Background Report on draft Aboriginal and Torres Strait Islander Planning policy

For the

Queensland Division of the Planning Institute of Australia

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APRIL 2017
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The Centre for Tropical Urban and Regional Planning (CTURP)
CTURP is a multi-disciplinary research group established within the College of Science and Engineering of James Cook University. CTURP aims to contribute to improving planning practices in urban, regional and remote tropical locales. CTURP provides high quality tertiary education, training and research focusing on the discipline of Urban and Regional Planning in a tropical context.

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April 2017
About the Centre for Tropical Urban and Regional Planning

The Centre for Tropical Urban and Regional Planning (CTURP) is a multi-disciplinary research group within the College of Science and Engineering at James Cook University. CTURP was established in 1993 in response to the need for a substantial focus toward the urban, regional and environmental planning of Northern Australia.

CTURP aims to contribute to improving planning practices in urban, regional and remote tropical locales. CTURP provides high quality tertiary education, training and research focusing on the discipline of Urban and Regional Planning in a tropical context.

**Rural and Remote Specialists:**
CTURP has undertaken a range of research projects with rural, remote and resource dependent communities. These have included: Community Plans, Structure planning (roles and functions of small towns and service centres), Social Impact Assessment, masterplans for rural CBD’s, Social Infrastructure Assessment and Development Contributions for Community Infrastructure.

**Environmental Planning:**
CTURP is committed to the use and development of qualitative research methods to approach complex environmental, disaster management and planning issues. Our goal is to enhance and create a broader community understanding of the role and potential of social planning practices to address contemporary natural resource management issues.

**Indigenous Planning**
CTURP is committed to ensuring that the well-being and development aspirations of Aboriginal and Torres Strait Islander peoples are acknowledged and that they co-exist in all planning activities irrespective of land tenure. CTURP at JCU is the only planning school in Australia that requires each of its planning students to graduate with an understanding of the Native Title and statutory Aboriginal and Torres Strait Islander land rights schemes across northern Australia, Indigenous Environmental Management and Cultural Heritage Management and Planning. Our research activities include climate change adaptation, involvement of Indigenous communities in planning decisions that affect their future (social equity), land tenure and more recently the creation of place based planning theory.

**Tropical Urban Planning:**
CTURP is located in the tropics and well positioned to provide advice and research on a range of matters that are unique to tropical locales. This includes urban disaster mitigation strategies, tropical urban design and, food production and distribution.
Executive Summary
In May 2016, the Queensland Parliament passed new planning legislation, the Planning Act 2016 (Qld), to replace the Sustainable Planning Act 2009 (Qld).

For the first time in the history of planning law in Australia, the Planning Act 2016 (Qld) includes a provision which requires the consideration of Aboriginal and Torres Strait Islander people’s knowledge, culture and tradition as an integral part of advancing the purpose of the Act. Specifically, the Act will require all entities performing functions under the Act to perform the function in a way that advances the purpose of the Act, and advancing the purpose of the Act includes ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’ (s.5(2)(d)).

The Queensland Division of the Planning Institute of Australia (PIA) endorsed the creation of a policy statement to provide clear direction to the profession about the Division’s position in respect to planning and Queensland’s Aboriginal and Torres Strait Islander peoples.

This draft version of the Policy Statements has been circulated to Indigenous local governments in Queensland for comment. Where comments were received they were incorporated into this final draft for QPIA members for further consideration. All QPIA member comments received by the 31st of May 2017 will be considered for inclusion into the final document.

The draft Policy Statements for Planning and Queensland’s Aboriginal and Torres Strait Islander peoples are:

1. Queensland Division of PIA acknowledges and respects the Aboriginal and Torres Strait Islander people’s ongoing tradition of ownership and management of their ancestral lands and waters according to their laws traditions and cultural governance systems.

2. Queensland Division of PIA supports the inclusion of the ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’ as a part of advancing the purpose of the new Planning Act 2016 (Qld).

3. Queensland Division of PIA understands that Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition is held by them and that undertaking functions under the Planning Act 2016 (Qld) will require developing a working relationship with Aboriginal and Torres Strait Islander peoples based on mutual trust and respect.

4. Queensland Division of PIA will work with Aboriginal and Torres Strait Islander peoples and the Queensland government to develop an appropriate set of protocols for engagement around the incorporation of Aboriginal and Torres Strait Islander knowledge, culture and tradition in contemporary land use and environmental planning under the Planning Act 2016 (Qld). The protocol will as a minimum include a code of ethics that describes members obligations to Aboriginal and Torres Strait Islander communities in planning, guidance on how to identify who the appropriate Aboriginal and/or Torres Strait Islander peoples may be for a particular area, how to access and assess the necessary information for the planning task at hand, how to assess whether the relevant information has been appropriately incorporated and how Aboriginal and Torres Strait Islander peoples can continue being involved in planning activities that may affect their interests and wellbeing.

5. Queensland Division of PIA will work with Aboriginal and Torres Strait Islander peoples and organisations to develop their capacity and understanding of how contemporary planning systems
work and how Aboriginal and Torres Strait Islander approaches to planning can be better understood, reflected and respectfully integrated into contemporary planning systems.

