

**National Indigenous Australians Agency
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Evaluation of the Township Lease Measure

**Final Report
25th October 2021**



Prepared for:

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Evaluation of the Township Lease Measure – FINAL REPORT

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Acronyms

ABA	Aboriginals Benefit Account
CLC	Central Land Council
Executive Director	Executive Director of Township Leasing
IBA	Indigenous Business Australia
NLC	Northern Land Council
NIAA	National Indigenous Australians Agency
NTER	Northern Territory Emergency Response
OTL	Office of Township Leasing

Terminology

Certain terms and phrases used since Township Leasing commenced have evolved and are often interchanged. For the purposes of this report, we use the following terms:

Community	A community populated predominantly by Indigenous Australian people.
Community Entity Model	The township leasing model administered by a Community owned, controlled and operated Entity.
Executive Director Model	The township leasing model administered by the Executive Director.
Executive Director	The statutory office holder responsible under the Land Rights Act for entering and administering township leases under the Executive Director Model.
Indigenous	A person who is Aboriginal and/or Torres Strait Islander, who identifies as Aboriginal and/or Torres Strait Islander and is accepted in their community as Aboriginal and/or Torres Strait Islander.
Land Rights Act	Aboriginal Land Rights (Northern Territory) Act 1976.
The Measure	This phrase is used in the 2015 Northern Australia White Paper, as well as in the draft Statement of Work for this project to refer to township leasing generally. We refer to this as “township leasing”.
Transition Model	The Executive Director leasing model with the intent that the head lease will be transferred to a community entity, when appropriate.
Office of Township Leasing	The office set up to assist support the Executive Director, funded from the ABA and with staff employed through the NIAA.
Township leasing and township lease	Leasing arrangement or a Lease that covers an entire Township with sub-leases administered under either the Executive Director Model, the Community Entity Model, or the Transition Model.
Section references such as S.19 and S.19A	Refers to the relevant section of Aboriginal Land Rights (Northern Territory) Act 1976.
Traditional owners	A group of Indigenous people who have ‘primary spiritual responsibility’ for sacred sites on a piece of land, and who are entitled by Aboriginal tradition to hunt and gather on that land.
White Paper	Our North, Our Future: White Paper on Developing Northern Australia, Commonwealth Government, 2015.

1 Executive Summary

1.1 Introduction

The Office of Northern Australia, within the Department of Infrastructure, Transport, Regional Development and Communications, leads the Commonwealth's northern Australia agenda initiatives and policy. The Office of Northern Australia issued the **Our North, Our Future: White Paper on Developing Northern Australia**¹ (referred to as the White Paper) as part of their plan *"to build a strong, prosperous economy and a safe, secure Australia."*²

The White Paper states that *"Secure land rights underpin investment and development"* and that *"The Commonwealth Government will work with Indigenous communities, business and northern jurisdictions to simplify and modernise land arrangements in the north. This will create more certainty for investors and increase the value of land for all Australians"*.³

The Commonwealth Government introduced township leasing in 2006 with the intent to offer innovative land administration and tenure on communally held freehold Aboriginal owned land administered under the Lands Rights Act. A new section, S.19A, was inserted into the Land Rights Act, enabling an entity to hold a head lease over an entire township. This was to facilitate home ownership and attract economic development within the township lease boundary as part of a focus by the Commonwealth Government on increasing the level of economic participation by Indigenous people.

Prior to township leasing the main leasing option was a S.19 lease. S.19 leases are granted over specified areas of land. They are administered by the Land Councils and require traditional owners' consent. In the lead-up to the introduction of township leasing, there were several issues around S.19 including a low percentage of coverage of lots in communities, poor rental returns and inconsistencies across the Northern Territory leading to a view that this form of land tenure was holding back development.

Township leasing sees a head lease issued over an entire township area with the head lessee having control over land use by issuing sub-leases.

Initially the only township leasing option was for the head leases to be held by the Executive Director of Township Leasing (a Commonwealth Statutory Officer Holder), under what we refer to as the Executive Director Model. This represented a major shift from S.19 leasing as it resulted in the ultimate decision making on land use moving from the traditional owners to a Commonwealth Officer, albeit after consulting with traditional owner stakeholders through a Consultative Forum.

In 2017 the Community Entity Model became available which allowed an Aboriginal corporation established by traditional owners to hold the head lease. In addition, there is a Transition Model that allows a community to enter into a township lease using the Executive Director Model before transitioning across to the Community Entity Model when appropriate.

Accordingly, township leasing represents a significant reform as it has potential application to all communities on Aboriginal land in the Northern Territory, is intergenerational and results in a shift of the ultimate authority for land use decision making. Through regular forums township leasing

¹ In June 2015 the Commonwealth Government released Our North, Our Future: White Paper on Developing Northern Australia. The White Paper outlines the Government's plans to unlock economic development opportunities in Northern Australia. <https://www.industry.gov.au/data-and-publications/our-north-our-future-white-paper-on-developing-northern-australia>

² Department of Infrastructure, Transport, Regional Development and Communications website <https://www.infrastructure.gov.au/territories-regions-cities/regions/northern-australia>

³ Our North, Our Future: White Paper on Developing Northern Australia, p.15.

takes a whole-of-township approach to community development, in a manner similar to local government in other jurisdictions around Australia.

There has been no formal evaluation of the township leasing and land administration measures to date. Accordingly, NIAA engaged Yaran to conduct an evaluation of township leasing. The purpose of the evaluation was to document the findings, implications and recommendations against the core requirements which are:

1. Establishing the benefit of township leasing towards improving the social, cultural and economic wellbeing of Aboriginal and Torres Strait Islander people and communities.
2. Establishing the effectiveness and efficiency of township leasing in increasing certainty for investors, increased economic opportunity for Aboriginal communities, and increased home ownership.
3. Assessing the different township leasing models in supporting uptake and implementation of township leases.
4. Assessing the administrative efficiency of the township lease model.
5. Understanding and providing recommendations on how the initiative could be modified or scaled in the future to achieve future impact, beyond the evaluation period.

1.2 Methodology

This evaluation used a mixed-methods approach working within a theory-based evaluation framework. A program logic model guided the evaluation design, including enabling the testing of key assumptions and the extent to which outcomes have been achieved to assess the potential for longer term benefits.

Evidence was collected at several levels of the program logic to help understand success. Following the principle of mixed methods, both qualitative and quantitative data was collected including through:

- Semi-structured interviews and focus groups with a broad range of stakeholders including representatives of townships that have a township lease in place.
- A literature review to draw on what is already known about township leasing and to better understand the background, characteristics and outcomes (both qualitative and quantitative).

The evaluation was limited by several factors including:

- The evaluation only considered communities with township leasing with no examination of, for example, communities that may have considered it, but decided not to proceed.
- Difficulty in separating the impact of land tenure reform from the incentives offered.
- Limited township leasing stakeholders to interview due to a restricted sample size, including only one community entity township lease.
- Lack of quantitative data to measure the cost effectiveness of township leasing.

1.3 Evaluation Findings

Overall

The overall purpose of township leasing is to improve the social, cultural and economic wellbeing of Indigenous people and communities in the Northern Territory through improved and more secure land tenure. This objective has partially been met with direct outcomes being significantly lower than what was expected. Township leasing has acted as a catalyst for broader positive improvements in land tenure management generating economic benefits for other communities across the Northern Territory.

The main factor that contributed to less than expected direct outcomes is that by 31st May 2021 only two out of approximately sixty-five potential mainland communities and all six island communities had signed a township lease. This poor uptake was despite substantial incentives being offered to encourage communities to sign and the reasons for this are explored further in Key Findings.

Where township leasing has proceeded, it generally has gone well with land tenure becoming more systemised and well defined through a whole of community approach to infrastructure and economic development. This is reflected in that communities in five of the six township leases consider the measure to be worthwhile overall. The remaining community was not available to meet but appears to have made little progress.

The key advantages for a township lease are the up-front incentives and that it provides a better-defined framework which considers all aspects of a township's development.

The financial incentives for communities to enter a township lease did provide a direct benefit to the communities involved, although this was not a result solely of changed land tenure. However, the reform has not attracted new investment nor resulted in any significant new home ownership outcomes. While township leasing addresses one barrier to private business and home ownership by providing security of tenure within a township framework, it was not designed to address other key components required for the outcomes sought.

Township leasing has contributed to positive outcomes for land administration across the Northern Territory with widespread acceptance that leasing is now part of land use in communities. Support for leasing has been built through education on the concept, increased level of certainty, professionalising services and negotiating a system for the receipt and payment of commercial rents, which has been adopted for S.19 leases.

Some communities now appear to be drawn to the additional benefits of the Community Entity Model, such as the enhanced level of self-determination, which has renewed interest in township leasing as an option. It must be recognised that there is a long lead time prior to signing a lease and the communities that signed in 2017 had all been considering township leasing for many years and were ready to advance when the option became available. Gunyanara, as the only Community Entity Model as at 31st May 2021, is being used for demonstration purposes as it appears to have been established soundly, is functioning well and has strong community support.

The Northern Land Council (NLC) has noted that recent enquiries relating to the Community Entity Model have generally been led by the community and are collaborative in nature with interest in the support and incentives available.

The points of difference between communities with a township lease and those without a township lease has reduced considerably over the years, in terms of coverage and rents received, both having been driven by the "secure tenure" requirement for infrastructure funding. The combination of more leases at commercial rents has resulted in a significant income stream for traditional owners in all communities.

Overall, township leasing can be beneficial in the appropriate circumstance but is not the best fit for all communities. Therefore, it is important to identify where there is desire and demand from the community to change, and where it can be sustainable, before committing scarce resources.

Specific Key Findings

Community Response to Township Leasing

Key Finding #1 – Poor uptake of township leasing across the Northern Territory

Township leasing is available to all communities in the Northern Territory. However, the level of uptake has been limited with 12% of eligible communities within the Northern Territory having signed a township lease in the 14 years since it was introduced. Although there is no readily accessible data on what expectations were when township leasing was introduced in 2007, the level of uptake is substantially less than would reasonably have been expected.

In the initial stages, when the Executive Director Model was the only available model, only island communities associated with Tiwi Island Land Council and Anindilyakwa Land Council entered township lease arrangements. The uptake of the Executive Director Model was hindered by several factors including that the mainland Land Councils were strongly opposed to the governance arrangements and its introduction coincided with the controversial NTER and the acceptance of S.19 as offering secure tenure for Government investment in infrastructure. These factors were substantial enough to outweigh the inducements on offer to sign.

When the Community Entity and Transition Models became available in 2017 it was seen as providing a breakthrough, with support for this model seemingly higher than the Executive Director Model. Three more Communities signed leases (two of which were the Transition Model), including one in each of the two mainland Land Councils (5% total). Nonetheless, as at 31st May 2021, there was only one township with the Community Entity Model in place.

Key Finding #2 - Significant and complex negotiations prior to signing and ongoing operations generally work well

Township leasing negotiations are complex and the effort and social cost involved should not be underestimated with major decisions required around key components such as Head Lessees, the makeup of the Consultative Forum, land use and spending of incentives. We also found genuine concern in committing future generations to a 99-year lease added to this complexity.

However, the initial effort and social cost has subsided over time and Communities in four out of six communities with township leases reported positive experiences. Positive aspects included the direct economic benefits from the incentive payments as well as the experience of operating within the known terms and guidelines of a township lease.

Administrative and Design Efficiency of Township Leasing

Key Finding #3 – Administrative efficiency of township leasing could not be determined

The ongoing process of creating a sub-lease under a township lease is guided by the rules of the head lease. Each S.19 lease must go through a substantial consent and consultation process, that on a practical level, is less time efficient than what is required for a sub-lease within a Township Lease model. Efficiency could not be quantified as there is insufficient financial data available to do so, largely because the Office of Township Leasing (OTL), undertakes multiple functions and do not differentiate between the costs of these different administrative functions.

Similarly, data does not exist to assess the administrative efficiency of the Executive Director Model compared to the Community Entity Model. However, OTL should be well positioned to realise efficiencies in the land administration aspects of township leases through both economies of scale and experience, as it provides services on several township leases, compared to a Community Entity which is formed as a one-off.

Key Finding #4 - Well-defined approach of township leasing

All township leasing options provide a well-defined overall approach to land tenure within the Township boundaries resulting in sound land administration processes within a known and planned approach to infrastructure and economic development. This provides a valued point of reference and a sound starting point for interactions between the head lessee and external stakeholders.

Key Finding #5 - Appeal of the Community Entity Model and self-determination

Communities considered that the level of self-determination associated with the Community Entity Model is high and that this is a key reason that this model appears to be the current preferred option. Our Gunyanara consultation identified that this went beyond the community entity having the final decision on sub-leasing. Importantly, the model led to a stronger sense of ownership by the community and a greater understanding regarding the use of land, including for economic development.

Key Finding #6 - Place and context determines the best fit leasing model

Place and context are important in determining what form of land tenure is best suited to a community as one form of leasing will not necessarily be the best fit for all communities. When assessing the leasing options, it is critical to have regard to a range of factors including the level of desire for the community to change from current arrangements and its capacity to benefit from a township lease. A community's capacity to benefit depends on whether or not there are existing mechanisms that enable an inclusive approach to land management decisions, and there is sufficient scale for a township lease model to be administratively efficient and sustainable.

Key Outcomes and Impacts of Township Leasing

Key Finding #7 – Direct economic benefits driven by formalising existing tenure and sign-on incentives

The expected medium-term outcome that “township leases provide an improved platform for economic activity in communities” where the leaseholder formalises existing tenure arrangements in townships and where the traditional owners and residents benefit from upfront income from head-leases, have both materialised. In a significant achievement, the OTL converted all tenants across to a sub-lease and derived a model for calculation of commercial rent that is now used for all subleases, as well as for S.19 in other communities. This led to a substantial increase in rental payments thereby creating economic opportunity.

Investments of the substantial upfront incentives received on signing a township lease have been made within the community directly.

Key Finding #8 – Negligible private sector or mainstream bank financed investment

Investment in communities with a township lease has resulted from resetting of prior tenancy arrangements or related traditional owner businesses rather than from an increase of new investment from external sources. Accordingly, the outcomes envisaged that there would be an increase in investments and sub-leases to businesses have not been achieved. Communities did receive incentive payments for entering into a township lease, but these payments do not constitute private investments.

Whilst traditional owners and community residents have greater capacity to borrow against their land interests they have not been able to capitalise on this, with only one instance where a commercial bank financed a property development to a relatively low level.

Key Finding #9 – Few home ownership outcomes as many issues impact on this

In terms of the medium-term outcome envisaged that there would be an “Increase in sub-leases to private residents”, homeownership outcomes have been negligible, aside from 15 leases signed at Wurrumiyanga during the initial stage of that township lease. Township leasing addresses one barrier to home ownership, namely providing security of tenure within a township framework. However, it was not designed to address the numerous other factors required to be met to achieve the home ownership outcomes sought. Whilst the change in tenure was necessary it was insufficient to drive home ownership in these remote locations. Further, there are many diverse views about the merits of home ownership in community settings and the level of support for people wanting to own a home has varied considerably since 2007.

Key Finding #10 – Township leasing has acted as a catalyst for broader change in S.19 leasing requirements that have generated economic benefits for communities without a township lease.

The Commonwealth and Northern Territory governments introduced a “secure tenure” requirement as a pre-requisite for infrastructure funding in communities and, importantly, treated S.19 and S.19A leases equally. This has led to a substantial increase in the proportion of communities in which S.19 leases have been issued (to approximately 90%). The combination this increased coverage and rises in rents received per lot has resulted in a significant increase in rental income for all communities. These decisions were influenced by the positive experiences of governments in entering into sub-leases within a township lease for funding of new infrastructure. A key benefit for township leasing remains the policy that a township lease generally receives the first ten years rental income up-front (to be repaid) as an incentive. This provides a lump sum to pursue economic opportunity, whereas S.19 rental income is received annually.

Key Finding #11 – Township leasing provides improved visibility and strategic thinking over whole-of-township land planning

A key benefit of township leasing is that it provides a well-defined framework that considers all aspects of the township’s development, and every lot is considered. This framework is less defined for non-township lease communities. The consultations identified that for communities in four of the six township leases, decisions are made more strategically, with regard to whole-of-township land planning, than was previously the case. The Consultative Forum and community entity meetings provide an improved platform for local decision making through formal, proactive and regular meetings and information exchanges related to all aspects of land management within the township lease boundary including town planning and infrastructure development.

Key Finding #12 – Township leasing has shifted the authority for decision making on land beyond the traditional owners as well as broadening the consultative process

Township leasing provides the opportunity for decision making on land beyond the traditional owners and can provide a more inclusive and broader consultation process. The ultimate authority on land use has moved from being with the traditional owner for S.19 to either the Executive Director or the community entity (Aboriginal corporation) board. The Land Councils have a continued, albeit diminished, role in township leasing. The role of the traditional owners has changed from ultimate authority under S.19 to consultative through the forum or as a board member if part of a community entity board, noting that traditional owner consent is still required to enter a township lease.

The input of non-traditional owner residents varies across the different models. For example, the role of non-traditional owner residents is as a consultative stakeholder if impacted by the decision for S.19, consultative, if invited onto the Consultative Forum or potentially as a decision maker if they are on a community entity board. The potential for an increase in the role of non-traditional owner Indigenous residents is important in the local decision making process as non-traditional owner residents, who may have lived in the community for many years, have a strong vested interest in land use.

1.4 Recommendations for Township Leasing

The starting point for the future policy directions of township leasing is to assess the extent to which it is relevant for other communities in the context of the now widespread use of S.19 leases and whether any of the township leasing model options offer compelling advantages and benefits over and above S.19.

The findings support that township leasing does provide an improved pathway for communities wanting to be empowered, that have economic development opportunities and would benefit from whole of town planning. However, it is not necessarily the best fit for all communities and the advantages and benefits are not compelling in all instances when compared with S.19 Leases.

In formulating our recommendations on policy direction, we have considered the reasons as to why the uptake of township leasing has been historically low and yet communities may now be considering a township lease.

Based on the findings above the following recommendations outline how the initiative could be modified or scaled in the future.

Improving Policy Design

1. Any re-launching or re-modelling to township leasing only be undertaken after detailed consultation with all key stakeholders to reach a level of consensus and co-design that will help drive any modifications. As part of this, convene a key stakeholder group to establish **key criteria** to determine the circumstances where a township leasing model is relevant and sustainable, to support any future township leasing opportunities.
2. The Executive Director and the Land Councils develop an Assessment Framework for assessing suitability of a Community for Township Leasing, as shown in the flowchart below, that identifies the most appropriate form of leasing for each community using a decision tree against the criteria identified in Recommendation 1.

Step	Criteria	Decision
1	Desire and demand of community for township leasing	If NO stay with S.19 lease If YES move to step 2
2	Capacity to benefit from township leasing based on context and place	If NO stay with S.19 lease If YES move to step 3
3	Is township leasing going to be sustainable - may depend on which model	If NO stay with S.19 lease If YES move to step 4
4	Desire for local control and autonomy	If NO - Executive Director Model If YES move to step 5
5	Capacity to manage	If NO - Transition Model If YES - Community Entity Model

Testing Policy Framework

3. The OTL and the Land Councils pilot this framework with a small number of communities, prior to rolling out across the Northern Territory.
4. The OTL and the Land Councils discuss their respective roles in this modified arrangement in terms of lease administration, support for community entities, etc.

Private Investment and Home ownership

5. Derive a consistent approach to attracting future investments across the Northern Territory where similar opportunities that exist in several communities can be bundled and leveraged with a view to reducing transaction costs and risks per investment.
6. The key stakeholders determine a consistent view on whether home ownership is a shared goal and, if it is, agree on a long-term commitment as to how to deal with the broader home ownership challenges.

Monitoring and Evaluation

7. A measurement and evaluation framework for township leasing be established including a set of quantitative and qualitative measures to gauge the effectiveness and impact of township leasing in meeting its goals.
8. As part of its strategic planning process, OTL identifies ways to maintain better data and measures for its role in administering township leases including measuring and reporting on the costs of maintaining current township leasing arrangements.

Existing Township Leasing

9. Assess the current township leases being implemented against the criteria recommended above and consider if the existing model is the best option for communities.
10. Each township lease should be assessed with a view to identifying improvement opportunities and prepare a plan for continuous Improvement.

2 Introduction and Context

2.1 Introduction to Township Leasing

Since the mid-1990s there have been many different views regarding land use and land tenure over Aboriginal owned land in the Northern Territory. This is a highly complex area given the many stakeholders involved in land use decisions and associated funding between the Commonwealth Government, the Northern Territory Government, Local Councils, Land Councils and traditional owners. It is clear that no one measure or policy was going to satisfy the requirements of all stakeholders and therefore understanding the context around township leasing is important when evaluating its outcomes.

Township leasing was introduced in 2006 through inserting a new S.19A⁴ into the Land Rights Act to overcome the perception that tenure offered prior to this was insufficiently secure to attract investment and home ownership in Aboriginal communities. The intent was that this perception would be overcome by offering innovative land tenure and administration arrangements within the township lease boundary. These arrangements would maintain the underlying inalienable traditional ownership of the land as well as create bankable interests and generate opportunities. The initiative was part of an increased focus by the Commonwealth Government at the time on economic development and participation in the 'broader economy' for Indigenous people.

The reforms in this bill are designed to do three things: provide for individual property rights in Aboriginal townships, streamline processes for development of Aboriginal land and improve efficiency and enhance accountability of organisations under the Land Rights Act...

The Bill provides for a new tenure system for townships on Aboriginal land that will allow individuals to have property rights. It is individual property rights that drive economic development.

Mr Brough - Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 2006⁵

To achieve this the township lease covers the entire township area, including all lots of land with buildings as well as lots on which there may be future development. Initially township leases were held by the Executive Director on behalf of the Commonwealth Government in the Executive Director Model. In 2017 the Community Entity Model became available which allowed an Aboriginal Corporation established by traditional owners to hold the township lease. In addition, there is a Transition Model that allows a community to enter into a township lease using the Executive Director Model before transitioning across to the Community Entity Model at the appropriate time.

Under a township lease, the head lessee grants subleases to tenants with clear responsibilities on each party, including the payment of a commercial rent. Community residents are able to apply to buy or build their own home in the township through a long-term home ownership sublease.

Whilst much of the commentary promotes township leasing as offering a more secure tenure it should be noted that S.19 leases negotiated by the Land Councils also offer secure tenure. One key difference though is that sub-leases in a township lease are tradeable and transferable, subject to the terms of the head lease, as opposed to a S.19 lease that needs to go back through the Land Council process. The position of the Government at the time (refer Quote above) was that secure,

⁴ S 19A was inserted by the Aboriginal Land Rights (Northern Territory) Amendment Act 2006:

<https://www.legislation.gov.au/Details/C2006A00093>

⁵ Second Reading, Aboriginal Land Rights (Northern Territory) Amendment Bill 2006, Hansard Wednesday, 31 May 2006.

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/2006-05-31/0012%22>

long term, tradeable tenure should encourage businesses and governments to invest in the township and lending institutions to provide commercial loans.

Importantly, beyond the individual sub-leases, the head lessee aims to take a “whole of township” approach to community development, in a manner similar to local government in other jurisdictions around Australia. This is a key distinguishing feature compared to S.19 which deals primarily in single or multiple lots but not the entire township.

In 2014 the Minister for Indigenous Affairs and the Executive Director exchanged correspondence regarding “Statement of Expectations” and “Statement of Intent” which outlined the key strategic priorities for the Executive Director role. Amongst other things this included an ongoing contribution towards the Government’s key priorities – *“In the context of township leasing this priority will be primarily realised through facilitating economic development opportunities, enabling home ownership and entering into new township leases where possible to regularise land tenure arrangements.”*⁶

Funding for Township Leasing

Funding for township leasing is provided from two main sources, namely, the administrative costs of township leasing are met through the Aboriginals Benefit Account (ABA) and the Indigenous Advancement Strategy may provide funding in preliminary stages to assist in negotiating and developing a township lease and/or to fund early economic development pursuits.

