

The Hon John Mansfield AM QC
Aboriginal Land Commissioner
GPO Box 9932 Darwin NT 0801

David Self
President
King Ash Bay Fishing Club
president@kingashbay.com.au
12 March 2018

**Review of detriment issues- McArthur River Region Land Claim No.184 and part of
Manangoora Region Land Claim No.185.**

Dear Mr Mansfield,

I refer to the above Land Claims and thank you for the opportunity to revisit what we would consider detrimental issues. Given the passage of time, the position of King Ash Bay Fishing Club has changed considerably.

Unfortunately Mr Bernie Redfern Passed away two years ago. While I am confident that Bernie would have raised the issues that were significant in the year 2000, the King Ash Bay Fishing Club has over the past 18 years, grown exponentially and we are in reality a small town.

With regard to the above claim Numbers 184 and 185 the King Ash Bay Fishing Club seeks exemptions in the following areas.

1. The area from the low water mark to the high bank throughout the NT Portion 3898 and 3899.
2. Exemption from any restrictions relating to boat ramp access.
3. Exemption from any restrictions relating to the maintenance of the Boat Ramp.
4. The ability to anchor freely for protracted periods opposite the bank forming the KAB lease.
5. Exemption from any restrictions relating to the use of the McArthur River, local coastal areas, islands and other rivers and creeks not mentioned in the above claim.

Should we be unsuccessful in obtaining exemptions for these areas the KABFC will eventually wither and cease to exist.

Members and visitors to King Ash Bay come for the following reasons. To escape southern winters, to enjoy the NT climate, explore the eco system, to reunite with extended families and the most popular reason by far, "The Fishing". Should KABFC lose its current access to the river system and the opportunity to fish, I have no doubt that club membership and the volume of tourists to the area will diminish and eventually be the

downfall of the club. Borroloola which is 42 Km southwest of KABFC will also miss the tourism dollars spent within the town

Possibly the most appropriate method of identifying detrimental issues would be to list facilities within the KABFC and place an associated value on each. This is potentially what we stand to lose.

The King Ash Bay Fishing Club was originally known as the Borroloola Boat and Fishing Club. The club was established at Batten Point in 1985 and subsequently moved to its current location in 1989. The King Ash Bay Fishing Club now exists on NT Portion 3899 and NT Portion 3898 under Crown Lease in Perpetuity No 1476. The lease commenced on the 30th June 1995. Clause 1. of the lease states “ **subject to the Crown Lands Act the Lessee will not use the land for a purpose other than the purpose for which it is Leased, viz.tourism, recreation, camping and ancillary purposes.**”(copy attached).

KABFC has an airstrip for local use and for guests and tourists to fly in. The strip is listed in the En-Route Supplement for Airmen (ERSA) and also features in OZ Runways. The strip is 600metres from the CBD and is maintained by the club. A replacement value would be \$100,000.

Given the security a perpetual lease implies, members of the King Ash Bay Fishing Club have worked diligently to provide facilities for our club members and to promote tourism, recreation camping and sustainable fishing. To meet our obligations and service the needs of members and tourists alike, we have provided three ablution blocks. Our largest facility was built two years ago at a cost of \$350,000 and this along with one smaller facility, service the powered camping area. There is another modern facility in the bar/restaurant area. One ablution block is currently available to campers in the non-powered area. We have recently purchased two new ablution blocks which are portable and we plan to have them installed for the coming season. In total we have invested in excess of \$500,000 in ablution blocks alone.

To service the club facilities we have constructed a machinery shed which houses our equipment. At present we have a back hoe, two tip trucks, one garbage compactor, two slashers, two zero turn mowers, one water truck/firefighting appliance, one forklift, a ditch witch and work utility. Current replacement value would be around \$400,000.

