STEPS TOWARDS THE DEVELOPMENT OF AN INDIGENOUS COMMUNITY-BASED, HIGH-VALUE TOURISM JOINT VENTURE PARTNERSHIP

A report for the Torres Cape Indigenous Councils Alliance (TCICA) September 2023, with support from the Queensland Government's Remote Area Board program

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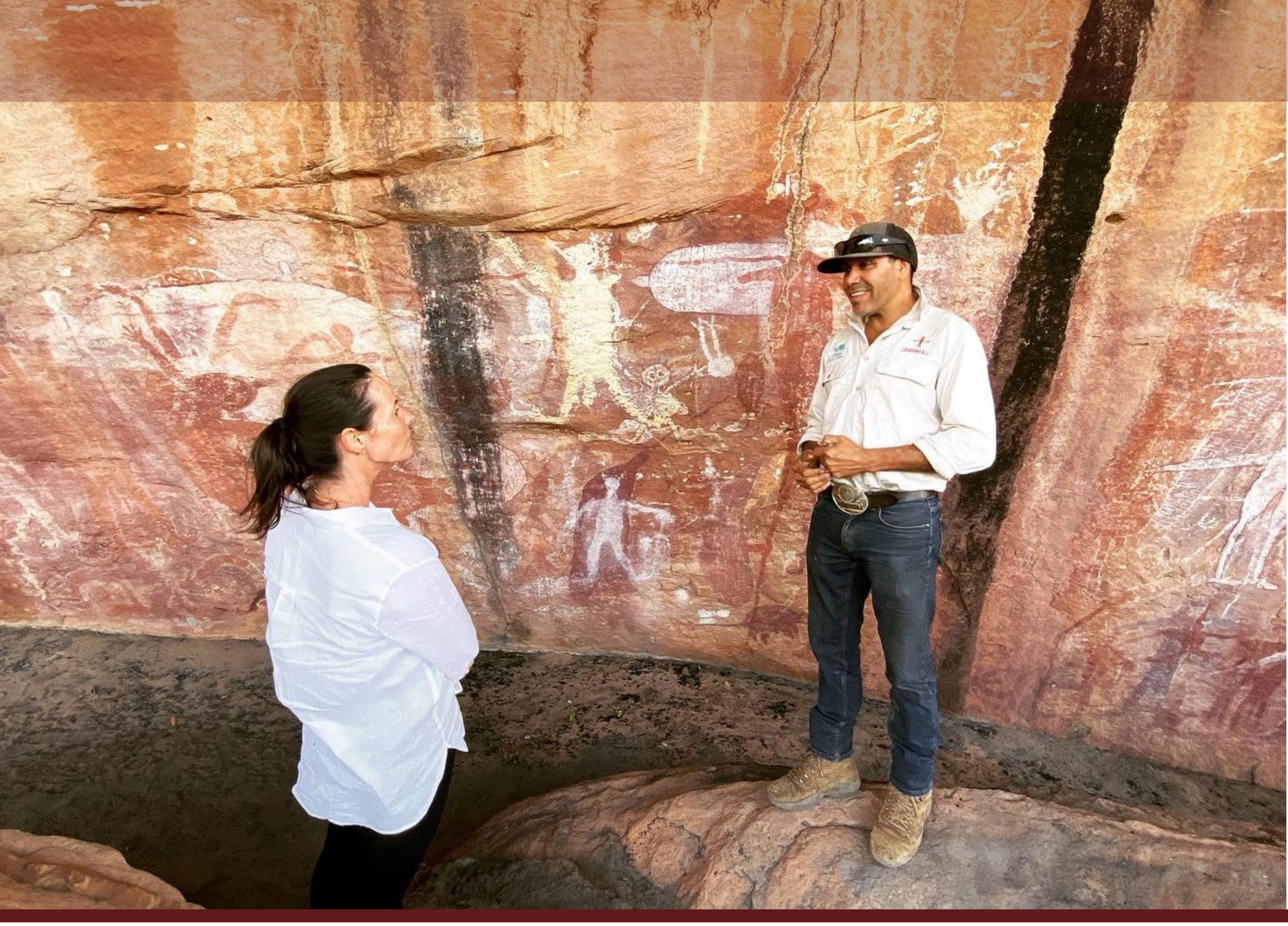


INTRODUCTION

A joint venture (JV) is a business activity undertaken by two or more partners for their mutual benefit.

Partners in an Indigenous community-based tourism joint venture will be:

- **A local Indigenous community who are recognised as the Traditional Owners**, typically represented by a Prescribed Body Corporate, who have the rights to the natural resources occurring on Country for which Native Title rights have been awarded to them, and
- **An established private sector tourism company** (tourism investor, operator or management company) that recognize the area's potential for tourism development and who want to work with partnership with the Indigenous community for mutual benefit.