6. Queensland Division of PIA will actively encourage the Queensland government to address the organisation and accessibility of spatial data governing the Aboriginal and Torres Strait Islander
estate to support the creation of land use and occupancy mapping as determined and identified by Aboriginal and Torres Strait Islander peoples and communities.

7. Queensland Division of PIA supports the application of the principle of ‘free, prior and informed consent’ when engaging with Aboriginal and Torres Strait Islander peoples on all planning matters that may affect their rights and interests.
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Glossary of Terms used in this Policy Document:

**Indigenous:** The use of the term ‘Indigenous’ has evolved through international law and acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The term ‘Indigenous’ is therefore, best used in international settings, recognising the international diversity of Indigenous peoples around the World. It is imperative that the specific groups are named, Australian Aboriginal and Torres Strait Islander, and one does not place all groups under the word *Indigenous*.

However, when referring to a specific government document or policy, the Queensland division of the Planning Institute of Australia respectfully maintains the government’s language to ensure consistency.

**First Nations Peoples:** Some Aboriginal and Torres Strait Islander peoples are identifying themselves as ‘First Nations Peoples’ to signify their unique status as the first occupants of their traditional country. The term should be used with respect where a group of Aboriginal and Torres Strait Islander people has identified themselves as ‘First Nations’.

Within Australia, it is most appropriate to use terms that further specify identity. In Australia at the national level it has long been appropriate to specify that we have Aboriginal and Torres Strait Islander peoples and nations, recognising that there is a collective dimension to their livelihoods.

At the regional and community level it is appropriate to use regionally or locally specific terms of identity. For example, the Eastern Kuku Yalanji People in the case of the Aboriginal people in the north Wet Tropics.

**Other Australians:** Refers to the broader Australian community that do not identify as being from Aboriginal and/or Torres Strait Islander decent. The Queensland division of PIA will refrain from using *non-Indigenous*, and will use terms such as *other Australians* or *the broader community*.

**Native Title Holder:** According to the *Native Title Act 1993* (Cth), the expression native title holder, in relation to native title, means:

(a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust—the prescribed body corporate; or

(b) in any other case—the person or persons who hold the native title.

**Native title or native title rights and interests:** means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

(c) the rights and interests are recognised by the common law of Australia. (s.223 *Native Title Act 1993* (Cth).

Native title rights and interests can be held at different levels and hence methods of consultation will need to be tailored accordingly.

**Traditional Owner:** This term is purposely not used in this policy document as it does not have a statutory basis in Queensland law. The term is defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), but not in the *Native Title Act 1993* (Cth). However, the term is widely used by Aboriginal and Torres Strait Islander peoples and other Australians in a broad range of contexts which creates confusion and ambiguity (after Tran and Stacey 2016). However, the term may be used to identify the right Aboriginal or Torres Strait Islander people in circumstances where a native title claim has not been filed, or where continuity has been adjudged by the Court to have been lost, or where native title has been extinguished.
Land Use and Occupancy Mapping: Tobias (2009) and Yu (2013) use this term to describe Indigenous peoples’ approaches to mapping land use and occupancy according to their laws and customs. Indigenous peoples’ land use and occupancy mapping can assist collaborative geospatial methodologies for mapping land use and development and assist with the application of the United Nations Principles of ‘free, prior and informed consent’.

Scope
The scope of this Policy Statement includes:

- an overview of the geographic distribution of the Aboriginal and Torres Strait Islander population in Queensland;
- the continuing growth of the Aboriginal and Torres Strait Islander estate in Queensland through various means;
- the emerging international human rights norms and standards applying to Indigenous peoples globally as well as in Australia;
- the inclusion of Aboriginal and Torres Strait Islander peoples’ approaches to land use and occupancy of their traditional lands in contemporary planning systems; and
- support for the inclusion of Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition in Queensland’s new Planning Act 2016.
New planning legislation in Queensland

In May 2016, the Queensland Parliament passed new planning legislation, the Planning Act 2016 (Qld) that will replace the Sustainable Planning Act 2009 (Qld) when the new statute comes into effect in 2017.

For the first time in the history of planning law in Australia, the Planning Act 2016 (Qld) includes a provision which requires the consideration of Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition as an integral part of advancing the purpose of the Act. Specifically, the Act will require all entities performing functions under the Act to perform the function in a way that advances the purpose of the Act, and advancing the purpose of the Act includes ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’ (s.5(2)(d)).

The inclusion of this provision came about because the Legislative Standards Act 1992 (Qld) includes a set of fundamental legislative principles which require that Queensland legislation should have sufficient regard to the rights and liberties of individuals and to the institution of the Queensland Parliament. In turn, sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation ‘has sufficient regard to Aboriginal tradition and Island custom’ (s.4).

