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THE DEVOLUTION OF INDIGENOUS LOCAL GOVERNMENT AUTHORITY IN QUEENSLAND

Opportunities for Statutory Planning

Introduction

Government policy change to self determination over the past two decades has gradually given rise to various structures of Indigenous self government across Australia. Indigenous Local Government Authorities (LGAs) are the governing structure which receive the greatest devolution of State authority, especially those found in Queensland and the Northern Territory. Their statutory basis has developed over a relatively short period of time and is still very much evolving. This paper explores what opportunities exist for Indigenous LGAs to adopt statutory planning mechanisms.

By way of definition, 'statutory planning' refers to the planning schemes and policies which guide and controls the use and development of land, buildings and infrastructure. A statutory plan is prepared by a LGA and is given its statutory basis under State legislation. Its jurisdiction is usually limited to the local government area of the LGA.

The different State and Territory Parliaments of Australia have developed their own legislation concerning land use, local governing structures and planning. As a result, there is a bewildering array of legislative frameworks underpinning statutory planning mechanisms for Indigenous settlements. It was therefore necessary to limit this study to the State of Queensland, although comparisons can be drawn to the rest of Australia. To begin, let us consider the unique legislative basis to Indigenous Local Government Authorities (LGAs) in Queensland, otherwise referred to as Community Councils.

Indigenous local government and tenure in Queensland

As for the all of Indigenous Australia, Indigenous land holdings in Queensland have multiple bases. Aboriginal reserves are the oldest form of land tenure established for Indigenous communities. Most of the larger reserves were replaced in the 1980s by a system of 'deed in grant in trust' (DOGITs), through amendments to the *Land Act 1962 (Qld)*.

Almost all DOGITs constitute an Indigenous Local Government Authority (LGA) area, under the *Community Services (Aborigines) Act 1984 (Qld)* and the *Community Services (Torres Strait) Act 1984 (Qld)*. Democratically elected Community Councils play a dual role of LGA and land trustee. In total there are 32 Indigenous LGAs in Queensland, 17 of which are located in the Torres Strait. Under the Community Services legislation, each Community Council is given a wide range of functions and powers to make by-laws, but these are nonetheless subject to governmental veto. The powers and functions go well beyond the provision of municipal services (Brennan 1996, 5). Council are required to deal with a wide range of matters, including education, health, employment, house construction and maintenance, the community store, etc. Although Indigenous LGAs have more functions than a mainstream LGA, they effectively have less discretionary power and less access to resources. The Electoral and Administrative Review Commission (1991, 11) found that in "conventional municipal terms they operate at a more reduced level of responsibility and independence than mainstream LGAs and they lack some of the mainstream powers, for example fiscal autonomy, town planning and development controls."

In addition to the 32 Community Councils, there are two former reserve communities which were not granted tenure in DOGIT. The Shire of Aurukun and the Shire of Mornington were established separately, under the *Local Government (Aboriginal Lands) Act 1978 (Qld)* and both were granted 50 year leases. They are required to act in accordance with the *Local Government Act 1993 (Qld)*, similar to all mainstream LGAs in Queensland.

Table 1 gives summary details of the

34 Indigenous LGAs in Queensland. The Queensland Department of Natural Resources (2000a; 2000b; 2000c) also produce a series of maps which show the location of Indigenous LGAs, Indigenous land trusts and Native Title applications.

Despite their high profile, these 34 Indigenous LGAs account for only 17% of the State's Indigenous population (Australian Bureau of Statistics 1996). The remaining Indigenous population live within mainstream LGAs, mostly on serviced freehold housing allotments dispersed across rural townships and urban areas. Housing is a mixture of public, private and community rental housing, as well as a growing proportion of home owner housing. There is also a small, but growing, number of discrete Indigenous settlements on communal title land, which are also located within mainstream LGAs. Unlike the 34 'DOGIT' settlements, these do not have local government status, although all have self-governing structures through incorporated Indigenous organisations. This paper will focus on Indigenous LGAs and will not examine Indigenous settlements living in mainstream LGAs in much detail. Other planners have examined ways to better incorporate these groups into local government planning schemes (Jackson 1997; Wensing & Sheehan 1997; Sheehan & Wensing 1998; Australian Local Government Association 1998; Australian Local Government Association 1999).

Although the governing structures of Indigenous LGAs represent an important step towards Indigenous self government, they were effectively imposed by the Queensland Government with minimal consultation. Accordingly, the legislation has been widely criticised and has been amended and reviewed ever since. From the early 1990's, the State Government instigated a series of studies to replace or update the Community Services legislation (Electoral and Administrative Review Commission 1991; Legislation Review Committee 1991). This led to the Alternative Governing Structures Program from 1992 which gave communities the opportunity to develop their own governing structures to suit their local context. Apart from amended legislation to permit Aurukun to better manage alcohol, no other changes were forthcoming, and the program was wound down from 1998. Then in 1999 and again in 2001, the State Government pushed ahead with amendments to the legislation, mainly to introduce accountability measures, but also to introduce some innovative measures, such as a proportional clan voting system at Saibai. Most recently, the Aboriginal Coordinating Council has facilitated a consultative review of the legislation through its member Councils. The Cape York Justice Study (Fitzgerald 2001) has also made a raft of recommendations to improve governance on remote communities. Whatever changes are in store for the governing structure of Indigenous LGAs in Queensland, it is at least clear the Indigenous LGAs are here to stay, and that their governing structure is evolving with time.

