



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
COUNCIL OF TERRITORY CO-OPERATION

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Mr Willem Westra van Holthe, MLA, Member for Katherine

HEARING, WEDNESDAY 14 APRIL 2010

Witness:

Office of Township Leasing, represented by:

Pat Watson Executive Director of Township Leasing
Scott Kinley Director of Township Leasing

Mr CHAIRMAN: Good morning, how are you? I presume you are Mr Pat Watson.

Mr WATSON: I am.

Ms CAMPBELL: Mr Pat Watson and with him is Mr Scott Kinley who is also from the Office of Township Leasing.

Mr CHAIRMAN: Good morning, Mr Kinley. Thank you very much for coming. I will introduce the members of the committee. We have Willem Westra van Holthe, member for Katherine; Marion Scrymgour, member for Arafura; Lyn Walker, member for Nhulunbuy; John Elferink on my right, member for Port Darwin; and me, and the member for Nelson.

Thank you very much for coming. I do not know whether you know much about this committee at all but it is basically a committee made up of representatives of each party and up to two Independents. I suppose our role is to scrutinise government policies. Sometimes that goes over into Commonwealth policies as well because they affect the Northern Territory quite often, actually. We have quite a few questions to ask you, but I will ask you some general questions because we do not know much about yourself and we do not know really a lot about the Office of Township Leasing. So could give us a bit of background about yourself, and how you got into this job, and how long has this particular Office of Township Leasing been in existence, and how it has developed.

Mr WATSON: Yes, I am happy to do that. I have a short opening statement. You will have to excuse me. My eyes are not as good as they use to be and the writing on the name plates is very small, so I am going to struggle in getting names right when questions are asked.

My name is Pat Watson; I am the Executive Director of Township Leasing. The Executive Director of Township Leasing is a statutory position established under section 20(c) of the *Aboriginal Land Rights (Northern Territory) Act 2007*. The position came into effect on 1 July 2007. I have been in the position basically since it started; first on a temporary basis, and then was appointed later on in the process. So I am coming up for nearly three years in the position.

The Executive Director reports directly to the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin. As Executive Director, I manage Township Leases in the Northern Territory on behalf of the appropriate land council, land trust and the Australian government.

The functions of the Executive Director are primarily to administer township leases negotiated between the Australian government and Indigenous communities in the Northern Territory. This includes the administration of any subleases and other rights and interests derived from such leases in accordance with the terms and conditions. The head lease agreed with traditional owner's sets out the terms and conditions under which the lease is to be managed. In essence, I am required to develop a township and improve the prosperity and wellbeing of its residents while protecting those with existing legal rights, titles and other interests in the township.

The head lease requires that township subleases are granted on a commercial basis applying sound business principles, taking into account the general purpose of the lease.

The head lease also covers my responsibilities in relation to other matters of importance to community including access to the township, respect for Indigenous culture, respect for sacred sites, recognition of general community access areas and administering the application of fit and proper personal requirements and assessing new business proposals.

At present, long term leases are held over the townships of Nguiu on the Tiwi Islands, Angurugu and Umbakumba on Groote Eylandt, and Milyakburra on Bickerton Island, and I also manage the leases associated with the Alice Springs town camps.

The Office of Township Leasing is the administrative arm of the Executive Director of Township Leasing. The Office of Township Leasing undertakes the initial cadastral surveys of the townships; negotiates subleasing arrangements with existing and future occupiers of the townships; works with the land council and land trust to promote economic development; and enables access to home ownership.

The benefits of a township lease are that it assists in regularising land tenure arrangements; promotes certainty over land tenure which assists in encouraging new businesses to be established in the town; it encourages lending organisations to offer loan facilities to businesses that have land tenure; creates opportunity for new jobs for local people; and allows community members to buy their own homes.

Traditional owners continue to have a very important role and provide advice to the Executive Director on how their land is used. Through the consultative forum their views are sought on a range of issues including advising on the appropriateness of proposals concerning land usage; advising on the identification of rights of access of community members to general access areas; ensuring continual respect for Aboriginal culture and tradition; and identifying and protecting sacred sites.

While results on the ground inevitably take some time to be realised, progress to date has been encouraging. For example, in Nguiu 10 families have now either purchased their own homes or are building their own home, and another four families currently have applications being processed, and traditional owners have established an enterprise arm called Mantiyupwi. Mantiyupwi is being actively engaged in pursuing a number of development opportunities including the purchase of Tiwi Tours with a lease back arrangement to AAT Kings for tourism and accommodation; introduction of a car hire business; the upgrading of derelict buildings to lease out to visiting construction workers; and the development of five acre greenfields site for a motel and accommodation. The motel and accommodation site is under short-term lease to Territory Alliance while they are doing the SIHIP work out there; and Mantiyupwi will be negotiating with Territory Alliance to purchase the asset on the site once it is completed. In the meantime, Territory Alliance has amended its plans to accommodate the future use of the facility as a motel so in terms of layout and so forth they are accommodating what might be its future use.

Also, Mantiyupwi has commissioned a feasibility study through Indigenous Business Australia for a new shop and office complex, and they are currently working with the Northern Territory government to construct and lease back a government business centre which will include accommodation and a shop front. That concludes my statement.

Mr CHAIRMAN: I should, before you go on, ask some questions. I forgot to read the formal bit that I have in front of me.

This hearing is open to the public and is being recorded. A transcript will be produced and will be available to the public. In certain circumstances, the committee may decide that evidence or part thereof can be taken *in camera* and remain confidential. Please advise me if you wish any part of your evidence to be *in camera*, but I remind you that this is at the discretion of the committee.

You are reminded that the evidence given to the committee is protected by parliamentary privilege. For the purposes of *Hansard* record, I ask you to state your full names and the capacity in which you are appearing today - and I have to be reminded myself. I also ask that you state your name each time you speak, so I better get you to formally give your names and your capacity in which you are here.

Mr WATSON: My name is Patrick Watson. I am the Executive Director of Township Leasing.

Mr KINLEY: I am Scott Kinley, Director of Township Leasing.

Mr CHAIRMAN: Thank you very much.

Do you have any questions you would like to lead off with?

Ms SCRYMGOUR: Good morning, Mr Watson. Marion Scrymgour, member for Arafura. It is great to finally get to meet you and to have some discussions.

Can you first go through how the Office of Township Leasing - what your funding and structure is? I know you are a statutory authority, but it would be ...

Mr WATSON: Well, I am not a statutory authority. I am a statutory office holder, so there is a subtle difference there. What that means is that the position is commissioned under the act.

Ms SCRYMGOUR: Under ALRA.

Mr WATSON: Not the office as such, so it is only the position of Executive Director.

The office at the moment consists of Mr Kinley and me, and we have four people in Darwin. We operate out of 60 Smith Street in Darwin. We have gradually built up staff as head leases have come on board and we now have basically one person looking after Nguiu, and one person looking after our interests at Groote Eylandt and Bickerton Island and the Alice Springs Town Camps.

Ms SCRYMGOUR: How do those mechanics work? I mean the whole of township head lease has been transferred to the Office of Township Leasing.

Mr WATSON: What happens is that a head lease is a negotiated between the community, represented by traditional owners and the land council and the land trust and the Australian government. We do not have any part to play in that. We are not part of the negotiating team. We will provide information to the community if they want

to know how we operate, and so forth, and we certainly meet the community. Our role starts once the head lease is signed and all the necessary procedures have been adhered to, in terms of consultation and in terms of agreement from the minister for entering into the head lease. So we basically get the head lease. I sign it on behalf of the Australian government, and then I manage and administer the lease in accordance with the terms and conditions which are contained within that lease.

So in the case of Nguiu, in August 2007, I signed the head lease on behalf of the Australian government and then went into administer the lease. The first thing we do, apart from obviously getting to know and understand issues associated with the township itself, is to commission a full cadastral survey of the township because they have not been traditionally undertaken in the past.

Mr CHAIRMAN: Can I say that there was one done because I was the shire clerk of Nguiu. There use to be one.

Mr WATSON: Well, there was a site map.

Mr CHAIRMAN: No, there was a survey plan done for the Nguiu. It was all surveyed.

Mr WATSON: Not registered then. Our project ...

Mr CHAIRMAN: Yes, okay, it was a surveyed town.

Mr WATSON: We have to basically survey individual lots because, under the *Planning Act* of the Northern Territory, if the lease is going to be longer than 12 years, it has to be registered and it has to a survey accompany the sublease. So we basically commission a survey of the complete township down to individual lot level. Once we have done that, and basically while we are doing that, we start negotiations with existing occupiers within the township about subleasing arrangements. Basically, our aim is to sublease every part of the town to either the NT government, the Shire, community organisations, the Catholic Church where there is a Catholic School, and so forth. We negotiate terms and conditions associated with those subleases.

Mr WOOD: Can I just ask, so you were not part of the negotiations?

Mr WATSON: No.

Mr WOOD: Who is actually the government representative who negotiates?

Mr WATSON: For Nguiu?

Mr CHAIRMAN: Yes.

Mr WATSON: Before my time, and it was probably not just one person, but Caroline Edwards, I suppose, was the leader of the team that did negotiations.

Mr CHAIRMAN: Are the details of that lease public?

Mr WATSON: Yes.

Mr CHAIRMAN: And where would we find the details of that lease?

Mr WATSON: We can provide a copy of it. It is a registered lease with the Land Titles and it is available through there, but we are happy to provide you with a copy of the lease.

Mr CHAIRMAN: Yes, please if you could. In relation to Nguiu, because for me it is some area I do know, is that – there is a portion of land which is subject to the head lease. Now, that is a surveyed portion.

Mr WATSON: Yes. Surveyed portion. It is basically the township plus the airstrip, and it goes down to the low water mark. So it includes what was the wharf there and the barge landing and so forth.

Mr CHAIRMAN: So does it include all the roads?

Mr WATSON: Technically it includes the roads for the sake of the township lease. But we then go back to the shire, and the shire has certain responsibilities under the *Local Government Act* which includes responsibilities for roads, parks, swimming pools, and the normal sort of things. So one of the first things we do is to write to the Shire and say that: 'In line with the responsibilities under the *Local Government Act*, we are passing back to you those responsibilities in relation to roads, parks and the normal sorts of things shires undertake'.

Mr CHAIRMAN: So you are not charging them for the roads?

Mr WATSON: No. [inaudible].

Mr CHAIRMAN: Well, not always ...

Ms SCRYMGOUR: That is just mooted by a number of the shires all around the place. John, do you have some questions as well?

Mr ELFERINK: No, I will just tag along and tuck in behind and listen up.

Ms SCRYMGOUR: Can I say, Pat, that I think the work and the subdivisions - I will get to my congratulations of the Office of Township Leasing for doing that. I think that is something that land councils have been abrogating in terms of their responsibility. From my reading of ALRA and when it was amended in the 2006 act, and there have been other subsequent amendments relevant to 19(a) which gives rise to the head leases, the exclusion of Territory Land Administration rules applies to the primary grant of the township, which is the head lease, and not to any subsequent subleases that might be granted from within that head lease area. Part of that, I suppose, when you look at the township of Nguiu, there are some SPLs that have been established pre-ALRA, and just what you have been able to work through with some of that - and I am talking about the special purpose leases that were granted to the Catholic Church, or to the Missions, which were pre-ALRA and pre-dated ALRA. What processes has OTL been able to work through with the Catholic Missions with that?

