

Chapter 6.

Aboriginal Traditional Owner aspirations for national park homelands and the *Cape York Peninsula Heritage Act 2007 (Qld)*

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***Abstract.** I investigate the national park management reforms within the Cape York Peninsula Heritage Act 2007 (Qld) and the likelihood that management arrangements negotiated under the Act can meet the aspirations of Traditional Owners. The Uw Oygangand people based in Kowanyama aspire to Aboriginal land tenure and community-based management of the Mitchell-Alice Rivers National Park. They have been recognised as the Traditional Owners of the National Park after protracted proceedings under the Aboriginal Land Act 1991 (Qld). The Cape York Peninsula Heritage Act certainly progresses legislative requirements to involve Traditional Owners in national park management, and thus has the potential to meet many of the Uw Oygangand's aspirations. However, there is insufficient evidence at this stage to foresee how the Uw Oygangand families will proceed when confronted with still more negotiations over land which they have always known as their own. Much will depend on the policy currently in development, particularly with regards to power sharing and conflict resolution, the resources available to implement the Act and the capacity of the community to engage in potentially demanding and time-consuming negotiations.*



Figure 6.1: Traditional owners, Kowanyama Rangers and Queensland Parks and Wildlife Service rangers working together in the Mitchell-Alice Rivers National Park in 2007.
(L to R): Lana Little and Mick Cockburn (QPWS), Stanley Budby, Phillip Mango, Allan Flower, Victor Highbury, Anzac Frank, Arthur Luke, Colin Lawrence and Paddy Yam, Arvid Hogstrom and Stephen Dunbar (Kowanyama).

5.1 Introduction

On 7 June 2007 a new Bill was introduced to Queensland Parliament that was greeted with enthusiasm and received bipartisan support from both sides of the House. The Cape York Peninsula Heritage Bill was subsequently passed into legislation on 17 October 2007. Until this time, Queensland did not have a legal framework which supported Aboriginal peoples' aspirations for their homelands within the protected area estate. The *Cape York Peninsula Heritage Act 2007 (Qld)* (CYPHA) amended some other Queensland Acts with the intent of providing 'cooperative and ecologically sustainable management' (CYPHA 2007:7) of land in the region. CYPHA amended the *Aboriginal Land Act 1991(Qld)* (ALA) and *Nature Conservation Act 1992 (Qld)* (NCA) to allow Traditional Owners to take conditional ownership of national parks and to allow for joint or co-management arrangements for national park homelands within the region.

The Uw Oykangand people, based in Kowanyama in western Cape York Peninsula (Figure 6.2), are the Traditional Owners of the nearby Mitchell-Alice Rivers National Park. The families have worked towards regaining ownership and management of their national park homeland for at least twenty years. During this time legislative reform had been introduced that purported to facilitate their aspirations. While some benefits from past reform efforts have transpired, their aspirations had not been met fully. The Traditional Owners are now concerned that they will be drawn into another process where they will be expected to 'jump through hoops' yet again with minimal outcomes for their families. The aim of this paper is to investigate the national park reforms within the CYPHA and the possibility that ownership and management arrangements negotiated under the Act can meet the aspirations of Traditional Owners.

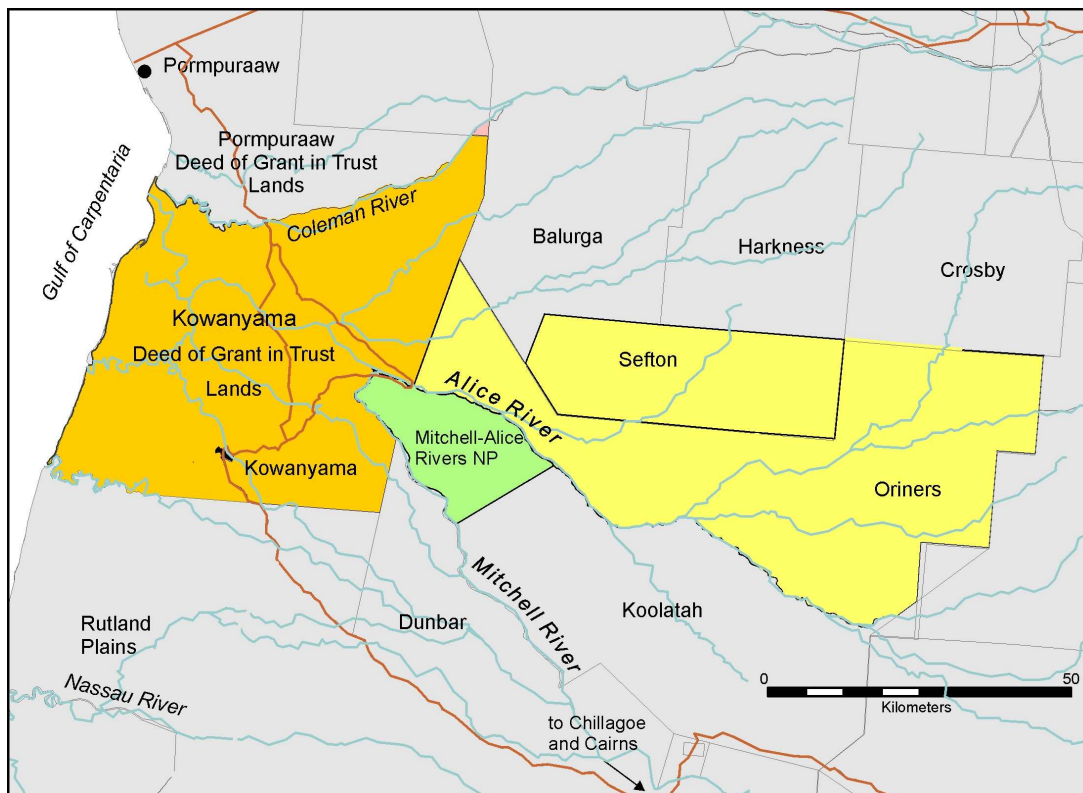


Figure 6.2: Location of Kowanyama lands and the Mitchell-Alice Rivers National Park

