

**INFORMATION SHEET  
PROPOSED TIWI DEVELOPMENT FRAMEWORK AGREEMENT**

**Date:** 9 December 2014

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The Tiwi Aboriginal Land Trust (**Land Trust**), the Tiwi Land Council (**Land Council**) and the Northern Territory Government are currently working towards establishing new economic development and employment opportunities on the Tiwi Islands. The Land Council and the Northern Territory Government intend on entering into a partnership agreement to formalise a commitment to economic development and job creation on the Tiwi Islands (**Partnership Agreement**).

The Land Trust, Land Council and the Northern Territory Government have been negotiating a Tiwi Development Framework Agreement between the Land Trust, the Land Council, Tiwi Resources Pty Ltd and Land Development Corporation (established by the *Land Development Corporation Act*) (**Development Agreement**) which will form an important part of the implementation of the intentions set out in the Partnership Agreement. Under the Development Agreement, the Land Trust will in the future be granting leases of up to 99 years over up to 10,040 hectares of land on the Tiwi Islands, subject to consultations with the relevant traditional owners. The terms of the Development Agreement are now largely agreed with no material change expected.

Consultations for the Development Agreement have been held in Milikapiti, Pirlangimpi and Wurrumiyanga.

**The Development Agreement is an overarching or “umbrella” agreement under which leases are proposed to be granted in the future. It is very important to understand that no leases have yet been granted and none will be granted without consultation with the relevant traditional owners.**

A lease under the Development Agreement **will not** be granted unless and until the Land Council is satisfied as to all the matters required by sections 19 and 23(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (**Land Rights Act**). One of those requirements is that the Land Council be satisfied that the relevant traditional owners understand the nature and purpose of the proposed lease and, as a group, consent to it. That will eventually involve further meetings of the relevant traditional owners **for each lease** to be granted under the Development Agreement. There will also be consultation with other Aboriginals affected by the proposed lease.

The Land Council is planning on executing the Development Agreement on Wednesday 9 December 2014 provided that the full Land Council resolves to endorse the proposal.

**A copy of the Development Agreement is available for inspection at the Land Council's offices.**

## **1. Highlights**

- 1.1 Land Development Corporation (ABN 11 768 147 358) (**LDC**) is established by the *Land Development Corporation Act* to develop and manage land for use by new and existing industries in the Northern Territory, for use for residential developments and for related purposes.
- 1.2 Under the Development Agreement (which is expected to run initially for 50 years):

- » At the request of the Northern Territory Government, and for the purpose of furthering the objectives of the *Land Development Corporation Act*, the LDC has paid \$1,000,000.00 (one million dollars) to Tiwi Resources Pty Ltd to benefit all Tiwi people; and
- » At the request of the Land Council, the Land Trust has agreed to a proposal under which potential leases for up to 99 years over up to 10,040 hectares of land on the Tiwi Islands may be leased to LDC or the Northern Territory Government subject to the outcome of consultations with the relevant traditional owners. These leases may be granted within certain “Investigation Areas” which have been agreed between the Land Council, the Land Trust and the LDC and set out in the Development Agreement.

- 1.3 The objective of the Development Agreement is to progress economic development on the Tiwi Islands.
- 1.4 The Development Agreement is not a lease. It is an overarching or “umbrella” agreement under which leases are proposed to be granted to LDC in the future.

## **2. Details of the Development Agreement**

### **2.1 Agreement to lease**

Under the Development Agreement, the Land Trust agrees to grant leases of up to 99 years at the request of the LDC of various parts of the investigation areas, subject to the outcome of consultations with the relevant traditional owners.

The aggregate area which is proposed to be leased is 10,040 hectares made up as follows:

- » approximately 10,000 hectares for primary production purposes;
- » approximately 10 hectares for residential purposes;
- » approximately 20 hectares for aqua-cultural purposes, tourism purposes or industrial purposes; and
- » approximately 10 hectares for township purposes.

Leases granted under the Development Agreement to LDC shall be in the form of a template lease that has been agreed between the parties (see 3 for details).

LDC may then sublease a lease to an investor/sublessee. These subleases must contain certain “sublease parameters” specified in the Development Agreement (e.g. in relation to sacred sites and respect for Tiwi culture). Once a site is subleased to an investor, the investor will be able to access and use the site.

### **2.2 Payment of rent**

LDC is not required to pay any fixed \$ amount of rent under any lease granted under the Development Agreement as the rental will vary according to the income earned on any subleases granted by LDC to investors (also known as sublessees).

