



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**COUNCIL OF TERRITORY CO-OPERATION**

**PUBLIC HEARING NO 52**

**TUESDAY 6 MARCH 2012**

Members:

Mr Gerry Wood, MLA, Member for Nelson – CHAIR  
Ms Lynne Walker, MLA, Member for Nhulunbuy  
Ms Marion Scrymgour, MLA, Member for Arafura

Witnesses:

**Department of Housing, Local Government & Regional Services**

Mr Ken Davies – Chief Executive  
Mr Andrew Kirkman - Executive Director – Remote Housing SIHIP  
Mr Mike Chiodo - Deputy Chief Executive – Remote Infrastructure Program Office  
Mr John Tobin - Acting Executive Director, Local Government, Regional and  
Community Services  
Ms Michelle Brown - Acting Executive Director – Service Delivery Coordination Unit  
Ms Giovina D'Alessandro - Director - Local Government & Community Services

**Northern Land Council**

Mr Kim Hill – Chief Executive Officer  
Mr Ron Levy – Principal Legal Officer  
Ms Shanti Rama – Legal Officer  
Mr Syd Stirling – Senior Policy Officer

**NAPCAN** - Ms Lesley Taylor

Professor Graham Vimpani (*via teleconference*),  
Chair – Child Protection External Reporting & Monitoring Committee

**SAF,T**

Ms Victoria Pollifrone – Advocacy and Policy Manager  
Ms Briony Crummy

**AMSANT**

Mr John Paterson, Chief Executive Officer

Member of the Public representing the Silent Majority - Mr Kenny Wu

**CHAIR:** Okay. We might keep going. First of all I'd like to thank you for coming. I'll just make this opening statement first. I welcome you to this public meeting of the Council Territory Co-operation, Kim Hill, CEO of the Northern Land Council, together with Syd Stirling, Senior Policy Officer. I thank you both for appearing today. And also Ron Levy, and ...

**Mr Kim HILL:** Shanti Rama.

**CHAIR:** And what's her position.

**Mr Kim HILL:** She's a legal officer. I was going to say Principal Legal Officer.

**CHAIR:** Although the Committee does not require you to give evidence under oath, these hearings are civil proceedings of the Parliament and consequently they warrant respect as proceedings of the House itself.

Whilst this meeting is public, witnesses have the right to request to be heard in private session. If you wish to be heard in-camera, please advise the Committee prior to commencing your answer. I remind the witness that giving false or misleading evidence is a serious matter, and may be regarded as a Contempt of Parliament.

Today's proceedings are being electronically recorded. Please state your full name and position before commencing your evidence. As soon as practicable following this hearing a transcript of your evidence will be provided to you to proof it.

Kim, do you wish to make any opening statement. Sorry, I should introduce you. Probably know these good people. Lynne Walker, Member for Nhulunbuy and Marion Scrymgour, Member for Arafura, and me. So have you got any opening statements you'd like to make, Kim?

**Mr Kim HILL:** Chairman, my name's Kim Hill, Chief Executive Officer, Northern Land Council. With me is Syd Stirling, Senior Policy Officer of the Land Council. Mr Ron Levy, the Principal Legal Officer, along with Miss Shanti Rama, who is a Legal Officer with NLC.

Thank you, Mr Chairman, for allowing us by invitation to speak to you. My Principal, sorry, my Senior Policy Officer, also appreciates the lollies. Hopefully we won't have time to go through all the lollies.

Mr Chair, the NLC, as you know, is a Commonwealth Statutory Body, by which we administer Aboriginal Lands in the NLC region. We have been working with local governments in regards to the issue for leasing, which I understand is an issue for you, as the Chair, and of interest for those, who are residing on Aboriginal Lands. However the NLC, and its Council Members, are very co-operative in the way to move forward, and acknowledging that it is Aboriginal land, and the decisions of both Territory, and Federal Government is welcomed, and that the rent is finally being paid to Aboriginal peoples.

**CHAIR:** Is that the lot? Thank you, and may I say that I'm not against things being recognised, it's the manner in which they're recognised. But look, we'll get onto that. I'll just ask, maybe, a fairly general question, so to look at the technical side of what the Land Council does. So what is your role in leasing? How does it work? So how do you, you know, what do you do if someone wants to lease land?

**Mr Kim HILL:** Yeah, Mr Chair, some of the technical questions I'll refer to the Principal Legal Officer, and I do encourage the Committee to ask Miss Shanti Rama any questions on this matter, because Shanti, and Jonathon Kneebone, were the two Officers, who were leading the negotiations with Mr Levy in regards to dealing with the technical aspects of leasing on Aboriginal land.

The Land Council, as I said earlier in my opening statement, is responsible for the administration of the Land Trust areas. We are, I can just say this on record, that we are the only Commonwealth registered body which represents traditional owners, and that's very important that people understand that, that we have got a by law, we represent traditional owners.

The other thing, the Act does allow us, and traditional owners, to actually exercise their rights on Aboriginal lands. Section 19 of the Aboriginal Land Rights Act requires, or allows, the Council to provide a lease to an individual, or if not to own it, to carry out activities on Aboriginal lands. And I'll now ask Miss Shanti, or Mr Levy, to make reference to certain aspects of the Act, which also allows traditional owners to exercise their rights.

**Mr Ron LEVY:** I think as you are probably aware, Mr Chairman, there's a Statute. The process is that the proponent makes an application, the Land Council must be satisfied that the traditional owners of the relevant land consent to the proposal, and if they consent it goes to the full Council to be processed. After it's processed, the documents are executed by the Land Trust, and the proponent, and it's then enforced.

**CHAIR:** Can I just ask you some fundamental questions? But why does the full Council ... required to approve something that's been approved by the traditional owners of that parcel of land?

**Mr Ron LEVY:** It's the structure of the statute.

**CHAIR:** That's all right. I'm just ... yeah. And what's the definition of a traditional land owner, the legal definition?

**Mr Ron LEVY:** The Traditional Aboriginal Owners, plural, is the actual technical term, are a local descent group of Aboriginal people that have common spiritual affiliations for the relevant land, which give them primary spiritual responsibility for sites, the sacred sites, on that land, and in addition they need to have a right as of Aboriginal tradition, to forage from that land.

**CHAIR:** And how ... that definition, is it interpreted in different ways? In other words, because an argument has been put to me that older days you would regard yourself as the community; nowadays it tends to be more a specific family, for instance. So has there been some ... is it a definition that is in concrete, or is it a definition that's been argued about from time to time?

**Mr Kim HILL:** I think, sorry, Mr Levy, from a technical ... Mr Levy can pick that up on a technical in the legislatures. I just, Mr Chair, people need to understand the history to the Land Rights Act and particularly the Act itself. To my knowledge, I don't think any Commonwealth Government has challenged the issue of traditional ownership on the basis that the original intent of the Act itself.

The Act itself was written for people residing on Aboriginal reserves. Sadly it wasn't written for the members of The Stolen Generation, or changing of society in

regards to one's definition of a community. I think that the legislators at the time, and the advice they received, has kept us in good steady [sic], from a cultural integrity aspect, and that's something which the Council is very proud of all governments that it was written for those out in the bush. It wasn't written for those, who sadly was impacted by government policies, such as The Stolen Generation, and other pieces of legislation affecting Aboriginal children. It was written for traditional people, residing on traditional lands. And it still serves its purpose today.

And I think, and I've made the commentary, Mr Chair, that it is a piece of legislation I think all Australians should be proud of, because, one, it recognises traditional ownership, as first peoples of this nation, and importantly those people have been, for some time, for 40, 60, 80,000 years been occupying these lands, and I think it's a piece of legislation which all Australians should be proud of, and I'll ask Mr Levy to put it in a legal context, in regards to traditional ownership, as defined.

**Mr Ron LEVY:** Yeah. Well, I don't think I can add, Mr Chairman.

**CHAIR:** That's all right.

**Ms SCRYMGOUR:** But what, if I could just follow on from the Member for Nelson, I suppose just to elaborate, I mean, it's quite clear, I mean, the Act, I mean, ALRA in terms of traditional ownership, I think ... and where Gerry was going on is you have a whole group of other people that are resident in a community, so they would fall under Section, I think, 70, of the Aboriginal Land Rights Act.

**Mr Ron LEVY:** Seventy-one.

**Ms SCRYMGOUR:** So the people that are impacted on by traditional ownership. So I think that that's what ... so when you've got a number of other ... or other Aboriginal people who are born in that community ...

