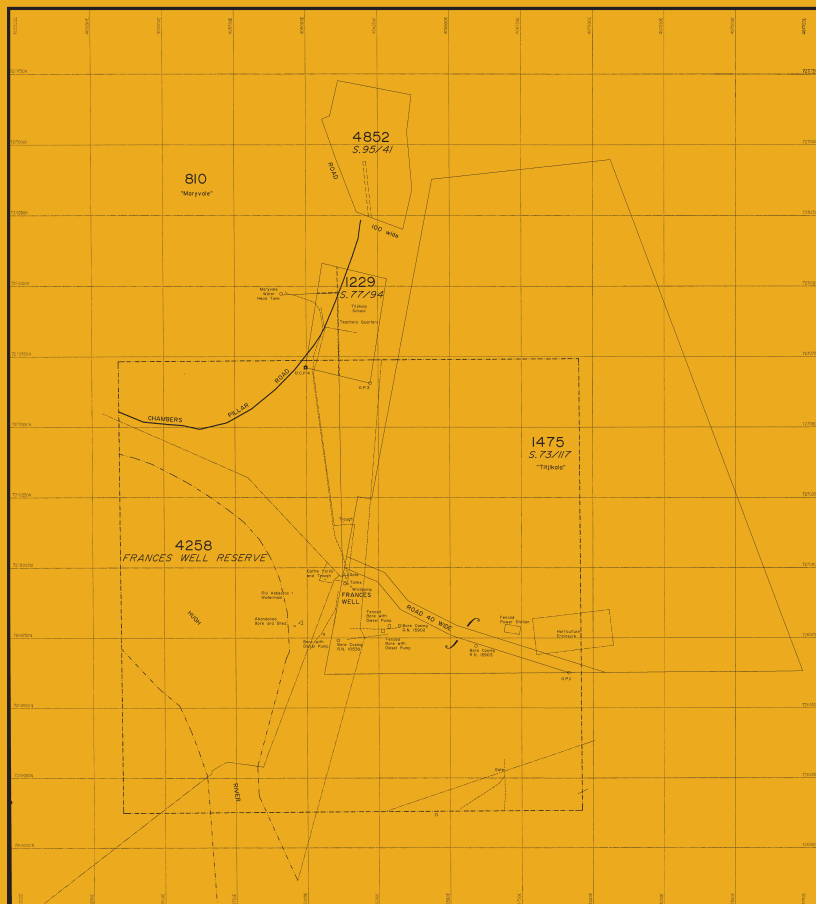




# *Aboriginal Land Rights (Northern Territory) Act 1976*

## Frances Well Land Claim No 64

Report of the Aboriginal Land Commissioner,  
Justice JR Mansfield AM,  
to the Minister for Indigenous Affairs  
and to the Administrator of the Northern Territory



*Aboriginal Land Rights (Northern Territory) Act 1976*

## **Frances Well Land Claim**

**No. 64**

Report No 73

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OFFICE OF THE ABORIGINAL LAND COMMISSIONER  
Level 5, Jacana House, 39-41 Woods Street, Darwin NT 0800

Telephone: (08) 8928 6458  
Facsimile: (02) 6204 9098

GPO Box 9932  
DARWIN NT 0801

16 June 2016

Senator the Hon Nigel Scullion  
Minister for Indigenous Affairs  
PO Box 6100  
Senate, Parliament House  
CANBERRA ACT 2600

Dear Minister,

**Frances Well Land Claim No 64**

In accordance with the provisions of section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, I present my report on this claim.

As required by the Act, I have sent a copy of this report to the Administrator of the Northern Territory.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Mansfield', with a long horizontal flourish extending to the right.

Justice John Mansfield  
Aboriginal Land Commissioner





OFFICE OF THE ABORIGINAL LAND COMMISSIONER  
Level 5, Jacana House, 39-41 Woods Street, Darwin NT 0800

Telephone: (08) 8928 6458  
Facsimile: (02) 6204 9098

GPO Box 9932  
DARWIN NT 0801

16 June 2016

The Hon John Hardy OAM  
Administrator of the Northern Territory  
Office of the Administrator  
The Esplanade  
DARWIN NT 0800

Your Honour,

**Frances Well Land Claim No 64**

In accordance with the provisions of section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, I present my report on this claim.

As required by the Act, I have sent a copy of this report to the Minister for Indigenous Affairs.

Yours sincerely

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Justice John Mansfield  
Aboriginal Land Commissioner



## **WARNING**

**This report contains the names of Aboriginal people who are deceased.**

**Speaking aloud the name of a deceased Aboriginal person may cause offence and distress to some Aboriginal people.**





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# 1. INTRODUCTION

1 This report is made to the Minister for Indigenous Affairs (the Minister) and to the Administrator of the Northern Territory (the Administrator) pursuant to s 50(1)(a)(ii) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (the Land Rights Act). The report relates to an inquiry conducted by the Aboriginal Land Commissioner into a traditional land claim application made pursuant to s 50(1)(a) of the Land Rights Act, the Frances Well Land Claim, being the claim numbered 64 in the records of the Office of the Aboriginal Land Commissioner.

2 Under s 50(1)(a) of the Land Rights Act, when an application is made to me by or on behalf of Aboriginal people claiming to have a traditional land claim to (relevantly) an eligible area of unalienated Crown land, I am to perform the following two functions:

- (i) to ascertain whether those Aboriginals who claim to have a traditional land claim or any other Aboriginals are the traditional Aboriginal owners of the land; and
- (ii) to report my findings to the Minister and to the Administrator of the Northern Territory, and where I find that there are Aboriginals who are the traditional Aboriginal owners of the land, to make recommendations to the Minister for the granting of the land or any part of the land in accordance with ss 11 and 12 of the Land Rights Act.

3 Section 50(3) of the Land Rights Act then provides as follows:

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;

- (b) the detriment to persons or communities including other Aboriginal groups that might result if the claim were acceded to either in whole or in part;
- (c) the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region; and
- (d) where the claim relates to alienated Crown land – the cost of acquiring the interests of persons (other than the Crown) in the land concerned.

- 4 In this report, I have set out the relevant details of the claim made on behalf of the claimants, the inquiry process, the evidence produced in support of the traditional land claim, and the detailed findings which have led to my findings and recommendations.
- 5 This report deals in turn with the three matters specified in s 50(3)(a)-(c) to the extent to which comment is required. As the claim does not relate to alienated Crown land, it is not required that I comment on the matter in s 50(3)(d) of the Land Rights Act.
- 6 The report then, as required, contains my findings and recommendations in respect of the Frances Well Land Claim in accordance with s 50(1)(a)(ii) of the Land Rights Act.
- 7 For the better understanding and convenience of reading this report, it is in my view helpful to include at this point a glossary of the Arrernte/Pertame Terms used in the report:

## Glossary

**altyerre (alchera or altjira)** – the long-past time when ancestral beings wandered the Earth and formed the landscape, commonly translated as ‘dreaming’ or ‘dream time’.

**imarnte** – the proper name given to the wider estate to which the claim area belongs, encompassing principally the *ulpulperne* altyerre but also the *irretye* altyerre, *kngwelye irtnwere* altyerre, and *tewe* altyerre.

**irretye** – an ancestor from the altyerre who took the form of an eaglehawk.

**irrkepe** – desert oak.

**Iterrkewarre (Idracowra)** – a knob-tailed gecko man ancestral being, now represented by Chambers Pillar, close to the claim area.

**kwertengwerle** – holders of ‘secondary’ rights to land, whose role is to assist in rituals associated with the relevant land and to act as ‘caretakers’ or ‘policemen’ for the relevant land.

**kngwelye irtnwere** – dingo ancestral being.

**pmerekertweye** – holders of ‘primary’ rights to land, who are said to be the principal ‘owners’ and principal ‘speakers for’ the relevant land.

**tewe** – bush turkey (also known as the Australian bustard or *ardeotis australis*).

**tywerrenge (tjurunga or churinga)** – a term most commonly used in relation to sacred objects, but also used to refer to sacred sites, country, or ceremonies, or traditional law generally. The fluidity of this term’s definition probably relates to the fact that classical Arrernte tradition sees ancestral beings as indistinguishable from their associated sacred objects, sites, country and ceremonies.

**ulpulperne** – bat ancestral being.

## 2. HISTORY OF THE APPLICATION AND THE INQUIRY

8 This land claim has had a protracted history.

9 On 4 November 1981, an application was received by the Aboriginal Land Commissioner in which the Central Land Council (CLC) on behalf of particular named Aboriginal people as the traditional owners submitted a traditional land claim in relation to an area of unalienated Crown land within the boundaries of the Maryvale Pastoral Lease No 682 and more specifically described as:

An area of unalienated Crown land marked on the plan of the Maryvale Pastoral Lease as part of the stock route, [the Southern Stock Route] and including the land shown as Bundooma, Alice Well and Frances Well, including Frances Well Reserve set aside for Aboriginal inhabitants ...

and as shown on the annexed map.

10 On 4 June 1984, the land claim was amended to add to the then claimed area so as to include additionally a further part of the Southern Stock Route running north from Frances Well within the boundaries of the Maryvale Pastoral Lease and the Deep Well Pastoral Lease and within the boundaries of the Owen Springs and Undoolya Pastoral Leases. The attached map shows the area of the Southern Stock Route running roughly north from the part of it previously claimed about a further 60 kilometres to Alice Springs.

11 On 5 December 1991, the land claim was again amended so that the then claim area included:

- (i) The claim area as originally claimed, but with a reduced section of the Southern Stock Route (it appears from the map attached that, for some reason, that part of the Southern Stock Route running south from Frances Well Reserve to the

southern boundary of the Maryvale Pastoral Lease was no longer included);

(ii) NT Portion 1229 and NT Portion 1475;

(iii) The area of unalienated Crown land comprising that section of the Southern Stock Route added to the claim area on 4 June 1984.

- 12 In 2002, the Northern Territory prepared a survey plan of the area of the land claim. It is numbered AS.2002/0001/4 and entitled N.T. Portion 4258 Frances Well – Land Claim, Maryvale Locality. It does not contain any plan of the area of the claim as part of the Southern Stock Route running north of the Maryvale Pastoral Lease Area. For reasons which are set out below, that is of no moment. As it is helpful to understand the layout of certain features in the area of Frances Well, an enlarged copy of the central part of that survey plan as well as the survey plan itself are appended to this report as Appendix 2 (the survey plan), and Appendix 3 (the enlargement of the central area).
- 13 On 16 June 2008, the then Aboriginal Land Commissioner, the Hon Justice Howard Olney, made a Decision on the validity of the application. The document entitled “Reasons for Decision on Preliminary Issues Relating to Jurisdiction” but excluding the Appendices (the Reasons) is Appendix 1 to this report. As appears in the Reasons, the amendments to the Land Rights Act after the initial and amended application, by the addition of subs 50(2C) in 1987, by the addition of subs 50(2D) in 1990, and by the addition of subs 67A(6) and subs 67A(9) in 2006, had significant consequences to the status of the application as expressed in the further amended application of 5 December 1991.
- 14 The then Aboriginal Land Commissioner decided that the application as then amended is a valid traditional land claim application under s 50(1)(a) of the Land Rights Act in so far as it relates to NT Portion 1229 and NT Portion 4258 (being the balance of the Frances Well Reserve as defined in “the 1914 Proclamation” after the excision from



that area of parts of NT Portions 1229 and 1475). There was no statutory impediment to the Aboriginal Land Commissioner exercising the functions under s 50(1)(a)(i) and (ii) of the Land Rights Act in respect of NT Portion 1229 and NT Portion 4258.

- 15 In the light of the Reasons, it is necessary to note only part of what was there recorded as the relevant acts relating to the land then under claim. That is because the Reasons, as noted, confined the land available to claim under the Land Rights Act as those two portions.
- 16 The Aboriginal claimants and the CLC accepted that the Reasons are a proper foundation for the claim to go forward. As is apparent from the above, that is how the claim has been presented, although the area of the claim as expressed in the 5 December 1991 amended claim has not formally been further amended.
- 17 The Reasons determined that the area of the Southern Stock Route was no longer available to be the subject of a report by the Aboriginal Land Commissioner under s 50(1)(a) by operation of s 50(2D) and s 67A(6) of the Land Rights Act, because to the extent of such a claim, it is taken to have been finally disposed of by the revocation of the stock route on 21 February 1996 over the area of Maryvale Station.
- 18 As also appears from the Reasons, Special Purpose Lease 456 granted to the Titjikala Social Club Inc on 11 April 1979 in perpetuity over NT Portion 1475. On 27 July 1987 there was the grant of an estate in fee simple to that body (with the surrender of Special Purpose Lease 456) over the land in NT Portion 1475. As it was not unalienated Crown land thereafter and was no longer intended to be included in the area subject to claim, it was not available to be the subject of an application under s 50(1)(a) of the Land Rights Act.

19 Consequently, as noted, the land now claimed, consists of two areas, namely:

- (i) NT Portion 1229 – the Titjikala school block; and
- (ii) NT Portion 4258 – the balance of the land comprising the Frances Well Reserve after the excision from that area of the overlapping parts of NT Portions 1229 and 1475.

I shall call those two areas the claim area for the balance of this report.

20 A hearing was scheduled for 17 July 2013 as part of the Aboriginal Land Commissioner’s inquiry into this land claim. Public notice of the claim hearing was given by publication of advertisements in the *Northern Territory News* on 15 June 2013, the *Centralian Advocate* on 18 June 2013, the *Tennant and District Times* on 21 June 2013, and the *Katherine Times* on 22 June 2013.

21 On 17 July 2013, the hearing was held in relation to this land claim at Titjikala. At that hearing, the CLC, acting on behalf of the Aboriginal people who claim to be the traditional Aboriginal owners of the land within the claim area, the Northern Territory, and the holders of the Maryvale pastoral lease, were each represented. Samuel Goldsworthy, one of the joint owners of the pastoral lease also attended.

22 At that hearing, the following evidence was received by me from the CLC:

- (i) “Submission on Title” document;
- (ii) Anthropological Report dated March 2008 by Ms Ase Ottosson (Anthropological Report);
- (iii) “Genealogy” document;
- (iv) “Sacred Site Register” document; and
- (v) Two maps of the claim area.

- 23 Subsequently, further evidence detailed at [149]-[153] below was received without objection as relevant to the question of detriment.
- 24 There was no objection to the receipt of any of this evidence and no application on behalf of either the Attorney-General for the Northern Territory (hereafter I shall simply refer to the Northern Territory) or Mr Goldsworthy to cross-examine any person responsible for the contents of any of these documents. Neither the Northern Territory nor Mr Goldsworthy gave any further evidence on those matters. Consequently, the material contained in the above evidence was unchallenged.
- 25 Following the formal hearing, I conducted a view of a number of significant sites on and around the claim area, accompanied by the legal representatives for those represented and a number of the claimants, and Mr Goldsworthy.
- 26 At the hearing, the representatives for the Northern Territory and Mr Goldsworthy made it clear that their clients did not dispute that the claimants were the traditional Aboriginal owners of the land within the claim area. Indeed, counsel for the Northern Territory agreed that the Anthropological Report showed that the claimants are the traditional Aboriginal owners of the claim area. In explicitly adopting the definition in s 3 of the Land Rights Act, the Northern Territory accepted that the claimants are a local descent group of Aboriginal people who have common spiritual affiliations to sites on the claim area, and that those affiliations place the claim group under a primary spiritual responsibility for those sites; and that they are entitled by Aboriginal traditions to forage as of right over the claim area.

### **3. BRIEF HISTORY OF THE GENERAL AREA**

- 27 In 1825, the British settlers claimed sovereignty over the claim area as part of a much wider area. From that time, the claim area was part of the colony of New South Wales, although there was no European presence there.
- 28 A number of early European explorers travelled close to the claim area. John McDouall Stuart crossed the Finke River in April 1860, a river which runs very close to the south of the claim area, and visited Chambers Pillar, just south of the claim area. He noted the presence of Aboriginal camps along the Finke River, and at Chambers Pillar. From Chambers Pillar, Stuart travelled west of the claim area to the Hugh River, where again he sighted a “large number” of Aboriginal camps. Stuart travelled close to the claim area several more times on subsequent expeditions over the next few years. On each occasion he recorded further encounters and sightings of Aboriginal people inhabiting the area. On one occasion, three armed Aboriginal men threatened the expedition. Stuart’s party fired a warning shot from a gun, and the Aboriginal men fled. Ms Ottosson notes in the Anthropological Report at 19 that this incident occurred upon land that the claimants identify as part of their traditional “estate”, the “Imarnte estate”.
- 29 In 1863, Letters Patent were issued that had the effect of bringing the claim area (along with the rest of what is now known as the Northern Territory) within the colony of South Australia. The South Australian Government tried to encourage grazing in central Australia, but settlers did not begin to arrive in central Australia until the Overland Telegraph line was completed in 1872. The telegraph line went through the claim area. Telegraph stations served as “white outposts” in central Australia, and, as the early pastoralists made their presence felt, the stations also

became “lures for Aboriginal people driven from their territories by pastoral expansion”: Anthropological Report at 20.

