# Land Tenure Framework

## POLICY POSITION STATEMENT

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PREPARED FOR: KIMBERLEY REGIONAL GROUP

naja

*Business Consulting Services*

**ABN** 42 759 221 541

E info@naja.com.au

W **naja.com.au**

This publication has been complied by NAJA Business Consulting Service on behalf of the Kimberley Regional Group.

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# 1. Introduction

This Land Tenure Framework Policy Position Paper has been commissioned by the Kimberley Regional Group, comprised of the Shire of Broome, Shire of Derby/West Kimberley, Shire of Halls Creek and Shire of Wyndham/East Kimberley. This commissioning was initiated in response to their understanding of the frustrations experienced by pastoralists seeking to diversify their operations along with the challenges faced by the Shires themselves and experienced by developers and Aboriginal groups seeking to engage in other developments and infrastructure works. Land tenure changes required for normal local government operations, such as roads, housing, land development and the provision of infrastructure and services are often thwarted due, in part, to the complexities of the current land tenure framework and in particular, native title processes.

It is important for the Kimberley Regional Group that opportunities for economic development and diversification are supported in the region through effective policy that is sustainable, workable and takes consideration the needs and priorities of all key stakeholders.

If the Western Australian government is committed to developing the Kimberley region, a land tenure reform program that is focused on unlocking the economic potential that exists on pastoral leases and Unallocated Crown Land, in particular facilitating quicker and easier access to strategic land and water assets is paramount. At its core, this approach should focus on developing opportunities to increase revenue and economic returns to the State, as well as addressing Aboriginal disadvantage. The current situation is not sustainable and, put simply, what is needed is solid, confident leadership which is prepared to take a facilitative approach and adopt a far less risk averse position, as technically the legislation, in the most part, is not the restrictive factor.

This Position Paper has been prepared by NAJA Business Consulting Services (NAJA), following extensive consultation with stakeholders, research into current policy and practices, analysis of case studies and best practice and the formulation of potential policy positions. This document is intended to provide the basis for the initiation of robust conversations with relevant key political and government decision makers and the State Opposition to develop a contemporary tenure approval system by making policy change and driving refinements to the current processes to improve economic outcomes for the Kimberley region, and the State of Western Australia more broadly.

## 1.1. Development and investment in the Kimberley context

There has been significant interest in supporting development and investment in the Kimberley, with the Western Australian government initiating a range of programs and policies designed to facilitate growth in the region. This growth potential is multi-sectored, covering areas such as agriculture, mining, infrastructure, services, transport, tourism and energy. Additionally, the Northern Australia White Paper, developed by the Commonwealth, has seen a growth in strategic development in this region.

### 1.1.1. Seizing the Opportunity Agriculture

Traditionally pastoral leases have been restricted to grazing stock on natural vegetation, and whilst it is possible to diversify once a permit has been obtained, crop species must be used for pastoral purposes. Seizing the Opportunity Agriculture is a $300 million initiative supported by the Royalties for Regions program. The initiative is enabling the agricultural sector seize the opportunities presented from rising global food demand. This program aims to strengthen the capacity of regional communities where agriculture is a major economic driver.

Seizing the Opportunity Agriculture focuses on promoting local products and attracting new investment in agriculture, along with building business skills, research and developing and creating efficient supply chains.

The Water for Food program is a four-year, $40 million Royalties for Regions program which is funded as part of the Seizing the Opportunity Agriculture initiative. This program seeks to accelerate water investigations and optimise the use of pastoral land tenure across the State. This program seeks to build the potential for new irrigation precincts and the expansion of agricultural and pastoral opportunities in existing districts across the state.

The Water for Food program underpins Western Australia's strategic approach to increase productivity in agriculture, building export supply chains and encouraging capital investment in regional industries. The program supports public and private sector investment in new, large-scale irrigated agriculture and the expansion of existing areas by identifying where water is available, along with its quality and quantity.

The Water for Food program has five lynchpin aims:

*"Water for Food will seek to unlock the potential for intensive agriculture by identifying the most appropriate forms of land tenure to promote agricultural investment in Western Australia's rangelands.*

*The objective is to potentially provide existing pastoral lease holders with priority access to secure an alternative land tenure that attracts capital into higher-value activities, such as irrigation."*

Hon Terry Redman MLA, Minister for Regional Development, Water for Food Department of Water publication, July 2015

- Regional economic growth: increased certainty offered by sustainable water supplies will provide new opportunities for business development and boost the State's regional communities.
- Employment growth: act as a catalyst for increased agricultural and pastoral activity with a flow on benefit of increased capacity for local employment.
- Growing diversification: build confidence in the pastoral and agricultural industries to diversify and increase the scale and range of crops through irrigation by providing water certainty.
- Growing markets: facilitate industry to meet the demands of the global market through the provision of high quality food.
- Aboriginal Engagement: development of Aboriginal business partnerships is a key component of the increase of food production, particularly in the north.

As part of the Water for Food initiative, there has been particular consideration given to West Kimberley projects and alternative land tenure options. In October 2014 Stage One projects in Mowanjum, Knowsley and Fitzroy Valley were initiated with an investment of $15.5 million. These projects shared a common aim of supporting the establishment of irrigation on suitable land with proximity to common-user infrastructure (all-weather roads, ports, air services and airport facilities). These projects also sought to include an Aboriginal benefit element, with the potential to develop sustainable job and training opportunities.

A specific element of this part of the Water for Food initiative saw resources devoted to the development of a policy framework which was intended to assist pastoralists to change parts of their leases to facilitate a more flexible, investor-friendly land use tenure. As part of the Stage One announcement in October 2014, it was proposed that the new policy framework would aim to provide:

- Pastoralists with better security of tenure and opportunity to attract investment and diversify into irrigated agriculture.
- Information packages about options for appropriate tenure for project activities.
- Tools to obtain government approvals and licenses with guides to negotiate native title, Aboriginal heritage and associated considerations.

This transition to a more flexible approach has been addressed, in the first instance, through the Land Tenure Pathway for Irrigated Agriculture. The Land Tenure Pathways for Irrigated Agriculture, administered by Department of Lands, is explored in greater detail in *2.1 Impact of current land tenure framework*. In broad terms, the intent of the Land Tenure Pathways for Irrigated Agriculture was to provide information and guidance to proponents for a pathway to convert a portion of a pastoral lease or other Crown land to a high and more secure tenure such as a long-term lease.

*"Ideally, the pastoral lease of the future will not only run stock, but contain commercial-scale irrigation islands where a diverse range of cash crops and high value food products can be grown, alongside fodder."*

Hon Mia Davies MLA, Minister for Water; CEDA Leadership in agriculture: Seizing the Opportunity conference, 20 June 2014

Despite substantial government investment in projects connected to diversification of agriculture in the Kimberley, and a large body of work around the development of the Land Tenure Pathways for Irrigated Agriculture framework, there is significant stakeholder dissatisfaction and a perception that navigation to land tenure is prolonged and not achievable. There is the perception that the bureaucratic barriers in place are significant and that negotiation of them require an unsustainable level of investment, effort and expertise by project proponents.

### 1.1.2. Northern Australia White Paper

The Northern Australia White Paper – Our North, Our Future, lays out a vision for the development of Northern Australia, with consideration of the intersection of the interests and priorities of the Commonwealth, Western Australia, Northern Territory and Queensland.

The vision laid out in this paper highlights the importance of government and business each focusing on where they work to highest effect. Specifically, the paper emphasises

the importance of government facilitating successful business environments, rather than engaging in actual business development. The establishment of the pre-conditions for growth including the development of prudent economic policies, critical infrastructure to support development, regulation which minimises cost to businesses, a skilled workforce and high level, strategic research that supports businesses identify opportunities in the north.

The Northern Australia White Paper explores a range of complex factors impacting on development in the north. Of particular note to this Policy Position Paper is the discussion related to land tenure. The White Paper proposes that the north will never reach its potential if significant work is not undertaken to address the issues thrown up by land tenure, with the current challenges in accessing secure, tradeable titles to land and water. Further impacting the development in the north is the complex land tenure systems across this area of the country which are not easily understood, nor navigated, by potential investors or financial institutions.

*"Governments can't develop Australia's north. Governments can only create an environment that will foster the flow of capital into Northern Australia and provide conditions that encourage investment."*

Warren Mundine, Chair Prime Minister's Indigenous Advisory Council 2014

The White Paper notes the impact of pastoral leases on the ability of pastoralists to diversify beyond their current activity of grazing, with the challenges for obtaining authority to diversify obstructing their ability to pursue other developments such as horticulture or tourism. Additionally, the nature of the leases precludes them from having the same security as those with freehold, thus impacting on their ability to secure investment.

Native title is also highlighted as an area where outcomes could be strengthened, with both indigenous and non-indigenous stakeholders highlighting challenges around procedural complexity, timelines and uncertainty. The White Paper positions native title as an indigenous economic opportunity, with potential to secure development that can enhance the quality of life of indigenous Australians.

The White Paper suggests that a role for Government could be to provide support to improve the capabilities of native title bodies to more efficiently negotiate with business.

A further improvement to investment conditions in the north would include a greater depth of information on land tenure, water availability and soils, which currently is of a poor standard. More detailed information, combined with a commitment from government to accelerate investment in water infrastructure, will further enhance the investment environment.

Red tape is highlighted as another major negative factor impacting on investors. Connected with a risk adverse approach by government and bureaucratic processes that hamper business investment through unnecessary regulation. The White Paper proposes resetting the risk profile adopted by Government, moving from the risk averse approach to a risk neutral stance in relation to the development of the north.

Investment by government is also identified as critical, with traditional investment coming predominately from business – either through direct investment, public/private partnerships or via by user pays systems for government-funded infrastructure. Where it is difficult to pass the cost on to users or there is wider social benefit, there are

advantages in government directly funding the infrastructure development (for example, in road networks). There is a challenge for government in balancing its investment with the social benefits, with cost-benefit analysis being complex and the potential for end users to overstate benefits when they are not directly paying for the infrastructure. As such, further work on establishing the cost-benefit of potential infrastructure investments is critical.

Workforce development is a further significant consideration in the north, with a need to develop a more flexible labour market as well as deepening the skills base of the existing and potential workforce. Without access to a suitably skilled and experienced workforce, the north will not be able to realise its development potential and government intervention to incentivise workforce participation as well as improved skills development opportunities is critical.

*"The time taken to settle native title claims (including the backlog of claims) is a serious impediment to some developments. Importantly many Indigenous claimants are frustrated and disappointed by delays as we risk a whole generation never realising the benefit of their entitlements."*

Northern Australia Advisory Group, 2015

Finally, the White Paper identifies improved governance as an essential element for positive outcomes, proposing a strategic alliance between Commonwealth and States to drive realisation of commitments. Governments are encouraged to adopt a facilitator approach, with less focus on regulation, as well as testing policies to assess their applicability in the north. It is also considered that further investment by business in the north will have a natural flow on effect of strengthen governance with the influence of the high standards of accountability and governance necessitated by the nature of corporate entities.

## 1.2. A new paradigm and model

The current system and processes are long-winded, inefficient and unsustainable. The existing systems are characterised by duplication, onerous legal processes along with significant effort in developing propositions, business cases and project plans.

The current system is proponent driven and given the complexity of the approvals processes is significantly flawed. Government needs to intervene to drive action on projects, such was the case with the Ord, Mowanjum and Gogo developments.

The existing processes need to be modified on a number of fronts, with options including:

- Decision making referral timeframes reduced;
- Delegations to local governments (with standard legally developed conditions); and
- Winding back of government decision-making based on the viability of projects, instead placing the onus on the proponent to evaluate probable viability and government taking a view that a proponent being prepared to invest in a well-researched business proposition should be sufficient to demonstrate the probability of viability.

  An example of this approach in practice is with the 'first come, first served'

approach used in the water allocation policy introduced as a consequence of the government's failed attempts (which were successfully challenged) to 'pick winners' in terms of business prospects.

As explored in Section 2.2.1 Case Study 1 – Nita Downs Station, the practice of government involving itself in determining viability was questioned by independent legal advice sought by the proponent, which suggested that there no part of the *Land Administration Act 1997* that requires that a new station should be viable without a permit, and consequently this practice is based on policy and not on any legislative requirement.

There is also significant scope to provide greater clarity around the intent of a number of pieces of legislation and tighten alignment between different Acts. These include provision of clarity around:

- The term 'pastoral purposes' in Section 93 of the *Land Administration Act 1997*, potentially mirroring the definition of the 'primary production' definition in the Commonwealth *Native Title Amendment Act 1998* – given s24GA and s24GB of that Act allows a broad range of primary production activities. This would potentially not require a tenure change and as a consequence, not require an ILUA.
- Whether on Division 5 of the *Land Administration Act 1997* diversification permits are necessary for 'agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and activities ancillary' – particularly given that the need for permits for activities that form part of accepted pastoral practices which would seem to align with the intent of the lease agreement;
- Inconsistencies between definition of pastoral purposes in S93 and s51(c) of the *Environmental Protection Act 1986* (which requires authorisation for the clearing of native vegetation) and the current approach of requiring diversification permits for agricultural uses of pastoral land (such as S120 of the *Land Administration Act 1997*); and
- Terminology such as 'enclosed and improved', and 'unenclosed and unimproved' within the *Land Administration Act 1997*.

With regards to native title, adjustments to the current approach to improve outcomes for all stakeholders include:

- Innovative native title compensation models developed to allow proponents to negotiate a compensation, with the government to fund up-front and the proponent to repay through staged payments linked to approvals timeframes and milestones and/or lease installments;
- The reinstatement of the Native Title Office;
- Templates and tools for proponents to support ILUA (ILUA) negotiation and formation of agreements; and
- Establishment of a procedural remedy for unresolved native title disputes or failures to establish agreements.

## 1.3. Cross sector applicability

The proposed framework has been developed with the intention of supporting the diversification of pastoral and agricultural sectors. The framework has the potential to be applied to other sectors such as mining, tourism, energy and transport.

