

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

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

1. **Garrwa (Wearyan and Robinson River Beds and Banks) Land Claim No.178; McArthur River Region Land Claim No 184 and part Manangoora Region Land Claim No 185.**
2. **Seven Emu Region Land Claim No. 186; Wologorang Area II Land Claim No. 187 and part of Manangoora Region Land Claim No. 185 (Report No. 66).**

Submissions on behalf of the Claimants

1 Introduction

At the outset it may be useful to mention briefly a number of developments since the Reports were published being matters that could now be taken into consideration by the Commissioner in framing comments about detriment. Apart from the Blue Mud Bay decision, the possible effect of which was largely anticipated, relevant matters include: –

- The so-called “Intervention” one result of which was the exposure of traditional owners to much greater levels of agreement making than hitherto, due to the Commonwealth’s insistence that tenure be provided for funded developments on Aboriginal land including housing;
- Native title determinations with respect to some of the pastoral leases affected by the land claims, under which the lessees of those leases are recognised as members of the native title holding group;
- Indigenous Land Use Agreements to facilitate the grant of tenements under the *Mineral Titles Act*;
- The ‘Survey of Recreational Fishing in the Northern Territory 2009-2010’ providing objective information about recreational fishing;
- Agreements between the local land trusts, the NT and NLC to enable fishing access to tidal waters over land owned by the land trusts;
- NT closure of further areas including the McArthur River to commercial fishing;
- Amendment of the *Fisheries Act* to provide enforcement powers to appropriately trained sea rangers;
- Northern Territory Fisheries Harvest Strategy Policy (December 2016); and
- Guidelines for implementing the Northern Territory Fisheries Harvest Strategy of Policy (December 2016);
- NT Recreational Fishing Development Plan (2012-2022);
- Establishment of the Li-Anthawirriyarra Sea Rangers;
- Grant of NT Portion 3900 adjoining King Ash Bay to Wurralibi (No.2) Aboriginal Land Trust as Aboriginal land;

Agreement making

- 2 In our submission it would be appropriate for the Review to comment on the likelihood of agreements being reached before or after land is granted, to accommodate the detriment to a party that may arise in the absence of agreement. It would be anomalous to take into account matters as ‘detriment’ which are assertions of potential loss of future prospects of an activity, without providing appropriate consideration of the prospects for agreement that will provide for the continuation of the activity, as has been done in various land claim reports. In our submission it is not sufficient simply to record that ‘if’ the land claim was acceded to a certain detriment would arise.
- 3 The most relevant examples involved the Amadeus Basin/Darwin gas pipeline, a major Northern Territory infrastructure facility that traverses a number of land trusts.
- 4 In both the Warlmanpa (Muckaty Pastoral Lease) Land Claim Report No.50 and the Elsey Land Claim Report No.52, Commissioner Gray recorded comments about a situation with some similarities to that of both Britmar and Glencore (and CSS). The comments are virtually identical in both reports. Having found that NT Gas Pty Ltd and its associates in the gas pipeline that traversed Muckaty and Elsey did not hold an estate or interest in the land, he noted that if a land trust resolved not to permit the continued use of the pipeline across Aboriginal land, the consortium would suffer severe financial detriment both through the high cost of re-routing the pipeline and disruption to the use of the pipeline during re-routing.
- 5 At paragraph 6.3.3 of each report Commissioner Gray observed that the far more likely prospect was that agreement for a lease or easement would be reached and the detriment would be limited to the compensation payable under the lease. He noted that such agreements had been reached between NT Gas Pty Ltd and a number of land trusts, including the Wubalawun Aboriginal Land Trust which held the land immediately south of the land claimed in the Elsey Land Claim, and Ahakaye Aboriginal Land Trust in central Australia.
- 6 In each land claim the claimants had made clear in their submissions that they were amenable to an agreement for a lease of the pipeline easement. It was the combination of existing agreements for the pipeline by land trusts, and particularly together with the expressions in submissions of a willingness to make agreements that led Commissioner Gray to say [paragraph 6.3.3] ‘
“In my view, that (a lease) is the most likely outcome and any detriment suffered will be limited to amounts payable under the lease that results.”
In both of those cases leases were subsequently entered into. In our submission it is appropriate to take note of current agreements between parties to come to a view about the prospects of reaching an agreement that will address the detriment issues.
- 7 The issue of future agreement has been addressed in other land claims. In the Finke Land Claim Report No.39 Commissioner Olney referred to the situation of a local tourist operator [pp22-23 paragraph 14.6]. Mr. Hellyer operated a tourist enterprise at Mt Dare Homestead and wrote to the Commissioner expressing reservations about future access to Dakota Bore on the claim area. He also mentioned that his

relationship with the Finke community (home to most of the claimants) was satisfactory. The Commissioner observed at paragraph 14.6.6 –

“Experience in other similar situations suggests that there should be no difficulty in Mr Hellyer and the traditional owners reaching a satisfactory agreement, and I would not anticipate that any detriment would result to him in the event that the land in the vicinity of Dakota Bore becomes Aboriginal land.”

- 8 There is a considerable body of evidence in a more general sense to support a view that groups of traditional owners in the Northern Territory have consistently recognised the broader economic implications when called upon to make decisions that will enable land to be used for significant projects. The prime example is the over-arching agreement for the Alice Springs-Darwin Railway Corridor and leases from numerous land trusts for the corridor. That project involved a large number of different groups of traditional owners entering into the arrangements for the major economic development. Other examples are the Tennant Creek-Mt Isa gas pipeline presently under construction, and the Blacktip pipeline that traverses Land Trust land to convey gas to the Darwin power station.
- 9 Claimants in these land claims have been involved in significant relevant agreement making. They have been involved in ILUAs involving Britmar’s project at Bing Bong port (see below) and in approving the fishing access agreements made between the NT, NLC and the Wurralibi, Wurralibi (No.2) and Narwinbi Aboriginal Land Trusts that enable fishing access to tidal waters over land owned by the land trusts [the agreements are not annexed to these submissions but are available as part of Fitzmaurice River Region Land Claim Exhibit A28].
- 10 By their very nature these land claims require that proposed agreements may need to be evidenced in some circumstances in order for the Minister to consider the decisions he must make in response to the recommendations. In that way the agreement making function is quite different to granted Aboriginal land, and substantially the same as the situation addressed by the remarks of Commissioner Gray referred to above. However, these submissions also caution that to the extent that parties claiming detriment are opposed to the grant of the claim areas as Aboriginal land in any circumstances they may refuse to participate in good faith negotiations that would address the claimed detriment.
- 11 Submissions on behalf of King Ash Bay (paragraph 24) include the following remarks about detriment concerns –

“The Club submits that given the nature of the detriment affecting the Club and its members, options to address them are not available.”

That is said in spite of the example of the agreements referred to in paragraph 9 above. The letter from Glencore dated 25 January 2018 says-

2. No negotiations or agreement on detriment.

There have been no negotiations or agreement between the NLC and MRM in relation to the land claimed becoming Aboriginal land and how to address the significant issues of detriment to MRM.

Although submissions on behalf of both bodies go to great lengths to set out how serious the risks from a grant would be and both are sufficiently well-resourced to obtain advice, in particular Glencore which is one of the largest mining enterprises in the world, they have not explored whether an agreement may be made that would address their concerns in the event the claim areas were granted to a land trust. This is despite the claimants' expressed willingness to make agreements (see below). In some ways Britmar's submission is even more surprising in its omission to look at the potential for agreement because it already has an ILUA with the NLC and Native Title Parties for the very tenements at Bing Bong and elsewhere that it claims would be adversely affected by the possible grant.

- 12 Given the claims by these parties of severe adverse consequences of a grant it is remarkable that none of them has taken the prudent step towards averting the claimed risks by seeking out an opportunity for agreement to address the risk if and when the relevant claimed area is granted.
- 13 Finally in this section we note the relevance of the "Intervention" in this context. A sequel to the Intervention was governments' insistence on 'tenure' to 'normalise' land use in Aboriginal communities. This imparted to traditional owners, as it was intended, an understanding and appreciation of land value beyond the traditional sense. A common concern expressed in detriment submissions is that if in future an agreement is required there may be an expense involved, and that expense would amount to a detriment. Commercial users of Crown land (mining excepted) expect to be able to continue doing so permanently free of charge. The flip side of the claim to detriment from possible future costs is to deny claimants a 'normalised' ownership of the land. If acceded to in their entirety such detriment claims would strip away from the land virtually all such future value in favour of those who presently use it for any commercial purpose. It would also reduce the claimants' capacity to protect the cultural values ascribed to the land, entrenching a detriment to them.

Permits

- 14 A copy of the statement of Kane Bowden, Manager dated 29 May 2018 and the transcript of his evidence in the Fitzmaurice River Region Land Claim No.189 and other land claims on 25 June 2018 is attached [**Attachment 1**]. The features of the new permit system being developed are summarised at paragraph 4 of Mr Bowden's statement. Mr Bowden said the object is to roll out the system by the end of 2018.
- 15 The submission on behalf of AFANT at paragraphs 40 and 41 mentions permits as a detriment – on the basis that multiple permits may be needed for different areas, financial cost and the time taken to apply, plus the risk of refusal of a permit. The submission is dated 16 March 2018 before any parties had the benefit of the information provided by Mr Kane. On the basis of Mr Kane's evidence in the Fitzmaurice River Region Land Claim (tendered as an exhibit in the Peron Islands Land Claim) it appears very likely that a downloadable app will be available to enable permit applicants to apply remotely and download a permit based on standing instructions, once the system is up and running. It will be fee-free for the first three years but may be subject to an administration cost-recovery fee thereafter [T.10.15].

16 In the McArthur River Land Claim in particular, the requirement to obtain a permit - whether it is the issue of time or money - must be placed in context: 90% of the McArthur River (King Ash Bay) recreational fishing effort was estimated to be undertaken by visitors [Survey of Recreational Fishing in the NT p.80 Table 27 and NT submissions p.10 paragraph i)]. Allowing for the level of planning, expense and time allocated to travelling from interstate to the McArthur River compared to the very modest time required to download a permit under the permit system being developed by the NLC, and the possible future administrative costs for the permit, assertions of 'detriment' as to either time or cost, should be given little weight.

17 On this point we respectfully adopt the observations of Commissioner Gray in his report on The Kenbi (Cox Peninsula) Land Claim No.37, the second sentence in particular: –

11.13.11 I do not believe that the detriment suffered by recreational fishermen, boaters, sailors or divers, in respect of the need to obtain permits, would be particularly great. There is no reason to believe that the claimants would act unreasonably in relation to the granting of permits, or that establishing and then following a process to obtain permits would be particularly difficult for the fishermen or sailors concerned. There was some evidence that the Amateur Fishermen's Association (Northern Territory) had been able to negotiate cooperative arrangements Page 154 with Aboriginal landholders for access to recreational fishing around other parts of the Northern Territory coastline. Many of the recreational activities referred to, while subject to weather conditions on the day, are planned well in advance. Simply obtaining a permit would not, in my opinion, be an onerous addition to the organisational requirements of such activities. There would be some detriment arising from the inability of people to engage in spontaneous activities involving use of Aboriginal land, including land in the inter-tidal zone.

18 The issue of permits under the *Aboriginal Land Act* (NT) may be delegated to third parties. The NLC has delegated the permit function for certain areas around the Gove Peninsula to Dhimurru which has for years operated a fully on-line permit system. The CLC also has delegated the power to issue permits for the Mereenie Loop Road to CATIA through its tourist information bureau, to the store at Hermannsburg and to Kings Canyon Resort.

19 The possibility of delegation could usefully be explored with the proprietors of Manangoora, Greenbank, and Seven Emu pastoral leases to complement their existing requirements for third parties entering their leases. Third parties wishing to access claim areas via any of those pastoral leases may arrive unannounced. Their access is usually via station roads and tracks approved by the lessees, and it is important for the lessees to know who is on the lease and where they are. Some of the pastoral lessees provide facilities for tourists. They may find it convenient to be able to issue a permit at the same time as they make any other arrangements with their visitors.

Parks and Wildlife

20 We endorse the remarks recorded on pp1-2 of the NT submission.

- 21 The land immediately to the north of NT Portion 3898 (King Ash Bay) is NT Portion 3900 on plan S90/252D. NT Portion 3900 includes all of the land from the boundary with NTP 3898 up to and including Batten Point. It is now Aboriginal land having been granted to the Wurralibi (No.2) Aboriginal Land Trust on 6 May 2015. NT Portion 3900 extends to the top of the bank of the McArthur River. A substantial facility to house the operations of the Li-Anthawirriyarra Rangers has been constructed on part of the Land Trust leased to the Mabunji Aboriginal Resource Association Incorporated.

Pastoral

- 22 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.
- 23 The McArthur River Region LC and Manangoora Region Land Claim Report (Report) at paragraph 161 noted the following as a possible effect on land usage -
- “Without suitable safeguards, the economic use of the adjoining pastoral leaseholds, particularly Manangoora and Greenbank, could be placed in jeopardy as could the development of prospective agricultural, tourist, recreational and mining uses on the pastoral properties.”
- 24 As with the claimants submissions to the Review in the Lower Daly Land Claim No 68 at paragraph 62 it is proposed that the “jeopardy” could be addressed as follows –
- “... a licence to be provided to the station (and this could apply for pastoral lessees elsewhere in similar circumstances) that would reflect the current usage of the claim area by the adjoining pastoral lessee include the following essential features (this is not an exhaustive recitation of the elements of a proposed licence):
- (i) To permit those pastoral activities presently undertaken in the claim area – access for mustering (replacing s.27 *Livestock Act*), repair and maintenance of fencing (if any);
 - (ii) Feral animal control;
 - (iii) Assume obligations to comply with the *Weeds Management Act*, and other legislation relating to the environment;
 - (iv) Term will run with the pastoral lease;
 - (v) Fully transferable on sale of the pastoral lease without further consent (but on notice to the Land Trust);
 - (vi) No licence fee (peppercorn);
 - (vii) Non-exclusive;
 - (viii) Replicate current rights of an adjoining landowner under sections 11 and 13 of the *Water Act*.” (NB the reference to s.13 was inadvertently omitted in the Lower Daly submissions)

In our submission an agreement of this kind would provide a “suitable safeguard”.

- 25 In recent consultations with the claimant groups there was acknowledgement that the owners of **Greenbank** and **Manangoora** pastoral leases hold traditional interests in the country, and responses included expression of support for the proprietors of those leases to be enabled to continue all of their current activities on the claim areas in the event they are granted as Aboriginal land. The claimants are also familiar with the pastoral operations conducted on McArthur River pastoral lease although the relationship is different because it is owned by a corporation.

- 26 As far as **Spring Creek** and **Seven Emu** pastoral leases are concerned consultations with the claimant groups have not yet been undertaken. However, we would anticipate similar recognition of the proprietors' traditional interests in the lease areas and similar support for the proprietors to be enabled to continue all of their current activities on the claim areas in the event they are granted as Aboriginal land.
- 27 After Mr Shadforth, the owner of Seven Emu pastoral lease, contacted the office of the Commissioner, we met him and had a useful and positive discussion in which we outlined a proposition to develop a licence in the broad terms set out in paragraph 24 above so that Mr Shadforth could consider it. Mr Shadforth followed that up by telephone and we have also been in touch with a solicitor in Katherine nominated by Mr. Shadforth who is willing to assist him. We have provided the information in paragraph 24 to the solicitor.
- 28 Seven Emu is sub-leased to the Australian Wildlife Conservancy (AWC). We have had a telephone discussion with Ms Ruth Cairns, counsel for AWC and signatory to AWC's submission dated 4 June 2018, and emailed the information in paragraph 24 above to her for consideration by AWC. Subject to consultations with the claimants, the same considerations would apply to the AWC's **Pungalina** Pastoral lease which adjoins the Calvert River. Given the beneficial nature of the activities of AWC on both Seven Emu and Pungalina, the relationship with Mr Shadforth, and past and possible future activities involving the Garawa Rangers, we would also expect to receive positive consideration by the traditional owners to the grant of a licence enabling AWC to continue all current activities in the claim areas adjacent to Seven Emu and Pungalina, including conservation and research activities.
- 29 AWC's submission at part 7 said that AWC was seeking either a conditional grant (of the claim area) or legislative change to allow it to retain its access to the claim areas. It also seeks the right to be consulted on proposed activities on the claim areas where they are inconsistent with ongoing use of that land by AWC. At this point these submissions provide a reminder (gentle in this case) that the claimed areas are not part of the lease and sublease held by AWC. AWC enjoys rights of access under the *Pastoral Land Act* and the *Water Act* and as a member of the public. In our submission the proposed non-exclusive licence, subject to agreement on its terms and conditions, would meet AWC's concerns.
- 30 We note the various comments in the NT submission concerning the proprietors of Manangoora, Greenbank, Spring Creek and Seven Emu pastoral leases. The following paragraphs of the NT submission reference native title consent determinations for those pastoral leases: Table 1, Item 2 at paragraphs p) and s) [Manangoora and Greenbank Stations]; Table 2 Item 1 at paragraphs l) and m) and at paragraph v) [Seven Emu and Spring Creek Stations]. We respectfully agree with the following NT observations made concerning each of the proprietor families for those pastoral leases that:-
- “It is therefore likely that (the proprietor and his family) are part of the traditional owner group for all or part of the (claim area). If this is the case then any use of the intertidal zone/waterway (including the beds and or banks) for pastoral, tourism or domestic purposes ...is unlikely to be objected to by the other traditional owners and limited or no detriment is likely to result.”

However, we point out that the proposal for a non-exclusive licence on the terms mentioned earlier is that it should run with the term of the lease and be fully transferable. If the proposal is adopted, the present owners of the pastoral leases would accrue whatever value such a licence may have, it would be transferrable to their heirs, they would recover that value should they ever sell the lease, and the interest of the new owner in the licensed activities would be protected. Finally we note that the proposed licence would of course include access roads and thereby meet any concerns about that mentioned in the NT Submissions parts 2 (DIPL) and 3 (DTC).

31 **McArthur River Pastoral Lease.**

After reviewing the potential detriment to the lessee should the land claim be granted the Commissioner observed (Report p.52 at paragraph 100) –

“In the event that the intertidal zone becomes Aboriginal land, the adjoining pastoralists would suffer detriment to the extent that the continuation of the practice of allowing cattle to graze unrestricted beyond the mean high water mark would be dependent upon the necessary permission being obtained. It is highly unlikely that permission would be withheld, except perhaps in relation to areas associated with sites of particular significance to the traditional owners but nevertheless, the potential for dispute would exist.”

Obviously the owner of this pastoral lease stands in a different relationship with traditional owners than the proprietors of the pastoral leases mentioned earlier. However, instructions will be sought, consistent with the observations of the Commissioner as to the likelihood of access being maintained in the event of a grant, to offer the lessee a licence consistent with the terms set out in paragraph 24 above.

32 **Wollogorang: Pardoo Beef Company Pty Ltd**

The submission on behalf of the company dated 20 April 2018 sets out the familiar concerns of pastoral lessees adjoining rivers and the intertidal zone. We would propose to seek instructions from the traditional owners to offer the company a licence consistent with the terms set out in paragraph 24 above.

Fishing

33 These submissions adopt paragraphs 6-12 of the submissions on behalf of the claimants to the Review in Lower Daly River Land Claim No.68. As regards AFANT’s submissions these submissions also adopt the general observations contained in paragraphs 13-15 of the earlier Submissions. On the issue of Fisheries Management these submissions adopt paragraphs 23 – 36 of the earlier Submissions, (in each case with necessary changes).