Communities wishing to pursue a township lease may apply for funding through an Indigenous Advancement Strategy community led application for early negotiations. Indigenous Advancement Strategy grants can assist prospective community entities to build the capacity of their corporation, seek legal advice and observe other township leases prior to prepare a corporation to eventually hold the township lease.

To date, two main payments have been made at the execution of a township lease: An Advance Payment and an Economic Development Fund.

- The Advance Payment is equivalent to the anticipated rental income from township subleases for the first ten years of the township lease. It is paid out of the ABA under section 64(4A) of the Land Rights Act. The Advance Payment is paid back into the ABA from all rental income from township subleases collected during the first ten years of a township lease, though this may be repaid earlier depending on rental revenue.
- The Economic Development Fund is a grant paid from the Indigenous Advancement Strategy. The White Paper provided \$17.04 million from 2015-16 to 2017-18 for Township Leasing and land administration, some of which was allocated for the payment of Economic Development Funds.⁷

The amount of an Economic Development Fund is determined on a community-by-community basis, dependent on the size, needs, and economic development potential of a community. The project is identified in partnership with traditional owners, community members, the relevant Land Council and NIAA.

⁶ https://www.otl.gov.au/sites/default/files/documents/interactive/2014-07-30_edtl_statement_of_intent_minister_letter_final.pdf Page 2

⁷ Source – NIAA

Background on the ABA

The ABA is legislated under Part VI of the Land Rights Act and is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act).

The ABA receives and distributes monies generated from mining on Aboriginal land in the Northern Territory. Payments into the ABA are based on royalty equivalents which are determined by the estimated value of the statutory royalty payments. The ABA is designed to benefit Aboriginal people in the Northern Territory.

The Minister for Indigenous Australians [or delegate] allocates funding to the OTL and community entity township leaseholders to cover the establishment and administration costs associated with township leases.

Background on the Indigenous Advancement Strategy

The Indigenous Advancement Strategy is a national account established in 2014 to consolidate the many different Indigenous policies and programs delivered by Government into six overarching programs. The program streams are: Jobs, Land and Economy; Children and Schooling; Safety and Wellbeing; Culture and Capability; Remote Australia Strategies and Evaluation.

In contrast to the ABA, the Indigenous Advancement Strategy has national coverage.

2.2 Purpose and Evaluation Objectives

The Office of Northern Australia has policy responsibility for the White Paper. The aim of the White Paper was to provide a vision for the development of Northern Australia and to outline initiatives to achieve this vision by aiming to bring more certainty for investors, create opportunities for Indigenous economic activity and increase the value and productive use of land for all Australians.

The White Paper defined three key measures in relation to supporting land investments within Indigenous lands:

- Township Leasing and Land Administration
- Land Tenure
- Prescribed Body Corporate Capacity Building

Whilst township leases have been possible since 2007, to date there has been no formal evaluation of the township leasing and Land Administration measure (referred to in the White Paper as “The Measure” but referred to as “township leasing” in this Report) in order to understand the extent to which township leases have delivered against their initial aim.

The Land Branch within the NIAA has responsibility for implementing some of the initiatives shown in the White Paper in partnership with northern jurisdictions, Indigenous Communities and their representatives, and businesses.

Of note from the White Paper are the following excerpts that have relevance to this evaluation:

- *Governments’ role is to create successful business environments, not successful businesses – Page 2*
- *The Government will address challenges to development by: making it easier to use natural assets, in close consultation with, and the support of, Indigenous communities; providing a more welcoming investment environment – Page 5*
- *The Government will invest \$17 million to improve land administration and support new township leases in the Northern Territory – Page 32*

- *Developing the North: what progress would look like – Page 123*
 - *Policy - Direction simpler land arrangements to support investment*
 - *Goals - More opportunities for Indigenous Australians from their land*
 - *Progress - Township leases (NT) supporting and attracting private investment*

In November 2019, NIAA engaged Yaran to conduct an evaluation of township leasing. The purpose of the evaluation was to understand how township leases impact on the lives of Aboriginal and Torres Strait Islander people and their communities in the Northern Territory. The impacts Yaran was engaged to consider include impacts on social, cultural and economic wellbeing as well as on economic opportunity and home ownership.

The evaluation was guided by an evaluation strategy, developed for NIAA by Social Ventures Australia and refined by Yaran (Refer Section 4.1). The revised Program Logic Model sets out clearly what the measure intends to achieve and how it will achieve it.

The **medium-term outcomes** as set out in the Program Logic Model are as follows:

- Township Leases provide an improved platform for economic activity in communities.
- Township Leases provide an improved platform for local decision making.

The **long-term outcomes** as set out in the Program Logic Model are as follows:

- Indigenous people in the Northern Territory have greater opportunities to leverage their land assets for economic benefits.
- Indigenous people in the Northern Territory can more freely pursue their own economic, social and cultural development priorities through a wider range of choices generated by the combination of increased economic activity and improved local decision making.

The purpose of this report is to document the findings, implications and recommendations against the core requirements of the evaluation which are:

1. *Establishing the benefit of township leasing towards improving the social, cultural and economic wellbeing of Aboriginal and Torres Strait Islander people and communities.*
2. *Establishing the effectiveness and efficiency of township leasing in increasing certainty for investors, increased economic opportunity for Aboriginal communities, and increased home ownership.*
3. *Assessing the different township leasing models - the Executive Director of Township Leasing and community entity township leases - in supporting uptake and implementation of township leases.*
4. *Assessing the administrative efficiency of the township lease model, including determining the proportion of total funding expended on the process to establish and administer the lease and compare/benchmark this with alternative arrangements – such as communities utilising Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Rights Act) Section 19 leases or communities which have decided not to implement a township lease.*
5. *Understanding and providing recommendations on how the initiative could be modified or scaled in the future to achieve future impact, beyond the evaluation period.*

3 Township Leasing

3.1 Context for Township Leasing

This evaluation examines the current policy framework for township leasing. However, in order to measure policy performance, it is necessary to consider how the policy evolved as some aspects are critical to understanding why “Participant Activities and Outputs” in the Verified Logic Model (Refer Section 4.1) may not have led to the expected short term, medium term and long term outcomes. As such we set out below key points to note regarding the evolution of township leasing.

Land Tenure

The fundamental starting point for understanding the rationale of township leasing is the nature of land tenure on Aboriginal land under the Land Rights Act. The Land Rights Act created inalienable tenure for the land whereby land can't be bought or sold but can be leased.⁸

- Defined traditional owners and Sacred Sites (S.3).
- Established Land Trusts that hold the land on behalf of the traditional owners (S.4(1)) as communally held freehold title with separate trusts for different regions.
- Created two Land Councils, namely NLC and Central Land Council (“CLC”) in 1976. (Note that the Tiwi Land Council was established in 1978 and Anindilyakwa Land Council in 1991).
- Ratified the ABA,⁹ in accordance with Part VI of the Land Rights Act, which has many functions including to receive the equivalent of mining royalty monies derived from mining operations on Aboriginal land in the Northern Territory and to make payments to or for the benefit of Aboriginal people living in the Northern Territory.

S.19¹⁰

Prior to the introduction of township leasing in 2006 property use within Aboriginal township or community boundaries was regulated through S.19 of the Land Rights Act “*Dealings etc. with interests in land by Land Trusts*”.

S.19 remains an option for the management of leases and requires Government, businesses, organisations and individual people to apply to the relevant Land Council for a formal lease over specific areas of Aboriginal land in order to commence activities. The main mechanisms of S.19 allow:

- The granting of an interest in land for use for residential purposes, for use in the conduct of a business or for any purpose at the direction, in writing, of the relevant Land Council (and the Minister’s consent for leases over 40 years). While leases are granted *at the direction of Land Councils*, leases are *actually granted by Land Trusts* (as Land Trusts are the landholders).
- That the Land Council shall not give a direction under S.19 without the appropriate consultation and informed consent from the traditional owners and with due regard to views of other affected Aboriginal groups and communities. Accordingly, when a S.19 lease is applied for the Land Council is required to consult widely prior to making a decision on each lease proposal, which can be time consuming.

⁹https://www.pmc.gov.au/sites/default/files/publications/annual_reports/2015-16-HTML/appendix-aboriginals-benefit-account-annual-report-2015-16/aboriginals-benefit-account-overview.html

¹⁰ <https://www.legislation.gov.au/Details/C2004C01562>,

Rationale for Township Leasing

Prior to 2007 there was a growing aspiration from Indigenous people in the Northern Territory for economic development and home ownership in communities and a sense that a well-defined system for land tenure within communities would assist in meeting these aspirations. The inaugural 2007-2008 Annual Report¹¹ of the Executive Director states on page 4:

The aim of the township leases is to regularise land-tenure arrangements in the townships and to facilitate economic development opportunities for the benefit of Aboriginal landowners and residents of the townships.

And on Page 8

One of the benefits of having a 99-year lease in place is the prospect of fostering an interest in home ownership within the Community.

The perceived **shortfalls** in the nature and coverage of S.19 leasing in the early 2000s set the policy context and rationale for the introduction of township leasing, and were supported by our consultations, are set out below.

- A perception that the nature of the tenure was holding back both economic development and home ownership and that it was necessary to have the option of another form of tenure to provide greater security and transactional ability for economic activity.
- The process for S.19 leases was long, complicated and not transparent as to what the final result would be. This was seen as inhibiting economic development which requires certainty around a decision within a commercial timeframe.
- Traditional owners were not receiving commercial rent for land that was being used without a S.19 lease in place.
- The S.19 process was geared towards traditional owners and yet a high number of residents are not traditional owners and were excluded from the consultation and decision-making process.
- At the highest-level S.19 leases were not a familiar leasehold property system for lending for home ownership.
- At the time the S.19 process generally dealt with individual lots and meant that the whole of community planning and development for subdividing land was complicated and holding back investment in the new housing required to alleviate overcrowding. Accordingly, key aspects needed for orderly community development such as surveying, town planning regulations, zoning overlays were not readily put in place.

As a result of the above we understand that there were relatively few S.19 leases in place at the time township leasing was introduced, agreements were often informal, rental payments were minimal and leases were slow to proceed and there was little consistency between the approaches of the four Land Councils.

Limited data exists to support this assertion however Table 8 in Section 7 illustrates the low level of rental receipts in 2009.

¹¹ OTL Annual Report 2008 Page 4 Available at https://www.otl.gov.au/sites/default/files/annual_report_2007-2008.pdf

The 2008-2009 Annual Report of the Executive Director¹² highlighted some of the issues encountered at Nguiu on the Tiwi Islands in the initial stages of their township leasing:

Negotiation of subleases with existing occupiers has progressed steadily. However, the transition to a whole of township lease environment has meant a significant shift for many occupiers, including the Northern Territory Government and the Tiwi Shire Council. While better progress would have been preferred this has not been possible for a number of reasons:

- *Very few occupiers have previously paid any rent in respect to the land or buildings they occupied...*
- *Very few occupiers have previously been party to any formal lease arrangement...*
- *A number of occupiers have sought to be excluded from the leasing arrangements by claiming they were providing an “essential service” to the community; and*
- *Other occupiers have sought recognition by way of a rent offset for significant capital improvements which they have made to buildings they occupy.*

Township leasing was developed with a view to undertaking a range of activities aimed at addressing the above shortfalls in S.19 by providing:

- A well-defined, transparent and consistent platform for long term land tenure that would assist with loan security, rental arrangements and lease administration that would, in turn promote commercial activity on Aboriginal land.
- At the highest-level a leasehold property system that would assist to facilitate home ownership within communities.
- A broader Consultative Forum to facilitate agreement between traditional owners and resident non-traditional owners which was seen as a positive and inclusive step.
- A whole of township approach to streamline community planning and development processes.

The intent was that township leasing would lead to the outcomes outlined in the Program Logic Model (Refer Section 4.1).

Summary of Context in 2007

In summary, providing a well-defined land tenure environment for lessees within township boundaries was seen as a necessary pre-requisite by the Commonwealth and Territory Governments to support further investment in housing and economic development within township boundaries.

There is no readily identifiable evidence as to what the expected level of uptake would be of township leasing either on commencement of township leasing or with the introduction of the Community Entity model. In the absence of this, and given the context at the time, we assume that stakeholders would have been anticipating broad-scale adoption, rather than merely providing a mechanism for communities to adopt should they choose without prompting.

¹² OTL Annual Report 2009 Page 2 Available at https://www.otl.gov.au/sites/default/files/annual_report_2008-2009.pdf

3.2 Changing Context Since Introduction

Any assessment of the progress of township leasing since its inception needs to consider the following key contextual changes since township leasing was originally designed.

Northern Territory Emergency Response (NTER)

On 21 June 2007 the Commonwealth Government announced a set of initiatives known as the NTER¹³ (also known as the Intervention). These initiatives were presented by the Commonwealth as a response to *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. The inquiry was conducted in order to find better ways of protecting Aboriginal children in the Northern Territory from sexual abuse. The report was publicly released by the Northern Territory Government on 15 June 2007.

The Northern Territory Emergency Response (NTER) resulted in a complex set of measures being applied across the Northern Territory. The NTER imposed sudden and significant changes on Indigenous communities in the Northern Territory, a great many of which were considered to be controversial by a number of stakeholders.

The measures covered improving child and family health, enhancing education, supporting families, promoting law and order and welfare reform and employment. However, of note for township leasing, and hence our evaluation, were the following:

- The creation of prescribed areas, including 73 larger settlements in the Northern Territory, that were targeted for the application of NTER initiatives; and
- The establishment of compulsory five-year leases over townships on Aboriginal land, for the purpose of improving access to housing.

We understand that the compulsory acquisition of 5-year leases over townships was influenced by the earlier S.19A amendments, however, the original policy regarding S.19A was established prior to the NTER. Nonetheless, it seems that the initial uptake of township leasing is likely to have been negatively impacted by the compulsory acquisition of land given that it was introduced shortly after the S.19A changes came into effect. This is explored further in our evaluation below, noting that the NTER was also a contributing factor to creating rental streams on just terms for "secure tenure".

Significant investment in housing throughout the Northern Territory

The NTER led to changes to the National Housing Partnership Agreements to facilitate increased investment in housing throughout the Northern Territory. The key programs were:

- The National Partnership Agreement on Remote Indigenous Housing¹⁴ which came into effect in November 2008 had the following objectives:
 - significantly reduce severe overcrowding in remote Indigenous communities;
 - increase the supply of new houses;
 - improve the condition of existing houses in remote Indigenous communities; and
 - ensure that rental houses are well-maintained and managed in remote Indigenous communities.

¹³https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/indig/reports/2009/report2/c04

¹⁴ https://www.cgc.gov.au/sites/default/files/u2016_-_national_partnership_agreement_on_remote_indigenous_housing.pdf?v=1538462880

- The Strategic Indigenous Housing Infrastructure Program¹⁵ which was part of National Partnership Agreement on Remote Indigenous Housing and a critical element of the Remote Housing Northern Territory framework.

National Indigenous Reform Agreement (Closing The Gap)¹⁶

Land tenure reform continued after the change of Government in November 2007, however the emphasis changed with various initiatives arising from the Council of Australian Governments (COAG) under the National Indigenous Reform Agreement (Closing the Gap) in 2008. Critical to land tenure in the Northern Territory were the National Principles for Investments in Remote Locations (Page A-23 of the Reform Agreement) which states: *“Priority for enhanced infrastructure support and service provision should be to larger and more economically sustainable communities **where secure land tenure exists**, allowing for services outreach to, and access by, smaller surrounding communities (emphasis added).”*

This had a major impact on land arrangements as all Government investment in infrastructure (buildings and housing) became conditional upon “secure tenure” (that is, a formalised, ideally a long-term lease, such as those attainable under S.19 and S.19A of the Land Rights Act).

Leases on Commercial Terms

Between 2007 and 2012 the Commonwealth worked on, and introduced, a standard method of valuation to calculate rent in a commercial and consistent manner. This method applies to both S.19A and S.19 leases and has resulted in a significant increase in the amount of rent being paid by all tenants (Refer Section 7.3).

“Secure tenure” policy led to a substantial increase in the use of S.19 leases

Prior to 2008 the coverage of S.19 leases within communities was low, leases were inconsistent in nature and rarely on commercial terms. The “secure tenure” policy led to a significant and rapid increase in S.19 leases within communities.

These substantial changes resulted in numerous issues associated with lease arrangements and processes, challenging the capacity, resources and capability of Land Councils to undertake the work required to be undertaken on a timely basis, to facilitate the large-scale development. Despite these challenges there has been substantial increase in the number of S.19 leases.

The CLC alluded to this after the secure tenure policy had been in effect for five years, stating¹⁷:

“The CLC is dealing with an enormous workload processing leasing applications that government departments, service providers and other parties have submitted. ... The large volume of leases executed ... is because parties who previously did not seek leases are now applying for them, third parties are gaining a better understanding and governments aren’t providing funding to ... build infrastructure unless they have a lease. In addition, the CLC now has better resources to assist in processing lease applications.”

¹⁶ National Indigenous Reform Agreement, Intergovernmental Agreement on Federal Financial Relations https://www.federalfinancialrelations.gov.au/content/npa/health/_archive/indigenous-reform/national-agreement_sept_12.pdf

¹⁷ CLC, Land Reform in the Northern Territory: Evidence not ideology, October 2013

Consultations indicate that most communities, where there is not a township lease in place, now have a high percentage of lots that are covered by commercial S.19 leases.

The NLC state¹⁸ that:

“The number of micro-enterprises, private business, Government and community development activities occurring on Aboriginal land has steadily increased over the last few years. As of 1 July 2019, NLC’s land management responsibilities include overseeing more than 700 section 19 Land Use Agreements that are in place over 3,687 parcels of land.”

While communities without a township lease were outside of our Scope of Works, our literature review and consultations with each of the mainland Land Councils indicate that the S.19 leasing process is much improved from 2007. Most of the issues noted regarding S.19 leases in 2007 (Refer Section 3.1) have diminished, with S.19 leases now delivering stable rental income to traditional owners.

Nonetheless the S.19 process remains time consuming as per the NLC website (accessed June 2021):

“... The time frame for an assessment of a S.19 Land Use Agreement expression of interest and the subsequent consultation with traditional Aboriginal owners can take a minimum of six months to progress if all information is provided in a timely manner. However, the time required to conduct consultations on S.19 Land Use Agreements will vary depending on the type of interest and the region. The NLC makes no guarantee as to the time taken to conduct those consultations pursuant to its statutory responsibilities under the Land Rights Act.”¹⁹

Change in priority of Township Leases over the years

As shown above, the political environment, related Policy settings and supports for Township Leasing has changed substantially over time.

The initial direction for land reform was to encourage the use of township leases as a means of assisting with community economic and housing development, including home ownership.

The inaugural 2007-2008 Annual Report²⁰ of the Executive Director states on Page 4:

“The aim of the township leases is to regularise land-tenure arrangements in the townships and to facilitate economic development opportunities for the benefit of Aboriginal landowners and residents of the townships. ... One of the benefits of having a 99-year lease in place is the prospect of fostering an interest in home ownership within the community.”

On 9 April 2014 the Minister for Indigenous Affairs wrote to the Executive Director outlining a “Statement of Expectations”²¹ regarding the roles and responsibilities of the Executive Director. The preamble included that:

“The Government expects the Executive Director of Township Leasing to contribute to the Government’s key priorities in Indigenous Affairs by regularising land-tenure arrangements in townships and facilitating economic development opportunities for Aboriginal traditional owners and all residents of those townships.”

¹⁸ <https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation>

¹⁹ <https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation>

²⁰ <https://www.otl.gov.au/publications?page=1>

²¹ https://www.otl.gov.au/sites/default/files/2014-04-09_statement_of_expectations.pdf

The Executive Director responded on 30 July 2014 with a “Statement of Intent”²² which outlined the key strategic priorities for the Executive Director role and that of the OTL. Amongst other things, the “Statement of Intent” included:

Contribution to the Government’s key priorities

“I note that the Government’s priorities for Indigenous Affairs includes a strong focus on increased, sustainable employment for Aboriginal residents of remote Communities. In the context of township leasing in the Northern Territory this priority will be primarily realised through facilitating economic development opportunities, enabling home ownership and entering into new Township Leases where possible to regularise land tenure arrangements.”

Role and responsibilities

“I affirm my commitment to improving land tenure arrangements and facilitating economic development opportunities for the benefit of landowners and all residents in the Township Leases... I will continue to ... enable the environment for home ownership and providing input to home ownership policy framework.”

In more recent times the focus has been on the governance arrangements within a township lease and the discussion around home ownership has varied from strong support to little mention.

An indicator of the above is that OTL as a key stakeholder in township leasing has moved between proactively seeking communities as candidates for township leasing to becoming reactive and waiting to be approached²³. The scrutiny on the direction and results of OTL regarding township leasing appears to have been relatively minor as OTL is in the process of completing its first Strategic Plan and has insufficient granular data to measure performance against the outcomes sought for township leasing.

Summary of Context Since 2007

In summary, township leasing started as a policy response whereby providing a well-defined land tenure environment for lessees within township boundaries was seen as a pre-requisite by the Government to support further investment in housing and economic development within township boundaries.

However, this is a highly complex area given the power sharing over land use decisions and associated funding between stakeholders and it is clear that no one measure was going to satisfy the requirements of all stakeholders. Accordingly, there have been significant changes in direction and focus since the introduction of township leasing, not the least being that there are many S.19 leases that deliver stable rental income to traditional owners across the Northern Territory.

This evaluation builds on this changing context by examining the uptake and evolution of township leasing since 2007, considering the benefits to communities, both directly and through broader reform. It also examines the benefits of township leasing over and above the granting of sub-leases, with a focus on economic development opportunities and governance arrangements.

²² https://www.otl.gov.au/sites/default/files/documents/interactive/2014-07-30_edtl_statement_of_intent_minister_letter_final.pdf

²³ Source: OTL consultation

3.3 Township Leasing Options

At the time of writing there are four lease tenure options available under the Land Rights Act, namely:

INDIVIDUAL DIRECT LEASE OPTION

Option 1 – S.19 Lease.

TOWNSHIP LEASING OPTIONS

Option 2 – the Executive Director Model.

Option 3 – the Community Entity Model.

Option 4 – the Transition Model.

Features Common to All Options

The key features that are common to each of the four leasing options shown are:

- The lease is pursuant to the Land Rights Act and provides security of tenure for the duration of the lease, subject to any conditions in the Lease.
- Entering into the Lease is a **voluntary** process for the traditional owners.
- The underlying title of the subject land remains unchanged.
- Lease administration costs have thus far been paid in full by ABA²⁴ in accordance with S.64(4A) of the Land Rights Act and the terms of the leases.

Key features for each of the leasing options are:

S.19 LEASE OPTION

Option 1 – S.19

Involves the granting of a lease over a specific area of land directly to the final lessee. *Refer Section 3.1 for further background on S.19 leases.* They are managed by the Land Councils and have been available since the Land Rights Act was legislated. Features of the S.19 leasing process include²⁵:

- The appropriate Land Council consults with traditional owners and other affected Aboriginal groups and Communities on a case-by-case basis for each lease.
- The lease can be over a broad area or specific to a lot within a township and can be of any duration with terms over 40 years requiring Ministerial consent.
- The traditional owners **must** consent to each S.19 lease through a traditional decision-making process or accepted alternative. Without consent the lease will not proceed.
- The Land Council must ensure that traditional owners understand the nature and purpose of each lease proposal.
- The lease proposal must be approved by the Full Council of the Land Council or a delegated authority, noting that full Land Council meetings are usually held a few times each year.
- Compensation payments for land use under S.19 leases must be paid to the respective Land Council and distributed in full (including interest) to or for the benefit of the traditional owners.

