



HOPEVALE CONGRESS ABORIGINAL CORPORATION (RNTBC) (CONGRESS)

SUBMISSION TO THE QLD LAW REFORM COMMISSION

REVIEW OF MINING LEASE OBJECTIONS PROCESSES

(Prepared with the assistance of Atherton Tablelands Law, Lawyers for Congress (ATL))

(MEETING 25 SEPTEMBER 2024 AT HOPEVALE)

QLRC CHAIR – FLEUR KINGHAM

Background

The Qld Government have decided to revise the mining lease objection process because it is not working well for either miners or landowners or the community in general.

The government has asked the Qld. Law Reform Commission (QLRC) to consult with miners, landholders and the community about a new way of dealing with mining lease applications.

QLRC have developed some proposals for a new system and they recognise the special place of ATSI peoples in relation to mining lease applications and want Congress views about the problems Congress has had in dealing with miners and what Congress thinks about the new process proposed by QLRC.

QLRC have put out 4 Summary papers about the new suggested process and a Consultation Paper for ATSI responses to questions QLRC have asked on the new recommended process.

Outline of current process

The current processes for handling mining lease applications is very complex and it is not efficient, either for the miner or the landholder who are the most affected parties.

There are multiple permissions required under different laws for both the mining and environmental impacts of the project.

Congress is both landholder and RNTBC for native title parties involved in the current mining lease applications of both Diatreme and Metallica. Congress consent as Land Trustee is required for the government to grant any mining lease. Congress consent as RNTBC for native title parties under the right to negotiate is also required.

The negotiations so far have been difficult and very unsatisfactory. They have all been held in the context of confidential discussions. If no agreement can be reached then Congress will need to lodge and objection to the Land Court to the mining lease applications.

The Land Court currently deals with the objections of landholders to mining lease applications **before the** mines Minister makes a decision as to whether to grant the mining lease or not.

The Land Court process is again complex, adversarial, restrictive and costly for both miners and landholders.

There is a lack of transparency during the whole process as the landholder is dependant on the miner to provide information directly to the landholder or the court. And this hampers the landholder in preparing for the court proceedings. The court process can be manipulated by the miner and external environmental groups who may not have the local community interests at heart.

A further problem with the current process is that the Minister is not required by law to consider the rights and interests of ATSI people in land, culture and heritage (except to the extent that the Minister needs to know if an ATSI landholder has consented or not to the application – but even if no consent is given by the ATSI landholder, the Qld Governor can still make a decision to grant the mining lease).

QLRC Proposal for reform

The main thrust of the reform proposals is to give an opportunity for ATSI participation and environmental investigations and consultation to take place first in relation to a mining lease application, then for the mines Minister to make a decision based on the recommendations from those consultations and postpone the Land Court process until after the Minister makes a decision to grant or not grant the mining lease.

So, in summary it is proposed there will be 3 stages for assessing a mining lease application:

Stage 1 ATSI Committee/ Expert environmental and community investigation and consultation and advice to the Minister about the mine project

Stage 2 Minister makes decision on mining lease application taking into account all information and recommendations from Stage 1 ;

Stage 3 If the miner or landholder does not agree with the Minister's decision then either can go to the Land Court to review the decision

There are some legal complexities to do with the type of decision the Land Court can ultimately make and also there are questions about who will make up the ATSI committee and who will be on a new Independent Expert Advisory Panel.

The new process will be complimented by an online Portal that will have all information relating to the mining lease applications and updates on progress through the process on it for all to see to enhance the transparency of the whole process.

There will also be new laws that force the Minister to consider the rights and interests of ATSI people in land culture and heritage.

Questions for Congress to ask QLRC

1. The proposal is to establish a ATSI Advisory Committee.

- Is that for each mining proposal or is this Committee to be a standing committee called on to advise on each mining proposal?
- How will the members of that Committee be selected?
- Only traditional owners for the particular area have authority to speak for that country.

- How will that principle be protected in the selection of the ATSI Advisory Committee? Will it have local ATSI people for the mine area on it?
- What will be the job of the ATSI Advisory Committee?
- How will the ATSI Advisory Committee be resourced?
- Congress endorses the concept of extension for ATSI group to co- own or co-manage the project. This is consistent with Congress Chair Tim McGreen policy statement that Congress should be involved as an equal stakeholder in mine projects **“from the start”**.

Contributions on ATSI Advisory Panel from meeting:

Because Congress is both the RNTBC and the Land Trustee with decision making processes for making Native Title Decisions and Statutory Title Decisions already included in the Rules of Congress, it is the perfect vehicle to constitute the proposed ATSI Panel.

(See R.7.12 and 7.13 **Congress Rule Book copy attached** and associated Certificates in Schedules 2A, 2B, 2C).

So far as Congress is aware all PBCs were mandated to amend their Rules to include at least the Native title decision making process in 7.12.

The ATSI Panel TOR should include a requirement to make a recommendation to the Minister as a relevant consideration in the Minister’s decision making process and QLRC should recommend that the recommendation by the ATSI Panel should be deemed either a Native Title Decision and/or Statutory Title Decision (where PBC applicable) and the recommendation to Minister can be accompanied by the relevant Certificates as evidence of proper process in the ATSI Panel reaching that decision.

Further to instructions from Congress we are able to outline the process followed by Congress experience of recent negotiations over the past two years Congress has adapted this process to include the following:

- a) Identification of the right native title holders for the mine area (and areas ancillary to the project) by reference to the clan lists and connection materials filed with the court for the purposes of a native title determination (These suggested processes will obviously only work where there is already a native title determination but an RNTBC would be the next best entity to identify and then assist with setting up of an ATSI Panel and follow a similar process- but using their anthropological inhouse information – where there is no determination)
- b) Using the Hopevale Clan lists, Congress examined the list and identified persons who had passed but had surviving family members who were added to the list.
- c) Notice was given of a clan meeting to all the clan members so identified for the purpose of selection of clan representatives for a steering committee to participate in negotiations. In addition, the whole Board of Directors of Congress were part of the negotiation Committee.
- d) Meeting was held and clan representatives selected to conduct negotiations alongside Congress and with whom Congress could consult on mining negotiations issues.
- e) Meetings were then held with the miner with the clan steering committee and Congress to confer on mine issues/impacts.

TOR for ATSI Advisory Committee

QLRC should give some consideration to developing, along with the concept of the ATSI Advisory Committee, some TOR that responds to the sorts of issues raised at the recent meeting with QLRC viz:

1. ASTI Advisory Committee (if not PBC) should not do anything to undermine role of PBC in undertaking its statutory duties;
2. If ATSI Advisory Committee is the PBC then appreciate that it might also be Land Trustee and in that capacity it has to take account of all beneficial interests in the whole of the land (eg whole 110,000Ha of the Hopevale DOGIT).
3. Give special attention to resources such as Water/ cultural knowledge about flora/fauna/ insect species for the land as well as cultural heritage

Despite significant contributions made by Hopevale Congress to recent draft EIS TOR for both Northern Silica Project and the Cape Flattery Silica Sand Project, the experience was disappointing because it does not appear that sensible/genuine suggestions were taken up in the final version of the TOR just released.

So if the setting of the TOR for the ATSI Advisory Committee is left to some bureaucratic agency – it is unlikely to be accurately responsive to their needs. Perhaps if QLRC cannot draft TOR then some basic principles enshrined in legislation for framework for the TOR to fit into would ensure ATSI views /concerns are addressed in the TOR. The concept of ATSI AC taking a “holistic” view of the impact of the mining proposal should also be included.

Engagement with ATSI people on country was a big issue as was a degree of control of the participation process by ATSI people. they need to be treated as if “**at the top**” in terms of the importance of their views because of their legal ownership and/or native title rights and interests in the land as well as their cultural interests now being formally recognised under the Human Rights Act (Q).

Given there can be disagreement still between different clan groups about certain matters – TOR may need to provide for the recording of minority views (as with Parliamentary Committee Reports).

2. The proposal is to set up a new Independent Expert Advisory Panel that will form project specific committees for decisions on environmental authority applications to include experts appointed by the Government with knowledge about cultural heritage and ATSI rights and interests.

- Is this a standing committee or project specific?
- How will the ATSI expert be selected?
- The TOR for this Panel will need to include specific cultural norms such as the ATSI expert consulting with the right people before giving an opinion relating to a particular project. The TOR for the panel need to be widely consulted to ensure ATSI people are satisfied with the extent of authority of this Panel member

Congress Contribution on Expert Panel

Congress suggests that the ATSI Advisory Committee is best place to nominate the ATSI member on the Expert Panel because that person will already be authorised by the processes backgrounding the establishment of the ATSI Advisory Committee and should be up to date with

progress and activities of the ATSI Advisory Committee and can keep the Expert Panel informed thereof.

3. Resourcing of ATSI participation.

The new system involves considerations of costs and resources for participation in the Land Court process at the end (if that occurs) but who pays for the ATSI participation during the earlier stages of the new process?

In recent mining project negotiations over the past two years Congress has experienced huge difficulties in being properly resourced to respond to the mining applications. Although both mining companies involved have covered some costs incurred by Congress the process of reaching agreement over that funding has been time consuming and drawn out and not covered all the costs incurred by Congress in informing itself about all aspects of the project. In one instance, having agreed on a budget to cover the costs of a meeting, the proponent then reneged and disputed aspects of the invoice that was in accordance with the budget, and stalled payment in that regard for months.

The gratuitous cost recovery situation that prevails at present has thus been weaponised by certain project proponents. In one case clearly, the proponent did not like the results of meetings some meetings and used delay/refusal to pay/ nitpicking over invoices to take revenge upon Congress for things not going their way.

As a Trustee Landholder under the Aboriginal Land Act – the decisions required of Congress extend beyond just negotiation of compensation for native title impact (which is the case in its capacity as RNTBC for those clans affected by the mine projects and for which it is the RNTBC).

The primary principle applied by Congress is that it “*should not have to put its hand in its pocket to pay for any work needed to be done to obtain Free Prior Informed Consent for any mining project.*” *There should be complete cost recovery of Congress costs from the proponent.*

The QLRC should take the opportunity of including the ATSI FPIC cost recovery principle as a statutory criteria because that would at least be a starting point to reduce argument over what costs the proponent will and will not cover. There is currently no statutory obligation on the miner to cover the ATSI landholder/native title holder costs.

Congress and no doubt other ATSI landholders simply do not have the resources to respond to even one mining project let alone two or three at the same time.

By way of example in each of the current mining project negotiations currently involving Congress, historical conduct and compensation agreements relating to exploration have included terms obliging the proponent to cover Congress costs of legal advice, experts and administration. However, that obligation is conditional upon the proponent first agreeing to a budget and of course what has happened in both sets of negotiations is that the proponent avoids reaching agreement on anything other than funding Congress for specific events (such as meetings) that do not cover the work required to keep up to date, progress reports and advising Congress in between particular events and on matters relevant to the project but may not be the subject of a particular meeting.

In each case, the proponent has been given an estimate for a monthly retainer for Congress legal advisers relating to the project which is time based such that in months where not much work needs to be done that is project related it could be less and in other months where more work is required to provide advice to Congress it might be slightly more but that could be advised to the proponent.

The current situation where there is no governance or regulatory obligation to fund Congress legal and expert advisory relating to FPIC on projects is entirely unsatisfactory to Congress and downright **unfair**.

The inability to obtain proper resourcing for its participation in project negotiations is an example of where Congress has experienced the inequality and disadvantage of being forced to colloquially “play” not “on a level playing field” when it comes to mining negotiations.

So whilst Congress would be inclined to endorse a change to the mining objection process so as to include ATSI participation up front, that must come with a statutory obligation on the proponent to fund that participation in the ATSI party full discretion.

The funding obligation must not be controlled by the mine proponent as that is how it is weaponised. The control and management of its own legal, technical expert and other costs associated with responding/participating in the consideration of mining lease applications should rest with the ATSI landholder entirely as a matter of self-determination.

Suggestions for ensuring ATSI participants are properly resourced:

1. Legislate the obligation for applicants to pay the ATSI participation costs/ alternatively legislate applicants comply with ATSI Project Engagement Standards (if any) (Note these ought to contain ATSI requirements for resourcing);
2. Consider whether the applicants should be required at the outset to set up a fund/pool from which ATSI participation costs are paid to be replenished as the process advances.
3. Establish a Code of Conduct for mining lease applicants that sets out expectations for compliance and cost recovery for ATSI participation in the application process and guidelines to be followed to ensure recognition and adoption of best practice ATSI engagement principles for FPIC.
4. Consider including a proponents' failure to comply with the Guidelines/Code of Conduct/ATSI Project Engagement Standards to be sanctioned as a relevant consideration for the Minister's decision on whether to grant the application.

Answers to QLRC questions about new process

Q1 Guiding principles of new process “Fair, efficient, effective and contemporary”.

Are these principles appropriate to reform of the mining lease objection process.

A1 Yes provided they apply to all stakeholders and ATSI stakeholders are properly resourced by the applicant to achieve those principles.

Q2 the current process.

The major problem with the current process is that it fails to treat the ATSI landholder as an equal stakeholder from the start of the process. It is not transparent in many

respects and fails to take account of both the interests of and value that could be contributed to a project.

Otherwise, the summary of the strengths and problems of the current processes is OK, however the other major issue for ATSI people with the current process is the failure to ensure ATSI participation in FPIC is properly resourced by the proponent.

In the current review no attention has been given to the practical integration of compensation negotiations with the objection process. What essentially happens in practice is that the landholder will use the objections process as a lever in compensation negotiations.

This is a valuable negotiation tool that will be lost in the new process but if the new process were to take cognisance that there is a contemporaneous requirement for negotiation both under the MRA and the NTA for compensation and include a trigger for that to take place in conjunction with the new application assessment process then that would enhance the efficiency of the all processes involved with the decision to grant or not grant a mining lease.

For instance, should QLRC be looking at streamlining and aligning the MRA Compensation provisions/hearing with the new proposed process for mining lease assessment?

Integration with the current OCG EIS process is unclear – perhaps more work needs to be done on how the proposed new process will fulfill or duplicate the EIS processes that apply to major projects of State significance.

P1. Reframed process involving postponement of Land Court objections hearing to end and setting up new integrated, non-adversarial participation process including ATSI Advisory Committee to facilitate ATSI participation.

Congress views

Q3. Congress views about P1

Congress endorses the concept of the Land Court making a decision (if required) after the Minister has made a decision on whether to grant a mining lease or not. That is much more efficient process and enables focus on the relevant considerations and merits that the Minister should have taken into account. It provides a focus (via the Minister's decision) that focuses and confines any dispute.

It is consistent with Congress policy of equality as a stakeholder from the start that early ATSI participation via the ATSI Advisory Committee is recommended. However, Congress needs more information on who is appointed to that Committee, the process of appointment and how will actually work.

Congress stresses that applicant resourcing of the ATSI involvement in the Advisory Committee needs to be the subject of either legislative or Code of Conduct compliance in order to achieve FPIC.

The process also needs to oblige full disclosure by the applicant of all relevant information, reports and data relating to the project up front and progressively through the process.

Q4 What forms of participation should be included in new process

There must be local landholder (ATSI land trustee and RNTBC) participation at the level of control and manage. Eg Congress view is that Congress should be developing, managing and controlling the consultations required – across the range of issues – cultural heritage/technical impact/compensation. There is no reason why, where an RNTBC/Land Trustee is the landholder is involved the first preference to manage the consultation process should be an invitation to the Land Trustee/RNTBC to run that process.

Q5 Are private interests affected by removing objections hearing?

Private interests (in the form of rights) protected by current objections hearing currently include:

The right to be heard about the application

The right to receive all information used by the applicant miner to support its application.

The right to challenge the validity of the application in terms of technical compliance. (eg lease area marked out compliantly/datum identification/ etc).

The right to challenge the supporting information of the miner, relevant information that may dispute accuracy/ validity of applicant's information

The right to have an unbiased adjudicator (and other natural justice rights applicable an objections hearing)

A.

If private interests are affected – they should be noted and taken up in the new process. The new process could take account of and protect those interests. Note particularly include requirement for provision of full disclosure by the applicant at an early stage and the need for continued disclosure which is what landholder would otherwise get in objection proceedings.

Q6 Should there be tailored participation processes depending on project.

A. (a) (i) Yes, if project is declared Co-ordinated project under SDPWOA then ATSI participation should transition to active participation in the EIS process that is likely to deliver much of the consultation needed through the SEIA processes.

See copy of Congress submissions to the draft EIS TOR for both Metallica and Diatrema Projects recently published for comment. (**Attached x 2**)

(a) (ii) ATSI participation criteria should apply no matter what size the project where it is to be held on ATSI land.

(b) form of participation should be a seat at the stakeholder table alongside miner in all dealings with government/consultation.

Q7 How can QLRC ensure that the new participation process is accessible and responsive to the diverse needs of community.

A. (i) Ensure that there is a **robust** Regulatory Impact Statement (RIS) prepared instead of the mickey mouse jobs that are done on most regulatory changes that just tow the government line.

- (ii) ensure that draft of the new laws to introduce new process is circulated widely and specifically for ATSI comment prior to preparation of the Bill.

P2. Creation of central online portal to facilitate public notice and give up to date information about mining proposals.

Q8, 9, 10, 11

- A. (i) The concept of online portal is endorsed but realities of inhibitors to access for ATSI community members (especially elders) needs to be appreciated and hard copy notices should still be required to be sent to ATSI landholders/native title holders
- (ii) IP ownership and retention of ATSI generated/commissioned reports (cultural/anthropological/economic) information that may be uploaded and/or confidential need to be considered. Rules around uploading of ATSI cultural/confidential content need to be developed in consultation with ATSI Advisory Panel
- (ii) Whilst there is a requirement for formal notice of an EA application by a miner, there seems to be a different process applying when the project is a co-ordinated project. For instance, despite there being a requirement for public notice to be given of an EA application in each of Northern Silica Project and the Cape Flattery Silica Project, Congress has not been able to locate any notification for either EA application.
- (iii) the new process should continue to require notification of ATSI landholder directly by post within the existing time frames in MRA of the lodgement of an application for mining lease and require notification of an EA application direct to the ATSI landholder/native title parties within so many days of DESI accepting the application as a valid application. (not just rely on the public notification phase)
- (iv) the latter notice might trigger the application of the new process.
- (v) notices could be included in local council/ RNTBC/Land Council facebook pages/Social media as well as ATSI newspapers/local radio stations (eg Blackstar radio).

P3. Establishment of project specific Independent Expert Advisory committees comprised of experts with experience relevant to assessment of EA applications

Q12, Q13 – Views and criteria to form the IEAC

- A. (a) **ATSI Landholder should be at table when selecting IEAC members.**
 - Congress needs more information on what is proposed for selection of IEAC members. Who will appoint the members? ATSI landholders should participate in selection process.
 - Selection criteria:
 - For projects on ATSI land:
 - ATSI member - Preference for previous local ATSI involvement/knowledge and subject to acceptance by ATSI interested parties for particular project.
 - ATSI member applications to be shared with ATSI landholder for consideration and comment

- Other experts –(i) relevant and contemporary experience/knowledge of working with ATSI landholders in past projects.
- (ii) relevant and contemporary experience in environmental and social impact assessment

P4. And P5 Statutory criteria in MRA and EPA inserted to require relevant decision maker to consider information coming out of the new participation process and for EA decisions – the advice of the IEAC and Statutory criteria inserted into MRA and EPA requiring each decision maker to take into account rights and interests of ATSI peoples in land, culture and cultural heritage

Q14, Q15 - What are Congress views

- A. Congress endorses the insertion of the above statutory criteria provided that the rights and interests of ATSI people for P5 are correctly identified for the land and waters affected by the application and not generalised to just any ATSI view. The views of the landholders and native title holders of the particular country involved have primacy.

Q16 Should decision maker for mining lease be required to consider the EA authority decision maker on the statutory criteria for public interest, adverse environmental impacts, ATSI rights and interests/any other criteria?

- A. (i) **Yes** (but avoid potential inconsistency between two sets of ATSI rights and interests considerations to be inserted in P4 and P5. If there is an inconsistency then QLRC needs to recommend how that inconsistency is reconciled and by whom?)
- (ii) the other criteria – don't lose sight of the ATSI consent required for mining on aboriginal land and also the requirement for compensation agreement with ATSI landholder and RTN compensation under the NTA.

All of the above need to be streamlined – consider one process to meet the needs of all three requirements – participation process/MRA landholder compensation and RTN compensation.

Q17. Any additional statutory criteria ?

- A. Yes compliance with Code of Conduct/Negotiation Standards/ Indigenous engagement standards.

Example - <https://www.ymac.org.au/standards/>

- these are the standards applied to renewable energy projects by Ymatji Marlpa Aboriginal Corporation (YMAC) in WA and are very thorough and comprehensive.

- (ii) applicant to provide evidence of FPIC via RNTBC making Native Title decision in accordance with RNTBC Rules and NTA Regulations and where applicable Statutory Title decision in accordance with Trustee Landholder rules.

P6 Review of Minister decision by Land Court after both MRA and EPA decisions are made, be a combined merits and judicial review on the evidence before the decision maker (unless exceptional circumstances apply) and apply existing Land Court practices and procedures.

Q18, Q 19, What are Congress views about P6 and should there be any pre-conditions to commence combined review?

A. Proposal for Land Court merits and law review supported after both mining lease and environmental decisions are made.

Preconditions to commence in Land Court

- (i) Consider compulsory conference of the parties before Registrar of Land Court before commencement (like in FC&FCOA) with Applicant to pay the costs thereof.
- (ii) RNTBC/Land Trustee to be authorised by relevant ATSI participation committee to start Land Court proceedings as well as resolution by RNTBC/Land Trust.

Q20 Should Land Court decision substitute for decision -maker's decision or should Land Court send matter back to decision maker?

Given past experience with both political interference with decisions by government decision makers and bureaucratic obstinacy, Land Court decision should be final decision unless appealed to Court of Appeal. The rationale for this is that too many times decision makers do not follow guidance of review court and for political or outright bureaucratic obstinacy make the same decision again on the same grounds or same decision again on slightly different grounds paying lip service only to court reasons. Too much interference by political agenda surrounding applications at this stage and final decision of the Land Court as independent arbitrator is much safer and cost efficient result. Land Court decision substituting for decision maker decision prevents wasted expense, time and effort of a rubber stamp again if matter is sent back to decision maker.

Q21 Who should pay costs of Land Court merits review?

Following the principle of ATSI landholder should not be required to put their hand in their pocket at any stage of the process of assessment, decision making and review of an application to interfere with their land, applicant should pay all costs of a Land Court review provided an ATSI application for review has prima facie case and is not an abuse of process or vexatious or malicious.

Q.22 Q23. Are there any issues arising from interactions with decisions made under other Acts and are there opportunities to integrate processes?

- A. Yes. Decisions regarding EIS, DAs under planning laws and permissions required for use of other resources should all align. Congress recent experience with draft EIS TOR process is an example. There will be a disjunct in how the new proposed participation process for mining leases and environmental authority applications occur when the OCG process for developing draft EIS TOR is completely devoid of inclusion of ATSI participation in the drafting stage.

What happens now is that OCG have developed a set of standard EIS TOR on which the proponent and OCG work (without any consultation with the ATSI landholder (as an equal stakeholder) before the draft TOR are released for public comment. This process relegates the ATSI landholder to the status equivalent to the public instead of recognising their status and importance as the landholder with equivalent land use interests to the miner. That situation is very unsatisfactory and QLRC should be giving attention to remedying/aligning OCG Co-ordinated projects processes to incorporate the proposed participation process or ATSI participation process in sympathy with the

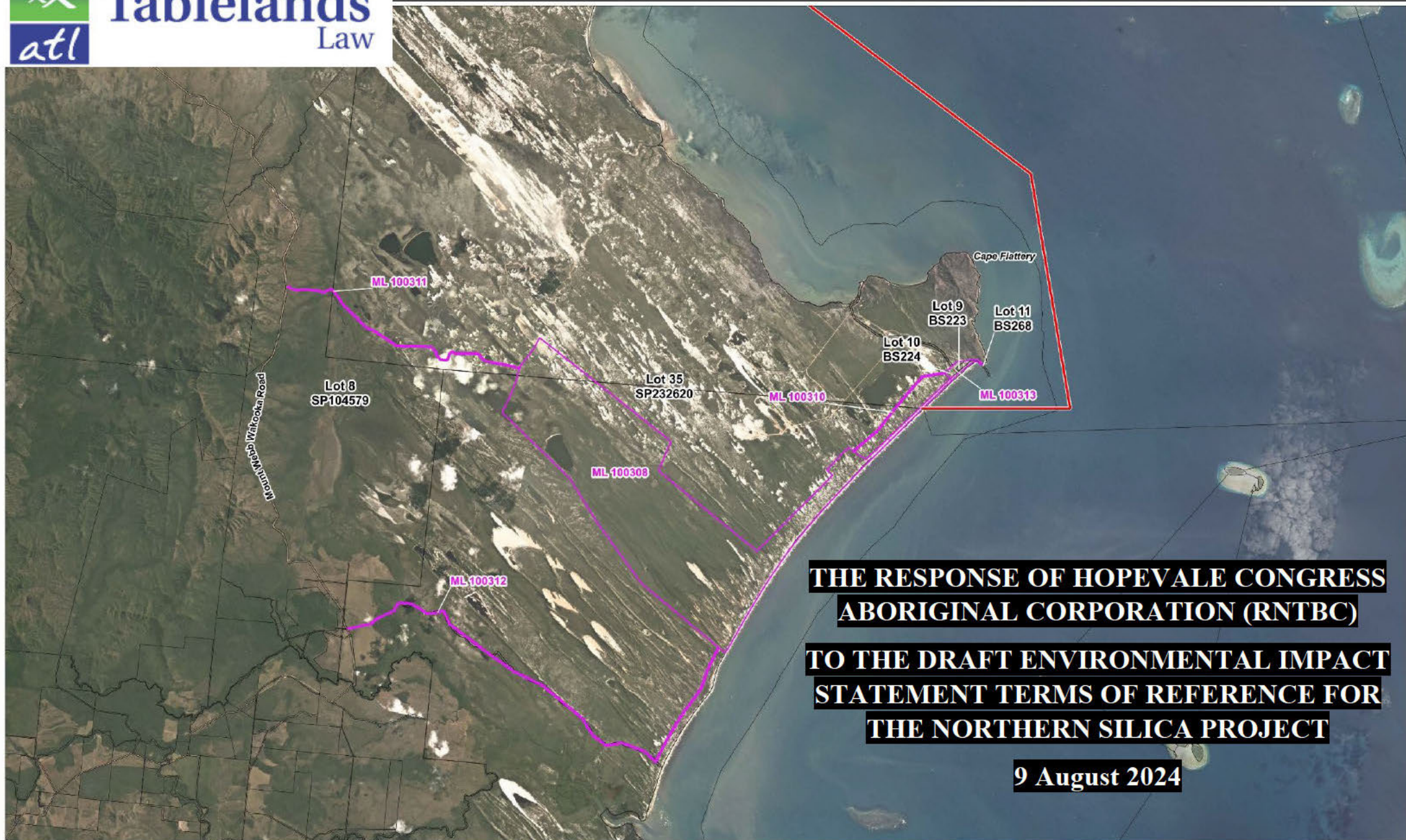
new proposals so that ATSI landholder is treated with the status and respect they deserve in connection with such applications.

See Congress submission to OCG on draft EIS TOR for the Northern Silica Project and the Cape Flattery Silica Sand Project for more suggestions on integration/ recognition of the role and contribution that ATSI landholders can make regarding these types of applications.