# 2. Western Australia's current land tenure framework

The Western Australian's government has devoted significant resources towards developing a land tenure pathway framework that will facilitate the growth and diversification of pastoral industries in the north of Western Australia. It is apparent that, despite these measures, good intent and considerable investment in the sector, there are still a number of issues with the current Land Tenure Pathways for Irrigated Agriculture framework that are impeding the realisation of the potential of the pastoral and agricultural regions, particularly in the Kimberley.

To understand the proposed approach, it is useful to understand the current context. The following overview of the impact of the current land tenure framework, along with case studies of the experiences of two pastoral companies in working within the framework, serve to highlight the current situation. An additional case study highlighting the West Arnhem Land Fire Abatement Project explores opportunities for industry and aboriginal land holders to collaborate to develop a mutually beneficial solution to land issues is also discussed.

*"…to realise the potential of Northern Australia we need a regulatory approval framework that embraces agility and entrepreneurship, provides certainty and predictability for people wanting to do business and is not ridiculously expensive."*

Warren Mundine, Chair Prime Minister's Indigenous Advisory Council 2014

If Western Australia is to the truly 'seize the opportunity' presented by pastoral and agricultural diversification in the north, it is critical that pastoralists and investors alike are able to secure appropriate land tenure via a transparent, consistent and easily navigable process. It is also imperative that this process be relatively quick to allow a responsive sector that can implement projects in response to emerging market needs and availability of investors. The current eight years to achieve freehold tenure is both unacceptable and unsustainable.

## 2.1.Impact of current land tenure framework

Feedback relating to the existing land tenure framework suggests that it is problematic in a number of areas and reforms proposed to date (Rangeland Reforms Package) are in essence only administrative in nature and do not appear to focus on increased revenue and economic returns to the State, rather seek to tightly manage access to Crown land assets.

In the context of the current situation with land tenure in Western Australia, it is important to consider whether it is reasonable that:

- The primary agricultural activity on pastoral leases in Western Australia is effectively the same as it was when leases were first granted in the 1850s – grazing stock on native vegetation;
- The State leases 34% of Crown land (87 million hectares) for a total value of production of only around $300-million per annum – constituting only three percent of the State's $10-billion of agricultural production each year;

- It costs more to administer pastoral leases than the State receives in rent for those leases; and
- Investors and lessees trying to expand and develop relatively small areas (500 to 15 000 hectares) of pastoral leases for high value horticulture and irrigated fodder production are tied up in red tape and complex negotiations for years.[1]

If a project proponent wishes to diversify a pastoral lease, there are two possible avenues – either a Diversification Permit or through the negotiation of long term leasehold changes or freehold title.

The Department of Lands acknowledges that, whilst Diversification Permits may offer an appropriate solution for many projects on Pastoral Leases, they have limited applications. These permits can only be used for small-scale activity used to support pastoral operations and can only be used for activities related to pastoral use. Additionally, they can only be held by the pastoral lessee, are not transferable and are not registerable (which impacts on the potential to secure finance through loans or third party partnerships).

The alternative option is to change purpose through tenure change, either leasehold or freehold. This is a complex process and proponents attempting to achieve this who were contacted as part of the development of this Position Paper had experienced, in some cases, the process taking in excess of ten years without resolution.

The Department of Lands developed the Land Tenure Pathway for Irrigated Agriculture (referred to as LTPIA) as part of the Water for Food initiative. The project aims to reduce the regulatory burden in Western Australia through the articulation of a clear pathway to develop land for irrigated agriculture.

Department of Lands proposes, in its publication Land Tenure Pathway for Irrigated Agriculture – Application Guidelines, that this project will assist project proponents obtain more secure land tenure to allow for the attraction of investment and facilitate diversification into high-value intensive irrigated agriculture. The project proposes that it will make the process clearer and to streamline the available information. There is no suggestion that the current processes will be or have been modified in any way. Rather the Land Tenure Pathways for Irrigated Agriculture project is focused on better articulating the current processes to enable project proponents to have access to a more transparent explanation of the pathway.

The Land Tenure Pathway for Irrigated Agriculture involves a four-stage process and is describe in a high-level way in the Application Guidelines (Introduction, page 3) as involving the following process (timelines sourced from Appendix A of the document):

[1] Rangeland Reforms Discussion Paper – Mark Lewis MLC Mining & Pastoral Region, 2016

| Stage | Description | Estimated Timeline |
|---|---|---|
| **Application Stage 1:** | Proponent develops idea, submission of Crown Land Enquiry Form to Department of Lands for initial land tenure investigation and assessment. | Applicant completion of Crown Land Enquiry form + 2 months |
| **Application Stage 2:** | Proponent seeks preliminary advice and in-principle support, develops Project Proposal. Project Proposal is submitted to Department of Lands for assessment and to undertake statutory referrals. Department of Lands then refers the application to the Minister for Lands and Cabinet for approval. | 7 months + unspecified timelines for Ministerial and Cabinet consideration |
| **Option Agreement Stage** | If Project Proposal is approved, proponent is offered a three-year Option, providing the opportunity to determine project feasibility. There are a range of conditions that must be met during this Stage. | 3 years |
| **Tenure Stage** | If all conditions of the Option are met, a four-year lease is issued. The land must then be developed in this final stage. Once all the conditions of the development lease are met, a long-term lease or freehold, as approved, will be granted. | 4 years |

To support the development of the proponents understanding of the process, Department of Lands has included an Appendix in the form of a detailed flow chart. This document, in printed form, constitutes a flow chart font approximately size nine, and the overall document spans roughly equivalent to four A4 landscape orientation pages.

Whilst on the surface it may appear that this Appendix (and the associated volume of Application Guidelines) has the potential to provide clarity to the process, in reality it provides an intimidating impression to project proponents with the extensive flow-charting arrows drawing the eye through a series of potentially infinite loops, dependent on the proponent successfully navigating bureaucracy or negotiating agreement with stakeholders. As later described in this paper by a key stakeholder, it has strong resemblance to a game of snakes and ladders, rather than instilling confidence in a potential project proponent that there is a likelihood they will to achieve success with their project.

In addition to the bureaucratised process, there is no procedural remedy if a project stalls due to challenges negotiating an ILUA and this further compounds the difficulties in achieving tenure. Stakeholders have shared that this is a considerable challenge for project proponents.

## ABOUT NATIVE TITLE AGREEMENTS[2] & FUTURE ACTS[3, 4]

A range of agreements involving land use and access to land can be made under the *Native Title Act 1993* (NTA) (Cwlth) for example agreements under the NTA right to negotiate or indigenous land use agreements.

### Agreements under the Right to Negotiate

The majority of land use agreements in Western Australia are made under the right to negotiate (the RTN). Where the RTN applies, registered native title applicants can negotiate over proposed future acts, such as the granting of a mining lease or the compulsory acquisition of native title rights and interest. Agreements reached under the RTN usually include access and heritage protection as well as compensation for the loss or impairment of the native title rights and interests. An RTN agreement is contractually binding for all parties involved in the negotiation.

### Indigenous Land Use Agreements

An Indigenous Land Use Agreement (ILUA) is a voluntary agreement between Aboriginal groups and others about the use and management of land and waters. An ILUA is much more flexible than an RTN agreement and may include a broader range of interests. This type of agreement can address past and intermediate acts as well as future acts. It may also replace the future act process entirely. An ILUA may address issues of access, compensation, extinguishment and coexistence. The agreement may be made separately from the formal native title process, form a part of that process or pave the way for a native title determination. An ILUA does not extinguish native title but may, by agreement, allow for the surrender of native title In WA over fifty ILUA's have been registered

### What is a future act?

A future act is a proposal to deal with land in a way that affects native title rights and interests. Examples of future acts include the grant of a mining tenement or the compulsory acquisition of land. A future act will be invalid to the extent it affects native title unless it complies with the procedures set out in the *Native Title Act 1993* (Cth). These procedures vary depending on the nature of the future act.

### The Future Act Process

The future act process provides native title holders and registered native title applicants with specified rights from the time a claim is registered, until it is determined. These rights vary from the right to be consulted, to the right to negotiate over some future acts, or activities on the land.

The State must notify native title holders or native title applicants registered under the Native Title Act (NTA) of the intention to carry out a future act. In most cases, native title holders and registered native title applicants instruct their representatives (usually one of the native title representative bodies) to represent them in ongoing proceedings or negotiations regarding the future act.

Native Title Parties, as well as members of the public, are notified of proposed future acts in WA (to which the Right to Negotiate applies) under Section 29 of the NTA.

### The Right to Negotiate

Registered native title claimants and native title holders (Native Title Parties) have the right to negotiate (RTN) about some proposed activities and development, such as mining, insofar as the proposal may affect their native title rights and interests.

If the government considers that the future act will have minimal impact on native title (eg. some exploration and prospecting licences), the Section 29 notice will include a statement to the effect

[2] Department of Premier & Cabinet, https://www.dpc.wa.gov.au/lantu/Agreements/
[3] National Native Title Tribunal http://www.nntt.gov.au/futureacts
[4] Department of Premier & Cabinet, https://www.dpc.wa.gov.au/lantu/FutureActs

that the act attracts the 'expedited procedure'. This means that the government considers that the act should be 'fast-tracked'. If the expedited procedure is used, the future act can be done without negotiating with the Native Title Parties.

If no native title parties come forward after four months from the date given in the Section 29 notice, the act can be done without further reference to the NTA. If, however, there are objections at the end of the four month period, the government, the developer and the Native Title Party must negotiate 'in good faith' for at least six months about the effect of the proposed development on the registered native title rights and interests. The parties can ask the National Native Title Tribunal to mediate during the negotiations. If the negotiations do not result in an agreement, after the parties have negotiated for at least six months, the parties can ask the National Native Title Tribunal to decide whether or not the future act should go ahead, or on what conditions it should go ahead.

### The Expedited Procedure

Native Title Parties can object to an application being fast-tracked. Lodging an objection means that the Native Title Party is objecting to the grant being made without reference to the RTN procedures. Native Title Parties have four months from the date given in the Section 29 notice to lodge an objection. If the National Native Title Tribunal receives an objection, it will set up a preliminary conference with the Native Title Party, the developer, and the government party, to facilitate discussions between the parties.

The preliminary conference is usually scheduled within 28 days from the date the Tribunal receives the objection. An agreement may be reached on the basis of, for example, site clearance surveys, heritage protection agreements or other matters. If a negotiated agreement cannot be reached, the Tribunal will conduct a formal inquiry to determine whether the expedited procedure should apply or not.

If the Tribunal determines that the expedited procedure applies, the development can then go ahead without a negotiation process. If, however, the Tribunal determines that the expedited procedure does not apply, the proposed future act is moved into the RTN stream. All parties then enter into formal negotiations in good faith.

### Other Procedural Rights

In some situations, the RTN does not apply. In these circumstances, Native Title Parties may have the right to be notified, to be consulted, to object and to be heard by an independent umpire.

### Why do we have future act processes?

Future act processes are based on the principle that in general, acts affecting native title will only be valid if they can also be done on freehold land. These processes gives effect to the principle that in appropriate cases, these acts should only be done after every reasonable effort has been made to secure the agreement of the native title holders. They also provide certainty by ensuring that future dealings with land are enforceable, notwithstanding the existence of native title.

## 2.2. Case Studies

The following Case Studies have been provided to highlight the experiences of a number of pastoralists who are seeking to diversify their businesses. The information presented has been sourced from the pastoralists and represents their interpretation on the process they experienced. Additional Case Studies highlighting the progress of a State Significant project, along with commentary in the media around land tenure in the Kimberley have been provided to deliver further insights.

In developing these Case Studies, as well as in conversations with other stakeholders, it is apparent that whilst the project proponents may have a strong understanding of the pastoral industry and business propositions which appear viable, their frustrations in

getting traction on the projects appear to be caused by a combination of a complex bureaucracy, lack of understanding of how to effectively navigate government processes and a need for capacity building in terms of the development of business propositions. Additionally, there is likely a gap in the capacity of both project proponents and native title holders to engage in considered negotiation leading to agreement on positive outcomes for both parties.

Essentially, the system is designed with an assumption that the parties involved have a high degree of expertise in both working within government processes, as well as being able to engage and negotiate with stakeholders. Although pastoralists are likely extremely capable at operating their businesses and, in instances where diversification is considered, in developing innovative and sustainable business propositions, there may be a skills gap in terms of their ability to navigate bureaucratic processes as well as undertake complex negotiations.

Without expert support or changes to the current system (or possibly both) it is very probable that small scale project proponents, such as those highlighted in the Case Studies and media examples, will continue to fail to get traction, which is at odds with the intent proposed by the State and Federal governments in their drive to develop the north of the state.

### 2.2.1. Case Study 1: Nita Downs Station

In 2006 the Foreshaw Pastoral Company (FPC) identified an opportunity to establish a cattle fodder production and backgrounding operation on 3,000 hectares of land within the Nita Downs pastoral lease.

The FPC followed with interest the developments such as La Grange Agriculture Opportunities project recently completed, the Northern Beef Futures and Water for Food programs. The proposal for this project was developed based, in part, on FPC's understanding that State Government was supportive of projects of this nature with significant investments and undertakings to expand irrigated agriculture production and improve the productivity of the beef cattle industry in the north (such as the Seizing the Opportunity initiatives).

Despite FPC's perception that projects like they were proposing were priorities for the State Government, the FPC has been thwarted in attempts to secure approvals to proceed and has been frustrated in attempts to realise the project. A significant challenge to success has been negotiating approvals through Department of Lands.

The proposed FPC development centres on a 3,000ha parcel encompassesing land identified in the La Grange project as optimal for irrigated agriculture with preferred soils and depth to groundwater of 19 metres. This project represents the opportunity to bring strong outcomes for both FPC and the regional economy, further demonstrating the worth of the significant investment of time and resources into the La Grange project, Water for Food, Northern Beef Futures and the *Seizing the Opportunity Agriculture* projects.

