

# Dispute Resolution in the Torres Strait: How we combined the two laws and practices

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# Overview of discussion

- Between 2014-2017 DATSIP negotiated ILUAs throughout the Torres Strait for land to construct social houses.
- During PBC's consultation and consent requirements, disputes between traditional owners often arose about who was the traditional owner who had authority to speak for that land under Ailan Kastom.
- The presentation today will be about how 2 different PBCs and communities in the Torres Strait developed frameworks to resolve these issues.

# Boigu Traditional Boundary Project



# Background

- The Malu Ki'ai (Torres Strait Islander) Corporation RNTBC is the Registered Native Title Body Corporate that holds native title on trust over Boigu and surrounding islands for Boigulgal common law holders.
- In 2016 the PBC was negotiating a number of Indigenous Land Use Agreements (ILUAs) for areas on Boigu including:
  - Social Housing ILUA for three new houses;
  - DAFF Office Accommodation ILUA; and
  - IBIS ILUA.

# Background

- As a Registered Native Title Body Corporate the PBC has a statutory obligation to identify Boigulgal traditional land owners for these areas and consult and obtain their consent for the ILUA to proceed.
- As part of this process the PBC realised that there may be some uncertainty as to the exact location of traditional boundaries between land parcels held by different Boigulgal families under Boigulgal traditional law and custom.
- To resolve these issues the PBC sought assistance from:
  - The TSRA as the Rep Body.
  - TSIRC as the local government.
  - NNTT.
  - DATSIP's Program Office

# Planning and Preparation

- In 2016 a number of community consultations were held in Cairns, Brisbane and on Boigu.
- At each of these community consultation meetings a discussion was had about how the best way to record, map and settle any disputes that may arise regarding traditional land ownership.
- Traditional Owners were identified and selected based on their knowledge of Boigulgal traditional law and Kastom and specifically the laws and protocols around land ownership.

# Process

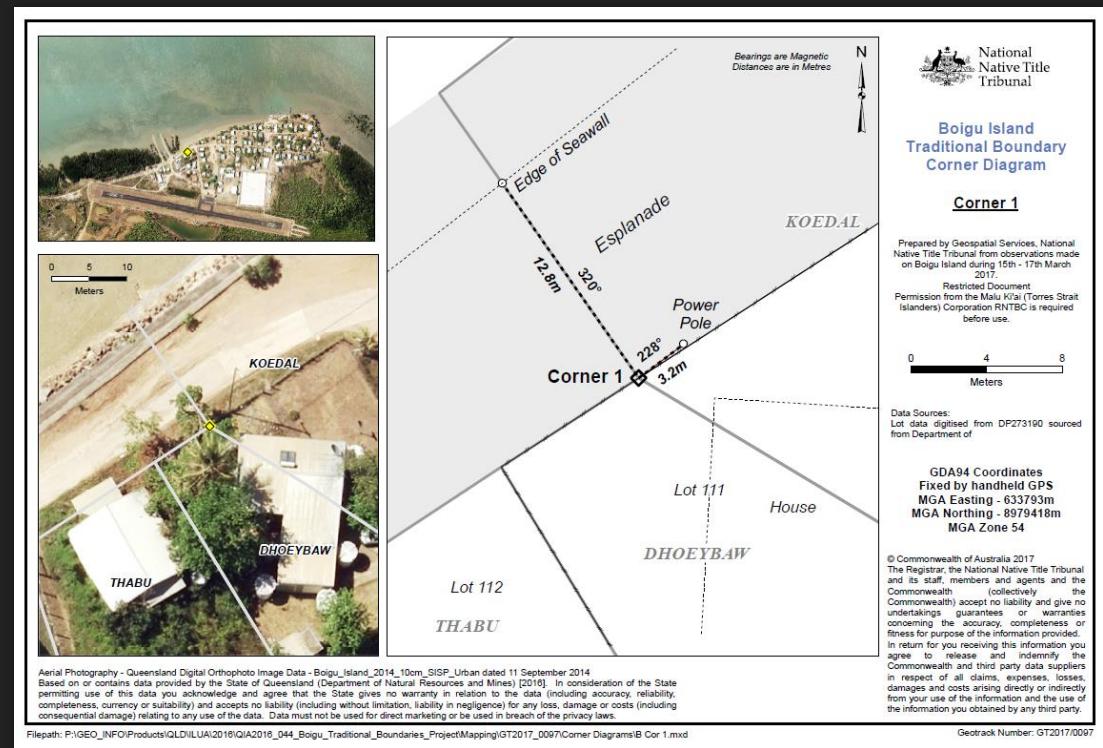
- A month before the project was to take place NNTT representatives came to Boigu and met with the PBC.
- This meeting provided an opportunity for the NNTT to discuss and understand from the PBC directors about the level of assistance they were seeking from the NNTT.
- The NNTT asked the PBC directors for guidance about how the traditional boundaries would be mapped