34 The three access agreements enabling fishing access to tidal waters overlying Aboriginal land in the region (paragraph 9 above) have been highly beneficial for recreational fishers and the fishing industry.

35 In response to the section of the NT submissions headed “Scene Setting: access negotiations” at pp.11-12 we note the assertion that previous grants have been made to the “mean low water mark”. While that may be the practical result, the grants have actually been made to the “low water mark”. More important, we dispute the claim

that the ‘mean low water mark’ is “in a practical sense unenforceable”. We note comments in the Report concerning evidence of the difficulty in defining it, but it is capable of being defined on the ground otherwise why is it in use as a very common concept? It is no more ‘unenforceable’ than the mean high water mark which is the tenure boundary of many pastoral leases granted by the Northern Territory. As well as that, if the Northern Territory submission on this point is to be believed the figures for fish allegedly caught “in the claim areas” [NT Submission p.10 paragraph f)] must be questioned.

36 The Northern Territory’s capacity to identify the mean low water mark is the same as its capacity to identify the mean high water mark. Identification of either would rely on tidal observations for the same period(s) of time. The fact that MLWM is under water for periods in the tidal cycle does not obviate the use of GPS equipment to locate the whereabouts of a vessel in the overlying waters. The assertion is rejected on a further basis which is that with upwards of 78% of the Northern Territory coastline comprised of Aboriginal land to the low water mark the Northern Territory can’t simply come up with “the throw away idea” (to adopt its own line) that the land boundary is “unenforceable” and thereby avoid its responsibilities as the government. Of course the NT does not do that – reference the discussion about the Territory baseline at paragraphs ggg and hhh page 12 of the NT submissions to the Maria Island and Limmen Bight River Land Claim etc dated 1 May 2018. Perhaps DPIR Energy Division should assist DPIR Fisheries Division on this aspect.

37 The NT submission in the group 4 land claims has a slightly amended version of the “access negotiations” paragraph in which it is claimed “The NLC has advised that it does not want to put the Territory’s offer to other Traditional Owner groups.” Whether or not that is correct, the comment is irrelevant because, whatever the content of the NT offer was or is it only relates to tidal waters overlying Aboriginal land. No similar offer has been made with respect to the areas in these land claims (*cf also Agreement Making above*).

38 In the Mataranka Land Claim Report No.29, Commissioner Maurice wrote -

14.4.8 1 The Northern Territory expressed concern that, if access is denied to water- courses and lagoons within the claim area, this will foreseeably lead to more intensive and potentially excessive use of other recreational areas and, particularly with barramundi fishing, would lead to excessive exploitation of stocks in neighbouring areas. Now that the claim has been reduced to exclude Roper Creek and most of the Roper River, any force which this submission had is dissipated. In any event, I am not convinced that there are not ways of preventing these consequences: for example, fewer licences, appropriate licence restrictions, closed seasons, bag limits, and more effective fisheries law enforcement.

39 The NT Recreational Fishing Development Plan 2012-2022 (the Plan) [attached to NT Submissions] provides for strategies that will in effect address all of the concerns summarised in that paragraph and control measures referred to in the last sentence. The Plan anticipates increased fishing pressure and how it will need to be dealt with in the future. The repeated claim of cumulative detriment relies on the assertion that if recreational fishing effort is unable to be undertaken in one place it will move to a place where it can take place. That may be correct in a general sense, but in this submission it is not the re-location of fishing effort per se that gives rise to so-called cumulative detriment. The detriment arises if the areas the fishing effort relocates to are not able to provide for that additional fishing effort. That is in our submission a

weak point in the repeated assertions of detriment under this heading. Simply adopting the observations of Commissioner Olney as to re-location of fishing effort does not establish cumulative detriment. This is particularly so now that better information is available from the 2009-2010 Survey (we do not regard the AFANT survey as capable of informing this issue reliably). The Plan anticipates and provides a framework to address increased fishing pressure.

- 40 In framing his comments Commissioner Olney did not have the benefit of information in the form of the Recreational Fishing Development Plan or the post-Blue Mud Bay access agreements, or other relevant information referred to in paragraph 1 of these submissions. The only references to measures that may reduce detriment to fishers in the McArthur River Land Claim were in paragraph 120 and 168(c). The reference at paragraph 120 is interesting:-

Detriment accruing from a grant of title is readily identifiable, albeit that the detriment is based on the subjective judgment of those who claim they would be detrimentally affected, but to comment on proposals which are expressed to be preliminary and which lack particularity, affecting not so much the land under claim but the future conduct of both professional and recreational fishing in the region, is beyond the scope of this inquiry.

The “proposals” related to the letter from the NLC [Exhibit 18 mentioned earlier] setting out proposals to address detriment issues. Although it’s very late in the piece with respect to the Commissioner we consider those comments to be unfair, because the future conduct of fishing in the area was the matter that was central to so much of the detriment evidence. In any event we now have examples of a particular form of agreement which contains great detail as to how fishing may be conducted in tidal waters over Aboriginal land in the region, and a great deal of other relevant information noted in paragraph 1. Such information is, in our submission, within the scope of the Review. Also, in this submission the appetite for risk demonstrated by those KAB members who seem to have ‘invested’ in dwellings at King Ash Bay should now be taken into account because that aspect was never apparent at the hearing of the land claim.

- 41 Two sentences from paragraph 112 of the Lower Roper River Land Claim Report are reproduced on p.14 of the NT Submissions and highlighted in bold type –

“In each, one of the concerns expressed is that if by reason of a grant of title access to waters of the ocean and rivers by commercial and/or recreational fishers is prohibited or restricted, there is likely to be a corresponding increase in fishing effort in other areas. This reasoning has not been challenged.”

These submissions challenge that reasoning not just by suggesting that increase in fishing effort elsewhere is not necessarily a matter of detriment, but also by asserting on the basis of the local recent history of agreement making that the idea “if by reason of a grant of title ... (fishing) is prohibited or restricted..” must be qualified by the very encouraging and realistic prospects of agreement, and of an efficient permit system (see above).

- 42 The submissions on behalf of AFANT do not raise any new matters not already addressed. With respect to the matters raised in paragraphs 43-44 in our view they arise out of the fishing access agreements referred to. The improved level of co-

operation produced by those agreements is another benefit to recreational and commercial fishers.

- 43 Increasing fishing effort in the Northern Territory is a strategy or goal of the Northern Territory government through tourism promotion, the Million Dollar Barra promotion which is aimed at the whole community, support of fishing competitions, and by expenditure of substantial sums on improving facilities to make various fishing places more accessible to more people. Bodies that may benefit commercially also promote recreational fishing, such as King Ash Bay. There is thus a level of hypocrisy in asserting as cumulative detriment the potential relocation of fishing effort from one place to another, while at the same time enhancing or promoting increased fishing effort across the board.

Mining

- 44 There are three mining tenements that would be affected, or in the case of ML 29268 possibly affected, if the inter-tidal zone at Bing Bong port was granted as Aboriginal land. They are ML29268 and Access Authority 29692, both held by Britmar (Aunt) Pty Ltd (Britmar) and ML1126 held McArthur River Mining Pty Ltd a subsidiary of Glencore PLC (Glencore). From the Northern Territory submission (at p.16) it is difficult to discern how the Dredge Spoil Emplacement Facility, which is presumably the area referred to at p.15 as 'ML 29881 (application)', could be affected by the grant of any part of the intertidal zone. On the map at NT Attachment1 it is depicted as lying south (landward) of ML1126. Presumably all dredging operations take place within ML 1126 and the transport of dredged material across the intertidal zone would take place within ML1126. It's not a matter raised by Glencore.
- 45 The Land Rights Act provides for preservation of the right to enter and remain on Aboriginal land for any purpose necessary for the use or enjoyment of an estate or interest in Aboriginal land [s.70(2)] and for the purposes of that sub-section a 'mining interest' is an estate or interest [s.66(a)] read with the definition of 'mining interest' [s.3(1)]. Section 3(4) provides that a reference in ALRA to the grant of a mining interest does not include a reference to the renewal of a mining interest that was in existence when the land became Aboriginal land in accordance with an option or other right conferred before the land became Aboriginal land. Although the Act provides that parties may enter into agreements anticipatory of the possible grant of an area to a Land Trust [s.48A] those provisions would not be available in these circumstances.
- 46 The primary issue for Access Authority 29692 and ML1126 is the capacity to conduct on-water activities consistent with the port's intended scope of operations, should the intertidal zone be granted as Aboriginal land. The situation of ML 29268 is also discussed below although it does not appear that there is any intention or possibility for the conduct of on-water operations. The conduct of on-water operations over the intertidal zone could be clarified and secured by agreement under Section 11A of the Land Rights Act in anticipation of the possible grant of the area to a land trust, particularly where the security to conduct port operations is fundamental to both projects.

Britmar (Aust) Pty Ltd

- 47 Access Authority 29691 for the haul road from the mine to the port was granted on 8 November 2012, and ML29628 and Access Authority 29692 were granted on 11 February 2013, all being granted some 10 years after the Land Claim Report was published. Access Authority 29691 for the haul road is shown on Attachment 1 to the NT submissions. A small area of ML 29628 in its north-east corner may extend beyond the high water mark. If so the extent of that area would need to be established by survey. Access Authority 29692 is larger than but substantially co-extensive with ML1126 held by MIM, a Glencore subsidiary (see below). Part of it overlies the intertidal zone.
- 48 WDR Iron Ore Pty Ltd (WDR), the original holder of the three tenements, was placed in liquidation on 9 April 2015. WDR, the NLC, Wurrunburru Association Incorporated¹ and the Native Title Parties had entered into an Ancillary Infrastructure Agreement for the Roper Bar Iron Ore Project Haul Road and Port Facilities (Agreement) dated 3 June 2013 which recorded the NLC and the Native Title Parties agreement to the grant of the Access Authorities and ML29628 on the terms and conditions in the Agreement. WDR developed the mine, constructed the haul road on the area of Access Authority 29691, including the Limmen River bridge, and then encountered financial difficulties. Administrators were appointed, leading to the company being placed in liquidation. Britmar purchased various tenements from the liquidator in 2017, including Access Authorities 29691 and 29692 and ML29628. WDR (In liquidation) assigned its interest in the Agreement to Britmar. The Agreement was not mentioned in Britmar's submissions. Wurrunburru Association Inc. (now Wurrunburru Association Aboriginal Corporation) holds Crown Lease in Perpetuity No.429 over NT Portion 2432 which adjoins the western boundary of McArthur River PPL1051.
- 49 The Agreement specifically addresses those matters relating to the transport, storage and shipment of minerals from the port facility. Of interest in this regard is the definition of 'Port Facilities' in the Agreement, viz –
- "Port Facilities"** means the facilities located on land subject to the Ancillary Mineral Lease and Access Authorities whose boundaries are delineated on the maps in Schedule 3 and Schedule 4 to this Agreement respectively and within the Area of Operations for the unloading, storage, handling, loading, conveying, barging and trans-shipment of Iron Ore Product and including all ancillary and related facilities for the same purpose such as: etc etc
- The definition encompasses all of Britmar's operations at the port.
- 50 The Agreement was 'ancillary' to the earlier ILUA between the same parties, other than Wurrunburru, made in 2012 to facilitate the grant of a number of mineral leases including ML 28264. Pursuant to the earlier agreement the native title holders are also entitled to compensation and other benefits, including compensation based on the value of iron ore sold. Thus all tenements related to the mining project have been the subject of negotiation with and approval by the native title holders, who under each of the agreements stand to benefit from the project. The native title holders include members of the claimant groups for the land claims. For those reasons it would be extremely unlikely that if the area at Bing Bong Port is granted as Aboriginal land the

¹ Now Wurrunburru Association Aboriginal Corporation.

land trust/traditional owners would do anything that would negatively impact Britmar's operations on ML29268 or Access Authority 29692.

- 51 In our submission the Review should record that in light of the agreements mentioned above that deal with the affected tenements it is virtually certain that an appropriate agreement or agreements will be made to enable Britmar to continue its operations at Bing Bong port in the event of a grant of the area or part of it to a Land Trust.

McArthur River Mining – MIM – Glencore: Bing Bong Port

- 52 No issue is taken with the submission that the part of PPL 1051 excavated for the port facility remained alienated Crown land due to the underlying pastoral lease and was not available for claim, regardless of whether as a result of the excavation there was now an intertidal zone within the pastoral lease boundary. The excavation did not change the boundary of the pastoral lease.
- 53 The claimable area was always the intertidal zone seaward of the high water mark that forms the seaward boundary of PPL 1051. The accurate location of the pastoral lease boundary at the high water mark is a matter to be resolved by survey. A Google Earth image of the area of the facility is attached [**Attachment 2**] to provide an indication of the apparent extent of tidal land in the area of ML1126. While it is not asserted that the high water mark, the boundary of PPL 1051, can be discerned on Attachment 2, the image provides a reasonably clear indication of the relationship of the swing basin and channel to tidal areas, and indicates a firm likelihood that the line of the high water mark would intersect the facility somewhere at the basin or the channel. Commissioner Olney had observed elsewhere in the Report (p.49 at paragraph 89) –

“Although the coastal boundaries of the pastoral leaseholds adjoining the area of intertidal zone under claim extend only to the mean high water mark it is not possible to identify the precise locations of those boundaries; ...”

The advice of the NT Surveyor-General now is that it would be possible to establish the HWM although that could involve a complicated survey procedure.

- 54 Flowing from the above discussion in our view a modest correction is due with respect to the submission provided by MRM: the conclusion expressed in the penultimate paragraph on page 3, repeated on page 4 of the letter of 16 March 2018, is not entirely accurate. As noted in the preceding paragraph of this submission, no issue arises over the part of the port facility excavated landward of the boundary of PPL 1051, that is, landward of the high water mark. Although Commissioner Olney made certain observations about Mr Hendry's 'uncontradicted' evidence and the conclusion that could be drawn from that, the only 'area' that the Commissioner's remarks were directed to was the area "landward of the high water mark as it existed when PPL 1051 was granted". Commissioner Olney made no determination. Nor did he record any finding as to the location of the boundary of PPL 1051 within the overall port facility [Report p.69 paragraph 143]. The passage from the Report referenced at footnote 15 of the letter concerns the area immediately west of the mouth of the McArthur River where the lease boundary included some small islands and the intertidal area between them. It has no relevance to the intertidal zone in the area of the port.

- 55 It follows that we also do not accept the accuracy of the following statement on page 2 of MRM's letter -
"The only evidence before Commissioner Olney is that the swing basin and the channel are within NT Portion 4319, Perpetual Pastoral Lease 1051 (McArthur River Pastoral Lease) which is land excluded from grant under the terms of the recommendation made in the Land Claim Report."
- 56 We refer to the observations concerning agreement making above. We also refer to the ILUAs made with Britmar's predecessor and assigned to Britmar which have a direct relationship to operations across the tidal waters in the area of Bing Bong port. We also refer to the information provided by Glencore about its positive relationship with claimants and local Aboriginal communities in its letters dated 25 January 2018 and 30 April 2018. An offer to begin talks with the representatives of the port at Bing Bong about issues of concern was first conveyed in a letter dated 10 July 2000 from the NLC to Commissioner Olney [Exhibit NLC 18] and repeated in a second letter dated 17 Mat 2001 [Exhibit NLC38]. Copies of the letters were provided to MRM's solicitors. On the basis of those matters we submit, as with Britmar, that there is a high level of probability that an agreement could be reached to enable MIM/MRM to continue its operations in the tidal waters at Bing Bong port in the event of a grant of the area or part of it to a Land Trust.
- 57 The potential for closure of seas under the *Aboriginal Land Act* (NT) [MRM letter dated 16 March 2018 p.7] is also raised as a detriment issue by the Northern Territory [cf. NT submissions p.19 paragraphs i. & k.]. In this land claim it picks up the Commissioner's comment at p.45 paragraph 82(g) of the Report. Although not expressed in these terms by the Commissioner, the suggestion is that the Northern Territory may take an action that will give rise to a detriment. Under s.12(1) of the Act the Administrator may close seas adjoining Aboriginal land. The section does not require or mention any application by the traditional owners. It may be done without reference to them but it is implicit that they would be the parties most likely to seek the action. By section 34(1) of the *Interpretation Act* (NT) the Administrator may only act on the advice of the Executive Council, which by s.33(2) of the *Northern Territory (Self Government) Act 1978* consists of the persons for the time being holding Ministerial office. Thus it would be the Northern Territory government that would take the detrimental action, and which by s.13 of the same Act could reverse the action.
- 58 These submissions do not specifically address those provided on behalf of Carpentaria Shipping Services (CSS) on the assumption that the interests of CSS will be addressed in any agreement with MRM/MIM.
- 59 Although we do not accept that it is a matter of detriment because it is speculative, McArthur River Mines' letter of 16 March 2018 picks up makes the broad point, referred to in the Report at paragraph 154 that there might be another mining development in the region or other general (non-mining) uses for the port facility in the future. Such non-mining uses would be inconsistent with the uses allowed under ML 1126 as detailed in paragraph 135 of the Report. Conventional land tenure would be the basis for a general use port facility. To the extent that MRM's letter repeats observations from paragraph 154 of the Report it is noted that despite the exploration

interest in the region no new mine base metal mine has been developed in over 16 years since the Report was published in February 2002. The McArthur River Mine remains the only base metal mine in the region, and the only such mineral leases remain the old leases associated with the McArthur River deposits. Britmar's iron ore project is the only other mine in the region. Nor has there been any requirement for a general (non-mining) port facility in the region.

- 60 In his comments at paragraph 168(b) Commissioner Olney did not have the benefit of subsequent information that the claimants (as native title holders) have entered into an ILUA with (Britmar) in respect of its operations at the port that are mutually beneficial and that give the claimants a strong stake in ensuring the continued operation of the port.

Petroleum

Armour Energy

- 61 The tenement holder's right to enter and remain on its tenements is protected by ALRA sub-section 70(2). The company's right of access to its tenements is protected by s.70(4). Armour has not suggested that it would intend to conduct any operations using waters overlying the inter-tidal zone or river beds. Should Armour seek a production permit in respect of an area that includes Aboriginal land ALRA Part 4 will apply. The application of the Land Rights Act to land as a consequence of it becoming Aboriginal land is not a detriment. Nor is the effect of s.67A a matter of detriment.
- 62 **General:** The Northern Territory submission relating to petroleum interests makes a several claims about the operation of the Land Rights Act as a source of detriment. In these submissions we adopt the following paragraphs from submissions on behalf of the claimants in the Legune Land Claim No.167 and Gregory National Park/Victoria River Region Land Claim No.182:-

"5. This submission is supported by observations of Commissioner Toohey in the Warlpiri and Kartangarurru-Kurintji Land Claim Report No.2 at paragraphs 327 and 328 in which Commissioner Toohey [at paragraph 327] accepted that a submission by Mr Eames, counsel for the claimants, as follows -

"Their argument is with the Act. It is not with the land claim. They argue that the Act itself by posing the obligation on them to reach agreement with the traditional owners before their mining goes ahead imposes a detriment, but that was Parliament's intention. That was precisely what the Act said (transcript, p.2407)."

must be correct. Commissioner Toohey made various observations at paragraph 328 including the following sentence -

"But when Parliament itself has replaced the certainty of the Petroleum Ordinance with the uncertainty of negotiation and arbitration, I do not think that can fairly be regarded as a detriment resulting from acceding to a claim."