**CHAIR:** Or they're part of the clan, but they're not ...

**Ms SCRYMGOUR:** ... so I think he was trying to ... that process of ... so they're not recognised traditional owners, but they're people affected by decisions of traditional owners, so they would be part of a process that would need to be ...

**Mr Kim HILL:** Yeah, look, the NLC does, and is required to seek the advices of traditional owners but we are also required to consult the affected groups in regards to a proposal being put to the traditional owners. So we do allow to consult with other groups in the community, depending on the proponent, what the proposed activity is happening, or going to happen on Aboriginal lands, for example, the SIHIP was a good example, where we not only consulted settled traditional owners, we also had discussions with affected groups in the community, regarding SIHIP, and the roll out of the SIHIP.

**CHAIR:** Look, I suppose what I'm getting at is that ... and it relates partly to the leasing of government facilities, but it doesn't, not exclusively, it could be that you'll get a group of people that some will receive benefits through, say, mining royalties, and some won't, but they all belong to the same group, except this is the traditional owners, so the issue I'm looking at is whether, for instance, the case that we discuss today, there'll be payments for the lease of various government facilities in a township, but that township is made up more than just the traditional owners, but those people in the township will not necessarily get the benefit of those lease payments. And that's where I'm wondering, is the definition of 'Traditional Owner' a

little broader so that all those people who live in that town, who might all belong to the one group, but they may not be the traditional owners for that spec of land, which is the town, they will not get any benefits from those contributions from the government for leasing government facilities.

**Mr Kim HILL:** Yeah, Mr Chair, I think the question is more to do with how can the wider community benefit from government initiatives, such as paying rent for their facilities on Aboriginal land. There obviously is, and has been, working with traditional owners at establishing corporations, mostly corporations you see in the NLC region, did arise from the NLC in consultation with those traditional owners.

Look across the NLC region, Jawoyn is a classic example, Gumatj is a classic example, so many of the organisations, which do exist out there today were, or if not, were children of the NLC. We do see, and we are advising traditional owners that there is a benefit for all living, and residing, in that community.

The example, which we use, when we explain it to people, that TOs have a right to receive those moneys because they are the land owners, but from a cultural perspective those TOs also have an obligation to the [Jungais?] of that area, the Mother's Mob, and the Mothers, to look after it, because we're centred upon the issue of cultural achievement, that that sharing, that understanding of who's responsible for what in a community, needs to continue to exist today, to keep our culture in tact.

We see the breakdown on the introduction of alcohol, and so forth, but NLC is working, under the leadership of our Chairman, working very hard to maintain the integrity of our peoples, because, one, not really all of our people are alcoholics. Not many of our people smoke dope. But yet there's a general perception out there that every Aboriginal man, all Aboriginal people, generally are alcoholics. Just because we've got the high imprisonment rate, that doesn't mean that we're all criminals.

Getting to the final beneficiaries, we are looking at setting up a couple of corporations in which traditional owners, we've done that with the Gove Agreement. We're doing it with other agreements, where we're looking at more of a regional benefit, rather than just a community benefit, because from a cultural perspective, over Maningrida, the clouds don't just stop there. In East Arnhem the clouds go through, the wind blows, so if you're depending on, if you're here to [12.16.12], those clouds won't stop there. They go across [12.16.16] people's country. They keep on going across Duwa people's country. So from a cultural perspective, yes, that is, they have to share those benefits, not just for communities, and surrounding communities, but to maintain their cultural integrity. So we are ...

**CHAIR:** Well, I understand it's not their cultural requirement, but is there anything to enforce that cultural requirement. So if someone makes a benefit, take, I presume the Office of Township Leasing in Bathurst Island, there would have been a certain amount paid to traditional owners. Now where would the community who live on Nguiu, the new name, I just keep forgetting it, where do they get ... and I'm not saying that's your area, but I'll just use that as an example, where would they get the benefits, the funds that go straight to the traditional owners, receive?

**Ms SCRYMGOUR:** Yeah, they'd just stay with Mantiyupwi.

**Mr Kim HILL:** Yeah, no, we can't make a comment on that statement.

**CHAIR:** No. It's the principle I was saying.

**Mr Kim HILL:** Yeah. No. You'll have to ask the Fifth Land Council, and that's the Executive Director of Township Leasing. I can't make a comment in regards to that.

**CHAIR:** Yeah. Okay. Why do you call it the Fifth Land Council?

**Mr Kim HILL:** Well, it does the same role which we do. They just ... we can actually fulfill the Executive Director of Township Leasing. There's a big difference between us and them. Well, the Fifth Land Council is that we're anthropologists and lawyers, and they can sublease, their exempt from the 12 year planning. We're not.

**Ms SCRYMGOUR:** Why is that?

**Mr Kim HILL:** That's something which no doubt Minister Brough and current Minister Macklin still believes should happen. So it's a Commonwealth choice.

**Ms SCRYMGOUR:** But is that under the ... because the Executive Director of Township Leasing was established under the Aboriginal Lands Rights Act, so was the Aboriginal Lands Right Act amended so that they were exempted, or he's exempted, or that office is exempted?

**Mr Kim HILL:** That's right.

**Ms SCRYMGOUR:** Wow. That's ...

**CHAIR:** Have you got any questions? I'll have to think about that. But look, can we get back to leases then, and can I just say at the outset, this is my opinion, so it doesn't necessarily be the opinion of the others, and you know my opinion on leasing. But could I say, first of all I think there should be leases, and I think we should provide services for Aboriginal people. I think the difference I had with you is that those services, I think, should be peppercorn rental. One is, one recognises it's Aboriginal land. Two, recognises that there are services being provided for the benefit of that community, which in most places would be provided probably only in much larger towns. They should be provided.

I'm not knocking that they shouldn't be provided. And the other part of that is if you require a government service to pay a fund into a lease arrangement, there is a chance that you would have less money for the provision of that service. Now it may be only a small amount of money to start with, but as time goes by with UCV changing, and CPI, there's a fair chance that that will be a considerable amount of money.

So the question I would ask, Northern Territory Housing, you have an agreement with them for peppercorn rental, provision of services, why wasn't that the same agreement with provision of aged care, health care, women's centres, in those communities, that is have a lease, but give it a peppercorn rental?

**Mr Kim HILL:** We still welcome the debate, I think it's a long, outstanding debate, and the decision of both governments, the Territory Government and the Federal Government, as I mentioned in my opening statement, we will welcome the decision. No doubt the politics have changed in which leases are now, and moneys are now ... leases are now being offered. Yes, there is a commercial return for traditional owners, as land owners.

I think that I heard Mr Ken Davies earlier in regards one of the advisors about this shire's taken up residency here in Darwin. I mean, the offices in which they are currently occupying, do they receive peppercorn leases for the services they deliver on Aboriginal land, or if not, in the general community of Darwin. I don't think so. I think Aboriginal people, like any property owner, has a right, has a right, to charge.

Now the charge in which we've ... has taken quite some time. A bit of to and fro-ing with the Valuer General, both the Territory and Australian Government, and with the Minister. I think at the end of the day, the question for everybody is not so much should a specific group provide, or if not receive, peppercorn rent? I think the question is the service delivery - is it being actually met by those providers out in the communities? And I would think right across the board that they aren't being met. There's a lot of money out there ...

**CHAIR:** But the question is not about ... that's a separate question, the question is whether they should pay a lease arrangement. Now, councils don't normal operate on private land. You don't get councils operating in my back yard, or other private land. In the case of Aboriginal land, which is private land, you have a provision of a service, which is ... I'm not saying you shouldn't get the service normally, but if we're going to argue technicalities, then those services are not something that a local government should provide. It's funded by the Commonwealth government to provide services for the public, the public, not private land, and the issue about whether they pay rent in Parap, I'd be happy to argue that they shouldn't even be there, that they should be built out at Wadeye, Borroloola, or wherever, and that's a debate, but most, most places, you can always pull out the exception, most places, government, and local government, are situated on their own land. You don't rate, councils don't rate government facilities, for the very reason I'm saying they shouldn't be charging a UCV lease. You don't rate the hospital. Darwin City Council doesn't rate it, because we say they're a service for the community. I mean, why would you charge a lease for an aged care facility on a community, which is for that community? Isn't that a sort of a, you know, the thinking is detrimental to what you're trying to do?