S.5(2)(d) of the Planning Act 2016 (Qld) will have significant implications for the way in which land use and environmental planning will be carried out in Queensland. For example, this provision has implications for all entities operating under the Planning Act 2016 (Qld), namely of course, the Department of Infrastructure, Local Government and Planning as well as a host of other State Government departments and agencies, all local governments in Queensland, and all other entities performing functions under this Act. S.5(2)(d) is also ‘tenure blind’, which means that it applies regardless of whether:

- or not native title exists under the Native Title Act 1993 (Cth);
- the land is subject to a land grant under the Aboriginal Land Act 1991 (Qld) or the Torres Strait Islander Land Act 1991 (Qld); and
- there are listed or registered sites of Aboriginal or Torres Strait Islander heritage significance under the Aboriginal Cultural Heritage Act 2003 (Qld) or the Torres Strait Islander Cultural Heritage Act 2003 (Qld).

The provision applies to all entities performing functions under the Planning Act 2016 (Qld) and therefore all planning policies and documents identified in S.4 of the Act will need to demonstrate how they have addressed ‘Advancing the purpose of the Act’, which includes, amongst other things, ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’.

Currently, there are no guidelines or policy directions on how s.5(2)(d) will be implemented. Matters that will require consideration include:

- Who holds the appropriate information about ‘Aboriginal and Torres Strait Islander knowledge, culture and tradition’?
- What constitutes ‘Aboriginal and Torres Strait Islander knowledge, culture and tradition’?
- How can entities operating under the planning statute go about accessing the necessary information about ‘Aboriginal and Torres Strait Islander knowledge, culture and tradition’ so that their actions can value, protect and promote them?
- How can ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’ be factored into planning functions under statutory planning instruments such as State Planning Policies, regional plans and local planning schemes?
- How can the information provided by Aboriginal and Torres Strait Islander peoples be protected from misuse?
• How can the principles of social equity be applied in the pursuit of development?
• What criteria can be applied to ascertaining whether Aboriginal and Torres Strait knowledge, culture and tradition have been appropriately valued, protected and promoted in the particular function or functions being performed under the planning statute? (Wensing 2016)

These matters need to be discussed with various Aboriginal and Torres Strait Islander organisations including the Native Title Representative Bodies/Native Title Service Providers\(^1\) in Queensland, the Registered Native Title Bodies Corporate\(^2\), the Aboriginal and Torres Strait Islander Land Trusts\(^3\), the Aboriginal Shires\(^4\), the Torres Strait Island Regional Council (TSIRC) and the Northern Peninsula Area Regional Council (NPARC)\(^5\) and with the relevant Aboriginal and/or Torres Strait Islander peoples concerned when it comes to any particular locality (Wensing 2016a).

There are various ways in which Aboriginal and Torres Strait Islander people can assert their rights to land and there is, in some respects a ‘hierarchy’ of Aboriginal and Torres Strait Islander interests that needs to be taken into consideration in any planning exercise. These include:

• Through native title claimant applications and determinations under the Native Title Act 1993 (Cth). Where they have been determined by the Federal Court of Australia to exist, they are recognised, protected and enforceable under that Act;
• Grants of land to Aboriginal or Torres Strait Islander Land Trusts under the Aboriginal Land Act 1991 (Qld) and Torres Strait Islander Land Act 1991 (Qld). The title holder will have certain property rights under those statutes;
• Aboriginal and Torres Strait Islander people with spiritual or other cultural connections that warrant protection under the Aboriginal Cultural Heritage Act 2003 (Qld) or the Torres Strait Islander Cultural Heritage Act 2003 (Qld); and
• Aboriginal and Torres Strait Islander people with historical or familial or other ties to an area given the history of forced relocation and dispossession.

Not all of these rights and interests will necessarily exist in all locations, but they do need to be considered and, where they exist or may exist, respected and accommodated when it comes to incorporating Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition in performing functions under the Planning Act 2016 (Qld).

Many Aboriginal and Torres Strait Islander organisations and entities will have had limited exposure and experience with statutory planning activities and therefore may have little knowledge and understanding of statutory planning processes. The planning profession, including PIA Queensland needs to be ready and willing to assist with these discussions.

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1 Appointed by the relevant Commonwealth Minister under Part 11 of the Native Title Act 1993 (Cth).
2 Established under the Native Title Act 1993 (Cth) and incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth).
3 Established under the Aboriginal Land Act 1991 (Qld) and Torres Strait Islander Land Act 1991 (Qld).
4 Established under the Local Government Act 1993 (Qld).
5 Established under the Local Government and Other Legislation (Indigenous Regional Councils) Act 2007 (Qld).
Aboriginal and Torres Strait Islander peoples in Queensland

This section provides an overview of where Aboriginal and Torres Strait Islander peoples live relative to the lands that form part of the Indigenous Estate. It is also critical that the planning profession recognise that a ‘one size fits all’ approach to the planning will exacerbate disparity between urban and remote residents.

Total Population: Australia
As at June 2011, the estimated resident Aboriginal and Torres Strait Islander population of Australia was 670,000 people. The Aboriginal and Torres Strait Islander population of Australia accounts for 3% of the total population of 22.3 million people (SCRGSP 2016). Of the total Aboriginal and Torres Strait Islander population in Australia, it is estimated that 606,000 people (90%) were of Aboriginal descent, 38,100 were of Torres Strait Islander descent (6%) and 25,600 (4%) were of both origins (SCRGSP 2016).

