



Australian Government
Office of Township Leasing

Independent Expert Panel
Northern Australia Infrastructure Facility

14 Oct 2024

Dear Panel Members,

The Office of Township Leasing (the Office) welcomes the opportunity to provide this submission to the review of the *Northern Infrastructure Facility Act 2016*. The Office partners with Traditional Owners across remote Northern Territory. We are experienced in delivering economic and social outcomes within remote Townships established on Aboriginal-held land.

The Township Leasing Model offers certainty of tenure, the reliability of long-term rental income streams and an enabling foundation for Township development. This foundation results in Traditional Owners building capability within their organisations, applying sound cultural decision making and, articulating and implementing their vision and aspirations for their communities. The Model places Traditional Owners at the heart of the decision making for their traditional lands.

Residents of Townships in the Northern Territory established on land held in communal Aboriginal title have a right to experience the same opportunities, services and facilities that are available to residents in other Australian towns and cities. Secure land tenure supported through sound land administration is the foundation upon which this right can be realised.

The model creates the opportunity for development. Programs such as NAIF provide access to the vital financial resources to make these opportunities reality. We are pleased to contribute to the review to ensure NAIF continues to be available and relevant for the future development of remote Northern Australia.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Pennie Talbot'.

Pennie Talbot

Executive Director of Township Leasing

2024 Review of the Northern Australia Infrastructure Facility Act 2016

Office of Township Leasing Submission

Introduction

The Executive Director of Township Leasing (EDTL) and the Office of the Executive Director, the Office of Township Leasing (OTL) welcome the opportunity to provide this submission to the Independent Expert Panel.

Our work is focused on enabling choices through empowered partnerships with Traditional Owners in remote Aboriginal communities in the Northern Territory. We seek to improve economic and social outcomes through activating land by providing secure, tradable tenure supported by sound land administration.

We hope that our experiences can assist in improving access to the Northern Australia Infrastructure Facility and other forms of project financing for Indigenous organisations in remote Northern Australia.

Township Leasing Model

In June 1976 the Australian Government introduced the *Aboriginal Land Rights (Northern Territory) Bill 1976* (ALRA). The bill gave Aboriginal people in the Northern Territory the opportunity to claim and receive title to traditional lands. Approximately 50 per cent of land in the Northern Territory is Aboriginal Land.

Land granted under the ALRA is held in communal ownership by an Aboriginal Land Trust on behalf of the Traditional Owners. The ALRA provides Aboriginal people the equivalent of freehold title over their lands providing them exclusive possession. The land is communally held inalienable freehold, which means it cannot be bought or sold, acquired or forfeited. Traditional Owners have been able to exercise veto rights for anyone accessing their lands through a permit system.

The ALRA under Section 19 enables Traditional Owners to grant an interest through an individual lease for residential, business, and other purposes to Aboriginal people and others. This process involves the Land Council engaging with other affected groups and requires the consent of the Land Council (which may only meet quarterly) and in some cases also the Minister. This process can be cumbersome, and the full consent process is again undertaken if the lessee intends to transfer or surrender its interest.

Township Leases

In 2006, the ALRA was amended, introducing Section 19A, enabling a Land Trust to voluntarily grant a lease over Aboriginal townships in the Northern Territory to an approved entity for a period from 40 to 99-years. The amendment sought to promote individual

property rights by enabling long term tradeable subleases to be granted without the necessity of each lease being negotiated through the S19 Land Council mechanism. In 2007, the statutory office of the Executive Director of Township Leasing was created through further amendment to the ALRA to fulfil the role of the approved entity. Importantly, a Section 19A lease does not extinguish underlying Aboriginal Land title.

The objective behind the Section 19A amendment was “to enable Aboriginal people to have the same opportunities as other Australians living in towns”. The purpose behind this ambition for equality remains a need to improve the wellbeing of all township residents. While the Executive Director does not have the ability to influence all factors that contribute to wellbeing, it is the case that secure land tenure is fundamental and necessary to achieving economic and social advancement.

The Township Lease Model has been designed to provide individual property rights that drive economic development by establishing a clear, transparent, and efficient land administration system on Aboriginal Land in the Northern Territory that provides certainty for individuals, businesses and lending institutions wishing to invest.

The Model allows Aboriginal Traditional Owners to grant a lease over a Township to the Executive Director of Township Leasing who then administers all land within the agreed Township boundary. Alternatively, the headlease can be granted to a ‘Community Entity’. The Executive Director or Community Entity is then able to grant long-term equitable, tradeable subleases to individuals, businesses, and organisations. It aims to provide certainty for investors by enabling efficient dealings in land such as transfers where required by a sale and recognising the rights of access for mortgagors.