In order to secure the capital investment to enable the project to happen, FPC is seeking Department of Lands approval under section 134(1) of the *Land Administration Act 1997* to transfer its interest in part (3,000 ha) of the Nita Downs pastoral lease to a new entity. FPC received advice from Department of Lands in May 2015 that the transfer

process under section 134 is the appropriate process for subdivision under the *Land Administration Act 1997*. The main purpose of this subdivision being to secure third party investment so Department of Lands can have security in the land and the FPC main pastoral enterprise is kept separate.

In order for the Pastoral Lands Unit (PLU) to approve the transfer of this land, the PLU must be satisfied that each part of the lease will be capable, when fully development, of carrying sufficient stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit.

The full development of the 3,000 ha as FPC proposes will include an irrigated fodder production area of 800 ha and fencing of most of the remaining area into backgrounding paddocks. This operation is anticipated to be capable of supporting at least 10,000 head with a potential (but not limited to) 20,000 based on this model.

The FPC have been advised by Department of Lands that the new station should be viable without a permit. The FPC have received their own independent legal advice that disagrees with this position. In the first instance, the FPC's legal advice puts forwards that there is no part of the *Land Administration Act 1997* that requires that, when looking at the viability of a pastoral lease, there needs to be a consideration of whether activities require a permit. "Fully developed" infers that consideration should be given to the potential of the land, rather than solely its current state. When this area is fully developed as per the FPC proposition, it will be viable.

Further advice from the FPC's legal advisor proposes that there is also no part in the *Land Administration Act 1997* that suggests that, when considering the viability of a pastoral lease, whether any "third party consent" is necessary or must be obtained is a relevant consideration. As noted above, it must be presumed that the land would be "fully developed". The FPC's advisor suggests that a reasonable, common sense and contemporary interpretation of section 134(4)(a) must prevail. Most land parcels in the state could not be 'fully developed' without some type of approval or permit. For example, a building permit, as well as development approval in some cases, is required to build a house on a residential lot (i.e. to fully develop that lot for residential purposes) regardless that the lot may be zoned for that residential purpose.

A further complexity in the Nita Downs proposal is the development and implementation of an ILUA. Despite ongoing negotiations, when an ILUA proposal was negotiated after 5 years of discussion, the Traditional Owners did not endorse it as it was considered that, on reflection, they were entitled to more economic benefits.

The proposed FPC development is capable of securing relevant approvals given the type of development that it is and where it is – a cattle fodder production and fattening enterprise on a pastoral lease. The land parcel, when fully developed as FPC proposes, is capable of carrying sufficient stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit. This proposed subdivision will allow FPC to start immediately with outside investment while there is genuine interest. There is the potential once this initial stage is complete for FPC to explore opportunities via the Water for Food pathway and look at alternative land tenure options such as a General lease with an ILUA. The new development will allow FPC to continue their current joint project with their native title holders and the Karajarri rangers to relocate cattle away from the Munro Springs area and over to the irrigation area. As the springs are of

cultural and environmental significance, the traditional owners are supportive of FPC's plans to protect this area.

At the time of writing, this process had been going on for approximately a decade and was still unresolved.

### 2.2.2. Case Study 2: Country Downs Station

When Country Downs Station (CDS) embarked on the process to secure land for a development project, they were cognisant of the traditionally long time frames to achieve land tenure. The last land tenure transition undertaken with CDS took twelve years to finalise.

The project proposed by CDS would see the station access more land for grazing purposes to improve the viability of cattle production on CDS. They identified a parcel of land to access under license for the purpose of grazing, and this parcel of land is adjacent to the existing pastoral lease (in fact, it had been part of the original lease but had been split off in a land swap initiated by the previous lessee and was used for pastoral purposes) as well a portion of the current Country Downs lease.

CDS is keen to bring this project to fruition as a grazing licence would significantly enhance the productivity of the business by increasing the scale of their grazing to meet their operational and production targets which have been identified to achieve a sustainable business model.

Photo Credit 1: Country Downs Station

The need for increased scale is also validated by the Country Downs Ecologically Sustainable Rangelands Management Plan which has demonstrated the appropriate stocking levels for CDS land systems. The CDS proposal would enable them to increase the scale of their operation by approximately 30%. The proposal will contribute to achieving the aim of the Northern Beef Futures project which is to double the value of northern beef production.

The subject land also has strategic fire mitigation significance to CDS with it being immediately adjacent to their current operation. It has been a significant liability for CDS in terms of bushfire risk since the land swap occurred. If CDS take responsibility for this area, they will be providing ecosystem services including wet season mosaic burning and early dry season preventative burning programs in liaison with the Department of Fires and Emergency Services and Kimberley Land Council ranger groups. CDS believes that this will significantly improve the fire regime in the area to the benefit of the environment and community safety.

CDS are seeking a Section 91 licence with a duration of at least 20 years with the option to renew the licence at the end of the term. CDS considers that this is a reasonable and appropriate duration to offset the significant investment of time and resources required to bring the land up to optimal condition for grazing. Additionally, CDS views this as an

opportunity to demonstrate to the broader pastoral industry a workable tenure solution that allows for low intensity crown land usage without compromising native title interests.

CDS submitted their application for a Section 91 licence to Department of Lands in July 2016. CDS were concerned that the process had the potential to be drawn out, based on communications with Department of Lands. The initial concerns of CDS were:

- Inability for Department of Lands to provide any form of timeframe to complete the approvals process;
- An emphasis from Department of Lands staff that work will be addressed in order of priority, without clarity around what this constitutes; and
- Suggestion that approvals process could be delayed by inaction of other agencies who are required to input into the approvals process.

These concerns became moot in August 2016 when Department of Lands advised that they were unable to progress the application as a Section 91 licence had not been deemed the most appropriate form of tenure because of the size (approximately 70 500 hectares) and term (20 years) of the lease. Department of Lands proposed that a more suitable form of tenure would be a pastoral lease granted over the subject portion of Unallocated Crown Land, either as a new standalone pastoral lease or the amalgamation of the Unallocated Crown Land into CDS' adjoining pastoral lease. Furthermore, Department of Lands noted that the granting of this was not guaranteed and also required:

- Approval of the PLB;
- Due diligence investigations by Department of Lands; and
- Resolution of a native title future act process.

CDS have received independent advice that contradicts Department of Lands' advice suggesting that Section 91 licenses do not constitute tenure. The range of opinions around the interpretation of the *Land Administration Act 1997* has led to considerable frustration and investment of resources without resolution. It is CDS' concern that pursuing a standalone pastoral lease will see them tied up in bureaucracy for many years. Whilst their ultimate intention is to establish a pastoral lease over the land, a Section 91 licence would provide them with the opportunity to commence developing the project and improve the sustainability of their business and contribute to their local economy.

CDS then proceeded to supply the information requested by Department of Lands to facilitate the development of a pastoral lease, as proposed by Department of Lands as being more appropriate for the context. In December, Department of Lands then advised CDS that the department had progressed and finalised, in principle, its policy and business process for the granting of Pastoral Lease tenure. With this policy applied, the Department found that the grant of a Licence for grazing activities prior to the nomination or selection of a preferred proponent for the grant of a supporting Pastoral Lease is no longer appropriate.

The Department of Lands advised that this was due to the uncertainty of a licensee not actually eventuating to be the determined Pastoral Lessee. The Department noted that the Minister for Lands is to consult with the Pastoral Lands Board, under the Land

Administration Act 1997, to advertise the method of release of land for a Pastoral Lease (i.e. tender, direct offer, auction etc.). That confirmation and advertisement of the release method is unable to occur until after the Department completes its due diligence, the Minister for Lands and Pastoral Lands Board consider all responses and make a determination on the grant proceeding, and if so under what terms and conditions. Department of Lands advised that this decision is made at a point much later in the Pastoral Lease investigation process and that a key consideration in shaping the aforementioned process is the potential of infrastructure being installed/developed on site (with or without authorisation) and the subsequent difficulty in seeking licensee/infrastructure owners in vacating and removing the infrastructure from the land upon expiration or other termination method of the Licence.

The Department advised that it is unable to accept providing one party interim access to land to utilise for pastoral related activities without a determination being in place that the party is the preferred proponent for a Pastoral Lease over the land and where Native Title processes also allow a licence grant.

The Department was able to consider granting a s91 Land Administration Act 1997/s24LA Native Title Act 1993 Licence to CDS to undertake the proposed mosaic burning activities on the land, subject to completion of relevant due diligence process. However, it should be noted that in the event that Native Title rights and interests were determined over the subject lands (or portion thereof) the Licence would terminate and the activities would need to cease immediately. The Department advised that for the s91 Licence grant that the contemplated purpose would be consistent with environmental related burning activities and the term would be 1 year. The Licence would be subject to termination on determination of Native Title rights and interests. Consideration could be given to any subsequent applications for regrant of Licence closer to expiry, and after Department of Lands had given due consideration – taking into account assessment of timing for Native Title determinations. The Department advises that the s24LA Licence could be considered to be granted to support the environmental related burning activities, but as advised and for reasons explained above not the pastoral activities. Department of Lands noted CDS comments around the historical use of the land for pastoral related activities but the Department maintained its position regarding the application of licences as detailed.

The Department of Lands recommended that CDS make contact with the National Native Title Tribunal to seek confirmation of the consultation process involved for determination of Native Title, to progress stakeholder notification/consultation as appropriate. The Department was not able to provide advice on the negotiation of separate ILUAs but was seeking confirmation from its Native Title Unit on the most appropriate process to address Native Title rights and interests for the purpose of a Pastoral Lease grant over this area and indicated it would provide an update to CDS on this once confirmation of appropriate process and requirements is received.

At the time of writing, CDS were determining the best way forward, given the seeming difficulties in obtaining authority to use the land for pastoral purposes and the project had not been progressed.

### 2.2.3. Case Study: Ord East Kimberley Expansion Project

The Ord East Kimberley Expansion Project is an example of a State Significant Project – as such, receiving significant government support to plan for and negotiate the approvals

and land tenure process. This project is clearly of a far more significant scale that than explored in Case Study 2.2.1 and 2.2.2, however the process for navigation was the same, except that the proponents have less capacity and access to resources, along with limited support from government in terms of negotiation.

The East Kimberley Development Package saw the establishment of the federally funded $195m National Partnership Agreement with the Commonwealth Government to match the State Governments $330m commitment to the infrastructure to enable irrigation expansion, encompassing 27 projects for the construction of agricultural infrastructure, supporting social community and transport projects. All of these projects were completed prior to end 2013.

With regards to the Irrigation Expansion Project, significant progress was made within a tight timeframe. In 2009 the project scoping and design was completed, along with securing relevant approvals, Request for Proposals and tenders developed. 2010 saw Phase 1 construction commence and EPBC approval secured. Concurrently, Phase 2 design and costing was commenced. Phase 1 was completed in 2011, with Environmental Protection Biodiversity and Conservation (EPBC) approval gained and land released in preparation for Phase 2. Phase 2 commenced in 2012, with completion in 2013.

*"Native title is only the starting point for our people in reclaiming land…the next step is being able to freely exercise our rights to promote economic development and build housing to the advantage of our communities…it's about understanding what are those barriers, what are those extra layers of regulation that hinder people using their assets and participating in economic development."*

Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 2015)

This fast-tracked project saw significant achievements in a complex context with the navigation of environmental and water allocation challenges, along with involved construction process and the need for local skills building. Additionally, a priority for the project was to build in regional and community benefits that were contextually appropriate and sustainable.

Despite this complex environment, Phase 1 (2010-2011) saw the completion of 19kms of irrigation channel, 13kms of road, development of hillside drains and syphon structures, the Moonamang Joint Venture, along with capacity building in the MG Corporation (representing the Miriuwung and Garerrong people). Phase 2 (2012-2013) saw further rapid development, with 3 million cubic metres of dirt moved, the development of 28kms of irrigation channel, 22 farm supply points, 10 major culverts, 40kms of flood levy at a height of 5m, 8 flow structures, 36kms sealed roads, 70kms of drains – representing 360 000 man hours. Additionally, the Phase saw the establishment of the Leighton Contractors and Wanna Work Joint Venture and development of MG Services within MG Corporation.

This project saw significant flow on benefits to the region, including:

- $50m construction increase in the housing sector;
- $100m+ per annum new farming system;
- $195m EKDP partnership;

- 16 000ha CPC freehold land;
- $70m direct spend in regional businesses;
- 300-400 permanent jobs created;
- Approximately 21% aboriginal employment on the project;
- Pre-investment made in future expansions;
- Development of the processing sector; and
- Leveraging of on shore gas and mineral developments.

Photo Credit 2: http://biggerpicture.regions.wa.gov.au/Kimberley/Ord-East-Kimberley-Expansion

The achievements over the five years are impressive, however it is likely that these were only achieved due to the devotion of significant government resources to facilitating the progression of this project. A highly facilitative approach was adopted, and whilst the project was driven by industry, government resources were pivotal in ensuring that the project was not impeded by a lack of capacity to navigate the complex approvals and native title processes.

### 2.2.4. Case Study: West Arnhem Land Fire Abatement

The West Arnhem Land Fire Abatement Project (WALFA) is an innovative carbon offset program with a multitude of environmental and social benefits. During summer, Australia experiences some of the worst wildfires on the planet due to its arid savanna landscapes. The low moisture content in the air, combined with the leafless native shrubbery and feral introduced grasses, positions areas such as the Northern Territory as prime locations for disastrous wildfires. Throughout history, wildfires in the Northern Territory area have destroyed lives, homes, and native habitats.

Photo Credit 3: http://energy-pubs.com.au/oil-gas-australia/conocophillips-fire-management-success/

The WALFA project investigated Indigenous Australian history to find a different perspective on fire management; particularly using controlled burns during the early-dry season. Since 2006, the project has successfully offset over 1 million tonnes of CO2e and employed over 200 indigenous Australians to impart their knowledge and assist in the preservation of the land. Additionally, the project has been able to conserve indigenous rock art sites and wild animal habitats.