²⁴ https://www.otl.gov.au/sites/default/files/otl_annual_report_2019_faweb_pages_1_-_website.pdf

²⁵ <https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation>

TOWNSHIP LEASING OPTIONS 2-4

Features Common to Each Township Leasing Option

The key features that are common to each township leasing option shown are:

- A head lease is granted over an entire township within agreed boundaries and with agreed terms and conditions.
- The Land Council no longer undertakes consultations and consent processes for land use within the township lease area – this is the responsibility of the Executive Director or the Community Entity holding the township lease in accordance with its lease terms and processes.
- The township leases are long term, up to 99 years.
- The head lessor issues subleases over the land in the township. There is transferability of sub-leases, provided it is consistent with the head lease.

Option 2 – Executive Director Model

Involves the granting of a S.19A head lease over a whole township and it is held and managed by the Executive Director. The Executive Director then issues sub-leases. *Refer Section 3.4 for further background on the Executive Director model.*

In addition to the key features common to each township leasing option as shown above, in this instance:

- Traditional owners, with assistance from their Land Council, agree to a head lease to the Executive Director using leasing rules negotiated up-front and the Executive Director manages the township lease according to these rules.
- The Executive Director manages land in accordance with the terms and conditions of the head lease, and in consultation with traditional owners through a Consultative Forum. However, traditional owners' input is non-binding.
- OTL use a land administration system for each lease that is consistent with other township leases in the Northern Territory.
- The Executive Director collects rent on behalf of traditional owners, which must be paid to the relevant Land Council and then paid to a corporation for the benefit of the township's traditional owners.

Option 3 – S.19A Community Entity Model

Involves the granting of a head lease over a township to a Community Entity, approved by the Minister.

Under this option a community entity, approved by the Minister, holds and manages the head lease over a whole township. The community entity issues sub-leases. *Refer Section 3.5 for further background on the Community Entity model.*

In this instance:

- The community entity is an Aboriginal corporation, representing traditional owners and community residents. The entity must meet certain capacity and capability requirements. At the time of writing, it is standard practice for the corporation to be incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
- Traditional owners voluntarily agree to a head lease to the community entity using leasing terms and conditions set up front.

- The community entity manages the land in the township according to these terms and conditions of the head lease, rather than through a Consultative Forum.
- The community entity issues and manages subleases over the land in the township using their own land administration system.
- The community entity collects the rent directly and applies it on suitable activities relating to community and economic development.
- The ABA pays for administration costs under the lease terms.
- As a safety net the township lease can be transferred to another entity or the Executive Director if the existing community entity becomes unable to effectively hold and administer the lease.

Option 4 – The Transition Model

The Executive Director holds the S.19A head lease over a whole township and managed as per the Executive Director Model for an interim period, with the intention of transitioning to the Community Entity model at some stage in the future. Once transitioned the lease adopts the features of Option 3 above. *Refer Section 3.5 for further background on the Transition model.*

In this instance:

- The processes are much the same as under the Executive Director model, with the main difference being that the lease agreement requires the Executive Director to transfer the lease when the Land Council is satisfied of the capacity and capability of the community entity.
- A substantial amount of work is required to establish, manage and transfer the head lease.
- There is no set trigger point that needs to be met to drive through to the transition phase.

3.4 Initial Phase – The Executive Director Model

In addition to the features of the Executive Director Model noted above, the following provides additional context, relevant to understanding our findings:

Establishment

The original amendment to the Land Rights Act introducing the township leasing measure received royal assent on 5 September 2006. The additional amendment introducing the Executive Director to the Land Rights Act was established on 28 June 2007. The NTER legislation received royal assent on 17 August 2007.

The 2007-2008 Annual Report of the Executive Director states the following with respect to the establishment of the Executive Director and the OTL²⁶:

“Township leases are provided for in section 19A of the Aboriginal Land Rights (Northern Territory) Act 1976 (the Act). S.19A allows land trusts to grant a lease of a township on Aboriginal land to an approved entity. The Commonwealth is an approved entity for this purpose.”

The amendments also provide additional flexibility in relation to the term of township leases by providing that township leases can be granted for a minimum of 40 years and a maximum of 99 years.

“Tiwi people are for the first time in a position to own their own home, realising the ‘great Australian dream’ that the rest of Australia takes for granted.” A senior Mantiyupwi landowner

²⁶ OTL Annual Report 2008 Page 4 Available at https://www.otl.gov.au/sites/default/files/annual_report_2007-2008.pdf

Key Features

The main components of township leasing during the initial phase can be summarised as follows:

Governance of the Executive Director Model

Governance for the Executive Director Model is centred on the Executive Director, a position established pursuant to S.20B of the Land Rights Act. The functions of the Executive Director are outlined in S.20C and include: entering, on behalf of the Commonwealth, leases under S.19A; administering leases granted to the Commonwealth under S.19A; and any other functions that are prescribed by the regulations. Under S20R the Executive Director must, as soon as practical after the end of each financial year, prepare and give the Minister for presentation to the Parliament a report on the operations of the Executive Director during that year.

The OTL was established to assist and support the Executive Director with the management of township leases. This includes managing the day-to-day work of land administration in the townships and providing advice to the Executive Director and Consultative Forum members on applications for new developments or land usage changes.

Regulation of Tenure

The key objective of township leasing was to provide a commercial approach to leasing that recognises long term secure tenure within a well-defined leasing environment. A major issue was to establish a value on the land in order to know how to enter a lease within a commercial framework. A valuation methodology was derived to deal with this aspect.

Consultative Forum

“The Consultative Forum is at the centre of every Township Lease”

Executive Director²⁷

The Executive Director has the power to make decisions about land use within the township lease area. However they must consult with traditional owners on all developments and land use matters in the township and this is achieved through the Consultative Forum process.

The Consultative Forum is not a legislative requirement for Township Leasing. Rather, it was introduced by the Executive Director as a formal requirement in the terms and conditions of each township lease specifically for the Executive Director Model. The Land Council (being a signatory to the township lease) nominates traditional owners, and sometimes residents, of the township area to form the Consultative Forum. The Consultative Forum may also include representatives of the Land Council.

The Consultative Forum is intended to provide a voice for the traditional owners and non-traditional owner residents in the community in discussions about land use and developments. The Consultative Forum plays an essential part in managing and developing the township for all residents and gives advice to the Executive Director about how land should be used in the township and any issues regarding the operation of the township lease.

The Consultative Forum is meant to meet regularly with the Executive Director to talk about a range of property related matters including²⁸ land management and planning in the township, applications for new developments, and the terms and conditions of commercial subleases.

²⁷ <https://www.otl.gov.au/township-leases/consultative-forum> Accessed 27 January 2021

²⁸ <https://www.otl.gov.au/township-leases/consultative-forum>

By way of example the Wurrumiyanga (Nguiu) Community (located on Bathurst Island) signed a 99-year Township Lease on 30th August 2007. Parties to the lease are the Tiwi Aboriginal Land Trust, the Tiwi Land Council and the Executive Director.

Mantiyupwi Pty Ltd is a company owned by the landowner groups of Wurrumiyanga to develop economic opportunities on their land and share the benefits.²⁹

Mantiyupwi Pty Ltd received \$5,000,000 rent in advance, which was reduced to \$4,400,000 and repaid in September 2016. In addition, a number of grants were received from the Economic Development Fund for Community Benefit. A number of investments were made including a new supermarket and visitor accommodation.

At our community consultation it was stated that “the Consultative Forum is effective and meets twice per annum and can call a meeting if needed” and that “the community has received rent money for this last 3+ years and budget tightly”.

Appendix C provides additional detail on this lease including the types of investments made.

Economic Development and Home Ownership

Township leasing was seen as a necessary step required to facilitate economic development and home ownership as it provided enhanced security through more formalised tenure for lenders, investors and government agencies.

Whilst a necessary step, township leasing was insufficient in its own right, for economic development and home ownership. Therefore, in order to encourage entities to sign up for township leasing, and for township leasing to get traction in meeting its economic development and homeownership goals, the Commonwealth Government provides incentives to communities to enter into a township lease. These incentives had two components, namely:

- **Advanced Payments** whereby rent was paid in advance, up to 10 years, based on rent payments and that could be spent on a range of activities including community development. This advance payment is to be repaid across an agreed period. If not re-paid by the end of that period the debt would be forgiven, therefore the ABA bears risk of non-payment.
- **Community Development** through the Economic Development Fund as negotiated with NIAA and paid through the Indigenous Advancement Strategy. These are usually paid to an ORIC or ASIC entity.

The structure of the Executive Director Model has remained largely the same since commencement.

²⁹ See further at <https://tiwilandcouncil.com>

3.5 Second Phase – The Community Entity and Transition Model

The key change to township leasing since commencement has been the introduction of an alternative model for township leasing, known as the **Community Entity Model**, whereby the S.19A head lease could also be granted to a local Aboriginal corporation. Advocates for the Community Entity model argued that it would provide greater autonomy for Aboriginal communities and facilitate local decision making, while maintaining the key benefits of township leasing.

Once the township lease is in place, the community entity is responsible for the granting of subleases, licences, or other interests in land in the area covered by the township lease in accordance with its terms and conditions. This means that the Land Council no longer undertakes consultations and consent processes for land use in the township lease area – this is the responsibility of the entity holding the township lease in accordance with its lease terms.

By way of example the Gumatj³⁰ clan, for more than 10 years as the traditional owners of the Gunyanara community (located near Nhulunbuy) and surrounding areas, had been pursuing a Township Lease for Gunyanara. The Gumatj clan wanted to hold and administer the township lease and be directly responsible for decisions on their land, and have the ability to directly engage, and partner, with people and organisations seeking to utilise their land.

On 18 October 2017, Ngarrariyal Aboriginal Corporation was approved by the Federal Minister for Indigenous Affairs as a Commonwealth approved entity under the Land Rights Act, which enables it to hold a township lease. On 24 October 2017, the Gunyanara Township Lease was executed with a commencement date of 1 December 2017. The Gunyanara Township Lease is significant as it is the first Township Lease held by a traditional owner corporation.³¹

This is referenced in the 2019-2020 Aboriginal Land Rights (Northern Territory) Amendment (Jabiru) Bill 2020 Explanatory Memorandum³²:

“At the request of traditional owners in North East Arnhem Land, the Government worked in partnership with the Gumatj people to develop a model of Township Leasing that would strengthen local decision making and ensure that traditional owners are in the driver’s seat when it comes to decisions about their land. A new Community entity Township Leasing model was established whereby a Township Lease could be held and administered by a community entity. In 2016, the first Community entity Township Lease was established in the town of Gunyanara, North East Arnhem Land.”

At the time the evaluation was carried out, the Gunyanara Township Lease is the only community entity lease in operation and is being used as a prototype for other communities interested in the Community Entity model. We note that the Jabiru township lease (held by the Gundjeihmi Aboriginal Corporation) commenced on 1 July 2021 but is outside of the Scope of Works for this project.

In the case of the Gunyanara township lease,³³ *“Rental income from subleases will be directed to Community and economic development which will improve the prosperity and wellbeing of Aboriginal residents of the Gunyanara Community”*.

³⁰ <https://Gunyanara.com.au/about-the-township-lease/township-leasing/aboriginal-land-township-lease/>

³¹ The information on the Gunyanara township lease in this section was paraphrased from the information provided on the Ngarrariyal Aboriginal Corporation website: <https://Gunyanara.com.au/>. Accessed on 30 September 2020 and <https://www.niaa.gov.au/sites/default/files/publications/Gunyanara-fact-sheet.pdf>

³²

https://parlinfo.aph.gov.au/parllInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6536_ems_aee2e2b9-203e-46ce-a59d-d3f2e374d6de%22

³³ <https://Gunyanara.com.au/about-the-township-lease/township-leasing/>

Description of Gunyanara Township Lease Structure³⁴

Aboriginal land

- The Arnhem Land Aboriginal Land Trust holds Aboriginal land on behalf of traditional Aboriginal owners, including the land on which the Gunyanara community is situated

Township Lease

- The Arnhem Land Aboriginal Land Trust, directed by the Northern Land Council, grants a 99 year township lease under section 19A of the Land Rights Act to Narrariyal Aboriginal Corporation, an approved entity under section 3AAA of the Land Rights Act

Subleases and licences

- Following commencement of the township lease, Narrariyal decides who can get a new sublease or licence in the township lease area, and how land is used based on the rules set out in the lease, its constitution and the master plan.
- Any existing section 19 leases or licences become subleases or sublicences on the same terms and conditions.
- Narrariyal assumes responsibility for all property management functions previously undertaken by the Land Council such as lease compliance and rent collection.

The Transition Model is a model whereby the Township Lease is managed as per the Executive Director Model for an interim period until transitioned to a Community Entity Model. Importantly the lease agreement requires the Executive Director to implement a capacity building program to improve the capacity and capability of the community entity so that it can assume, after a transition period, the role of the head lessor.

The Mutitjulu Lease uses this model³⁵:

“CLC has given the green light for an innovative township lease that puts traditional owners and residents of the Mutitjulu community firmly in control of their future... Initially the sublease will be held by the Executive Director who must consult with a committee of residents and traditional owners before making any land use decisions in Mutitjulu. Once traditional owners and residents have built their capacity and established a new corporation the sublease will be transferred.

The Executive Director must transfer the sublease to a new community corporation when the CLC is satisfied that the Corporation has the capacity to manage the sublease. This can happen at any time, and the sublease can be transferred back to the Executive Director if the corporation runs into trouble.”

The risk is that the capacity threshold is not met, and the lease continues to be held by the Executive Director indefinitely.

³⁴ <https://Gunyanara.com.au/about-the-township-lease/township-leasing/>

³⁵ Township Leasing our Way: CLC Approves Community Driven Model For Mutitjulu, Media Release, 8 December 2016 <https://www.clc.org.au/township-leasing-our-way-clc-approves-community-driven-model-for-mutitjulu/>

4 Overview of the Evaluation

4.1 Evaluation Method

Ethical Approach and Cultural Sensitivity

The evaluation was guided by the Indigenous Advancement Strategy Evaluation Framework³⁶ that aims to generate high quality and ethical evidence to inform decision making on Commonwealth-funded policies and programs affecting Indigenous Australians. The Indigenous Advancement Strategy Evaluation Framework holds the Commonwealth to the highest standards of ethical evaluation practice.

Yaran's team was committed to ensuring ethical and appropriate consultation is undertaken on all projects. Accordingly, any projects Yaran undertakes are planned, ethical and culturally appropriate and take place with Aboriginal groups, communities and individuals who have traditional, cultural, social, or physical community connection with the land on which it operates.

Yaran were required to submit this project to the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) for single ethical review. AIATSIS reviewed Yaran's proposed method of consultation and engagement with Aboriginal communities and granted ethical approval of this evaluation project.

In addition to the ethical clearance, Yaran took practical steps to increase the cultural sensitivity of the evaluation consistent with the principles of the Indigenous Advancement Strategy evaluation framework. Richard (Rick) Callaghan, Project Director is an Indigenous man, and he:

- Reviewed all documents (including methodologies, interview guides, reports) prior to use or submission to the client.
- Ensured that non-Indigenous evaluators involved in the project were knowledgeable about culturally sensitive evaluation.
- Attended all Community consultations and most of the interviews to ensure that the opinions of indigenous stakeholders were portrayed with a high level of accuracy.

Overview

The intent of township leasing was to provide a framework and establish processes that would enable communities to make land tenure decisions within a well-defined and inclusive structure. In turn, this was expected to create a sustainable environment that fostered social, economic and cultural well-being benefits for Indigenous people and communities in the Northern Territory. This evaluation explores the extent to which this potential has been realised.

This evaluation considers the status of the communities that did take up township leases prior to 31st May 2021 and how they have performed against initial expectations. The terms of reference do not extend to consider why communities haven't pursued township leasing.

In examining the benefits of township leasing, the methodology involves examining the direct benefits of the initiative to a specific community but also the broader Northern Territory scale benefits. For this evaluation, we have described this as:

- **Direct benefits** are gained when a community signs a township lease.
- **Broader Benefits** are those where township leasing was found to be a significant contributing factor or a direct catalyst for change that has led to social, cultural and economic benefits for the communities across the Northern Territory that have not entered into a township lease.

³⁶ <https://www.niaa.gov.au/sites/default/files/publications/ias-evaluation-framework.pdf>

Our assessment of direct benefits was largely based on stakeholder interviews and review of available documentation as there was insufficient data available to isolate and quantify the benefits arising from the change in land tenure only. For example, an increase in rental income from Northern Territory Government agencies concurrent with the introduction of a township lease was the result of other contributing factors as well as the signing of a 99-year lease. This is illustrated by the fact that the Northern Territory Government agencies also commenced paying market rents in communities without a township lease in place.

The purpose of the evaluation was to understand how township leases impact on the lives of Indigenous people and their communities in the Northern Territory. The evaluation will be used to inform a post-commencement report on township leasing under the White Paper. Other potential users of the evaluation include communities, Office of Northern Australia, the NIAA Land Branch and Policy, Analysis & Evaluation Branch and the OTL.

Mixed Method Approach

The evaluation used a mixed-methods approach working within a theory-based evaluation framework. A theory-based framework is applicable when it is difficult or not possible to measure actual long-term outcomes. This approach is required for this evaluation on the following basis:

- For the earlier township leases as, whilst there has been sufficient time for the medium and long-term benefits to be observable, there are data limitations.
- For the more recent township leases as it is unlikely that sufficient time has elapsed for measurable medium to longer term outcomes to emerge.

Accordingly, the evaluation needed to consider the extent to which outcomes have been achieved and then apply the **theory of change** (testing the underlying assumptions) to assess the potential for longer term benefits. Further, a theory-based approach was necessary to assess the contributory effects of township leases to any observed changes in outcome indicators.

The methodology included drawing upon a Program Logic with a focus on medium term outcomes, that is the outcomes realised since township leasing was introduced.

The specific methods that used during the evaluation are described in the remainder of this section.

Township Leasing Logic Model

The Township Leasing Logic Model is a representation of how township leasing is expected to operate in order to achieve its outcomes. The Logic Model was originally developed by Social Ventures Australia for NIAA. Figure 1 shows an updated version prepared by Yaran based on consultations with the Township Leasing Evaluation Advisory Group – (Refer Appendix One for the members of this Group). The two core components of the revised Verified Logic Model as presented and accepted as Milestone 2 for this project are set out below.

Operational component: identifies the inputs, participants, activities and outputs. Here the evaluation is focused on the implementation of township leasing and the extent to which township leasing is operating as expected.

Figure 1: Extract of Updated Logic Model 20 August 2019 – Activities and Outputs

Activities and Outputs

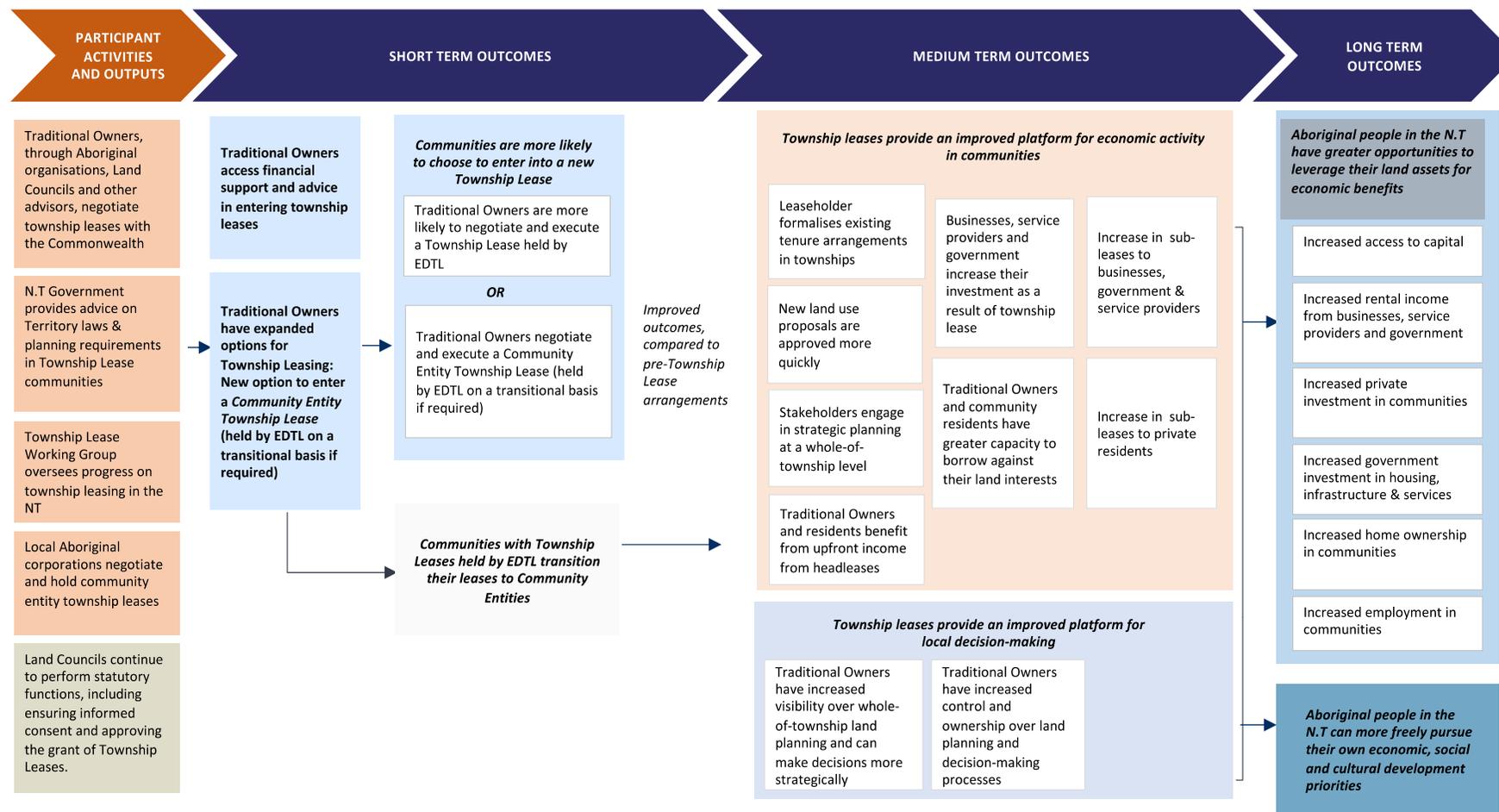
INPUTS	PARTICIPATION	COMMONWEALTH ACTIVITIES AND OUTPUTS	PARTICIPANT ACTIVITIES AND OUTPUTS
<p>Policy change to provide option for Township Leases to be held by local Aboriginal corporations.</p> <ul style="list-style-type: none"> Lease terms contain provision for direct lease to Aboriginal corporation (a 'Community Entity'), or transfer to a Community Entity after a transitional lease to EDTL. <p>\$17 million to support Land Administration and Township Leasing in NT. 3 strands:</p> <ul style="list-style-type: none"> Economic Development Fund for communities entering Township Leases Independent legal representation for Traditional Owners, as required Funding for NT Government to develop Community Land Use Plans 	<p>Primary beneficiaries: Traditional Owners, representative organisations (including Land Councils) and communities on Aboriginal Land in the Northern Territory.</p> <p>Secondary beneficiaries: Government, investors and businesses in the Northern Territory.</p>	<p>Leading township lease negotiations with Traditional Owners and their representative organisations (PM&C).</p> <p>Administering grants and funding arrangements (PM&C).</p> <p>Holding and administering township leases and transitional community entity township leases (EDTL).</p> <p>Providing information, coordination support and monitoring outcomes (ONA).</p>	<p>Traditional Owners, through Aboriginal organisations, Land Councils and other advisors, negotiate township leases with the Commonwealth.</p> <p>NT Government provides advice on Territory laws & planning requirements in Township Lease communities.</p> <p>Township Lease Working Group oversees progress on township leasing in the NT.</p> <p>Local Aboriginal corporations negotiate and hold community entity township leases.</p> <p>Land Councils continue to perform statutory functions, including ensuring informed consent and approving the grant of Township Leases.</p> <p>NT Government prepares Community Land Use Plans.</p>

Outcomes: identify the expected short term, medium term and longer-term outcomes. Here the evaluation is focused on the extent to which the outcomes have been achieved and/or the extent to which township leasing is tracking towards achieving the expected outcomes.