Long term leases over a Township are intended to enable the headlessee to;

- develop the Township.
- implement a land administration system that allows for certainty of land tenure for housing and commercial development.
- introduce a streamlined development process; and
- improve the prosperity and wellbeing of its residents through creating the environment for development and investment, whilst protecting existing rights, titles, or other interests.

Township leases are voluntary and negotiated with the involvement of the relevant Land Council to ensure Traditional Owners give their informed consent as required by the ALRA. Once consent is provided, the Minister then approves the lease.

Where the EDTL holds the headlease, a Consultative Forum is established comprised of Traditional Owners. The purpose of the Consultative Forum is to provide advice and consent

to the Executive Director on land planning, lease applications and all relevant activities linked to the administration of the lease.

Leases Held By The Executive Director

The Executive Director currently holds 4 Whole of Township leases over 5 Townships. The table below provides the details of the location and duration of these leases.

	Community	Headlease	Location	Date of Execution	Term
1	Wurrumiyanga (Nguiu)	Wurrumiyanga	Bathurst Island	30 August 2007	99 years
2	Milikapiti (Snake Bay)	Milikapiti and Wurankuwu	Melville Island	22 November 2011	99 years
3	Wurankuwu (Ranku)	Milikapiti and Wurankuwu	Bathurst Island	22 November 2011	99 years
4	Mutitjulu	Mutitjulu (Sublease)	Central Australia	16 March 2017	67 years
5	Pirlangimpi (Garden Point)	Pirlangimpi	Melville Island	26 June 2017	99 years

The EDTL and OTL also holds leases on behalf of the Commonwealth Government over the 17 Alice Springs Living Areas (Town Camps) and a number of Commonwealth assets and Housing Assets situated in Indigenous communities (e.g. early childhood centres, safe houses, Government Engagement Coordinator complexes, offices, and residential accommodation).

Leases Held By Community Entities

In 2016, the ALRA was amended to enable capable community-controlled organisations to hold a Township Lease. A Community Entity must be an Aboriginal Corporation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

The first of these was over the Township of Gunyangara (Ski Beach) near Gove. In 2022, there was a transfer of the Groote Eylandt lease from the Executive Director to a corporation owned by the Warnindilyakwa Traditional Owners. This was the first time a Township Lease had transferred from being held by the Executive Director on behalf of the Commonwealth to a community-controlled organisation.

	Community	Community Entity	Location	Term
1	Gunyangara	Ngarrariyal Aboriginal Corporation	Gove	99 years
2	Groote Eylandt (includes 7 communities; Angurugu, Milyakburra, Umbakumba, Little Paradise, Bartalumba Bay, Malkala and Four Mile)	Anindilyakwa Royalties Aboriginal Corporation	Groote Eylandt and Bickerton Island	80 years
3	Jabiru	Gundjeihmi Aboriginal Corporation Jabiru Town (GACJT)	Arnhem Land	99 years

The Executive Director is committed to facilitating the transition to community control where this is requested by Traditional Owners. Existing leases, where transfer provisions are not included, are being amended to enable this choice for Traditional Owners in the future.

Township Leasing Framework

The Township Leasing Framework is a suite of documents developed by OTL to capture the Model's strategies, policies, processes, and approaches. It informs and guides the achievement of the Township Leasing Model's overarching objective that residents of Townships established on Aboriginal land experience the same opportunities, services and facilities that are available to residents in other Australian towns and cities.

The Framework focusses on creating an environment where Traditional Owners are central to decision making about land use in their Townships. This ensures that in implementing the Township Leasing Model, from the initial engagement, through the negotiation of headlease agreements, the delivery of land administration arrangements and realisation of economic development opportunities, Traditional Owners will be empowered to manage and administer arrangements on their land.

The Framework is a work in progress with key documents and processes continuing to be developed and articulated. Currently we have created a sophisticated land administration database which records all transactions and decision-making in relation to land use. Access to

the database infrastructure has been provided to a community entity cost free to support their land administration.

OTL has also developed a comprehensive procedure manual, tools related to transitioning a lease to community control, approaches to supporting Traditional Owners to articulate their vision for their communities including Masterplanning and communications, and a set of Engagement Principles to enable Traditional Owners to engage with larger developers on an even playing field. Areas where we continue to develop include capability development methodology, measurement and evaluation, and support for potential homeownership. We are actively working in each of these areas to build the tools and supports necessary to support Traditional Owners to fully activate the benefits of the Township Leasing Model.

The OTL intends that the Framework will be made available to all organisations managing or supporting Township Leasing. This will ensure consistency and build efficiency in the Township Leasing ecosystem.

Review of the Northern Australia Infrastructure Facility Act 2016 Terms of Reference

In reviewing the Terms of Reference for the Review, it is clear that the Office of Township Leasing is most concerned with those that are applicable to First Nations people, in particular;

‘opportunities to support greater engagement and inclusion of First Nations people and organisations in NAIF projects, including procurement and employment, and as project proponents’

We note that within the discussion paper accompanying the request for submissions, two relevant questions are posed;

Discussion Area 9: How can NAIF best support the needs and interests of First Nations businesses, communities and First Nations capacity building through its investments?