Rent paid under or in connection with a specific lease granted pursuant to the Development Agreement will be payable by the LDC to the Land Trust at the rate of:

- » 50% of the rent payable under any sublease until the LDC has recovered:

- the advance payment of \$1,000,000.00 (one million dollars) previously made to Tiwi Resources Pty Ltd; and
  - all pre-lease costs incurred in connection with the grant of the Leases; and
- » 80% of the rent payable under any sublease **after** the amounts specified above have been recovered.

Sublessees/investors can pay rent in two ways. The first is to build assets/infrastructure in the leased area and the second is to pay money. Sublessees/investors may be able to build infrastructure or assets before they can pay money. It may be some time before the sublessees/investors can afford to pay money.

### 2.3 Pre-lease works and licence to conduct

The Land Trust grants to LDC a licence to access, occupy and undertake the pre-lease works on the investigation areas for the purpose of identifying areas that may become the subject of a lease.

This licence will enable LDC to access investigation areas in order to investigate opportunities for development, which may include taking surveys of investigation areas. LDC will undertake work **before** leases are in place which will include marketing opportunities to attract investors.

### 2.4 Investigation Areas and Access

LDC must access the investigation areas only through the designated access routes (as agreed with the Land Council).

The Development Agreement has flexibility so additional “investigation areas” can be included for investigation at a later date. Additional investigation areas need to be agreed between the Land Council and LDC.

### 2.5 ALRA Consultations

LDC will consult with the Land Council and traditional owners in relation to the grant of potential leases under the Development Agreement. When LDC wants to be granted a lease, LDC will give notice to the Land Council asking the Land Council to commence lease consultations under ALRA with the relevant traditional owners.

The notice must provide the Land Council with as much information in relation to the proposed lease as reasonably possible to allow the Land Council to commence consultations with the relevant traditional owners, including:

- » the approximate boundaries of the premises to be leased;
- » the proposed permitted use of the land to be leased;
- » if known, the identity and previous relevant experience of any proposed sublessee of the land;
- » in the case of a proposed sublessee that is a body corporate, the directors, managers and corporate structure of a proposed sublessee (if known); and
- » proposed amendments to the standard lease (if any) to account for matters specific to the premises or permitted use (for example, specific end of lease or environmental provisions).

The Land Council, the Land Trust and LDC must each use their best endeavours, to enable consultation with traditional owners to proceed as quickly and efficiently as possible.

If the relevant traditional owners agree to the grant of a lease and the other requirements of the Land Rights Act are complied with, there will be a lease between the Land Trust and the LDC. There will then be subleases between LDC and investors/sublessees. **Leases will only progress where they are wanted by traditional owners.**

If traditional owners **do not** want development on their land, then LDC **will not** be granted leases by the Land Trust.

## 2.6 Respect for Culture and Sacred Sites

LDC acknowledges under the Development Agreement that:

- » the traditional owners of the land have a spiritual and custodial relationship with the land and surrounding seas;
- » the traditional owners of the land remain the custodians of the cultural heritage of the land;
- » some knowledge belongs only to specific members of the Aboriginal community;
- » certain information is inaccessible to all except those deemed appropriate by the Aboriginal community;
- » secret and sacred materials are items of special religious and spiritual significance to Aboriginals, and are usually associated with men's and women's private ceremonies; and
- » Aboriginals must have access to sacred sites in accordance with the *Sacred Sites Act*.

LDC must do all things reasonably possible to ensure its employees, contractors, agents and representatives work respectfully with the traditional Aboriginal owners and other Aboriginal members of the community in the performance of its obligations under the Development Agreement.

LDC shall do all things reasonably possible to ensure all dealings by its employees, contractors, agents on or regarding the land are performed or undertaken in accordance with the *Sacred Sites Act*.

## 2.7 The Consultative Forum

A consultative forum will be established for each lease comprising nominees as follows (subject to any agreement otherwise between the parties):

- » 2 members nominated by the Land Council;
- » 2 members nominated by the Land Trust;
- » 2 members nominated by LDC; and
- » 2 members nominated by the relevant traditional Aboriginal owner group.

The purpose of each Consultative Forum is to:

- » facilitate communication and discuss land use and issues arising from the performance of the Lease having regard to the interests of the Land Trust, traditional owners and other legitimate community interests;
- » undertake other functions in specific circumstances outlined in the Lease; and
- » perform other functions agreed to by the Land Trust, Land Council and LDC.

Members of each Consultative Forum who are nominees of the Land Trust are required to consult with traditional Tiwi owners and other residents of their community in relation to the business of their Consultative Forum. The parties must have due regard to any recommendation of the relevant Consultative Forum.

A Consultative Forum may assist in the resolution of any disputes between the Land Trust, the Land Council and LDC.

## **2.8 Review of Development Agreement**

The Consultative Forum will review and recommend any changes to the Development Agreement and each lease (if any) after the first 5 years of operation of the Development Agreement and after every 10 years of operation of the Development Agreement thereafter, or as otherwise determined by the Consultative Forum. The Land Trust and the LDC are required to give due consideration to any recommendations made by the Consultative Forum in relation to the Development Agreement.

