

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

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

Maria Island and Limmen Bight River Land Claim (No. 71) and part of Maria Island Region Land Claim (No. 198)

Lorella Region Land Claim (No. 199) and part of Maria Island Region Land Claim (No.198)

Submissions on behalf of the Claimants

Introduction

- 1 In the introduction to submissions on behalf of the claimants in the Group 1 and 6 land claims (submissions for Land Claims 178, 184, 185, 186 & 182) we drew attention to a number of matters or developments that had arisen since the publication of the original Reports. Many of those may also be applicable in these land claims and the list is not reproduced separately in these submissions.
- 2 The submissions referred to adopted those parts of submissions provided with respect to the Lower Daly River Land Claim No.68 that addressed general matters in response to NT submissions, particularly in regard to pastoral matters and fishing. Those aspects of the previous submissions are adopted for the purposes of these submissions. The Northern Territory has responded to those submissions and it is not intended to engage in a further round of 'responses'. For the purpose of these submissions we assume the Commissioner will be able to reach a final position, where relevant, from the information in the respective submissions.
- 3 In these submissions we also adopt the sections titled Agreement Making and Permits from the submissions for Groups 1 & 6.
- 4 On the issue of access for recreational fishers Commissioner Toohey's observations in the Limmen Bight Land Claim Report remain as relevant now, if not more relevant, as they were to the issues he was required to address (Limmen Bight Land Claim Report p.26) even taking into account that they did not anticipate the effect of the Blue Mud Bay decision –

161. I have not found this aspect of detriment an easy matter. The purpose of the Land Rights Act is not to ensure a grant of land only when it is of no value, economically or otherwise, to other persons or to government. At the same time the provisions of s.50(3) of the Act make detriment a relevant consideration. There is no doubt that if the land claimed ceases to be available to people in and around Katherine, they will suffer a detriment. It will not be economic but it will be a social detriment of some consequence. Equally clearly, that enjoyment does not depend upon unfettered access to the whole of the claim area.

While acknowledging the 1980 context of those remarks, in our submission they have broader application. The term “unfettered access” relates to comments in the Submissions on behalf of the claimants in the Lower Daly River Land Claim No.68 p.12 at paragraphs 54-55.

- 5 The Northern Territory’s Submissions in Reply in the Lower Daly Land Claim at page 15 sets out the NT’s position on the commercial use of Crown land. It is not straight forward. On one hand there are the specific activities listed as prohibited without a licence. On the other the public ‘may reasonably use’ Crown land for the activities categorised as Low Impact Activities within “a privilege or liberty to enter upon and enjoy Crown land unless restricted or prohibited by the Crown.”
- 6 The submissions on behalf of Lorella Springs, addressed in more detail below, refer to ‘coastal quad tours along remote parts of the coastline’, “aquaculture”, helicopter scenic flights land on the intertidal zone” and “ helicopter base from which remote coastal fishing tours along the Lorella coastline and rivers are offered ...”. None of these four descriptions of use of the intertidal zone (and here its assumed ‘coastal’ and ‘coastline’ includes the ITZ), fits readily into the category of Low Impact Activities.
- 7 A detriment, claim repeated in submissions on behalf of NTIO (letter dated 30 April 2018 p.2), is that if an area became Aboriginal land the adjacent seas could be closed under the *Aboriginal Land Act* (NT) s.12. The issue was responded to in the Submissions on behalf of the Claimants in Group 1 & 6 land claims. In response Glencore has repeated it’s assertions on the matter. The possibility for sea closure under the *Aboriginal Land Act* was noted by Commissioner Olney in the McArthur River Region Land Claim (etc) Report p.33 paragraph 82(g), in the context of comments for the assistance of the Minister, but *not* under the.50(3) function to comment. The issue was succinctly addressed by Commissioner Toohey at p.26 paragraph 160 of the Limmen Bight Land Claim Report mentioned above –

160. Counsel for the Katherine residents pointed to the provisions in the Aboriginal Land Act for closure of the seas within two kilometres of Aboriginal land as a further hazard for his clients. In my view that is not a relevant consideration in the hearing of a claim under the Land Rights Act. Not only does it arise under different legislation, but different considerations may well be involved.

- 8 These submissions are also informed generally by the following paragraph from NT Submissions Attachment 8 Discussion Paper p.3 -

Increased powers for Aboriginal rangers to manage traditional lands

1 Background and context

Aboriginal people have long held cultural and traditional responsibilities to protect and manage their land and sea country. Aboriginal owned and/or managed land occupies an estimated 50 per cent of the land area of the Northern Territory and approximately 85 per cent of the coastline is Aboriginal land. These lands are some of our most environmentally precious natural assets and, for Aboriginal people, are rich in cultural and spiritual meaning.

The areas under claim are also lands in respect of which Aboriginal people have long held traditional responsibilities to protect and manage and as demonstrated in the land claims are rich in cultural and spiritual meaning.

- 9 We refer to Appendix 4 of the Maria Island and Limmen Bight Land Claim No.71 and part of Maria Island Region Land Claim No.198 Report (pp.62-67). Appendix 4 is a letter in response to matters raised in discussions with the Commissioner. Concerns expressed by claimant groups recently consulted for the purposes of the Review into detriment in these land claims and Group 1 & 6 land claims remain the same as those set out in Appendix 4 at pp 64-66. The same problems continue to confront the claimants.

Parks and Wildlife

- 10 Limmen Bight Marine Park was declared on 29 June 2012. The NT has raised as a possible detriment [NT Submissions p.14 paragraph f.] that grant of the claim areas “will cause detriment to the Parks and Wildlife Commission in its management of the LNP and Marine Park unless suitable arrangements for park management and public access and use across the claimed land can be agreed ... prior to the grant...”. If this is a real detriment, as opposed to something that is largely confected, the NT had full knowledge of the claimed effect when it decided to declare both parks in 2012 without attempting to reach an agreement that would address the claimed detriment (access through the intertidal zone) if and when the claim areas were granted. It still has that opportunity. The NT can issue permits for its employees. Third parties will be able to apply for permits.
- 11 The issues raised regarding the Limmen National Park are self-drive tourism access to the Cox River and ITZ and access for fishers by boat. It may be the punctuation but it is unclear whether it is intended to suggest that Lorella Springs operates tours within the Park. Commercial operations in Parks require a permit.
- 12 In consultations the claimants mentioned their involvement in developing the management plans for the parks. They expressed concerns about recreational and commercial fishing within the intertidal zone surrounding Maria Island, as well as their wish to protect sacred sites on the island particularly in relation to turtle and dugong dreamings. Claimants were aware of turtle nesting sites

Tourism and fishing

- 13 Submissions from AFANT and the NTSC address the usual concerns about access. It appears from the AFANT submissions that the claim area is not particularly intensely used by recreational fishermen. With the exception of Maria Island the claimants do not wish to prevent recreational fishing provided fishers obtain a permit. The claimants expressed the same concerns as in other land claims about protection of sacred sites and important cultural places, respecting rules about not leaving fish remains on the land. Rules endorsed on permits will improve their capacity to fulfil their cultural and traditional responsibilities for the land. Claimants are interested to develop a ‘regional’ permit so that fishers will not require a multiplicity of separate

permits. All groups would like to improve the capacity of rangers to protect the land and waters and permit fees may be one way to obtain funds for that purpose.