These submissions were endorsed by Congress on 25 Sept. 2024

Attachments

- 1. Hopevale Congress Aboriginal Corporation Submission on Draft EIS TOR – Northern Silica Project**
- 2. Hopevale Congress Aboriginal Corporation Submission on Draft EIS TOR –Cape Flattery Silica Sand project.**
- 3. Hopevale Congress Aboriginal Corporation**



INTRODUCTION

Hopevale Congress Aboriginal Corporation (RNTBC) Congress has a firm view that First Nations people affected by this project should be treated as equal stakeholders with the proponent in the assessment processes involved with the EIS and be an active participant starting with scoping of the reports and consultancies required to respond to the EIS TOR.

The Congress response comprises three components collected together:

A response prepared by [REDACTED] of Global Sustainable Solutions

A response prepared by [REDACTED] of McAtamney & Advisors

A response prepared by Atherton Tablelands Law.

Congress has engaged expert assistance to advise on the economic and environmental/social aspects of the draft TOR.

Atherton Tablelands Law has compiled comments based on concerns raised by and with Congress Board about the project matters raised in the TOR.

The EIS should adopt a set of principles for scoping that imbue inclusive First Nations Active Participation Opportunities (FNAPO) throughout the EIS components.

First Nations traditional owners and Congress should be involved at the very outset and throughout the design and implementation of EIS processes to:

- a) give both indigenous landholder and native title parties the opportunity to identify and share in the economic benefits that the EIS process itself presents (rather than simply being “consulted” scoping and reports have been completed;
- b) Inform the EIS development and engagement process from the beginning. They have stories to tell that explain that part of the world in their terms;
- c) Identify at an early stage where active Hopevale indigenous participation can occur in the consultancies and engagements of contractors to provide the EIS

First Nations consultation is not just restricted to Cultural Heritage issues. Consistent with government policy on First Nations recognition and meaningful participation and development of partnerships in such projects¹ the TOR should make provision for First Nations representatives to be members of EIS implementation committee (s) and an audit of all consultancies required to meet TOR should be undertaken as a first step to identify First Nation active participation opportunities (FNAPO)

The proponent should demonstrate FNAPO in all aspects of the EIS process by development in collaboration with First Nations people a set of principles that permeate the whole EIS report that importantly include:

- a) How recognition and acknowledgement of First Nations people will be demonstrated for each section;

¹ Qld Critical Minerals strategy p13

- b) Identification of FNAPo as part of the scoping process;
- c) Providing proper resources to First Nations people to participate in the EIS process

The mechanism by which the above can be achieved is outlined by [REDACTED] in her contribution, that is, the establishment of a *Hopevale Community Consultative Committee* as part of the EIS scoping process. [REDACTED] makes the point that these suggestions are underpinned by both State and International Human Rights Obligations and are otherwise Best Practice principles for leaders in the resource development area such as the World Bank.

The suggestions contained in this Response are also a means by which the proponent can demonstrate the principles of First Nations Free Prior and Informed consent for the project or identify where there are issues of concern.

If First Nations people are not involved from the very start of the EIS process from scoping to final report, the risk is that it will end up being very tokenistic in terms of its First Nations engagement.

Major Preliminary Issue of Concern

Omission of MLA 1003009 from NSP EIS process

The NSP scope is described and represented in mapping as concentrating around the production MLA 100308 Northern Silica.

When the proponent first engaged with Congress the proponent presented the NSP as including MLA 100309 called Casuarina Silica lease as part of the NSP. Diatreme has now sought to “park” that application and has not included it in the description for the co-ordinated project.

MLA100309 is located immediately adjacent to MLA100308 to the north.

It is a matter of serious concern to Congress that it appears that Diatreme have not included MLA 100309 in the scope of the co-ordinated project application or IAS contained with it. MLA 100309 is not mentioned in the NSP description at Table 1.1 nor at Table 3.1 approval requirements. Nor is MLA 100309 included in the locality map for the NSP.

In the June 2023 ASX Positive Scoping Study² (Scoping Study) there is a clear statement of intent by Diatreme to develop the Casuarina lease as part of the NSP at a later date. “*MLA 100309 “Casuarina Silica” will be developed for future inclusion in the NSP, but for the purpose of the Scoping Study will be excluded....*”

MLA 1003009 is not identified as a mining lease application in Fig 1.1 in the IAS and is described in the legend as “*Diatreme Resources Exploration Target*” which is inaccurate. The fact that this area is the subject of an existing mining lease application is not disclosed on that figure but rather the above comment gives the appearance that it is the subject of future exploration. That may be the case but the critical fact that it is currently the subject of an unresolved mining lease application is omitted.

² ASX Positive Scoping Study p25 Sec.3.5

For the following reasons Congress regards the absence of MLA 1003009 from the EIS assessment process as a serious flaw.

1. The reason for Congress concern is that MLA 100309 covers an area where native title rights and interests are jointly held by Dingaal and Nguurruumungu interests which would necessarily involve Congress as the RNTBC for Nguurruumungu in negotiations for the grant of that lease and compensation matters.
2. Diatreme asserted Casuarina as an integral part of the project in its MLA 1003009 supporting material, stating “*Collectively the development of Si2 North and Casuarina is being consolidated under Northern Silica Pty Ltd (Northern Silica)*”³ and later stated in that same application, “*The proposed Mining and Mining Infrastructure Lease’s comprise:*

Table 1: Proposed MLA Configuration

Lease	Purpose
Northern Silica	<i>Mining, Processing, with Infrastructure supporting both Northern Silica and Casuarina Silica leases.</i>
Casuarina Silica	<i>Separated lease with infrastructure areas noted.</i>
Northern Silica Port Access	<i>Access to Port across Mitsubishi granted ML.</i>
FNQPCL Cape Flattery Access	<i>Lease over the Far North Queensland Ports Corporation Limited (Ports North) Freehold Leases.</i>
Starcke-Northern Silica Access 1	<i>Shortest possible access form Starcke road to Northern Silica and camp.</i>
Starcke-Northern Silica Access 2	<i>Backup access to Northern Silica and Casuarina Silica.</i>

*The holding companies also reflect these names and are direct subsidiaries of Diatreme. The other MLAs in the project are for infrastructure, access and port logistics. They will also be held in the name of Northern Silica”*⁴

3. Further MLA1003009 relied upon all the information supplied in support of the NSP application for MLA 100308. Diatreme have more recently advised Congress that they now wish to “park” Casuarina for now and proceed just with MLA 1003008 being the initial production lease for the NSP. That divergence has now taken shape in the co-ordinated project application and subsequent approval leaving Congress to wonder what is the status of MLA 1003009 and what is the State’s attitude to this proposal?
4. Congress perceive this divergence from the presentation of the project inclusive of Casuarina originally as a deliberate attempt to cut Congress as agent of Nguurruumungu out of important negotiations relating to the project and in particular that course of action will result in serious

³ MLA 1003009 p ii and iii.

flaws and defects in the response to the EIS TOR. For instance, important information about the economic impacts of the project will be deficient if the Casuarina lease is omitted. Such information would be critical for Congress to have when negotiating with Diatreme over the grant of that lease.

5. It is necessary for an effective and valid EIS process to include all such tenures in terms of assessing **all** the impacts of the project as a whole. In particular, the “cumulative” impacts of the project cannot properly be assessed if a significant component thereof is left out.
6. The omission of MLA 100309 from the scope of the project for the EIS is produced, also effectively deprives First Nations people of opportunities that could be identified with that lease which is otherwise tied into the NSP overall operation in the long term. It is expressly stated in Table 3.1 of the Tenement Schedule at p25 of the Scoping Study that MLA1003008 (Northern Silica P/L lease) will contain “*Mining, Processing with Infrastructure to support both Northern Silica and Casuarina*”.
7. Congress has previously advised both Diatreme and DoR that it does not agree with or approve Diatreme effectively “parking” MLA 100309. With respect, the regulatory process does not permit the indefinite deferral of the processing of a mining lease application. It is an application on foot and part of the overall project and should be included in all EIS assessments so that the full impact of the project can be assessed.
8. DoR have not responded to Congress complaints about the inappropriate “parking” of the Casuarina lease. Congress is puzzled by apparent inaction by both DoR and OCG in not holding Diatreme to account on this issue.
9. There are statutory requirements applying to the processing of a mining lease applications. The fact that both DoR and OCG appear to be condoning the parking of MLA 1003009 Casuarina is inconsistent with objective 1 of the principles of the Critical Minerals Strategy, (p10). It cannot seriously be asserted that “parking” the Casuarina lease is consistent with the objective of moving “faster and smarter” to develop this silica resource when clearly it is intended that the area of Casuarina mining lease will be included in the project at a future date, especially in circumstances where it has been declared a co-ordinated project. The parking of Casuarina lease now suggests it may be the subject of some special treatment in the future that may result in prejudice to First Nations stakeholders.
10. There has been no request by Diatreme to Congress to agree to any postponement of the regulatory process associated with MLA 100309 and Congress has not agreed to any such dispensation in regard to that MLA. In plain terms Congress does not agree that Diatreme should be favoured by holding onto an MLA that it is not being progressed through its regulatory stages. If it is not included in the EIS scope now, the risk is that it will potentially receive the benefit of the EIS process for the “project” to which it will be included, without the required scrutiny because it has been left out at this stage. Congress submits that is a totally unsatisfactory state of affairs for both the regulators and the landholder/native title parties.
11. Congress requests OCG seek confirmation from Diatreme to amend the scope for the EIS TOR to include MLA 1003009 as a matter of urgency.

In conclusion, Congress would welcome the opportunity for its expert, CEO and available Directors and the writer for a meeting to talk OCG officers through the Response if that is convenient to OCG.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

– SIA RESPONSE TO DRAFT TOR FOR THE NSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
Social Objective and outcomes	Specification of social objectives	<p>Suggested change Update Objective (a) to the following:</p> <p><i>“Create, enable, and maximise opportunities for social benefits, harmonious relationships and capacity building within communities in the vicinity of the project with particular emphasis on local First Nations communities.</i></p> <p>Rationale The proponent should be required to demonstrate a much more proactive approach to creating and enabling opportunities to maximise social benefits, improving harmonious relationships and building the capacity of First Nations people within the local community. The proposed wording above places a much greater onus on the project proponent, together with the local First Nations peoples, to identify and achieve such opportunities.</p> <p>Requested change Include a new Objective (d) as follows:</p> <p><i>“The design, construction and operation of the project are to:</i></p> <p><i>(d) be assessed and managed in a way that is consistent with the Human Rights Act 2019 and United Nations (UN) Guiding Principles for Business and Human Rights, considering the special importance for the Aboriginal and Torres Strait Islander peoples of Queensland, as Australia’s first people who will be impacted by this project.</i></p> <p>Rationale The current objectives do not make any explicit reference to human rights considerations and their importance to First Nations communities and Traditional Owners, and this warrants explicit stand-alone consideration as part of the EIS and social analysis.</p>
Social	Specification of general context	<p>Suggested change Update Paragraph 9.115 to the following:</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

– SIA RESPONSE TO DRAFT TOR FOR THE NSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
General Context, paragraph 9.115		<p><i>“The social impact (SIA) and human rights impact assessment (HRIA) for the project must provide for the following key matters:</i></p> <ul style="list-style-type: none"> <i>a) a community and stakeholder analysis and engagement plan that builds the capacity of local First Nations people and demonstrates that Free Prior Informed Consent has been achieved;</i> <i>b) a workforce management plan including the prioritised hierarchy for recruitment for local First Nations peoples from surrounding communities;</i> <i>c) a housing and accommodation strategy that enables opportunities for employment and/or economic and social benefits for local First Nations people in surrounding communities;</i> <i>d) a local business and procurement strategy including a prioritised hierarchy for service providers from local First Nations peoples from surrounding communities and Indigenous (Supply Nation certified) businesses;</i> <i>e) a health and community wellbeing strategy that builds on existing initiatives and supports improvements in physical and psychosocial health;</i> <i>f) a comprehensive human rights impact assessment and management strategy for Indigenous communities and First Nations people in accordance with the UN Guiding Principles based on the framework of protect, respect and remedy.</i> <p><i>The baseline must be informed by credible datasets, qualitative research, and consultation, particularly at a local and community level.”</i></p> <p>Rationale There are significant social complexities at a local and regional level with the proposed project and other related projects that must be taken into consideration to ensure positive social outcomes from the project for remote and disadvantaged First Nations communities. The current wording of the requirement is too general to reflect this complexity, does not consider human rights matters which impact First Nations peoples and does not fully consider how beneficial social outcomes will be delivered to remote, local Indigenous communities.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

– SIA RESPONSE TO DRAFT TOR FOR THE NSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
Social Paragraph 9.129	Impact Assessment and mitigation measures	<p>Suggested change Addition of the following into Paragraph 9.129 as follows:</p> <p><i>“In accordance with the Social Impact Assessment Guideline and UN Guiding Principles for Business, develop a social and human rights impact management plan including (but not limited to):</i></p> <ul style="list-style-type: none"> <i>a) a comprehensive explanation of how specific issues identified through community and stakeholder engagement, especially those related to water, cultural heritage and cumulative impacts for local First Nations communities are addressed through mitigation and management measures;</i> <i>b) strategies, plans and initiatives to improve poor baseline conditions (where identified during the social baseline analysis and comprehensive stakeholder engagement with local First Nations communities) including health (physical and psychosocial), housing and employment barriers;</i> <i>c) the establishment of a Community Consultative Committee with an agreed charter and resourcing to support the continued involvement of local First Nations peoples participation in the monitoring, mitigation and management of environmental, social, human rights and economic impacts associated with the project;</i> <i>d) a framework to monitor the effectiveness and performance of proposed mitigation and management measures, including timeframes and key performance indicators for the achievement of these measures. The framework must identify roles and responsibilities in accordance with the charter for a Community Consultative Committee.</i>

Rationale

Social constraints and human rights matters are significant barriers and concerns for Australian First Nations people. It is critical that the EIS is supported by a detailed and specific understanding of these matters to ensure that benefits and opportunities will be realised for local First Nations communities and that they are not further disadvantaged or negatively impacted by the proposed project.

HOPEVALE CONGRESS ABORIGINAL CORPORATION –
ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO
DRAFT EIS TOR -NORTHERN SILICA PROJECT

– SIA RESPONSE TO DRAFT TOR FOR THE NSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
		The current wording of the requirements does not include considerations of human rights principles and social disadvantages that needs to be considered to develop robust social benefits and management plans.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

[REDACTED] – AHERTON TABLELANDS LAW – RESPONSE TO DRAFT TOR FOR THE NSP		
Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
2.4	Preliminary comments	<p>With reference to the Introduction above regarding a more robust requirement to demonstrate active participation by First Nations people from the outset of the EIS process.</p> <p>Suggested amendment:</p> <p><i>“Accepting statutory processes and regulated decision-making requirements, as far as practicable the proponent is to demonstrate active engagement with and consideration of the views of the Hope Vale Warra People together with their active participation in and about the project.”</i></p>
6.2	Project description	<p>EIS to describe and include all project components contemplated to be included in the future including MLA 1003009.</p> <p>Rationale For the reasons set out in the Introduction, the EIS must include assessment of project impacts inclusive of mining tenures applied for and intended to be brought into the project at any later date.</p> <p>Suggested change inset new subclause 6.2 (f):</p> <p><i>Project components including mining tenures proposed to be brought into the project in the future (in particular mining lease application 1003009, “Casuarina Silica”)</i></p>
9.13	Land use and Tenure	<p>Consistent with identifying FNAPO Native title holders to be included in scoping for mapping and vetting of mapping prior to inclusion in final EIS.</p> <p>Suggested change to reflect the above principle:</p> <p>Insert the words <i>“In collaboration with Native title holders”</i> at the commencement of cl. 9.13</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.40 p. 17	Flora and Fauna	<p><i>“Consistent with FNAPO scoping for Flora and Fauna studies and reports should include native title holder representatives in their formulation as well as the work undertaken to respond to that scope”</i></p> <p>For the reasons already given, add the above wording as an objective and outcome.</p>
9.43	Mapping Flora and Fauna	<p>Consistent with FNAPO maps should include language names where possible for locations to enable and facilitate better appreciation by local aboriginal people of the impacts.</p> <p>Suggested change: Insert new 9.43 (e)</p> <p><i>“and in collaboration with native title holders, identified by reference to traditional language names, where they exist.”</i></p>
9.52	Impact Assessment – Flora and Fauna	<p>Consistent with FNAPO maps should include language names where possible for locations to enable and facilitate better appreciation by local aboriginal people of the impacts.</p> <p>Suggested change:</p> <p>Add the words <i>“and in collaboration with native title holders, identified by reference to traditional language names, where they exist”</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.115	Social Impact	<p>Additional comments from Congress to points made by [REDACTED]</p> <p>Consistent with 2.4 Comments above and the CG Supplementary Material for Assessing and Managing Social Impacts of Projects, the TOR should specifically include a requirement for a separate SIA relating to the HopeVale First Nations people including native title holders, residents of the Hope Vale community both in the town and outlying areas, the regulatory and landholding institutions of Hope Vale such as Hopevale Congress Aboriginal Corporation, Hope Vale Aboriginal Shire Council, and other Hope Vale community elements.</p> <p>Rationale for change:</p> <p>Precedents –</p> <p>(1)For the purposes of the Wardens Court proceedings assessing the applications by Cape Flattery Silica Mines P/L in the early 1990's a Socio-Economic Impact Study was prepared regarding the impact of the existing Cape Flattery Silica Mine on the local Hope Vale community. That report was invaluable in informing Hope Vale in negotiations for the grant of the mining lease and there is a similar need for this project.</p> <p>Proximity and First Nations recognition</p> <p>In giving due recognition to the special place of Hope Vale First Nations people as neighbours, landholders and holding native title rights and interests and the proximity of the project to them, there is a need to focus the SIA on Hope Vale impacts that should be a separate stand alone report of the Social Impact part of the EIS.</p> <p>Further suggested change:</p> <p>General Content</p> <p>9.115</p> <p>Add new paragraph (g (to [REDACTED]'s draft update above):</p> <p><i>“a separate SIA report covering all of the above relating to Hope Vale Aboriginal people and the proper resourcing by the proponent of Hope Vale Aboriginal people active participation in the preparation of that report.”</i></p>
-------	---------------	---

HOPEVALE CONGRESS ABORIGINAL CORPORATION –
ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO
DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.77 p. 25	Water Resources	Objective (a) fails to account for the identification of FNAPO for Indigenous water uses and values that may present in the project. Rationale Notwithstanding cl. 9.102, consistent with FNAPO the design, construction and operation of the project should specifically state that FNAPO opportunities for water use and control should be maximised. Suggested change: Add new clause (e) to objectives and outcomes <i>“maximise the First Nations control and management of water resources required for the project”</i>
------------	-----------------	---

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.94	Relationship between groundwater and seawater	<p>Should address not only “seawater incursion” but also reference to linkages of fresh ground water with sea water via specifically “wonky holes”. Wonky holes are depressions in the seabed where upflows of fresh groundwater occur.</p> <p>Explanation and rationale: <i>ABC Environment and Nature 2001</i> <i>“Tests on the electrical conductivity of water trapped in sediments two metres below the seafloor have confirmed the depressions are in fact mouths of springs which carry freshwater via submarine channels to the seabed seven to 10 kilometres offshore... But the depressions, which can measure 30 metres across and four metres deep, occur all along the coast from Townsville to Cape York, with some reports further south”</i></p> <p>There are known wonky holes in the Great Barrier Reef area offshore north of Cooktown.</p> <p>This is an FNAP0 for them to lead engagement with the local commercial trawlermen who can identify wonky hole locations offshore for scientists to investigate further. Native title rights and interests exist in the marine areas and linkages between freshwater and seawater offshore of the project area should be investigated.</p> <p>Suggested change: addition of new subclause for 9.94 (d) and renumbering of balance subclauses.</p> <p>New wording for cl. 9.94 (c) <i>freshwater linkages with sea water in the Great Barrier Reef (including the identification of any “wonky holes” offshore the project area”</i></p>
9.132	Cultural Heritage	<p>Identifying the existing environment should include marine scape as well as landscape given the increased port/wharf area usage. Cultural heritage sites and stories exist for the marine areas.</p> <p>Suggested change: insert the words “<i>and marine scape</i>” after the word “<i>landscape</i>” in the second last line of para. 9.132</p>
9.137	Economic	Refer to the response on draft Economic TOR prepared for Congress by McAtamney & Advisors.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.155	Hazards, Health and safety	<p>The TOR for safety and health should address and include safety concerns for employees of existing operator associated with requirements for upgrade and/or modifications of existing wharf structure to handle silica product exported from the NSP.</p> <p>This is a cumulative impact of the project. There are already safety concerns from CFSM employees around maintenance and upgrades of existing wharf infrastructure to handle NSP requirements whilst shiploading for existing CFSM operations occurs. (CFSM – Cape Flattery Silica Mines P/L)</p> <p>cl. 9.155 should include addressing safety hazards and concerns around wharf maintenance and upgrade/modification required to handle NSP output.</p> <p>Suggested change:</p> <p>Add the following words to the second last sentence after the word “<i>incidents</i>” – “<i>wharf upgrades, maintenance and/ or modifications to the existing Cape Flattery Wharf as may be required to handle the NSP silica output</i>”</p>
9.177	Flooding	<p>Major concerns have been raised with Congress about flooding affecting/impacting access roads to the project . Description of the existing environment should include specifically reference to access roads to the project site not just the site or areas in “proximity” to the project site.</p> <p>Suggested change:</p> <p>Delete the word “and” in the first line of 9.177 and replace with a comma, and insert the words “<i>and access roads to it</i>” after the word “<i>site</i>”.</p> <p>cl. 9.177 should read:</p> <p><i>“Discuss the history of flooding onsite, in proximity to the proposed project site and access roads to it including extent, levels and frequency (upstream and downstream).”</i></p> <p>A similar amendment is required of cl. 9.178 by adding a reference to “<i>access roads</i>”</p> <p>Suggested change: add the words “<i>and access roads</i>” at the end of the clause.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.181, 9.182, p.44	Flooding - Impact assessment and mitigation	<p>Serious concerns have been raised by Dhaarpa people with Congress about the proposed access route to the project site through Dhaarpa country to the north west of the NSP. Dhaarpa people report concerns about the road interfering with natural water flows, creating severance for same and wildlife such as fresh water tortoises for whom there are traditional stories and cultural associations. The descriptions required in 9.181 and 9.182 should include reference to existing hydrology and changes involved with access roads for the project. Specific mention of access road impacts is required to address these concerns.</p> <p>Rationale for change. To address deep and serious cultural concerns about changes to surface and ground water flow patterns as a result of the location of proposed access roads to project site.</p> <p>Suggested changes : cl 9.181 insert the words “<i>and in connection with access road areas</i>” after the word “<i>site</i>” in the first line.</p> <p>cl. 9.182 – insert the words “<i>including access roads</i>” after the word “<i>project</i>” in the third line.</p>
-----------------------	---	---

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

9.236, p.53

Cumulative
impacts

Comments by [REDACTED] regarding the need for establishment of base line for economic component of the TOR in order to measure cumulative impacts are adopted here.

The primary concern here is the cumulative impact of two more silica projects (Diatreme and Metallica) together with the existing silica mine at Cape Flattery within a relatively short distance of each other. Specification of the Metallica project and existing Cape Flattery Silica Mines operation is more desirable than a vague reference to “other relevant projects”. It is Congress position that there should be no doubt about the baseline which should include both existing and prospective mining projects in the area. At present these comprise Cape Flattery Silica Mines, the Metallica project and the exploration and potential mining application by Big Bull Resources also in close proximity to the project site.

Suggested change.

Insert the words “*Cape Flattery Silica Mine, Metallica Resources Cape Flattery Silica Project, Big Bull Resources exploration/mining activities and/or*” before the words “*other relevant projects*” in the second last line of cl.