"Similar observations were made by Commissioner Toohey in the Daly River (Malak Malak) Land Claim Report No.13 [paragraph 373], the Finniss River Land Claim Report No.9 [paragraph 283] and other reports, and by Commissioner Kearney in the Upper Daly Land Claim Report [at paragraph 122].

6. In our submission those remarks support the view that the obligation of a mineral tenement holder to comply with Part IV in the event that a land claim is acceded to is not a detriment, and would apply equally to the need to comply with ALRA s.70, which provides a defence to the general prohibition against entering Aboriginal land in s.70(1) if entry is in accordance with ALRA or a law of the Northern Territory, and the *Aboriginal Land Act* which is such a law.”

- 63 We are not sure what is meant by “other petroleum activities” [NT Submission p.19 paragraph 1.]. But if access is the issue, we refer to our comments on Armour’s submission above, and note that s.70(4) provides for arbitration in the event agreement is not reached. The costs of an access agreement would be derisory in comparison to the average costs for petroleum exploration wells.

King Ash Bay

- 64 It is acknowledged that improvements erected on or made to the leasehold land have involved substantial expenditure on the part of the Club and as it seems a number of its members. However, for the reasons set out in this section the expenditure may not be reflected in the present value(s). The unsupported claims as to value in the KAB submission are not accepted as accurate estimates. It is noted that as a party to the Review we have been provided with a copy of the KAB submission in which parts of paragraphs 36 and 40 referencing value have been redacted. Given the redaction we have no idea of the gross figures of claimed value. They should be disregarded for purposes of the Review unless they are disclosed.
- 65 A key claim of the KAB submission to the review [paragraph 30(a) et al] is financial detriment, to the club and to its members. The submission repeatedly distinguishes between the interests of the club, as an entity, and its members as individuals who have separate interests – paragraphs 34-37. However, the KAB submission does not clarify at any point “ownership” of the “dwellings”, who constructed them nor what rights of occupancy are enjoyed by those who live in them, some of them apparently permanently [KAB submission paragraphs 13(a) and 35; AFANT statement Appendix Q.18 comment no. 85]. In this regard we note that the membership of the association has more than halved since the land claim to approximately 770 now [KAB submission paragraph 5] against 1629 then [Report p.59 paragraph 116]. The potential diminution of club membership referred to in the KAB submission at paragraph 49 seems to have happened already independent of the land claim.
- 66 The 2002 Land Claim Report listed the number of dwellings on the KAB lease as follows -

The land held under CLP 1476 comprises just under 2 square kilometres on which 65 substantial dwellings together with many campsites and caravan parks have been established.

The submission to the Review on behalf of King Ash Bay (KAB) mentions at paragraph 6 that there are now “96 dwellings which have been constructed within the lease area.” In a letter to the Aboriginal Land Commissioner dated 12 March 2018 the president of KAB, David Self, said –

“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 role, 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**.”
(*emphasis added*)

- 67 The nature of the arrangements between the club and its members relating to use of and occupancy of the club’s land by members is not really the business of the claimants. However, attention must be paid to it because of the submissions made on behalf of KAB, and Mr. Self’s letter. The following observations address not just the issue of value and detriment, but also the apparent appetite for risk of those who have spent money on the dwellings given their lack of tenure (with the exception of the single sub-lease).
- 68 It may also suggest that the Northern Territory’s complaint about the term of the current fishing access agreements [e.g. Narwinbi, Wurralibi (No.2) and Wurralibi ALTs of NT Submissions at part 5 paragraphs n) to q)] would not be shared by those KAB members who have erected structures at King Ash Bay without any apparent tenure. They at least seem to be prepared to accept long-term insecurity with respect to their ‘investments’.
- 69 A copy of search certificate for CLP 1476 obtained on 21 June 2018 is attached [**Attachment 3**]. Lease condition 1 reads – “Subject to the *Crown Lands Act* the Lessee will not use the leased land for a purpose other than the purpose for which it is leased, viz. tourism, recreation, camping and ancillary purposes.” The KAB submission does not explain how the construction of permanent dwellings complies with the lease purpose.
- 70 In addition to the lease conditions, there are three principal statutory provisions that have a bearing on land tenure, use and occupation of NT Portions 3898 and 3899 held under CLP 1476, namely the *Crown Lands Act*, *Associations Act* and the *Planning Act*. The purpose in outlining the constraints, obligations under and interactions between the statutes is to underline that assertions of “value” in the KAB submission are dubious due to the level of uncertainty around tenure for dwellings at King Ash Bay.
- 71 The lease is endorsed as “prescribed property” a term defined in the *Associations Act* (NT). The effect is that by s.110 of the *Associations Act* the lessee may not dispose of, charge or otherwise deal with the property without the consent of the Minister administering the *Crown Lands Act*. Between the latter Act and the *Associations Act* the lessee requires Ministerial consent to sublet or otherwise part with possession of the leased land, or dispose of, charge or otherwise deal with the lease property.

72 CLP 1476 is subject to section 46(1)(b) of the *Crown Lands Act* (NT) which provides that the lessee shall not sublet or otherwise part with possession of the leased land or part of it without the consent of the Minister. Under s.47(2) the Minister may grant or refuse consent to an application to create an interest of a type referred to in s.46, which includes “sub-let or otherwise part with possession of the land or part of the land the subject of the lease”, apparently in his absolute discretion. Currently there is one sublease registered against CLP 1476, which is to the proprietors of King Ash Bay Service Station and Supermarket, a letter from whom is attached to the King Ash Bay submission.

73 Whether KAB has parted with possession of part(s) of the leased land by allocating it to persons for the construction of permanent structures might depend on the terms of the undisclosed arrangements between the Club and the people who construct the buildings, but it has the appearance that the Club has parted with possession. This impression is supported by the framing of the club’s submission to the Review which refers to the members’ investments as separate from the club’s [paragraphs 34–37 refer].

74 The *Planning Act* is relevant to the leased land for two reasons: the uses to which the area may be put in compliance with its zoning, and the proscription against certain dealings that may amount to “subdivision” as defined in that Act. The Planning Scheme Zone for King Ash Bay is “Specific use – King Ash Bay”. A copy of KAB-I from the NT Planning Scheme is **Attachment 4**. No part of the lease area is zoned “residential”, nor is residential a consent use. The reference in clause 2 of Attachment 4 to the non-consent uses of “Home based visitor accommodation” and “home occupation” refer to services that may be provided in a dwelling, not consent for the dwelling itself [see **Attachment 5** – NT Planning Scheme 7.10 Associated Residential Uses]. KAB submission paragraphs 35 and 37 refer to structures on the river frontage and even on the claim area. Attention is drawn to clause 6(b) of the planning scheme [Attachment 4] -

(b) no future development shall be located on land sloping towards the river or within 50m of a watercourse; and ...

Most of the structures near the river bank appear to infringe this requirement although it is not known which of them were constructed before the Planning Scheme Zone for King Ash Bay came into effect.

75 “Subdivision” is defined in the *Planning Act* s.5 –

Meaning of subdivision

- (1) Subject to subsections (2), (3) and (4), in this Act, **subdivision** means the division of land into parts available for separate occupation or use, by means of:
 - (a) sale, transfer or partition; or
 - (b) lease, agreement, dealing or instrument purporting to render different parts of the land available for separate disposition or separate occupation.
- (3) Land is not to be taken to be subdivided for the purposes of this Act:
 - (a) by the grant of a lease, licence or other right to use or occupy a part of the land unless the lease, licence or other right is for a term of more than 12 years; or
 - (b) by reason only of the lease of part of a building.

The only sub-lease registered against CLP 1476 is for a 6 year term with an option for a further 6 years, presumably so it is not a subdivision under the *Planning Act*.

- 76 Whatever the undisclosed scheme, agreement(s) or arrangements are under which each person has constructed and/or claims permanently to occupy a building on the lease area, it does not provide secure tenure, and is likely to be void: s.63(1) of the *Planning Act* “a person must not enter into a transaction purporting to subdivide or consolidate land in contravention of the Part” (maximum penalty 200 penalty units for a natural person and 1000 penalty units for a corporation). S.63(2) provides that “a transaction purporting to subdivide ... land in contravention of this Part is void.”
- 77 No information has been provided about the relationship between the lessee, KAB, and the many parties who have constructed sheds or residences on the leased land, other than they are all presumably KAB members, and in particular what security of occupation is purportedly provided to them. When (at paragraph 35) the submission says that “some members utilise **their** houses as holiday homes while others live **permanently** at King Ash Bay” it implies that there is some assumed property right in the houses rather than a mere right to occupy, a view that is supported by the reference to “recent dwelling sales” in paragraph 36 which is assumed to refer to sales at King Ash Bay. No information has been provided about the claimed sales. The search certificate [Attachment 3] lists all development permits for CLP 1476 since January 2002.
- 78 Persons who claim to have invested or to be permanent residents, or the club’s claims to that effect on their on their behalf, seem to be saying that there is some agreement on the part of the club that the area allocated to them is for their separate occupation for a period in excess of 12 years. If they did not have such ‘rights’ there could not really be any claim for detriment related to attrition to the value of their “investment”.
- 79 During the land claim hearing some members of KAB gave evidence. Reginald Simpkin said –
“If this happens, our cottage out there that I put my life savings in is going to be unviable, I’ll just have to walk out of it, it won’t be worth anything.” [T.1335.8]

Mr Kenneth Melville gave the following evidence –

“As we have invested \$100,000 building a comfortable retirement home restrictions to our jetty or waterfront will have a severe detriment to its value and our lifestyle.”[T.1339.35]

A letter Mr Melville wrote to the Commissioner, referred to in paragraph 131 of the Report, included the claim-

“We have a sizeable self-funded retirement investment on club leased land, that will be greatly affected.”

From this brief evidence it appears that both witnesses believed that they enjoyed some sort of security for the “investment” they had made.

- 80 There was an inconclusive attempt earlier in the hearing to ascertain the nature of the interest in the dwellings. Mr Redfern, the then President of the KABFC, was

questioned by Mr Parsons, counsel for the claimants, concerning the nature of the interest in the dwellings -

Insofar as the dwellings, they are all privately owned, are they not?---Yes. So is the service station.

Yes. So just so that - - -?---So is the mini-mart, so are the houseboats, dinghy hire operators.

Are they transferable, those private dwellings?---Yes.

So the club has no proprietary interest in them whatsoever?---No, I haven't said - - -

No financial interest in them?---I haven't said it has.

So the club assets, are they accurately reflected in the balance sheet of about \$320,000?---I'd say that's underestimated.

All right. With respect to all of the rest of the assets, or the balance of the 6 to 8 million dollars, they are all privately held assets of - - -?---Yes.

- - - members of the club - - -?---Yes.

- - - in some cases?---Yes. [T.1324.14-35]

- 81 There are other reasons to reject the valuation estimates in the KAB submissions. The service station is said to have a value as a business of \$2,000,000 [KAB submission paragraph 38(a)]. Sublease No.883974 held by the proprietors has less than four and a half years left of its current term, with an option for a further term of 6 years subject to the consent of the Minister administering the *Crown Lands Act*. The improvements listed in the sublease must be removed on termination of the lease on 14 days' notice from the sub-lessor. While many small businesses operate on relatively short term leases, there is usually a reasonable possibility that alternative premises will be available if a lease is not renewed. That is not the case at King Ash Bay where there is a single 'landlord'.
- 82 It appears from advertisements currently on Gumtree and another site that Northern Territory Luxury Houseboats business is for sale for \$400,000 ONO or \$429,000 ONO [**Attachment 6 a & b** screenshots of the advertisements] depending on which advertisement is perused. That is a significant variation from the \$750,000 figure in KAB submission paragraph 38(c)(i).
- 83 The claims to value are reminiscent of inflated claims concerning the value of improvements made in the Warnarrwarnarr-Barranyi (Borroloola No.2) Land Claim No.30 by the beach block holders on Centre Island. As it turned out although they had purchased their blocks at government auction they had not acquired a valid leasehold title and thus would not actually suffer any detriment as a result of the land claim. The following remarks by Commissioner Gray could almost apply to many of the persons who have "invested" in dwellings at King Ash Bay concerning alleged loss of value arising if the land claims were acceded to-

6.1.6 The block holders are therefore in a very difficult position. They have expended monies in return for which they have acquired nothing. They have no interests in the lands concerned or in the houses which they have built.

6.1.7 Section 50(3)(b) of the Land Rights Act obliges me to comment on "the detriment to persons....that might result if the claim were acceded to either in whole or in part". I am compelled to report that none of the block holders would suffer any detriment in the event that the claim were acceded to in whole or in part. This is because they have already suffered whatever detriment they can suffer. The expenditure of money on the purchase of the blocks, which could not lead to the

acquisition of any interest in them, and on the construction of buildings which have become part of the real estate, has already occurred.

- 84 The apparent disregard for or acceptance of the risk arising from both the absence of tenure and the possible breach of applicable statutory provisions, by those members who have spent money on “dwellings” at King Ash Bay, stands in marked contrast to the professed non-acceptance of any risk associated with the grant of the claim areas as Aboriginal land, even the very modest detriment of a fee for a permit.
- 85 Under the sub-heading “Steps to address detriment concerns” the KAB submission asserts that options to address them are not available. This is somewhat surprising given the access provided to fishers under the agreements made between the NT, NLC and the local Land Trusts. There is a very clear option available through the Land Rights Act. In our submission it is a feigned helplessness.

Boat ramp at King Ash Bay

- 86 In our submission the discussion by Commissioner Olney in the Report does not support the exclusion of the boat ramp from a future grant on the basis that it is a road over which the public has a right of way. While there are parts of roads in the NT that are periodically inundated by tidal waters, such as Cahills Crossing and other crossings in tidal areas, those are roads that lead somewhere and not merely to the bottom of a river. If publicly accessible boat ramps are to be categorised as “public roads” we caution that there may be unexpected consequences as to their regulation, maintenance, liability issues and so on.

**McArthur River Region and part of Manangoora Region Land Claim Report:
Paragraphs 86 and 87**

- 87 Before concluding these submissions we draw attention to comments in paragraphs 86 and 87 of the Report, in particular the following passage from paragraph 86 –
- “Such a grant would however enable the titleholders (in effect the NLC) to inhibit the use of the statutory right of non-beneficiaries to obtain access to the river and the sea. It is clear from the submissions made on behalf of the claimants that it is the potential capacity to exclude non-beneficiaries from the claim area, rather than the use of the land itself, which is regarded as the most potent advantage that would accrue from a grant of title. The claimants would seek to use their title to the land as a lever to control the use of adjacent land to which they have no title and to regulate the use and enjoyment of the water of the river and the sea.”
- 88 During the hearing on 25 June 2000 counsel for the claimants read into transcript a brief document provided by the NT [T.1147-1148] headed “Indicative Government Detriment Issues” and set out the claimants response. Counsel also referred to detriment notices from other parties. The purpose was to indicate the claimants’ intentions in response to the issues raised by the document. One of the points in the NT document was “Conservation and management of the marine coastal and island ecosystems including recreational use and access”. Counsel said that those and other matters had been raised with the claimants, more than 40 of whom were present while counsel spoke.

89 At the request of the Commissioner the NLC wrote to him on 10 July 2000. The letter is Exhibit NLC 18. Both the remarks on transcript and the letter are expressed to be preliminary in nature as not all detriment submissions had been provided at that stage. The Commissioner at Report paragraph 87 noted that “Central to the claimants’ overall position is a proposal to set up a board for the local management of land, sea and resources.” This was accurate but incomplete. During the hearing on 25 June 2000 there had been a discussion of possible models for the board of management along the lines of either Gurig National Park or Nitmiluk National Park. The idea of a park or marine park was not novel. It was a serious issue in the earlier Warnarrwarnarr-Barranyi (Borrooloola No.2) Land Claim which involved many of the same claimants. The idea of a park was raised with various non-claimant witnesses in the land claim.

90 The Park concept was touched on in the letter of 10 July 2000 [Exhibit NLC18], was addressed at length in a statement by Keith Taylor [Exhibit NLC27] and again in the claimants’ submissions of January 2001 [Exhibit NLC23]. The latter being largely reproduced at paragraph 85 of the Report but without the preceding and qualifying paragraphs which read –

“It is submitted that it is important to see the land under claim in this claim in the context of those earlier claims for it is then that one sees the true nature and extent of the advantage which will be derived by the claimants in the event of a successful claim. That is, the advantage that flows to the claimants in the event of a successful claim builds on and enhances the advantages that flowed to them as a result of the earlier claims. For example it is the intention of the claimants to bring the land under the Park management. It may be possible that the land becomes part of that Park, it may be that this is impractical. Nevertheless, the claimants have made their intentions clear on the broad level, however the matters of detail remain to be worked out. At this time no one else involved in the claim has indicated any desire to engage the claimants representatives in any discussions about this matter.

“Whatever be the outcome of the 'Park' issue there are other advantages that would flow to the claimants.

91 Finally, a letter to the Commissioner from the NLC dated 17 May 2001 [Exhibit NLC38] recorded that the NLC held instructions from the claimants on those matters. The instructions were consistent with the earlier documents but expanded on some aspects, in response to detriment submissions. The submissions and two letters are provided with these submissions as a bundle [**Attachment 7**].

92 On the basis of the above documents, and the transcript referred to it is submitted that the following passage from paragraph 86 –

“Such a grant would however enable the titleholders (in effect the NLC) to inhibit the use of the statutory right of non-beneficiaries to obtain access to the river and the sea. It is clear from the submissions made on behalf of the claimants that it is the potential capacity to exclude non-beneficiaries from the claim area, rather than the use of the land itself, which is regarded as the most potent advantage that would accrue from a grant of title. The claimants would seek to use their title to the land as a lever to control the use of adjacent land to which they have no title and to regulate the use and enjoyment of the water of the river and the sea.”

does not accurately reflect the position of the claimants.

- 93 The claimants' position was much more nuanced and inclusive of the interests of third parties than is reflected by those observations. In fact the submissions and the letters, read together, are a serious attempt to find ways to reconcile the cultural values and responsibilities, and traditional uses of the claimants, in the land and waters in the claim area, with ongoing use of those areas by other parties ("non-beneficiaries" is the Commissioner's term). To gloss the claimants' expressed position as one of "the potential capacity to exclude non-beneficiaries from the claim area, rather than the use of the land itself ... as the most potent advantage that would accrue from a grant of title" and that "The claimants seek to use their title to the land as a lever to control the use of adjacent land to which they have no title etc..." on these documents is to do the claimants a substantial disservice.
- 94 One may think that a proposal for joint management reflected the very opposite of the prospect of excluding non-beneficiaries from the claim area. Particularly when both of the examples referred to in Exhibits NLC 18 & 38 and the elaboration on joint management in Exhibit NLC 27, Mr Taylor's statement, involved leaseback of the land to a government entity for management of the area as a park under joint management. If it was "a lever to control the use of adjacent land..." it would be very ineffective if it passed management control to a board under a joint management model. The Commissioner returned to these matters in paragraph 87 of the Report again without providing the broader context.
- 95 The passage of transcript referred to above [at T.1151.1] and both letters [Exhibits NLC 18 & 38] also referred to the claimants willingness to enter into talks with the representatives of the port at Bing Bong about their concerns, not envisaging that there would be difficulties in resolving those issues. There is no mention of those consistent views in the Report.
- 96 While these matters may seem to be ancient history, we have returned to them because a third party simply reading the Report, without access to the correspondence and submissions referred to, may otherwise gain an impression adverse to the claimants' position, that in our submission is not warranted. The fact that the park concept may no longer be in the mix of solutions is not the point – it being that the claimants' responses to the detriment issues were much more constructive and inclusive than is represented in the Report.