- 14 Commercial fishing: claimants have recently been in consultations with NLC staff concerning fishing business opportunities in the region.

Lorella

- 15 It is acknowledged that the proprietors of Lorella Springs have spent many years and invested considerable capital developing the tourist enterprise. In recent consultations the claimants' agreed with the proposal for Lorella to have a licence to conduct its activities within the intertidal zone if and when the land claim is acceded to, subject to agreement on a licence fee.

- 16 During consultations claimants expressed certain misgivings about damage to sacred sites on Lorella and intrusions into significant sites and burial places. While this is not a matter for the Review, it indicates that there is room for improved cultural awareness on the part of the proprietors so that they and their guests are enabled to enjoy what Lorella has to offer without, however inadvertently, giving rise to grievance on the part of the traditional owners. This form of detriment to the traditional owners is unfortunately too common, and seeking grant of title to the land claimed will enable them to exercise their cultural responsibilities to protect important parts of the claimed areas.

- 17 The licence referred to above would be in accordance with details provided in earlier submissions. For the sake of completeness paragraph 24 of the Submissions on behalf of the Claimants in Group 6 and 1 claims is reproduced-

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)

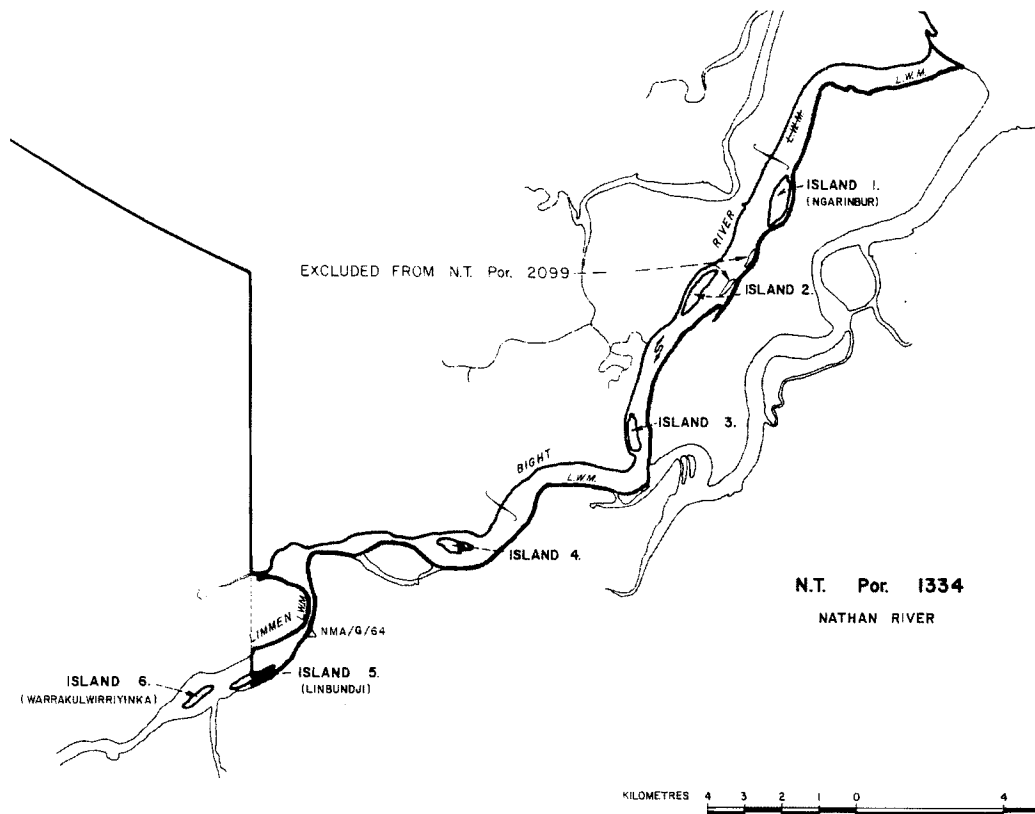
In our submission an agreement of this kind would provide a "suitable safeguard".

The qualification to that paragraph is the claimants' suggestion of a fee for the licence, reflecting the primary use of the area for tourist activities. Should the area become Aboriginal land such a licence could deliver a commercial advantage to Lorella Springs. On the fee issue it appears from its website that Lorella Springs already expects to charge visitors a small 'permit' fee to access the station itself, and camping fees for areas such as the banks of Rosie Creek [**Attachment 1** –Lorella Springs Wilderness Park rates]. Section 79 of the *Pastoral Land Act* provides that a person without permission of the lessee has a right to be on perennial natural waters within or bounded by a pastoral lease (including the sea) and to camp temporarily on land within the prescribed distance (50 metres) of the waters.

- 18 Although Lorella Springs is located on a pastoral lease it appears from its submission that the primary economic activity is the tourism enterprise, with the cattle operation being secondary and perhaps supported by the former. It is a matter of curiosity that only now, according to the NT Submissions at p.21, are the lessees of Lorella "formalising a non-pastoral use arrangement". Given that activities Lorella Springs undertakes that are in or dependent on the intertidal zone are all part of its existing commercial tourist operation, and appear to fall outside the classes of activities that the Northern Territory categorises as Low Impact Activities, they would be activities for which by current Crown land management practice the operator would be required to obtain a licence from the Crown. In that context to be consistent the Northern Territory should require that Lorella Springs obtain a licence for tourist activities in the claim area other than Low Impact Activities.
- 19 Aquaculture: it is assumed for the purposes of these submissions that development of an enterprise of that nature would require an "appropriate form of tenure under the Crown Land Act" in any event, in addition to stringent environmental impact compliance. Acceding to the grant of the land claimed would not be a detriment in those circumstances because the proponent would in any event be required to obtain a form of tenure (and environmental approvals) from government, which may or may not be forthcoming.
- 20 The detriment to Lorella Springs is relative. Its (very comprehensive) website explains that there are 20 kilometres of coastline and "There are hundreds of kilometres of untouched rivers, creeks and billabongs." While access to the sea for fishing is promoted by Lorella Springs and enjoyed by numbers of its visitors, there are other very substantial areas of water within the confines of Lorella or adjoining it that will remain available for guests to fish. These include Rosie Creek, Wuraliwuntya Creek and a number of other tidal creeks, rivers and billabongs.

