

Commercial Forestry: An Economic Development Opportunity Consistent with the Property Rights of Wik People to Natural Resources

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Wik people on Cape York Peninsula, Queensland, aspire to economic independence. Commercial processing of native forest timbers is seen by Wik people as a culturally appropriate engine for economic development; however, much uncertainty surrounds their property rights to native forest timber. The granting of native title over some traditional Wik land in 2000 and 2004 was seen as a coup by Wik people, but some economists have argued that the inalienable and communal nature of native title is an obstacle to development in indigenous communities. An assessment of Wik property rights to timber resources reveals that a commercial forestry industry is consistent with their rights. In comparison with social and cultural factors, the inalienable and communal characteristics of native title are second-order development constraints for Wik people.

Key words: native title, native forest management, Aurukun community, Cape York Peninsula.

1. INTRODUCTION

Relative to other Australians, Wik, Wik-Way and Kugu people (referred to hereafter for anthropological convenience as Wik people) living in Aurukun Shire on the west coast of Cape York Peninsula (CYP) are socio-economically disadvantaged. They are almost completely excluded from the market economy and are financially dependant on government welfare, including the work-for-welfare Community Development Employment Program (CDEP). Nevertheless, elders aspire for their people to be economically independent and self-reliant. While opinion varies about how to promote economic development in remote indigenous communities, there is an emerging

consensus among economists (e.g. Duncan 2003, Altman 2004) and indigenous leaders (e.g. Pearson 2000, Ah Mat 2003) that economic development is urgent and necessary to improve the welfare of inhabitants and for the survival of Australian indigenous cultures.

Wik people are poor in terms of financial and (Western) human capital. However, the High Court judgement in *Wik Peoples v State of Queensland and Others 1996*, the granting in 2000 and 2004 of native title over a portion of the Wik land claim, and legislated future changes of land tenure under the Queensland *Aboriginal Land Act 1991*, indicate that Wik people may become relatively rich in natural capital. In the late 1990s, Balkanu Cape York Development Corporation (Balkanu) representatives of Wik people identified commercial utilisation of the Darwin stringybark (*Eucalyptus tetradonta*) native forest timber resource on traditional land as one potential engine with which to drive the elders' vision of economic independence. In 2000, the author was invited by Balkanu and the Australian Centre for International Agricultural Research (ACIAR) to investigate the potential for a forestry industry to generate employment and income for Wik people as a PhD project. That research indicated the potential commercial viability of a Wik timber industry (Venn 2004a).

Wik forestry opportunities will be shaped by the incidence of property rights to timber, which are dependent upon the legal interpretation of numerous pieces of Queensland and Federal Government legislation, past and pending native title court rulings, and continuing negotiations between representatives of Wik people and the Queensland Government. There is no practical or legal precedent for commercial timber harvesting on indigenous land tenure in Queensland and it became apparent that considerable uncertainty surrounded Wik rights to timber, because the combined effect of various court cases and pieces of Federal and Queensland Government legislation had never been contemplated. Economists are generally of the view that alienable and secure individualised land tenure is desirable, even essential, for wealth creation, economic efficiency and ecological sustainability. Therefore, it is not surprising that some economists (e.g. Williams 1993, Warby 1997) have argued that the collective and inalienable nature of Australian native title property rights to land present an obstacle to the development of indigenous communities. Furthermore, recent High Court judgements (e.g. *Commonwealth v Yarmirr 2001* and *Western Australia v Ward 2002*)

have compounded the obstacles to development faced by native title holders by reflecting a ‘frozen in time’ approach to indigenous laws and customs.

This paper examines the property rights of Wik people to native forest timber and assesses whether a forestry-based economic development strategy is consistent with inalienable and communal native title to land. The following section describes the study area, timber resources and the forestry objectives of Wik people. Next, the author’s interpretation of Wik rights to timber is outlined. A discussion of the compatibility of Wik native title rights with forestry-based economic development follows.

2. STUDY AREA, TIMBER RESOURCES AND WIK FORESTRY OBJECTIVES

Wik people have an historical and spiritual connection with land along the west coast of CYP between Napranum and Pormpuraaw and east to the Great Dividing Range (Dale 1993). Encroaching settlers demanded greater control of the ‘wild tribes’ on CYP, which led to the establishment in 1904 of Aurukun Mission to ‘settle’ Wik people (Anderson 1981). Wik people were encouraged and sometimes forced to settle in the village (Balkanu c1999) and by the 1970s the last of the Wik had left the ‘bush’ on a permanent basis (von Sturmer, personal communication, cited in Dale 1993). Today, Aurukun town is home for about 900 Wik people, accounting for 88% of the town’s population (ABS 2002). The town’s indigenous population is not a cohesive group of people, but a complex of 23 allied and competing clans with variable status, power and authority (Dale 1993). Inter-clan and inter-racial cultural differences have periodically led to social disorder (Anderson 1981, Leveridge and Lea 1993, Voss 2000).