Over the years we have built and extended our bar/restaurant facilities. The kitchen is quite modern with all of the features one would expect to find in a restaurant situated in a large town. Equipment includes deep fryers, grills, bay maries, ovens and pizza oven. The kitchen has dedicated fridges and freezers. The KABFC lease our kitchen to an external contractor. On most nights the bar is well frequented by members and tourists alike. It is not unusual to serve 250 meals a night. The bar has two display fridges (one a walk in) which we use for day to day use. We also have a large fridge area which we use for the storage of our bulk alcohol. There is a large walk in freezer attached. The bar area is paved and concreted, has many tables and chairs and the entire area is covered with shade sails. Replacement value would be \$1,000,000.

There are approximately 100 dwellings within the lease area. Members have invested heavily in the area knowing that we have a perpetual lease and that their investments are sound. While some members utilise their buildings as holiday homes, many people live here permanently. I am not aware of how many members have King Ash Bay listed as their primary address on the electoral roll, but there are sufficient to warrant the Electoral Commission setting up a polling booth come election time. There are about 26 dwellings on Riverside Drive that have river frontage (on the East/West portion of the lease) many of them having floating pontoons or jetties to moor their boats and or gain access to the river. Many of these houses are built just on the high bank which forms part of the current claim. In theory, these residents could potentially lose parts of their dwellings. I would hazard a guess that the total of all dwellings would have a collective value of [REDACTED].

Two years ago we constructed a new office and administration building. The building is of block construction filled with concrete meeting cyclone ratings. The building also provides a safe haven during cyclones season and is valued at \$200,000.

King Ash Bay Fishing Club has 770 members most of which have partners. Our membership mainly consists of what is commonly referred to as "grey nomads". These members come from all states of Australia as well as Alice Springs and Tennant Creek. Many of our members spend in excess of six months a year at the fishing club and a small nucleus live here permanently. Many members develop relationships with fellow campers, their neighbours and other fisherman and not only do they develop close knitted groups they become extended families. King Ash Bay attracts a significant number of tourists that visit our community. We provide a number of options from staying in a Lodge (communal accommodation), Powered Cabins to powered and unpowered camp sites. To this end, we have in excess of 170,000 night stays per year. Total value \$xxxx

The club is currently mounting a campaign to have a Telstra Tower erected on our lease. In six months 900 individuals signed a petition urging Telstra to provide a tower at KABFC. It should be realised that each signature could potentially represent two or three individuals as not all passengers would enter the office to register.

At KABFC we have a 9 hole golf course and provide various other activities. We provide a members night with happy hour, raffles and the major members draw (which has at times jackpotted in excess of \$1500). Carpet bowls, Hoy, Bingo, Line Dancing, Darts, Card Nights and Trivia are some of the facilities we provide to entertain our guests and members when they are not fishing. Needless to say, the members and tourists contribute significantly to the local and NT economy. I am of the opinion that should we be denied free access to the river and its use our club would wither and the local township of Borroloola would also suffer. Contribution to the Local and NT economies: impossible to calculate.

King Ash bay is I believe, one of the most successful stories of the Northern Territory. We have over the past twenty two years managed to generate and distribute our own electricity. We maintain a generator shed housing four generators varying in capacity from 350kw to 100kw output. We are this month investing \$108,000 to provide auto selection and synchronisation of all generators to ensure the production of electricity more cost

effective and of higher quality. We endeavour to ensure our distribution system and subsequent connections meet Power and Water standards. Last year we installed a 64,000 litre diesel tank that is environmentally friendly, thus reducing the possibility of any adverse environmental issues. The cost of the tank was \$60,000. Our investment in the generator shed with contents would be in the vicinity of \$600,000 not counting the associated distribution and infrastructure.

KABFC have established and maintain a reticulated water supply and infrastructure to support approximately 100 houses/shacks in the development area. The reticulated system extends to all camping areas. We are currently commencing stage two of our reticulation upgrade, replacing rural pipeline with high pressure plastic pipe encased in sand at 600mm depth. The program which will be completed over the next four years and will see an additional \$100,000 invested in infrastructure. Our bore, storage tanks, pumps and infrastructure is valued at \$500,000.