Figure 2 (next Page): Extract of Updated Logic Model 20 August 2019 – Outcomes

Note: Accessible version of Figure 2 is available at Appendix D.

Outcomes



Measuring and assessing effectiveness

The effectiveness of the initiative was assessed by analysing the extent to which the expected outcomes have been achieved – short term outcomes for all leases, and medium, and long-term outcomes for the earlier leases. Measuring outcomes requires:

- Developing (qualitative and/or quantitative) indicators for each expected outcome.
- Developing data collection instruments for primary data, and
- Collation of relevant secondary data from existing sources.

The outcome indicators were either categorical or quantitative in nature where:

- **Categorical indicators** - While it is necessary for the evaluation to assess whether the attribute in question has been achieved, **this is not sufficient to establish the success of the initiative.**

For example, the short-term outcome '*traditional owners have expanded options for township leasing*' is categorical in nature and thus the evaluation needs to establish whether, or not, the traditional owners have expanded options. However, a simple Yes or No is insufficient to judge success. We also need to establish the extent to which traditional owners were aware of the options, had sufficient information to make an informed decision about the options and that options were sufficiently explored to ensure that they were relevant to the community.

- **Quantitative indicators** - ideally sufficient data is available to find a baseline trend so we can assess **whether there has been a change in trend since the inception of a township lease.** Where this is not possible, we consider qualitatively what changes have occurred and establish whether there are links between the change and the initiative (attribution).

Identifying and understanding the enablers and barriers

Any measures need to be understood within the broader context, including consideration of barriers to outcomes being achieved. This is also important when assessing attribution (an element of theory-based evaluation methods). The evaluation, by focusing on barriers and enablers, also generates insights critical for future strategy development (an evaluation requirement).

Measuring and Assessing Efficiency

There are two broad types of efficiency, technical (achieving maximum outputs with the least cost) and allocative efficiency (combining different resource inputs to produce a mix of outputs).

There were challenges to undertaking a quantitative analysis as this requires robust data for communities that have a township lease (S.19A) and those that have some alternative arrangement (S.19). We discuss in Section 4.4 data constraints we encountered which made it difficult to complete a full and robust evaluation of efficiency.

4.2 Evaluation Questions

Consultation tools comprising evaluation questions for each evaluation requirement were submitted with our ethics application. These were developed in conjunction with the Evaluation Advisory Group³⁷ and are as follows:

³⁷ Refer Appendix A for make-up of the Evaluation Advisory Group

1. Establish the benefit of the township leasing measure towards improving the social, cultural and economic wellbeing of Aboriginal and Torres Strait Islander people and communities.
 - a) Have communities with township leases more freely pursued their own social, economic and cultural development priorities?
 - b) What is the extent that traditional owners are able to derive income from leases?
 - c) Do traditional owners have increased control and ownership over land planning and decision-making processes?
 - d) What is the benefit for Aboriginal and Torres Strait residents of township leasing communities?
2. Establish the effectiveness and efficiency of the township leasing measure in increasing certainty for investors, increased economic opportunity for Aboriginal communities, and increased home ownership.
 - a) Are businesses, service providers and Government more willing to invest in township lease communities? To what extent has this occurred?
 - b) Do traditional owners and community residents have greater capacity to leverage against their land interests? To what extent has this occurred?
 - c) To what extent has the lease resulted in additional income and investment opportunities?
 - d) What are the impacts of the township leasing components including: the lease and governance arrangements, activities and infrastructure funded by the community benefits package, use of rental payments, additional land administration support and community planning?
3. Assess the township leasing models - the Executive Director of Township Leasing ("Executive Director") model ("Executive Director Model") and Community Entity Township Leases model ("Community Entity model") in supporting uptake and implementation of township leases.
 - a) How have the models supported or impeded the uptake of township leases by Aboriginal communities?
 - b) How have the models supported or impeded the implementation of township leases in Aboriginal communities?
 - c) How do the outcomes of township leases held by community entities compare to those held by the Executive Director?
 - d) Are relevant township leasing communities able to transition to a Community Entity model if desired?
 - e) Do community entities have the capacity to administer their own leases? How is this decided?
 - f) What support do community entities need to perform their functions?
4. Assess the administrative efficiency of the township lease model.
 - a) Is the OTL model administratively efficient?
 - b) What is the cost of establishing and maintaining a sub-lease?
 - c) Is the cost of establishing and maintaining a sub-lease comparable with S.19 and other sub-lease arrangements?
5. To understand how the initiative could be modified or scaled in the future to achieve future impact, beyond the evaluation period.
 - a) What are the preconditions for township leasing to be successful?
 - b) What changes could be made to this initiative to increase its impact?
 - c) To what extent is township leasing a viable solution for other communities in the NT?

4.3 Research and Analysis

Our main research methods were as follows:

Literature Review

A literature review, see **Appendix B**, was conducted at the outset of the evaluation. The purpose of the literature review was to draw on what is already known about township leasing and to better understand the background, characteristics and outcomes. The literature review sought to contribute data to each of the evaluation requirements.

Peer-reviewed journal articles; evaluations and reviews of similar programs/services; data sets produced by reliable Government sources and other reports and relevant publications from reliable sources were considered in scope for inclusion in the literature review. Literature was selected through referrals from the Evaluation Advisory Group, stakeholders during our consultation and via systematic internet searches using key search terms such as township leasing.

Semi-structured interviews and focus group meetings

Primary data was collected from a broad range of stakeholders including meetings with representatives of each township that has a township lease in place. A list of stakeholders and groups consulted is included at **Appendix A**. This method was chosen because it provided Yaran with rich qualitative data on the stakeholders' experiences. Consultation tools (Refer Section 4.2) were structured in a manner that enabled Yaran to address the five requirements set out in the Statement of Work.

Analysis of Information

We adopted a systematic approach to the collation and analysis of information, guided by the evaluation questions. To ensure the integrity, consistency and robustness of the collation of information, we used an evidentiary matrix. This evidentiary matrix is a simple structural mechanism that requires each team member participating in the desktop work to match key pieces of information to the evaluation questions, to document the information source and to state the basis for the relevancy of the information to the evaluation question.

4.4 Evaluation Limitations

The main limitations with the evaluation were as follows:

Only Considered Communities with Township Leasing prior to 30 June 2019

The evaluation only examined communities that took up township leasing, with no examination of communities that may have considered it, but decided not to proceed, or those that indirectly benefited from the introduction of township leasing. Accordingly, we could not directly interrogate what the barriers to entering township leasing may have been for these communities, nor the downstream impact of other communities having entered into township leases on them.

We note that there are now two township leases in operation using the Community Entity model. The Jabiru Township Lease (held by the Gundjeihmi Aboriginal Corporation Jabiru Town) commenced on 1 July 2021 but is outside of the Scope of Works for this project.

Difficulty in Separating Impact of Land Tenure from Incentives

A significant challenge in assessing direct benefits is that it is not just the township leasing measure that communities have signed up to. Rather, substantial financial incentives were also provided which means that it is more difficult to isolate the benefits of township leasing compared to the impact of the entire package on social, cultural and economic wellbeing. Whilst we understand that the policy is to continue to offer these incentives, the level of incentives is discretionary and the policy may change in the future.

Limited Township Leasing Sites

There has been a relatively limited uptake of township leases, including only one using the Community Entity Model at the time that this evaluation was conducted. This meant that we could not extrapolate findings to the entirety of the Northern Territory. Nonetheless, several township leases have been in place long enough to provide sound conclusions.

Lack of Quantitative Data to Measure Efficiency

We found that it was not possible to quantitatively assess the efficiency of creating land tenure at the individual lease or sublease level on the basis that:

- We encountered material data constraints as there is no relevant financial data available to compare either the different options (S.19 and S.19A) nor to benchmark efficiency to any level.
- There is an annual summary of OTL expenses across the four key expense categories of employee expenses; travel-related expenses; contractor services; and general administrative expenses. However, OTL does not split the costs of administering and promoting township leasing, either in total or by each township.

We were advised by OTL that there is no relevant granular financial information that could be used to understand the cost of establishing and administering a particular township lease with regard to matters such as consultation costs; legal costs; operational costs; and transactional costs for sub-leases.

- Regardless, any comparison of the cost of administering township leases is problematic given that OTL has many more functions than administering S.19A leases. Similarly Land Councils have very diverse operations, doing significantly more than setting up and administering S.19 leases.
- OTL does not undertake any formal measurement and evaluation of its performance or the impact of tenure through township leasing on the social and economic wellbeing of traditional owners and township residents.
- Assessing the administrative efficiency of sub-leasing requires initially, determining the expenditure incurred in establishing and then managing sub-leases and then comparing/benchmarking this with an alternative arrangement such as communities utilising the S.19 arrangements. This data was largely unavailable.

5 Findings - Community Response to Township Leasing

This section covers the community response to township leasing including the level of uptake and the experience of communities in engaging in township leasing:

- The level of uptake of township leasing across the Northern Territory and any insights into what created the impetus for the uptake.
- The community experience of implementing township leasing, including the initial consultation process.

5.1 Level of Uptake of Township Leases

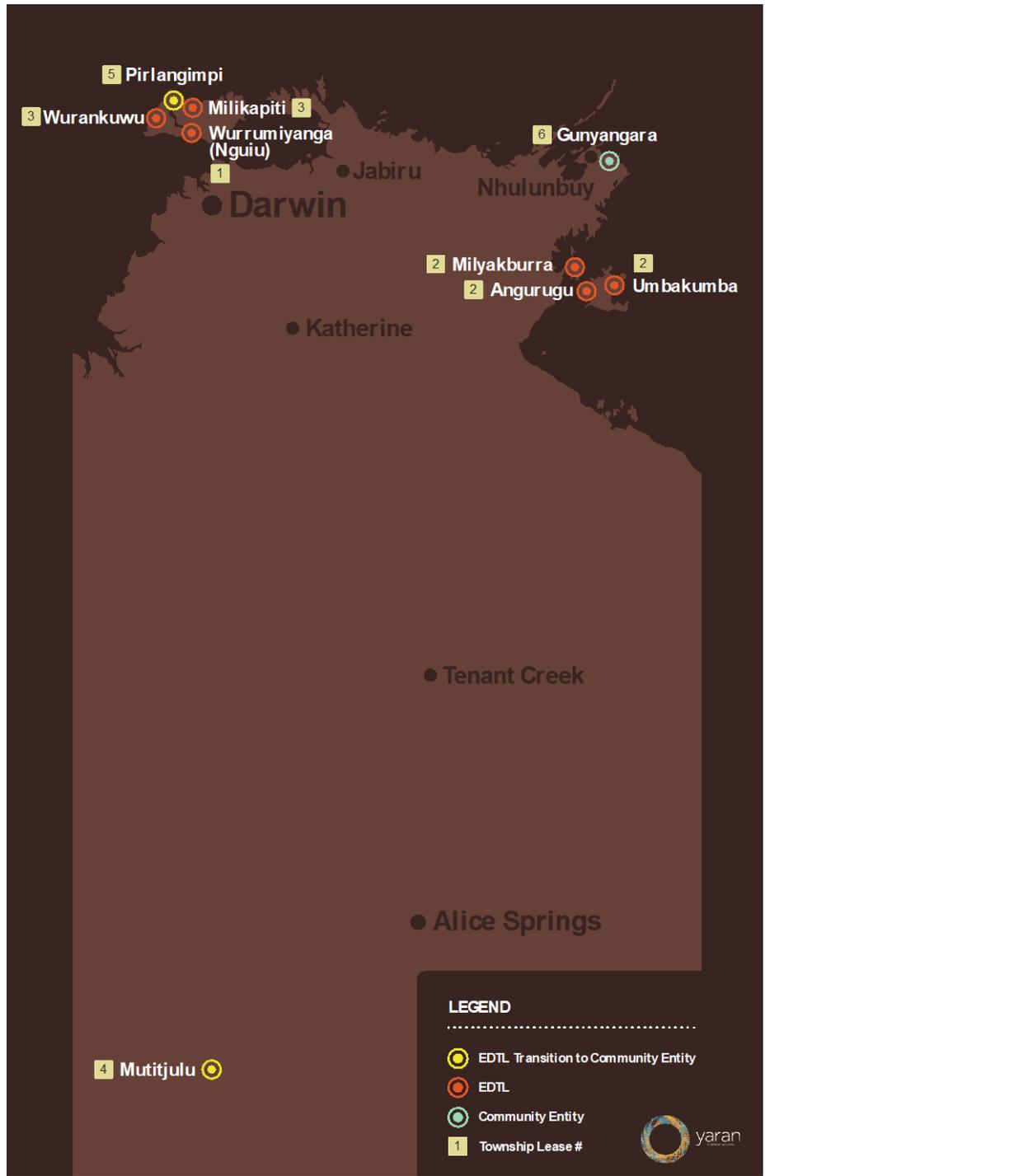
Key Finding #1 – Poor uptake of township leasing across the Northern Territory

Township leasing is available to all communities in the Northern Territory. However, we found that the level of uptake has been limited with 12% of eligible communities within the Northern Territory having signed a township lease in the 14 years since it was introduced. Although there is no readily accessible data on what expectations were when township leasing was introduced in 2006, we believe that the level of uptake is substantially less than would reasonably have been expected.

In the initial stages, when the Executive Director Model was the only available model, only island communities associated with Tiwi Island Land Council and Anindilyakwa Land Council entered township lease arrangements. The uptake of the Executive Director Model was hindered by several factors including that the mainland Land Councils were strongly opposed to the governance arrangements and its introduction coincided with the controversial NTER and the acceptance of S.19 as offering secure tenure for Government investment in infrastructure. These factors were substantial enough to outweigh the inducements on offer to sign.

When the Community Entity and Transition Models became available in 2017 it was seen as providing a breakthrough, with support for this model seemingly higher than the Executive Director Model. Three more Communities signed leases (two of which were the Transition Model), including one in each of the two mainland Land Councils (5% total). Nonetheless, as at 31st May 2021, there was only one township with the Community Entity Model in place.

Figure 3: This map shows the number of Township Leases that have been signed and the nature of each model.



As noted previously there were material differences in the political and social context for township leasing since 2007. For this evaluation, we consider the initial phase of township leasing is the period from inception until 2017 when the Executive Director Model was the only model available. We consider the second phase as the period from 2017 when the Community Entity and Transition Models become available. Each lease is described below (Refer Table 9 in Section 7.1 and to Appendix C for additional information):

INITIAL PHASE – EXECUTIVE DIRECTOR MODEL

The Township Leases signed in the initial phase were:

Table 1: Summary of Township Leases signed during the Initial Phase

Township Lease #1 – 30th August 2007 (Number 1 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Wurrumiyanga (Nguui)	Bathurst Island	Tiwi Land Council	Executive Director Model	99 years

Township Lease #2 – 4th December 2008 (Number 2 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Angurugu	Groote Eylandt	Anindilyakwa Land Council	Executive Director Model	80 years
Umbakumba	Groote Eylandt	Anindilyakwa Land Council	Executive Director Model	80 years
Milyakburra	Bickerton Island	Anindilyakwa Land Council	Executive Director Model	80 years

Township Lease #3 – 22nd November 2008 (Number 3 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Milikapiti (Snake Bay)	Melville Island	Tiwi Land Council	Executive Director Model	99 years
Wurankuwu (Ranku)	Bathurst Island	Tiwi Land Council	Executive Director Model	99 years

A key component in the Logic Model is the short-term outcome whereby traditional owners have access to financial support and advice in entering into township leases. This determines that they are more likely to choose to enter into a township lease with the expectation of improved outcomes compared to pre-township lease arrangements.

The introduction of township leasing came with much publicity across the Northern Territory and support was offered to any Communities that expressed an interest in investigating their options. However only three township leases were signed within the initial 18-month period when this activity and promotion of township leasing was also coupled with the offer of substantial incentives.

The lower level of uptake during the initial phase demonstrates the reluctance of mainland communities to enter township leasing using the Executive Director Model driven mainly by the strident disapproval of the mainland Land Councils. Three township leases, covering six communities, were signed in this initial phase and they were only with their respective island Land Councils namely, either Tiwi Land Council or Anindilyakwa Land Council.

We set out below our findings in regard to the reasons for this.

Tiwi Island Uptake

Through our consultations we found that the reasons for the Tiwi Islands responding early to township leasing are as follows:

- Senior Tiwi traditional owners were very supportive of township leasing.
- Signing up to the township leases at the time attracted substantial incentives and being a “first mover” meant the definitions for economic and community development were quite broad to further incentivise communities.
- The Tiwi Land Council were under-resourced and had few S.19 leases in place in 2007 with very limited capacity under any mechanism (S.19 or S.19A) to establish leases for the housing packages on offer.
- The Tiwi Islands provided a sound demonstration site for township leasing being relatively accessible to Darwin coupled with relatively high level of education and an appetite to develop the island meant they could potentially realise more of the likely benefits in due course.
- There was no home ownership and limited investment on the Tiwi Islands yet over the years the community had shown an appetite to grow and take risks, for example the development of the forestry operations.
- Being a smaller Land Council allowed for much more direct interaction between the Land Council and the communities, compared with the larger mainland Councils, which meant that the Tiwi Land Council were able to monitor and influence developments.

Groote Eylandt Uptake

Groote Eylandt and Bickerton Island had similarities to the Tiwi Islands however a large driving force was that township leasing was a relatively small component of a substantial Regional Partnership Agreement which covered a range of major initiatives for the islands. This Agreement included the Strategic Indigenous Housing Infrastructure Program that led to a significant investment in housing on Groote Eylandt and Bickerton Island.

At the time a township lease was being promoted as a measure (bordering on a pre-requisite) that would support and provide efficiencies in township planning for such a major investment in infrastructure, community and housing. It is important to note that, subsequently, the Strategic Indigenous Housing Infrastructure Program was a Territory-wide initiative that provided housing to most Communities across the Northern Territory, many of which did not, and still do not, have township leasing.

Quote from Groote Eylandt Consultation:

“There was a lot of pressure at the time to sign up for the Township Lease and the advice was not very clear and not given many options – felt pushed into it. Was all part of the Regional Partnership which was complex.”

In 2013, during this initial phase, and six years after the initial township lease was signed, the Groote Eylandt Consultative Forum, the Anindilyakwa Land Council and the Anindilyakwa Land Trust members endorsed a forty-year extension of the township lease. This suggests support for township leasing, although it should be noted that the Community Entity Model was not available at that point.

In 2019 at the request of traditional owners the Groote Eylandt township lease had provisions inserted into the lease to enable the transfer to the Community Entity Model. Our consultations with the Anindilyakwa Land Trust suggested they are exploring the timing of this transition.

Mainland Uptake

No mainland communities signed up for the Executive Director Model during the initial phase. Several factors were identified during consultation as contributing to the poor levels of uptake on the mainland including:

- Having fought for land rights for so long there was a strong caution and reluctance to hand existing Land Council and traditional owners functions and control to a Commonwealth Officer for such a long period. As such from commencement many key stakeholders considered the ideology of offering control to the Commonwealth Government through the Executive Director as counter to the intention of the Land Rights Act.

Having a Commonwealth Officer holding the head lease requires substantial trust in the model and a high level of confidence that it won't go astray in that time and as noted this, co-incidentally, was against the backdrop of the NTER and the controversy associated with compulsory leasing that further undermined trust.

Each of the mainland Land Councils have expressed their views publicly. For example:

When the Gunyanara lease was signed NLC Chairman Sam Bush-Blanasi said³⁸ "At the NLC, we didn't like the way the Land Rights Act was first changed to allow for Township Leasing. That's because the lease was held by a Commonwealth officer, the Executive Director.

*Under that law, it was the Executive Director who held the head lease over a community, and in the end it was the Executive Director who would get to have the say over who got to use the land within the community. **At the NLC we opposed that model of leasing because we didn't like the way it could take the power away from Traditional Owners.**"*

Joe Morrison. CEO of NLC, in an address to National Press Club 11 February 2015 said (Page 7) "as an incentive to get communities to surrender their land to Commonwealth control, the Minister is dangling promises of services and infrastructure – basic entitlements of citizenship. The NLC's advice to our constituents has been consistent: be careful about a township lease, because if you consent to it, it could be the last decision you'll ever make about development on your land. You'll be handing ultimate control and your property rights to the Commonwealth of your land which you and your ancestors fought hard to get title to many years ago."

- The process of gaining consent from traditional owners towards any form of township lease is complex, time consuming and, often, emotionally draining which requires a substantial number of meetings and community consultations. This remains a potential barrier to progressing township leasing arrangements (Refer Section 5.2). "Reform fatigue" was an issue at the time and other major policy initiatives (e.g., NTER) took the focus away and reduced capacity to access communities to discuss township leasing, its implications and potential benefits.
- Township leasing can impact adversely on existing control and relationships, leading to tensions. Despite this the township leasing model was created relatively quickly without full consultation on the potential impacts and without gaining full endorsement from, or co-designing aspects with, key stakeholders such as the NLC and CLC.
- During the initial phase the Government was focusing on larger communities rather than smaller communities, many of which are located on the mainland.

While we did not consult directly with these communities, our literature review and consultations with the Land Councils suggests that for the Communities on the mainland the need for self-determination was a higher importance than incentives for local economic benefits.

³⁸ <https://www.nlc.org.au/media-publications/gunyangara-signs-township-lease>

SECOND PHASE – COMMUNITY ENTITY MODEL AND TRANSITION MODEL INTRODUCTION

The township leases signed in the second phase were:

Table 2: Summary of township leases signed during the second phase

Township Lease #4 – 17th March 2017 (Number 4 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Mutitjulu	Central Australia	CLC	Transition Model	67 years

Township Lease #5 – 26th June 2017 (Number 5 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Pirlangimpi	Twii Islands	Tiwi Island Land Council	Transition Model	99 years

Township Lease #6 – 1st December 2017 (Number 6 in Figure 3 map above)

Township	Location	Land Council	Model	Term
Gunyanara	Nhulunbuy	NLC	Community Entity Model	99 years

The second phase of township leasing evolved into offering the option of the Community Entity Model in 2017. The thinking behind the Community Model was to take the best components of township leasing (for example, to deal with the township as a whole within transparent rules) and combine this with local direct control or moving towards it when capacity is in place.

We note that all three leases were signed within the first year of the Community Entity Model (one lease signed) and the Transition Model (two leases signed) becoming available which illustrates that these townships were anticipating that this option may arise, as the complexities of establishing a township lease are such that there is invariably a long lead time prior to the signing of the lease. This was confirmed in our consultations with each community. Also, the Groote Eylandt township lease had provisions inserted into the lease to enable transition to the Community Entity Model.

The encouraging aspect is that each of the mainland Land Councils now have a township lease within their region as without the support of these Land Councils the likelihood of any significant uptake of township leasing is greatly reduced. For example:

The Director of CLC states³⁹ the following regarding the Mutitjulu Lease “In our model a long term lease over a community would be held by an Aboriginal corporation rather than by a public servant, a concept that is unacceptable to our members. This is an exciting development and provides traditional owners and community residents with a new option for tenure reform which may be attractive to some remote communities.

The CLC Corporate Plan 2020-2024⁴⁰ shows Policy Priorities for 2019-2022 and under the “Keeping Land Rights Strong” heading has the following priority “Community leasing model - Support Traditional Owner aspirations in relation to leasing arrangements, including community township leasing and housing leases.”

In addition, the NLC stated during our consultation that they are currently working with several other communities that have shown interest in the Community Entity Model.