Balkanu defined an 841,500 ha study area for this research (approximately 30% of the Wik native title claim) including Aurukun Shire and part of Mining Lease 7024 in Cook Shire adjacent to the north-west boundary of Aurukun Shire. This area is highlighted in Figure 1 and is hereafter referred to interchangeably as the ‘Aurukun area’ or ‘study

area'. In 2004, the study area consisted of land with four distinct combinations of land tenure and title, namely¹:

1. Aurukun Shire lease land within the Wik Part A native title determination area (503,000 ha);
2. Aurukun Shire lease land in the Wik Part B native title determination area with no other titles or interests (69,900 ha);
3. Aurukun Shire lease land in the Wik Part B native title determination area, which was formerly covered by Mining Lease 7032 (165,200 ha); and
4. Unallocated State-owned land in Cook Shire covered by Mining Lease 7024 (103,400 ha).

The study area is topographically level to gently undulating and dominated by two major vegetation groupings, namely Darwin stringybark forests and wetlands, with the former covering approximately 70% of the Aurukun area. The high level of interest of Wik people and Balkanu in native forest timber harvesting is partly due to the fact that 230,000 ha of commercially valuable Darwin stringybark forests in the Aurukun area grow on deep red kandosols that contain valuable bauxite deposits situated on mining leases (Venn 2004a). No mining operations have commenced in the Aurukun area. Following consistent failure of the holders of Mining Lease 7032 to meet obligations stipulated within the lease agreement, laws cancelling that lease were passed through the Queensland Parliament in May 2004. The Beattie Queensland Labor Government has been publicising its intention to call for expressions of international interest in the forfeited bauxite resource and, while the Government is committed to a consultation process with traditional Wik landholders about a new mining agreement, it has stipulated that Wik people will not have the right to veto the project (Hodge 2003). Bauxite mining by Comalco Pty. Ltd. in Darwin stringybark forest on a mining lease near Weipa, north of Aurukun Shire, is proceeding at a rate of over 500 ha per annum (Stokes 2000). Currently, Comalco prepares land for open-cut bauxite mining by clearing vegetation with bulldozers and chains, windrowing woody debris and then burning, which represents an enormous waste of a valuable timber resource.

¹ All land areas reported for the Aurukun area have been estimated by the author with ArcView geographic information system software using spatial data provided by the Queensland Department of Natural Resources, Mines and Energy in 2000.