Conclusion

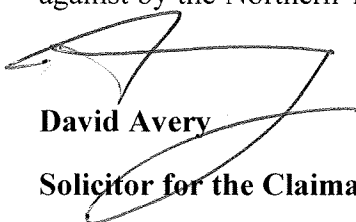
We respond to the following comments in the Conclusion to the NT Submissions:-

“Consistent with previous detriment review tables provided by this Office in relation to the detriment review for groupings 1, 2, and 3, it is the submission of the Northern Territory that the comment function of the Commissioner under section 50 (3) (b) and (c) ALRA requires, where appropriate, the Commissioner to take a broad view that the effect of acceding to a claim may have.

A land claim by its very nature involves the intended change of tenure of the land claimed as one of the beneficial objectives of the Land Rights Act. In response to the NT comment we submit that a genuinely broad view of the effect of acceding to a land claim requires that a

Commissioner should take into account matters that may meet detriment concerns, that diminish or ameliorate detriment, such as the agreement making and permit reforms mentioned in these submissions, as well as matters that place a claimed detriment into its appropriate context. Part of that context in the Review would be where parties exaggerate the possible detriment, or they choose to do nothing when there are reasonable options available to protect their interests should the area become Aboriginal land in the future.

The genuinely broad view that brings such matters into account will much better inform the Minister with the truest possible picture of whether a detriment issue is really as serious as claimed and how it may be dealt with. The submissions on behalf of the Northern Territory are on behalf of the government for *all* citizens of the Northern Territory. Aboriginal people, claimants and otherwise are citizens and their agency, capacity and role in meeting detriment concerns should not be disregarded, and whether by omission or neglect in effect argued against by the Northern Territory.



David Avery

Solicitor for the Claimants

16 July 2018

ATTACHMENTS.

1. Statement of Kane Bowden dated 29n May 2018 and transcript dated 25 June 2018;
2. Google Earth image of Bing Bong port;
3. Search certificate for CLP 1476 dated 21 June 2018;
4. NT Planning Scheme – Specific Use KAB;
5. NT Planning Scheme 7.10 Associated residential uses;
6. a & b: Screenshots of online advertisements for NT Luxury Houseboats business;
7. Bundle of documents being Exhibits NLC18, NLC23 and NLC38.

BEFORE THE ABORIGINAL LAND COMMISSIONER
ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

Fitzmaurice River Region Land Claim No. 189

Statement of Kane Bowden, Permit Reform Manager of the Northern Land Council ("NLC"),
GPO Box 1222, Darwin NT 0801 -

1. I started work with NLC on 12th February 2018 when I was appointed Permit Reform Manager. I was previously employed at the Lighthouse Foundation for 9 years as CEO until December 2015 before establishing a consulting business. My relevant skills and experience include governance, strategy, business and project planning, managing teams and change management.
2. I have responsibility for the management of the Permit Reform Project. This involves the timely development and implementation of an updated Permit Management System including comprehensive policy framework and guidelines for permit approval, management and compliance.

Current permit system

3. The Northern Land Council administers the permit system on behalf of the traditional owners. The current system can be viewed via the NLC website at <https://www.nlc.org.au/visiting-aboriginal-land/apply-for-permit>. The system was not designed to cater for large numbers of permit applications.
4. Permits are not intended to generate revenue for traditional owners and in most cases there is no charge for a permit. However, in some areas, access and/or camping licence fees apply.

Access agreements and temporary permit waiver

5. Following the 2008 Blue Mud Bay decision by the High Court of Australia, the NLC and various land trusts entered agreements with the Northern Territory Government over six high value fishing areas to license permit free access for commercial and recreational fishers and fishing tour operators onto Tidal Aboriginal Land while there are waters overlying it.
6. While consultations continue over the remaining intertidal zones on Aboriginal land, the NLC granted a waiver under section 5(8) of the *Aboriginal Land Act* allowing permit free access for commercial and recreational fishers and fishing tour operators. This waiver will expire on 1 January 2019.

Intended updated permit system design

7. Design of an updated Permit Management System is not yet complete but a key objective of the Permit Reform Project is to create an online self-service permit application system that has the following features:
 - a. A user-friendly interface accessible via the NLC website and a downloadable app;
 - b. Ability for automated permits where traditional Aboriginal owners have nominated areas as open for public access via permits. An automated permit is one where a visitor can register and apply on-line, and can down-load (and print if required) a permit immediately once eligibility criteria are met.
 - c. Some areas nominated as open for public access via permits will licence additional visitor activities such as camping and fishing;
 - d. Capability to efficiently process permit applications for areas that require special permission, or for more complex activities;
 - e. Options to apply for different types of permits including a single use permit, a permit for multiple zones, family permits and seasonal permits. This will avoid duplicate applications;
 - f. Permits that provide useful additional information to assist permit holders accessing Aboriginal land; and
 - g. Capacity for visitors to communicate feedback on amenity and safety issues.
8. Consultation meetings will be sought with peak bodies representing visitors to clarify how the application process can be simplified to meet visitor needs.

Status of the Permit Reform Project

9. A system prototype has been completed for demonstration at the NLC Full Council Meeting to be held over 4-7 June 2018.
10. The NLC has commissioned an Information and Communications Technology company to design the software and application.
11. To assist with the efficient management of the broader project, four additional staff members are being recruited to the NLC including a Project Officer, Business Systems Administrator, Data Analyst, and Policy Officer.

Estimated timeframe for implementation

12. It is estimated that the upgraded Permit Management System will be ready for implementation by 31 December 2018.

13. The implementation of automatic entry permits is dependent on areas nominated through consultation and agreement with traditional Aboriginal owners. Until this occurs, the current process for permit applications will continue.
14. Consultations will begin in 2018 with traditional owners of various intertidal areas of Aboriginal land to brief them on the nature and purpose of the reformed permit system and to come to an agreement as to the terms and conditions upon which the NLC may issue permits.

I declare that I have read this statement carefully before signing it and that I believe it to be true and correct.

Signed:



Kane Bowden

Date:

29/5/18

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**ABORIGINAL LAND COMMISSIONER
THE HON JOHN MANSFIELD AM QC**

FITZMAURICE RIVER REGION LAND CLAIM NO. 189

**GREGORY NATIONAL PARK / VICTORIA RIVER LAND CLAIM
NO. 167**

LEGUNE AREA LAND CLAIM NO. 188

WOOLNER/MARY RIVER LAND CLAIM NO. 192

PERON ISLAND LAND CLAIM NO. 190

AT DARWIN.

1.32 PM, MONDAY 25 JUNE 2018

APPEARANCES:

MR D AVERY	for Northern Land Council
MR T PAULING QC	for Northern Territory Government
MR P WALSH	for Northern Territory Government
MR B TORGAN	for Amateur Fisherman's Association NT
MS K WINCHESTER	for Seafood Council NT

COMMISSIONER: We have today scheduled first some residual issues
05 arising out of the detriment evidence for the Legune and Victoria River land
claim and the Fitzmaurice River land claim, and I think you've all been given a
copy of the letter of 22 June 2018. And there are three people concerned in
terms of potential evidence, one is Mr Bowden and one is Mr Curnow, who's
already given some evidence, and the third is Miss Winchester. And I think
10 there might be some evolution of the need for her to give evidence but we'll
have to wait and see. So, we can commence that evidence or that process now.
Whether it becomes evidence I think is still a moot question.

Before I start that, in terms of Mr Curnow's evidence that he wants to lead and
15 not what he has given, there's also a statement for the evidence in Woolner and
Peron Islands on detriment which, because it's not new, it's not a surprise, I
mean to say it is not evidence that might have been given earlier, that is, at the
start of it, one would expect that to the extent to which that evidence is now
sought to be given, it can be given without objection in relation to its timing.
20 There might be objection to it in relation to its content, but in relation to its
timing.

So, I simply raise that because to the extent to which it overlaps, and the
evidence which is proposed to be led in claims 167, 188 and 189, it may be
25 convenient to treat what is said in those – the evidence today in those claims if
it is given as evidence which he would also say tomorrow without repeating it.

MR WALSH: Yes.

30 COMMISSIONER: So, if you can think about that when and if we get to that
appropriate point.

MR AVERY: Which witness was that, your Honour?

35 COMMISSIONER: Ian Curnow.

MR AVERY: Yes.

COMMISSIONER: The first one on our list is Mr Bowden, who I think is
40 your witness, Mr Avery.

MR AVERY: Yes, I'm just looking at my letter of 11th – that's correct, your
Honour, the letter of 20 June on the order of witnesses doesn't have Mrs
Winchester on today. Was there another letter after that?
45

COMMISSIONER: There's a letter of 22 June - - -

MR AVERY: Oh.

COMMISSIONER: - - - which doesn't have her by name but has
AFANT/NTSC provisional.

05

MR AVERY: Oh, I see.

COMMISSIONER: And I think that refers to her.

10 MR AVERY: Yes, correct.

COMMISSIONER: But she did have some health problems, and I think there
was an issue about when she was available and whether she should be brought
forward and things like that.

15

MR AVERY: Yes, I'm sorry, I overlooked that.

COMMISSIONER: So, we had to deal with that, and I said what I would do
with her evidence in – or her proposed evidence, by listing it at the end of Mr
20 Bowden and Mr Curnow's time, whatever it may take today.

MR AVERY: So, it's Mr Bowden now?

COMMISSIONER: Yes.
25

<KANE BOWDEN, SWORN

[1.36pm]

30 COMMISSIONER: Thank you. Now, Mr Bowden, have you got a copy of
your statement?

KANE BOWDEN: I do, your Honour.

35 COMMISSIONER: Alright. Well, I'll leave it to you, Mr Avery, to lead
whatever evidence you want to.

MR AVERY: Thank you, your Honour.

40

<EVIDENCE-IN-CHIEF BY MR AVERY

[1.36pm]

MR AVERY: Mr Bowden, in a statement that is not yet exhibited that has
45 been provided by Mr Curnow, the Director of Fisheries, in paragraph 4 he says
that your statement suggests negotiations with traditional owners are
continuing. Could you have a look at the statement please?

KANE BOWDEN: Right here?

05 MR AVERY: Yes. Can you see anywhere where you suggest that?

KANE BOWDEN: Where consultations are continuing?

MR AVERY: Yes, negotiations, negotiations.

10 KANE BOWDEN: Well, there's nothing on negotiations.

MR AVERY: Right. Now, at paragraph 6 you talked about consultations.

15 KANE BOWDEN: That's right.

MR AVERY: What are they about?

20 KANE BOWDEN: They're about consulting with the traditional owners in the NLC regions as to the introduction of a permit system to help them understand it and inform it.

MR AVERY: Right. And you also mention at paragraph 4 in the last paragraph you again mention consultations?

25 KANE BOWDEN: That's right, yes.

MR AVERY: And is that for the same purpose?

30 KANE BOWDEN: Absolutely, yes. And a lot of this reform depends on the consultations with traditional owners to ensure that they're aware of what's been put in place on their behalf, and to seek their instructions on the permit system.

35 MR AVERY: So, those consultations are required under the Aboriginal Land Act as far as permits are concerned?

KANE BOWDEN: They are, yes.

40 MR AVERY: Thank you. That's all I have, your Honour.

COMMISSIONER: Now, that statement which is dated 29 May, have I received that yet or do you want me to - - -

45 MR AVERY: I think - - -

MR WALSH: Yes, you did, your Honour.

MR AVERY: Yes.

COMMISSIONER: Thank you.

05 MR WALSH: Exhibit A33 in Fitzmaurice.

COMMISSIONER: Thank you.

MR WALSH: And A37 that you were given.

10

COMMISSIONER: And A37. Thank you. Alright. Now, Mr Walsh, you're asking questions?

MR WALSH: Yes, your Honour.

15

<CROSS-EXAMINATION BY MR WALSH

[1.39pm]

20 MR WALSH: Is it Mr Bowden or Mr Bowden?

KANE BOWDEN: Bowden thanks, yes.

MR WALSH: Sorry. It's not addressed in your statement but what are your
25 formal qualifications, if any?

KANE BOWDEN: I'm a qualified teacher, DipEd, I've got a Bachelor of Arts
before that, and I'm currently in my last subject of a Master of Business
Administration.

30

MR WALSH: And you say that your – prior to the job you're now
undertaking, you were for some nine years the CEO of the Lighthouse
Foundation. Can you tell us what the lighthouse foundation does?

35 KANE BOWDEN: It's charity based in Melbourne and it cares for young
people 15 to 22 in a therapeutic care program, and it's residential based.

MR WALSH: Alright. And your role as CEO I presume didn't involve the
hands-on type administration or IT work and the like?

40

KANE BOWDEN: It did, yes, in some projects definitely. We had a number
of IT projects which I was involved in. Is that the question?

MR WALSH: Yes, you had an IT role as part of your business?

45

KANE BOWDEN: No, not an IT role, I was the overall administrator of the
business.

MR WALSH: Yes. Thank you. And then you operated a consultancy business for just over two years?

05 KANE BOWDEN: That's correct.

MR WALSH: And what work did you undertake during your consulting business period?

10 KANE BOWDEN: Oh, mostly advisory work with not for profits and commercial organisations with an indigenous focus.

MR WALSH: Was this also in Victoria?

15 KANE BOWDEN: No, that's been primarily in the Northern Territory.

MR WALSH: Okay. And then you are now described as permit reform manager and head of the permit reform project. Does that involve – currently involve a team of people other than yourself?

20

KANE BOWDEN: It does, yes.

MR WALSH: And how many people?

25 KANE BOWDEN: We had a lead project manager, and we've just recruited a business system administrator, and we have a project officer who's come on board, and we're about to onboard a policy officer.

MR WALSH: Alright. And your role as permit reform manager, is that
30 pursuant to a contract of employment?

KANE BOWDEN: It is, yes.

MR WALSH: And what is the period of that contract?

35

KANE BOWDEN: 12 months.

MR WALSH: Commencing I think in about February this year?

40 KANE BOWDEN: 12 February.

MR WALSH: And the job description, if you like, or – how did it all come about? Did you answer an advertisement or you - - -

45 KANE BOWDEN: Yes. Yes, I did. It was in the – it was in Seek and I looked at that project and talked to the appropriate officers at the Northern Land Council about the opportunity to work with the council, and we too-ed

and fro-ed on the kind of contract that we would enter into and settled on a 12 month employment contract.

05 MR WALSH: Right. And could you just in short and general terms describe the permit reform project and what you've been instructed to do by the NLC?

KANE BOWDEN: Basically bring the permit system into the 21st century, and put in place a system that enables streamlined permits for visitors and anyone wishing to access Aboriginal land, and protect but also promote the
10 interests of Aboriginal people in doing so. That seems to be a fair summary.

MR WALSH: Alright. The shape and the look and the form of the project it may ultimately take, is there a fair degree of latitude of the depth to review in that design process?

15 KANE BOWDEN: Not really. An expert in IT systems, Sharon McAnelly, wrote a detailed project plan prior to my employment, and also has completed detailed business architecture and other documentation that clearly defined the parameters for the system developer. So, the answer to that would be no. It's
20 very clear to me the elements that go into the development of this permit system.

MR WALSH: Yes. You mentioned a system developer, and later in your statement you refer to an IT company being hired to - - -

25 KANE BOWDEN: Yes.

MR WALSH: - - - do that work, so that that's then going to be done by somebody else in the due course of it?

30 KANE BOWDEN: Oh, it's been done, and we've had a prototyped developed, and the prototype's been used at the moment to explain the system to various stakeholders, and we've received on Friday the first version of a full system design from the developers.

35 MR WALSH: Alright. You say in paragraph 3 of your statement that the current permit system is not designed to cater for large numbers of permit applications. Well, what are its limitations in that regard?

40 KANE BOWDEN: Oh, its limitations are that occasionally it breaks down. And there are some issues with the forms. Some of the forms that people are filling in either online or in offices are different, and occasionally permits are being lost in the system. They're some of its limitations.

45 MR WALSH: Right. And when you say "not designed to cope with large numbers of permits", basically what do you mean by large numbers?

05 KANE BOWDEN: Oh, we've got about 14 to 15 thousand permits being processed every year, and we think that that could double. It's very difficult to get figures on what sort of upswing in numbers there will be in year one, but we think they could at least double, and we want a system that makes it much more likely that those permits can be processed.

10 MR WALSH: Right. So, the 14 or 15 thousand that it's currently coping with, or trying to cope with, are permits – are land based permits for various activities are they?

KANE BOWDEN: That's correct.

15 MR WALSH: Such as, what, contractors needing to go to a community to do work and - - -

20 KANE BOWDEN: Work permits and recreational permits. There's also media permits and there's a range of other conflicts and research permits. So, anything that people want to explore Aboriginal land, if they want to go onto a land trust they need a permit - - -

MR WALSH: Yes.

25 KANE BOWDEN: - - - and we cover all – all of the types of permits that people are interested in.

MR WALSH: And what sort of lead time, if you're able to answer, is involved in those sort of permits at present?

30 KANE BOWDEN: Which ones, yes?

MR WALSH: Well, the permits under the current system for the sort of activities you just described.

35 KANE BOWDEN: So, a work permit or a recreational permit or a - - -

MR WALSH: No, we'll start with a work permit.

40 KANE BOWDEN: It can be turned around in 24 hours, and in most cases it is. A recreational permit, about the same, but we do say that they take up to 10 days. As I say, sometimes a permit can be lost in the system, but mostly they're turned around well within the 10 days that the Northern Land Council advises people that they can take. The research permits and the media permits can take longer and they're subject to what the particular applicant would like to do.

45 MR WALSH: Right. So, is it the case that the applicant's told that it may take 10 days and it may in practice take a shorter period of time - - -

KANE BOWDEN: Absolutely, yes.

MR WALSH: - - - but that's the time frame?

05 KANE BOWDEN: Yes. So, applicants are told it can take 10 days but usually it's much quicker.

MR WALSH: Yes. But they have no actual expectation outside of the period of 10 days as to when the permit would actually be granted?

10

KANE BOWDEN: I don't understand. The - - -

MR WALSH: If they're told it can take up to 10 days - - -

15 KANE BOWDEN: Yes.

MR WALSH: - - - so that's what they've got to work with?

KANE BOWDEN: That's right.

20

MR WALSH: Yes, thank you. In paragraph 4 you suggest that permits that are obviously talking about – I presume you're talking about the present system. Permits are at best – or effectively paragraph 4 which says:

25 *Permits are not intended to generate revenue for traditional owners, and in most cases there's no charge for a permit -*

that suggests that permits are at best revenue neutral, but in fact may even with a permit fee actually involve a cost to administer beyond any revenue that might be gained. Is that the case?

30

KANE BOWDEN: I'm not sure of the question. We don't charge for basic permits at the moment. There are some permits that people seek that do attract a cost and they're to do with special activities like visiting a special place on
35 Aboriginal land or a beach or a camping zone.

MR WALSH: Yes. So - - -

40 COMMISSIONER: Do the permits broadly – different categories of permit, are they mainly designed to decide whether or not to allow the person onto the land?

KANE BOWDEN: That's right, yes, of course.