Total Population: Queensland
As at June 2011, the estimated resident Aboriginal and Torres Strait Islander population of Queensland was 155,824 people (Queensland Government Statisticians Office 2016). The combined Aboriginal and Torres Strait Islander population of Queensland accounts for 3.6% of the total state population of 4,332,740 people (inclusive of ‘Indigenous status not stated’). Of the total Aboriginal and Torres Strait Islander population in Queensland, 122,896 people (79%) were of Aboriginal descent, 20,094 people (13%) were of Torres Strait Islander descent and 12,834 (8%) were of both origins.

Geographic Distribution: Australia
There is a strong imperative for planning activities to address the needs and aspirations of all Aboriginal and Torres Strait Islander peoples irrespective of where they live and their native title status. Planners need to consider the geographic distribution of Aboriginal and Torres Strait Islander peoples and the requirements of different groups within this population. The vast majority of Aboriginal and Torres Strait Islander peoples live in cities and regional centres. However, high proportions of Aboriginal and Torres Strait Islanders live in sparsely populated areas in remote and very remote regions relative to the total number of other Australians in those regions. Federal and State Government Indigenous policy is skewed toward the remote and very remote regions, but the reality is that almost 80 per cent of Aboriginal and Torres Strait Islander peoples live in our major cities, inner regional areas and outer regional areas.

It is estimated that in 2011, the spatial distribution of the total population of Aboriginal and Torres Strait Islander peoples living in Australia based on the ARIA classification of regions were as follows (ABS 2013):

- 35% of Aboriginal and Torres Strait Islander Australians (233,000 people) lived in a major city in 2011.
- 22% (148,000 people) lived in an inner regional area;
- 22% (146,000 people) lived in an outer regional area and
- 22% (142,000 people) lived in a remote or very remote areas.

Geographic Distribution: Queensland
The spatial distribution of Aboriginal and Torres Strait Islander peoples follows a similar pattern in Queensland (see Table 1 below). The vast majority (81%) live in non-remote areas of Queensland. However, the proportion of Aboriginal and Torres Strait Islander peoples living in remote and very remote areas compared to other Australians is very high. The inverse is true for urban areas, where the proportion of Aboriginal and Torres Strait Islander peoples is low compared to other Australians.
**Aboriginal and Torres Strait Islander knowledge, culture and tradition**

This section provides a rationale for the inclusion of Aboriginal and Torres Strait Islander peoples in planning regimes in Queensland. It is important to highlight the influence of knowledge, culture and tradition in the everyday lived experience of Aboriginal and Torres Strait Islander peoples in non-remote and remote locations. The data presented in the tables below has been aggregated from the National Aboriginal and Torres Strait Islander Social Survey (2016). There is no equivalent table that describes the experiences of Queensland’s Aboriginal and Torres Strait Islander peoples.

The following tables provide some understanding of Aboriginal and Torres Strait Islander participation in selected sporting, social or community activities and the use of their own languages. For the purposes of analysis, the ARIA regions have been aggregated as follows:

- Non-remote = major cities + inner + outer regional areas; and
- Remote = remote + very remote.

The information presented in Table 2 highlights the importance of social infrastructure and services to support Aboriginal and Torres Strait Islander peoples’ cultural activities and which in turn support the transfer of knowledge and practice of traditions. Table 2 clearly illustrates that Aboriginal and Torres Strait Islander peoples continue to practice their culture irrespective of whether they are living on their traditional lands or in a major city or region. Planning has a responsibility to ensure that its practices include opportunities for Aboriginal and Torres Strait Islander people to be involved in decision making that affects them and the application of their knowledge, culture and tradition, regardless of whether the locality is regarded as being remote or non-remote and regardless of whether it may be subject to a native title application or a determination. It is critical for the planning profession to acknowledge that Aboriginal and Torres Strait Islander peoples have been planning their country since time immemorial. Aboriginal and Torres Strait Islander peoples have their own approaches to planning and these should be acknowledged and incorporated into the mainstream planning and development system. This background paper seeks to create both a ‘conceptual and legal space’ for these planning methods and practices to be integrated into the overall system of planning and development in Queensland.
Table 2 Participation in sporting, social or community activities in last 12 months

Table 3 presents information about Aboriginal and Torres Strait Islander peoples’ use of their languages, self-identification and involvement in selected cultural events or ceremonies. Table 3 shows that the majority of Aboriginal and Torres Strait Islander peoples in Australia who live in non-remote regions continue to be apply their knowledge, culture and tradition in their everyday lives. It is important therefore that planning activities recognise and respect these occurrences irrespective of land tenure and location.