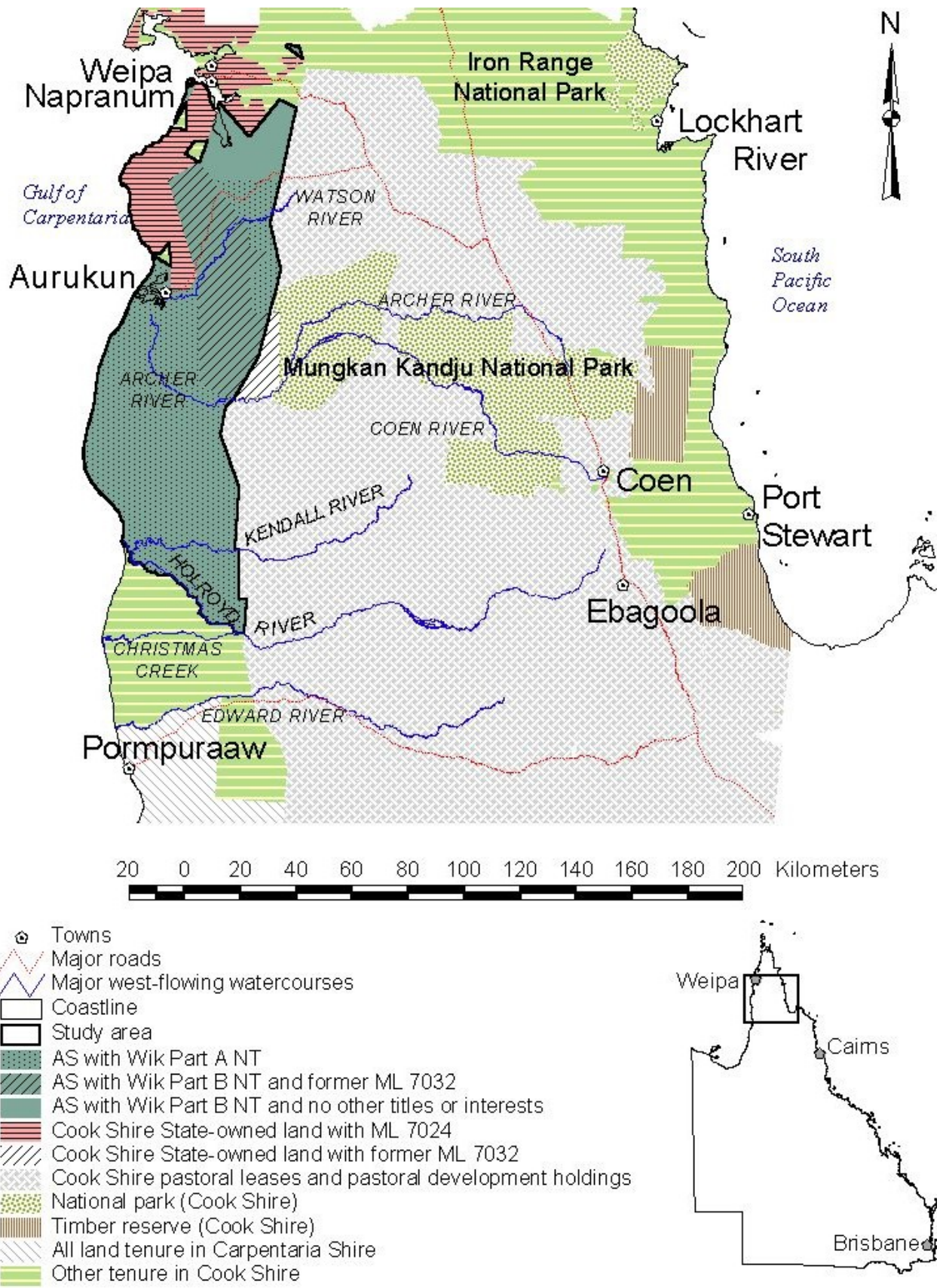


Figure 1. The study area and surrounding land tenure on central CYP

Notes: AS is Aurukun Shire Special Lease land; NT is native title; and ML is mining lease.

Source: Generated by the author using ArcView geographic information system software. Spatial data were provided by the Queensland Department of Natural Resources, Mines and Energy in 2000.

Darwin stringybark forests contain several commercially valuable timber species, particularly *Eucalyptus tetradonta* (Darwin stringybark), *Corymbia nesophila* (Melville Island bloodwood) and *Erythrophleum chlorostachys* (Cooktown ironwood). A timber inventory undertaken in the study area found that, while the total standing volume of millable and harvestable timber is large at approximately 2.3 M m³ to 3.7 M m³ (depending on merchantability specifications), this is distributed over 0.4 M ha of forest where standing volumes are typically less than 7 m³/ha to 10 m³/ha (Venn 2004a). Scarce growth data for timber species in these forests suggest the trees are slow growing and have led DPI Forestry personnel to recommend a 100-year rotation for selective logging operations (Crevatin 2000). Much of the timber resource on Wik land is remote from roads and over half of the standing volume in the study area is located south of the Watson River. Processing of timber harvested south of the Watson River in Aurukun town would require hauling over relatively long distances to utilise existing river fords or bridge construction over 'wild' rivers that flood annually.

Freshwater and estuarine wetlands surround and extend south of Aurukun town along the coast to the Edward River. These have been identified by conservation groups, including the Wildlife Preservation Society of Queensland, as areas that may prove to be equivalent in biological diversity to Kakadu (Smyth 1993). Throughout CYP, including the study area, most soil types are deficient in macro and micro-nutrients, are weakly structured and are erosion prone following clearing of native vegetation, which limits the land's suitability for intensive agriculture (CYRAG 1997). Carrying capacities for open-range grazing of cattle on native grasses and other native vegetation in the study area average between 21 ha and 56 ha per beast (CYRAG 1997).

According to Sutton (1988, cited in Martin 1993), for Wik people 'there is no wilderness'. Darwin stringybark forests have been managed with regular burning to provide many valuable economic and cultural goods and services that are important to sustain their people and culture, including:

- native (and in recent history, exotic) plant and animal foods;
- traditional tools, arts and crafts;
- classrooms for passing on indigenous knowledge to the children;

- settings for important Dreamtime stories;
- habitat for clan totem beings; and
- venues for traditional ceremonies.

The Wik are acutely aware that the forest ecosystems on mining leases, including areas under native title, will be destroyed by strip mining. However, Western natural resource extraction practices that can be modified to be culturally appropriate, such as selective logging, are considered by Wik people as consistent with their traditional way of life, land management objectives, and conservation ethic.

Wik people have multiple objectives for a timber industry operating on traditional land (Venn 2004a, 2004b). Employment generation, not profit maximisation, is the highest priority forestry objective, particularly generation of *on-country* (outside of town) employment to encourage population decentralisation, reduce social problems in Aurukun town and facilitate better connection of young people with *country*. As the Wik envisage ecotourism becoming a major economic activity in the future, another non-pecuniary objective is to limit logging in forests outside of mining leases, especially within the catchments of wetlands. A goal programming analysis of forestry opportunities for Wik people indicated that a financially viable and ecologically sustainable moderate-sized timber industry in the Aurukun area (annual log throughput of 5,000 m³ and employing about 35 people) that is consistent with Wik forestry objectives, would require selective harvesting of at least approximately 500 ha/year or 50,000 ha over a 100-year rotation (Venn 2004a).

3. WIK RIGHTS TO TIMBER IN THE AURUKUN AREA

Settlement of Australia proceeded as if the land was *terra nullius*². Post 1788, Wik people had no enforceable property rights to any land or natural resources until limited rights were conferred with the establishment of the Aurukun Mission. It was not until the High Court's judgement in *Mabo v State of Queensland 1992* that indigenous people were legally recognised as the first inhabitants of Australia and native title was introduced to Australian law. The Federal *Native Title Act 1993* addressed many of the

² There is an on-going and controversial debate being waged between historians about whether *terra nullius* was ever part of law relied on to justify settlement of Australia (Connor 2004, Pearson 2004).

fundamental undecided issues of the Mabo case and established a process by which indigenous Australians could obtain native title. A key element of the *Act* is that native title holders and claimants may surrender their native title to government under an agreement with the Federal or a state or territory government, but native title cannot be transferred to someone outside the clan, group or community. In Section 223(1) of the *Native Title Act 1993*, native title or native title rights and interests are defined as:

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

- a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land and waters; and
- c) the rights and interests are recognised by the common law of Australia.