Mr WATSON: As part of the process of implementation, we get our legal representatives to do a due diligence on the records of the land council to search out any pre-existing legal arrangements with occupiers within the township. It was not revealed to us and has not been revealed to us since was that there was any special purpose lease in place with the Catholic Archdiocese at all. Our approach with the Catholic Archdiocese has been that we are happy to give them a sublease at no cost on the majority of the property which includes the school, the church, the presbytery, and the convent, those sorts of ...

Ms SCRYMGOUR: They also had an SPL over where the clinic was?

Mr WATSON: Well, there are a number – if there was an SPL it was never presented to us, nor is it officially recorded anywhere, and nor have they raised it with us with us at any time. We have been in quite extensive negotiations with the Catholic Archdiocese over the properties that they wish to have a sublease over, and as I say they have never raised it.

The only properties for which we are and continue to negotiate a rent on, is properties where they actually garner a profit. In other words, they let rooms out to people who want to stay over night and so forth. So the view is that if they are making a profit out of a property, then there is an expectation that traditional owners will garner some return out of that. That is where we are at, at the moment.

Our latest information is that the Archdiocese is just about ready to sign the subleases but they are yet to (inaudible) us.

Mr CHAIRMAN: I will go back one step again. When you signed off the head lease, what was the arrangement from a financial point of view? The government came in and said: 'This is the agreement', so what happens then? Are the traditional land owners paid a sum of money for that lease?

Mr WATSON: In Nguiu, the traditional owners were paid \$5m and it is basically a prepayment for the first 15 years of the lease. If we manage to collect more than \$5m in the first 15 years, less our operating costs, I will come back to that in a minute, then anything over \$5m is returned to traditional owners in advance of the 15 years. But assuming that we do not collect any more than \$5m, when the 15 year deadline hits then any revenue gained after the 15 years less operating costs of the office, then goes back to traditional owners.

Mr CHAIRMAN: All right. Where does the \$5m come from in the first place?

Mr WATSON: \$5m is sourced from the Aboriginal Benefits Account, and any revenue we collect goes back to the Aboriginal Benefits Account.

Mr ELFERINK: Can I pause at this stage for a technical question and I have been bothered by this for a while in terms of touching the ABA that is not consolidated revenue. And whilst I appreciate you are not the decision maker as to touching the ABA, you are the person who manages what you manage. Doubtlessly, you will be aware of the terms of the Australian Constitution which prevent the acquisition of someone else's property without settling on just terms. By what vehicle was that \$5m taken out of a

benefit account, not consolidated revenue, without offending that constitutional provision?

Mr WATSON: That is not obviously a matter on which I am expert and would be able to respond appropriately to. I think the issue you mentioned in the first place is the one of relevance to us, is that the parliament of Australia made a decision about where these funds were to be sourced from. In my job as a public servant and as the statutory officer, obviously I am bound by the decisions of the parliament of the day.

Mr ELFERINK: I appreciate that, but you would, I expect, in your position have had someone raise this issue with you in the past?

Mr WATSON: I have given a presentation to the ABA committee just late last year. Certainly, there were questions raised about their views on the appropriateness of the funding coming from the ABA, but my response was the same: that it was a decision taken by the parliament of Australia.

Mr ELFERINK: Have you made it your business to inquire on this specific issue? Whilst I appreciate it is not central, it is a question you will be faced with not by just them and me, but it will come up again I imagine.

Mr WATSON: I do not consider it within my area of responsibility to inquire as to whether or not that is appropriate. It is a legal decision of the parliament of the land.

Mr ELFERINK: But there is a potentiality here that the parliament may have been acting beyond its powers. I would have expected you, as the Executive Director, would – I will rephrase the question. Have you looked into this particular issue, or asked for any advice on this particular issue?

Mr WATSON: No.

Mr ELFERINK: I find that a little bit surprising, because even though I realise that it is not within your area of concern it does touch on your area of concern, is that if the decision was challenged and should a court, nominally the High Court, uphold such a challenge, it immediately undermines everything that you are doing. I would have expected that you would have had some concern about the matter.

Mr WATSON: It is not something which I have actively pursued, as I have indicated. I am happy to take it on notice and to seek some views. But my position, as always, is as I have stated that ...

Mr ELFERINK: Mr Chairman, can I place a question on notice?

Mr CHAIRMAN: Yes.

Mr ELFERINK: For transmission to Mr Watson: What is the effect of the use of the Aboriginal Benefits Account for funding the Office of Township Leasing, or the prepayment arrangements over the township leases in relation to the constitutional provisions relating to the acquisition of property rights and settlement on just terms?

Have we got that?

Mr CHAIRMAN: Are you willing to take on that question?

Mr WATSON: I am not aware of the legal processes associated with the committee as to my obligation to take questions on notice. But in good faith, assuming it is appropriate for the question to be asked and related to me, and appropriate for me to answer it, then in good faith I ...

Mr CHAIRMAN: Okay.

Mr ELFERINK: Thank you, sir, I appreciate it.

Mr CHAIRMAN: Obviously you may be able to pass it on to someone else as well.

Mr ELFERINK: I imagine that what will happen is that you will flick it off to the Solicitor-General's Office or some such thing, or Parliamentary Counsel, or whoever wrote the legislation.

Ms SCRYMGOUR: Or to the minister who has responsibility for administering the Aboriginal Land rights Act and the ABA.

Mr ELFERINK: Or to the minister. Clearly, the Parliamentary Counsel will have to ask them the question, but I just cannot see the vehicle that has been used.

Mr CHAIRMAN: I am learning about the leases. Now, the \$5m, that is paid back via the leases in the town? Is that how ...

Mr WATSON: Yes, and the revenue from the sale of houses also goes back toward that as well.

Mr CHAIRMAN: How do houses come into the equation, because you are only administering leases?

Mr WATSON: Well, because I issue a long-term lease on the house. It is, in some ways, the way the ACT operates. Everybody in the ACT has basically a 99-year lease on their property. They do not have freehold. It is the similar situation in Nguiu. So I issue a lease which is basically one day less than the maximum amount left on the term. So we are now nearly three years down the track, so if somebody got a lease now for a house it would be 96 years rather than 99 years.

Mr CHAIRMAN: Right. I knew the ACT was different from the rest of us, and tended to lease out ...

Mr ELFERINK: The Territory used to be like that up until 1978 or 1974, or something like that; same deal.

Mr CHAIRMAN: So my understanding, if I lived in a house on Bathurst there would be a lease on the land. So if I was the store manager, for instance, the store manager's house would come under - I think it is Ullintjinni Association still?

Mr WATSON: Yes.

Mr CHAIRMAN: So you would charge them for the use of that land for ...

Mr WATSON: Well, see the lease covers the land and all the improvements to the land.

Mr CHAIRMAN: Where does Nguiu Ullintjinni stand in relation to what they own?

Mr WATSON: Well, effectively, and this is not a legal explanation, it is my explanation, is that people built improvements on land which they had no legal right to do.

Ms SCRYMGOUR: Not secure tenure.

Mr WATSON: They did not have secure tenure, exactly, and that includes everybody.

Mr ELFERINK: Police stations, health clinics.

Mr WATSON: Exactly.

Mr ELFERINK: Schools.

Mr WOOD: So when the head lease is signed and an agreement is made with the Australian government, and I administer that lease on behalf of the Australian government, and to a significant extent the people of the township as well, because I have obligations under the head lease in relation to the people of the township, and that lease includes everything within the township boundary on the land.

Mr CHAIRMAN: If that is the case, you actually own the house?

Mr WATSON: Yes. Well, I have a lease over the house. I do not own the house. I would never claim to own the house.

Mr CHAIRMAN: Right. Now, this is a question that the council brought up. If that is the case, whose job is it to mow the lawns, paint the house, and make sure the windows are all in?

Mr WATSON: There are two parts to that: one is there is community housing, which under subleasing arrangements that we sign with Territory Housing, those traditional community houses become public housing. So they come under that arrangement, and we have a lease in place with Territory Housing for the public housing. We do not charge any rent on that because in my view the most important thing for members of the community is better housing, and if I am charging rent on the housing then potentially that is taking away the ability for the money to be spent on improving the housing. So that is one part of it.

The other part is basically everything else. So if somebody has a house, generally under the terms of the lease that we provide, they are responsible for the ongoing maintenance and upkeep of the house, but then the rent reflects that.

If I was going to lease a house in Darwin, I might charge \$300 a week, and I might say I will be responsible for mowing the lawn, and so forth. If I rent a house out in Nguiu it might be \$65 a week, so then I am able to say that you have responsibility for the upkeep and maintenance of the house.

Mr CHAIRMAN: Is that stated in the lease so people know what they are responsible for?

Mr WATSON: A sublease has to reflect the terms and conditions of the head lease because there are certain mandatory requirements that the community required in the head lease which are passed on through the sublease; and then there is a schedule within the sublease which sets out the terms and conditions, and those terms and conditions relate to the period of the lease plus the rent paid.

Mr CHAIRMAN: And that is done for every block of land that has – yes.

Mr ELFERINK: May I?

Mr CHAIRMAN: Yes.

Mr ELFERINK: Thank you. In terms of those properties which are community housing, ownership essentially resides in the building with Territory Housing, yes?

Mr WATSON: It is the land and the improvements.

Mr ELFERINK: The land as well. The ownership of the land or the sublease?

Mr WATSON: I have signed a lease with Territory Housing over specified lots within the community which number probably ...

Mr ELFERINK: I am just trying to figure out the ...

Mr KINLEY: 280 to 300 lots.

Mr ELFERINK: I am just trying to figure out who is the landlord in this model. The owners of the land remain the traditional owners who have signed a head lease, and then under the umbrella of that head lease, as long as there are no offending sections, there are a series of subleases. The owner of the land therefore is the traditional owner represented or managed by the land council, who essentially – the land trust is probably a better expression. The land is then leased and the owner of the building on the land is the Northern Territory government in the case of community housing.

Mr WATSON: You cannot differentiate between the land and the building.

Mr ELFERINK: That is what I am struggling with.

Mr WATSON: All the building is, is an improvement on the land. Right. If you own a block of land in Darwin and somebody else comes along and mistakenly builds a house on your block of land, you own their house.

Mr ELFERINK: Yes, got that.

Mr WATSON: So it is the land which is the core issue.

Ms SCRYMGOUR: It is the fixed asset on the land.

Mr WATSON: The land is the core issue. I lease to Territory Housing a 20 plus 20 plus 20 - 60 year effective ...

Mr ELFERINK: So Territory Housing holds the sublease over the land?

Mr WATSON: ... sublease over the land, and improvements on the land.

Mr ELFERINK: So you then, on behalf of Territory Housing, collect rents and those sorts of things.

Mr WATSON: No. Territory Housing - once I issue the subleases to Territory Housing, I am clear, and they treat it like a public house. They collect the rent, do the maintenance, and do the improvements.