45 COMMISSIONER: Does that mean they need more or less individual consideration once the application is made?

KANE BOWDEN: They do, and that's considered by a representative of the particular clan group - - -

COMMISSIONER: Yes.

05

KANE BOWDEN: - - - called a permit delegate.

COMMISSIONER: Thank you.

10. MR WALSH: Yes. So, again, to repeat what I just said about paragraph 4, permits are not intended to generate revenue? It may be the case that the cost of administering a permit system would outweigh any revenue gained from such a system?

15 KANE BOWDEN: No, I don't think so. The business plan certainly doesn't look at fees in the first three years. There's funding to set up and operate the permit system for at least that long. At least I understand there is. There would be, I think, in the future a small fee to ensure that the system can continue to be administered if there are issues, 24/7 support, etcetera.

20

MR WALSH: Right. So, I think you just said that the business plan doesn't envisage or refer to fees in the first three years?

KANE BOWDEN: Correct.

25

MR WALSH: Yes. Are you aware, and you may not be, that some years back, around about 2013, 2014 the Tiwi Islands – the Tiwi Land Council on the Tiwi Islands operated a permit system for a couple of years, and ultimately came to the conclusion that the cost of operating it so far exceeded any revenue gained that they ultimately abandoned it. Are you aware of that?

30

KANE BOWDEN: Oh, I'm aware that they have made different efforts to establish a permit system. I wasn't aware of some of those details in there about abandoning it for - - -

35

COMMISSIONER: Mr Walsh, if you want to make anything of that - - -

KANE BOWDEN: - - - any reason.

40 COMMISSIONER: - - - I'll have to understand what it's about more than the generality of your question.

MR WALSH: Yes. Mr Curnow can speak for that, your Honour.

45 COMMISSIONER: Well, if he's allowed to.

MR WALSH: If he's allowed to, yes.

Yes. Now, Mr Avery touched on this: in paragraph 5 there appear to be six agreements that have been negotiated to date. Following the Blue Mud Bay decision the NLC and various land trusts entered into agreements with the
05 Northern Territory Government over six high valued fishing areas. Are you aware that these agreements were completed between approximately 2012 and July 2014 and that there have been no agreements since that time?

KANE BOWDEN: The timing is not – I don't have that in front of me, but I
10 am aware that's around about the timing.

MR WALSH: Thank you. And in paragraph 6, and again you spoke to Mr – spoke with Mr Avery about this where you say, while consultations continue over the remaining intertidal zones, etcetera, you are distinguishing
15 consultations from negotiations, I think in your answer to Mr Avery. Is that - -

KANE BOWDEN: Yes, there have been no negotiations. I'm not empowered or don't have in my remit any negotiations. My remit is to ensure that
20 consultations are carried out with every clan group wishing to introduce the permit system.

MR WALSH: And you said in answer to Mr Avery that the consultations with traditional owners were concerning the introduction of a permit system?
25

KANE BOWDEN: Correct.

MR WALSH: So, there were no other options put to the traditional owners other than the current system?
30

KANE BOWDEN: Oh, no, and this starts with traditional owners wanting a permit system, so my understanding is it came from traditional owners and it went to a full council meeting in 2017, and it was made a priority project for the Northern Land Council and that's why we're – I'm sitting here today
35 talking to you.

MR WALSH: But to your knowledge the consultations that you refer to in your statement have been with traditional owners about the introduction and perhaps the nature of a permit system?
40

KANE BOWDEN: They have, and the consultations that I have personally been involved in have commenced.

MR WALSH: Yes. Now, in paragraph 7 you talk about the design of an
45 updated permit management system which is not yet complete. And I think you've already given some evidence about how far it's progressed, but when you say "not yet complete", what is the intended timeframe from here on?

KANE BOWDEN: Oh, we need the next three months to build it, and in the last three months of the year to test and ensure that it's going to pass muster 1 January when the waiver expires.

05

MR WALSH: So, the intended completion date is 1 January?

KANE BOWDEN: Correct.

10 MR WALSH: You then talk about again in paragraph 7 a self-service permit application system. Could you expand on what you mean by a self-service permit application system?

KANE BOWDEN: Yes, sure. And therein lies the need for the consultations.
15 Where we can, we will obtain standing instructions from traditional owners, so that someone wanting a permit can get a permit immediately. So, if – the traditional owners have said we will – we've given you standing instructions for this particular area. That will then be entered into the system and a person who's applied to visit that area will be able to go online through their app and
20 have that permit approved immediately. They will then have that permit come up on their app and they can print it or they can show it via their mobile device, so that's either a phone or a tablet.

MR WALSH: Alright. In a similar vein at 7(b) you refer to automated
25 permits. By automated do you mean the same thing as automatic?

KANE BOWDEN: That's what I was just talking about then.

MR WALSH: In other words, applying for a permit is ultimately getting a
30 permit?

KANE BOWDEN: Yes, if it's clear, and our job is to make it very clear what people can and can't do on Aboriginal land they will have an automated permit. So, if they're looking to travel to a certain place and there are standing
35 instructions that a permit is allowable by traditional owners understanding instructions, they will have it automatically.

MR WALSH: So, what is the meaning of the phrase at the end of that
40 paragraph 7(b): "Once eligibility criteria are met?"

KANE BOWDEN: Well, they obviously have to, you know, put in a licence and various other information so that we can judge who the person is and the traditional owners will have a good view of who it is that wants that permit, and then it goes through the system.

45

MR WALSH: But doesn't that imply that it's not automatic in the sense that if one doesn't meet eligibility criteria, whatever they may be, one wouldn't get a permit?

05 KANE BOWDEN: And again, as you say, it's in development and we'll be dealing with all of these policy issues before it is implemented. But presuming eligibility criteria are met, it will be an automated permit.

MR WALSH: Alright. So, work in progress we don't know what eligibility
10 criteria may mean at this stage?

KANE BOWDEN: Well, obviously you need checks and balances, but it certainly means that the person is good and proper.

15 MR WALSH: Good and proper, okay, thank you. Subparagraph (e) of - - -

COMMISSIONER: So, if you had someone who had been on the land fishing previously and had destroyed something that was important to the traditional owners, the program would be amended to say, "Don't give another permit to
20 that person"?

KANE BOWDEN: We are allowing capacity for banning people.

COMMISSIONER: Yes.
25

KANE BOWDEN: And certainly rangers who are very important in this system are able to make judgments about the behaviour of certain people on Aboriginal country, and they can enter data into the system that allows decision makers to make decisions about the - whether or not to give a permit to that
30 person again.

COMMISSIONER: Or an automated decision can be made - - -

KANE BOWDEN: Correct, yes.
35

COMMISSIONER: - - - because have you just been told not to allow this person on anymore?

KANE BOWDEN: Yes. In the current design we do have a banned visitor
40 register.

MR WALSH: At subparagraph (e) of your paragraph 7 you say:

45 *Options to apply for different types of permits including a single use permit, a permit for multiple zones, family permits and seasonal permits. This will avoid duplicate applications.*

First of all could you tell us if you're up to that stage how these multiple permits type categories is intended to work?

KANE BOWDEN: Oh, yes, we've done some detailed work on this part.
05 This is about you need to travel somewhere, and you might need to travel over Aboriginal land on a road, and you may want to go to multiple sites, you may allocate on the application that you're taking your family or a group, so we don't want people to be hamstrung by having to get multiple permits to do that sort of thing. We want them to be able to go into the system and nominate
10 what they want to do and get the longest possible permit for the most possible people in that party. There will be some limitations around that, of course, so that they can get access to the places they'd like to have access to and that traditional owners are happy for them to visit.

15 MR WALSH: Thank you. So, that's the system you say will avoid the duplicate application?

KANE BOWDEN: Absolutely. A lot of thought has gone into that to this point.
20

MR WALSH: Okay. Paragraph 8 you talk about:

Consultation meetings will be sought for peak bodies, etcetera.

25 Have they – any of those consultation meetings commenced as yet?

KANE BOWDEN: They've been ad hoc to this point. Our communications plan is about to be rolled out, so we are planning those consultations in the coming months.
30

MR WALSH: Okay. And paragraph 9 you refer to the intention to demonstrate a system prototype at the NLC full council meeting that was held on the 4th to the 7th of June this year. Did that actually occur?

35 KANE BOWDEN: It certainly did, yes.

MR WALSH: Yes. And paragraph 10 I think you've already said that an information and communications technology company has already been brought on board to edit the process?
40

KANE BOWDEN: We haven't – we haven't finalised, but I was just speaking to them this morning. And, as I said, on Friday we received the initial design and we need to do some more work around that and a bit of toing and froing before we appoint them to build a system.
45

MR WALSH: Alright. You presumably don't know at this stage whether the idea of the permit system that you're designing will meet with universal

acceptance of – from each of the clan groups and traditional owner groups around the coastline that - - -

05 KANE BOWDEN: Oh, anecdotally we feel that there's a buy-in across the regions, and we feel the message that we're getting back every time the message goes out is that the permit system is something that clan groups are looking forward to participating in.

10 MR WALSH: Right. If there's not buy-in though for any particular clan group resulting in no go areas or areas where a permit can't be applied for because you can't go there, how will that situation – how is it envisaged that situation will be handled?

15 KANE BOWDEN: Well, unless the NLC delegates it as in the Dhimurru case for another organisation to manage a certain part of Aboriginal land, and the NLC does have to manage and administer the permit system, their options are not to enter into standing instructions and just leave the status quo in place. They will have a better system and permits will be processed more quickly, or to go down the Dhimurru model.

20 MR WALSH: So, the – would the permits issued inform the applicant of those areas where the permit does not apply?

25 KANE BOWDEN: Oh, it will seek to provide high visibility and the highest possible clarity as to what you can and can't do on Aboriginal land. And the whole idea is to use the current technology, and the technology that's at our disposal now to simplify and clarify and make clear to visitors and traditional owners and any stakeholders what's possible on Aboriginal land.

30 MR WALSH: Alright. And finally, I think, paragraph 14, you refer to consultations will begin in 2018 with the traditional owners, and I think you said those consultations have begun?

35 KANE BOWDEN: They have, yes.

MR WALSH: So, briefly and by the nature and purpose of a reformed permit system, it's clear from what you've said that that reform permit system is very much a work in progress. How are you briefing them on the system that is not yet - - -

40 KANE BOWDEN: Oh, we – as I say, we've built a really excellent prototype and we showed them the prototype, and we've made some short videos that they'll then quickly understand where it's headed, and we've got a five step approach that we're using. There's lots of models that we're working from:
45 the Greater Barrier Reef. And there's other models that are already out there that are working well and I'm not sure what else to answer there.

MR WALSH: Thanks.

MR AVERY: Go ahead.

05 MR WALSH: Yes, thank you, Mr Bowden.

COMMISSIONER: Mr Walsh, I just want to understand the purport of some of your questions. I mean you and I and everybody in this room has had the experience of seeking permits or licences from various government bodies, and
10 I don't in particular have in mind the Northern Territory. And there's a sort of an implication in your questions that there may be some hiccups and there may be a day or two's delay, and there may be some erratic answers with this system. Is not the important the objective to get there and not whether it does in fact because I don't think any permit provider would provide the quality of
15 service which might be implicit in some of your questions.

So, I'm just not sure how much – where you're going to take all those answers. That's – I mean the answers would say to me, "Look, we're trying to do our best to get it as quickly and as simply as possible and at its lowest cost as
20 possible." And that's what governments say all the time or commercial enterprises. Have you ever tried to deal with Telstra? Ever tried to get Optus to give you a film of the World Cup game? You know, I mean it just doesn't – it's not a perfect world. So, I'm not sure where those questions are going beyond exploring the intent.

25 MR WALSH: The evidence has been and will be, your Honour, that the Northern Territory's preferred position is, and remains, that a process in line with the six deeds have already been negotiated in certain areas as opposed to a permanent system per se. And we are trying to establish what this now
30 preferred model from the NLC side is going to look like, and whether it's a substitute for any alternatives that we would still propose as the – as the better option.

COMMISSIONER: Alright. Well, I'm just making a comment because I
35 don't know how I'm going to use some of those answers that are directed to whether it might not work as well as we would like it to work because that happens with all of these systems.

MR WALSH: Yes, if that - - -

40 COMMISSIONER: You know, in the biggest of enterprises it happens. We've had three banks that have lost their whole system for hours at a time this year, so - - -

45 MR WALSH: Well, that's part of the problem, your Honour. The deeds - - -

COMMISSIONER: And including the Northern Territory Government probably has problems. I wouldn't know particularly but it might no doubt pretend perfection I suspect.

05 MR WALSH: But - - -

COMMISSIONER: They aim for it but they don't necessarily achieve it.

10 MR WALSH: The deeds of agreement as the alternative, we propose, are in place for - - -

COMMISSIONER: I can understand that at the conceptual level.

MR WALSH: Yes.

15

COMMISSIONER: I understand that proposition.

MR WALSH: Well, for an extended period of time, and the certainty is there, and - - -

20

COMMISSIONER: And your proposition is unrestricted access - - -

MR WALSH: But - - -

25 COMMISSIONER: - - - provided certain money goes from - or certain arrangements are made with the government about other things isn't it?

MR WALSH: I - well, we don't put it in that way, and I think Mr Curnow's evidence will go to that if permitted, but - - -

30

COMMISSIONER: Well, if permitted - well, how do you put it if it's not unrestricted access?

MR WALSH: Well - - -

35

COMMISSIONER: Subject to the Fisheries Act restrictions.

MR WALSH: Exactly.

40 COMMISSIONER: Is it unrestricted in relation to Aboriginal communities isn't it for commercial and - - -

MR WALSH: Well, the Fisheries Act, the Sacred Sites Act and any other relevant legislation still applies.

45

COMMISSIONER: Yes.

MR WALSH: And it's access pursuant to the terms of the deeds the terms of which were negotiated between the Northern Territory Government and the NLC.

05 MR AVERY: No.

COMMISSIONER: For a period of time.

MR WALSH: And the land development – in the development of land, but - -
10 -

COMMISSIONER: Yes, alright. Thank you. Did you want to ask any questions of that?

15 MR AVERY: I have a couple of questions, your Honour.

COMMISSIONER: Yes, Mr Avery.

MR AVERY: I just want to take you back to the questions about the eligibility
20 criteria.

MR TORGAN: I also have some cross-examining questions.

MR AVERY: Oh, I beg your pardon.
25

COMMISSIONER: Oh, I'm sorry.

MR AVERY: Sorry.

30 COMMISSIONER: No, I beg your pardon, Mr Torgan.

MR TORGAN: It's quite alright.

COMMISSIONER: It just slipped my attention. Yes, you go ahead.
35

MR TORGAN: Thank you.

40 <CROSS-EXAMINATION BY MR TORGAN [2.07pm]

MR TORGAN: I just want to double back first to paragraph 7(b). Did I hear that the eligibility criteria have not been developed yet?

45 KANE BOWDEN: Oh, we've done work around that. I can't off the top of my head give you details on it, that's all.

MR TORGAN: Does the current permit freely open access arrangements for other eligibility requirements for recreational fishermen?

05 KANE BOWDEN: Sorry, which - - -

MR TORGAN: I mean are there eligibility requirements in place now for recreational fishermen under the current system? Sorry, I know I have a funny accent.

10 KANE BOWDEN: Yes, of course there are, yes.

MR TORGAN: Are they specific to the fishermen or to the areas?

15 KANE BOWDEN: Well, fishermen don't need permits at the moment.

MR TORGAN: Going to paragraph 8 – I'm sorry. So, there have been no consultations yet with the peak bodies, but you're getting ready to roll out a communications strategy with them? Is that what I – did I hear that correctly?

20 KANE BOWDEN: There have been some discussions with stakeholders, external stakeholders to the Northern Land Council, but a program of meeting and working our way through to make sure everybody is familiar with what's happening with the implementation of the system is about to commence, yes.

25 MR TORGAN: Right. Which peak bodies do you intend to consult with?

KANE BOWDEN: Oh, the government, AFANT, Seafood Council and a range of other stakeholders.

30 MR TORGAN: And you expect to conduct those consultations over the next -
--

KANE BOWDEN: Imminently.

35 MR TORGAN: Imminently, meaning you have – since you haven't ruled out your strategy yet, you're going to have to - - -

KANE BOWDEN: As soon as we can possibly arrange those meetings, we'll be having them.

40 MR TORGAN: Okay. But you've said that – you've also said that the timeframe to complete the building of the project will be within the next three months?

45 KANE BOWDEN: Correct.

MR TORGAN: So, essentially the project will be completed when you have the stakeholder consultations?

05 KANE BOWDEN: No, it's going to take three months to build it and three months following that to test it, and before the build is complete we will have met with at least all of the key stakeholders, that's a much smaller group, however we do have an extensive list of people to go and meet with and talk to about the system and explain it to them.

10 MR TORGAN: So, explain it to them. So, that means that really you're – in other words, this is it, take it or leave it?

15 KANE BOWDEN: No, we've always said we would like to balance the interests of all stakeholders, and we're taking feedback at all times, particularly from traditional owners but also, I mean I've been speaking with, as I say, some stakeholders and taking their feedback and that feeds into the design of the system.

20 MR TORGAN: If the building of the system is ongoing, and you haven't consulted with the stakeholders prior to the building of the system, how do you make changes midstream then if - - -

KANE BOWDEN: Well, like - - -

25 MR TORGAN: - - - the stakeholders raise an issue that you hadn't considered about a problem with the system?

30 KANE BOWDEN: Because the design of the system is all about being able to change it. So, while we may have a system in place in time for the waiver expiring, we will continue to refine and improve and develop the system over time. So, the system by the end of this year and five years from then will be very different as we continue to collect feedback, particularly through the system itself through people leaving feedback like all modern day, 21st century systems. So, that's what we mean there.

35 MR TORGAN: You mention that the four additional staff members in a paragraph of your statement, paragraph 11, they have been – they've been hired or offers are outstanding?

40 KANE BOWDEN: Two have and we're about to bring on a third.

MR TORGAN: The paragraph also suggested, or your statement also suggested that these positions are not specific to the permit reform project?

45 KANE BOWDEN: There's a range of information system reform projects going on at the Northern Land Council, and the permit system is one of those reform projects, and these staff will work across all of those reform projects.

However, they have each of them integral duties committed to the permit reform project.

05 MR TORGAN: Has an allocation of – has a general allocation of time percentage wise been made to work as a policy officer?

10 KANE BOWDEN: The policy officer is 100 percent for the first six months of their role, and the business system administrator would be 50 percent, give or take, and the data analysts will be 50 percent.

MR TORGAN: Moving to a couple of questions on paragraph – focusing on paragraph 12 – actually your statement in paragraph 14 refers to various intertidal areas. Is there – how are the various areas being prioritised?

15 KANE BOWDEN: Mostly where the highest volume of fishing is occurring.

MR TORGAN: I guess could you forgive my ignorance, but how many different groups and different clans do you have to consult with over the course of developing the system?

20 KANE BOWDEN: And that's a very good question. We've got 12 priority areas, and there are close to 100 clan groups that need to be consulted before the end of the year.

25 MR TORGAN: That's all I have, your Honour.

COMMISSIONER: Thank you. Now, Mr Avery.

30 MR AVERY: Well, I'll get back to where I was.

<RE-EXAMINATION BY MR AVERY

[2.15pm]

35 MR AVERY: Yes, I'll just take you back. You were asked about eligibility criteria. If I could perhaps suggest things. So, a fairly common form would require your licence number, driver's licence number and your name, address and I forget - - -

40 KANE BOWDEN: That's right.

MR AVERY: Hey?

