

**EDO NQ**

ABN 32 017 484 326
Level 1, Suite 1, 96-98 Lake Street
Cairns QLD 4870 AUSTRALIA
E: edong@edong.org.au
W: www.edong.org.au
T: +61 7 4031 4766
F: +61 7 4041 4535

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Deputy Premier, Minister for State Development,
Infrastructure and Planning
c/o Department of State Development, Infrastructure
and Planning
PO Box 15009
City East Brisbane QLD 4002

EMAIL: CYRegionalPlan@dsdip.qld.gov.au

Dear Sir or Madam,

Cape York Regional Plan

1. We welcome the opportunity to provide a submission on the Cape York Regional Plan (CYRP).

Who we are

2. The Environmental Defenders Office of Northern Queensland ('EDO NQ') is a non-profit, non-government community legal centre which helps people understand their legal rights to protect the environment in the public interest. We assist urban, rural and remote clients. A large number of our clients and stakeholders are concerned about the management and impacts on the Cape York Region, hence our submission on the CYRP.

The Context of this Submission

3. The draft Cape York Regional Plan (CYRP) is positioned within a wider context of legislation and policy. It is clearly focussed upon economic development, with the potential for resource extraction and agriculture in most areas of Cape York, excepting National Parks.
4. We have experienced difficulty interpreting the CYRP and predicting its practical application. This is due to a lack of detail on important matters, including compatible use criteria for Strategic Environmental Areas (SEAs) and coexistence criteria for Priority Agricultural Areas (PAAs).

5. Compatible use criteria for SEAs are not located within the CYRP, or elsewhere at this stage. The relevant legislation on the Regional Planning Interests Bill 2013 (RPI Bill), has not been enacted, nor have the regulations been implemented. We acknowledge that we were granted the opportunity to make submissions on the RPI Bill, but we remain concerned that important details about SEAs will be located in regulations to this legislation, which are not yet available, and which no one will have the opportunity to comment on.
6. This lack of transparency and absence of detail in the CYRP and RPI Bill complicate attempts to predict how the CYRP will work in practise. We do not think the CYRP is at a stage where it is close to finalisation. We hope that our submission is of assistance in improving the current draft.
7. With respect to the finalisation of the current draft, we raise that while we are aware that a consultative committee was formed in relation to the formulation of the CYRP, a number of traditional owner groups are disgruntled as they were not consulted prior to the drafting of the plan.¹ While Cape York Aboriginal organisations may have been on the Planning Committee, unless these organisations were authorised to speak for traditional owner groups, then true consultation cannot be said to have occurred. We submit that the progression of the plan be adjourned until meaningful consultation has occurred directly with all traditional owner groups for their input into the CYRP.

The focus of this submission

8. There is a large amount of information missing from the CYRP. Due to the vagueness of the plan there is a lack of rationale to support it, other than its direction in support of economic development. Economic development as a basis for policy is not sufficiently interrogated, especially when one considers the cultural and environmental importance of areas of Cape York. Short term economic gain cannot endlessly be purchased at the expense of social and environmental health. This Plan does not envisage economic benefits flowing to the Cape from anything but extractive and destructive industries. It does not plan for a cooperative or innovative future for Cape York.
9. The main points raised in this submission and detailed below are as follows:
 - a) Lack of Transparency in mapping Regional Interest Areas;
 - b) Lack of detail to support and protect Strategic Environmental Areas;

¹ AAP, 'Cape York traditional owners want more time for plan', Brisbane Times Newspaper, 14 March 2014, <<http://www.brisbanetimes.com.au/queensland/cape-york-traditional-owners-want-more-time-for-plan-20140314-34sb2.html#ixzz2w4wgNSsc>> Accessed 16 March 2014.

- c) Lack of criteria for where there is an overriding need in the community interest;
- d) Weak protections for Priority Agricultural Areas;
- e) Lack of protection against external development for Priority Living Areas;
- f) Lack of innovation for economic development, diversity and inclusion of local communities; and
- g) Removal of Wild Rivers declarations in Cape York and implementing a separate water plan.