Mr ELFERINK: Okay, that is fine. That is what I wanted to make certain of, thank you.

Mr CHAIRMAN: One thing I heard when we had our public meeting at Nguiu is that there is a possibility that traditional owners still have a say in who can live on those parcels of land?

Mr WATSON: I think you need to divide that up a little bit. In terms of public housing, Territory Housing have a housing reference group, which is a group made up of representatives of the committee for the shire, and traditional owners are obviously included in that, and it is that group who has a say about who is on the priority list for a new house or whatever. So that is all done through that mechanism.

If there is a new proposal comes to us that says somebody wants to do a development in the township, then there are certain mandatory requirements that we have to go through in terms of advertising that development to the community: who is involved, do fit and proper person tests on them, directors if there is a company involved, and we need to take that to the consultative forum to get their views on whether it is an appropriate business for the township, whether they are happy with the people that are proposing to run it, what sort of rental we might charge them, and so forth. So we rely heavily on the consultative forum.

Mr CHAIRMAN: In the light of Nguiu being a growth town, becoming a 'normal' town, if a person wanted to set up a business at Howard Springs, they would not have to go through all that?

Mr WATSON: No.

Mr CHAIRMAN: It would not matter whether your background was that you were broke last time, or whether your business is one star or five star. So why do they have to go through that consultation process?

Mr WATSON: The difference here is that we have a head lease which mandates that we go through that process, the community want it.

Mr CHAIRMAN: I understand. Then is the town a so called 'normal' town?

Mr WATSON: I think you have to give these things time. I mean at the moment the only people who can purchase a house in Nguigu are community members largely associated with the fact that there is community housing, and people have been living in houses and they want to buy their own houses, and so forth.

Over time, the view of the community might become broader than that. They might welcome other people to come and live and build houses, and so forth. But I think it is sort of one step at a time as we work through and get people use to this new environment of home ownership, and leasing, and businesses, and rent, and a normalisation. But I think it is just a step-by-step, and over a period of time, things may change to what you and I might regard more as a normal town, but they may not. Much of that is in the hands of the community.

Mr CHAIRMAN: I suppose I am concerned that then you can pick and choose who comes to the town. And that could be that a TO might not like a particular person. That should not be a reason that you necessarily cannot come and live in the town.

Mr WATSON: No, and there is not a limiter which says that they can pick and choose on the basis of whether they like someone or not. But we need to be careful – and I do not want to put myself up as an administrator or whatever - but if there is a community shop which is operating reasonably well and you allow someone to come in who is prepared to do cost cutting over an extended period of time, to basically put the community shop out of business, and then put their own prices up, that is of no benefit to the community.

While we accept, in what we call a normal world, competition and so forth, we are dealing with a microcosm here which does not necessarily have the flexibility to cope with all of those sorts of pressures of competition and so forth, and which can end up having a detrimental impact on the community rather than a positive impact. So it is a bit softly softly as we sort through some of this to ask: is that a good thing for the community, or is it a bad thing for the community? Does the community want healthy competition? They have to understand what goes with competition and that is part of going through the consultative forum process to engage with representatives of the community to say: 'If you allow this then you need to understand that there are issues associated with this and there are potentials down the track for things to occur which you might not have expected. You need to have all the information before you actually go down that profile'.

Ms SCRYMGOUR: Mr Watson, would you say, as a statutory – and you do not have to answer this, but I think you have taken on the role of what the land council should have been doing for some time. And I am not asking, I am just making a general statement. I think all the stuff – and the administration – because whether we call you the Executive Director of Township Leasing, you are administering all the aspects under the *Aboriginal Land Rights Act* which is specifically and it should have been the function of the land council. That was the issue that certainly was a sticking point going towards this.

I do not know whether you mentioned it, Mr Watson, but your budgetary allocation for the year, what is that allocation?

Mr WATSON: The cost of running the office is about \$1m a year.

Ms SCRYMGOUR: And with the cost of that \$1m, given that – and I have noticed in your annual report you talked about – so you have the head lease, then you are doing each of the surveys for the subleases of the head lease. Does the cost of doing individual survey plans for each of the subleases or each of the lots, does that come out of that \$1m, or is that paid for separately out of ABA for that work to be done?

Mr WATSON: All of our costs come out of that \$1m.

Ms SCRYMGOUR: \$1m, okay.

Mr WATSON: The only things the department, FaHCSIA, currently provide our administrative – in other words, our accommodation and phones and computer, and so forth. They are not charging us for that, so the \$1m reflects basically direct costs, such as salaries, the cost of the surveys, the cost of valuations and so forth.

Mr ELFERINK: Can I just interrupt just briefly your thread of questions? I would like to return to just one issue that has come up?

Ms SCRYMGOUR: The ABA, yes.

Mr ELFERINK: Not with the ABA, actually going back to this business about the terms and conditions of leases, the control of business, and those sorts of things. Is there a vehicle in the amendments which established your office and the more amendments generally that in *ALRA* there is any statement that other federal legislation is held in abeyance for the purposes of applying *ALRA* and applying these town leases?

Mr WATSON: Other federal legislation?

Mr ELFERINK: Yes. It is my understanding; correct me if I am wrong, that there is a limitation on the numbers of non-community people who may choose to purchase a house.

Mr WATSON: There is a limitation imposed by the community that no more than 15% ...

Mr ELFERINK: But you would agree with me in the hierarchy of things that even the head lease cannot usurp a legislative instrument?

Mr WATSON: Well, I am not sure of what you said.

Mr ELFERINK: I will explain the thread of my questions. The reason I ask, is that it would be, as my understanding, an offence under the *Anti-Discrimination Act*, federal, to discriminate a person against their cultural background. If a person chose to challenge the legitimacy of the condition of those ...

Ms SCRYMGOUR: Yes, but the RDA does not apply in a prescribed area. I mean, with the NTER ...

Mr ELFERINK: That is the RDA, but what I have also just heard is potentially ...

Ms SCRYMGOUR: But it is a federal act.

Mr ELFERINK: Yes, I get it, but it is not the only act. The *Trades Practices Act* has things to say about the operation of monopoly environments and those sorts of things. Has any research been done into the effect of that sort of condition in the head lease on federal legislation, not only the RDA, but also things like the *Trade Practices Act*?

Mr WATSON: I don't know if there has ever been any research done, but I guess what I would want to do is perhaps qualify the reference to the 15%. It is not as if it is a line drawn in the sand. What we are required to do is be mindful of the Tiwi Islanders desire to have no more than 15%. We are required to do, basically, a census on an annual basis to ascertain what the percentage is and then depending on what the outcome is ...

Mr CHAIRMAN: What is that census based on?

Mr WATSON: We do a survey of the residents.

Mr CHAIRMAN: What are the residents then classified as?

Mr WATSON: Tiwi or non-Tiwi.

Mr CHAIRMAN: Who makes the decision on who is Tiwi and who is not?

Mr WATSON: We engage someone within the community to provide us with the information.

Mr CHAIRMAN: Interesting.

Mr ELFERINK: This casts a broader net than just the RDA. What about, specifically, the *Trade Practices Act*? If someone wanted to set up, if Bunnings wanted to set up in Nguiu - and I know it is perhaps a ridiculous example but we will use it.

Ms SCRYMGOUR: No, it is not a ridiculous thing. I think it is appropriate.

Mr ELFERINK: Okay, I will rephrase it, a non-ridiculous example. Bunnings want to set up in Nguiu and is suddenly told because the local shop does not want them there they cannot come. Has any consideration been given to that, and other pieces of federal legislation?

Mr WATSON: First, I know you are just generalising, but it is not up to the local shop. If Bunnings wanted to open up a business in Nguiu, we would take the proposal to the consultative forum. Then the consultative forum would consider the proposal and provide advice to me - because the consultative forum does not make the decisions. They provide me with advice. I can go against the advice of the consultative forum. But

my own view is I would be extremely reluctant to do that and cannot see any circumstances ...

Mr ELFERINK: So Bunnings now indicate to you that if they don't get what they want, they are off to the Federal Court. What is your response?

Mr WATSON: It depends on the circumstances under which the rejection is being made.

Mr CHAIR: Can they appeal before they go to the court on your decision?

Mr ELFERINK: An Administrative Appeals Tribunal.

Mr WATSON: (inaudible).

Mr CHAIRMAN: I suppose having lived and worked on Bathurst Island for a long time, and the funny thing is in the shire council, I actually did a lot of work you are talking about, that restaurant, if you can call it that was there through a decision through the shire council. There was a town plan that showed the commercial area and the residential areas. It seems strange now that, to some extent, that some of that role is gone. You basically have the role of, to some extent, what councils would have in other parts of Australia, not necessarily the Territory, because we do not have planning controls in the Territory. But a lot of other places, zoning and where residences would be would be the role of the council.

Mr WATSON: Well, except that while there are certain elements of the *Planning Act* which do not apply to Indigenous communities, we work with the planning people and the Surveyor-General, and we abide by the Planning Regulations of the Northern Territory. In no way do we want to set ourselves up as anything other than administering the leases. We are not trying to be a de facto shire council or a planning body or anything else. We have Peter Siebert over there with his area plans and all of that stuff. All the surveys we do are registered with the Surveyor-General. Any planning applications which have come through go through the appropriate planning body. So we are not trying to be something different to what already applies in the Northern Territory.

Ms SCRYMGOUR: That is a good ...

Mr CHAIRMAN: Say there is a new subdivision going for SIHIP on the west side of town. Would I see an advertisement in the paper for that, in the *Northern Territory News*, to say ...

Mr WATSON: I cannot answer for SIHIP, but whatever the normal processes are associated with planning in the Northern Territory, I would expect to apply. As representing the land owner, I would expect to be engaged in that process as well.

Mr CHAIRMAN: Yes.

Ms SCRYMGOUR: How many of those titles have been registered so far? You have the head lease, then you have the subdivisions which you have been working on. There have been, I think you said, 10 IBA or home ownership ...

Mr WATSON: Ten families have entered ...

Ms SCRYMGOUR: So have those titles been registered at all?

Mr WATSON: Yes.

Ms SCRYMGOUR: So they have all been registered at the ...

Mr WATSON: The only ones not registered now will relate to the Northern Territory government, the shire, and the church.

Ms SCRYMGOUR: Okay.

Mr CHAIRMAN: Now, anybody else ...

Ms SCRYMGOUR: Sorry, Mr Chairman, if I can just pursue this for a bit?

Mr CHAIRMAN: Yes, keep going.

Ms SCRYMGOUR: In relation to the registering of those subdivisions and those houses, and let us look at the home ownership – I am talking about the home ownership IBA houses - you were saying, I suppose, that the *Planning Act* and all of those regulations would apply. Have you received any complaints in relation to the inability of those home owners to get a certificate of occupancy for those homes because they have failed to comply?

Mr WATSON: I am aware that there is an issue at present. I guess for background information, the people who decide to purchase their houses inevitably need a loan, a normal housing loan, to do that. IBA, Indigenous Business Australia, is the general first port of call for the provision of those housing loans and, like any lending body, it seeks to minimise its risk in terms of not only maybe people defaulting on the mortgage and so their capacity to pay, but also in terms of the construction of the building and its – what would you say – the quality of the workmanship on it. So if someone is getting either a new house built or renovations to an existing house and the mortgagee is concerned about whether the house is a fit and proper place for people to live, then they would step in and say: 'Well, we are not prepared to release the next tranche of money until you fit X, Y and Z'. And that, in essence, is what I understand this issue to be.