WALFA employs Indigenous rangers who use their traditional knowledge in combination with modern technology. Supplementary to using early-dry (March-April) season burning, late-dry (November-December) season fires are fought with helicopters to reach fires in challenging terrain, and rangers suppress fires using back-burning and rake-hoes.

WALFA is a positive example of industry and Indigenous Australians working together to create mutually beneficial solutions to land issues. The WALFA project is made possible through the collaboration of several organisations, including the Northern Land Council, North Australian Indigenous Land and Sea Management Alliance, Charles Darwin University, the Northern Territory Government, and a $1.2 million deal with Conoco Philips. Furthermore, WALFA relies on the work of five ranger groups: Warddeken, Adjumarllal, Djelk, Mimal and Jawoyn.

The project delivers benefits to all parties; Conoco Philips claim the emission reductions as an eligible offset program under the Federal Government's Carbon Farming Initiative, while locals receive employment and fire management training for over 200 Traditional Owners and rangers each year. The project brings new livelihood opportunities for indigenous communities where mainstream economies are typically limited.

Before the implementation of WALFA's early-dry season burns, uncontrolled wildfires could tear through tens of thousands of square kilometres of land, damaging trees, habitats for small marsupials, and putting local lives in danger. The estimated emissions from one of these uncontrolled burns is over 350,000 tonnes CO2e, as well as making a significant contribution to the nation's methane and nitrous oxide gas emissions.

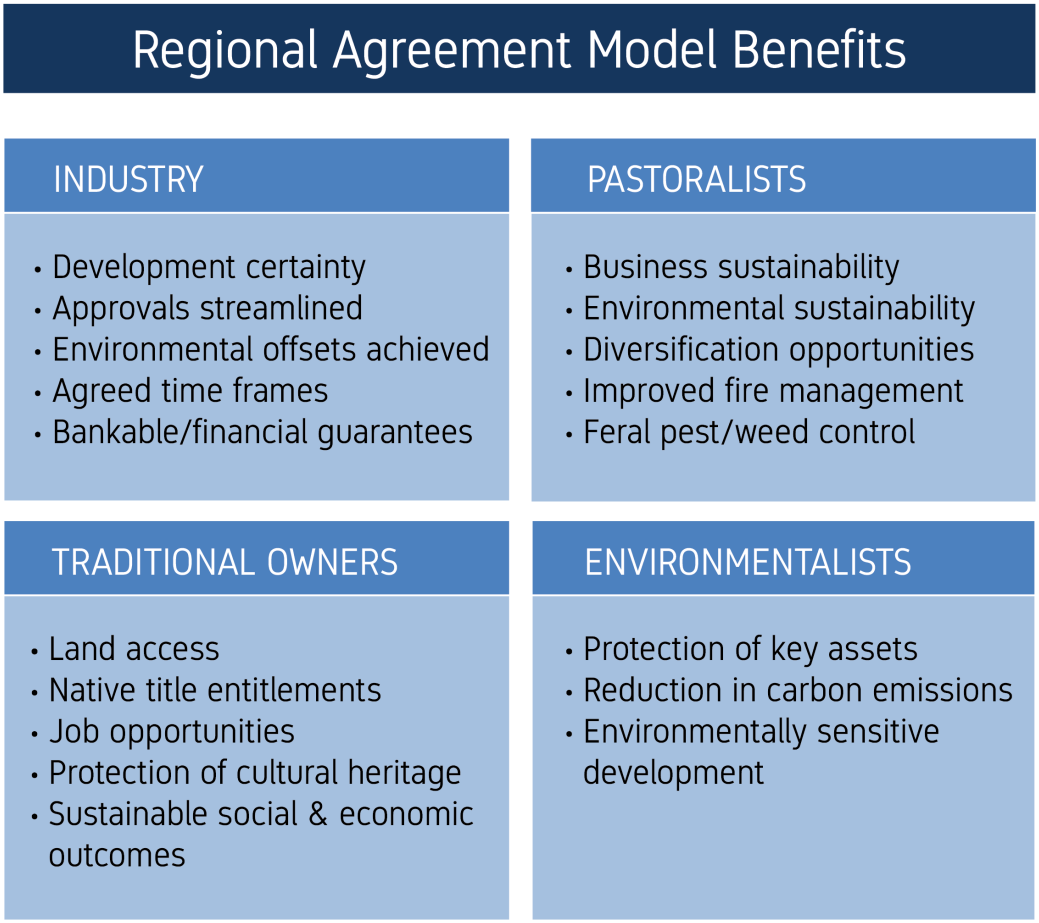
According to research conducted by CSIRO, most savannas burn once every 2-4 years in the late-dry season, producing 3-4 percent of Australia's total accountable greenhouse emissions.

Photo Credit 4: http://www.theaustralian.com.au/news/inquirer/frontline-defence-against-fire-and-weeds/story-e6frg6z6-1226598497959

With the help and knowledge of the indigenous ranger teams, WALFA were able to use early-dry season burns to control late season wildfires and restrict their ability to spread and cause damage. This innovative technique to reduce the frequency and intensity if the fires increases the amount of carbon stored in the landscape, resulting in a decrease in carbon emissions of over 35%, from 350,000 tonnes down to 210,000 tonnes. This gives a CO2e abatement of 140,000 tonnes, a tradeable, saleable commodity in the form of carbon credits bringing huge opportunities for the local communities.

In early 2012 the Savanna Burning Methodology was approved by the Federal Government under the Carbon Farming Initiative (CFI). As a result, the local indigenous ranger groups were able to bring in a new economy to their communities, selling and trading carbon credits by managing their land using controlled burning techniques.

The development of a Regional Agreement such as seen in the WALFA project has the potential to realise significant benefits for stakeholders, as outlined in the table below. This approach has the potential to dramatically improve the social and economic benefits to traditional owners, while offering positive outcomes for industry, pastoralists and environmentalists. An approach that prioritises these multi-dimensional benefits and sustainable social and economic outcomes for regional communities is extremely desirable and should be strongly considered by project proponents and stakeholders when exploring options for a development proposal.




## 2.3. Media Coverage Seizing the Opportunity Agriculture

Since the establishment of the Seizing the Opportunity Agriculture program and its associated initiatives, there has been many positive news articles shared about the potential they offer, along with celebration of the initial success of trials and pilot programs. Now just over two years on from the establishment of the program, frustration is setting in and commentary around concerns with the land tenure and approvals process associated with pursuing the development projects mooted by Seizing the Opportunity Agriculture are rising – both in the traditional media as well as on the social media platform Twitter.

### 2.3.1. Ceres Farm

Matt and Melanie Grey own Ceres Farm where they grow crops including melons, corn, chia and pumpkins. In 2014 the Western Australian Government announced that the Greys were the preferred developers of a 360-hectare parcel of land adjacent to their existing property in the Ord Valley. The experiences of the Grey's in attempting to

unlock this land was highlighted in the recent media article "Red tape strangling young family's dream of developing new farm in the Ord Irrigation Scheme"[5]

Photo Credit 5: Ceres Farm

The ABC reports that the family had anticipated a relatively quick transition from the initial announcement of their status as preferred developer through to actually commencing the development. In reality they have been caught up in bureaucratic processes. Mr Grey describes their experience of being "hand-balled" between government departments, with significant time and resources devoted to achieving little progress.

*"If I had my time again, I would think twice before I wasted my time on the application process…the politicians are on board, but there is a massive breakdown at the bureaucratic level and we have been fighting it for over two years now."*

Matt Grey, Ceres Farm, ABC.net.au, December 2016

The Grey's began the process to get approval for development in 2014, but a lease was not forthcoming until August 2016 and, at the time of the article in December 2016, they were still negotiating the lease as they felt that the lease created by Department of Lands did not represent an understanding of what the project involved. Furthermore, they were still waiting on a clearing permit, but given the low rate of clearing permits being issued in the Kimberley at this time they are not confident this approval will be issued.

The Grey's have taken on two additional employees in anticipation of this project but they now consider it unlikely to see the activation of this opportunity. Mr Grey said "If I had my time again, I would think twice before I wasted my time on the application process…the politicians are on board, but there is a massive breakdown at the bureaucratic level and we have been fighting it for over two years now."

[5] http://abc.net.au/news/2016-12-02/red-tape-strangling-kununurra-family-plans-to-develop-new-farm/8051904

### 2.3.2. Mowanjum Station

The Western Australian Government and Mowanjum Aboriginal Corporation (MAC) partnered in 2014 with the investment in $3.6 million irrigation trial to grow fodder crops for cattle, as part of the Water for Food project.

This project has seen the first centre pivot on Mowanjum Station commissioned in 2015 with over 200 tonnes of hay and silage cut in March. The Government heralded the project as "a demonstration model for other Aboriginal pastoral stations". Furthermore, the project was awarded the Premier's Award for Improving Aboriginal Outcomes.

Photo Credit 6: http://www.waterforfood.wa.gov.au/Projects/Mowanjum-Irrigation-Trial

Despite these successes and positioning of this development as a flagship program for the Kimberley and in particular, Aboriginal communities, the project featured in the media when a bureaucratic roadblock placed a halt to expansion. ABC News, along with other outlets, featured the story, highlighting the inconsistencies between the government's messaging around development in the Kimberley and the realities of dealing with the bureaucracy to activate the projects[6].

When the MAC sought to expand the trial (with political support), the Department of Environmental Regulation blocked their clearing application for the staged expansion of up to 223 hectares of irrigation.

ABC News reported MAC CEO Steve Austin, and the community he represents, as being frustrated and confused by the rejection of the application.

"There doesn't seem to be any reasonable explanation on why we can't expand, and it all comes back to the environmental regulation department which keeps putting these head bulls up against us," he said.

*"There doesn't seem to be any reasonable explanation on why we can't expand, and it all comes back to the environmental regulation department which keeps putting these head bulls up against us…the community can't understand why you've got government on one hand supporting you, but government on the other hand putting all of these restrictions on you and stopping you from moving ahead."*

Steve Austin, Mowanjum Aboriginal Corporation, ABC.net.au, November 2016

[6] http://www.abc.net.au/news/2016-11-04/mowanjum-irrigation-expansion-blocked-by-environment-department/7992210

"The community can't understand why you've got government on one hand supporting you, but government on the other hand putting all of these restrictions on you and stopping you from moving ahead."

ABC News reported that Mr Austin understood that the application had been rejected on two occasions by the Department of Environmental regulation on the grounds of flora and fauna concerns such as bilbies.

"We've submitted extensive flora and fauna surveys which shows there's nothing to be concerned about, but they're saying there's bilbies, honeybee eaters and quolls, even though there's no evidence of them living on our property at all," he said.

"The Indigenous people know this country better than anyone, but that's what comes back every time we put in a clearing application."

Mr Austin advised that since then they had been asked to undertake a hydrological assessment before the Department would be in a position to consider the application again. This seemed unviable to Mr Austin who questioned why they would spend $100 000 on an assessment which may still not lead to the approval of a clearing permit.

The Department of Environmental Regulation was reported in the same article as indicating that the original 2014 clearing permit was appealed by a third party and when the appeal was dismissed it was noted that future expansion to clearing may require further information such as flora and fauna surveys.

The Department shared that the applicant's flora and fauna surveys were broad scale (conducted of 208 000 hectares) and not adequate for the assessment of potential environmental impacts from the clearing proposal. The applicant was requested to provided targeted fauna and flora surveys to inform the assessment but declined and as such the application was assessed and refused.

The frustrations of the MAC are compounded when these findings are contrasted with Ministerial comment such as Lands Minister Terry Redman saying the Mowanjum community "could now proceed with plans to develop an irrigation precinct, feedlot and related infrastructure with the option for freehold tenure" following the Western Australian Government's approval of the project in March 2016.

# 3. Land tenure framework stakeholders

As a pre-cursor to the development of this policy position paper, significant engagement with key stakeholders has been undertaken. In addition to the leaseholders and project proponents interviewed for the case studies shared in this paper, meetings were conducted with all sides of State politics, Directors General of relevant State Government agencies and representatives of relevant peak bodies. These perspectives have informed the shaping of this policy document, with a high-level overview of the insights and views of each stakeholder being provided in this section.

## 3.1.National Native Title Tribunal

Deputy Registrar of the National Native Title Tribunal, Dr Debbie Fletcher discussed federal perspectives on the native title issues raised as part of this engagement process. The challenges thrown up by a lack of a procedural remedy for small-scale, non-mining projects was discussed at length. With no mechanism to move forward stalled projects, small-scale development projects, such as those in agriculture, tourism and road development, are unable to be resolved and as a result, no benefits can be realised for any of the parties involved.

Dr Fletcher proposed the development of a suite of negotiation tools and the provision of template ILUAs, rather than legislative changes. She also suggested that a best practice approach would be to secure agreement at the start of the process to utilise arbitration in the ILUA process, allowing for the facilitation of an agreement in a structured manner not unlike the existing provisions under Subdivision P, Section 26 of the *Native Title Act 1993* which incorporates a clear dispute resolution process. There is the potential to develop an administrative policy manual using Subdivision P, Section 26 as a model.

## 3.2. Department of Aboriginal Affairs

The Director General of the Department of Aboriginal Affairs, Cliff Weeks, discussed the Department of Aboriginal Affairs' position in relation to land tenure matters in the Kimberley during a consultation meeting with NAJA.

Based on the experiences of Department of Aboriginal Affairs' around the Heritage Approvals process, Mr Weeks proposed that there is the opportunity for Department of Lands to review the approvals processes in relation to land tenure, particularly in relation to timeframes allocated to statutory approvals with the potential for these to be significantly shortened. There is the potential to develop standard conditions development in conjunction with the State Solicitor's Office to expedite approvals and to be used in delegation models. Mr Weeks highlighted at the *Aboriginal Heritage Act 1972* has a turnaround of just 45 days for approvals and suggests that a similar approach would be appropriate for other agencies. Additionally, the Act has clear structures to allow for dispute resolution. Concerns around whether this is sufficient time seem unfounded from his perspective, with recent findings of the Chief Justice Martin's enquiry into the Roe 8 project suggesting that the timeframes for these processes were reasonable.

