



16 June 2015

Mr Wayne Bergmann
Chairperson
Expert Indigenous Working Group
COAG
BARTON ACT 2600

By E-Mail to EIWGSecretariat@pmc.gov.au

Dear Wayne

COAG Investigation into Indigenous Land Administration and Use

I refer to correspondence received 13 May 2015 addressed to the Miriuwung and Gajerrong #1 (Native Title Prescribed Body Corporate) Aboriginal Corporation and the Miriuwung and Gajerrong #4 (Native Title Prescribed Body Corporate) Aboriginal Corporation (**MG PBCs**) seeking comment.

The MG native title determinations gave rise to the Ord Final Agreement (**OFA**) which established MG Corporation and other entities to receive the benefits of the agreement. MG Corporation provides administrative and legal support to the MG PBCs under their respective constitutions. The OFA articulates the benefits and obligations of both the MG people and the State Government but fails to incorporate timeframes and or financial responsibility to complete the actions required. Further the State has continued to facilitate new agreements for alternative lands outside of the OFA.

The OFA specifies a benefits package including cash components, partnerships and joint venture opportunities, and most significantly freehold land and other land interests and entitlements. It provides the foundation for constructive engagement between the State, including the Commonwealth, local authorities and the MG people.

Whilst the OFA's intent could be considered progressive at the time of construction, it failed to recognise the requirement of the State to implement strong governance and financial management developmental programs. MG people were placed in decision making roles of which they were generally ill equipped to undertake in the first instance. This has led to slow development of businesses and other economic ventures.

Positive aspects of the OFA include:

- Open dialogue between the parties which has formed the basis of ongoing considerations and negotiations.
- Immediate cash injection for economic and personal development of MG people
- Opportunity for individuals and family groups to establish enterprise and partnerships with external providers and investors in the locality.
- Requirement of government and developers to engage with MG people

- Recognition of Native title and its positive aspects
- Understanding by developers that Aboriginal people are not against developers

Aspects of concern:

- The OFA did not establish a single desk within Government to manage the agreement commitments and ensure completion. MGC constantly advised that particular issues is another department's problem.
- Administration funding provided to operate MG Corporation is inadequate given the broad outcomes imposed on the MG Corporation and the ongoing requirement for advice and decisions by the Government and other proponents.
- OFA empowered the Government considerably more than the MG People and the objectives of Trusts and other entities could be seen as paternalistic.
- Costs incurred through transfer of lands (including impending and future statutory requirements) is prohibitive and could lead to future loss of lands through other legal processes external to the OFA
- No sunset clauses other than when the government specified contribution period ceases.

General comment

Overall the MG people have not yet benefited in a sustainable manner through the OFA as the State continues to determine its areas of priorities rather than facilitating the MG people to develop its own executive management and corporate governance understanding/implementation.

In both the legislative framework and the contractual obligations of the OFA, MG Corporation and the MG people are beholden to the Government's agenda. A corresponding regulatory framework to protect the MG People from the exercise of Government political power has not been developed. The requirement of having an independent State Government director on several trusts, while good in theory has not provided any benefits and could be argued has impeded the development of MG Directors and development due to the conservative and restrained manner that the State has required to protect its "investment"

The development of the East Kimberley area continues to occur beyond the OFA and thus the MG people's right to a legitimate interest in all new development continues to override/postpone both past and current OFA obligations, therefore further delaying realisation of opportunity for sustained growth from lands and opportunities already provided under the OFA.

Issues to be considered for future agreements under Native Title determinations.

Establishing priorities

MG Corporation continues to be involved in the development of the area albeit not as a valued party of equal contribution and participation. MG Corporation has sought to lead the way in the development of the East Kimberley area, yet its potential is quashed by Government. MG Corporation's eagerness to move forward is demonstrated by the productive relationship with Kimberley Agricultural Investments Pty Ltd (**KAI**) whereas it has reached agreement without Government involvement.

The suppressed economic development potential of MG Corporation and the MG people is demonstrated by the example of a 700 hectare parcel of land. The OFA entitles MG Corporation to freehold ownership of this land. Its transfer is yet to be finalised. This is an area of numerous competing interests and MG Corporation has received proposals regarding development and the granting of additional land interests. MG Corporation cannot facilitate these opportunities because it has not received title and the State cannot provide details when this transfer will occur.

Statutory Costs

Where land transfers impose statutory costs such as environmental management and monitoring, rates and stamp duties etc. these costs need to be brought to the front of discussions and a tabulated schedule of costs highlighted. MG Corp through the incompetence of the land administration has

avoided many of these costs to date, however as pressure is mounting to deliver the requirements of the OFA, it places the Corporation in a fiscally dangerous position. Insufficient ongoing operational funds could lead to default and then freehold lands being resumed by Local Government and the State.

Legislation

The intersection of State and Commonwealth legislative instruments is severely debilitating for economic development outcomes. For example the MG Corporation and KAI partnership is inhibited by the *Environmental Protection Act 1986 (WA)* and *Environmental Protection and Biodiversity Conservation Act 1999 (Cwth)*.

Where native title holder's position is not conducive to economic development outcomes the State demonstrates a lack of adherence to agreements so as to achieve outcomes consistent with their economic and political agenda. The most common correspondence the MG PBCs receive from the State in relation to native title is to advise of the commencement of action under the compulsory acquisition provisions of the legislation. This is despite MG people being very willing to work with the State to develop areas that have no impact on cultural matters.

Recently MG Corporation was advised by DPaW that its intent was to establish a Marine park and unless the MG People immediately participated in consultation and commenced the development of an ILUA, it would proceed and implement anyway because the government wanted it completed by August 2015. The fact that conservation land and other titles under the OFA are still outstanding was irrelevant.

Community interests

Despite the OFA being in existence for 10 years, lands that would allow MG people to receive independent land leases or allocations of freehold cannot be facilitated as the State has yet to transfer these lands. As a consequence, where family groups have sought to utilise the land as assets for business development or personal loans, this has been thwarted though government inaction. This clearly demonstrates a clear link between the inefficiency of the land administration system inhibiting personal and economic development outcomes for MG people.

Conclusion

1. Agreements need to incorporate stringent mechanisms for independent review and commits the Government to abide by an independent review to fulfil its obligations.
2. Agreements need to be costed and funds allocated on an annual basis to enable bureaucracy to undertake its role without excuse of not having adequate funds to complete actions.
3. Host organisations such as the MG Corporation need to be properly resourced and if requirement that independently resourced in a set time then appropriate development need to be part of process.
4. State needs to agree that new developments not to occur until current actions completed
5. Consider exemptions from Statutory costs until host organisation/entities are financially sound – with government having responsibility to assist with development of capacity in a professional manner – not paternalistic.

Yours sincerely



Neil Fong
Chief Executive Officer
MG CORPORATION