Apart from legislative reviews and amendments, Indigenous LGAs have also been increasingly influenced by the emergence of regional Indigenous structures. Throughout the 1990s, ATSIC regional councils, land councils and other regional Indigenous organisations have all strongly advocated for greater regional autonomy at the political, administrative, and economic levels (Aboriginal and Torres Strait Islander Commission 1999;

TABLE 1: DISCRETE INDIGENOUS SETTLEMENTS IN QUEENSLAND WITH LOCAL GOVERNMENT STATUS

Community	Tenure	Total Pop. [a]	Year founded [b]	Original administration[b]
Aboriginal Community Councils				
Cherbourg	DOGIT	1100	1904	Queensland Government Settlement
Doomadgee	DOGIT	754	1931	Brethren Mission
Hopevale	Native Title	750	1885	Lutheran Mission
Injinoo	DOGIT and Inalienable Freehold	337	1910s	Independent Council
Kowanyama	DOGIT	912	1904	Anglican Mission
Lockhart River	DOGIT	504	1924	Anglican Mission
Mapoon	DOGIT	208	1891	Presbyterian Mission
Napranum	DOGIT	777	1898	Presbyterian Mission
New Mapoon	DOGIT	276	1960s	Queensland Government Settlement
Palm Island	DOGIT	2073	1918	Queensland Government Settlement
Pormpuraaw	DOGIT	553	1936	Anglican Mission
Umagico	DOGIT	231	1960s	Queensland Government Settlement
Woorabinda	DOGIT	1119	1927	Queensland Government Settlement
Wujal Wujal	DOGIT	293	1957	Lutheran Mission
Yarrabah	DOGIT	1978	1891	Anglican Mission
Aboriginal Shire Councils				
Aurukun	Shire Lease	778	1904	Presbyterian Mission
Mornington Is. (Gununa)	Shire Lease	1111	1905	Presbyterian Mission
Torres Strait Community Councils				
Badu Island	DOGIT	562	(c)	Anglican Mission
Bamaga	DOGIT	756	1948	Queensland Government Settlement
Boigu Island	DOGIT	241	(c)	Anglican Mission
Coconut Island (Poruma)	DOGIT		1928	
Darnley Island (Erub)	DOGIT	223	(c)	Anglican Mission
Dauan Island	DOGIT	121	(c)	Anglican Mission
Hammond Island (Keriri)	DOGIT	199	(c)	Catholic Mission
Kubin (Moa Island)	DOGIT	160		
Mabuiag Island	DOGIT	177	(c)	Anglican Mission
Mer (Murray) Island	Native Title	418	(c)	Anglican Mission
Saibai Island	DOGIT	272	(c)	Anglican Mission
Seisia	DOGIT	188	1940s	Queensland Government Settlement
St Pauls (Moa) Island	DOGIT	283	1904	Anglican Mission
Stephen Island (Ugar)	DOGIT	92	(c)	Anglican Mission
Warraber (Sue) Island	DOGIT	389	(c)	Anglican Mission
Yam Island (Iama)	DOGIT	150	(c)	Anglican Mission
Yorke Island (Masig)	DOGIT	285	(c)	Anglican Mission

Notes:
(a) From 1996 ABS Census data (Australian Bureau of Statistics 1996). ABS figures are widely held to less than the actual populations;
(b) From (Anderson 1981, 306; Long 1970, 156, 164-166);
(c) No dates given as village settlement existed prior to missionary arrival in 1871

TABLE 2: TYPICAL SCENARIO OF THE TYPES OF DEVELOPMENT AND DEVELOPERS FOUND IN AN INDIGENOUS LGA

Developer	Types of Development or Land / Sea Use
	Almost always found:
Council	■ Community infrastructure including water treatment plant, roadworks, sewerage treatment plant, underground pipes, landfill refuse sites, airstrip, etc. Community rental housing, including staff housing.
	■ Community facilities including aged persons home, recreation hall, sports fields, etc.
	■ Community enterprises, e.g. block making plant, market garden, canteen, guesthouse, postal agency, caravan park, etc.
	■ Council facilities including council chambers, works compounds, storerooms.
State Government	■ School, health clinic, community store, staff housing.
Indigenous organisations	■ Offices and facilities for community organisations, e.g. local radio station, CDEP, arts and crafts, sporting club, culture-related activities, homeland resourcing, women's refuge, etc.
Utility service providers	■ Telephone exchange and underground telephone lines.
	■ Power station and aerial reticulation lines.
Church	■ Community church and clergy housing.
	Less frequently found:
Private community entrepreneurs	■ Buildings and facilities for private enterprise; e.g. takeaway food store, bakery, butcher, taxi service, etc.
Externally contracted / leased private enterprise	■ Recreational fishing camp, private airstrip, visitors accommodation facility, tourism operation, community store, etc.
Commercial fisherman	■ Shipping, commercial fishing, setting of nets, etc
Mining company	■ Excavation, land clearing and restoration, airstrip, buildings, access roads, wharfs, processing facilities, etc.
	Found outside of Community township:
Traditional owner and outstation groups	■ Self built humpies and other improvements, including bush roads and tracks.
	■ Land use enterprises including fences, dams and pastoral improvements.
	■ Traditional land use and subsistence activities

Pearson 2000). This has largely occurred through Commonwealth funding. Emerging methods to achieve this include; negotiating regional agreements or partnerships between Indigenous organizations and existing governments and government agencies (Queensland Department of the Premier and Cabinet 2000a); establishing function specific regional service agencies (Westbury & Sander 2000); and, forming new statutory authorities such as the recently-formed Torres Strait Regional Authority. It is likely that varying levels of Indigenous regional autonomy will soon emerge across a number of regions in Queensland, particularly in remote areas. It is yet unclear what the impact might be on Indigenous LGAs, but such autonomy is expected to alter the range and modes of service delivery methods as well as impact on regional economies (Memmott & Moran 2001).

Almost all tenure on Indigenous LGAs is held communally, either as DOGIT or inalienable freehold, with one notable exception. From 1986 to 1991, households on Indigenous LGAs where encouraged to apply for a perpetual lease and purchase a home, under *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985 (Qld)*. Some of these leases have been transferred back to the respective Council and the status of the remainder is today unclear.

Throughout the 1990s and to date, the Queensland Government has been in the process of implementing its latest Indigenous land rights legislation; the *Aboriginal Land Act 1991 (Qld)* and the *Torres Strait Islander Land Act 1991 (Qld)*. All previously granted lands, including reserves, DOGITs and Shire Leases, are transferable under these Acts into inalienable freehold land. The land is granted to incorporated Land Trusts.