5.2 Research Methodology

Information presented in this chapter was obtained over a two year period as part of a larger research project including fourteen months' fieldwork with the Kowanyama community. During this time, information pertaining to the management of the Mitchell-Alice Rivers National Park and surrounding homeland area was collected using a variety of qualitative methods and analysed thematically. For example, the Traditional Owners' aspirations for their national park homeland were explored in workshops conducted in November 2005 and September 2007. These workshops facilitated the clarification and compilation of those aspirations expressed consistently by the Traditional Owners for many years (Larsen 2007). Information regarding the Traditional Owners' aspirations was also obtained by:

- Analysis of documents in the Kowanyama Aboriginal Land and Natural Resource Management Office (KALNRMO) library;
- Attending meetings between Traditional Owners and Queensland Parks and Wildlife Service (QPWS) staff while negotiating a 'Memorandum of Understanding';
- Observing interactions between Traditional Owners and QPWS staff while carrying out management activities in the National Park;
- Listening to Elders' explanations during informal conversations.

Information pertaining to CYPHA was obtained from the legislation and explanatory notes, the Queensland Parliamentary Hansard, senior staff of the Queensland Parks and Wildlife Service (QPWS), leaders and representatives of Regional Aboriginal Organisations, as well as news media and academic and law journals.

5.3 Kowanyama: the people and their country

The community of Kowanyama in the 2006 Census had a population of 1112 of whom at least ninety percent are Aboriginal (ABS 2007). The community was created when the 'Mitchell River Reserve for Aborigines' was gazetted in 1903, closely followed by the establishment of an Anglican mission at a site known as Trubanamen in 1905. The mission site was relocated to the present location of Kowanyama on the Magnificent Creek in the period from 1910 to 1915 primarily because of a problem of saline intrusion into the drinking water at Trubanamen. During 'Mission time' (the period from 1905 to 1967), the population of Kowanyama came to include three major linguistic groups from the surrounding region: Yir Yoront, Kokoberra and Kunjen. In 1967, the Queensland government's Department of Aboriginal and Islander Affairs (DAIA) assumed control of the Mitchell River Reserve from the Anglican Church. This was the start of the period which became known as 'Department time'. Department time persisted for twenty years until Kowanyama lands were handed over in trust to elected Councillors from the Kowanyama community in 1987. The Mitchell River Reserve then became the Kowanyama Deed of Grant in Trust lands (DOGIT).

Since the handover of DOGIT title in 1987, Kowanyama's leaders have strongly asserted the right and responsibility for the statutory or traditional land interests of all the people of Kowanyama. The community's efforts for self-governance and community-based natural resource management of Kowanyama Aboriginal lands led to the establishment of a community ranger service in May 1988 and KALNRMO in 1990. This was one of the first such agencies in Australia operated by an Aboriginal community council and both the land office and the ranger service have remained in continuous operation since. In 1991 and 1996 respectively, the Kowanyama Aboriginal Council purchased the neighbouring pastoral lease properties of 'Oriners' and 'Sefton'.

Today, the land office co-ordinates land management and ranger activities in these pastoral properties and the DOGIT lands.

The area that became the Mitchell-Alice Rivers National Park was identified by Peter Stanton in a report entitled 'National Parks for Cape York Peninsula'. Stanton did not visit the area in person, but examined aerial photographs. He stated (1976:54):

It was designed to afford a cross-section of the woodland and grassland vegetation of the extensive alluvial plains of the lower rainfall regions of the Peninsula. It was chosen with the intention that the monotony of such vegetation would be broken by the scenic relief provided by the presence of permanent water and gallery forests of large streams.



Figure 6.3: Elder Alma Wason at Errk Iygow (Shelfo) on the Mitchell River National Park boundary

At the time, the area was part of 'Koolatah Station', a leasehold pastoral property running beef cattle neighbouring Kowanyama lands to the east (Figure 6.2). The owner of the lease voluntarily gave up this section of his property without financial compensation. Neither the property leaseholder nor QPWS staff informed the Kowanyama community about the impending gazettal of the park or sought to include them in the process.

Prior to European settlement of Cape York Peninsula, the Uw Oygangand traditionally occupied land to the east (inland) of the Kowanyama DOGIT. During Mission time, many Uw Oygangand families came to work on the cattle properties (including Koolatah) which occupied their traditional country. Some of these families only moved to Kowanyama when either their children were required to attend the mission school in the 1950s, or later in the 1960s and 70s when equal wage legislation was introduced throughout Australia, resulting in many Aboriginal workers losing employment on

pastoral stations (Strang 1997; Monaghan 2005; Moran 2006). By staying on, or close to their country, the Uw Oygangand were able to maintain their strong connection with their country despite European settlement in the area.