- 30 By 1877, the claim area and surrounding country had been taken up by pastoralists. The pastoral lease now known as Maryvale was at that time called Mount Burrell. Three pastoralists unsuccessfully tried to run sheep, cattle and horses there. TGH Strehlow and other anthropologists spoke to those who remembered or had heard about these early days, and recorded that there was often violence between the original Mount Burrell pastoralists and the local Aboriginal people. The local people resented the intrusion of the pastoralists, and speared their cattle. In retaliation, the pastoralists carried out shootings in the Aboriginal camps. Other oral reports suggest that Aboriginal women were kidnapped by early white settlers.
- 31 In 1885, a new pastoralist took over Mount Burrell and bred horses there. But Mount Burrell was again abandoned during a severe drought that lasted from 1889 to 1894. By this time, it is clear that the numbers of local Aboriginal population had fallen substantially. MC Hartwig, an academic who wrote extensively on the history of white settlement of this area, argues that one cause of the decline in the Aboriginal population was that pastoral activities had led to a destruction of Aboriginal vegetable foods and game. The 1894 “Horn Scientific Expedition to Central Australia” noted that venereal diseases were “extremely rife” amongst the local Aboriginal population, “undoubtedly largely owing to the infection by the whites.” It was also around this time that a substantial number of local Aboriginals began working and living at Mount Burrell Station and neighbouring stations.
- 32 In the mid-1890s, the Hayes family took up the Mount Burrell Pastoral Lease, and renamed it Maryvale. By 1910, the Hayes family, still based at Maryvale, was the biggest pastoral leaseholder in Central Australia. Hayes’ success continued until a drought over the years 1927-1930, when

Maryvale was closed and sold not long after to a Cameron Stott. Through the Hayes' tenure, members of the Hayes family, and also of members of the Breaden family (who worked at Maryvale/Mount Burrell), fathered Aboriginal children. At some stage at around this time, Frances Well was sunk. As noted below, Frances Well was proclaimed a Water Conservation Reserve in 1914.

- 33 In 1929, a railway line was built through central Australia. It ran through the Maryvale Pastoral Lease area. It was also at around this time that John Bleakley, the Chief Protector of Aborigines for Queensland, was appointed by the Federal Government to inquire into the status and condition of Australian Aborigines. In his report, Bleakley noted that at this time the pastoral industry in Australia was "absolutely dependent on Aboriginal labour, both domestic and in the field": Anthropological Report at 24.
- 34 Since World War II, there has been a succession of owners of the Maryvale Pastoral Lease, leading up to the present day lessee, Mr Goldsworthy. In the 1970s, in the wake of the decision to provide for equal wages for Aboriginal station workers, most Aboriginal station workers were laid off. Today, the local Aboriginal people live in the community of Titjikala, which has about 250 residents and lies just outside the claim area. Another 80 local Aboriginal people reside at nearby outstations Walkabout Bore, Mount Peachy, and Oak Valley, which are all on land entrusted to the Mpwelarre Aboriginal Land Trust, to the north-west of the claim area, and John Holland Bore, which is on land entrusted to the Pwerte Marnte Marnte Aboriginal Corporation, to the north-west of the claim area, and Alice Well, which is on land entrusted to the Inarnme Aboriginal Land Trust, to the south of the claim area.
- 35 Claimants refer to the claim area itself as Rtetyikale or Tepethetheke. Rtetyikale is a name derived from two nearby hills, while Tepethetheke refers to a nearby sacred site.

## 4. THE CLAIM AREA

- 36 It is now uncontentious that the claim area is unalienated Crown land within the meaning of s 3(1) the Land Rights Act and is thus available to be claimed under s 50(1). There are certain roads within the boundaries of the claim area, which are addressed at [175]-[181] below.
- 37 It is useful to give a brief account of the history of the status of the claim area. It is slightly abridged from that in the Reasons, as the claim area is now more limited.
- 38 On 12 September 1914, the land now comprising NT Portion 4258, and some of the land comprising NT Portion 1229 was proclaimed in the Commonwealth Gazette as Frances Well Reserve, a Water Conservation Reserve pursuant to the *Water Conservation Act 1886* (SA), and as in force in the Northern Territory. This is the “1914 Proclamation” referred to above. It was then an area of one square mile, with Frances Well in its centre and each side of the square being 80 chains long.
- 39 On 15 March 1919, the Crown granted to members of the Hayes family of Alice Springs Miscellaneous Lease (Water) No 51 over Frances Well Reserve for a term of 21 years commencing on 1 January 1919. The purpose of the lease was expressed as “supplying water to the public”. The Hayes family was, at the time, the lessee of Pastoral Lease 1720, surrounding but not including Frances Well Reserve. That lease was not renewed or extended.
- 40 On 4 February 1932, Pastoral Lease 119 was granted to the Hayes family, for a term from 25 May 1927 to 30 June 1965, in exchange for its then existing pastoral leases, including PL 1720.
- 41 On 17 August 1933, a stock route was declared in the Commonwealth Gazette pursuant to s 113 of the *Crown Lands Ordinance* (NT). Part of the stock route was expressed thus:

“thence ... generally in a south-easterly direction for about 190 miles via Deep Well, Frances Well, Alice Well, Junction Well ...”

- 42 On 14 November 1963, PL 119 is surrendered in exchange for a new Pastoral Lease 682 for a term of 50 years from 1 July 1963. The leased land is NT Portion 810. It is not necessary to recount its area save to note that it surrounded Frances Well Reserve.
- 43 On 29 May 1975, the Surveyor-General approved the survey of a new portion of land, to be known as NT Portion 1475. The newly-surveyed parcel encroached upon part of the Frances Well Reserve. Shortly afterwards, on 30 March 1976, a proclamation was made in the Commonwealth Gazette revoking the reservation of Frances Well Reserve as a Water Conservation Reserve, it being “desirable that the said land be used for the benefit of the Aboriginal inhabitants of the Northern Territory”. Apart from that proclamation, there is no evidence that the former Frances Well Reserve was dedicated to any particular purpose after this time.
- 44 On 9 December 1977, the Surveyor-General approved the survey of a further new portion of land, to be known as NT Portion 1229. Part of this newly-surveyed parcel also encroached upon part of the Frances Well Reserve. At an unknown subsequent date, NT Portion 1229 was dedicated for education purposes.
- 45 On 11 April 1979 and 27 July 1987, the grants of NT Portion 1475 to Titjikala Social Club Inc, as noted in [18] above took place.
- 46 In 1992, the part of the original Frances Well Reserve remaining after the surveying of NT Portions 1475 and 1229 was designated NT Portion 4258.
- 47 On 14 May 1993, Perpetual Pastoral Lease 01063 (PPL 01063) was granted over NT Portion 810, with effect from 1 April 1993, excluding from its area NT Portions



1229 and 1475 and the Frances Well Reserve. NT Portion 810 is known now as Maryvale Station.

- 48 Finally, on 21 February 1996, a revocation of the 1933 declaration of a stock route was published in the Northern Territory Government Gazette. There is some ambiguity as to the extent of the stock route to which the revocation applied, but the Reasons of 16 June 2008 indicated that this revocation effectively revoked the declaration of stock route at least insofar as it affected the land within NT Portions 1229 and 4258 and on Maryvale Station.
- 49 As noted above, that left the claim area available as unalienated Crown land.
- 50 The claim area is land within the Maryvale PPL 01063 of some 3244 square kilometres over NT Portion 810. The joint owners of the leased area are Samuel Les Goldsworthy and Heather Jessie Goldsworthy. The claim area is almost in the centre of the leased area. It is specifically excluded from the leased area under the terms of the lease.
- 51 The proximity of relationship of the claim area to the Maryvale Pastoral Lease has significance. The north, west, south and south-easterly boundaries of the remaining part of Frances Well Reserve adjoin the Maryvale Pastoral Lease. To the immediate east is the Titjikala Social Club Inc land.
- 52 In addition to the Maryvale Pastoral Lease area, NT Portion 4852 is held in fee simple by the Goldsworthys. It is to the north of the claim area (in particular Lot 1229) but not contiguous with it. It is an area of about 11 hectares.
- 53 The Maryvale Pastoral Lease over NT Portion 810 has the public Chambers Pillar/Maryvale Access Road running through it. It also surrounds NT Portions 1475 (the Titjikala Social Club Land) and NT Portion 4852 and NT Portion 1229, together with the Frances Well Reserve (NT Portion 4258 excluding NT Portion 1475).

54 NT Portion 1229 is a smaller roughly rectangular piece of land running across and north from the northern boundary of the Frances Well Reserve. A little from the north-western corner of the Frances Well Reserve is the Maryvale Homestead. It appears to be on the freehold land NT Portion 4852 and is a little north of Frances Well Reserve and NT Portion 1229. It is not contiguous with it. Those areas are shown on the survey plans which are Appendices 2 and 3 to this report.

## 5. THE STATUTORY REQUIREMENTS OF TRADITIONAL OWNERSHIP

55 Section 3(1) of the Land Rights Act provides the definition of “traditional Aboriginal owners”:

“traditional Aboriginal owners”, in relation to land, means a local descent group of Aboriginals who:

- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
- (b) are entitled by Aboriginal tradition to forage as of right over that land.

56 “Aboriginal tradition” is further defined by s 3(1) as:

the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.

57 The definition of “traditional Aboriginal owners” has been examined in depth in numerous past land claims and associated litigation.

58 The authoritative exposition of its meaning is generally considered to be that given in *Northern Land Council v Olney* (1992) 105 ALR 539 (*NLC v Olney*) by Northrop, Hill and O’Loughlin JJ in the Full Court of the Federal Court: see, eg, *Myoung v Northern Land Council* [2006] FCA 1130 per Mansfield J; *Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory of Australia* [2004] FCA 472 at [47] per Mansfield J.

59 Their Honours in *NLC v Olney* focussed upon the term “local descent group”. Their Honours took the statement of Olney J as Aboriginal Land Commissioner at [161] in the *Report on the Finnis River Land Claim*, 1981 as to

the meaning of “local descent group” as their starting point: *NLC v Olney*, [60]. That statement was as follows:

[A] local descent group is a collection of people related by some principle of descent, possessing ties to land who may be recruited ... on a principle of descent deemed relevant by the claimants.

60 Their Honours endorsed that statement, but added the following two qualifications at [64]-[66]:

[First,] ... although the underlying principle of recruitment to a group must be some form of descent, that need not be seen in a biological sense, and persons not claiming biological affiliation may be adopted into and become part of the group. Thus the principle of descent should be interpreted not solely in a biological sense. Second, the words “deemed to be relevant by the claimants” [used by Olney J in the above statement] may be misinterpreted by some. What has to be found is the existence of a group, recruited by descent, possessing ties to the land and otherwise satisfying the criteria set out in the definition of “traditional Aboriginal owners”. The particular principle of descent in operation will depend upon the circumstances of the particular case. It may be that, in a particular area, the Aboriginal people of that area have adopted the principle of matrilineal descent; in another area, there may have been adopted some other principle of descent. The point is that the principle of descent will be one that is recognised as applying in respect of the particular group. Further, there is no reason why the particular principle of descent traditionally operating may not change over time. That is what Toohey J meant when his Honour used the words:

... a principle of descent deemed relevant by the claimants.

It should not be thought that the words are to be taken to suggest that the governing descent principle in operation in a particular group could be changed by them at whim so as to fit the circumstances of a land claim.

In determining whether on the facts there exists such a group it would be no disqualification that the claimants are members of a linguistic group, provided membership of that group is recruited on a principle of descent and the group otherwise qualified as having the necessary spiritual

affiliation to the land and was under the necessary primary responsibility for the site and the land.

- 61 Apart from “local descent group”, the other important parts of the definition of traditional Aboriginal ownership are the references to “common spiritual affiliations” and “primary spiritual responsibility” in paragraph (a).
- 62 Their Honours in *NLC v Olney* said about “common spiritual affiliations” at [82]:

The use of the plural ... suggests that the common spiritual affiliations have to be possessed by the individuals who comprise the group, rather than, if there be a difference, by the group as a group. ... Thus if a group of persons having an appropriate genealogy is found to exist, but some members of the group, whether because of age or otherwise, e.g. infants, lack the requisite spiritual affiliation, those persons will be excluded from the group. If only the group itself were looked at, then the fact that the group as a whole was recognised as having the appropriate spiritual affiliation would not disqualify individual members of that group lacking the necessary spiritual affiliation from belonging to the group.

- 63 That statement should be read in light of the comments of Gray J (as he then was) as Aboriginal Land Commissioner in the *Report on the Carpentaria Downs/Balbirini Land Claim* (1999). After referring to the above passage in *NLC v Olney*, Gray J noted at [4.3.1]-[4.3.3]:

This [passage of the judgment in *NLC v Olney*] does not appear to have been intended to add age as an element of the statutory definition of ‘traditional Aboriginal owners’. Above all, the court recognised ... that the task of the Aboriginal Land Commissioner ‘must vary depending upon the way the evidence is presented’.

The present claim was presented on the basis that the acquisition of spiritual affiliations is a matter of descent. If a person acquires them by birth or adoption, those spiritual affiliations will give rise to rights that may be invoked at any time during the life of that person. The existence of the affiliations is not dependent upon any particular age or any particular level of knowledge. ...

Knowledge in Northern Territory Aboriginal cultures is recognised widely as a commodity which is imparted progressively to people who possess the requisite affiliations

and have attained sufficient maturity and responsibility to be trusted with a particular level of knowledge. ...

If there existed some minimum standard of knowledge as a requirement of being a traditional Aboriginal owner, some deserving claimants would be excluded in the present claim. ... There are ... examples of claimants who have not had opportunities to learn, or whose opportunities have been limited, but whose rights are not questioned and who desire to activate them. The exclusion of such persons is unlikely to have been intended by the framers of what is clearly remedial legislation.

- 64 So far as “primary spiritual responsibility” is concerned, Gray J said at [4.8.1] of the same report that a “primary spiritual responsibility”, at least in the context of the claim in question, is a spiritual responsibility that is “ahead of that of any other people who hold the same dreaming.” His Honour goes on to note that the exercise of spiritual responsibility for sites and land “involves ceremonial activity related to those sites and that land.” It should be noted that Gray J’s definition of “primary spiritual responsibility” may have to be refined to accommodate findings reached in some other land claim reports. For instance, in the *Report on the North-West Simpson Desert Land Claim*, 1991, Olney J as Aboriginal Land Commissioner found at [6.8.6] in relation to one part of the claimed land that there were two local descent groups that shared “primary spiritual responsibility” for the relevant land. The description given by Gray J does not expressly admit of the possibility of two local descent groups sharing primary spiritual responsibility, but that is probably because the issue did not there arise. Gray J’s definition, had it been adopted by Olney J, would have required Olney J to determine which of the local estate groups had a spiritual responsibility that was “ahead of” that of the other group.
- 65 It is not necessary to address this possible inconsistency for the purposes of this land claim. The evidence is quite straightforward on the topic in this matter.

## 6. THE LOCAL DESCENT GROUP

- 66 The claim is brought on behalf of particular Aboriginal people belonging to an over-arching language-identified group known as Pertame or Southern Arrernte. Ottosson says these two terms are used interchangeably by the claimants, and the language group is regarded as a sub-group of the Arrernte people. The claimants assert that they are part of three local descent groups within that language group that satisfy the statutory definition in respect of the claimed land. There is no dispute about that.
- 67 Ottosson says that the claimants' present-day model of descent is essentially one of cognatic descent – that is, one can claim membership of an estate group (that is, a land-holding group) and thus rights to country by tracing one's descent from particular ancestors through a combination of male and female links, rather than only male links (patrilineal descent), or only female links (matrilineal descent): 35. However, it is cognatic descent with, in Ottosson's words, "a very strong patrilineal bias, which gives an unquestioned privileged status to those who trace descent in the male line": 35. Membership of an estate group can also be related to one's totemic conception place.
- 68 On the evidence, therefore, there are four different descent paths through which rights can be inherited, via each grandparent (i.e. maternal grandfather, maternal grandmother, paternal grandfather, paternal grandmother).
- 69 Primary rights in an estate country are generally attained by patrilineal descent (i.e. one's paternal grandfather) or by reference to one's father's conception country. Such primary rights holders are known as "pmerekertweye".
- 70 A pmerekertweye has a "right to reside [on the estate country], the right to speak for and make decision[s] about that country, and to use all the resources of [the] land": Anthropological Report at 34. In short, pmerekertweye are

regarded as the primary “owner” or “boss” of the relevant country: Anthropological Report at 40. Ottosson writes that a patrilineal connection to land entitles the holder of that connection to “more or less automatic right[s]” in respect of the land and “cannot really be questioned”: Anthropological Report at 34.

- 71 Secondary rights are generally attained by matrification, either by reference to one’s maternal grandfather’s country, or by reference to one’s mother’s conception country. Secondary rights holders are called kwertengwerle. Kwertengwerle have rights and duties as caretakers of the land and ritual assistants to the relevant pmerekertweye and are regarded as “custodians” of the sacred sites on the relevant country: Anthropological Report at 40. Kwertengwerle will also have “strong foraging and residence rights” in the relevant country: Anthropological Report at 35.
- 72 A vaguer set of rights to country, that might be referred to as tertiary rights, are attained by reference to one’s grandmother’s country or the site of her conception (either maternal or paternal grandmother). Such rights holders are also called kwertengwerle, but the rights and duties such status affords and accords are not as clear-cut as they are for matrifilial kwertengwerle. Ottosson notes that there is a more prominent element of choice in the exercise of these tertiary rights – “the importance attributed to these two descent paths [i.e. maternal and paternal grandmother] ... will depend on a person’s aspirations in relation to those places, his or her history of residence, the degree of active engagement in the affairs of this country, and the emotional attachment to these relationships”: Anthropological Report at 35.
- 73 Where children have non-Aboriginal fathers, those children may often claim a patrifilial connection through their maternal grandfather – that is, they will take primary rights to their maternal grandfather’s country, rather than secondary rights.