Limmen River.

- 21 The image below, a section of survey plan CP4524 for Marra Aboriginal Land Trust, shows that the land trust owns the left bank and bed of the Limmen Bight River to the low water mark adjacent to the right (south) bank. The present situation is that being tidal this part is presently subject to the permit waiver. Persons traversing this part of the river will require a permit as of 1 January 2019, except for the intertidal zone (claim area) adjacent to the right bank. Acceding to the claim in this location will not give rise to any further appreciable detriment.



Limmen River Fishing Camp

- 22 Please see the attached extract from the NLC submissions on detriment which may be read with the relevant transcript at T.57-57. These are duly reflected in Maria Island and Limmen Bight Land Claim No.71 Report at p.112. It is apparent from Mr Barrett’s letter to the Review of 5 April 2018 that his relationship with traditional owners and local Aboriginal people is maintained and remains as reflected by their evidence in the claim. His concerns are very largely their concerns. In these circumstances our submission is that there is a firm likelihood of the traditional owners supporting an agreement should Mr Barrett require some more formal arrangement to protect his long-term interests.
- 23 Consultations with claimants in July 2018 confirmed that claimants are agreed that visitors to Steve Barrett’s Fishing Camp can continue to enter the areas under claim as they do now, but would want them to obtain a permit to do so. They agree that the Barrett’s could administer permits for their guests (under delegation) subject to agreement on a permit fee.
- 24 We refer to the late emails from Mr Barrett concerning his ownership of part of the bank of the river adjoining his land to the high water mark, and agree that is the case. It was referred to at page 7, paragraph 24(d) of the Report on Land Claim No.71 and part of Land Claim No.198.

AFANT

- 25 Mr Ciaravolo's statement on behalf of AFANT raises the issues common to AFANT's previous submissions concerning use of the claim areas by fishers (quite light use apparently). The submission repeats the usual refrain about permits [paragraphs 59-61] as to costs, delay and certainty. The issues have been addressed previously on behalf of claimants and there is no need to repeat those submissions. However, at paragraphs 49-51 Mr Ciaravolo again mentions that fishers pay "camping/access fees at private properties". He does so without a hint of irony. In the case of Steve Barrett's fishing camp, which is not a pastoral lease, s.79 of the *Pastoral Land Act* does not apply. But it does apply to Lorella Springs. If AFANT was consistent it would be as critical of pastoral lessees levying fees for access to and camping in areas covered by s.79, or imposing access restrictions to the same areas, as it is of the possibility of permits being required to access areas that could become Aboriginal land as a result of these land claims.
- 26 We do not believe it is necessary or would be productive to comment AFANT's response to the Claimants Submissions to the Group 1 & 6 land claims.

Mines and Petroleum

- 27 For the purposes of the se submissions we again adopt the submissions set out in paragraph 62 of our submissions in the Group 1 & 6 land claims.

Northern Territory Iron Ore Pty Ltd: SPL 219 (NT Portion 1184)

- 28 The submission on behalf of NTIO is set out in two letters from their legal representatives dated 30 April 2018 and 11 May 2018. The letters address detriment said to arise from the land claims in this group and the Lower Roper River Land Claim No.70. This part of the submission will also be adopted on behalf of claimants in the Review of detriment in the Lower Roper River Land Claim.
- 29 The relevant part of the project described in the NTIO submissions is an intention to establish a loading facility on NT Portion 1184 located on the right (south) bank of the river near the mouth, which is held by NTIO under SPL 219, to load barges that will transport iron ore out to sea. A copy of SPL 219 is attached [**Attachment 2**] the survey plan for NT Portion 1184 is also attached [**Attachment 2** - survey plan A.681 for NT Portion 1184]. According to the Lower Roper River Land Claim Report, at the time the claim was heard (2002) SPL 219 was owned by Roper Properties Pty Ltd. The Report commented (at p.25, paragraph 75) that there was no evidence that the land was then used for lease purposes or any other purpose, and –
- “... The plan annexed to the lease indicates that the leased area does not extend to the riverbank and there is accordingly a margin of u-nalienated Crown land between the river and the leasehold.”
- 30 The Commissioner's observation is consistent with the plan in SPL 219, itself adopted from survey plan A.681 [**Attachment 2**]. On these plans NT Portion 1184 does not appear to extend to the bank of the river.

- 31 The following passage from the NTIO submissions suggests that NTIO may have assumed that NT Portion 1184 includes the bank of the river -
The BLF at SPL 219 will include berthing piles driven into the river bed adjacent to the riverbank. Barges will moor along the berthing piles to be loaded before being towed to sea for transshipment (*Letter 11 May 2018 p.2*)
Whether the piles would be located on what the proponents believe is part of NT Portion 1184 or in the land claim area is unclear. NTIO would require tenure of some sort to secure ownership and usage of any part of the facility constructed outside NT Portion 1184. The submission does not disclose what tenure of the area outside NT Portion 1184 will be required or sought to support its investment in the planned facility, whether it will be a mining tenement as at Bing Bong (partly overlying the pastoral lease) or a conventional form of tenure consistent with SPL 219 or some other tenure arrangement.
- 32 A minor matter that needs to be clarified is whether Limmen Bight Land Claim No.8 has been ‘finally disposed of’ with respect to that area of land between NT Portion 1184 and the low water mark of the river that adjoins the north western boundary of NT Portion 1184 [per s.67A(5) although the Deed of Grant to Marra Aboriginal Land Trust is dated 6 September 1984 and pre-dates s.67A by some years]. It is possible that there could be correspondence or a document withdrawing Land Claim No.8 with respect to the area adjacent to NT Portion 1184 but we have not located anything at this stage and the area may remain subject to Land Claim No.8. The answer could lie in archived Commonwealth files.
- 33 The reason it may remain under claim is that Land Claim No.8 as lodged was to an area described by its metes and bounds. As described the claim area included any area between NT Portion 1184 and the low water mark of the Roper River adjacent to NTP 1184. That area was not subsequently included in NT Portion 2099 on Compiled Plan 4524, the area granted to the Marra Aboriginal Land Trust. The claim to the bed and bank in the Lower Roper River Land Claim included the same area but was not treated as a repeat claim. The fact that the area was dealt with in the latter land claim confirms at least that at that time there was a river bank adjacent to NT Portion 1184 available for claim. If this part of the Limmen Bight Land Claim has not been finalised any strip of land between NT Portion 1184 and the bank of the river remains under claim.
- 34 SPL219 was granted for a term of 50 years commencing 7 July 1969 and was transferred to NTIO in 2017. The NTIO submission refers to “the use of SPL 219 for its “intended purpose...”(*letter of 30 April 2018 p.3*). By “intended purpose” the submission probably means NTIO’s intended purpose rather than the purpose stated in the lease.
- 35 Three of the mineral leases held by NTIO, MLs 29070, 29071 and 29437, were granted following agreement under Part IV of the Land Rights Act between the then applicant, Sherwin Iron (NT) Pty Limited, a wholly owned subsidiary of Sherwin Iron Limited, and the NLC in 2014. That agreement was itself pursuant to a 2007 agreement under Part 4 of the Land Rights Act consenting to the grant of EL24102 within which the mineral leases are located. The three leases are located for the most part on the Alawa 1 Aboriginal Land Trust, and partly on Mangarrayi Aboriginal

Land Trust. ML 29584 was granted following a native title agreement between the applicant and the NLC and Native Title Parties.