## **2.9 Dispute Resolution**

To ensure any disputes are handled appropriately and efficiently, the Development Agreement sets out a dispute resolution process involving negotiation and mediation before court action can commence.

# **3. Terms of the Leases**

Each lease granted under the Development Agreement shall be in substantially the same form as the template lease which is annexed to the Development Agreement.

The details of the key terms of the template lease are as follows:

## **3.1 Grant of lease**

The Land Trust grants a lease over the specified land for a term of up to 99 years.

## **3.2 Rent, operating costs and other costs**

The lessee will pay rent to the Land Trust in accordance with the Development Agreement (i.e. from the amount of rent paid to the lessee under any sublease – see 2.2 above).

The lessee shall pay the operating costs of the land during the term of the lease. Operating costs include all costs, expenses and charges levied in respect of the land during the term of any sublease, including council rates and charges, water rates and charges and sewerage rates and charges.

The lessee shall, during the term of any subleases of the land, pay for all services supplied to or consumed on the land. Such services include any services or systems provided to the land including:

- » water, power, fuel, oil, garbage compacting and removal, waste disposal, sewerage, telecommunications, communications systems and public address systems,

background music, security, air conditioning, ventilation, escalators, fire protection, lift services, washroom and toilet services; and

- » the wires, pipes, ducting and other means of providing those services or systems to the land

### 3.3 **Lessee's covenants**

The lessee agrees:

- » not to use the land for a purpose other than the permitted use (which will be one of the following, namely, primary production purposes, aquaculture purposes, residential purposes, tourism purposes, industrial purposes or township purposes);
- » to comply with all laws relating to or affecting the land or lessee's use and occupation of the land;
- » that it is entitled to make alterations or modifications to the land without the consent of the Land Council provided the works are consistent with the permitted use of the land and in compliance with all laws;
- » to keep, repair and maintain the land and the improvements in a reasonable state of repair;
- » to keep appropriate insurances in force in respect of the premises;

The parties agree that it is the express intention of the lessee to sublet the land under the lease and, the lessee may sublet the land to an investor/sublessee provided:

- » the proposed investor/sublessee is a fit and proper person;
- » the terms of any sublease, are not inconsistent with the terms of the lease (including the permitted use) and are consistent with Land Council environmental policies;
- » any sublease must contain certain "parameters" (e.g. in relation to sacred sites and respect for Tiwi culture);
- » the investor/sublessee agrees to perform and observe all the lessee's obligations under the lease.

Either party may terminate the lease if, for a period of 5 years, no part of the land is subleased and the lessee has not commenced paying rent to the Land Council;

### 3.4 **Planning and Environment**

The lessee must pay for any applications for planning consents or approvals required by the lessee or sublessee for the development or use of the land. Further, the lessee must:

- » comply with all environmental laws; and
- » not cause the land to be the subject of any contaminant;
- » comply with all policies of the Land Council or the Land Trust in relation to environmental protection;

### 3.5 **Land Trust and Land Council's obligations**

The lessee is entitled to peaceably hold and quietly enjoy the land during the lease term.

### 3.6 Default by the lessee

The Land Council cannot terminate the lease unless the lessee breaches its obligations to pay rent to the land Council and to comply with the permitted use of the land. If the lessee breaches either of these obligations, the Land Trust may give the lessee a notice in writing specifying the breach. The default provisions provide an opportunity for the lessee to remedy any breach. If such a breach is not remedied, the Land Trust can terminate the lease.

### 3.7 Dispute Resolution

To ensure any disputes are handled appropriately and efficiently, the lease sets out a dispute resolution process involving negotiation and mediation before court action can commence.

## 4. Where to from here?

Consultations for the Development Agreement have been held in Milikapiti, Pirlangimpi and Wurrumiyanga.

The Land Council is planning on executing the Development Agreement on or shortly after Wednesday 9 December 2014 provided that the full Land Council resolves to endorse the proposal. The Development Agreement is not a lease. It is an overarching or “umbrella” agreement under which leases are proposed to be granted in the future.

Any proposed lease under the Development Agreement must be consented to by the traditional owners (see clause 2.5 above). A lease under the Development Agreement **will not** be granted unless and until the Land Council is satisfied as to all the matters required by sections 19 and 23(3) of the Land Rights Act.

One of those requirements is that the Land Council be satisfied that the traditional Aboriginal owners of the Tiwi Islands understand the nature and purpose of the lease and, as a group, consent to it. That will eventually involve further meetings of the relevant traditional Aboriginal owners **for each lease** to be granted under the Development Agreement.