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Introduction

Ngaji Gurrijin, Nyamba Buru Noongar Country.

Yawuru language meaning: Hi, how are we all? Thank you for inviting me to Noongar Country.

My name is Paul Robertson and I am the General Manager of Property Development for Nyamba Buru Yawuru Ltd in Broome WA.

My role is to advise the NBY Board about its investment strategy for its property portfolio and then implement its investment decisions.

To describe this role as challenging would be somewhat of an understatement. The Yawuru native title agreement with the State Government which was registered in August last year, involved Yawuru native title holders surrendering their traditional rights over significant areas of lands so that Broome could expand on the basis of certainty over land titles.

In return, as well as compensation for past illegal acquisition of Yawuru lands by the State of Western Australia, Yawuru native title holders acquired freehold property in Broome worth approximately \$140million, representing 80% of Broome's developable land. There was also a financial component to the agreement. Over three years Yawuru will receive from the State \$56m to be spent on administration, housing, cultural management and economic development.

Beyond 2013, Yawuru native title holders will need to generate their own income principally from property development.

As a professional with extensive experience in property development and banking, working with Yawuru as a Property Development Manager looks like a dream job. We hold extensive areas of Broome as freehold, much of it englobo but with significant numbers of lots ready for development, Nyamba Buru Yawuru Ltd is cashed up and debt free.

It doesn't get much better than this, one might think. But nothing is as simple as it seems.

Yawuru people have been able to negotiate this agreement because their native title has been determined by the Federal Court. And here lies the heart of the complexity. Native title is not just legal leverage to drive a good deal. It is the culture of a people who are determined to maintain it for future generations. And the development of Yawuru property must be about generating income as a cultural and social dividend for the Yawuru shareholders.

This is a challenge to put it mildly.

Native Title in Australia

Before talking about the exciting potential of the Yawuru property portfolio I want to try and explain the context of native title that we are working in. I am assuming many of you are probably a bit like I was before taking this job at the beginning of the year in terms of understanding native title.

What I will present in a few short minutes is a 101 explanation of native title. The concept is pretty straight forward. It is the governments of this country that have made it a legal quagmire.

But firstly let me say that I am no bleeding heart. I strongly believe in the capacity of the market to create and distribute wealth and that individual effort, responsibility and enterprising risk taking are the pillars of a prosperous and civil society. Some of my colleagues have dubbed me the resident Tory. So be it.

But I also believe in the notion of the level playing field and the opportunity for all to participate and benefit from the market based economy.

I come from New Zealand and I grew up with that ethic. I hope I don't upset people here when I say that Australia does not have a mortgage on the concept of the "fair go".

If there is one section of Australian society that has not been given a "fair go" it is the Aborigines. I see native title, particularly the way it had been used to negotiate the Agreement in Broome, as a way of dealing Aboriginal people into the game.

More of that in a few minutes but back to native title 101.

On January 26 1788 when the Union Jack was raised on Sydney Cove to symbolize Australia's absorption into the British Empire, the British Government intended that the land mass of Australia was to be shared between the new settlers and the Aborigines. It would have been hard to imagine any other course at the time. There were only a few hundred Brits, most of them convicts, and there were, as we now know up to three million Aborigines comprising several hundred different languages with highly developed land title and governance systems.

But as more and more settlers came and settlement spread over the continent, a made up story called terra nullius - meaning land belonging to no body - took hold. The racist notion that Aboriginal people were so primitive that they possessed no concept of land ownership became the legal philosophy that dispossessed Aboriginal people throughout Australia.

The problem was that it was a lie and it was only a matter of time before our legal system exposed the concept of terra nullius for what it was. We didn't have this problem of terra nullius in New Zealand because the Brits negotiated the Treaty of Waitangi with the Maoris in 1840. And for those of you who watched the All Blacks perform the haka last Sunday, you'll understand why the British signed that treaty.

The 1992 High Court Mabo decision cemented native title in the Australian legal system. It took Australia right back to 1788 and the British Government's intention that Aboriginal rights must coexist with the interests of the new settlers. But the Australian High Court was never going to undermine this nation's land title system; which was the basis of individual economic prosperity that had been developed over more than two centuries.

It determined that wherever governments had issued land titles that were exclusive possession; native title was extinguished, gone forever. Non aboriginal people's back yards should never have been an issue. People who had freehold or exclusive possession leasehold titles, their land titles were 100% secure.