Mr Weeks also highlighted the opportunity to delegate some responsibilities related to land tenure approvals to local governments.

The need for a procedural remedy where agreement with traditional owners could not be reached is also supported by Department of Aboriginal Affairs. Mr Weeks described the current process as looking like 'a snakes and ladders process' with the potential to be very close to finalising the project, only to fail at a late juncture and essentially be brought back right to the beginning of the process.

## 3.3. Department of Lands

The Department of Lands were consulted regarding land tenure in the Kimberley during a meeting between NAJA and the Director General, Colin Slattery and Executive Director Regional Operations, Matt Darcy.

The Department of Lands position is that whilst it is keen to facilitate the achievement of bankable land tenure for projects in the Kimberley, it is essentially the responsibility of the project proponent to drive the actioning of each process stage and that the role of Department of Lands is to review, facilitate and action any applications. They highlighted the availability of the Land Tenure Pathways for Irrigated Agriculture publication designed to guide proponents through the land tenure process.

The Department of Lands was of the opinion that many issues surrounding land tenure in the region could have been resolved through the proposed Rangeland Reforms but due to a range of issues, in particular push back from pastoral stakeholders because of the recommendation to abolish the Pastoral Lands Board, these changes have not been possible to implement.

A key challenge, acknowledged by Department of Lands, is the issue of the resolution of native title. They highlighted that part of the problem lies with the Western Australian Government Native Title Compensation Policy which did not facilitate a straightforward native title compensation process. Their perspective was that the State is not willing to pay for the direct compensation for acquiring land other than for key assets.

Further to this, Department of Lands acknowledged the lack of a procedural remedy for non-major projects in the event of stalled negotiations around an ILUA left project proponents and Traditional Owners without an avenue to pursue a resolution acceptable to all parties.

Whilst adjustments to the current process are possible, and likely needed, Department of Lands was conscious that significant changes to current Acts (for example, the redefining of 'Pastoral Purposes' within the *Land Administration Act 1997*) could invoke a future act.

## 3.4. Kimberley Land Council

NAJA engaged with Nolan Hunter, the Chief Executive Officer of the Kimberley Lands Council to explore the Kimberley Lands Council's perspectives on land tenure in the Kimberley. The Kimberley Lands Council was primarily concerned around the impact on Traditional Owners and native title issues.

The Kimberley Lands Council considers that significant issues are created in this space due to the nature of the native title legislation, viewing it as legislation developed in an ad hoc manner and that the whole system needed revision. To quote Mr Hunter directly, "Native title is a shitty law." With this as a base point, the Kimberley Lands Council are

frustrated that the native title process can be drawn out to fourteen to eighteen years to secure agreement from all parties. Additionally, it is a concern of the Kimberley Lands Council that some pastoralists and other developers may seek to circumvent the native title process and subsequently excluded Traditional Owners from the economic benefits flowing from their traditional lands.

The Kimberley Lands Council is supportive of development opportunities, seeing that it is important to build economic opportunities for Traditional Owners, but is concerned to avoid a 'development at any cost' approach. It is important for the Kimberley Lands Council that development opportunities provide fair benefits to Traditional Owners via a sustainable business model.

Mr Hunter was open to improving the current situation and was also supportive, in principal, of many of the improvements being developed as part of this policy review and position development.

## 3.5. Kimberley Pilbara Cattleman's Association

Kimberley Pilbara Cattleman's Association's Executive Officer, Catherine Marriott discussed with NAJA the Association's perspectives on land tenure in the Kimberley. The major concern of the Kimberley Pilbara Cattleman's Association centres on the process of achieving land tenure, rather than issues with the *Land Administration Act 1997* itself. They consider that land tenure reform needs to be implemented to facilitate pastoralists working on their core business, not being consumed with navigating bureaucracy. Clarity around the definition of pastoralism would, in the opinion of the Association, potentially resolve many of the issues around achieving land tenure.

The referral notice timeframes are not palatable to the Association, their position being that much shorter timeframes would be appropriate. It is also perceived that the Department of Lands use the referral agencies as a means to slow down the process when it suits the Department. The seeming lack of collaboration between government agencies is also a frustration, leading to stakeholder impressions that the public service is slow moving and negatively impacting on the commercial viability of projects that are time sensitive.

Further compounding the issue, from the Kimberley Pilbara Cattleman's Association's view, is the legalistic nature of the process, as well as the way that the Department of Lands approach is viewed by stakeholders (typically as bureaucratic and over complicated).

The Association considers that in terms of Rangeland Reform, the Pastoral Lands Board or similar is essential to provide some distance between the Department of Lands and pastoralists. There is considered a need for 99-year leases or, ideally, freehold. The Association was also supportive of foreign investment and ownership opportunities, given proper accountability mechanisms in terms of land management and chemical application.

In terms of working to achieve resolution of native title matters, the Kimberley Pilbara Cattleman's Association considers that the system is essentially broken. There is seen that there is no mechanism to bring negotiations to an end and that there is an imbalance of power, with native title holders being in a position to refuse to negotiate or require payment to attend meetings which may yield no real outcomes for either party.

The Association considered that all parties were being failed by the current process as the failure to activate projects meant that no significant benefits could flow through to any party. It is considered important by the Association that there is greater emphasis on development of opportunities for aboriginal economic benefits in projects and a more holistic approach be adopted. The idea of a Regional Native Title Agreement is palatable to the Association, with them being interested in the idea of an agreement that brought together the interests of pastoralists, industry, aboriginal groups and environmental groups.

## 3.6. Pastoralists and Graziers Association of WA

The Pastoralists and Graziers Association of WA's President, Tony Seabrook and Chair of the Pastoral Committee, Lachie McTaggart met with NAJA to share the perspectives of the Pastoralists and Graziers Association in relation to land tenure in the Kimberley.

The Pastoralists and Graziers Association's primary focus is to support pastoralists in the undertaking of pastoralism in the most efficient and effective manner, with the Pastoralists and Graziers Association targeting its efforts towards focusing on issues that form a barrier to this and advocating for solutions. The Pastoralists and Graziers Association considers that it is important that as an industry consideration is given to the development of viable and sustainable businesses, along with the continuation of a strong Pastoral Lands Board.

Although the Pastoralists and Graziers Association is broadly supportive of the Rangelands Reform package of initiatives, the recommendation for the abolishment of the Pastoral Lands Board was of significant concern to them and as such they opposed the Reform package, primarily on this one issue. The Pastoralists and Graziers Association is, however, supportive of many other elements of the initiatives of the Reform package.

On the issue of Tenure reform, the Pastoralists and Graziers Association did not perceive a widespread, strong desire from their broader membership for freehold opportunities, nor was there significant interest in diversification. However, the Pastoralists and Graziers Association is keen to see a streamlining of processes to achieve freeholding and bankable tenure for those members who were keen to pursue these opportunities and the Pastoralists and Graziers Association is very supportive of the development of a regional policy position on the matter.

The Pastoralists and Graziers Association is of the view that the land tenure processes are not appropriate and the drawn out process of eight and a half years to achieve tenure is too long. The critical issue created by these long timelines is the impact on the ability of the developer to effectively move their project forward, potentially being impacted upon by changing market conditions and being unable to provide certainty of the projects viability to potential investors. They consider that the 45-day referral times in the current framework are excessive and could well be shortened.

The Pastoralists and Graziers Association is also supportive of the implementation of a procedural remedy for non-major projects that have reached an impasse with negotiations of native title. The concept of an independent body to adjudicate when 'best endeavours' had been undertaken to resolve stalled native title negotiations on sustainable development proposals which were in the State's interest and that presented

a reasonable package of benefits from an ILUA was an approach that the Pastoralists and Graziers Association would consider supporting.

The Pastoralists and Graziers Association considers that the current legislation is broadly appropriate, with the proper application. It has the perception that the current process are too legislative and that there may not be strong political or Departmental will for change.

## 3.7. Mark Lewis (Liberal)

Hon. Mark Lewis MLC Mining and Pastoral Region and Minister for Agriculture and Food is very interested in the issues surrounding development in the Kimberley and the impact of land tenure matters and the ability of proponents to realise projects. He is concerned that viable projects were failing to succeed in achieving land tenure, and that potential development in the Kimberley was stifled by convoluted and difficult to navigate government processes.

*"If the State thinks it is appropriate that it takes 6-8 years to excise 650ha from a 250 000ha pastoral lease and still fail, then I'm very uncomfortable."*

Mark Lewis, 12 September 2016, interview with Paul Rosair, NAJA Business Consulting Services

His perspective was that many of the issues experienced by project proponents in terms of achieving tenure came down to the interpretation and currency of the *Land Administration Act 1997* with a need for the Act to be brought up-to-date with the current context. In particular, he highlighted the interpretation of Part 7, section 93 where *pastoral purposes* are defined as:

(a) the commercial grazing of authorised stock; and

(b) agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and

(c) activities ancillary to the activities mentioned in paragraphs (a) and (b).

He suggested that updating the *Land Administration Act 1997* to mirror the definition of *primary production* as defined in the *Native Title Act 1993*, Section 24GA:

(a) cultivating land;

(b) maintaining, breeding or agisting animals;

(c) taking or catching fish or shellfish;

(d) forest operations (defined in section 253);

(e) horticultural activities (see section 253 for the definition of ***horticulture***);

(f) aquacultural activities;

(g) leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.

He considered that improving the alignment between these Acts would be useful in terms of consistency but also that many of the issues around obtaining of permits

currently experienced when pastoralists sought to diversify would be eliminated with this broader interpretation of use of the land.

Mr Lewis observed that the *Land Administration Act 1997* already has an embedded legislative mandate with regards to these matters, with the second reading speech stating, "Where major non-pastoral projects are proposed on pastoral lease land, that portion of that pastoral lease affected by that project will be excised from the pastoral lease. A new lease for that non-pastoral project will be granted, subject to native title and other considerations."

In terms of compensation paid to Traditional Owners under the Western Australian Government Native Title Compensation Policy, Mr Lewis identified a possible approach which better supported fledgling projects could involve the government making the payment with this recovered via the collection of rent from the lease or for the proponent or developer to pay back this once their project was operational.

## 3.8. Brendon Grylls (The Nationals)

Hon. Brendon Grylls MLA Leader of the National Party of Australia (WA) is supportive of a new approach to a pathway to land tenure in the Kimberley. He considered that the current risk appetite on the part of government potentially impeded an innovative approach to land tenure pathways and there is a need to establish a new risk profile that is more conducive to development and diversification in the region.

Mr Grylls' perspective on the processes currently underpinning land tenure pathways is that they are too legalistic and that proponents and Department of Lands tend to be overwhelmed by documentation and bureaucracy, resulting in projects losing traction. He considered a transition to a less risk adverse approach whilst fostering an enabling culture on the part of Departments involved in the land tenure pathway processes was important for development in the Kimberley.

Mr Grylls indicated that he was interested in exploring the opportunities for further streamlining of the processes around land tenure, developing a procedural remedy for stalled negotiations, reducing referral timeframes and exploring delegations to local governments to reduce the workload on government officers. He was of the opinion that development of a regional agreement may well be beneficial in streamlining the ILUA process.

Mr Grylls discussed how the complex nature of the current processes meant that proponent led projects were only likely to be successful when both the proponent and the NT holder had significant capacity to negotiate and implement projects. Where proponents are small-scale operators, it seemed to Mr Grylls that the current model would be unlikely to see the project successfully implemented, irrespective of whether the project was viable and had sound economic prospects.

## 3.9. Terry Redman (The Nationals)

Hon. Terry Redman MLA Minister for Regional Development; Lands; Minister Assisting the Minister for State Development, provided access to his Chief of Staff, Jamie Henderson and Policy Officer, Josh Caccetta to provide insights from his office's perspective.

Mr Henderson and Mr Caccetta agreed, that while Department of Lands had undertaken significant work in developing the Land Tenure Pathways for Irrigated Agriculture, it did essentially describe the current processes without necessarily endeavouring to simplify them in any real way and that the processes were still quite onerous for a project proponent. They also conceded that the process requires significant capacity from all parties, particularly the developer and the native title parties.

Case studies were discussed, such as Gogo and Mowanjum, which have required significant government support. There was agreement that this approach is unsustainable for the hundreds of routine developments which will flow from the region if the streamlining of the process was not to occur.

There was agreement that there was an opportunity to for Department of Lands to review its practices to identify improvements in the bureaucratic processes around land tenure.

It was also noted that the risk appetite of the government of the day would impact on potential changes. The development of a case that can assist government to understand the impact of current process will increase the likelihood they will understand and accept the risk to implement change.

Some discussion was had around the use of Notice Of Intention To Take process that has been utilised to-date in limited circumstances. The Minister's representatives indicated that they have an understanding that that NT holders view the Notice Of Intention To Take as an impost on their rights.

## 3.10. Dave Grills (The Nationals)

Hon. Dave Grills, MLC Mining and Pastoral Region for The Nationals considered that the key issue related to land tenure in the Kimberley centres around the successful negotiation of ILUAs, with difficulties in reaching agreement as well as overcoming the challenges of bringing together the relevant parties for meaningful conversations about a way forward.

Mr Grills was supportive of the possibility of a regional agreement, a procedural remember and with the negotiation of economic benefits for traditional owners.

## 3.11. Ben Wyatt (ALP)

Mr Ben Wyatt, MLA was engaged with in his roles as Shadow Minister for the portfolios of Aboriginal Affairs, Native Title and at that time, Kimberley. Mr Wyatt is comfortable with, and supportive of, the idea of streamlining the process for achieving land tenure in the Kimberley. He is in agreement that the current model is both unsustainable and unworkable.

Mr Wyatt considers it important to take into account the context of the Remote Communities strategy and that there is also the opportunity to emulate the approach taken by the Northern Territory that saw the development of partnerships between Traditional Owners, pastoralists and industry in economically beneficial projects.

