

## FACT SHEET



### CAVEATS ON ILC-GRANTED LAND

From time to time, the ILC receives enquiries regarding caveats on land granted to Indigenous organisations by the ILC. This fact sheet provides information on caveats, some frequently asked questions and provides examples of the flexible use of caveats to help support Aboriginal and Torres Strait Islander people generate sustainable Indigenous benefits from their land.

#### What are caveats?

A caveat is a formal notice of interest in land. On granting land to an Indigenous corporation, the ILC lodges a caveat on the public register of title deeds, registering the ILC's on-going interest in the land.

#### How is the ILC able to place a caveat on ILC-granted land?

Section 191D of the *Aboriginal and Torres Strait Islander Act 2005* allows the ILC to buy and grant land to Indigenous corporations and to place terms and conditions when granting land.

#### Why does the ILC place caveats on ILC-granted land?

The caveat is put in place to protect ILC-granted land from being sold or transferred to another owner without prior agreement by the ILC. This helps ensure that the property continues to deliver benefits for Indigenous people remains in Indigenous control and continues to be used for the purpose for which it was originally acquired and granted.

#### Does a caveat mean we do not own the land?

**No.** Once land has been granted by the ILC to an Indigenous corporation, that Indigenous corporation is the full owner of the land. The caveat does not affect an Indigenous corporation's normal, everyday use and enjoyment of the land. The caveat only provides a role in notifying the ILC should the Indigenous corporation move to sell, transfer or have any registered dealings (such as registering a lease over the title) with ILC-granted land. *It does not give any additional powers to the ILC.*

#### Is there flexibility in how caveats are used?

**Yes.** If Indigenous landowners want to lease, sub-lease, mortgage or sell some of the ILC-granted land, you should to talk to the ILC about your proposal

The ILC is committed to continuing long term, constructive partnerships with Indigenous corporations after land has been granted, to continue to assist the corporation to achieve land-based benefits. If a

new proposal builds on the economic, environmental, social and/or cultural benefits the land already delivers, or helps an Indigenous corporation to better manage its assets, the ILC will seriously consider supporting the group to execute its plans by removing or temporarily 'lifting' the caveat to allow the proposed activity to occur.

The ILC takes a flexible approach and will work with Indigenous corporations to realise their goals. In considering a proposal the ILC looks at:

- The aspirations of the landholding group and relevant Traditional Owners for the property and whether the proposed change would provide a greater benefit to Indigenous people.
- The risks that may be involved in the proposal.
- Whether the proposed change will sustain existing benefits and maximise these benefits for future generations.
- The status of the property.

Attachment A provides some examples of types of proposals that have been presented and developed with the ILC to allow the achievement of greater Indigenous benefits.

Groups are encouraged to contact their Divisional Office as early as possible if they want to discuss caveats on ILC-granted land.

### **Examples of flexibility on caveats over ILC-granted land**

#### ***Consenting to Mortgaging***

The ILC grants land to an Indigenous organisation 4 years ago. Since this time, the group has delivered strong social, cultural and economic benefits to the local Indigenous community. The group has experienced significant growth in its services over time, resulting in a need for additional business space. The group sought the ILC's consent to mortgaging the ILC-granted land, enabling the group to secure a commercial loan and build a new service centre.

The group has strong governance, has managed the land well, and has a strong financial plan and business model to support its growth. As a result the ILC temporarily removed the caveat, allowing the lending bank's mortgage to be registered.

#### ***Registering of other interests***

An Indigenous landowner plans to establish a Bio-Bank site on land granted to them by the ILC. The *Bio-Banking Agreement* allows the group to generate biodiversity credits through managing their land for conservation. The group's pursuit of the Bio-Bank agreement is aligned with the original acquisition and grant purpose of the land which is generating a financial return that allows the group to preserve the land in its natural state. A *Bio-Banking Agreement* between the landowner and the State Government registered on the title of the property is required.

To support this, the ILC temporarily removes the caveat, allowing the *Bio-Banking Agreement* to be registered on the land title. In doing so, the ILC recognises the viability and benefits of the Indigenous landowner's business model, including the longer-term benefits to the land and the security of the cultural and environmental values of the property.

### ***Sale of Property***

An Indigenous organisation owns and manages its ILC-granted land over a 10 year period. During this time the group's business model shifts significantly in order to respond to the needs of its clients, as well as changes to its funded programs. As a result, the organisation no longer needs a specific sporting facility and is experiencing difficulties in sustaining the under-used property. The changed business focus also creates an increased need for accommodation to support its domestic violence services including a shop front for its counselling services and a Women's Shelter.

The ILC works with the group to review its accommodation needs and the Indigenous benefits being generated. The ILC consents to the sale of the property and removes the caveat, with the proceeds to be invested in the re-development and expansion of the organisation's other properties, meeting the contemporary business needs of the organisation. In approving the request, the ILC is confident in the organisation's governance and business viability, as well as its ability to increase benefits to the Indigenous community.

### ***Land-Based Sub Leasing***

A 90,000ha grazing leasehold property is purchased by the ILC for cultural reasons and granted to an Indigenous organisation, established specifically to hold title to the land. Membership of the organisation consists of Traditional Owners. Throughout the ownership period, the landholding body experiences difficulty in generating an income from the property and over time the presence of Traditional Owners on the property reduces. Although the land grant results in Traditional Owners owning a property with significant cultural and environmental values, it is not generating other benefits. The Traditional Owners express their priority is to protect cultural sites, but they have no aspirations to undertake other property-based activities.

The ILC consents to a 15 year sub-lease to another land based enterprise group, whose membership also includes Traditional Owners. This lease now sees the property being managed for diverse uses including; conservation, cattle mustering, land management and tourism. Under the new sub-lease arrangements the Lessee provides Indigenous training and employment opportunities, income for the Traditional Owners to meet landholding expenses and improved roads and infrastructure. Cultural activities by Traditional Owners on the property also increase.