When the area (named 'National Park 5' by the government at the time) was gazetted as a national park on 29 October 1977 it was perceived by the Traditional Owners as yet another act of invasion and dispossession. As with the gazettal of other national parks in Cape York Peninsula in the 1970s, it was not the practice of the Bjelke-Petersen government to include Aboriginal peoples in decisions regarding the ownership and management of traditional land. Rather, the government actively and consistently denied their rights to land and natural resources.

Colin Lawrence (1992 cited by Strang 1997:64), a community leader and a Uw Oygangand Elder whose family has country in the national park area, reflected on the gazettal of the national park:

You know, they never come and ask the Kunjen people, 'Oh well, this place gonna become national park'. They never come and ask the people: they just went on and do it! And we got a great big shock!



Figure 6.4: George Lawrence (foreground) and Colin Lawrence at Archampiythan (Emu Lagoon), Mitchell-Alice Rivers National Park in 2006

Following the installation of an Aboriginal Council elected by the Kowanyama community in 1987, the Council, and those that followed, began taking an active and radical role in the management of Aboriginal lands and waters with the establishment of

a firm self-governance ethic. Today, the Traditional Owners and the Kowanyama community actively demonstrate their ownership and responsibility for the national park homeland. Activities such as camping on-park, surveillance patrols by the Kowanyama Rangers, and Elders speaking out at regional forums about self-governance of Aboriginal lands have been the principal means by which the community has confirmed their rights and responsibilities for the area. More recently, the Kowanyama Rangers and Traditional Owners have undertaken an even broader range of natural and cultural resource management tasks in the area. Since the early 1990s, much of this work was planned and implemented without QPWS staff and resources. Prior to 2008, no payment was made for the conservation work undertaken by the community in the national park.

Kowanyama Aboriginal land holdings today occupy a total area of approximately 5470 square kilometres held in trust by the Kowanyama Aboriginal Shire Council. This area includes the DOGIT area (2520 km²) and the community-owned pastoral leases of 'Oriners' (2180 km²) and 'Sefton' (770 km²). The Kowanyama People's Native Title claim area covers a much larger area of about 22 303 square kilometres. Neighbouring the national park and within the Native Title claim area are the pastoral leases of 'Dunbar' and 'Koolatah'. The Traditional Owners have negotiated with the leaseholder and registered an Indigenous Land Use Agreement (ILUA) under the Australian Government's *Native Title Act 1993* (NTA) over the 'Koolatah' lease area. The Mitchell-Alice Rivers National Park is 371 square kilometres, which is small compared to other mainland national parks on the Peninsula and to the rest of Kowanyama residents' land interests and homelands by which it is bounded.

QPWS Rangers who manage Mitchell-Alice Rivers National Park are based in Chillagoe, a small town almost 400 kilometres to the southeast of the Park. The Rangers also manage the Staaten River National Park, the Palmer Goldfield Resources Reserve, and the Chillagoe-Mungana Caves National Park, a total of 5268 square kilometres. Due to the distance of the QPWS Rangers' base to the park, its perceived isolation, very low tourist visitation, seasonal flooding, the generally poor condition of the roads and tracks in the area, and serious limits to resourcing, QPWS Rangers manage the park as a 'wilderness area'. The QPWS Rangers describe the management of the national park as simple and uncomplicated and they only visit the area when they have a pressing need, usually only a few times each year.

In contrast to the QPWS Rangers' perception, the Uw Oygangand do not consider the park to be isolated or remote but their homeland and part of a broader Aboriginal landscape. It doesn't make sense to them for the park to be managed in isolation from the rest of their country by those who live so far away.

5.4 Aspirations

Aspirations are a person's or people' strongly held desires and hopes to achieve something. However, when the Uw Oygangand tell others about their aspirations for their country they are not just talking about what they hope for. They are also asserting their right and their moral entitlement to securing an enduring connection to their Country. In putting forth their aspirations, the families also acknowledge their responsibility and obligation as Traditional Owners to care for their Country and its people.

The Uw Oygangand aspire to community-based management of their traditional land where power and authority to make decisions regarding management are largely devolved to the Traditional Owners. They do not aspire to joint-management regimes (often referred to as co-managed protected areas as in Figure 6.1), which tend to focus on power sharing and the co-operation and interactions between the State and the local

community. The following statement made by Colin Lawrence (cited in ATSIIC & CYLC 1992:29) in 1992 demonstrates this conviction:

We got one National Park there at Mitchell River. It's covered up most of my Kunjen people's country. You expect us not to go in there. I asked the Minister and he told me no but you can't stop me going in there. He said that we should have a bit of a claim in that National Park area. He said 'you can join us side by side' and we said 'what for, we don't need you to manage it, we can do it ourselves, it's our land'.