If agreement can be reached between Kimberley local governments in terms of a unified approach, he is happy to be approached to act as an intermediary in communicating the intent with aboriginal groups.

## 3.12. Peter Tinley (ALP)

Mr Peter Tinley, MLA was consulted twice in his capacity as Shadow Minister for Lands. From the ALP's perspective, the Kimberley was under developed however was also at risk of 'uncontrolled development'. It is considered that there is poor planning in terms of state strategy for the Kimberley and that a more visionary, strategic approach is warranted. Mr Tinley proposed this strategic approach would see stronger statutory controls over investment with a holistic approach, rather than the current project-by-project basis that is currently applied and is, in his opinion, risky.

The ALP seeks a more cohesive approach from government, with more interagency collaboration to streamline and strengthen project approval processes, combined targeted investment including prudent encouragement of foreign investment. The development of policy positions in relation to navigating land tenure in a more straightforward manner and for converting arable land to freehold, along with the development of a Cabinet approved process and information product to assist investors understand land tenure requirements.

Mr Tinley agreed that a procedural remedy to respond to impasses between project proponents and traditional owners would be beneficial. He considered that using existing systems, such as a State Arbitration Tribunal might be part of the solution. Mr Tinley also suggested the ALP is less concerned about native title rights and more concerned about securing positive outcomes for Traditional Owners. He is supportive of the development of a Regional Agreement for the Kimberley.

## 3.13. Josephine Farrer (ALP) & Stephen Dawson (ALP)

Ms Josephine Farrer, MLA Member for the Kimberley and Mr Stephen Dawson, MLC Mining and Pastoral Region, both representing the ALP met to discuss land tenure matters. Ms Farrer led the conversation, with agreement on her position from Mr Dawson. She considers that the process around land tenure and native title have seen a lack of consultation and engagement with Aboriginal stakeholders. She has a sense that somewhere through the process, it has been forgotten that Aboriginal stakeholders are the major group which should be being meaningfully engaged with.

Ms Farrer is of the view that many pastoralists felt they owned their property and that this created a difficult and confrontational atmosphere when negotiating with Aboriginal people. She considers that a better process is essential to improve the engagement with Aboriginal stakeholders and for them to achieve positive outcomes as a result of development projects.

When discussing possible options, Ms Farrer is supportive of the idea of developing a process that focused on sustainable development designed with proper consultation and engagement, seeking to identify opportunities to develop solutions that proactively engaged Aboriginal people in meaningful ways. The development of real employment opportunities that are integral to the overall project was viewed as an important element of an agreement.

## 3.14. Michael Murray (ALP)

Mr Michael Murray, MLA was engaged in consultation in his capacity a Shadow Minister for Agriculture and Food. He considered that the current process for diversifying in agriculture is not appropriate or adequate to facilitate the effective pursuit of agricultural opportunities. Mr Murray was in agreement that improvements to the process were particularly important for small-scale project proponents who typically lack the resources and capacity to tackle the process effectively.

Mr Murray was of the view that the development of a procedural remedy to address stalled negotiations with relation to native title would be a useful strategy to assist with some of the challenges in this space. He also considered that the upfront payment of compensation of behalf of the proponent could well be considered by government, with the proponent repaying the funds once the project was operational with a cash flow to facilitate this.

## 3.15. Robin Chapple (Greens)

Mr Robin Chapple, MLC Mining and Pastoral Region for the Greens, discussed the Greens' position in relation to land tenure in the Kimberley. A key focus of the conversation was on native title, with Mr Chapple considering that this has, in the main, been a disaster in terms of outcomes for aboriginal people.

The Greens would be keen to see the establishment of a treaty, outlining level of ownership and relationship with the land. The South West Land and Sea Council's model could provide a framework for such an agreement. They are also supportive of significantly more investment into indigenous development opportunities, along with a more effective and appropriate remote community strategy.

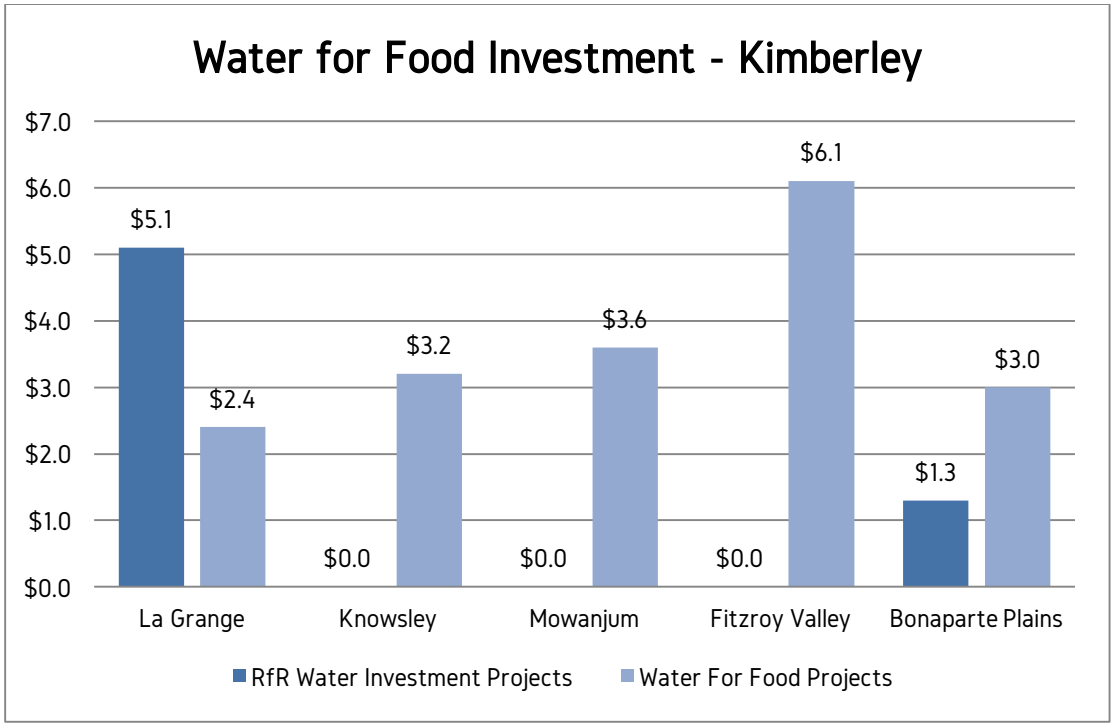
Mr Chapple also raised the dichotomy of compensating people for taking 'their land' when in essence, aboriginal people consider that the land owns them, rather than them having ownership over the land.

The Greens were not inclined to increasing freehold opportunities, seeing that this could create a variety of issues, particularly around aboriginal land rights. They were, however, comfortable with foreign investment in the north.

# 4. Discussion of Findings

It is clear from the views and experiences of the diverse stakeholders who were consulted during the development of this policy position paper, that there are real challenges with development in the Kimberley in particular, largely characterised by complex processes to achieve suitable land tenure. This is compounded by a perceived disconnect between the messaging of politicians and programs aiming to support development in the north, and the actual experience of project proponents attempting to navigate government approvals and bureaucratic processes to activate their projects.

The Government's preferred "proponent driven" model is not achieving optimal outcomes in its current form. The complexity of the process is normally beyond the capacity and resources of the vast majority of proponents and native title parties. These processes are not sustainable, with those projects that have been successful generally only being so because of significant government investment and government officer support to reach the project initiation phase (for example the Water for Food projects listed in the graph below, this is in addition to $330m invested in the Ord).




The need to assign significant government resources and investment to achieve desired outcomes or to expect proponents of comparatively small-scale developments to have the skills and resources to achieve land tenure, is not a sustainable model.

Resolution of native title is also a challenge in this space; with parties often lacking the capability to successful negotiate an ILUA. This can see the process for achieving tenure being significantly drawn out, often with the negotiations failing to achieve a result after protracted discussion. This has no outcome for the proponent, the native title holders or the State, as no benefits can flow from the project if agreement cannot be reached for it to proceed. Currently there is no procedural remedy to address stalled or failed negotiations for small-scale projects. A parallel issue is the level of confusion over native

title processes and a lack of resources to support proponents and native title holders successfully negotiate with one another to secure positive outcomes for all parties.

The current risk profile of the government (as further emphasised in Section 1.1.2 Northern Australia White Paper) also presents challenges with departments adopting an approach of evaluating project sustainability to a high degree. This is generally based on the skills and expertise of their staff, which is normally no stronger than the project proponents who have already prepared their development proposals and are prepared to invest significant funds to activate it – suggesting that as skilled industry experts the project has a strong chance of success. Government should seek to transition from a risk averse to a risk neutral approach (as suggested in the Northern Australia White Paper) and stepping back from being deeply involved in 'assessing business' and instead adopting an enabling approach.

This risk averse approach is also prevalent across government in the area of native title resolution and, in particular, the use of Notice Of Intent To Take (NOITT) process to take land and provide proper compensation when projects have a regional economic and social benefit to the State and adhere to the objectives of State and regional strategies and plans. Provided that reasonable efforts and time have been devoted to resolution through negotiation, where viable projects have stalled, a less risk averse approach could see the use of NOITTs (under well-defined assessment criteria) to move projects to implementation.

A more liberal interpretation of relevant legislation, in particular the *Land Administration Act 1997*, needs to be applied and policy positions more flexible and enabling. A reduction in the levels of seeking legal opinion and referral is necessary with the administering public servants applying legislation and policy on a case-by-case basis in a prudent and timely manner, recognising the protection provided under the *Public Sector Management Act 1994* afforded to public servants administering legislation in the spirit of the law. Adequate scrutiny and intensive formulation, construction and review of the legislation has already occurred as part of the Crown Solicitor drafting phase and parliamentary member review stage, and the need for continuous legal referrals should not be ordinarily required.

The lack of certainty created by the current system is not conducive to development, or the attraction of investment. As seen in the case studies, proponents can invest significant time and resources into the development of a project, only to have them stall after years of work, or to have a complete change to a Department's position on their project as a result of the interpretation of policy and application of an Act. This is not helpful and reform is required to bring projects to fruition within reasonable timeframes.

# 5. Benefits of the new land tenure framework

When considering amendments to legislation and government processes, it is critical to consider what benefits will flow. In terms of changes to the land tenure framework, the leveraging of economic growth, innovation and sustainable development is central to the success of any changes.

## 5.1.Benefits for the State

Pastoralism in Western Australia contributes in only a minor way to the overall agriculture economy, and the administration of pastoral leases actually costs government more than the leases bring in. This new approach would open up opportunities for great diversification into commercial-scale irrigation islands where a diverse range of cash crops and high value food products can be grown, alongside fodder. Currently the State leases 34% of Crown land (87 million hectares) for a total value of production of only around $300-million per annum – constituting only three percent of the State's $10-billion of agricultural production each year.

With the positioning of the Kimberley as a place of opportunity where investment in innovative and diversified projects was fostered by government would likely see a greater interest from project proponents and investments, with the benefit of economic growth being derived by the State – both in terms of direct returns to government through leases and taxes as well as the overall improved economic viability of the region. This is of particular interest and strategic opportunity, given the difficult fiscal challenges being confronted by the State.

## 5.2. Benefits for government

The proposed changes to the land tenure framework also offer government significant benefits, particularly in reducing the administrative burden of implementing the highly bureaucratised processes that characterises the current framework.

The investment in time and resources to evaluate and process applications through the existing framework, particularly where government seeks to make a judgement of the viability of projects driven by private proponents, does not generate significant value. A cost-benefit analysis of current process is likely to demonstrate low or no return on investment. A reduction in bureaucratic processes could see efforts redirected to a facilitative approach, focused on capacity building of proponents and native title holders to further support the likelihood of successful development projects.

## 5.3. Benefits for industry

With a new land tenure framework that seeks to support the swift transition to bankable land tenure, there is an incentive for industry to develop viable diversification projects that add to the depth of their current operations in the region. These improved timeframes and increased certainty, combined with a decrease of resources required to achieve land tenure, will foster a culture of diversification and innovation, ideally leading to a more robust and sustainable industry in the Kimberley.

The new framework offers improved navigability, particular for proponents of small-scale projects who may lack the resources and/or capacity to successfully negotiate the current processes. With many small-scale project proponents feeling disillusioned with the promise offered by Seizing the Opportunity Agriculture when first launched, these changes have the potential to re-invigorate their interest and see them actualise their project concepts.

The acknowledgement of the need for support in negotiating with native title holders is also important for small-scale operators. The provision of tools to understand and effectively engage in meaningful negotiation should provide an added level of support to project proponents and native title holders alike. The inclusion of a procedural remedy further supports all parties by offering a mechanism to address stalled negotiations, where third-party intervention can support the matter reaching resolution.

## 5.4. Benefits for traditional owners

Under the current system, very rarely do benefits flow to Traditional Owners as potential projects often stall during negotiation with Traditional Owners. There is a range of factors influencing this, but in part lack of capacity to effectively negotiate on behalf of both the proponent and the Traditional Owners seems to be a contributing factor. The provision of tools to support more effective negotiation, along with a procedural remedy for stalled negotiations, should see more projects come to fruition and in turn the negotiated benefits flow through to the Traditional Owners.

The possibilities presented by a Regional Agreement (as described in Section 2.2.4) and innovative arrangements (such as those outlined in the West Arnhem Land Fire Abatement Project Case Study) represent real opportunities for Traditional Owners to secure sustainable economic and social outcomes while retaining land access and protection of cultural heritage.

## 5.5. Benefits for community

The future of the Kimberley is dependent on the continued development of the regional economy, with the focus on growing a sustainable and robust economy. To ensure strong economic and social outcomes, a pastoral industry that operates with confidence and a tendency to innovation is a critical element of the overall economy.

Furthermore, the importance of systems and processes that foster an environmentally sensitive approach is also critical to ensure that the balance between industry and environmental protection is maintained in this unique environmental region. This framework offers a balance between appropriate regulation and freedom for industry to pursue environmentally sensitive developments.