In some cases, there may be more than one tourism company partner if activities such as lodge management, booking services, marketing and distribution are managed by different companies.

Below is a simplified two-phase approach for Traditional Owner bodies to develop a tourism joint venture enterprise. Each of these steps is outlined in the next section. Appendix 1 out-lines the different types of joint ventures that could be negotiated, depending on what the two partners want to achieve together.

A Simplified Approach to Developing a Tourism Joint Venture for Traditional Owner Bodies

**PHASE 1: COMMUNITY PLANNING -
TOURISM PROJECT & PARTNER IDENTIFICATION**

1. Develop Community-based Tourism Plan & Tourism Management Committee

2. Tourism Rapid Assessment

3. (Optional): Develop and Circulate a Tourism Product Prospectus

4. Joint Venture Tourism Partner Assessment & Selection

PHASE 2: JOINT PROJECT PLANNING WITH TOURISM PARTNER

1. Negotiate Joint Venture agreement

2. Co-design of tourism project (under NDA)

3. Tourism partner to undertake feasibility assessment

PHASE 1: COMMUNITY PLANNING – TOURISM PROJECT AND PARTNER IDENTIFICATION

Step 1. Develop Community-based Tourism Plan & Tourism Management Committee

This is a vitally important part of the process because it ensures that the tourism enterprise is *community-led and owned* from the outset. Through consultation and discussion with the Traditional Owners, discuss what the community wants to get out of tourism. Seek to clearly understand the community's vision and priorities for tourism, including where they want to be in ten years' time. Establish actions and responsibilities for the community and local stakeholders to undertake.

It is very important to obtain clarity (agree) on the primary purpose of establishing a tourism enterprise. Here, the community needs to be very clear about its priorities and what it wants most to get out of a tourism development. For example, is the objective to:

- Protect the natural environment;
- Protect the cultural heritage of the area;
- Create tourism-related jobs for local Indigenous people;
- Create income for the community;
- Develop skills and capacity of the local community; and/or
- Create economic benefit for the region?

Confirm if the community is enthusiastic about working with a tourism company joint-venture partner or would prefer to operate independently and at a smaller scale. Use this opportunity to discuss the pros and cons of the different approaches.

The *community-based tourism plan* will represent the Traditional Owner's general goals for tourism and it provides a clear position on behalf of the community that can be shared with potential tourism company partners. It should not go into a lot of detail into specifics of a tourism project as this will be co-planned with a tourism company partner under a joint venture.

Arising from this process, establish a *Tourism Management Committee* with people from the community that have a mandate to represent the Traditional Owners on matters of tourism and who are enabled to lead in negotiations with any tourism partners. At least one person in the committee should have some expertise in business or tourism. The PBC may wish to engage an external board member to serve as a tourism expert on the board (e.g. this was done at Nitmiluk to build their Joint Venture in tourism).

Ensure that the tourism plan aligns with local and regional plans for the area. During the community consultation, identify any key sites that community members feel have potential for high-value tourism.

Use the consultation period as an opportunity to educate the community on the different types of tourism with examples from different parts of Australia and the world (e.g. budget, mass market, mid-range tourism versus high-value tourism). Explain the pros and cons of working with a tourism company joint venture partner and consider different types of lease agreements (refer to Appendix 1).

Step 2. Tourism Rapid Assessment

A Tourism Rapid Assessment will help the community develop a 'great potential idea' into a project that has a better chance of success by highlighting important issues that need to be addressed prior to starting. A Tourism Rapid Assessment will work through:

1. The Attraction - the natural attributes of a site or region;
2. The Target Market – the people who will visit the site or region and pay for the experience;
3. The Infrastructure – any construction or physical resources required to bring the attraction and target market together.

It is essentially a checklist that highlights any strengths and weaknesses in the business concept so they can be dealt with in the process or resolved prior to starting. An example of an Ecotourism Rapid Assessment by Tourism Queensland is provided in Appendix 2. As it quite a detailed process, it may be valuable to work with a business or tourism advisor to work through the table. The Tourism Rapid Assessment is not a Business Plan, but it is an important process to go through in preparation to start a tourism business.

Step 3. (Optional): Develop and Circulate a Tourism Product Prospectus

The community may choose to develop its own tourism product prospectus at this point OR it may elect to skip this stage and instead co-develop the tourism offering in partnership with the tourism joint venture partner (in Phase 2, Step 2 below).

The tourism product prospectus will outline the type of tourism product being offered by the community and the opportunity, including a description of the desired style of accommodation, number of beds, views, orientation, climate, seasonality, flora and fauna, activities, access, available infrastructure in relation to electricity and water provision, photographs and maps of the area.