I also believe that King Ash Bay is one of the Northern Territories major tourist attractions. Our Easter Fishing Competition (The Easter Barra Classic) is one of the oldest and most supported fishing competitions in the Northern Territory. Last year the prize pool was in excess of \$60,000. King Ash Bay regularly features in Fishing Magazines and Television. The ability to catch a fish in an eco system such as we enjoy. Priceless

The King Ash Bay Fishing Club generates \$450,000/year in camping fees and rent which eventually is returned to the NT economy. Last year we purchased \$200,000 worth of diesel to power our generators. This was in turn transported from Darwin to KAB. In 2017 we spent \$112,000 at Pit Lane (Alcohol Retailer). The product was transported to KAB and sold through our Bar. The Bar employed eight staff during the tourist season. We also provide garbage collection in a compactus truck, amenities cleaners, office staff and maintenance staff. In total we employ 17 people. I mention these few facts to highlight the flow on effect that we contribute to the NT economy.

We are in reality a small township that has evolved without any burden to the Northern Territory Government. In accordance with our lease provisions, we encourage tourism, recreation, camping and sustainable fishing. I believe we do a splendid job and I for one, would be very disappointed if all of our collective efforts over the years were to no avail.

I have attempted to list the assets of the KABFC and placed a dollar value associated with each area. There are however, a small number of businesses that operate within the lease.

The King Ash Bay service station has six bowsers supported by a tank farm. Infrastructure consists of a shop front, workshop area, accommodation and secure storage area. The staff provide a number of services to members and visitors including, welding, fabrication, maintenance of vehicles and boats. The Service Station is also a grocery store selling groceries, fresh vegetables and fruit, bread, milk and meat. They also have hardware, clothing and fishing gear. The list is comprehensive and there is no necessity to shop elsewhere should you choose not to do so. A conservative value would be \$2,000,000.

The King Ash Bay lodge is a privately operated business within our lease and has private accommodation for 10 people. I would estimate it is valued at \$500,000.

There are two businesses that hire house boats. Northern Territory Luxury House Boats (two house boats and a number of powered dinghies) would be valued at \$750,000 and Borroloola House Boats (five house boats of various size) would be somewhere about \$1,500,000. The other business that operates within our lease is Borroloola Cabins. There are six self contained cabins and I would place a value on them at \$300,000.

Should King Ash bay fishing Club cease to exist or be forced to close as a consequence of the land claim, then these businesses would suffer greatly.

Again I thank you for the opportunity to bring you up to date with the status of our club. Should you require clarification or photos of any aspect please contact me direct on [REDACTED].

Yours faithfully

D Self

Review of Detriment Issues

McArthur River Region Land Claim No.184 and part of Manangoora Region Land Claim No.185

Submissions of King Ash Bay Fishing Club Incorporated

16 March 2018

Legend

1. In these submissions:
 - (a) **ALRA** means the *Aboriginal Land Rights Act (Northern Territory) Act 1976 (Cth)*;
 - (b) **Club** is a reference to the King Ash Bay Fishing Club;
 - (c) **Commissioner** is a reference to the Aboriginal Land Commissioner;
 - (d) **McArthur River Claim** means the McArthur River Region Land Claim No 184;
 - (e) **Manangoora Claim** means the Manangoora Region Land Claim No 185;
 - (f) **Report** is a reference to the report and recommendations of Justice Olney in relation to the McArthur River Claim and part of the Manangoora Claim being Report No 64;
 - (g) **Review** means the review of the Commissioner pursuant to s.50(1)(d) of the ALRA into detriment issues for the McArthur River Claim and part of the Manangoora Claim.