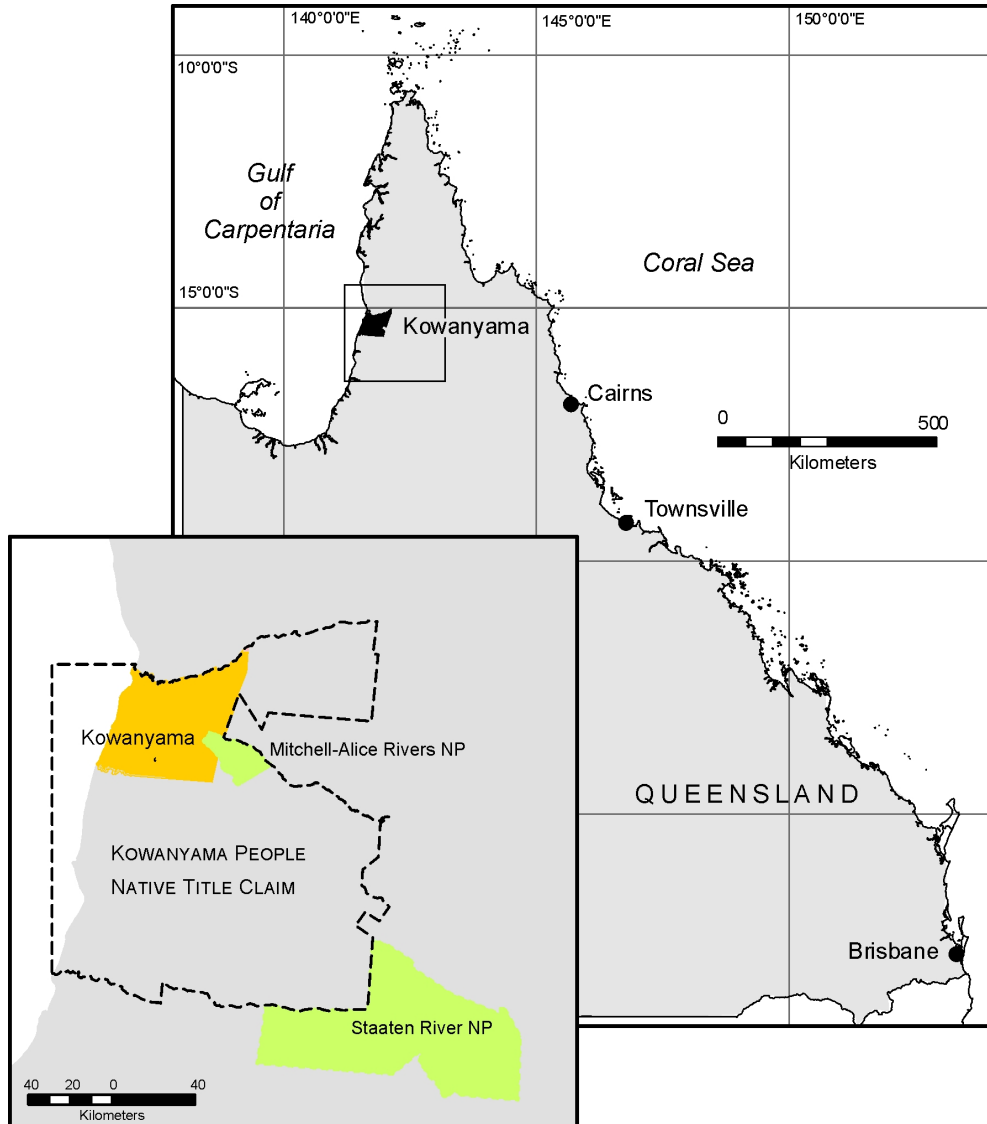


Figure 6.5: Kowanyama Native Title Claim area

True authority is derived from land ownership – statutory as well as traditional – and the Uw Oykangand have long aspired to be recognised in Australian law as the statutory owners of their land. From land ownership stems several other important principles by which the Kowanyama community manages their land. These principles, reflected in the published principles of operation of Kowanyama's Land Office (e.g. KALNRMO 1994, 1999, 2003), are also critical for the successful development and implementation of any legislation concerning Aboriginal land. They include (KALNRMO 2003):

- Self-governance;
- A sense of ownership of the legislation and over the process of implementation;
- The pursuit of community initiatives and priorities;
- Utilisation of indigenous-directed expertise.

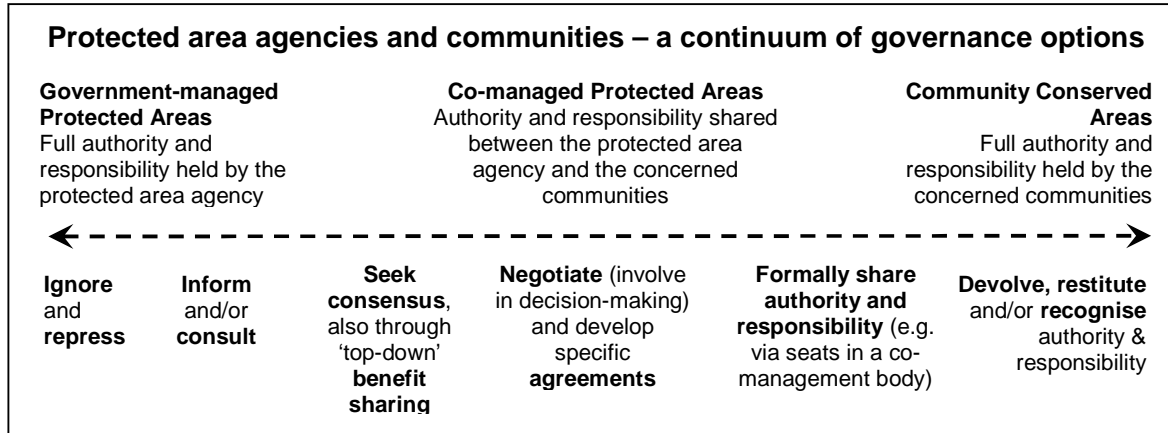


Figure 6.6: Governance options for protected area agencies and communities (Borrini-Feyerabend et al. 2004:30)

The fundamental aspirations of the Traditional Owners for themselves, their community and their land include:

- Statutory ownership;
- Community-based management:
 - full authority and responsibility held by the community;
 - sharing of responsibility and benefits with the wider Kowanyama community;
- Integrated management of the national park with the wider Aboriginal cultural landscape;
- Building community capacity for natural and cultural resource management;
- Seeking support where required, particularly the funding and other management resources necessary for effective management.