a) Mapping Regional Interest Areas

10. We suggest that an evidence based approach in mapping Regional Interest Areas would assist with transparency of process. The requisite criteria, or at least the minimum level of attributes required for an area to be mapped a Regional Interest Area, is supportive of an evidence based process, as well as a transparent one. The present mapping, including the content of the CYRP lacks this factual support for users to understand its background and logic.
11. We are aware that the initial SEAs were mapped by the Department of Environment and Heritage Protection (DEHP) based on areas with high environmental and biodiversity value. We understand that the SEAs in the CYRP were subsequently reduced at the request of the Department of State Development, Infrastructure and Planning (DSDIP) to expand the area available for resource extraction, agriculture and cropping. There is very little public information about this process and we submit that this should be transparent so that the community is aware of how and why important mapping decisions have been made. It is of great concern that areas with high environmental and biodiversity value, and possibly world heritage value, may be placed at risk for potential short term economic gains.
12. Also, a number of Nature Refuges (Holyroyd River, Strathburn Cattle Station, Harkness, Yarraden, Running Creek, Balclutha Creek, Balclutha (Lava Hill) and Kalpower Nature Refuges, as well as part of Yuukingga Nature Refuge) have been left out of SEAs despite their recognised high environmental value, signified by their designation as Nature Refuges. Landholders of these Nature Refuges have no guaranteed protection of these areas, despite all their good intent to protect and conserve them.
13. The reduction of mapped SEAs, the failure to include a number of Nature Refuges in SEAs (as well as all wetlands and MNES), and the lack of criteria for Regional Interest Areas, indicates that a non-evidence based approach is being used to create a “balance” pitched at satisfying objectives of particular stakeholders. The State Interests set out in the State Planning Policy are disproportionately focussed on the State Interest

of Economic Growth and not on the State Interests of Environment and Heritage or Hazard and Safety. For example, the protection of indigenous cultural heritage and biological diversity (both State Interests) are not addressed in the CYRP.

14. The State Development, Infrastructure and Industry Committee Public Hearing held on 12 February in Brisbane showed that most people examining the RPI Bill and the CYRP were unhappy with the lack of certainty, including those stakeholders the non-evidence based approach was intended to assist. Consultations on the CYRP, despite the best efforts of DSDIP staff, produced a comparable level of dissatisfaction.
15. We acknowledge that not everyone can or will be content with the CYRP, however clarity and predictability within the document would improve it considerably, allow the community and stakeholders to understand it and have confidence in the CYRP. At this point the document is flawed because it cannot provide any level of certainty to the community or any stakeholder.

Solution:

Existing reports on Cape York commissioned by the Queensland Government be used in determining Regional Interest Areas and criteria reflecting their intrinsic attributes. These include the reports: 'Compiling a case for World Heritage on Cape York Peninsula' by Associate Professor Peter Valentine from James Cook University in 2006 and 'The Natural Heritage Significance of Cape York Peninsula' by Dr. Brendan Mackey, Emeritus Professor Henry Nix and Peter Hitchcock in 2001. Areas listed in these reports as being of high environmental value need to be included in SEAs.

b) Strategic Environmental Areas

16. While Strategic Environmental Areas (SEAs) create zones for areas containing significant environmental, biodiversity and ecological values, it is of concern that SEAs fail to provide mechanisms to protect these areas. While compatible use criteria are supposed to determine whether mining, agriculture and other activities are "compatible"² within SEAs, these compatible use criteria are not defined in the CYRP or in the RPI Bill.
17. Coexistence criteria exist in example form in the CYRP for PAAs and Priority Living Areas however there is no equivalent for SEAs. It is difficult to provide comment without some indication of what the criteria may look like. However, we provide our views on potential levels of protection below.
18. While clause 11 of the Regional Planning Interests Bill 2013 (RPI Bill) refers to SEAs it fails to define them or detail their requisite criteria. This

² State of Queensland, Department of State Development, Infrastructure and Planning, Cape York Regional Plan, Draft for consultation, November 2013, p. 21.

provides uncertainty for all in regard to SEAs, despite the Deputy Premier stating that the CYRP provides ... “long-term land use certainty, particularly in relation to areas which are set aside for environmental protection”³ ...