**Mr Kim HILL:** I think what ...

**Mr Ron LEVY:** [Whispers - inaudible].

**Mr Kim HILL:** Mr Levy said there's a legal point he would like to express. I think again, you've mentioned a number of important issues, which people need to define, and with your opening statement in regards to definition on traditional owners, there is that question we have in regards to services, versus rates, on Aboriginal land. I think we need to all have a clear definition of what are we actually talking about when we talk about servicing, and rates. I mean, we're seeking Senior Counsel advice in regards to what local governments are saying, that they are providing a service, versus a rate. So we're still waiting on that advice from our Senior Counsel. But Mr Levy wants to make a valid point, from a legal perspective, in regards to Aboriginal lands.

**Mr Ron LEVY:** Mr Chairman, it's just exceptions always arise, and SIHIP was an exception, which we can come back to, but if a statutory entity, which is what a Land Council is, as a matter of course, in communities for aged care facilities, other government facilities, took the understandable approach, I understand where you and others, are coming from, of granting peppercorn leases.

What will happen is, the Land Council, as a Commonwealth entity, would inevitably be sued for the value of the rent. It's just inevitable that that would happen. One of the reasons I understand that former governments, and there were discussions back to the 1980s according to the Northern Land Council files, and according to whom I've spoken to, about leasing in communities.

One of the difficulties for governments was that there would be a rental charge. At that stage no-one had an idea of what it would be, and from the Land Council's point of view, if it was for a peppercorn, it exposes itself as a transfer of risk. Now the SIHIP case was exceptional, because there was great impoverishment in the nine communities in the NLC region. I think there were nine. All the traditional owners made clear that this was an exceptional case, that the housing stock was run down, that they were close to everybody in the community, they saw this as a contribution, and they were prepared to do it. They've all made clear that they wouldn't do it again, across the board, and they expect that if there are leases, that they'll be Valuer General determined.

Now if the Land Council was to go up there, and override that, you'd get sued, or alternatively go out and give advice that that shouldn't happen, you'd get sued for negligent advice. So there's a legal impediment to that proposal. I understand that people may still think it's a good policy, but it would require an amendment to the Land Rights Act, and that in turn would raise compulsory acquisition issues.

**CHAIR:** So what's the section of the Act that we should refer to that says there would be a ...

**Mr Ron LEVY:** Section 19, subsection 5, paragraph C, says the Land Council must be satisfied with the terms and conditions of the proposed lease are reasonable. Now in relation to SIHIP, on the basis of Counsel's advice, the NLC readily accepted that, in the circumstances, that that provision was complied with. And there have been other occasions in the past when the NLC has granted peppercorn leases along the lines of what you suggested, because the NLC, I think probably alone amongst land councils, has always endeavoured to grant leases in communities, particularly for shops, and those kind of things, right back to the 1980s, the NLC was doing it.

As far as government facilities go, for whatever reason, discussions between the former government, former governments, from the 1980s didn't proceed to a leasing arrangement, because things were complex, and of course there were many other things on the boil at any one time. I think that's sort of understandable that it wasn't resolved quickly. It was complicated. At the same time it didn't lead, in the 1980s, or the 1990s, or the 2000s, to litigation, which again I think we'll see proper and appropriate approach.

The proper and appropriate approach was to wait until such complex issues, which require a policy, and political, response, were in line for all the relevant stakeholders to deal with, and that's what's happened, and it's very complex, and difficult, but it's got to be analysed in terms of the legal structure. What's being proposed would expose Land Councils to being sued, and they'd lose.

**CHAIR:** What would they be sued for?

**Mr Ron LEVY:** They'd be sued for giving negligent advice to traditional owners, which they accepted to enable peppercorn leases to be granted regarding



valuable land and that is sued for the value of the rent foregone, and you just would not win, you would lose such a case.

Now, the only other thing, if the policy of governance is different, would be from in the Land Rights Act, but we now know, post the Warrigal case in 2009, that that would be a compulsive acquisition of property which attracts the just terms provisions of the Constitution.

So it's just, there is a legal structure here, one can like it or dislike it, but it's there, and it just doesn't allow for what is being proposed to happen to happen, and whether for that reason or for other reasons, the Northern Territory Government and also the Commonwealth Government are going down the Valuer General riff, and I think it's understandable they're doing so. I don't really see what other legal course is available.

**CHAIR:** Thank you for that, Ron. But I suppose there's two sides to the equation. The equation is the provision of services that the government provides to a community, for the benefit of that community. Maybe it's a philosophical argument, but the point is that the government could say, well, we're not going to provide an aged care facility here, we're not going to put a school, we're not going to build a health clinic. Because it's on private land. That's basically what it is and you wouldn't normally do that elsewhere. But, I would say that they'd be foolish to do that and I think they've got a responsibility to do it.

So I'm saying there's two sides to the equation, there's this provision of services which is for the benefit of Aboriginal people, and they're costly, they're not cheap, and on the other side, the argument is where should those facilities be situated and what should be the cost of those facilities. And I know you're talking from a legal point; I suppose my argument is a philosophical point that there's respect on both sides, there's the respect that we should provide facilities for people and the other side is the respect that we should recognise is Aboriginal land and the bit that I'm saying is that the peppercorn rental represents that it is Aboriginal land and the alliance of that lease represents that we also recognise that those facilities must be on a piece of land that's owned by Aboriginal people.

**Mr Ron LEVY:** Yes, Mr Chair, I wouldn't want to represent the position of economists in the Productivity Commission, especially since I'm not an economist, but we at office level did have discussions with the Productivity Commission officers about this, and they made it clear that again the understandable concern you expressed is, in reality, not what's going to happen. What happens is government fund facilities. What they need to do is organise themselves and they know what the cost is and so with the commitment to the Commonwealth and the Territory from around 2006/2007 to pay rent which came under the Township Leasing proposal, it's now filtering down through the bureaucracy as to how that will happen, and all these grant funded entities operating Aboriginal communities now must make sure that their budgets apply for rent and the Department will provide.

Now, I understand what you're saying, you're saying, well, it might only be a small amount of money at the moment, it could be an impossibly large amount of money later. I don't know whether that will happen or not, it's definitely an important question of policy, and I understand you're saying philosophical and, you know, if the philosophical policy position the government wants to take is different to the legal position then they need to amend the statute. But they will, if they try and do that, run into the just terms compensation provision of the Constitution anyway. So both governments have taken the current route.

In terms of the advice given by the Territory as to the actual total cost of it, in the scheme of things, it's pretty clear that it's affordable, I would suggest, but in terms of these communities, as the Productivity Commission said to us, it needs more money circulating in the community which is a benefit to the entire community.

**CHAIR:** That was the reason I was asking who was the traditional owners because if it's only a small group of people get that ...

**Mr Ron LEVY:** But circulation money's different. If money goes to a wealthy person in the suburb of Darwin, they'll spend it in Darwin and so shopkeepers and other people will have money spent and get the benefit. The benefit's indirect.

**CHAIR:** Alright, what about Mabunji and Laynhapuy Associations, they do provide ... I know they have some commercial sides to them but they also provide, I think, community assets for the benefit of the community. Now they will have to have a lease arrangement ...

**Mr Kim HILL:** Yes, Mr Chair, they will be, and NLC, along with the Australian Government have written to all organisations to advise them that they need to make contact with the Land Council to ascertain section 19s and so the Council can direct what is relevant to the Land Trust and to grant those leases to those organisations.

**CHAIR:** And how long will those leases be for?

**Mr Kim HILL:** Again, each of the individual components we'll look at individually on its merits in regards to no doubt what's been proposed and we can't, as Mr Levy pointed out, we can't provide long term leases on the basis, we've got to check each application on its merits. Importantly, we can't allow the people to hold onto long term leases to the detriment of any future or possible incomes to the traditional owners. So we will examine each of the applications on its merits and no doubt work with these organisations, and we've been doing it for quite some time.

**CHAIR:** But if they have an asset and you only give them a five year lease and you refuse to renew that lease at the end of five years that will go immediately over to the Land Trust?

**Mr Kim HILL:** Well, that could occur, however, we will no doubt come to a practical outcome with the organisations and the traditional owner groups in question. A lot of common sense has got to prevail in regards to that and in my knowledge, since I've been at the Land Council, I don't think we had that ... I've had to deal with that situation. To my knowledge.