These aspirations are also the foundation principles from which the more practical, day-to-day aspirations of the Traditional Owners are derived. For example, the Traditional Owners envisage the responsibility and benefits of community-based management of the national park can be distributed within their Aboriginal community through the following mechanisms:

- The Land Office incorporating the strategic, operational and administrative management of the national park into the current holistic management of other Kowanyama lands (the Aboriginal landscape):
 - Kowanyama Rangers undertaking operational (on-ground) natural & cultural resource management tasks;
 - Land Office managers co-ordinating the administrative and strategic requirements of national park management, including the provision of technical advice and support; planning and mentoring;

- The Kowanyama Cattle Company, as an Aboriginal community-owned company co-ordinating annual cattle mustering activities in the National Park;
- The Kowanyama Aboriginal Shire Council providing technical support and co-ordinating track maintenance;
- The Uw Oykangand would like:
 - Their Elders recognised and paid for their efforts guiding the management of the national park (which they have done voluntarily to date);
 - Their young people employed on projects (e.g. capital works) on the national park;
 - To earn an income from national park visitors and related tourism activities;
 - To develop a homeland on the park so they can pass on knowledge, continue their close spiritual association to the country with their children and monitor the activities of visitors.



Figure 6.7: Elder Paddy Yam guiding Council track maintenance in the Mitchell-Alice Rivers National Park

While the success of Kowanyama's land management activities have been internationally recognised (e.g. Baker et al. 2001; Chernela et al. 2002; Strang 1997) the community understands that there are areas where further capacity-building is required. If Kowanyama identifies that additional capacity is required to manage certain tasks, it is happy to seek assistance and resources externally from organisations such as QPWS and others. This way the community can build its own capacity for land management, gaining expertise and equipment, receiving the socio-economic benefits that result.

Kowanyama and the Traditional Owners seek to negotiate management arrangements for the national park that are far more self-determining than they perceive is happening elsewhere in Australia. The community does not find current Australian examples of joint management attractive. Kowanyama has not taken the 'all or nothing' road either. The community has been proactive in seeking interim arrangements with the State from time to time. The Traditional Owners are only willing to negotiate and enter into interim arrangements if there is a commitment by the other parties to Kowanyama's long-term vision of Aboriginal land tenure and community-based management.

A Memorandum of Understanding (MOU) was signed by the Traditional Owners, the Land Office, the Kowanyama Aboriginal Shire Council and the QPWS on 1 November 2007. As an interim arrangement, the MOU will deliver some of the Traditional Owners' aspirations – those that align with the objectives of QPWS in caring for country. Under the MOU, the Traditional Owners, Kowanyama Rangers and other community members receive a greater role in the operational aspects of park management on a fee-for-service basis and can also benefit from QPWS training. The MOU has the potential to deliver significant benefits to the community while they continue to pursue their goal of Aboriginal land tenure and community-based management.



Figure 6.8: Tim White (QPWS) and Colin Lawrence (Uw Oygangand Elder) with MOU in 2007

5.5 The Cape York Peninsula Heritage Act 2007 (Qld)

The *Cape York Peninsula Heritage Bill 2007* was introduced to Queensland Parliament by then Premier Peter Beattie on 7 June 2007. He described the Bill as ‘one of the most significant land management initiatives in the history of Queensland’ (Hansard 2007a: 1938). Aboriginal leader, Noel Pearson (2007a), said the Bill was the ‘... culmination of decades of conflict between pastoralist, mining, Aboriginal and conservationist interests ...’ and ‘I really do feel land rights is going to be put behind us ... and we can get onto the social agenda of development and welfare reform’ (2007b). Representatives from Cape York Peninsula’s Indigenous organisations provided substantial input into the Bill, as did representatives of the pastoral industry, resources/mining industry and environmental non-governmental organisations. The Bill was passed into law by the Queensland Parliament on 17 October 2007 having received bipartisan support.

The intent of the CYPHA is to provide the Aboriginal peoples of the Peninsula with ‘... greater recognition and autonomy in the ongoing delivery of land management in areas of conservation significance’ (Hansard 2007a:1963). As the name implies, the Act is directly relevant only to the Cape York Peninsula region, where (Bligh 2007):

... at least 45 existing and proposed national parks totalling in excess of 3 million hectares (23% of the Cape York Peninsula area) will be incorporated into the new model allowing for joint management of national park land by Traditional Owners and the State.