³⁹ CLC Annual Report 2014-15 <https://www.clc.org.au/all-publications/?type=annual-reports&topic=&time=>

⁴⁰ Available at <https://www.clc.org.au/central-land-council-corporate-plan-2020-2024>

Nonetheless while the Community Entity Model was seen as providing somewhat of a breakthrough, at the time of writing only one exists in its pure form despite support for the model and the option having been available since 2017.

5.2 Findings - Community Experiences of Township Leases

Key Finding #2 - Significant and complex negotiations prior to signing and ongoing operations generally work well

Township leasing negotiations are complex and the effort and social cost involved should not be underestimated with major decisions required around key components such as Head Lessees, the makeup of Consultative Forum, land use and spending of incentives. We also found genuine concern in committing future generations to a 99-year lease added to this complexity.

However, the initial effort and social cost has subsided over time and Communities in four out of six communities with township leases reported positive experiences. Positive aspects included the direct economic benefits from the incentive payments as well as the experience of operating within the known terms and guidelines of a township lease.

Refer Recommendations 1-4 which seek to simplify and identify the best fit for purpose lease approach to leasing for each community.

Summary of medium-term outcomes

The Logic Model presents a set of short-term outcomes and medium-term outcomes expected from the introduction of township leasing. Our assessment of these, based on our consultations and literature review can be summarised as follows with more detail in following sections:

Table 3: Summary of Yaran's qualitative assessment of short-term outcomes and medium-term outcomes for each community with a township lease

Short Term Outcomes

Outcomes	Wurrumiya -nga	Groote Eylandt	Milikapiti & Ranku	Mutitjulu	Pirlangimpi	Gunyanara
Traditional owners access financial support and advice	Yes	Yes	Yes	Yes	Yes	Yes
Traditional owners have expanded options for Township Leasing	Yes	Yes	Yes	Yes	Yes	Yes

Medium Term Outcomes

Outcomes	Wurrumiya -nga	Groote Eylandt	Milikapiti & Ranku	Mutitjulu	Pirlangimpi	Gunyanara
Leaseholder formalises existing tenure arrangements	Yes	Yes	Yes	Yes	Yes	Yes
New land use proposals are approved more quickly	Yes	Yes	Yes	Yes	Yes	Yes
Stakeholders engage in whole-of-township strategic planning	Yes	Yes	Yes	Yes	Yes	Yes
Traditional owners/residents benefit from upfront income from head leases	Yes	Yes	Yes	Yes	Yes	Yes
Increased investment because of township lease*	Difficult to assess	Difficult to assess	Difficult to assess	No	No	Yes
Traditional owners/residents - have borrowed against their land	Yes	No	No	No	No	No

Outcomes	Wurrumiya -nga	Groote Eylandt	Milikapiti & Ranku	Mutitjulu	Pirlangimpi	Gunyanara
Increased sub-leases to businesses, Government & service providers	Yes	No	No	No	No	No
Increase in sub-leases to private residents	Yes	No	No	No	No	No
Traditional owners have increased visibility and make decisions more strategically	Yes	Yes	Yes	Yes	Yes	Yes
Traditional owners have increased control and ownership over land planning and decision-making processes	No	No	No	No	No	No

In terms of the overall sentiment towards township leasing from each community based on our consultations (refer Appendix C) can be summarised as:

Table 4: Summary of Yaran’s qualitative assessment of community sentiment to township leasing

Community	Overall Comments
Wurrumiyanga	Very positive regarding the Executive Director Model – <i>“OTL better than S.19 – much quicker more transparent”</i>
Groote Eylandt (three Communities)	Generally positive towards township leasing however, given the level of activity on the island they felt economic development could occur without the head lease. They expressed that the Executive Director Model was too complicated for their needs and are looking at the Community Entity Model. The sentiment from the three individual community consultations was that they felt they didn't have enough communication and information regarding township leasing, probably as the Land Council was between the Executive Director and them.
Milikapiti & Ranku	Milikapiti were positive regarding the Executive Director Model. When asked whether they would do it again they responded <i>“Yes, but not for as long”</i> as they had concerns about the length of tenure. Ranku demonstrated that township leasing didn't suit a homeland. They stated that <i>“If didn’t have OTL wouldn’t be much different in hindsight S.19 would probably have been better as less complicated”</i>
Mutitjulu	Representatives of the community were not available to meet with Yaran. In transition and appear to be progressing well in terms of economic benefits based on desktop research.
Pirlangimpi	Representatives of the community were not available to meet with Yaran. Appears to have been significant discussion and dissent over an extended period prior to signing the township lease. Our understanding is that this continues and they have yet to agree on what to spend the rent-in advance and incentive funds on, with the funds still being held in trust.
Gunyanara	Very positive – <i>“This model of Township Leasing can be a beacon for other traditional owners across the Northern Territory who want to take on responsibility for their land and break free from current barriers in land tenure”</i>

Significant and Complex Negotiations Prior to Signing can Lead to Community Unrest

Consultation with the majority of the communities confirmed that the process of consulting within a community over **any** type of land tenure and use (S.19 and S.19A) can be complicated. When this process involves any major land-based negotiations such as township leasing then it is highly likely to become a long, complex, detailed and emotionally draining process, requiring patience and strong leadership.

At the **Wurrumiyanga** consultation in response to the question “Did they make the right decision?” – *“Took a lot of time, meetings and negotiation. Communication was strong and well known across the Community. Turned out to be good timing with opportunities available – without Township Leasing we would be struggling.”*

At the **Gunyanara** consultation – *“There were 10 years at least of discussions and trying to get it to happen” and “Leadership was also and is very important – in this regard, our eldest brother led the way. Knew what he wanted and set out to get it”*

Township lease negotiations can potentially become quite divisive depending upon the community dynamics. This was the case with Pirlangimpi, based on Yaran’s prior exposure to this community at the time and, whilst we did not consult with directly impacted communities, anecdotally this was reported to have caused several communities to pull out of negotiations for a lease.

Negotiations are complicated further by other factors mentioned above such as historical resistance to the Executive Director Model by the mainland Land Councils, a cautionary approach by communities and Land Councils to the concept of committing future generations to a 99-year lease over a community (refer Milikapiti above) and the ability to accommodate the aspirations of traditional owners and non-traditional owner residents.

Should the positive outcomes for communities with township leasing become more visible over a longer time frame the barrier caused by the above may reduce.

Refer Recommendations 1-3 which can be used to determine if the 99-year period is too long and whether the aims for township leasing could be served equally as well through an initial, say, 40-year period with options to extend by 10 years every 10 years.

Ongoing Operations Generally Work Well

As per Table 4 above for the nine communities that did enter a township lease, seven are generally positive to the concept and agreed that the initial negative impact and high “social cost” of communities arising from the negotiation process subsided.

Rather, communities were experiencing the direct benefits (Refer Section 7.1) from the upfront incentives made as a result of entering into a township lease as well as being more comfortable through the Consultative Forums with the operations of the township leasing arrangements.

These findings are supported by comments at the Gunyanara consultation, including:

Long lead time and complex negotiations - *“There were 10 years at least of discussions and trying to get it to happen” so need strong leadership, a clear vision, community stability and patience.”*

Once in place - *“Overall, it is good to have a range of matters brought under the one roof so that we can minimise meetings for the key leaders of the community.”*

Nonetheless there was some negative feedback from the three Groote Eylandt communities regarding the ongoing operations, primarily in relation to communication regarding the flow of funds into and out of township leasing and engagement with community members.

6 Findings - Efficiency of Township Leasing

This section examines the key design features of township leasing and where possible examines their efficiency and utility in comparison to S.19 approaches.

6.1 Administrative Efficiency of Township Leasing

Key Finding #3 – Administrative efficiency of township leasing could not be determined

The ongoing process of creating a sub-lease under a township lease is guided by the rules of the head lease. Each S.19 lease must go through a substantial consent and consultation process, that on a practical level, is less time efficient than what is required for a sub-lease within a Township Lease model. Efficiency could not be quantified as there is insufficient financial data available to do so, largely because the Office of Township Leasing (OTL), undertakes multiple functions and do not differentiate between the costs of these different administrative functions.

Similarly, data does not exist to assess the administrative efficiency of the Executive Director Model compared to the Community Entity Model. However, OTL should be well positioned to realise efficiencies in the land administration aspects of township leases through both economies of scale and experience, as it provides services on several township leases, compared to a Community Entity which is formed as a one-off.

Refer Recommendations 8 and 9 which aim at creating an ongoing measurement and evaluation framework for Township Leasing

Efficiency of S.19 Compared with Township Leasing

Once established, the ongoing process of creating a sub-lease is relatively straightforward under a township lease as it is guided by, and needs to be consistent with, the rules of the head lease. In addition, the OTL or the community entity can use relatively standard lease agreements or leases, which reduces legal and land administration effort.

Conversely, each S.19 lease has to go through a comprehensive consent and consultation process, which on face value, appears less efficient. By way of example the NLC website⁴¹ states that:

“The time frame for an assessment of a S.19 Land Use Agreement expression of interest and the subsequent consultation with traditional Aboriginal owners can take a minimum of six months to progress if all information is provided in a timely manner. However, the time required to conduct consultations on S.19 Land Use Agreements will vary depending on the type of interest and the region. The NLC makes no guarantee as to the time taken to conduct those consultations pursuant to its statutory responsibilities under the Land Rights Act.”

“In order to deal with the volume of approx. 200 expressions of interest to lease received each year, NLC forward-schedules consultations across its region twice a year, at the beginning of the year and mid-way through the year.”

Therefore, from an administration perspective township leasing seems to provide a quicker, simpler and more transparent sub-leasing mechanism than S.19 leases as it reduces the need for ongoing and ad hoc consultations about each lease proposal and related Land Council capacity issues. This includes being more efficient than S.19 processes when it was introduced due to standard and transparent processes including standard procedures, forms and lease templates.

⁴¹ <https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation> - Accessed June 2021.

Efficiency of Executive Director Model compared to the Community Entity Model

All township leasing options provide a well-defined overall approach to land tenure within the township boundaries using several mechanisms to assist efficiencies including in relation to administrative burden, creation of sub-leases, collective decision making, strategic planning and seeking community scale economic benefits. However, we found that it was not possible to measure the relative economic efficiency of the Executive Director Model compared to the Community Entity Model due to the lack data. We also note that there is only one Community Entity Model in place at the time that the evaluation was conducted, such that meaningful comparisons cannot validly be made.

However, the nature of the work undertaken is such that efficiencies in the land administration aspects of the township leases should be available through:

- **Economies of scale** gained by spreading fixed costs over a wider base. This should be an advantage that OTL, which provides land administration services on several township leases, has over the Community Entity Model, which are formed as a one-off for their own Lease.
- **Economies of experience** is the return on a specific investment whereby the average cost of service delivery reduces over time through learnings. Similarly, OTL should have an economies of experience advantage over the Community Entity Model.

We also note that the Executive Director's 2017 Annual Report, in a critique of the Community Entity Model appears to support this finding:

Amongst the issues that need to be addressed are: how the entity is to deal with the question of liability, and the substantial insurance costs; how is it to manage the cost of administering the township lease without the economies of scale that are inherent in leases administered by OTL.⁴²

These advantages determine that OTL should be well placed to provide land administration services for any township lease regardless of who the head lease holder is.

6.2 Design Efficiency of Township Leasing

Key Finding #4 - Well-defined approach of township leasing

All township leasing options provide a well-defined overall approach to land tenure within the Township boundaries resulting in sound land administration processes within a known and planned approach to infrastructure and economic development. This provides a valued point of reference and a sound starting point for interactions between the head lessee and external stakeholders.

Key Finding #5 - Appeal of the Community Entity Model and self-determination

Communities considered that the level of self-determination associated with the Community Entity Model is high and that this is a key reason that this model appears to be the current preferred option. Our Gunyanara consultation identified that this went beyond the community entity having the final decision on sub-leasing. Importantly, the model led to a stronger sense of ownership by the community and a greater understanding regarding the use of land, including for economic development.

⁴² OTL Annual Report 2017 Page 4 Available at https://www.otl.gov.au/sites/default/files/edtl_2016-17_annual_report_booklet_final.pdf

Key Finding #6 - Place and context determines the best fit leasing model

Place and context are important in determining what form of land tenure is best suited to a community as one form of leasing will not necessarily be the best fit for all communities. When assessing the leasing options, it is critical to have regard to a range of factors including the level of desire for the community to change from current arrangements and its capacity to benefit from a township lease. A community's capacity to benefit depends on whether or not there are existing mechanisms that enable an inclusive approach to land management decisions, and there is sufficient scale for a township lease model to be administratively efficient and sustainable.

Refer Recommendations 1-4 which seek to simplify and identify the best fit for purpose lease approach to Leasing for each Community

Well-Defined Approach of Township Leasing

The expected medium-term outcome that township leases provide an improved platform for economic activity in communities has been found to be true to a degree, as within each township leasing community some of the outcomes envisaged have materialised including:

- New land use proposals are approved more quickly.
- Stakeholders engage in strategic planning at a whole-of-township level.

We found that township leasing provides communities with a more inclusive approach to land tenure decisions, which aims to engage all stakeholders through the Consultative Forum and providing a sound framework for negotiation and township planning. It therefore creates a more agile and flexible environment that enables communities to respond to changing circumstances and take up investment opportunities more easily.

It also creates a long term and shared view about land management with the introduction of town planning as part of the process. This is important for the management of resources, approaches to funding bodies and the alignment of community and stakeholder goals.

This was evident when discussing the use of up-front payments and community benefit funds at each of the four consultations undertaken.

For example:

These findings are supported by comments at the Milikapiti and Wurankuwu consultation, including:

The traditional owners chose to invest part of the advance payment to establish trusts, with business arms to facilitate investment, including in their own communities. Milikapiti's is Wulirankuwu Trust and its business arm is Wulirankuwu Pty Ltd.

In accordance with community wishes the Milikapiti traditional owners decided to invest their Community Benefit Package into the construction of new community housing with 3 new dwellings for the community.

In 2013 the Wulirankuwu traditional owners of Milikapiti invested in the Wurrumiyanga supermarket by constructing and leasing back to the store a manager's house.

Compared to S.19, township leases aim to deal with all aspects of township planning as it leases the entire township as opposed to distinct lots. This "whole of township" approach to master planning and infrastructure development means the Executive Director or the community entity can build effective relationships with the Northern Territory Government that can assist with infrastructure and in co-ordinating Northern Territory Government services, such as roads, housing, power and water.

Importantly the township lease is over a term of between 40 and 99 years, which necessitates long term planning and the establishment of relationships based on extended timeframes.

In addition, the added benefit of regular Consultative Forums and reporting from OTL determines that township leasing provides a proactive land tenure mechanism as it puts township leasing on the community's agenda on a regular basis compared to our understanding that S.19 is a more reactive mechanism that responds to requests to lease a portion of land. This assists not just with immediate leasing issues but builds the capacity of the community to understand land administration and economic opportunities from this.

These findings are supported by comments at the Gunyanara consultation, including:

A Master Plan has been prepared and tourism is the focus.

To achieve what we have, support was very important. This support came from the surrounding areas, with people approving and encouraging us to take this step. Professional support then important to get it done.

The higher level of certainty for investors through township leasing compared to S.19 potentially arises through a combination of factors including that the speed of the land tenure process is much quicker, a direct trade of tenure can be facilitated if both parties agree, and it is consistent with the head lease and township planning provides more guidance on community direction which will assist risk assessments made by investor.

These same mechanisms provide more transparency for community stakeholders. In addition, while home ownership is not an aspiration for everyone, it is important that where an individual has such aspiration that they can more easily pursue it. Whilst private leases are available under S.19, township leasing better enables people to potentially seek home ownership, if they want to and are able to, within the parameters of a well-defined tenure option within the township boundaries.

Appeal of the Community Entity Model and Self-determination

When assessing the different leasing options and model designs, it is important to understand the shifts in power, authority and influence within the different leasing options. This is illustrated in the following Table:

Table 5: Summary of key stakeholder roles in S.19 and S.19A Leases

Factor	S.19 Leases	Executive Director (+Transition) Model	Community Entity Model
Which party has the ultimate authority on land use	Traditional owner as their consent is required	Executive Director	Community Entity (Aboriginal Corporation) Board
Critical role in consultation and administration	Land Council	OTL	Community Entity
Diminished role in consultation and administration		Land Council	Land Council
No role, unless invited	Executive Director		Executive Director
Traditional owner role	Ultimate authority on land use	Consultative if on Forum* Traditional owner consent required for township lease initially.	Highly likely to be on Community Entity Board. Traditional owner consent required for township lease initially.
Input of non-traditional owner residents	Must consult with Aboriginal people impacted by the decision	Potentially on Consultative Forum	Potentially on Community Entity Board

**Under the Executive Director Model, the Consultative Forums (a committee provided for in the Head Lease rather than legislation) have different styles, knowledge and expertise available, however the ultimate decision always lies with the Executive Director.*

On this basis the medium-term outcomes envisaged that “*traditional owners would have increased control and ownership over land planning and decision-making processes*”. We found that the level of traditional owners control diminished under township leasing.

In the case of Gunyanara ⁴³ *Narrariyal’s Directors are senior Gumatj traditional owners, as well as two independent directors. Its broader membership is comprised of members of the Gumatj clan.*

In practice this is a significant change. Prior to the township lease, traditional owners would have consented to land use decisions after NLC consulted with traditional owners and non-traditional owner residents. The decision would be actioned by the NLC. The same decision now would be made by the Community Entity which may include traditional owners and non-traditional owners. This is a significant change from S.19 where consent sits solely with the traditional owners. Critically this change was proposed by the traditional owners and agreed to by NLC.

⁴³ <https://gunyangara.com.au/about-nac/>

The Executive Director Model seems to have wavering support given the fact that this option hasn't been taken up since 2011, apart from it being adopted as a stepping stone towards the Community Entity Model by Mutitjulu and Pirlangimpi.

The preference towards the Community Entity Model is driven by placing control directly in a local community entity with a Board of agreed mix of traditional owners and others depending on the community wishes. Self-determination associated with this is high and there was a sense that this went beyond the Executive Director having the final decision on sub-leasing in the Executive Director model.

The feedback from the only Community Entity Model, Gunyanara (refer Appendix C) was that the Community Entity Model led to regular community discussions about leasing, a stronger sense of ownership by the community and a greater level of understanding regarding the use of land for economic development.

"We can then make better and quicker day to day decisions." – Gunyanara consultation

In addition, consultation with stakeholders on all land tenure matters happened directly with the Community Entity and were not filtered through the OTL.

We acknowledge that the Community Entity for Gunyanara has a high existing level of governance knowledge, management expertise and community understanding of business, nonetheless the observations regarding self-determination and decision making that they feel from the Community Entity Model are telling. For example, they identified challenges that would ordinarily be dealt with by OTL in the Executive Director Model that they were having to deal with internally such as "How do we promote what we have for commercial value?" This should lead to more robust outcomes in the long-term.

However, a few challenges have been identified with the Community Entity Model, including that the make-up of a community entity could change over generations. Success, in part, depends upon sustainable capacity and capability as decision making and planning is placed directly in the hands of the community entity governed by traditional owners. The Transition Model supports this Governance through the advances in land administration established by the OTL.

The success of the Community Entity (and hence sustainability) will be determined by:

- Support of traditional owners and non-traditional owner residents.
- Pathway for succession planning.
- Governance structures and training.
- Members demanding transparency around the money story.
- Structuring of organisations that are fit for purpose – leasing and business separated.
- Critical supports for land administration.
- Resources to support and the calculation of lease and advance payments is very important as the Community Entity needs a critical mass of funding otherwise it will not have enough resources to effectively operate the township lease.

Place and Context Determines the Best Fit Leasing Model

Overall, we found that place and context are important in determining what form of land tenure is best suited to a community as S.19 or one form of township leasing will not necessarily be the best fit for all communities (Refer Appendix C - Wurankuwu). When assessing the different options, there is a critical need to have regard to the balance between the following factors:

Desire and Demand

Does the community want to change from current arrangements, particularly given the substantial upfront effort required to establish a township lease?

Capacity to benefit

Does the community have the capacity to benefit from a township lease which is also a function of the fit for the community? That is, township leasing is unlikely to be best fit (nor necessarily designed to be a fit) for all communities as context and place related factors need to be considered, including:

- The level of S.19 leases in place and how functional the community already is. We have been advised by Land Councils and Northern Territory Government that most communities are well covered by S.19 leases and they would need a strong argument in support of a township lease to make it worthwhile to proceed (noting that S.19 leases are able to transition to sub-leases when a township lease is executed).
- The length of the lease is a concern as it results in inter-generational obligations, committing outward 5 to 6 generations with the 99-lease term (same for both models).
- A range of thresholds that will impact on the efficiency of township leasing compared to S.19 leases. For example:
 - Population.
 - Service needs.
 - Underlying economic driven potential and larger enterprises, particularly if economic development requires the ability to have a decision within a commercial timeframe.
 - Communities planning for more property infrastructure.
 - Any compelling reason to sign up.
 - Any alternate model that could work for smaller communities with limited economic potential and where Government is the only (main) investor.
- A constraining aspect to community and economic development can be a lack of serviced lots and reticulated services, such as power and water that may be better addressed by township leasing of some form to:
 - Support the model for economic growth.
 - Support investment planning; and
 - Support infrastructure investment as without this investment may be stymied.

Township leasing can potentially assist with this as part of the package with new funding (master planning, community benefit funding (incentive) and payments in advance), noting that this can still happen under S.19 but is potentially more difficult as tenure is only one part.

7 Findings - Key Outcomes and Impacts of Township Leasing

This section examines the key outcomes and impacts of township leasing, both direct on communities engaging in township leasing but also broader impacts created by the mechanisms and processes established that created a stimulus for changing broader leasing practices.

Secure tenure is a fundamental part of sustainable economic activity and social development regardless of culture, location or political system and is a pre-condition on which to establish other initiatives. This was highlighted to us during various consultations. Secure tenure is a necessary but alone not a sufficient basis to stimulate economic activity. This is particularly relevant when trying to attribute economic outcomes directly to township leasing.

7.1 Direct Economic Benefits of Township Leasing

Key Finding #7 – Direct economic benefits driven by formalising existing tenure and sign-on incentives

The expected medium-term outcome that “township leases provide an improved platform for economic activity in communities” where the leaseholder formalises existing tenure arrangements in townships and where the traditional owners and residents benefit from upfront income from head-leases, have both materialised. In a significant achievement, the OTL converted all tenants across to a sub-lease and derived a model for calculation of commercial rent that is now used for all subleases, as well as for S.19 in other communities. This led to a substantial increase in rental payments thereby creating economic opportunity.

Investments of the substantial upfront incentives received on signing a township lease have been made within the community directly.

Key Finding #8 – Negligible private sector or mainstream bank financed investment

Investment in communities with a township lease has resulted from resetting of prior tenancy arrangements or related traditional owner businesses rather than from an increase of new investment from external sources. Accordingly, the outcomes envisaged that there would be an increase in investments and sub-leases to businesses have not been achieved. Communities did receive incentive payments for entering into a township lease, but these payments do not constitute private investments.

Whilst traditional owners and community residents have greater capacity to borrow against their land interests, they have not been able to capitalise on this, with only one instance where a commercial bank financed a property development to a relatively low level.

Refer Recommendation 6 which aims to derive a consistent approach to attracting investments where similar opportunities exist in several Communities.

Direct Economic Benefits Driven by Formalising Tenure

The expected medium-term outcome that township leases provide an improved platform for economic activity in communities where the leaseholder formalises existing tenure arrangements has materialised. The OTL used the township lease to formalise new sub-lease arrangements with all existing land users converted to market rates, which provided certainty for the sub-lessees, more direct control on the use of the community land through the community forum and generated the receipt of a market rent (Refer Section 7.3).