Up until recently, the elected Community Councils held both the land and the local government authority, over the entire land holding. The combined effect of the transfer of land under Queensland Indigenous Land Act legislation and the recognition of native title rights is leading to the disaggregation of these two distinct roles. As sections of the DOGIT are progressively transferred to inalienable freehold, or as native title determinations confer rights of occupancy and land use, Indigenous LGAs must now deal with separate Indigenous land owners who are within their local government area.

Hopevale and Injinoo have established a model likely to be repeated in other communities. The tenure of the town centre continues to be held in trust by Council, with the remainder of the LGA effectively divided between different traditional owner groups. In Hopevale this occurred through a native title determination. In Injinoo, this occurred though a land transfer into inalienable freehold under the *Aboriginal Land Act 1991 (Qld)*. Regardless of these changes in tenure, the entire land holding still remains under the local government authority of the Community Council. The Community Services legislation was amended in 1999 to confirm that Council has jurisdiction over non-trust land.

The types of developments and developers found on an Indigenous LGA is fairly consistent across Queensland and a typical scenario is given in Table 2 below. Almost all development is concentrated into a focal township and the remainder of the LGA area is generally undeveloped. The exception is outstations or homelands, which are small, decentralised family based settlements. Outstations are generally no larger than an extended family group, but occasionally represent a much greater return to country of a large land / linguistic group. A few decentralised settlements have grown to the point where they can claim to be discrete settlements in their own right. For example, Bentinck Island in Mornington Shire has in the past unsuccessfully petitioned the Minister for Local Government and Planning for independent Council status.

There are considerable differences between Indigenous and non-Indigenous LGAs, which are summarised in the following Table 3. It is important to understand this different development context before considering the appropriateness of mainstream statutory planning mechanisms.

Existing non-statutory planning mechanisms

There are number of existing non-statutory planning mechanisms in use in Indigenous communities in Queensland, which will be examined in turn.

INFRASTRUCTURE BASED PLANS

Planning in Indigenous LGAs dates back

to the 1970s, beginning with engineering survey plans. A series of ortho photo maps were first prepared by an engineering firm 'Cardno & Davies' for the purpose of designing sewerage schemes. Diagrammatic town plans were also prepared by 'Brazier & Motti' depicting allotment layouts. Although undertaken with little, if any, community consultation, these plans were nonetheless used as the basis of drawing up the titles for the DOGITs when they were issued throughout the 1980s.

From the late 1980s, the State Government has initiated a rolling series of infrastructure based plans, which provide data relating to planning for infrastructure, funding and services. Community consultation has been largely limited to the elected Council and Council employees. Typically the plans are driven by economically efficient infrastructure design, resulting in small allotments and grid type layouts. From 1987 to 1990, 'Edmiston & Taylor' completed community infrastructure development reports for all 34 Indigenous LGAs. These plans included comprehensive assessments of infrastructure requirements, providing preliminary design data for large capital works programs that occurred throughout the 1990s. Total Management Plans (TMP) were then prepared in 1996/97 for the 34 Indigenous LGAs in Queensland by 'Edmiston and Taylor' and 'Gutteridge Haskins and Davey'. The TMPs reported on water and transport related infrastructure with a focus on asset management, including comprehensive asset management registers. In 1999, infrastructure planning reports were prepared for the Torres Strait Island communities through the Major Infrastructure Project (MIP) to address a perceived lower level of infrastructure servicing in comparison to Aboriginal settlements. Community Expansion Plans (CEP) were prepared in 2000 to meet urgent needs for serviced housing allotments. An update of the TMPs with a planning horizon from 2000 to 2010 were completed in 2001.

A recent project prepared town plan maps for all of the community settlements in the Torres Strait. These town plans typically comprise a map depicting land use of the focal settlement and are generally not supported with development guidelines or policies. Zones which are indicated include residential, future residential, commercial, council, special purpose, and public open space.

TABLE 3; COMPARISON BETWEEN INDIGENOUS AND RURAL NON-INDIGENOUS LOCAL AUTHORITIES IN QUEENSLAND

Aspects	Indigenous Councils and Shires	Rural Non-Indigenous Shire Councils
Tenure	Inalienable community title held collectively either by a Community Council or Land Trust.	Predominantly freehold and leasehold title land held by individuals or corporations.
Governing legislation	Community Services Legislation (except Aurukun and Mornington Shires) with overriding responsibility vested in the Department of Aboriginal and Torres Strait Islander Policy and Development	Local Government legislation with overriding responsibility vested in the Department of Local Government and Planning.
Land use philosophy	Land held communally. Traditional land use with cultural and spiritual attachments. Cultural tradition of land ownership equating with land management and development rights.	Land held privately. Predominantly economic land use. Long accepted desegregation between land ownership and local government controls of development.
Land titling	One single land title with no property market and no system of registering survey plans and titles.	Patchwork of different land titles and an active property market and system of registering survey plans and titles.
Types of development	Predominantly community housing, buildings and infrastructure, with limited or no enterprise development.	Predominantly private housing and public infrastructure with wide range of enterprise development.
Development approval	Community Council and other Indigenous organisations are the main developers. They generally don't submit development applications, but rather apply to and satisfy conditions of funding agencies. In some cases, development applications must be submitted to State agencies for approval.	Private developers are main developers. Subject to the type of development and whether there is a local planning scheme, they submit applications for development assessment to the LGA. The LGA may also be the proponent, but usually only for community uses and public infrastructure. In some cases, development applications must also be submitted to State agencies for approval.
Local authority	Dual governance and welfare role which exceed the functions of a non-Indigenous LGA; eg. policing, CDEP, social welfare, alcohol rehabilitation, etc.	Greater fiscal autonomy and powers; eg.rating base, development controls, etc.
Income	Predominantly funded through a wide variety of State and Commonwealth Government grants. Rates cannot be charged. Rent or community levy may be charged to cover housing maintenance. Some Councils receive profits from a community canteen.	Funded mostly by local rates and charges placed on local constituents, enterprises and developers, with some funding assistance, predominantly through Commonwealth Financial Assistance Grants.
Fiscal autonomy	Most funding is tied and must be acquitted by the end of the financial year, thereby limiting fiscal autonomy.	Most income is untied and discretionary permitting greater fiscal autonomy.
Statutory planning	No legislative requirement for statutory planning scheme. Informal planning mechanisms which usually focuses on the community township.	Statutory planning schemes compliant with the Integrated Planning Act 1997 (Qld) are required to be prepared by 30 March 2003. The scheme must include the entire LGA area.