Background

2. The Club holds NT Portions 3898 and 3899 under Crown Lease Perpetual 1476 which borders the banks of the McArthur River near Borroloola in the Northern Territory. The lease commenced on 30 June 1995.
3. The purpose for which the Club land is leased is "*tourism, recreation, camping and ancillary purposes.*"
4. The Club supports a reasonably substantial regional centre populated by members and visitors who predominantly come to the area for the fishing.
5. Currently, there are approximately 770 members of the Club.
6. There are 96 dwellings which have been constructed within the lease area.
7. Facilities associated with the Club include ablution blocks, bar and restaurant facilities, an office and administration building, 9 hole golf course and airstrip.
8. Several small business enterprises operate within the lease area. These include the King Ash Bay service station and associated grocery store, King Ash Bay Lodge and two houseboat hire operators.
9. Club members and other persons wishing to access the McArthur River use the boat ramp which is adjacent to the western boundary of NT Portion 3899. Map 3 annexed to the Report,

shows the boat ramp as an extension of Batten Road which runs between NT Portion 3898 and NT Portion 3899.

10. In 2002, the McArthur River Claim and the Manangoora Claim were recommended for grant by the Commissioner in the Report.
11. The Review is now being conducted by the Commissioner pursuant to s.50(1)(d) of the ALRA as set out in the letter from the Commissioner to Mr Bernard Redfern to the Club dated 15 December 2017.
12. As invited by the Commissioner, the Club's comments in relation to detriment issues are set out below.
13. The Club provides these submissions:
 - (a) as a landowner of land adjoining the claimed area and on behalf of the residents both permanent and temporary on the leased land;
 - (b) as a fishing club which offers its members, residents and visitors to the Northern Territory the opportunity to pursue their love of the river and coastal system and of fishing and on behalf of all those persons;
 - (c) on behalf of all other persons associated with the Club who will suffer detriment should a grant of Aboriginal land be made. Such persons include the small business operators and other workers within the lease area whose livelihoods depend on the thriving regional centre that the Club has become;
 - (d) in the interest of the broader communities of King Ash Bay and Borroloola which directly benefit from the tourism generated by the Club; and
 - (e) in the overarching interest of the Northern Territory and its economy of which the Club is a significant contributor including by raising the profile of the Territory as a premier tourism destination within Australia.

Review of Detriment issues - general

14. As a preliminary matter, the Club submits that any consideration of detriment which would be suffered if the relevant areas became Aboriginal land must now be made in the context of the understanding arising from the Blue Mud Bay decision of the High Court in 2008.¹
15. In a pre Blue Mud Bay landscape, detriment issues identified in the Report focussed on detriment which would be suffered on the basis that, while access to the waters and river bed of those wanting to fish may have been compromised, there would be no prohibition on actually being on the waters and fishing in the waters (where there was no direct contact with the solid surface of the earth).
16. The judgement of the majority in Blue Mud Bay confirmed that there is no relevant distinction between dry land and the land in the intertidal zone when covered with water. Aboriginal land is defined by metes and bounds and without regard to whether the tide is in or out at the time of an alleged entry or remaining.
17. The Club submits that Blue Mud Bay decision has significantly changed and magnified the detriment arising in the event that a grant of Aboriginal land is made in respect of the claimed areas:
 - (a) access to the McArthur River intertidal zones would now be prohibited entirely without permission from traditional owners; and

¹ *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* [2008] HCA 29.

(b) to the extent that the McArthur River Claim does not extend past the mouths of tidal rivers and creeks, the grant of the McArthur River Claim would have the additional effect of preventing access by river and sea to many significant tributaries and coastal creeks, which are presently accessed by Club members and visitors via the McArthur River.

18. The Commissioner acknowledged that, at the time of the Report, there were unresolved legal questions concerning the rights which attach to Aboriginal ownership of tidal rivers and the bed of the intertidal zone.² The Commissioner recognised that for an acceptable result to be achieved, legislative action on the part of both the Commonwealth and the Northern Territory may be required.³ The Club submits that the Blue Mud Bay decision:

(a) is not an acceptable result and has only escalated the detriment issues facing the Club and many other parties; and

(b) is exactly the kind of outcome that the Commissioner is alluding to as requiring legislative intervention to achieve an acceptable result.