OTL derived a model for calculation of rent that previously was ad hoc. This calculation is now used for all subleases within the township lease. By way of example the 2010 OTL Annual Report states⁴⁴:

*Prior to the signing of the head leases many occupiers of land and/or buildings in Wurrumiyanga (Nguui), Angurugu, Umbakumba and Milyakburra paid very little rent for land they were utilising. For example, at Wurrumiyanga (Nguui) the traditional owners were receiving just **\$2,000 per annum** in rental for land usage in the township prior to entering into the Township Lease.*

*The Office has now finalised subleasing arrangements at Wurrumiyanga (Nguui) with nearly all existing non-Government occupiers. Rental receipts for the township of Wurrumiyanga (Nguui) for 2009–10 was **just under \$200,000**.*

The substantial additional direct economic benefit from this is that the Advance Rental Payments provided as incentives for township leasing were calculated on the new market rent.

The increases in rent achieved across all communities in the Northern Territory was substantial from 2009 as illustrated by the increase in rents received by the OTL for sub-leases within township leases as well as for the CLC for S.19 leases across the same period.

Table 6: Summary of rents received between FY 2010 and FY 2021 by OTL for sub-leases and CLC for leases

Financial Year	Township Sublease Revenue collected by OTL. As provided by OTL 15 June 2021	Annual rental received on s.19 leases in communities in the CLC region ⁴⁵
2009–2010	\$531,970	\$17,540
2010–2011	\$476,011	\$32,752
2011–2012	\$547,477	\$37,050
2012–2013	\$1,520,052	\$1,148,882
2013–2014	\$1,458,225	\$1,686,982
2014–2015	\$1,573,748	\$563,453
2015–2016	\$2,123,408	\$2,102,929
2016–2017	\$2,131,853	\$2,199,254
2017–2018	\$1,847,803	\$1,868,386
2018–2019	\$2,210,972	\$2,002,919
2019–2020	\$2,114,549	\$2,373,655

Table 7: Source of rental income in each of the township leases as of February 2019

Source of Rental Income	% Total	Likely Preference for Township Leasing over S.19
Commonwealth/ Territory/ Local Government; Land Councils and NGO's	53.5%	These groups continue to invest in communities that have township leasing as well as those that don't. We are not aware of any policy that prioritises investment in communities with township leasing.
National Park	8.9%	This is specific to the Mutitjulu Township Lease.

⁴⁴ OTL Annual Report 2010 Page 8 Available at https://www.otl.gov.au/sites/default/files/annual_report_2009-2010.pdf

⁴⁵ Data provided by the CLC, June 2020, Sourced from Leasing Reforms on Aboriginal Land In The Northern Territory: Impacts On Land Rights And Remote Community Governance, J. Weepers, Australian National University; Policy Insights: Special Series 04/2021

Source of Rental Income	% Total	Likely Preference for Township Leasing over S.19
Home Ownership	3.4%	This is predominantly in Wurrumiyanga – refer below.
Local Indigenous Business, traditional owner Orgs	30.8%	Generally traditional owners will only invest in their own community. Some Indigenous businesses operate across the Northern Territory.
Business	3.4%	This is very low percentage and reflects the lack of private investment in communities with township leasing.

A further breakdown of these commercial subleases across each of the township leases is shown in the table below⁴⁶:

Table 8: The commercial sub-leases in communities with township leasing.

Groote Eylandt

Township	Total	NT Govt	Regional Council	Non-Gov't Org's	Land Council	Business	Local ATSI business	Traditional owner Org's / business	Home Ownership	National Parks	Cth Gov't
Angurugu	78	11	17	4	10	2	9	23	1	-	1
Umbakumba	53	16	13	1	4	1	3	13	-	-	2
Milyakburra	27	14	5	-	1	1	-	6	-	-	-

Tiwi Islands

Township	Total	NT Govt	Regional Council	Non-Gov't Org's	Land Council	Business	Local ATSI business	Traditional owner Org's / business	Home Ownership	National Parks	Cth Gov't
Wurrumiyanga	144	28	22	30	-	7	27	13	16	-	1
Pirlangimpi	56	13	26	2	-	2	10	2	-	-	1
Milikapiti	60	18	16	2	-	-	20	2	1	-	1
Wurankuwu	12	5	1	2	-	1	1	2	-	-	-

Central Australia

Township	Total	NT Govt	Regional Council	Non-Gov't Org's	Land Council	Business	Local ATSI business	Traditional owner Org's / business	Home Ownership	National Parks	Cth Gov't
Mutitjulu	105	2	-	9	5	4	21	11	-	47	6

Total

Township	Total	NT Govt	Regional Council	Non-Gov't Org's	Land Council	Business	Local ATSI business	Traditional owner Org's / business	Home Ownership	National Parks	Cth Gov't
Total	529	107	100	50	20	18	91	72	18	47	6
	100%	20.2%	18.9%	9.5%	3.8%	3.4%	17.2%	13.6%	3.4%	8.9%	1.1%

Direct Economic Benefits Driven from Upfront Payments

A key expectation of the implementation of township leasing was that traditional owners and residents would economically benefit from upfront income from head leases. This benefit has

⁴⁶ Commercial subleasing of ALRA township leases, Factual submission provided jointly by: Department of the Prime Minister & Cabinet Attorney-General's Department Joint Standing Committee on Northern Australia; Inquiry into the Opportunities and Challenges of the Engagement of traditional owners in the Economic Development of Northern Australia. Source – Attachment F: Office of Township Leasing, 27 February 2019

This income arose from both Advance Rental Payments made to communities by ABA in anticipation that rental income would be generated as well as Economic Development Fund monies for community benefit.

The intent of the Advance Rental Payment was for this lump sum payment to provide funding for the traditional owners, should they wish, to invest in economic projects located both in their townships and/or elsewhere. This income ordinarily would have been derived from the sub-leases entered into via the head lease over a period of 10 years. The lump sum received needs to be repaid and once repaid the traditional owners then receive the annual rental revenue paid by sub-lessees directly for further investment or to put to community projects.

This up-front financial injection is significant to communities because it provides funds that can be invested in projects with a longer lead time, larger projects or more projects and the impact of the investment can be increased. The alternative of receiving the rent each year requires a different and more sophisticated approach to investment, for example cash flow lending against future income streams.

The amount and status of the advance payments, expected annual rentals and Economic Development Fund Receipts for each township lease are summarised as follows:

Table 9 - Summary of advance payments, expected annual rentals and Economic Development Fund Receipts for each community

Township Lease	Advance Rental Payments	Repayment Date	Expected Annual Rent	Economic Development Fund Receipts
Wurrumiyanga	\$5,000,000 reduced to \$4,400,000 ⁴⁷	Repaid in September 2016	\$1,500,000	Numerous aspects
Groote Eylandt	\$4,500,000	Repaid in September 2017	\$880,000	Part of Regional Partnership Agreement
Milikapiti Wurankuwu	\$1,760,000	Repaid March 2020	\$1,500,000	\$3,000,000
	\$190,000		\$15,000	\$160,000
Mutitjulu	\$Nil	Not Applicable	\$50,000	\$2,000,000 plus housing
Pirlangimpi	\$2,000,000	2027	\$550,000	\$2,000,000 plus housing
Gunyanara	\$2,000,000	2027	Not available	\$2,000,000 plus housing

As outlined in Appendix C, traditional owner groups across the township leases have:

- Invested the Advance Rental Payments into a wide variety of investments, principally seeking long-term economic opportunities intended to provide for future generations.
- Spent the Community Benefits Package on various projects after much consultation where the traditional owners considered the needs and priorities of their community.

⁴⁷ Reduced due to delays in rental payments during initial years.

Table 10 - Summary of key investments and projects by Community⁴⁸:

Township Lease	Major Investments Advance Rental Payments	Economic Development Fund
Wurrumiyanga	Short-term accommodation, office and conference facility - 2010 Tiwi Tours, car hire, cement truck - 2010 Investment in Tiwi Plantations and Tiwi College Built Piliyamyirra Supermarket which includes four small retail outlets	Construction of houses Major upgrade of football oval Upgrade of the cemetery precinct Baseline study to provide data to monitor community health Construction of a health and wellbeing centre.
Groote Eylandt	Angurugu purchased a successful car hire business on Groote Eylandt Umbakumba commenced a trepang fishing joint venture (Numaynga) with Tasmanian Seafoods* New business centre at Milyakburra Upgrading of stores The purchase of a small hotel in Darwin	Advised that this money is not yet spent
Milikapiti	Establish trusts, with business arms to facilitate investment Built and leased a Wurrumiyanga supermarket Manager's house.	Construction of three new Community houses
Wurankuwu	Purchase a multipurpose demountable	Two homes upgraded
Mutitjulu	Aiming for new business ventures, for instance in tourism	Support development of Business Hub
Pirlangimpi	Yet to be spent	Yet to be spent
Gunyanara	Yet to be spent	Quadplex for the grandmothers Youth centre. Beautification of the entire Community

**"As Numaynga had no operational money to start the fishing venture, along with Aminjarrinja Aboriginal Corporation and the township lease upfront lease payment, Numaynga has re-established itself and has two key aims. The two key aims are community enhancement and economic development opportunities for the community."*

Quote 2011 OTL Report (Page 2) - Numaynga Aboriginal Corporation

The majority of the direct economic development outcomes in the township leasing communities appear to have been generated by the Advance Rental Payments and the Economic Development Fund payments which were both provided as incentives for township leasing rather than an increase in investment solely from through the establishment of a new form of lease. In particular, the rent in advance component is calculated on existing tenants that have been converted to market rates, rather than any new money being invested into the community. Importantly, S.19 leases in communities that do not have a township lease now generate similar returns on land assets on an annual basis.

Recent OTL Annual Reports detail other projects in these communities where the township lease process has helped facilitate the project, for example the \$11 million Wurrumiyanga Ferry Pontoon connecting Bathurst and Melville Island. Whilst this is an impressive project what is unable to be tested is whether this project would have proceeded, and how efficiently, had it been a S.19 lease process.

⁴⁸ This information was sourced directly from the Community and desktop research noting that some project information is highlighted in OTL's Annual Report, which provides a valuable record of progress across the years.

Negligible Private Sector or Mainstream Bank Financed Investment

A key expectation of the implementation of township leasing was that traditional owners and residents would economically benefit from an increase from new private sector investment or Government programs specifically targeted at communities with a township lease.

We found that this benefit has not materialised and that most, if not all, of the economic activity since township leases were signed has arisen from the incentives provided to take up a township lease rather than through new investments stimulated by the change of land tenure arising from the township lease.

The attitude of banks to township leasing was mentioned in the 2014-15 Executive Director Annual Report⁴⁹:

"I have concentrated on two impediments to driving economic growth on communities: the costs of essential infrastructure and the lending practices of the major banks. Although banking investment has occurred where there is a township lease it is still difficult to persuade banks of the merits of investment. I have continued discussions with the banking industry in a bid to overcome any obstacles to investment and to identify any concerns a bank may have with the township lease."

We are only aware of one bank loan from a mainstream bank into any of the township lease communities, which occurred in 2013 with the Piliyamyirra Supermarket at Wurrumiyanga wholly owned and operated by the Mantiyupwi traditional owners. The supermarket was built using funds drawn from the upfront rental payment and a 10 year loan from a mainstream commercial bank. Mantiyupwi Pty Ltd has reduced operational risk through a management agreement with Outback Stores. We were advised that the bank funding was substantially less than requested due to difficulties with the valuation.

The reality is that township leasing, per se, is only one part of a larger solution for sustainable economic development. Private investment is not drawn to the low economic activity in remote communities and as significant barriers remain such as:

- Distance from supply base and the impact of this on infrastructure and related costs
- Limited capacity of locals to establish and run a viable business
- Unlikely to realise the value attributed to land security in the event of a default
- Small markets of insufficient size to sustain a business

This is particularly the case with the township leases on the Tiwi Islands, Umbakumba and Bickerton Island and is also likely to apply to a substantial number of communities across the Northern Territory.

The expectation of encouraging private sector investment and/or bank finance for projects should be higher for communities that have a stronger local economy either because they are larger or through the influence of nearby economic activity. For example: Gunyanara and Angurugu are adjacent to substantial mining operations and towns and Mutitjulu which is adjacent to Uluru, a major tourism attraction. It could be argued that these townships are as well-placed as any communities in the Northern Territory to attract private funding.

However, the concept that long-term security of tenure, coupled with an ongoing annual income stream, based on commercial terms, would encourage banks to invest would appear not to have been realised as the level of external banking is extremely low and banks are still unwilling to lend on the basis of community assets.

⁴⁹ OTL Annual Report 2020 Page 2 Available at https://www.otl.gov.au/sites/default/files/annual_report_2014-2015.pdf

7.2 Home Ownership Outcomes Arising from Township Leasing

Key Finding #9 – Few home ownership outcomes as many issues impact on this

In terms of the medium-term outcome envisaged that there would be an “Increase in sub-leases to private residents”, homeownership outcomes have been negligible, aside from 15 leases signed at Wurrumiyanga during the initial stage of that township lease.

Township leasing addresses one barrier to home ownership, namely providing security of tenure within a township framework. However, it was not designed to address the numerous other factors required to be met to achieve the home ownership outcomes sought. Whilst the change in tenure was necessary it was insufficient to drive home ownership in these remote locations. Further, there are the many diverse views about the merits of home ownership in community settings and the level of support for people wanting to own a home has varied considerably since 2007.

Refer Recommendation 7 which aims determine whether home ownership remains a shared achievable goal and how to deal with the broader home ownership challenges.

Limited Uptake of Home Ownership

The impact from the implementation of township leasing on the medium-term outcome of an “Increase in sub-leases to private residents” has been significantly less than expected with little improvement as home ownership remains very low.

This lack of progress is supported by qualitative data from our consultations and the following data sourced from the Australian Bureau of Statistics, which shows that the only township that had any people staying in homes that were either owned outright or owned with mortgage were at Wurrumiyanga from 2009 and 2016 where, interestingly, there were fewer people in 2016 than 2009:

Table 11: “Count of Persons at home on Census night, by Indigenous Status and Tenure/Landlord Type, for selected Indigenous Locations of Usual Residence”⁵⁰ categorised as:

Indigenous Location of Usual Residence by Community - Left Hand Column

Tenure/Landlord Type set out in the table as Type 1 – Owned Outright; Type 2 - owned with a mortgage; Type 3 - Rented: Housing co-operative, Community or church group or State / Territory Housing

Census Date	8/8/06	8/8/06	8/8/06	9/8/06	9/8/06	9/8/06	9/8/16	9/8/16	9/8/16
Tenure / Landlord Type	Type 1	Type 2	Type 3	Type 1	Type 2	Type 3	Type 1	Type 2	Type 3
Mutitjulu	0	0	176	0	0	183	3	0	145
Milikapiti	0	0	322	0	0	381	0	0	330
Pirlangimpi	0	0	391	0	0	299	0	0	247
Wurrumiyanga (Nguuu)	0	0	1,105	17	14	1,055	3	9	1,273
Angurugu	0	0	709	0	5	720	0	0	782
Milyakburra	0	0	87	0	0	119	0	0	137
Umbakumba	0	0	321	0	0	401	0	0	449
Gunyanara	N/A	N/A	N/A	0	0	133	0	0	188

⁵⁰ Census of Population and Housing, Customised Data Report as Commissioned by Yaran – September 2019

We note that there was a bubble of activity on commencement of the measure, however few transactions since. Fifteen families purchased their own home in Wurrumiyanga within a reasonably short space of time from when the township lease commenced in 2007. In 2017, a couple in Wurrumiyanga became the first remote residents to purchase a home under the Northern Territory's Sale of Public Housing Policy. They accessed finance from Indigenous Business Australia (IBA).

Many Issues other than Land Tenure Impact on Home Ownership Outcomes

We found that township leasing addresses one barrier to home ownership namely, providing security of tenure within a township framework. However, whilst the change in tenure was necessary, it was not designed to address other and arguably more systemic barriers to home ownership. Thus, the minimal impact of township leasing should not be seen as a failing of the township leasing model. This was highlighted by the Executive Director in the 2019-2020 Annual Report⁵¹:

The aim of township leasing, as stated when the original amendments were introduced into Parliament, is to 'enable Aboriginal people to have the same opportunities as other Australians living in towns.' The purpose behind this ambition for equality is 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 intent of the 99-year sub-lease was to give security of tenure to the banks however the level of external banking is very low due to the reality of how they can protect their investment when there is a limited secondary market and houses are heavily used. IBA appears to be the only option as a lender and there is no obvious appetite from mainstream home lenders.

Reasons home ownership is difficult to operationalise across the remote areas of the Northern Territory generally include:

- The economics "don't add up" due the high cost to build.
- Housing is often overused and therefore there are substantial maintenance costs which if not met will reduced the likelihood of a re-sale.
- Public housing programs such as the Strategic Indigenous Housing Infrastructure Program have increased the supply of houses which has likely reduced demand for home ownership.
- The lack of a secondary market to resell the home.
- The 2017-2019 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has meant that responsible banking requires not putting people in a worse position by taking out a loan. Given the uncertainties around long term employment and the secondary market (the ability to on sell a house at a reasonable price) providing loans to people in these circumstances should there be a default would not be seen as responsible banking.
- There are economic disincentives for individuals to become home owners. For example, home owners are responsible for water rates and ongoing maintenance and repairs. These can be high with a lower economic life for the house due to overuse given the long history of poor building environments.
- There are different relationships and different paradigms due to social and cultural factors which determine that home ownership is not necessarily an objective for many people in remote locations.

⁵¹ OTL Annual Report 2020 Page 3 Available at https://www.otl.gov.au/sites/default/files/otl_annual_report_2019-20_2.pdf

Support for Home Ownership has Varied Across the Period

The level of support around home ownership in communities has varied considerably since township leasing was introduced. Whilst it was one of the clear early aspirations and was supported by promotions, information sessions and homeownership lending schemes by IBA this support has varied considerably.

Township leasing was originally promoted for economic development, home ownership and growth however public commentators have questioned whether the policy expectations were realistic. There are a range of differing views as to homeownership in communities in remote Northern Territory as illustrated by the following:

Michael Dillon and Leon Terrill have contributed greatly to the debate on township leasing over an extended period. In the article “Untangling a new era for land rights” Michael Dillon⁵² reviews Leon Terrill’s book “Beyond Communal and Individual Ownership⁵³” with key items relevant to home ownership summarised by Dillon, with reference to Terrill’s book, as:

Terrill goes to some lengths to spell out the problematic history of government attempts to encourage home ownership in remote communities and highlights the almost total failure of Coalition and Labor governments to make much progress. While home ownership ought to be available to all citizens (and in theory is available via long-term leases under the Aboriginal Land Rights Act), the reality is that the vast majority of remote residents are relatively poor and disadvantaged, and many are on welfare and/or do not have stable or secure jobs; many also have low levels of financial literacy and have highly mobile lives that make living continuously in one location inconvenient...

Advocating home ownership as an unalloyed positive for any citizen, let alone disadvantaged Indigenous citizens, is problematic. Of course, the alternatives, social or community housing, also have their disadvantages.

This is in contrast to the position outlined in the White Paper⁵⁴ in 2015 that:

Township leases provide an option for traditional owners that will facilitate not only security in home ownership in communities, but also the tradability and bankability of interests in Aboriginal land.

The dialogue and support around home ownership has shifted over time and we note the following from our consultation and desktop research to support this:

- Initially IBA offered strong support on homeownership however staff were relocated to Brisbane and Cairns and the momentum was lost.
- The argument for home ownership is not compelling and there is a reluctance due to the high cost of building, lack of employment certainty, and the fact there is no secondary market.
- Wavering support to help people get into homes as per the following information gained from the OTL Annual Reports over time:

2011 – *“Since the signing the township lease in 2007, 15 Tiwi families have purchased a residential sublease. Some residents have expressed interest in home ownership in the*

⁵² Michael Dillon, Untangling a new era for land rights, Inside Story, 15 April 2016, Accessed at [https://insidestory.org.au/untangling-a-new-era-for-land-rights/June 2021](https://insidestory.org.au/untangling-a-new-era-for-land-rights/June%202021)

⁵³ Beyond Communal and Individual Ownership, Indigenous Land Reform in Australia, By Leon Terrill, Copyright Year 2016

⁵⁴ White Paper, p 31

communities of Groote Eylandt and Bickerton Island however these have not progressed any further.”

“The Executive Director entered into a commercial sublease with IBA to construct four houses in Wurrumiyanga. The houses were sold at cost with finance provided by the home ownership on Indigenous Land Program.”⁵⁵

2013 – *“Individual private home ownership on Aboriginal land in the Northern Territory did not progress significantly in 2012-13. Previous success in home ownership on the Tiwi Islands came from regular community visits, workshops and the construction of purpose-built housing. Page 4*

Home ownership is an individual choice that requires time to consider and lots of one-on-one consultation to enable people living in the community to understand the concept of home ownership on community land in order to make an informed decision.⁵⁶

Further consideration could be given to updating the current home ownership incentives packages and to deliver a strategy to make available more serviced land specifically for home ownership would continue to strengthen home ownership.”

2017 – *Concern that specialist case workers to support aspiring Indigenous home owners have not been funded beyond the 2016-17 financial year.⁵⁷*

2019 – *“I intend to work with both the Northern Territory and Commonwealth Governments and with Indigenous Business Australia to refocus on home ownership policy and to reduce the complexity of its implementation to ensure that the opportunity can be taken up by those who aspire to own their own home.”⁵⁸*

Home ownership will continue to be an area where township leasing has the potential to influence outcomes, however, it there are unlikely to be any significant changes without the underlying issues of home ownership in remote communities being overcome.

⁵⁵ OTL Annual Report 2011 Pages 18 & 20 Available at https://www.otl.gov.au/sites/default/files/otl_annual_report_2010-2011.pdf

⁵⁶ OTL Annual Report 2013 Page 4 Available at https://www.otl.gov.au/sites/default/files/annual_report_2013.pdf

⁵⁷ OTL Annual Report 2017 Page 6 Available at https://www.otl.gov.au/sites/default/files/edtl_2016-17_annual_report_booklet_final.pdf

⁵⁸ OTL Annual Report 2019 Page 7 Available at https://www.otl.gov.au/sites/default/files/2018-19_otl_annual_report.pdf

7.3 The Broader Impacts of Township Leasing on Northern Territory

Key Finding #10 – Township leasing has acted as a catalyst for broader change in S.19 leasing requirements that have generated economic benefits for communities without a township lease.

The Commonwealth and Northern Territory governments introduced a “secure tenure” requirement as a pre-requisite for infrastructure funding in communities and, importantly, treated S.19 and S.19A leases equally. This has led to a substantial increase in the proportion of communities in which S.19 leases have been issued (to approximately 90%). The combination of this increased coverage and rises in rents received per lot has resulted in a significant increase in rental income for all communities. These decisions were influenced by the positive experiences of governments in entering into sub-leases within a township lease for funding of new infrastructure.

A key benefit for township leasing remains the policy that a township lease generally receives the first ten years rental income up-front (to be repaid) as an incentive. This provides a lump sum to pursue economic opportunity, whereas S.19 rental income is received annually.

Township leasing has contributed to positive changes around leasing in remote communities

We found that Township leasing has acted as a catalyst for change for land administration within communities across all the Northern Territory. Based on stakeholder interviews and review of available documentation there have been numerous broader spin-offs associated with the implementation of township leasing, including:

- The Executive Director Model introduced an element of competition to land tenure and new benchmarks were set around time, processes etc. Together with the “secure tenure” policy (Refer Section 3.2) it has created wider and higher expectations of a formal framework being in place for land use on Aboriginal land in the Northern Territory. This has led Land Councils to improve their processes in the period since 2007 as well as leading to the Community Entity Model being created. This increase has arisen partly through competitive pressure on communities that do not have a township lease arising from observing the township leasing outcomes in other communities.
- The introduction of township leasing and work undertaken by OTL had a flow-on effect to other communities of “professionalising” the work around leases, for example:
 - Regulation around land administration has improved.
 - Township leasing has led to an education process that has increased all communities’ understanding of the use of leases and leasing, having them more comfortable with the concept and processes (whether they are section 19 or section 19A leases) and improved the awareness of what can be achieved by providing secure tenure.
- Township leasing was a catalyst for cadastral and survey works being undertaken across all Northern Territory remote communities.
- A key economic outcome was that an accepted method of valuation was introduced in order to calculate rent in a consistent manner, now determined by Northern Territory Valuer General. As part of our consultation OTL advised the following in relation to our enquiry on this matter:

The establishment of a value for Aboriginal land, something which in practice did not exist prior to the establishment of township leasing, was led by the Executive Director of Township Leasing at the time, Mr Pat Watson. This occurred through two mechanisms:

- The Executive Director placing a well-informed, but arbitrary, unimproved capital value on a subleased lot at the commencement of the Wurrumiyanga lease. This, over time,

led to the ability of the valuer-general to determine unimproved capital values for leases on Aboriginal held land.