The CYPHA has various functions; that of principal interest to the Traditional Owners of the Mitchell-Alice Rivers National Park provides for the grant of ownership of existing national parks. This provision is subject to these conditions:

- Ownership must be granted to an Aboriginal Land Trust made up of Traditional Owners;
- The Land Trust must agree for the area to continue to be managed as a national park in perpetuity but also in a way that is, as far as practicable, consistent with Aboriginal tradition;
- The Land Trust and the State must negotiate an Indigenous Management Agreement (IMA) before the national park is granted. The IMA will include details such as how the land will be managed; the responsibilities of each party involved in the agreement and will confirm public rights of access;
- When the park is granted, it concurrently becomes Aboriginal land under the ALA and a new class of national park under Queensland's *Nature Conservation Act 1992, National Park (Cape York Peninsula Aboriginal Land)*;
- After the dedication of National Park (Cape York Peninsula Aboriginal Land) the Minister must prepare a management plan jointly with the Land Trust which is consistent with any Indigenous Land Use Agreement (ILUA) under the Native Title Act and the IMA for the area.

The CYPHA also inserts a requirement into the *Nature Conservation Act* that requires the Minister to establish a 'Regional Protected Area Management Committee', consisting entirely of Indigenous persons, to advise the Minister about matters such as employment, management plans and provision of resources.

How an Act is interpreted, in terms of the structures, processes and policies necessary for implementation, are as important as the legislation itself. These critical instruments are currently in development; however, the second reading of a Bill can often provide insight into the interpretation of the legislation and the commitment from the government for implementation. At the second reading, then Premier Beattie stated (Hansard 2007a:1963):

The extent of the government's role in the management of national park land will be negotiated for each subregion and be dependent on the capacity of Traditional Owners to undertake day-to-day management. The greater the capacity of the Traditional Owners to manage the day-to-day aspects of the national park, the greater their responsibility will be. Subcontracting arrangements to Traditional Owners will be detailed in the Indigenous management agreement. Where the government undertakes management of the national park land, it will occur in accordance with Aboriginal tradition.

At the resumption of the second reading new Premier Anna Bligh committed the Queensland Government to provide \$3.63 million for the 2007-08 financial year to allow government departments to commence work immediately, to reinvigorate negotiations with Traditional Owners; and to establish an Aboriginal environmental rangers program (Hansard 2007b).

5.6 Queensland Land Rights Legislation

In order to understand whether the *Cape York Peninsula Heritage Act* is likely to meet the aspirations of the Uw Oygangand, it is useful to investigate previous attempts by the Queensland Government to recognise and accommodate Aboriginal aspirations for land. The most important pieces of legislation in this regard are the ALA and the NTA both of which remain in effect.

Aboriginal Land Act 1991 (Qld)

From the time of enactment, the *Aboriginal Land Act 1991 (Qld)* (ALA) was intended to provide (ALA 1991:2):

... recognition of the interests and responsibilities of Aboriginal people in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of the Aboriginal people of Queensland.

As the Queensland Government's response to calls for Aboriginal land rights legislation, the ALA provides for the claim and grant of State land as Aboriginal land. Specific national parks were gazetted under the ALA as available for claim by Aboriginal communities based on their historical or traditional association with that land. Most claimable national parks are on Cape York Peninsula and the Mitchell-Alice Rivers National Park was one of these.

Steps required to be taken by Traditional Owners if they are successfully to claim a national park under the ALA include:

- Providing substantial oral and documented evidence of their traditional associations with the national park to the Government's Land Tribunal. Collating this evidence is a substantial task, requiring the service of a consultant anthropologist to work with sometimes elderly and frail Traditional Owners on-country in order to map the traditional landscape and trace familial associations;

If a claim is successful, the grant of national park is subject to conditions:

- Compulsory lease back of the area to the government to be managed as a National Park (Aboriginal Land) in perpetuity;
- No rental payment;
- Secure rights of access for existing park users;
- Trustees of the national park are appointed by the Minister;
- The Board of Management is appointed by the government and there is no surety of majority of Traditional Owners;
- A management plan for the national park must be negotiated by the Board of Management and the Queensland Parks and Wildlife Service before the park can proceed to grant;
- The management plan must be approved by the Governor in Council;
- No commitment of funding and resources for Aboriginal owners to manage their land once the park was granted.

Both the process of developing this legislation and its content were criticised extensively from before the Act was proclaimed. After initially promising a lengthy consultation period, the Queensland Government moved ahead with the preparation of the Bill with such alacrity that Aboriginal peoples felt they had insufficient time to understand and to provide meaningful input into the legislation (Brennan 1991). The Minister of the Department of Family Services and Aboriginal and Islander Affairs, was

quoted as saying, 'It's not a matter of what you want – we know that. It's what you'll accept' (Warner 1991 cited by Brennan 1991:1). Aboriginal communities no longer felt they could provide meaningful input into the development of the legislation and withdrew from negotiations with the government. Any sense of ownership, the opportunity for reconciliation, for resolving long-standing disadvantage and for improving the lives of Aboriginal peoples in Queensland, was lost.

From the time it was passed the ALA was criticised for giving with one hand and taking with the other. Any perceived benefits that were provided were negated by another condition within the Act. Ownership of the land is of little practical value if it must then be given back in perpetuity for others to manage according to relatively unfamiliar laws rather than traditional law. Ownership of national parks under the ALA did not appear to provide much improvement in rights and responsibility to successful claimants.