Detriment issues identified in the Report

19. In his concluding comments to the Report, the Commissioner found that:

"The interests of the King Ash Bay Fishing Club would be detrimentally affected by any grant of title which did not preserve a right of access to the McArthur River by the boat ramp at King Ash Bay and across the bank of the river adjacent to NTP 3898 and NTP 3899."⁴

"If it is ultimately decided as a matter of law that a grant of title would entitle the Land Trust to prohibit or regulate the placing of nets, crab pots and/or anchors on the bed of the river and intertidal zone, commercial and recreational fishers in the waters concerned would suffer detriment."⁵

20. At the time of the inquiry into the McArthur River Claim and the Manangoora Claim, the club had a membership of 1629 and an estimated total capital investment of between \$6 million and \$8 million. The Report identified detriment that would be suffered by the Club and its members in the event that the claimed areas became Aboriginal land as follows:

(a) restrictions on the use of the King Ash Bay boat ramp would cause detriment to members of the Club and thus to the Club itself assuming a decrease in membership and visitor numbers would follow;

(b) similar concerns were held in relation to jetties which members had built to gain access to the river; and

(c) the right to place anchors and crab pots on the river bed would be restricted.

21. There is no doubt that these issues are still relevant to the detriment that would be suffered by the Club in the event of a grant of Aboriginal land. However, the restrictions identified all fall within the far greater and more overarching restriction resulting from the Blue Mud Bay decision, being the prohibition on entering waters covering Aboriginal land at all.

22. In addition, as pointed out by the Commissioner, the claims were made days before the s.50(2A) sunset clause took effect under the ALRA, being more than 20 years after the ALRA

² Report, para 169.

³ Report, para 169.

⁴ Report, para 168(g).

⁵ Report, para 168(f).

came into operation and 8 years after the development of King Ash Bay commenced.⁶ As can be seen from the Report, members had invested heavily in the growth of the Club in those initial 8 years. This would be to great detriment if a land claim were acceded to.

Steps to address detriment concerns

23. The Commissioner has invited comments on whether any steps have been taken to address the detriment concerns for the Club specified in the Report.
24. The Club submits that given the nature of the detriment affecting the Club and its members, options to address them are not available.
25. Detriment to the Club and others associated with the Club arises from the potential for restrictions on (or complete prohibition of) fishing activities on the making of a land grant. Other than the Club ceasing to exist for the benefit of its members, it is difficult to realistically see how any steps could be taken to address detriment issues (either those identified in the Report or the further detriment issues which are identified in these submissions). Addressing issues of detriment could have only been achieved by ceasing further development at the Club after 2002. That in itself would have raised immediate and ongoing significant detriment issues.
26. Given the significant passage of time which has elapsed from when the land claims were recommended for grant the Club has been left no alternative but to move forward or risk jeopardising the thriving tourist centre it has become and the incomes and businesses that depend on it.
27. However, the Club submits that steps have been taken to develop a positive working relationship with traditional owners. For example, the owners of Borrooloola Houseboats in their letter dated 29 January 2018 (see annexure 1) state that:

"Our relationship with the Traditional Owners in the past 20 years has grown, since we started our operation in 1995 with us working hand in hand with the local tour operators. The Borrooloola area has become a popular Fishing, Cultural and Tourist destination in the Northern Territory."
28. The Easter Barra Fishing Competition is another initiative of the Club which receives support from several Indigenous organisations such as Mulandari, Mubunji and The Sea Rangers. In 2017, more than 50% of the participants were Indigenous people from the local community. A large number of Indigenous people also participate in the presentation and festivities which follow. The competition is seen by the local community as one of the highlights of the year.
29. Such co-operation between Club associated business and local Indigenous tour operators is a positive step for both the Club and traditional owners and enhances the experience of tourists and visitors. While it is impossible for the Club to address the detriment concerns specified in the Report it is submitted that the development of such relationships is a positive for all parties concerned.