In another landmark High Court ruling that became known as the Wik case³, the Court ruled that the granting of pastoral leases over the traditional land of Wik people (living in Aurukun town) did not necessarily extinguish all native title rights. The majority of judges found that native title rights can co-exist with the rights of a lessee, so long as those rights are not inconsistent with the rights of the pastoralist. This was a politically explosive outcome and the Howard Federal Coalition Government attempted to reduce uncertainty surrounding the judgement with the *Native Title Amendment Act 1998*, which many commentators perceived as reducing native title rights in favour of miners and pastoralists.

Together the Mabo and Wik Cases, and the *Native Title Act 1993* and *Native Title Amendment Act 1998* established a framework for the application for native title, determining the exclusive existence or co-existence of native title on particular land tenures, protecting native title, and specifying procedures for negotiating future land uses that may affect native title. However, no *Act* or court ruling has specified exactly

³There were actually two native title cases before the High Court in the Wik case, *Wik Peoples v State of Queensland and Others 1996* and *Thayorre Peoples v State of Queensland and Others 1996*. The Court decided to hear both cases together because the claims overlapped.

what rights are conferred by native title. Instead, it has been left for the detail of native title rights to be determined on a case-by-case basis, depending on the local law and custom of each indigenous community claiming native title. For example, one group's entitlement may be to traverse the land for periodic gathering or harvest of bush foods, while another group's rights may be exclusive and constant occupation and use of the land (Brennan 1998).

The Mabo decision does make it clear, however, that Aboriginal tradition is not a 'fixation of the past'. As Justices Deane and Gaudron concluded, provided any changes do not diminish or extinguish the relationship between a particular tribe or other group and particular land, subsequent developments or variations do not extinguish the title in relation to that land (Bennett 1996). For example, the use of present day tools in harvesting plants and animals, including firearms, boats and nets made of present-day materials, still comprise the exercise of a traditional right, albeit in a modern way (Sweeney 1993). The High Court ruling in *Yanner v Eaton 1999* confirmed that legitimate native title holders have the right to hunt game for subsistence in the areas in which native title is held by that group or individual. But, there remains much uncertainty about whether native title in Australia includes rights to non-traditional uses of natural resources or uses of resources that had not traditionally been exploited.

Meyers (2000) observed that the Federal Trial Court and Full Federal Court judgements in *Western Australia v Ward* (Mirruwung Gajerrong) case found that where native title in Australia includes the right of occupation, this creates an interest in land or possessory native title⁴. 'The prescript announced in *Mabo (No 2)* that native title is given its meaning by the traditions and customs observed by the claimants, means that *in a case of exclusive possession, those customary and traditional uses of the land define the area under claim, not the extent of the rights associated with exclusive occupancy of the land*' (Meyers 2000, p. 6, original emphasis). According to Meyers (2000) and Cape York Peninsula indigenous leader and lawyer, Noel Pearson (2003), possessory native title should confer a generally unencumbered right to manage and determine uses of the land as native title holders see fit to support their economic and cultural development, as well as diminished sovereign rights to manage the land, in the

⁴ The High Court's judgement in *Western Australia v Ward 2002* did not reject this argument (Strelein 2002).

same manner as holders of native title in the United States and non-Aboriginal freehold title in Australia. However, High Court judgements involving possessory native title in *Commonwealth v Yarmirr 2001* and *Mirruwung Gajerrong* have reflected a ‘frozen in time’ approach to indigenous laws and customs, compounding the obstacles to development faced by native title holders. For example, the Justices in *Mirruwung Gajerrong* concluded that the indigenous claimants did not hold a native title right to ownership or the right to use (e.g. extract and process) minerals and petroleum, because they had not demonstrated laws and customs related to the use of minerals. Pearson (2002) described the Justices anthropological rather than common law conception of native title as a ‘great travesty [of justice] for Australia’. The issue of whether holders of native title may exercise native title rights to commercially utilise natural resources has not yet been answered conclusively in Australia and will certainly continue to be fought over in Australia’s courts.

The characteristics of property rights that Wik people hold over timber resources differ between the land tenure-title combinations in the Aurukun area. Further complicating the issue is that land tenure-title combinations and Wik property rights will change with anticipated future native title rulings, the issuing of a new mining lease over former Mining Lease 7032 and the transfer of Aurukun Shire lease land to Aboriginal freehold tenure under the *Queensland Aboriginal Lands Act 1991*.