It should also lay out the type of joint venture arrangement that the community wants (for example, it might be a shared ownership model enabled by a government grant for the community's share of equity, with a set lease fee paid to the community by the tourism operator annually and an agreed proportion of profits, or it might be a 100% community ownership model in which the full risk and profit are with the community, which perhaps pays a management fee to a tourism company to operate it while the community builds capacity and experience – see Appendix 1).

The feasibility assessment and community-based tourism plan should be included as appendices. Call for proposals from potential tourism company partners. Provide an on-site visit for a shortlist of potential tourism company partners to show them the potential site and activities and to meet the community.

To make sure that the negotiations remain transparent, and all parties are held accountable, it is important that a process is followed and that there are clear steps in this process. The Tourism Management Committee should:

1) Agree on a schedule for the process, to include all key dates for each step in the process (when doing this, make sure that the schedule will fit in with the tourism cycle of the potential operator).

2) Agree on who will be responsible for each step, who should be included in the process of each step, and how will the process be funded.
3) Clarify all key steps in the process and the methods to be used for each: how will the proposal be assessed during adjudication, what will be the key selection criteria, will there be a ‘scoring system’ and how will this work?
4) Develop written material.
5) Send out the written material to the interested operator.
6) Provide feedback and clarification to the interested operator if required.
7) Facilitate a visit to the site to allow the potential operator to see the site and meet the conservancy.
8) Receive the proposal.

Step 4. Joint Venture Tourism Partner Assessment & Selection

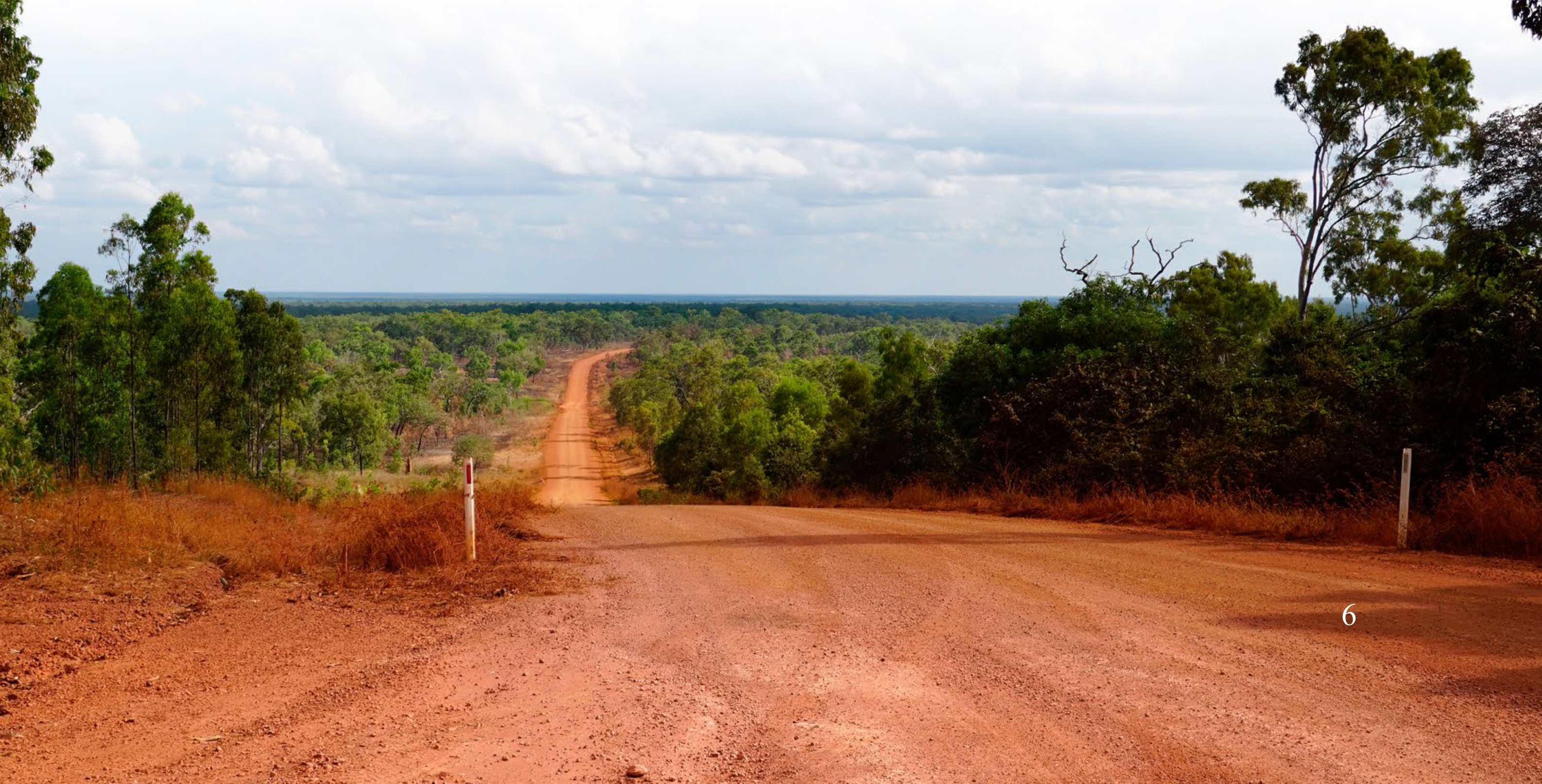
The Tourism Management Committee should consider a range of potential joint venture tourism company partners, and this may be done with advice from tourism experts.