- 36 Sherwin Iron Limited was placed under administration in July 2014 and placed in liquidation in November 2015. The project was subsequently acquired by Al Rawda Resources Pty Ltd, now NTIO. The traditional owners were again consulted and approved the assignment of the agreements to the new owner. The purpose in reciting these agreements is to demonstrate that the NLC and traditional owners of the exploration licences and mineral leases have a long history of engagement with the original developers and the administrators, and subsequently have entered into assignments of the various agreements to the new entity NTIO.
- 37 Although the traditional owners in the area of SPL 219 and the mouth of the Roper River are different groups from those in the areas of the mineral leases. As yet they have not been provided with details of the proposed development of an ore loading facility. The information provided in the NTIO submission is insufficient for consultations to be undertaken. For example apart from mentioning piles, there is no information about other land works in the claim area or of possible dredging in the river. From the previous level of engagement by the NLC in the iron ore project, NTIO and the Commissioner may assume that if it is requested to do so by NTIO the NLC will undertake consultation with claimants once it is provided with sufficient information about the project. subject to consultations with the traditional owners of the bed and banks adjacent to NTP 219, and of the mouth of the river, a Section 11A Agreement may be reached that would enable the project to continue in the event the area is granted as Aboriginal land.
- 38 Environmental approvals required for the project would need to be available before an agreement could be finalised. The NLC has been in contact with NTIO about the proposed project but yet there has been no approach from NTIO for an agreement.

MA 28133 and 28134 (applications)

- 39 The applications dated 6 June 2010 are both in the name of Winchelsea Mining Pty Ltd. Winchelsea has also had an application pending since 2009 for an exploration licence over Winchelsea Island which is part of the Andiliyakwa ALT. The NT submission does not explain why MAs 21813 and 28134 have not been granted for 8 years, or whether there is any prospect that they might be granted at any time in the future.
- 40 The MA application areas appear to be co-extensive with the marine park established by the Notice which is NT Submissions Attachment 7. This may be the reason they have not been granted and may indicate a low likelihood they will ever be granted, as mining activity on the seabed within a marine park would seem to be contra-indicated. Winchelsea has not raised a detriment issue, but on the slender information provided by the NT it is unlikely that any detriment is associated with these applications.

Britmar: bridge over Limmen Bight River

- 41 The author of the Britmar submission has expressed concern as follows -

The 'big picture' detriment is the most obvious. A granting of either or both the Land Claims could prevent operation of the NRRP. Both the bridge over the Limmen Bight River and the BBLF are independently critical to the financial viability of the NRRP.

42 The matters raised by Britmar are common to both the McArthur River Land Claim and the Maria Island and Limmen Bight River Land Claim and have been generally addressed in the submissions to the Review on behalf of the claimants dated 16 July 2018. A general background was provided in paragraph 48 –

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 PPL 1051.

43 The parties had finalised the agreement before Access Authority 29691 was issued on 8 November 2012 (although formal execution was not completed for some months). Prior to the issue of the authority there had been what could fairly be described as an intense engagement between the parties (including the traditional owners) concerning the location and construction of the haul road (including the bridge) at the Limmen Bight River crossing due to important sacred sites in the vicinity. In this way the concerns of traditional owners and site custodians were accommodated before and during construction of the bridge.

44 The General Conditions of Grant for the access authority, Clause 12, reads -

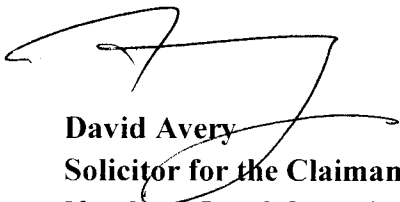
12. Design, construction and use of the haul road within the area of the Access Authority is at all times subject to the existing rights, title and interests of all other persons, including but not limited to relevant land holders (including the Territory), land users, native title holders, registered native title claimants, the NLC and all persons holding a mineral title within the area of the Access Authority or any land adjacent to the area of the Access Authority. The holder will not, to the extent possible to maintain consistency, by operation of law, and as is reasonably practicable in the circumstances having regard to the intent of this Access Authority to permit the construction, maintenance and use of a haul road, unreasonably or unduly interfere with, impede, restrict or limit the rights, title or interests of any other person.

The claimants have an interest in the area pursuant to the land claim in which they have been found to be the traditional owners, and for which there has been a recommendation for grant to a land trust

- 45 In this submission we adopt paragraph 51 of our submissions to the Review for Group 1 & 6 land claims dated 16 July 2018. The involvement of the traditional owners in planning the construction of the haul road and bridge at the Limmen Bight River together with the current agreement between the parties and general condition 12 of the access authority, taken together provide assurance that there should be no difficulty reaching an agreement under the Land Rights Act should an agreement be considered desirable or necessary to protect Britmar's interests at some future time.

Wurrunburru Association Inc.

- 46 The association has not provided a submission to the Review. It holds NT Portion 2432 under Crown Lease Perpetual 429. The membership of the association is comprised of traditional owners of the land held by the association, who are also claimants to the claim areas on the intertidal zone and Bing Bong Creek adjoining NTP 2432. Some of the association's members have attended recent NLC consultations about the land claims and their views are consistent with the views of other claimants. In our submission the Association would not suffer detriment, and its members would be advantaged, if the adjacent intertidal zone and Bing Bong Creek claim areas were granted to a Land Trust.



David Avery
Solicitor for the Claimants
Northern Land Council

18 August 2018

Attachments.