The builder – and there is an issue herein that what we would expect in a normal town of building control, inspections and certification does not apply in Indigenous communities. Therefore, you cannot rely on the regulator to regulate the standard of building construction. Therefore, the mortgagee is basically saying: 'Well, I am protecting the person who has the mortgage, and our own interests, in trying to ensure that there is quality work'.

Ms SCRYMGOUR: I have heard you say now twice, Mr Watson, that the *Planning Act* or the Planning Scheme does not apply in relation to Aboriginal land. I suppose 19E of the *Aboriginal Land Rights Act* – is that what you are basing it ...

Mr WATSON: No.

Ms SCRYMGOUR: ... where the Commonwealth can make modifications in relation to – so any land that is granted to the Commonwealth entity under 19A or transferred, the Commonwealth can make modifications to those regulations or laws of the Northern Territory relating to planning, infrastructure, the subdivision or transfer of land. Is that ...

Mr WATSON: No, I am referring to the Northern Territory *Planning Act* and under the ...

Ms SCRYMGOUR: So am I. That is what I am trying to ascertain, with the subdivision what you are ...

Mr WATSON: What I am referring to is under the *Planning Act* there are certain prescribed areas in the Northern Territory where, I do not have a name, like the building code applies, and under the building code there are requirements for inspections on work done which links to building standards. But that code does not apply in Indigenous communities.

Mr CHAIRMAN: It really does not apply in remote areas because pastoral properties do not have to apply in ...

Mr WATSON: I think the reference you are making there is that there is an option for the minister to make a regulation exempting us from certain requirements of the *Planning Act* of the Northern Territory. She has done that in relation to new subdivisions where we came across a problem in that because of the nature of the lease we had, when we wanted to register a sublease, the Northern Territory *Planning Act* would require us to submit a development application for every lot, for like 300 or 400 development applications for what was existing infrastructure. We did not feel that was appropriate, so the minister exempted us for a period of three years for existing infrastructure basically to say that we can register the subleases without putting in a development application.

Ms SCRYMGOUR: And for new subleases?

Mr WATSON: For new subleases and for new developments, the development application process applies.

Ms SCRYMGOUR: Mr Chairman, just so I can get this right. You are saying existing infrastructure on the ground in Nguiu, none of the codes or regulations apply, but all new subdivisions and infrastructure the *Planning Act* and development application processes would apply? Is that right?

Mr WATSON: I am not quite sure that I am saying that. I am saying that our first port of call is that we will abide by the *Planning Act*. We will only move from that where there is a problem for us in adhering to it and the one problem we have come up against, firstly, was a requirement for development applications for leases in excess of 12 years. We got a regulation exemption from that. But where there is either new work - and it could be to an existing premises - or a new development altogether, then we would expect that the normal requirements of the *Planning Act* would apply.

Mr CHAIRMAN: Was there any request made to the Territory government to change that law if that was a problem? Or why weren't you given an exemption, I suppose, under pre-existing rights? In other words, that that development existed before ...

Mr WATSON: Regulation was discussed with the Northern Territory government representatives and basically there was agreed wording. It was agreed between the two parts of government for the regulation for the expedition of regulation. I am not aware of the detailed discussions were about; whether it was appropriate or not to change the NT government part of the law, or whatever, but that was seen as being the way forward and the wording was amended.

Ms SCRYMGOUR: Mr Watson, how many subleases have been granted, or subleases for more than 12 years, have been granted so far in Nguuu?

Mr WATSON: I would say every sublease that we have granted would have been in excess of 12 years. There are other ...

Ms SCRYMGOUR: Do you know how many that might be? Can I take that on notice, Mr Chairman, or would you be willing to provide that information? If I could, the question is: 'How many subleases for more than 12 years have been granted so far at Nguuu'.

Mr WATSON: The majority of those have been in relation to the community housing (inaudible) make up the majority.

Mr CHAIR: Can I just ask one on the subleases: who actually works out what the lease payment will be?

Mr WATSON: We have valuers. We use Colliers in Darwin as our valuers. They give us what you might call a market price, bearing in mind that there is not really a market there. So they are using their professional expertise and their understanding and knowledge of other areas in the Northern Territory to give us a view about what would be an appropriate rent. We then have negotiations with the occupier about whether that is appropriate, or whether there are other factors which need to be taken into account. We take into account such things as the fact that they might even incur significant capital costs in actually building this piece of infrastructure in the first place. Therefore, the negotiated rent would reflect that.

Mr CHAIRMAN: Does the community consultative forum have any say in what the rents will be, for the leases will be?

Mr WATSON: There are two parts to that. If we are proposing to modify the standard sublease template, because there is a sublease included within the head lease as a template with mandatory provisions in it, if we were to change some of those, then we would have to take that to the consultative forum and we have done that. In the majority of cases, if we can just negotiate a fair rent with people, then we would just do that. If there was a situation where there were issues where we need to engage with local people about the appropriateness of a rent, because maybe somebody would be claiming a community benefit organisation and therefore does not have the capacity to pay, then we would seek the views of the consultative forum about whether that was appropriate.

Mr CHAIRMAN: In the case of the council, I got the impression from a public meeting that at least one TO – or it might have been more than that – do not have a lot of time for the council. When I raised the issue of whether they should pay, why should the council which basically is a non-profit organisation – really, that is what it should be – providing a service for its own community be paying a large lease. It was like: ‘Well, so what?’ So I did not know what power other people might have in the setting of leases, or is it purely done on a commercial basis?

Mr WATSON: No, it is done on a commercial basis. I mean I engage with the consultative forum over our practices and the sorts of negotiating rationale that we use. I engage with them over the sort of rental return that we anticipate it might be reasonable to expect. So the consultative forum is fully across all of that.

Mr CHAIRMAN: But can they influence that lease?

Mr WATSON: They can influence it in terms of advice to me about local issues. There are always local issues of internal politics of the township, and there will always be people who – some people like the council, some people do not like the council.

Mr CHAIRMAN: But that should not have anything to do with the council’s lease, should it?

Mr WATSON: That will not have anything to do with the council’s lease and ...

Ms SCRYMGOUR: Or sublease.

Mr WATSON: ... it is not my view that the council or the Northern Territory government should get off scott free ...

Mr CHAIRMAN: I did not say that.

Mr WATSON: ... because they are basically still utilising land owned by somebody else, and there is an expectation that a fair rent should be paid for that utilisation.

Mr CHAIRMAN: But just as you said that there could be some unfair ramifications, for instance, if someone came in and built a new store and undercut the other one, etcetera, you charge a council too much money and its only other form of – in theory – covering that cost is to increase the rates on people. Then is it robbing Peter to pay Paul?

Mr WATSON: Potentially, that is the case, and that is the art – if that is the word – of trying to negotiate something which is fair and reasonable, a fair return for traditional owners and a fair impost on the shire.

Ms SCRYMGOUR: It is that argument, Mr Chairman, that then maybe the land trust should not have been exempt in terms of being rated.
Can I just go back to the questions that ...

Mr ELFERINK: No way you can avoid it.

Ms SCRYMGOUR: Sorry?

Mr ELFERINK: The problem with not exempting a land trust is you cannot ultimately take the step you need to take to recover lost income.

Ms SCRYMGOUR: Well, that could be argued in terms of if you are charging for rents and other things then that comes back ...

Mr ELFERINK: I am just wondering where you recover from when you cannot inalienate the land.

Ms SCRYMGOUR: The question on notice that I asked, Mr Watson, I just wanted to expand that. I asked how many subleases for more than 12 years have been granted so far at Nguuu. Mr Watson, would you be willing to go further if I just expanded – have all or any of those subleases been registered and, if so, what have been the separate plans of survey that have been lodged for registration in respect of all or any of those subleases?

Mr WATSON: I am happy to take that on notice. Basically all of the subleases would be registered and if they are over 12 years then they need a survey, so they would all have a survey as well, and we have surveyed the entire township.

Ms SCRYMGOUR: Yes, if the committee could get that. With the consultative forum, are we also able to, if you would be willing to take it on notice, the membership of the consultative forum?

Mr WATSON: The membership varies because the head lease requires that there be a consultative forum, and that the majority of membership be made up of community members and the EDTL, the Executive Director for Township Leasing. So it is not prescribed and nor do we prescribe the names of the people who attend the consultative forum. Our only interest is that we have a quorum. But there is a certain group ...

Ms SCRYMGOUR: But wouldn't that blur the lines though? I mean if you are talking about Nguuu and the head lease that you hold, is Mantiyupwi traditional owner land, and they have transferred that lease to the Executive Director of Township Leasing. Would you not have a responsibility to make sure that the consultative forum consisted of Mantiyupwi traditional owners rather than section 71 Aboriginal Community members under ALRA which is where problems could arise?

Mr WATSON: Well, it is natural for traditional owners ...

Ms SCRYMGOUR: That are part of that forum.

Mr WATSON: ... they form the membership of the consultative forum.

Ms SCRYMGOUR: And you are saying there is no set members of the Mantiyupwi that sit on there?

Mr WATSON: What I am saying is that there is a regular - there is probably a group of a dozen people who would attend the consultative forum but not on every occasion. So most times you might get, say, half a dozen people, and the next time you will get

another half a dozen who might be three of the same from last time and a new three. There is sort of core of people who attend on a regular basis.

Ms SCRYMGOUR: Do you have consistency though in members who attend?

Mr WATSON: Yes.

Ms SCRYMGOUR: Back to our previous discussion where we were talking about competition, and you were saying that that is not a real good thing for Nguuu. What is that based on, what evidence?

Mr WATSON: No, no. I have to say I did not say it is not a good thing for Nguuu. What I said was that with competition comes broader issues, and the consultative forum has to be in the full understanding of what the broader issues associated with taking competition into the township, and it is a matter of making them fully aware of what those issues are and making a decision, or providing advice to me, in the knowledge of what those potential issues might be. Really, it is just a matter of saying to ourselves, we might look on competition as a good thing because competition in the normal environment that we live in has the potential to reduce prices, and provide better quality, and all sorts of things. Competition in an Indigenous ...

Ms SCRYMGOUR: Or greater choice.

Mr WATSON: Greater choice as well. Competition, per se, in an Indigenous community could provide those benefits but there are some negative things which could also flow through which could be problems.

Mr CHAIR: I don't know if there are negative things about having a monopoly. I mean I lived on Bathurst. We had one store which has now been demolished, not the one that they have presently. Irish stew and sweet curry was about the main diet. That was all about what you could get in the store to eat. You got meat from Bulloo River and you got canned milk. I would have loved some competition. But there are also down sides in that the community does not get what we would in a normal town because there isn't competition. And if Maccas turned up tomorrow and said we want to establish a store ...