9.236

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

– RESPONSE TO DRAFT TOR FOR THE NSP

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
Economic Objective and outcomes	Specification of economic objectives	<p>Requested change Update Objective (b) to the following:</p> <p><i>“Create, enable, and maximise opportunities for local businesses and communities to contribute to the successful delivery of the project, particularly First Nations.”</i></p> <p>Rationale The proponent should be required to demonstrate a much more proactive approach to creating and enabling local opportunities to maximise local economic and social benefits. The proposed wording above places a much fairer balance and onus on the project proponent, together with the local community and businesses, to identify and capitalise on such opportunities.</p> <hr/> <p>Requested change Update Objective (c) to the following:</p> <p><i>“Create a net economic benefit to the local community (particularly First Nations people residing in Hopevale township/Hope Value Aboriginal Shire local government area), Cape Flattery and Cooktown region, and the State of Queensland.”</i></p> <p>Rationale The current wording does not define “region” and does not account for the fact that there may be adverse local impacts of the project while still delivering a net positive economic benefit at a broader regional and State level. Specific consideration is needed at a local level, including potential mitigation strategies for risks that may result in economic or social costs.</p> <hr/> <p>Requested change Include a new Objective (d) as follows:</p> <p><i>“The design, construction and operation of the project are to:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p><i>(d) deliver and enable net financial and economic benefits to First Nations communities and Traditional Owners derived from the use of their land. ”</i></p> <p>Rationale The current objectives do not make any explicit reference to First Nations communities and Traditional Owners, and this warrants explicit stand-alone consideration as part of the EIS and economic analysis.</p>
Economic Paragraph 9.137	Description of existing economic environment	<p>Requested change Update Paragraph 9.137 to the following:</p> <p><i>“Describe the existing economic environment at a local, regional, and State level to inform a comprehensive baseline for the cost benefit analysis and economic impact assessment. This should be undertaken in line with (but not unnecessarily constrained by) the Economic Impact Assessment Guideline. The baseline must include (but may not be limited to):</i></p> <ul style="list-style-type: none"> <i>a) Economic profiles consisting of industry economic contribution (value added), employment, and other key indicators (e.g., incomes, industry mix, skills and capabilities);</i> <i>b) Synthesis of the current policy environment and strategic alignment of the project with local, regional, State, National, and international policies and strategies;</i> <i>c) Ways in which the project will align with objectives in relation to First Nations participation as included in the Critical Minerals Strategy (Queensland) and Critical Minerals Strategy 2023-2030 (Commonwealth);</i> <i>d) Synthesis of current commercial agreements (in force and planned) that directly or indirectly affect the project;</i> <i>e) Documentation of key external economic, technological, and other forces impacting the proponent, the project, and/or the broader operating landscape;</i> <i>f) A comprehensive profile of existing and proposed resource projects in the region, including discussion of the cumulative operating context associated with these projects;</i> <i>g) A comprehensive discussion of the economic and social context for First Nations people in the local community and region, including (but not limited to):</i>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<ul style="list-style-type: none"> i) Local businesses and employment; ii) Education, skills, and training; and iii) Employment and related opportunities on other resources project; and iv) Strategic vision or planning by First Nations people for the area in which the project is to be developed. <p><i>The baseline must be informed by credible datasets, qualitative research, and consultation, particularly at a local and community level.”</i></p> <p>Rationale There are significant complexities at a local and regional level with the proposed project and other related projects that must be captured to inform a credible project appraisal. The current wording of the requirement is too general to reflect this complexity and will not produce a robust and credible economic analysis. Further, in relation to economic impacts for First Nations people, having a clearer lens to the current state will reduce the risk of obfuscation of the proponent’s accountability for its role in actively creating and enabling economic opportunities as part of its design and implementation of the project.</p>
Economic Paragraph 9.138 and 9.142	Description of existing and future demand	<p>Requested change Combine Paragraphs 9.138 and 9.142 and update the wording of the combined paragraph as follows:</p> <p><i>“Describe the existing and future demand for the project’s silica sand product in both domestic and international markets over the life of the operations, including (but not limited to):</i></p> <ul style="list-style-type: none"> a) Strategic context of silica sand and its applications; b) Current and emerging demand drivers; c) Supply outlook; and d) Risks and opportunities in the demand and supply outlook. <p><i>Based on the above, and any relevant information published by the International Energy Agency, provide a range of project demand scenarios, including:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>a) <i>A central estimate (or range);</i> b) <i>Plausible upside and downside scenarios (with clear justification and links back to identified project risks and opportunities); and</i> c) <i>The International Energy Agency's development scenarios.</i></p> <p><i>All assumptions underpinning the demand analysis and scenario/sensitivity analysis must be documented and sourced in full."</i></p> <p>Rationale Demand and market pricing are significant drivers of the project viability and economic benefits, including for First Nations people. It is critical that the EIS is supported by a detailed and specific understanding of demand drivers, including rigorous scenario testing, to fully assess the overall economic risk and break-even points in the project. First Nations people will also need such information when considering Free Prior and Informed Consent (FPIC) and compensation negotiations relating to the Project.</p> <p>The current wording of the requirements does not start from an understanding of demand drivers and how these are, and will continue to be, shaped by broader market, macro-environmental, geo-political, and other contexts.</p> <p>The proposed wording creates a clear requirement for the proponent demonstrate a robust understanding of the demand context, and to identify uncertainties so they can inform proper risk analysis and sensitivity testing. It is also important this analysis is fully and transparently documented to provide the Queensland Government and key stakeholders with confidence in the proponent's modelling and associated understanding of project benefits and impacts.</p>
Economic 9.140	Identification and description of benefits	<p>Requested change Update Paragraph 9.140 as follows:</p> <p><i>"In accordance with the Queensland Government Cost Benefit Analysis Guide, identify and describe all key direct and indirect economic impacts associated with the proposed project, including:</i></p> <p>a) <i>Financial costs;</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>b) <i>Financial benefits;</i> c) <i>Economic costs and dis-benefits (i.e., a reduction in a positive impact or benefit currently experienced);</i> and d) <i>Economic benefits.</i></p> <p><i>In describing the impact streams, map the following key information:</i></p> <p>a) <i>The bearer (cost) or beneficiary (benefit);</i> b) <i>The geographic level at which the impact originates (e.g., increased employment opportunities for local First Nations people is a local level benefit, whereas royalties payable to the State is a State level benefit);</i> and c) <i>Whether the impacts are primarily related to First Nations people.”</i></p> <p>Rationale The proper identification of impacts should be the identification of each impact stream, rather than the “<i>net economic benefits</i>” as currently included in the requirement.</p> <p>Further, while the guidelines require impacts to be identified, this is usually oversimplified by proponents. There is significant complexity in the requirements and impacts of this proposed project, and establishing clarity of these is critical to ensuring the analysis can be transparently assessed by all parties.</p> <p>This importance is further heightened by the need to consider cumulative interaction effects between the proposed project and other current and related projects as part of this impact analysis.</p>
Economic 9.144, 9.145, 9.146	Cost benefit analysis of options	<p>Requested change Merge and update Paragraphs 9.144, 9.145, and 9.146 as below, and re-order the new combined paragraph to immediately follow Paragraph 9.140:</p> <p><i>“Undertake a cost benefit analysis (CBA) of the net direct economic impact of project options relative to the baseline in line with relevant Queensland Government Cost Benefit Analysis Guide. The CBA must include (but may not be limited to):</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<ul style="list-style-type: none"> a) <i>Description of the base case (or ‘do nothing’) option, which should draw on the earlier analysis and other relevant sections of the EIS;</i> b) <i>Description of project options and the process to develop and short-list options for consideration in the CBA (which should draw on, and be congruent with, the options identified in 6.15(c) and 6.15(d));</i> c) <i>Identification of all relevant direct costs and benefits of the options considered and an explanation of the drivers of these costs and benefits (consistent with earlier analysis);</i> d) <i>Discussion and sourcing of all relevant inputs and assumptions for the CBA, which should include (but may not be limited to):</i> <ul style="list-style-type: none"> i) <i>Standard economic parameters and assumptions (e.g., discount rates);</i> ii) <i>All relevant project cost inputs, including (but not necessarily limited to):</i> <ul style="list-style-type: none"> (1) <i>Construction costs, inputs and milestones;</i> (2) <i>Whole-of-life repair/replacement costs;</i> (3) <i>Fixed and variable operational costs;</i> (4) <i>Costs associated with environmental management, monitoring, mitigation and offsets associated with the project, including abatement of greenhouse gas (GHG) emissions;</i> (5) <i>Investment costs associated with First Nations and related community initiatives, including (but not limited to) employment and economic opportunities, partnerships, training and development, community participation, culture and heritage;</i> (6) <i>Parameters for the calculation of royalties and other payments, including under Native Title and any landholder compensation agreements; and</i> (7) <i>De-commissioning and other end of project life costs.</i> iii) <i>All relevant project revenue inputs, including (but not necessarily limited to):</i> <ul style="list-style-type: none"> (1) <i>Silica sand production volume profile linked to demand analysis and scenarios;</i> (2) <i>Market price assumptions.</i> iv) <i>All other inputs to the estimation of other economic costs and benefits identified.</i> e) <i>Analysis of all relevant direct costs and benefits identified, including, where appropriate, differentiation of these costs and benefits by:</i> <ul style="list-style-type: none"> i) <i>Bearer (cost) / beneficiary (benefit); and</i> ii) <i>Geography (local, regional, State).</i>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>f) <i>Summary of all quantifiable direct costs and benefits of the project and calculation of:</i></p> <p>i) <i>Standard performance metrics of a CBA, including Net Present Value (NPV), Benefit Cost Ratio (BCR), and Internal Rate of Return (IRR);</i></p> <p>ii) <i>Production tonnages and associated project revenue;</i></p> <p>iii) <i>Taxes payable to the Queensland Government;</i></p> <p>iv) <i>Statutory royalty amounts payable to the land trustee under the Aboriginal Land Act and regulations; and</i></p> <p>v) <i>Expected rate of project profit after tax.</i></p> <p>g) <i>Sensitivity analysis of the above metrics based on clearly defined adjustments to project risks and drivers based on prior analysis (e.g., testing of the project under the alternate demand and price scenarios established).</i></p> <p>h) <i>Discussion of unquantifiable impacts, including description, potential likelihood and extent of the impacts based on known information, and the significance of the expected directional impact on the quantified results.</i></p> <p>i) <i>Assessment of the preferred option and/or configuration(s) of options, based on the results of the cost benefit analysis and a clear set of criteria.</i></p> <p>j) <i>Discussion of the limitations of the cost benefit analysis.”</i></p>

Rationale

The current requirement for the cost benefit analysis does not accord with the relevant guidelines and is very unclear, both in terms of the description of the requirements and in being spread over several paragraphs. The key concerns in relation to the current wording are as follows:

- CBA assesses direct (i.e., first round) costs and benefits, as distinct from an economic impact assessment which assesses total (i.e., direct and indirect) economic impacts. While this is acknowledged at the start of Paragraph 9.144, the current CBA requirement goes on to make several references to the inclusion of indirect impacts which is not appropriate or technically correct.
- The results of a CBA are typically an input to the subsequent economic impact assessment, whereas the economic impact assessment precedes the CBA in the current ToR.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<ul style="list-style-type: none"> The current Paragraph 9.144 describes the CBA as “<i>identif(ying) the structure of the project...</i>” which can be interpreted as leading insofar as the base case (i.e., do nothing) option may be preferred if the net direct impacts of the project under the options/configurations proposed by the proponent do not meet project hurdles and expectations. The current requirements do not make explicit mention of the base case from which the comparison of the impacts of the project options considered are to be made. The base case for this project is fundamental because of the other projects underway in the region and the changing market dynamics. There will be interaction effects and other complexities resulting from the proposed project and a proper assessment of these requires a rigorous and comprehensive base case. There are several references to the CBA including “<i>net benefits</i>” and “<i>net costs</i>” (e.g., Paragraph 9.145(a) and 9.145(b)). A cost or benefit stream is simply that. The net of all costs and benefits forms the Net Present Value (NPV) of the project, which is a key performance benchmark of a CBA. The proponent should not be invited to purport net impacts of the project without demonstrating the underlying cost and benefit items which contribute to that net impact. Transparency of all data and assumptions made in relation to each single impact item must form part of this assessment to enable appropriate scrutiny to be applied by the Queensland Government and stakeholders of the proponent’s analysis. <p>The proposed wording updates, together with the other proposed changes (e.g., in relation to the base case analysis) collectively address the above concerns and provide a much clearer basis for the CBA to be interrogated and understood by all parties.</p>
Economic Paragraph 9.141 and 9.143	Economic impact assessment	<p>Requested change</p> <p>Combine Paragraphs 9.141 and 9.143 and update the wording of the combined paragraph as follows:</p> <p><i>“Undertake an economic impact assessment of project options at a local, regional, and whole-of-state level in line with the Queensland Government’s Cost Benefit Analysis Guide. The economic impact assessment must be undertaken with respect to the established baseline, which must account for all existing and committed projects and current policy settings.</i></p> <p><i>The economic impact assessment must include (but may not be limited to) analysis of:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>a) <i>Direct project costs and benefits (as assessed through the cost benefit analysis);</i></p> <p>b) <i>Silica sand demand and market prices (from the proponent's demand analysis);</i></p> <p>c) <i>Labour demand, including the ability for labour (including specialists) to be drawn from the existing local, regional, and State workforce, and the potential effects on local and regional businesses;</i></p> <p>d) <i>Raw input demand, including the ability for existing local, regional, and State suppliers to provide relevant raw and manufactured inputs;</i></p> <p>e) <i>Costs and commercial considerations associated with infrastructure development and access required to support the proposed project;</i></p> <p>f) <i>Anticipated value of offsets required for all components of the proposed project.</i></p> <p><i>Noting that the baseline must include all current and committed projects and current government policies/investments, the assessment should include explicit consideration of the interaction and compounding effects of the proposed project at a local and regional level.</i></p> <p><i>The economic impact assessment results must be reported at a local, regional, and State level and include:</i></p> <p>a) <i>Direct and indirect value-added (i.e., economic output)</i></p> <p>b) <i>Direct and indirect employment</i></p> <p>c) <i>Taxes and subsidies.</i></p> <p><i>An appropriate local and regional modelling technique must be used and supported with appropriate evidence and assumptions to support the rationale for key assumptions. The proponent must not rely solely on gross aggregated input-output multipliers to estimate local and regional economic impact, as these will not reflect the complexity of the local context, concurrent projects, and supply chain required to be addressed in the analysis."</i></p> <p>Rationale</p> <p>The current wording of the economic impact assessment requirements is very general and out of sequence with other components of the analysis on which it needs to be based (e.g., demand and price analysis, cost benefit analysis). The economic impact assessment should be the culmination of the prior analyses.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>The proposed wording provides for a much more rigorous and comprehensive analysis than is currently proposed. This includes at a local and regional level. It also addresses technical inconsistencies between the 2017 <i>Economic Impact Assessment Guideline</i> (referred to in the ToR) and the more contemporary 2021 Queensland Government <i>Cost Benefit Analysis Guide</i> in relation to the use of Input-Output methods to undertake economic impact assessments.</p> <p>The updated proposed wording also places greater onus on the proponent to justify its assumptions regarding the structure and interaction effects in the local and regional economy and supply chain. This is complex analysis requiring a level of bespoke specification by the proponent, and often is oversimplified or obfuscated by reliance on publicly available Input-Output Multipliers (e.g., those published by the Australian Bureau of Statistics). Such methods contain significant limitations and are not suitable or appropriate to be applied at localised levels. These concerns are addressed directly in the Queensland Government’s 2021 <i>Cost Benefit Analysis Guide</i> and should be reflected in the ToR. The proponent should also be required to fully investigate the economic dependencies at the local and regional level and make its assumptions clear.</p>
Economic Paragraph 9.148	Aboriginal and Torres Strait Islander “aspirations”	<p>Requested change Update Paragraph 9.148, as follows, and move it after the demand analysis requirements (i.e., following the current Paragraph 9.142).</p> <p><i>“Discuss commercial arrangements (incl. under native title), workforce/employment strategies, and other community initiatives agreed and/or being explored in consultation with Aboriginal and Torres Strait Islander peoples that are to be enacted by the project, especially for areas where native title exists. Quantify the impacts of these initiatives and benefits to First Nations communities and their alignment to relevant strategies and plans.”</i></p> <p>Rationale The current wording of Paragraph 9.148 is limited insofar as it only relates to issues identified during engagement with Aboriginal and Torres Strait Islander peoples. There is an opportunity through the EIS to invite the proponent to be more proactive in its identification of strategies and initiatives to not only deliver on identified priorities, but actively create and enable them with the community. The proposed wording provides a clearer and more explicit basis for the proponent to discuss such initiatives, and puts an emphasis on quantification of impacts, rather than just a qualitative description as currently in the requirements.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
Economic New paragraph	Economic impact for First Nations communities	<p>Requested change Insert a new paragraph after the cost benefit analysis and economic impact assessment (i.e., following the current Paragraph 9.146) as follows:</p> <p><i>“Provide an economic impact statement in relation to First Nations communities in the local area and broader Cape Flattery region. This must include, but may not be limited to:</i></p> <ul style="list-style-type: none"> <i>a) Analysis of the royalties and benefits payable to First Nations people, including the statutory royalty payable under the Aboriginal Land Act, under each of the demand and cost scenarios developed;</i> <i>b) Summary of all key initiatives and strategies related to First Nations people’s involvement with, benefit from, and mitigation of adverse impacts from, the proposed projects;</i> <i>c) Summary of all benefits expected to accrue to First Nations people, and report this as a function of the project’s overall benefits;</i> <i>d) Expected number of direct jobs that can be locally sourced, and the strategies to enable this to be delivered;</i> <i>e) Benchmarking / comparison of the First Nations impacts with other projects and jurisdictions and/or any existing First Nations agreements for similar projects in the region, and with consideration of the Cape York Regional Plan.”</i> <p>Rationale The consideration of First Nations related impacts in the EIS requirements is very weak, and in its current form creates a risk of native title holders and the broader local and regional communities shouldering downside risks and not having sufficient transparency to share in the potential upside of the proposed project. There must be sufficient depth and clarity of the strategies and expected impacts associated with First Nations people as a result of the project, starting with analysis of royalties and benefits payable under the different project options, employment and other skills related opportunities, and broader initiatives.</p>
Economic New paragraph	Insertion of requirement for an independent peer review of	<p>Requested change Insert a new paragraph at the conclusion of the <i>Economic</i> section as follows:</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR -NORTHERN SILICA PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
	economic analysis	<p><i>“Provide the findings and the proponent’s response to feedback from an appropriately-qualified independent peer reviewer(s) of the cost benefit analysis, economic impact assessment, and First Nations economic impact statement, with specific consideration to the treatment of cumulative impacts of the project at a local and regional level.”</i></p> <p>Rationale There are significant economic complexities and economic and social implications of the proposed project. It is in all stakeholders’ interests to have full transparency of the analysis completed, the data on which it is based, and the veracity (and limitations) of the underlying assumptions. Other sections of the EIS requirements call for appropriately-qualified third party input and the economic analysis should be no different.</p>



██████████ has worked on transformative projects throughout Australia, Asia and the Pacific developing solutions which balance economic, environmental, and social aspects to achieve enduring outcomes. With over 30 years of work experience, ██████████ is competent in managing complex project approvals processes, leading impact assessments and undertaking stakeholder engagement, community development, environmental management, auditing, gender analysis and workshop facilitation involving large teams of industry professionals, government representatives, community residents and Indigenous peoples. ██████████ is committed to the empowerment of Indigenous groups and poverty alleviation in rural communities through effective development and sound environmental management. She believes in capacity building of minority groups through transparent, humane and gender balanced practices.

SPECIALIST SKILLS

- ESG Reviews & Audits
- Management of complex project approvals
- Integrated social and environmental impact assessments
- Project planning and implementation to IFC and ICMM standards
- Stakeholder analysis and community engagement in conflict situations

QUALIFICATIONS

- PhD, Agricultural Science, University of Western Australia, 1988
- Bachelor of Agricultural Science (1st Class Hons.), University of Queensland, 1984
- Graduate Diploma of Education, Griffith University, 1991

PROFESSIONAL AFFILIATIONS

- Australian Institute of Mining and Metallurgy
- Australian Native Food and Botanicals Industry
- Wet Tropics Soilcare Inc.

BOARD EXPERIENCE

- Current Chair – FNQ Branch, Australian Institute of Mining and Metallurgy
- Previous Chair – Wet Tropics Soilcare Inc
- Previous Director/Secretary – Australian Native Food and Botanicals Peak Industry Group
- Previous Advisory Board – CRC Transition in Mining Economies (TIME), Impact Committee
- Previous Advisory Board – University of Qld, Sustainable Minerals Institute – Environment Centres
- Previous Director – Regional Development Australia, Far North Queensland

PROFESSIONAL EXPERIENCE

Environmental, Social and Governance (ESG) Reviews & Audits

- ESG review of Alcoa's potential investment in West Kalimantan, Indonesia.
- ESG review of ArcelorMittal Iron Ore Mines in Kazakhstan
- Review and development of Social Performance System, Newcrest Gosowong Gold Mine, North Halmahera, Indonesia
- Environmental Legal Compliance Audit for Sepon Gold and Copper Operations, Savannakhet Laos
- Social Review of the Liquid Natural Gas project - BG-group, Queensland Gas Australia

e. ██████████
m. ██████████

www.sustainablesolutionsglobal.com

- Martabe Gold Mine Feasibility Study site inspection and review – Oxiana Ltd, North Sumatra Indonesia
- Construction inspections and reviews of Tailing Storage Facility, Pipeline, Powerlines and Processing Plant expansion projects - Sepon Gold and Copper Operations, Savannakhet Laos
- Annual Environmental and Social Operational Audit - Sepon Gold and Copper Operations, Savannakhet Laos
- Environmental and social review - Sepon Gold and Copper Operations, Savannakhet Laos
- Operational site inspections and review of Wirralie Gold Mines environmental liabilities - Ashburton Minerals, North Queensland Australia
- Annual Site and Corporate Environmental Audits - Kelian Equatorial Mining, East Kalimantan Indonesian
- Environmental audit - Kaltim Prima Coal, East Kalimantan Indonesia
- Construction inspections and reviews of river diversion and waste rock dam projects - Kelian Equatorial Mining, East Kalimantan Indonesia.

Approvals & Impact Assessment

- Project Leader – Environmental Authority Amendments – Capricorn Copper, Mt. Isa Australia.
- Project Manager, Approvals Scoping Project – Wilmar Sugar Port Facilities, Townsville Australia.
- Project Manager, Social Impact Assessment and Sustaining Project Approvals, Collinsville Coal, North Queensland Australia.
- Manager Stakeholder Engagement and Social Impact Assessment, KUR-World Co-ordinated Eco-tourism Development, North Queensland Australia.
- Project Leader, Social Impact Assessment (SIA) for the South of the Embley Bauxite Mine - Rio Tinto Alcan (RTA), North Queensland Australia.
- Project Manager, In-migration Management Plan and Stakeholder Engagement Plan for Indomet Coal, BHP Billiton, Indonesia.
- Project Leader, Approval for Gold Expansion – LXML Sepon Gold and Copper Operations, Laos.
- Project Reviewer, Environmental and Social Impact Assessments (ESIA) for Frieda River Project, PNG.
- Project Leader, Environmental and Social Impact Assessments (ESIA) and Initial Environmental Examinations (IEE) for the Western Tailing Storage Facility, Gold Oxide expansions, Copper expansion projects, Powerline and Primary Gold projects – LXML Sepon Gold and Copper Operations, Savannakhet Laos.
- Project Leader, Aurukun Bauxite Project, Benefit Package Negotiations with Proponents, Cape York Australia.
- Project Leader, Social Impact Assessment for Waisoi Copper Project, Newcrest/Namosi Joint Venture, Fiji.
- Project Manager, Social Impact Assessment and scoping studies for the Liquid Natural Gas project - BG-group, Queensland Gas Australia.
- Project Manager, SIA to determine the impact of mining on Papua New Guinea (PNG) women - World Bank/GENFUND, PNG.
- Project Manager, ESIA for alluvial gold Mining and wetland construction - Kelian Equatorial Mining, East Kalimantan Indonesia.
- Project Manager, Cultural and Natural Resource Management Plans for the Bar Barrum and Tableland Yidinji Traditional Owners – Australian Government, North Queensland Australia.
- ESIA scoping studies for underground diamond mine - Argyle Diamond Mines, Western Australia.
- Baseline vegetation surveys and impact assessment for mine expansion EIS - Cape Flattery Silica Mine, North Queensland Australia.
- Baseline vegetation surveys and impact assessment for the mine expansion EIS – Red Dome Gold Mine, North Queensland Australia.
- Baseline vegetation surveys and impact assessment for rail expansion EIS – Queensland Rail, North Queensland Australia.

Stakeholder Engagement

- Chaired Community Reference Groups, Advisory Groups and Stakeholder Forums for large and complex projects in renewable energy, minerals, tourism and agricultural

- Conducted analyses of stakeholder groups, issues and power structures in remote, rural and residential communities in conflict situations in Australia, Indonesia, Laos and PNG.
- Designed inclusive engagement programs with diverse stakeholder representatives from community, government and private sector groups and organisations in Australia, Indonesia, Laos and PNG.
- Recorded outcomes and developed action plans for key issues arising from community and industry engagement forums in Indonesia, Laos and PNG.
- Co-ordinated the community consultation processes devised sustainability selection criteria and conducted an option analysis for a complex local Australian shire feasibility study of alternative uses for a public area.
- Co-ordinated and facilitated engagement forums for local community, Indigenous and non-Indigenous community leaders and private sector representatives to develop action plans for innovative sustainable development projects involving health, education, tourism, business development and law/order issues.
- Provided technical advice on environmental impacts, land access and mitigation strategies to private sector representatives for mining projects in Australia, Indonesia and Laos.
- Developed and co-ordinated a comprehensive survey, funded by the World Bank, to determine the status of women in Papua New Guinea (PNG) which involved interviewing community, government and private sector focus groups at a number of remote location throughout PNG.
- Co-ordinated steering committee and working group meetings involving the community, government and private stakeholders over a three year period and analysed the outcomes to develop an agreed plan for sustainable post-closure uses of a large industrial site in Indonesia.

Project Closures and Rehabilitation

- Progressive Rehabilitation and Closure Plan – Capricorn Copper, Mt.Isa Australia
- Mine Closure Communities Advisor – Argyle Diamond Mines, Western Australia
- Mine Closure Advisor – Reefion Gold Mine, New Zealand
- Mine Closure Gap Analysis and Scoping – Gosowong Project, Nusa Halmahera Minerals – Indonesia
- Abandoned Mines Unit, Herberton and Irvinebank Projects – North Queensland – Australia
- Mine Closure Reviews, Advice and Plans – Phu Bia Mining – Laos
- Mine Closure Gap Analysis – Xstrata Copper Refinery – Townsville, North Queensland Australia
- Mine Closure Plan advisor, reviewer and author – Sepon Gold and Copper Operations, Savannakhet, Laos
- Weipa Bauxite Mine Closure Plan advisor – Rio Tinto Alcan, North Queensland Australia
- Mine Closure Plan compilation – Blair Athol Coal Mine, Queensland Australia (2005/6)
- Mine Closure strategy reviewer - Hunter Valley Coal Operations and the Clermont Coal Mine, New South Wales and Queensland Australia
- Mine Closure manager – development and implementation of closure agreement including post-closure endowment trust and foundation for in-perpetuity environmental and social requirements- Kelian Equatorial Mining, East Kalimantan Indonesia
- Preliminary Mine Closure Plan compilation - Kelian Equatorial Mining, East Kalimantan Indonesia
- Decommissioning Plan contributor - Red Dome Gold Mine, North Queensland Australia

PROFESSIONAL HISTORY

2022 - present	Manager Environment & Community – Capricorn Copper, NW Qld.
2002 – present	Founder & Director - Sustainable Solutions Global Pty Ltd.
1996 – 2002	Manager Environment & Mine Closure - Kelian Equatorial Mining, Rio Tinto, Indonesia.
1993 – 1996	Senior Environmental Scientist - Natural Resource Assessments Pty Ltd (NRA), Australia.

LANGUAGE PROFICIENCY

English	Excellent
Bahasa Indonesian	Intermediate
Lao	Basic

REFEREES

Upon request

McAtamney & Advisors

Curriculum Vitae

Background

██████████ is an actuary and acts as a senior independent advisor to clients and facilitates the origination and development of commercial ventures. He has worked extensively in many industries, Commonwealth, State/Territory and local governments, and the non-government sectors in Australia and internationally.

██████████ brings significant experience in strategy, policy and operational issues with government and the private sector on matters related to economic development, business case and investment advice, industry policy, social policy, regional development, investment attraction, infrastructure and major projects, commercial strategy, market development, regulation, and government administration. He has also supported various projects related to Aboriginal and Torres Strait Islander communities, including (but not limited to) business cases, feasibility studies, and economic evaluations associated with cultural infrastructure, fisheries, and education.

He brings advanced skills in consortium and project leadership and senior stakeholder engagement. He couples this with technical expertise in advanced data analytics, financial and economic analysis, demand modelling and forecasting, market analysis, and risk analytics.

This experience, coupled with his technical expertise as an Associate of the Institute of Actuaries of Australia, enables ██████████ to quickly understand and translate complex commercial and economic issues across disciplines and to different stakeholders to create clarity and shared understanding.

Three recent and relevant projects

- Strategy, policy, and economic advice on the impacts of significant regulatory changes in fishing.
- Analysis of investment attraction and economic development opportunities associated with decarbonisation and the energy transition, including (but not limited to) critical minerals, hydrogen, advanced manufacturing, high-intensity agriculture, sustainable fuels, and transport network electrification.
- Economic analysis and business case advice in relation to energy management systems.

Technical capabilities

Business cases and feasibility studies; Commercial advice; Data analytics; Demand modelling; Evaluation; Financial, economic and actuarial analysis; Impact measurement; Strategy and policy development.

Sectors worked (Not exhaustive)

Agriculture; Creative economy; Energy; Fishing; Gambling policy and harm minimisation; Human and social services (disability, child protection, family violence); Investment attraction.

Delivery locations

Australia (all States/Territories); New Zealand; India; U.K.; U.S.; Canada; Saudi Arabia.