- An assessment by Colliers which established a formula for calculating equitable rents based on the unimproved capital value of a lot which was commissioned by the Executive Director.

The Colliers methodology was adopted by Land Councils to facilitate their S.19 dealings. To the best of our knowledge there is not any formal policy.

“OTL partnered with the CLC and NLC to negotiate a consistent approach with the Northern Territory Government to subleasing on Aboriginal land. In 2011–12 rental methodologies and asset classifications were agreed between the parties. The cooperation and professionalism of relevant land council staff is gratefully acknowledged in this exercise.”⁵⁹

We note that township leases aimed to refresh all leases within the township boundary during the initial period however our scope of work did not extend to considering how many S.19 leases with existing tenants had been re-negotiated where a township lease hasn't been signed. As a minimum we expect these communities have benefited from an increase in rental income generated from Commonwealth, Territory and Local Government tenants where existing S.19 leases have been renegotiated onto commercial terms.

During our consultation with the Northern Territory Department of Local Government, Housing and Community Development - Land Tenure Remote Programs they noted that they did not differentiate between S.19 and S.19A tenure in terms of the nature of the security of tenure offered. In addition, they estimated that up to 90% of lots in communities that do not have a township lease have a S.19 lease in place.

The gap between the outcomes for a community with a township lease and those without has closed over time but critical structural differences remain

The broader benefits that have flowed through to communities without a township lease, coupled with the initiatives undertaken by the NLC and the CLC in response to the “secure tenure” requirements, has reduced the differentiation over the years between communities with a township lease and those without. This has been influenced by:

- The increase in the percentage coverage of a township by leases or sub-leases and the features of the land tenure granted.
- S.19 leases in non-township leased communities are now generating similar returns on Commonwealth, Territory and Local Government assets. The difference remains that S.19 generates this income return on an annual basis, whereas on commencement of a township lease the first ten years rental income has been received up-front (to be repaid) as an incentive.
- The understanding of leasing appears to have generally increased across all communities.

We are unaware of any Government or financier that states a preference for communities with a township lease and it appears there are many instances where funding has been provided to communities regardless of whether S.19 or S.19A leasing arrangements are in place.

We found that the key structural differences between communities with a township lease and those without a township lease are:

Firstly, in a township lease the issuing of subleases occurs within a well-defined framework whereby the head lessee considers all aspects of the township's development and every lot is considered. We understand that the framework is less defined for non-township lease communities however we do

⁵⁹ OTL Annual Report 2012 Page 18 Available at https://www.otl.gov.au/sites/default/files/annual_report_2011-12.pdf

highlight that consulting with such communities was not within our scope of works. Nonetheless, S.19 generally only deals with specific lots and any inputs over and above this to township development are on a case-by-case basis rather than as a requirement of a township lease.

Secondly, S.19 leases require consent from traditional owners and to consult with other Aboriginal people affected by the decision, whereas technically a township lease model provides for a more inclusive and broader consultation process either through the Consultative Forum (with the ultimate decision held by the Executive Director) or the make-up of the community entity. We recognise that, in practice, there generally may not be a significant difference between the two.

Whilst on face value an increase in S.19 leases would be considered desirable there is a counter view that by engaging in a township lease these communities would have experienced higher overall benefit through a more well-defined approach to township development as well as accessing the up-front incentive payments.

7.4 Improved Platform for Local Decision Making

Key Finding #11 – Township leasing provides improved visibility and strategic thinking over whole-of-township land planning

A key benefit of township leasing is that it provides a well-defined framework that considers all aspects of the township's development, and every lot is considered. This framework is less defined for non-township lease communities.

The consultations identified that communities in four of the six township leases, decisions are made more strategically, with regard to whole-of-township land planning, than was previously the case. The Consultative Forum and community entity meetings provide an improved platform for local decision making through formal, proactive and regular meetings and information exchanges related to all aspects of land management within the township lease boundary including town planning and infrastructure development.

Key Finding #12 – Township leasing has shifted the authority for decision making on land beyond the traditional owners as well as broadening the consultative process

Township leasing provides the opportunity for decision making on land beyond the traditional owners and can provide a more inclusive and broader consultation process. The ultimate authority on land use has moved from being with the traditional owner for S.19 to either the Executive Director or the community entity (Aboriginal corporation) board. The Land Councils have a continued, albeit diminished, role in township leasing.

The role of the traditional owners has changed from ultimate authority under S.19 to consultative through the forum or as a board member if part of a community entity board, noting that traditional owner consent is still required to enter a township lease.

The input of non-traditional owner residents varies across the different models. For example, the role of non-traditional owner residents is as a consultative stakeholder if impacted by the decision for S.19, consultative, if invited onto the Consultative Forum or potentially as a decision maker if they are on a community entity board. The potential for an increase in the role of non-traditional owner Indigenous residents is important in the local decision-making process as non-traditional owner residents, who may have lived in the community for many years, have a strong vested interest in land use.

Our consultation with Gunyanara indicated that this difference was likely to be more pronounced where it involved one of the larger mainland Land Councils that are responsible for many communities compared to the island Land Councils which are smaller and have a more direct channel of communication as there are fewer communities, and each community is in reasonably close proximity to the Land Council head office. The Tiwi Island consultations indicated that they enjoyed good working relationships with OTL, reflecting ease of access and that only a few communities, with similar issues are involved. The result is that they still feel empowered in the Executive Director Model and expressed no desire to explore the Community Entity Model.

Township leasing has improved whole-of-township planning and strategic thinking

In terms of the medium-term outcome of “*traditional owners have increased visibility over whole-of-township land planning and can make decisions more strategically*” we found that township leasing does achieve this and to a higher level than prior to its introduction.

The S.19 process requires fully informed consent from the traditional owners only and consultation beyond this to other Aboriginal people affected by the proposal. We understand, but were unable to test, that the S.19 process tends to be a more reactive process, not part of a regular forum, nor does it necessarily have to deal with any aspects outside of the specific sub-lease being considered.

Township leasing facilitates local decision making in several ways including:

- The Executive Director Model (through the Consultative Forum that includes traditional owners and potentially community members, including non-traditional owner residents) and the Community Entity Model (through the community entity Board) provide a formal, proactive and regular way of interacting over land decisions that influence leasing decisions. This mechanism is adapted to fit the circumstances of each township lease.

One of the main perceived shortcomings of the Executive Director Model is that the Consultative Forum does not have any delegated authority from the Executive Director and is merely consultative. That is, the Executive Director is not obligated to comply with the wishes of the Consultative Forum.

The composition of the board of the Aboriginal corporation in the Community Entity Model is a critical Governance issue. The board may or may not be restricted to traditional owners only and, for example, can include independent members or non-traditional owner residents.

- Both the OTL and community entities provide visibility on land management through regular reports on issues, finances and agendas to drive discussions. Importantly this covers all aspects of land management within the township lease boundary including town planning and infrastructure development – this is a key point of difference with S.19 which considers lot by lot applications.

- In terms of support for strategic thinking we note that the OTL works with the township lease communities to enable sound and strategic local decision making through facilitating capability and capacity development opportunities to assist traditional owners identify current and future investment opportunities. An example of this was in 2014 where:

*Each township lease has seen the emergence and growth of business corporations established by traditional owners whose initial income was from an advance lease payment. To assist the traditional owners to succeed in their new business ventures a Corporate Business Advisors project was initiated in 2014.*⁶⁰

There was strong support for this process in most of our consultations. The exception being the individual community groups on Groote Eylandt and Bickerton Island that were seeking additional and more regular information from OTL and the Land Council about land use.

Felt that we don't really understand the process and have limited knowledge of township leasing. Bickerton Island always felt left behind and had originally been excluded from the lease in the early negotiations. – Comment made at Bickerton Island Community Consultation

This was seen as an area for improvement rather than a structural issue of the township lease. We were unable to discuss the workings at Pirlangimpi as we did not meet with them.

Township Leasing has shifted the authority for decision making on land beyond the traditional owners as well as broadening the consultative process

As noted in Section 6.2:

- The **Land Councils** have a diminished role in Township Leasing.
- The **ultimate authority on land use** has moved from being the traditional owner for S.19 to either the Executive Director in the Executive Director & Transition models or the community entity (Aboriginal corporation) board in the Community Entity model.
- The **traditional owners' role** moves from ultimate authority for S.19 to consultative through the Forum or as a board member if part of community entity board, noting that traditional owner consent is required in order to enter into a township lease.
- The input of **non-traditional owner residents** is consultative if impacted by the decision for S.19, consultative if invited onto the Consultative Forum and potentially as a decision maker if on the community entity board.

Accordingly, township leasing provides the opportunity for decision making on land beyond the traditional owners and provides a more inclusive and broader consultation process. The resistance of Land Councils to the Executive Director role and the support for the Community Entity model has been discussed earlier in this evaluation.

However, it is the role of non-traditional owner Indigenous residents that is also very important in this local decision-making framework. That is reconciling any different views between the traditional owners who don't live in the community and have the decision-making power under S.19 with the views of non-traditional owner residents who live in the community. The non-traditional owner residents arguably have a more vested interest in any types of land development.

⁶⁰ OTL Annual Report 2014-15 Page 14 Available at
https://www.otl.gov.au/sites/default/files/annual_report_2014-2015.pdf

This is highlighted by the CLC in their “Land Reform in the Northern Territory: evidence not ideology” October 2013⁶¹ as follows:

*Beyond the more obvious aspects of land administration and reform there is a further matter that the CLC considers a priority for future land policy relating to communities. Together with the demise of community government councils, the formalisation of tenure in remote Aboriginal communities has brought into sharper definition **the need to develop mechanisms to clarify the relationship between long-term Aboriginal residents of remote communities who are not recognised as traditional owners and recognised traditional owners who are not residents of those communities.***

The Community Entity Model has the capacity to achieve this, whereas neither of the Executive Director Model nor S.19 can do this beyond a consultation due to their decision-making structure. One counter argument to this is that S.19 consultations (using the Land Council and other parties impacted) and the Executive Director (using OTL which has a broad range of experiences) bring valuable diversity to the assessment of land use proposals, whereas community entities can be narrower in their outlook.

Our consultations around the Gunyanara Community Entity Lease highlighted the importance of local decision making and self-determination, including:

“At Mr Yunupingu’s and the Gumatj peoples request the Government has worked in partnership with his Community to develop a model of township leasing that will strengthen local decision making .. and then it’s about community control, and empowering traditional owners to make decisions about their land, as opposed to focusing solely on the economic benefits of the leases.

Want to, and happy to, go slow. We are in control and will develop things as we wish to.

... because with power comes responsibility. So, if the community have got the power, then they need to take the responsibility and make sure they put in place ways to manage it themselves.”

⁶¹ Land reform in the Northern Territory: evidence not ideology 5 Dec 2013, Publisher CLC, p29; Accessed at <https://apo.org.au/node/37046> June 2021

8 Recommendations for Township Leasing

Requirement 5 from our Scope of Work is **“Understanding and providing recommendations on how the initiative could be modified or scaled in the future to achieve future impact, beyond the evaluation period”**.

The starting point for the future policy directions of township leasing is to assess the extent to which it is relevant for other communities in the context of the now widespread use of S.19 leases and whether any of the township leasing model options offer compelling advantages and benefits over and above S.19.

Our findings support that township leasing does provide an improved pathway for communities wanting to be empowered, that have economic development opportunities and would benefit from whole of town planning. However, it is not necessarily the best fit for all communities and the advantages and benefits are not compelling in all instances when compared with S.19 leases.

In formulating our recommendations on policy direction, we have considered the following key matters as to why the uptake of township leasing has been historically low and yet communities may now consider a township lease:

- The Executive Director Model encountered significant resistance from mainland Land Councils for reasons beyond the merits of township leasing, per se. The Community Entity Model appears to be the preferred model however it may not be appropriate in all circumstances and there may be efficiencies in a centrally driven model.
- Township leasing has resulted in direct benefit to most communities that have taken it up, both through the incentive payments and through a higher sense of self-determination in most instances.
- The effort required to understand and assess the benefits and then to establish the township lease is significant and has proven a major hurdle for communities to pursue township leasing. A process to reduce this barrier would assist uptake.
- There are opportunities to improve aspects of the models currently in use which may enable them to be taken up more efficiently elsewhere.

Accordingly, the recommendations are aimed at providing a clearer pathway and a more efficient process to establishing township leasing in the communities where it is appropriate. The effort and use of scarce resources to establish a township lease is such that an initial screening process to determine which communities are in scope and which are out of scope will be important.

Where township leasing is not appropriate, the reasons for this should be understood and accepted with alternative arrangements, namely S.19 leases, resourced in a way to deliver efficient results. This may require exploring how a “whole of township” approach could be designed for these communities if such an approach would be of benefit – this may potentially result in a hybrid model.

To be successful township leasing requires strong engagement between the relevant stakeholders, noting that the stakeholders will change depending on the type of township lease, but may include any or all of the Executive Director, the Land Councils, Northern Territory Government and the Commonwealth Government. Successful township leases need to empower traditional owners and communities to make decisions about their land through local decision-making processes with due regard to the longer-term policy direction for land reform.

Based on our findings set out above **we make the following recommendations on how the initiative could be modified or scaled in the future to achieve future impact, beyond the evaluation period.**

Improving Policy Design

Starting from the proposition that critical features of sound land use include secure tenure, cost effectiveness, whole of township planning, inclusive consultation and key stakeholder acceptance.

1. Any re-launching or re-modelling to Township Leasing only be undertaken after detailed consultation with all key stakeholders to reach a level of consensus and co-design that will help drive any modifications. Consideration should be given to a hybrid model that introduces a transparent and consistent whole-of-township planning process for all S.19 communities, potentially using the skills and networks of OTL.
 - a. Convene a stakeholder group to establish **key criteria** to determine the circumstances where a township leasing model is relevant and sustainable, to support any future township leasing opportunities. For communities that don't fit the criteria or have no interest in township leasing, determine whether there are opportunities to promote the use of a hybrid model.
2. The Executive Director and the Land Councils develop an assessment framework that identifies the most appropriate form of leasing for each community using a decision tree against the criteria identified in Recommendation 2, along the following lines:

Assessment framework for assessing suitability of a Community for Township Leasing

Step	Criteria	Decision
1	Desire and demand of community for township leasing	If NO stay with S.19 lease If YES move to step 2
2	Capacity to benefit from township leasing based on context and place	If NO stay with S.19 lease If YES move to step 3
3	Is township leasing going to be sustainable - may depend on which model	If NO stay with S.19 lease If YES move to step 4
4	Desire for local control and autonomy	If NO - Executive Director Model If YES move to step 5
5	Capacity to manage	If NO - Transition Model If YES - Community Entity Model

Testing Policy Framework

3. The OTL and the Land Councils pilot this framework with a small number of communities, prior to rolling out across the Northern Territory implementing the most appropriate form of leasing.
4. The OTL and the Land Councils discuss their respective roles in this modified arrangement in terms of lease administration, support for community entities etc.

For example, the efficiencies of scale and experience gained by OTL in administering township leases may enable them to efficiently offer these services under the Community Entity Model

Private Investment and Home-ownership

5. Derive a consistent approach to attracting future investments across the Northern Territory where similar opportunities that exist in several communities can be bundled and leveraged with a view to reducing transaction costs and risks per investment.

For example, the process to attract bank finance to Wurrumiyanga supermarket was substantial. After undertaking demand analysis and feasibility assessment the subject communities could make a combined approach to a financier with a package of similar investments (say, stores given that there usually is a store in each community) across a number of communities. The investment could also be underpinned by the annual cash flow being generated by rents in each community.

6. The key stakeholders determine a consistent view, potentially by surveying communities, on whether home ownership is a shared goal and, if it is, agree on a long-term commitment as to how to deal with the broader home ownership challenges. If not a priority goal for township leasing, then this message needs to be consistently conveyed to communities across time.

Monitoring and Evaluation

7. A measurement and evaluation framework for township leasing be established including a set of quantitative and qualitative measures to gauge the effectiveness and impact of township leasing in meeting its goals.

That is: the Community Entity Model is still relatively new and offers the opportunity to establish a baseline of key data points (tracking rent and businesses) as well as understanding aspirations, why communities entered the lease, and then being able to reflect on impacts over a period of time.

8. As part of its strategic planning process, OTL identifies ways to maintain better data and measures for its role in administering township leases including measuring and reporting on the costs of maintaining current township leasing arrangements.

Existing Township Leasing

9. Assess the current township leases being implemented against the criteria recommended above and consider if the existing model is the best option for communities.

It is important to note that the current township leases are multi-generational such that many in the community today, for the longstanding township leases, have little knowledge of how and why it was established many years ago. The existing arrangements took considerable time and community consultation. Accordingly, any changes to existing arrangements will require considerable consultation and perhaps a period of familiarisation amongst communities to ensure all understand and accept any changes to the existing model.

10. Each township lease should be assessed with a view to identifying improvement opportunities and prepare a plan for continuous Improvement, noting that this would also inform future township leases.

9 Conclusion

Township leasing has provided traditional owners, other community residents and all stakeholders with a clear and transparent framework that they can use to formalise and maintain sub-leases.

Township leasing was introduced in 2006 with the intent to offer innovative land tenure and administration arrangements on communally held freehold Aboriginal owned land in the Northern Territory to enable home ownership and attract economic development within the township lease boundary. The initiative was part of an increased focus by the Commonwealth Government on economic development and participation in the 'broader economy' for Indigenous people.

Design and Implementation

The Executive Director Model was the only township leasing option during the first phase of township leasing. In a major shift from S.19 this resulted in the ultimate decision making on land use moving from the traditional owners to a Commonwealth Government Officer, albeit after consulting with stakeholders through a Consultative Forum. Substantial incentives were offered to encourage communities to sign, despite this after 10 years only three township leases had been signed and they were all with island communities.

This poor uptake coupled with changing economic, political and social circumstances led to the introduction of the Community Entity Model where an Aboriginal corporation became the head lessee with the ultimate decision making on land use. Again, despite the continual offer of incentives, uptake has been low with only three more communities signing leases, one to the new model and two signed to the Transition Model with a view to transitioning to the Community Entity Model.

Findings

Township leasing is a significant reform as it has potential application to all communities across the Northern Territory, results in a shift of power in land use decision making and is intergenerational. Signing a township lease involves substantial resources and social cost within a community which, we understand was a barrier for a number of communities.

The uptake of the Executive Director Model was hindered by several factors including, that the mainland Land Councils were strongly opposed to the governance arrangements; its introduction coincided with the controversial Intervention and the acceptance of S.19 as offering secure tenure for Government investment in infrastructure. The factors were substantial enough to outweigh the inducements on offer to sign.

Nonetheless township leasing has contributed to positive outcomes such as a whole of community approach to infrastructure and economic development involving key stakeholders, widespread acceptance of the concept of leasing and negotiating a system for the receipt of commercial rents, which has been adopted for S.19 leases. The financial incentives also provided a direct benefit to the communities involved, although this is not a result of changed land tenure.

The reform has not attracted new investment nor resulted in any significant new home ownership outcomes as while it addresses one barrier to private business and home ownership, namely providing security of tenure within a township framework, it was not designed to address other key components required for the outcomes sought.

The points of difference between communities with a township lease and those without a township lease has reduced considerably over the years, both in terms of rents received and coverage. The key advantages for a township lease are the up-front incentives and that it provides a better defined framework that considers all aspects of the township's development.

The Community Entity Model has emerged as the preferred option and we found that the level of self-determination felt within the community was a key reason for that this model, not only by having the final decision on sub-leasing but also a stronger sense of ownership by the community and a greater understanding regarding the use of land.

Recommendations

The evaluation has uncovered the need for some changes and the starting point for the future policy directions of township leasing is to assess the extent to which it is relevant for other communities in the context of the now widespread use of S.19 leases and whether any township leasing model offers compelling advantages and benefits over and above S.19.

Our findings support that township leasing does provide an improved pathway for the communities wanting to be empowered, that have economic development opportunities and would benefit from whole of town planning. However, it is not necessarily the best fit for all communities and the advantages and benefits are not compelling in all instances when compared with S.19 Leases.

In formulating our recommendations on policy direction, we have considered the reasons as to why the uptake of township leasing has been historically low and yet communities may now consider a township lease.

Our overall conclusion is that township leasing can be beneficial in the appropriate circumstance but is not the best fit for all communities and that given that it takes many resources so need to identify where there is desire and demand from the community to change and where it can be sustainable. For communities that don't fit we recommend a hybrid model be investigated that draws the best features of S.19 and township leasing.

Appendix B: Documents Reviewed

A summary of the key documents reviewed include:

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Appendix C: Summary of Communities with Township Leasing

Township Lease #1 (Executive Director Model) Wurrumiyanga

Details of the lease are summarised as:

Initial interest was expressed in 2006 and formal negotiations were undertaken in 2006 and 2007.

Date of Execution	30 Aug 2007
Location	Bathurst Island
Land Council	Tiwi Land Council
Local Government Council	Tiwi Islands Regional Council
Related entities	Mantiyupwi Pty Ltd
Population	1,837 (Source: Based on ABS 2016 Census)
Bushtel Classification	Major
Head Lessor	Executive Director
Term	99 years
Rental in Advance	\$5,000,000
Repaid	*Reduced to \$4,400,000, repaid September 2016
Community Benefit	Numerous aspects
Variations	14 Mar 2014 29 Mar 17
5 Year Review	Yes

Total Sub-lease 2019 144 – NTG 28; Regional Council 22; NGO 30; Business 7; ATSI Business 27; traditional owner Orgs 13; Home ownership 16; Commonwealth 1.

**In 2012 it was agreed that the amount to be repaid would be reduced to \$4,400,000, to account for the delay in obtaining agreement from the Northern Territory and Tiwi Islands Regional Council to pay rent.*

Major Projects and Investments

2009 Community Benefits Package included:

- The construction of 25 houses
- A major upgrade of the community football oval to Northern Territory Australian Football League standard
- An upgrade of the cemetery precinct with shade areas
- The commissioning of a baseline study to provide data to monitor community health, and
- The construction of a health and wellbeing centre to provide appropriate accommodation for the delivery of mental health and ancillary services.

Key Projects

- In 2009 Mantiyupwi Pty Ltd sub-leased five acres of land in Wurrumiyanga for the purpose of establishing a motel. This site was made available to the Strategic Indigenous Housing Infrastructure Program Building Alliance partner for the duration of that project, as a temporary workers camp. Mantiyupwi received no rent during this period and had the option to purchase the facility once vacated so that they could redevelop the facility as short-term accommodation, office and conference facility.

- 2010 - Mantiupwi Pty Ltd acquired Tiwi Tours, established a car-rental business and purchased a cement truck to provide raw materials during Strategic Indigenous Housing Infrastructure Program construction work.
- 2012 – Joint Venture for a food van on the Island.
- Investment in Tiwi Plantations and Tiwi College
- 2013 - The opening in Wurrumiyanga of the Piliyanyirra Supermarket wholly owned and operated by the Mantiupwi traditional owners. The supermarket was built using funds drawn in part from the Township Lease upfront payment with the balance raised by a loan over 10 years from a mainstream commercial bank. Mantiupwi Pty Ltd has entered into a management agreement with Outback Stores to operate the supermarket.
- Mantiupwi Pty Ltd included in the supermarket complex four small retail outlets. They have been under-leased to third parties for a takeaway food outlet, a laundromat, games parlour and banking facilities.
- New change rooms were built at the Wurrumiyanga oval in 2018. The funds were provided by the Northern Territory Government.