In deciding on which tourism company a community wants to work with some key components of the adjudication process may be:

What does the tourism company brings to the table in terms of:

a) *Financial and business acumen*: all aspects of financing, developing and operating a tourism lodge (includes track record and experience and access to tourism market through existing channels).
b) *Empowerment*: aspects related to people and Indigenous employment and training, as well as the relationship between the operator and the conservancy. The presence and implementation of a Reconciliation Action Plan.
c) *Environment*: the track record of the company in providing environmental benefits and stewardship (e.g. support for ranger program, turtle monitoring).

The process should be transparent based on clear criteria and shared with the local community once a decision has been reached.



PHASE 2: JOINT PLANNING WITH THE TOURISM PARTNER

Step 1. Negotiate a joint venture agreement (lease agreement)

Once a joint venture tourism partner has been selected and agreed to, the negotiations should commence to determine any issues that are not satisfactory to either partner. An external mediator may be required to facilitate this process. A general draft joint venture agreement should be developed by a third party (e.g. unbiased independent consultant with legal background), which can then be discussed and amended until it is satisfactory to both partners. Both parties need to fully understand the content and meaning of the agreement. Once it is deemed to be satisfactory to both partners, the agreement can be finalised and signed.

Prior to the negotiations, the facilitator and Tourism Management Committee may discuss and prepare the following in preparation.

1) Community-based Tourism Plan;
2) Strategies for proportionally-based revenue sharing for the community and its inhabitants;
3) The strategic plan for coordinated and united land-use for the land between key local partners – and in particular, between the PBC, local council and Traditional Owners;
4) Different strategies for dealing with different tourism operators based on their history, types of agreements and associated legal obligations, willingness to negotiate, and general vision; and
5) Identification and benefit/impact/conflict analysis of available land-use options, such as tourism joint venture high value accommodation, cultural tours, community campsites, information centres, agriculture, craft sales and others – and the preparation of a strategy of negotiation based on these factors.

Should an Indigenous Land Use Agreement (ILUA) be required, depending on the land tenure of a site, the steps above should be incorporated into the requirements of an ILUA. Negotiation of the Joint Venture Agreement and ILUA can occur concurrently if the steps to registration of an ILUA registered are met.

The ILUA is a legally binding contract between the parties that must meet the requirements of the Native Title Act 1993. The ILUA's purpose is to provide native title consent to the projects that are proposed (e.g tourism facilities, any leases required to secure tenure over the facilities and their terms). ILUAs include settlement or exercise of native title rights and interests (e.g. non-extinguishment principle under which native title is supressed for a period of time) or determine if native title co-exists with the other rights that are agreed to under the ILUA. The State usually includes a cultural heritage clearance procedure as a schedule to an ILUA to ensure no loss or impairment to cultural heritage and payments are included for monitors to be onsite if ground disturbance is occurring. ILUAs also provide agreement on compensation for loss or impairment of native title, monetary or non-monetary. They also include PBC fees for service for implementing the ILUA. Section 60 AB of the *Native Title Act* also provides for PBCs to charge a fee for negotiating an ILUA.

Step 2. Co-design of tourism project (under non-disclosure agreement)

This stage will be different for every community and tourism partner, but it comes down to working together towards an outcome that both parties want. The tourism partner may take the lead in this phase based on their expertise in operating high-value tourism enterprises in remote locations, however the enterprise should take note of and incorporate the aspirations of the Traditional Owners throughout the process. For example, the lodge design may reflect local culture and traditions, as well as iconic trees and animals. This process should be consultative throughout to ensure that it is on track with both parties. Both parties need to be active and willing to listen to each other wherever possible.

Step 3. Tourism partner to undertake feasibility assessment (under non-disclosure agreement)

As part of their business planning, the tourism partner will undertake a feasibility assessment of the proposed tourism project. This may include aspects such as:

1. Regional context

Before a site can be chosen, it is important that the regional context be fully understood as the success of a lodge is largely dependent on the environment within which it is located. As much as the attractions of a region and/or a particular site are important, the landscape, the socio-economic situation, and the local people of the region may all have an impact on its potential success. Competing land uses, accessibility, infrastructure and service support are also important considerations, particularly in remote parts of Cape York and Torres Strait, posing very high costs of logistics and operations.