3.1 Property Rights of Wik People to Timber Resources on Native Title Land in Aurukun Shire

For the purposes of native title determination, the 27,000 km² Wik native title claim area was split into two parts: Part A, approximately 6,000 km² confined to areas that have only ever been unallocated State land or land under forms of title granted for the benefit of Aboriginal people; and Part B, the remaining 21,000 km² that incorporates seven pastoral leases and four mining titles. In October of 2000 and 2004, the Federal Court granted Wik people native title over all of Part A and 12,500 km² of Part B⁵, respectively (Pryor 2000, Gerard 2004). Both the Part A and B native title determination

⁵ Negotiation is continuing over the remaining Part B Wik claim area.

areas include land outside of the study area. Figure 1 illustrates native title land within the Aurukun area only.

Justice Drummond ruled in Order 3 of the Part A judgement, that (Federal Court of Australia 2000):

The nature and extent of the native title rights and interests in relation to the determination area are that, subject to Orders 4 and 5⁶, they confer possession, occupation, use and enjoyment of the determination area on the native title holders and, in particular, include rights, duties and responsibilities to do the following:

(e) make use of the determination area by:

(i) engaging in a way of life consistent with the traditional connection of the native title holders to the determination area ...

(f) take, use and enjoy the natural resources from the determination area for the purposes of:

(i) manufacturing artefacts, objects and other products;

(ii) disposing of those natural resources and manufactured items, by trade, exchange or gift save that the right of disposal of natural resources taken from the waterways (as that term is defined in the *Fisheries Act 1994* (Qld) as at the date of this determination) of the determination area is only a right to do so for non-commercial purposes.

The definition of *natural resources* in Order 3 of the ruling included forest products as defined in the *Forestry Act 1959* (Qld). Order 3 also conferred the right upon native title holders to ‘determine as between native title holders what are the particular native title rights and interests that are held by particular native title holders in relation to particular parts of the determination area’. Order 8 stated that ‘subject to Orders 4 and 5, [the native title rights and interests of Wik people confer] possession, occupation, use and enjoyment of the determination area on the native title holders to the exclusion of all others, except those having rights and interests identified in Order 6’. No rights and interests identified in Order 6 appear to degrade the Wik peoples’ exclusive right to timber in Part A of the determination.

⁶ Orders 4 and 5 specify that management must be in accordance with State and Commonwealth laws, and traditional laws and customs, and include a clause about tidal and flowing waters.

The Part B judgement handed down in 2004 consisted of two schedules: an exclusive areas determination; and a non-exclusive areas determination. All Part B determination areas within the Aurukun area are exclusive areas⁷. The rights of Wik people to timber on the exclusive areas of Part B are identical to Part A with the exceptions that points (i) and (ii) from Order 3(f) of the Part A determination (reported above) are not included, and there are different parties identified as holding valid rights and interests in the native title area. There are presently no ‘other rights and interests’ identified in Order 6 of the Part B exclusive determination areas schedule that could degrade the Wik peoples’ exclusive right to timber in the Aurukun area. However, presumably some rights to timber will be affected by the granting of a new mining lease over former Mining Lease 7032.

The Federal Court has granted Wik people possessory native title over the Part A and Part B exclusive determination areas. Section 45 of the *Forestry Act 1959* (Qld) includes a provision that forest products are the absolute property of the Crown ‘unless and until the contrary is proved’. These native title judgements have proved the contrary. Selective logging of timber appears to be consistent with the traditional connection of Wik people to their land and the Part A determination explicitly conferred the rights to manufacture artefacts, objects and other products out of ‘natural resources’ taken from the land, and to dispose of these manufactured items through trade, exchange or gift⁸. Wik people also appear to have been conferred a right to conduct commercial forestry on native title land within the study area without a permit from or payment of royalties to DPI Forestry. Forestry activities would be subject to legislation that applies to forestry operations on freehold land elsewhere in Queensland. Operations will also be subject to the Queensland Code of Practice for native forest timber production on private lands when it is complete.

⁷ The Part B non-exclusive determination area consists mostly of pastoral leases on which Wik people have been conferred less comprehensive rights. For example, Wik people cannot engage in a way of life consistent with the traditional connection of native title holders, live on or erect residences on non-exclusive native title areas. Also, Wik people have no right to control access to or use of the Part B non-exclusive determination area.

⁸ The right to produce and sell goods manufactured from the natural resources within the Part B exclusive determination area, which includes former Mining Lease 7032, is unclear.

3.2 Property Rights of Wik People to Timber Resources conferred by the *Local Government (Aboriginal Lands) Act 1978 (Qld)*

The *Local Government (Aboriginal Lands) Act 1978 (Qld)* established Aurukun Shire as a 50-year lease to Aurukun Shire Council. Until the granting of native title 2000, this *Act* defined the legal rights of Wik people to timber throughout Aurukun Shire. The rights of Aurukun Shire Council and Wik people to natural resources in Aurukun Shire are specified in sections 29 to 31 of the *Act*. Section 31 specifies all forest products within the meaning of the *Forestry Act 1959 (Qld)* are reserved for the Crown, as if the Shire was a Crown holding within the meaning of that *Act*. The *Forestry Act 1959* gives the chief executive of DPI Forestry the power to authorise persons to enter and extract forest products from the forests of Aurukun Shire. Therefore, under the *Local Government (Aboriginal Lands) Act 1978 (Qld)*, Wik people do not have the right to exclude others from timber within Aurukun Shire. Aurukun Shire Council may authorise the harvesting of timber for use on the lease without payment of a royalty to DPI Forestry. However, a permit must be sought from DPI Forestry to undertake commercial timber harvesting, logging must comply with all environmental and other legislation that affects such activities on State-owned land elsewhere in the State, and royalties for harvested timber are legally payable to the Queensland Government. Prior to the cancellation of Mining Lease 7032, Wik rights to timber on the lease were also subject to the condition that they did not interfere with the rights and obligations of the lessee.