Home Ownership

- There was an initial bubble of activity on commencement of the Lease at Wurrumiyanga with fifteen families purchasing their own home within the initial period. This was a combination of new builds and existing homes.
- In 2017, a couple purchased their own home in Wurrumiyanga under the Northern Territory's Sale of Public Housing Policy. They accessed finance from Indigenous Business Australia.

Current Key Projects as per the 2020 OTL Annual Report

- \$11 million Wurrumiyanga Ferry Pontoon
- Visitors Centre completion and opening
- Development of new accommodation facility by Tiwi Designs - Jilarti Eco Lodge
- Telecommunication cabling - undersea optic fibre to improve communications

Community Consultation

Date and Place: 11 November 2020, Wurrumiyanga
Attendees: 30 Community members plus Mantiupwi Business Manager
Method: Group interview using consultation tools

Key Points

- Have a strong relationship with OTL and appreciate the heavy lifting they have done over the years
- Consultative forum is effective and meets twice per annum and can call a meeting if needed
- Have been receiving the rent money for this last 3+ years and budget tightly. Looking at investment when possible, in the community and using income generated for payment to the elderly and people living with disabilities on a quarterly basis, children for education, community activities etc
- OTL better than S.19 - much quicker more transparent
- Home ownership - a few that have done this up to 10 years ago. Early years a big push by IBA and the Government but IBA stop pushing also to change due to a change in Government direction. Home ownership difficult to see it happen at any greater rate
- Have the only bank loan in a Northern Territory Community, struggled with valuation and could only borrow \$1.5 million on a \$5million project. Seemed the bank were "shamed into it"

- Have told other groups that township leasing is good but up to them to make up their own mind. Need strong communication, a plan and strategy.
- Did they make the right decision? Took a lot of time, meetings and negotiation. Communication was strong and well known across the community. Turned out to be good timing with opportunities available - without township leasing would be struggling

Township Lease #2 (Transition Model) Groote Eylandt

Details of the lease are summarised as:

Initial interest was expressed in 2006 and formal negotiations were undertaken in 2008.

Date of Execution	4 December 2008
Location	Groote Eylandt
Land Council	Anindilyakwa Land Council
Local Government Council	East Arnhem Regional Council
Related entities	GEBIE Pty Ltd
5 Year Review	Yes
Head Lessor	Executive Director*
Term	40 years; extended by additional 40 years at the 5 year review
Rental in Advance	\$4,500,000
Repaid	Repaid September 2017
Community Benefit	Various as part of Regional Partnership Agreement
Variations	12 Sept 2012 17 June 2015

*Groote Eylandt township lease had provisions inserted into the lease in 2019 to enable the transfer to a community entity (at the request of traditional owners).

Angurugu

Related entities	Warningakalinga Aboriginal Corporation
Population	1,005 (Source: Based on ABS 2016 Census)
Location	Groote Eylandt
Bushtel Classification	Major

Total Sub-lease 2019 78 – NTG118; Regional Council 17; NGO 4; Land Council 10; Business 2; ATSI Business 9; traditional owner Orgs 23; Home ownership 1; Commonwealth 1.

Umbakumba

Related entities	Aminjarrinja Enterprise Aboriginal Corporation
Population	591 (Source: Based on ABS 2016 Census)
Location	Groote Eylandt
Bushtel Classification	Major

Total Sub-lease 2019 53 – NTG 16; Regional Council 13; NGO 1; Land Council 4; Business 1; ATSI Business 3; traditional owner Orgs 13; Home ownership 0; Commonwealth 2

Milyakburra

Related entities	Lagulalya Aboriginal Corporation
Population	161 (Source: Based on ABS 2016 Census)
Location	Bickerton Island
Bushtel Classification	Major

Total Sub-lease 2019 27 – NTG 14; Regional Council 5; NGO 0; Land Council 1; Business 1; ATSI Business 0; traditional owner Orgs 6; Home ownership 0; Commonwealth 0.

Major Projects and Investments

- The Anindilyakwa Land Council and each clan group indicated that upfront rental payments should be invested in economic development opportunities and Anindilyakwa Land Council consulted with clan groups on how to spend the funds. The Groote Eylandt and Bickerton Island Enterprises (GEBIE) organisation engaged an economic development officer to work with all residents of Groote Eylandt and Bickerton Island.
- 2011 - Angurugu traditional Land owners used their lease upfront rent payment to purchase a successful car hire business on Groote Eylandt.
- The Umbakumba traditional owners used their rent payment to commence a commercial fishing venture called Numaynga fishing venture - a joint commercial venture with Tasmanian Seafoods specialising in trepang.
- New business centre at Milyakburra
- Upgrading of stores
- The purchase of a small hotel in Darwin
- 2013 - The transition of Groote Eylandt's largest community store to Warningakalinga Aboriginal Corporation
- Aminjarrinja Enterprises Aboriginal Corporation is owned and operated by the traditional owners of Umbakumba and has been an active investor in businesses, including using some of the up-front funds. It facilitates training for local indigenous workers and provides a variety of services related to the building and construction industry and essential services.

Current Key Projects as per the 2020 OTL Annual Report

- Construction of houses on existing subdivisions
- Application from NT Government for greenfield housing subdivision linked with Local Decision-Making commitments
- Sealing of the Angurugu perimeter road

Community Consultation (Interviews using consultation tools)

Consultation	Anindilyakwa Land Council	Angurugu	Umbakumba	Milyakburra
Date and Place:	28 October 2020, Alyangula	28 October 2020, Angurugu	28 October 2020, Angurugu	28 October 2020, Milyakburra
Attendees:	Chair and CEO	3 Community members	2 Community members	15 Community members

Key Points

Bickerton Island Group

- Felt that they don't really understand the process and have limited knowledge of township leasing. Bickerton Island always felt left behind and had originally been excluded from the lease in the early negotiations.
- Home ownership is nil and no support to start. Houses get worn out.
- Intergenerational aspect is that the people who signed up have “passed” and therefore limited background knowledge.

ALC and Groote Eylandt Groups

- There was a lot of pressure at the time to sign up for the township lease and the advice was not very clear and not given many options – felt pushed into it. Was all part of the Regional Partnership which was complex.
- The Consultative Forum members had challenges getting explanations back to each community and clearly outline what was happening.
- Groote Eylandt is now all about local control - education, housing, local Government and moving towards this systematically. Head lease could become part of this in time. We know how to arrange ourselves.
- No compelling reason re home ownership as collective housing is functioning - high cost and no secondary market.
- Economic development can be done without the head lease.
- There was much confusion re the rent dollars and too many layers of bureaucracy.
- Consultative forum is a loosely defined group and the traditional owners know who should be on it.
- Valuations were contentious before landed on current system.
- Strong leadership is essential to get it happening.
- Communities still have issues as to where rent monies are going - traditional owners asking about this.
- Need more communication from the Land Council so that the traditional owners making the decision are comfortable they are making the right call.
- Get OTL to discuss with traditional owners and involve elders.
- Need traditional owners and elders to get agreement on next steps.

Township Lease #3 (Executive Director Model) Milikapiti and Wurankuwu

Milikapiti and Wurankuwu traditional owners agreed to a single township lease because of the strong historical and traditional owner affiliations across the two Communities. However, the lease has separate provisions for each community on key matters. For example, each community has established its own local Consultative Forum under the lease.

Initial interest was expressed in 2009 and formal negotiations were undertaken in 2010.

Date of Execution	22 November 2011
Location	Tiwi Islands
Land Council	Tiwi Land Council
Local Government Council	Tiwi Islands Regional Council
Related entities	See below
5 Year Review	Yes
Head Lessor	Executive Director
Term	99 years
Rental in Advance	\$1,760,000 Milikapiti \$15,000 - Wurankuwu
Repaid	Repaid March 2020 - Milikapiti
Community Benefit	\$3,000,000 Milikapiti \$160,000 - Wurankuwu
Variations	

Milikapiti

Related entities	Wulirankuwu Pty Ltd
Population	471 (Source: Based on ABS 2016 Census)
Location	Melville Island
Bushtel Classification	Major

Total Sub-lease 2019 60 – NTG 18; Regional Council 16; NGO 2; Business 0; ATSI Business 20; traditional owner Orgs 2; Home ownership 1; Commonwealth 1.

Wurankuwu

Related entities	Portaminni Pty Ltd
Population	20 (Source: Based on ABS 2016 Census)
Location	Bathurst Island
Bushtel Classification	Minor

Total Sub-lease 2019 12 – NTG 5; Regional Council 1; NGO 2; Business 1; ATSI Business 1; traditional owner Orgs 11; Home ownership 0; Commonwealth 0.

Consultation (Group interview using consultation tools)

Consultation	Milikapiti	Wurankuwu
Date and Place:	10 November 2020, Milikapiti	11 November 2020, Wurrumiyanga
Attendees:	19 Community members plus Business Manager	12 Community members plus Business Manager

Milikapiti

The traditional owners chose to invest part of the advance payment to establish trusts, with business arms to facilitate investment, including in their own communities. Milikapiti's is Wulirankuwu Trust and its business arm is Wulirankuwu Pty Ltd

In accordance with community wishes the Milikapiti traditional owners decided to invest their Community Benefit Package into the construction of new community housing with 3 new dwellings for the community.

In 2013 the Wulirankuwu traditional owners of Milikapiti invested in the Wurrumiyanga supermarket by constructing and leasing back to the store a manager's house.

Current Key Projects as per the 2020 OTL Annual Report

- Renovation of motel accommodation by Wulirankuwu traditional owners
- Five new lots allocated for Community Housing Development
- Bathurst Island Housing Association secured a sublease providing easy access and reduced travel time to Pirlangimpi and Milikapiti.

Key Points from Community Consultation

- 99 years is too long – should be less as it commits too many generations
- Still looking for more employment for younger people
- Home ownership – one outcome only. Need jobs to afford a house though as houses are expensive to buy and not a lot of jobs
- Consultative forum meets twice per year and works well
- Would they do it again? - Yes, but not for as long.
- Have a very good relationship with OTL and know that the administration side is very time-consuming and well advanced.

Wurankuwu

The NT Government categorises Wurankuwu (aka Ranku) as a homeland. This makes Wurankuwu the only homeland in the Northern Territory under a township lease held by the Executive Director.

This has meant that, unlike other communities under township leases, the Northern Territory Government has not agreed to hold subleases for the provision of housing at Wurankuwu, at least until the existing housing stock is brought up to NT Residential Tenancy Act (RTA) standards.

Wurankuwu is not included in the footprint of the National Partnership NT Remote Housing.

Though it is not usual practice to include a homeland under a township lease, Tiwi traditional owners requested inclusion of Wurankuwu in the Executive Director-held 99-year township lease for the larger Tiwi Community of Milikapiti, which commenced in 2011.

Major Projects and Investments – Wurankuwu

- The traditional owners chose to invest part of the advance payment to establish trusts, with business arms to facilitate investment, including in their own communities. Wurankuwu's is the Portaminni Trust and its business arm is Portaminni Pty Ltd.
- In accordance with community wishes the Milikapiti traditional owners decided to purchase a multipurpose demountable for Wurankuwu.
- Two homes were upgraded at the request of traditional owners.

Current Key Projects as per the 2020 OTL Annual Report

- New power generators installed to improve power services
- Full scope of all houses to identify repairs and maintenance requirements
- Funding for basketball courts upgrade and new playground on school grounds
- Commencement of store upgrade

Community Consultation

- Consultative forum a lot of talking but no action as only four houses out there with 10 people - houses need to be fixed but won't get services. No economic base and population won't go out there without services or jobs and can't run a bus service on the road as it is.
- Designated as an outstation but want to change to the status of a community - at the time of signing felt the OTL could have triggered this, but it didn't happen.
- OTL has helped but feel we all should have done and achieved more.
- If didn't have OTL wouldn't be much different in hindsight S.19 would problem have been better.
- Being annexed to Snake Bay is problematic.

Township Lease #4 (Transition Model) Mutitjulu

On 16 March 2017 Minister Scullion announced the Township Lease over Mutitjulu⁶². Key parts of the announcement included that:

- Prior to the lease, Mutitjulu had been subject to **unique tenure arrangements** due to its location in the Uluru-Kata Tjuta National Park. This meant that Mutitjulu had been unable to benefit from leasing arrangements in the same way that other communities in the Northern Territory have.
- The Coalition Government and the CLC worked with the community and traditional owners of Mutitjulu to establish an Aboriginal corporation to hold and administer the Mutitjulu sublease.
- Having the Executive Director holding the lease initially enabled benefits to flow from the start.

Details of the lease are summarised as:

Initial interest was expressed in 2014 and formal negotiations were undertaken in 2016.

Date of Execution	16 March 2017
Location	Central Australia
Land Council	CLC
Local Government	MacDonnell Council
Related entities	Mutitjulu Community Aboriginal Corporation
5 Year Review	No
Population	436 (Source: Based on ABS 2016 Census)
Head Lessor	Executive Director
Term	67 years
Rental in Advance	\$Nil
Repaid	
Community Benefit	\$2,000,000 plus housing
Variations	
Bushtel Classification	Major

Total Sub-lease 2019 105 – NTG 2; Regional Council 0; NGO 9; Land Council 5; Business 4; ATSI Business 21; traditional owner Orgs 11; Home ownership 0; National Parks 47; Commonwealth 6.

⁶² <https://www.indigenous.gov.au/news-and-media/announcements/minister-scullion-historic-township-sublease-over-mutitjulu>

Major Projects and Investments

- Income from the sublease will flow back to the community to be used to support new business ventures, for instance in tourism, and invest in community infrastructure.
- Minister Scullion said the execution of the sublease meant the Australian and Northern Territory Governments were now in a position to proceed with a \$10 million investment in housing in Mutitjulu. How this investment will be used will be decided in partnership with the community.
- The Commonwealth provided a \$2 million Economic Development Fund to support the establishment of a community and business hub in Mutitjulu.

Current Key Projects as per the 2020 OTL Annual Report

- Support development of the Mutitjulu Business Centre
- Delivery of 2nd tranche of Commonwealth Government funded, NT Government managed, public housing works including the upgrade of 26 houses and construction of two new homes
- Upgrade of the Inma Area

Community Consultation

We were unable to meet with a community group at Mutitjulu.

Township Lease #5 (Transition model) Pirlangimpi

On 27 June 2017 Minister Scullion announced the Township Lease over Pirlangimpi⁶³. Key parts of the announcement included that it was the first time the administration of a lease on the Tiwi Islands could be transferred to the traditional owners and community members and that having the Executive Director of Township Leasing holding the lease initially enabled benefits to flow from the start. Minister Scullion also stated:

“Munupi traditional owners and Pirlangimpi Community members told us they want to work toward local control when it comes to land decisions in their communities. We have listened and the Coalition Government looks forward to working together towards the establishment of an Aboriginal corporation to hold and administer the Pirlangimpi Township Lease.”

Details of the lease are summarised as:

Initial interest approximately 2009-10, formal negotiations recommenced in 2013-14 and again in 2015-16.

Date of Execution	16 March 2017
Location	Melville Island
Land Council	Tiwi Land Council
Local Government Council	Tiwi Islands Regional Council
Related entities	Munupi Family Trust
5 Year Review	No
Population	371 (Source: Based on ABS 2016 Census)
Head Lessor	Executive Director
Term	99 years
Rental in Advance	\$2,000,000

⁶³ <https://www.indigenous.gov.au/news-and-media/announcements/minister-scullion-celebrations-tiwi-islands-township-leasing-outcomes>

Repaid	
Community Benefit	\$2,000,000 plus housing
Variations	
Bushtel Classification	Major

Total Sub-lease 2019 56 – NTG 13; Regional Council 26; NGO 2; Business 2; ATSI Business 10; traditional owner Orgs 2; Home ownership 0; Commonwealth 1.

Major Projects and Investments

- This township lease underpins more than \$15 million in housing investment under the Remote Housing Strategy with a new subdivision for future development.
- \$2 million economic development fund to support commercial development opportunities in Pirlangimpi. We understand that the community have yet to decide where this money will be spent.

Current Key Projects as per the 2020 OTL Annual Report

- Tender let for development of a 29 Lot housing subdivision
- Business and strategic planning support for traditional owner organisation Munupi
- Art Centre upgrades to improve conditions for artists in the community

Key feedback from Community Consultation

We were unable to meet with a community group at Pirlangimpi.

Township Lease #6 (Community Entity Model) Gunyanara

On 21 November 2016 Minister Scullion announced the township lease over Gunyanara⁶⁴. Key parts of the announcement included:

- A historic agreement – the first to result in a lease held by an Aboriginal corporation – was reached with the traditional owners of Gunyanara to enter into a township lease over their community in North East Arnhem Land.
- A township lease unlocks opportunities for the Gumatj people, for the community of Gunyanara and for the East Arnhem region by enabling better land administration and individual leasing that is transferable and mortgageable.
- At the request of Mr Yunupingu and the Gumatj people, the Coalition Government worked in partnership with his community to develop a model of township leasing that will strengthen local decision making and ensure traditional owners are in the driver's seat when it comes to decisions about their land, including for future commercial developments.
- Prior to this, the only entity approved to hold a township lease had been the Commonwealth Executive Director of Township Leasing.
- Gunyanara was the first township lease to be approved by the NLC
- This model of township leasing can be a beacon for other traditional owners across the Northern Territory who want to take on responsibility for their land and break free from current barriers in land tenure.

⁶⁴ <https://www.indigenous.gov.au/news-and-media/announcements/minister-scullion-historic-agreement-over-Gunyanara-township-lease>

Details of the lease are summarised as:

Initial interest approximately 2009 formal negotiations recommenced 2016

Date of Execution	1 December 2017
Location	Adjacent Nhulunbuy
Land Council	NLC
Local Government Council	East Arnhem Regional Council
Related entities	Gumatj Aboriginal Corp
5 Year Review	No
Population	240 (2016 Census)
Head Lessor	Ngarrariyal Aboriginal Corporation
Term	99 years
Rental in Advance	\$2,000,000
Repaid	
Community Benefit	\$2,000,000 plus housing
Variations	
Bushtel Classification	Minor

Total Sub-lease 2019 Not available

Major Projects and Investments

- Quadplex for the grandmothers. This is a complex of four units joined together that accommodates the community grandmothers so as to ensure that they had a place to live.
- Youth centre also known as drop-in centre is to have more funds allocated to it.
- A budget has now been developed for the Community Development funds based on the Master Plan and includes: Beautification of the entire community; Women’s centre; Work with the East Arnhem Regional Council (EARC) on various matters by inputting funds so that the community gets standard “A” from anything to be done, rather than a lesser standard; Cyclone shelter which will double as a club-house and change rooms near the oval

Community Consultation (Interview using consultation tools)

Date and Place:	3 November 2020, Gunyanara
Attendees:	2 Senior Directors and the General Manager of Ngarrariyal Aboriginal Corporation; CEO of Gumatj Corporation

Key Points

- There were 10 years at least of discussions and trying to get it to happen.
- “I think that this is a better model as we are in control of our own land. It is not with Government through the OTL and Executive Director. Our knowledge for this area and being close to it is better than Government’s. We can then make better and quicker day to day decisions.”
- No new business has been created. However, the town lease has simplified relationships – E.g., boat club variation. If this had been done through the old pathway of the NLC, it may have taken 6-8 months with the request, review, consultation, drafting, etc. For us, we can move much quicker to have meetings and make a decision.

- Other leases all came across at the time of the town lease coming into being.
- Also, most of the money earned from renting properties stays in Ngarrariyal.
- We are tracking for just under 10 years to repay the loan of the initial ten years of rent.
- Main challenges to being able to do more:
 - EARC role - The emergence of Ngarrariyal Aboriginal Corporation and its control of land tenure, there now seems to be a doubling up on discussions and decision making, given that so many aspects are concerned with impact on land. The council is slow.
 - How do we promote what we have for commercial value?
- Rental income has increased by 25-30% already. Want to increase by this amount again
- Master Plan – tourism is the focus
- Township lease hasn't increased people's income yet. Want to, and happy to, go slow. We are in control and will develop things as we wish to.
- This community is not a transient place. People are very settled here.
- To achieve what we have, support was very important. This support came from the surrounding areas, with people approving and encouraging us to take this step. Professional support then important to get it done.
- Leadership was also and is very important – in this regard, our eldest brother led the way. Knew what he wanted and set out to get it.
- From an administrative perspective, there was a service agreement with the Executive Director, but this was cancelled after 2 years as didn't really work; the key issue was that we just didn't know how to interact with each other.
- If communities are thinking of getting a township lease - they must plan and communicate.
- To be successful, they must have the right people on the board. They have to work with the NLC as the statutory body.
- Positive interactions with departments.
- Overall, it is good to have a range of matters brought under the one roof so that we can minimise meetings for the key leaders of the community.

Appendix D: Accessible text – Outcomes Table (p.32)

Outcomes

PARTICIPANT ACTIVITIES AND OUTPUTS

- Traditional Owners, through Aboriginal organisations, Land Councils and other advisors, negotiate township leases with the Commonwealth.
- NT Government provides advice on Territory laws & planning requirements in Township Lease communities.
- Township Lease Working Group oversees progress on township leasing in the NT.
- Local Aboriginal corporations negotiate and hold community entity township leases.
- Land Councils continue to perform statutory functions, including ensuring informed consent and approving the grant of Township Leases.
- NT Government prepares Community Land Use Plans.
 - Community Land Use Plans are used by traditional owners, government, businesses & service providers to inform planning decisions.
 - Community Land Use Plans contribute to faster, more strategic decision-making on land use in Aboriginal communities.

SHORT TERM OUTCOMES

- Traditional Owners access financial support and advice in entering township leases.
 - Communities are more likely to choose to enter into a new Township Lease. Traditional Owners are more likely to negotiate and execute a Township Lease held by EDTL.

OR

- Traditional Owners have expanded options for Township Leasing: New option to enter a Community Entity Township Lease (held by EDTL on a transitional basis if required).

Communities with Township Leases held by EDTL transition their leases to Community Entities. Improved outcomes, compared to pre-Township Lease arrangements. Sustained or improved outcomes, compared to EDTL-held Lease

MEDIUM TERM OUTCOMES

Township leases provide an improved platform for economic activity in communities

- Leaseholders formalise existing tenure arrangements in townships.
- Traditional Owners can negotiate and approve new land use proposals more quickly.
- Leaseholders engage in strategic planning at a whole-of-township level.
- Traditional Owners access upfront income from headleases.
- Businesses, service providers and government are more willing to invest in township lease communities.
- Traditional Owners and community residents have greater capacity to borrow against their land interests.
- Leaseholders choose to issue sub-leases to businesses, government & service providers.
- Leaseholders choose to issue sub-leases to private residents.
 - *Subleases will be issued incrementally following the execution of a township lease. This process is likely to take 5 to 10 years to be complete.*

Township leases provide an improved platform for local decision-making

- Traditional Owners have increased visibility over whole-of-township land planning and can make decisions more strategically.
- Traditional Owners have increased control and ownership over land planning and decision-making processes.
- Communities have an additional vehicle for voice and leadership on non-land matters.

LONG TERM OUTCOMES

Aboriginal people in the N.T have greater opportunities to leverage their land assets for economic benefits

- Increased access to capital.
- Increased rental income from businesses, service providers and government.
- Increased private investment in communities.
- Increased government investment in housing, infrastructure & services.
- Increased home ownership in communities.
- Increased employment in communities.

Aboriginal people in the N.T can more freely pursue their own economic, social and cultural development priorities.