**CHAIR:** Certainly I've been written to about it, and the concern is that the leases are short, a five year lease, no guarantee that they might get an extension, and they're also concerned about what the cost of those leases will be, if there's a monthly payment, and I understand those resource bodies may have some commercial arms to them but they also must provide basic facilities to some of these communities out bush, and I think they're concerned that it may make these businesses unviable.

**Mr Kim HILL:** Mr Chair, we are encouraging organisations to, if they're running, or if like receive moneys from either the Territory or the Australian Government, that they talk to those organisations to have a budget line item in regards to the rental aspect. So we're encouraging and we will work with

organisations to make sure, or if not pressure the relevant agencies that there is a bottom line, a budget line item within their budget for the rental. And we're not talking about hundreds of thousands of dollars.

**CHAIR:** I don't think people know what those costs will be, especially over time, and the figures I was shown for one particular place were, you know, reasonable amount per month and, I mean, I don't know what their profit making ability is but does someone take that into account before they decide this is the rent payment?

**Mr Kim HILL:** Yeah, I'll probably ask Ms Shanti Rama to make a comment in regards to ... the various rental payments are based upon where, the actual location and what we've been able to negotiate with the Australian Valuer General along with the Territory Valuer General. So places like Darwin across the Cox Peninsula, yeah. Moneys for rent will be greater because it's near a major population and mining towns and it'll be greater, more remote, there'll be less moneys. So I'll ask Ms Rama ... ? But this is part, Mr Chair, this is part of her professional development to front the CTC.

**Ms Shanti RAMA:** Told me I had to speak today. But the CEO said the right thing, we're charging standard rates, that's the whole purpose of what we've been doing to get the Valuer General in to assess Aboriginal land across the NLC's region so any rental amounts would be based on the Valuer General's assessment, and that's independent from the proponent and the NLC.

**CHAIR:** Yeah, but my argument was that again they operate of the benefit of Aboriginal community, that's why they exist. They may not have a large profit base and they exist on grants to keep them going, so you can theoretically charge them a rent based on what the Valuer General thinks and they go broke. So is there any allowance for, you know, to look at the circumstances because these groups are helping Aboriginal people, they're not there for any other reason. So who draws the line between going broke and paying the rent?

**Mr Kim HILL:** Mr Chair, that's a management decision of those organisations, it's the directors of those organisations to make, you know, show a bit of leadership and it's their administration, or the CEOs of these organisations to review their financial situations, and the reality is that the world has changed, and they need to go back and reassess their financial positions, no doubt look at their cash flows, but again, approach the government funded agencies for more moneys for the budget line items for the lease payments. I mean, at the end of the day, some of these organisations out there who's putting up these arguments. They could put the arguments, we'll look at them, however, they just don't stack up. We, as a Commonwealth specialist body, we have rules and regulations on which we have to fulfil, as Mr Levy has indicated in regards to possibly being sued by others out there. So some of the organisations out there need to take a bit of a deep breath ...

**CHAIR:** But if that means cutting services back, it doesn't matter? That might be what they have to do.

**Mr Kim HILL:** Well, again, those services can be delivered by other organisations and if not, other bodies. I mean, we've seen an increase of other people coming into the regions or if not into the Territory under the intervention whether providing services to Territorians. I mean, it's nothing new, I've encouraged other organisations to form a consortium in providing services on the ground. We've seen ... there's a lot less services being provided on the ground. That comes from

my council when there is specific issues, particularly about services on the ground, and I have had to, under the leadership of the chairman and my management team is keep my member's focus on their core business.

**CHAIR:** Alright. Private housing. Have you got any idea how many leases you would have granted for private houses in your area?

**Mr Ron LEVY:** Occasionally ...

**CHAIR:** No, the total number of leases that might have been granted for private housing in the ...

**Mr Ron LEVY:** There's been a number over the decades. The reason why there aren't more is because first concept of leasing as far as housing goes, which is nearly always government created housing, the Land Council, as the responsible Commonwealth entity, would not take an improvement on land built by the government and transfer it to someone else unless the government is involved in it. So it requires government involvement. But there have been a number of instances of non-government funded entities in the NLC region where life tenancies and that kind of thing have been granted.

But you've got to be very careful as a Commonwealth entity. It's all very well to say, as you correctly said before, that the agreement as well as the land will become owned by the Land Trust of the five year leasings. Well, that's true. The Land Council is not private owned, it could just say, well, this is a great windfall, I can do whatever I like with it. The Land Council has to say, we are the responsible Commonwealth entity, although that improvement is now vested in the land trust it has to be used responsibly for the benefit of not only the traditional owners but for the people that reside in the community, the interest of the stakeholders, in this case, the government who built the house have to be taken into account. All those things are in the mix, so it's not ... the number of opportunities for it to happen haven't arisen very often. And the other reason is, not many people in communities are working, and it's very hard to get a mortgage if you don't have a job.

**CHAIR:** So you're saying in your area that there's very few private house leases? Private leases, sorry, for housing?

**Mr Ron LEVY:** There's very few ... it's very rarely been raised, it has occasionally that long leases have been granted to individual ...

**CHAIR:** Because we've heard that we're not going to solve the solution of over-crowding using public housing. The alternative is private housing, so if someone wanted to build a house on a parcel of land that's under the Northern Land Council's responsibility, what is required for them to do?

**Mr Ron LEVY:** They need to show they have access to finance. That means they'll need a bank and/or equivalent Commonwealth entity to say that they have filled in all the documents and the documentation's in order and usually either the bank or the HOIL program will expect people to have a job, and to have security of income to be able to pay off the money; if those sorts of documentation is produced it'll get processed. But that hasn't been what has been happening over the last 30 years. Those applications don't come in. But there's a real chicken and egg issue here. Everyone says that's their private housing, well, that's fine. Before that you've got to have people in work. That means that there needs to be work in communities so people have an income so they can do it.

**CHAIR:** But could a person, for instance, ask that they lease a parcel of land, even out bush, and say, “I like that parcel of land and I will build ... my house could be made out of local materials but I want some ownership of that asset that I'm building therefore I need a lease”. So can they do that?

**Mr Ron LEVY:** But remember that almost everybody who already does that, and that happens a lot, outstations are a classic example, are either traditional Aboriginal owners or for the broader group of Aboriginal people with traditional rights and interest in the land, who under Section 71 of the Land Rights Act have a right to do that anyway, and that's all the outstations that have been built around the place, big ones, little ones, have been built as of right by Aboriginal people, either from slabs of stringy bark or from, in some places, royalty funding to build outstations or sometimes government funding. Those have all been built as of right under Section 71 of the Land Rights Act. We're talking about the class of people who are right in that circumstance from a legal perspective, and/or, what governments might want to do with public housing as they do elsewhere in allowing public housing to convert to private housing in an appropriate way.

Again, this requires an interactive approach between the various relevant responsible entities: governments, land councils and others. The titanic is turning around, that's what's happening at the moment. In terms of the past, this was all ignored.

**CHAIR:** Except it might have been ignored, but I don't think that's a balanced view when it comes to saying the government didn't provide facilities. I'm not against what you're saying, I think if you look at everything in a legalistic perspective, I don't think we're fair to ... there were services provided, and there still are services provided. How they should be provided in regards to leasing and recognition of the land, that's a different matter. But I was just trying to go down the path of we've heard a lot about private housing from the government, that this is a means of reducing overcrowding and you're saying that you've hardly had anybody apply for a private lease and could I just put the other side of it – do you encourage it as a land council?

**Mr Kim HILL:** Mr Chair, we've been working cooperatively with the Territory Government and Australian Government, obviously the Territory Government Secondment Officer to work about to work with NLC to establish a home ownership program. That individual is going to cease employment with the Territory Government. Mr Davies just advised me prior to appearing before you that they would like to continue it because NLC doesn't have the funds for that position, but we will be putting a proposal to the full council later in May or early June.

We've also, the Territory Government has had a forum with all the bankers which was a successful forum to look at how money from the loan to people residing on Aboriginal land, so there's been a lot of work done over the last ten months in regards to the possibility of home ownership within the NLC region.

We also have received an application from organisations, one at Wadeye to look at doing a number of service lots or housing from Catholic Ed and a few others. We're encouraging the traditional owners to participate in that process where the moneys which they have received assist the organisations and their communities to rather than building 26 service lots, you probably need to do 50 service lots. So we are encouraging economic development in our communities.