Mr WATSON: Can I put two scenarios to you? In Nguuu, the Mantiyupwi Association is actually looking at opening another store, because they actually see the benefit in competition. There are, again, views about whether the prices being charged in the current store are too high, or whether the quality of food is appropriate, and all that sort of stuff. So their view is that if they had a store themselves, the Mantiyupwi, then that would be a good thing for Mantiyupwi and a good thing for the community because of competition, etcetera.

In Angurugu on Groote Eylandt, there is a proposal to open another store - but not by traditional owners, but someone from outside. There is a concern there amongst the community as to what the impact of somebody coming in to the community with another store will do to the current community store which is struggling to some extent, and whether in fact at the end of a couple of years they will be in a better position or a worst position. That is a discussion I am having with the community at the moment.

All I am saying is that we need to look at things on a community by community basis, about what the proposal is and how the community reacts to that. When you go to another community it might be quite a different scenario.

Mr WESTRA van HOLTHE: Is that not protectionism and does not the committee structure that you have for making decisions like that possibly lend itself to corrupt practices? I mean in terms of there are conflicts of interest all over the place that I can see, potentially?

Mr WATSON: The committee does not have any decision-making powers. They can only advise the Executive Director. I take the views of the community and of the consultative forum very seriously.

Mr ELFERINK: This then gets back to the question I asked before. What about the views of the Australian parliament as expressed through the *Trade Practices Act*?

Mr WATSON: That may well become an issue at some stage.

Mr ELFERINK: It should be an issue now, I would suggest to you, because it is the law now. Anti-competitive conduct in that fashion is frowned upon, to put it mildly, by the *Trade Practices Act*.

Mr WESTRA van HOLTHE: And the store example is probably a better example than trying to throw Bunnings in, perhaps if I could suggest, because it makes it a lot easier to understand.

Mr CHAIRMAN: Just not quite on the same note, but if this town is now going to be a normal town – and I have my doubts that it is because there seems to be still some restrictions that you would not get in a normal town – but do you still require a permit to go to Nguui if the airstrip is included in your lease?

Mr WATSON: The way the head lease is constructed is that whatever the permit requirements are more broadly for Indigenous communities under the act is what applies.

Mr CHAIRMAN: So that town is not an open town?

Mr WATSON: Whatever the permit restrictions are, as they apply to Indigenous communities in the Northern Territory.

Ms SCRYMGOUR: Mr Chairman, maybe a question on notice for that bit to be provided.

Mr CHAIRMAN: I think the answer is there. Basically, he is saying that the permit still applies for Nguui. He is saying that the same rules ...

Mr WESTRA van HOLTHE: Not as much as a permit, but as a condition of the lease.

Mr CHAIRMAN: Is it a condition of the lease that the same conditions as apply to an Aboriginal community apply to Nguui? That is probably the answer.

Ms SCRYMGOUR: So the transfer of the lease to OTL has not normalised the situation in any way? You still have to go through the process of seeking a permit or permission to have entry onto that land?

Mr WATSON: I am not required to get permits under the head lease. I am not aware that there are ...

Ms SCRYMGOUR: No, because you are a statutory officer under a Commonwealth act; I can see that you are not required to get a permit ...

Mr WATSON: Yes.

Ms SCRYMGOUR: ... but there are – just say someone conducting a business or going over there – and I know there are Northern Territory and Commonwealth officers who also get permits issued to them because they have open access onto Aboriginal land, but anyone else wanting to go over to approach a council, or the land council, or to talk to someone, just say a visitor, they would be required to get a permit. Is that right?

Mr WATSON: Whatever is required under the act?

Ms SCRYMGOUR: So who do they apply to?

Mr WATSON: They would normally apply to the land council. I think that is quite the norm.

Ms SCRYMGOUR: But the land council does not administer Nguiu anymore. The head lease is actually held by you. I am trying to gauge what is the role of the land council in relation to Nguiu when you are now in effect the landlord for Nguiu. The whole of township lease covers the airport and also goes down to the barge landing. So if you talk the low water mark that is the intertidal zone, so if the land council has transferred that ...

Mr WATSON: Can I put it in this way: it is not an issue that has arisen. My view is that whatever were the arrangements in place previously and whatever is consistent with the act now, is what applies and there does not seem to be any problem. Now whether the people are getting permits from the land council or not is not something I am aware of.

Mr ELFERINK: Can I just say there is a problem. There is a major problem here, and that is the whole thrust of this process of the normalisation of these townships and township leasing was to normalise these towns. So whilst I appreciate in the technical level there may not be a problem, in the real level there is a problem.

May I also say that in relation to the attraction of businesses, in your opening statement here today, you said that part of the process that you are involved in is make these places more attractive for business to come to these communities. However, I am starting to see a structure which is particularly business unfriendly as the Land Rights Act has now been for 30 years.

The operation section 19 of Land Rights Act particularly has - I have described it as a wall; Bob Beadman describes it as a maze. I am not going to quibble over the details, but it is very hard to get into these communities. So from a stand point of does the *Trade Practices Act* apply, and I suspect from your answer - or you did not answer the question, you have not turned your mind to that particular issue, and any other federal legislation, that whilst in the opening statement you have made here today, that you want to make them business friendly, if you cannot see a problem that permits to apply, then I suspect that some further thinking has to go into how the Office of Township Leasing goes about its business.

Now I hear that you have said: 'Oh, this is a staged process, and this will happen over time', well I suspect Aboriginal people have been waiting for decades now. Would you care to comment on any of those observations?

Mr WATSON: The comment I would make is that we endeavour to deal with issues as they arise. That formally my understanding is that in relation to permits whatever is required under ALRA is in place. But I am not aware of anybody having any issues in accessing the township. So it is not something that has arisen. Nobody has come to my office and said: 'We cannot get a permit to go to Nguuiu, we can't move about Nguuiu freely'.

Mr CHAIRMAN: Technically, you need a permit which you would not need in a normal town?

Mr WATSON: If the act says that you need a permit, then you technically need a permit. Now, how strictly that has been enforced, I don't know.

Mr CHAIRMAN: And that could depend on who is in the land council.

Mr WATSON: It may do.

Mr CHAIRMAN: Well, just looking at the broader picture in relation to that. The Commonwealth government was agreeing to 15 growth towns, and Nguuiu was one of those. Then the Territory government has added on five more. My understanding is that is an agreement with the Commonwealth and the Territory governments, to normalise towns, to improve facilities in those towns. Now, if you still have to get a permit, it does not seem to be a normal town. If you restrict who can come there, you are not opening up the place for business which is one of the reasons for growth towns when you read all the materials on it. So, has the Office of Township Leasing been part of the discussions around growth towns, in particular Nguuiu, Umbakumba, Alyangula, have you been part of that process as well? – Angurugu, sorry.

Mr WATSON: Can I just go back to the first part of that, which is an inference that we are trying to restrict in some way who might open a business in the town. I would take exception to that, in that we are not trying to restrict necessarily who has access to the town. We are saying that we are required under the lease to take that to the consultative forum and to put that, not only to the consultative forum, but in the case of Nguuiu to put it to the whole community, when a new business is being proposed. They are entitled to provide their comments as to whether they feel it is appropriate or not.

Mr CHAIRMAN: Could you not do that under the *Planning Act* and you not be involved at all?

Ms SCRYMGOUR: It is part of the development application.

Mr CHAIRMAN: Yes. So I put up a sign, I am going to put a new store there.

Mr WATSON: We could do that, but it is specifically within the Nguuiu head lease that actually sets out the process I have to take where there is a new business proposal being envisaged.

Mr CHAIRMAN: So we need to question the people who negotiated the head lease to say: 'Why did you put those restrictions in if you wanted the town to do what is meant to happen under growth towns?'

Ms SCRYMGOUR: To open it up.

Mr WATSON: Well, remembering that this head lease was in place before the 20 growth town proposal came forward, so there is no causal effect here. In relation to the growth town issue, we have had some discussions with bureaucrats in the Northern Territory government about growth towns, but most of the discussion has been between the Australian government and the Northern Territory government that has not involved us. Our involvement in relation to Nguuiu has been more to do with the proposed government business centre and the construction lease back arrangement which might apply with that, and facilitating that sort of discussion and encouraging that discussion.

Mr ELFERINK: But ultimately you are the decision maker?

Mr WATSON: Certainly, a decision maker in terms of issuing of the sublease. That is right.

Mr ELFERINK: And you have indicated that you would be strongly influenced by the advice of the consultative forum.

Mr WATSON: Consultative forum, that is right. But in relation to, say, a government business centre, no one is perceiving an issue with the government business centre. It is seen as a good thing. When we talk about normalisation, and we are talking about Mantiyupwi will be potentially stumping up the cash to build this facility on a lease back to the Northern Territory government over 20 years or 40 years, that is sort of a normalised arrangement.

Mr ELFERINK: That has been the deal with the Police Station there now for 15 years now.

Ms SCRYMGOUR: Nearly 20 years. So that sort of process ...

Mr ELFERINK: It is not new.

Ms SCRYMGOUR: ... and that is why ...

Mr WATSON: No, that is not new.

Ms SCRYMGOUR: That is why I am a bit perplexed, I suppose, with the restrictions, or why are there restrictions. When the consultation was going through about the 99 year lease and the transfer to OTL, one of the driving forces behind that was that traditional owners said they wanted to open up their community, they wanted buildings, they wanted people to come in, they wanted Nguiu developed.

Mr WATSON: I think you need to distinguish something here. What I mentioned previously about a shop and getting people's views and that getting competition was not necessarily the be all and end all, I was not talking specifically about Nguiu. If you want to talk specifically about Nguiu, then they are very interested in opening up the town and putting in new enterprises and so forth. There has been no issue about trying to, if you like, restrict trade in any way, shape or form. The issue with Angurugu is ...

Ms SCRYMGOUR: I can see on Groote Eylandt, Mr Watson, where maybe there are issues because you have Alyangula which has another store and stuff, and people from those communities go into the mining town where they can get access to cheaper and better foods in a mining ...

Mr ELFERINK: I bought a cheese sandwich there the other day for \$7.

Ms SCRYMGOUR: Yes. So, on Groote Eylandt, I can see the case to try to look at how things could ...

Mr WATSON: If I in any way inferred that there was an issue with Nguiu, there is not an issue with Nguiu.

Ms SCRYMGOUR: So why are permits applying there? I have actually written to both federal ministers trying to ask for the Commonwealth government to answer why is the permit system applying given the transfer of the head lease.

Mr WATSON: Because the act still applies.

Ms SCRYMGOUR: The *Aboriginal Land Rights Act*, as I understand, was amended. There were amendments to – because ALRA is the enabling act and it enabled the *Aboriginal Land Act*, but then that quashed the *Aboriginal Land*. I know the 99 year lease came before the compulsory acquisition of those 73 communities, and as I understand it, the one act that came over the top of the lot of them was the NTER or the FAHSCIA act.

Mr WATSON: My understanding is that the permits still apply.

Ms SCRYMGOUR: If that is the case, Mr Watson that is good. I will let people know over there, because people are under this impression that permits do not apply. Also, non-Indigenous people have been going over there, and I have received complaints because when people turn up in their boats and they see (inaudible) and then they get threatened with litigation or that they are trespassing, when people are under this impression that that Nguiu is an open town and there is no requirement for permits. So I will let people know.

