



The Pormpuraaw ILUA

Presented by Kirstin Malyon, Cape
York Land Council and Jenny
Humphris, MacDonnells Law

Community snapshot

- Situated on Edward River, approx. 500 km from the tip of Australia
- 2011 census- 662 people/600 indigenous
- 160 houses
- Council office
- State offices- Jobfind and housing
- Privately run Café/kiosk
- Government run supermarket
- Club operated by an Aboriginal corporation

Land Tenure

- Most of the underlying tenure is Deed of Grant in Trust (DOGIT) land held by the Pormpuraaw Aboriginal Shire Council in trust “ for the benefit of Aboriginal inhabitants and for no other purpose whatsoever” under Land Act 1994 (Qld)
- Some State owned reserves in town eg. school, police station.
- Some leases granted under the Aboriginal and Torres Strait Islander (Land Holding)Act 1985 (“Katter “leases)
- Also leases to State to build social housing

Land Regulation

- Under Land Act 1994
 - Trustee of DOGIT must manage and maintain it.
- Under Aboriginal Land Act 1991 (ALA), Trustee of DOGIT can:
 - grant leases > 99 years to allow for home ownership to Aboriginal persons or their spouses
 - Grant leases > 99 years for business.
- Leases can be mortgaged (unlike leases under Land Act 1994)

Other Regulation

- Development Laws
Sustainable Planning Act 2009 (Qld), Planning Scheme, Building codes
- Wild Rivers Act 2005
- Wet Tropics World Heritage Protection & Management Act 1993
- Vegetation Management Act 1999
- Local Laws
- Aboriginal Cultural Heritage Act 2003
- Native Title Act 1993

Native Title

- Pormpuraaw is within the Cape York United No. 1 Claim
- Traditional Owners for the township are the Thaayorre People (comprise approx. half the indigenous residents)
- Other half of indigenous residents predominantly identify as Mungken People.

Starting a Business in Pormpuraaw

Business Owner

- Business owner lodges an Expression of Interest with Council as trustee
- Council as trustee must consult with community
- If lease exceeds 10 years, business owner must apply to Council as local government/planning assessment manager for development approval

Council/Trustee

- Council can agree to grant a lease > 99 years, subject to the business owner addressing native title

Native Title Party

- An ILUA would be required under which the Native Title Party's consent is sought

ILUA Township Approach

- State identified significant practical challenges (time /cost) faced by private /public entities and the native title party to address native title on a case by case basis.
- From a doing business perspective native title was often seen as insurmountable because of the need for an ILUA.
- Also local people couldn't own their homes unless an ILUA was negotiated.
- State approached the Cape York Land Council in 2014 proposing a Township ILUA to provide a process for addressing future private and public development in the town area.
- 6 months later Council joined the negotiations
- 18 months later ILUA signed

ILUA

- Parties-
 - Registered Native Title Claimants for the Cape York United Claim; Traditional Owners of Pormpuraaw; State of Queensland; Council.
- Purpose to facilitate-
 - Home ownership by residents
 - Future social housing for the community
 - Provision of State and Council infrastructure to provide services
 - Business and development
 - Capacity building of TOs

Consent to Future Acts

- Grant of Leases and development
- Development was categorised and upfront consent provided to certain development relevant to where it was to be located, the purpose and the length of the lease.
- Consent to other development – case by case and could be refused.
- Third parties can opt in to the consent process- obviates need for separate ILUAs/removes a hurdle towards business and home ownership.

Challenges in Negotiations-Council's Perspective

Managing Relationships

- Between TOs/Council when the lawyers left town
- Between non TO Aboriginal inhabitants who comprise approx .half of the inhabitants of the town and TOs. Council mindful not to alienate people but at the same time recognise and properly compensate TOs as the holders of native title

Managing Conflicts

- Council has multiple responsibilities/roles
 - local government
 - trustee of DOGIT
 - housing service provider
 - others (post office, funeral services, administrative assistance etc)
- Local government- responsibility to manage facilities and deliver services
- Trustee-must deal with land for benefit of Aboriginal inhabitants.

Managing Councillor conflicts

- Local Government Act 2009 requires Councillors to declare conflicts of interest or material personal interests.
- As Councillors must act in best interests of Council and community as a whole.
- Three Councillors were also TOs.
- Where Councillor is also a TO and under an ILUA with Council could stand to obtain a benefit (compensation as part of TO group)- potential material personal benefit.

Managing Conflicts

- To protect Councillors from assertions of conflict and to maintain the integrity of negotiations, TO/Councillors did not participate in negotiations on behalf of Council or the TOs.
- Dispensation from Minister was required under the Local Government Act 2009 to allow the TO/Councillors to vote on ILUA.

Maintaining confidentiality of negotiations

Small town/parties with multiple roles and capacities/ Council is relied upon as the provider of all information=

confidentiality difficult to maintain !

Managing Cost

- Because land is DOGIT/not rateable-Council has no rates base.
- Reliant almost entirely on government funding to survive.
- Could see the benefits of ILUA and wanted to build capacity of TOs through income but financially constrained.
- Council compensation had to be “cost neutral”.
- Compensation was apportioned according to capacity to pay and with the ambition of building local TO capacity.