More detailed town plans have been prepared for Yarrabah and Hopevale. Most other communities have simple town plan zoning maps prepared primarily for the purposes of infrastructure delivery. (C&B Group & Moran 2000, 25-27)

COMMUNITY BASED PLANS

Indigenous communities have had a long tradition of reaching consensus and informal planning for action. Reports of communities undertaking more formal community plans date back to the 1970s (Davies 1995, 2:58-61). However, the practice of community based planning has only recently become widespread in the 1990s, since the formation of the Aboriginal and Torres Strait Islander Commission (Wolfe 1993). ATSIC (1994, 6) defines community-based planning as a process which "is used by community members to make sure that the community develops the way that they want it to. Community members are fully involved in the process of planning and carrying out the community's development. The community controls priority setting, decision making and implementation."

These plans tend to beyond the spatial matters of land and development which preoccupy statutory land use plans. They may embrace broad aspects of community development including administration, employment, training, health, education, housing, infrastructure and recreation and have regard to the social, cultural, economic and environmental factors affecting the community. Although they

often purport to be holistic, in reality, they generally often focus on one or more focal issues. The plan is developed using a variety of participatory methods, permitting opportunity for community control and self-expression. At their best, consultation extends beyond the Community Council to the household and individual level.

There is considerable diversity in the style and scope of community development plans, due in part to the diversity of community needs and aspirations, but also to the different styles and practices followed by the planners involved. The different types of community based planning can be considered in terms of four different levels of engagement with the community, as given in Table 4 below.

It is very difficult to locate the many community planning documents that have been completed in the past. Few make their way into libraries and there is no formal register maintained by any State or Commonwealth Government Department. It is often necessary to contact each Community Council individually, and given the frequent turnover of staff and elected councillors, it can be difficult to find someone with the administrative history to locate past planning documents.

The extent of consultation undertaken generally exceeds that undertaken in the course of preparing planning schemes in mainstream LGAs. This is due partly to efforts to place the process within a broader community development context. It is also necessary to overcome literacy and other cultural barriers which render more conventional means of consultation ineffective, such as calls for written submissions, newspaper advertisements and public meetings. Community based planing often must utilise more time consuming methods, such as household interviews, focus group workshops, action research and participatory planning methods.

Since 1995, the Centre for Appropriate Technology has worked with a number of communities in Queensland to develop planning projects which are both 'community' and 'infrastructure' based. These communities include Old Mapoon, Port Stewart, Mona Mona and China Camp. Although the outcomes of the plans are largely physical, including town planning, housing and infrastructure, the process followed has been strongly participatory. These plans seek to broker a dialogue between community aspirations and the technical and economic conditions of government programs.

The Queensland Government is gradually coming to play an increasingly active role in community based planning. From the mid 1990s, the Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD) provided funding for community based planning through its Alternative Governing Structures Program, and more recently its Community Development Program. The Aboriginal and Torres Strait Islander Infrastructure Branch of the Queensland Department of Local Government and Planning implemented two innovative planning projects from 1998 to 2000. Although both were infrastructure based, they adopted in-depth consultative processes and responded to a range of social and economic issues. The Community Infrastructure Planning (CIP) project was piloted in four communities: Kowanyama, Woorabinda, Hammond Island and Saibai Island. The CIPs were unique in their attempt to use community derived priorities to drive a 'whole of government' response. The Community Settlement Planning (CSP) project was based on the Centre for Appropriate Technology model described above. It focused on seven discrete Indigenous settlements in Queensland without local government status: Marmanya, Old Doomadgee, Bentinck Island, Mossman Gorge, Jumbun, China Camp and Kowrowa/Koad/Mantaka.

TABLE 4: TYPES OF COMMUNITY BASED PLANNING

	Peripheral, to the decisions and actions of the community	**Directional**, relevant, linked to the directions and actions of the community
Centralised, involving only a small section of the community, usually elites and leaders	RITUALISTIC (going through the motions; 'top down' with token consultation only)	AUTOCRATIC (decisions made by an individual, elected council or interest group)
Participatory, involving the whole community (Council, elders, women, youth, etc)	PLACATORY ('wish list'; not linked to action, implementation and decision making)	DEVELOPMENTAL (non-manipulative participatory process involving whole community, linked to community action and decisions) (after Boothroyd 1986, 18-20)

RESOURCE AND LAND MANAGEMENT PLANS

The practice of resource and land management planning has largely developed outside of Indigenous LGA areas, often as a means to protect and negotiate Indigenous rights and interests. Native title and cultural heritage legislation has permitted Indigenous interest groups to negotiate a much higher degree of involvement in environmental decision making on non-Indigenous lands. Peak Indigenous organisations are increasingly participating in, or initiating, resource and land use management planning as a means to manage development pressures, especially from mining, tourism, fishing, pastoralism and conservation projects. A number of Commonwealth Government initiatives, including the Natural Heritage Trust, are increasingly focusing attention on Indigenous land management plans. The Indigenous Land Corporation is taking a lead role in land use planning for Indigenous land, focusing primarily on property plans for purchased pastoral holdings.

There are fewer examples of resource and land management plans for Indigenous LGA areas. The infrastructure and community based plans described above tend to focus on the developed community township area. Some land management plans have been prepared in association with ranger programs or pastoral enterprises. Several outstation plans have been completed which have included aspects of land management planning. Social impact assessment plans have been prepared in connection with development proposals including mining and tourism. Most of these plans have been prepared in response to a specific issue, development proposal, or government funding program. Conversely to infrastructure and community based plans, the existing resource and land management plans tend to exclude the community township.