1. Lorella Springs Wilderness Park rates
2. Copy of SPL 219;
3. Survey plan A.681 for NT Portion 1184.



DAY RATES 2018

		ADULT	CHILD (5 to 15 years old)
Day rate	Campground facilities only: Magical Spring, shower and toilet facilities. Price per person.	\$ 10	\$ 5
Day rate	Campground facilities + permit + mud maps, 4WD tracks, fishing places and swimming holes.	\$ 15	\$ 5

24-HOUR PERMITS 2018

		1 night	7 nights (= 1 night FREE)	1 month (= 1 week FREE)
Overnight	Adult	\$ 20	\$ 120	\$ 480
Overnight	Child – 5 to 15	\$ 5	\$ 30	\$ 110
Overnight	Child – 0 to 4	FREE	FREE	FREE

ACCOMMODATION RATES 2018

All following accommodation prices are PER ROOM PER NIGHT. Discounts apply when staying 4 nights or more.

ROOM TYPE	MINIMUM STAY	ROOM OPTIONS (Light breakfast = continental breakfast = choice of tea/ coffee, cereals, toasts, butter and jam)	OCCUPANCY = How many people per room?		
			Single (1)	Double (2) Queen or Twin	Triple (3) Queen + Single
STANDARD ROOM (ceiling fan, bathroom just outside your room)	1 night	Room Only	\$ 99	\$ 99	Not Available
	1 night	Room + Light Breakfast	\$ 109	\$ 119	Not Available
STANDARD ROOM (ceiling fan, bathroom just outside your room)	4 nights	Room Only	\$ 79	\$ 79	Not Available
	4 nights	Room + Light Breakfast	\$ 89	\$ 99	Not Available
DELUXE ROOM (ceiling fan, en-suite bathroom)	1 night	Room Only	\$ 199	\$ 199	Not Available
	1 night	Room + Light Breakfast	\$ 209	\$ 219	Not Available
DELUXE ROOM (ceiling fan, en-suite bathroom)	4 nights	Room Only	\$ 179	\$ 179	Not Available
	4 nights	Room + Light Breakfast	\$ 189	\$ 199	Not Available
CABIN (air-conditioning, Sat TV, en-suite bathroom, BBQ)	1 night	Room Only	\$ 230	\$ 230	\$ 260
	1 night	Room + Light Breakfast	\$ 245	\$ 250	\$ 280
CABIN (air-conditioning, Sat TV, en-suite bathroom, BBQ)	4 nights	Room Only	\$ 210	\$ 210	\$ 240
	4 nights	Room + Light Breakfast	\$ 225	\$ 230	\$ 260

N.T.A. 1644

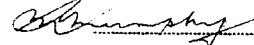


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COMMONWEALTH OF AUSTRALIA

 Registrar-General

NORTHERN TERRITORY OF AUSTRALIA

Special Purposes Leases Ordinance 1953- 1971

Lease SPECIAL PURPOSES**No. 219**

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

To all to whom these presents shall come—

Greeting:

KNOW YE that We do, in pursuance of the Special Purposes Leases Ordinance 1953-1971 hereby grant to Northern Shrimp Exporters Pty. Limited whose registered office is situate at Katherine Meatworks Stuart Highway Katherine in the Northern Territory of Australia (who, with its executors, administrators and assigns is in this lease referred to as "the lessee") a lease of all that piece or parcel of land in the Northern Territory of Australia containing an area of four hundred and sixty four acres one rood and twenty perches or thereabouts and being Northern Territory Portion 1184 as delineated on the plan hereon and therein tinted pink for the purposes of Trawler Base, Base Airstrip, Factory, Accommodation and ancillary only reserving unto Us, Our Heirs and Successors -

- (a) a right of entry in favour of the Administrator, or an officer authorised in writing by the Administrator, at all reasonable times and in any reasonable manner, to enter upon the leased land or any part of it and to inspect the leased land or any part of it and any improvements on it;
- (b) all minerals and mineral substances in or on the leased land including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, shale, mineral oils and valuable earths or substances, together with the right to authorise any persons to enter upon the land to mine, work for, win recover and remove them or any of them and to do all things necessary or convenient for those purposes;
- (c) a power of resumption;
- (d) a right of entry and inspection for the purposes of providing and maintaining water, sewer, electricity and other services on the leased land, or on other lands;

to hold unto the lessee for a term of fifty years, yielding and paying therefor an annual rental of twenty five dollars;

And We declare that the rental payable under this Lease shall be subject to re-appraisal in accordance with Section 11A of the Ordinance;

And We declare that the lessee, having paid all rent due by it, may at any time surrender this lease in accordance with the provisions of the said Ordinance and the Regulations thereunder;

And We declare that if the rent (other than the rent for the first year) is not paid on or before the expiry of three months from the date on which it becomes payable, an additional amount (which shall be deemed to be recoverable as rent), at the rate of five per centum per annum from the expiry of that period shall become payable by the lessee in respect of the rent overdue, if demanded by the Administrator;

And We declare that this lease is granted under and subject to the said Ordinance and the Regulations for the time being in force thereunder and is conditional upon compliance by the lessee with the covenants and conditions to be complied with by it and may, subject to the Ordinance and the Regulations, be forfeited for non-compliance with any such covenant or condition;

And We declare that this lease shall commence on the seventh day of July One thousand nine hundred and sixty nine;



CUCL/097/0335

And the Lessee covenants with Her Majesty the Queen and with the Minister of State for the time being controlling the Northern Territory, as follows:-

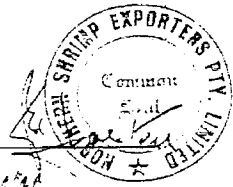
1. That it will pay the rent annually in advance;
2. That it will use the land only for the purpose, or a purpose ancillary to the purpose, for which the lease is granted: *Viz: Trawler Base, Base Airstrip, Factory, Accommodation and ancillary;*
3. That it will pay all rates and taxes which may at any time become due in respect of the leased land;
4. That it will observe and comply with the Regulations under the said Ordinance for the time being in force;
5. That it will at all times maintain and repair and keep in repair all buildings and erections on the said land all to the satisfaction of the Administrator; *W.A.*
6. That it will within two years from the commencement of the lease or within such further time as may be approved in writing by the Administrator have established buildings and other facilities suitable to the purpose of the lease to the value of at least Fifty thousand dollars.
7. That it will within four years from the commencement of the lease or within such further time as may be approved in writing by the Administrator increase the value of improvements on the leased land to at least One hundred thousand dollars and shall thereafter maintain all improvements.