The Wik Part A and Part B native title determinations identified Aurukun Shire Council, with its rights defined by the *Local Government (Aboriginal Lands) Act 1978 (Qld)*, as one of the ‘other interests’ in relation to the determination areas. The rights to timber conferred to Aurukun Shire Council under this *Act* prevail over native title rights to the extent of any inconsistency. Council activities are largely organised by a non-indigenous Chief Executive Officer and non-indigenous administration and technical teams working under democratically elected indigenous Councillors and an indigenous Mayor. Therefore, it is unlikely that the Aurukun Shire Council will invoke its power under the *Local Government (Aboriginal Lands) Act 1978 (Qld)* to deliberately override native title rights.

3.3 Property Rights of Wik People to Timber Resources on Mining Leases in the Aurukun Area

The establishment of Mining Leases 7024 and 7032 in the study area were facilitated by the special mineral development Acts, the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* (Qld) and the *Aurukun Associates Agreement Act 1975* (Qld), respectively. These were entered into as agreements between the mining company and the Queensland Government and gave lessees rights to utilise timber on the leases for construction, erection and maintenance of plant buildings, roads and other works necessary to directly or indirectly carry out their operations, without payment of a royalty to DPI Forestry.

Under the Queensland *Forestry Act 1959* and *Mineral Resources Act 1989*, control of access to commercially utilise timber resources on mining leases on State-owned land in Queensland is vested with the Crown. DPI Forestry can authorise commercial forestry operations on these leases provided those activities do not interfere with the rights and obligations of the lessees. All legislation applicable to forestry operations on State-owned land in Queensland are, by strict definition of the law, also applicable to forestry operations on mining leases within the Aurukun area⁹.

Wik people hold no legal rights to timber resources on Mining Lease 7024 in Cook Shire. Wik people can apply to DPI Forestry for a permit to commercially harvest timber from forests on the lease, but are obliged to pay royalties for harvested timber to DPI Forestry. It is unclear what, if any, restrictions Comalco Pty. Ltd. (the holder of Mining Lease 7024) may place on forestry activities within their lease area. Wik rights to commercially utilise timber on land that was formerly Mining Lease 7032 are presently those conferred by the Part B exclusive areas determination, but these rights are likely to be affected when a new mining lease is granted to the bauxite resource.

⁹ The intention of granting special bauxite mining leases is for all land under the lease to be cleared of vegetation and mined. Therefore, there may be grounds for regulations or restrictions imposed by particular environmental legislation on forestry operations to be relaxed on the mining leases within the study area. The Queensland Department of State Development and Innovation has indicated that it will support this argument for proposed forestry operations on bauxite mining leases on CYP (Taylor 2003). Nevertheless, it is likely that the longer the period of time between harvesting and subsequent clearing for mining, the fewer the number of regulations and restrictions that will be waived (Taylor 2003).

3.4 Property Rights of Wik People to Timber Resources on Aboriginal Freehold

As prescribed by the *Aboriginal Land Act 1991*, Aboriginal freehold over Aurukun Shire lease land (including former Mining Lease 7032) is likely to arise within the study area in the near future. Aboriginal freehold title reserves to the State the rights to all minerals and petroleum on or below the land surface. Section 43 of the *Aboriginal Land Act 1991* provides for the reservation of forest products (and quarry materials) to the Crown, if the Crown desires. Assuming the Queensland Government transfers the rights to timber with Aboriginal freehold land title, the characteristics of property rights of Wik people to utilise timber resources will be the same as freehold land title holders in Queensland. A Wik forestry industry would not be required to obtain a harvest permit from DPI Forestry or pay royalties for harvested timber, but would still be subject to legislation relating to vegetation management on freehold land. However, existing interests in the land continue in force, i.e. the granting of Aboriginal freehold over Aurukun Shire lease land with an existing mining lease would not diminish the mining leaseholder's right to demand that forestry activities must not interfere with their rights and obligations. Presumably, to the extent of any inconsistency between native title rights and Aboriginal freehold rights, the more comprehensive rights for Wik people will prevail.