45 KANE BOWDEN: That's right, yes.

MR AVERY: Right. Now, what we're talking about here is the intertidal zone where people want to access the water. Would it be useful to be able to identify a boat?

05 KANE BOWDEN: Oh, it would be useful but it's not necessary.

MR AVERY: How would the rangers manage if they saw a boat acting inappropriately? How would they identify it?

10 KANE BOWDEN: Oh, they'd probably look for markers on the boat and they'd look for things that identify the boat, but as we know at the moment you don't have to have a registered boat to boat in the Northern Territory.

MR AVERY: Would it be useful if there was a number on the boat?

15 KANE BOWDEN: I think it – yes, I think it would be useful of course.

MR AVERY: Yes. And the other thing is, of course, you're dealing with Aboriginal land at the moment?

20 KANE BOWDEN: That's right, only Aboriginal land.

MR AVERY: Yes, thank you.

25 COMMISSIONER: Thank you. Alright, thank you, Mr Bowden.

KANE BOWDEN: Thanks, your Honour.

30 <THE WITNESS WITHDREW

[2.16pm]

COMMISSIONER: And where are we going from here? Is that the end of what you need to do as evidence from your end, Mr Avery?

35 MR AVERY: That's it.

COMMISSIONER: Alright, well, we'd better get on to Mr Curnow I guess. Yes, Mr Pauling.

40 MR PAULING: Your Honour, I apply for leave to produce a further statement of Ian Arthur Curnow, but before I do so I need to hand up the redacted deeds of settlement that we said we'd put before your Honour that - - -

45 COMMISSIONER: Yes, thank you.



Sign in



Google

Map

Date Registered: 14/03/2017

Volume 817 Folio 163

Duplicate Certificate as to Title issued? No

SEARCH CERTIFICATE**CROWN LEASE IN PERPETUITY 01476**

N.T. Portion 3898 from plan(s) S90/252D

N.T. Portion 3899 from plan(s) S90/252D

Area under title is 1 square kilometres 99 hectares 8500 square metres

Owner:King Ash Bay Fishing Club Inc
of 3, 567 Jose Steet, Borroloola NT 0854

Registered Date	Dealing Number	Description
14/03/2017	883974	Previous title is Volume 741 Folio 914 Sublease to Tarmo Koivumaki, Jolene Koivumaki, Jamie McGuinness and Rebecca McGuinness - part - expiring 15/12/2022
03/12/2001	483660	Variation conditions varied
27/08/1996	358800	Statutory Notice prescribed property
End of Dealings		

Commencement date: 30th June, 1995**Expiry Date: In Perpetuity****Reservations:**

1. Reservation of a right of entry and inspection.
2. Reservation of all minerals, mineral substances and ores in or upon the land, includingd gems, stones, valuable earths and fossil fuels.
3. Reservation of power of resumption.
4. All reservations and rights to which this grant is made subject to the Crown Lands Act.

Provisions:

1. The annual rent for the lease ('called the rent') will be nil
2. This lease is granted under and subject to the Crown Lands Act and the Regulations for the time being in force thereunder, and is conditional upon compliance by the Lessee with the lease conditions to be complied with by the Lessee, and will, subject to the Crown Lands Act and the Regulations, be liable to be determined and forfeited for non-compliance with any such lease condition.
3. The Lessee, having paid all rent due to be paid by the Lessee may at any time surrender the lease in the manner prescribed under the Crown Lands Act.
4. For the purpose of sections 58 and 59 of the Crown Lands Act the Lessee agrees that the Minister may at his absolute discretion determine the Lessee's rights in improvements and whether compensation is payable for improvements following surrender, expiry, termination or forfeiture of this lease.

Lease Conditions:

Duplicate Certificate as to Title issued? No

1. Subject to the Crown Lands Act the Lessee will not use the leased land for a purpose other than the purpose for which it is leased, viz. tourism, recreation, camping and ancillary purposes.

2. The Lessee will, pay rates and taxes which may at any time become due in respect of the leased land.

3. The Lessee will in respect of the land included in the lease, ensure that at all times and to the satisfaction of the Minister, the land is kept clean, tidy and free of weeds, debris dry herbage, rubbish, carcasses of animals and other unsightly or offensive matter and harbour for insect, pests and the breeding of mosquitoes.

4. If the lessee fails to observe and carry out or cause to be observed or carried out the conditions outlined in clause 3 above of the lease on his part, the Territory will have a right to enter onto the demised premises and do all things necessary to that end and the expense and cost thereof, as determined by the Minister, will be borne and payable by the Lessee on demand.

5. The Lessee will at all times maintain and repair and keep in repair, all improvements on the leased land to the satisfaction of the Minister.

6. The Lessee will at all times comply with any Planning instrument affecting the leased land.

7. The Lessee will, not obstruct any land rehabilitation works carried out on the leased land.

8. The Lessee will, within one (1) year of commencement of the lease in conjunction with the Department of Lands Housing and Local Government and the Conservation Commission of the Northern Territory formulate a suitable land management strategy to ensure the sustainable use for the area and at all times take reasonable precautions to prevent accelerated soil erosion and land degradation occurring on the leased land.

9. The Lessee will, at all times comply with the requirements of the Soil Conservation and Land Utilisation Act.

L.T.O. Instrument No. 483660 registered on 3rd December 2001. Variation to condition 8 by inserting ".....formulate and implement a suitable land management strategy...."

Insert new condition. Condition 10 "The Lessee will produce and provide to the Department of Infrastructure, Planning and Environment, an emergency counter disaster plan."



NORTHERN TERRITORY OF AUSTRALIA

Record of Administrative Interests and Information

Record of Administrative Interests and Information

The information contained in this record of Administrative Interests only relates to the below parcel reference.

Parcel Reference: N.T. Portion 03898 plan(s) S90/252D

(See section 38 of the Land Title Act)

Note: The Record of Administrative Interests and Information is not part of the Land Register and is not guaranteed by the Northern Territory of Australia, and the NT Government accepts no Liability for any omission, misstatement or inaccuracy contained in this statement.

Registrar General

Government Land Register

(none found)

Custodian - Registrar General (+61 8 8999 6252)

Current Title

CUFT 817 163 (order 1)

Tenure Type

CROWN LEASE IN PERPETUITY 1476

Tenure Status

Current

Area Under Title

1 square kilometres 99 hectares 8500 square metres

Owners

King Ash Bay Fishing Club Inc
3, 567 Jose Steet, Borroloola NT 0854

Easements

(none found)

Scheme Name

(none found)

Scheme Body Corporate Name

(none found)

Reserved Name(s)

(none found)

Unit Entitlements

(none found)

Transfers

27/03/1995 for \$30,000

Tenure Comments

(none found)

Historic Titles

CUFT 741 914 (order 1)
CUFT 731 179 (order 1)
CUFT 731 178 (order 1)
CUFT 731 177 (order 1)
CUFT 642 115 (order 1)
CUFT 626 810 (order 1)
CUFT 620 478 (order 1)
CUFT 425 113 (order 1)
CUFT 411 025 (order 2)
CUFT 411 025 (order 1)

Visit the website http://www.nt.gov.au/justice/bdm/land_title_office/

Custodian - Surveyor General (+61 8 8995 5362)**Address**

2114 BATTEN RD, MCARTHUR

Survey Plan

S 90/252D

Survey Status

Approved

Parcel Status

CURRENT

Parcel Area

1 square kilometres, 97 hectares, 5000 square metres

Map Reference

Code 615 Scale 500000 Sheet 00.09

Parent Parcels

(none found)

Parcel Comments

RECREATION AND TOURISM PURPOSES S90/252/2. SUBJECT TO INTERIM DEVL T CONTROL ORDER UNDER SEC 31(1) OF PLANNING ACT NTG G47 28/11/2001.

Survey Comments

NT PORS 3898 TO 3900 AND ROAD EX NT POR 813. FOR BATTEN ROAD SURVEY SEE PLANS A TO C.

Proposed Easements

(none found)

Municipality

ROPER GULF SHIRE

Region

KATHERINE

Custodian - Valuer General (+61 8 8995 5375)

Owner's Last Known Address

King Ash Bay Fishing Club Inc, 3, 567 JOSE STEEET, BORROLOOLA NT 0854

Parcels in Valuation

N.T. Portion 03898

N.T. Portion 03899

Unimproved Capital Value

\$200,000 on 01/07/2015

\$200,000 on 01/07/2012

\$200,000 on 01/07/2010

Valuation Improvements

(none found)

Custodian - Property Purchasing (+61 8 8999 6886)

Acquisitions

(none found)

Custodian - Building Advisory Service (+61 8 8999 8965)

Building Control Areas

(none found)

Building Permits

(none found)

Visit the website <http://www.nt.gov.au/building/>

Custodian - Town Planning and Development Assessment Services (+61 8 8999 6046)

Planning Scheme Zone

SKA (Specific Use)

Interim Development Control Orders

(none found)

Planning Notes

(none found)

Planning Applications

File Number

PA2018/0036

Type

Development

Date Received

31/01/2018

Application Purpose

Storage shed

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

29/03/2018

Instrument Number

DP18/0093

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2017/0549

Type

Development

Date Received

17/11/2017

Application Purpose

Storage shed

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

04/01/2018

Instrument Number

DP17/0508

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2017/0546

Type

Development

Date Received

17/11/2017

Application Purpose

Storage shed

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

04/01/2018

Instrument Number

DP17/0505

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2017/0477

Type

Development

Date Received

03/10/2017

Application Purpose

Storage Shed

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

19/02/2018

Instrument Number

DP18/0006

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2017/0053

Type

Development

Date Received

06/02/2017

Application Purpose

Clearing of native vegetation

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

22/03/2017

Instrument Number

DP17/0083

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2005/0356

Type

Development

Date Received

23/05/2005

Application Purpose

DETACHED DWELLING

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

05/11/2005

Instrument Number

DP05/0470

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2005/0307

Type

Development

Date Received

06/05/2005

Application Purpose

Construction of 11 x 7.5, 1 bedroom dwelling



Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

05/11/2005

Instrument Number

DP05/0250

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2005/0256

Type

Development

Date Received

08/04/2005

Application Purpose

SHED TO EXISTING STOREROOM

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

12/09/2005

Instrument Number

DP05/0246

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2005/0087

Type

Development

Date Received

03/02/2005

Application Purpose

SHED 8X12X3 METRES

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

29/03/2005

Instrument Number

DP05/0050

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2005/0061

Type

Development

Date Received

24/01/2005

Application Purpose

SHED

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

29/03/2005

Instrument Number

DP05/0035

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0641

Type

Development

Date Received

29/09/2004

Application Purpose

Construct single bedroom dwelling

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

05/11/2005

Instrument Number

DP05/0469

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0574

Type

Development

Date Received

06/09/2004

Application Purpose

Construct detached dwelling - freestanding universal verandah over caravan

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

30/08/2005

Instrument Number

DP04/0331

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0521

Type

Development

Date Received

16/08/2004

Application Purpose

Club house modification & workshop

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

12/11/2004

Instrument Number

DP04/0308

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2002/0146

Type

Extension of Time

Date Received

16/07/2004

Application Purpose

EXTENSION OF TIME TO COMPLETE SHED

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

27/09/2004

Instrument Number

DPM02/0028A

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0428

Type

Development

Date Received

30/06/2004

Application Purpose

Construct a shed, 9m x 6m with concrete floor

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

02/10/2004

Instrument Number

DP04/0252

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0412

Type

Development

Date Received

25/06/2004

Application Purpose

Construct steel frame shed, colour bond roof & walls, raised floor on steel stumps

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

02/10/2004

Instrument Number

DP04/0251

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2004/0403

Type

Development

Date Received

23/06/2004

Application Purpose

2 storey detached dwelling

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

02/10/2004

Instrument Number

DP04/0247

Instrument Issued

Signed

Instrument Status

Current

File Number

PA2003/0761

Type

Development

Date Received

31/10/2003

Application Purpose

Shed as Residence

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed**Instrument Number**

DP03/0286

Instrument Issued

Signed

Instrument Status**File Number**

PA2003/0763

Type

Development

Date Received

31/10/2003

Application Purpose

Nursery

Application Status

Approved



Other Affected Parcels
(none found)

Instrument Signed

Instrument Number
DP03/0285

Instrument Issued
Signed

Instrument Status

File Number
PA2003/0762

Type
Development

Date Received
31/10/2003

Application Purpose
Caravan Shelter

Application Status
Approved

Other Affected Parcels
(none found)

Instrument Signed

Instrument Number
DP03/0284

Instrument Issued
Signed

Instrument Status

File Number
PA2003/0675

Type
Development

Date Received
01/10/2003

Application Purpose
Shed

Application Status
Approved

Other Affected Parcels
(none found)

Instrument Signed

Instrument Number
DP03/0283

Instrument Issued
Signed

Instrument Status

File Number
PA2002/0889

Type
Development

Date Received
20/12/2002

Application Purpose
18M X 11M DWELLING EXHIBITION DATES - 19/2/03 TO 5/3/03 ADVERTISED IN NT NEWS

Application Status
Approved

Other Affected Parcels
(none found)

Instrument Signed
28/03/2003

Instrument Number
DPM03/0011

Instrument Issued
Signed

Instrument Status

File Number
PA2002/0755

Type
Development

Date Received
01/11/2002

Application Purpose
DEMOUNTABLES EXHIBITION DATES - 4/12/02 TO 18/12/02 ATTACHMENT A RECEIVED 29/11/02 FILE SENT TO DARWIN FOR SIGNATURE ON 23/12/02

Application Status
Approved

Other Affected Parcels
(none found)

Instrument Signed
05/02/2003

Instrument Number

DPM02/0068

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0711

Type

Development

Date Received

22/10/2002

Application Purpose

12M X 9M SHED EXHIBITION DATES - 25/10/02 TO 8/11/02 FILE SENT TO BACK TO KATE 06/12/2002

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

26/11/2002

Instrument Number

DPM02/0060

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0588

Type

Development

Date Received

02/09/2002

Application Purpose

CARAVAN SHELTER EXHIBITION DATES 6/9/02 TO 20/9/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

07/11/2002

Instrument Number

DPM02/0052

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0408

Type

Development

Date Received

25/06/2002

Application Purpose

CONSTRUCT 2 BEDRM SHED & STORAGE AREA EXHIB DATES 28/6-12/7

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

16/09/2002

Instrument Number

DPM02/0038

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0273

Type

Variation of Development Permit

Date Received

24/06/2002

Application Purpose

AMEND COND 1 OF DPM00/0026

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

08/07/2002

Instrument Number

DPM02/0026A

Instrument Issued

Signed

Instrument Status

File Number

PA2002/0403

Type

Development

Date Received

14/06/2002

Application Purpose

CONSTRUCT 15M X 16M RESIDENCE EXHIB DATES 21/06/02 TO 05/07/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

26/11/2002

Instrument Number

DPM02/0061

Instrument Issued

Signed

Instrument Status

File Number

PA2002/0364

Type

Development

Date Received

04/06/2002

Application Purpose

CONSTRUCTION OF SMALL ACCOMMODATION DWELLING EXHIB DATES 7/06 TO 21/06/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

16/09/2002

Instrument Number

DPM02/0039

Instrument Issued

Signed

Instrument Status

Current



File Number

PA2002/0319

Type

Development

Date Received

21/05/2002

Application Purpose

BED AND BREAKFAST EXHIB DATES 24/05 TO 07/06/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

18/09/2002

Instrument Number

DPM02/0034

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0297

Type

Development

Date Received

03/05/2002

Application Purpose

ALLOCATION OF 20M X 20M ALLOTMENT, SHED & ANNEXE EX DATES 16/8/02 - 30/8/2002

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

20/09/2002

Instrument Number

DPM02/0048

Instrument Issued

Signed

Instrument Status

File Number

PA2002/0296

Type

Development

Date Received

03/05/2002

Application Purpose

ALLOCATION OF 20M X 20M ALLOTMENT BLOCK EXHIB DATE 31/05 TO 14/06/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

18/09/2002

Instrument Number

DPM02/0035

Instrument Issued

Signed

Instrument Status

File Number

PA2002/0272

Type

Development

Date Received

26/04/2002

Application Purpose

MINOR EARTHWORKS BETWEEN RIVERSIDE DR & EXIST RESIDENCE EXHIB DATES 03/05/02 TO 17/05/02

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

18/07/2002

Instrument Number

DPM02/0030

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0273

Type

Development

Date Received

22/04/2002

Application Purpose

1X2 BDR DWELLING WITH BOAT/CARAVAN CARPORT ATTACHED EX DATE 3/5/02 - 17/5/02 18 RIVERSIDE DR (KING ASH BAY)

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

11/06/2002

Instrument Number

DPM02/0026

Instrument Issued

Signed

Instrument Status**File Number**

PA2002/0145

Type

Development

Date Received

25/02/2002

Application Purpose

9M X 6M SHED MICHAEL HEILSCHER TOWNSVILLE LOT 116 BATTERN ROAD KING ASH BAY FISHING CLUB

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

18/07/2002

Instrument Number

DPM02/0027

Instrument Issued

Signed

Instrument Status

File Number

PA2002/0146

Type

Development

Date Received

25/02/2002

Application Purpose

9M X 6M SHED WARREN CALLAGHAN 322 DALRYMPLE RD, TOWNSVILLE 120 BATTERN ROAD KING ASH BAY FISHING CLUB

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

18/07/2002

Instrument Number

DPM02/0028

Instrument Issued

Signed

Instrument Status

File Number

PA2001/0647

Type

Compliance Check

Date Received

21/01/2002

Application Purpose

LIQUOR LICENCE FOR FISHING CLUB

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed

Instrument Number

Instrument Issued

Not Complete

Instrument Status**File Number**

PA2002/0069

Type

Development

Date Received

17/01/2002

Application PurposePROPOSED 7M X 13M SHED FOR USE AS A RESIDENCE/STORAGE EXHIB 08/02-22/02/2002 NT NEWS
EXHIB 06/02-20/02/2002 KTIMES LOT 35 RIVERSIDE DR, KING ASH BAY FISHING CLUB**Application Status**

Approved

Other Affected Parcels

(none found)

Instrument Signed

08/04/2002

Instrument Number

DPM02/0017

Instrument Issued

Signed

Instrument Status

Custodian - Power and Water Corporation (1800 245 092)**Meters on Parcel**

Power Water - Electricity (none found)

Power Water - Water (none found)

For Account balances, contact the Power and Water Corporation.

Custodian - Pool Fencing Unit (+61 8 8924 3641)**Swimming Pool/Spa Status**

(none found)

For more information, contact the Pool Fencing Unit (+61 8 8924 3641).

Custodian - Mines and Energy (+61 8 8999 5322)For information on possible Exploration Licences, contact Mines & Energy or visit the website
http://www.nt.gov.au/d/Minerals_Energy/For information on possible Petroleum Titles, contact Mines & Energy for further details.

Custodian - NT Environment Protection Authority (+61 8 8924 4218)

Results of site contamination assessment

(none found)

For further information contact Environment Protection Authority or visit the website
<https://ntepa.nt.gov.au/waste-pollution/contaminated-land>

Custodian - Heritage Branch (+61 8 8999 5039)

Heritage Listing:

(none found)

For further information on heritage places contact Heritage Branch or visit the website
<https://nt.gov.au/property/land/heritage-register-search-for-places-or-objects>

Other Interests

For Account balances, contact Roper Gulf Shire Council

Storm Surge: This lot is within a primary surge zone. For more information contact Lands Planning on 8999 8963.

