

DEPARTMENT OF LAW

Aboriginal Land Rights (Northern Territory) Act

THE SOLICITOR GENERAL

*ring of law hawker
— hands*

I refer to your request that I examine further the methods by which certain lands in the Northern Territory may be taken out of the definition of "unalienated Crown land" within the meaning of Section 3 of the Aboriginal Land Rights (Northern Territory) Act.

2. I can find no legal reason why the land in the 32 square mile acquisition area and/or the land at Cox's Peninsula should not be constituted a town by proclamation of the Administrator under Section 111 of the Crown Lands Act. I am informed that all towns in the Northern Territory have been so proclaimed under Section 111 and that the last two which were recently proclaimed were Batchelor and Yulara.

3. Sub-section (3) of Section 111 provides that the Administrator may by proclamation set apart as town lands any Crown land within the boundaries of the town. The Administrator is not required to take this action and provided that he does not do so there would appear to be no alteration in the type of leases which may be granted in respect of the land under the Crown Lands Act or a Special Purposes Leases Act.

4. I can see no way in which existing land tenures or tenancies will be affected. Some mining tenures will be affected. "Town" is not defined by the Mining Act and I therefore assume that the word when used in that Act includes an area constituted as a town under Section 111 of the Crown Lands Act.

5. Section 23(2) of the Mining Act provides that the holder of a miner's right shall not by virtue of that section use any Crown land located within 1 mile of the town for the purpose of a residence or market garden except with the consent of the Minister and shall not use any Crown land located within 3 miles of the town for the purpose of business except with the consent of the Minister.

ok

6. Section 33 provides that upon any land held under a miner's right for the purposes of residence or business being included in a town the holding may continue until the land is sold.

7. Section 55 of the Act provides that mining leases may be granted of any land in a town but the lessee shall not disturb the surface without permission of the Minister.

8. Section 109 provides that no mining tenement may be granted in respect of private land which is of less extent than half an acre within the limits of the town.

9. I understand that both Cox's Peninsula and the 32 square mile area are within goldfields and that there are therefore garden areas and business areas in existence - also mineral leases especially for quarrying in the 32 square mile area. I do not see that these problems are insuperable so long as the Minister for Mines and Energy is prepared to co-operate.

10. I can see no legal problem about having an Aboriginal reserve within a town - we have the Bagot reserve in Darwin but it may be possible to excise the reserve if this is desirable.

11. The Town Planning Act will of course apply to such towns but it seems that the Town Planning Board is not required to consider town planning schemes for such towns - it may do so if it wishes.

12. Mr. Seccombe of Lands and Housing will list for you the practical problems. They don't seem to me to be significant. Briefly they are -

- (1) Although it is not required to name a town this is usually done when a town is constituted under Section 111.
- (2) Land values will probably rise if a town is constituted.
- (3) People in towns often bring pressure to bear for the supply of services.
- (4) There will be some alteration in reserve prices for some leases - I believe these will decrease.

13. You have asked me to consider the alternative proposal that the lands be vested in the Northern Territory Development Corporation (or some such body) which would simply hold the lands until they are to be utilised properly.

14. The Northern Territory Development Corporation has the power to acquire, hold and dispose of real property. Its function however is limited to assisting in the development

of industry in the Territory by the provision of money resources and advice.

15. It would therefore probably require a major change in the legislation to enable it to act in this way.

16. I envisage other major problems.

17. If the land were vested in the Corporation by legislation it would be necessary to spell out what its powers would be. At present the ~~sun~~ land in the 32 square mile area is held under lease from the Territory under section 6A of the Crown Lands Act and administered by the Housing Commission under the Housing Act. These types of leases and this administration would no longer be possible. Is the Corporation really geared for a landlord and tenant situation?

18. Long term alienation of part of the land would be difficult. In order to grant a registrable crown lease it would be necessary to revoke the legislation vesting it in the Corporation or revoke it in relation to a part of the area and simultaneously grant a lease - otherwise the way would be open for an application under the Aboriginal Land Rights (Northern Territory) Act. If the period within which such an application may be made is to be limited, this would not be a problem.

19. The system of granting mining tenements would be complicated because all the land would cease to be crown land. Although some mining tenements may be granted over private land there are complicated questions of compensation to be considered.

20. The Torrens system in the Territory would once again be undermined by vesting land in bodies other than the crown and making no provisions for registry of the title - in fact in these circumstances such a provision would be unwise.

Juliet Shields
JULIET SHIELDS
28/11/78