- 74 An alternative means of obtaining rights in land in Arrernte culture is by reference to one's own conception site. One's conception site is "where an ancestral being, mediated by its tywerrenge, enters a married woman's body and causes her pregnancy": Anthropological Report at 37.
- 75 In classical times, it was normal for one's descent and conception affiliations to align – that is, one's parents' country would also be one's own conception country. Now, one's conception site is more likely to be different from one's patrilineal affiliations. Where one is connected to land only by conception site, "a person cannot make a strong claim to country", says Ottosson at Anthropological Report 38-39. "Continued residence, matrilineal connections, belonging to the "right" sub-section, local conception of one's own children, or/and incorporation into the ritual affairs of an estate by pmerekertweye, will be required to consolidate a conception affiliation."

## **Three Groups**

- 76 The claim was put on the basis that there are three interconnected local descent groups, who share common spiritual affiliations and a primary spiritual responsibility for the claim area, as well as a right to forage over it. The groups are: the descendants of Paddy Ntjalka (Group 1); the descendants of Arreyeke (Group 2); and the descendants of Yewlte (Group 3). The pmerekertweye for the claim area are drawn from each of the groups. The main kwertengwerle for the claim area have been recruited from a sub-group of claimants within Group 2, the descendants of Daisy Braedon and her son Ted Johnson.

## **Group 1: Descendants of Paddy Ntjalka**

- 77 Paddy Ntjalka was the son, son-in-law, or nephew of Hetyirrkaye, or “Cranky Jack”, a principal informant of the anthropologist TGH Strehlow and, inter alia, a kwertengwerle for the large Imarnte estate country, of which the claim area forms a part. Strehlow recorded that Ntjalka’s conception site was Ilaye, a sacred site on the Iterrkewarre line, 20km north-west of the claim area, in the heart of Imarnte country.
- 78 Ntjalka married Maggie Karne (Untjiamba), whose conception site was Urremwerne, on the Deep Well pastoral lease, also part of the Imarnte estate. Karne had a daughter and son from a previous relationship. The identity and whereabouts of the descendants of the son are unknown. However, the daughter, Alice Costello, was adopted by Ntjalka. The descendants of Costello form part of the Paddy Ntjalka group claimants. Costello’s grandson, Joe Rawson, is according to Ottosson a leading man in Titjikala community affairs.
- 79 Ntjalka and Karne had five sons and a daughter together, each of whom was conceived and born on or in the immediate vicinity of the claim area: Big Allen Ltyelyarre, Frank ‘Ilkie’ Ingkwerrperre (Ltaperenye), Alfie Irtekarre, Dick Tjampita Irretye, Tjupi Irretye (Morton) and Queenie Pepperill. Several of the brothers worked with TGH Strehlow in the 1950s and 1960s, and Strehlow has documented their spiritual affiliations with the claim area.
- 80 Most of Ntjalka’s children had their own children who were also conceived, born and brought up in the claim area.
- 81 Big Allen had two daughters with a woman, Yangi, who was born just north of the claim area. They are Hazel Ungwanaka and Emily Schilling, two of the most senior living claimants. Hazel and Emily both had children who were conceived and born in the claim area, including

Emily's only surviving child, Angelina, and five of Hazel's six children. Two of Hazel's children, Timothy and Christopher, are kwertengwerle for the claim area, as the claim area is their mother's father's country.

- 82 Frank 'Ilkie' Ingkwerrpere (Njtalka's second son) was regarded as the "ritual headman among Paddy Njtalka's sons": Anthropological Report at 62. His own son, Ashley Smith, took over in that role. Ashley is now deceased, but he is survived by his son by his first wife, Jonathan, and two daughters by his second wife. A third daughter by a third wife is deceased.
- 83 Alfie Irtekarre was conceived at Tepethetheke. He had a son, Roy Braedon, whose three children live in Adelaide.
- 84 Dick Tjampita Irretye was also conceived at Tepethetheke. He had no children.
- 85 Tjupi Irretye was conceived in the claim area. His daughter Daisy Campbell is, along with Hazel Ungwanaka and Emily Schilling, the most senior claimant from Group 1, with a great knowledge of spiritual matters in relation to the claim area. Her daughter Margaret was conceived and born at Titjikala, and resides there. Margaret has several children and foster children of her own. Margaret's children's father was Geoffrey Pepperill, the grandson of Queenie Pepperill. Margaret is also active in the claim group's religious matters.
- 86 Tjupi Irretye's other daughter Janet is deceased, but is survived by two children, Susan Amungara and Rodney Campbell. Susan resides with her own family at Titjikala, while Rodney resides with his family in Finke. Tjupi also had a son, Aaron, also deceased, with a second wife. Aaron's children reside at Titjikala.
- 87 Queenie Pepperill's oldest son Kevin was born on Maryvale Station. He is a knowledgeable ritual man for his father's country, which is not part of the claim area, but he also has some knowledge of his mother's father's country, the claim area. Queenie's daughter Renie, her

children, and other children and grandchildren of Queenie, are active members of the claim group.

## **Group 2: Descendants of Arreyeke (Braedon/Johnson)**

- 88 Arreyeke was a ritual headman in the 1890s for the Imarnte estate country. His ritual performances were witnessed by the early ethnographers Spencer and Gillen. Arreyeke is regarded by subsequent generations of local senior men as an incarnation of an ancestral being of the same name. Arreyeke's sons and grandsons have continued to be ritual headmen up until about the 1980s.
- 89 Arreyeke had two sons, Punch Braedon and Kentyeye Braedon Bob. TGH Strehlow recorded them both as ritual headmen for the Imarnte estate country in the 1930s. Arreyeke also had a daughter, Rosie Braedon.
- 90 Punch Braedon had no children. Kentyeye Braedon Bob had one daughter, Nora, and three sons, Toby, George and Lindsay. Toby was a leading ritual man for the ritual sites associated with the "irretye dreaming" line (discussed below). He had four daughters and two sons of whom only one survives: his son Eric. Ottosson writes that Eric Braedon is regarded as the main spokesman for the descendants of Arreyeke today: Anthropological Report at 66. Toby Braedon has a number of grandchildren, many of whom reside in Alice Springs, but a number of whom "affiliate strongly with" the claim area: Anthropological Report at 66. Mary Williams is one granddaughter of Toby's who is an active member of the claim group.
- 91 George Braedon was conceived near the claim area and is buried at Titjikala cemetery. He had a daughter, Edna, now deceased. Edna's three daughters reside in Alice Springs.

- 92 Lindsay Braedon was conceived near the claim area. He had a number of children including a son, Sambo, and a daughter, Daisy. Three of Daisy's four children live at Titjikala. The fourth lives on a nearby outstation.
- 93 The male descendants of Rosie Braedon (Arreyeke's daughter) and her husband Charlie Johnson have acted as primary kwertengwerle for the claim area for several generations. Rosie and Charlie's oldest son Ted was a kwertengwerle for sites in the claim area, as was Ted's own son, Edward, both now deceased. Edward had no children. Ted's youngest son, Peter, is a present kwertengwerle for the claim area and a Titjikala resident.

### **Group 3: Descendants of Yewlte**

- 94 Yewlte was the daughter of Malbungka III, an apical ancestor for the broad Imarnte estate country of which the claim area forms a part. Anthropologist Ray Wood, in his 1986 report for the Hugh River Stock Route Land Claim (a land claim relating to a nearby area of land that was eventually resolved without a report from the Commissioner being required, by having land included in Schedule 1 of the Land Rights Act) refers to Malbungka III as the brother of Arreyeke, but it is unclear whether they were actually biological brothers: Anthropological Report at 71. Yewlte had four children: Jack Kenny and Dick Taylor, with two different non-Aboriginal men, and Sandy White and Minnie with an Aboriginal man, Charlie Apme, a Central Arrernte man who also acted as step-father to Jack and Dick.
- 95 Jack and Dick were conceived on Imarnte estate country, and have lived their lives in the claim area. Despite the fact that the claim area is their mother's father's country, they became recognised as pmerekertweye for the claim area.

- 96 Dick had one son, Robert, now deceased, with his first wife, and four daughters and five sons with his second wife. Robert's children live at Alice Springs, but his sons Dustin and John (Chucky) have been involved in the management of their estate country.
- 97 Of Dick's other children, his son Harry is the only fully-initiated man and resides at a nearby outstation. Harry has three surviving children, one of whom resides at Titjikala, and another at Harry's outstation. Dick's oldest daughter Mary had six children. Those children now reside variously at a nearby outstation, Alice Springs, and Darwin. Dick's second son, William, was born in the Finke area and his children were born and reside in Darwin. Dick's children, Myra, Peter and Mavis were all born at Oodnadatta, South Australia. As adults, they returned to Alice Springs and their children reside there, at a nearby outstation, or in Adelaide. Myra is an active participant in meetings regarding her father's country.
- 98 Jack Kenny had a number of children with his wife Edie. His oldest son, Casey, is now the main ritual authority for this group. He is a fully-initiated man and was instructed in Imarnte ritual by Jack and by George and Toby Braedon. Casey has five surviving children, two sons and three daughters, from his first marriage to Dorothy Braedon. Dorothy was the oldest daughter of Toby Braedon, so their children have both patrilineal and matrilineal connections to the claim area. Of those children, Casey's son, Don, is a fully-initiated man and Casey's chosen successor as ritual headman. He mainly resides in Alice Springs. Casey's other children reside variously in Alice Springs, Tennant Creek, and the Anangu Pitjantjatjara Yankunytjatjara (APY) lands, South Australia. Casey has five more children from his second marriage to Queenie Bloomfield. They mainly reside in the Ernabella area and the APY lands.
- 99 Jack and Edie Kenny's other children include Dennis, Julie, Mary, Margaret, Peter and Syd, who all reside on

various nearby outstations, and a number of further children who now reside in Alice Springs. All Jack's children are active in matters regarding his country.

## Conclusion

- 100 As noted above, the claimants appear to have expressed their claim as brought by three 'local descent groups'. However, it does not appear from the Anthropological Report that there is any significant distinction between those groups other than that each group has a different apical ancestor.
- 101 For the purpose of the Land Rights Act, in my view it is appropriate to regard the three family groups as a single local descent group.
- 102 There is no requirement that a local descent group must all be able to trace their descent to a single apical ancestor. There may be a number of apical ancestors in the one local descent group. That much was said by Gray J as Aboriginal Land Commissioner in the *Report on the Jawoyn (Gimbat Area) Land Claim and Alligator Rivers Area III (Gimbat Resumption-Waterfall Creek) (No. 2) Repeat Land Claim* (1995) at [3.4.3] and accords with common sense. It also fits with the evidence in this matter.
- 103 The evidence shows the three family groups as not separate local descent groups. They share the concept of "primary spiritual responsibility" proffered by Gray J as Aboriginal Land Commissioner in the *Report on the Carpentaria Downs/Balbirini Land Claim*, 1999 discussed above. There is no call for an inquiry into which of the three family groups' spiritual responsibility for the claimed land can be characterised as the *primary* responsibility. That exercise might lead to only one family group being found to be the traditional Aboriginal owners of the claim area, contrary to the evidence and to the position of all the parties to this land claim. More

pertinently, on the evidence, such an inquiry would demonstrate the conclusion that the three family groups are in fact one local descent group and together they share the primary spiritual responsibility for the claim area.

104 I therefore conclude that the three family groups to which I have referred above together answer the description of a local descent group for the purposes of the definition of “traditional Aboriginal owners” in the Land Rights Act. The three family groups are local in the sense that they are associated with the claim area through birth, work and residence. The groups are made up of Aboriginal people who satisfy the criteria of descent accepted by the claimants for the purposes of their system of land tenure.



## **7. COMMON SPIRITUAL AFFILIATIONS, PRIMARY SPIRITUAL RESPONSIBILITY AND RIGHTS TO FORAGE**

- 105 According to classical and current Arrernte tradition, Arrernte country is divided into fairly well-defined totemic areas known as pmere in Arrernte, and “estates” in the anthropological literature. Each “estate country” is associated with particular totemic ancestors who created the landscape, instituted forms of social order, established the existing social groups, and left supernatural powers that people can “tap”.
- 106 Human beings are understood as descending from totemic ancestors through a man or set of male siblings who are often identified as the totemic ancestor himself. Such a descent group, according to Arrernte tradition, holds rights in the estate country because it descends from the totemic ancestor embodied in the landscape.
- 107 The estate country that the claim area is primarily associated with is that of the irreye (eaglehawk) ancestors. The claim area is also particularly associated with the estate country of the kngwelye irtnwere (dingo) ancestor and the tewe (bush turkey) ancestor.
- 108 All these “estate countries”, also known as “dreamings”, make up an eastern flank of what is known as the larger Imarnte estate country, which focuses on the ulpulperne (bat) ancestor. The central Imarnte site complex is about roughly 20 km north-west of the claim area.
- 109 The members of the local descent group identify with all of the three primary dreamings associated with the claim area (irreye, kngwelye irtnwere and tewe).

## Irretye Dreaming

- 110 The irretye ancestors, in the form of two eaglehawks, created the topography of the claim area while looking for meat. They landed at the claypan opposite the present-day Maryvale Homestead and chased a boy around the area. One version of the story says that one of the eaglehawks picked the boy up off the ground with his claws, scratched the boy's back red, and then dropped him to create a small claypan in the claim area. Sometimes the two eaglehawks are male and female, sometimes they are old and young. One irretye ancestor stayed near the claim area and transformed into the local topography. The other irretye flew back from where it came from and turned into topographical features there (there are some discrepancies in different versions of the story as to where the irretye came from). The dreaming's two focal site areas are the final resting places of each of the two irretye ancestors.
- 111 The irretye who stopped near the claim area is embodied in the claypans, a number of desert oaks (only one of which remains standing), the sand ridge surrounding the Titjikala community, and Frances Well itself. The other irretye lies some 50 km east of the claim area at Prominent Pillar (or, according to some claimants, somewhere north).
- 112 The irretye dreaming's songs and knowledge are traditionally held by men only. The women only know the general story and the location of the sites.
- 113 While it is clear that the claim area is closely associated with the irretye story, and indeed, according to the maps provided by the CLC, the irretye storyline does pass through the claim area, there are nonetheless no sacred sites associated with the irretye dreaming that are located on the claim area itself. However, the claim area is closely surrounded by a significant number of such sites.
- 114 The following sites are located on the neighbouring land parcel, NT Portion 1475, on which land the Titjikala

community largely sits (the land was originally claimed as part of this application but was, according to the Reasons of Olney J, not able to be claimed under the Land Rights Act). Each site was inspected as part of the view that occurred after the hearing on 17 July 2013:

1. **Frances Well:** This site is located a few metres east of the claim area. According to some claimants, Frances Well was created by the irreyte as they looked for meat.
2. **Desert oak:** A desert oak (known as irrkepe in Pertame) stands one hundred metres north of the last house in the Titjikala community (about 600 m north of the claim area). It is regarded as part of one of the irreyte who rested in the claim area. It is a site restricted to men only.
3. **Sandridge:** The sand hill curving around the western side of the Titjikala community, about 400 m east of the claim area. It was formerly restricted to men only, but no longer. It forms part of the irreyte who came to rest in the claim area.

115 Two central irreyte sites lie outside NT Portion 1475, but only about 200 m north of the claim area. Both sites were inspected as part of the view that occurred after the hearing on 17 July 2013:

4. **Tepethetheke:** The claypan opposite the present Maryvale homestead where the two eaglehawks landed (or in some versions of the story, where one of the eaglehawks landed). Because of the irreytes' landing on the claypan, the sand around the claypan was pushed up to form the sand ridges that surround the claypan today. Part of the road to Alice Springs goes over the eastern edge of this claypan. It is the most important irreyte site in the claim area, and has also been called "Thapata Thaka" by the Aboriginal Areas Protection Authority, "Topatjitjika" by Strehlow, and

“Tapatjatjaka” by the local community government council.

5. **Small claypan:** A smaller claypan just west of Tepethetheke, where it is said that the boy whom the irreyte were chasing was dropped (and subsequently laid down or died) after he was caught by one of the irreyte. The red ochre seen on the sides of this claypan is the boy’s blood. The claimants do not have a name for this site, but Ms Ottosson referred to the site in her report as “Werreinteme”, which in Pertame translates as “boy lies down”.

Three further irreyte sites are located a little further away from the claim area. These places were not part of the view that occurred after the 17 July 2013 hearing:

6. **Rrtetyikale:** Two hills roughly 2.5 km north-west of the claim area. The irreyte are said to have stopped here to look for meat. It is also called “Artetyikale”.
7. **Black Hill:** A hill roughly 5 km west of the claim area. The irreyte stopped here while chasing the boy, before moving to Frances Well. There is some discrepancy as to whether both or only one irreyte stopped here.
8. **Rock pile:** A pile of rocks in the bed of the Hugh River, about 2 km south of the claim area. The irreyte went through here and left the pile of rocks behind. The place has no Pertame name, but it was formerly considered a mekemeke (sacred, powerful, dangerous) place.

116 There are many other sites associated with the irreyte dreaming in the vicinity of the claim area. I have here merely given an account of those closest to the claim area.