It might be important, if that is a condition under the head lease, whether OTL also stipulates that.

Mr WATSON: I have just got my colleague looking up part of the head lease that deals with permits which will give us the answer.

Mr CHAIRMAN: Just a little issue sitting here that might be completely off the subject. What is a township licence?

Mr WATSON: A township licence is – it potentially applies to a shire where perhaps the shire was not seeking a sublease over, say, a park. We would issue a licence for them to manage the park. We have not issued any licences because once the head lease was in place the legal view was that we could rely on the *Local Government Act* and the requirements of the shire under the *Local Government Act* to cover circumstances where a licence might be ...

Mr CHAIRMAN: It is like a permit?

Mr WATSON: It is like a permit, yes.

Mr CHAIRMAN: Because on Bathurst, I remember when they moved the tip one time, those are the old days, I can't mention the old days too much, but you will go to traditional owners simply and say: 'We need to have another site for a tip. Where should it be?' Although it was verbal, it was the same thing. Obviously the council did not own the tip, but had permission to use that piece of land as the tip.

Mr WATSON: Well, it is a similar situation with some of the work that is going on at the moment in relation to SIHIP where there are asbestos issues. I put it to the consultative forum: were they of the view that they would be content to have asbestos buried in a new tip on the island. And they were not and therefore any asbestos material is barged off the island in relation to that.

Ms SCRYMGOUR: You were just saying following on from the Chair's question, if someone takes out a sublease, you waive the requirements for a licence for that business or for that operation.

Mr WATSON: No, no. What I was saying is that under normal circumstances people would apply for a sublease. If they need to operate in a way which did not require a specific piece of land, or that they were just managing this piece of land on behalf of the community, then an option for us would be to issue a licence to (inaudible).

Ms SCRYMGOUR: How about a store? Just say the store; they would have a sublease. So you do not issue them a licence to operate or for their activities on that sublease?

Mr WATSON: It is not a circumstance where we are providing a licence for a business to operate or something like that. We are only dealing with the land itself. So if they are operating a shop, it is to do with the land and infrastructure on land, not the business that operates from it.

Ms SCRYMGOUR: Isn't that a concern though? That means someone can get a sublease, build a shop or, say, establish some infrastructure. They say they are going to conduct this activity on this subdivision. If you are not issuing them a licence which regulates that activity under which they have subleased, isn't that a concern?

Mr WATSON: Under the terms and conditions there is what we call 'permitted use' and it comes within the permitted use. Permitted use might be a house, or it might be a shop, or it might be an NT government building or whatever.

Ms SCRYMGOUR: All right. So will you remove the need for licences, so that you do not have any licences? You just use that mechanism of the sublease conditions?

Mr WATSON: Again, I think you might have the wrong concept of the licence.

Ms SCRYMGOUR: No, no. I am following the concept of leases and licences under the *Aboriginal Land Rights Act* which is a requirement if you are establishing infrastructure, or carrying out or conducting any activities on Aboriginal land under the *Aboriginal Land Rights Act* you are required by law, Commonwealth law, to not just only get a lease or a sublease, but you are also obligated to get a licence for your activity on that land. So I am going strictly by Commonwealth legislation which is what you are a statutory officer under.

Mr WATSON: This licence that I am talking about, I think is a different licence to what you are talking about. This licence ...

Ms SCRYMGOUR: What is the licence you talking about, Mr Watson?

Mr WATSON: The licence I am talking about is a situation where someone is operating some ...

Mr CHAIRMAN: What about the football oval at Nguiu; can that have a licence?

Mr WATSON: The football oval. Where the shire – it is mostly related to the shire where they are managing the football oval but do not necessarily want a lease over the football oval. So it might be community access areas. There are certain defined areas within the township which are denoted community access areas whereby there would be an expectation maybe that the shire would keep the facility in reasonable order, mow the grass and so forth. We would give, potentially, the shire a licence to manage that community access area on behalf of the community.

The sort of licensing that you are talking about, I think, is taken up in our permitted use. So we have strictly within the sublease the permitted use for a particular site.

Mr CHAIRMAN: So the sites at Nguiu were designed with a lot of parks, parks between houses? You have not finished your arrangements with the council yet, because the council did say: 'We will pay for a lease on where our sheds are and our buildings are, but we will not ask for licence on the parks?'

Mr WATSON: Exactly. We would not be charging a sublease rental on parks and gardens, and football ovals, and things like that. Precisely what you have explained there is where they have a facility on a piece of land, it is sort of place where we would be charging rent.

If I can just go back to the permit system, under the permit system it says:

In the event that access to the land is not regulated by the Aboriginal Lands Act, the parties agree that any person wishing to enter the township must have a permit except to the extent of either [such and such and such and such].

My understanding is that access to the land is regulated by the *Aboriginal Lands Act* and therefore the rest of these clauses under the permit system does not apply. That is what I think it was.

Ms SCRYMGOUR: *Aboriginal Land Rights (Northern Territory) Act?*

Mr WATSON: It just says *Aboriginal Lands Act*.

Mr ELFERINK: Which is the NT act?

Ms SCRYMGOUR: NT act, but I am confused, because the changes to 19A which established – I mean the changes or the modifications that came through with *Aboriginal Lands Act* exempts the Northern Territory law from applying, so ...

Mr WESTRA van HOLTHE: And that is for the five year the leases as well under the NTER, is it not?

Ms SCRYMGOUR: Yes.

Mr KINLEY: The exemptions from the Territory legislation primarily is listed in a number of areas which deal with land planning, land usage, those types of things. It does not exempt the township area from the requirements of the *Aboriginal Land Rights (Northern Territory) Act*.

Ms SCRYMGOUR: I beg to differ. There have been problems and I think we can argue till the cows come home in relation to that.

Mr WESTRA van HOLTHE: Yes, and I am sure that this committee has taken evidence to suggest that the leases over the NTER community dispensed with the need for ...

Mr ELFERINK: It was always the stated intention.

Mr WESTRA van HOLTHE: ... for permits under the *Aboriginal Lands Act* of the Northern Territory. I am sure we have taken evidence to that. Perhaps the other members of the committee can ...

Mr WATSON: It may well be.

Mr ELFERINK: Under the former government which initiated the NTER, that was the stated intention of that government.

Mr WATSON: Once a township signs a long-term – holds a township lease under section 19A then the provisions under the NTER in most circumstances do not apply.

Mr WESTRA van HOLTHE: Okay. So if I am getting that right, and please correct me if I am wrong, an NTER lease has no requirement for people to get a permit under

the *Aboriginal Lands Act*. But once a further lease a 99 year lease, negotiated over that area by OTL it establishes itself, then there is then a requirement to go back to needing a permit?

Mr WATSON: I cannot answer the question in relation to the NTER; I am not familiar enough with that to be able to provide that advice. I am happy to take that on notice.

Ms SCRYMGOUR: Yes, that would be good because there is some confusion out there in some of the communities.

Mr CHAIRMAN: We want some clarification in relation to permits; in relation to what was the status under the NTER, what happened when the Office of Township Leasing then took over a town that was originally subject to the NTER, and did that mean that permits were reinstated as a requirement to visit that town? Does that make sense?

Mr WESTRA van HOLTHE: Yes, I am sure we can formulate a question around that.

Mr CHAIRMAN: I must admit I am having - it might be a philosophical problem here with the issue of permits. What is the point in leasing the land, as now having it leased, if one of the basic things is that the people who have leased it are telling you who can come on to your lease and who cannot come onto your lease? They may as well have kept that land themselves and made those rules themselves.

Mr WATSON: It still relates to the permit system. Why don't we answer the question that has been put on notice?

Mr CHAIRMAN: Okay. I am just going to ask, we have left Groote Eylandt off the list. Can we just ask what the difference between say Groote is and Nguiu. They are the two main areas that presently have ...

Mr WATSON: Plus Alice Springs.

Mr CHAIRMAN: ... and Alice Springs. Is there a difference between all three communities or five communities in this case?

Ms SCRYMGOUR: Or are the head leases, the requirements, the same? That is what should be asked.

Mr WATSON: There are always many parts to these questions. The head leases are substantially the same. There are some changes to the group lease over the Nguiu lease. The main ones are that the sublease pro forma is not contained within the group lease, so it is basically kept to one side. It does not mandate the rules for the consultative forum meeting. They are basically agreed by the consultative forum at its first meeting, and not much else.

In terms of the communities, very different - as you would expect. We certainly do not go into a new community with a view that what worked at a previous community will work here because of different cultures, different people, different views, different geographical locations, all sorts of stuff. We are dealing with three disparate communities in Groote and there are distances between them. The nature of the issues that are happening on the three communities there are obviously different as well.

It is early days in Groote but the lease has been going for just over 12 months; December 2008 it was signed. We have done the survey of the townships; they have been registered with the Surveyor-General. We have been negotiating with the existing occupiers and some subleases are now starting to be signed and agreed. There are some applications in now for the initial start of home ownership.

Groote is obviously influenced a lot by the mine there and the amount of royalties that come through from the mine, and the fact that there is an RPA, a Regional Partnership Agreement, there as well. This Regional Partnership Agreement has a significant contribution in investment from the land council. So there is a whole different set of circumstances and we just manage that as best we can.

Mr CHAIRMAN: So in the case of SIHIP we were wanting extra land there for putting more houses, they come to you and say we need more land. Then it is up to you to negotiate that new subdivision?

Mr WATSON: Yes, basically. We would take that to the consultative forum. SIHIP would generally say to us: 'this is the area of where we think it is seems to be useful to put a new subdivision'. They probably would already have had some discussions with planning about the town planning aspects of it, and we would then enter into negotiations, take it to the consultative forum, get views from the consultative forum and if everybody basically agreed then the surveyors would come in and works would be undertaken.

Mr CHAIRMAN: You talk about the consultative forum, but in planning in the Darwin region, you have a public meeting and the public is allowed input. Outside of the Darwin region, the minister has a delegate but still advertises and the public can still input into these planning matters.

Does the community, first of all, understand that that is the process elsewhere? And does the community have any say outside of the consultative forum? You can get your groups on consultative forum which, for whatever reason, might have their own points of view and leave the rest of the community out of the equation. Is there a place that John Smith who has nothing to do with the consultative forum but lives in that community can also have a say as to whether he wants that subdivision over there?

Mr WATSON: There is a development application process, and if the development application process includes a consultation with the community, then obviously that should occur.

But there is an expectation that the consultative forum will not only reflect the views of the community but also take back to the community issues which are on the agenda of the consultative forum. So for instance, going back to Nguui, there is a large subdivision now which is being proposed; the SIHIP and Territory Alliance have come along and given presentations to the consultative forum saying where the subdivision was planned to go, and all that sort of stuff.

I am not aware, but neither would I be, that they have done broader consultations. I suspect they have.

Mr CHAIRMAN: One of the issues I have in relation to what is going on in some of these communities is that we have this overly bureaucratic system on small communities, which must just about drown people. For instance, why isn't a consultative forum the local management board? When you are going to deal with subdivisions, I would not be asking a consultancy board. I would be asking the council because the council is the one that is going to have to look after the roads, the parks, and all that sort of stuff. It is its bailiwick to be doing those sorts of things. I would have thought the local management board, or the council if there is no need for a management board, would be the key factor in that.