While work towards collating information for the Uw Oygangand people's claim to the national park had commenced years earlier, the Traditional Owners with the support of the Kowanyama community formally lodged a claim for the Mitchell-Alice Rivers National Park with the Lands Tribunal on 31 May 1996. By this time, the Traditional Owners well understood the limitations of the ALA and entered the claim process understanding that the outcome would not achieve their full aspirations for their country. However, the community was prepared to submit to the claim process in the belief that the outcomes could improve their current standing and serve as an interim measure as part of a long-term strategy for achieving their aspiration for statutory Aboriginal ownership and management (KALNRMO 2000). This perspective was clearly stated in a significant document prepared by the Land Office in preparation for an on-park meeting in 2000 with the State Land Tribunal to assess the Traditional Owners' claim to the national park. The document informed government representatives about the Traditional Owners' traditional, historical and contemporary relationship with the National Park homeland and the principles by which negotiations with the State regarding future management of the area should be undertaken.

In 2001, the Land Tribunal finally made a recommendation to the Minister that the Mitchell-Alice Rivers National Park should be granted to the Uw Oygangand claimants. However, like other successful claimants in the Peninsula, the Uw Oygangand chose not to proceed to grant due to their concerns about the proposed leaseback tenure arrangement and future management structures. The families and the Kowanyama community have continued to work towards their aspirations by negotiating interim management arrangements for the Mitchell-Alice directly with QPWS staff and by continuing their claim for the park under the NTA.

Native Title Act 1993 (Clth)

Within twelve months of formally lodging the claim under the ALA, the community (under the name 'Kowanyama People') also lodged a claim over the National Park and other properties under the *Native Title Act (Clth)* (NTA). It was hoped that the Native Title process could deliver Traditional Owners better outcomes than those possible under the *Aboriginal Land Act*. The Queensland Government had expressed a strong preference for land claims to be settled under State rather than Australian Government native title structures. Traditional owners hoped that a native title claim over the Mitchell-Alice Rivers National Park would pressure the State to release the funding required for progressing the claim under the ALA. Ten years has now passed since lodgement of the 'Kowanyama People's' native title claim and an Indigenous Land Use Agreement (ILUA) is yet to be negotiated for the National Park area.

The Queensland Government has been acquiring land in Cape York Peninsula with the aim of adding much of it to the protected area estate and returning homelands to Aboriginal peoples for their economic development. As part of this process, the State government and Traditional Owners in other parts of the Peninsula have entered into ILUAs under the NTA. These ILUAs do not provide for Aboriginal land tenure, but do provide substantial support for joint management of national parks and for community-based conservation on Aboriginal land. These ILUAs have delivered better outcomes, particularly in terms of resourcing and support, than perceived possible under the ALA. An aim of the CYPHA is to simplify the tenure resolution process as well as to improve outcomes for Traditional Owner groups.

Some of the ILUA arrangements that have been negotiated for national parks in the Peninsula (not including the Mitchell-Alice Rivers NP) include:

- Establishment of a Traditional Owner Negotiating Committee to negotiate management protocols and other arrangements;
- Establishment of an incorporated body to receive, hold and administer funds
- A consultation protocol (three levels of consultation depending on the proposed activity)
- Recognition of rights and interests: e.g. permanent living areas on park and traditional use of wildlife;
- Use of traditional place names;
- Employment, training and scholarship opportunities within QPWS;
- Community rangers provided access to QPWS training programs;
- Control of public use and access to certain areas;
- Assistance and training for commercial tourism applications from the local community;
- Funding has been provided to communities for management activities such as:
 - Natural and cultural resource management;
 - Ranger patrols and compliance;
 - Support for negotiations and meetings;
 - Administration of an incorporated body;
 - Management plan preparation;
 - Employment and training of community rangers
 - The hire or acquisition of vehicles, equipment and materials

5.7 Revisiting Traditional Owner aspirations

Table 5.1 provides a comparison of the major aspects of the ALA, NTA and CYPHA. The principal aspects of the CYPHA and related policy which will further Traditional Owner aspirations from those deliverable under the ALA are:

- The level of ownership over the content of the legislation and the process of implementation;
- The government's commitment to providing resources for implementation – both for the negotiating process and for Indigenous management of national parks;
- Where the community has the capacity, the government has committed to devolving responsibility for the day to day management of the park.

Aboriginal persons (via their representative bodies) have had much greater input into the development of the CYPHA, providing a far greater sense of ownership, good-

will and co-operation between the parties than was achieved with the development and implementation of the ALA. The government has also committed to providing substantial resources for the implementation of the CYPHA; such a commitment was not offered when the ALA was passed. With funding and responsibility for managing day to day aspects of the national park come employment and training opportunities for local persons.

Table 5.1: Comparison of Major Characteristics of the Queensland ‘Land Rights’ Legislation

Provisions	Aboriginal Land Act 1991	Native Title Act 1993 (ILUA)	Cape York Peninsula Heritage Act 2007
Ownership of land	Yes	No	Yes
Aboriginal ownership / control of process	low	moderate	high (so far)
Tenure	National Park (Aboriginal Land)	National Park	National Park (CYP Aboriginal Land)
Leaseback	Yes, in perpetuity	No, area remains a National Park	No, but must be managed as National Park in perpetuity
Rental	None / ‘peppercorn’	None	None
Agreements	None	Indigenous Land Use Agreement	Indigenous Management Agreement must be negotiated by Land Trust and QPWS prior to grant of NP
Management Body	Board of Management appointed by government; no guarantee of Aboriginal majority	Traditional Owner Negotiating Committee (or similar)	Land Trust consisting of Aboriginal persons / Traditional Owners
Management Plan	Yes, must be written prior to grant of NP	Not included in process	Yes, can be written after grant of NP
Management principles	as a national park consistent with Aboriginal tradition	as a national park	as a national park consistent with Aboriginal tradition
Community role in management	To be negotiated	Yes, as negotiated	Yes, in day to day management - as much as community capability allows
Resources for Implementation	TOs could apply for funding to facilitate the claim process only	Yes, resources can be provided for negotiation process and for Aboriginal management of the area	Yes, resources can be provided for negotiation process and for Aboriginal management of the area