Qualifications and Professional Memberships

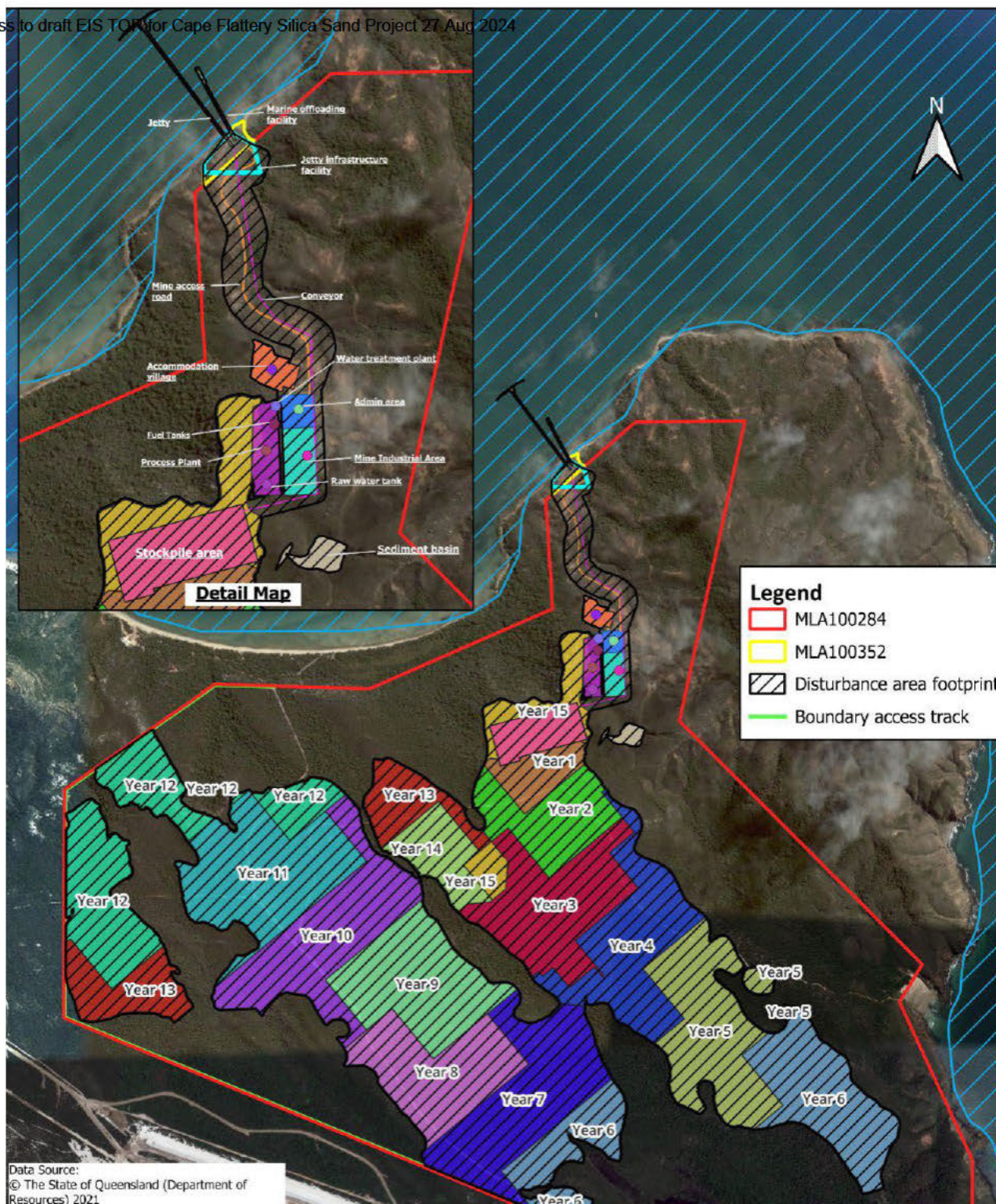
- Associate of the Institute of Actuaries of Australia.
- Bachelor of Commerce in Actuarial Studies and Finance (University of NSW).
- Associate of Trinity College London (Recital Diploma in Piano).



**THE RESPONSE OF HOPEVALE
CONGRESS ABORIGINAL
CORPORATION (RNTBC)**

**TO THE DRAFT ENVIRONMENTAL
IMPACT STATEMENT TERMS OF
REFERENCE FOR THE CAPE
FLATTERY SILICA SAND PROJECT**

27 August 2024



INTRODUCTION

Hopevale Congress Aboriginal Corporation (RNTBC) Congress has a firm view that First Nations people affected by this project should be treated as equal stakeholders with the proponent in the assessment processes involved with the EIS and be an active participant starting with scoping of the reports and consultancies required to respond to the EIS TOR.

The Congress response comprises three components collected together:

A response prepared by [REDACTED] of Global Sustainable Solutions

A response prepared by [REDACTED] of McAtamney & Advisors (for Diatreme EIS TOR adopted for this submission)

A response prepared by Atherton Tablelands Law.

Congress has engaged expert assistance to advise on the economic and environmental/social aspects of the draft TOR.

Atherton Tablelands Law has compiled comments based on concerns raised by and with Congress Board about the project matters raised in the TOR.

The EIS should adopt a set of principles for scoping that imbue inclusive First Nations Active Participation Opportunities (FNAPPO) throughout the EIS components.

First Nations traditional owners and Congress should be involved at the very outset and throughout the design and implementation of EIS processes to:

- a) give both indigenous landholder and native title parties the opportunity to identify and share in the economic benefits that the EIS process itself presents (rather than simply being “consulted” scoping and reports have been completed;
- b) Inform the EIS development and engagement process from the beginning. They have stories to tell that explain that part of the world in their terms;
- c) Identify at an early stage where active Hopevale indigenous participation can occur in the consultancies and engagements of contractors to provide the EIS

First Nations consultation is not just restricted to Cultural Heritage issues. Consistent with government policy on First Nations recognition and meaningful participation and development of partnerships in such projects¹ the TOR should make provision for First Nations representatives to

¹ Qld Critical Minerals strategy p13

be members of EIS implementation committee (s) and an audit of all consultancies required to meet TOR should be undertaken as a first step to identify First Nation active participation opportunities (FNAPO)

The proponent should demonstrate FNAPO in all aspects of the EIS process by development in collaboration with First Nations people a set of principles that permeate the whole EIS report that importantly include:

- a) How recognition and acknowledgement of First Nations people will be demonstrated for each section;
- b) Identification of FNAPO as part of the scoping process;
- c) Providing proper resources to First Nations people to participate in the EIS process

The mechanism by which the above can be achieved is outlined by [REDACTED] in her contribution, that is, the establishment of a *Hopevale Community Consultative Committee* as part of the EIS scoping process. [REDACTED] makes the point that these suggestions are underpinned by both State and International Human Rights Obligations and are otherwise Best Practice principles for leaders in the resource development area such as the World Bank.

The suggestions contained in this Response are also a means by which the proponent can demonstrate the principles of First Nations Free Prior and Informed consent for the project or identify where there are issues of concern.

If First Nations people are not involved from the very start of the EIS process from scoping to final report, the risk is that it will end up being very tokenistic in terms of its First Nations engagement.

Major Preliminary Issue of Concern

Omission of Water approvals under EIS Scope

The IAS at sec. 3.2.1 deals with Water requirements and proposed water licencing/allocation processes for the project.

Water rights, control and management of water are of great significance to First Nations people. At p. 32 of the IAS the suggestion is made that because of the DRDMW recognition of the project as a Project of Regional Significance under the *Water Plan (Cape York) 2019 (Water Plan)* that status “means that the Project can apply for a water entitlement from the 25,000 ML of unallocated water held in the Strategic Reserve for the Water Plan. In accordance with the Water Plan, both Coordinated Projects and Projects of Regional Significance are eligible to request, but are not guaranteed, unallocated water held in the strategic reserve under the Water Plan”.

Whichever administrative process is used, the opportunity for Congress to apply for and obtain an allocation from the reserves that is otherwise available to the project would be an economic opportunity for First Nations people to participate in the project. For instance, by controlling the

water allocation, Congress could enter into sub-leasing arrangements that could provide a business opportunity that should be investigated for the purposes of para. 9. 152 of the TOR.

However, from what appears on pages 34-35 of the IAS it is apparent that a lot of important assessment criteria relating to Water matters seems to be relegated to the Water Licencing Application process rather than brought into the EIS TOR. Further to substantiate this suspicion, Table 6 setting out the approvals summary covered in the scope of the EIS excludes the Water Plan and Water Act approvals from the TOR scope (Water Scope Exclusion) yet s9.80 –9.105 covers Water resources in some detail, particularly the requirement in 9.104 and 9.105. An internal inconsistency in the EIS TOR scope is created thereby. All water information, whether prepared for various water permit/licensing applications or the EIS TOR should be brought into the one place within the scope of the EIS TOR so that it can easily and usefully be used for the purposes of 9.104 and 9.105 as well as other economic and cumulative impact analysis.

The Water Scope Exclusion is entirely unsatisfactory given the important information that is likely to be addressed in the application process outlined above and should be included in the EIS scope in order to properly assess both the economic opportunities for First Nations presented by the project and also in order to properly assess the cumulative impacts of water access for this project. If it is intended that the latter information be included then the proponent should be asked to clarify why it is stated not to be within the EIS scope in the IAS and agreement to include it in the EIS Scope in order to settle any uncertainty in that regard.

There is an existing water allocation to Cape Flattery Silica Mines P/L for the existing mine. There will be a further requirement for Water (for processing/slurry pipeline use as well as potable etc) for the CFS project and then there will also be a similar if not greater requirement for the Diatreme Northern Silica Project. It is not known if all these three projects will take from the same aquifer but that is presumed at this point. The origin and source of water for all three projects and the impacts thereof on such water supply needs to be addressed and examined in the cumulative study. It is essential for that purpose for all water assessment criteria that would be provided to DRDMW be included in the scope of the EIS TOR not left out of it.

Congress requests OCG seek confirmation from CFS to amend the scope for the EIS TOR to include all matters mentioned in paras. 3.2.1 to 3.2.5 in the IAS as part of the EIS TOR scope or alternatively require it as a condition in the EIS TOR.

2. BASELINE concepts - One or Two EIS?

The concept of establishing a baseline in the assessments should refer to the position of what the area was like before Cape Flattery Silica Mine (Mitsubishi) (CFSM) started. All disturbance assessments for land or water etc. should refer back to their original condition before disturbance by CFSM but cumulative impacts should be assessed including all three major projects, CFSM, NSP and CFSSP. Given the takeover has now occurred consideration should be given as to whether it is indeed appropriate for two EIS to be prepared when conceivably, given a single entity holder, there is now one big project with two different sites. Perhaps there should be a combination of the EIS and one comprehensive study undertaken. In effect the practical reality is that the two EIS TOR for two projects could now be brought together in one EIS which would be a more efficient and cost effective course of action.

In conclusion, Congress would welcome the opportunity for its expert, CEO and available Directors and the writer for a meeting to talk OCG officers through the Response if that is convenient to OCG.

Glossary

Congress – Hopevale Congress Aboriginal Corporation (RNTBC) (In both capacities and Land Trustee and as RNTBC).

FNAPO – First Nations Active Participation Opportunities

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

SIA RESPONSE TO DRAFT TOR FOR THE CFSSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
Flora and fauna General Content Paragraph 9.45	Specification of flora and fauna content	<p>Suggested change Update Paragraph 9.45 to the following:</p> <p><i>“Involve appropriate Traditional Owners in flora and fauna surveys through engagement via an agreed mechanism (refer to Social Section for details) and include outcomes of engagement in the survey findings. Describe how matters raised through local First Nations people input have informed the project design and were reconciled with other information and assessments.”</i></p> <p>Rationale The proponent should be required to demonstrate a much more proactive approach to creating and enabling opportunities to maximise inputs and building the capacity of First Nations people within the local community. The proposed wording above places a much greater onus on the project proponent, together with the local First Nations peoples, to participate in the opportunity of flora and fauna surveys.</p>
Water Resource Surface Water Impact Assessment and mitigation measures	Specification of impact assessment and mitigation measures	<p>Suggested change Following Paragraph 9.84 include the following:</p> <p><i>“Detail the authorisations required for surface water under the Water Act, Water Regulation and Water Plan (Cape York) 2019. This includes whether a proposed activity can be carried out under an exemption under the Water Act, Water Regulation or Water Plan (Cape York) 2019.”</i></p> <p>Rationale This requirement was included in the Northern Silica Project and should also be a requirement of the Cape Flattery Silica Sand Project unless it can be demonstrated that it is not relevant.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Social Objective and outcomes	Specification of social objectives	<p>Suggested change Update Objective (a) to the following:</p> <p><i>“Create, enable, and maximise opportunities for social benefits, harmonious relationships and capacity building within communities in the vicinity of the project with particular emphasis on local First Nations communities.</i></p> <p>Rationale The proponent should be required to demonstrate a much more proactive approach to creating and enabling opportunities to maximise social benefits, improving harmonious relationships and building the capacity of First Nations people within the local community. The proposed wording above places a much greater onus on the project proponent, together with the local First Nations peoples, to identify and achieve such opportunities.</p> <p>Suggested change Include a new Objective (d) as follows:</p> <p><i>“The design, construction and operation of the project are to:</i></p> <p><i>(d) be assessed and managed in a way that is consistent with the Human Rights Act 2019 and United Nations (UN) Guiding Principles for Business and Human Rights, considering the special importance for the Aboriginal and Torres Strait Islander peoples of Queensland, as Australia’s first people who will be impacted by this project.</i></p> <p>Rationale The current objectives do not make any explicit reference to human rights considerations and their importance to First Nations communities and Traditional Owners, and this warrants explicit stand-alone consideration as part of the EIS and social analysis.</p>
--	---------------------------------------	--

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Social General Content, paragraph 9.117	Specification of general content	Suggested change Update Paragraph 9.117 to the following:
		<p><i>“The social impact (SLA) and human rights impact assessment (HRIA) for the project must provide for the following key matters:</i></p> <ul style="list-style-type: none"> <i>a) a community and stakeholder analysis and engagement plan that builds the capacity of local First Nations people and demonstrates that Free Prior Informed Consent has been achieved;</i> <i>b) a workforce management plan including the prioritised hierarchy for recruitment for local First Nations peoples from surrounding communities;</i> <i>c) a housing and accommodation strategy that enables opportunities for employment and/or economic and social benefits for local First Nations people in surrounding communities;</i> <i>d) a local business and procurement strategy including a prioritised hierarchy for service providers from local First Nations peoples from surrounding communities and Indigenous (Supply Nation certified) businesses;</i> <i>e) a health and community wellbeing strategy that builds on existing initiatives and supports improvements in physical and psychosocial health;</i> <i>f) a comprehensive human rights impact assessment and management strategy for Indigenous communities and First Nations people in accordance with the UN Guiding Principles based on the framework of protect, respect and remedy.</i> <i>g) a visual amenity impact assessment of the project on sensitive receptors with due consideration of areas that are accessed by local First Nations people for cultural and recreational purposes.</i> <p><i>The baseline must be informed by credible datasets, qualitative research, and consultation, particularly at a local and community level.”</i></p> <p>Rationale There are significant social complexities at a local and regional level with the proposed project and other related projects that must be taken into consideration to ensure positive social outcomes from the project for remote and disadvantaged First Nations communities. The current wording of the requirement is too general to reflect this complexity, does not consider human rights matters or visual impacts which impact First Nations peoples and does not fully consider how beneficial social outcomes will be delivered to remote, local Indigenous communities.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Social	Impact	Suggested change
Paragraph 9.131	Assessment and mitigation measures	<p data-bbox="683 383 1769 422">Addition of the impact assessment and mitigation measures into Paragraph 9.131 as follows:</p> <p data-bbox="683 446 2016 518"><i>“In accordance with the Social Impact Assessment Guideline and UN Guiding Principles for Business, develop a social and human rights impact management plan including (but not limited to):</i></p> <ul style="list-style-type: none"> <li data-bbox="728 550 1993 654"><i>a) a comprehensive explanation of how specific issues identified through community and stakeholder engagement, especially those related to visual amenity, water, cultural heritage and cumulative impacts for local First Nations communities are addressed through mitigation and management measures;</i> <li data-bbox="728 654 1993 758"><i>b) strategies, plans and initiatives to improve poor baseline conditions (where identified during the social baseline analysis and comprehensive stakeholder engagement with local First Nations communities) including health (physical and psychosocial), housing and employment barriers;</i> <li data-bbox="728 758 2027 893"><i>c) the establishment of a Community Consultative Committee with an agreed charter and resourcing to support the continued involvement of local First Nations peoples participation in the monitoring, mitigation and management of environmental, social, human rights and economic impacts associated with the project;</i> <li data-bbox="728 893 1993 1024"><i>d) a framework to monitor the effectiveness and performance of proposed mitigation and management measures, including timeframes and key performance indicators for the achievement of these measures. The framework must identify roles and responsibilities in accordance with the charter for a Community Consultative Committee.</i>

Rationale

Social constraints and human rights matters are significant barriers and concerns for Australian First Nations people. It is critical that the EIS is supported by a detailed and specific understanding of these matters to ensure that benefits and opportunities will be realised for local First Nations communities and that they are not further disadvantaged or negatively impacted by the proposed project.

The current wording of the requirements does not include considerations of human rights principles and social disadvantages that needs to be considered to develop robust social benefits and management plans.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Cumulative Impacts Objective and outcomes	Specification of objective and outcomes	<p>Suggested change Update of the objective and outcome of the cumulative impact assessment as follows:</p> <p><i>“The design, construction, operation and closure of the project are to avoid, minimize and/or mitigate potential adverse impacts and suggest opportunities arising from the combined effects of this project and the Cape Flattery Silica Mine (CFSM), the proposed Northern Silica project and any other reasonably foreseeable or associated projects. The environmental, social including human rights and visual amenity, economic and cultural values are to be considered in this assessment.</i></p> <p>Rationale The impact mitigations and management of the two proposed projects, Cape Flattery Silica Sand Project and Northern Silica Project should now be considered as one project with one EIS since the takeover of Metallica by Diatrene. Furthermore, the cumulative impact of these projects together with Cape Flattery Silica Mine (CFSM) should be covered in a comprehensive Cumulative Impact Assessment by considering the pre-mining conditions at CFSM as the baseline. This would provide a valid understanding of the cumulative impacts on land disturbance and water usage in the region as well as identify the opportunities to minimize impacts such as the use of shared port and camp facilities.</p>
Cumulative Impacts General requirements Paragraph 9.237	Specification of general requirements	<p>Suggested change Inclusion of the additional requirements into Paragraph 9.237 as follows:</p> <p><i>“(n) visual amenity, with special consideration of local First Nations peoples use of the area (o) cultural heritage, with special consideration of linkages between land and marine environments”</i></p> <p>Rationale Visual amenity and cultural heritage are values of high significance to local First Nations people and should be thoroughly considered during the cumulative impacts of the three projects within close proximity of Hopevale.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

– SIA RESPONSE TO DRAFT TOR FOR THE CFSSP

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
2.4	Preliminary comments	<p>With reference to the Introduction above regarding a more robust requirement to demonstrate active participation by First Nations people from the outset of the EIS process.</p> <p>Suggested amendment:</p> <p><i>“Accepting statutory processes and regulated decision-making requirements, as far as practicable the proponent is to demonstrate active engagement with and consideration of the views of the Hope Vale Warra People together with their active participation in and about the project.”</i></p>
6.2(e) and (f)	Project description	<p>With reference to concerns expressed in the Introduction above about failure to include Water tenures under Cape York Water Plan and the Water Act in the scope of the EIS, the proponent should be required to demonstrate:</p> <ul style="list-style-type: none"> a) why the water approvals should be assessed separately to the EIS (if not included in the scope); b) why those approvals should not be granted to the First Nations people to manage and control and allocate through subleasing mechanisms to the proponent for the project so as to maximise economic benefits of the project for First Nations people; and c) how the assessment of the cumulative impacts of the project (in respect of water requirements) in the context of three co-existing silica sand projects all requiring access to water for their respective projects, will be assessed if the water assessment information does not form part of the EIS scope. <p>Preferred change – insertion of new (f) and (g):</p> <p><i>(f) “the water requirements for all elements of the project and how it is proposed to satisfy them and identify the economic opportunities for inclusion of First Nations people to participate in the provision of water requirements for the project”</i></p> <p><i>(g) all water permitting application information required to properly assess cumulative impact 9.241(f) of the EIS TOR.”</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
9.13	Land use and Tenure	Consistent with identifying FNAPO Native title holders to be included in scoping for mapping and vetting of mapping prior to inclusion in final EIS. Suggested change to reflect the above principle: Insert the words “ <i>In collaboration with Native title holders</i> ” at the commencement of cl. 9.13
9.40 p. 17	Flora and Fauna	“ <i>Consistent with FNAPO scoping for Flora and Fauna studies and reports should include native title holder representatives in their formulation as well as the work undertaken to respond to that scope</i> ” For the reasons already given, add the above wording as an objective and outcome.
9.43	Mapping Flora and Fauna	Consistent with FNAPO maps should include language names where possible for locations to enable and facilitate better appreciation by local aboriginal people of the impacts. Suggested change: Insert new 9.43 (e) “ <i>and in collaboration with native title holders, identified by reference to traditional language names, where they exist.</i> ”
9.52	Impact Assessment – Flora and Fauna	Consistent with FNAPO maps should include language names where possible for locations to enable and facilitate better appreciation by local aboriginal people of the impacts. Suggested change: Add the words “ <i>and in collaboration with native title holders, identified by reference to traditional language names, where they exist</i> ”
9.117	Social Impact	Additional comments from Congress to points made by [REDACTED]

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
		<p>Since the submission of Congress Response to Diatreme NSP EIS TOR further discussion with [REDACTED] with regard to the desirability of a separate SIA relating to indigenous interests has been revised and consistent with her recommendation, that component of the SIA should still remain part of the SIA but be a separate and distinct part of the overall EIS that focuses on the impacts particularly relevant to the Hopevale community and is a task that should be undertaken by Congress being engaged by the proponent to run that process, to engage experts for same and run the consultation processes required within the community. In that way the proponent can also be satisfied that Congress is undertaking its statutory duty when making both a Trustee and Native Title decision about the project elements as well as fulfilling FNAPO for the EIS.</p> <p>Rationale for change: Precedents – (1) For the purposes of the Wardens Court proceedings assessing the applications by Cape Flattery Silica Mines P/L in the early 1990's a Socio-Economic Impact Study was prepared regarding the impact of the existing Cape Flattery Silica Mine on the local Hope Vale community. That report was invaluable in informing Hope Vale in negotiations for the grant of the mining lease and there is a similar need for this project.</p> <p>Proximity and First Nations recognition In giving due recognition to the special place of Hope Vale First Nations people as neighbours, landholders and holding native title rights and interests and the proximity of the project to them, there is a need to focus the SIA on Hope Vale impacts.</p> <p>Further suggested change:</p> <p>General Content 9.115 Add new paragraph (h) (to [REDACTED] draft update above):</p> <p><i>“the resourcing by the proponent of the Hope Vale Aboriginal people, including Congress active management of and participation in the preparation of that report.”</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
Objectives and Outcomes p25.	Water Resources	<p>Objective (a) fails to account for the identification of FNAPO for Indigenous water uses and values that may present in the project.</p> <p>Rationale Notwithstanding cl. 9.102, consistent with FNAPO the design, construction and operation of the project should specifically state that FNAPO opportunities for water use and control should be maximised.</p> <p>Suggested change:</p> <p>Add new clause (e) to objectives and outcomes</p> <p><i>“maximise the First Nations control and management of water resources required for the project”</i></p> <p>Otherwise the confusion about what is in or out of the EIS scope in regard to Water outlined above should be clarified.</p>
9.97	Relationship between groundwater and seawater	<p>Should address not only at (c) “seawater intrusion” but also reference to linkages of fresh ground water with sea water via specifically “wonky holes”.</p> <p>Wonky holes are depressions in the seabed where upflows of fresh groundwater occur.</p> <p>Explanation and rationale: <i>ABC Environment and Nature 2001</i> <i>“Tests on the electrical conductivity of water trapped in sediments two metres below the seafloor have confirmed the depressions are in fact mouths of springs which carry freshwater via submarine channels to the seabed seven to 10 kilometres offshore...</i> <i>But the depressions, which can measure 30 metres across and four metres deep, occur all along the coast from Townsville to Cape York, with some reports further south”</i></p> <p>There are known wonky holes in the Great Barrier Reef area offshore north of Cooktown.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
		<p>This is an FNAPO for them to lead engagement with the local commercial trawlermen who can identify wonky hole locations offshore for scientists to investigate further. This is a good opportunity for collaboration across sectors driven by the First Nations (Congress) on a project to study the linkages between fresh water and salt water.</p> <p>Native title rights and interests exist in the marine areas and linkages between freshwater and seawater offshore of the project area should be investigated.</p> <p>Suggested change: addition of new subclause for 9.97 (c) and renumbering of balance subclauses.</p> <p>New wording for cl. 9.94 (c) <i>freshwater linkages with sea water in the Great Barrier Reef (including the identification of any “wonky holes” offshore the project area” and possible link to ground or subterranean water resources that may be used by the project.”</i></p>
9.132	Cultural Heritage	<p>Identifying the existing environment should include a reference to the seascape as well as landscape given the increased port/wharf area usage.</p> <p>Cultural heritage sites and stories exist for the marine areas.</p> <p>The words “Aboriginal Party” have a specific connotation under the Aboriginal Cultural Heritage Act (Qld) (ACHA) which is capable (if not clarified in the EIS TOR) of excluding important Aboriginal groups from consideration here.</p> <p>There is a particular need in the case of the seascape adjacent to this project to ensure that all Aboriginal people with a connection to the area are included in this Cultural heritage assessment including any groups that do not fit strictly within the definition of “Aboriginal Party” as set out in s34 and s35 of that Act.</p> <p>Under the Hopevale Native Title Determination 1997 referred to in s2.2 above the native title rights and interests in the land the subject of the proposed project is held jointly by the Dingaal clan and the Nguurruumungu clan. However, only the Dingaal clan have historically made a native title claim over sea areas immediately adjacent to the project area. Although the Dingaal claim was later de-registered in did not result in any form of determination</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
		<p>in regard to the marine area, by virtue of that claim Dingaal people are recognised as “Aboriginal Party” under the ACHA, to the exclusion of the Nguurruumungu people.</p> <p>Whereas if the native title interests in the adjacent land is held jointly, then logically the only conclusion can be that the immediately adjacent sea areas must be held jointly by extension (even though there is no determination yet to that effect). By agreement with Dingaal people, it is recognised that Nguurruumungu are also relevant Aboriginal Party for the seascape adjacent to the proposed mining tenement because of their status as a joint native title holder in the immediately adjacent land.</p> <p>In addition by virtue of the recognition of both “property rights” (s24) (viz a viz a right to claim native title rights and interests in the adjacent sea area, and under s28 “Cultural rights” of Aboriginal people under the HRA, Nguurruumungu people (as well as other traditional owners and historical residents of Hope Vale who visit and use the resources of the sea area and do so by tradition) need to be included in this cultural heritage assessment.</p> <p>Suggested changes:</p> <p>9.132 – should be replaced with the following:</p> <p><i>“Identify the Aboriginal Parties and any other Aboriginal group with connections to the land and waters (including marine areas) within and adjacent to the project area.”</i></p> <p>9.133 – should be replaced with the following:</p> <p><i>“ Identify the existing and potential Aboriginal and Torres Strait people’s cultural heritage within the project area. Describe the existing cultural heritage values of Aboriginal and Torres Strait Islander peoples that may be affected by the project, and the environmental values of the cultural landscape and seascape (including all Aboriginal people relevant to the seascape either by agreement or recognised as culturally connected under the Human Rights Act Qld) for the affected area in terms of the physical and cultural integrity of the lands and waters (including the marine areas) ”.</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
	Economic	Refer to the response on draft Economic TOR for the NSP prepared for Congress by McAtamney & Advisors and apply to the equivalent paragraphs in the CFSSP EIS TOR as per below section.
9.159	Hazards, Health and safety	<p>Given the recent Take over by Diatreme of Metallica and hence CFSS project, if the product produced in the CFSS project is now to be exported through the use of or augmentation of the Cape Flattery wharf, this TOR for safety and health should address and include safety concerns for employees of existing operator associated with requirements for upgrade and/or modifications of existing wharf structure to handle silica product exported from the SFSSP</p> <p>This is a cumulative impact of the project. There are already safety concerns from CFSSM employees around maintenance and upgrades of existing wharf infrastructure to handle NSP requirements whilst shiploading for existing CFSSM operations occurs. (CFSSM – Cape Flattery Silica Mines P/L). Such concerns are equally valid if the existing wharf facility is now to include export from the CFSSP.</p> <p>cl. 9.159 should include addressing safety hazards and concerns around wharf maintenance and upgrade/modification required to handle both NSP and CFSSP output.</p> <p>Suggested change:</p> <p>Add the following words to the second last sentence after the word “<i>incidents</i>” – “<i>wharf upgrades, maintenance and/ or modifications to the existing Cape Flattery Wharf as may be required to handle the NSP and CFSSP silica output</i>”</p>
9.181	Flooding	<p>Major concerns have been raised with Congress about flooding affecting/impacting access roads to the project . Description of the existing environment should include specifically reference to access roads to the project site not just the site or areas in “proximity” to the project site.</p> <p>Suggested change:</p> <p>Delete the word “and” in the first line of 9.181 and replace with a comma, and insert the words “<i>and any access roads to it</i>” after the word “<i>onsite</i>”.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic—e.g. social	Suggested change(s) to draft TOR, including reasons for the change
		<p>cl. 9.181 should read:</p> <p><i>“Discuss the history of flooding onsite, in proximity to the proposed project site and any access roads to it including extent, levels and frequency (upstream and downstream).”</i></p> <p>A similar amendment is required of cl. 9.182 by adding a reference to “access roads”</p> <p>Suggested change: add the words “and access roads” at the end of the clause.</p>
9.240, p.53	Cumulative impacts	<p>Comments by [REDACTED] regarding the need for establishment of base line for economic component of the TOR in order to measure cumulative impacts are adopted here.</p> <p>The primary concern here is the cumulative impact of two more silica projects (Diatreme and Metallica) together with the existing silica mine at Cape Flattery within a relatively short distance of each other. Specification of the Metallica/Daitreme project(s) and existing Cape Flattery Silica Mines operation is more desirable than a vague reference to “other relevant projects”. It is Congress position that there should be no doubt about the baseline which should include both existing and prospective mining projects in the area. At present these comprise Cape Flattery Silica Mines, the CFSSP and NSP and the exploration and potential mining application by Big Bull Resources also in close proximity to the project site.</p> <p>Suggested change. Insert the words “Cape Flattery Silica Mine, Metallica Resources Cape Flattery Silica Sand Project, Diatreme Northern Silica Project and Big Bull Resources exploration/mining activities and/or” before the words “other relevant projects” in the second last line of cl. 9.240</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