We're also advising traditional owners that they need to be part because we've all see the LDC and its model for the housing estate at Darla and that's a great model and we want to replicate that model across the NLC region. So again, we have a strong relationship and we've got an MoU with National Australia Bank to look at our economic development opportunities for Aboriginal people across the NLC region and that includes home ownership. So we're working very closely and hopefully we'll have the proposal put to the council who will hopefully endorse for the continuation of the home ownership scheme on Aboriginal lands.

**CHAIR:** Could I just ask a point of clarification that Ron was talking about. You talk about housing on Aboriginal land built by traditional owners. If that housing is on Aboriginal land trust, who actually owns the land?

**Ms SCRYMGOUR:** It's the same thing.

**CHAIR:** Is it the same thing? Is the land trust made up of all the traditional owners, or just the area that that house is on? When you're referring to who owns that house.

**Mr Kim HILL:** It's one ... just the single land trust.

**Ms SCRYMGOUR:** Arnhem Land Trust.

**Mr Ron LEVY:** That's right. But they don't own individual lots. Sometimes they do, actually, but the Arnhem Land Land Trust owns a huge block of land, probably one of the biggest in Australia which is Arnhem Land, but it also owns some individual lots.

**CHAIR:** So if someone asks to build a house on ... it could be a traditional owner but on a block of land in the Arnhem land Trust, and then they didn't pay the lease, because you've got to have a lease, and the lease ran out, who would actually own the house?

**Mr Kim HILL:** Well, the present question, are you referring to a traditional owner? Or are you referring to someone who's residing on Aboriginal land?

**CHAIR:** Say if a traditional owner wished to build a private house, on Aboriginal land trust, their Aboriginal Land Trust land, and you have to have a lease arrangement – is that correct?

**Mr Kim HILL:** Not necessarily. If they're borrowing money, yes. If they're not and they've got moneys from a philanthropic organisation, want to build a house ...

**CHAIR:** But if they want to build a private house, which they're entitled to do if they want, if they haven't got a lease arrangement, then the house belongs to the Aboriginal Land Trust?

**Mr Ron LEVY:** It's not an accurate legal predication. It's a common error. The Land Trust owns the land. It owns the land subject to the functions and processes set out in the Land Rights Act. As Mr Hill was indicating, if a traditional owner, it depends on the source of the money, it depends whether its private money's on their salary, which may well be something which will go down the lease issue if that happens, or whether it's money that comes in in some other means, for example, quite a bit of housing in some communities has been built with not money from salaries but non-government money.

I can think of a number of communities, Palumpa is one place where that happened and also some other communities in Arnhem land with mining royalties. Now those mining royalties, if you like, belong to the traditional owners/community and they build houses with it. They did that pursuant to Section 71 of the Land Rights Act.

Now, if however, you're talking about someone who builds a house like they do in Sydney or Darwin, with private money from their salary and a mortgage in the bank, then it'll be the lease route. But these things all get merged into each other, and the structure ... attention is required to the structure of the statute in relation to this, and when traditional owners or other Aborigines with rights regarding land, which is most people in the area, most Aboriginal people would have rights of some sort, have done this, they don't get direct approval from the NLC or the Land Trust to do it. They do it as of right. So it depends on the class of person you're talking about, it's more complicated.

And that is why governments, rightly, are focussed on the major and medium sized communities where everyone lives, and one of the negatives of what's happened over the last 35 years is from the point of view of people who are tenants of public housing, but in that a tenancy agreement, they could never have a tenancy agreement, they could never go to a tenancy set of lawyers and say, "Look, the light bulbs don't work, this do work under my tenancy lease, my tenancy sublease I should be able to get it fixed".

One of the great reforms which doesn't seem to be realised is that in Aboriginal communities, because of the Commonwealth and Territory reforms, Aboriginal tenants will have rights and more which they didn't previously have. And the Commonwealth no doubt more funding perhaps should be provided but the Commonwealth, and often the Territory, has been funding, you know, the Aboriginal Legal Aid services to provide tenancy advice. So it's much more complicated than it looks at first glance, I suggest.

**CHAIR:** It makes me wonder about private ownership of land, unless you do it in a town but if you wanted to go out and build your own house somewhere and have ownership of that house, it's obviously a little bit more complicated. And I don't think we've got time today probably to ...

**Mr Ron LEVY:** It's complicated.

**Mr Kim HILL:** Mr Chair, the first complication is, no doubt, that if that individual meets the banking criteria in regards to loaning that person ...

**CHAIR:** Yeah, I'm saying they do. I'm just sort of saying, so what does that person do. It comes to the Land Council and asks for a lease over the block of land, then if they ... and you fill out a lease, you might say ten years which I think would be too short if you owned a house, but ...

**Mr Kim HILL:** Yeah, we all agree that ...

**CHAIR:** So once that lease has run out and the person doesn't ... the lease is not renewed, who was the owner of the asset?

**Mr Kim HILL:** Well, again, if it's a traditional owner, from a traditional perspective, it'll be that person, so that individual's family who will move into that house. You know, we're not aliens ...

**CHAIR:** No, no, I'm not saying you are, but then don't have a lease, you wouldn't need a lease.

**Mr Kim HILL:** You'd still have the family, I mean, the Land Rights Act is still there in 20, 30, 40 years. The Land Rights Act will still have to fulfil the statutory responsibility, and that responsibility will then go on because we've got to keep the register of traditional owners, but the families will still be in.

**Mr Ron LEVY:** And that's if it's the non-lease route. If, say, bank mortgaged 100 year lease for a house and the mortgagee doesn't pay the mortgage off to the bank, then obviously the bank will repossess the lease. But that arrangement would only have happened if the bank was originally satisfied with if that occurred, they'd be able to sell that remainder of that lease to other people who might want to buy it and that's one of the big ...

It's again, why governments are focussing on major communities, because what banks have told us, and it's pretty sort of self-evident, they're not going to loan money in entire communities because if they loan money, secured by 100 year lease and the person living on the lease doesn't pay off the bank, then the bank forecloses, takes the lease and tries to sell it, no one would want to buy it. The market is in the major community so the whole question of home ownership is a major community issue.

You then go to major communities and they're full of government housing so you have to take into account as a statutory entity which is what the NLC is, that those houses were built, even if they're dilapidated now, there's still the improvements underneath, they were built by the government. So you can only go flogging them without including the government in the arrangement and the whole exercise has to involve all responsible entities working together in harmony about it. Then you have to take into account banks loan money to people who have jobs, so there has to be an understanding of who has jobs and who doesn't and who will be loaned to and who won't and what works doesn't.

**Ms SCRYMGOUR:** How many leases have been approved and put in place in the Northern Land Council region?

**Mr Kim HILL:** In the last two, three years we've got over 300 leases and those leases vary from shops to cattle and then adjustment programs occurring on Aboriginal Land Trust areas to government infrastructure and so forth.

**Ms SCRYMGOUR:** So it's not just housing, there's been other ...

**Mr Kim HILL:** It's not just housing, yeah, a number of crocodile safari hunting, roads, gravel, and so forth, so we've issued multitudes of leases.

**Ms SCRYMGOUR:** So that includes Indigenous home lease agreements as part of that?

**Mr Ron LEVY:** They're not involved.

**Ms SCRYMGOUR:** So they're separate? Okay.



**Mr Kim HILL:** I've just been advised that we've got more than 400 leases. What we also have done with some of the major things is where a proponent is wanting to or has housing assets and so forth is that we've given that organisation or that body a single lease and we've got a number of schedules outlining the lot numbers and so forth. For example, NLC is moving towards rather than providing the Federal Government 800 Sections 19s we're saying, well, if you got these facilities in Maningrida we'll give you a lease with schedules indicating the allotment's number, so we're only issuing one lease rather than 14 leases. It's just a bit of common sense needs to prevail.

**Ms SCRYMGOUR:** Yeah, over each separate lot, yes.

**Mr Kim HILL:** Yeah, so we give a single lease. The other thing we wanted to do ...

**Ms SCRYMGOUR:** Makes sense.

**Mr Kim HILL:** ... because that issue also, particularly with the development through the SIHIP project, is given the alliance contractors a single permit or a lease so they can take care of their employees. We would like to do that with other, so someone who's providing a service like TCU will give a single permit to the Chief Executive Officer. We will then issue it to her staff, or his staff, and they're responsible, because it's very hard for the Land Council to execute the prosecution for people occupying or residing on Aboriginal lands.

