

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

Review of Detriment – Aboriginal land claims recommended for grant but not yet finalised

Mataranka Area Land Claim No.69 - Area 4: Urupunga Stock Route.

Submissions on behalf of the Claimants

Introduction

1. The land claim to Area 4 - Urupunga Stock Route was lodged in 1986, heard in 1986 and 1988, and the Land Claim Report was sent to the Minister in December 1988. Following Minister Tickner's decision in 1995 to grant the area [**Attachment 1** - Letter from Minister Tickner to NLC dated 25 May 1995¹] the claim area was surveyed as the neighbouring leaseholders would not accept a compiled plan as the basis for settlement discussions [**Attachment 2** – survey plan S.93/325A-E for NT Portion 2193].
2. Settlement negotiations over the land claim were under from the outset, even before Commissioner Maurice delivered his report to the Minister. They continued for more than 10 years, with the Minister being regularly informed of progress. These submissions set out the progressive subdivision of Roper Valley Pastoral Lease No.632 as the background to and complicating factor in attempts to negotiate a settlement of the land claim. The steps taken towards attempted resolution of the detriment issues are also canvassed. It will be seen from the attached materials that at times there did seem to have been a reasonable prospect of resolution. Certainly successive Ministers seemed to believe it could be done.
3. **Attachment 3** is a (numbered) bundle of correspondence provided to inform the Review of efforts to resolve detriment issues over a period of approximately 14 years up to about 2000. It is not the complete correspondence. A brief, not comprehensive, list of relevant dates and events is appended as part of these submissions.
4. At the time of lodging these submissions we have been unable to carry out consultations with the claimants concerning current detriment issues.

Subdivisions of Roper River pastoral lease

5. When the land claim was lodged and heard the stock route traversed a single pastoral lease. About 40% of NT Portion 712, Roper Valley Pastoral Lease, lay south of the

¹ Attachments 9 & 10 – Letters from Minister Herron to the NLC show that Minister Tickner's decision was at first adopted by the Minister but later in effect set aside.

stock route, including the homestead block. The history of the subsequent subdivisions of Roper Valley PL is set out in the Roper Valley (Kewulyi) Report No.56 Chapter 17 at paragraph 17.1.4] -

THE CLAIMED LAND

11. Prior to December 1995 the claim area was part of a larger area identified as Northern Territory Portion 712, which was the subject of Pastoral Lease 632, and was commonly known as Roper Valley station. The last proprietors of PL 632 were June Tapp, William Tapp, Daniel Tapp and Ben Tapp. On 13 December 1995 PL 632 was totally surrendered and the land subdivided into 4 new portions designated respectively as Northern Territory Portions 4775, 4776, 4777 and 4778. Simultaneously with the surrender and subdivision three new Perpetual Pastoral Leases were issued.

NTP 4775 became the subject of PPL 1153 which was transferred to June Tapp, and later to Joe Tapp. It is now known as Flying Fox station.

NTP 4776 and NTP 4777 became the subject of PPL 1151 and were transferred to William Tapp and Daniel Tapp.

NTP 4778 became the subject of PPL 1152 and was transferred to Ben Tapp.

NTP 4776 and NTP 4778 were subsequently further subdivided. NTP 4776 became NTP 4972 (Lonesome Dove station) and NTP 4973 (Roper Valley station) whilst NTP 4778 became NTP 4970 (Chatterhoochee station) and NTP 4971 (Mount McMinn station). [The spelling of the name Chatterhoochee has recently been amended and in this report the form currently approved by the Northern Territory Department of Lands, Planning and Environment has been adopted].

12. On 14 May 1996 William Tapp and Daniel Tapp entered into an agreement with the Kewulyi Aboriginal Corporation for the sale of NTP 4777. On 7 June 1996 PPL 1151 was surrendered as to NTP 4777 and was replaced by Crown Lease Perpetual 1562 which was then transferred to Kewulyi Aboriginal Corporation.

The claimed area is now owned by the Kewulyi Aboriginal Land Trust.