Mr WATSON: In some ways it comes back to Northern Territory government officials. What they would normally do is engage with the local shire over these developments and the local management board, and then they will continue to do that. We are only sitting in the shoes of the land owner and it is about: if I owned a tranche of land on the outskirts of Darwin and someone came to me and said: 'We want to use your land for a subdivision', then that is our role. Once they get into the broader planning process and engagement with shire, they would undertake that role. We are only dealing with the land tenure in this case.

Mr CHAIRMAN: That is fair enough. I agree and basically you ask the traditional owners whether they would allow that land to be used for development. And that is where you finish?

Mr WATSON: Basically that is where we finish. We get engaged somewhat more than that. Mostly because the SIHIP and the contractors find it useful to continue an engagement through the consultative forum to make sure that everything is on track, and basically traditional owners are happy and understand what is happening and where things are up to. So we would bring them back to meetings on the consultative forum so that everyone is aware of the project and what is going on.

Mr CHAIRMAN: So Angurugu Local Management Board has any say in this?

Mr WATSON: Well, Angurugu ...

UNKNOWN: East Arm Shire.

Mr WATSON: Well, it is East Arm Shire, I know. I am not sure ...

Mr CHAIRMAN: But East Arm Shire is based in Nhulunbuy.

Ms WALKER: Yes, but at every community within the East Arnhem Shire there is a local management board.

Mr CHAIRMAN: And to me they were set up for that purpose. I am worried about over-bureaucratic ...

Mr WATSON: We have not engaged with the local management board at Angurugu, but we have engaged with the shire representative at Angurugu.

Ms SCRYMGOUR: At the end of the day, the consultative forum made up of traditional owners who are the land holders have the say.

Mr CHAIRMAN: Yes, but they give approval for the land, no problem with that. But after that, when you are looking at the development, which is the roads and the parks and all that, I would expect the local management board which has been made through the *Local Government Act* to have a say in those sorts of areas. I would have thought them to be the key group to be involved.

Ms WALKER: And I would have thought so too.

Mr WATSON: As I said, I think that then goes into the Northern Territory government's responsibilities in relation to the planning ...

Ms SCRYMGOUR: Once that goes through the development process.

Mr WATSON: ... and in relation to power and water and all that sort of stuff. I would assume ...

Mr CHAIRMAN: Yes. How about Alice Springs Town Camps; how do you work there now? What is your role there?

Mr WATSON: The way that was put together was that there was 14 hectares under leases over town camps. We immediately sublet those to the Northern Territory government in their entirety. So my responsibilities there are much less. Basically, they are in relation to forming a consultative forum again which are representatives of the town camps, and to address issues which emerge from the town camps which have a commonality, and to take those forward to appropriate areas to have issues resolved.

Mr CHAIRMAN: The roads in those communities belong to whom?

Mr WATSON: The whole town camp is sublet back to the Northern Territory government, so they remain the responsibility of the Northern Territory government.

Mr CHAIRMAN: I originally believed that what they were trying to do was make them part of the Alice Springs Town Council, or come under their control?

Mr WATSON: That would be a matter between the Northern Territory government and the Alice Springs Town Council.

Ms SCRYMGOUR: The *Local Government Act*.

Mr CHAIRMAN: Permits: do you require a permit to go to a town camp?

Mr WATSON: Not that I am aware of.

Ms SCRYMGOUR: It has never been a requirement.

Mr ELFERINK: No.

Mr CHAIRMAN: That is all right. I was just seeing ...

Mr ELFERINK: It is not ALRA land.

Ms SCRYMGOUR: It is an SPL.

Mr WATSON: A special purpose lease.

Mr CHAIRMAN: But then you have taken over the lease, or you are subleasing from the people who had ...

Mr WATSON: We have a 40 year lease on the town camps at Alice Springs.

Mr CHAIRMAN: From whom?

Mr WATSON: From the housing associations.

Mr CHAIRMAN: Did they require a permit to come into those areas?

Mr WATSON: Not that I know.

Mr CHAIRMAN: That is all right. I am just trying to clarify. We have different bits of land here.

The other area that I have been asked to talk about is: there are a lot of refurbishments in Central Australia under the SIHIP program. I am not sure there are so many new houses being built; I do not have the matrix yet. How far have you gone in relation to township leasing in Central Australia, or areas under the control of the Central Land Council?

Mr WATSON: I am not involved in the negotiation of the township leases per se. I administer them once they have been approved.

Mr CHAIRMAN: Right. Could you give us an update on what areas have been now approved for leasing?

Mr WATSON: Do you mean the whole of township leasing? There are various housing precinct leases which ...

Mr CHAIRMAN: Who looks after the housing leases?

Mr WATSON: The housing precinct leases are mostly with the Northern Territory government.

Mr CHAIRMAN: Right, and you look after township leasing?

Mr WATSON: Yes.

Mr CHAIRMAN: Are there any other townships which you are in negotiation with or ...

Mr WATSON: I am not in negotiation ...

Mr CHAIRMAN: No, you are not, but you know that are being in negotiation?

Mr WATSON: There are ...

Ms SCRYMGOUR: On the Tiwi Islands, there are two.

Mr CHAIRMAN: No, I mean Central Australia because ...

Ms SCRYMGOUR: None.

Mr WATSON: There are continuing discussions with both the Central Land Council and the Northern Land Council about other communities which might be interested in township leasing.

Mr CHAIRMAN: So there are some growth towns in the Centre?

Mr WATSON: Yes. There are discussions going on. To what level and how far they have proceeded with those discussions, I am not aware of anything which is on the immediate horizon other than the other communities in ...

Mr CHAIRMAN: Who in the Commonwealth would we have to talk to about that?

Ms SCRYMGOUR: FAHSCIA.

Mr WATSON: It would be FAHSCIA, yes.

Mr CHAIRMAN: Any particular person?

Mr WATSON: Amanda Cattermole and John Litchfield would be the contacts.

Mr CHAIRMAN: There was another question too. Do you have maps of all these township leases? Can we get hold of the head lease?

Ms SCRYMGOUR: Land Titles Office.

Mr WATSON: Yes, we can get them.

Mr ELFERINK: Now that they are registered, will they be on the Northern Territory map system. ILAS, whatever it is, so you should just be able to download them as cadastrals?

Mr WATSON: Yes.

Mr CHAIRMAN: I will let the smart people do that for me.

Mr ELFERINK: It is a hell of a system to work with.

Mr CHAIRMAN: If you could send us a copy of those.

Ms SCRYMGOUR: Can I just, Mr Chairman, go back to the home ownership questions that I was asking Mr Watson. The subleases, once someone determines, and I know there are about 10 over on Nguiu, so the sublease leases are taken out by IBA, or are they taken out by the individual who is seeking the loan?

Mr WATSON: They are taken out by the individual.

Ms SCRYMGOUR: Does IBA do the normal thing that happens so a caveat is put over ...

Mr WATSON: They register them.

Ms SCRYMGOUR: ... and conditions on that. Okay.

Mr CHAIRMAN: You reminded me of a question or two. You raised the issue that IBA can actually check the standard of the house. I pull out a particular issue: we saw at least one, or maybe two, Chinese houses at Nguuu, and I have been quoted as not being an expert in building, but I did have some concerns about its durability. Would IBA actually have a look at those houses?

Mr WATSON: I think that actually goes to the answer I gave before, and I certainly do not want to speak on behalf of IBA. My understanding is that they, IBA, have some concerns too, and that is the nut of the problem whereby certificates of occupancy, if that is what we would call them, are not being issued until there are rectifications done on some of the houses where IBA has a financial interest in terms of the mortgage.

Mr CHAIRMAN: How can you get a certificate of occupancy in an area that is not covered by the building board?

Mr WATSON: I think we are loosely saying a certificate of occupancy. Basically, my understanding is that IBA is holding up certain funds until they are satisfied that the house is in accordance with ...

Mr ELFERINK: So some form of engineering certificate.

Mr CHAIRMAN: Which you can get done.

Ms SCRYMGOUR: Which is a requirement under the IBA funding? Mr Chairman, these are the issues that we have to work through. The *Building Act* does not to apply in some instances but it does apply in other instances. You have a mish mash of different layers, and different acts either applying or not applying, and if we are talking about growth towns, normalisations, we need to get some clear answer as to these communities and what regulations do apply. The IBA, the home ownership issues - by the way, the federal minister is over on the Island today looking at - will have huge problems into the future, because, one, it is taxpayers dollars. It is not as if it is a separate bank but it is money that comes from taxpayers.

Mr CHAIRMAN: It has to be sensible. If you have building restrictions that are so onerous that the building ...

Ms SCRYMGOUR: Why shouldn't the same requirements for me as a home owner in Darwin not apply on Aboriginal land ...

Mr CHAIRMAN: I have not said that.

Ms SCRYMGOUR: No, but that is the stuff that has to be ...

Mr ELFERINK: If I living in a remote area, not necessarily Aboriginal land, I do not know if I would want to have to jump through all of those hoops.

Mr CHAIRMAN: There are issues in relation nowadays to ...

Ms SCRYMGOUR: That is why houses last five years and not 30 years.

Mr CHAIRMAN: No, no, there are other issues that do not come under the Building Board. For instance, in energy rating. You know that some of the energy rating requirements now put a bigger cost on the house and they may not be sensible in some of these communities.

What I am saying is that we need to apply the rules in relation to where we are, that is all, and not just a blanket rule. Houses should not fall down, that is for sure. Or they should not have, as those Chinese houses appear to have, internal doors on the outside, which is a bad sign straight away.

Mr WESTRA van HOLTHE: I have a couple of questions if I could leap in. Just a clarifying question: early on, the member for Arafura asked you about funding. She asked what your budget was and I think you said something like you spend about \$1m a year. Is that an actual budgetary allocation from somewhere and in whose budget does that appear?

Mr WATSON: What we do is submit estimates to the minister through the ABA or through people who manage the ABA account in FAHSCIA. Those estimates are for a three-year period. In essence, the minister either agrees or disagrees with that budget. That is how our budget is determined.

Mr WESTRA van HOLTHE: Yes.

Mr ELFERINK: What is the appropriation process? There is none? It is just a ministerial stroke of a pen?

Mr WATSON: Yes. It is a minute to the minister to access funds in a special account ...

Mr ELFERINK: So basically the minister has the ABA's cheque book?

Mr WATSON: Well ...

Mr ELFERINK: To oversimplify it.

Mr WATSON: Sorry?

Mr ELFERINK: To oversimplify it.

Mr WATSON: I am not sure I would agree with the statement, but certainly the minister agrees our budget.

Mr WESTRA van HOLTHE: And the money comes from?

Mr WATSON: The way the money works is that administratively it is simpler for us to charge our costs to a departmental charge account, a charge code. Then on a monthly or quarterly basis there is a journal done internally which journals the expenditure from our department to the ABA.

Mr WESTRA van HOLTHE: And which department is that?

Mr WATSON: FAHSCIA.