There is a need for more coordination between land use and land management plans for the entire Indigenous LGA holding, similar to a mainstream shire planning scheme. Kilah (1979) and Coutts (1979) were probably the first planners to consider this, in the context of Aurukun and Mornington Shires just after they were formed. They separately proposed a regulated land use system based on traditional land authority structures. Kilah recommended a system of development control utilising

covenants placed over leases, with an Elders Council given overriding powers of veto. Coutts recommended two separate zones: a community zone encompassing the existing township with a development control plan; and a tribal zone covering the balance of the shire divided according to traditional estates.

Yarrabah is currently preparing a plan which examines future land use of the entire DOGIT area in the context of physical and environmental constraints and community and native title claimant aspirations. The non-statutory plan supports expansion of the Yarrabah settlement beyond the township at Missionary Bay and may assist in the development of a native title agreement between Council and traditional owners. (C&B Group & Moran 2000, 27)

DISCRETE SETTLEMENTS IN NON-INDIGENOUS LOCAL GOVERNMENT AREAS

There are a few examples in Queensland where Indigenous settlements on communal title land located in non-Indigenous LGAs have followed statutory planning processes. These settlements are managed by Indigenous Corporations and carry varying responsibilities for service delivery including housing, infrastructure, operation of CDEP, etc. They are nonetheless subject to the Planning Scheme and local laws of the mainstream LGA in which they are located. These communities provide the only examples of Indigenous statutory planning in Queensland.

Old Mapoon has recently followed the planning scheme process of the *Integrated Planning Act 1997 (Qld)* in partnership with Cook Shire, resulting in the Mapoon Local Area Plan (C&B Group 2000). This was based on an earlier community based settlement plan which was facilitated by the Centre for Appropriate Technology (1995). Although initiated as part of Cook Shire Planning Scheme, Mapoon was subsequently awarded local government status under the Community Services legislation prior to its completion. The Mapoon Aboriginal Council is currently considering whether to adopt the Local Area Plan as a by-law under the Community Services legislation.

Following in the footsteps of Old Mapoon, Cook Shire Council and ATSIC are considering the preparation of local area plan for Port Stewart. The local area plan would form part of the IPA Planning Scheme currently under preparation by Cook Shire. Similar to Mapoon, it would be based on an earlier community based plan which was also facilitated by the Centre for Appropriate Technology (1997).

Rather than preparing a separate local area plan, Mona Mona has lodged a development application to Mareeba Shire for a 'material change of use'. Mona Mona will be included in the Special Development Zone of the Mareeba Shire Planning Scheme with a separate table of development to guide future land use. The Mona Mona plan has utilised the performance based approach of the Integrated Planning Act (IPA) to develop a planning document which is both accessible to the community yet reflects the various conditions imposed on land use by the Wet Tropics Management Authority, Environment Protection Agency and Mareeba Shire Council. Importantly, the plan devolves many land-use decisions back to the community following an initial 'one-off' agreement by the Shire for those proposed land uses. This approach has challenged the normal procedural approaches inherent to the IPA.

SUMMARY

Planning in Indigenous LGAs is a relatively new phenomenon. Based on the sample of planning documents that could be located, most were prepared in the 1990s and especially in the years since 1995. This suggests a recent intensification in the amount of planning undertaken in Indigenous LGAs.

There is so much diversity between the different types of plans produced that it is difficult to make comparisons between communities and the merits of different planning mechanisms. There is no practice of evaluating the plans (say five years on) in order to measure their success, or to make amendments.

The high level of economic dependence on the State and the lack of fiscal autonomy is clearly evident in the style and content of planning documents. Most have been prepared as a means to secure and direct government funding, primarily for capital works.

None of the plans have established effective organisations and administrative procedures for implementation and management, other than funding applications based on the recommendations made by the plan. They have no mechanisms, either formal or informal, to accept, assess and decide applications for development, or to deal with appeals, enforcement and amendments.

Many of the current plans have been at the initiative by Government in the interest of providing infrastructure and improving service delivery.

A high proportion of the current plans are 'community based', the scope of which exceeds spatial matters of land use and development. Although they purport to be holistic, they often focus on a limited number of issues. Although the extent of community participation generally exceeds what would normally be undertaken in mainstream LGAs, there is great variation in the participatory methods utilised.

Resource and land management plans are not common, but where they exist they tend to be restricted to certain areas and are limited to a particular development issue or economic proposal. There is need for land use and management plans which comprehensively cover the entire Indigenous LGA.

There is not one Indigenous LGA which has adopted a statutory planning scheme. There are, however, a number of smaller discrete settlements located with mainstream LGAs, which have followed statutory planning processes.

Opportunities for statutory planning

THE NEED TO REGULATE LAND USE

Due the combined operation of the transfer of land under Indigenous Land legislation and the recognition of native title rights, Indigenous Councils are increasingly seeing the emergence of separate landowners within their LGAs. The State Government is also currently exploring the feasibility of introducing a home ownership scheme on community title land. As land ownership and rights become more diverse on Indigenous LGAs, Indigenous Councils will be called to take a more regulatory role. They will also be called to make decisions in an open and accountable manner.

Indigenous LGAs have in place a wide range of informal planning mechanisms. None of these planning mechanisms have been prepared according to a statutory framework, and adherence to a town plan varies widely from Council to Council. They have an inherent weakness in that they offer no specific mechanisms for implementation and management, other than through funding applications based on the recommendations made by the plan. Given the high turnover of Council staff in remote communities, new staff are

often unaware of the existence of these non-statutory plans. There is currently no guarantee that external Government service and utility providers will conform with a non-statutory plan, regardless whether it has been prepared with due consultation and is fully representative of a consensus community view. This can apply also to opportunistic community groups or elected leaders.

In the course of a recent study (C&B Group & Moran 2000, 36), stakeholders including Government agencies, Community Councils, community residents and traditional owners, highlighted their concerns that plans are not properly implemented. Interestingly, a similarity can be drawn here with recent policy shifts in international development practice, from participatory planning to more decentralised approaches to governance and management (United Nations Development Programme 1997). In Uganda, aid practitioners (Porter & Onyach-Olaa 1999) have identified the need for increased community participation in post planning implementation.

