NTA 2

SETTLEMENT DEED

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA (THE TERRITORY)

AND:

DALY RIVER/PORT KEATS ABORIGINAL LAND TRUST (THE LAND TRUST)

AND

NORTHERN LAND COUNCIL (THE NLC)

Solicitor for the Northern Territory
68 The Esplanade, Darwin
Telephone: 08 8935 7765 Facsimile: 08 8935 7810
File reference: 20082049

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ANNEXURE A – LICENCE DEED

LICENCE DEED

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA (THE TERRITORY)

AND:

DALY RIVER/PORT KEATSABORIGINAL LAND TRUST (THE LAND TRUST)

AND

NORTHERN LAND COUNCIL (THE NLC)

Solicitor for the Northern Territory
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File reference: 20082049

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NTA 3

SETTLEMENT DEED

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA (THE TERRITORY)

AND:

MALAK MALAK ABORIGINAL LAND TRUST (THE LAND TRUST)

AND

NORTHERN LAND COUNCIL (THE NLC)

Solicitor for the Northern Territory
68 The Esplanade, Darwin
Telephone: 08 8935 7765 Facsimile: 08 8935 7810
File reference: 20082049

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ANNEXURE A – LICENCE DEED

LICENCE DEED

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA (THE TERRITORY)

AND:

MALAK MALAK ABORIGINAL LAND TRUST (THE LAND TRUST)

AND

NORTHERN LAND COUNCIL (THE NLC)

Solicitor for the Northern Territory
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File reference: 20082049

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NORTHERN LAND COUNCIL

INFORMATION SHEET

Our Land, Our Sea, Our Life

Access to Tidal Waters on Aboriginal Land
NLC waives requirement for a permit until 31 December 2018

15 November 2017

From 1 January 2019 all commercial fishing operators and recreational fishers will require permission from Aboriginal land owners and the Northern Land Council (NLC) through the grant of a licence or permit to fish in tidal waters over Aboriginal land.

Aboriginal land is privately owned. It is not Crown land, nor public land. Permission must be obtained before going onto Aboriginal land.

This includes access to tidal waters over Aboriginal land. That is, access to the water and land between the low and high tide watermarks. This is regardless of whether you hold a commercial fishing licence issued by the Northern Territory Government.

The 'interim' (short-term) arrangement put in place in 2007 that allowed all recreational fishers and commercial operators' access to tidal waters over Aboriginal land ended on 31 December 2016. After almost 10 years, the interim arrangement between the NLC and the Northern Territory Government has not been renewed.

However, on 15 November 2017, the NLC issued a Public Notice, pursuant to section 5(8) of the *Aboriginal Land Act*, that waives the requirement for a permit to enter tidal waters overlying Aboriginal land for a further period of 12 months, until 31 December 2018.

As of 1 January 2019, all recreational and commercial fishers will be required to have a permit or licence, except in permitted access areas.

Permitted Access Areas

Access to tidal waters over Aboriginal land by recreational fishers and commercial operators is still permitted in areas where the Northern Territory Government has entered into an Agreement with the relevant Aboriginal Land Trust.

Those Permitted Access Areas include the:

A. Five 20 year intertidal fishing access agreements in place for

   I. Thamurrurr (Wadeye/Moyle River area) – until 30 June 2034.
   II. Anson Bay area – until 31 December 2033.
   III. Malak Malak (Daly River area) – until 30 June 2032.
   IV. Dhimurru (Nhulunbuy area) – until 31 December 2034.
   V. Yanyuwa (McArthur River and Sir Edward Pellew islands area) – until 30 June 2032.

B. One year agreement in place for Iwaidja Armurduk (Mini Mini/Murgenella Rivers area), which will expire on the 30 June 2018.