Under the legal principles of Mabo, Aboriginal and Islander people could assert their rights to their traditional lands with proof that they were biologically connected to the original owners at the time of British acquisition and with an ongoing connection to the traditional culture and its practices.

Unfortunately because of the lack of trust and established processes of dialogue between Aboriginal people and settler society in this country, the principles of Mabo have set the battle ground rules for protracted litigation and spawned an unedifying legal and anthropological industry.

The Mabo decision appeared to leave Aboriginal and Islander people with very little to claim. The ruling left no doubt that leases extinguished native title and on that basis it was thought that pastoral leases which covered almost half of the continent of Australia had effectively extinguished native title.

Three and a half years after Mabo, the High Court clarified that issue in the Wik case when it determined that Australian pastoral leases were not really leases in the English Common Law sense but simply a license to graze livestock that the British Government intended should not extinguish Aboriginal people's rights.

Yawuru Native Title Determination and Agreement

In 1994 the Yawuru people asserted their native title rights. After a few years mediation broke down with the State Government and the claim was litigated in the Federal Court. After a lengthy court battle where the Yawuru were subjected to intense scrutiny by the State Government and other respondents, Judge Ron Merkel determined in Yawuru's favor.

The Court found and I quote:

"That the present Yawuru community still acknowledges and observes the traditional laws and customs which, since sovereignty, have constituted the normative system under which the native title rights and interests in issue are being claimed".

The State Government immediately appealed and in April 2008 the Full bench of the Federal Court upheld the original decision. What followed was a two year negotiation between Yawuru leaders and State negotiators who had to work out how Yawuru native title could coexist within the land and planning system of the Broome region. These negotiations had to deal with the future land use aspirations of this town and the State of Western Australia.

In early 2010 Yawuru, The State Government and the Shire of Broome signed a Global Agreement that settled generic usages for land in accord with the town planning requirements and regulations.

The critical imperative for Yawuru is to protect traditional culture and values. On face value this seems at odds with the Yawuru corporate vision which is to develop a basis for reliable prosperity for future generations of Yawuru families. Yawuru don't think so. Their mission is to secure the cultural, social and economic life of the Yawuru community for generations to come through participation and engagement in the mainstream competitive market place.

Yawuru's investment strategy is being developed on an understanding that culture is not static. Just like the society and economy it inhabits, Yawuru community is dynamic with a resilience that Yawuru believe will be strengthened by participating in the market place as serious stakeholders.

The agreement has resolved the uncertainty of native title in Broome through an elaborate compensation compact that positions Yawuru people as significant equity stakeholders in Broome's vibrant economy. The majority of Broome's developmental land is owned by Yawuru as freehold title. This is the basis for an income stream generated in perpetuity for Yawuru to invest in cultural, social and economic enterprises.

The cash component of the agreement is designed to build the capacity of Yawuru people to assume their rightful place as institutional partners in Broome's development. Large conservation lands encompassing most of Yawuru country's 100 km coastline, including a proposed marine park covering Roebuck Bay will be vested with the Yawuru who will jointly manage the estate with the State Government and the Broome Shire.

A number of young Yawuru and other Aboriginal people have already been employed as rangers to help manage these lands and seas.

In a little over a year the agreement's impact on Yawuru people and our relationship with the wider Broome community has been considerable. There has been a resurgence of interest in Yawuru language, employment opportunities are emerging and formal planning processes are beginning to feel the influence of Yawuru people's vision for Broome's future development.

Yawuru Property Development Strategy

Nyamba Buru Yawuru Limited (NBY) is the corporate body that holds the agreement proceeds from the Native Title Determination which was won in 2006 and settled one year ago on 6th August 2010.

The Agreement comprised freehold title of some 3,500 hectares of land worth approximately \$140 million and \$56million cash. It is not a royalty based settlement- we had one bite of the cherry only and it is now incumbent on the board and the executive of NBY to grow this balance sheet to provide social and economic outcomes for this and future generations. While it is exciting times in terms of the future prospects of our growth the board is very conscious of the risks associated and will obviously take the most prudent form of action in our developing investment strategy.

Our business is divided into two specific area of responsibilities:

I look after anything commercial and apart from property development and investment this also includes business acquisitions and the development of SME's to be owned and operated by Yawuru. My colleague John Roberts looks after our Cultural, Heritage and Social responsibilities.

John's team has estimated that there are only just over 1,000 Yawuru people. We are currently undertaking one of the most comprehensive demographic household surveys ever done in a local community to understand more comprehensively the nature of our community, their relevant profiles and the environment in which we live to be able to respond adequately for future planning needs and for the optimal outcome from our future investments.