Additional issues of detriment arising since the Report

30. It is clear that additional issues of detriment have arisen for the Club since the making of the Report in 2002. There are two components to such detriment:
 - (a) the detriment (both financial and other) arising from further development and investment by the Club and its members in facilities, accommodation and small business; and
 - (b) the additional detriment which now arises as a result of the Blue Mud Bay decision.

⁶ Report, para 123.

31. The Club has continued to develop in the years since the Report was made, consistent with:
- (a) its location as a premier tourism destination in the Northern Territory; and
 - (b) the security of tenure offered by a Perpetual Crown Lease.

Financial detriment

32. The Club has worked to provide facilities for members and to promote the purpose of the Club being tourism, recreational camping and fishing. Some of these facilities were in place at the time of the Report but many have been expanded and extended in the years following the Report.
33. Facilities developed by the Club include the following:
- (a) **Airstrip:** This is for local use and for guests and tourists to fly in. The strip is listed in the En-Route Supplement for Airmen (ERSA) and also features in OZ Runways. The strip is 600 metres from the centre of Borroloola and is maintained by the Club. A replacement value would be **\$100,000**.
 - (b) **Ablution blocks:** To meet obligations and service the needs of members and tourists, the Club has provided three ablution blocks. The largest facility was built two years ago at a cost of \$350,000 and this along with one smaller facility, services the powered camping area. There is another modern facility in the bar/restaurant area. An ablutions block is made available to campers in the non-powered area. The Club has recently purchased two new ablution blocks which are portable and plans to have them installed for the coming season. In total the Club has invested in excess of **\$500,000** in ablution blocks.
 - (c) **Machinery Shed:** To service Club facilities a machinery shed has been constructed which houses equipment. At present the Club has a back hoe, two tip trucks, one garbage compactor, two slashers, two zero turn mowers, one water truck/firefighting appliance, one forklift, a ditch witch and work utility. Current replacement value is around **\$400,000**.
 - (d) **Restaurant and bar facilities:** Over the years the Club has extended its bar and restaurant facilities. Equipment in the modern kitchen includes deep fryers, grills, bay maries, ovens and pizza oven. The kitchen has dedicated fridges and freezers. The Club leases the kitchen to an external contractor. On most nights the bar is well frequented by members and tourists alike. It is not unusual for the restaurant to serve 250 meals a night. The bar has two display fridges (one a walk in) which is for day to day use. There is a large fridge area which is used for the storage of bulk alcohol. There is also a large walk in freezer attached. The bar area is paved and concreted, has many tables and chairs and the entire area is covered with shade sails. Replacement value of these facilities would be **\$1,000,000**.
 - (e) **Office and administration:** Two years ago the Club constructed a new office and administration building. The building is of block construction filled with concrete meeting cyclone ratings. The building doubles as a safe haven during cyclone season and is valued at **\$200,000**.
 - (f) **Powered cabins and camping -** The Club provides a number of accommodation options from powered cabins to powered and unpowered camp sites. To this end, it has in excess of 170,000 night stays per year. This has increased from the figure given in the Report of "30,000 bed nights per year."⁷
 - (g) **Nine hole golf course:** The Club has established a nine hole golf course for use by members and visitors.

⁷ Report, para 117.