ECONOMIC – RESPONSE TO DRAFT TOR FOR THE CFSSP (adapted from the NSP Response)

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
Economic Objective and outcomes	Specification of economic objectives	<p>Requested change Update Objective (b) to the following:</p> <p><i>“Create, enable, and maximise opportunities for local businesses and communities to contribute to the successful delivery of the project, particularly First Nations.”</i></p> <p>Rationale The proponent should be required to demonstrate a much more proactive approach to creating and enabling local opportunities to maximise local economic and social benefits. The proposed wording above places a much fairer balance and onus on the project proponent, together with the local community and businesses, to identify and capitalise on such opportunities.</p>
		<p>Requested change Update Objective (c) to the following:</p> <p><i>“Create a net economic benefit to the local community (particularly First Nations people residing in Hopevale township/Hope Value Aboriginal Shire local government area), Cape Flattery and Cooktown region, and the State of Queensland.”</i></p> <p>Rationale The current wording does not define “region” and does not account for the fact that there may be adverse local impacts of the project while still delivering a net positive economic benefit at a broader regional and State level. Specific consideration is needed at a local level, including potential mitigation strategies for risks that may result in economic or social costs.</p>
		<p>Requested change Include a new Objective (d) as follows:</p> <p><i>“The design, construction and operation of the project are to:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p><i>(d) deliver and enable net financial and economic benefits to First Nations communities and Traditional Owners derived from the use of their land. ”</i></p> <p>Rationale The current objectives do not make any explicit reference to First Nations communities and Traditional Owners, and this warrants explicit stand-alone consideration as part of the EIS and economic analysis.</p>
Economic Paragraph 9.141	Description of existing economic environment	<p>Requested change Update Paragraph 9.141 to the following:</p> <p><i>“Describe the existing economic environment at a local, regional, and State level to inform a comprehensive baseline for the cost benefit analysis and economic impact assessment. This should be undertaken in line with (but not unnecessarily constrained by) the Economic Impact Assessment Guideline. The baseline must include (but may not be limited to):</i></p> <ul style="list-style-type: none"> <i>a) Economic profiles consisting of industry economic contribution (value added), employment, and other key indicators (e.g., incomes, industry mix, skills and capabilities);</i> <i>b) Synthesis of the current policy environment and strategic alignment of the project with local, regional, State, National, and international policies and strategies;</i> <i>c) Ways in which the project will align with objectives in relation to First Nations participation as included in the Critical Minerals Strategy (Queensland) and Critical Minerals Strategy 2023-2030 (Commonwealth);</i> <i>d) Synthesis of current commercial agreements (in force and planned) that directly or indirectly affect the project;</i> <i>e) Documentation of key external economic, technological, and other forces impacting the proponent, the project, and/or the broader operating landscape;</i> <i>f) A comprehensive profile of existing and proposed resource projects in the region, including discussion of the cumulative operating context associated with these projects;</i> <i>g) A comprehensive discussion of the economic and social context for First Nations people in the local community and region, including (but not limited to):</i>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>i) <i>Local businesses and employment;</i> ii) <i>Education, skills, and training; and</i> iii) <i>Employment and related opportunities on other resources project; and</i> iv) <i>Strategic vision or planning by First Nations people for the area in which the project is to be developed.</i></p> <p><i>The baseline must be informed by credible datasets, qualitative research, and consultation, particularly at a local and community level.”</i></p> <p>Rationale There are significant complexities at a local and regional level with the proposed project and other related projects that must be captured to inform a credible project appraisal. The current wording of the requirement is too general to reflect this complexity and will not produce a robust and credible economic analysis. Further, in relation to economic impacts for First Nations people, having a clearer lens to the current state will reduce the risk of obfuscation of the proponent’s accountability for its role in actively creating and enabling economic opportunities as part of its design and implementation of the project.</p>
Economic Paragraph 9.142 and 9.146	Description of existing and future demand	<p>Requested change Combine Paragraphs 9.142 and 9.146 and update the wording of the combined paragraph as follows:</p> <p><i>“Describe the existing and future demand for the project’s silica sand product in both domestic and international markets over the life of the operations, including (but not limited to):</i></p> <p>a) <i>Strategic context of silica sand and its applications;</i> b) <i>Current and emerging demand drivers;</i> c) <i>Supply outlook; and</i> d) <i>Risks and opportunities in the demand and supply outlook.</i></p> <p><i>Based on the above, and any relevant information published by the International Energy Agency, provide a range of project demand scenarios, including:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>a) <i>A central estimate (or range);</i> b) <i>Plausible upside and downside scenarios (with clear justification and links back to identified project risks and opportunities); and</i> c) <i>The International Energy Agency's development scenarios.</i></p> <p><i>All assumptions underpinning the demand analysis and scenario/sensitivity analysis must be documented and sourced in full."</i></p> <p>Rationale Demand and market pricing are significant drivers of the project viability and economic benefits, including for First Nations people. It is critical that the EIS is supported by a detailed and specific understanding of demand drivers, including rigorous scenario testing, to fully assess the overall economic risk and break-even points in the project. First Nations people will also need such information when considering Free Prior and Informed Consent (FPIC) and compensation negotiations relating to the Project.</p> <p>The current wording of the requirements does not start from an understanding of demand drivers and how these are, and will continue to be, shaped by broader market, macro-environmental, geo-political, and other contexts.</p> <p>The proposed wording creates a clear requirement for the proponent demonstrate a robust understanding of the demand context, and to identify uncertainties so they can inform proper risk analysis and sensitivity testing. It is also important this analysis is fully and transparently documented to provide the Queensland Government and key stakeholders with confidence in the proponent's modelling and associated understanding of project benefits and impacts.</p>
Economic 9.144	Identification and description of benefits	<p>Requested change Update Paragraph 9.144 as follows:</p> <p><i>"In accordance with the Queensland Government Cost Benefit Analysis Guide, identify and describe all key direct and indirect economic impacts associated with the proposed project, including:</i></p> <p>a) <i>Financial costs;</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>b) <i>Financial benefits;</i> c) <i>Economic costs and dis-benefits (i.e., a reduction in a positive impact or benefit currently experienced);</i> and d) <i>Economic benefits.</i></p> <p><i>In describing the impact streams, map the following key information:</i></p> <p>a) <i>The bearer (cost) or beneficiary (benefit);</i> b) <i>The geographic level at which the impact originates (e.g., increased employment opportunities for local First Nations people is a local level benefit, whereas royalties payable to the State is a State level benefit);</i> and c) <i>Whether the impacts are primarily related to First Nations people.”</i></p> <p>Rationale The proper identification of impacts should be the identification of each impact stream, rather than the “<i>net economic benefits</i>” as currently included in the requirement.</p> <p>Further, while the guidelines require impacts to be identified, this is usually oversimplified by proponents. There is significant complexity in the requirements and impacts of this proposed project, and establishing clarity of these is critical to ensuring the analysis can be transparently assessed by all parties.</p> <p>This importance is further heightened by the need to consider cumulative interaction effects between the proposed project and other current and related projects as part of this impact analysis.</p>
Economic 9.148, 9.149, 9.150	Cost benefit analysis of options	<p>Requested change Merge and update Paragraphs 9.148, 9.149, and 9.150 as below, and re-order the new combined paragraph to immediately follow Paragraph 9.144:</p> <p><i>“Undertake a cost benefit analysis (CBA) of the net direct economic impact of project options relative to the baseline in line with relevant Queensland Government Cost Benefit Analysis Guide. The CBA must include (but may not be limited to):</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<ul style="list-style-type: none"> a) <i>Description of the base case (or 'do nothing') option, which should draw on the earlier analysis and other relevant sections of the EIS;</i> b) <i>Description of project options and the process to develop and short-list options for consideration in the CBA (which should draw on, and be congruent with, the options identified in 6.15(c) and 6.15(d));</i> c) <i>Identification of all relevant direct costs and benefits of the options considered and an explanation of the drivers of these costs and benefits (consistent with earlier analysis);</i> d) <i>Discussion and sourcing of all relevant inputs and assumptions for the CBA, which should include (but may not be limited to):</i> <ul style="list-style-type: none"> i) <i>Standard economic parameters and assumptions (e.g., discount rates);</i> ii) <i>All relevant project cost inputs, including (but not necessarily limited to):</i> <ul style="list-style-type: none"> (1) <i>Construction costs, inputs and milestones;</i> (2) <i>Whole-of-life repair/replacement costs;</i> (3) <i>Fixed and variable operational costs;</i> (4) <i>Costs associated with environmental management, monitoring, mitigation and offsets associated with the project, including abatement of greenhouse gas (GHG) emissions;</i> (5) <i>Investment costs associated with First Nations and related community initiatives, including (but not limited to) employment and economic opportunities, partnerships, training and development, community participation, culture and heritage;</i> (6) <i>Parameters for the calculation of royalties and other payments, including under Native Title and any landholder compensation agreements; and</i> (7) <i>De-commissioning and other end of project life costs.</i> iii) <i>All relevant project revenue inputs, including (but not necessarily limited to):</i> <ul style="list-style-type: none"> (1) <i>Silica sand production volume profile linked to demand analysis and scenarios;</i> (2) <i>Market price assumptions.</i> iv) <i>All other inputs to the estimation of other economic costs and benefits identified.</i> e) <i>Analysis of all relevant direct costs and benefits identified, including, where appropriate, differentiation of these costs and benefits by:</i> <ul style="list-style-type: none"> i) <i>Bearer (cost) / beneficiary (benefit); and</i> ii) <i>Geography (local, regional, State).</i>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>f) <i>Summary of all quantifiable direct costs and benefits of the project and calculation of:</i></p> <p>i) <i>Standard performance metrics of a CBA, including Net Present Value (NPV), Benefit Cost Ratio (BCR), and Internal Rate of Return (IRR);</i></p> <p>ii) <i>Production tonnages and associated project revenue;</i></p> <p>iii) <i>Taxes payable to the Queensland Government;</i></p> <p>iv) <i>Statutory royalty amounts payable to the land trustee under the Aboriginal Land Act and regulations; and</i></p> <p>v) <i>Expected rate of project profit after tax.</i></p> <p>g) <i>Sensitivity analysis of the above metrics based on clearly defined adjustments to project risks and drivers based on prior analysis (e.g., testing of the project under the alternate demand and price scenarios established).</i></p> <p>h) <i>Discussion of unquantifiable impacts, including description, potential likelihood and extent of the impacts based on known information, and the significance of the expected directional impact on the quantified results.</i></p> <p>i) <i>Assessment of the preferred option and/or configuration(s) of options, based on the results of the cost benefit analysis and a clear set of criteria.</i></p> <p>j) <i>Discussion of the limitations of the cost benefit analysis.”</i></p>

Rationale

The current requirement for the cost benefit analysis does not accord with the relevant guidelines and is very unclear, both in terms of the description of the requirements and in being spread over several paragraphs. The key concerns in relation to the current wording are as follows:

- CBA assesses direct (i.e., first round) costs and benefits, as distinct from an economic impact assessment which assesses total (i.e., direct and indirect) economic impacts. While this is acknowledged at the start of Paragraph 9.148, the current CBA requirement goes on to make several references to the inclusion of indirect impacts which is not appropriate or technically correct.
- The results of a CBA are typically an input to the subsequent economic impact assessment, whereas the economic impact assessment precedes the CBA in the current ToR.

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<ul style="list-style-type: none"> The current Paragraph 9.148 describes the CBA as “<i>identif(ying) the structure of the project...</i>” which can be interpreted as leading insofar as the base case (i.e., do nothing) option may be preferred if the net direct impacts of the project under the options/configurations proposed by the proponent do not meet project hurdles and expectations. The current requirements do not make explicit mention of the base case from which the comparison of the impacts of the project options considered are to be made. The base case for this project is fundamental because of the other projects underway in the region and the changing market dynamics. There will be interaction effects and other complexities resulting from the proposed project and a proper assessment of these requires a rigorous and comprehensive base case. There are several references to the CBA including “<i>net benefits</i>” and “<i>net costs</i>” (e.g., Paragraph 9.149(a) and 9.149(b)). A cost or benefit stream is simply that. The net of all costs and benefits forms the Net Present Value (NPV) of the project, which is a key performance benchmark of a CBA. The proponent should not be invited to purport net impacts of the project without demonstrating the underlying cost and benefit items which contribute to that net impact. Transparency of all data and assumptions made in relation to each single impact item must form part of this assessment to enable appropriate scrutiny to be applied by the Queensland Government and stakeholders of the proponent’s analysis. <p>The proposed wording updates, together with the other proposed changes (e.g., in relation to the base case analysis) collectively address the above concerns and provide a much clearer basis for the CBA to be interrogated and understood by all parties.</p>
Economic Paragraph 9.145 and 9.147	Economic impact assessment	<p>Requested change</p> <p>Combine Paragraphs 9.145 and 9.147 and update the wording of the combined paragraph as follows:</p> <p><i>“Undertake an economic impact assessment of project options at a local, regional, and whole-of-state level in line with the Queensland Government’s Cost Benefit Analysis Guide. The economic impact assessment must be undertaken with respect to the established baseline, which must account for all existing and committed projects and current policy settings.</i></p> <p><i>The economic impact assessment must include (but may not be limited to) analysis of:</i></p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>a) <i>Direct project costs and benefits (as assessed through the cost benefit analysis);</i></p> <p>b) <i>Silica sand demand and market prices (from the proponent's demand analysis);</i></p> <p>c) <i>Labour demand, including the ability for labour (including specialists) to be drawn from the existing local, regional, and State workforce, and the potential effects on local and regional businesses;</i></p> <p>d) <i>Raw input demand, including the ability for existing local, regional, and State suppliers to provide relevant raw and manufactured inputs;</i></p> <p>e) <i>Costs and commercial considerations associated with infrastructure development and access required to support the proposed project;</i></p> <p>f) <i>Anticipated value of offsets required for all components of the proposed project.</i></p> <p><i>Noting that the baseline must include all current and committed projects and current government policies/investments, the assessment should include explicit consideration of the interaction and compounding effects of the proposed project at a local and regional level.</i></p> <p><i>The economic impact assessment results must be reported at a local, regional, and State level and include:</i></p> <p>a) <i>Direct and indirect value-added (i.e., economic output)</i></p> <p>b) <i>Direct and indirect employment</i></p> <p>c) <i>Taxes and subsidies.</i></p> <p><i>An appropriate local and regional modelling technique must be used and supported with appropriate evidence and assumptions to support the rationale for key assumptions. The proponent must not rely solely on gross aggregated input-output multipliers to estimate local and regional economic impact, as these will not reflect the complexity of the local context, concurrent projects, and supply chain required to be addressed in the analysis."</i></p> <p>Rationale</p> <p>The current wording of the economic impact assessment requirements is very general and out of sequence with other components of the analysis on which it needs to be based (e.g., demand and price analysis, cost benefit analysis). The economic impact assessment should be the culmination of the prior analyses.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
		<p>The proposed wording provides for a much more rigorous and comprehensive analysis than is currently proposed. This includes at a local and regional level. It also addresses technical inconsistencies between the 2017 <i>Economic Impact Assessment Guideline</i> (referred to in the ToR) and the more contemporary 2021 Queensland Government <i>Cost Benefit Analysis Guide</i> in relation to the use of Input-Output methods to undertake economic impact assessments.</p> <p>The updated proposed wording also places greater onus on the proponent to justify its assumptions regarding the structure and interaction effects in the local and regional economy and supply chain. This is complex analysis requiring a level of bespoke specification by the proponent, and often is oversimplified or obfuscated by reliance on publicly available Input-Output Multipliers (e.g., those published by the Australian Bureau of Statistics). Such methods contain significant limitations and are not suitable or appropriate to be applied at localised levels. These concerns are addressed directly in the Queensland Government's 2021 <i>Cost Benefit Analysis Guide</i> and should be reflected in the ToR. The proponent should also be required to fully investigate the economic dependencies at the local and regional level and make its assumptions clear.</p>
Economic Paragraph 9.152	Aboriginal and Torres Strait Islander "aspirations"	<p>Requested change Update Paragraph 9.152, as follows, and move it after the demand analysis requirements (i.e., following the current Paragraph 9.146).</p> <p><i>"Discuss commercial arrangements (incl. under native title), workforce/employment strategies, and other community initiatives agreed and/or being explored in consultation with Aboriginal and Torres Strait Islander peoples that are to be enacted by the project, especially for areas where native title exists. Quantify the impacts of these initiatives and benefits to First Nations communities and their alignment to relevant strategies and plans."</i></p> <p>Rationale The current wording of Paragraph 9.152 is limited insofar as it only relates to issues identified during engagement with Aboriginal and Torres Strait Islander peoples. There is an opportunity through the EIS to invite the proponent to be more proactive in its identification of strategies and initiatives to not only deliver on identified priorities, but actively create and enable them with the community. The proposed wording provides a clearer and more explicit basis for the proponent to discuss such initiatives, and puts an emphasis on quantification of impacts, rather than just a qualitative description as currently in the requirements.</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
Economic New paragraph	Economic impact for First Nations communities	<p>Requested change Insert a new paragraph after the cost benefit analysis and economic impact assessment (i.e., following the current Paragraph 9.150) as follows:</p> <p><i>“Provide an economic impact statement in relation to First Nations communities in the local area and broader Cape Flattery region. This must include, but may not be limited to:</i></p> <ul style="list-style-type: none"> <i>a) Analysis of the royalties and benefits payable to First Nations people, including the statutory royalty payable under the Aboriginal Land Act, under each of the demand and cost scenarios developed;</i> <i>b) Summary of all key initiatives and strategies related to First Nations people’s involvement with, benefit from, and mitigation of adverse impacts from, the proposed projects;</i> <i>c) Summary of all benefits expected to accrue to First Nations people, and report this as a function of the project’s overall benefits;</i> <i>d) Expected number of direct jobs that can be locally sourced, and the strategies to enable this to be delivered;</i> <i>e) Benchmarking / comparison of the First Nations impacts with other projects and jurisdictions and/or any existing First Nations agreements for similar projects in the region, and with consideration of the Cape York Regional Plan.”</i> <p>Rationale The consideration of First Nations related impacts in the EIS requirements is very weak, and in its current form creates a risk of native title holders and the broader local and regional communities shouldering downside risks and not having sufficient transparency to share in the potential upside of the proposed project. There must be sufficient depth and clarity of the strategies and expected impacts associated with First Nations people as a result of the project, starting with analysis of royalties and benefits payable under the different project options, employment and other skills related opportunities, and broader initiatives.</p>
Economic New paragraph	Insertion of requirement for an independent peer review of	<p>Requested change Insert a new paragraph at the conclusion of the <i>Economic</i> section as follows:</p>

HOPEVALE CONGRESS ABORIGINAL CORPORATION – ENVIRONMENTAL/SOCIAL/ECONOMIC RESPONSE TO DRAFT EIS TOR - CAPE FLATTERY SILICA SAND PROJECT

Section or paragraph no.	Topic	Suggested change(s) to draft TOR, including reasons for the change
	economic analysis	<p><i>“Provide the findings and the proponent’s response to feedback from an appropriately-qualified independent peer reviewer(s) of the cost benefit analysis, economic impact assessment, and First Nations economic impact statement, with specific consideration to the treatment of cumulative impacts of the project at a local and regional level.”</i></p> <p>Rationale There are significant economic complexities and economic and social implications of the proposed project. It is in all stakeholders’ interests to have full transparency of the analysis completed, the data on which it is based, and the veracity (and limitations) of the underlying assumptions. Other sections of the EIS requirements call for appropriately-qualified third party input and the economic analysis should be no different.</p>



██████████ has worked on transformative projects throughout Australia, Asia and the Pacific developing solutions which balance economic, environmental, and social aspects to achieve enduring outcomes. With over 30 years of work experience, ██████████ is competent in managing complex project approvals processes, leading impact assessments and undertaking stakeholder engagement, community development, environmental management, auditing, gender analysis and workshop facilitation involving large teams of industry professionals, government representatives, community residents and Indigenous peoples. ██████████ is committed to the empowerment of Indigenous groups and poverty alleviation in rural communities through effective development and sound environmental management. She believes in capacity building of minority groups through transparent, humane and gender balanced practices.

SPECIALIST SKILLS

- ESG Reviews & Audits
- Management of complex project approvals
- Integrated social and environmental impact assessments
- Project planning and implementation to IFC and ICMM standards
- Stakeholder analysis and community engagement in conflict situations

QUALIFICATIONS

- PhD, Agricultural Science, University of Western Australia, 1988
- Bachelor of Agricultural Science (1st Class Hons.), University of Queensland, 1984
- Graduate Diploma of Education, Griffith University, 1991

PROFESSIONAL AFFILIATIONS

- Australian Institute of Mining and Metallurgy
- Australian Native Food and Botanicals Industry
- Wet Tropics Soilcare Inc.

BOARD EXPERIENCE

- Current Chair – FNQ Branch, Australian Institute of Mining and Metallurgy
- Previous Chair – Wet Tropics Soilcare Inc
- Previous Director/Secretary – Australian Native Food and Botanicals Peak Industry Group
- Previous Advisory Board – CRC Transition in Mining Economies (TIME), Impact Committee
- Previous Advisory Board – University of Qld, Sustainable Minerals Institute – Environment Centres
- Previous Director – Regional Development Australia, Far North Queensland

PROFESSIONAL EXPERIENCE

Environmental, Social and Governance (ESG) Reviews & Audits

- ESG review of Alcoa's potential investment in West Kalimantan, Indonesia.
- ESG review of ArcelorMittal Iron Ore Mines in Kazakhstan
- Review and development of Social Performance System, Newcrest Gosowong Gold Mine, North Halmahera, Indonesia
- Environmental Legal Compliance Audit for Sepon Gold and Copper Operations, Savannakhet Laos
- Social Review of the Liquid Natural Gas project - BG-group, Queensland Gas Australia

- Martabe Gold Mine Feasibility Study site inspection and review – Oxiana Ltd, North Sumatra Indonesia
- Construction inspections and reviews of Tailing Storage Facility, Pipeline, Powerlines and Processing Plant expansion projects - Sepon Gold and Copper Operations, Savannakhet Laos
- Annual Environmental and Social Operational Audit - Sepon Gold and Copper Operations, Savannakhet Laos
- Environmental and social review - Sepon Gold and Copper Operations, Savannakhet Laos
- Operational site inspections and review of Wirralie Gold Mines environmental liabilities - Ashburton Minerals, North Queensland Australia
- Annual Site and Corporate Environmental Audits - Kelian Equatorial Mining, East Kalimantan Indonesian
- Environmental audit - Kaltim Prima Coal, East Kalimantan Indonesia
- Construction inspections and reviews of river diversion and waste rock dam projects - Kelian Equatorial Mining, East Kalimantan Indonesia.

Approvals & Impact Assessment

- Project Leader – Environmental Authority Amendments – Capricorn Copper, Mt. Isa Australia.
- Project Manager, Approvals Scoping Project – Wilmar Sugar Port Facilities, Townsville Australia.
- Project Manager, Social Impact Assessment and Sustaining Project Approvals, Collinsville Coal, North Queensland Australia.
- Manager Stakeholder Engagement and Social Impact Assessment, KUR-World Co-ordinated Eco-tourism Development, North Queensland Australia.
- Project Leader, Social Impact Assessment (SIA) for the South of the Embley Bauxite Mine - Rio Tinto Alcan (RTA), North Queensland Australia.
- Project Manager, In-migration Management Plan and Stakeholder Engagement Plan for Indomet Coal, BHP Billiton, Indonesia.
- Project Leader, Approval for Gold Expansion – LXML Sepon Gold and Copper Operations, Laos.
- Project Reviewer, Environmental and Social Impact Assessments (ESIA) for Frieda River Project, PNG.
- Project Leader, Environmental and Social Impact Assessments (ESIA) and Initial Environmental Examinations (IEE) for the Western Tailing Storage Facility, Gold Oxide expansions, Copper expansion projects, Powerline and Primary Gold projects – LXML Sepon Gold and Copper Operations, Savannakhet Laos.
- Project Leader, Aurukun Bauxite Project, Benefit Package Negotiations with Proponents, Cape York Australia.
- Project Leader, Social Impact Assessment for Waisoi Copper Project, Newcrest/Namosi Joint Venture, Fiji.
- Project Manager, Social Impact Assessment and scoping studies for the Liquid Natural Gas project - BG-group, Queensland Gas Australia.
- Project Manager, SIA to determine the impact of mining on Papua New Guinea (PNG) women - World Bank/GENFUND, PNG.
- Project Manager, ESIA for alluvial gold Mining and wetland construction - Kelian Equatorial Mining, East Kalimantan Indonesia.
- Project Manager, Cultural and Natural Resource Management Plans for the Bar Barrum and Tableland Yidinji Traditional Owners – Australian Government, North Queensland Australia.
- ESIA scoping studies for underground diamond mine - Argyle Diamond Mines, Western Australia.
- Baseline vegetation surveys and impact assessment for mine expansion EIS - Cape Flattery Silica Mine, North Queensland Australia.
- Baseline vegetation surveys and impact assessment for the mine expansion EIS – Red Dome Gold Mine, North Queensland Australia.
- Baseline vegetation surveys and impact assessment for rail expansion EIS – Queensland Rail, North Queensland Australia.

Stakeholder Engagement

- Chaired Community Reference Groups, Advisory Groups and Stakeholder Forums for large and complex projects in renewable energy, minerals, tourism and agricultural

- Conducted analyses of stakeholder groups, issues and power structures in remote, rural and residential communities in conflict situations in Australia, Indonesia, Laos and PNG.
- Designed inclusive engagement programs with diverse stakeholder representatives from community, government and private sector groups and organisations in Australia, Indonesia, Laos and PNG.
- Recorded outcomes and developed action plans for key issues arising from community and industry engagement forums in Indonesia, Laos and PNG.
- Co-ordinated the community consultation processes devised sustainability selection criteria and conducted an option analysis for a complex local Australian shire feasibility study of alternative uses for a public area.
- Co-ordinated and facilitated engagement forums for local community, Indigenous and non-Indigenous community leaders and private sector representatives to develop action plans for innovative sustainable development projects involving health, education, tourism, business development and law/order issues.
- Provided technical advice on environmental impacts, land access and mitigation strategies to private sector representatives for mining projects in Australia, Indonesia and Laos.
- Developed and co-ordinated a comprehensive survey, funded by the World Bank, to determine the status of women in Papua New Guinea (PNG) which involved interviewing community, government and private sector focus groups at a number of remote location throughout PNG.
- Co-ordinated steering committee and working group meetings involving the community, government and private stakeholders over a three year period and analysed the outcomes to develop an agreed plan for sustainable post-closure uses of a large industrial site in Indonesia.