**Ms SCRYMGOUR:** Did you say permit? But I thought the permit system hasn't been reinstated.

**Mr Kim HILL:** I make reference because with leases comes the issue of permits and access for people around, so in regards to the leasing, yes. The Minister is not seeking amendments to the Northern Territory Lands Rights Act, to amend the legislation prior to Mr Brough making those amendments. But I make reference of permits merely on the basis that leases, particularly for private operators and government operators and police and so forth with leases come the permits. That's all I'm saying. They must come with permits so people are able to enjoy. And the issue of retention.

NLC and the Council is very aware that the Territory Government and the Commonwealth Government in their efforts to recruit and retain employees in remote regional areas, we're working collectively with those agencies to assist them in not just the recruitment but the retention of staff, teaching police officers and so forth.

**Ms SCRYMGOUR:** But they're not required to get a permit though.

**Mr Kim HILL:** No, they aren't required, or they...

**Ms SCRYMGOUR:** No, I'm just trying to ... yeah.

**Mr Kim HILL:** Like, we hear a lot about government employees and others fishing in areas where they are...

**Ms SCRYMGOUR:** Okay, so it's land outside of the township, the township ...

**Mr Kim HILL:** Yes.

**Ms SCRYMGOUR:** Because going into the township, they don't need a permit but it's land outside ...

**Mr Kim HILL:** Outside. Most people want to go and camp and so forth. When we're talking about leasing we're also talking about permits and access for those employees.

**Ms SCRYMGOUR:** How do we, besides leases and ... I thought areas, you could put in place, was separate from ... that it wasn't just native title but places like ... I suppose if you an outstation that was carrying out or conducting an activity that you could put in place an Indigenous Land Use Agreement to do that, or would that be a licence for just completely separate ...

**Mr Ron LEVY:** The Native Title Act doesn't apply to Aboriginal land.

**Ms SCRYMGOUR:** Okay. So either way it only apply to, say, Tennant Creek, or Mataranka, and pastoral.

**Mr Ron LEVY:** Pastoral.

**Mr Kim HILL:** Mr Chair, through the Chair, I think the terminology 'Land Use Agreement' is thrown around loosely, where we only refer it to Native Title, and it's not so much Aboriginal Land ...

**Ms SCRYMGOUR:** Well, it would be good to clarify that, because people do talk about the ... Ron, how many licences, besides leases, have been issued in these communities, since 2007?

**Mr Ron LEVY:** Shanti tells me that our records show over 400 leases, or licences. Now most of them will be leases, some will be licences. Exactly what the difference between a lease and a licence is not so clear these days ...

**Ms SCRYMGOUR:** Yeah. I was just going to ask that.

**Mr Ron LEVY:** ... So licences would include buffalo, safari hunting licences and that kind thing, although they usually have an exclusive possession camp area, as you would know. Most of these are leases.

**Ms SCRYMGOUR:** Okay.

**Mr Ron LEVY:** And I should say that if we were to give you the figure lot by lot, obviously the SIHIP leases are every lot in Maningrida, but, I mean, no-one wants to create work for yourself, when you could have done it lot by lot, because there's actually thousands.

**Ms SCRYMGOUR:** Yes. And so you do the lease, which covers all of them.

**Mr Ron LEVY:** The outcome intended by both governments, and the Land Councils, is that by the time of the expiry of the five year leases in August, everything that requires security of tenure, will have it. Some of them will be large leases covering many lots. Some of them will be lot by lot for some reason. And we're on track to achieve that.

**Ms SCRYMGOUR:** An essential piece of infrastructure in a lot of our communities, particularly coastal island communities, and you probably know where I'm going to go with this one, are barge landings. Under the present legislation, up to the low water mark, I mean, that is still under the compulsory lease, or under the NTER. What's the negotiations in terms of, I suppose, with the community, or working with operators, with access to those barge landings at peppercorn rental?

**Mr Ron LEVY:** Well, again, given that from the 1980s it was problematic getting a leasing regime with governments, at our government facilities, it obviously focussed on private operators, including barge operators, and there's been leases, which have existed regarding barge landings in Arnhem Land, since at least the 1990s. I think somewhere back before that but at least since the 1990s. Now, some operators, I won't name operators, but the major operators had licences to use those barge landings, for a long time. They've renewed those arrangements.

To answer an earlier question from you, Mr Chairman, the primary reason why leases, or licences, are sometimes shorter than the proponent would want, or we would want, is the rule in the Northern Territory Planning Act, which imposes the 12 year limit unless you have a survey. So some of them have been shorter than one might expect, for that reason.

Some of them have an exclusive area, like a shed or something, most of them are just not exclusive licences, anyone who does it. You might know that there were questions asked by Senator Nigel Scullion before a Senate Committee this year about barge landings, which were answered. I can refer you to those answers, if you wish, but they haven't been going on peppercorn, they've been going on a rental. Senator Scullion said, "Well, how do you know that you're not being unreasonable in what you're charging, and breaking the bank?" And the answer that the NLC gave to that was, "Well, there's a precedent of licences/leases for barge landings, which goes back into the 1990s and it's a small fee, and it's a fee which nobody has ever suggested is causing any concern for community prices in stores, and so forth."

**Ms SCRYMGOUR:** It would be good if we can get that reference, Ron, when that was asked, thanks.

**Mr Ron LEVY:** Yeah. Happy to.

**Ms WALKER:** I just had one question, I guess in a general sense, for my own information. If the NLC is an entity that represents the interests of traditional owners, very much in a legal sense around leasing and land ownership and representing their interests in maximising economic opportunities around that; what's the role of the NLC - Ron, you said you're not an economist, I know you employ a number of lawyers - what's your role in providing that investment advice?

**Mr Kim HILL:** Yeah. No. Good question. My lawyers are intending to advise traditional owners that they can't provide that form of advice. What NLC has arranged is that any proponent who wants, or requires, a Section 19, or a Licence to Operate on Aboriginal Land, our arrangement with the NAB Bank is that we send it across to them, who does a desktop exercise in regards to the viability of that proposal. So I've got a good relationship with the local branch here, and the NLC, and the Council has a great relationship with the CEO of NAB Bank, and Mark Joiner, the Chief Financial Officer.

So what we've done is allowed a banking institute as part of our tender process to provide us that advice if the proponent or the proposal to ... of activity on

Aboriginal land is going to be successful, because we've seen many businesses operate, which has fallen over. We hear the stories where Golden [1.03.32] used to provide all the oysters to Darwin, in the Darwin restaurants, but that's no longer there.

So what we're trying to do is provide that advice, using the banking system, or the bank itself, to provide that advice to traditional owners, and to my staff in regards to viability of any proposals from the economic perspective.

**Ms WALKER:** Why is it the NAB Bank that makes huge profits, and has a vested interest in making money, as opposed to someone who gives independent advice, that's not associated with the banking sector?

**Mr Kim HILL:** Through the Chair, what we did is at the NLC four years ago, first handed out its banking and financial services to the market, so to speak, to see what returns we can get, because historically Aboriginal organisations have tended to bank with Westpac, and Westpac does provide an important service, not just to the communities, in terms of Aboriginal organisations.

So we wanted to test the market, what services, and what banks, are out there to provide this assistance. It's a new area for banks too, working with Aboriginal people, so we put it out there for public tender, and NAB was successful.

The other thing too, as the CEO of a Commonwealth entity, and living here in Darwin, you've got to negotiate, and I did that with the bank, what services they will provide my employees, and what advice they can provide my employees in regards to home ownership, and so forth, as three-quarters of my staff are Aboriginal. So it was also what they could provide to the organisation, but importantly what advice they can provide, and importantly will they, are they willing to throw money at any proponents to ... and using their stakeholders, or their clientele, to assist us in joint venturing.

**Ms WALKER:** As part of that tendering process, were TCU invited to tender?

**Mr Kim HILL:** Look, TCU gets a lot of support, my understanding from their bank, and the leadership. I understand that they have governance arrangements as the NAB involved. So, again, we will be, in the near future, tendering out our banking services, not just for the administration of NLC, but importantly to what advice, or assistance, banks generally can provide to traditional owners out there. We welcome all banks to operate on Aboriginal lands, but the question is put your money where your mouth is in regards to assisting traditional owners, and having long term, sustainable businesses.