2. Objectives

Outline the objectives of the community in relation to the potential tourism development from the *community-based tourism plan (Step 1)*, including the key outcomes that the Traditional Owners want to achieve from it. These key objectives should be clear and agreed by the community at an early stage in the planning and assessment process.

3. Land Ownership and Permissions

It is important to know who has rights over a particular piece of land, who the Native Title holders are, and what form their rights take. Expert legal advice may be needed to confirm this and advise on the process for a particular site.

In Australia, an Indigenous Land Use Agreement (ILUA) is a binding agreement between a tourism operator and an Indigenous community that has Native Title over the land in question. An ILUA provides consent to use land that is under Native Title under the *Native Title Act 1993*. The landowner consent is a different decision-making power to the PBC consent under the ILUA even if the PBC owns the land. In this case, the PBC has two different decision powers, and decisions are made under different pieces of legislation. The PBC as landowner holds the land under the *Aboriginal Land Act 1991* or

Torres Strait Islander Land Act 1991 and decisions in relation to manging the land are made under those Acts. PBCs must also consider their rule book, as per the requirements of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

(CATSI Act). PBCs are incorporated under the CATSI Act. The native title decisions (including ILUAs) are made under the *Native Title Act 1993*.

4. Integration with Existing Frameworks

The selection of a site should be done within the framework of existing tourism policies, strategies and other tourism, economic, or regional development plans and should also show awareness of any other infrastructure plans or projects contemplated in the area that may have an influence on the proposed lodge/campsite. Certain projects planned for an area may be conflicting or competing (e.g., mines, clinic) with the intended lodge/campsite or, conversely, may create new opportunities.

5. Stakeholder Assessment

The Tourism Management Committee should identify all stakeholders who are likely to be involved in the tourism enterprise and outline their roles and responsibilities.

6. Market Assessment

A tourism market survey needs to be undertaken to assess the demand for the proposed tourism product. This will help the tourism operator to move from an initial idea to a concrete business proposal, and to define the product more clearly. Ideally this should be done with input from a tourism professional and/or organisation (e.g. TTNQ/TEQ/TA) with access to current and emerging market data. If the community has already selected a tourism JV partner, this company could do the market assessment.

The following elements should be analysed before a picture can be formed of realistic market demand for a specific site:

- International and national trends (arrivals, trends, estimated numbers etc.).
- National industry indicators (regional vs. national occupancies, access, trends, etc.).
- Markets (level, volume, growth, attractions, projected regional demand, projected site demand etc.).
- Assessment of proposed site within industry (market pitch, attractions, likes, concerns, dislikes).
- Best concept/s

7. Describe the product

Provide a detailed description of the proposed accommodation (number, appearance and type of rooms/beds, the orientation, views, accessibility, construction materials, dimensions, vehicle access) and activities (cultural experiences, nature walks, boat trips etc.). The product must be matched to the demand that has been demonstrated in the market assessment.

