be no private freeholding on the Peninsular.

Question 17 Public access rights on freehold land (Aboriginal and non Aboriginal).

At present there is no public access to land held in freehold title It is suggested that these provisions should remain. However in cases where freehold land exists in area that are of particular significance to Aboriginal people it is suggested that the proper mechanism of achieving some access would be by negotiations and consultations.

SECTION C: NATIONAL PARKS

Question 18 Aboriginal rights in national parks.

Under the Aboriginal Land Act 1991, national parks in Cape York Peninsular are currently available for claim. If claimed successfully the title to the national park will pass to an Aboriginal group with grantees being appointed by the Crown. However, as a condition of the grant, a management arrangement must be agreed to. The legislation provides no opportunity for Aboriginal people to deal with the title as they wish nor does it enable them to achieve particular outcomes. At present no management agreements have yet been negotiated.

It is therefore suggested that a negotiated joint management agreement is an appropriate mechanism to preserve Aboriginal rights in national parks. The joint management arrangements will undoubtedly take into account environmental and other conservation values. Aboriginal rights may be exercised under native title and Aboriginal people have expressed considerable interest in protecting and preserving biodiversity within Cape York. Opportunities to negotiate conservation arrangements with Aboriginal people, in particular with regard to specific species,² is always a possibility. However, it must be recognised that the prime loss of biodiversity is through habitat destruction. Aboriginal people have made it clear that they do not accept responsibility for such habitat destruction, although they do accept a responsibility for biodiversity preservation.

Question 19 Permits, licences and/or franchises in national parks.

Question 19 specifically mentions Lakefield National Park and Rokeby-Croal National Park. Currently Lakefield National Park is under claim by an Aboriginal group. The question of approved private ventures in national parks, given the answer to question 18 above, is likely to be determined by Aboriginal people. In the case of Cape York Peninsular where Aboriginal people can clearly demonstrate interests in most, if not all, national parks, and are likely to be pursuing further claims, it should be Aboriginal people via a joint management arrangement who should determine whether there is any role for appropriate private ventures in national parks.

It is clear from the experience in Uluru, Kakadu and Nitmiluk that there are opportunities for private ventures in national parks. It is also possible for Aboriginal organisations and communities to seek to increase their economic independence via the use of private or profit venture in national parks.

SECTION D: OTHER ISSUES

Question 20 Possible new forms of public tenures.

The simple answer to question 20 is that there is significance scope for a public form of land tenure specially designed to accommodate rights of public access together with opportunities for multi purpose private uses. However this must be seen in the context of Aboriginal aspirations for Cape York Peninsular.

Areas such as Heathlands, Batavia Downs and Starcke are areas where there is potential for significant Aboriginal interests. Under the current agreement, Starcke will available for claim with restriction placed on it by a conservation agreement.

It must be made clear that the comparison of Aboriginal land tenure as distinct from development lands is incorrect. Aboriginal lands are not quarantined from development. Aboriginal lands are areas of land, of whatever tenure or use, that are held and managed by Aboriginal people.

Question 21 Responsibility for land rehabilitation.

The simple answer to question 21 is that current legislation and current implementation is not adequate and that those people who have been responsible for land degradation are not responsible for land rehabilitation. One of the particular concerns expressed by Aboriginal people is that land that has survived Aboriginal occupation for 40,000 years has not survived pastoral occupation for over 140. Severe erosion and degradation problems have not been dealt with and cause an economic implement to Aboriginal people wishing to operate these leases in a commercial way.

APPENDIX 3 - TERMS OF REFERENCE

- Utilising information provided by the Department of Lands, from a survey to be undertaken by the consultant and from the consultants own sources, identify issues relating to land tenure for consideration in Stage 2 of CYPLUS.
- Prepare a report comparing community views and aspirations about land tenure with the government policy statements prepared and reported by the Department of Lands.