- (h) **Generator Shed:** The Club has managed to generate and distribute its own electricity for 22 years. It maintains a generator shed housing four generators varying in capacity from 350kw to 100kw output. The Club has just invested \$108,000 to provide auto selection and synchronisation of all generators to make the production of electricity more cost effective. The Club endeavours to ensure its distribution system and subsequent connections meet Power and Water standards. Last year the Club installed a 64,000 litre diesel tank that is environmentally friendly thus reducing the possibility of any adverse environmental issue. The cost of the tank was **\$60,000**. The Club's investment in the generator shed with contents would be in the vicinity of **\$600,000** not counting the associated distribution infrastructure.
- (i) **Reticulated water supply:** The Club has established and maintains a reticulated water supply and infrastructure to support approximately 100 houses and shacks in the development area. The reticulated system extends to all camping areas. The Club is currently commencing stage two of its reticulation upgrade, replacing rural pipeline with high pressure plastic pipe. The program which will be completed over the next four years will see an additional **\$100,000** invested in infrastructure. The Club's bore, storage tanks, pumps and infrastructure is valued at **\$500,000**.
34. In addition to Club facilities there are approximately 100 dwellings within the lease area. This has increased from the time of the Report which refers to 65 substantial dwellings having been established.⁸
35. Some members utilise their houses as holiday homes while others live permanently at King Ash Bay. 26 dwellings have river frontage and many have pontoons or jetties to moor boats.
36. Based on recent dwelling sales, it is estimated that the collective value of all dwellings (the corresponding capital improvements to the lease area) at King Ash Bay is approximately [REDACTED]
37. At least 26 houses, in addition to the Club's bar and restaurant, generator shed and one of its ablution blocks have been erected along the McArthur River bank and may encroach on the claimed land.
38. Small businesses operate within the lease area as follows:
- (a) **King Ash Bay service station:** The King Ash Bay service station has six bowzers supported by a tank farm. Infrastructure consists of a shop front, workshop area, accommodation and secure storage area. The staff provide a number of services to members and visitors including, welding, fabrication, maintenance of vehicles and boats. The Service Station is also a grocery store selling groceries, fresh vegetables and fruit, bread, milk and meat. They also have hardware, clothing and fishing gear. The list is comprehensive and there is no necessity for members and visitors to shop elsewhere. A conservative value of the business would be **\$2,000,000**.
- (b) **King Ash Bay lodge:** This is a privately operated business and has accommodation for 10 people. Its value is estimated at **\$500,000**.
- (c) Two house boat businesses:
- (i) **Northern Territory Luxury House Boats:** This has two house boats and a number of powered dinghies. Approximate value is **\$750,000**.
- (ii) **Borroloola House Boats:** This has five house boats of varying size. Approximate value is **\$1,500,000**.

⁸ Report, para 115

- (d) **Borrooloola Cabins:** This has six self-contained cabins. Approximate value **\$300,000.**

39. In the Report, the total capital investment of the Club and its members was estimated at between \$6 million and \$8 million.⁹
40. Based on the estimates provided in paragraphs 33 to 38 above, the current value of the capital investment by the Club and its members is in excess of [REDACTED]. This figure represents part of the significant financial detriment that would be suffered by the Club and its members should the claimed land be granted. The figure is potentially greater than this, as it is not only equipment and facilities that will be devalued in the event of a land being granted. As discussed at paragraph 43, added to this figure would need to be the loss of income that would result for businesses and workers associated with the Club.
41. Members and visitors come to King Ash Bay because it is a premier tourism and fishing destination. If fishing were unreasonably restricted or prohibited, it is highly likely that the Club and other endeavours based on the leased area would no longer be viable. Many of the members and business owners would suffer obvious financial detriment having regard to their investment in the area. There is a real likelihood that houses, facilities and businesses would be worthless without access to the waters of the McArthur River and the relevant inter tidal zones and the world class fishing they offer.
42. The impact is even more clear in relation to the two house boat businesses which would be unable to operate at all in the event of prohibition of access to the river.
43. As well as small business owners there are other contractors and workers who make a living out of the Club such as those that work in the busy bar and restaurant. These people would suffer detriment as they would be without a job and source of income should the Club be no longer viable. It is a benefit to the area that the Club exists and creates employment opportunities.