3.5 Legislative and Other Constraints Potentially Affecting the Rights of Wik People to Commercially Utilise Timber in the Aurukun Area

Legislation enacted by Australian Federal and State Parliaments¹⁰, regional planning policy (e.g. CYRAG 1997, Commonwealth of Australia 1998, Department of the Premier and Cabinet 2000), and industry regulations and codes of practice (e.g. EPA 2002) can affect the rights of entrepreneurs and landholders with any tenure to manage and utilise timber resources on CYP. These constraints are discussed in Venn (2004a). In summary, with the exception of the Federal Government *World Heritage Properties Conservation Act 1983*, legislation, policy and codes of practice can affect how and

¹⁰ Important Federal and State legislation that can affect forestry operations in Queensland, include the *Export Control Act 1982* (Fed), the *World Heritage Properties Conservation Act 1983* (Fed) and the *Environmental Protection and Biodiversity Conservation Act 1999* (Fed), the *Forestry Act 1959* (Qld), *Timber Utilisation and Marketing Act 1987* (Qld), *Nature Conservation Act 1992* (Qld), *Land Act 1994* (Qld), *Environmental Protection Act 1994* (Qld), *Integrated Planning Act 1997* (Qld) and *Vegetation Management Act 1999* (Qld).

where forestry operations are conducted in the Aurukun area, but cannot completely prohibit selective logging in native forest.

4. COMPATIBILITY OF FORESTRY-BASED ECONOMIC DEVELOPMENT FOR WIK PEOPLE WITH INALIENABLE AND COMMUNAL NATIVE TITLE TO LAND

Economists have argued that the inalienable and communal nature of native title is an obstacle to economic development in remote Australian indigenous communities. For example, Williams (1993) asserted that collective property rights reduce incentives to improve land (management that increases the stream of benefits produced by the land) and manage land in an ecologically sustainable manner. Warby (1997) argued that inalienability prevents land from being put to its economically efficient use by people who most value the land. Furthermore, he contended that, in comparison with individualised land tenure, the communal nature of native title property rights increases transaction costs, thereby reducing the number of wealth generating exchanges that will take place. Duncan (2003) observed that inalienability limits the capacity of native title holders to raise capital by mortgaging land. Indeed, Nagy (1996) reported that traditional owners of several Aboriginal-owned pastoral leases in the Northern Territory, which have been converted to inalienable Aboriginal freehold land under the *Northern Territory Land Rights Act 1976*, were unable to raise finance to maintain and develop their pastoral enterprises.

The socio-economic environment of the Aurukun area and the high importance Wik people place on non-pecuniary objectives is unfamiliar to Australian finance lenders – a Wik forestry industry will be judged as a high-risk venture irrespective of whether Wik rights to land are alienable and held individually. The argument that the inalienability of native title land tenure will prevent the land from being put to its most economically efficient use has limited relevance to the Aurukun area. Remoteness, poor soils and low cattle carrying capacity suggest that the opportunity cost of agricultural production foregone is likely to be small. The criticism that inalienability precludes indigenous landholders from raising finance to drive economic development through mortgaging land is simplistic both in its narrow conception of rights potentially conferred by native title and because in determining credit worthiness, financial lenders not only consider an

applicant's collateral, but also their ability to repay the loan. Altman and Cochrane (2003) and Duncan (2003) have highlighted the potential for long-term leases conferring rights to particular natural resources on native title land (as distinct from interests in the land) to be accepted by banks as security for loans. With possessory native title that includes rights to commercially utilise timber, Wik people could potentially raise finance using long-term leases to timber resources as collateral, as distinct from the land.

The high importance of connection with country for the spiritual well-being of Wik people raises ethical and practicality issues surrounding the alienability of Wik native title land. Suppose Wik people were granted alienable native title and defaulted on repayments of a mortgage over their traditional land. Presumably the lender would wish to sell the property to recover the debt, but what would happen to Wik people? Eviction would be politically intolerable. This suggests that even if Wik native title land became alienable, the government would be required as the guarantor on a private loan or source of 'seed' funding to facilitate economic development.

The argument that without individual land rights there are reduced incentives to manage natural resources to improve the land (increase the flow of future benefits) has less relevance for an extensively managed native forest system than, for example, an intensively managed annual cropping system. Discounted revenues arising from native forest management practices, such as timber stand improvement (removing unmerchantable trees to promote regeneration), are negligible at any realistic discount rate.

Collectively, Wik people have aspirations for a timber industry that will have limited detrimental effects on other potential economic development opportunities, e.g. ecotourism in wetlands and forests outside of mining leases. Presently, various pieces of legislation and operational prescriptions restrict how and where timber harvesting can be undertaken on native title land, but do not prohibit logging¹¹. A profit maximising individual native title landholder in the upper catchment of wetlands has no economic incentive to refrain from harvesting timber and will not account for the cost of likely

¹¹ With the potential exception of the *World Heritage Properties Conservation Act 1983*.

increases in sediment loads in watercourses and subsequent damage to the ecology and ecotourism potential of wetlands on other individual native title landholdings downstream. In contrast, collective resource management on communal native title land may lead to a more socio-economically efficient outcome for Wik people, as all members of the native title claimant group can share in the benefits and costs of logging and conservation in particular areas.