## Kngwelye Irtnwere Dreaming

- 117 A dreaming regarding several dingo ancestors runs through the claim area, but, like the irreye dreaming, none of the dreaming's sacred sites are located on the claim area itself.
- 118 Nonetheless, there are five sites associated with the kngwelye irtnwere dreaming that are located close to the claim area:
1. **Sandhill:** A sandhill on the eastern bank of the Hugh River, about 1 km south of the claim area, where the dingo ancestors are said to have “played around”.
  2. **Rocky Hill:** A rocky hill on the western bank of the Hugh River, also about 1 km south of the claim area, where the dingo ancestors are again said to have “played around”.
  3. **Rock piles:** A string of at least four distinct piles of rocks between the Hugh River and a tributary creek, about 1.3 km south of the claim area. The piles of rocks are puppies left by the dingo ancestors.
  4. **Rockhole:** A rocky outcrop in the middle of the riverbed at Mt Charlotte, about 1.3 km west of the claim area. The dingo ancestors are said to have settled down here and had puppies, and then turned into a big rock.
  5. **Hills:** Some hills also known as Charlotte Range (incorporating Mt Charlotte) roughly 1.2 km west of the claim area. Some of the dingo ancestors stopped here and turned into the Charlotte Range.
- 119 The first three of these sites were part of the view conducted after the 17 July 2013 hearing. The latter two were not. Again, there are many more kngwelye irtnwere

sites that could be mentioned, but I have simply concentrated on a few situated most near the claim area.

## **Tewe Dreaming**

- 120 There is a men's dreaming regarding a bush turkey ancestor that runs through the claim area, but it appears that very little detail of it is now known.
- 121 According to Ottosson, there is one tewe dreaming site very close to the claim area, a sandhill that marks the southern end of the sand ridge that curves around the Titjikala community. That sandhill was viewed by me in the presence of the parties after the 17 July 2013 hearing. Daisy Campbell was Ottosson's "main" informant in relation to this site. She calls the site "Alperthu", a word for which Ms Ottosson is unable to offer a translation. Ms Campbell learnt of the fact of Alperthu's existence from her grandfather Paddy Ntjalka. However, she does not know the relevant story relating to the tewe dreaming. No other tewe sites are known of, near the claim area or otherwise.

## **Other Significant Sites**

- 122 A men's ceremonial ground lies on the claim area itself. It is a secluded area lying between two sand hills. The ceremonial ground was viewed by me and male lawyers and claimants after the 17 July 2013 hearing. Young men from the Titjikala community go through initiation elsewhere, but are then brought back to this place immediately afterwards. The place was established as a ceremonial ground only in the 1980s or 1990s.
- 123 Two important burial sites are located very close to the claim area – one, about 400 m east of the claim area, another, about 400 m north. The northern burial site is the

resting place of a number of respected ancestors of the local descent group, including Braedon Bob, Old Sandy, Mamutja, Lame Mick, and Old Thomas. The eastern burial site is the resting place of Njekurba, the wife of Braedon Bob. The eastern burial site was part of the view conducted after the 17 July 2013 hearing.

- 124 Finally, about 1 km north-west of the claim area, there is a red ochre site, restricted to men only. It is related to men's initiation business. It is also the site of a cave which used to be used to store tywerrenge (tjurunga or churinga).

## **Rights to Forage**

- 125 It is clear that the claimants are entitled to forage over the land that constitutes the claim area. The claimant groups have a shared and ongoing history of using the claim area for hunting and gathering foods, arising from their shared history of ritual management and residence and work in the claim area. It has already been explained above that one traditionally inherits a right to forage as an incident of membership of a particular estate group.

## **Conclusion**

- 126 The definition of "traditional Aboriginal owners" requires that the local descent group must have common spiritual affiliations "to a site on the land". A difficulty with the present claim is that there is only one identifiable "site" located on the claim area, and that is the ceremonial ground which was probably only established in the 1980s or 1990s. It is not clear to me that it can be said that that ceremonial ground is a site to which the identified local descent group has "common spiritual affiliations ... that place the group under a primary spiritual responsibility for

that site”, as required by the definition of “traditional Aboriginal owners”.

- 127 That conclusion means there are no sites directly on the claim area to which the local descent group has common spiritual affiliations.
- 128 Does this mean that the local descent group cannot fulfil the definition of “traditional Aboriginal owners”? This question has been addressed in two High Court cases, *Re Toohey; Ex parte Stanton (on Behalf of Herself and Claimant Members of the Kungarakany People)* (1983) 57 ALJR 73; (1982) 44 ALR 94 (*Stanton*) and *The Queen v Kearney; Ex parte Jurlama* (1984) 158 CLR 426; [1984] HCA 14 (*Jurlama*).
- 129 In *Jurlama*, the Court faced an identical problem to the one faced here. Gibbs CJ at 432; [5] respectively characterised it thus:
- ... Aboriginals can be traditional Aboriginal owners, within the meaning of the Land Rights Act, in respect of land, only if [inter alia] they are a local descent group of Aboriginals who have common spiritual affiliations to a site on that land. ... If the [relevant land claimed in the case at hand] is to be considered in isolation, the members of [the local descent group] are not the traditional Aboriginal owners of it, because there are no sites on it. If, on the other hand, regard is had to the larger area which includes the [claimed land], but includes land outside the claim area as well, the claimants may be the traditional Aboriginal owners of that larger area ... The question then is whether the claimants, to be entitled to [make a traditional land claim] under s 50(1)(a), must be the traditional Aboriginal owners of the land in respect of which the claim is made, in the sense of that there must be sites on that land, or whether it is enough that they are the traditional Aboriginal owners of a larger area of which the land the subject of the claim forms part.
- 130 Gibbs CJ (Brennan, Deane and Dawson JJ concurring, and Murphy J agreeing) at 432-434; [5]-[9] respectively analysed the construction of the Land Rights Act and held that the latter view was the better view – that is, that land



claimed under s 50(1)(a) must merely form part of land that has upon it sites to which the claimants have common spiritual affiliations, and that whether any of those sites happen to be located on the actual parcel of land able to be claimed under the Land Rights Act is irrelevant.

- 131 The same conclusion was reached in *Stanton*, where Brennan J held (Gibbs CJ, Mason, Murphy and Wilson JJ agreeing) at ALJR 78; ALR 102-103:

It would be erroneous for the Commissioner to reject a traditional land claim merely because ... the land claimed does not contain any sites of spiritual significance to the claimants. The existence of such sites somewhere on the country of a local descent group is material to the responsibility of the group for the whole of their country and, provided the unalienated Crown land is part of that country and is the subject of a traditional land claim, the absence of sites of spiritual significance from the unalienated Crown lands is not destructive of the claim.

- 132 It is therefore clear that sites to which the claimants have common spiritual affiliations need not be directly on the claimed land in order for the claimants to be the traditional Aboriginal owners of the claimed land. If I may presume to say so, the two decisions of the High Court are eminently sensible, particular to circumstances such as the present where the residual available land for an application under the Land Rights Act is relatively small in area, but is clearly only a part of a wider area (although not lending itself to an application under the Land Rights Act) to which the Aboriginal people have strong spiritual affiliations and which has specific sites proximate to the claim area of especial cultural or spiritual significance.

- 133 In this case, there are a significant number of specific sites to which the claimants have common spiritual affiliations that are located very close to the claim area. There are three 'dreaming lines'; that of the irretye altyerre, the kngwelye irtnwere altyerre and the tewe altyerre, that, according to the map produced by the anthropologist

Ottosson, pass directly through the claim area. In the case of the irreyte altyerre, the dreaming line passes through the claim area multiple times. In the sense explained by the High Court in *Jurlama* and *Stanton*, the local descent group which I have found to exist has common spiritual affiliations to a site or sites on the land.

134 It is clear that those common spiritual affiliations give rise to a primary spiritual responsibility for the relevant land. The local descent groups' spiritual responsibility for the land flows from the members of those groups' roles as pmerekertweye and kwertengwerle, which have been described in the preceding section of this report.

135 I am also satisfied, as explained above, that the local descent group has a right to forage on the claim area.

136 Further, I am satisfied that there is no other group that are the traditional Aboriginal owners of the claim area. There was no suggestion to that effect made by any of the parties or that is apparent on any of the material before me.

137 It follows that the members of the local descent group identified are the traditional Aboriginal owners of land including the entirety of the claim area.

138 The presently living Aboriginal people who are members of the local descent group for the purpose of the Land Rights Act are identified in the "Findings" section of this report. Those findings are based on Ottosson's anthropological report, in which she sets out the Aboriginal people who she understands are presently members of the local descent group.

## **8. SECTION 50(3) CONSIDERATIONS**

### **Strength of Attachment**

- 139 Section 50(3)(a) requires a consideration of the advantages of acceptance of the claim and the making of a grant. The references above to the strength of attachment of the traditional owners to the claim area, and to the broader surrounding area, demonstrate that, although the land claim area is but a small part of their traditional lands, it is of significant value to them. It is of value because of the formal recognition afforded to them through the process of this land claim and its determination. It is also of value to them, in the event of a future grant, as a recognised addition to their lands which will enhance the opportunities which they, and the local community, have to exercise autonomy in the future protection, management and development of their wider traditional lands, including the claim area. The existence of the claim area, not recognised as their traditional lands, is an impediment to the full enjoyment and exercise of that autonomy.
- 140 For the purposes of concluding that the claimants are the traditional Aboriginal owners of the claim area, it has not been necessary in the particular circumstances to explore the full extent of their relationship with the claim area and surrounding areas as has been the case in those claims where that relationship is contested or is less apparent.
- 141 That relationship is set out comprehensively in the Anthropological Report. The claimants are within the Pertame/Southern Arrente tradition of Aboriginal people, whose relationships with country were documented and explained from the earliest times of European settlement. Spencer and Gillen, Carl Strehlow and later TGH

Strehlow, are among the more significant ethnographers of that tradition.

- 142 As the Anthropological Report indicates, the Pertame/Southern Arrente country extends quite substantially to the south, north and west of the present claim area, which is but a small part of it on its eastern flank.
- 143 It is not necessary to refer to the well-recognised and deep relationship that the people have with their country. It is explained fully in the Anthropological Report at 28-31.
- 144 Ottosson says, the three descent groups referred to are commonly called the “Maryvale mob” within themselves and by neighbouring estate groups because of their long residence in the area over several generations. There is, as she says:
- [A] historical process of increased mutual and social cooperation and identification [which] has produced a very close “company relationship” between the three land-holding groups in their shared spiritual responsibility for the claim area
- which is becoming more important at the present time: Anthropological Report at 15-16.
- 145 Moreover, as discussed above, and in the Anthropological Report more fully at 44-51, there is a strong and meaningful mythology for the Frances Well area, particularly concerning the activities of the irreye ancestors (eaglehawks), the kngwelye irtnwere (dingo dog) and tewe (bush turkey), with clusters of sites in relation to each of those ancestors, and other important sites, in close proximity to the claim area. There are also many other extensive dreamings and sites on the wider estate area, referred to in the Anthropological Report at 51-59.
- 146 The grant of the claim area would represent, in a very real way, a significant acknowledgment and recognition of that extensive relationship, in particular for the Maryvale mob,

with their country, given its proximity to the Titjikala Community land being surrounded by so many significant dreamings and sites.

## **Issues of Detriment**

- 147 It is of course necessary to have regard to, and report upon, the possible detriment to others in the event that a grant is made pursuant to any recommendations to be made by this report.
- 148 In this instance, issues as to detriment concern the leaseholders of the Maryvale Station and, separately, concern the Northern Territory and its agencies.
- 149 For the purposes of reporting on issues of detriment, I note that I have received on behalf of the Goldsworthy family the following evidentiary material (in addition to that which was referred to above for the purposes of the primary hearing) and which is also listed in Appendix 5 as follows:
- Revised witness statement of Mr Goldsworthy provided on 20 September 2013;
  - Supplementary witness statement of Mr Goldsworthy provided on 6 December 2013.

There was no application to cross-examine him.

- 150 The CLC on behalf of the applicants, and in response to that material, also provided evidence in respect of the bores referred to, namely bores RN15432, RN94 (Frances Well) and RN3503, a collapsed and abandoned bore in close proximity to the Frances Well bore. To the extent to which that material informs the assessment, it is referred to in the following text. It is also listed in Appendix 5.
- 151 It is appropriate formally to number that evidence, so the two statements of Mr Goldsworthy will be marked as Exhibit 6 and 7 and the bore reports for bore RN15432,

RN914 (extract), and RN3503 (extract), are together marked as Exhibit 8.

152 The submissions on behalf of the Attorney-General for the Northern Territory identify a number of matters upon which I should comment pursuant to s 50(3)(b) and (c) of the Land Rights Act. They concern the status and impact of: the public's right of way over roads; the potential need to stockpile areas for construction, campsites and for gravel/borrow pits; the impact upon two existing exploration licences; the impact upon the Power and Water Corporation infrastructure; the impact upon the Titjikala School and Education Centre on Lot 2 of NT Portion 1229; the government and employee housing on Lots 1 and 81 of NT Portion 1229; and the detriment to other Lots within NT Portion 1229. I shall refer to those topics in sequence.

153 I note that, in support of its submissions and without objection, the Attorney-General for the Northern Territory produced a number of plans and other documents annexed to the submission which have the number given in those submissions (with the given exhibit number):

- A1. Plan of map of NT Portion 4258, depicting the course of the Ghan Heritage Road through NT Portions 1229 and 1475 and the path of the Chambers Pillar Road into NT Portion 1229 (Exhibit 9);
- A2. Map of claim area depicting path of Chambers Pillar Road and Ghan Heritage Road through NT Portion 1229 and location of Titjikala School through NT Portion 1229 (Exhibit 10);
- A3. Map of NT Portion 4258 depicting course of Chambers Pillar Road and course of Ghan Heritage Road through that portion (Exhibit 11);
- A4. Wider area map depicting in particular NT Portion 1229, and location of the Titjikala settlement and allotments (Exhibit 12);

- A5. Aerial photograph of NT Portion 1229 with access tracks through that portion marked in red (Exhibit 13);
- A6. Aerial photograph of NT Portion 1229 depicting location of housing allotments within that portion (Exhibit 14);
- A7. Record of administrative interests and information, Northern Territory concerning NT Portion 4258 (Exhibit 15);
- A.8 Record of administrative interests and information, Northern Territory, concerning NT Portion 1229 (Exhibit 16);
- A.9 Aerial photograph of NT Portion 1229 with diagonal hatching to indicate extent of required prospective road reserve in relation to Chambers Pillar Road (Exhibit 17);
- A.10 Aerial photograph of NT Portion 1229 without hatching (Exhibit 18);
- A.11 Map depicting current titles over land claim area and adjacent areas of EL29080 and EL29081 (title documents) (Exhibit 19);
- A.12 Map of serviced land availability programs (SLAP Map), Titjikala, showing power and water corporation infrastructure within NT Portion 1229 (Exhibit 20);
- A.12A Larger scale map of same (Exhibit 21);
- A.13 Larger scale map of same, close up sections or part of NT Portion 1229 (Exhibit 22);
- A.14 Aerial photograph of NT Portion 1229 depicting location of Titjikala School and Education Centre (Exhibit 23);
- A.14A Aerial photograph of NT Portion 1229 (closer) depicting location of Titjikala School and Education Centre in NT Portion 1229 (Exhibit 24); and
- A.15 Site plans and representative photographs of Titjikala School and Education Centre (Exhibit 25).

## **Maryvale Pastoral Lease**

- 154 The Maryvale Pastoral Lease covers an area of about 3244 sq km. Within that space the current land claim area constitutes a very small part of the lease area, especially if those areas identified as road corridors are also removed.
- 155 As previously noted, the claim area is traversed by the Hugh River and by a tributary creek, so that it is subject to periodic flooding to a not insignificant degree, and there is only a smaller area on which permanent infrastructure could be located free of flood risk. The size of the claim area in relation to the size of the Maryvale Pastoral Lease area is not of itself significant to the Maryvale Pastoral Lease area.
- 156 Mr Goldsworthy, on behalf of Maryvale Pastoral Lease holders, raised two broad issues. The first is water supply and reticulation, and the second is the way in which the grant, if made, might affect pastoral activities over the pastoral lease area.
- 157 His first statement, being the amended statement of 20 September 2013, addressed the issue of water supply and reticulation.
- 158 He and his wife, Heather Goldsworthy, acquired Maryvale Station in 1996. Previously, it had been owned and run by the Hayes family. The Goldsworthys have run the station as a pastoral enterprise.
- 159 There is a bore on the land claim area which was put down by William Hayes, and which Mr Goldsworthy says in his statement has been operated for at least 50 years. In fact, on the evidence the only bore presently in use is bore numbered RN15432, which records that it was drilled on 20 April 1989. In my view that is more likely to be correct, as a business record, and I find that that is when the bore was drilled. In any event, as the claimants accept, it was drilled, equipped, and has been maintained and operated since then including during the period of ownership of Maryvale Station by the proprietors for the



time being. I observe that the bore was drilled when the area was Crown land, but with the status of land under claim. As noted earlier in these reasons, the original claim in this matter was made by application dated 8 November 1981. There is nothing to suggest that, at the time it was drilled, or at any time subsequently, there has been any procedure undertaken to obtain approval for the drilling of the bore, or to secure a licence or easement so as to have the right to access to it, notwithstanding the making of the land claim under the Land Rights Act.