**Ms WALKER:** Thanks, Kim.

**CHAIR:** Can I ... yeah. I just need to ask ...

**Ms SCRYMGOUR:** I was just going to ask Ron about roads, if that's all right.

**CHAIR:** I was going to ask that too. Go on. You're away. I won't get into so much trouble if you ask it.

**Ms SCRYMGOUR:** Kim, one of the things we were talking to ... when we had Ken Davies, and his Department in earlier, we were talking about the growth towns, and just the economies between, you know, these 20 growth towns.

A major issue, I suppose, with going between these two ... well, if you look at a number of our communities, is the roads, and has the Northern Land Council had discussions, or gone down the track in terms of considering 99 year leases over the road corridors on Aboriginal land to ... that's adjoining, or going into these communities?

**Mr Kim HILL:** Yeah, good question. Very good question. NLC do, and I'll ask Mr Stirling to comment specifically in regards to the Central Arnhem Road, because he's been involved heavily in a social impacts study with the traditional owners from Bulman, Beswick up to Nhulunbuy.

Where I sit, as a Chief Executive Officer of the aspirations of the NLC Council is that we want to get involved in business activities, and we know that we have to have better roads to get our product in the market. We need to have more ports around the coastal areas. We understand that. We want to be part of the international community. So NLC, under the current leadership of my Chairperson, and these Executives, and the Councillors, we need to have this discussion about rent to get our products to the market.

**Ms SCRYMGOUR:** Oh, good.

**Mr Kim HILL:** So it is a forefront in our thinking to allow, again, Aboriginal people on Aboriginal land to be involved in the world market, rather than just the regional market. I've seen, over the last four years where a lot of traditional owners in some areas are saying, "Yes" to exploration.

However, when we do our negotiations, on behalf of traditional owners, with those mining companies, we have a very limited space to actually get an equitable return for traditional owners. However, if we were to participate in building bridges, doing roads, the return to traditional owners, I believe, would be greater ...

**Ms SCRYMGOUR:** Opens it broader.

**Mr Kim HILL:** ... because the current industry itself, a lot of the financial risk, risk with them, is left with them, but if Aboriginal people were to develop their lands, and have bridges and roads to get their products, or through a JV, products on the market, it would be good for traditional owners, and importantly for the cultural integrity moments of their culture. Mr Stirling.

**Mr Syd STIRLING:** Thanks, Kim. There's been a terrific piece of work under Social Impact Studies Central Arnhem Road, under the auspices of Ernie Wanka, within the Department. He's been tremendously supportive, and really in conjunction with our anthropology branch, and I don't want to put all credit on anthropology, but one of the reasons for the success of the program is that anthropology have been so closely involved. They've structured the exercise. They've identified the traditional owners. They've mapped out the consultation, the questions, and the information, they will provide session-by-session, in a very patient, and painstaking way. So it's not sort of fly out. "You've got to make a decision." "What's your decision?" This is a slow information building up exercise.

Over the years the Central Arnhem Road changed dramatically over, say, a 20 or a 30 year period, so that it would be unrecognisable from the late eighties to what you see today, but no-one went out in 1978, and said to the TOs, "This is what it will look in 2012". Because year by year they said, "We'll knock out that culvert." "We'll

straighten that bit of road.” “We’ll put a little bridge here.” You know. It was all incremental, year-by-year, so there were gradual changes over a long period of time, so you’ve got a vastly different road now.

We wanted to get away from that, and we wanted to put a long-term view to the TOs, so it wasn’t just year-by-year consultation. We wanted them to share the vision, and put their views forward of what they saw it should look like in 20, 30 years’ time. That’s why it’s taking so long, and that’s why it’s been so valuable, because it’s bringing traditional owners, it’s giving them all of the information they need, letting them digest that, but then putting these big questions ahead of them.

Some of those questions that are out there for consideration: “Should it be excised?” “Should it sort of be sold off?” “Should it have a 99 year lease?” “Forty year lease?” “What would be feasible for a road? You know, railway’s got 100 or more years. Should a road have that sort of length of lease?”

So they are very important questions, which traditional owners, in their own way, are getting their heads around, as we speak. But really should commend Carol Christopherson and David Martin, as the anthropologists involved in that, because they’ve done, and Ernie for all his support for the project, because they’ve done a terrific job, and it’s ongoing work.

Can I just raise one, Kim, and Mr Chairman, in relation to Yirrkala came up in relation to leasing before, and I think it’s a good community. I just want to put this idea in your head, Mr Chairman, I know you’re aware of it, but I think you’ve forgotten it.

When the missionaries went there, in the mid, late 30s following the strife and turmoil at Blue Mud Bay, they recognised local leaders, no question about that. They knew who they were. They identified them. They formed local village Elders Council. What they didn’t recognise was they actually owned the land. And no-one really recognised that until 1976 in the Land Rights Act. So when they come to this little camp, which it would have been in those days, I’d imagine, it’s a beautiful site for a village, and they would have talked to them, but at no stage would they, I think, have sat down and asked them consent for us to build a village here, as a bit of a service centre, bring people in, and establish a town. A bit like the Central Arnhem Road.

This is something that’s grown, it’s an accident of history, but you can’t expect in 2012 for traditional owners to forgo all their rights, after their property being used by others, because in 1935 the missionaries turned up on the doorstep and built a town there. Not their fault. Not the church’s fault in that sense either. But do they go on paying that price, which was an accident of history, mind you, it was a beautiful accident, wasn’t it? It’s a lovely place to have a village. But why? I just want you to think about that. It really is an accident. It could have been built down the coast, and would have been inflicted on other TOs, but they shouldn’t have to give up the rights to their land forever after, simply because that’s where the town was built, that’s where the church went, that’s where the store went, and in time, that’s where the post office will be, the service station, hairdresser, all of that, but you’ll never see any money for it, because way back someone decided this would be a village, and you forewent all rights at that time. Law doesn’t work like that, nor should human nature.

**CHAIR:** Well, I should just should respond a little bit to that. I haven’t gone in recently, and I am also married to a traditional owner, and I also worked many years on communities, and I do respect the traditional owners of land. That was never,

never the point that I'm raising. I'm raising a balanced approach that I feel represents both sides of the argument. But I do need ...

**Ms SCRYMGOUR:** It's like having a glass door.

**CHAIR:** All right. Thank you. We need it, thank you, we still need ... we need to knock off, but I need to ask one question about roads. The roads in Arnhem Land are mainly private. Is that correct?

**Mr Ron LEVY:** Well, again, by regulation of Aboriginal land ...

**CHAIR:** That's right.

**Mr Ron LEVY:** ... could only mean something a bit different to private ...

**CHAIR:** But they're on private land.

**Mr Ron LEVY:** That's right. It's on land owned by Commonwealth entity being allowed ...

**CHAIR:** They require a permit normally to travel on?

**Mr Ron LEVY:** Correct.

**CHAIR:** Okay. The Council's job is to maintain those roads?

**Mr Ron LEVY:** No, they're maintained by the government. Not by the Northern Land Council.

**CHAIR:** No. Sorry.

**Mr Ron LEVY:** By local councils.

**CHAIR:** Local councils?

**Mr Ron LEVY:** Yeah. The Government and/or local councils.

**CHAIR:** So the local council's job is not to maintain private roads. It gets money from the Commonwealth Government and the Grants Commission for public roads. Is that correct?

**Mr Ron LEVY:** Yes. But this comes back to a legal concept.

**CHAIR:** Well, I said ... a very important concept.

**Mr Ron LEVY:** Well, that's right. The answer is a legal answer. There is a difference between land vested in a Land Trust, which is freehold, and which is owned by a Commonwealth entity with certain functions and responsibilities as to how they perform their functions, compared with the land that you or I might own, on which our house is, which is a block of freehold. It's not a correct analogy to call.

**CHAIR:** But a road is neither ... it's not private either. Generally speaking a road is a public road.

**Mr Ron LEVY:** The local council is given money, by the Commonwealth probably, or possibly by the Territory, to do certain functions. Now there's no legal impediment as to the ownership structure, and particularly when you're dealing with land, which is owned for the benefit of the, if you like, the regional public, being the regional Aboriginal public, to use, it's hardly surprising that governments do give funding for that, and they do. I can't see any legal difficulty with that.

**CHAIR:** Well, nowadays they're not allowed to grade private pastoral property roads. That single user roads is now finished.