19. The list of potential land uses within SEAs illustrates that despite SEAs having significant environmental values, they will not necessarily have high-level protection from development. Enabling development to occur where it “does not present risk of irreversible or widespread impacts to the ecological integrity of the areas in supporting the region’s significant biodiversity”⁴ fails to inspire confidence in the protection and conservation of SEAs. At the moment these terms indicate that a reasonably high level of harm can occur in SEAs, however the threshold level of harm is not clearly defined. It is also unclear as to whether potential for rehabilitation attempts are factored into “irreversible or widespread impacts”. For example, Cape Alumina Company Managing Director Graeme Sherlock stated that if permission was granted to mine bauxite in the Steve Irwin Wildlife Reserve “rehabilitation would vastly improve the area.”⁵ This viewpoint fails to understand that the resource extracted (bauxite) has an integral role as part of the environment in that area, “supporting the different ecosystems not only that grow on it but also in driving the hydrology.”⁶
20. Given the values that exist in SEAs it is our view that they should not be compromised and that the precautionary principle⁷ must be applied to prevent irreversible harm. There is a statutory requirement to do so under section 33(b) *Sustainable Planning Act 2009* (SPA), under which the CYRP will be made. We cannot see how the significant values in SEAs can continue without the level of protection afforded by the precautionary principle.
21. While it is stated in the CYRP that open cut and strip mining will not occur in SEAs, there is no legislative protection to support this. Activities capable of occurring in SEAs need to be clearly defined, with environmental protection as the priority. This would mean that destructive forms of mining could not occur in SEAs. We consider that this is appropriate given the current pristine state of much of Cape York, the high environmental value of SEAs, and the proportion of land already proposed to be General Use Areas (GUAs) and therefore made available for development. Given the importance and significance of the ecological values identified, it is a reasonable expectation that SEAs will attract a similar level of protection to that of National Parks.

³ State of Queensland, Department of State Development, Infrastructure and Planning, Cape York Regional Plan, Draft for consultation, November 2013, p. 2.

⁴ State of Queensland, Department of State Development, Infrastructure and Planning, Cape York Regional Plan, Draft for consultation, November 2013, p. 4.

⁵ Nick Dalton, ‘Bauxite project revived’, *Cairns Post*, 8 March 2014, p. 7.

⁶ Barry Lyon, Senior Conservation Ranger, Steve Irwin Wildlife Reserve, Australia Zoo, Appearing before the State Development, Infrastructure and Industry Committee Public Hearing, Inquiry into the Regional Planning Interests Bill 2013, Transcript of Proceedings, 12 February 2014, Brisbane, p. 11.

⁷ *Sustainable Planning Act 2009* (Qld), s 5(1)(a)(iii).

22. Neither the CYRP nor the RPI Bill clearly describes the way in which decisions will be made in relation to the activities that can occur in SEAs. This is of significant concern for the future management and protection of the environment within the Cape York Region, as well as for those external areas that depend upon it, including the Great Barrier Reef in its northern and healthiest zone. We acknowledge that the CYRP indicates that a vast area of the east coast of Cape York will be SEA, and that this has the potential to continue to provide protection for these areas and the northern area of the Great Barrier Reef, *if protection for SEAs is strong*. However, under the CYRP, the strength of protection for SEAs is not certain. Also, a significant amount of Cape York has been recognised for its World Heritage values, this of itself obviates the importance of uncompromising protection of SEAs. This is not presently reflected in the CYRP for SEAs. The CYRP breaches the statutory requirement to ensure the regional plan identifies “the way the resources are to be preserved, maintained or developed” (section 39(b)(iv) SPA).
23. The CYRP also fails to consider all the potential effects of activities in Cape York on areas external to it, such as the Great Barrier Reef. For example, the Stewart River in the eastern Cape flows into the Great Barrier Reef World Heritage Area and is presently protected from extractive and destructive uses by the Wild Rivers legislation. Under the CYRP the Stewart River is a General Use Area, and will no longer be protected from development such as mining and agriculture. If development along the Stewart River, and other rivers like it, is not constrained, then polluted waters will flow into the World Heritage Area. A solution to this is to map areas like Port Stewart, all reef catchments, wetlands and also any areas containing MNES as SEAs and to provide definitive high level protection to SEAs. Again, activities that can occur in SEAs need to be clearly defined, especially where their effects extend beyond the area or the region. It is clear that regional planning should also incorporate the potential impacts of activities within Cape York on important external areas such as the Great Barrier Reef.

Solution:

Define general characteristics of SEAs and criteria indicating activities that may occur in SEAs. In defining these activities the precautionary principle should apply and protections afforded to National Parks should be used for guidance. Destructive forms of mining should be banned and grazing prohibited in sensitive areas.

c) “Overriding need in the community’s interest” requires clear criteria

24. It is of grave concern to us that the strategic planning intent can be overridden where there are sufficient grounds, based on the “overriding

need in the community's interest."⁸ This concept indicates that due to the potential economic benefits of mining projects, environmental and biodiversity values in SEAs can be overridden if the mining project cannot be located elsewhere. It is also unclear whether this decision making process takes into account other projects in the State or the region.

25. Again, evaluative criteria are not included in the decision making process, indicating that if a project is likely to generate significant financial benefits to the State, it will be approved regardless of the regional impacts. As with any other robust decision making process the criteria to be used in making decisions in terms of "an overriding need in the community interest" must be provided if we are to properly assess the process.
26. Finally, we cannot support a process that will reduce already limited SEAs in such an important region. We further fail to understand the need for a concept that overrides the strategic planning intent for SEAs in the Cape York Region when there is already a significant area set aside for development in General Use Areas (GUAs).