Some of the conditions of the CYPHA appear to be simple ‘repackaging’ or ‘rewording’ of certain ALA conditions. The overall effect of this re-packaging may be negligible and may not advance the Traditional Owners’ aspirations. For example,

- The word ‘leaseback’, a highly contentious condition of Aboriginal ownership under the ALA, has disappeared; however, under the CYPHA the land must still be managed as a national park in perpetuity, co-existing with Aboriginal land;
- The management principles (under the *Nature Conservation Act 1992*) of ‘National Park (Cape York Peninsula Aboriginal land)’ and ‘National Park (Aboriginal land)’ are identical.

- While the Queensland Government has committed to negotiating the government's role in the operational or day-to-day management tasks, there are other aspects of park management to which the Kowanyama community aspires to take responsibility. The Uw Oy kangand people's aspiration for leading strategic management activities, such as planning in the national park, will allow its management to be integrated with that of the wider Aboriginal landscape at Kowanyama. The devolution of authority and decision-making over both strategic and operational management is characteristic of community-conserved protected areas and community-based management. The Australian Government's Indigenous Protected Area (IPA) Program allows Aboriginal landowners to choose the level of government involvement and enshrines the community's authority to decide what level of visitor access (if any) and development will meet their needs (Bauman and Smyth 2007). The level of community control of the IPA program is not available to the owners of national parks under the CYPHA because statutory ownership of the land is contingent on the area remaining a national park. Under the IPA program, Indigenous landowners voluntarily enter into arrangements with the Australian Government and can choose to cease their agreement at any time. Under the CYPHA, Traditional Owners are still coerced to accept a co-operative relationship with the government rather than offered incentives to create a co-operative relationship voluntarily.

Progress on a draft fire strategy for the Mitchell-Alice Rivers National Park stalled at the end of 2007, largely due to the lack of community ownership and control over the development of the strategy. This may prove to be an ongoing area of contention if the QPWS continues to drive planning activities without first ensuring that the Kowanyama community has decided to prioritise, plan and resource such activities (particularly in their demands of local persons' time and expertise).

If the Traditional Owners choose not to accept the conditions of the CYPHA, the Park will remain a government-managed protected area with community involvement in day-to-day management. If Traditional Owners choose to engage with the government under the terms of this Act and continue to build their capacity for management, they can eventually move substantially closer to the 'community-conserved area' end of the continuum of governance options (Figure 6.6.) where decision-making is devolved to the community. The community will still not have the same level of authority and responsibility for the area as they would over an IPA. It is possible that the Traditional Owners may choose to accept the conditions of the CYPHA as another interim measure, providing there is evidence of government support for the future devolution of authority and for the community to continue to build capacity for community-based management of the area.

The response from the Uw Oy kangand Traditional Owners and the successful implementation of the CYPHA may depend less on the content of the Act itself (and the political promises made when the legislation was passed), than some other factors, including:

- The policy developed from the Act; for example:
 - Power sharing: Is the government willing to go beyond capacity-building for day to day management and support Aboriginal self-governance? For example, relinquishing control of strategic management so that Kowanyama can take a leadership role in planning activities in the National Park?
 - Conflict resolution: The mechanisms developed within the Indigenous Management Agreement to resolve potential disagreements.

- The relationship between the community and government facilitators, particularly the level of trust and cross-cultural understanding between the Traditional Owners and QPWS operational staff.
- The flexibility of the government to respond to community priorities, timeframes and competing demands of contemporary Aboriginal land management.
- Even though the Traditional Owners have the support of their Land Office as a community-driven agency, consideration needs to be given to whether the community has adequate capacity, particularly well-informed representatives, available to:
 - Engage in potentially demanding and time-consuming negotiations, and
 - Provide consistent, best practice Aboriginal management of the national park over time.
- The resources and support available for negotiations and for community-based management must be secure and long-term (in perpetuity) if the community is to maximise capacity-building and the benefits of owning and managing their national park homeland. In particular, long-term secure (non-CDEP) employment for community rangers and Land Office managers is vital and will foster the necessary stability and incentive necessary for enduring and effective management.

5.8 Conclusion

Only time will tell if Aboriginal residents of Cape York Peninsula choose to leave conflict over land rights behind so that the social agenda of development and welfare reform can take priority in the years to come. Negotiating Indigenous Management Agreements under the CYPHA with all willing Traditional Owner groups and their communities will take many years. Support for communities' management of national parks will need to be ongoing (in perpetuity) as long as their homelands remain a protected area. It is imperative that government allocations for the management of protected areas in Cape York Peninsula continue to increase appropriately as the number of communities taking on the management of their national park homelands increases. However, as the Indigenous Protected Area program has demonstrated, investment in community-based protected area management is cost effective and has the added benefit of improving Aboriginal peoples' social, cultural and economic wellbeing (Gilligan 2006).

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