A statutory planning framework with its system of development controls and approvals could sensibly be used to extend community control from planning into implementation and management. A proper system for management of a planning scheme should include processes for controlling development, assessing and deciding on applications, referral to State Government agencies, dealing with appeals and enforcement, and evaluating and amending the original plan. The lengthy definitions, zoning tables, subdivision controls and procedure which typify shire planning schemes would be out of place in an Indigenous setting, but a streamlined system could be developed. Other special implementation measures would be required to specifically suit Indigenous settings, including negotiation with external funding agencies, coordination at a regional level, and dealings with native title.

It can be argued that informality, flexibility, contingency and a lack of regulation are all integral to the Indigenous domain. It can be argued that the absence of a statutory planning scheme may enable communities to be more responsive to funding opportunities and changing community dynamics. It can also be argued that it is not culturally appropriate for an Indigenous LGA to be exerting development controls over native title holders. In practice, however, such 'informality' has resulted in development decisions which are inconsistent with earlier planning work, thereby frustrating the achievement of desired community goals. Private developers and contractors, including Government and Indigenous groups, have manipulated this 'informality' and effectively undermined community control of development. Protected areas and sacred sites have been damaged. Sloppy definitions of responsibility for land use have also caused tension and conflict between Councils and representative native title bodies and other land holding groups.

Shortcoming of the current *ad hoc* approach to planning is especially evident in the propensity for construction contractors and utility providers to compromise standards. I have personally seen a telephone line laid in an arc to avoid tree roots, power poles placed in a zigzag alignment down a street, houses built in the middle of allotment boundaries, excavation of a sand borrow pit from a beach foreshore, and last but not least, the lid of concrete septic tank laid on the ground but with no tank underneath.

If Indigenous LGAs are going to improve this situation, they will require discretionary statutory powers. There are currently two options available to Indigenous LGAs to develop a statutory planning scheme, both of which will be examined in turn: an IPA planning scheme under the *Integrated Planning Act 1997 (Qld)*; and by-laws under the Community Services legislation.

IPA PLANNING SCHEME UNDER THE INTEGRATED PLANNING ACT (IPA)

The IPA has heralded a new planning regime in Queensland. It is based on the combined principles of ecologically sustainable development and expediting the economic development of Queensland (Yearbury 1998). The IPA also establishes the Integrated Development Assessment System (IDAS) which integrates Government permits and approval systems for development.

State Government planning legislation has previously excluded Indigenous LGAs, but recent amendments to the IPA enabled Community Councils to prepare statutory planning schemes for the first time. Whilst under the IPA there is provision for the Minister to direct a local government to prepare a planning scheme, this has not happened in the past, and it is not likely to happen in the future. Rather, the IPA is an option which Indigenous local governments might choose. (C&B Group & Moran 2000, 37-38)

Since their formation in 1978, Mornington and Aurukun Shires have been subject to State Government planning legislation, including the IPA and the previous and now repealed *Local Government Planning and Environment Act 1990 (Qld)*. Neither Council has taken up the opportunity to prepare a statutory plan which is perhaps related to a lack of resources.

Schedule 8 of the IPA sets out development that is assessable across the State. The Integrated Development Assessment System (IDAS) of IPA must be followed by Indigenous LGAs, regardless whether they produce an IPA planning scheme or not (Queensland Department of Communication and Information Local Government and Planning 1999a). The IDAS was specifically designed for mainstream LGAs, to streamline the previously arduous process of the assessment and approval of mostly private development applications. However, its extension to Indigenous LGAs is unnecessarily confusing, where Council have only a small volume of development to process. Since the main developer on Indigenous LGAs is the Council itself (see Table 2), the applicant and assessment managers are also usually one and the same. Most building work in Indigenous LGAs is carried out by (or on behalf) the Council or the State Government, which is classified as 'self assessable', and no application through IDAS is required.

Some types of development must, however, go through the IDAS if classified as 'assessable'. This includes environmentally relevant activities under the *Environment Protection Act 1994 (Qld)* and vegetation clearing under the *Vegetation Management Act 1999 (Qld)*. Without an IPA planning scheme in place, or a devolved authority, an Indigenous LGA may find itself left outside of the development approval process. For example, if an application for development is made by a private landholder to drain a coastal swamp and clear a stand of melaleuca trees, decisions may be made by the Environment Protection Agency and the Department of Natural Resources respectively. The list of assessable development under Schedule 8 is expected to increase in the future which will undoubtedly be of increasing concern to Indigenous LGAs. Under the

IPA, this can only be overcome if the Indigenous LGA prepares their own IPA planning scheme.

It is questionable whether the statutory framework provided by the IPA is the most appropriate for Indigenous LGAs. There are a number of apparent disadvantages. Much of the language and concepts are largely only understood within the domains of planning professionals. Often different or particular meanings are assigned to everyday words, causing communication barriers between planning professionals and the community. Few, if any, planning professionals are employed by Community Councils or peak Indigenous organisations. Once a Council 'locks into' an IPA planning scheme, there are statutory requirements and timeframes which must be met. It should also not be assumed that Indigenous Councils have the required financial resources, staff and expertise to prepare and administer an IPA planning scheme (C&B Group & Moran 2000, 41).

Potentially, there may also be some advantages for an Indigenous LGA to adopt an IPA planning scheme. The IPA provides increased autonomy to local government (under the previous planning legislation, DLGP had greater involvement with development applications through the rezoning process). This autonomy is consistent with the aspirations of Indigenous LGAs. The IPA binds the State (but not the Commonwealth) which can lead to improved local government control. Although the IPA sets out various outcomes and measures, it is not prescriptive in the form of a planning scheme (Queensland Department of Communication and Information Local Government and Planning 1999b, 8). It is possible that an uncomplicated, locally appropriate IPA planning scheme could be developed which only seeks to regulate a handful of developments. It could otherwise be designed to minimise the management resourcing requirements on Council. It is, however, difficult to comment on how successful this would be, because adaptation of the IPA to an Indigenous setting has not yet been attempted.