Storm Surge: This lot is within a secondary surge zone. For more information contact Lands Planning on 8999 8963.





NORTHERN TERRITORY OF AUSTRALIA

Record of Administrative Interests and Information

Record of Administrative Interests and Information

The information contained in this record of Administrative Interests only relates to the below parcel reference.

Parcel Reference: N.T. Portion 03899 plan(s) S90/252D

(See section 38 of the Land Title Act)

Note: The Record of Administrative Interests and Information is not part of the Land Register and is not guaranteed by the Northern Territory of Australia, and the NT Government accepts no Liability for any omission, misstatement or inaccuracy contained in this statement.

Registrar General

Government Land Register

(none found)

Custodian - Registrar General (+61 8 8999 6252)

Current Title

CUFT 817 163 (order 1)

Tenure Type

CROWN LEASE IN PERPETUITY 1476

Tenure Status

Current

Area Under Title

1 square kilometres 99 hectares 8500 square metres

Owners

King Ash Bay Fishing Club Inc
3, 567 Jose Steet, Borroloola NT 0854

Easements

(none found)

Scheme Name

(none found)

Scheme Body Corporate Name

(none found)

Reserved Name(s)

(none found)

Unit Entitlements

(none found)

Transfers

(none found)

Tenure Comments

(none found)

Historic Titles

CUFT 741 914 (order 1)

CUFT 731 179 (order 1)

CUFT 731 178 (order 1)

CUFT 731 177 (order 1)

CUFT 642 115 (order 1)

CUFT 626 810 (order 1)

CUFT 620 478 (order 1)

CUFT 425 113 (order 1)

CUCL 204 021 (order 1)

Visit the website http://www.nt.gov.au/justice/bdm/land_title_office/

Custodian - Surveyor General (+61 8 8995 5362)**Address**

2150 BATTEN RD, MCARTHUR

Survey Plan

S 90/252D

Survey Status

Approved

Parcel Status

CURRENT

Parcel Area

2 hectares, 3500 square metres

Map Reference

Code 615 Scale 500000 Sheet 00.09

Parent Parcels

(none found)

Parcel Comments

TO BE LEASED TO THE BORROLOOLA FISHING CLUB FOR CLUBHOUSE AND CLUB USES VIDE S90/252/2.
SUBJECT TO INTERIM DEVL'T CONTROL ORDER UNDER SEC 31(1) OF PLANNING ACT NTG G47 28/11/2001.

Survey Comments

NT PORS 3898 TO 3900 AND ROAD EX NT POR 813. FOR BATTEN ROAD SURVEY SEE PLANS A TO C.

Proposed Easements

(none found)

Municipality

ROPER GULF SHIRE

Region

KATHERINE

Custodian - Valuer General (+61 8 8995 5375)

Owner's Last Known Address

King Ash Bay Fishing Club Inc, 3, 567 JOSE STEEET, BORROLOOLA NT 0854

Parcels in Valuation

N.T. Portion 03898

N.T. Portion 03899

Unimproved Capital Value

\$200,000 on 01/07/2015

\$200,000 on 01/07/2012

\$200,000 on 01/07/2010

Valuation Improvements

(none found)

Custodian - Property Purchasing (+61 8 8999 6886)

Acquisitions

(none found)

Custodian - Building Advisory Service (+61 8 8999 8965)

Building Control Areas

(none found)

Building Permits

(none found)

Visit the website <http://www.nt.gov.au/building/>

Custodian - Town Planning and Development Assessment Services (+61 8 8999 6046)

Planning Scheme Zone

SKA (Specific Use)

Interim Development Control Orders

(none found)

Planning Notes

(none found)

Planning Applications

File Number

PA2001/0647

Type

Compliance Check

Date Received

21/01/2002

Application Purpose

LIQUOR LICENCE FOR FISHING CLUB

Application Status

Approved

Other Affected Parcels

(none found)

Instrument Signed**Instrument Number****Instrument Issued**

Not Complete

Instrument Status

Custodian - Power and Water Corporation (1800 245 092)**Meters on Parcel**

Power Water - Electricity (none found)

Power Water - Water (none found)

For Account balances, contact the Power and Water Corporation.

Custodian - Pool Fencing Unit (+61 8 8924 3641)**Swimming Pool/Spa Status**

(none found)

For more information, contact the Pool Fencing Unit (+61 8 8924 3641).

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For information on possible Exploration Licences, contact Mines & Energy or visit the website
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For information on possible Petroleum Titles, contact Mines & Energy for further details.

Custodian - NT Environment Protection Authority (+61 8 8924 4218)**Results of site contamination assessment**

(none found)

For further information contact Environment Protection Authority or visit the website
<https://ntepa.nt.gov.au/waste-pollution/contaminated-land>

Custodian - Heritage Branch (+61 8 8999 5039)**Heritage Listing:**

(none found)

For further information on heritage places contact Heritage Branch or visit the website
<https://nt.gov.au/property/land/heritage-register-search-for-places-or-objects>



Other Interests

For Account balances, contact Roper Gulf Shire Council

Storm Surge: This lot is within a primary surge zone. For more information contact Lands Planning on 8999 8963.

Storm Surge: This lot is within a secondary surge zone. For more information contact Lands Planning on 8999 8963.



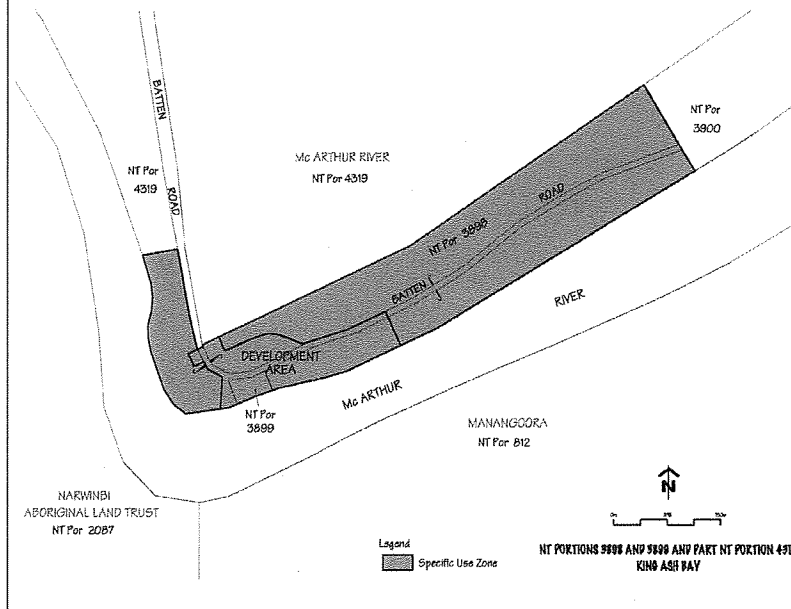
SPECIFIC USES – KING ASH BAY

SKA

NT Portions 3898 and 3899, Batten Road, King Ash Bay locality.

1. The purpose of this zone is to provide for the orderly and appropriate use of the King Ash Bay Crown lease having regard to:
 - (a) the likelihood of inundation due to flooding and or storm surge;
 - (b) potential detrimental impacts on the environment;
 - (c) the availability of potable water;
 - (d) the provision of appropriate infrastructure to safeguard human health; and
 - (e) isolation from community services and facilities.
2. Land within the area designated on the map "King Ash Bay" as "Development Area" may be used or developed for any of the following purposes:
 - (a) without **consent**:
 - i. **home based visitor accommodation**;
 - ii. **home occupation**;
 - (b) with **consent**:
 - i. **caravan park**;
 - ii. **clearing of native vegetation**;
 - iii. **community centre**;
 - iv. **hostel**;
 - v. **licensed club**;
 - vi. **restaurant**;
 - vii. **service station**;
 - viii. sheds or other structures not capable of being occupied as a **dwelling**; or
 - ix. **shop**.
3. Notwithstanding paragraph 2(b)(i) and the definition of **caravan park**, cabins other than for commercial purposes are prohibited.
4. Land shown on the King Ash Bay map other than described as "Development Area" may be used or developed:
 - (a) without **consent** as an airstrip; and
 - (b) with **consent**:
 - i. **caravan park**;
 - ii. **clearing of native vegetation**.
5. Notwithstanding paragraph 4(b)(i) of this schedule and the definition of **caravan park**, permanent structures are prohibited on the land described in that paragraph.

6. A use or development for a purpose specified in paragraphs 2 and 4 of this schedule is subject to the following conditions:
 - (a) any development on existing sites facing the river is to incorporate appropriate erosion control measures;
 - (b) no future development shall be located on land sloping towards the river or within 50m of a watercourse; and
 - (c) appropriate sanitation and waste disposal facilities are provided.
7. The placement of any structure (including a **demountable structure**) other than in accordance with paragraphs 2 or 4 of this schedule is prohibited.
8. A tent, **caravan**, motor home or the like described in paragraphs 2 and 4 of this schedule must be capable of immediate removal at all times.



7.10 ASSOCIATED RESIDENTIAL USES

7.10.1 Home Based Visitor Accommodation

Amendment No. 279
gazetted 08.05.2013
omits and substitutes
clause 7.10.1

1. The purpose of this clause is to ensure that **home based visitor accommodation** does not detract from the **amenity** of the locality and primary purpose of the zone in which the use is established.
2. **Home based visitor accommodation** must:
 - (a) meet the requirements of sub-clauses 3 and 4; and
 - (b) not gain access from a road that is in Zone M (Main Road); in order to be permitted with self assessment.
3. **Home based visitor accommodation:**
 - (a) is provided on the premises of a **dwelling**;
 - (b) may not operate if the **dwelling** is a **multiple dwelling**;
 - (c) may only operate on a lot with an area of at least 600m²;
 - (d) may not accommodate more than six guests at a time on the premises;
 - (e) may only occur if the person or persons operating the use reside on the premises;
 - (f) may only display a **business sign** that is not more than 0.5m² in area;
 - (g) must provide all car parking spaces on-site; and
 - (h) must provide one **car parking space** for every guest room and two car parking spaces for the residents of the **dwelling**.
4. Despite anything to the contrary in this Planning Scheme, a **car parking area** provided for **home based visitor accommodation** should be designed to:
 - (a) be of a suitable gradient for safe and convenient parking;
 - (b) be sealed and well drained; and
 - (c) be functional in design to allow for safe traffic movement and may include tandem parking where one car parks behind another.
5. Despite anything to the contrary in this Planning Scheme, the consent authority may **consent** to an illuminated **business sign** for home **based visitor accommodation** in Zones H, A, RL and R as long as the sign is not more than 0.5m² in area and only if the consent authority is satisfied that the level of illumination is appropriate to the **site** having regard to the potential impact on the residential **amenity** of adjoining and nearby properties.
6. The consent authority may approve an application for **home based visitor accommodation** that accommodates more than six guests only if it is satisfied the use is appropriate to the **site** having regard to the potential impact of the use on the residential **amenity** of adjoining and nearby property and where the combined total number of residents and guests is no more than twelve.

Clause 13.2 Land Adjacent to Main Roads requires approval to gain access from a main road.

Home based visitor accommodation needs to meet the requirements of the Building Code of Australia as Class 1b.

Leisure & Entertainment business for sale in King Ash Bay

Leisure & Entertainment 📍 King Ash Bay NT 0854 💰 \$400,000 + GST



Luxury Established Houseboat Business - King Ash Bay, NT

If you're seeking a more laidback lifestyle, with a solid income and plenty of time on the water, this is it. This successful luxury houseboat business at King Ash Bay is yours for the taking!

Located on the McArthur River, close to Borroloola - and about 50km from the Gulf of Carpentaria - this is a dream job that doesn't even feel like work.

2 x Full aluminium houseboats:

- Groper - 10.5m - runs on 12v and 240v, and includes a 6.5KVA Honda generator
- Snapper - 13.5m - runs on 24v and 240v, and includes 7.5KVA Onan Marine generator

[View more](#) ▾



Business

Floor Area
[Ask Business](#)

Parking
[Ask Business](#)

Last updated
06 May 2018





 10 images

78 views

 Post Similar Ad  Report Ad  Share  Save

NT Luxury Houseboats and Fishing Boats For Sale

\$429,000

 [18 Batten Road, McArthur, NT](#)

The houseboats and the fishing boats have current 1E and 4E survey certificates.

The houseboats are based at King Ash Bay, McArthur River via Borroloola, NT.

[More](#) 

Date Listed: 18/05/2017

Last Edited: 28/05/2018

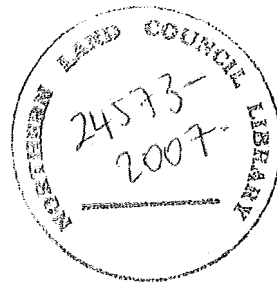
Listing Type: Private seller

Attachment 7
Exhibits NLC18, NLC23 & NLC38

McArthur River Region
Land Claim No 184 and

Manangoorah Region
Land Claim No 185

Exhibit NLC 18



NLC:18



Northern Land Council

Address all correspondence to:
CHAIRMAN
PO Box 42921
CASUARINA NT 0811

9 Rowling Street, Casuarina NT 0810
Phone: (08) 8920 5100
Fax: (08) 8945 2633
Freecall: 1800 645 299

Legal Branch Fax: (08) 8920 5251
e-mail: nlc95@ozemail.com.au

10 July 2000

Our Ref: LO8/97/0732

Hon. Justice Olney
Aboriginal Land Commissioner
7th Floor, National Mutual Centre
11-13 Cavenagh Street
DARWIN NT 0800

Dear Justice Olney

MCARTHUR RIVER REGION LAND CLAIM NO. 184 AND MANANGOORA LAND CLAIM NO. 185.

As foreshadowed on the final day of the hearing of traditional evidence on Kangaroo Island, we think it would be useful to advise Your Honour, the Northern Territory Government and those representing local interests in the region of the land under claim of the claimants' preliminary views concerning the 'detriment' issues that have been raised by the Northern Territory Government representatives, the pastoralists and those representing the interests of the Bing Bong Port facility.

We refer to the following as 'preliminary' to reflect the fact that the 'detriment submissions' will not be forthcoming for some weeks.

The fundamental matter is the setting up of a board for the local management of land, sea and resources. We understand that such models of local management and control exist elsewhere in the Northern Territory such as Gurig National Park and the Nitmiluk Park. We envisage that the body would comprise representatives from the claimants, the various local interests as well as government.

The claimants have suggested that sufficient funding be made available to purchase three boats and training for rangers to patrol and enforce regulations made by the board in the area of the land under claim.

The claimants have indicated that:

1. They would not close any of the currently existing jetties nor the boat ramp at King Ash Bay;
2. They wish to regulate the numbers of persons catching crabs and the areas in which they operate and concerned, in particular, about crabbers in the area of Lilujulhuwa (Wuy b 101) and Sharkers Point (Jarrka);
3. They wish to prevent commercial fishermen fishing in the rivers and throwing away fish that they do not want;

BORROLOOLA
PO Box 453
Borroloola NT 0854
Ph: (08) 8975 8648
Fax: (08) 8975 8745

JARRIU
PO Box 18
Jabiru NT 0886
Ph: (08) 8970 2410
Fax: (08) 8970 2650

KATHERINE
PO Box 386
Katherine NT 0851
Ph: (08) 8972 9336
Fax: (08) 8972 2190

NGUKURR
PMB 85
via Katherine NT 0851
Ph: (08) 8975 4755
Fax: (08) 8975 4601

NHULUNBUY
PO Box 820
Nhulunbuy NT 0881
Ph: (08) 8987 2802
Fax: (08) 8987 1334

PALMERSTON
PO Box 1249
Palmerston NT 0831
Ph: (08) 8931 1910
Fax: (08) 8931 1675

TENNANT CREEK
PO Box 55
Tennant Creek NT 0867
Ph: (08) 8962 2804
Fax: (08) 8962 1960

TIMBER CREEK
43 Wilson Street
via Katherine NT 0852
Ph: (08) 8975 0789
Fax: (08) 8975 0854

4. They wish to regulate the numbers of commercial fishermen licensed to catch fish in the area and the areas in which they operate;
5. They wish to prevent fishermen (tourist or commercial operators, including crabbers) fishing in the sea grass areas;
6. They do not object to the current level of tourists in the area but want to be involved in discussions concerning any increase in the numbers, and any proposals for future development;
7. They would not object to people having continued access to the airstrip at Milrila (Fat Fellow Creek) or the ramp at Batten Point;
8. They are not presently seized of sufficient information with regard to the proposed jellyfish factory to express an opinion;
9. They are happy to begin talks with the representatives of the Port at Bing Bong regarding issues of concern and see no difficulties in resolving those issues;
10. They want to prohibit fishing of any kind whatsoever at the following places in the McArthur River and in its vicinity:
 - i. Rnuwangkala (MWc131);
 - ii. Namaru (MWc132);
 - iii. Lubundalha (Wuy b 136);
 - iv. Yamirri (Wuy b 127);
 - v. Kurndi (Wuy b 116);
 - vi. Mungkungadaka (Wuy b 114);
 - vii. Wulijirra (Wuy b 112);
 - viii. Wuthanda (Wuy b 106).

The areas of the exclusion are to be explained to the board of management. It is not believed that there are any other areas in the river of concern but the claimants are not to be taken as having finally having resolved that question. Again, this is a matter for discussion at the Board.

11. They want to prohibit fishing of any kind whatsoever at the following places along the coastline:
 - i. Wurrwinkarra (Wuy c 155);
 - ii. Kanimbunuwa (Wuy c 158);
 - iii. Nungkulanba (Wuy c 117);
 - iv. Mangurrunguru (Wuy c 160);
 - v. Mulkamurrawiji (Wuy c 161);
 - vi. Yijimanda (Wuy c 157);
 - vii. Wujulakinda (Wuy c 159).

The areas of the exclusion are to be matters to be explained to the board of management. It is not believed that there are any other areas along the coast of concern but the claimants are not to be taken as having finally resolved that question. Again, this is a matter for discussion at the Board.

12. They would want a fee charged by the board to be payed by those using the boat ramps in the area. This fee would be used to provide pamphlets and signs explaining the areas of restriction and the reasons for such restriction;

13. With respect to certain concerns raised by the proprietors of the pastoral leases adjoining the area under claim, the claimants are unable at this stage to ascertain with precision the line of the high water mark which is the seaward boundary of the leases.

We trust the foregoing is of sufficient particularity for the various parties to delimit the issues they wish to raise at the 'detriment hearing'. Once we have received their submissions it may be possible to seek more detailed instructions from the claimants if there is sufficient time before the adjourned hearing recommences. Thus it would be of assistance to receive those submissions as soon as possible.

The claimants believe that the extent of detriment perceived by the local community and other interests in the area may be based on the assumption that the access through and the use of the area under claim will be unreasonably restricted. It was precisely in order to allay these concerns that the claimants put their current thoughts on the record, so that the various positions could be worked out, and detriment assessed, in a climate of positive engagement rather than opposition.