The relatively low harvestable volume of timber per hectare in forests of the study area indicate it is unlikely that individualised native title holdings would include sufficient timber volume to supply a moderate-sized milling operation over a time period that would justify investment in necessary plant and equipment. On the other hand, establishing a forestry industry with access to a large pooled resource, as under the communal native title Wik people presently hold, would provide a large resource, permit logging to be concentrated initially in the most accessible (least cost) areas and facilitate a high degree of operational flexibility (e.g. provide areas for wet weather harvesting and the ability to meet orders for less common timbers, including Cooktown ironwood).

In the culturally diverse and historically troubled social environment of Aurukun town, government financial assistance, whether as 'seed' funding or as guarantor on a private loan, is probably best directed towards collective economic development projects in which all clans in the Aurukun area have a stake. This will reduce the prospect that a project will be seen as favouring particular clans over others. Communal native title appears to be more conducive than individualised native title for the provision of economic development assistance in the study area.

The current property rights regime appears to be satisfactory for establishment of a Wik timber industry on CYP and research by Venn (2004a) has highlighted the potential of such an industry to generate employment and income for Wik people. However, a plethora of resource development projects have been implemented in the Aurukun area from the earliest days of Mission activity, all of which failed when the community-based brokers who initiated them became dispirited or departed (Dale 1993, Venn 2004b). Dale (1993) highlighted several reasons for project failure, but principally the

limited support and interest of Wik people in the projects, and a lack of participatory and technical planning.

CYP indigenous leaders have argued that reconciliation of social and cultural considerations with private enterprise is the main obstacle to economic development (Pearson 2000, Ah Mat 2003), an issue that has hardly been addressed by research. Cultural differences and low Western education and skill levels have excluded Wik people from the *real* economy labour force. A passive welfare economy has been created by government where personal sustenance is received without the recipient being required to work or provide anything in return. This regime has corrupted Wik social relationships, values, expectations and aspirations. Traditional custom requires Wik people to fulfill cultural obligations such as social engagements (e.g. participation in mortuary rituals) and traditional management responsibilities within clan estates (e.g. hunting and fire management). It is sometimes impractical for these activities to be postponed until the end of the working week. For a timber industry to have a chance of success in Aurukun, employment opportunities need to be designed that recognise the inappropriateness of a 40-hour working week and the relatively low labour productivity of people with no market economy work experience and limited Western education and skills training. Another feature of Wik and other Australian indigenous cultures is the obligation to distribute gains among extended families. This makes it difficult for the Wik to accumulate capital or obtain and service a bank loan.

Social and cultural factors are substantial obstacles for a commercially viable, employment-generating Wik forestry industry. Enterprise development in Aurukun will require a transition period between the welfare and the market economies. During this phase, culturally appropriate employment generation and development of human capital and entrepreneurial expertise will take precedence over profit maximisation. Quiggin (2004) asserted that arguments similar to those used to justify tariff protection for particular industries are relevant for infant indigenous industries. Subsidising the high effective labour costs in the study area, perhaps through the CDEP, is one policy option that could be explored.

5. CONCLUDING COMMENTS

There has been much political rhetoric in Australia about sustainable economic development in remote indigenous communities, yet governments have appeared reluctant to grant indigenous people property rights to natural resources – the single economic factor remote indigenous communities have in their favour. To avoid impeding development opportunities for indigenous communities, native title must confer comprehensive and exclusive rights to at least some economically important natural resources. As possessory native title holders, Wik people appear to have an unencumbered right to manage and determine uses of their native title land, including rights to commercially utilise timber without a permit from and payment of royalties to the Queensland Government. However, outside of native title determination areas Wik people are legally obliged to obtain harvest permits and pay royalties to commercially harvest timber. Forestry operations within and outside the native title areas must comply with all legislation applicable to activities on freehold and State-owned land respectively.

Several issues, including reconciliation of social and cultural obligations with engagement in the market economy, cultural diversity within the indigenous population of Aurukun town and low Western skill-levels make economic development for Wik people a challenging undertaking. By comparison, the inalienable and communal aspects of native title appear to be second-order development obstacles. If Wik native title land became alienable and individualised, it is unlikely enterprise development in the Aurukun area would become less challenging. The fact that forestry enterprises have harvested and continue to harvest timber from native forests on State-owned and freehold land in Queensland without alienable and individualised rights to land provides another indication that the inalienable and communal nature of native title is unlikely to be a major impediment for native forest-based economic development in the Aurukun area. Native forest logging provides an economic development opportunity for Wik people that is compatible with their property rights to natural resources.

ACKNOWLEDGEMENTS

The author is grateful to the Australian Research Council, Rural Industries Research and Development Corporation, the Cape York Partnerships unit in the Queensland Department of Premier and Cabinet, and the Australian Centre for International Agricultural Research for funding this research. Critical in-kind support was also provided by Balkanu Cape York Development Corporation, Aurukun Shire Council and DPI Forestry. The following Wik elders are thanked for generously giving their time to discuss their forestry objectives and opportunities: Joe Ngallametta; Rotana Ngallametta; Pamela Ngallametta; Joshua Woolla; Ron Yunkaporta; Hersey Yunkaporta; Maurice Holroyd; Anthony Kerenden; Gladys Tybingoompa; and Denny Bowenda. The editing assistance of anonymous government experts in land tenure, property rights issues and conservation significant flora and fauna is also appreciated.

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