6. The successive subdivisions are shown in survey plans S.95/218A dated 9 November 1995 [NT Subs Attachments 14 & 19], S.96/261 dated 11 October 1996 [NT Subs Attachment 15], and S.96/262 dated 29 October 1996 [**Attachment 4**]. NT Portion 4970 (Chatterhoochie) was purchased on behalf of Aboriginal interests and is now known as Namul-Namul . It is unaffected by the land claim. The subdivision effected by survey plan S.96/262 divided NT Portion 4776 in to NT Portion 4972 (Flying Fox) and NT Portion 4973 (now Big River).
7. The subdivision and further subdivision of the pastoral lease, all of which was approved by the Northern Territory, has had the effect of substantially amplifying the detriment, or to adopt a term used in other contexts, it has caused ‘cumulative detriment’, but this time to the claimants, by multiplying the number of persons claiming detriment with whom an accommodation must be reached. The Northern Territory has been the primary agent in the amplification of the detriment. While there are obvious practical reasons for each pastoral lease area to have access to the Roper

Valley Highway, responsibly the NT should have required resolution of the detriment issues before or contemporaneously with its approval of the pastoral subdivisions so that each lessee had established the required access before the subdivisions and new leases were approved.

8. Although the detriment issues remain the same, there are now four pastoral lessees claiming detriment arising from the stock route land claim instead of one. This issue of the subdivisions was addressed in some detail in letter from the NLC to Minister Herron dated 6 January 1997 [Attachment 3 Doc.3 p.2 at paragraph (v)]. Joe Tapp, the previous owner of Flying Fox, wrote to the Minister disputing some aspects of the letter that concerned his personal involvement or otherwise.
9. The present situation is that three pastoral leases subdivided out of Roper Valley have small areas between the stock route and Roper Valley Highway (the road). No part of NT Portion 4970 lies north of the road. The remaining block, Mount McMinn, includes a small section of its lease between the road and the stock route, and a substantial section north of the stock route, at a point where the road runs more or less east-west within the part of the stock route that was not claimed.

Attempts to resolve the detriment issues

10. The detriment identified in the Report was not disputed. There is no argument that provision must be made for each of the lessees to have access through the claim area to the parts of its lease that lie on either side. The simple answer to the immediate access problem is to identify and agree on the access routes for the purposes of section 70(4) of the Act. However, that does not resolve detriment arising from use of the claim area for normal pastoral activities, including cattle management, access, and piping water from the Roper River. It is further accepted that any requirement to fence the claim area would involve a cost to a pastoral lessee and that cost would be a detriment.
11. Serious efforts to resolve detriment were made by the NLC and claimants over a period of more than 10 years, ultimately to no avail. These efforts are documented in correspondence to Ministers [Attachment 3 – Docs 3, 3.2 & 3.3].
12. The NLC made various attempts to resolve detriment issues with Mr C.W. (Bill) Tapp the owner of Roper Valley. It was unsuccessful. Mr Tapp was apparently in financial difficulty and the mortgage holder exercised its rights with the result that Roper Valley Station was placed in receivership in 1989. Mr Tapp challenged the creditor's actions in the NT Supreme Court, but died in May 1992, before the proceedings were resolved. One of his sons was appointed the administrator of his estate. During the period from 1988 onwards the NLC made numerous attempted to reach a settlement of the land claim, the primary issue being access across the stock route for pastoral management purposes, and particularly to pipe water from the Roper River to the homestead area to the south of the road.
13. The NLC's attempts to negotiate a settlement were frustrated by the mortgage holder entering into possession, death of the owner, a Receiver & Manager being appointed, and lack of response.

14. On 25 May 1995 Minister Tickner wrote to the NLC to advise his decision to accede to the Commissioner's recommendation to grant [Attachment 1]. It is assumed that he also wrote to the Roper Valley lessee to inform it of his decision, as he said he would. The subdivisions were undertaken with full knowledge of the Report recommending grant of the stock route, and it is reasonable to assume, with knowledge of Minister Tickner's decision to accede to the recommendation in the Report.

15. In undated correspondence with ATSIC (then carrying out Departmental functions on behalf of the Minister) in August 1997 Mr Joe Tapp described the area traversing Flying Fox as follows –

“It is an arid piece of land with no water and mostly useless scrub. 2/3 of it is of little use to me as it is to anybody. That is why it is unreasonable to expect me to swap that scrub for good open blacksoil country with river frontage and highway frontage.”

Those comments were in relation to a land-swap proposal set out in a letter from the NLC to Mr Tapp dated 28 November 1996 [see Attachment 3 Doc.]. By contrast Mr Sullivan at p.6 of the Flying Fox submissions says of the same area –

“The land covered by the stock route is also some of the best river country with Mitchell & Flinders grasses, acknowledged as some of the best native grasses in the country.

16. The NT Submission includes observations by the NT Valuer-General :-

.. j. LC 69 is currently a stock route traversing a number of Perpetual Pastoral Properties. This stock route area is currently excluded from the Unimproved Capital Valuation (UCV) assessable area for the PPLs, however there have been some 20+ consolidations of stock routes into the adjoining pastoral properties over the past few years. When this occurs, the consolidation does add value to the pastoral properties benefitting from the amalgamation.