The settlement agreement at the time was seen to be substantial however I think that what was not properly considered during the negotiations was the fact that \$140 million of engloba land would probably need \$300 million in capital to develop- and the reality of the impact of the GFC.

Regardless we are pressing on with some significant developments:

1. We have leased 50 hectares of land to the Broome Port Authority on a long term ground lease. They will develop the land and we will also share in the rental returns achieved from the completed facilities thereon.
2. A DA for a 45 lot residential land subdivision is currently lodged with WA planning for approval- work should commence at the start of the next dry season in 2012.
3. A 600 sqm office building for our own occupation with work due to start this month.
4. 2,000 sqm office building over three levels on Frederick Street- DA was approved last month and a pre-lease campaign is about to commence .
5. 20 one and two bedroom apartments on Stewart Street- DA was approved last month and work will commence in the next dry season.
6. 11x 3bedroom townhouses across three lots in the Six Seasons Estate- design work is underway.
7. 1,500 sqm office building on Haas street - Engineering design underway and DA will be lodged this month.
8. We have executed an MOU with the Department of Housing to jointly develop an affordable retirement village on Clemenston Street.
9. We are currently negotiating with the Indigenous Land Corporation for the transfer back to us of Roebuck Plains Station which is currently held in trust by the ILC- this is a 300,000 hectare cattle station running 30,000 head of Brahman. The property also includes a TAFE training facility for young stockmen and station hands.

10. We are designing a large heavy transport refueling facility on a site at Broome North opposite the Cape Leveque Turn-off. This project is pre-leased to a major listed service station operator on a 30 year lease.
11. Initial planning and feasibility has commenced for the development of a 700 lot residential subdivision which would be planned for release in 5 years' time.
12. Planning is nearing completion for the development of a Bulky Goods Retail precinct with expressions of interest held from several listed national retailers.

In summary we will inject some \$50 million into the local economy over the next two years from our development activity.

I'd like to conclude by sharing with you some personal observations that I have about Broome and the Yawuru people- keeping in mind that I have only been here since January this year.

- The Yawuru people are generally well educated or at least have had excellent education opportunities primarily initiated by the Catholic Church.
- If you are Yawuru and you want to work- then you already have a job! This causes external contractors some angst when they pitch for work and attempt to use Indigenous engagement as leverage.
- Our educated young people move away from Broome and many can be found working in the public service in Canberra, Perth and Adelaide.
- It is a cause of great personal frustration to me that we have missed access to a generation of young professionals who could be working alongside myself and my colleagues to learn to manage this business.
- Whilst there are the obvious manifestations of social dysfunctional behavior that you may see around town and elsewhere in the Kimberley's, it should be recognized as it is in the broader community, that there is significant social and cultural diversity in Aboriginal societies.

There are many people who are disenfranchised members from remote communities who have travelled many kilometers to get to Broome for various reasons similar to other visitors. For these peoples Broome is the main regional center - we have pubs and bottle shops, we have Centrelink, Medicare, dialysis, a hospital a courthouse and a jail. These visitors put a huge strain on the shires resources. Yawuru is working with both the State Government and the shire to develop a managed lodging house concept where these people can find temporary shelter. Keep in mind that most remote communities are "dry" and have little commercial resources.

- As an example of Aboriginal cultural diversity, the Yawuru do not play the didgeridoo as it is a cultural instrument used for ceremonial practices emanating out of East Arnhem Land and whilst it is widely recognized today, generically as a widely used musical instrument, the Yawuru continues to respect it as a part of Aboriginal Law as an instrument associated with customary practice.
- There are only three elderly people left in our community who speak fluent Yawuru, obviously the language is under threat. We have funded the development of a language resource center to document and preserve the language and already senior people are running language classes at the local schools.
- Since the early days of pearling which was primarily manned by Asian labor there has been integration with Yawuru through marriage. The young generation carries with pride their Asian inheritance.

Yawuru are developing a comprehensive cultural induction program that will be available for companies who are seeking to do business in our region. Access to the program will ensure that their managers and employees are better informed about who we are and what we're on about. What we are on about is about making a significant difference to the way we engage and benefit from what we do in this community and with each other.

While we have a primary responsibility to Yawuru, we also recognize our broader obligations to the Broome community and we are determined to sustain the important social and cultural values that continue to make Broome the place where people want to come and live.

Thank you.

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Nyamba Buru Yawuru Ltd