



Australian Government
Office of Township Leasing

Mr Wayne Bergmann
Chair
Expert Indigenous Working Group
COAG Investigation into
Indigenous Land Administration and Use
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600


Dear Mr Bergmann,

Thank you for the opportunity to provide the Expert Indigenous Working Group with advice on current Indigenous land administration and in particular on township leasing in the Northern Territory and on what could be improved to support economic development outcomes for Aboriginal and Torres Strait Islander peoples.

For background the position of the Executive Director Township Leasing was established in 2007 under section 20B of the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)* to hold and administer section 19A whole of township leases on behalf of the Commonwealth in the Northern Territory. Further details are in my submission.

I was appointed as Executive Director in February 2013 for a period of five years following my temporary appointment to the role in 2011. The role of the Executive Director is a challenging and interesting role, given the remote localities subject to the lease, the varying types of leases I administer and the diversity of issues associated with the different leasing arrangements.

In my submission to the Working Group, I have highlighted some key successes of the Traditional Owners of township lease communities and outline some of major challenges in achieving meaningful economic development for the Traditional Owners and the communities generally.

I would be pleased to meet with the Working Group to provide more detail.

Yours sincerely



Greg Roche
Executive Director
Township Leasing

June 2015

Background - Township Leasing

In 2006 the *Aboriginal Land Rights Act (Northern Territory) Act 1976 (ALRA)* was amended to enable Aboriginal Land Trusts in the Northern Territory to voluntarily grant a lease of a township to the Executive Director Township Leasing for a period of up to 99 years. The amendment sought to promote individual property rights by enabling the Executive Director to subsequently grant long term tradeable subleases without the necessity of each sublease being negotiated individually with Traditional Owners and approved by the relevant Land Council. Township leases do not extinguish the underlying Aboriginal land title. Traditional Owners receive an upfront rent payment which they can use to undertake economic development activities. The community is surveyed and administrative lots are created and approved by the NT Surveyor-General. Subleases and underleases are registrable with the Northern Territory Land Titles Office (LTO).

As Executive Director I can grant subleases and licence agreements to occupiers and developers of land and I can also facilitate private home ownership. Subleases may be transferred or surrendered or assigned, sublessees may enter into formal underlease and tenancy agreements, and I can support private finance through granting a right of access and facilitating the registration of mortgages secured against subleases. Together with my staff in the Office of Township Leasing (OTL) I have implemented sublease assessment procedures and a standardised rental methodology developed in consultation with industry professionals.

Executive Director Township Leasing

The position of Executive Director Township Leasing is an independent statutory office. The position was established to hold and administer leases. I do not negotiate leases: such negotiations are conducted by the Department of the Prime Minister and Cabinet. I currently administer three township leases over six communities: Wurrumiyanga, Milikapiti and Wurankuwu on the Tiwi Islands and Angurugu, Umbakumba and Milyakburra in the Groote Eylandt archipelago. Since the commencement of the township leasing system my predecessor and I as Executive Director have executed over 260 subleases over approximately 1000 lots. Total sublease revenue collected by the OTL in 2013-14 was \$1.6 million (inclusive of GST).

The Consultative Forum

A Consultative Forum is created in each township lease. The Forum is convened by the Executive Director and consists of representatives of Traditional Owners and the relevant Land Council. The Forum can assist me by establishing guidelines for land use matters and assisting with dispute resolution. It plays an important role in keeping the community informed of proposals for new developments. The Forums assist in improving the prosperity and development of a township by ensuring I have the benefit of hearing the Traditional Owners and community's perspectives and ideas when making decisions under the lease. Both my predecessor and myself as Executive Director have at all times acted in accordance with the wishes of the relevant Consultative Forum.

Case Studies - Economic Development Activity in Township Leased Communities

Following the signing of the Nguiu (Wurrumiyanga) township lease in 2007, the Traditional Owners established a commercial business arm, Mantiyupwi Pty Ltd, to invest the upfront payment of \$5,000,000. Mantiyupwi Pty Ltd is now in its seventh year of operation. It has entered into several subleases for lots within Wurrumiyanga, including for a highly successful supermarket and takeaway outlet. The supermarket was built using funds drawn in part from the township lease upfront rental payment. The balance of the funds was raised by a loan from a mainstream commercial bank secured by a mortgage over the store. The store is managed by Outback Stores. Mantiyupwi Pty Ltd included in its supermarket complex four small retail outlets. They have been under-leased to third parties who operate a takeaway food outlet, a laundromat, a games parlour and an outlet for the Traditional Credit Union. Mantiyupwi Pty Ltd recently purchased a workers camp from the Northern Territory Government at Wurrumiyanga and is in the process of converting it into office and overnight accommodation. Mantiyupwi Pty Ltd also owns Tiwi Tours and operates a hire car business on Bathurst Island.