# Identifying the traditional boundaries

- The NNTT prepared an 5 x A0 aerial and clear overlay for each of the totem clans from the NNTT and whiteboard markers in colours that matched those of the totem clans.
- There were five tables positioned around the community hall dressed in colours of each totem.
- For two days the Boigulgul representatives identified and coloured in on the overlay those areas of land that belonged to their totem.

# Mapping the traditional boundaries

- The NNTT team assisted Boigulgal people to identify points of traditional boundaries that did not match the points on the survey plan.
- These points were marked using GPS coordinates and recorded with pictures and detailed description of the markings.



# Outcomes

- The -Boigu township was divided into a kaleidoscope of colours representing the land ownership of the different totem groups.
- All of this information was collated by the NNTT into an interactive PDF document with different layers.



# The secret to the success of the Project

- The Boigu community was instrumental in the success of this project.
- Each day approximately 100 people attended and participated in discussions about the boundaries.
- The community hall was beautifully decorated throughout the week. The flag of each totem hung behind the main table.

# Next Steps

- There are still 2 disputes that remain outstanding. These disputes are between different totem groups about land ownership.
- The RNTBC is working out a framework and process to resolve these issues.
- Map the rest of the Boigu.

# **Magani Lagaugal (Torres Strait Islanders) Corporation**

## **The Dispute Resolution Council**

# Background

- DATSIP wanted to negotiate an Indigenous Land Use Agreement for 5 lots to construct social houses on Iama.
- The Social Housing ILUA involves the grant by TSIRC to the State of a 40 year Social Housing Lease and the construction of new social houses.
- The PBC held a community workshop on Iama 26-27 February 2016 to undertake consultation and consent with the requisite common law native title holders.
- At this meeting the PBC received a notice of a dispute concerning the identity of the traditional owner for lots 34, 105 and 106.



# Consultation and Consent

- Disputes about the Traditional Owner who can make the decision to give ILUA consent means the necessary consent could not be provided.
- The consultation and consent process revealed some disputes as to the location of traditional boundaries and/or identity of common law holders (Traditional Owners) for some parcels of traditional land.
- There remained a dispute about the identity of the Traditional Owners who, under traditional law, can actually give the consent.

# Mediation under the Rule Book

- Under the PBC's rule book, the PBC must follow a dispute resolution process where such disputes arise.
- Assistance was sought from the NNTT to help with a first stage of dispute resolution involving mediation.
- The mediation was unsuccessful. Under the Rule Book, this meant that the next step for the PBC was to have the dispute resolved by a council of elders.

# Planning and Process

- At Iama, all land, including that in the village, and in the intertidal zone, is owned by named individuals who have inherited the land on behalf of their families.
- The PBC identified the relevant Iamalaig and Tudulaig who were not living on Iama and that would need to attend the meeting.
- Over 2 days with assistance from the NTO and a facilitator the Iamalaig and Tudulaig who attended the meeting and workshopped how to resolve this dispute.

# Establishing the Dispute Resolution Council

- The critical thing was that community needed to agree about the process in establishing elders, how to identify elders and how to choose elders.
- The community agreed to break out into apical ancestors or family groups and discussed a number of questions posed by the facilitator.
- The community decided:-
  - What attributes the members on the Dispute Resolution Council needed.
  - Process of selecting members on the Dispute Resolution Council.
  - The type of information disputing parties should present.

# Decision Making Process

- This was the first time the Dispute Resolution Council had been brought together to resolve any native title land disputes as per the PBC's Rule Book.
- The Dispute Resolution Council briefly discussed the practice and procedure they would take for the purpose of resolving the disputes fairly and in a timely manner.
- The Dispute Resolution Council made a decision. Unfortunately, one of the disputing families was not happy with the decision.
- The community supported the decision of the Dispute Resolution Council and suggested that the disputing families try and go sort it out amongst themselves. This did result in an agreement between the families about moving forward.

# Next Steps

- The Iamalaig/Tudulaig community asked for a traditional boundary project to mark out their traditional land boundaries to prevent disputes like these continuing on for generations.