Table 3 Indigenous Language and Culture

<table>
<thead>
<tr>
<th>Activities</th>
<th>Non-Remote</th>
<th>Remote</th>
<th>Australia Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identified with clan, tribal or language group</td>
<td>57.6</td>
<td>78.9</td>
<td>62.3</td>
</tr>
<tr>
<td>Attended funerals/sorry business, ceremonies or Aboriginal/Torres Strait Islander festivals</td>
<td>55</td>
<td>80.9</td>
<td>60.6</td>
</tr>
<tr>
<td>Went out to a cafe, restaurant or bar</td>
<td>69.3</td>
<td>48.5</td>
<td>64.7</td>
</tr>
<tr>
<td>Attended movies</td>
<td>49.4</td>
<td>24.1</td>
<td>43.9</td>
</tr>
<tr>
<td>Attended theatre or concert</td>
<td>23.7</td>
<td>9.4</td>
<td>20.6</td>
</tr>
<tr>
<td>Visited library, museum or art gallery</td>
<td>40.3</td>
<td>23</td>
<td>36.6</td>
</tr>
<tr>
<td>Visited park, botanic gardens, zoo or theme park</td>
<td>51.4</td>
<td>22.4</td>
<td>45.1</td>
</tr>
<tr>
<td>Watched Indigenous TV</td>
<td>67.6</td>
<td>78.1</td>
<td>69.9</td>
</tr>
<tr>
<td>Listened to Indigenous radio</td>
<td>23.3</td>
<td>45.4</td>
<td>28.1</td>
</tr>
<tr>
<td>Played sport or took part in physical activities</td>
<td>34.9</td>
<td>33.5</td>
<td>34.6</td>
</tr>
</tbody>
</table>

Source: ABS (2016) National Aboriginal and Torres Strait Islander Social Survey
Table 4 highlights the importance of engagement with Aboriginal and Torres Strait Islander peoples regarding matters that affect their livelihoods. Creating an engagement protocol is critical to establishing relationships built on mutual trust and respect.

<table>
<thead>
<tr>
<th>Proportion of Aboriginal and Torres Strait Islander peoples</th>
<th>Non Remote %</th>
<th>Remote %</th>
<th>Australia Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>How often feels able to have a say within community on important issues</td>
<td>24.6</td>
<td>29.1</td>
<td>25.5</td>
</tr>
<tr>
<td>All of the time/most of the time</td>
<td>24.1</td>
<td>22.8</td>
<td>23.9</td>
</tr>
<tr>
<td>Some of the time</td>
<td>51.2</td>
<td>47.9</td>
<td>50.6</td>
</tr>
</tbody>
</table>

Source: ABS (2016) National Aboriginal and Torres Strait Islander Social Survey

### Table 4 Sense of Efficacy

**Regional Planning Initiatives in Queensland**

Table 5 presents the Aboriginal and Torres Strait Islander population per planning region as defined by the Department of Infrastructure, Local Government and Planning and as a proportion of Queensland’s total population. What Table 5 shows is that in several regions there is an inverse relationship between the total Aboriginal and Torres Strait Islander population in a region as a proportion of the total Aboriginal and Torres Strait Islander population of Queensland and the total Aboriginal and Torres Strait Islander population in a region as a proportion of the total population for the same region. For example, in South East Queensland, the 53,281 Aboriginal and Torres Strait Islander population comprises only 1.8 per cent of the total regional population, but it also comprises 34.2 per cent of Queensland’s Aboriginal and Torres Strait Islander population. And in Cape York, the 8,810 Aboriginal and Torres Strait islander population comprises 56.4 per cent of the regional population, but only 5.7 per cent of the total Aboriginal and Torres Strait Islander population of Queensland.

The data in Table 5 also highlights the importance for addressing intra- and inter-regional equity for two regions – namely the Torres Strait and Gulf Savannah. Both of these regions contain high proportions of Aboriginal and Torres Strait Islander people relative to the rest of the population in those regions, but have no regional plan to address inter-regional equity (see for instance Harwood et al 2012, for a discussion on implications of regional planning approaches that do not consider inter- and intra-regional equity for remote regions).
<table>
<thead>
<tr>
<th>Regional Plan area</th>
<th>Aboriginal</th>
<th>Torres Strait</th>
<th>Both Aboriginal and Torres Strait Islander</th>
<th>Total</th>
<th>% of total Queensland Aboriginal and Torres Strait Islander peoples</th>
<th>% of Aboriginal and Torres Strait Islander people as a proportion of total regional population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape York</td>
<td>5,977</td>
<td>1,206</td>
<td>1,627</td>
<td>8,810</td>
<td>5.7</td>
<td>56.4</td>
</tr>
<tr>
<td>Central Q</td>
<td>9,187</td>
<td>647</td>
<td>691</td>
<td>10,525</td>
<td>6.8</td>
<td>5</td>
</tr>
<tr>
<td>Central West</td>
<td>900</td>
<td>46</td>
<td>51</td>
<td>997</td>
<td>0.6</td>
<td>8.3</td>
</tr>
<tr>
<td>Darling Downs</td>
<td>7,796</td>
<td>294</td>
<td>215</td>
<td>8,305</td>
<td>5.3</td>
<td>3.7</td>
</tr>
<tr>
<td>Far North Qld</td>
<td>15,481</td>
<td>5,091</td>
<td>3,239</td>
<td>23,811</td>
<td>15.3</td>
<td>10.4</td>
</tr>
<tr>
<td>Gulf Savannah (no regional plan)</td>
<td>3,120</td>
<td>20</td>
<td>57</td>
<td>3,197</td>
<td>2.1</td>
<td>51.5</td>
</tr>
<tr>
<td>Mackay, Isaac and Whitsunday</td>
<td>4,467</td>
<td>1,486</td>
<td>896</td>
<td>6,849</td>
<td>4.4</td>
<td>4.1</td>
</tr>
<tr>
<td>Maranoa Balonne</td>
<td>1,726</td>
<td>12</td>
<td>27</td>
<td>1,765</td>
<td>1.1</td>
<td>9.9</td>
</tr>
<tr>
<td>North Queensland</td>
<td>11,726</td>
<td>1,944</td>
<td>1,742</td>
<td>15,412</td>
<td>9.9</td>
<td>7.1</td>
</tr>
<tr>
<td>North West Qld</td>
<td>3,827</td>
<td>135</td>
<td>144</td>
<td>4,106</td>
<td>2.6</td>
<td>14.6</td>
</tr>
<tr>
<td>South East Qld</td>
<td>46,883</td>
<td>3,689</td>
<td>2,709</td>
<td>53,281</td>
<td>34.2</td>
<td>1.8</td>
</tr>
<tr>
<td>South West Qld</td>
<td>1,202</td>
<td>27</td>
<td>30</td>
<td>1,259</td>
<td>0.8</td>
<td>16</td>
</tr>
<tr>
<td>Wide Bay Burnett</td>
<td>9,853</td>
<td>490</td>
<td>496</td>
<td>10,839</td>
<td>7.0</td>
<td>4</td>
</tr>
<tr>
<td>Torres Strait (no regional plan)</td>
<td>137</td>
<td>4,911</td>
<td>872</td>
<td>5,920</td>
<td>3.8</td>
<td>78.9</td>
</tr>
<tr>
<td>Queensland</td>
<td>122,896</td>
<td>20,094</td>
<td>12,834</td>
<td>155,824</td>
<td>100</td>
<td>3.6</td>
</tr>
</tbody>
</table>