This may be intended to demonstrate a possible detriment to the neighbouring pastoral lessees if the area of the stock route is not amalgamated into their leases, thereby depriving them of the value of the additional land. By illustrating the potential gain in value to the pastoral lease of amalgamation, it also demonstrates a potential economic loss to the claimants if their legitimate claim was frustrated.

17. Assistance towards future settlement discussions for the land claim may come from an unexpected source. The Administrative Interests and Information for NT Portion 2193 [Attachment 5] at page 2 include ‘Parcel Comments’ and ‘Survey Comments’ as follows -

Parcel Comments

PART URAPUNGA STOCK ROUTE CG48 17/8/1933. PROP 10B RELEASE TO PL632 S81/1117/17. PART OF AREA 4 MATARANKA LAND CLAIM 69. RECOMMENDED FOR GRANT UNDER ALR(NT) ACT S93/325/5. CANCELLED - REALLOCATED AS NT PORTIONS 4256, 7571, 7572, 7573 AND 7574 FOR PASTORAL LEASE PURPOSES.

Survey Comments

URAPUNGA STOCK ROUTE LAND CLAIM - LAND GRANT SURVEY. SURVEY ON PLANS A TO E.

18. Those endorsements not only inform any one inquiring about the status of the stock route, they also point to a further survey plan apparently prepared with the object of

enabling the subdivision of the stock route. There is in turn a separate Record of Administrative Interests and Information for NT Portion 7571, one of the portions mentioned, [**Attachment 6**]. The Parcel Comments in the latter state “NT Portion 07571 plan(s) S2016/068”. Under Survey Comments it records “NT Portion 7571, to eventually be added to PPL1179 over NT Portion 4775 (Flying Fox)”. This explains the further parcel comments in Attachment 5: the new survey plan has been prepared and apparently approved by the NT Surveyor-General, hence the allocation ‘S.2016/068’. We have not been able to obtain a copy of the latter plan.

19. Whatever the reasons behind preparation of the new survey plan suggested by the Survey Comments, it was apparently intended to allow for the subdivision of the stock route into separate parcels, each presumably related to a particular affected pastoral lease. The adoption of the new survey plan could provide a useful tool for reaching an agreement with each of the lessees enabling the management of the respective areas as part of the pastoral operations. The plan is in the possession of the NT and should be provided to the Review.

Pastoral.

20. Insofar as the general remarks in paragraphs 41 to 53 of the Claimants Submissions to the Review in the Lower Daly Land Claim No.68 apply they are adopted in these submissions. We also refer to the remarks in paragraph 10 above: observations in this section should not be taken to indicate that the detriment identified in the Report is not acknowledged.
21. In this case, despite the availability of readily accessible public information, two of the parties claim to have been ignorant of the land claim. Claims of ignorance are more readily accepted with claims to the intertidal zone and bed and banks when in the absence of a survey there may not have been either allocation of a parcel number and an Administrative Interests record, or they simply had no obvious need to make inquiry. Here the claim area is substantial, bisects each of the pastoral leases and access across it is essential to a viable pastoral operation. Further to those remarks we caution against recommendations that effectively reward either professed ignorance of this land claim, when information is readily and publicly available, and/or intransigence in response to attempts at settlement on the part of previous owners.
22. It is possible that parties asserting detriment, even where they claim have substantial assets or enterprises at stake, by choice do not initiate negotiations to mitigate the detriment and minimise the perceived risk to their assets and business in the event that the land is granted, because they are simply opposed to the grant of the claimed area under any circumstances, even circumstances where their interests are protected.

NTCA

23. Two documents have been provided on behalf of the association. These submissions address relevant matters raised by the submission from Mr Nott, President of the NTCA. Matters of general policy of the NTCA towards land claims will not be addressed.
24. Mr Nott makes the point at paragraph 17(c) –

Much of the advantage that accrues to a land trust from a land claim such as this results from the ability to exclude others; that is, significantly altering the status quo

He is correct about the ability to exclude, but that is correct to a greater or lesser degree for all forms of land tenure. The relative exclusivity of any tenure is what gives the tenure its value or utility. The effective modification of parts of a pastoral lease by the sub-leasing measures discussed by Mr Nott at paragraphs 9 and 10 of his statement is an example of that. Sub-leasing will be adverse to Aboriginals who currently enjoy native title rights of access to pastoral leases. The sub-leases will stand to further restrict access to native title holders, and/or the beneficiaries of the reservation in favour of the Aboriginal inhabitants of the Northern Territory in s.38 of the *Pastoral Land Act*. By addressing this point we do not wish to detract from the importance of grant of title to the land claimed in giving full recognition to the cultural values of the land and the claimants' relationship to it thereby enabling them to protect and preserve their relationship and those values.