Project Closures and Rehabilitation

- Progressive Rehabilitation and Closure Plan – Capricorn Copper, Mt.Isa Australia
- Mine Closure Communities Advisor – Argyle Diamond Mines, Western Australia
- Mine Closure Advisor – Reefion Gold Mine, New Zealand
- Mine Closure Gap Analysis and Scoping – Gosowong Project, Nusa Halmahera Minerals – Indonesia
- Abandoned Mines Unit, Herberton and Irvinebank Projects – North Queensland – Australia
- Mine Closure Reviews, Advice and Plans – Phu Bia Mining – Laos
- Mine Closure Gap Analysis – Xstrata Copper Refinery – Townsville, North Queensland Australia
- Mine Closure Plan advisor, reviewer and author – Sepon Gold and Copper Operations, Savannakhet, Laos
- Weipa Bauxite Mine Closure Plan advisor – Rio Tinto Alcan, North Queensland Australia
- Mine Closure Plan compilation – Blair Athol Coal Mine, Queensland Australia (2005/6)
- Mine Closure strategy reviewer - Hunter Valley Coal Operations and the Clermont Coal Mine, New South Wales and Queensland Australia
- Mine Closure manager – development and implementation of closure agreement including post-closure endowment trust and foundation for in-perpetuity environmental and social requirements- Kelian Equatorial Mining, East Kalimantan Indonesia
- Preliminary Mine Closure Plan compilation - Kelian Equatorial Mining, East Kalimantan Indonesia
- Decommissioning Plan contributor - Red Dome Gold Mine, North Queensland Australia

PROFESSIONAL HISTORY

2022 - present	Manager Environment & Community – Capricorn Copper, NW Qld.
2002 – present	Founder & Director - Sustainable Solutions Global Pty Ltd.
1996 – 2002	Manager Environment & Mine Closure - Kelian Equatorial Mining, Rio Tinto, Indonesia.
1993 – 1996	Senior Environmental Scientist - Natural Resource Assessments Pty Ltd (NRA), Australia.

LANGUAGE PROFICIENCY

English	Excellent
Bahasa Indonesian	Intermediate
Lao	Basic

REFEREES

Upon request

Hopevale Congress Aboriginal Corporation RNTBC

ICN: 3135

Rule Book

Table of Contents

1.	Name.....	1
2.	Dictionary and interpretation	1
3.	Objectives	1
3.1	Property.....	1
3.2	Functions.....	2
3.3	Community development.....	2
4.	Powers of Congress.....	3
5.	Membership of Congress	3
5.1	Members by application	3
5.2	Membership fees.....	4
5.3	Members' rights and obligations.....	4
5.4	How a person stops being a member	5
5.5	Resignation of member	5
5.6	Process for cancelling membership.....	6
5.7	Different classes of members	8
6.	Register of members and former members	8
6.1	Corporation to maintain a register of members	8
6.2	Information on the register of members.....	8
6.3	Corporation to maintain register of former members	8
6.4	Information on the register of former members	8
6.5	Location and inspection of registers of members and former members	9
6.6	Making register of members available at AGM.....	9
6.7	Provision of registers to Registrar	10
7.	Annual general meetings (AGMs) and general meetings	10
7.1	AGMs	10
7.2	General meetings	10
7.3	Calling general meetings	11
7.4	Requirements for notice of a general meeting.....	12
7.5	Members' resolutions	14
7.6	Quorum for general meeting	16
7.7	Chairing general meeting	16
7.8	Use of technology for general meeting.....	17
7.9	Auditor's right to be heard at general meetings	17
7.10	Voting at general meetings.....	17
7.11	Postponing a general meeting or AGM	18
7.12	Native title decisions.....	19
7.13	Statutory title decisions.....	20
7.14	Resolutions without a general meeting.....	21
7.15	Proxies	22
7.16	Receipt of proxy documents.....	23
7.17	Questions at AGMs	24
7.18	Questions by members of auditors at AGM.....	24
7.19	Adjourned meetings	24
7.20	Business at adjourned meetings	24
7.21	Re-notification of adjourned meeting.....	24
7.22	Who, other than members, may attend general meetings	24
8.	Directors of Congress.....	25
8.1	Number of directors.....	25
8.2	Composition of directors.....	25

8.3	Eligibility to be a director	25
8.4	Majority of director requirements	26
8.5	Consent to act as director	26
8.6	Becoming a director by appointment	26
8.7	Casual vacancy	26
8.8	Directors may appoint other directors to make up a quorum	27
8.9	Term of appointment	27
8.10	Alternate directors	27
8.11	Office bearers	27
8.12	How a person ceases to be a director	27
8.13	Resignation of director	28
8.14	Process for removing a director	28
9.	General duties	30
9.1	General duties	30
10.	Functions, powers and duties of directors	30
10.1	Powers of directors	30
10.2	Duty of director to disclose material personal interests	31
10.3	Remuneration	32
10.4	Negotiable instruments	32
10.5	Delegation	32
10.6	Member approval needed for related party benefit	33
10.7	Conflicts of interest	33
11.	Directors' meetings	33
11.1	Frequency of directors' meetings	33
11.2	Calling and giving notice of directors' meetings	33
11.3	Quorum at directors' meetings	34
11.4	Chairing directors' meetings	34
11.5	Use of technology	34
11.6	Resolutions at directors' meetings	34
12.	Secretary and contact person	35
12.1	Requirements for a secretary or contact person	35
12.2	Consent to act as secretary or contact person	35
12.3	Becoming a secretary or a contact person on registration	36
12.4	How a secretary or contact person is appointed	36
12.5	Terms and conditions of office	36
12.6	Terms and conditions of contact person's appointment	36
12.7	Duties of secretary and contact person	36
13.	Execution of document and the common seal of Congress	37
13.1	Corporation may have a common seal	37
13.2	Execution of documents	37
14.	Finances and record keeping	38
14.2	Minutes of meetings	38
14.3	Rule book and records about officers, contact person, etc.	40
14.4	Financial records	40
14.5	Physical format	40
14.6	Place where records are kept	41
14.7	Right of access to corporation books by director or past director	41
14.8	Access to financial records by directors	41
14.9	Members' access to minutes	42
14.10	Inspection of books by members	43
14.11	Access to governance material	43

14.12	Registered office	43
14.13	Document access address	43
14.14	General provisions regarding access rules	43
15.	Auditor	43
16.	Annual reporting	43
17.	Dispute resolution process	44
17.1	Dispute resolution process	44
17.2	Informal negotiations	44
17.3	Giving of dispute notice	44
17.4	Seeking assistance from the Registrar or the native title representative body for the area	44
17.5	Referring dispute to the directors	45
17.6	Referring dispute to a general meeting	45
18.	Notices	45
18.1	General	45
18.2	How a notice to a member may be given	45
18.3	When notice taken as being given	45
19.	Winding up	46
19.1	Resolution to distribute surplus assets	46
19.2	No distribution of surplus assets to members	46
20.	Amendment of the rule book	46
20.1	Corporation wants to change this rule book	46
20.2	Corporation to lodge copy of changes	47
20.3	Date of effect of change	47
21.	Trustee finances	47
21.1	Receipt of monies	47
21.2	Investment of trust monies	48
22.	Grantee or transferee under <i>Aboriginal Land Act 1991</i> (Qld)	48
	Schedule 1—Interpretation	49
23.	Dictionary	49
24.	Interpretation	50
	Schedule 2A—Certificate in accordance with rule 7.12.3(a)(i)	52
	Schedule 2B—Certificate in accordance with rule 7.12.3(a)(ii)	53
	Schedule 2C—Certificate in accordance with rule 7.13.2(a)	54
	Schedule 3— Code of conduct for Congress officers	55
	Schedule 4—proxy form (rule 7.15.1)	57
	Schedule 5—application for membership form (rule 5.1.1)	58
	Schedule 6—dispute notice (rule 17.3)	59
	Schedule 7—native title determination	60

Preamble

The Hopevale Congress Aboriginal Corporation RNTBC, together with the Dhubbi Warra Aboriginal Corporation RNTBC and Walmbaar Aboriginal Corporation RNTBC, administers land on behalf of the Gamaay people. The Gamaay's ownership was recognised by the Hope Vale determination of December 2007.

This determination arose from a claim made in June 1996 on behalf of 11 Hope Vale clans. These clans were later joined by two other existing clans, in total Gamaay, Dingaal, Nugal, Thuubi, Nguurruumungu, Dharrpa, Binthi, Thiithaarr, Thanil, Nguymbaarr Nguymbaarr, Ngaatha, Buurnga and Gulaal clans. Together they agreed to form a body called the Hope Vale Congress of Clans, comprising one representative of each of the clans. Following a series of mediations, several internal issues between the applicants were resolved. In particular, the delimitation of some clan boundaries was agreed upon.

Both the state of Queensland and the Hope Vale Aboriginal Council recognised that the Congress of Clans was an appropriate body to claim native title. This recognition was formalised in a Deed of Agreement, created between May and November 2007. This recognition was important as the land being claimed had been granted to the Hope Vale Aboriginal Council in 1986 to be held on trust for the Aboriginal inhabitants. All parties agreed to recognise the Gamaay's native title rights and interests. This agreement was affirmed and approved by the Federal Court in December 2007.

1. Name

The name of this corporation is Hopevale Congress Aboriginal Corporation RNTBC (Congress or the corporation).

2. Dictionary and interpretation

See Schedule 1 for the meanings of terms and phrases used in this rule book.

3. Objectives

3.1 Property

- (a) To hold land as trustee transferred pursuant to the *Aboriginal Land Act 1991* (Qld) (ALA) for the benefit of Aboriginal people, their ancestors and descendants;
- (b) To be the grantee, including sole grantee, of grants of land made under the ALA;
- (c) To own land, including legal and equitable interests in land;
- (d) Receive royalty payments from the State pursuant to section 88 of the ALA;

- (e) To lawfully distribute any of the corporation's property, in kind or otherwise, among any of its members either alone or with others;

3.2 Functions

- (a) To be the subject of a determination of native title under section 56 or section 57 of the *Native Title Act 1993* (Cth) (NTA);
- (b) To fulfil the role and functions of a prescribed body corporate under section 56 or section 57 of the NTA for the common law holders in relation to a determination of native title;
- (c) To fulfil the role and functions of a prescribed body corporate under regulation 6 or regulation 7 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth);
- (d) To fulfil the role and functions of a trustee in accordance with the ALA, the Aboriginal Land Regulation 1991 (Qld) and any associated Land Trust Rules;
- (e) To fulfil the role and functions of a trustee in accordance with the *Nature Conservation Act 1992* (Qld) and any associated Indigenous management agreement;
- (f) To act as trustee of land granted pursuant to the *Land Act 1994* (Qld), including ordinary freehold land;
- (g) To act as trustee of any community purpose reserves pursuant to the *Land Act 1994* (Qld);
- (h) To act as trustee of any other trust, whether charitable or otherwise, established for the benefit of any of its members either alone or with others;
- (i) Enter into compensation or other agreements for mining and other activities pursuant to the *Mineral Resources Act 1989* (Qld) and any other legislation;
- (j) To exercise all powers necessary or convenient to perform its functions for the benefit of the Native Title Holders and Statutory Title Holders in all matters relevant to these objects;

3.3 Community development

- (a) To protect, preserve and advance the traditions, lore, laws, languages, culture and customs of its members;
- (b) To manage the land, waters and sea country for the members and undertake programs to protect and preserve it; and
- (c) To promote and support the economic, social and cultural aspirations of its members.

4. Powers of Congress

Subject to the Act and these rules, Congress has the power to do anything lawful to carry out the objectives at rule 3 except charge application fees for membership or annual membership fees.

5. Membership of Congress

5.1 Members by application

5.1.1 How to become a member

A person becomes a member if:

- (a) the person wants to become a member and applies in writing.
(The person may use the form provided for this purpose in this rule book.)
- (b) the person is eligible for membership;
- (c) the directors accept the application; and
- (d) the person's name is entered on the register of members.

5.1.2 Who can apply to become a member (eligibility for membership)

A person who is eligible to apply for membership must be an individual who is at least 16 years of age and an Aboriginal person who is a Native Title Holder.

5.1.3 Membership application

- (a) A person who wants to become a member must apply to Congress; and
- (b) The application must be in writing.

5.1.4 Deciding membership applications

- (a) The directors will consider and decide the membership applications within a reasonable period after they are received.
- (b) The directors must, by resolution at a directors' meeting, accept a membership application if the applicant:
 - (i) applies for membership in the required manner, and
 - (ii) meets the eligibility for membership requirements under this rule book.
- (c) If the directors decide to refuse an application for membership, they must notify the applicant in writing of the decision within 14 days and the reasons for it.

5.1.5 Entry on the register of members

- (a) If the directors accept a membership application, the person's name must be entered on the register of members within 14 days.

The person does not become a member until the corporation enters the person on the register of members.

- (b) However, if:
 - (i) the applicant applies for membership after a notice has been given for the holding of a general meeting, and
 - (ii) the meeting has not been held when the directors consider the application,

then Congress must not enter the person on the register of members until after the general meeting has been held.

5.2 Membership fees

Congress must not impose fees for membership of Congress.

5.3 Members' rights and obligations

5.3.1 *Members' rights*

- (a) Each member has rights under the Act and these rules including the rights set out below. A member:
 - (i) can attend, speak and vote at a general meeting of Congress;
 - (ii) can be elected or appointed as a director or office bearer;
 - (iii) cannot be removed as a member unless the directors and Congress have complied with rule 5.6;
 - (iv) can put forward resolutions to be voted on at a general meeting of Congress;
 - (v) can ask the directors to call a general meeting of Congress;
 - (vi) can access the following books and records of Congress:
 - (A) the register of members;
 - (B) the minutes book for general meetings;
 - (C) the rule book;
 - (D) certain reports prepared by or for the directors and Congress, in accordance with the Act.
 - (vii) can ask the directors to provide access to any other records or books of Congress; and
 - (viii) can have any dispute with another member or with the directors dealt with under the process in rule.
- (b) Members do not have the right to take part in the distribution of Congress' assets if it is wound up.

- (c) If a member believes that their rights have been breached or ignored by the directors, the members can use the dispute resolution process in rule 17.

5.3.2 Members' responsibilities

Each member has the following responsibilities:

- (a) to comply with these rules;
- (b) to notify Congress of any change of address within 28 days;
- (c) to comply with any code of conduct adopted by Congress;
- (d) to treat other members and the directors with respect and dignity; and
- (e) to not behave in a way that significantly interferes with the operation of Congress or of corporation meetings.

5.3.3 Liability of members

- (a) The members are not liable to contribute to the property of Congress on winding up.
- (b) If the application for registration of Congress states that members and former members are:
 - (i) Not to be liable to contribute towards the payment of the debts and liabilities of Congress, then they are not liable to contribute, or
 - (ii) To be liable to contribute towards the payment of the debts and liabilities of Congress on a particular basis, then they are liable so to contribute on that basis.

5.4 How a person stops being a member

5.4.1 Stop being a member

A person will stop being a member if:

- (a) the person resigns as a member;
- (b) the person dies;
- (c) the person's membership of Congress is cancelled;
- (d) the member is a body corporate and it ceases to exist.

5.4.2 When a person ceases to be a member

A person ceases to be a member when the member's name is removed from the register of members as a current member of Congress.

5.5 Resignation of member

- (a) a member may resign by giving a notice of resignation to Congress.

- (b) A notice of resignation must be in writing.
- (c) Congress must remove the member's name from the register of current members of Congress within 14 days after receiving the resignation notice.

5.6 Process for cancelling membership

5.6.1 Cancellation by directors

- (a) The directors may, by resolution, cancel the membership of a member if the member:
 - (i) is not eligible for membership; or
 - (ii) has ceased to be eligible for membership.
- (b) Before cancelling the membership, the directors must consult with representatives of the Clan to which the member belongs and must give the member notice in writing stating that:
 - (i) the directors intend to cancel the membership for the reasons specified in the notice, and
 - (ii) the member has 14 days to object to the cancellation of the membership, and
 - (iii) the objection must be in writing and given to the corporation within the period of 14 days from the day the notice is given.
- (c) If the member does not object, the directors must cancel the membership by passing a resolution at a directors' meeting.
- (d) If the member does object:
 - (i) the directors must not cancel the membership;
 - (ii) only Congress by resolution in general meeting may cancel the membership.
- (e) If a membership is cancelled, the directors must give the member a copy of the resolution (being either the resolution of the directors or the resolution of the general meeting) as soon as possible after it has been passed.

5.6.2 Membership may be cancelled if a member cannot be contacted

- (a) The membership of a member may be cancelled by a special resolution of Congress if Congress:
 - (i) has not been able to contact that member at their address entered on the register of members for a continuous period of two years before the meeting; and
 - (ii) has made two or more reasonable attempts to contact the member during that two year period but has been unable to.

- (b) The directors must consult with representatives of the Clan to which the member belongs before holding the general meeting of Congress which will consider the motion to cancel the member's membership. The member must be given the opportunity to be heard at the meeting.
- (c) If Congress cancels the membership, the directors must send that person a copy of the resolution at their last known address, as soon as possible after the resolution has been passed.

5.6.3 Membership may be cancelled if a member is not an Aboriginal person

- (a) If this rule book includes a membership eligibility requirement that an individual be an Aboriginal person, membership may be cancelled if the member is not an Aboriginal person.
- (b) Congress, by special resolution in a general meeting, may cancel the member's membership if the general meeting is satisfied that the member is not an Aboriginal person.
- (c) The directors must consult with representatives of the Clan to which the member belongs before holding the general meeting of Congress which will consider the motion to cancel the member's membership. The member must be given the opportunity to be heard at the meeting.
- (d) If Congress cancels a person's membership under this rule, the directors must give that person a copy of the resolution as soon as possible after it has passed.

5.6.4 Membership may be cancelled if a member misbehaves

- (a) Congress may cancel a membership by a special resolution of Congress if the general meeting is satisfied that a member has behaved in a way that significantly interfered with the operation of Congress or of corporation meetings.
- (b) The directors must consult with representatives of the Clan to which the member belongs before holding the general meeting of Congress which will consider the motion to cancel the member's membership. The member must be given the opportunity to be heard at the meeting.
- (c) If Congress cancels a membership under this rule, the directors must give that person a copy of the resolution, as soon as possible after it has been passed.

5.6.5 Amending the register of members after a membership is cancelled

Within 14 days of a member's membership being cancelled, Congress must remove their name from the register of current members of Congress.

5.7 Different classes of members

Congress does not have different classes of members.

6. Register of members and former members

6.1 Corporation to maintain a register of members

Congress must set up and maintain a register of members.

6.2 Information on the register of members

6.2.1 Information about individuals

The register of members must contain the following information about individual members:

- (a) The member's name (given and family name) and address, the register may also contain any other name by which the member is or was known.
- (b) The date on which the member's name was entered on the register.

6.2.2 Information about bodies corporate

The register of members must contain the following information about body corporate members:

- (a) The member's name and address.
- (b) The date on which the member's name was entered on the register.

6.3 Corporation to maintain register of former members

- (a) Congress must set up and maintain a register of former members.
- (b) Congress may maintain the register of former members in one document with the register of members.

6.4 Information on the register of former members

6.4.1 Information about individuals

The register of former members must contain the following information about each individual who stopped being a member within the last seven years:

- (a) the member's name (given and family name) and address; and
- (b) the date on which the individual stopped being a member.

6.4.2 Information about bodies corporate

The register of former members must contain the following information about each body corporate that stopped being a member within the last seven years:

- (a) the member's name and address; and

- (b) the date on which the body stopped being a member.

6.5 Location and inspection of registers of members and former members

6.5.1 *Location of registers*

Congress must keep the register of members and the register of former members at:

- (a) Congress' registered office if it is registered as a large corporation; or
- (b) Congress' document access address if it is registered as a small or medium corporation.

6.5.2 *Right to inspect registers*

- (a) The register of members and the register of former members must be open for inspection by any person, and any person has the right to inspect the registers; and
- (b) If a register is kept on a computer, Congress must allow the person to inspect a hard copy of the information on the register (unless the person and Congress agree that the person can access the information by computer).

6.5.3 *Inspection fees*

- (a) A member may inspect the register without charge.
- (b) A person who is not a member may inspect the registers only on payment of any fee required by Congress.

6.5.4 *Right to get copies*

Congress must give a person a copy of the registers (or a part of either register) within seven days (or such longer period as the Registrar may allow) to the person who:

- (a) asks for the copy; and
- (b) pays any fee (up to the prescribed amount) required by Congress.

6.6 Making register of members available at AGM

Congress must:

- (a) make the register of members available for inspection (without charge) by members at the AGM; and
- (b) ask each member attending the AGM to check and update their entry.

6.7 Provision of registers to Registrar

If the Registrar requests a copy of the register of members, or the register of former members, it must be provided within 14 days or such longer period as the Registrar specifies.

7. Annual general meetings (AGMs) and general meetings

7.1 AGMs

7.1.1 Holding AGMs

- (a) Congress must hold an AGM within 5 months after the end of its financial year.
- (b) If Congress has only one member, it is not required to hold an AGM.

7.1.2 Extension of time for holding AGMs

- (a) Congress may apply to the Registrar to extend the period within which Congress must hold an AGM, provided the application is made before the end of that period.
- (b) If the Registrar grants an extension, Congress must hold its AGM within the period specified by the Registrar.

7.1.3 Business of AGM

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) Confirmation of the minutes of the previous meeting, except at the first AGM;
- (b) The consideration of the reports that under Chapter 7 of the Act are required to be presented at the AGM;
- (c) The election of directors;
- (d) The appointment and remuneration of the auditor (if any);
- (e) Checking of details on the register of members; and
- (f) Asking questions about management of Congress and asking questions of Congress' auditor (if any).

7.2 General meetings

7.2.1 Purpose of general meeting

A general meeting must be held for a proper purpose.

7.2.2 Time and place of general meeting

- (a) A general meeting must be held at a reasonable time and place.

- (b) If the directors change the place of a general meeting, notice of the change must be given to each person who is entitled to receive it.

7.2.3 Business of general meeting

The business at each general meeting must include:

- (a) All matters set out in the notice of the general meeting; and
- (b) Any general business.

7.3 Calling general meetings

7.3.1 Directors may call meetings

A general meeting of Congress may be called by a resolution of the directors.

7.3.2 Members may ask directors to call general meetings

- (a) The directors must call and arrange to hold a general meeting on the request of at least the required number of members specified under this rule:
 - (i) the number of members prescribed by Regulations and applicable to Congress, or, if none is prescribed, 5 members, or
 - (ii) the percentage of members prescribed by the Regulations and applicable to Congress, or, if none is prescribed, 10% of the members.
- (b) A request under rule 7.3.2(a) must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the meeting;
 - (iii) be signed by the members making the request;
 - (iv) nominate a member to be the contact member on behalf of the members making the request;
 - (v) be given to Congress.
- (c) Separate copies of a document setting out a request under rule 7.3.2(a) may be used for signing by members if the wording of the request is identical in each copy.

7.3.3 Directors may apply to deny a member's request to call a general meeting

- (a) If the directors resolve:
 - (i) that a request under rule 7.3.2 is frivolous or unreasonable, or

- (ii) that complying with a request under rule 7.3.2 would be contrary to the interest of the members as a whole,
 - (iii) a director, on behalf of all of the directors, may apply to the Registrar for permission to deny the request.
- (b) An application must:
 - (i) be in writing;
 - (ii) set out the ground on which the application is made; and
 - (iii) be made within 21 days after the request was made.
- (c) The directors must, as soon as possible after making an application, give the contact member (see 7.3.2(b)(iv)) notice that an application has been made.

7.3.4 *Timing for a requested general meeting*

- (a) The directors must call the meeting within 21 days after the request was sent to them.
- (b) If:
 - (i) a director has applied to deny a request, and
 - (ii) the Registrar refuses that request,
 - (iii) the directors must call the meeting within 21 days after being notified of the Registrar's decision.

7.4 Requirements for notice of a general meeting

7.4.1 *Notice for general meeting*

- (a) At least 21 days notice must be given of a general meeting.
- (b) Congress:
 - (i) may call an AGM on shorter notice, if all the members agree before hand
 - (ii) may call any other general meeting on shorter notice, if at least 95% of the members agree beforehand.
- (c) At least 21 days notice must be given of a general meeting at which a resolution will be moved to:
 - (i) remove a director
 - (ii) appoint a director in place of director removed or
 - (iii) remove an auditor

Note: Shorter notice cannot be given for these kinds of meetings.

7.4.2 Requirement to give notice of general meeting to members and officers

- (a) Congress must give written notice of a general meeting to the following people:
 - (i) each member entitled to vote at the meeting
 - (ii) each director
 - (iii) the contact officer or secretary (if any)
- (b) Congress may give the notice of meeting to a member personally or by sending it by post, fax, social media or other electronic means, or by publishing a notice in a newspaper widely circulating in the Hope Vale or Cooktown region or on a publicly accessible website.
- (c) A notice of meeting:
 - (i) sent by post is taken to be received three business days after it is posted; and/or
 - (ii) sent by fax, or other electronic means, is taken to be received on the business day after it is sent.

7.4.3 Requirement to give notice of general meeting and other communications to auditor

Congress must give its auditor (if any);

- (a) notice of a general meeting in the same way that a member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member is entitled to receive.

7.4.4 Contents of notice of general meeting

- (a) A notice of a general meeting must:
 - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to do this);
 - (ii) state the general nature of the meeting's business;
 - (iii) if a General Meeting Decision is to be proposed at the meeting, set out an intention to propose it and state what it is;
 - (iv) if a member is entitled to appoint a proxy, contain a statement setting out:
 - (A) that the member has a right to appoint a proxy; and

(B) whether or not the proxy needs to be a member of Congress.

- (b) The information included in a notice of a general meeting must be worded and presented clearly and concisely.

7.4.5 *Failure to give notice*

A general meeting, or any proceeding at a general meeting, will not be invalid just because:

- (a) the notice of the general meeting has accidentally not been sent; or
- (b) a person has not received the notice.

7.5 **Members' resolutions**

7.5.1 *Notice of members' resolutions*

- (a) If a member or members wish/es to move a resolution at a general meeting, a notice of that resolution must be given to Congress by at least the required number of members under rule 7.5.1(d).
- (b) A notice of a members' resolution must
- (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the member/s proposing to move the resolution.
- (c) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- (d) For the purposes of rule 7.5.1(a), the required number of members is the greater of:
- (i) the number of members prescribed by the Regulations and applicable to Congress for the purposes of giving such a notice, or, if none is prescribed, five members; or
 - (ii) the percentage of members prescribed by the Regulations and applicable to Congress for the purposes of giving such a notice, or, if none is prescribed, 10% of the members.

7.5.2 *Consideration of members' resolutions*

- (a) If Congress has been given notice of a members' resolution it must be considered at the next general meeting that occurs more than 28 days after the notice is given.

- (b) Congress must give its members notice of that resolution at the same time, or as soon as possible afterwards, and in the same way, as it gives notice of a general meeting.
- (c) Congress does not have to give notice of a resolution if it is defamatory.