8. Price

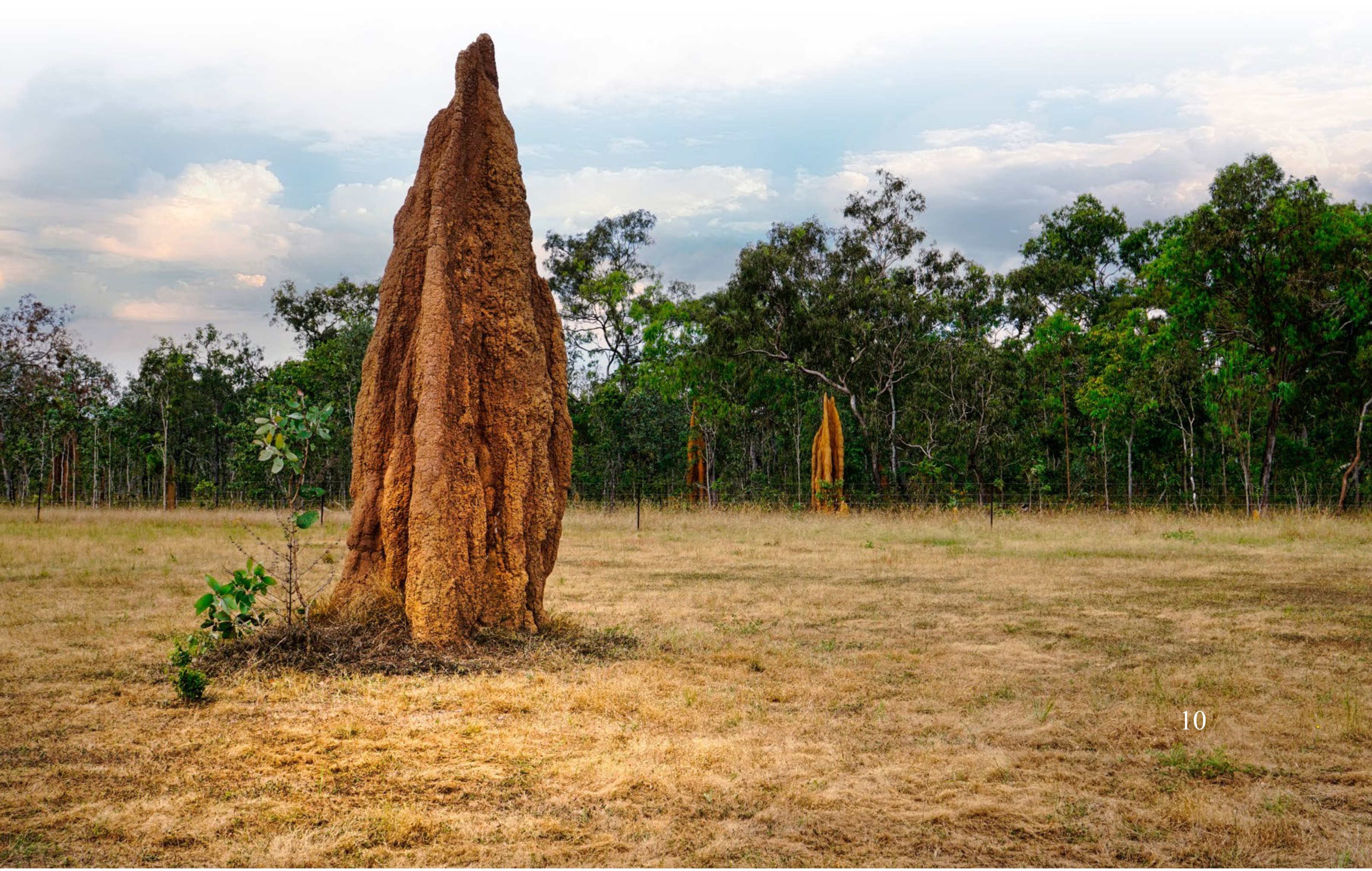
Determine the correct price for the product being offered. This will be determined by the type of product, costs and competition from similar lodges offering a similar product. A potential tourism joint venture partner might advise on this.

9. Occupancy

Estimate how many tourists will come and how this number will change over time as the lodge grows. The actual measure of occupancy used is ‘bed-nights’ (this is because one tourist could stay for more than one night and what we need to measure are the number of bed-nights sold, not just the number of individual tourists who have visited). Occupancy levels are determined by looking at the number of bed-nights as a proportion (percentage) of the total number of possible bed-nights available.

NOTE: *Bed-nights are literally calculated on the number of ‘beds’ and NOT ‘rooms’ sold. For example, a lodge might have 12 rooms, but 24 beds. Thus, calculating bed-nights uses the numbers of beds and not rooms.*

The feasibility assessment should include recommendations by the consultant for consideration by the Tourism Management Committee and discussion with the community. The community can then decide what direction they want to take based on this information and whether they want to proceed or not.