C. Kenbi Open Area (Cox Peninsula) as for

   I. Category 3 – fishing is permitted only at high tide at Roche Reef, Middle Reef, Simms Reef, Charles Point and Talc Head. Anchoring, disturbing the seabed and landing on the reef at low tide are NOT permitted for these areas.
   II. Category 4 – fishing is permitted in the area of the outstation on the west coast of the Cox Peninsula. Fishers must observe sacred site restricted areas.
   III. Category 5 – fishing and access to the beach is permitted at Grose Island, Beer Eetar Island, Turtle Island, Quail Island, Dum-in-mirre Island and residual coastline of the Cox Peninsula. Access to the private lease area is NOT permitted and fishers must observe sacred site restricted areas.
   IV. Category 6 – fishing, beach access and beach camping are permitted at Bare Sand Island and Indian Island. Fishers must observe sacred site restricted areas.

For those areas that do allow beach access and beach camping, access is from the high tide watermark to the crest of the secondary sand dune; or, if there is no secondary sand dune, to 50 metres inland. Visit the NLC website to download a map showing all access categories of the Kenbi Open Area at www.nlc.org.au/articles/cat/kenbimap.

These permitted access areas do not require individual commercial fishing licence holders or recreational fishers to get permission from land owners to access tidal waters over Aboriginal land.

The permitted access areas are shown in GREEN on the Sea Country Access Arrangements in the Northern Land Council Region map (the NLC Map).

Access Not Permitted Areas

No access is permitted, unless with a permit, for some areas. This is regardless of the 12 month waiver on the requirements for a permit. These are shown in RED on the NLC Map. Areas include:

A. Cape Scott, within the Daly River Port Keats Aboriginal Land Trust.
B. Upper Finniss River, within the Delissaville Wagait Larrakia Aboriginal Land Trust.
C. Closed sea areas adjoining and within 2 kilometres of the Aboriginal land.
   I. Milingimbi, Crocodile Island and Glyde River area, gazetted in 1981.
   II. Castlereagh Bay and Howard Island area, gazetted in 1988.

Access is not permitted in some areas within the Kenbi Open Area (Cox Peninsula), specifically

   I. Category 2 – fishing is NOT permitted in the tidal waters of Ida Bay, Knife Island and Crocodile Island.
   II. Category 5 –Access to the private lease area is NOT permitted and fishers must observe sacred site restricted areas.

Visit the NLC website to download a map showing all access categories of the Kenbi Open Area at www.nlc.org.au/articles/cat/kenbimap.

Access Requirements for Other Areas

For the rest of the Northern Territory, permission to access tidal waters over Aboriginal land will be mandatory in accordance with the requirements of the *Aboriginal Land Act* as of 1 January 2019. These areas are shown in YELLOW on the NLC Map. NLC issued a Public Notice on 15 November 2017 that waives the requirement for a permit to these areas for 12 months, until 31 December 2018.

Commercial Operators

Commercial operators include any person holding a licence issued by the Northern Territory Government under the *Fisheries (NT) Act 1988* for any of the commercially harvested fisheries and for guided fishing tours.

Commercial operators seeking to access tidal waters over Aboriginal land where an access agreement is not in place will be required to hold a license issued through the NLC as of 1 January 2019.

Permission is granted through a s19 Land Use Agreement (s19 LUA) under the *Aboriginal Land Rights (Northern Territory) Act*.

Please note that the time frame for an assessment of a s19 LUA expression of interest and the subsequent consultation with Traditional Owners can take a minimum of 6 months to progress. In these cases, the NLC makes no guarantee on time frames given that each interest will vary depending on the type of interest and the region.

More information about the process and to download a s19 LUA expression of interest form can be found on the NLC web site at www.nlc.org.au/articles/cat/s19-land-use-agreements.

Recreational Fishers

Recreational fishers include anyone who is a member of a fishing association, and the general public who fish for non-commercial purposes.

Anyone seeking to fish recreationally in tidal waters over Aboriginal land where an access agreement is not in place will be required to get permission from land owners through the NLC as of 1 January 2019.

Permission is granted through a permit. An application for a permit can be found on the NLC web site at www.nlc.org.au/articles/cat/work-transit-tourist-permits.