160 Nevertheless, I accept, as Mr Goldsworthy says, that this bore has been operated and maintained by them as owners of the Maryvale Station since 1996, and is used as a supply of water to the Maryvale Homestead and the store adjoining it, and at times of mustering as a water supply for cattle.

161 I note also that through their counsel, the claimants have indicated their willingness to make arrangements with the Goldsworthys for them to continue to obtain a water supply from this bore for domestic and shop purposes in the event that the claim area is granted to a land trust. That will of course have to be a matter of negotiation, but there is no reason to think that it would be an onerous negotiation or would lead to an onerous arrangement.

162 Mr Goldsworthy refers to a second bore, located within the boundary of the Titjikala Community area (NT Portion 1475 held by the Titjikala Social Club Inc), apparently bore numbered RN10530. He had believed until recently that it was on the land within the land claim area, but now accepts that it is not. The Goldsworthys also access that bore as a reserve source of water. Access to it is given informally by the Titjikala Social Club Inc. It was drilled by the Water Resources Branch of the Northern Territory Government. So far as the evidence shows, access to that bore has been unimpeded at all times, indicative of the cooperative nature or relationship between the proprietors of Maryvale Station and the traditional owners of the land

the subject of the claim and adjoining land. That arrangement further supports my expectation that workable arrangements would be reached with regard to access to, and use of, water from bore RN15432 if the land grant is made over the claimed area.

163 I note the evidence that, apart from the two bores (the third one is defunct), the land claim area in the vicinity of Frances Well also contains a tank of 30,000 gallons, a windmill, two troughs, two trap yards, some poly piping and fencing (which does not run along surveyed boundaries). I have expressed the location of those assets with caution, because the Survey Plan which is annexed to this report as Annexure 1B indicates that they are about the line dividing NT Portion 4258 and NT Portion 1475. Those assets were inspected following the hearing. They are not in good condition. The windmill was damaged following a previous flooding of the Hugh River. I note also Mr Goldsworthy's evidence that his route to get access to the reserve bore on the Titjikala community area itself involves moving along a road that travels into and across the land claim area. It is called, at least by the proprietors, the "Bore Road".

164 I therefore formally record that the claimants have acknowledged that the bore located on the claimed area, being bore number RN15432, was installed by and at the expense of the former proprietors of Maryvale Station and since 1996 has been operated by the current proprietors of Maryvale Station to provide water for their purposes, primarily as a water supply servicing the station homestead, the store and adjacent facilities. Having regard to past history and the uncontentioned facts just recorded, I am confident that appropriate arrangements for ongoing access to that bore will be able to be made in the future in the event of a grant of the claimed land. I do not think it is necessary to make a specific recommendation as to the nature of any such arrangement. I have had regard to the long-standing and unimpeded access enjoyed by the proprietors to that bore and to the secondary water source

located on the adjacent land as described, particularly having regard to the fact that numerous claimants, including senior claimants, presently reside at Titjikala. I have also taken into account in reaching that view that, the evidence clearly indicates that adequate bore water supplies may be obtained from that secondary water source from the aquifer servicing both bores. I observe, in that regard, that the bore report for RN10530 notes as to “groundwater availability” that large supplies can be obtained from aquifers in the Santo Sandstone Formation, which (it says) is a formation as the youngest member of the Finke group of formations and which is equivalent to the Pertnjarra Series further to the north.

165 Given that report, an alternative and additional water source would appear to be the drilling of another bore into the same geological structure in a location other than on the claim area.

166 It is important to note that the proprietors of Maryvale Station have, effectively from the time of their taking over Maryvale Station, had unrestricted access to the Crown land then and now under claim without any legal right to do so (other than to protect livestock). So that there is no reason to think that an informal arrangement to permit the ongoing accommodation of their expectations would be unavailable. I specifically decline, in those circumstances, from recommending (as Mr Goldsworthy proposed) that there should be a grant of an easement along the existing pipeline route to bore RN15432 and an easement between that bore and towards bore RN10530 up to the boundary between the claim area and the adjoining land in the name of Titjikala Social Club Inc in favour of the registered proprietors of the Maryvale Station. That would constitute the establishment of a legal right which presently they do not have and which they have not previously sought. For the same reason, I do not recommend that any grant should be on the basis of requiring the imposition of a licence agreement between the CLC on behalf of the traditional owners of the claim area to permit servicing

repairs and maintenance to the pipeline and bores. It is a circumstance which the proprietors of Maryvale Station have up to the present time elected to accept without seeking such protection and noting the making of this claim, which was registered and known at the time they became proprietors of Maryvale Station.

167 In my view that would be a disproportionate and inappropriate response to the private detriment assertion of the proprietors of the Maryvale Station. It would mean that the claimants would lose in large measure, given its size, any right to exclusive use and possession of any part of the claim area.

168 As to that aspect, I do not think there is any reason to consider that the grant of the claim area would result in any material detriment to the proprietors of the Maryvale Station. To the contrary, their dealings with the traditional owners on the Titjikala Social Club Inc land to date and generally suggest strongly that the existing accommodation they have would continue to be available after a grant of the claim area, as is the case now by their informal use of the Crown land.

169 There is another aspect to address. I accept that cattle operations have been maintained in this area for many years, and well prior to the transfer of Maryvale Pastoral Lease to the present proprietors. It is very likely that those operations have been carried out since well prior to the drilling of the bore on the claim area.

170 I also accept that for many years, and certainly from the time the proprietors took over Maryvale Station, they have accessed the claim area from time to time when mustering and for moving cattle through it. For that purpose, the existing fencing serves a relevant use to assist mustering the cattle into the trap yards and holding paddock which are located on the claim area. Mr Goldsworthy says in his supplementary statement that, if access to the claim area is denied (which involves the assumption that he will not be able to make any arrangement with the traditional owners

to continue to access the claim area even if the grant is made, he would have to alter the path taken to muster cattle and would no longer be able to use the existing trap yards and holding paddock. He says that, as the Hugh River is to the west of the claim area and Titjikala to the east, detouring from the current path would mean extending the musters by “hours and into another day”. He would need another path for mustering, involving relocating the fence line. He would need to create a new holding paddock, relocate the troughs and trap yards, and lay additional water piping from the water supply to the relocated troughs. On the evidence, I do not think that that assumption is warranted. It is not a matter of the risk of disentitlement, because there is no entitlement. It is the risk that he would be unable to negotiate an access arrangement in the event of a grant where, over the many years of dealing with the Titjikala community (including access to the bore on NT Portion 1475) he has been able to do so. From the point of view of the traditional owners, who have informally dealt with him to date in other respects, there is no apparent reason why they would not do so in the future.

- 171 In the submissions on behalf of the proprietors, they seek an acknowledgment by this report that the pastoralists would suffer a detriment if the land claim is granted. I have indicated that that is, in my view, a theoretical detriment, but in my view it is not a significant detriment. It is not likely that they would have to discover an alternative water supply and relocate the facilities presently on Crown land. They do not have the right to use the water supply on the claim area at present, nor to access the Crown land. They have known of the claim for many years. They have been prepared to informally access those resources to date. They have dealt with the Titjikala community over many years. There is no reason to think that appropriate access arrangements cannot be made through the traditional owners if the land grant is made. In particular, there is no reason to think that, if the pump

breaks down due to a need for service and maintenance, access to the pump would be denied so that it would fall into desuetude.

- 172 Consequently, on this aspect also, I do not consider the detriment to the proprietors of Maryvale Station is more than theoretical.
- 173 Finally, as I note the topic was raised, there is little evidence to indicate any meaningful effect on the existing patterns of named land usage by the grant of the claim area.

## **Northern Territory**

- 174 I have noted above the issues in respect of which the Northern Territory has raised matters of concern in relation to detriment which may be experienced if a land grant is made.

### **(i) Public Roads**

- 175 The Land Rights Act does not specifically require consideration of public roads within an area recommended for grant, but obviously any grant under s 12 of the Land Rights Act flowing from a recommendation should identify land over which there is a road where the public has a right of way, and the grant should be expressed so as to exclude those roads from the grant: see s 12(3).
- 176 It is therefore appropriate to remark upon the existing public roads.
- 177 As the applicants primary submissions point out, Annexure 1B (Appendices 2 and 3 of this Report) depicts in detail NT Portion 4258. It shows the Chambers Pillar Road running in part across the north-eastern section of that Portion and then through NT Portion 1229. The same Survey Plan shows what is known as the Ghan Heritage

Road traversing both those portions, and it shows as well some minor access roads doing so.

- 178 The more focused maps in Exhibits 9-14 show in more detail that the Chambers Pillar Road traverses the north-western corner of NT Portion 4258 from NT Portion 810 at its west for about 700 m and then across NT Portion 1229 for about 105 m where it intersects and joins with the Ghan Heritage Road. The Ghan Heritage Road enters NT Portion 4258 from the east from NT Portion 1475 and travels north for a distance of some 970 m and then it enters NT Portion 1229 where it intersects with the Chambers Pillar Road and it continues northwards through NT Portion 1229 totalling a distance of about 400 m before continuing to run in a northerly direction.
- 179 There are other minor access roads within NT Portion 1229 which provide access to the allotments within it, as delineated on Exhibits 3 and 14.
- 180 In submissions, the Attorney-General for the Northern Territory has explained how the maps now Exhibits 9-14 came to be prepared, based upon information from the Territory's Integrated Land Information system, and then as incorporated into Exhibits 15 and 16 recording the administrative interests and information for NT Portions 4258 and 1229. There is no reason to doubt that information, and indeed the claimants in their submissions on detriment do not do so.
- 181 I think it is therefore safe to proceed to note in addition the following matters.
- 182 The Northern Territory Department of Construction and Infrastructure maintains the Chambers Pillar Road on behalf of the Department of Lands and Planning. The Ghan Heritage Road within NT Portion 1475 is also maintained in that way, but insofar as it traverses NT Portions 4258 and 1229, the MacDonnell Shire Council (being responsible for the roads within the Titjikala community and connecting to that community) is

responsible for that part of the Ghan Heritage Road traversing those two sections. It is also responsible for the access roads within those sections. Both of those roads provide the pathway to the Chambers Pillar Historical Reserve, to several cattle stations and the site of the Finke Desert Racetrack. The access roads within the portions are used by the Titjikala community to access the school and the residential area within NT Portion 1229.

- 183      Insofar as it is a function or a responsibility of the Territory, the Department of Infrastructure, Planning and the Environment has a policy of classifying roads and providing each classification with a road reserve of an appropriate width in relation to its designation. That was noted upon by Gray J as Aboriginal Land Commissioner in *Carpentaria Downs/Balbirini Land Claim No 160*, 1999. The widths of the road reserves are to provide for a seal and shoulders, maintenance, construction and future upgrades, access roads, drains, any road infrastructure, rest areas, detours during maintenance and construction, stockpiling of materials required for construction and maintenance, buffers from adjoining improvements, access for services such as telecommunications, gas, power, and minor road realignments. It is said in the submission, and the claimants do not contest, that the Department provides for specified widths according to the designation of particular roads as addressing the minimum required to effectively manage the road network and to accommodate future needs.
- 184      Given its designation, the Chambers Pillar Road is designated as a local road, with the requirement of a road reserve of 100 m in width (50 m either side of the centre line) as it traverses each of the portions. Road widening has not yet occurred, but there is a prospect of it being undertaken. It is said that it is the Department's objective to have uniform road reserve widths across the entire road network. Whilst, of course, I accept that information, I do not consider that it is appropriate in the particular



circumstances to adopt it as explained in my concluding comments on this aspect.

- 185 The Ghan Heritage Road presently has no road reserve exclusion in the adjoining section on NT Portion 1475. It is suggested by the Territory that road reserve allowance of 40 m (20 m each side of the centreline) is both necessary and appropriate where the Ghan Heritage Road runs through NT Portion 4258 and NT Portion 1229.
- 186 The access roads linking NT Portion 1229 to other adjacent areas, or internally, presently have no road reserves, but the existing road reserves of access roads within NT Portion 1475 have a road reserve of 20 m in width (10 m either side of the centre line). It is submitted that those reserves to that width, that is 20 m in width, should be imposed in respect of the access roads in NT Portion 1229.
- 187 The claimants, understandably, express disappointment that so much of the small area available for the claim, and particularly the usable area, having regard to the water flow and periodic flooding of the Hugh River, is claimed as future road reserves. Obviously that will have a significant impact on the available area for use. They accept that the issue of, and location of, road reserves is best left to future discussions with the Territory, if and when the land is recommended for grant. In my view, that is an appropriate step to take. Indeed, it is consistent with what the Territory sought.
- 188 In the case of the proposed road corridor for the short length of the Chambers Pillar Road traversing NT Portion 1229 and the north-western corner of NT Portion 4258, that is a 100 m road corridor, there is a very severe effect. It is depicted in Exhibit 17 by the hatched area. I am informed that, in respect of past land claims where there has been the proposed imposition of a standard width of road reserve which would result in hardship or which would result in the inclusion of a sacred site within a road corridor, a more modest adjustment has been

accommodated. In some instances the standard road corridor has been modified, or a narrower corridor for short distances adopted, to ameliorate the severe negative effects on adjacent land. The claimants appropriately draw that matter to the attention of the Commissioner.

189 As requested by them, I note that if the full width of the standard 100 metre corridor was to be adopted for the full length of the Chambers Pillar Road as it passes through NT Portions 1229 and 4258, the result would be a disproportionate loss of usable land from the small area otherwise available, and I recommend that if possible the road corridor would be reduced to a minimum width for that distance.

**(ii) Gravel Pits and Bores**

190 The Northern Territory has pointed out that there are no designated stockpiling areas or construction campsites or gravel/borrow pits identified within either NT Portions 4258 or 1229. It says that its use of gravel pits and bores would be preserved by s 14 of the Land Rights Act in the event that the claim land is granted to an Aboriginal Land Trust. It acknowledges that it has previously been held that the use of gravel pits and bores does not fall within the expression “for a community purpose” within s 15(1) and as defined in s 3(1) of the Land Rights Act: *Attorney General for the Northern Territory v Hand* (1991) 172 CLR 185. On that basis, in the event that gravel pits and bores become necessary in the future, s 15(1) of the Land Rights Act will oblige the Crown in right of the Northern Territory to pay to the CLC on behalf of the traditional owners for the use of those pits and bores areas amounts in the nature of rent to be fixed by the relevant Minister having regard to the economic value of the land. It was also held in that case that the Northern Territory would suffer detriment to the extent of the rent so fixed. It is not immediately apparent to me that there is a meaningful detriment in that respect. The extent to which the two roads traverse the two sections is moderate to slight. It is

not clear that in normal operational judgment, the location of gravel and bores could not be made in previously reserved areas in adjacent allotments. In any event, although the extent of the rent may constitute a detriment, in my view it is not likely to be seen to be a significant one.

**(iii) Exploration Licences**

191 Based on the submissions of the Northern Territory, there are currently two exploration licences (EL) and one exploration permit (EP) existing on NT Portions 1229 and 4258. It is not necessary to note the holders. The areas and titles are depicted and established by Exhibit 19. There is no dispute that these titles are protected by a combination of ss 66 and 70(2) and the definition of “mining interest” in s 3(1) of the Land Rights Act.

192 The Northern Territory submits that the holders of these licences or permits may suffer detriment in that the renewal of their licences, otherwise possible under s 30 of the *Mineral Titles Act 2010* (NT) for the ELs and s 23 of the *Petroleum Act 1989* (NT) for the EP would not be available without an agreement under Pt IV of the Land Rights Act if a grant were made. The Northern Territory also raises whether the holders of those interests might also suffer detriment in that, by virtue of s 45 of the Land Rights Act, a mining interest cannot be granted in respect of Aboriginal land (if a grant is made) without an agreement with the CLC.

193 There is no information as to the extent to which those interests have been utilised in the past, or whether there is any prospect of the holders seeking to renew or extend the interests which they have been granted. In any event, if there were any significant positive information flowing from the exercise of those rights or interests, that would require a different permit or licence for the entitlement to extract the results of any such exploration, as the second stage in the submission notes. Although this hearing was notified, and the application itself has been on foot (as

noted earlier) for a very considerable time, none of the title holders have sought to participate. I infer that is because they are not much worried by the outcome, whatever it may be. I do not regard the existence of the present ELs and the one EP to expose their holders to any material detriment.

**(iv) Power and Water Corporation Infrastructure**

194 In relation to usage by the Power and Water Corporation for its power distribution and water infrastructure and related services, as shown in Exhibits 20, 21 and 22, it is accepted that the occupation and use of the land for the power distribution and water infrastructure and the use of access tracks for those purposes will be preserved by s 14 of the Land Rights Act in the event that the claim land is granted to an Aboriginal Land Trust.

195 In those circumstances, it is not necessary to remark upon any detriment to the Power and Water Corporation in relation to its infrastructure or the access required for that infrastructure.

**(v) Titjikala School and Education Centre**

196 Similarly, in relation to the Titjikala School and Education Centre located on Lot 2 in the north-eastern section of NT Portion 1229, its use and operations are preserved by s 14 of the Land Rights Act in the event that the claimed land is granted to an Aboriginal Land Trust. Members of the local Titjikala community have a real and continuing interest in maintaining the existing facility. As the evidence shows, it is a significant and attractive physical feature of that area of NT Portion 1229. There is access to the school by four access tracks from NT Portions 1475 and within NT Portion 1229 which (it is accepted) are roads over which the public has a right of way, and so are roads in respect of which protection would be accorded under the Land Rights Act in any event as they exist for a community purpose: see s 15(1) and the definition in s 3(1) of the Land Rights Act.