**Mr Ron LEVY:** Yes. But pastoral properties, sorry to interrupt, they're commercial properties.

**CHAIR:** No, no. But private road on that property, is not to be ...

**Mr Ron LEVY:** It's just the Land Trust is not a commercial entity. It doesn't exist to make a profit.

**CHAIR:** But it's not a public road.

**Mr Ron LEVY:** Yes, but the whole reason why government funds are not spent for the benefit of the private individual, or a private corporation that owns a pastoral lease, is because any questions asked in Parliament as to the misappropriation, the mis-expenditure by Ministers, of government funds. What's happening here, is funds in relation to roads, or other government facilities, are being spent in relation to Aboriginal freehold, under a Statute, which is owned by a Commonwealth entity, the Land Trust, which can't make a profit. So there is no ...

**CHAIR:** But it requires a permit to be on those roads. You don't require a permit on the Stuart Highway.

**Mr Ron LEVY:** Yeah. But the government can grant that permit.

**CHAIR:** But at the moment those roads are not freely accessed by the public.

**Mr Ron LEVY:** Yes. But it's anyone who want to, who has a reason to travel on them.

**CHAIR:** But they're not freely accessed. You need a permit.

**Mr Ron LEVY:** But the access is ...

**CHAIR:** ... as distinct from other roads.

**Ms SCRYMGOUR:** No. But if you want to go there, you can.

**Mr Ron LEVY:** Yes. But you're treating it, with respect, as though it's a prohibition. It's not. It's regulate ...

**CHAIR:** No.

**Mr Ron LEVY:** Well, no. The legal position of the Aboriginal Land Act of the Northern Territory is regulated access, by means of permit. It's not a prohibition. A Land Council can't refuse to grant a permit to someone who has a good reason to



travel on it. And hence, in relation to the permit system, people who need to go there, usually get permits.

**CHAIR:** Yeah. I'm not going to argue the case about the permits at the moment, we could go on for a long time. The point I'm getting at is that where is Council's role, for instance, in a town like Maningrida? Who owns the roads between the leases you've given for the NT Housing. So who owns the bitumen roads around the houses?

**Mr Ron LEVY:** I can't remember quite what's in the infrastructure, it may include road permissions?

**Ms Shanti RAMA:** No. We're been talking about infrastructure license.

**Mr Ron LEVY:** The infrastructure lease is negotiated with the Territory, and dealt with a range of infrastructure, other than public housing. You know, sewerage pipes, electricity poles, and that kind of thing, and Ms Rama has been in discussion about sorting out the roads, and that can be done.

**CHAIR:** Will be they be leased, the roads? Will they have to pay a value for that lease, on the roads in that town Maningrida? I'm only using that example.

**Mr Ron LEVY:** Yeah. I'm not sure how far the discussion goes, but some of the Valuer General's valuations are taken into account, what you're suggesting. Those things will be looked at.

**CHAIR:** So there's a likelihood that a council could get charged to lease a road within a community?

**Mr Ron LEVY:** I wouldn't think that that was likely.

**Ms SCRYMGOUR:** No.

**CHAIR:** I hope not. But no, well, they are assets.

**Mr Kim HILL:** Mr Chair, I think again, common sense has got to prevail. I mean, you've got a situation here in Darwin where you go down McMillan's Road, where on one side it belongs to the Darwin City Council, and it was, you know, and you've got the Territory, and you've got the Commonwealth, the airport side of things. So I think, at the end of the day I think common sense has got to prevail.

**CHAIR:** Well, I don't think that's the argument I'm putting here. I'm not saying the ownership of land is private ...

**Mr Ron LEVY:** It's not the answer you want?

**CHAIR:** No. Yeah.

**Mr Ron LEVY:** I've got a good answer for you. Consistent with common sense, the discussions at officer level, consistent with sewerage pipes, and electricity pylons, which are a licence to repair and maintain, for a peppercorn. Likewise for the public road, that "public roads" in communities you're talking about.

**CHAIR:** And just the last one I raise; provision of gravel. The complaint I get from a number of contractors, including Local Government Association, who do

maintain roads, is that they get asked by TOs to do the road, and there's the cost of the gravel, and the cost of that gravel depends on who, when, and where, you're talking to people. What's the policy for the provision of gravel to repair roads, so I'll go back, they're basically private roads, but the councils are sometimes asked to maintain.

**Mr Kim HILL:** Yeah. I ...

**CHAIR:** Well, it's an issue that comes up regularly.

**Mr Kim HILL:** Yeah, Mr Chair, I can go on forever on this issue, and like the housing, and so forth, but I'll ask my lawyers just to respond to that question.

**Mr Ron LEVY:** It's a great question, and there seems to be a legal misunderstanding. I hate to go back to the law. Gravel is an extracted mineral ...

**CHAIR:** It's your job.

**Mr Ron LEVY:** That's right. Gravel is an extracted mineral. Other minerals like bauxite, uranium, and gold are ordinary minerals. They're owned by Queen Elizabeth, the Crown. Extracted minerals are owned by the Land Trust. Because they're owned by the Land Trust, that means that a Section 19 agreement to allow that gravel to be used for some purpose has to be on the basis on the Terms and Conditions to be a reasonable Section 19, Subsection 5, Paragraph C of the Land Rights Act. That is why a fee is an issue about gravel.

Obviously, the only solution is to build on the arrangements already in place where governments, and local councils, know where the gravel pits are. Where they've already, over the decades, done their best to comply with sacred site requirements and so forth, and also come up with standard fees, which are acceptable, and that process is well underway.

And again, it needs to happen, you know, the people high up in governments made decisions about paying rent for leases, and so forth, and licences, and therefore gravel on Aboriginal land. It's still filtering through the Department. The problem in relation to gravel, in relation to grant funded entities, and so forth, is that the line items are not yet in the Departmental budgets, especially Commonwealth budgets. That's coming. Once that comes, it will be covered, and at the moment we're in the middle of a process to cause that outcome. The outcome necessarily follows from the then Prime Minister's decision to have rent paid in relation to Commonwealth involvement with Aboriginal land in 2006.

**CHAIR:** All right.

**Mr Kim HILL:** Mr Chair, could I just quickly summarise, I mean, on the basis that when we exercise our rights under Westminster systems of laws, there's always that question, "Why are we doing it?" "Why are we exercising our rights under a system of law which Aboriginal people out in the bush don't necessarily recognise?" But, you know, we continuously have to justify, you know, explain that we win our rights, in your courts, and yet we're continuously being asked to water down our rights, and I don't think it's, you know, we're 2012 and Aboriginal people have a right to exercise, not only their laws, but also the Australian law, and it just frustrates me that when we do have successful court cases, or we do follow regulations, and laws, either that of the Commonwealth, or the Territory Government, Aboriginal people are always asked to waiver their rights, or if not, you know, just sit down there,

underneath the tree, and we'll provide you a service. Well, Aboriginal people, particularly traditional owners, have a right to exercise their rights.

That's the only point I just want to make that, you know, when we want to exercise our rights, we're always questioned why we're exercising, and should we continuously be good house niggers and sit out on the balcony and let other people decide what's best for us?

**CHAIR:** Well, hopefully this Council of Territory Co-operation will continue in the next phase government, and hopefully it will still question the Land Council, because the Land Council should not be immune from hard questions. I don't think they ...

**Mr KIM HILL:** You're welcome ...

**Ms SCRYMGOUR:** Don't ever for a second.

**CHAIR:** I don't think just because we might ask questions,, we are opposed to Aboriginal land rights, or Aboriginal rights, but I think there's, being part of a democracy, I think in a public forum like this, one of the few chances we have to question policies, of not only the Land Council, but the Commonwealth and the Territory Government, in relation to land rights, which are important, and I don't think they should be shut away in a little cocoon forever and a day, and I think we need to question, and it's good to hear from people, like your lawyers, about the reasons why things are done, because I think that's healthy. So I hope we continue this sort of debate, and I hope you come back again, because I think that we need more of these forums, and I think it's a good way to be.

So look, thank you very much, Kim. Yes, I'll probably see you on the footy field one day, when the oldies are out there playing with St Mary's again, but appreciate you giving up your time this afternoon. I know we've gone a bit longer but I think there's a lot of important questions that need to be asked, so thank you very much for coming today.

**Mr Kim HILL:** Thank you, Mr Chair, and you're always welcome. You're a friend of the Northern Land Council.