What is clear is that the IPA was developed with little if any consultation with Indigenous leaders, simply because it was not designed to serve Indigenous LGAs. Table 3 above has set out the many differences between Indigenous and non-Indigenous local government. It cannot be assumed that a system developed to serve non-Indigenous local government will work in a different cultural, economic and development context. Rather than trying to 'bend' the IPA to suit, it may prove necessary for a more appropriate (or modified) statutory framework to be made available, one specifically designed to meet the needs of Indigenous LGAs.

BY-LAWS UNDER THE COMMUNITY SERVICES LEGISLATION

The *Community Services (Aborigines) Act 1984 (Qld)* states in Section 25.(2) that "a Council can make by-laws for the promoting, maintaining, regulating and controlling the planning, development and embellishment of its council area". This provision has some parallels with the past by-law system of town planning administration under the repealed *Local Government Act 1936 (Qld)* and the role played by the Magistrates Court in determining town planning breaches. However, the Community Services legislation does not set out a detailed process under which a planning by-law is to operate (C&B Group & Moran 2000, 16).

Indigenous LGAs have therefore had, for some time, a limited option under the Community Services legislation to impose a suite of by-laws to control development. Despite this, only a few Councils have gazetted by-laws and none of these fully address development and land use planning. Councils also tend to ignore by-laws unless they need to use them.

One option currently available is to use a generic model by-law to adopt a separate planning scheme in its entirety. Development and land use controls could then be contained within the planning scheme, rather than a suite of separate by-laws. The by-law would give effect to the plan provisions, without requiring the establishment of a complex statutory development assessment system within Council. The planning scheme could vary from community to community according to the local context and need. This approach is currently under consideration by Mapoon Community Council (C&B Group & Moran 2000, 42).

A community by-law has a statutory basis but it would not have the power to bind Government to the extent of a statutory planning framework similar to IPA. There would be none of the normal statutory provisions for appeals, enforcement and amendments. The community would still need to deal with the IPA through the IDAS. Although this option would be simple to implement, it falls considerably short of the normal provisions of a statutory planning scheme. Before considering more appropriate alternatives, there are two opportunities for statutory planning to be examined: integrated regional planning and native title agreements.

INTEGRATED REGIONAL PLANNING

Beyond the needs of regulating land use, a statutory planning framework could also ensure some measure of compatibility between the diverse range of planning documents and instruments that currently exist between different Indigenous LGAs. This would promote better regional coordination and sharing of resources between different Indigenous LGAs, and between Indigenous and non-Indigenous LGAs. It could also promote increased Indigenous participation in regional planning processes.

This is not however to suggest that a statutory planning framework be used to promulgate a model or standard approach for planning. The demands of local diversity and ownership will require each plan to be unique and intensely local. Notwithstanding this, output based guidelines could be developed to permit some measure of compatibility, which is similar approach to that followed by the IPA.

There are several existing regional planning mechanisms operating in Queensland. ATSIC Regional Councils are required under Section 94(1) of the *Aboriginal and Torres Strait Islander Act 1989 (Cth)* to prepare, revise and assist in the implementation of regional plans directed at "improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the region". Although ATSIC regional plans have a statutory basis, they do not possess the statutory force of a land use plan of the kind prepared under State legislation. Their chief role is to advise the allocation of the ATSIC Council budget. Despite their dominant role in Indigenous affairs, ATSIC and the Commonwealth generally play only a limited role in land use planning, the exception being some bioregional planning processes.

The Queensland Government also has legislative provisions for regional planning. Under the IPA the Minister can appoint Regional Planning Advisory Committees (RPACs) for the purposes of preparing a Regional Plan. Recommendations made by RPAC regional plans, together with other State interests,

must be taken into consideration in the drafting of LGA planning schemes. Whilst the IPA promotes 'integration' between local, regional and State interests (and to a lesser extent the Commonwealth), it is less effective in promoting integration between Indigenous and non-Indigenous LGAs. The RPAC boundaries which have so far been established in Queensland generally do not align with ATSIC regional council boundaries. This is an unfortunate mismatch, because of the missed opportunity to integrate planning of Indigenous and non-Indigenous LGAs at a regional level. Nonetheless, considerable efforts were made to incorporate Indigenous interests in the Gulf Regional Development Plan which has been recently fully endorsed by Government (Gulf Regional Planning Advisory Committee 2000).

The strength of a regionally integrated approach (which largely occurred outside of the IPA) has been demonstrated on Cape York Peninsula, where the boundaries of the ATSIC Cooktown Region align closely with the boundaries of a number of Government sponsored planning initiatives, including the Cape York Peninsula Land Use Study (CYPLUS), Cape York Natural Heritage Trust (CYNHT) Plan and the Cape York Peninsula to the Year 2010 (CYP 2010). These planning processes contributed to agreement between Indigenous, non-Indigenous and environmental interest groups, including the Cape York Heads of Agreement in 1996, and the more recent Cape York Partnership Plan. A shortcoming is a lack of integration with the planning mechanisms of Indigenous LGAs. Nonetheless, the joint planning and agreement frameworks that have emerged on Cape York provide important lessons from which a statutory planning framework might learn.

NATIVE TITLE AND INDIGENOUS LAND USE AGREEMENTS

The development of native title rights in Australia has been preoccupied with negotiations between native title groups and non-Indigenous or Government interests. However, similar co-existing rights also occur between an Indigenous LGA and native title holders. It is becoming increasingly important for Indigenous LGAs to have future act processes in place with native title holders for future dealings over the LGA area, subject to final determinations of native title. There are important implications and opportunities here for the design of a statutory planning framework for Indigenous LGAs.

Given the uncertainty inherent to native title rights, the negotiation of agreements has emerged as the best way to provide some surety. The *Native Title Act 1996 (Cth)* makes provision for Indigenous Land Use Agreements (ILUAs), and the National Native Title Tribunal is actively promoting ILUAs as an alternative to litigation (Neate 1999). The negotiation of agreements is also promoted by the Queensland Government (Queensland Department of the Premier and Cabinet 1998; Queensland Department of the Premier and Cabinet 2000b).

