

Supplementary comments by the Northern Land Council

Application for the Establishment of the Katherine Regional Land Council

11 October 2012

**APPLICATION TO ESTABLISH KATHERINE REGIONAL LAND COUNCIL
SUPPLEMENTARY COMMENTS BY NORTHERN LAND COUNCIL**

In a letter to the Northern Land Council (NLC) dated 25 July 2012, the Indigenous Affairs Minister invited comments in relation to the interim report dated 14 October 2011 and final report dated 27 April 2012 which was prepared by the former Aboriginal Land Commissioner, Howard Olney AM QC.

The NLC agrees with the Commissioner's observations that there is now "a wide range of material" available to inform the Minister as to her consideration under s 21B of the *Aboriginal Land Rights (Northern Territory) Act 1976*,¹ and that although described as "preliminary" the applicants' further submission dated 24 April 2012 in fact "succinctly" states their position regarding various matters put against their application for a proposed 'Katherine Regional Land Council' (terminology which is exposed as a misnomer given the vast size of the qualifying area; see below).²

It is not necessary to respond in any detail to the applicants' further submission or accompanying correspondence (dated 12 March and 24 April 2012). That submission does not coherently respond to the central thrust of the NLC submission dated 28 September 2011, namely that the application should be refused pursuant to s 21B(1)(b) because:

- (i) the Minister could not be satisfied that the qualifying area is an "appropriate" area under s 21B(2)(a) on various grounds (detailed in the NLC submission dated 28 September 2011) including that it is not in any respect focused on regional cultural groupings;
- (ii) the Minister could not be satisfied that the proposed entity could "satisfactorily" perform a Land Council's functions regarding the qualifying area as required by s 21B(2)(b), due to the proposal being unworkable;
- (iii) consultations demonstrate that there is considerable support for the NLC retaining its role regarding the qualifying area, and only minimal support for a new entity being established.

The applicants' submission confirms these grounds of refusal. The applicants now concede that the proposed new entity - which concerns almost 80% of the NLC's region - will, in fact, require staffing levels which "will probably mirror those of the NLC insofar as they relate to servicing the Qualifying Area." No longer do the applicants claim, incorrectly, that the new entity will need only 10 staff.³

The applicants also concede that its initial costs will exceed those currently expended by the NLC in the qualifying area (ie current NLC costs plus "initial establishment costs").⁴ The applicants' claim that "there will in due course be a reduction of staffing and consultant costs" of the new entity is not supported by any coherent evidence and, in view of the

¹ Commissioner's final report par 16.

² Commissioner's final report par 16.

³ Applicants' further submission p 3.

⁴ Applicants' further submission p 3.

complex and resource intensive functions performed by Land Councils, must be regarded as speculative and implausible.

The applicants further concede that the members of the new entity “will include most of the present NLC members from the Qualifying Area.” In other words, the new entity will simply comprise 80% of the current NLC (both in membership and in funds), with the remaining 20% operating as a small Land Council to the north. The application is not in any respect focused on regional cultural groupings.

Rather, it is exposed as an attempt - under the guise of establishing a tailored entity serving specific cultural groupings - to supplant the NLC by a similarly sized, similarly constituted, and similarly funded entity which performs the same functions at the same cost regarding substantially the same area of land. So appreciated, the application is well beyond the ambit of what was contemplated by the Legislature when including the new Land Council provisions in Part III of the statute.

This consideration directs attention to the remaining 20% of land which, if the application is implemented, would become the reduced NLC region. This would occur notwithstanding that the traditional owners and Aboriginal residents of that reduced region have not made any application under s 21A(1) for a smaller Land Council. If that had occurred, under the statute, those traditional owners and residents would have been consulted and, if supported by the Minister under s 21B(1)(a), there would be a plebiscite in which their views would be formally expressed.

Notwithstanding their clear interest in a proposal which substantially reduces the administrative size of current arrangements regarding their country, the applicants have evidently made little or no attempt to consult or ascertain the views of traditional owners and residents of the remaining 20% of land.⁵ Nor, with respect, did the consultative process conducted by the former Commissioner include direct consultations with those traditional owners and residents. The Commissioner's approach accorded with that previously taken for proposals to establish new Land Councils to relatively small areas of land, with focus primarily on the traditional owners and residents of that land.

These considerations underscore that the applicants' proposal is radically different to previous proposals for the establishment of new Land Councils, and must be appreciated and assessed on that basis. In this circumstance, it is submitted, the statute and administrative law requirements⁶ require consultation and consideration of the views of traditional owners and residents of the remaining 20% of land. The Minister could not, it is submitted, properly proceed to plebiscite under s 21B(1)(a) without first formally consulting, and considering, those views.

Finally, the applicants' submission contains various other claims and, regrettably, aspersions, which are baseless, and are not subject of detailed response herein.

⁵ Nor, as previously submitted, are the Applicants' consultations with traditional owners and residents of the qualifying area adequate or reliable.

⁶ The *Land Rights Act* is silent as to such consultations, perhaps because the possibility of such a large application under s 21A was not considered during the drafting process. Nonetheless administrative law requirements as to consultation with interested persons (of the remaining 20% of land), and consideration of their views, apply.