Please allow a minimum of 10 days to process applications.

Access Rules

- Access agreements, s19 LUAs and permits DO NOT ALLOW access to Aboriginal land unless specified on the agreement. This includes the land and beach. A permit is required to enter and remain on Aboriginal land.
- The Kenbi Open Area is the only case where beach access and beach camping are declared at some designated areas on the Cox Peninsula and do not require further permissions through a S19 LUA or permit (for more detail see: www.nlc.org.au/articles/cat/kenbimap).
- Where permissions are in place, fishers must observe restrictions to sacred site areas. All sacred sites are protected in accordance with the *Northern Territory Aboriginal Sacred Sites Act*. You must NOT fish within 100 metres of any sacred site, though some sacred sites may have more restrictive access. More information on sacred sites can be found on the Aboriginal Areas Protection Authority web site at www.aapant.org.au/sacred-sites.
- Where permissions are in place, all fishing sectors must abide with rules set out under the *NT Fisheries Act.* More information on fishing regulations can be found on the Northern Territory Government web site at www.nt.gov.au/marine.

Code of Conduct

The coastline of the Northern Territory mainland is 5,100km long and offshore islands contribute a further 2,100km of coastline. Around 84% or 6,050km of the coastline is owned by Traditional Aboriginal Owner groups. It remains one of the world's most intact marine environments, rich in natural resources, biodiversity and cultural heritage and supports a range of regional and local economies and livelihoods.

Aboriginal land is privately owned. In most coastal areas, Traditional Owners have established Ranger Groups that provide land and sea management services, including fisheries compliance.

Recognise the cultural and spiritual connection of Traditional Owners to their land and waters.

- Respect Aboriginal cultural activities and ceremonies and observe restricted access to temporarily closed areas.
- Do not land ashore without first obtaining an access permit from the NLC.
- Be courteous to other water users and those who belong to the local Aboriginal community.

Respect Sacred Sites

- Do not enter any part of the waters containing identified sacred sites.
- Take care when boating to avoid damaging sensitive areas.

Observe all fishing regulations.

- Report any suspicious fishing activity to the local Ranger group or Water Police. Fishwatch Hotline **1800 891 136**.
- Stay safe on the water and always observe rules and safety standards.

Respect our waters

- Do not dispose of any rubbish or release boat engine fluid into the water.
- Discard any fish remains in open waters.
- Respect the movement and protection of any species such as dugong and turtles.
- Do not anchor on seagrass or reef beds.
- Do not speed through dugong and turtle nesting and feeding grounds.

Respect the role of Aboriginal Rangers carrying out sea country management activities, including fisheries compliance

- Aboriginal Ranger Groups operate across most of the Northern Territory coast delivering a range of management services.
- Respect Rangers with authority as Fisheries Inspectors to carry out fisheries compliance measures in accordance with the *Fisheries Act.*
- Some sea country is managed as Indigenous Protected Areas (IPA).

Be CrocWise

Saltwater crocodiles inhabit estuaries and coastal waters in the Northern Territory. Be Croc Wise and do not swim in any water or approach the edge of waterways. Clean fish away from the water's edge; www.becrocwise.nt.gov.au.

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: [redacted]

Kane Bowden

Date: 29/5/18.

NTA 6

Phone: Scott 0438 026 873
Lorna: 0409 380 012
Email: scott@humbugfishing.com.au
Website: www.humbugfishing.com.au

Attention: Aboriginal Land Commissioner,

RE: DETRIMENT REVIEW - LOWER DALY LAND CLAIM NO. 68

I alongside my husband Scott Wauchope am an owner and operator of our family run fishing charter business Humbug Fishing Pty Ltd. (Humbug Fishing). Humbug Fishing is owned by Scott and Lorna Wauchope of 130 Barker Road Howard Springs. We have been in operation for 10 years.

We are a Tourism Accredited business and an ATAP accredited business.