Much of the work to date on developing native title agreements has occurred in non-Indigenous LGAs (Cosgrove & Kliger 1997; Australian Local Government Association 1998; LPM Creative Rural Solutions 2000). Hopevale is one of the few examples where an agreement has been reached over an Indigenous LGAs. Following on from the landmark native title determination in 1997 over the Hopevale DOGIT, the Hopevale Community Council agreed to recognise and accommodate native title holders' traditional interests, rights and customs through a deed of agreement. In addition, the claimants put together a 'compact of free association' which made particular provision for the protection of the rights of historical people and acknowledged that the Hopevale Aboriginal Council had statutory obligations to carry out its responsibilities as a local government authority (Queensland Department of the Premier and Cabinet 2000b, 12).

There is an unrealised opportunity to utilise a statutory planning process as a means to reconcile land use and native title rights, including competing historical and traditional interests. Native title mediation inevitably raise political issues within a community, and often exacerbates social tensions. These negative ramifications could be mitigated by raising the agenda to a higher level of mutual community interest. The process of developing a planning scheme could encourage those involved to move beyond land ownership and rights of small estates (inherently private and political interests) to the land use, protection and development over the entire community land holding (inherently more in the greater community interest).

Most of the native title agreements that have been developed to date have emerged in the form of simple legalised Memorandum of Understanding (MOU) style documents. An alternative approach for consideration would be for a statutory plan to in itself form the basis of an agreement. Because a planning scheme can be presented in a graphical form, it is considerably more accessible than a legal document The real pro-active nature of settlement and land use planning permits negotiated outcomes to be documented graphically, on large aerial photographs rolled out before the participants. In this manner, a statutory plan could draw on the existing participatory tools used in community based planning. Through utilising participatory planning methods to meld a statutory planning framework with a native title agreement, a plan could be negotiated which would present some certainty and security for future development. This would be similar to an ILUA, but a statutory plan would bind all parties, not just the parties to the agreement. It could also be used to establish a system for ongoing implementation and management, which ILUAs currently do not do.

Conclusion

The development context on Indigenous LGAs is unique in comparison to mainstream LGAs, especially with respect to their tenure, social and economic conditions. It is important to acknowledge this difference before considering appropriate statutory planning mechanisms.

Until recently, Indigenous LGAs have played the dual role of both local government and land trustee. Through the workings of native title determination and Queensland Indigenous Land Act legislation, 'private' land holding groups are emerging within their jurisdiction. Indigenous LGAs are increasingly being called to take a greater role in regulating land use, and to be more accountable for their decisions. Looking to the future, Indigenous LGAs will increasingly need statutory powers to accept, pass, permit and regulate development applications in a transparent and accountable manner.

Over the past ten years, a diverse variety of non-statutory plans have been prepared in Indigenous settlements in Queensland. Despite this level of planning, development has largely proceeded in a *ad hoc* manner with

frequent problems in construction standards and maintaining records. None of the existing plans have a statutory basis, and few, if any, have established effective organisations and administrative structures for implementation and management. Although many plans have been prepared with community consultation, the lack of any management structure effectively undermines community control of development.

There are two options currently available to prepare a statutory plan: an uncomplicated IPA planning scheme, or the use of a generic by-law under the Community Services legislation to enact a planning scheme. It is difficult to comment of the feasibility of each, since neither option has yet been attempted. It is however clear, that existing legislation was not intended to be used for this purpose. Given the unique context of Indigenous LGAs, it seems more sensible to make a fresh start, and to develop an appropriate statutory planning framework from the ground up. This should take into consideration the unique context of Indigenous LGAs and minimise the procedures and costs involved in implementation and management. This might lead to amendments to the Community Services legislation, or to the IPA, or both.

Whatever the final form, a statutory planning framework should also promote coordination and integration at a regional level. There are increasing calls for greater regional autonomy with greater coordination between different LGAs and regional Indigenous organisations. There are also increasing calls for improved efficiency and coordination of service delivery by State Government agencies. A state and regional system of statutory planning for Indigenous LGAs could potentially greatly improve coordination between all the different levels of Indigenous and mainstream government.

Together with most LGAs across Australia, Indigenous LGAs are increasingly dealing with native title issues. The negotiation of agreements has emerged as the best means to provide some surety, especially Indigenous Land Use Agreements. Rather than taking the legalistic path of a negotiated MOU type agreement, there is an unrealised opportunity to meld a participatory planning process into a statutory planning framework, whereby the planning scheme could itself become the central binding agreement. This could have important implications on the design of a statutory planning framework.

Significantly, a statutory planning framework could also oblige governments to devolve additional resources and discretionary power to Indigenous LGAs. The existing non-statutory planning mechanisms prepared by and on the behalf of Indigenous LGAs reflect a high level of dependency on the State and a lack of fiscal autonomy. Statutory planning could provide an opportunity to shift the relationship between Government and Indigenous LGAs, by reducing dependency and devolving more local government authority.

This paper has presented some background material and preliminary discussion, but further research and development is required. A more appropriate statutory planning system would be best developed using an action research approach, through actual 'hands on' development of planning schemes with a number of Indigenous LGAs. Recommendations could then be made for amendments to legislation as appropriate.

Despite the opportunities discussed, a statutory planning mechanism must fit the capacity of Indigenous LGAs, which are already overloaded and under resourced. It would be unwise to impose an inappropriate formal compliance requirement, in the form of a statutory requirement to prepare a plan, without identifying the conditions of governance which first must be in place. A statutory framework must also be accompanied with the resources and devolution of discretionary power necessary to manage and implement it. There is a genuine risk that stakeholders will either underestimate the complexity involved or inadvertently increase State controls and external accountability. Indigenous LGAs involved in the design of a statutory planning framework would need to be vigilant to ensure that this does not occur. ■

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ACRONYMS

ATSIC	Aboriginal and Torres Strait Islander Commission
DOGIT	Deed of Grant in Trust
IDAS	Integrated Development Assessment System (under IPA)
ILUA	Indigenous Land Use Agreement
IPA	*Integrated Planning Act 1997 (Qld)*
LGA	Local Government Authority
MOU	Memorandum of Understanding

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