Mr CHAIRMAN: Just on your head leases for Groote Eylandt. It was \$5m for Nguui. What is it for the three communities ...

Mr WATSON: \$4.8m, I think was ...

Mr KINLEY: \$4.5m.

Mr WATSON: \$4.5m.

Mr CHAIRMAN: That is for the three?

Mr WATSON: Yes.

Mr CHAIRMAN: Was there any payment for the town camps in Alice?

Mr WATSON: There is an undertaking that \$100m will be spent.

Mr ELFERINK: They say \$150m-odd. Was it \$100m or \$150m?

Mr WATSON: \$100m in the leases that will be spent on upgrading the houses and new houses in the town camps.

Mr CHAIRMAN: So your money will be from the leases within those town camps?

Mr WATSON: No, there is no money associated with the town camps. The commitment is just from the Australian government through the Northern Territory government to spend \$100m. There are no businesses or anything else in the town camps. There are just houses and some community facilities.

Mr ELFERINK: You basically handed over a sublease which reflects the head lease entirely to the Northern Territory ...

Mr WATSON: Yes.

Mr ELFERINK: ... and, for a lack of a better expression, washed your hands of it for the moment.

Mr WATSON: Well, I certainly have not washed my hands of it.

Mr ELFERINK: Well, I am sorry. You have an overriding interest, but the fact is that you have no administrative interest.

Mr WATSON: I have an administrative interest because I have a lease with the housing associations which has requirements on me in terms of the administration of those leases.

Mr ELFERINK: All right.

Mr WATSON: But there is no rental involved in any of that.

Mr CHAIRMAN: I will just check my questions because we do not see you often. I have pretty well asked you all the questions.

Ms SCRYMGOUR: There is one, Mr Chairman, sorry.

Mr CHAIRMAN: Yes, you can go.

Ms SCRYMGOUR: If I can go back, Mr Watson, to your funding and your structure of OTL? You might have mentioned it, but what monies that are payable to you or to OTL with the leases from, say, the Northern Territory government or any other businesses, what proportion of that actually goes to traditional owners?

Mr WATSON: In theory, for the first 15 years none of it goes to traditional owners unless ...

Ms SCRYMGOUR: Does that apply to Groote Eylandt as well?

Mr WATSON: Yes, unless it exceeds the initial prepayment amount less our costs.

Mr ELFERINK: Not very likely though on the size of the amount of rent that is being collected.

Mr WATSON: Well, no one is paying rent.

Mr ELFERINK: Yes, that is my point. Not very likely at this point.

Mr CHAIRMAN: The store would.

Mr WATSON: Pardon?

Mr CHAIRMAN: I thought the store was going to pay a fair rent?

Mr WATSON: The store pays a fair rent. If both the Northern Territory government and the shire came on board and paid a fair rent, then there is some prospect that that would be exceeded in the case of Nguuiu within the first 15 years.

In talking about Nguuiu, if the rent totals that we have put forward were accepted the rental would be in the order of \$0.5m a year.

Mr ELFERINK: Minus costs.

Ms SCRYMGOUR: That is based on what – police services, the health clinic, all the services that the Northern Territory government administers. Is that what you ...

Mr WATSON: Well, it is the total rental for the whole township, not just ...

Ms SCRYMGOUR: Okay.

Mr WATSON: People shop and ...

Mr ELFERINK: So \$0.5m a year, it costs whatever you get from other rentals in other areas as well, minus your \$1m operating costs a year.

Mr WATSON: That is a good point you make. I think when township leasing was first envisaged it was envisaged that the take up rate would be a lot more, a lot sooner, and therefore the defraying of our costs would be across a much larger group of townships. So I think the issue about 'less our costs' is a good one. It is one which we need to grapple with in terms of probably going back to the minister and seeking some views. My own view is that, obviously, it would be inappropriate to put all of our costs of (inaudible) dollars a year against – in essence to the communities, so I think we would have to make some assumptions about what might have been envisaged and do (inaudible) arrangement of some description.

Mr CHAIRMAN: What other Top End communities – I know you are not negotiating – but any other Top End communities that are in the process?

Ms WALKER: Surely Galiwinku?

Mr CHAIRMAN: You have a whole pile of growth towns – Wadeye?

Mr WATSON: I think they are probably reasonably near the top of the list, yes.

Ms SCRYMGOUR: Except they are having negotiations with the Commonwealth.

Mr WATSON: Yes, through the (inaudible).

Ms SCRYMGOUR: So you are saying Galiwinku too?

Ms WALKER: So Galiwinku or Wadeye had obviously signed up to housing leases to get the SIHIP program underway, but must also be in the pipeline for town leasing.

Ms SCRYMGOUR: To do a whole of township.

Mr WATSON: Yes.

Mr CHAIRMAN: Just back to the council. You are going to charge them a lease; would you take into consideration their ability to pay that lease, considering that, as you know, their ability to raise money of their own is quite small? Their actual federal government grants are going to be cut by a half or two thirds. It is not that I mind the council paying rates, but I do think that for a community body that has to mow the lawns and do the roads and it is not getting – well, from a personal point of view, I do not think

it has the funds to really do that job properly - and then you cop them with a lease payment that might be fairly high because ...

Mr WATSON: We take into account a whole broad range of factors, whatever is relevant and whatever the parties might bring to us. There are some instances where we have allowed, say, a rent-free period and will actively engage with the occupiers. For instance, let us say there was a community benefit organisation which was being directly or indirectly funded by an Australian government agency but within their grant they did not get anything for rent. The Australian government basically has committed that it will pay a fair rent for premises it occupies in Indigenous communities where there is a township lease, and has also agreed, in principle, that if it is providing a grant to a third party, say a non-government organisation through an agency funding, then it would commit to increasing the grant to cover the rental. So we have in some instances said: 'Okay, we will give you a rent-free period of say three years and we will actively engage with you and the appropriate agency to get a rent component included in your grant. Once that grant component is approved in your grant then we will start charging you rent'.

Mr CHAIRMAN: That is one of the issues that the Tiwi Council has. It is about the agencies and how much money the Commonwealth ...

Mr WATSON: Sure.

Mr CHAIRMAN: ... or Northern Territory government pays ...

Mr WESTRA van HOLTHE: All the shires for that matter, really.

Mr CHAIRMAN: Yes. Is that already happening, those sorts of negotiations?

Mr WATSON: Yes, they are. For instance, the health centre (inaudible) aged care facility, the Department of Health and Ageing is paying the full rent on that.

Mr CHAIRMAN: Yes. I suppose, in theory, some of those government departments which are using the council to run their agencies could go into this new facility that is occurring on Bathurst Island?

Mr WATSON: Potentially, yes.

Mr CHAIRMAN: Do we have any other questions? You can ask more questions.

Ms WALKER: Mr Chairman, I do not have a question per se, but I would like to put on the record my concern about the use of ABA funding. I understand, entirely, Mr Watson, it is not of your doing, but I do share the concerns of other council members that that is a source of funding knowing, as I do, that organisations such as Homeland Resource Agencies are so reliant upon that as a grant funding process for them, and competing against the Commonwealth government is simply wrong. That is something key for me that I have learnt today and will be following up.

Ms SCRYMGOUR: If I could just ask Mr Watson: are you able to tell us whether there are any further amendments to the *Aboriginal Land Rights Amendment Act 2007*, the *Township Leasing Act 2007* that is being considered; if it is being considered by the

Commonwealth government, they would certainly as a statutory office under the Act they would be having discussions with you. Have those discussions taken place?

Mr WATSON: There have been no discussions taking place with me about any further amendments to the act. There were some amendments made subsequent to the creation of the position but they were mostly about that under section 19A I could only hold leases for 99 years, so they removed that because not everybody wanted the 99-year lease, so they amended it to between 40 and 99 years.

I am not sure but there has also been an amendment which allows me to hold other types of leases and therefore allowed me to hold the Alice Springs Town Camp leases. So they have basically done some changes to make it a broader sort of potential for the office. I am not aware of any other changes being proposed.

Mr CHAIRMAN: Any others questions? We have covered a fair bit of ground. I thank Mr Watson and Mr Kinley for giving up your time to talk to the committee. We appreciate that very much. If you could follow up on any of those queries we had, we would appreciate that as quickly as possible. Once again, thank you very much for coming.

Mr WATSON: I am assuming the secretariat will forward to us the questions on notice?

Ms CAMPBELL: Mr Chairman, would it be all right if Mr Watson tabled his opening statement for the record?

Mr CHAIRMAN: Yes, would that be okay?

Mr WATSON: Yes.

Mr CHAIRMAN: And if there are any documents you think that would be handy that we can have, if you could forward them to us it would be good - subleases and those sorts of things ...

Ms SCRYMGOUR: There is the head lease, but I also asked about the subleases that were over the 12 years and registering.

Ms CAMPBELL: Mr Chairman, I have kept track of the issues that we were seeking further information from, and no doubt we also have the transcript which we can forward to Mr Watson.

Ms SCRYMGOUR: Mr Chairman, I would like it on record - and I do not know if other members of the committee share this view - but I would like to put on record thanking you, Mr Watson, but also congratulating OTL for the work and all of the survey work that is being done with the subleases which is something I have griped about for many years. It is essential work that land councils should have been doing. For me, it raises 'What are land councils doing?' If you have taken over the administration of Aboriginal land or that township, I fail to see the role of land councils.

Mr CHAIRMAN: The member for Arafura used to work on the same council as I did. If only the government and the council worked together in those days to do the survey.

Ms SCRYMGOUR: I worked with two of the land councils, I can tell you.

Mr ELFERINK: Mr Watson, Where were you working previously before you took on this role?

Mr WATSON: I was actually retired.

Mr ELFERINK: You have my sympathies. Did you travel to Darwin to take this role up, or were you already living here?

Mr WATSON: No, I do not live in Darwin. I live on the south coast of New South Wales.

Mr ELFERINK: The reason I continue to hark back to the issue of the operation of other legislation is that the Aboriginal land, and Aboriginal issues as a whole in the Northern Territory history, have been commanded in many instances by a countless number of gate keepers. In your function, you have that gate keeper role. One of the greatest tragedies, and I have worked and lived in the Territory my whole life and done many years in the bush, of gate keeping has been a genuine desire on those people who hold that role to protect Aboriginal people but, unfortunately, that gate to keep people out has often become a prison that has the effect of keeping people in.

I would urge you to be mindful of that observation in the way you approach the work that you do with a view to some real results and genuine normalisation of the environment.

Mr WATSON: I accept what you say, and really do not see ourselves as being a gate keeper, although I can understand why some of that might come across. The important thing here is that progress can be made by the various elements as government working together. That is what we want to do and we are succeeding in that to some extent, but there is still some way to go.

Mr ELFERINK: I appreciate that, but it also not government exclusively. There are other people who may have an interest, and whilst I understand that many traditional people are reluctant to change, once they realise that some of the benefits of change it becomes a worthwhile exercise.

Thank you.

Mr CHAIRMAN: Okay, thank you very much. We might just have a 5 minute break and we will come back and discuss what we have been through. We might stop that recording if you want. Thank you very much.

HEARING ENDS