Solution:

SEAs should be excluded from the application of the concept of "overriding need in the community interest", so that the overriding need in the community interest cannot apply to activities within SEAs.

d) Priority Agricultural Areas

27. It is unclear whether the co-existence criteria for Priority Agricultural Areas (PAAs) in the CYRP have been provided as examples only for those providing submissions to re-draft, or because they are not viewed as important. Three of the example coexistence criteria (for material loss, no impact on the continuation of a Priority Agricultural Land Use (PALU) and no material impact) favour resource companies where they can show that there is no reasonable alternative for the resource activity to be located on land with a PALU. Protection of PALUs rather than PAAs is confusing, indicating that it is not necessarily the land that is being protected, but the use or production on the land. This fails to acknowledge the long term importance of high value agricultural land and its significance to the broader community. It also fails to acknowledge that a PAA not used at that point in time for a PALU is afforded less protection. It is short sighted, failing to acknowledge the permanent destruction of the value for short term gain.
28. The large areas of land available for resource activities in GUAs in Cape York clearly enable resource activity to be achieved. While the coexistence criteria may be intended as a guide only, it is difficult to understand why coexistence is encouraged in Cape York when there is just one PAA identified in the region. Encouraging coexistence and

⁸ State of Queensland, Department of State Development, Infrastructure and Planning, Cape York Regional Plan, Draft for consultation, November 2013, p. 57, Schedule 3.

providing avenues for coexistence in other regional plans can be more easily understood where PAAs are large or greater in number. However, given that one PAA is planned for Cape York at Lakeland Downs, and that its size in proportion to General Use Areas (GUAs) is small, it is perplexing that co-existence criteria are required in order to allow resource activities on the PAA.

29. It is difficult to comprehend why in order to extract resources, the single PAA identified in Cape York would need to be accessed. We also suggest that if further PAAs are identified they should only be extracted from GUAs, not SEAs, given that SEAs cover only 32% of the region and given the region's outstanding environmental value.
30. In terms of coexistence criteria clause 3(1)(c)(ii) RPI Bill simply informs of the purpose of the legislation to manage coexistence of resource activity and agricultural activity in areas of regional interest, rather than the implementation aspects of this process. The Deputy Premier highlighted that a landowner and resource company can essentially bypass these criteria by reaching agreement, and that this is the approach the government is encouraging.⁹
31. This process fails to respect the planning process and maintain valuable agricultural land dedicated and protected for agriculture for the benefit of all Queenslanders. It also fails to establish objective criteria for landowners and resource companies to make their own assessments. For example, a landowner may not be so quick to negotiate an agreement with a resource company if they think that it is unlikely that their project will be approved in a PAA, or the landowner may negotiate – but not understand their bargaining power. This lack of detail produces uncertainty, and undermines the Deputy Premier's statement that one of the aims of the Bill is to provide certainty, in particular to those with resource and agricultural interests.¹⁰ Delegating this level of authority to landowners is not conducive to protecting PAAs, especially in a region where only one exists.

Solution:

PAAs are protected from mining and mining related activities, therefore coexistence criteria are not required.

e) Priority Living Areas

32. We raise concern over the size of Priority Living Areas (PLAs) on the basis that activities outside, but close to PLAs, could have major impacts on PLAs. Presently there is not a sufficient buffer zone to protect PLAs. Even where PLAs are surrounded by SEAs, it can be seen from the

⁹ State Development, Infrastructure and Industry Committee, Public Hearing – Inquiry into the Regional Planning Interests Bill 2013, 12 February 2014, Hon. Jeff Seeney, p. 48.

¹⁰ State Development, Infrastructure and Industry Committee, Public Hearing – Inquiry into the Regional Planning Interests Bill 2013, 12 February 2014, Hon. Jeff Seeney, p. 48.

above that SEAs are not currently guaranteed protection from major resource and development activities under the CYRP, thereby leaving PLAs exposed.

33. One way of resolving this issue is to increase the size of PLAs substantially, another is to change the assessment process so that Councils are involved in the decision making process for activities outside the PLA boundary but that are likely to affect their PLA.