25. In the present instance the 'status quo' mentioned in Mr Nott's paragraph 17(c) is that the stock route is an area of Crown land claimed in 1986 and recommended for grant in 1988. It has been subject to a land claim and recommended for grant for 30 years. That is the status quo, although we suspect that is not what Mr Nott had in mind.
26. The principal point Mr Nott seems to want to make is that land claims cause investor insecurity. Whatever is intended to be captured by the term 'investor insecurity' the point seems not to be well made in the context of this land claim. The claim was lodged in 1986 and recommended for grant in 1988, 30 years ago. In the interim Roper River has been subdivided without the NT insisting on resolution of the detriment issues, and with the exception of Daniel Tapp's block Big River, each of the subdivided properties has changed hands. If this land claim gives rise to such a thing as 'investor risk' it is because successive owners of the leases have ignored it and failed to deal with it.
27. The submission made by Mr Sullivan of Flying Fox Station suggests the opposite – that there is no risk effect. The emails attached to Mr Sullivan's submission indicate that in the week or so following receipt of the letter from the Commissioner dated 10 May 2018 advising him of the Review, his advisers were very active in progressing a proposed irrigated cropping trial to be conducted on part of the land claim [Flying Fox submission Attachments Docs 21 & 30]. Flying Fox is also offered for sale through Ruralco Property, Darwin [**Attachment 7** Ruralco Flying Fox sale listing 2018].

Flying Fox: PPL 1179

28. The Flying Fox submission traverses the usual concerns about access, weed management and so on. The author, Mr Sullivan, is apparently unaware of ALRA s.70(4) addressed earlier in these submissions. But the Flying Fox concerns are broader than that and go to various matters that were under consideration in attempts to achieve settlement in the period between about 1985 and about 2000 referred to variously in correspondence included in Attachment 3.
29. Mr Sullivan submits that he had no knowledge of the land claim over the stock route until he received the letter from the Commissioner on 10 May 2018, despite undertaking 'due diligence' prior to purchase in 2003. The credibility of Mr

Sullivan's claim is not a matter that may be tested by the Review. Survey Plan S.93/325 A-E for NT Portion 2193 [Attachment 2] was approved by the Surveyor-General on 16 January 1997 enabling members of the public to make inquiries about its status. On page 4 of the Record of Administrative Interests [Attachment 5] there is even an Aboriginal Land Claim contact telephone number. It could not be clearer than that. Whoever conducted Mr Sullivan's 'due diligence' must not have extended inquiries very far to miss such an obvious source of information. The Records of Administrative Interests in 2003 contained the same information as those attached. Further transfers of Flying Fox were registered in 2009 and 2010 providing further reasons or opportunities to inquire into the status of the stock route [**Attachment 8** - Record of Administrative Interests NTP4775 Flying Fox].

30. The Northern Territory Government is fully aware of the land claim. Senior NT government officers have been actively assisting Mr Sullivan, cf Flying Fox submission Documents 20, 21 and 23. The person apparently responsible for the latter document as described in the list provided by Flying Fox viz. "23 Reference Doc Lorraine Corowa Gov presentation to Minister Vowles", is Ms Lorraine Corowa, Director of Major Agribusiness Projects, Northern Territory DPIR. Document 23 appears to be an incomplete draft or edited version of a Ministerial brief (which in our view should not be relied on). Further involvement with the Northern Territory is noted at page 9 of the Flying Fox submission.
31. The fact that a party has in claimed ignorance of the land claim undertaken developments on the land claimed and thereby in effect compounded the detriment should not be a burden imparted to the claimants for resolution. The information as to the status of NT Portion 2193 as land under land claim was and is available to members of the public by a fairly simple on-line inquiry on payment of the prescribed fee, let alone by direct inquiry to NT public servants engaged with Mr Sullivan in projects affecting the land.