7.5.3 *Members' statements to be distributed*

- (a) Members may ask Congress to give all its members a statement about:
 - (i) a resolution that is proposed to be moved at the general meeting; or
 - (ii) any other matter that may be considered at that general meeting.
- (b) This request must be:
 - (i) made by at least the required number of members under rule 7.5.3(f);
 - (ii) in writing;
 - (iii) signed by the members making the request; and
 - (iv) given to Congress.
- (c) Separate copies of a document setting out the request may be issued for signing by members if the wording of the request is identical in each copy.
- (d) After receiving a request, Congress must distribute a copy of the statement to all its members at the same time, or as soon as possible afterwards, and in the same way, as it gives notice of the relevant general meeting.
- (e) Congress does not have to comply with a request to distribute a statement if it is defamatory.
- (f) For the purposes of rule 7.5.3(b), the required number of members is the greater of:
 - (i) the number of members prescribed by Regulations and applicable to Congress for the purposes of making such a request, or, if none is prescribed, five members; or
 - (ii) the percentage of members prescribed by the regulations and applicable to Congress for the purposes of making such a request, or, if none is prescribed, 10% of the members.

7.6 Quorum for general meeting

7.6.1 Quorum

The quorum for a general meeting of Congress is 10 members and the quorum must include one member from at least seven of the 13 Clans that make up the Native Title Holders.

7.6.2 Quorum to be present

- (a) The quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives will be counted as follows:
 - (i) if a member has appointed more than one proxy or representative, only one of them will be contacted, and
 - (ii) if an individual is attending both as a member and as a proxy or body corporate representative, counting that individual only once.

7.6.3 Adjourned meeting where no quorum

- (a) A meeting of Congress' members that does not have a quorum present within two hours after the time for the meeting set out in the notice is adjourned to the same time of the same day in the next week, and to the same place, unless the directors specify otherwise.
- (b) If no quorum is present at the resumed meeting within 1 hour after the time for the meeting, the meeting is dissolved.

7.7 Chairing general meeting

- (a) The directors may elect an individual to chair general meetings.
- (b) If a chair has not been elected or the chair is not available or does not want to chair the meeting, the directors must elect an individual present to chair the meeting.
- (c) The members at a general meeting must elect a member present to chair the meeting (or part of it) if:
 - (i) the directors have not already elected a chair, or
 - (ii) a previously elected chair is not available, or does not want to chair the meeting.
- (d) The chair must adjourn a general meeting if the majority of members present agree or direct that the chair do so.

7.8 Use of technology for general meeting

Congress may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

7.9 Auditor's right to be heard at general meetings

- (a) If Congress has an auditor, the auditor is entitled to attend any general meeting of Congress.
- (b) The auditor is entitled to be heard at a general meeting on any part of the business of that meeting that concerns the auditor in their professional capacity.
- (c) The auditor is entitled to be heard even if:
 - (i) the auditor retires at that meeting, or
 - (ii) that meeting passes a resolution to remove the auditor from office.
- (d) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

7.10 Voting at general meetings

7.10.1 Entitlement to vote

At a general meeting, each member has one vote, both on a show of hands and a poll.

7.10.2 Objections to right to vote

A challenge to a right to vote at a general meeting:

- (a) may only be made at a meeting, and
- (b) must be determined by the chair, whose decision is final.

7.10.3 How voting is carried out

- (a) A resolution put to the vote at a general meeting must be decided by a simple majority on a show of hands unless a poll is demanded.
- (b) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded for or against, or abstentions.

7.10.4 Matters on which members can demand a poll

- (a) At a general meeting, a poll may be demanded on any resolution.
- (b) A demand for a poll may be withdrawn.

7.10.5 When members can demand a poll

- (a) At a general meeting, a poll may be demanded by:
 - (i) at least five members entitled to vote on a resolution;
 - (ii) members with at least 5% of the votes that may be cast on the resolution on a poll, or
 - (iii) the chair.
- (b) The poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared, or
 - (iii) immediately after the voting results on a show of hands are declared.

7.10.6 When and how polls must be taken

- (a) At a general meeting, a poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (b) At a general meeting, a poll demanded on other matters must be taken when the chair directs, and in the manner directed by the chair.

7.10.7 Matters upon which members may not vote

To remove any doubt a motion cannot be proposed, and members cannot vote, on any decision which state or federal legislation, or the terms of a particular trust of which Congress is trustee, requires to be made in a manner other than a vote by members of Congress.

7.11 Postponing a general meeting or AGM

- (a) After notice has been given for a general meeting or AGM the directors can decide to postpone the meeting (this means, delay or reschedule the meeting for a later date) if there are exceptional reasons for doing so (such as the death of a community person or a natural disaster).
- (b) The directors postpone the meeting by passing a resolution in a directors' meeting. A postponed meeting must be held within 30 days of the date that the meeting was due to occur.
- (c) The directors must give reasonable notice of the postponement and give each member a notice of the postponed meeting, in the

manner permitted for the giving of the original notice of the meeting, setting the new date, time and place.

7.12 Native title decisions

7.12.1 Native title decisions

- (a) Congress shall not make a Native Title Decision unless it:
 - (i) has used its best endeavours to ascertain the identity of the affected Native Title Holders;
 - (ii) has ensured that the affected Native Title Holders understand the nature and purpose of the proposed Native Title Decision, and the extent, if any, of any claims, actions or debts to which the affected Native Title Holders may be liable as a result of the Native Title Decision;
 - (iii) is satisfied that the affected Native Title Holders consent to the making of the proposed Native Title Decision and have given a direction to Congress to make the Native Title Decision.

7.12.2 Opinion of the representative body

The parties may seek the opinion of the native title representative body for the area that the native title rights and interests relate to.

7.12.3 Evidence of consultation and consent

- (a) Congress must not be taken to have ensured that the affected Native Title Holders understand the nature and purpose of the proposed Native Title Decision, and the extent, if any, of any claims, actions or debts to which the Native Title Holders may be liable as a result of the Native Title Decision unless Congress has obtained a document that certifies:
 - (i) that the affected Native Title Holders have been consulted about and have consented to the proposed decision; or
 - (ii) that:
 - A. the proposed decision is of a kind about which the Native Title Holders have been consulted; and
 - B. the Native Title Holders have decided that Congress can make decisions of that kind.
- (b) A document is a certificate in accordance with rule 7.12.3(a)(i) if it complies with the requirements set out in Schedule 2A to these rules.

- (c) A document is a certificate in accordance with rule 7.12.3(a)(ii) if it complies with the requirements set out in Schedule 2B to these rules.
- (d) A document if signed in accordance with this rule if:
 - (i) it is signed by five members of Congress who are affected Native Title Holders; or
 - (ii) If there are fewer than five members of Congress who are affected Native Title Holders, signed by:
 - A. those members of Congress who are affected Native Title Holders; and
 - B. five additional Native Title Holders.

7.12.4 Decision making process

- (a) If there is a particular process of decision making that, under the traditional laws and customs of the Native Title Holders, must be followed in relation to the giving of the consent for the making of a Native Title Decision, the consent must be given in accordance with that process.
- (b) If rule 7.12.4(a) does not apply, the consent must be given by the Native Title Holders in accordance with the process of decision making agreed and adopted by them for the proposed Native Title Decision or for decisions of the same kind as that decision.

7.13 Statutory title decisions

7.13.1 Statutory title decisions

- (a) Congress shall not make a Statutory Title Decision unless it:
 - (i) has used its best endeavours to ascertain the identity of the Statutory Title Holders; and
 - (ii) is satisfied that:
 - A. the Statutory Title Holders understand the nature and purpose and effect of the proposed Statutory Title Decision and are given an opportunity to express their views on the proposed Statutory Title Decision (refer s40 ALA); and
 - B. if the Statutory Title Decision involves the transfer of trust land, that at least 75 per cent of the Statutory Title Holders who are members of Congress, pass a resolution in a general meeting of Congress, agreeing to the transfer of all land, assets and

liabilities proposed to be transferred (refer s40ZE ALA);

7.13.2 Evidence of consultation and consent

- (a) Congress must not be taken to be satisfied that the Statutory Title Holders understand the nature and purpose of the proposed Statutory Title Decision unless Congress has obtained a document, signed in accordance with rule 7.13.2(c), that certifies that the Statutory Title Holders have been consulted about and understand the nature and purpose of the proposed Statutory Title Decision and consent to the making of that decision.
- (b) A document is a certificate in accordance with rule 7.13.2(a) if it complies with the requirements set out in Schedule 2C to these rules.
- (c) A document is signed in accordance with this rule if it is signed by five members of Congress who are Statutory Title Holders and, if the Statutory Title Decision involves the transfer of trust land, who were present at the general meeting referred to at rule 7.13.1(b)(ii)B.

7.14 Resolutions without a general meeting

- (a) Congress may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document stating that they are in favour of it. Each member of a joint membership must sign.
- (b) Auditors cannot be removed by a resolution without a general meeting.
- (c) Separate copies of a document under rule 7.14(a) may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (d) A resolution under rule 7.14(a) is passed when the last member signs.
- (e) Congress in passing a resolution under this rule without holding a meeting satisfies any requirement in the Act:
 - (i) to give members information or a document relating to the resolution by giving members that information or document with the document to be signed
 - (ii) to lodge with the Registrar a copy of a notice of meeting to consider the resolution by lodging a copy of the document to be signed by members

- (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution by lodging a copy of the information or documents referred to in rule 7.14(e)(i).
- (f) The passage of the resolution satisfies any requirement in the Act, or Congress' rules, that the resolution be passed at a general meeting.
- (g) This rule does not affect any rule of law relating to the assent of members not given at a general meeting.

7.15 Proxies

7.15.1 *Who may appoint a proxy*

- (a) A member who is entitled to attend and cast a vote at a general meeting may appoint a person as proxy to attend and vote for them at the meeting in accordance with the form at schedule 4.
- (b) The person appointed as a member's proxy may be an individual or a body corporate.
- (c) The appointment may specify the proportion or number of votes that the proxy may exercise if the person appointing the proxy has more than one vote.

7.15.2 *Rights of proxies*

- (a) Subject to this rule, a proxy appointed to attend and vote for a member has the same rights as the member:
 - (i) to speak at the meeting;
 - (ii) to vote (but only to the extent allowed by the appointment); and
 - (iii) join in a demand for a poll.

- (b) A proxy's authority to speak and vote for a member at a meeting is suspended if the member is present at the meeting.
- (c) A person must not exercise proxies for more than three members:

Note: However, a contravention of this rule 7.15.2(c) does not affect the validity of the votes cast.

7.15.3 *Appointing a proxy*

- (a) An appointment of a proxy is valid if it is signed, or otherwise authenticated as prescribed by the Regulations, by the member making the appointment and contains the following information:
 - (i) the member's name and address;
 - (ii) Congress' name;

- (iii) the proxy's name of the office held by the proxy;
 - (iv) the meetings at which the appointment may be used.
- (b) An undated appointment is taken to have been dated on the day it is given to Congress.
- (c) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands;
 - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (iii) if the proxy is the chair, the proxy must vote by poll, and must vote as directed
 - (iv) if the proxy is not the chair, the proxy need not vote by poll.
 - (v) If a proxy is also a member, this rule 7.15.3(c) does not affect how the person casts any votes they hold as a member.
- (d) A person who contravenes this rule commits an offence under the Act, but only if the person's appointment as a proxy resulted from Congress sending to members:
 - (i) a list of persons willing to act as proxies, or
 - (ii) a proxy appointment form holding the person out as being willing to act as a proxy.
- (e) An appointment of a proxy does not have to be witnessed.
- (f) A later appointment of a proxy revokes an earlier one if both appointments could not be validly exercised at the meeting.

7.16 Receipt of proxy documents

- (a) For an appointment of a proxy for a meeting of members to be effective, the following documents must be received by Congress at least 48 hours before the meeting:
 - (i) the proxy's appointment
 - (ii) if the appointment is signed by the appointer's attorney, the authority or a certified copy of the authority.
- (b) If a meeting has been adjourned an appointment and any authority received by Congress at least 48 hours beforehand is still valid when the meeting resumes.
- (c) The period of notice for appointing proxies may be reduced.

7.17 Questions at AGMs

7.17.1 Questions and comments by members on corporation management at AGM

The chair of an AGM must give members a reasonable opportunity to ask questions about or make comments on the management of Congress.

7.18 Questions by members of auditors at AGM

If Congress' auditor or auditor's representative is at an AGM, the chair of the meeting must give members a reasonable opportunity to ask the auditor or the auditor's representative questions relevant to:

- (a) The conduct of the audit
- (b) The preparation and content of the auditor's report
- (c) The accounting policies adopted by Congress in the preparation of the financial statements
- (d) The independence of the auditor in relation to the conduct of the audit.

7.19 Adjourned meetings

7.19.1 When resolution passed after adjournment of meeting

A resolution passed at a general meeting resumed after an adjournment is passed on the day it was passed.

7.20 Business at adjourned meetings

Only unfinished business is to be transacted at a general meeting resumed after an adjournment.

7.21 Re-notification of adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 21 days notice must be given to members, directors and the secretary or contact person of the day, time and place when the general meeting will be resumed.

7.22 Who, other than members, may attend general meetings

7.22.1 Non-members

Non-members are permitted to attend general meetings of Congress if a resolution is passed by the members at the meeting approving their attendance. Non-members do not have voting rights and are only permitted to speak at the meeting or ask questions if approved by the chair.

7.22.2 Employees or invitees of Congress

The directors may invite a non-member, including any person employed or engaged by Congress in any capacity, to attend or to address a meeting of Congress.

7.22.3 Auditor

The auditor is entitled to attend and be heard at general meetings pursuant to rule 7.9.

8. Directors of Congress

8.1 Number of directors

Congress must have a minimum of three directors and a maximum of 12 directors.

8.2 Composition of directors

- (a) Congress may have one representative director and one alternate director appointed by each of the following 12 Clans. The appointee must be a member of the Clan appointing them:

- (i) Binthi clan;
- (ii) Dharrpa clan;
- (iii) Gamaay clan;
- (iv) Gulaal clan;
- (v) Ngaatha clan;
- (vi) Nguymbaarr Nguymbaarr clan;
- (vii) Nguurruumunga clan;
- (viii) Nugal clan;
- (ix) Thanil clan;
- (x) Thiithaarr clan;
- (xi) Thuubi clan;
- (xii) DINGAAL clan.

Note: Buurnga is a recognised clan but its lands and affairs are administered by the five surrounding clans as it does not have any living descendants;

- (b) A clan may choose not to appoint a director or alternate director.

8.3 Eligibility to be a director

8.3.1 Eligibility for appointment as a director

- (a) An individual is eligible for appointment as a director or alternate director if they are a member and over the age of 18 years.
- (b) The following are not eligible to be appointed or remain as a director:

- (i) the chief executive officer or a person employed in a similar role;
- (ii) An individual who is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the Act, except with permission granted by the Registrar, or with leave granted by the court.

8.4 Majority of director requirements

- (a) A majority of the directors must be individuals who are Aboriginal people.
- (b) A majority of the directors must ordinarily reside in Australia.
- (c) A majority of the directors must be members.
- (d) A majority of the directors must not be employees of Congress.

8.5 Consent to act as director

- (a) Before a person takes office as a director or alternate director, that person must give Congress a signed consent to act as a director of Congress.
- (b) Congress must keep the consent.

8.6 Becoming a director by appointment

- (a) The members of each of the Clans with living descendants may appoint one director and an alternate director. The Clans must provide written notice to Congress of the appointed director and alternate director.
- (b) The members from each Clan may determine and change the procedure for their meetings and the appointment of their director and alternate director.
- (c) The directors and alternate directors appointed by the Clans take office at the end of the general meeting or annual general meeting after the expiry of the term of the previous director or alternate director.

8.7 Casual vacancy

- (a) As long as the maximum number of directors is not exceeded, a Clan may appoint a person to fill a casual vacancy in the position of director or alternate director.
- (b) A casual vacancy arises when a person stops being a director or alternate director before their term of appointment expires and so the position of that director or alternate director is vacant.

- (c) To be appointed, the person must meet the director eligibility criteria and be from the same Clan as the person that has stopped being a director or alternate director.

8.8 Directors may appoint other directors to make up a quorum

If the total number of directors does not make up a quorum, a person may be appointed to make up a quorum for a directors' meeting.

8.9 Term of appointment

- (a) A person must not be appointed as a director or alternate director for more than four years.
- (b) A person is eligible for reappointment as a director or alternate director but may not be appointed for more than two consecutive terms.
- (c) If the term of appointment of a director of Congress expires prior to a general meeting, their term is extended until the next general meeting that occurs.

8.10 Alternate directors

- (a) An alternate director is only entitled to attend directors' meetings if the director is not available.
- (b) If the alternate director requests notice of directors' meetings, Congress must do so.

8.11 Office bearers

- (a) Congress may have office bearers including a chairperson, a deputy chairperson, a secretary/contact person and a treasurer.
- (b) The office bearers, if any, shall be elected by a resolution of the directors at the first meeting of directors held after each AGM.
- (c) An office bearer can be removed by a resolution of the directors.
- (d) Any vacancy in the office of an office bearer may be filled by a resolution of the directors.

8.12 How a person ceases to be a director

A person ceases to be a director if:

- (a) the person dies;
- (b) the person resigns as a director;
- (c) the term of the person's appointment as a director expires;
- (d) the person is removed as a director by the members as provided for in rule 8.14.1;
- (e) the person is removed as a director by the other directors as provided for in rule 8.14.2; or

- (f) the person becomes disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the Act.

8.13 Resignation of director

- (a) A director may resign as a director by giving notice of resignation in writing to Congress.
- (b) A notice of resignation may be in writing.

8.14 Process for removing a director

8.14.1 Removal by members

- (a) Congress may, by resolution in general meeting, remove a director from office despite anything in:
 - (i) Congress' constitution;
 - (ii) an agreement between Congress and the director concerned; or
 - (iii) an agreement between any or all members of Congress and the director concerned.
- (b) Congress may, by resolution in general meeting, remove a director only where there has been consultation with the Clan to which the director being removed belongs and their agreement has been obtained in relation to the removal of that director and the appointment of another member of that Clan to be a director until the next annual general meeting of Congress.
- (c) A notice of intention to move a resolution to remove a director must be given to Congress at least 21 days before the meeting is to be held. However, if Congress calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than 21 days after the notice is given.
- (d) Congress must give the director concerned a copy of the notice as soon as possible after it is received.
- (e) The director concerned is entitled to put his or her case to members by:
 - (i) giving Congress a written statement for circulation to members; and
 - (ii) speaking to the motion at the meeting.
- (f) Congress is to circulate the written statement given under rule 8.14.1(e)(i) to members by:
 - (i) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so, or

- (ii) if there is not time to comply with rule 8.14.1(e)(i), having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (g) The written statement given under rule 8.14.1(e)(i) does not have to be circulated to members if it is defamatory.
- (h) If a person is appointed to replace a director removed under this rule, the time at which:
 - (i) the replacement director, or
 - (ii) any other director is to retire is to be worked out as if the replacement director had become a director on the day on which the replaced director was last appointed a director.

8.14.2 Removal by other directors

- (a) The only ground on which the directors may remove a director from office is that they fail without reasonable excuse to attend three or more consecutive directors' meetings. The directors may remove a director by resolution.
- (b) The directors may remove a director by resolution in a directors' meeting only after the other directors have consulted with the Clan to which the director being removed belongs and obtained their agreement to the removal of that director and the appointment of another member of that Clan to be a director until the next annual general meeting of Congress.
- (c) Rule 8.14.2(a) operates despite anything in:
 - (i) Congress' rule book
 - (ii) an agreement between Congress and the director concerned, or
 - (iii) an agreement between any or all members and the director concerned.
- (d) Before removing the director concerned, the directors must give the director concerned notice in writing:
 - (i) stating that the directors intend to remove the director concerned from office because they have failed without reasonable excuse to attend three or more consecutive directors' meetings
 - (ii) stating that the director concerned has 14 days to object in writing to the removal
- (e) If the director concerned does not object, the directors must remove the director concerned.

- (f) If the director concerned does object:
 - (i) the directors cannot remove the directors concerned
 - (ii) Congress, by resolution in general meeting, may remove the director in accordance with rule 8.14.1.
- (g) If the director concerned is removed, Congress must give them a copy of the resolution as soon as possible after the resolution has been passed.
- (h) If a person is appointed to replace a director removed under this rule, the time at which:
 - (i) the replacement director, or
 - (ii) any other director,
 - (iii) is to retire is to be worked out as if the replacement director had become director on the day when the replaced director was last appointed a director.

9. General duties

9.1 General duties

- (a) The directors, secretary, other officers and employees must comply with the duties imposed on them by the Act and the general law. These may include, for example:
 - (i) a duty of care and diligence
 - (ii) a duty of good faith
 - (iii) a duty of disclosure of material personal interests (see rule 10.2)
 - (iv) a duty not to improperly use position or information
 - (v) a duty to prevent insolvent trading.
- (b) The directors will be liable for debts and other obligation incurred by Congress while acting, or purporting to act, as trustee.

10. Functions, powers and duties of directors

10.1 Powers of directors

- (a) The business of Congress is to be managed by or under the direction of the directors.
- (b) The directors may exercise all the powers of Congress except any that the Act or Congress' rule book requires Congress to exercise in general meeting.

- (c) The directors may accept, and act in accordance with, any standing authority granted to them by the beneficiaries of any trust of which Congress is trustee.
- (d) The directors must comply with the Code of Conduct at schedule 3 to these rules.

10.2 Duty of director to disclose material personal interests

- (a) A director who has a material personal interest in a matter that related to the affairs of Congress must give the other directors notice of the interest unless rule 10.2(b) says otherwise.
- (b) A director does not need to give notice of an interest under rule 10.2(a) if:
 - (i) the interest:
 - (A) arises because the director is a member and is held in common with the other members
 - (B) arises in relation to the director's remuneration as a director
 - (C) relates to a contract Congress is proposing to enter into that is subject to approval by members and will not impose any obligation on Congress if it is not approved by the members
 - (ii) all the following conditions are satisfied:
 - (A) the director has already given notice of the nature and extent of the interest and its relation to the affairs of Congress under rule 10.2(a)
 - (B) if a person who was not a director when the notice under rule 10.2(a) was given is appointed as a director, the notice is given to that person
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice or
 - (iii) the director has given a standing notice of the nature and extent of the interest and that notice is still effective.
- (c) The notice required by rule 10.2(a) must:
 - (i) give details of:
 - (A) the nature and extent of the interest
 - (B) the relation of the interest to the affairs of Congress
 - (ii) be given at a directors' meeting as soon as possible after the director becomes aware of their interest in the matter.

- (iii) The details must be recorded in the minutes of the meeting.
- (d) A contravention of this rule 10.2 by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (e) This rule 10.2 does not apply to Congress if Congress has only one director.

10.3 Remuneration

- (a) The directors can be paid remuneration for their work as a director.
- (b) The remuneration is set by a resolution at a general meeting or AGM.
- (c) This rule does not prevent:
 - (i) a director who is an employee of Congress from receiving remuneration as an employee of Congress, or
 - (ii) reasonable payments (having regard to the market costs of obtaining similar goods or services) to the director for a contract for goods or services, provided that rule 10.2 has been complied with.
- (d) Congress may pay the directors travelling and other expenses that the directors incur:
 - (i) in attending director's meetings or any meetings of committees of directors
 - (ii) in attending any general meetings of Congress
 - (iii) in connection with Congress' business.

10.4 Negotiable instruments

- (a) Any two directors of Congress may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

10.5 Delegation

- (a) The directors may by resolution delegate any of their powers to:
 - (i) a committee of directors
 - (ii) a director
 - (iii) an employee of Congress, or
 - (iv) any other person.

- (b) A delegate must exercise the powers delegated in accordance with any directions of the directors.
- (c) The exercise of a power by a delegate is as effective as if the directors had exercised it.

10.6 Member approval needed for related party benefit

- (a) For Congress, or an entity that Congress controls, to give a financial benefit to a related party of Congress:
 - (i) Congress or entity must:
 - (A) obtain the approval of the members in the way set out in Division 290 of the Act, and
 - (B) give the benefit within 15 months after the approval, or
 - (ii) the giving of the benefit must fall within an exception to the requirement member approval set out in Division 287 of the Act.
- (b) If:
 - (i) the giving of the benefit is required by a contract
 - (ii) the making of the contract was approved in accordance with rule 10.6(a)(i)(A), and
 - (iii) the contract was made:
 - (A) within 15 months after that approval, or
 - (B) before that approval, if the contract was conditional on the approval being obtained, member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

10.7 Conflicts of interest

Congress must not act in a way that advances its own interests rather than those of any trust of which Congress is a trustee or member.

11. Directors' meetings

11.1 Frequency of directors' meetings

The directors will meet as often as the directors consider necessary for the good functioning of Congress.

11.2 Calling and giving notice of directors' meetings

- (a) The directors will normally determine the date, time and place of each directors' committee meeting at the previous meeting.

- (b) A directors' meeting may be called by a director giving reasonable notice individually to every other director.
- (c) The date, time and place for a directors' meeting must not unreasonably prevent a director attending.
- (d) Reasonable notice of each directors' meeting must be given to each director. The notice must state:
 - (i) the date, time and place of the meeting
 - (ii) the general nature of the business to be conducted at the meeting
 - (iii) any proposed resolutions.
- (e) A resolution passed at a directors' meeting will not be invalid only because of an unintentional omission or mistake in giving notice of the directors' meeting under rule 11.2(d) or in giving notice of any changes to the item, date or place of the directors' meeting.

11.3 Quorum at directors' meetings

The quorum for a directors' meeting is a majority of the directors holding office, and the quorum must be present at all times during the meeting.

11.4 Chairing directors' meetings

- (a) The chair will chair directors' meetings.
- (b) If the chair is unavailable or not in attendance at a directors' meeting, the directors must elect a director present to chair a meeting, or part of it

11.5 Use of technology

A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw his or her consent within a reasonable period before the meeting.

11.6 Resolutions at directors' meetings

11.6.1 Passing of directors resolutions

- (a) A resolution of the directors must be passed by consensus by directors entitled to vote on the resolution.
- (b) If a decision cannot be reached by consensus at a directors' meeting, after a reasonable effort has been made to reach consensus, a decision may be reached by simple majority.

11.6.2 Circulating resolutions if Congress has more than 1 director

- (a) the directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign

a statement that they are in favour of the resolution set out in the document.

- (b) Separate copies of a document under rule 11.6.2(a) may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- (c) A resolution under rule 11.6.2(a) is passed when the last director signs.

11.6.3 People who may attend directors' meetings

- (a) A director may invite a person who is not a director of Congress to attend or address a directors' meeting.
- (b) A person who is not a director:
 - (i) may not speak at a directors' meeting unless a majority of the board of directors' first agree that the person may address the meeting
 - (ii) may be required to leave the directors' meeting at any time by a majority of the board of directors
 - (iii) cannot vote on any matters decided by the board of directors.

12. Secretary and contact person

12.1 Requirements for a secretary or contact person

12.1.1 Who may be a secretary or contact person

- (a) Only an individual who is at least 18 years of age may be appointed as a secretary or contact person of Congress.
- (b) A person who is disqualified from managing an Aboriginal and Torres Strait Islander corporation under Part 6-5 of the Act may only be appointed as a secretary or contact person if the appointment is made with:
 - (i) the Registrar's permission under section 279-30(7) of the Act, or
 - (ii) the leave of the court under section 279-35 of the Act.

12.2 Consent to act as secretary or contact person

- (a) Congress must receive a signed consent from a person to act as secretary or contact person of Congress, before that person is appointed as secretary or contact person of Congress
- (b) Congress must keep each consent received under this rule.