Solution:

Increase the size of PLAs and provide Councils with the right to be heard in decision making processes for activities outside the PLA and to appeal decisions when they disagree.

f) Improving Cape York's Economic Development and Diversity

34. Economic development and diversity in the Cape York region is listed as a key driver for preparing the plan, however it does not present itself within the plan. The focus is on encouraging more resource extraction and agriculture. Tourism is not given adequate weight and significance in the plan, with the RPI Bill failing to provide tourism operators with appeal rights when development impacts upon their operations, unless they happen to be a land owner at the site of the proposed development.
35. There are no innovative drivers within the plan to assist local communities, including traditional owners, in economic development. It is expected that communities will continue to try to obtain some economic inclusion from resource extraction and agriculture. The local community has not been factored into any economic development approach in the CYRP and it seems that these communities are expected to somehow benefit from these activities. It has been shown in the past that benefits from mining and privately owned agriculture have proven to be small and even insignificant for Aboriginal communities. While some individuals benefit from jobs, numbers are small and communities continue to struggle.
36. Due to lack of detail and the encouragement of resource extraction, it can only be assumed that the approach is based on volume, which may temporarily increase short-term local jobs and monetary benefits in agreements with traditional owners. This approach is a continuation of the present one which has failed to enhance economic independence of communities and engagement with community members. It is also one that depletes resources in the short-term and destroys cultural heritage and the environment in the long-term. This is contrary to the principle of intergenerational equity and must be addressed to align with the objects of SPA.
37. As with non-landowners, traditional owners will not have appeal rights in relation to regional planning interest decisions, unless they are a

“landowner”, the definition of which does not include traditional owners (see clause 69 RPI Bill)

38. This fails to acknowledge the importance of traditional connection of Australia’s First Peoples and the different nature of the rights and interests that have been recognised by courts for traditional owners.
39. There is no recognition in the CYRP of the long term connection of traditional owners to the land and their continued right and requirement to speak for that land under their own law. This is a huge oversight in the CYRP, given the populace of Cape York, the disadvantage suffered by Aboriginal people generally and in Cape York in particular as documented in a number of reports.¹¹ We suggest that further consultation is required with Aboriginal people in Cape York and that the CYRP must include Cape York’s Aboriginal peoples’ visions which may differ, depending on family, clan, group affiliation, community and country spoken for.

Solution:

All traditional owner groups and the Aboriginal people of Cape York need to be engaged in a consultation process where they are listened to and their views and desires included in the CYRP. This requires a delay of the progression of the CYRP so that it can incorporate and reflect the views of those with interests in Cape York. The period of time required for these consultations and the process needs to be set through input from traditional owners and Aboriginal community members.

g) Separate plan for water

40. We acknowledge with grave concern the intended removal of Wild River Declarations in Cape York. This concern also stems from the lack of protections afforded to SEAs which cover most of the Wild Rivers. Clearly water is required for the increased resource extraction and future agriculture likely to occur due to the removal of the declarations. This needs to be managed carefully to protect the ecosystems and should be done in conjunction with the CYRP process.
41. We acknowledge that submissions are due on the “Draft Strategy for Delivering Water Resource Management in Cape York” at the same time as the CYRP. We also note that the short-term framework within that document again fails to provide criteria for people to assess if they will be allocated water, or to assess levels of protection for the environment.

¹¹ Royal Commission into Aboriginal Deaths in Custody, 1991, *National Report, Vol.2*, Australian Government Publishing Service, Canberra; Australian Government; The Aboriginal and Torres Strait Islander Women’s Task Force on Violence. (2000). ‘The Aboriginal and Torres Strait Islander Women’s Task Force on Violence report’, Brisbane, Queensland Government, Department of Aboriginal and Torres Strait Islander Policy and Development; Tony Fitzgerald, Queensland Department of the Premier and Cabinet, 2001, ‘Cape York Justice Study’ Vol 2, 2001; and Noel Pearson, Apunipima Cape York Health Council, Cape York Partnerships and Alcohol and Drugs Working Group, ‘Cape York Peninsula Drug Abuse Strategy’, 2002, Cape York Partnerships, Queensland.

Similarly, the proposed long-term framework also lacks detail and protections for the environment.

42. We suggest that an evidence based approach for extraction of water in all water courses must be applied, and where there is a lack of data, an extremely precautionary approach should be applied. This process should be incorporated into the CYRP in accordance with the requirements and objects of SPA and the Water Act 2000.

Solution:

An integrated approach needs to be taken with the CYRP and water management. Scientific research and traditional owner knowledge must be used to guide predictors for water extraction and where such information does not exist, research is to be undertaken and minimal or no water extracted. Predicted variations in climatic conditions must also be incorporated into water management strategies.

43. We again thank you for enabling us to make this submission. We trust our submissions will be of assistance to you.

Yours faithfully,

EDO NQ



Angela Strain

Coordinator