# 6. The proposed land tenure framework

The following proposed land tenure framework and associated changes to legislation and process is designed to provide a contemporary approach to land tenure, particularly in relation to pastoral leases and the conversion of Unallocated Crown Land. In order for the Kimberley region to develop a mature and sustainable economy, and to develop a cohesive social structure, greater ease of development and diversification in the pastoral industry is critical. Without reform, development and growth in the key industry will be stifled and the potential economic and social benefits for the region and the State will not be realised.

## 6.1. Objectives of the framework

The proposed land tenure framework seeks to achieve the following objectives:

- Navigability – that the process is be able to be navigated by small-scale project proponents who lack specialist knowledge.
- Preservation of rights – supporting the retention of the rights of Traditional Owners and improved process for the negotiation of benefits from land use.
- Improved certainty – that the process provides industry and investors with improved certainty about their rights and obligations to allow them to strategically manage their investment decisions.
- Acceleration – that the process be responsive and flexible enough for time-sensitive projects to achieve certainty regarding tenure to secure investment commitments at the time when they are considered most lucrative.
- Industry development – facilitate appropriate industry development and diversification in the Kimberley, particularly in the agricultural and tourism industries.
- Outcomes focus – supporting the development of projects that have beneficial outcomes for all parties (State, traditional owners, industry, environment and community).
- Structured negotiation – support all parties in effective negotiation through the provision of a structured process and provision of tools and templates.
- Procedural remedy – that stalled negotiations can be adjudicated by an independent body to allow for resolution.
- Procedural fairness – that the process gives all parties involved access to a fair and proper process when having their position considered.

The proposed land tenure framework should be considered within the context of both providing benefits to industry but also present a sound basis for government policy. The key objective of the proposed framework is to achieve land tenure outcomes that, on the whole, meet the needs of government, traditional owners and industry, with the benefits of any development being realised by the State.

## 6.2. Proposed pathways

The proposed pathways to land tenure outlined below have been developed as a result of consultation with key stakeholders to understand their needs, concerns and priorities in this area. The proposed pathways are a blend of current processes with the addition of mechanisms and procedural remedies to address stalled negotiations as well as to accelerate the process by limiting timeframes for referrals and negotiation.

This framework considers the tenure change of Crown Land parcels, specifically pastoral leases, other leases or agreements, Managed Reserves, Unmanaged Reserves, National Parks, Unallocated Crown Land and other tenure types.

This framework is used when a proponent develops a project proposal for the use of the Crown Land Parcel. As part of the process of initiating the navigation of the framework, the proponent should identify whether the proposal is in accordance with the current tenure, purpose or lease conditions. Where the purpose of the land is not aligned to the planned project use, then the proponent should seek to either a change to tenure, a change to purpose or an alteration to the lease agreement.

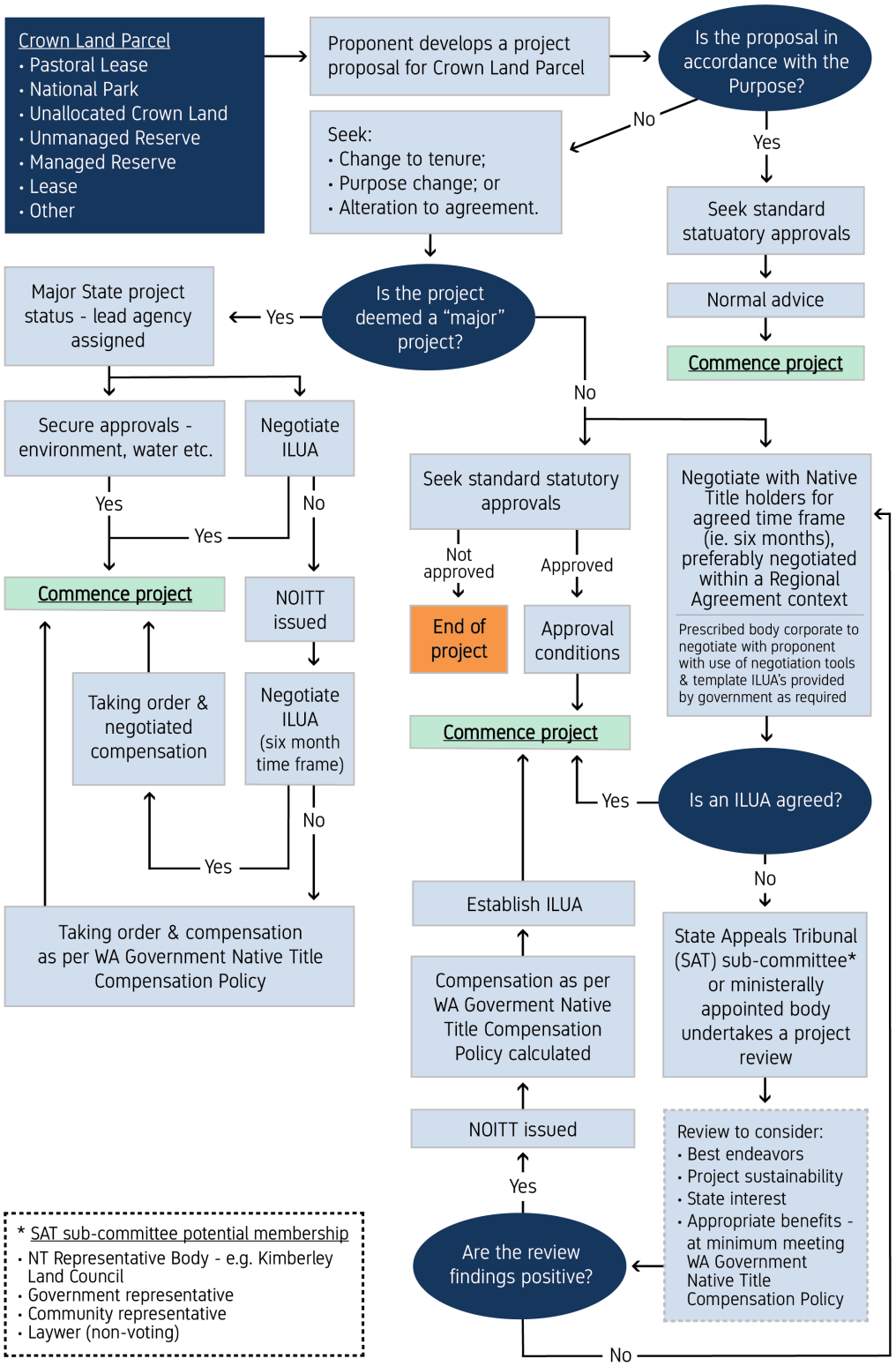



Diagram 1: Proposed Pathways to Land Tenure

### 6.2.1. Projects in accordance with existing land use conditions

If the project is in accordance with the applicable land use arrangement, then the proponent can proceed as per the standard development processes where no changes to land tenure or use conditions is required – specifically seeking statutory approvals and the normal advice (environment, water etc.) and assuming the project is granted statutory approvals and any issues around advice are managed, the project can commence. As such, no changes to this approach are proposed, other than the reduction in referral timeframes..

### 6.2.2. State Significant Projects

A State Significant Project is one deemed by Cabinet to be critical to the advancement of the State of Western Australia or the nation based on environmental, social, economic or heritage considerations. These projects represent proposals which forge a path for significant industry investment in large and complex projects – for example LNG processing precincts and ports. It is proposed that these projects continue as currently managed.

With each of these projects, a Lead Agency is assigned to act in the early stages of these type of projects to negotiate matters of land tenure, native title and heritage, environmental approvals, land use planning and social impact. The Lead Agency Framework guides this process and applies to all resource, infrastructure, transport, large scale land and housing proposals and developments.

A lead agency provides a single entry point for proponents. All proposals within the Lead Agency Framework receive a level of service by the lead agency commensurate to its size, complexity or environmental, economic or social impact. It applies to State initiated proposals, such as the Kimberley Browse LNG Precinct, Forrest Highway and the Ord-East Kimberley Expansion Plan. It also applies to proponent initiated proposals, such as Gorgon JV, Karara Iron Ore Project and Belmont Park Development.

State Significant Projects are determined through consideration of:

- the lifespan of the project;
- the requirement for long-term certainty for the proponents;
- the existence of extensive or complex land tenure issues;
- whether the project is located in a relatively remote area of the State, thus requiring significant infrastructure development, such as rail networks; and
- significance of the project to the economic development of the State.

State Agreements are legal contracts (ratified by Acts of Parliament) between the Western Australian government and a proponent of a major project within Western Australia. These Agreements demonstrate a high degree of support for and commitment to a project by the State. Agreements of this type typically occur where a project requires the development of railways, ports or other major infrastructure, along with long-term tenure. Agreements of this nature see the proponent share responsibility with the State for developing infrastructure specific to the project. Another common element

of these agreements sees the requirement for the use of local labour, suppliers and professional services where it is reasonable and economically sound to do so.

The roles and responsibilities of a lead agency, when assisting proponent initiated proposals and projects can include:

- Meeting with proponents to scope the proposal up-front before applications are lodged;
- Advising on community and stakeholder consultation requirements and arranging meetings with key stakeholders;
- Providing dedicated case management officers within agencies. It is expected that case management officers and case management teams will be allocated to Level 2 and 3 proposals;
- Arranging meetings for proponents with approval agencies to scope the range of issues that need to be addressed and what approvals will be required;
- Negotiating timelines between agencies for provision of approvals or advice, preferably at the outset of the proposal;
- Facilitating parallel processing at the outset;
- Monitoring of timelines for assessments and provision of advice across government through existing project tracking systems or through inter- agency working groups;
- Resolving bottlenecks and managing issues to achieve timeframes and milestones;
- Where issues cannot be resolved at officer level, referring this to a more senior level for resolution;
- Coordinating condition setting between approval agencies and proponents to prevent overlap and duplication; and
- Creating training modules for staff involved in case management.

With regards to the level of support for projects covered under the Lead Agency Framework, there are three levels of proposal classification, with commensurate levels of support provided by government to the proponent.

| Levels of assistance by proposal complexity and impact[7] | | |
|---|---|---|
| **Proposal Classification** | **Assistance provided** | **Monitoring and Reporting** |
| **Level 1** | | |
| Such a proposal would be characterised as being small to moderate scale and capable of being accommodated through existing environmental, social and economic assessment processes. The majority of proposals received by agencies would be classified as Level 1 | The Lead Agency may provide initial advice and support through an appointed project officer. Service could include referral and introduction to relevant agencies, negotiating with applicants and referral to relevant agencies where issues arise. | Agencies to monitor status of proposals by using existing website reports and quarterly reports. Proponents may be requested to provide updates to lead agency as required. |
| **Level 2** | | |
| This level includes non-standard moderate to large scale or complex proposals. These proposals are likely to have significant capital investment and employ a large number of people for an extensive period of time. | The lead agency, in addition to application tracking and approvals management, will appoint a project manager/ case officer to assist with proposal scoping, approval planning and inter-agency coordination. | The lead agency will monitor progress across Government and assist in the identification and resolution of issues impeding the approvals process. Agencies to report using existing website reports and quarterly reports. Proponents will be request to provide regular reports on progress. |
| **Level 3** | | |
| These proposals would be very large or complex proposals, those that have significant investment or have potential to create significant employment. Some proposals that are of critical strategic importance to the State or to Australia will be referred to Cabinet for consideration of "State significant" status. | The lead agency will assign a senior officer or senior project team to assist with Government related aspects of project definition, infrastructure, industrial land, regional issues, coordination and interaction with agencies relating to key statutory approvals, stakeholder recognition and consideration of agency timelines and negotiations in the State's interest. | Progress will be monitored on a case management basis by agency heads led by the lead agency. Monitoring will focus on coordination and progress of approvals across Government. Lead agencies should create website pages devoted to Level 3 proposals for reporting on their progress through various stages of the approvals process and provide links to key documents in the process. Proponents will be requested to provide monthly updates. |

[7] Lead Agency Framework, Department of Premier & Cabinet

The proportion of projects being deemed of State Significance is small, with only a minority of projects being provided with high degrees of government officer support offer at Level 3 proposal status.

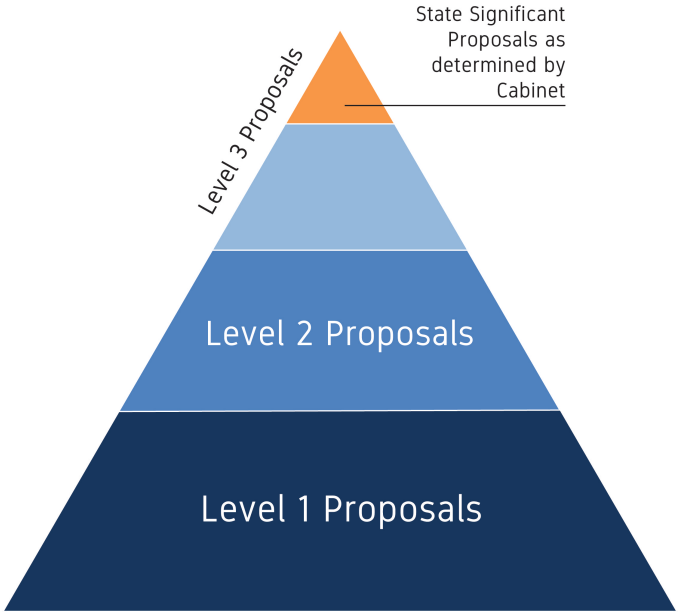



Diagram 2: Notional representation of proposals in each level (as per Lead Agency Framework, Department of Premier and Cabinet)

In terms of the land tenure process for major projects covered under this Framework, the outlined process applies. Following the establishment of a State Agreement, the proponent then submits a development proposal for the project to the Lead Agency. The Agency then assesses the development proposal to understand the nature and scale of the project, along with the statutory requirements and any gaps in information. Following this initial assessment, the Agency then works with the proponent to secure relevant statutory approvals and to negotiate an ILUA.