Discussion Area 10: Is the Indigenous Engagement Strategy approach sufficient to support First Nations procurement and employment? How might this approach be improved or adapted?

The following section of our submission will focus on these 2 discussion areas.

Supporting the needs and interests of First Nations businesses, communities and First Nations capacity building through NAIF investments.

The issue of capacity building in the remote Indigenous context is complex and challenging. To be effective, it takes time, resources and consistent, early and genuine engagement with Traditional Owners and other community members. Most development and other project proponents do not have the structures in place to make the necessary commitment to create the change they originally (and genuinely) aspire to in their planning.

To address this within the communities we partner with, OTL has developed a set of Engagement Principles to guide development proponents in their discussions and

negotiations with Traditional Owners. The principles, based on the doctrine of free, prior and informed consent, set clear expectations of how proponents will engage with Traditional Owners and present their proposals. They allow for access to the necessary information to make an informed decision regarding the proposal, including the potential to engage independent experts (at the cost of the proponent) to analyse any aspects of the proposal.

The aim of the Engagement Principles is to create a level playing field for First Nations people and organisations when considering development on their land. We believe that this approach will result in both better outcomes for all parties, and potentially improved approval and agreement making processes.

Being able to partner with Traditional Owners in this way will enable early identification of opportunities and barriers to participation and capacity development. We recommend that, where NAIF projects are proposed on Indigenous held land, greater emphasis is placed on active Indigenous participation and engagement beyond the existing Indigenous Engagement Strategy approach. This will require proponents to build organisational structures which are focused on partnership and developing local capability.

Case Study - The acquisition of Port Melville operations

To provide some context into the type of opportunity we believe should be within the NAIF scope, a case study of the recent acquisition of the Port Melville operations by a 100% Tiwi owned business is instructive.

Port Melville, a deep-water Port situated on Melville Island, is within the Pirlangimpi Township Lease Boundary. A sublease from the Executive Director over the Port is held by Port Melville Pty Ltd (PMPL). They in turn provided an underlease to NT Port and Marine Pty Ltd (NTPM, an Australian company wholly owned by a Singaporean parent), who hold the operating licences and permits and run the Port operations. In December 2022, NTPM was placed in administration following the collapse of its parent company in Singapore.

The Port provides vital infrastructure for the Tiwi Plantations business to access offshore markets for its timber products. There is also a substantial maritime fuel storage capacity which has recently been utilised by Defence and Border Force vessels. The Port has been identified as being a strategically important asset by Defence.

The Tiwi Islands current and future economy is reliant on this substantial infrastructure. Without it, the future of its forestry business and other opportunities linked to ancillary opportunities such as increased fuel storage and supply, vessel provisioning, renewable energy and activities linked to the Defence Strategic plan would not be possible. The impact of closure of the Port on the Tiwi economy would be significant involving the loss of over 50 jobs and the potential to realise any of the future opportunities.

OTL worked closely with PMPL, Tiwi Traditional Owners and other stakeholders to undertake the necessary due diligence and access finance for the acquisition of NTPM. As part of this

process we (and PMPL representatives) were referred to NAIF on a number of occasions. Unfortunately, the fact it was an acquisition, and the relatively small amount of financing required meant the project did not fit neatly within the NAIF parameters.

Unfortunately, it is likely that the Tiwi Port opportunity is typical of many infrastructure investments in remote First Nations situations. We expect that in many locations, developments will be below the \$10 million threshold, with longer break-even timeframes and potentially longer payback scenarios.

However, the potential long-term impact that these projects have on the communities they support are substantial. They can provide meaningful employment where previously none was available. This in turn provides hope for local people, encouraging participation in education, building local economy and offering further small enterprise activity. As such, we would encourage the NAIF Review Panel to consider how investment parameters could be adjusted in circumstances where communities may have limited access to alternative financing arrangements and projects have the potential for intergenerational impact.

Homeownership

Finally, OTL would like to highlight the need to encourage home ownership in remote communities. The Township Leasing Model provides the mechanism for individual ownership, however after an initial take up in Wurrumiyanga around 2010, no further activity has occurred. We are currently working with the National Indigenous Australians Agency and Indigenous Business Australia to establish an innovative homeownership model which recognises the unique challenges and thin markets in these locations.

We believe that facilities such as NAIF could have a role to play in this area and would welcome the opportunity to explore this further.

Conclusion

Thank you for the opportunity to provide this submission. We would be happy to provide further details on Township Leasing or anything raised in this submission. Please contact Tom Jenkins, Director Strategic Reform, tom.jenkins@otl.gov.au if you want to discuss.