X *W*
 Signed, Sealed and Delivered by **VERNON THOMAS O'BRIEN** Director
 Lands and Survey Branch, Northern Territory Administration, the Delegate of the
 Minister

In the presence of *W. O'Brien*
 this *19th* day of *November* 1971

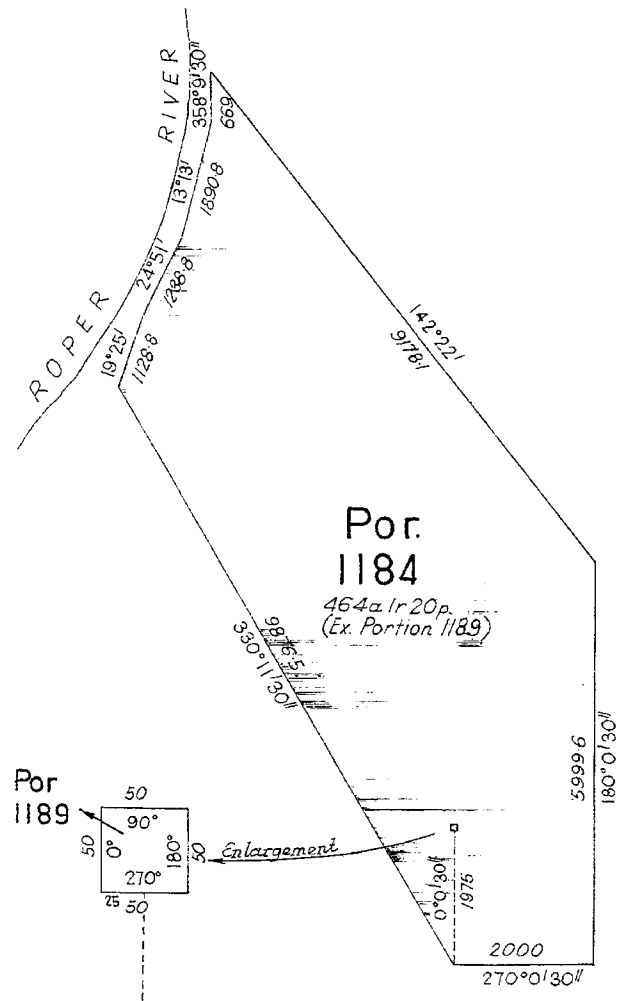
The Common Seal of Northern Shrimp Exporters
 Pty. Limited was hereunto affixed this *19th*
 day of *November* 1971.

W. O'Brien Secretary



Director

PLAN REFERRED TO



Scale: 20 chains to an inch
A661 Excl. L.P.P. S.R.R.



I certify that this lease is correct for execution.

[Signature]
.....
(Surveyor-General, N.T.)

237/77
647/81
102/83

The annual rental of the within lease has been re-appraised and increased from \$25-00 to \$250-00 for the next period of 10 years commencing on the 1st day of July, 1977 vide LTO instrument No. 47432. Produced the 23rd day of April 1977 at 3:00 P.M.

Transferred vide LTO Instrument No. 122840 TO: ROPER PROPERTIES PTY LTD. WHOSE REGISTERED OFFICE IS SITUATE AT: THE SLIPWAY, LOT 5277 FRANCIS BAY ROAD, DARWIN N.T. Produced the 22ND day of FEBRUARY 1983 at 11:21 A.M.

X CAVEAT No. 88261 BY (CAVEATOR) ANTHONY JOHN NOEL O'CONNOR OF THE CIVIC CENTRE HARRY CHAN AVENUE DARWIN N.T. REGISTRAR OF COMPANIES PRODUCED THE 17TH DAY OF JANUARY 1980 AT 3:54 P.M.

A PROVISIONAL COPY OF THE WITHIN LEASE WAS ISSUED ON THE 14TH DAY OF SEPTEMBER 1981 IN CONSEQUENCE OF A STATUTORY DECLARATION MADE BY JAMES MANNERS DIXON SECRETARY OF HOOKER RESTORATIONS PTY LIMITED THAT THE DUPLICATE LEASE WAS LOST OR DESTROYED VIDE LTO INSTRUMENT NO. 104377 PRODUCED 13TH AUGUST 1981 AT 10:19 A.M.

WX Withdrawal of Caveat No. 98261 vide L.T.O. instrument No. 104543 Produced the 12th day of AUGUST 1981 at 10:46 A.M.

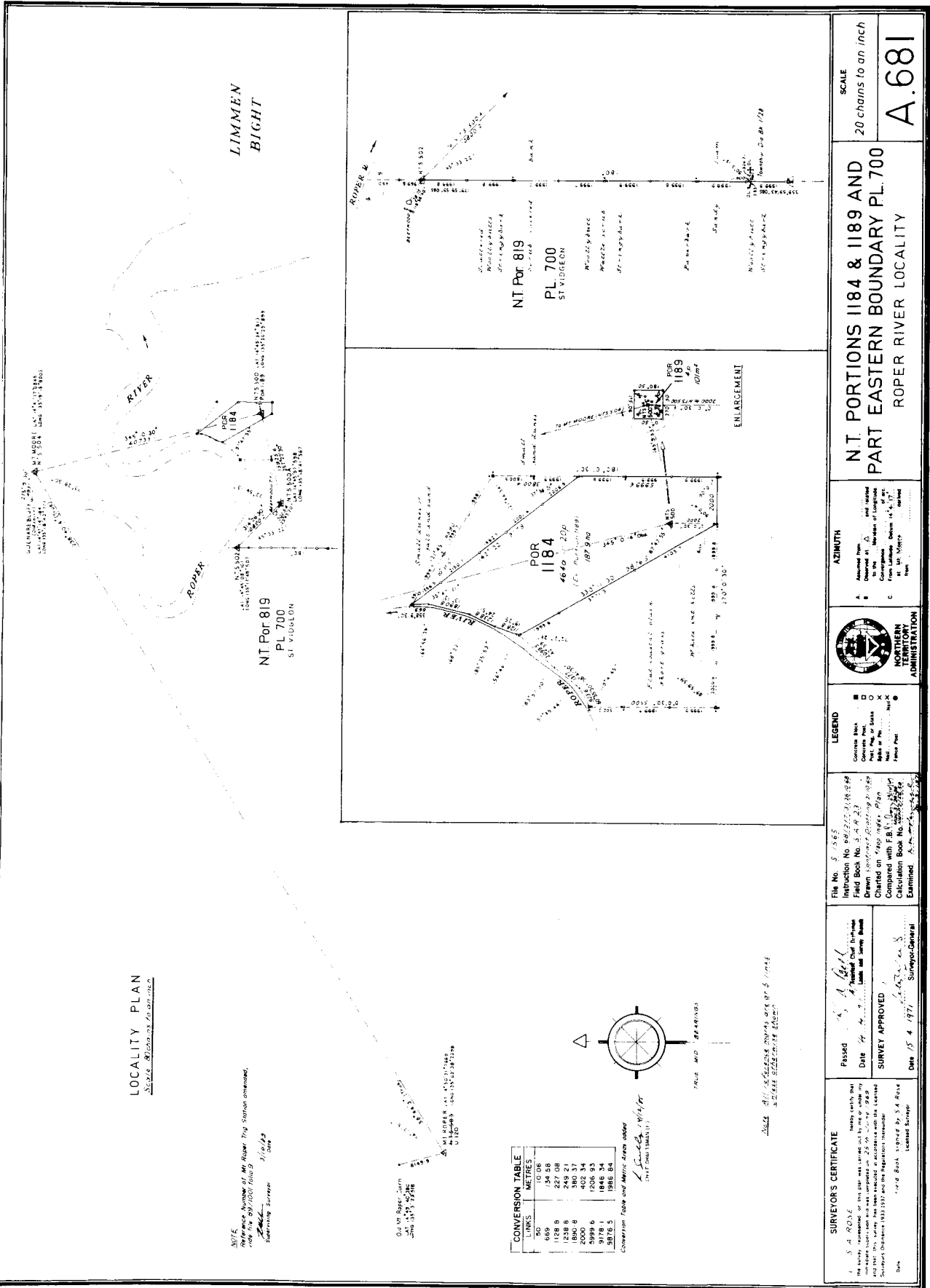
THE WITHIN NAMED NORTHERN SHRIMP EXPORTERS PTY LIMITED HAS BEEN CHANGED TO READ HOOKER RESTORATIONS PTY LIMITED OF CARE OF COOPERS & LYBRAND, CIVIC CENTRE, DARWIN N.T. VIDE L.T.O. INSTRUMENT NO. 122839 PRODUCED 22ND FEBRUARY 1983 AT 11:20 A.M.