197 It is not therefore necessary to remark on any detriment which may be suffered by the existence of the School and the Education Centre or those taking advantage of its facilities and requiring access through NT Portion 1229 to do so.

**(vi) Government Employee Housing**

198 The same comments apply in relation to the Northern Territory use of government employee housing, occupied for teacher housing in relation to the operation of the School and Education Centre present on Lots 1 and 81 in NT Portion 1229. There is no contest that that activity would be preserved by s 14 of the Land Rights Act in the event that the claimed land is granted to an Aboriginal Land Trust. Indeed, as the Northern Territory itself points out, all sections of the local community have a vested interest in maintaining the existing teacher housing.

199 For the sake of completeness, I note more fully that Lots 1 and 81 of NT Portion 1229 are presently occupied by the Department of Housing, Local Government and Regional Services for the purposes of government housing. They are each ground level residential dwellings. They are each accessed by access tracks which provide access from NT Portion 1475. The main access track is located adjacent to the northern side of the Titjikala School on Lot 1 and travels in a southerly direction between Lots 85, 107 and 106 to the west of NT Portion 1229 and Lots 1, 82, 83, 80, 81 and 105 to the east of NT Portion 1229.

200 The access track in any event is one of the roads over which the public has a right of way, as noted above. I accept that the use of those access tracks for the purposes of providing government services to the Titjikala community falls within the phrase “for a community purpose” within s 15(1) and as defined in s 3(1) of the Land Rights Act.

**(vii) Other lots within NT Portion 1229**

- 201 There are a number of other allotments which the Northern Territory has drawn to the attention of the Commissioner and which, it is said, would give rise to usage which would be protected by s 14 of the Land Rights Act within NT Portion 1229. The submission of the claimants accepts that to be the case. I note them briefly.
- 202 The MacDonnell Shire Council (formerly the Tapatjatjaka Community Council) provides the Titjikala community with a range of local government and other services.
- 203 It is responsible for the delivery of core local government services including the repair and maintenance of infrastructure, road and traffic management, waste management, public places and open spaces, fire hazard reduction, cemetery management and animal welfare. There is no submission that the MacDonnell Shire Council or its role is not within the protection of s 14 of the Land Rights Act.
- 204 Lots 85, 82, 107, and 83, 80, and 105 all comprise ground level residential dwellings occupied by government employees for the purposes of the MacDonnell Regional Council (previously called the MacDonnell Shire Council) or for the Tapatjatjaka Art Corporation. Lot 105 is occupied for the purpose of an indigenous assistance complex (housing and accommodation). All are accessed by access tracks which provide access from NT Portion 1475 and within NT Portion 1229. All those access tracks are roads over which the public has a right of way, as remarked earlier in these reasons.
- 205 Again, as noted, there is no submission that the use of those areas for the purposes nominated or identified, and the use of the access tracks for providing local government services to the Titjikala community, do not fall within the description of a “community purpose” within s 15(1) and as defined in s 3(1) of the Land Rights Act.

206 Again, in respect of those uses of land within the claim area, there is no meaningful or relevant detriment to be addressed.

**(viii) Summary**

207 The detriment issues raised by the Northern Territory are readily accommodated by an appropriate grant that excludes the existing public roads. Its concern regarding gravel pits and bores should be readily accommodated as discussed above. The exploration licences to which it refers are unlikely to explore the grantees to material detriment. The infrastructure, the school, and the housing allotments referred to in (iv)-(vii) above are accepted to be activities which are “for a community purpose” under s 15(1) of the Land Rights Act, so their continued existence and use will not oblige the Crown a right of the Northern Territory to pay rent. They do not give rise to any material detriment, relevant to the recommended grant.

## **Land Usage**

208 There was no primary focus on this topic by the evidence or submissions. I note that the Maryvale Station proprietors expressed some concerns about possible mustering re-arrangement in the event of a land grant, and in the event that the existing use of the claim area (presently Crown land) is not then accommodated. I have commented on that prospect above. In any event, the prospect of the mustering path being altered after grant of the land and facilities being relocated does not amount to an effect on land usage in the region. The Maryvale Station proprietors will not suffer any real diminution of carrying capacity or of use of the land as a pastoral lease. The claim area is very small, and having regard to the size of Maryvale Station itself, and the fact that the claim area shares two boundaries with the existing Titjikala freehold

land, it is hard to see that the grant of an area to the land trust would have any perceptible effect on patterns of land usage in the region.



## 9. CONCLUSION

- 209 For the reasons given above, and having regard to the other matters to which I have referred, I recommend that the whole of the land comprising NT Portion 1229 and NT Portion 4258 be granted to a single land trust for the benefit of Aboriginal people entitled by Aboriginal tradition to the use or occupation of that land as the traditional Aboriginal owners of that land.
- 210 That recommendation is subject to the exclusion of the existing public roads over that area, described in [175]-[189] above, over which the public has an existing right of way.
- 211 The persons who I find to be the traditional Aboriginal owners of that land are those persons identified in Section 6, being the descendants of Paddy Ntjalka, the descendants of Arreyeke, and the descendants of Yewlte. They are identified in more detail in that section of the report. A list of those presently identified as those descendants is Appendix 7 to this report. Inevitably, it will not be a fixed and fully comprehensive list at any specific point in time.
- 212 As appears above, I have had regard to the relevant matters specified in s 50(3)(a), (b) and (c) of the Land Rights Act in Section 8 of this report. I have had regard to the principles in s 50(4) of the Land Rights Act, but there are no particular matters upon which it is necessary to comment in the circumstances.

# APPENDIX 1 - Ruling and Reasons of the Aboriginal Land Commissioner, Justice Howard Olney, 2008

*ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976*

## FRANCES WELL LAND CLAIM

(Claim No. 64)

### REASONS FOR DECISION ON PRELIMINARY ISSUES

#### RELATING TO JURISDICTION

1. The Frances Well Land Claim was commenced in 1981 when the Central Land Council (CLC) on behalf of Aboriginals claiming to have a traditional land claim to an area of unalienated Crown land in the Northern Territory lodged an application pursuant to s.50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act). Subsequently the CLC twice amended the application, first in 1984 and later in 1991. On 20 May 2008 at Alice Springs I held a hearing to determine whether I had jurisdiction to exercise my functions under s.50(1)(a) in relation to the application. The CLC and the NT Government were both represented by counsel and a substantial quantity of documentary material, as well as some oral evidence, was put before me.
2. The issues which presently fall for determination are first, to identify the specific area or areas of land currently the subject of the application; and second, to determine whether such land or any part of it is properly to be regarded as being reserved, dedicated or otherwise set aside under a law of the Northern Territory as a stock route. There is a further issue that may arise, namely whether in respect of any part of the claimed land all estates and interests not held by the Crown are held by or on behalf of Aboriginals. The relevance of these issues will appear from the following discussion of the provisions of the Land Rights Act.

3. The functions of the Aboriginal Land Commissioner (the Commissioner) are specified in s.50(1) of the Land Rights Act. The primary function arises:

on an application being made to the Commissioner by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land, being unalienated Crown land or alienated Crown land in which all estates and interests not held by the Crown are held by, or on behalf of, Aboriginals: (s.50(1)(a))

Upon such an application being made the Commissioner is required:

- (i) to ascertain whether those Aboriginals or any other Aboriginals are the traditional Aboriginal owners of the land; and
- (ii) to report his or her findings to the Minister and to the Administrator of the Northern Territory, and, where the Commissioner finds that there are Aboriginals who are the traditional Aboriginal owners of the land, to make recommendations to the Minister for the granting of the land or any part of the land in accordance with sections 11 and 12.

It is implicit in the provisions of s.50(1)(a) that before entering upon the functions expressed in subparagraphs (i) and (ii), the Commissioner will have first ascertained that the claim relates to an area of land in the Northern Territory which is either unalienated Crown land or alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginals.

4. There is nothing in s.50(1)(a) or any other provision of the Land Rights Act that requires that an application should specifically identify whether the claimed land is of one or other of the two alternatives. It is a matter for the Commissioner to determine the status of the land before entering upon the functions set out in the section and this irrespective of how the land is described in the application. For example, a misdescription of an area as unalienated Crown land, when in fact it is alienated Crown land held by or on behalf of Aboriginals, would not of itself vitiate the application.
5. In 1987 the Land Rights Act was amended by the addition of a new subsection 50(2C) which provides:
- (2C) Where:
- (a) an application referred to in paragraph (1)(a) has been made to a Commissioner; and
  - (b) it appears to the Commissioner that an estate or interest in the land is held by or on behalf of Aboriginals;

the Commissioner shall not perform, or continue to perform, a function under that paragraph in relation to the application as it relates to that land unless the Aboriginals who hold that estate or interest have, or the body which holds that estate or interest on their behalf has, consented, in writing, to the making of the application.

This subsection does not require that the relevant consent be given as a condition precedent to the making of the application but rather it is merely a trigger for the exercise by the Commissioner of the functions identified in s.50(1)(a)(i) and (ii). However, in 2006 the Act was further amended by the addition of a new subsection 67A(9) whereby in certain circumstances, in the absence of appropriate consent, a claim to land caught by s.50(2C) is to be taken to have been finally disposed of.

6. A further amendment to s.50 of the Land Rights Act, which came into operation in 1990, was the addition of a new subsection (2D) whereby (with some exceptions not presently relevant) in circumstances in which a claim under s.50(1)(a) relates to land that has been reserved, dedicated or otherwise set aside under a law of the Northern Territory as a stock route or stock reserve, the Commissioner is prohibited from performing a function under paragraph (1)(a) in relation to the application in respect of that land. Although subsection (2D) merely affects the power of the Commissioner to exercise a function under the Act in relation to an otherwise valid application, a further amendment made in 2006, namely the new s.67A(6), now provides that in a case where subsection 50(2D) applies to the whole or a part of the claimed land, the claim, to the extent to which the subsection applies, is taken to have been finally disposed of.

7. As originally lodged in 1981, the Frances Well Land Claim identified the area of land the subject of the application in these terms:

an area of unalienated Crown land situated within the boundaries of Maryvale Pastoral Lease No. 682 AND BEING an area of unalienated Crown land marked on the plan of the Maryvale Pastoral Lease as part of a stock route and including the land shown as Bundooma, Alice Well, and Frances Well, including Frances Well Reserve set aside for Aboriginal inhabitants AND BEING the land shown on the annexed map.

The application (which is dated 4 November 1981) has annexed an extremely poor reproduction of a map on which the claimed land is shown as hatched. A copy of the map, which is of the same standard as that which accompanied the application, is reproduced in Appendix 1.

8. On 4 June 1984 the CLC lodged with the Commissioner an amended application. The description of the land claimed in the amended application, in the exact form in which it appears in the document, together with a copy of the map referred to in the description as being attached are set out in Appendix 2. The effect of the line and

arrow at the end of subparagraph 1(b) of the application indicates that whereas, as typed, the reference to the map would apply only to that subparagraph, the intention was that it should apply to the subparagraphs (a) and (b).

9. On 5 December 1991 the Commissioner received a letter dated 29 November 1991 from the CLC enclosing a further amended application. A copy of the letter together with the description of the claimed land and the annexed map are set out in Appendix 3. The letter contains an obvious error in that in the third line the year 1991 should read 1981. Further, subparagraph (c) of the description of the claimed land lacks clarity due to obvious typographical errors but in the circumstances, given that it refers to part of a stock route, that matter is of no present concern.
  
10. To provide a basis for the discussion that follows it will be convenient to set out a chronology of relevant events relating to the land under claim.
  - a) 12 September 1914: Frances Well Reserve is proclaimed as a Water Conservation Reserve pursuant to the *Water Conservation Act 1886* (an Act of the State of South Australia in force in the Northern Territory). The area proclaimed is described as follows:
 

Frances Well Reserve: Starting at a point 40 chains true north from the centre of Frances Well; thence east at right angles for 40 chains; thence south at right angles for 80 chains; thence west at right angles for 80 chains; thence north at right angles for 80 chains; thence east at right angles for 40 chains to the point of commencement.

(Commonwealth Gazette No. 71, 12 September 1914, p. 2158)

The reserve is clearly one square mile in area with Frances Well at its centre.
  - b) 15 March 1919: The Crown grants Miscellaneous Lease (Water) No. 51 to members of the Hayes family of Alice Springs in respect of
 

All that piece or parcel of land containing by admeasurement one (1) square mile or thereabouts and being Water Conservation Reserve Frances Well situate near the junction of the Hugh River and Frances Creek within Pastoral Lease No. 1720 in the Northern Territory of Australia.

The term of the lease was for 21 years commencing on 1 January 1919. The land was leased "for the purpose of supplying water to the public". (At the time the lessees were also the proprietors of PL 1720).
  - c) 4 February 1932: Pastoral Lease No. 119 is granted to members of the Hayes family "in exchange for leases 1720, 1727, 1769, 1770, 1881, 2129 and 2130". The lease was for a term commencing on 25 May 1927 and expiring on 30 June 1965.

- d) 17 August 1933: By notice published in the Commonwealth Gazette No. 48 at pp.1168-9 all previous notifications declaring certain routes to the stock routes were cancelled and in lieu thereof the routes described in the notice were declared to be routes for the passage of travelling stock pursuant to the provisions of s.113 of the *Crown Lands Ordinance*. The route headed "No. 6 Bore (on Newcastle Waters-Queensland Border Stock Route) to South Australian border" includes the following passage:

thence (i.e. from the Holding Ground at Stuart) generally in a south-easterly direction for about 190 miles via Deep Well, Frances Well, Alice Well, Junction Well ....

The notification concludes with the following:

NOTE – The whole of the stock routes referred to herein are more particularly defined on the plans of the Lands and Surveys Department in Darwin.

- e) 14 November 1963: PL119 is surrendered in exchange for a new Pastoral Lease No. 682 for a term of 50 years from 1 July 1963. The leased land is described as:

Northern Territory Portion 810 which said land is delineated in the plan hereon and therein tinted yellow.

A copy of the plan is reproduced in Appendix 4. Although no tinted copy of the plan is available, it appears from the note at the bottom of the plan that the stock route was not included in the area leased.

- f) 29 May 1975: The Surveyor-General approves the survey of NT Portion 1475 as shown on Plan S73/117. (The new NTP 1475 in part encroaches upon part of the Frances Well Reserve).
- g) 30 March 1976: A Proclamation is published in the Australian Government Gazette No. G13 revoking the reservation of Frances Well Reserve as a Water Conservation Reserve. The Proclamation, inter alia, recites that

it is desirable that the said land be used for the benefit of the Aboriginal inhabitants of the Northern Territory.

(Apart from this recital there is no evidence to suggest that the reserve was ever formally dedicated or set aside for the purpose indicated or for any other purpose).

- h) 9 December 1977: The Surveyor-General approves survey of NT Portion 1229 as shown on Plan S77/94. (Part of the new NT Portion 1229 appears to encroach upon a small part of the Frances Well Reserve). At some date unknown NTP 1229 was by administrative process set aside for Education purposes.

- i) 11 April 1979: Special Purposes Lease 456 is executed by Titjikala Social Club Incorporated over NT Portion 1475, to be held in perpetuity as from 28 December 1978. The lessee covenanted to use the land only for the purposes for which it was leased; viz Aboriginal Communal Living. The lease contained the following further covenants on the part of the lessee:

5. That the lessee will by the twenty eighth day of December, 1979 or within such further time as may be approved in writing by the Minister commence to erect improvements suitable to the purpose of the lease on the leased land at a cost of not less than the sum of twenty five thousand dollars and in accordance with plans and specifications previously submitted to and approved in writing by the Minister and the lessee will complete the erection of the said improvements at a cost not less than the said sum in accordance with the said plans and specifications and in accordance with any Act, Ordinance or Regulation by the twenty eighth day of December, 1980 or within such further time as may be approved in writing by the Minister and that the said lessee will at all times maintain and repair and keep in repair all improvements on the said land to the satisfaction of the Minister.

6. That the lessee will by the twenty eighth day of December, 1979 or within such further time as may be approved in writing by the Minister commence to fence the boundaries of the leased land with a stockproof fence, except where natural barriers exist, and the lessee will by the twenty eighth day of December, 1980 or within such further time as the Minister approves in writing complete the erection of the said stock fence, and that the lessee will at all times thereafter maintain and repair and keep in repair the fence to the satisfaction of the Minister.

7. That the lessee will by the twenty eighth day of December, 1980 or within such further time as may be approved in writing by the Minister provide a vehicle inspection fire break track along the full length of all fencing erected on the leased land and such firebreak track shall thereafter be maintained to the satisfaction of the Minister.

8. That the lessee will ensure that for every ten camping sites or part thereof, there will be provided the following facilities –

- 1 water closet for the use by males
- 1 urinal
- 1 water closet for use by females
- 1 shower for use by males
- 1 shower for use by females
- 1 handbasin for each water closet provided

And that the lessee will keep the said facilities to a standard acceptable to the Department of Health and such facilities shall thereafter be maintained in a neat and tidy condition to the satisfaction of the Minister.