Other detriment

44. Financial detriment is only one component of the devastation to the Club that would result from a loss of access to the McArthur River. Clearly, Club membership would suffer should the Club lose its current access to the river system and the opportunity to fish. The following issues of detriment are relevant:
- (a) Members would no longer be able to enjoy the fishing and spectacular river eco system which makes King Ash Bay one of the premier fishing destinations in the Northern Territory. The Club was established as a fishing club and for its members to have limited or no access to the river for fishing and related activities constitutes immeasurable detriment.
- (b) The Club is effectively a small township and has become an important community to many locals within the Borrooloola area.
- (c) The members of the Club are predominantly "grey nomads". Many of these seniors spend in excess of six months of the year at the Club and some live permanently at the Club. For these people, the Club facilitates important relationships with fellow campers and other fishers. Many develop close knit groups that become extended families offering security, friendship and emotional comfort and support to a section of our society in the context of a shared love of fishing and nature.
- (d) The Club also provides an important source of entertainment for its members, contributing further to their overall wellbeing and contentedness. Members' nights include a happy hour and other activities. Raffles, carpet bowls, hoy, bingo, line

⁹ Report, para 115.

dancing, darts, card nights and trivia are some of the entertainment options provided to entertain members.

- (e) The Club is a thriving tourist attraction which contributes significantly to the local and Northern Territory economy. There is no doubt that strength and importance of the Club would wither with a loss of access to the River and the effect would be greater than the Club itself.
- (f) Every year at Easter the Club's fishing competition, the "Easter Barra Classic", is held. This is one of the oldest and most supported fishing competitions in the Northern Territory. The prize pool in 2017 was in excess of \$60,000. To lose the opportunity to host such an important event would cause significant detriment to the Club. Again, such an event is greater than the Club itself, raising the profile of both the Borroloola area and the Northern Territory as a premier tourism and fishing destination.

Blue Mud Bay

- 45. As raised above, the Report considered the detriment which would be suffered by the Club and its members should the land claims be granted in the context of a loss of access to the beds and banks of the McArthur River and the inter tidal zone.
- 46. The Report acknowledged the potential that the King Ash Bay ramp was a "road" and would be required to be excised from any grant to a Land Trust. While there was no conclusion on this issue, it raised the possibility that (despite other restrictions which a land grant would impose), access to the river may have remained via the King Ash Bay boat ramp. If this was the case, Club members would have at least been able to access the river, even if the fishing activities that could be undertaken and fishing areas were restricted.
- 47. However, the Blue Mud Bay decision means that access to the McArthur River and intertidal zone would now be prohibited entirely without permission from traditional owners.
- 48. Further, to the extent that the McArthur River Claim does not extend past the mouths of tidal rivers and creeks, the grant of the McArthur River Claim would have the additional effect of preventing access by river and sea to many significant tributaries and coastal creeks. Presently, those areas are generally accessed by Club members and visitors via the McArthur River.
- 49. Detriment to the Club and its members is potentially significantly worsened as a consequence of this. Membership of the Club and visitor numbers will inevitably decrease and in a worst case scenario the Club would be forced to close with:
 - (a) increased financial detriment to the Club and businesses;
 - (b) significant detriment to the wellbeing and enjoyment of the members of the Club and its other visitors; and
 - (c) the overarching loss to the Northern Territory economy.

Relationship with traditional owners in the area

- 50. As set out in paragraphs 27 to 29 above, there has been positive co-operation between Club associated business and traditional owners for the benefit of all parties.

Effect on patterns of land usage

- 51. The Commissioner has confirmed that he will consider s.50(3)(c) as well as s.50(3)(b) of the ALRA in advising the Minister in relation to the current status of detriment issues.

52. Section 50(3)(c) requires regard to be had to the effect which acceding to the land claims, either in whole or in part, would have on the existing or proposed patterns of land usage in the region.
53. The Club is situated on a Perpetual Crown Lease granted for the purposes of "*tourism, recreation, camping and ancillary purposes.*" The focal point of all recreation and tourism in the area is of course the river and the fishing. Given the perpetual nature of the tenure granted to the Club, this land usage is unlikely to change in the future. The fishing and the ability to access the river and coastal system are the factors upon which the Club has been built.
54. The Report recognised that the present and proposed future use of the King Ash Bay Fishing Club land would be affected by any restrictions that may be placed on access to the McArthur River.¹⁰ It is submitted that this position has not changed since the Report but the negative effect is heightened in the wake of the Blue Mud Bay decision.

¹⁰ Report, para 161.

Attachment