The Registrar-General no longer updates paper Certificates as to the information on the information contained in the Register. It should conduct a search of the computerised Register for dealings which may not be endorsed on this title.

COPY TO L.T.O 20-12-85

Viewed at 15:07:38 on 16/07/2018 by NOC.

B/NEG 408
A 681





NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

Address all correspondence to:

Chief Executive Officer

GPO Box 1222 Darwin NT 0801
45 Mitchell Street Darwin NT 0800
P: 08 8920 5100 • F: 08 8945 2633
Freecall: 1800 645 299
www.nlc.org.au
ABN 56 327 515 336

27 September 2018

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

By email: AboriginalLandCommissioner@network.pmc.gov.au

Dear Commissioner

Re: Land Claims 171, 198 and 70: Submission in response on behalf of Northern Territory Iron Ore Pty Ltd

At this late stage we would not ordinarily respond to a party's reply (Reply) to submissions provided on behalf of the claimants (the Submissions), respecting the need for finality, and the present state of submissions by all parties should provide sufficient information to inform the Review. However, there are some references in the NTIO Reply dated 1 September 2018 that although they are quite petty in nature we are not content to leave without comment or further illumination.

Boundary of Limmen Bight Land Claim

The map included with the Reply is a copy of part of Limmen Bight Land Claim Exhibit 20 "Map identifying high and low roads". The complete description of Exhibit 20 on page 35 of the Report is "Letter from the Surveyor-General to the Crown Solicitor of 5 June 1980, together with map identifying high and low roads." The high and low roads are discussed in the Limmen Bight Land Claim Report at p.28 [paragraphs 170 & 171]. The Exhibit 20 map was provided to depict those roads and is inaccurate as to the boundary of the land claim in the area of NTP 1184. The boundary is as described in the land claim when it was lodged.

Information about the proposed ore loading facility - tenure

The Submissions' observations about information [paragraphs 37 & 38] were in the context of agreement making and whether at this stage there is sufficient information to support consultations with the traditional owners should NTIO seek security of tenure by way of a Section 11A Agreement for any part of the proposed ore loading facility. That is a separate issue from NTIO's statutory obligations in relation to the environmental impact assessment. The information referenced in the Reply relates to the environmental impact assessment and not any tenure proposal.

Katherine	Jabiru	Nhulunbuy	Borroloola	Ngukurr	Tennant Creek	Timber Creek	Wadeye
P.O. Box 396 Katherine NT 0851 P: (08) 8971 9899 F: (08) 8972 2190	P.O. Box 18 Jabiru NT 0886 P: (08) 8938 3000 F: (08) 8979 2650	P.O. Box 820 Nhulunbuy NT 0881 P: (08) 8986 8500 F: (08) 8987 1334	P.O. Box 453 Borroloola NT 0854 P: (08) 8975 8848 F: (08) 8975 8745	P.M.B. 85 via Katherine NT 0851 P: (08) 8975 4755 F: (08) 8975 4601	P.O. Box 55 Tennant Creek NT 0861 P: (08) 8962 1884 F: (08) 8962 1636	43 Wilson St Timber Creek NT 0852 P: (08) 8975 0789 F: (08) 8975 0664	Lot 788 Kanarlida St Wadeye NT 0822 P: 0439 830 435

We are at a loss to understand how any inference could reasonably be drawn from our submissions that NTIO “has or would shirk its consultative obligations.” The point of the Submissions was to demonstrate that there is a history of agreement making between the parties, and NTIO’s predecessor. It was clear from paragraphs 37 & 38 that the time for that information to be provided would be if and when NTIO seeks a Section 11A Agreement.

Agreement making

The Reply asserts that because the NLC –

- has not participated to assist NTIO to meet its obligations pursuant to the *Environmental Protection and Biodiversity Conservation Act 1999 (Cwlth)* and the *Environmental Assessment Act (NT)* by facilitating engagement and/or consultation with Aboriginal people on behalf of NTIO; and
- has not arranged a committee meeting under clause 5 of the Regional Deed,

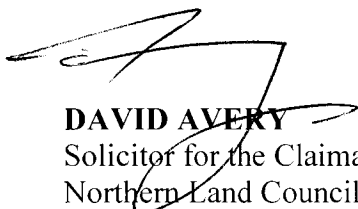
that “does not inspire confidence that the further agreements (sic) alluded to in [37] can be reached in a timely and cost-effective manner, increasing project risk and detriment to NTIO.”

Leaving aside the jargon – “timely”, “cost-effective” and “project risk” – the issue is whether the assertions above are justified. They are not. The NLC is not required to assist NTIO to comply with its obligations under the environmental legislation. That responsibility lies solely with NTIO. The NLC has no responsibility whatsoever to facilitate NTIO’s engagement or consultation with Aboriginal people for that purpose.

As to arranging a committee meeting under the Regional Deed (another example of an agreement between NTIO and the NLC), under clause 5 of the Deed that responsibility does not lie with the NLC. Under clause 5 the NTIO is required to appoint a secretary to the committee, and it is the responsibility of the secretary to notify committee members of the time, date and place of a committee meeting. The passage from Mr McKenzie’s email is accurately reproduced in the Reply. It says that NTIO “would like to arrange a committee meeting”. It does not request the NLC to arrange the meeting and simply requests advice about the best way to co-ordinate the meeting. The author of the Reply has simply not read the email accurately.

Communications between NTIO and the NLC were and are cordial, as is clear from the attached thread, which includes the email mentioned in the Reply.