- j) 4 November 1981: Frances Well Land Claim (Claim No. 64) lodged with the Commissioner.
- k) 4 June 1984: Amended Frances Well Land Claim lodged with the Commissioner.
- l) 5 June 1987: New subsection 67A(1) of the Land Rights Act comes into force. (The subsection, so far as may be presently relevant, prohibits the granting of any estate or interest in an area of land that is the subject of an application under s.50(1)(a)).
- m) 27 July 1987: An estate in fee simple in NT Portion 1475 is granted to Titjikala Social Club Incorporated.
- n) 30 July 1987: Special Purposes Lease 456 is surrendered.
- o) 18 May 1988: Notification of Titjikala Control Plan pursuant to s.61(2) of the Planning Act published in the Northern Territory Government Gazette No. G20.
- p) 21 August 1991: Notice of acceptance of application to convert NT Portion 1475 to a community living area pursuant to s.16(4) of the Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act published in the Northern Territory Gazette No. G33.
- q) 23 October 1991: Address of Titjikala Social Club Incorporated as shown on the grant in fee simple (Certificate of Title Volume 175 folio 75) changed from care of the Public Officer, Maryvale Station via Alice Springs to care of Central Land Council, PO Box 3321, Alice Springs.
- r) 5 December 1991: Further amended Frances Well Land Claim application received by the Commissioner.
- s) 14 May 1993: Perpetual Pastoral Lease 1063 granted with effect from 1 April 1993 over NT Portion 810. The plan annexed to the lease notes that the lease excludes, inter alia, NT Portions 1229 and 1475 and the Frances Well Reserve.
- t) 21 February 1996: Revocation of declaration of stock route relating to the area of land being part of PPL 1063 known as Maryvale Station as bounded by thick black lines and hatched on the plan in the schedule to the notice published in the Northern Territory Government Gazette No. G8. (A copy of the plan referred to is reproduced in Appendix 5). In 1992 the part of the original Frances Well Reserve which remained after the surveying of NT Portions 1475 and 1229 was designated as NT Portion 4258.



11. The 1933 stock route declaration states that

all such routes shall be one mile in width, i.e. half a mile on either side of the lines described except in any parts where station fences limit this width on one side or the other.

This suggests that (subject to what may be revealed in the plans referred to in the concluding note) the stock route follows a line between each successive point mentioned in the description of the route. A stock route one mile wide running from Deep Well to Frances Well would clearly encompass most, if not all, of the Frances Well Reserve, depending upon the direction of the stock route given that the western and eastern boundaries of the reserve run north and south whilst the northern and southern boundaries run east and west. The problem with the concluding note is that the available evidence suggests that there were no plans of the type mentioned in the note and moreover, plans subsequently prepared show the stock route in a variety of positions, several of which are located some distance from Frances Well.

12. The stock route status of the land comprising NT Portion 1475 (if it ever existed) was clearly terminated by the granting of SPL 456 on 28 December 1978. Apart from the usual right that a lessee has (subject to the terms of the lease) to the exclusive possession of the demised land, the covenants of the lease, particularly clause 6 which required that the land be fenced with a stockproof fence, are entirely incompatible with any continued use of the land as a route for travelling stock. Another fact that leads to the same conclusion is that Frances Well itself is within the boundaries of NT Portion 1475 and enclosed within the stockproof fence thus negating the whole purpose of having a stock route at that place.

13. Because of its small scale the plan in the schedule to the 1996 partial revocation of the stock route is far from helpful. However, the thick black lines referred to appear to encompass the areas indicated by the lines pointing to NT Portions 1229, 1475 and 4258. In all the circumstances I am of the view that the 1996 revocation was intended to finally dispose of whatever part of the stock route then remained within the outer boundaries of NT Portion 810. This being so, s.50(2D) of the Land Rights Act and likewise s.67A(6) have no application to any part of the land under claim.

14. The map annexed to the original application in 1981 is obviously based upon the plan of NT Portion 810 taken from PL 682. The area hatched is part of the stock route said to be excluded from the lease as well as the Frances Well Reserve which is also said to be excluded. It is surprising that the application makes no reference to NT Portion 1475 which in 1979 had been leased in perpetuity to the Titjikala Social Club Incorporated for the purpose of Aboriginal Communal Living. It may well be that in 1981 NTP 1475 was held on behalf of Aboriginals but it was not then unalienated Crown land. It beggars belief that in 1981 the CLC did not know that NTP 1475 was

no longer unalienated land and given that the application twice refers to the claimed land as unalienated Crown land it is a fair conclusion that the claim was not intended to include NTP 1475. Furthermore, given the statutory functions of the CLC it is not credible to suggest that in 1981 the CLC was not aware of the granting in perpetuity of SPL 456 for the purpose of Aboriginal Communal Living.

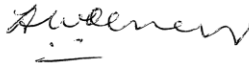
15. Reference has already been made to the description of the claimed land appearing in the 1984 amended application and in particular to the effect of the superimposed line and arrow. The hatching on the map attached to the amended application does not extend to either NT Portion 1229 or NT Portion 1475. This (at least so far as NT Portion 1475 is concerned) is consistent with an intention to claim only unalienated Crown land (as is expressed twice in the amended application) and is also consistent with an understanding on the part of the CLC that NTP 1475 was not unalienated land and was not intended to be part of the claimed area. There is therefore no inconsistency between the view expressed above as to the non-inclusion of NTP 1475 in the original application and the claim as described in the amended application.
16. It follows from the conclusions expressed above that at the date of the grant of title in fee simple to Titjikala Social Club Incorporated NT Portion 1475 was not an area of land in respect of which an application referred to in s.50(1)(a) of the Land Rights Act had been made and accordingly the provisions of s.67A(1) of the Act had no application in relation to the grant of title. It also follows that at the date of the further amended application in 1991 NTP 1475 was no longer Crown land as defined in s.3(1) of the Act, a fact of which the CLC would have been well aware having regard to the change of address of the Titjikala Social Club Incorporated registered on the Crown grant six weeks before the amended application was lodged. NTP 1475 was not then an area of land that was available to be the subject of an application pursuant to s.50(1)(a).
17. Even assuming (which has not been established with any certainty) that, at the time the 1991 amended application was made, the whole or part of NT Portion 1229 and/or the remnant area of the Frances Well Reserve (now NTP 4258) were part of the stock route declared in 1933, following the revocation gazetted on 21 February 1996 those areas could no longer be regarded as being within the scope of s.50(2D) nor would they be affected by s.67A(6) which did not come into operation until 2006, many years after the revocation.

18. I am satisfied that the Frances Well Land Claim (No. 64) as amended is a valid traditional land claim application for the purposes of s.50(1)(a) of the Land Rights Act in so far as it relates to

- a) NT Portion 1229; and
- b) NT Portion 4258 (being the balance of the Frances Well Reserve as defined in the 1914 Proclamation after the excision from that area of parts of NT Portions 1475 and 1229).

I am further satisfied that there is no statutory impediment to my exercising the functions of the Commissioner pursuant to s.50(1)(a)(i) and (ii) of the Act in respect of NT Portions 1229 and 4258.

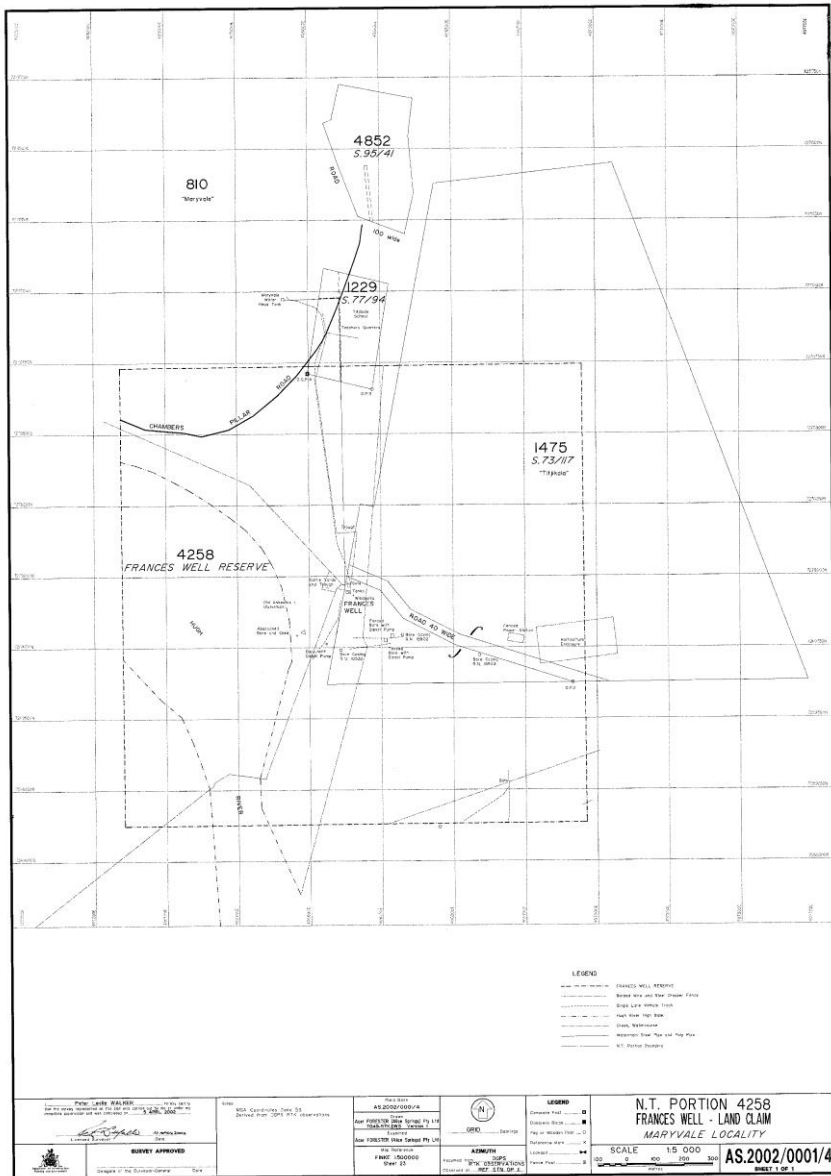
Dated this sixteenth day of June 2008.



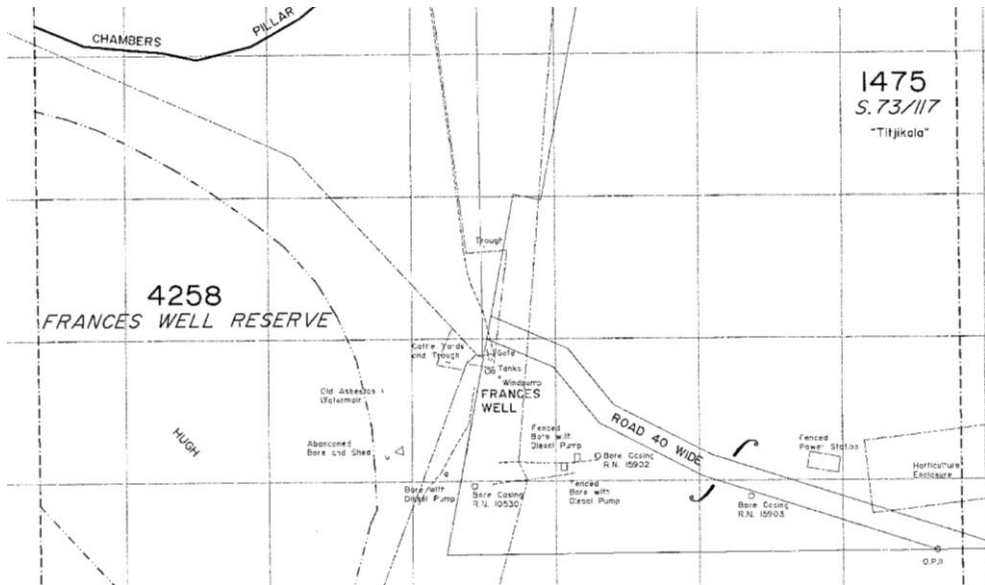
H.W. OLNEY

Aboriginal Land Commissioner

# APPENDIX 2 – Survey Plan



# APPENDIX 3 – Enlargement of the Central Area



## **APPENDIX 4 - List of Appearances and List of Anthropologists and Linguists**

### **Counsel for the claimants:**

David Avery and Elly Patira (Central Land Council)

### **Counsel for the Northern Territory:**

Jennifer Laurence (Solicitor for the Northern Territory)

### **Counsel for Mr Goldsworthy:**

John Stirk (Povey Stirk Lawyers)

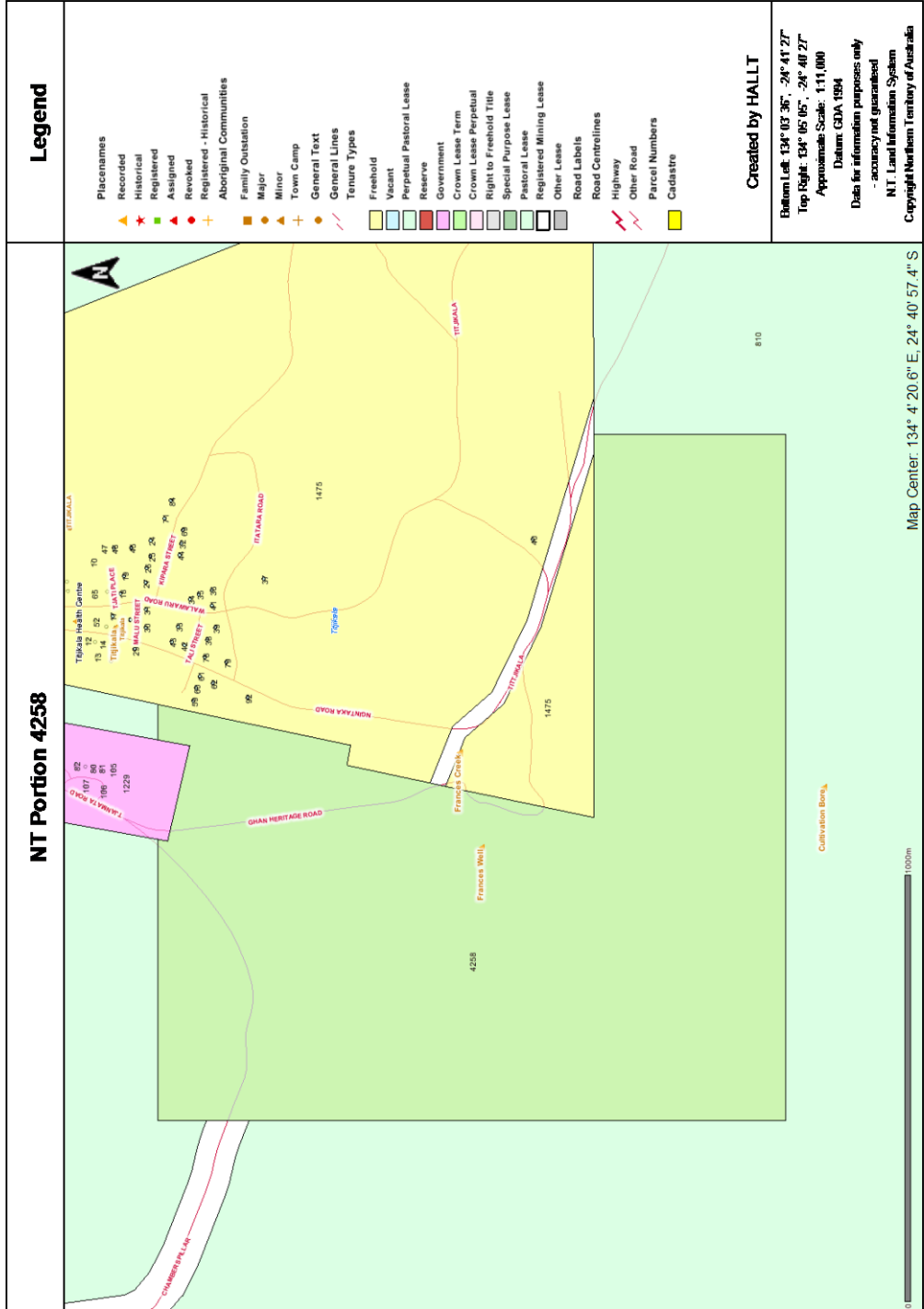
## **APPENDIX 5 - List of Exhibits**

- Exhibit 1: “Submission on Title” document
- Exhibit 2: Anthropologist’s Report date March 2008 by Ms Ase Ottosson
- Exhibit 3: “Genealogy” document
- Exhibit 4: “Sacred Site Register” document
- Exhibit 5: Two maps of the claim area
- Exhibit 6: Statement of Mr Goldsworthy
- Exhibit 7: Statement of Mr Goldsworthy
- Exhibit 8: Bore Reports for Bore RN15432; RN914 (extract) and RN3503 (extract)
- Exhibit 9: A1 Plan of map of NT Portion 4258, depicting the course of the Ghan Heritage Road through NT Portions 1229 and 1475 and the path of the Chambers Pillar Road into NT Portion 1229
- Exhibit 10: A2 Map of claim area depicting path of Chambers Pillar Road and Ghan Heritage Road through NT Portion 1229 and location of Titjikala School through NT Portion 1229
- Exhibit 11: A3 Map of NT Portion 4258 depicting course of Chambers Pillar Road and course of Ghan Heritage Road through that portion
- Exhibit 12: A4 Wider area map depicting in particular NT Portion 1229, and location of the Titjikala settlement and allotments
- Exhibit 13: A5 Aerial photograph of NT Portion 1229 with access tracks through that portion marked in red
- Exhibit 14: A6 Aerial photograph of NT Portion 1229 depicting location of housing allotments within that portion