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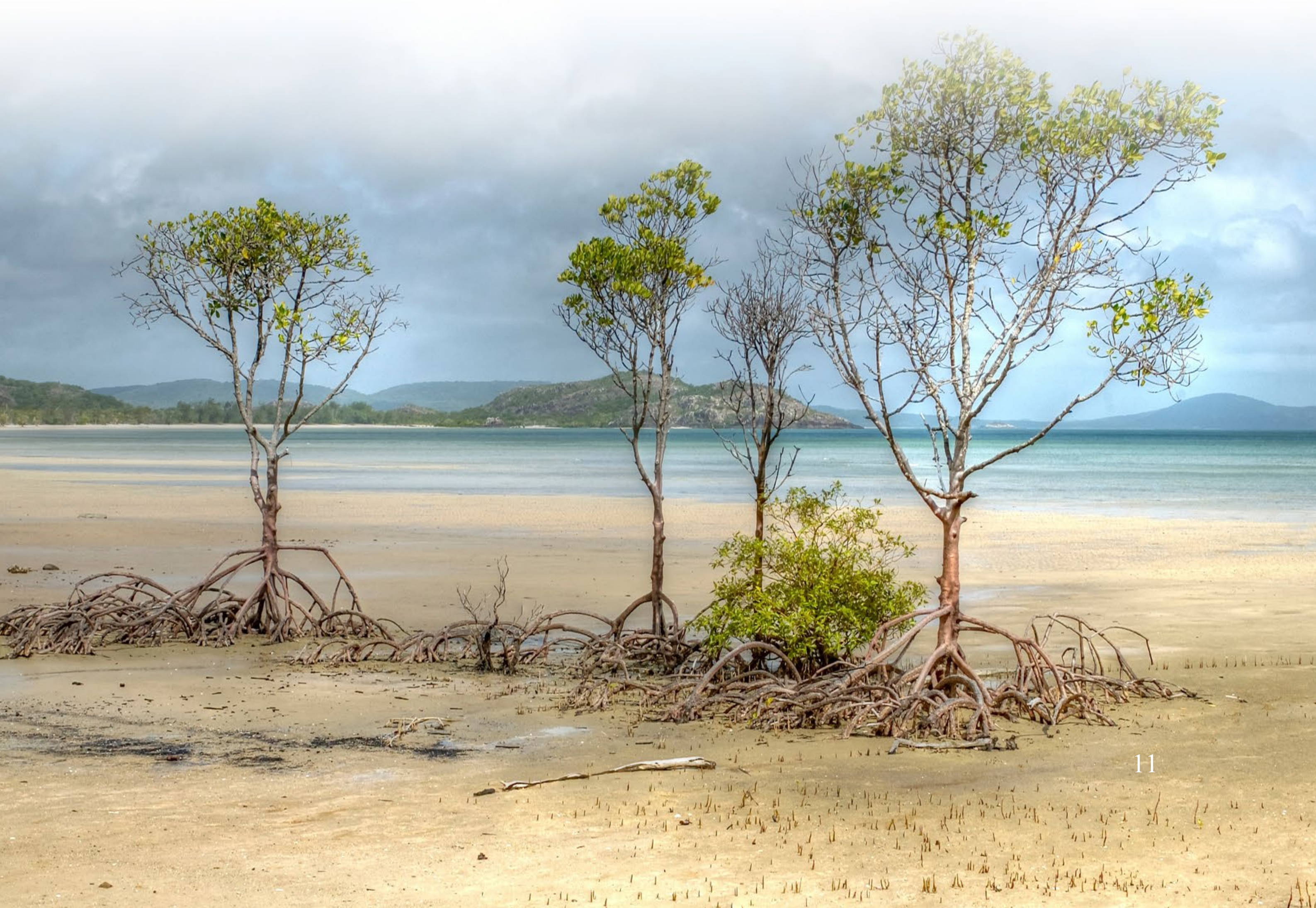
The material for this report has been adapted from training materials in joint venture tourism development provided to Indigenous communities in Namibia by the Namibian Association of Community Based Natural Resource Management Organisations (NACSO).



Appendix 1.
Different Types of Joint Ventures

There are several different types of tourism joint ventures and the community will need to agree on what type it wants to pursue. The choice of what type of joint venture will work best depends on a few things, but ultimately it is about the degree of risk the community wants to take. If a community has equity (shares) in a joint venture business, it is riskier for the community than if they do not. If profits are good, the community makes a share of the profit, but if not, they do not reap any benefits. In this case, it can be better for a community to be paid a set lease fee annually that is not affected by the business' profits, which may be very little or none at all in the first few years.

Equity in a joint venture enterprise brings empowerment, but it is important that the community has financial and business management experience to enable full participation in the business. If the community does not have this expertise initially, they may opt to recruit a business or financial expert to their board of management, or have a different type of joint venture until this experience is gained within the community. To be a shareholder in a joint venture tourism business, the community needs to contribute physical or financial resources to the capital investment. This could be made on the community's behalf by a government agency, such as Indigenous Business Australia (IBA) or the Northern Australia Infrastructure Facility (NAIF) as a loan or a grant.

A joint venture agreement should last at least ten years to give it the best chance of success. After the term has ended, the community can find another partner if they want or renegotiate the terms of the agreement with the existing tourism partner.

In all the joint venture models below, the community can negotiate with the tourism company to ensure there is the appropriate Indigenous employment and training being provided to the community out of the partnership. This will go into the joint venture contract between the parties. In all cases the community owns the land. The differences lie in the level of private sector and community investment in infrastructure and in which partner manages the operation of the tourism enterprise. In general, the sales and marketing would be done by the tourism company until such time as this capacity is built within the community, and sometimes communities choose to outsource this capacity to a company with tourism expertise in the long term. Unless a community has significant government investment that covers 100% of the cost of the enterprise, communities are likely to start with either Joint Venture Model 1 or 2 and work up to Model 3 after internal capacity has been built for full ownership.