Lonesome Dove: PPL1185

32. The possible detriment to Lonesome Dove is summarised in the first three dot points in the letter from its legal representatives dated 30 May 2018 –
 - Loss of access between grazing lands and stockyards on opposite sides of Land Claim;
 - Loss of access to the Roper Highway from significant portions of the pastoral lease;
 - Increased need for fencing along the Land Claim;We do not accept the concept of "cumulative detriment" arising from two or more separate pieces of Crown land being claimed.
33. As these submissions are directed to the Urupunga Stock Route land claim this response relates only to that area. Lonesome Dove is essentially in the same position as Flying Fox and Big River and will require agreement to be reached for it to continue pastoral operations across the claim area in the event that the land is granted.
34. The author of the Lonesome Dove submission states that they had no knowledge of the land claim at the time they acquired the property in 2016. Again this is puzzling because the information about the status of the stock route is publicly and readily available. Despite the obvious risk of having a substantial parcel of land cross the

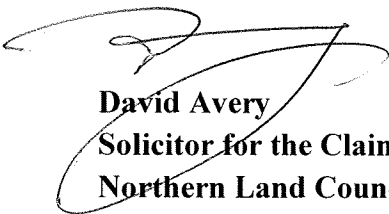
pastoral lease that they did not own, it's status was apparently not a matter of interest to them or their advisers.

Big River PPL1160

35. No submission has been provided by or on behalf of Mr Daniel Tapp the proprietor and original owner of Big River. As a party to negotiations mentioned in Attachment 3 Mr Tapp would be well informed about the status of the stock route. It is understood that Mr Tapp enjoys a positive relationship with local Aboriginal people. Big River is in the same position as Flying Fox and Lonesome Dove and will require agreement to be reached for it to continue pastoral operations across the claim area in the event that the land is granted.

Roper Highway – road reserve

36. The NT submissions (Table 2 paragraphs 1.-p.) seem to suggest that (minor) survey errors have resulted in small slivers of the road corridor being located within NTP 2193. NT Attachments 12, 17 & 18 illustrate the areas said to be affected. What is depicted in the underlying satellite imagery is that fences along the corridor at points marked 'Section A' and 'Section C' on NT Attachment 17 may have been erected within NT Portion 2193. The fence line at 'Section A' may be seen on survey plan S.93/325B and 'Section C' is shown on survey plan S.93/325A as an enlargement on the plan [both plans included in Attachment 1]. It is not accepted that any adjustment is needed because it does not seem that any part of the road corridor itself lies within NTP 2193. If subsequent investigation shows otherwise it would be excluded from a deed of grant by virtue of ALRA ss.12(3) or (3A). The concern on this point in the submission by **Northern Territory Iron Ore Pty Ltd** (letter dated 4 July 2018) is unwarranted because the road corridor is unaffected by the land claim.



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17 August 2018

Attachments.

1. Letter from Minister Tickner to NLC dated 25 May 1995;
2. Survey plan S.93/325A-E for NT Portion 2193;
3. Numbered bundle of correspondence;
4. Survey plan S.96/262 dated 29 October 1996;
5. Record of Administrative Interests and Information for NT Portion 2193;
6. Record of Administrative Interests and Information for NT Portion 7571;
7. 2018 RuralCo Flying Fox sale listing;
8. Record of Administrative Interests and Information for NT Portion 4972 Flying Fox;
9. Letter from Minister Herron to NLC dated 18 October 1996;
10. Letter from Minister Herron to NLC dated 4 May 1999.

ANNEXURE

Mataranka Area Land Claim area (iv) – list of relevant dates

23 April 1986	land claim amended to include the stock route (Area iv).
1986	hearing of claimants' evidence (followed by litigation over various issues)
November 1988	hearing of detriment evidence and completion of anthropological evidence
14 December 1988	Commissioner Maurice sends Land Claim Report to the Minister
July 1989	NLC file note records that negotiations with Roper Valley proprietor to settle the stock route land claim issue have broken off due to advice to pastoralist from NT Cattlemens Association.
1990	Land Claim Report published.
1991	Tapp properties (including Roper Valley Station) placed in receivership.
22 May 1992	C.W. (Bill) Tapp dies (proprietor of Roper Valley Station).
22 October 1993	Receiver & Manager appointed over Roper Valley Station
24 June 1993	Receiver & manager responds to NLC to say his powers under the court order restrict his ability to deal with the property.
11 November 1994	Solicitor for Roper Valley station writes to AUSLIG objecting to its entry onto the station to carry out the survey of the stock route.
25 May 1995	Minister Tickner writes to NLC advising "I am pleased to inform you that I have decided to accede to the recommendation of the Aboriginal Land Commissioner that Area 4 in the Mataranka Area land claim be granted to an Aboriginal Land Trust."
9 November 1995	Surveyor-General approved survey plan S.95/218A subdividing Roper Valley into four blocks.
18 October 1996	Minister Herron writes to NLC
29 October 1996	Surveyor-General approves survey plans [S.96/262] further subdividing one of the four blocks into two parts.
6 January 1996	NLC writes to the Minister setting out a detailed background
16 January 1997	Surveyor-General approves survey plans for the stock route [S.93/325 A-E]