Source: Queensland Government Statistician Office (November 2016)

Table 5 Queensland Regional Plans and proportion of Aboriginal and Torres Strait Islander population
Aboriginal and Torres Strait Islander peoples’ estate in Queensland

In Queensland, the Aboriginal and Torres Strait Islander estate comprises:

- Freehold lands (pursuant to the Aboriginal Land Act 1991 (Qld), Torres Strait Islander Land Act 1991 (Qld) and the Land Act 1994 (Qld));
- Lands and waters that are subject to an exclusive possession native title determination under the Native Title Act 1993 (Cth);
- Lands and waters that are subject to a non-exclusive possession native title determination under the Native Title Act 1993 (Cth);
- Areas subject to registered Indigenous land use agreements (ILUA) under the Native Title Act 1993 (Cth);
- Areas prescribed as Indigenous Protected Areas or IPAs under the National Reserve System and the International Union for the Conservation of Nature (IUCN).

One of the major impediments to effective land use and occupancy mapping activities is the lack of available and accessible data about the Aboriginal and Torres Strait Islander estate in Queensland. The spatial data held and managed by the Queensland government does not permit easy analysis of tenure and ownership by Aboriginal and Torres Strait Islander organisations and entities. Therefore it is difficult, if not impossible, to ascertain and describe the full extent of the Aboriginal and Torres Strait Islander estate in Queensland. This also means that achieving ‘free, prior, and informed consent’ regarding planning and development proposals unduly favours the party that has access to information.

However, what is available and accessible is Native Title data on the following:

<table>
<thead>
<tr>
<th>Native Title description</th>
<th>Area (ha)</th>
<th>% of Queensland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive Possession Determination</td>
<td>3 679 500</td>
<td>2.1</td>
</tr>
<tr>
<td>Non Exclusive Possession Determination</td>
<td>51 484 900</td>
<td>29.8</td>
</tr>
<tr>
<td>Subject to Native Title Claim</td>
<td>62 114 500</td>
<td>35.9</td>
</tr>
<tr>
<td>Queensland</td>
<td>172 700 000</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Native Title Tribunal (2016)

Table 6. Native Title Status of lands in Queensland

Map 1 (below) spatializes the data presented in Table 6. There is an important distinction to be made between an exclusive possession and non-exclusive possession native title determination. In many cases an exclusive possession native title determination will equate to full property rights, whereas in a non-exclusive possession native title determination the native title rights and interests will be subservient to the other existing interests recognised by the Crown. This data does not distinguish underlying tenure (e.g. state Crown land or national park) or whether this land, or portion thereof, has been transferred as freehold land (pursuant to the Aboriginal Land Act 1991 (Qld) or Torres Strait Islander Land Act 1991 (Qld)). Continuing confusion exists about the differences between statutory land ownership under the forementioned statutes and native title rights and interests. Native title applications and determinations are not clearly recorded in the State’s land title registration system which invariably means that the native title claimants or holders are not notified and consulted about matters that may affect their native title rights and interests. This is a serious oversight in the planning and native title systems that requires urgent attention.

