

Back to Basics: “Development on Aboriginal Land – Can’t be done...or can it?”

A new client to our firm recently laughed at the idea that development on Aboriginal land in the Northern Territory was even possible. Surely, so the understanding went, given the presence of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* and the lack of development in Aboriginal communities, having business development and producing decent commercial or residential property on Aboriginal land was impossible?

The answer to the question as to whether commercial development can be conducted on Aboriginal land is a resounding “Yes”! Yes, development on Aboriginal land in the Northern Territory is possible. Yes, it has happened in the past. And yes, it can happen today and into the future. In fact, the Land Rights Act is a mechanism for the development of Aboriginal land, provided that you secure agreement from the people who speak for the land – described in the Land Rights Act as “traditional Aboriginal owners” – through their representative, the relevant Land Council for that particular area.

Land Rights Act

The key provisions of the Land Rights Act are section 19(4A) and (5). These provide as follows:

(4A) With the consent, in writing, of the Minister [*where necessary*], and at the direction, in writing, of the relevant Land Council, a Land Trust may ... grant an estate or interest in the whole, or any part, of the land vested in it to any person for any purpose.

(5) A Land Council shall not give a direction under this section for the grant, transfer or surrender of an estate or interest in land unless the Land Council is satisfied that:

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed grant, transfer or surrender and, as a group, consent to it;
- (b) any Aboriginal community or group that may be affected by the proposed grant, transfer or surrender has been consulted and has had adequate opportunity to express its view to the Land Council; and
- (c) in the case of a grant of an estate or interest--the terms and conditions on which the grant is to be made are reasonable.

To trigger these provisions, an application must initially be made to the relevant Land Council which provides sufficient detail to enable the conduct of consultations with the traditional Aboriginal owners. Appropriate forms are available from each Land Council.

Upon successful consultations being completed, what is known as a ‘section 19 lease’ is then negotiated and executed between the parties. As with any lease of freehold property in an urban area, a section 19 lease provides tenure to the lessee on the terms agreed. It then operates as any normal lease would.

Development – Major Remote Towns

Twenty (20) remote Indigenous communities have now been identified as Major Remote Towns. All of these Major Remote Towns are zoned and have a corresponding area planⁱ. As a result, development in Major Remote Towns is assessed against the planning principles and provisions of the Northern Territory Planning Scheme, just as it would be in any urban centreⁱⁱ. For the remainder of Indigenous communities, however, you may not need a development permit to carry out works.

Some of these Major Remote Towns include:

- Ngukurr
- Hermannsburg
- Wurrumiyanga (formerly Nguiu)
- Papunya
- Gapuwiyak
- Wadeye
- Yuendumu
- Numbulwar

What is possible – Wadeye South

A great example of what is possible is found within the Township of Wadeye, being the land of the Kardu Diminin clan group. Now known as Wadeye South, an area of land formerly utilised as the taxiway for the town's air-strip was re-developed some years ago into a residential sub-division.

Utilising section 19(4A) and (5) of the Land Rights Act, negotiations were conducted between the local Aboriginal-owned business development entity, Thamarrurr Development Corporation Limited (TDC), as the developer, and the Northern Land Council (NLC) on behalf of the traditional Aboriginal owners. A proposal regarding re-development of the taxiway into a sub-division to house the staff of various service providers was put forward for the approval of the traditional Aboriginal owners. Informed consent was provided through the processes of the Land Rights Act and TDC was granted a Development Lease for a defined period of time. During this time, it was required to complete the civil works for the sub-division, including the satisfaction of all planning requirements in accordance with the Planning Act (NT).

As with any other commercial development, TDC needed to develop a sustainable and financially viable project. So as to secure finance, negotiations were entered into and finalised with various service providers which agreed to secure a specified number of blocks and have housing constructed by TDC according to their specific needs – in effect, pre-sales. With pre-sale contracts locked in, TDC was able to gain finance and commence the project with confidence, generating business development, training and employment opportunities at a local level, as well as cash-flow and profit from a business perspective.

The difference with this project and any other being conducted on freehold property in an urban centre was the tenure finally gained by the service providers. While TDC was remunerated by the service provider or "buyer" for the civil works completed and the construction of agreed housing, the "buyer" was also required to enter into a long-term lease with the NLC on behalf of the Daly River / Port Keats Aboriginal Land Trust at a set annual fee. While not the norm, this is precisely the requirement with respect to the gaining of residential accommodation in areas such as Nhulunbuy and Jabiru, each of which – due to the mining conducted in the region and

agreements struck between the mining company and the NT government – was developed on the basis of 40-year leases. The same also occurs in Canberra and the City of London!

The end result of this project was the creation of a much-needed residential sub-division for the staff of various agencies active at Wadeye. Aboriginal freehold land was developed due to the combined efforts of the traditional Aboriginal owners, the NLC, TDC, various agencies and a financier. From a local community perspective, the benefits included:

- Provision of increased services
- Stable staffing of service providers
- Developed land able to be secured by local organisations and utilised for accommodation purposes
- Further development of TDC capacity
- Creation of training and employment opportunities for local Aboriginal staff
- Retention of profits within community

For advice regarding the conduct of development on Aboriginal land in the Northern Territory, please contact Bowden McCormack on 08 8941 6355 or email the writer at dominic@bowden-mccormack.com.au.

ⁱ Area plans for each Major Remote Town that may help guide your development application can be found here: <https://nt.gov.au/property/building-and-development/development-application-indigenous-land/major-remote-town-area-plans>

ⁱⁱ For development generally, see: <https://nt.gov.au/property/building-and-development/development-one-stop-shop-applications-and-processes>