Joint Venture Model 1: Tourism Lease - 100% owned by the tourism company partner

Low risk, low return

Community owns land, Tourism company owns infrastructure & operates lodge

In this model, an agreed lease fee is paid by the tourism company to the community partner in exchange for the right to use the community's land for tourism. This is the least risky option for the community and can be a good option for the first ten years until capacity is built within the community to operate the enterprise. Typically, the lease agreement would include not only an annual payment to the community, but also a commitment to both employ a minimum number of local Indigenous people from the area and to run an in-house training program in which local Indigenous people can learn how to participate in the different parts of the enterprise through on-the-job experience. These jobs could range from being chefs and kitchen hands to house keepers, guides and managers. In this model, the tourism company would provide all of the capital to build the infrastructure and would provide management expertise to both operate the enterprise and access the market.

This option requires no capital investment from the community and any profits generated go to the tourism company partner, however the community receives a regular, guaranteed payment annually and the option to participate as employees and trainees in tourism for the duration of the lease agreement. This can be a good option to put a place on the map for tourists to visit as it taps into the tourism company's established marketing and distribution networks, enabling a ready flow of visitors.

Joint Venture Model 2: Shared equity (e.g. 50/50) between Tourism and Indigenous Community Partners

Shared risk, shared return

Community owns land, both community and tourism partner own infrastructure, tourism company operates lodge

This model shares the risk of the tourism enterprise between the community and the tourism company. In this model, the community receives a guaranteed minimum payment ('lease fee') from the tourism company, plus a percentage of the profits (e.g. 5-10%), an employment guarantee and an empowerment plan to train local people in-house and advance them up the ladder. Both the community and the tourism company provide capital to pay for the costs of development.

In Australia, if the community does not have finance, the community could apply to IBA, NAIF or another government agency to pay for their share of the capital investment. The profits are then shared based on the shares invested in the company after the company starts making profits. The private tourism company provides not only some capital, but also access to the market and distribution channels, along with management experience and an in-house training program for local Indigenous people. The community provides equity capital, access to the land (a lease), management of the natural environment (e.g. rangers to control feral pigs and protect turtles), locals to work in the enterprise. The community and tourism partner should agree on a minimum number of local Indigenous employees at the outset, a plan to work together to increase this number over time as the business grows, and a pathway for career development and advancement of local Indigenous staff.

This is a true partnership between the tourism company and the community and relies on the two being completely transparent with each other. It requires a commitment to genuinely making the business work (even when the going gets tough and especially in the early years when profits are not high). It reduces the risk for the community compared with 100% community ownership, and allows for greater investment by the tourism company in capacity building and career development for local Indigenous people. The community would be reliant on government funding to create its equity in the business, which may need to be paid back out of their profits. Any profits would be shared with the tourism company.

After the agreement ends, typically after ten years, the community may change the agreement and look to buy out the tourism company's share of the investment. A new agreement could be put into effect in which the tourism company remains involved beyond this time in the reservations, marketing and distribution, but this is up to the community to decide. This approach allows for significant empowerment and engagement by the community in the business, which creates a strong sense of ownership, giving the business a good chance of sustainability.

Joint Venture Model 3: 100% owned by the Indigenous community partner

High risk, high return (if successful)

Community owns land and infrastructure, Community operates lodge or pays tourism company to operate lodge

This is the most risky model for the Indigenous community as it requires them to provide all of the investment capital to develop the enterprise and take on all of the risk in relation to generating profits. When profits begin to be generated (hopefully after the first few years, although it can take longer), all of these are accrued by the community, however most of this may need to be reinvested in the business to enable it to grow. This is the most empowered model for the community, but it may return less income to the community than the first model in the first decade of operations during the establishment period.

If the community does not have the expertise to run the tourism business, they can outsource the running of operations to a management company. This was done at Karijini Eco-Retreat in Western Australia, which is owned by the Gumala Aboriginal Corporation, however they pay a management company, Mackerel Islands, to operate it for them.

Where a community is just getting started in tourism and does not yet have the expertise to run an enterprise to the standard required, this may not be the best model for the first ten years. Alternatively, it may be the best option in the second ten years once capacity has been built up. For example, Jawoyn Aboriginal Corporation now is the 100% owner of Nitmiluk Tours and Cicada Lodge, however it took many years to get to that point and it was for a joint venture with shared equity between the original tourism owner and the community while capacity was built up. Jawoyn Aboriginal Corporation went into a partnership with IBA to fund the tourism development, with repayments of the loan to be paid out of the profits. Nitmiluk Tours was established in 1993, and the Jawoyn community bought into the partnership with an IBA loan, making them equal partners, but they did not have 100% ownership of Nitmiluk Tours until 2005.

The negative side of this model is that it requires significant community capital and reserves and the community carries all the risk, including the cost of outsourcing the operations to a management company. The positive is that when it is running well at a good profit, the profits are made by the community and it is the most empowered model as full ownership sits with the community. The community can stipulate that the management company employs some local people and trains them as a condition of their employment in order to achieve their employment and capacity building goals.

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