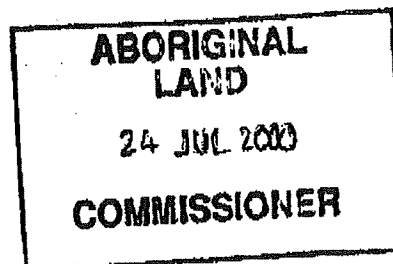
We respectfully agree with the course suggested by Your Honour of defining the extent of the claim by the use of satellite imagery or any other appropriate technique. Whilst the tides at which such photographs are taken will remain in issue we think it would be useful to adopt the determination of your Honour in the Yamirr Native Title Claim. We note that a request was made to the Counsel for the NTG that such work be funded by the appropriate government department.

This letter will be circulated to the various parties which have communicated their intention to be heard at this inquiry and others who may do so in advance of the hearing of the detriment case. We are happy to provide the transcript of proceedings of relevance to the issues of detriment when it is made available to us.

We would be grateful if Your Honour would circulate this letter, to any other party that files an intention to be heard in the Inquiry.

Yours faithfully

S.K. Rai
Sañlesh Rai
Solicitor for the Claimants



Cc Solicitor for the Northern Territory, GPO Box 1722, DARWIN, NT 0800.
Attention: Ms Karen Bowley
King Ash Bay Fishing Club, GPO Box 474, BORROLOOLA,
NT 0854. Attention: Mr Bernie Redfern (President)
Amateur Fishermen's Association of the NT, GPO Box 2740,
PALMERSTON, NT 0831. Attention: Mr John Harrison (Executive Officer)
Cridlands, GPO Box 1302, DARWIN, NT 0831.

Attention: Mr Neville Henwood
Northern Territory Seafood Council, GPO Box 618, DARWIN, NT 0801.

Attention: Mr Iain Smith
KAB Fuels, GPO Box 497, BORROLOOLA, NT 0854.

Attention: Mr Trevor Dorn (Manager)
The Proprietor, Manangoora Pastoral Lease, GPO Box 466,
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The Proprietor, Greenbank Pastoral Lease, GPO Box 454, BORROLOOLA,
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Mr Neville Andrews, GPO Box 436, BORROLOOLA, NT 0854.

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McArthur River Region
Land Claim No 184 and

Manangoorah Region
Land Claim No 185

Exhibit NLC 23

BEFORE THE ABORIGINAL LAND
COMMISSIONER

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

CLAIMANTS' SUBMISSIONS REGARDING SECTION 50(3)(a)
OF THE ABORIGINAL LAND RIGHTS (NORTHERN
TERRITORY) ACT 1976

January 2001



**BEFORE THE ABORIGINAL LAND
COMMISSIONER**

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

**CLAIMANTS' SUBMISSIONS REGARDING SECTION 50(3)(a) OF THE
ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976**

On the 7th December 2000 Your Honour ordered that:

“On or before 22 January 2001 the Northern Land Council on behalf of the claimants file and serve on each party who has taken an active part in the inquiry a detailed statement of the comments it submits should be made pursuant to s50 (3) (a) of the Act”.

Section 50(3)(a) states:

“In making a report in connexion with a traditional land claim a Commissioner shall have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed, and shall comment on each of the following matters:

- (a) the number of Aboriginals with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage that would accrue to those Aboriginals, if the claim were acceded to either in whole or in part...”

The meaning of this provision and the other matters mentioned in s50 of the Act were explored by the High Court in *Re Toohey; Ex Parte Meneling Station Pty Ltd* (1983) 44 ALR 63. See also Toohey J in the Borroloola claim at para 24 and the Finnis River Land Claim at paras 244-55.

In the Bilinara claim (para 8) and the Robinson River claim (para 8) Your Honour set out your approach to the interpretation of this paragraph of s50(3).

For the purposes of this document we have assumed that the claimants will be successful in their claim to be found traditional owners of the land under claim.

“Numbers Advantaged”

On the basis that not only the traditional owners but also the Aboriginals entitled by Aboriginal tradition to the use or occupation of the land, irrespective of whether that traditional entitlement is qualified in some way, (see section 4 of the Act) we submit that the numbers so advantaged by a successful result in this claim will include the following:

1. Those found to be traditional owners of the land;
2. Spouses and issue of the traditional owners where those spouses and/or issue are not themselves traditional owners of the land ;
3. People who are affiliated to dreaming tracks that traverse the land and sea in the area of the claim as well as those who are affiliated with the sites of spiritual significance on the land claimed;
4. Members (who are not themselves traditional owners) of the language groups to which the traditional owners belong;
5. Other co-residents of the various outstations and communities where claimants live, including those related to claimants by consanguinity and marriage;
6. Those who share and participate in ceremonies associated with the land.

These are in the main categories suggested by Your Honour in Kidman Springs (para 12.3) which, with respect seem apposite to the current claim.

Mr Justice Toohey in the original Borroloola claim said at para 169:

“Each group of traditional owners would be advantaged if its claim were acceded to. So too would those entitled to the use or occupation of the land. Speaking generally the traditional owners of island land are entitled to the use or occupation of the islands and the traditional owners of common land are

entitled to the use or occupation of the common. The entitlement may be wider in each case but it is not possible to give numbers.”

Justice Toohey found 252 traditional owners (para 168).

Justice Gray in Borrooloola No 2 claim at para 6.9.4 said of the land then under claim:

“There will be considerable intangible advantage to the traditional Aboriginal owners and their spouses, and to other members of Aboriginal communities in and near Borrooloola, if the land becomes Aboriginal land under the Land Rights Act. There are people who have links of kinship, marriage, dreamings and ceremonial obligations and attachments with the claimants. The knowledge that the land is held securely held and be able to be managed in accordance with Aboriginal culture and tradition will be of great benefit to a community so closely knit and culturally active as this one. I have no way of estimating the numbers of Borrooloola residents who would be so advantaged.”

Justice Gray found 215 traditional owners (para 6.9.1)

The claim materials tendered in this claim suggest that the numbers of traditional owners would be in the order of three hundred (300) individuals. The spouses and issue of the traditional owners where those spouses and/or issue are not themselves traditional owners of the land would be in the order or one hundred (100).

The “use” or “occupation” of the bed and banks of the McArthur River and the intertidal zone are matters of relevance to this issue. It is submitted that the “use” made by the claimants of the land under claim is made manifest in the evidence that the claimants “used” these areas for hunting, fishing, recreation, gathering of resources of all kinds and as areas associated with outstations built nearby. The areas were similarly “occupied” by the claimants in so far as the meaning of “occupied” is taken to mean something less than the building of a permanence residence or the maintenance of a permanent presence. There is no suggestion from the claimants that they intend to build structures in the manner of those observed by Your Honour in the Carrington channel during the trip in that part of the claim.

“Nature and Extent of the advantage”

The two previous Land Claims in 1978 (Claim 1) and 1996 (Claim 2) respectively have resulted in significant amounts of land being recommended to be Aboriginal Land under the Land Rights Act. A large portion of that land has subsequently become Aboriginal Land.

It is submitted that it is important to see the land under claim in this claim in the context of those earlier claims for it is then that one sees the true nature and extent of the advantage which will be derived by the claimants in the event of a successful claim. That is, the advantage that flows to the claimants in the event of a successful claim builds on and enhances the advantages that flowed to them as a result of the earlier claims. For example it is the intention of the claimants to bring the land under the Park management. It may be possible that the land becomes part of that Park, it may be that this is impractical. Nevertheless, the claimants have made their intentions clear on the broad level, however the matters of detail remain to be worked out. At this time no one else involved in the claim has indicated any desire to engage the claimants representatives in any discussions about this matter.

Whatever be the outcome of the ‘Park’ issue there are other advantages that would flow to the claimants.

Some advantages are common to most, if not all, successful claims:

1. The freedom to visit the claimed lands for hunting, fishing, recreation and for ritual and other cultural pursuits;
2. The unhindered use of the claimed land and the adjacent waters for the purpose of hunting, gathering and fishing for traditional foods and the resulting improvement in diet and health;
3. The ability to protect places of importance;
4. The ability to control the access of persons to named sacred sites and areas;

5. They would gain secure title to an area of land of great significance to them;
6. The community spirit and self esteem of the traditional owners would be enhanced.

Other matters are specific to the area:

7. The ability to control, cooperatively with Government and the representatives of other residents and visitors to the area, the movement of people in and around the land claimed;
8. In particular the ability to control the activities of persons whom the claimants believe are adversely affecting their ability to protect, hunt safely and enjoy the claim area;
9. The ability to control the movement of persons within the claim area is an even more significant advantage given the claimants have no control over the movement of persons within the Crooked River and the Carrington channel. In particular the ability to control the movements of crabbers – professional and otherwise, barramundi fishermen, campers, bait collectors, tourists, wharf builders, house builders and also to ensure that there is no wastage of fish in the area;
10. The ability to control the movement of persons is all the more significant given the presence of the King Ash Bay camping complex. The establishment of the complex is within the recent memory of the claimants (Your Honour will recall Phillip Timothy's lament that half of Katherine "moved in"). A favourite camping/recreation spot has been lost to the claimants forever. It is not unreasonable that they harbour concerns that more of the land that they have traditionally used will be lost to them as the numbers of tourists and others increase in the area. To become a stakeholder in the area in terms of future negotiations concerning the movement of persons will be of great advantage to them;
11. In this context we respectfully adopt Your Honour's comments in Claim 33 the Robinson River claim at para 9.6 "The recognition of traditional interest by the grant of title coupled with the opportunity of unhindered use and occupation and possible economic benefit is likely to have a

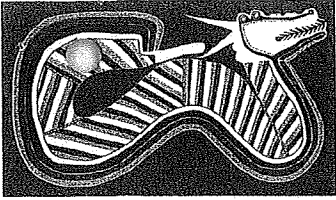
substantial impact on the attitudes and capacity for self respect of the beneficial owners and other Aboriginals advantaged”;

12. As Justice Sir William Kearney said in Claim 17 the Nicholson River (Waanyi/Garawa) Land Claim at para 254/5 (in respect of the Queensland claimants) “... the benefits and security of tenure flowing from a grant of land are particularly important to them ... (bearing in mind the then statutory provisions extant in Queensland)”, such comments, it is submitted, are relevant to the Queensland resident claimants in this claim.

We also refer Your Honour to the findings of Mr Justice Toohey at paragraphs 168 to 173 inclusive and to the findings of Mr Justice Gray at paragraph 6.9 of the earlier Borroloola claims.

It occurs to us that the issues raised above will likely be ventilated during the hearing of the balance of the claim and that the occasion may arise where the NLC may seek instructions from the claimants in respect of those issues. In either event we seek Your Honour’s leave to supplement this document.

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17 May 2001

Hon. Justice Olney
Aboriginal Land Commissioner
7th Floor, National Mutual Centre
11/13 Cavenagh Street
DARWIN NT 0800

COPY

Dear Justice Olney,

MCARTHUR RIVER REGION LAND CLAIM NO. 184 AND MANANGOORA LAND CLAIM NO. 185

As foreshadowed at the hearing on the 29th January 2001, we have now obtained instructions from the claimants in relation to the documents tendered to the Inquiry after the evidence relating to traditional ownership had been heard.

The claimants' understand the Batten Point, Borroloola - McArthur River, Rehabilitation and Development Concept Plan (Exhibit NLC 34), to be the Northern Territory Government's current land management strategy in relation to that part of the claim area comprising the beds and banks of the McArthur River adjacent to NT Portion 3898 and NT Portion 3899 (King Ash Bay) and NT Portion 3900 (Batten Point).

We assume therefore that this document enshrines the NTG's policy with respect to existing and proposed land use (and its environmental consequences) in this area and, significantly, sets the parameters within which the King Ash Bay Fishing Club will continue to operate.

Before addressing the document it should be pointed out that the claimants had no opportunity to make submissions about the matters to which the document refers. The claimants feel that they have a genuine contribution to make in relation to the planning process and feel keenly the fact that they were not asked for their views at the time the report was being prepared. The claimants felt that the Conservation Commission had made recommendations which were generally appropriate. However, they believe the plan needs to be updated.

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The claimants noted with concern the issue of land degradation highlighted in the report. However, they remain hopeful that the recommendations in that document, in particular with respect to the rehabilitation and protection of the riverbanks, will be implemented as appropriate, having regard to environmental changes which have occurred since the preparation of the document.

In their letter of the 10th July 2000, the claimants stated that they did not wish to close any of the existing jetties. The claimants have considered their position in light of the recommendation in Exhibit NLC 34 that access to the river be restricted to three formal boat ramps for environmental reasons. The claimants remain unopposed to the existing jetties. However, they see the need for creative solutions to planning issues and believe that the location of the jetties should be scientifically based to preserve the integrity of the bed and banks and adjacent areas. The claimants are of the opinion that this is the type of issue that could be addressed through a board of management as suggested by the claimants and promoted by the document (at paragraph 2.1.1).

In the event that the beds and banks under claim are granted as Aboriginal land, the claimants intend to work cooperatively with the NTG and endeavour to enlist the support of other parties to implement the recommendation contained in paragraph 3.1.8 of the document, as a matter of priority.

The claimants do not wish to make detailed comment on the King Ash Bay Fishing Club Land Management Plan save to observe that:

- a) it appears to be informed by the Batten Point, Borroloola – McArthur River, Rehabilitation and Development Concept Plan (Exhibit NLC 35); and
- b) until immediately prior to the January hearing in this matter it was still under preparation.

Nonetheless, the claimants are happy to commence negotiations with the Fishing Club regarding matters of mutual concern.

As mentioned in the claimants letter of the 10th July 2000, from the claimant's point of view, the fundamental matter is the setting up of a board for the local management of land, sea and resources. The claimant's envisage that the board would comprise representatives from the claimants, the various local interests and government. The search for an appropriate model will be assisted by the utilisation of existing models of local management and control which exist elsewhere in the Northern Territory such as Gurig National Park and the Nitmiluk Park. Ideally, this model would encompass areas beyond the claim area to enable a holistic approach to the management of land and resources in the area.

If for some reason the formation of such a board is not achievable, the claimants will consider individual agreements with relevant stakeholders in

respect of discrete sections of the claim area pursuant to section 11A of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

The claimants seek to further secure the following within the context of any agreed management structure or via individual agreements in respect of the area.

In relation to the beds and banks of the McArthur River under claim and the area in its vicinity:

- 1) The claimants are concerned to ensure that visitors to the area are provided with appropriate cultural information so that important areas are respected and valued. The claimants envisage that cultural information could be provided by way of a combination of pamphlets, posters and signage. The information would include explanations of the cultural significance of particular areas, clear identification of any restricted areas, sites or places and the reasons for the restriction. At this stage, the claimants are of the opinion that pamphlets and signage could be funded by the provision of a small fee charged by the board or pursuant to the terms of any agreement, to be paid by those using the boat ramps in the area.

The claimants note that this fee will be raised by negotiation with other parties, for the sole purpose of providing the necessary signage. Accordingly, it is not to be likened to on-going royalty payments.

An alternative to this proposed fee could be the provision of government funding for the purpose of erecting and maintaining the signage and the claimants will be exploring this possibility at the appropriate time. It is noted that the document (Exhibit NLC 34) states that every effort should be made to preserve the unique cultural values of the land and, we suggest, that this is advanced by the use of signage and information pamphlets as proposed by the claimants.

- 2) Upon further consideration, the claimants no longer wish to prevent commercial fishermen fishing in the river pursuant to the terms of their current licences. However, the claimants desire to be involved, through the board of management, in the re-issue, re-licensing or the granting of any future licences in the claimed area. The claimants feel there is a need to jointly manage and regulate this activity in the future with co-operative effort involving the NTG and the proposed board of management.

In particular, it is the claimants view, that they would wish to regulate the numbers of commercial fishermen licences to catch fish in the claim area. This could be achieved either through a board of management vested

with sufficient authority to monitor and influence the manner in which commercial fishing licences are operated in the jointly managed areas or through individual agreements with licence holders (including crabbers).

The claimants would seek to prevent fishermen (tourists, recreational or commercial, and particularly crabbers) fishing in the sea grass areas.

- 3) The claimants maintain their strong objection to the discarding of by-catch. This wastage is viewed by the claimants as offensive and unclean. This practice also creates unnecessary and unproductive work as the claimants are then obliged to dispose of the fish, in accordance with custom, by breaking up and burning the bones. Accordingly, the claimants wish to enter discussions with commercial fishermen fishing in the area or their representatives to identify ways to reduce waste.
- 4) The claimants are concerned that the number of tourists in the area are increasing. They wish to be involved in discussions concerning the future development of the area and any planned increases in tourist numbers. Again, it is noted that Exhibit NLC 34 provides the basis for such discussions to occur;
- 5) The claimants still do not have sufficient information to express an opinion on the jellyfish factory;
- 6) They want to prohibit fishing or activities of any kind on the river bed and banks which form part of the following sites in the McArthur River:
 - i) Rruwangkala (MWc131);
 - ii) Namaru (MWc132);
 - iii) Lubundalha (Wuy b 136);
 - iv) Yamirri (Wuy b 127);
 - v) Kurndi (Wuy b 116);
 - vi) Mungkungadaka (Wuy b 114);
 - vii) Wulijirra (Wuy b 112);
 - viii) Wuthanda (Wuy b 106).

The claimants are not proposing to restrict the passage of boats on the relevant sections of the waterway which comes within these sites.

The basis for the proposed restrictions or exclusions and the precise demarcation of those places are matters to be further explained to the board of management or the parties to any agreement for the joint-management of the relevant area.

The claimants are however able to indicate presently that the exclusion in respect of any given place (the buffer zone) will not extend unreasonably

along the associated section of the bank. In relation to the majority of these sites it is estimated that the exclusion area will not exceed 1 kilometre (and may be less).

In relation to the inter-tidal zone under claim the claimants indicate as follows:

- 7) They want to prohibit fishing or activities of any kind, at the following sites along the coastline.
 - i) Wurrwinkarra (Wuy c 155);
 - ii) Kanimbunuwa (Wuy c 158);
 - iii) Nungkulanba (Wuy c 117);
 - iv) Mangurrungurru (Wuy c 160);
 - v) Mulkamurrawiji (Wuy c 161);
 - vi) Yijimanda (Wuy c 157);
 - vii) Wujulakinda (Wuy c 159).

Again the size of the exclusion area will be as necessarily required to preserve the integrity of the relevant site and will not entail the prohibition of passage on adjacent waters. It is not believed that there are any other areas along the coast of present concern.

- 8) The claimants do not object to people having continued access to the airstrip at Milrila (Fat Fellow Creek) or the ramp at Batten Point;
- 9) They are happy to begin talks with the representatives of the Port at Bing Bong regarding issues of concern that have arisen in the context of this land claim and do not envisage that there will be difficulties in resolving those issues;
- 10) The claimants have suggested that sufficient funding be made available to purchase three boats and training for rangers to patrol and enforce regulations made by the board in the area of the land under claim.
- 11) The claimants have not expressed concern about the wandering of stock into the inter-tidal zone and do not believe there is a present need to erect fencing of any kind to prevent this happening.

In summary, the claimants have no intention of unreasonably restricting the use of the area under claim by the local community and other interests nor to significantly alter the current and proposed patterns of land use.

However, they are clear that such use must be appropriately regulated so that it is both sustainable and consistent with their use of the land and waters.

The claimants are acutely aware that the law in relation to the inter-tidal zone and the tidal limits of rivers is unsettled and that they may be compromising their legal entitlements in respect of the claim areas.

Notwithstanding, the claimants are prepared to negotiate in good faith on the basis of the matters outlined in this document with the other parties.

Yours faithfully,



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