12.3 Becoming a secretary or a contact person on registration

- (a) A person becomes a secretary or a contact person of Congress on registration of Congress, if the person is specified in the application with his or her consent as a proposed secretary or contact person of Congress.
- (b) If:
 - (i) Congress is registered as a small or medium corporation and
 - (ii) the application for registration does not specify a person to be the contact person for Congress, the applicant becomes the contact person for Congress upon registration.
- (c) If:
 - (i) a person is specified on the application for registration of Congress as the contact person for Congress and
 - (ii) that person is specified without his or her consent and
 - (iii) before registration, the Registrar becomes aware of that fact and
 - (iv) the Registrar determines, by notice in writing given to the applicant, that the applicant for registration is the contact person for Congress on registration,

The applicant becomes the contact person for Congress upon registration.

12.4 How a secretary or contact person is appointed

The directors appoint a secretary or contact person.

12.5 Terms and conditions of office

A secretary holds office on the terms and conditions (including remuneration) that the directors determine.

12.6 Terms and conditions of contact person's appointment

A contact person's appointment is subject to the terms and conditions (including remuneration) that the directors determine.

12.7 Duties of secretary and contact person

12.7.1 Contact person must pass on communications received

While entered on the Register of Aboriginal and Torres Strait Islander Corporations as the contact person, a person:

- (a) appointed with his or her consent as the contact person, or
- (b) determined to be the contact person,

must pass on to at least one of the directors each communication received by that person for Congress within 14 days after receiving it.

12.7.2 Secretary must pass on communications received

While entered on the Register of Aboriginal and Torres Strait Islander Corporations as the secretary, a person appointed with his or her consent to be the secretary must pass on to at least one of the directors each communication received by that person for Congress within 14 days after receiving it.

12.7.3 Effectiveness of acts by secretaries

- (a) An act done by a secretary is effective even if their appointment is invalid because Congress or secretary did not comply with Congress' rule book or the Act.
- (b) Rule 12.7.3(a) does not deal with the question whether an effective act by a secretary:
 - (i) binds Congress in its dealings with other people or
 - (ii) makes Congress liable to another person.

13. Execution of document and the common seal of Congress

13.1 Corporation may have a common seal

- (a) Congress may have a common seal.
- (b) If Congress does have a common seal:
 - (i) Congress must set out on it Congress' name and ICN
 - (ii) the common seal must be kept by the contact person or a person nominated by the directors.
 - (iii) Congress may have a duplicate common seal. The duplicate must be a copy of the common seal with the words "duplicate seal" added.

13.2 Execution of documents

13.2.1 Agent exercising corporation's power to make contracts etc.

Congress' power to make, vary, ratify or discharge a contract may be exercised by an individual acting with Congress' express or implied authority and on behalf of Congress. The power may be exercised without using a common seal.

13.2.2 Execution of documents (including deeds) by Congress

- (a) Congress may execute a document without using a common seal if the document is signed by:
 - (i) 2 directors;

- (ii) a director and a secretary (if any); or
- (b) if Congress has a common seal, Congress may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
 - (i) 2 directors;
 - (ii) a director and a secretary; or
 - (iii) if Congress has only 1 director, that director.
- (c) Congress may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rules 13.2.2(a) or 13.2.2(b).
- (d) This rule 13.2.2 does not limit the ways in which Congress may execute a document (including a deed).

14. Finances and record keeping

14.1.1 Application of funds and property

- (a) Subject to the Act and Congress' rule book, all funds or property of Congress not subject to any special trust can be used at the discretion of the directors in accordance with this rule book to carry out Congress' objectives.
- (b) Subject to the Act and Congress' rule book, no portion of the funds and property of Congress may be paid or distributed to any member of Congress.
- (c) Nothing in rule 14.1.1(b) is intended to prevent:
 - (i) the payment in good faith of reasonable wages to a member who is an employee of Congress (having regard to the circumstances of Congress and the qualification, role and responsibilities of the member as an employee), or
 - (ii) reasonable payment in good faith to a member for a contract for goods or services provided by that member (having regard to the market costs for obtaining similar goods or services in the area where the goods or services are to be provided).

14.2 Minutes of meetings

14.2.1 Obligations to keep minutes

- (a) Congress must keep minute books in which it records within 1 month:
 - (i) proceedings and resolutions of general meetings

- (ii) proceedings and resolutions of directors' meetings (including meetings of a committee of directors)
 - (iii) resolutions passed by members without a meeting
 - (iv) resolutions passed by directors without a meeting
 - (v) if Congress has only 1 director, the making of declarations by the director.
- (b) The minutes of the meeting may be kept:
 - (i) in writing, or
 - (ii) by means of audio, or audio-visual, recording.
- (c) If the minutes of the meeting are kept by means of an audio or audio-visual recording of the meeting, Congress must ensure that, on the recording:
 - (i) each person attending the meeting attending the meeting states their name; and
 - (ii) if a person attending a meeting holds a proxy, the person states the name of the person for whom the person is acting as proxy.
- (d) If the minutes of the meeting are kept in writing, Congress must ensure that either:
 - (i) the chair of the meeting, or
 - (ii) the chair of the next meeting,
 - (iii) signs those minutes within a reasonable time after the first meeting.
- (e) If the minutes of the meeting are kept by means of an audio, or audio visual recording, Congress must ensure that either:
 - (i) the chair of the meeting, or
 - (ii) the chair of the next meeting,
 - (iii) signs a declaration under rule 14.2.1(f) within a reasonable time frame after the first meeting.
- (f) The declaration under this rule must:
 - (i) identify the audio, or audio-visual, recording;
 - (ii) if the recording is not a recording of the whole of the meeting, identify the part of the meeting that is recorded;
 - (iii) declare that the recording constitutes the minutes of the meeting or that part of the meeting.

- (g) Congress must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- (h) Congress must keep its minute books at:
 - (i) its registered office if it is registered as a large corporation, or
 - (ii) its document access address if it is registered as a small or medium corporation.
- (i) A minute that is recorded and signed in accordance with this rule 14.2.1 is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

14.3 Rule book and records about officers, contact person, etc.

Congress must keep:

- (a) an up-to-date copy of its constitution (incorporating any changes to the constitution made in accordance with the Act and terms of the constitution)
- (b) written records relating to:
 - (i) the names and addresses of Congress' current officers and secretary or contact person (as the case may be)
 - (ii) Congress' registered office (if any)
 - (iii) Congress' document access address (if any).

14.4 Financial records

14.4.1 *Obligation to keep financial records*

- (a) Congress must keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance
 - (ii) would enable true and fair reports to be prepared and audited.
- (b) This obligation extends to transactions undertaken as trustee.

14.4.2 *Period for which financial records must be retained*

The financial records must be retained for seven years after the transaction covered by the records are completed.

14.5 Physical format

If the records that Congress is required to keep under rules 14.3 and 14.4 are kept in electronic form:

- (a) the records must be convertible into hard copy

- (b) that hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.

14.6 Place where records are kept

If Congress is registered as:

- (a) a large corporation, the records that Congress is required to keep under rules 14.3 and 14.4 must be kept at Congress' registered office, or
- (b) a small or medium corporation, the records that Congress is required to keep under rules 14.3 and 14.4 must be kept at Congress' document access address.

14.7 Right of access to corporation books by director or past director

- (a) A director may inspect the books of a corporation (other than its financial records) for the purposes of a legal proceeding:
 - (i) to which that person is a party
 - (ii) which that person proposes in good faith to bring, or
 - (iii) which that person has reason to believe will be brought against him or her.
- (b) A person who has ceased to be a director may inspect the books of Congress (including its own financial records) for the purposes of a legal proceeding:
 - (i) to which that person is a party
 - (ii) which that person proposes in good faith to bring, or
 - (iii) which that person has reason to believe will be brought against him or her.
 - (iv) This right continues for seven years after the person has ceased to be director.
- (c) A person authorised to inspect books under this rule for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.
- (d) Congress must allow a person to exercise the person's rights to inspect or take copies of the books under this rule.
- (e) This rule does not limit any right of access to corporation books that a person has apart from this rule.

14.8 Access to financial records by directors

- (a) A director has a right of access to the records that Congress is required to keep under rule 14.3 or rule 14.4.

- (b) On application by a director, the court may authorise a person to inspect on the director's behalf the records that Congress is required to keep under rule 14.3 or rule 14.4 subject to any other orders the court considers appropriate.
- (c) A person authorised to inspect records under rule 14.8(b) may make copies of the records unless the court orders otherwise.

14.9 Members' access to minutes

- (a) If Congress is registered as a large corporation, Congress must make available for inspection by members, at its registered office, the minute books for the meetings of its members and for resolutions of members passed without meetings. The books must be made available for inspection each business day from at least 10.00am to 12 noon and from at least 2.00pm to 4.00pm.
- (b) If Congress is registered as a small or medium corporation, Congress must make available for inspection by members, at its document access address, the minute books for the meetings of its members and for resolutions of members passed without meetings. The books must be made available within seven days of a member's written request for inspection.
- (c) Congress must make minutes available free of charge.
- (d) A member may ask Congress in writing for a copy of:
 - (i) any minutes of a meeting of Congress' members or an extract of the minutes or
 - (ii) any minutes of a resolution passed by members without a meeting.

Note: The member may ask Congress for an English translation under ss. 376-5(3) of the Act if the minutes are not in the English language.

- (e) If Congress does not require the member to pay for a copy, Congress must send it:
 - (i) within 14 days after the member asks for it or
 - (ii) within any longer period that the Registrar approves.
- (f) If Congress requires payment for the copy, Congress must send it:
 - (i) within 14 days after Congress receives payment or
 - (ii) within any longer period that the Registrar approves.
- (g) The amount of any payment Congress requires cannot exceed 50 cents per page.

14.10 Inspection of books by members

The directors, or Congress by a resolution passed at a general meeting, may authorise a member to inspect the books of Congress.

14.11 Access to governance material

14.11.1 Corporation to provide member with rules if requested

If a member asks for a copy of Congress' rule book, Congress must provide it:

- (a) free of charge; and
- (b) within seven days

14.12 Registered office

If Congress is registered as a large corporation, Congress must make available for inspection by members and officers at its registered office, its rule book. This rule book must be available for inspection each business day from at least 10.00am to 12 noon and from at least 2.00pm to 4.00pm.

14.13 Document access address

If Congress is registered as a small or medium corporation, Congress must make available for inspection by members and officers at its document access address, its rule book. This rule book must be made available for inspection within seven days of a member's or officer's written request for inspection.

14.14 General provisions regarding access rules

The rule book of Congress includes:

- (a) Congress' rule book
- (b) any replaceable rules that apply to Congress
- (c) any other material concerning the internal governance of Congress that is prescribed.

15. Auditor

- (a) Congress must comply with any requirements set out in the Act relating to the examination or auditing of its financial records.
- (b) If the auditor is appropriately qualified, the same auditor may be appointed to audit:
 - (i) the accounts of Congress, and
 - (ii) the accounts of any trusts Congress is trustee of.

16. Annual reporting

Congress must comply with the annual reporting requirements set out in the Act.

17. Dispute resolution process

17.1 Dispute resolution process

This rule sets out the steps which must be taken to try to resolve any disagreement or dispute:

- (a) about the affairs of Congress or how the Act or Congress's rule book applies, which arises between:
 - (i) members
 - (ii) members and directors, or
 - (iii) directors; and
- (b) between the corporation and a person who is or who claims to be a common law holder, whether or not the person is a member of the corporation, and the dispute is about:
 - (i) whether a person is or is not a common law holder
 - (ii) the corporation's performance of its functions under the native title legislation (as defined in the Act)
 - (iii) other matters directly related to the determination.

17.2 Informal negotiations

If a dispute arises, the parties must first try to resolve it themselves on an informal basis.

17.3 Giving of dispute notice

- (a) If the dispute is not resolved according with rule 17.2 within 10 business days, any party to the dispute may give a dispute notice, as set out in Schedule 6, to the other parties.
- (b) A dispute notice must be in writing, and must say what the dispute is about.
- (c) A copy of the notice must be given to Congress.

17.4 Seeking assistance from the Registrar or the native title representative body for the area

- (a) If a dispute or any part of a dispute relates to an issue arising out of the meaning of any provision of the Act or Congress' rule book, the directors or any other party to the dispute may seek an opinion from the Registrar about the correct meaning of the relevant provision. The Registrar's opinion will not be binding on the parties to a dispute.
- (b) If a dispute or any part of a dispute relates to a person who is or who claims to be a common law holder the parties may seek the opinion of the native title representative body for the area that the

native title rights and interests relate to, but the opinion will not be binding on the parties to the dispute.

17.5 Referring dispute to the directors

The directors must make a reasonable effort to help the parties resolve the dispute within 20 business days after Congress receives the dispute notice.

17.6 Referring dispute to a general meeting

- (a) If the directors cannot resolve the dispute within 20 business days after receiving the dispute notice, it must hold a general meeting of Congress and put the matter to the members to resolve. The general meeting must be held within 3 months after Congress received the dispute notice.
- (b) When passing any resolution about a dispute, the members in the general meeting are subject to the Act and these rules.

18. Notices

18.1 General

- (a) Unless the Act or these rules otherwise requires, notices must be given in writing (including by fax).
- (b) Notices of directors' meetings can be given in writing, by email, by telephone or orally, if all the directors agree to notice being given in that way.

18.2 How a notice to a member may be given

Unless the Act or these rules require otherwise, a notice or communication may be given:

- (a) personally
- (b) left at a member's address as recorded in the register of members
- (c) sent by pre-paid ordinary mail to the member's address as recorded in the register of members
- (d) sent by fax to the members current fax number for notices (if the member has nominated one)
- (e) sent by email to the member's current email address (if the member has nominated one).

18.3 When notice taken as being given

Unless the Act or these rules require otherwise, if a notice or communication:

- (a) is given by post, it is taken to have been given five business days after posting

- (b) is given by fax, it is taken to have been given on the business day after it is sent
- (c) is given:
 - (i) after 5.00pm in the place of receipt or
 - (ii) on a day which is Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9.00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

19. Winding up

19.1 Resolution to distribute surplus assets

Subject to rule 19.2, where:

- (a) Congress is wound up
- (b) after all debts and liabilities have been taken care of, and costs of winding up have been paid, surplus assets of Congress exist, the members may pass a General Meeting Decision relating to the distribution of the surplus assets of Congress.

19.2 No distribution of surplus assets to members

The distribution of surplus assets must not be made to any member or to any person to be held on trust for any member.

20. Amendment of the rule book

20.1 Corporation wants to change this rule book

For Congress to change its rule book, the following steps must be complied with:

- (a) Congress must pass a resolution in special general meeting effecting the change;
- (b) if, under Congress' rules, there are further steps that must also be complied with to make a change, those steps must be complied with;
- (c) Congress must ensure that the rule book changes are consistent with any native title determination and with the requirements of the CATSI Act, the Native Title Act and the relevant regulations;
- (d) changing rule 7.12 that sets out a process for native title decision making is a native title decision about native title decisions and the corporation must follow the processes under rule 7.12.
- (e) Congress must lodge certain documents under rule 20.2; and

- (f) the Registrar must make a decision in respect of the change and, if appropriate, must register the change.

20.2 Corporation to lodge copy of changes

- (a) If there is no extra requirement, within 28 days after the resolution in general meeting is passed, Congress must lodge with the Registrar:
 - (i) a copy of the resolution;
 - (ii) a copy of those parts of the minutes of the meeting that relate to the passing of the resolution, a directors' statement signed by two directors, or to the effect that the resolution was passed in accordance with the Act and Congress' rules; and
 - (iii) a copy of the rule book change.
- (b) If a change is not to have effect until an extra requirement has been complied with, Congress must lodge:
 - (i) the documents referred to in rule 20.2(a);
 - (ii) proof that the extra requirement has been met, within 28 days after it has been met.
- (c) If the Registrar directs Congress to lodge a consolidated copy of Congress' rule book as it would be if the Registrar registered the change, Congress must do so.

20.3 Date of effect of change

A rule book change under rule 21 takes effect on the day the change is registered.

21. Trustee finances

21.1 Receipt of monies

- (a) Official receipts are to be issued for all monies received by Congress in its capacity as a trustee of any trust.
- (b) If Congress is trustee of more than one trust it must:
 - (i) keep trust monies separate from the assets of the company
 - (ii) keep separate accounts and financial records in relation to each trust
 - (iii) maintain separate bank accounts for each trust at a bank or banks to be determined by the directors of the company.

21.2 Investment of trust monies

Where a trust is subject to conditions or legislation requiring the application of funds as directed by certain parties, in the absence of direction the directors of the trust may invest the funds as they see fit:

- (a) for the beneficiaries of the trust and
- (b) as permitted by the trust instrument or relevant legislation, and in the best interests of the beneficiaries of the trust.

22. Grantee or transferee under *Aboriginal Land Act 1991* (Qld)

If the corporation is a grantee or transferee under the *Aboriginal Land Act 1991* (Qld) the Land Trust Rules apply to the corporation when it is acting in its capacity as grantee.

Schedule 1—Interpretation

23. Dictionary

Aboriginal person means a person of the Aboriginal race of Australia

Act or **CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) as amended from time to time and its subordinate legislation.

Applicant means a person who is eligible to become a member of Congress and has applied to become a member according to rule 5.1.

Books include a register, any record of information, financial reports or records, or documents of a corporation however compiled, recorded or stored.

Business day means a day which is not a Saturday, Sunday or bank or public holiday at the place concerned.

Clans means one or more of the Binthi clan; Buurnga clan; Dharrpa clan; Gamaay clan; Gulaal clan; Ngaatha clan; Nguymbaarr Nguymbaarr clan; Nguurruumungu clan; Nugal clan; Thanil clan; Thiithaarr clan; Thuubi clan; or Dingaal clan.

Common seal means the common seal of Congress referred to in rule 13.

Congress means the Hopevale Congress Aboriginal Corporation RNTBC (ICN: 3135).

Directors means the people elected or appointed according to rule 8 to manage the affairs of Congress in accordance with the Act and these rules.

General meeting refers to both special general meetings and annual general meetings of the members of Congress called and held according to rule 7.

Land Trust Rules means the rules of any land trust under the *Aboriginal Land Act 1991* (Qld) for which Congress is grantee or transferee.

Member means a person whose name appears on the register of members.

Native Title Decision means a decision to surrender native title rights and interests in relation to land or waters or to do, or agree to do, any other act that would affect the native title rights and interests of the Native Title Holders, or to make a native title compensation application.

Native Title Holder means the descendants of the traditional land owners of native title identified in the determination of native title made by the Federal Court of Australia on 8 December 1997 in the proceeding known as *Erica Deeral and Ors. v Gordon Charlie and Ors.* (No. QG 174 of 1997) who are described at Schedule 7.

Officer is a director, corporation secretary, administrator, special administrator, receiver, receiver and manager, liquidator or trustee of Congress or a person who makes decisions that affect a substantial part of the business of Congress or could significantly affect Congress' financial standing.

Poll means voting at a general meeting by the members voting or signing a paper headed "for" or "against" a motion or resolution, as the case may be (as opposed to voting by a show of hands). A poll can include a secret ballot.

Proxy means a person who has been appointed to attend, speak and vote at a general meeting on behalf of a member, according to rule 7.15.

Registered native title body corporate or **RNTBC** means a prescribed body corporate whose name and address are registered on the National Native Title Register under the *Native Title Act 1993*.

Registrar means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed in accordance with the Act.

Rule book means a document consisting of set laws and replaceable rules under the Act that apply to Congress.

Statutory Title means interests in land or waters, whether equitable or legal, created pursuant to a grant or transfer made under the ALA or the acquisition of an interest under other legislation where that interest is vested in Congress.

Statutory Title Decision means any decision made or proposed to be made by Congress which may give rise to the creation of an interest in Statutory Title by a third party or any claim, debt or liability created or entered into by Congress on behalf of Statutory Title Holders.

Statutory Title Holder means an Aboriginal person for whose benefit Statutory Title is held by Congress and includes those Aboriginal people 'particularly concerned' with the land or waters the subject of Statutory Title created under the ALA as defined by section 4 of the *Aboriginal Land Act 1991* (Qld).

24. Interpretation

In these rules:

- (a) words in the singular include the plural and vice versa;
- (b) the words 'including', 'include' and 'includes' are to be read without limitation;
- (c) a reference to legislation is to be read as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;

- (d) headings and notes are used for convenience only and are not intended to affect the interpretation of these rules;
- (e) a word or expression defined in the Act and used, but not defined, in these rules has the same meaning given to it in the Act when used in these rules;
- (f) any inconsistency with the Act is to be resolved in favour of the Act.

Schedule 2A—Certificate in accordance with rule 7.12.3(a)(i)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

The certificate must contain:

- (a) a description of the proposal that is the subject of the proposed Native Title Decision;
- (b) a map showing the location and extent of the affected area;
- (c) sufficient information to enable the impacts on the native title of the proposed Native Title Decision to be identified;
- (d) details of the extent, if any, of any claims, actions or debts to which any native title holder may be liable as a result of the proposed Native Title Decision;
- (e) the identity of the Native Title Holders and of those involved in the consultation and the giving of any separate consent and direction in relation the proposed Native Title Decision;
- (f) information setting out the involvement of Native Title Holders in consideration of and decision making about the proposed Native Title Decision;
- (g) a statement as to whether the decision-making process that has been followed in relation to the giving of a consent has been a traditional decision making process or one agreed to and adopted by the Native Title Holders and a description of the decision making process followed;
- (h) a statement by each person who signs the document that he or she believes that the conditions referred to in rule 7.12.1 for the making of a Native Title Decision have been met;
- (i) the identity, qualifications and signature of the person who prepared the certificate in accordance with rule 7.12.3(a)(i) and this Schedule.

Schedule 2B—Certificate in accordance with rule 7.12.3(a)(ii)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

The certificate must contain:

- (a) information that identifies the kind of decision involved in consenting to the making of the proposed Native Title Decision;
- (b) information that identifies the decision of the Native Title Holders relied upon in order to certify in accordance with rule 7.12.3(a)(ii); and
- (c) identifies a document that to the extent applicable would comply with rule 7.12.3(a)(i) in relation to the decision so relied upon if that decision were a proposed Native Title Decision required to be certified in accordance with rule 7.12.3(a)(i) and Schedule 2A.

Schedule 2C—Certificate in accordance with rule 7.13.2(a)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

The certificate must contain:

- (a) a description of the proposal that is the subject of the proposed Statutory Title Decision;
- (b) a map showing the location and extent of the affected area;
- (c) sufficient information to enable the impacts on the Statutory Title of the proposed Statutory Title Decision to be identified;
- (d) details of the extent, if any, of any claims, actions or debts to which any Statutory Title Holder may be liable as a result of the proposed Statutory Title Decision;
- (e) the identity of the Statutory Title Holders and of those involved in the consultation and the giving of any separate consent and direction in relation the proposed Statutory Title Decision;
- (f) information setting out the involvement of Statutory Title Holders in consideration of and decision making about the proposed Statutory Title Decision;
- (g) a statement by each person who signs the document that he or she believes that the conditions referred to in rule 7.13.1(a) for the making of a Statutory Title Decision have been met;
- (h) If the Statutory Title Decision involves a transfer of trust land, a copy of the resolution of a general meeting of Congress in accordance with rule 7.13.1(a)(ii)B.
- (i) the identity, qualifications and signature of the person who prepared the certificate in accordance with rule 7.13.2(a) and this Schedule.

Schedule 3— Code of conduct for Congress officers

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

Overview

1. Directors manage the business of Congress.
2. Directors have special duties towards the corporation as a whole which includes duties to all its members and creditors.
3. Director's duties are imposed by the common law (judge-made law) and the CATSI Act. The CATSI Act duties overlap with the general law duties and are based on duties in the *Corporations Act 2001*.

Duties

Duty of care and diligence

4. Directors must take their responsibilities seriously. Directors who act carefully and diligently will be well prepared, making sure they understand and know about their corporation's affairs. For example, reading papers before a meeting, attending meetings, asking questions and getting more information if they do not understand something.

Duty of good faith

5. Directors must act honestly in the best interests of Congress. For example, a director should not make a decision based on their own personal best interest, but in the best interests of Congress as a whole.

Duty of disclosure of material personal interests

6. If a director is going to make a decision on behalf of Congress, and they may personally benefit from that decision, or are in some other way involved in matters relating to that decision, then this is a 'conflict of interest'.
7. The director must tell the other directors, in a meeting, that their decision may be influenced by other business. Even if the conflict doesn't actually affect a decision, but others could see it as being a conflict of interest, then the director should tell the other directors.

Duty not to improperly use position or information

8. Directors must not use their role of director, or information obtained in that role, for their own personal advantage or to the detriment of Congress.

Duty to prevent insolvent trading

9. Insolvency means not being able to pay debts when they are due and payable. Directors must not allow their corporation to trade when Congress is insolvent or if they think Congress may be insolvent.

Consequences of breach of director's duties

10. Disqualification—If a director has been convicted of fraud or if they are bankrupt then they can be automatically disqualified by the Register under the CATSI Act.
11. Civil penalties—A court may order the person to pay and/or compensate Congress for damage suffered as a result of a breach.
12. Criminal penalties—A person may be fined or sentenced to prison for serious breaches of the following duties: the duty not to use position or information, the duty to disclose conflict of interest and the duty of good faith.

Schedule 4—proxy form (rule 7.15.1)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

APPOINTMENT OF PROXY

I, _____ (full name of member)
of _____ (address of member)
being a descendant of _____
and being a member of the Hopevale Congress Aboriginal Corporation RNTBC
hereby appoint _____ (name of proxy)
of _____ (address of proxy)
being a member of the Hopevale Congress Aboriginal Corporation RNTBC, as
my proxy to vote for me on my behalf at the general meeting of Congress
(annual general meeting or general meeting, as the case may be) to be held
on the _____ day of _____ 2022 and at any adjournment of that
meeting.

(Optional—if member wishes to specify the way the proxy is to vote on a
particular resolution, include additional information below)

Signed: _____
(Signature of member appointing proxy)

Date: _____

Note: A member can appoint another member as proxy to attend a general meeting and vote for them. A proxy appointment must contain all of the information set out in this proxy form, be signed and dated by the member and submitted to the corporation at least 48 hours prior to the. A person must not be a proxy for more than three members.

Schedule 5—application for membership form (rule 5.1.1)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

(first name) (last name)

of _____
(address)

and belonging to the clan: _____
(name of clan)

Hereby apply for membership of the Hopevale Congress Aboriginal Corporation RNTBC.

Clan Membership: Confirmation of Clan membership (by at least one other adult member belonging to the same Clan as the applicant):

I confirm that the Applicant is accepted by the _____ Clan as a member of that Clan.

Signed: _____

I, _____ (applicant) declare that I am eligible for membership in accordance with this rule book of the Hopevale Congress Aboriginal Corporation RNTBC.

Signed: _____

Date: _____

Schedule 6—dispute notice (rule 17.3)

Hopevale Congress Aboriginal Corporation RNTBC ICN: 3135

(first name)

(surname)

of

(address)

belonging to the clan: _____ hereby
give notice of dispute to the Hopevale Congress Aboriginal Corporation RNTBC.

The dispute is about:

Signed: _____

Date: _____

Schedule 7—native title determination

1. Persons of the following Clans, determined by the Federal Court under proceedings known as *Erica Deeral and Ors. v Gordon Charlie and Ors.* (No. QG 174 of 1997) to hold native title for their respective Clan estates:
 - (a) Gamaay clan;
 - (b) Dingaal clan;
 - (c) Nugal clan;
 - (d) Thuubi clan;
 - (e) Nguurruumungu clan;
 - (f) Dharrpa clan;
 - (g) Binthi clan
 - (h) Thiithaarr clan;
 - (i) Thanil clan;
 - (j) Nguymbaarr Nguymbaarr clan;
 - (k) Ngaatha clan;
 - (l) Buurnga clan; and
 - (m) Gulaal clan.
2. Map of native title determination area is available at www.nntt.gov.au and in the native title determination decision (QG 174 of 1997 determined by the Federal Court on 8 December 1997).