Similarly, some Local Authorities in Queensland have used ILUA’s to describe statutory approvals as a ‘low native title impact activity’ pursuant to the Native Title Act 1993 (Cth)). This means that some native title holders have unknowingly agreed to a proxy approval of some planning and development decisions that
would otherwise have required their prior consultation and consent (refer to Wensing 2017 in press). See Appendix 1 for a map of the spatial extent of ILUA’s in Queensland.

Source: Peter Edwards, Connect Spatial, Townsville, Australia, 2016.

Map 1. Spatial Extent of Native Title in Queensland
Aboriginal and Torres Strait Islander Planning

Aboriginal and Torres Strait Islander peoples have occupied Australia for millennia and are recognised as having the oldest living culture on Earth (Flood 2006: 133). Aboriginal and Torres Strait Islander peoples and communities also have the oldest continually surviving system of land tenure in the world (Reynolds 1999:217).

For tens of thousands of years, Australia’s Aboriginal and Torres Strait Islander peoples relied upon an intimate understanding of the Australian continent’s biological systems and cycles for their survival and flourishing. Their knowledge should be perceived as a gift to planners (and all Australians), not as a hindrance.

Aboriginal and Torres Strait Islander people have had for many thousands of years, and continue to have, a crucial and legitimate stake in the use and occupancy of their traditional lands. Before European invasion and colonisation, the Aboriginal peoples of Australia developed and applied three important principles in caring for their ‘Country’:

‘Ensure that all life flourishes. Make plants and animals abundant, convenient and predictable. Think universal, act local’ (Gammage 2011:4).

These principles are reflected in Tom Trevorrow’s (Ngarrindjeri Elder) statement in the Murray Darling Basin Authority’s Murray Darling Basin Plan and in their publication about including Aboriginal voices within the Plan (MDBA 2011:iv):

‘Our traditional management plan was: don’t be greedy, don’t take more than you need and respect everything around you. That’s the management plan – it’s such a simple management plan, but so hard for people to carry out’ (Trevorrow 2010).

As one of the most ambitious environmental plans undertaken in Australia to date, the plan is instructive for how it seeks to embrace Aboriginal knowledge about environmental planning and management. What Tom Trevorrow’s statement reflects is that Australia’s Indigenous peoples knew how to plan, how to manage their lands and natural resources for their wellbeing and cultural survival.

Hirini Matunga (2013) maintains that contemporary planning systems need to create a space within which Indigenous planning can occur, otherwise there is a very real risk that Indigenous approaches to place and space will continue to be eroded and their relative disadvantages compared to the rest of the nation will continue to be exacerbated. Contemporary land use and environmental planning processes have not made any space for including Australia’s Aboriginal and Torres Strait Islander peoples planning theories, methods and tools.

In his keynote address to the Northern Australia Development Conference in Darwin, Peter Yu (2016) believes that from an Indigenous perspective the key elements to inclusive planning and development include:

• respecting Indigenous ownership of land;
• respecting Indigenous people’s imperative to maintain and nurture traditional culture; and
• respecting the aspirations of Indigenous people to participate and benefit from economic activity whilst maintaining connection to traditional culture.
According to Yu (2013: 26), a native title determination means that native title holders have a legal responsibility to ‘look after’ country for present and future generations and the challenge facing native title holders and the wider Australian community is constructing a relationship such that Aboriginal and Torres Strait Islander peoples’ world views and values can ‘inspire a new vibrancy and meaning in Western planning and land management frameworks’.

Planning is a collective decision-making system that governs and directs our land base in our common interests (Wensing and Porter 2015). As a profession that is so fundamentally about the relationship between people and their land base, planning must recognise the importance of Aboriginal and Torres Strait Islander people’s intrinsic connection to and responsibility for their land. The challenge is finding new ways of including, not assimilating, Aboriginal and Torres Strait Islander peoples’ cultural land use and occupancy mapping into contemporary planning systems and processes, respectfully and inclusively.

Human rights and planning

International human rights standards have evolved a long way since the United Nations Charter and the Universal Declaration of Human Rights were developed after World War II, especially for the World’s Indigenous peoples. Since the 1970s the United Nations has increasingly become a place for Indigenous peoples from around the world to voice their concerns, and over the past 20 years, the international community has increasingly recognised that special attention needs to be paid to the individual and collective rights of Indigenous peoples.

In 2007, the United Nations General Assembly endorsed the Declaration on the Rights of Indigenous Peoples or UNDRIP as it has become more widely known. While the UNDRIP is not binding on member states, it is nevertheless a significant development in terms of international human rights standards. It was compiled in consultations with Indigenous peoples from all over the World and it reflects the needs and aspirations of Indigenous peoples as well as the concerns of member states (Eide 2006: 157).

The UNDRIP expresses rights and by doing so, explains how Indigenous peoples want nation states (and others) to conduct themselves about matters that may affect their rights and interests. Of particular relevance is Article 19 of the UNDRIP. Article 19 states that Indigenous peoples have the right to be consulted in good faith in order for governments to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.6

Current Australian planning statutes do not constrain planners from applying any of the principles or Articles in the Declaration when working with Aboriginal and Torres Strait Islander peoples, and especially when their rights and interests are likely to be affected. Doing so, will earn a new level of respect for planning’s praxis.