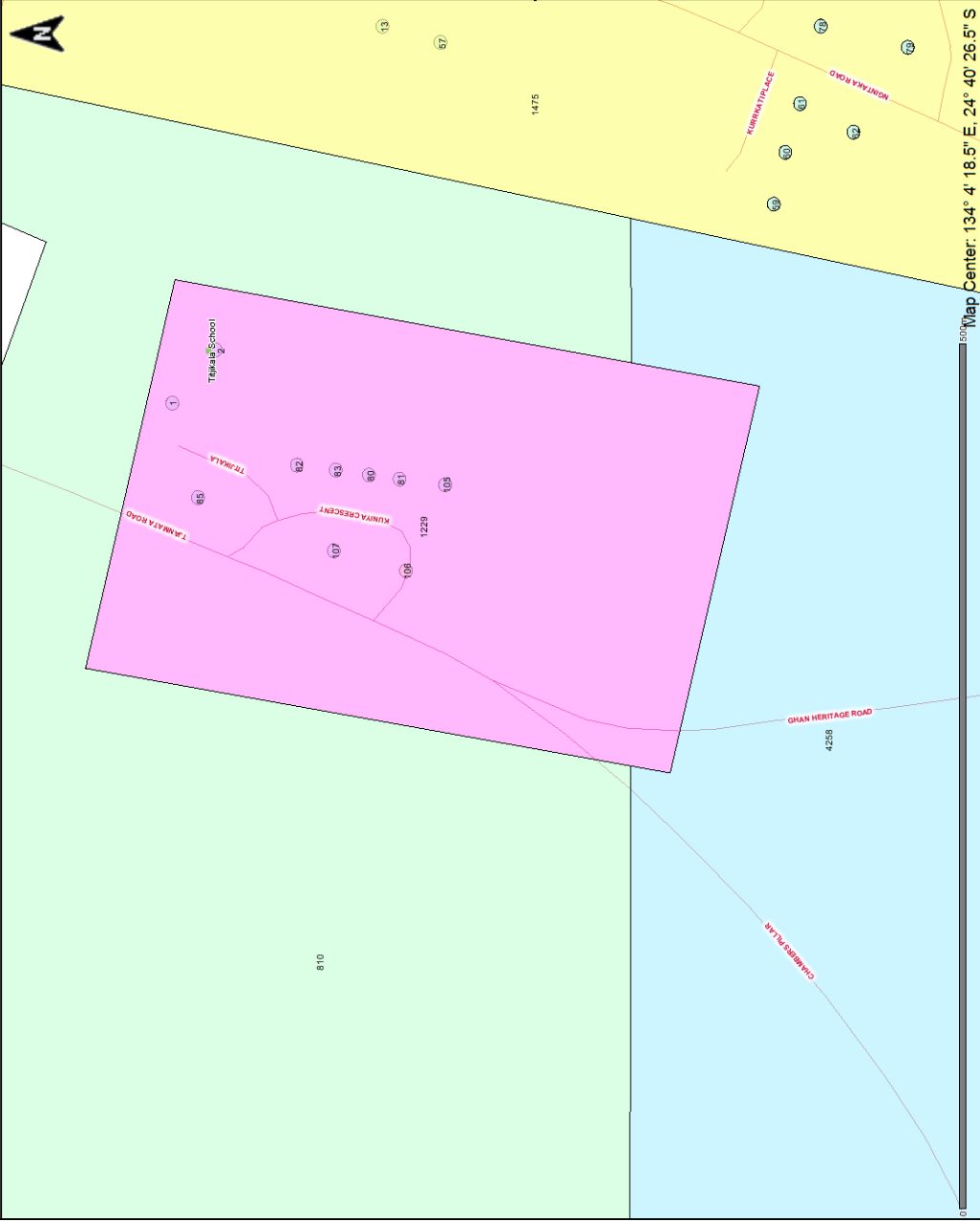
- Exhibit 15: A7 Record of administrative interests and information, Northern Territory concerning NT Portion 4258
- Exhibit 16: A8 Record of administrative interests and information, Northern Territory, concerning NT Portion 1229
- Exhibit 17: A9 Aerial photograph of NT Portion 1229 with diagonal hatching to indicate extent of required prospective road reserve in relation to Chambers Pillar Road
- Exhibit 18: A10 Aerial photograph of NT Portion 1229 without hatching
- Exhibit 19: A11 Map depicting current titles over land claim area and adjacent areas of EL29080 and EL29081 (title documents)
- Exhibit 20: A12 Map of serviced land availability programs (SLAP Map), Titjikala, showing power and water corporation infrastructure within NT Portion 1229
- Exhibit 21: A12A Larger scale map of same
- Exhibit 22: A13 Larger scale map of same, close up sections or part of NT Portion 1229
- Exhibit 23: A14 Aerial photograph of NT Portion 1229 depicting location of Titjikala School and Education Centre
- Exhibit 24: A.14A Aerial photograph of NT Portion 1229 (closer) depicting location of Titjikala School and Education Centre in NT Portion 1229
- Exhibit 25: A.15 Site plans and representative photographs of Titjikala School and Education Centre



# APPENDIX 6 - Maps of Claim Area



# NT Portion 1229



# Legend

- Placenames
- Recorded ▲
- Historical ★
- Registered ■
- Assigned ▲
- Revoked ●
- Registered - Historical +
- Aboriginal Communities
- Family Outstation ■
- Major ●
- Minor +
- Town Camp ▲
- General Text ◆
- General Lines —
- Tenure Types
- Freehold
- Vacant
- Perpetual Pastoral Lease
- Reserve
- Government
- Crown Lease Term
- Crown Lease Perpetual
- Right to Freehold Title
- Special Purpose Lease
- Pastoral Lease
- Registered Mining Lease
- Other Lease
- Road Labels
- Road Centrelines
- Highway —
- Other Road —
- Parcel Numbers

## Created by HALL

Bottom Left: 134° 04' 06", -24° 40' 34"  
 Top Right: 134° 04' 31", -24° 40' 18"  
 Approximate Scale: 1:3,300  
 Datum: GDA 1994  
 Data for information purposes only  
 - accuracy not guaranteed  
 N.T. Land Information System  
 Copyright Northern Territory of Australia

Map Center: 134° 4' 18.5" E, 24° 40' 26.5" S

## **APPENDIX 7 - Traditional Aboriginal Owners of NT Portion 1229 and NT Portion 4258**

### **Descendants of Paddy Ntjalka**

Alison Smith	Cecil, child of Ronald Morton
Andrea Smith	Christine Davis
Angelina Schilling	Christine Ungwanaka
Anthony Williams	Christopher Ungwanaka
Arthur, child of Ronald Morton	Daisy Elizabeth Campbell
Barbara Pepperill	Dean Smith
Barry Morton	Denise Foster
Benjamin Douglas	Donny, child of Angelina Schilling
Betty (Lizzie) Rawson	Edward (Eddie) Foster
Bevan, child of Harold Morton (not a member of the local descent group himself, but a son of Daisy Elizabeth Campbell)	Edward Ungwanaka
Brendan, child of Margaret Smith	Elaine, child of Nancy Schilling
Calandra Ungwanaka	Elizabeth Doolan
Careen, child of Angelina Schilling	Elizabeth Erlandson
Carey, child of Christopher Ungwanaka	Elizabeth Pepperill
Caydence, child of Alison Smith	Emily (Iwana) Schilling
	Eric Erlandson
	Eric Williams
	Evelyn Pepperill
	Francis, child of Roxanne (Josephine) Ungwanaka
	Francis, child of Patrick Oliver
	Frank (Benno) Pepperill

Frank Costello  
Gaye Costello  
Graham Erlandson  
Harold, child of Angelina Schilling  
Hazel (Ethel) Ungwanaka  
Helen Davis  
Herman Pepperill  
Jeanette Ungwanaka  
Jennifer Braedon  
Jimmy, child of Angelina Schilling  
Jimmy Campbell  
Joan Braedon  
Joanne Williams  
Jodie-Rose, child of Margaret Smith  
Joe Braedon  
Joe Rawson  
Jonathon Smith  
Josephine Erlandson  
Josephine Mimili  
Junior, child of Dean Smith  
Keisha, child of Alison Smith  
Kendric, child of Patrick Oliver  
Kevin Pepperill  
Kiara Allan  
Lenise Braedon  
Lincoln, *child of Susan Campbell* Amungara and Graham Erlandson

Lorraine Douglas  
Malcolm, child of Harold Morton (not a member of the local descent group himself, but a son of Daisy Elizabeth Campbell)  
Margaret Campbell  
Margaret Smith  
Maria, child of Roxanne (Josephine) Ungwanaka  
Marianne Pepperill  
Marjorie Braedon  
Marty, child of Ronald Morton  
Mary Morton  
Maxi Davis  
Michael Allan  
Michelle Costello  
Michelle Williams  
Nathan, child of Andrea Smith  
Nimboy, child of Timothy Ungwanaka  
Noella Morton  
Norman Pepperill  
Patrick Oliver  
Penny Douglas  
Renie Pepperill  
Renie Pepperill Jnr  
Richard (Woe) Foster  
Richard Williams  
Rodney Campbell  
Rodney Katatjuna

Ronald Morton  
Rosemary, child of Rodney  
Katatjuna  
Roxanne (Josephine)  
Ungwanaka  
Sheldon, child of Harold  
Morton (not a member of the  
local descent group himself,  
but a son of Daisy Elizabeth  
Campbell)  
Steven Rawson  
Susan Campbell Amungara  
Tahlia, child of Alison Smith  
Tamika, child of Margaret  
Smith  
Teresa Kelly  
Teresa Ungwanaka  
Tiani, child of Margaret  
Smith  
Timothy Ungwanaka  
Tjuna, child of Christopher  
Ungwanaka  
Tjunya, child of Roy Braedon  
(not a member of the local  
descent group himself, but a  
grandson of Paddy Ntjalka)  
Tony Pepperill  
Tristan Braedon  
Troy Erlandson  
Vanessa Davis  
Vera, child of Angelina  
Schilling  
Vincent Douglas  
Wendy Costello

Zacharia, child of Harold  
Morton (not a member of the  
local descent group himself,  
but a son of Daisy Elizabeth  
Campbell)

### **Descendants of Arreyeke**

Aubrey Johnson  
Belinda Swan  
Betty Braedon  
Darryl Jack  
Deanne Braedon  
Desmond Jack  
Don (Thatuku) Kenny (also a  
descendant of Yewlte)  
Eric Braedon  
Eric Ebatarinja  
Eva Braedon  
Eva Johnson  
Frieda Kenny (also a  
descendant of Yewlte)  
Helen Gillen  
Ian Braedon  
Jacqueline Williams  
Joan McCormack (nee  
Johnson)  
Julie Johnson  
Kevin Williams  
Lincoln Brokus  
Lisa Jane Braedon  
Loretta Kenny (also a  
descendant of Yewlte)  
Marlene Taylor

Mary Braedon  
Mary Williams  
Maxie Hayes  
Maxie Kenny (also a descendant of Yewlte)  
Pansy Brokus  
Peter Clive Johnson  
Queenie Gillen  
Rita Rubuntja  
Rochelle Braedon  
Roy Hayes  
Sylvania Kenny (also a descendant of Yewlte)  
Ursula Nichaloff (nee Johnson)  
Walter Ebatarinja  
Willy Taylor

**Descendants of Yewlte**

Aaron Kenny  
Aaron Le Rossignol  
Aaron Shannon  
Amanda Baird  
Andrew Brian Kenny  
Andrew Kenny  
Anna Marie Thompson  
Annette Gilligan  
Annette Kenny  
Bailey, child of Anna Marie Thompson  
Barbara Kenny  
Barbara Taylor

Basil Taylor  
Benjamin, child of Lyall Kenny  
Bob Taylor  
Bobby Taylor  
Brodie, child of Sharon Kenny  
Bruce Kemp  
Caitlin Ferguson  
Caitlin Kenny  
Carol Kenny 1  
Carol Kenny 2  
Casey Collins  
Casey Kenny  
Casey Kenny Jnr  
Cassandra Campbell  
Charmaine Taylor  
Christine Armstrong  
Christopher Campbell  
Christopher Kenny  
Clem Kenny  
Colin Kenny  
Craig Le Rossignol  
Cynthia Ferguson  
Damien, child of Josephine Kenny (not a member of the local descent group herself, but a granddaughter of Jack Kenny, son of Yewlte)  
Daniel, child of Josephine Kenny (not a member of the local descent group herself,

but a granddaughter of Jack Kenny, son of Yewlte)	Gerald Croaker
Daniel Forrester	Gillian Taylor
Darius Kenny	Glen Ward
Darryl Armstrong	Harry Taylor
Deanne Hampton	Harry Taylor Jnr
Deanne Ward	Heather Armstrong
Dennis Kenny	Heather Kenny
Dennis Orr	Henry Kenny
Don (Thatuku) Kenny (also a descendant of Arreyeke)	Ian, child of Donna Kenny
Donna Kenny	Ian Liddle
Douglas Taylor	Ingrid Kenny
Dustin Taylor	James, child of Josephine Kenny (not a member of the local descent group herself, but a granddaughter of Jack Kenny, son of Yewlte)
Edith Kenny	James Taylor
Edward Braedon	Jamis Taylor
Edward Kenny	Jane Kenny
Elaine Campbell	Janet Forrester
Elizabeth Campbell	Janette Kenny
Elizabeth Donaldson	Jason Kenny
Emma Thompson	Jeanette Kemp
Ethan Thompson	Jeffery Kenny
Felicia Kenny	Jennifer, child of Malcolm Kenny
Fiona Campbell	Jennifer Campbell
Frank Kenny	Jeremy, child of Lyall Kenny
Frank Kenny Jnr	Joanne Kenny
Frieda Kenny (also a descendant of Yewlte)	Joanne Shannon
Frieda Shannon	Joe Forrester
Gail Kemp	John Henry (Chucky) Taylor
Gary Armstrong	
Gary Taylor	

Johnny Campbell  
Josette Kenny  
Joy, child of Casey Kenny  
Jnr  
Judy Armstrong  
Julie Anne Armstrong  
Julie Kenny  
Karen Taylor  
Kathleen Campbell  
Katrina Kenny  
Keith Liddle  
Kelly Kenny  
Kenny Taylor  
Kerriane Kenny  
Kerrie Le Rossignol  
Kimberley Taylor  
Kyra, child of Donna Kenny  
Lakisha Stewart  
Leanne Campbell  
Leslie Campbell  
Lillian Le Rossignol  
Loretta Kenny (also a  
descendant of Arreyeke)  
Loyola Le Rossignol  
Lyall Kenny  
Malcolm, child of Harry  
Taylor  
Malcolm Kenny  
Malcolm Kenny Jnr  
Margaret Orr  
Marilyn Kenny  
Mary Le Rossignol

Matthew Gilligan  
Matthew Hampton  
Mavis Armstrong (nee  
Taylor)  
Maxie Kenny (also a  
descendant of Arreyeke)  
Megan Orr  
Myra Ah Chee (nee Taylor)  
Myra Taylor  
Natalie Bathern  
Nathan Collins  
Ndailia, child of Donna  
Kenny  
Nigel Kenny  
Nita Kenny  
Noelene Kenny  
Pam Kenny  
Paul Ah Chee  
Peter Kenny  
Peter Kenny Jnr 1  
Peter Kenny Jnr 2  
Peter Taylor  
Quentin, child of Lyall  
Kenny  
Rachel Thompson  
Raelene Kenny  
Reggie Kenny  
Reginald Thompson  
Reginald Thompson Jnr  
Renee Kenny  
Rhianna, child of Donna  
Kenny



Rhianna Lewis  
Richard Forrester  
Richard Taylor  
Ricky Orr  
Robert Taylor  
Rodney Baird Jnr  
Ronald Kenny  
Roxanne Kenny 1  
Roxanne Kenny 2  
Ruth Emery  
Sabina Stewart  
Samantha Liddle  
Sandra Kenny  
Sandra Orr  
Sarah, child of Josephine  
Kenny (not a member of the  
local descent group herself,  
but a granddaughter of Jack  
Kenny, son of Yewlte)  
Shane Davis  
Shani Kenny  
Sharon Kenny  
Shaun Taylor  
Shawna Collins  
Shirley Kenny  
Sonya Kenny  
Stanley Kenny  
Steven Kenny  
Susette Kenny  
Suzanne Campbell  
Syd Kenny

Sydney Kenny  
Sylvania Kenny (also a  
descendant of Arreyeke)  
Tahlia Kenny  
Tamia Thompson  
Tanya, child of Anna Marie  
Thompson  
Tanya Le Rossignol  
Tessa Campbell  
Thea Kenny  
Theresa, child of Sylvania  
Kenny  
Thomas Kenny  
Tracy Briscoe  
Travis Kenny  
Trevor Lewis  
Tristan Campbell  
Valerie Campbell  
Vanessa Bathern  
Veronica Campbell  
Veronica Kenny  
Victoria Croaker  
Vincent Taylor  
Walker Bathern  
Walter Forrester  
Wayne Bathern  
William Orr  
William Taylor  
William Taylor Jnr  
Winona Taylor  
Zachary Kenny