Yours faithfully,



DAVID AVERY
Solicitor for the Claimants
Northern Land Council

ATTACHMENT

From: Bill Mackenzie [mailto:Bill.Mackenzie@ntio.com.au]
Sent: Friday, 23 June 2017 12:56 PM
To: Su Sze Ting <SuSze.Ting@nlc.org.au>
Cc: Malcolm Hauser <Malcolm.Hauser@nlc.org.au>
Subject: HPE CM: RE: Invoices for Northern Territory Iron Ore Pty Ltd

Thanks Su Sze,

Colin Jardine has sent the proposed work plan (in the form of the amended MMP attached) to Malcolm and I have left a message for Malcolm to call if there are any concerns – hopefully we can get an on-country meeting next month.

I'll get the estimate through to you next week when I get back to my office. The EL24102 program proposed is described in the MMP as follows:

The proposed program on EL24102 will not involve substantial disturbance as defined in Section 35(3) of the Mining Management Act and so will not require authorisation under Section 35(2), however the following description of the proposed program is provided for information only. Previous exploration work on EL24102 included the excavation of two small pits (see Figure 7 below) to expose the full thickness of the orebody and provide samples for metallurgical testwork and characterisation. NTIO proposes to collect several small scale (± 200 kg) ore samples from these pits for metallurgical testing. Access to the area will be along existing tracks, and the samples will be taken by hand and collected in 200 l drums.

I'll get the estimate through to you next week when I get back to my office.

Bill Mackenzie
Director
Northern Territory Iron Ore Pty Ltd
ABN 59 906 206 706

e : bill.mackenzie@ntio.com.au
w : www.ntio.com.au

From: Su Sze Ting [mailto:SuSze.Ting@nlc.org.au]
Sent: Wednesday, 21 June 2017 3:29 PM
To: Bill Mackenzie <Bill.Mackenzie@ntio.com.au>
Cc: Malcolm Hauser <Malcolm.Hauser@nlc.org.au>; Su Sze Ting <SuSze.Ting@nlc.org.au>
Subject: RE: Invoices for Northern Territory Iron Ore Pty Ltd

Hi Bill

Apologies for the delay in responding to your email.

Thank you for sending through the relevant dates –



[REDACTED]

The best way to co-ordinate any work programme meetings and any committee meetings is with Malcolm Hauser. He is copied to this email and he is the mining officer for the Ngukurr region.

If you have any questions, please feel free to contact me.

Regards
Su Sze

Su Sze Ting | Legal Practice Manager – Land Rights |
Legal Branch| Northern Land Council|
45 Mitchell Street Darwin NT 0801| GPO BOX 1222 Darwin NT 0800|
(P) 08 89205202| (F) 08 89205251 |
(E) susze.ting@nlc.org.au | (W) www.nlc.org.au

From: Bill Mackenzie [<mailto:Bill.Mackenzie@ntio.com.au>]
Sent: Friday, 26 May 2017 12:20 PM
To: Su Sze Ting
Subject: RE: Invoices for Northern Territory Iron Ore Pty Ltd

Hi Su Sze,

Thanks for getting back to me on this.

I'm pleased to provide the following information:

a) [REDACTED]

In relation to the other information requests, I attach:

- a) A copy of a Mine Management Plan that has just been prepared and lodged with DPIR that seeks approval for a proposed exploration program for this year (see attached). This document describes the entire exploration program over all of NTIO's mineral titles. Section 4.3.3 of that document describes the work proposed on EL24102, which will involve collection of several small (+/- 200 kg) samples by hand from existing costeans. Sample collection will be undertaken by NTIO site staff and incur minimal cost;
- b) Attached is a copy of the presentation made to project stakeholders earlier in May.

In this regard, we would like to arrange a committee meeting (as required pursuant to Clause 5 of the Regional Deed) for later in the year to present these plans (this year's exploration plan and the

longer term development plan set out in the notice of intent) and discuss issues arising with the TO's.

Please advise the best way to coordinate this meeting.

Let me know if there is anything else you need.

Regards,

Bill

From: Su Sze Ting [<mailto:SuSze.Ting@nlc.org.au>]
Sent: Thursday, 25 May 2017 12:34 PM
To: Bill Mackenzie <mackenzies@bigpond.com>
Cc: Su Sze Ting <SuSze.Ting@nlc.org.au>
Subject: RE: Invoices for Northern Territory Iron Ore Pty Ltd

Hi Bill

Further to my email below, please provide details of any exploration programme which NTIO intend to undertaken in the next year for EL 24012. [REDACTED]

I also understand that there was a presentation by NTIO to a number of representatives of NLC a couple of weeks ago. I would appreciate it if you could provide me with an electronic version of that presentation.

Regards
Su Sze

Su Sze Ting | Legal Practice Manager – Land Rights |
Legal Branch| Northern Land Council|
45 Mitchell Street Darwin NT 0801| GPO BOX 1222 Darwin NT 0800|
(P) 08 89205202| (F) 08 89205251 |
(E) suze.ting@nlc.org.au | (W) www.nlc.org.au

From: Su Sze Ting
Sent: Thursday, 25 May 2017 1:24 PM
To: Bill Mackenzie
Cc: Su Sze Ting
Subject: Invoices for Northern Territory Iron Ore Pty Ltd

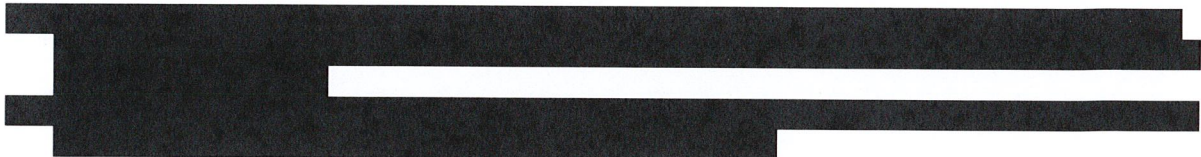
Hi Bill

I trust this email finds you well.

I know this is a bit late but things have been a bit busy with the departure of a number of lawyers in the Northern Land Council.

I am now in the process of drafting instructions on the issue of invoices under the various agreements between Northern Territory Iron Ore Pty Ltd (NTIO) and Northern Land Council.

Can you please provide me with the following dates:



I hope things are going well with Eric and the West Coast Eagles and the Dockers are performing surprisingly well!

Cheers
Su Sze

Su Sze Ting | [Legal Practice Manager – Land Rights](#) |
Legal Branch| Northern Land Council|
45 Mitchell Street Darwin NT 0801| GPO BOX 1222 Darwin NT 0800|
(P) 08 89205202| (F) 08 89205251 |
(E) susze.ting@nlc.org.au | (W) www.nlc.org.au

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