Humbug Fishing is a fishing charter business than incorporates taking groups of people on guided fishing charters across the Top End Coast and to the Kimberley. We have a 65 foot Mothership and 2, 6.5 metre tender boats. We employ 3 contractors during fishing charter periods.

Humbug Fishing offers the following services:

i. Extended Live aboard Fishing Charters, accommodate on the Mothership and guided fishing from the tenders. (minimum of 8 people, min of 5 days away)
ii. Mothership only charters, where customers use our Mothership as their home base and use their own boats to fish from (minimum of 8 people, min of 5 days away)
iii. Daly River Mothership and guided fishing charters. (customers pay per night to stay on Mothership or we take groups of 4-8 people on 5 day guided fishing charters in this area)
iv. Shady Camp Mothership and guided fishing charters . (customers pay per night to stay on Mothership or we take groups of 4-8 people on 5 day guided fishing charters in this area)

A description of Humbug Fishing operations in the Daly River Region (Land Claim 68 area) is included below :

i. About 60% of business is the Daly River region - we anchor our Mothership in the mouth of the Daly beside Palmerston Island (within Land Claim 68) from late Feb through to late May early June depending on booking demand. We fish the Daly River and Daly River mouth (within the Land Claim 68 area), the surrounding coastline and out to the Peron Islands. We take about 6 groups of 8 people for 5 days during this period. 90% of clients are from interstate for this charter with 60% of our clients being repeat customers.
ii. Our Mothership 'accommodation only' guests choose to stay with us (on our Mothership anchored within Land Claim 68) so they can fish these areas (with 70% being local Darwin residents and 70% repeat clientele)
iii. During the months of March, April, May and part of June our Mothership is anchored in the area of Land Claim 68 and accommodates on average 6 people for 100 days and nights fishing that area.
iv. We pick our guided customers up in our tenders from Dundee Beach Boat Ramp or Woolianna Public Boat Ramp using Metro Mini Bus as our transport.
v. We encourage the Metro Mini Bus to call in to the different businesses along the way to help the local business in the area, ie Adelaide River Township, Sand Palms Hotel, Dundee Lodge.
vi. The main fishing in the area of Land Claim 68 and surrounds is in the run-off from February to June with the main fish being Barramundi, but all fish species is targeted.

The reason the area of Land Claim 68 and surrounds is important to Humbug Fishing is we represent remote fishing, and adventure and experience of the get away from everywhere. This area has some really beautiful scenery and when you see it for the first time is absolutely amazing, you have the river winding its way down and turning in to the sea, the coastal creeks and then the inland creeks which wind thru some beautiful wilderness and then you capture the wildlife – crocodiles, birds, pigs as well as the excellent fishing. The customers are blown away by it all and that is what Humbug Fishing represents.

In some areas we like to go ashore to show the customers some of the wildlife and or the bird habitats that are present that they cannot see from the boats.

If Humbug Fishing could not operate in Land Claim 68 particularly it would greatly affect our business as we anchor our Mothership in a sheltered area near Palmerston Island. If we could not access Land Claim 68, we would have nowhere to safely anchor our Mothership and therefore we could not provide our Daly River mothership fishing charters nor our Mothership only accommodation offering. This represents 60% of our business so the viability of our business would be impacted into the future.

Scott Wauchope has been fishing in Land Claim 68 as a professional fishing charter guide for 10 years now and is an expert in fishing in this area, if he could not fish here he would have to spend years to learn a new place. Going to a new place may not give the customers the same experience as we know we can let them experience here and consequently we would likely lose a significant portion of our existing repeat clientele which would affect the continued viability of our business.

For the rest of our charters about 30% represent new areas for us that we are learning, ie Timor Box, Darwin to Kimberley, Arnhem Land and Shady Camp area. These represent a 50/50% of Darwin Local people and Interstate. We are currently trying to grow and diversify this part of our business, however this will take time as we try to learn the area and attract new clients.

Scott and Lorna Wauchope
Humbug Fishing Pty Ltd
18/07/18

[redacted]