Groote Eylandt-based Aminjarrinja Enterprises Aboriginal Corporation is owned and operated by the Traditional Owners of Umbakumba. It facilitates training for local Indigenous workers and provides a variety of services related to the building and construction industry, essential services and the seafood industry. Aminjarrinja has completed renovations and rebuilds of 66 houses at Umbakumba and Milyakburra. It provides garbage collection for Angurugu and Alyangula as well as periodic maintenance for the Northern Territory Government in the electrical, refrigeration, plumbing and carpentry fields. Aminjarrinja is also investing in businesses within Umbakumba and beyond, including a motel in Darwin. Aminjarrinja runs its operations out of Umbakumba where it has secured a number of subleases over workshops and staff residences. It has utilised several funding sources to develop its business, including funds from the township lease which were used to purchase plant and equipment.

Key Issues

Township Lease negotiations

The then Executive Director entered into the first township lease with the Mantiyupwi Traditional Owners of Nguiu (Wurrumiyanga) on the Tiwi Islands in August 2007, followed by a lease over the communities of Angurugu, Umbakumba and Milyakburra in the Groote archipelago in December 2008. The most recent township lease was signed in December 2011 over Milikapiti and Wurankuwu in the Tiwi Islands. In 2011, the relevant Commonwealth Department, then the Department of Families, Housing Community Services and Indigenous Affairs, wrote to the Traditional Owners of nine communities in the Northern Territory through the relevant Land Councils, the Northern (NLC) and Central Land (CLC) Councils and offered to commence negotiations for township leases. The Land Councils response, undertaken without consultation with the relevant communities, indicated no interest in the proposal, although subsequently the Traditional Owners of Gunbalanya have negotiated a township lease in the presence of the NLC. This draft lease is currently being considered by the NLC.

The NLC and CLC are not supportive of the current township lease model. The CLC wrote to the Department in 2011 to suggest its own variant which proposed that a local Aboriginal association administer each township lease. The CLC does support the Executive Director holding individual section 19 leases on behalf of the Commonwealth. The NLC has indicated that it does not support any model which involves the Executive Director holding either a township lease or any other form of lease. The NLC believes that the same economic outcomes can be achieved through s19 individual

leases although there are concerns about its capacity to administer existing leases effectively. The NLC position also fails to acknowledge that a section 19 system does not allow for the whole-of-community approach that is inherent in a township lease. The NLC is entitled to its position, which I respect, however it has allowed its position of opposition to township leasing to compromise its ability to consider each township leasing proposal on its merits, particularly where the Traditional Owners, such as at Gunbalanya, support the existing model and wish to enter into a township lease. I am aware that the NLC has recently stated its support for a community entity holding a township lease: this shift is welcome but such an approach throws up a number of conceptual and practical issues in implementation which need to be addressed.

The success of township leasing on the Tiwi Islands and Groote Eylandt has only been possible with the support of the Tiwi and Anindilyakwa Land Councils. The OTL and I enjoy excellent relations with both Land Councils and it has been very frustrating to see the NLC in particular decline to enter into a partnership to assist the Traditional Owners and communities to fulfil their potential.

Although the Australian Government's position is that township leasing is the preferred leasing model to promote economic development, the Department of Prime Minister and Cabinet does not appear to sufficiently resourced the negotiation of any more than a handful of township leases at one time. Township leasing is a voluntary model and requires a significant amount of regular consultation with Traditional Owners and the wider community over an extended period of time in order to meet the requirements of the ALRA and ensure that should the Traditional Owners wish to enter into a township lease that they provide a fully informed prior consent. The Department does not have any staff dedicated to township leasing negotiations based in the Northern Territory and only a small team located in Canberra.

Home Ownership in the Northern Territory

Private home ownership is not for everyone, or even a majority of residents of remote communities. That noted, private home ownership has many benefits and should be a choice available to those with the means and interest to do so. Individual private home ownership on Aboriginal land in the Northern Territory has not progressed significantly since 2010. The initial granting of sub-leases to 15 private home buyers on the Tiwi Islands was achieved in part through Indigenous Business Australia (IBA) conducting regular community visits and workshops and the construction of purpose-built housing for home ownership. Regular one-on-one meetings enabled Tiwi prospective homebuyers to understand the concept of home ownership on Tiwi land which enabled them to make informed decisions.

I would recommend a review of the current home ownership implementation strategy for the Northern Territory and in particular propose an increase in activity by both Commonwealth and Northern Territory Government officials who should visit communities to both explain what private home ownership entails and to provide more aftercare service for existing home owners.

