

# Communiqué

## Indigenous Property Rights Banking Roundtable - Minjerribah, Queensland 17-18 May 2016

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This Roundtable was held on Minjerribah and hosted by the Traditional Owners, the Quandamooka people. The Roundtable acknowledged and thanked the Traditional Owners for allowing us on their country and the generous sharing of their stories with us.

The purpose of this Roundtable was to establish a relationship between Aboriginal and Torres Strait Islander peoples and the financial sector that will:

1. Facilitate the realisation of economic benefit from the Indigenous Estate.
2. Identify areas of reform necessary to enable the finance sector to partner with Aboriginal and Torres Strait Islander property rights holders.
3. Engage in the advocacy for those areas of reform.

### Mapping the Indigenous Estate - The Quandamooka Atlas

As part of welcoming Roundtable participants to their country, the Quandamooka people provided participants with an opportunity view the Quandamooka Atlas (the Atlas).

The Atlas was developed as a joint effort between National Native Title Tribunal (NNTT) and Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) and includes land tenure and regulations including:

- native title land.
- freehold land.
- local government zoning.

The Atlas is a practical application of the NNTT's geospatial mapping technology discussed at the Canberra Roundtable at AIATSIS earlier this year. It shows how the technology can be used by Indigenous people across many types of tenure including native title determinations, land acquired through land rights applications, and pastoral leases.

The Atlas showed the Roundtable the benefits of mapping specific areas as a starting point for discussions about the development opportunities in an area.

### Using Principles to guide business and development

The Roundtable considered the *Indigenous Investment Principles*, recognising their utility for guidance to development decisions on the Indigenous Estate, noting the importance of free, prior and informed consent, and the role that good governance will play in sustainable and beneficial development.

The Roundtable also reaffirmed the importance of the *Guiding Principles* developed by the Indigenous Property Rights Network, particularly the securing and protection of the Indigenous Estate.

## The Banks

The Roundtable was an opportunity for bankers to hear, first-hand about the practical experiences of Indigenous property rights holders pursuing economic development on land and sea. Indigenous participants described the barriers encountered when engaging with state governments, local governments and planning regulations. They also described the important conversations about risk and investment among Traditional Owner groups, and the factors which make up the risk appetite among Indigenous community groups. Participants from the banks were able to give their insights into lending practices of the banks when considering development opportunities.

It was recognised that in an ideal world, non-Indigenous Australians and Indigenous peoples would face the same barriers to financing economic development, with five key decisions identified as fundamental to lenders' considerations of business proposals. In no particular order these were:

1. The question of serviceability of any loan – that is, is it viable?
2. Governance and financial acumen of the Indigenous community
3. Valuation in rural and remote Australia (the secondary market)
4. Reputational risk to lenders
5. Tenure of land used as collateral

It was acknowledged that we don't live in an ideal world, so the challenge remains to create a level playing field where those five decisions can be applied equally to Indigenous and non-Indigenous areas of economic development.

## Managing Risk

One way of creating a level playing field was to better understand and manage the different risks involved in leveraging the Indigenous Estate when entering into economic development activities. This is particularly important in view of the *Guiding Principles* which prioritised 'securing and protecting the Indigenous Estate'.

The Roundtable noted at least two areas of risk that required further understanding and mitigation; the risk of using the Indigenous Estate to raise capital and the risk to lenders in financing within the Indigenous Estate market.

The Roundtable noted the importance of building the governance capacity of landholding groups who were considering using the Indigenous Estate to raise capital. Strong governance and implementation of the principle of free, prior and informed consent were important to risk management. Utilising resources to guide informed decision making, such as the *Indigenous Investment Principles* was supported.

The issues of risk management from the lenders' perspective was discussed extensively. Practical considerations such as reputational risk to a bank of foreclosing on a loan within an Indigenous community, and the difficulties of finding a 'secondary market' in rural and remote Australia from which to realise any capital when a loan is distressed were discussed.

The Roundtable noted that federal governments had previously developed tax incentives and financial structures to underwrite the risks involved in establishing cutting edge new industries and nation building initiatives. Financial institutions had also created specialty support for sectors facing difficulty such rural businesses.

Capacity building was identified as an issue for both Indigenous community groups and the banking sector. Building the capacity of the banking sector to work with Indigenous land holders and land owners was seen as absolutely essential.

## The Strelein Model

Dr Lisa Strelein, Executive Director of Research, Indigenous Country and Governance at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has been developing a model which responds to the need for tenure that protects the intergenerational interests of native title holders using existing property law mechanisms. The model starts with 'exclusive possession native title' and considers processes whereby the interest becomes suitable for the finance sector to deal with as a 'mortgage-able interest'. A copy of that model is attached to this communique.

The Roundtable agreed that this model could produce a fundamental shift in how native title land may be used to advance economic development of the Indigenous Estate and endorsed further work on this model being undertaken to test its assumptions, and legal and practical workability.

## The Way Forward

There was a strong consensus between both the banks and the Indigenous participants that this was the first of many conversations and that the Indigenous Property Rights Network reform agenda should:

- continue building the relationship with the banking and finance sector to expand discussions about risk, return and serviceability.
- continuing mapping the Indigenous Estate to better understand its characteristics.
- increase capacity building among Indigenous property holders to facilitate effective participation in decisions.
- continue building knowledge about the market value of specific economic development opportunities.
- continue to explore and test tenure models that provide for economic development and maintain the Indigenous ownership of the Estate.
- continue exploring the potential for tax incentives and more flexible incorporation options for Indigenous organisations.
- Explore finance mechanisms to mitigate risk.

- Increase understanding about types of economic development that meets the risk appetite among Indigenous land holders.
- Increase understanding about the diverse ways to share benefits with Indigenous land holders.