Accordingly, Wensing (2016a:51) maintains:

Land use planning systems and the practices through which they are made operational must also undergo fundamental change. Everyday planning practice must involve a habitual engagement with Aboriginal and Torres Strait Islander peoples about their country, about proposals that affect their lands and waters, and in a manner that acknowledges and respects the parity of two co-existing land ownership and governance approaches. ... It is about recognising the parity of Indigenous governance authority with Western systems to seek agreements on matters of mutual concern.

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In response to Wensing (2016b) findings, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Gillian Triggs, and Deputy Commissioner, Robynne Quiggan, note in their annual Social Justice and Native Title Report for 2016 that statutory land use planning processes have been slow to recognise and integrate Indigenous rights and interests and have recommended that:

The Australian Government support the review of state and territory land use planning regimes in consultation with Indigenous organisations to ensure the Traditional Owners of the Indigenous Estate can exercise the right to free, prior and informed consent regarding land use planning decisions (Aboriginal and Torres Strait Islander Social Justice Commissioner 2016: 126-127, 137).

The *Planning Act 2016* (Qld) is silent on how consultation with the public should be conducted. This means that entities performing functions under the Act can generally decide what form of public consultations will take in any given planning exercise. Given the unique status of Aboriginal and Torres Strait Islander peoples as Australia’s Aboriginal and Torres Strait Islander Peoples, all entities performing functions under the *Planning Act 2016* (Qld) have the discretion to apply the principle of free, prior and informed consent when engaging with Aboriginal and Torres Strait Islander people and communities that may be affected by the planning activity or function.
Draft Policy Statement

Purpose
The purpose of this Policy Statement is to ensure the Queensland Division of PIA can make a constructive contribution to the implementation of new provisions in the planning statute around the inclusion of Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition in contemporary land use and environmental planning systems.

Aim
The aim of this Policy Statement is to appraise the planning profession of these developments and place the Queensland Division of PIA in a position where it will be able to make insightful and constructive contributions to a new area of planning law and practice.

Policy Statements
1. Queensland Division of PIA acknowledges and respects the Aboriginal and Torres Strait Islander people’s ongoing tradition of ownership and management of their ancestral lands and waters according to their laws traditions and cultural governance systems.

2. Queensland Division of PIA supports the inclusion of the ‘valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition’ as a part of advancing the purpose of the new Planning Act 2016 (Qld).

3. Queensland Division of PIA understands that Aboriginal and Torres Strait Islander peoples’ knowledge, culture and tradition is held by them and that undertaking functions under the Planning Act 2016 (Qld) will require developing a working relationship with Aboriginal and Torres Strait Islander peoples based on mutual trust and respect.

4. Queensland Division of PIA will work with Aboriginal and Torres Strait Islander peoples and the Queensland government to develop an appropriate set of protocols for engagement around the incorporation of Aboriginal and Torres Strait Islander knowledge, culture and tradition in contemporary land use and environmental planning under the Planning Act 2016 (Qld). The protocol will as a minimum include a code of ethics that describes members obligations to Aboriginal and Torres Strait Islander communities in planning, guidance on how to identify who the appropriate Aboriginal and/or Torres Strait Islander peoples may be for a particular area, how to access and assess the necessary information for the planning task at hand, how to assess whether the relevant information has been appropriately incorporated and how Aboriginal and Torres Strait Islander peoples can continue being involved in planning activities that may affect their interests and wellbeing.

5. Queensland Division of PIA will work with Aboriginal and Torres Strait Islander peoples and organisations to develop their capacity and understanding of how contemporary planning systems work and how Aboriginal and Torres Strait Islander approaches to planning can be better understood, reflected and respectfully integrated into contemporary planning systems.

6. Queensland Division of PIA will actively encourage the Queensland government to address the organisation and accessibility of spatial data governing the Aboriginal and Torres Strait Islander estate to support the creation of land use and occupancy mapping as determined and identified by Aboriginal and Torres Strait Islander peoples and communities.
7. Queensland Division of PIA supports the application of the principle of ‘free, prior and informed consent’ when engaging with Aboriginal and Torres Strait Islander peoples on all planning matters that may affect their rights and interests.
Acknowledgements
The authors gratefully acknowledge and sincerely thank Hirini Matunga Professor of Maori and Indigenous Development at Lincoln University, New Zealand for writing the planning framework for Indigenous planning (see below reference) and undertaking the initial review of this document. The Authors also gratefully acknowledge the comments provided by Roger Davis, Jeanie Govan and Kevin Smith in their review of earlier drafts.

References


http://www.mdba.gov.au/bpkid/bpkid-view.php?key=tsP33vmN57iXdN/QuW0blhFS82yNb7Ip4JUFloRgklc-

http://www.youtube.com/watch?v=GqrRfyVNqlo


Wensing, E. (2017 - forthcoming) *Indigenous rights in planning: Continuing cultural blindness or racial prejudice ... or both?* (Details to be advised).


Legislation


Appendix 1.

Source: Peter Edwards, Connect Spatial, Townsville, Australia, 2016.

Map 2. Spatial Extent of ILUA’s in Queensland