Assuming that agreement on an ILUA can be reached and statutory requirements are met, the project can commence. Where an ILUA cannot be negotiated, a Notice Of Intention To Take (NOITT) is used an further negotiations for the achievement of an ILUA are undertaken for a maximum timeframe of six months. At the end of this, if the ILUA has been agreed upon, the taking order is executed and the compensation negotiated under the ILUA is actioned. Where an ILUA is not agreed upon, the taking order is executed at and compensation is paid as per the Cabinet endorsed Western Australian Government Native Title Compensation Policy. With resolution of statutory requirements and the ILUA, projects can then commence. This process is undertaken with significant support from government to assist in the planning, as well as assistance in navigation of, the approvals process.

### 6.2.3. Non-Major Projects

Where a project does not have major State significance and is not deemed to be a State Significant project, the proponent then independently pursues the development. In a parallel process, the proponent seeks the standard statutory approvals, along with negotiation with native title holders. The research undertaken as background to this Policy Position Paper confirms the consistent views by proponents, and even within the

political and government sector, that the current framework is not effective and presents an impediment to development, diversification and investment in the north. As such, a range of changes to the framework is proposed.

With regards to addressing the statutory approvals required for the process, in essence the process is the same as for State Significant projects, although the proponent needs to independently navigate the process without the dedicated support of government staff (as per resourcing through Lead Agency for support to achieve this with State Significant projects). Although the project may have less complex approvals required than the major projects that Lead Agencies work with, the processes and documentation required of independent projects are still complex and involve significant capacity and resourcing to navigate.

At this stage of this process, it is essential that government adopt an enabling approach – with staff endeavouring to provide professional advice and service to facilitate the smooth navigation of the approvals process. It is possible that a project may not be successful in securing all required approvals but the expectation is that staff would seek to support proponents to move through the process in a structured and efficient manner, working together to identify how each stage of the process can be addressed effectively by the proponent.

Concurrently to the approvals process, there should be negotiation with the native title holders. It is recommended that the native title holders should utilise a Prescribed Body Corporate (PCB) to undertake negotiation with the proponent on their behalf. Additionally, both parties, however they choose to be represented, would be encouraged to seek professional advice and services to support them in the negotiation process. Negotiation is a complex and specialist process and conducting this process without sufficient experience, combined with a potential impact on objectivity caused by personal values related to the negotiation, may mean outcomes cannot not be reached or optimum outcomes are not achieved.

When establishing the process for the negotiations between the proponent and native title holders, it is important for both parties to agree on a fixed timeframe for negotiations. With a clear timeframe for agreement, both parties are incentivised to proactively engage in the process and work on developing a mutually acceptable ILUA. In addition, access to a suite of negotiation tools to assist both parties engage in effective dialogue as well as template ILUAs to provide guidance as to potentially approaches, will further assist the achievement of a positive resolution for both parties. The recommended re-establishment of the Office of Native Title (see Section 6.4) will significantly reduce the timeframe and increase the likelihood of success of the ILUA developments.

Following negotiations over the agreed timeframe, ideally agreement will be reach and an ILUA formed. In this instance, provided the statutory approvals have been addressed, the project can commence.

In the event that an ILUA has not been agreed, the project is then referred to a State Appeals Tribunal Sub-Committee, or an independent Ministerially appointed body. It is envisaged that the potential membership of this group could comprise of:

- Native title representative body (i.e. Kimberley Land Council);

- Government representative;
- Community representative; and
- Lawyer (non-voting role).

This sub-committee would review the project and actions to-date, considering whether:

- Best endeavors have been made by the proponent and Traditional Owners to reach resolution;
- The project appears to be a sustainable proposition;
- The project appears to be in the interests of the State; and
- Appropriate benefits have been proposed to the native title holders, at a minimum meeting the Cabinet endorsed Western Australian State Government Native Title Compensation Policy.

If it is determined that these matters have not been addressed to an appropriate standard, the project proponent will be advised to continue negotiations with the native title holders to agree on an ILUA as per the previous part of the process.

If it is found that these matters have been adequately addressed, the Sub-Committee will recommend moving the project forward. To achieve this, a Notice Of Intention To Take (NOITT) will be issued and compensation as per the Western Australian State Government Native Title Compensation Policy will be calculated. On this basis, an ILUA will be formed and, subject to standard statutory approvals being in place, the project can commence.

## 6.3. Legislative and Administrative Changes

There is an opportunity to make a number of legislative and administrative changes to further support the achievement of land tenure objectives.

In terms of legislation, amendments to the *Land Administration Act 1997* should be included in any reform of the land tenure process. Specifically, attention should be given to modernising the definition of pastoral purposes to better reflect current practice. The understanding of the activities that are to be undertaken on a pastoral lease have remained unchanged since the commencement of pastoral activities in the north of Western Australia in the 1850s, yet there is significant potential for diversification and development of this industry if the legislation was updated to reflect the potential practices open to a contemporary industry. Strong consideration should be given to aligning the definition of pastoral purposes with the 'primary production' definition in the Commonwealth *Native Title Amendment Act 1998* – given s24GA and s24GB of that Act allows a broad range of primary production activities.

It is also important for a review of the legislation to provide clarity whether on Division 5 of the *Land Administration Act 1997* diversification permits are necessary for 'agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and activities ancillary' – particularly given that the need for permits for activities that form part of accepted pastoral practices which would seem to align with the intent of the lease agreement. An additional area requiring

clarity relates to terminology such as 'enclosed and improved', and 'unenclosed and unimproved' within the *Land Administration Act 1997* in particular in relation to native title.

A further point of review of the legislation should consider the inconsistencies between definition of pastoral purposes in S93 and s51(c) of the *Environmental Protection Act 1986* (which requires authorisation for the clearing of native vegetation) and the current approach of requiring diversification permits for agricultural uses of pastoral land (such as S120 of the *Land Administration Act 1997*).

It should also be noted that the *Land Administration Act 1997* already has an embedded legislative mandate with regards to these matters, with the second reading speech stating, "Where major non-pastoral projects are proposed on pastoral lease land, that portion of that pastoral lease affected by that project will be excised from the pastoral lease. A new lease for that non-pastoral project will be granted, subject to native title and other considerations." Note that the speech uses the expression "*will* be excised/granted" and not terms such as *shall* or *may*.

If opportunities such as the West Arnhem Land Fire Abatement Project are to be realised with relation to carbon sequestration, consideration need to be given to provision of clarity around access to carbon rights. A key requirement of access carbon credits from a Commonwealth approved scheme is that the proponent must undertake a 'management action' (usually related to a pastoral activity) to attain a carbon credit. Essentially the only person who can undertake a management action (and therefore formalise an agreement with the Commonwealth) from a pastoral lease derived carbon credit is the lessee (or sub-lessee). The contract is between the lessee and the Commonwealth. If the lessee (or subsequent lessee) does not comply with the contract, that is a contractual issue between the lessee and the Commonwealth and there is not an issue or liability for the State. The only policy issue for the State is whether the State agrees with the land use/management action required to attain the carbon credit – and this management action is usually compliant with the management action related to the pastoral purpose. As such, it is suggested that the *Land Administration Act 1997* be amended so that the Minister or the Pastoral Lands Board can provide the statutory mechanism to transfer carbon rights on a pastoral lease on to the lessee. As a consequence of this amendment, further amendment to the *Carbon Rights Act 2003* may be required.

From an administrative perspective, there are a number of opportunities for government to significantly shorten the process, as well as adopting a more facilitative approach. It is suggested that referral timeframes be considerably reduced, with consideration that 14 days is sufficient time for referral agencies to provide comment on any proposals (given Chief Justice Martin's findings in relation to Roe 8). There is clearly an opportunity to reduce referral timeframes, which are currently around 45 days, considering that the referral agencies are generally not the decision makers, rather only required to provide comment on proposals.

A change of approach to responding to referrals is also proposed, with referral agencies' commentary being consistently considered as advice as opposed to decisions/directions. As such, a finding of a point of concern in relation to a project by a referral agency should not automatically see the termination of the project, rather the development of a strategy to address the concern, where possible, should be developed. It may also be

that the concern is noted, but that is not of sufficient magnitude to preclude the continuation of the development proposal.

The current administrative burden on government officers, anecdotally, appears to also be impacting on the speed with which Department of Lands is able to process land tenure documentation. There is potential for delegation to local governments to deal with straightforward land tenure matters using a set of standard conditions developed by the Department and reviewed by legal officers.

It is also suggested that there is a wind back of government decision-making around viability of projects with a transition to a 'first in, first served' type approach. Instead of government evaluating project viability, the onus be placed on the proponent to evaluate probable viability and government taking a view that a proponent being prepared to invest in a well-researched business proposition should be sufficient to demonstrate the probability of viability. As recommended in the Northern Australia White Paper, it is more effective for government to take a facilitative approach and look to creating an enabling environment for industry and development, rather than deeply involving itself in the technicalities of the business aspects of a project.

## 6.4. Native Title Changes

In developing a new approach to land tenure, consideration naturally needs to be given to the intersection with native title. The first recommendation in this area relates to the re-establishment of the Office of native title. The re-creation of a dedicated unit within government such as the previous Office of native title with relevant resourcing and independence with the mandate to develop, implement and support whole of government policies which are equitable, transparent, legally sound and sustainable. Government could also consider charging such an Office with broader responsibilities in coordinating and managing land approvals across government.

The creation of such a 'one-stop shop' to assist parties through the land approvals process could bring efficiency but it would require specific instructions from government and appropriate power to engage with other departments.

The current unit in the Department of Premier and Cabinet has such a title (Land Approvals and Native Title) but it is unclear how far this broader function of land approvals and whole of government coordination is undertaken. The limiting factors should be identified and appropriate changes made.

The independent statutory and regulatory regimes of government departments responsible for various aspects of land approvals would need to be accommodated and appropriate lines of authority and responsibility made clear. Native title approvals could easily be coordinated across government if the authority in charge was appropriately resourced with relevantly qualified, experienced and respected personnel. Coordination of other approvals would be more complex and it would be difficult to appoint any one arbitral body who would have the skill set to arbitrate successfully across all statutory approvals regimes, however for it is likely achievable within the context of native title approvals.

In 2010, a policy framework for the resolution of native title claims and native title land access strategy was developed by the Department of Premier and Cabinet. This document laid out a clear process for the resolution of native title claims but has not

been implemented – strong consideration should be given to reviewing, and as appropriate, adopting the policy framework.

The overarching objectives of the policy framework were to establish and manage the relationships of the rights of the government and the public, and the rights of native title parties, along with the creation of efficient process for delivery of mining and petroleum grants and access to tenements and titles, and delivery of government business. Furthermore, the framework identified strategies to address key issues in this area, including rigorous evaluation of evidentiary material related to native title claims, ensuring protection of the government's existing legal rights and interests are protected, undertake ILUA negotiations in parallel with the negotiation of a Consent Determination to facilitate a streamlined process and to strategically employ litigation to test the existence and extent of native title and the relationships between native title rights and non-native title rights. The strategy also identified the mechanism to fund compensation through the Native Title Land and Equity Fund and the Native Title Facilitation Fund.

As outlined in the earlier discussion around the reshaped land tenure framework, it would be important to include the:

- Development of templates and tools for proponents to support ILUA negotiation and formation of agreements; and
- Establishment of a procedural remedy for unresolved native title disputes or failures to establish agreements.

The establishment of a Regional Agreement, similar to the South West Land Settlement, offers the potential for a simplified approach for individual project proponents and reduces the burden on native title holders to engage in negotiations with multiple project proponents. Flowing from a Regional Agreement is the potential for the development of innovative native title compensation models developed to allow proponents to negotiate a compensation, with the government to fund up-front and the proponent to repay through staged payments linked to approvals timeframes and milestones.

A Regional Agreement approach allows for the development of models, such as in Case Study – West Arnhem Land Fire Abatement Project, where projects can be structured to incorporate sustainable employment opportunities and business development opportunities for traditional owners, as well as flow on benefits associated with responsible land management. If sustainable economic and social benefits are to be secured for traditional owners, and other people living in the regions, strategic approaches such as these are essential.

# 7. Policy options

Based on the research undertaken in the development of this Policy Position Paper, three policy options seem apparent and should be considered when developing the government's approach to any changes.

## 7.1.Policy Option 1 – No Change

The current land tenure framework, while well-intentioned, is flawed and does not adequately respond to the needs of project proponents seeking to diversify activities undertaken on pastoral leases. There is the potential to make no changes to the current approach. In doing so, the government must acknowledge that the impact on the economy in the north. Without change to the current system, any real opportunities for diversification and innovation in this space are unlikely to be realised which ultimately does not benefit the State. **No change to the current land tenure framework is not recommended.**

## 7.2. Policy Option 2 – Partial Adoption

There is potential to take the approach of partial adoption of the recommendations outlined in this Policy Position Paper. Taking a piecemeal approach will dilute the overall benefits offered by this approach and will impact on the overall benefits offered by the proposed changes. The issues around land tenure are essentially, a systems issue and it is essential that a broad view is taken when addressing matters – making minor adjustments is not sufficient to address a significant and intertwined systemic issue. **Partial adoption of the proposed changes to the current land tenure framework is not recommended.**

## 7.3. Policy Option 3 – Complete Adoption

The current environment offers a rare occasion to act decisively and implement some significant reforms to strengthen the development of the pastoral sector, and land tenure processes more broadly. This offers the opportunity to provide certainty and benefits to traditional owners in a timely manner. The complete adoption of the proposed land tenure framework changes has the potential to significantly improve the sustainability and viability of pastoral leases and lead to far greater economic and social benefits to the State as well as Traditional Owners. **Complete adoption of the proposed changes to the current land tenure framework is recommended.**

# FURTHER INFORMATION

**Kimberley Regional Group**

**NAJA Business Consulting** | info@naja.com.au |