The review should also include updating the current home ownership incentives package; making the incentives more widely available to Northern Territory Government and mainstream lenders; and implementing a strategy to make available more low cost serviced land specifically for home ownership (on the issue of serviced land see further below). Existing homebuyers should also have more options to utilise the equity in homes to enable them to invest, complete upgrades of their homes or assist their children to buy a home.

The other key to making home ownership a reality is for the Northern Territory Government to implement without further delay its announced policy on the sale of existing public housing on Aboriginal land.

Reluctance of Government to pay commercial rents

The OTL and myself have assisted a number of Aboriginal organisations on both Groote Eylandt and the Tiwi Islands in their negotiations around the proposed construction and rental of office and staff accommodation for Northern Territory Government employees in those communities. These proposals have entailed a local Aboriginal organisation investing its own funds or borrowing funds from a mainstream bank to construct high quality office space and residential accommodation. Some of these negotiations have stretched over five years and have seen a number of Aboriginal organisations invest significant funds and effort in developing construction and business plans to meet Northern Territory Government requirements. In some cases the organisation was also required to fund significant upgrades to the power and water infrastructure managed by Northern Territory Government authorities. To date all of these negotiations have failed as a result of the parties not being able to agree on a suitable rental figure. It appears that despite the higher risks and building costs associated with construction on remote Aboriginal land the Northern Territory Government has not been willing to pay a higher rent than it pays in urban areas.

Shortage of affordable serviced land in communities

Another major impediment to both economic development and home ownership on Aboriginal land in the Northern Territory is the lack of serviced land in communities. In recent times both the Northern Territory and Commonwealth Governments have made significant investments in new public housing which, while desirable, has had the effect of utilising almost all of the available serviced land. My office has assessed several new development applications for the Tiwi Islands and Groote Eylandt, including proposals for petrol stations, government employee housing, land subdivisions, clinics and cultural centres. However feedback from developers continues to be that despite the simpler method of securing long term tenure that is now available through the township leasing process these projects are stalled, have been scaled down, or are not proceeding due to the excessive cost of servicing land or to upgrade existing essential services infrastructure. In several cases developers have indicated that these costs render the project commercially unviable. It is not uncommon to hear of quotes to service small development projects that are well into the several hundreds of thousands of dollars. On Groote Eylandt I understand that current water and sewerage loadings in Angurugu and Umbakumba are operating at or beyond what Indigenous Essential Services considers to be full capacity, leading to the situation where in consultations around the construction of a new clinic at Umbakumba the Northern Territory Government stated that it wanted to demolish the old facility purely to free up the water and sewerage capacity to enable the servicing of the new building. The old building has outgrown its use as a clinic however can still be used as office accommodation, of which there is a chronic shortage in Umbakumba.

I understand that one of the reasons for the excessive servicing costs in remote communities is that the Northern Territory does not have a Developer Contribution Plan for essential service infrastructure to allow for a more reasonable allocation of the costs of servicing land in remote communities. At Wurrumiyanga the Traditional Owners were required to purchase an electricity transformer costing over \$100,000 before the supermarket could be connected to services. I understand that for a similar development in Darwin this cost would be significantly less as the cost would be apportioned as part of Darwin's Developer Contribution Plan. I understand that a Remote Developer Contribution Plan would be more complex to administer than in Darwin, however such an effort would be worthwhile in pursuit of attracting greater private investment in remote communities.

Access to Private Finance

I am actively working with several major banks to identify practical steps to assist Aboriginal and non-Aboriginal organisations in relation to the issue of access to finance for projects located on Aboriginal land. In particular, a major issue is how Australian banks value Aboriginal leasehold land as the basis for secure lending. Although investment by private Australian banks has occurred where there are township leases, there is still the perception that lending for projects on Aboriginal land is fraught.

Although the banks concede that it is legally possible to secure their interest in township lease communities, there does not appear to be any general policy framework for financing by any major private banks on Aboriginal land and in particular for a township lease. The current reality is that, generally speaking, banks place no value on the assets built on Aboriginal land.

Alleviating the economic disadvantages facing those Aboriginal and Torres Strait Islander peoples who live in remote communities can only be accomplished through economic development. In moving forward Aboriginal people need the assistance of the Australian banking system which should undertake a collective effort to develop an Indigenous land banking policy. That policy should treat such land as comparable to freehold and recognise the value of long term leasehold improvements located on Indigenous land.

The Australian Government could assist with this process by offering financial incentives or act as a form of guarantor to those banks willing to provide finance for projects located on Aboriginal Land. I appreciate that many would view such a policy as undesirable, however the alternative is that the governments will have to continue to provide the majority of funding for building projects located on Aboriginal land.