



Aboriginal Land Rights (Northern Territory) Act 1976

Cobourgh Peninsula Land Claim No. 6

Report and Recommendation of the Aboriginal Land Commissioner
to the Minister for Indigenous Australians
and to the Administrator of the Northern Territory



Cobourg Peninsula Land Claim No. 6

Report No. 80

Report and Recommendation of the Aboriginal Land Commissioner,
the Hon John Mansfield AM KC,
to the Minister for Indigenous Australians
and to the Administrator of the Northern Territory

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19 June 2024

The Hon Linda Burney MP
Minister for Indigenous Australians
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: MinisterBurney@ia.pm.gov.au

Dear Minister,

RE: Cobourgh Peninsula Land Claim (No. 6)

In accordance with section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, 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 faithfully,

A handwritten signature in dark ink, appearing to read 'John Mansfield'.

The Hon John Mansfield AM KC
Aboriginal Land Commissioner



Australian Government

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19 June 2024

The Hon Hugh Heggie PSM
Administrator of the Northern Territory
Office of the Administrator
14 The Esplanade
DARWIN NT 0800

By email: govhouse@nt.gov.au

Dear Administrator,

RE: Cobourg Peninsula Land Claim (No. 6)

In accordance with section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, 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 Australians.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'John Mansfield'.

The Hon John Mansfield AM KC
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 the outcome of an Inquiry conducted into the traditional Aboriginal ownership of the Cobourg Peninsula. It arises from complex and somewhat convoluted circumstances, as explained below in this Introduction. It concerns the claim brought by the Northern Land Council (NLC) on behalf of a number of Aboriginal persons claiming to be the traditional owners of the area of land known as the Cobourg Peninsula under section 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA). The claim area is illustrated by the map at Annexure A to this Report. The claim was made on 30 March 1978 and listed as number 6 in the register of applications held by the Office of the Aboriginal Land Commissioner (Commissioner), as required by section 50(1)(c) of the ALRA.
2. The Cobourg Peninsula is located on the north-western point of Arnhem Land in the Northern Territory, proximate to and just east of the Tiwi Islands. Croker Island is to its immediate east. It is known for its biodiverse environment and diverse Aboriginal cultures. It is also extremely remote, with access by road through Arnhem Land only available during the Dry Season.
3. For many years, Aboriginal people lived on this land without significant displacement, connecting and trading with trepangers and negotiating the space with settlers that arrived in the late 1800s. However, in the past century, as is the case in many remote areas in Australia, it has been common for people to leave the Peninsula for periods at a time to access services, work and schooling in more populated areas in the Top End.
4. The Cobourg Peninsula Land Claim (Cobourg LC) was first listed for a proposed hearing by Commissioner Toohey in February 1980 (the 1980 proposed hearing). The 1980 proposed hearing was then adjourned to a date to be fixed on the basis that the Northern Territory and NLC would settle the land claim by agreement. That was the position adopted by both the Northern Territory and the NLC. It was duly implemented. Under this agreement, freehold ownership of the claim area was to be vested in the Cobourg Peninsula Sanctuary Land Trust (Cobourg Land Trust) established under the *Cobourg Peninsula Aboriginal Land and Sanctuary Act 1981* (NT) (Cobourg Act), and the park so established was to be jointly managed by a Board consisting of 4 traditional Aboriginal owners nominated by the NLC and 4 representatives of the Parks and Wildlife Commission of the Northern Territory. One of the traditional Aboriginal owners was to be the Chair of the Board and was to have a casting vote if necessary as well as a deliberative vote. To this end, a Deed of Grant over the land claimed was finally executed on 1 May 1984. The Board was called the Cobourg Peninsula Sanctuary and Marine Park Board (the Cobourg Board).
5. It was apparently intended that the Cobourg LC would then be withdrawn or in some manner formally disposed of, but no steps were taken to effect that. It is now agreed that it has remained on foot.
6. The administrative structure for the Cobourg Peninsula stood in place then until about 2016 without specific challenge. However, that did not mean that the Board functioned at all times in an effective and uncontentious way.

7. During the period between 1984 and 2016, and indeed thereafter, the NLC was confronted with some internal disagreements between members of clans about representation on the Cobourg Board. In 2007, this led some members of one clan to request the Commissioner at the time to revive the Cobourg LC. However, the then Commissioner considered himself unable to proceed with any functions under section 50(1)(a) of the ALRA until the landowner under the Cobourg Land Trust gave their consent in accordance with section 50(2C) of the ALRA. That position was not further explored at the time.
8. One significant and ongoing issue over that period was, and still is, the status of the Minaga clan regarding a significant area of the claim area at the northern section of Cobourg Peninsula at Vashon Head, and extending south to a line at Adbanae on the mid western coast of Trepang Bay to Curlew Bay and Curlew Point in Port Essington on the mid eastern coast of that area. It is convenient to call this area the 'Disputed Area', as it was called during the Inquiry. It was accepted that this area was occupied by members of the Agalda clan at relevant times, and the issue ultimately was whether the Minaga clan also had a shared entitlement as traditional Aboriginal owners of the Disputed Area.
9. As emerged in the succeeding period, there was also, and still is, an ongoing issue as to the traditional Aboriginal ownership of the small island known as Mogogout Island. In the Inquiry it was simply called Mogogout Island. I shall retain that description.
10. Despite the expectations of the NLC that the identification of the traditional Aboriginal owners of the remainder of the claim area would be uncontentious, that expectation was not met. In circumstances described below, that area – initially called the Non-Disputed Area - also became contentious to some degree and required attention as part of the Inquiry. I shall adhere to that description, even though it is not literally correct.
11. Before proceeding to consideration of the Cobourg LC, having regard to that general background, it is appropriate to note some general features of the ALRA as they relate to such an Inquiry.
12. After my Inquiry into the Cobourg LC began in 2021, and on review of the status of the land available for claim, the claimant parties and the NLC and the Northern Territory came to the agreement that the grant of freehold land to the Cobourg Land Trust was in fact invalid under the ALRA, and thus could not and should not impede the hearing of the Cobourg LC. That decision was based upon the terms of section 67A of the ALRA.
13. My functions as the Commissioner, as stipulated by section 50(1)(a)(ii) of the ALRA, require me to ascertain who the traditional Aboriginal owners of the land claimed are, and to report my findings to the Minister for Indigenous Australians (Minister) and the Administrator of the Northern Territory (Administrator). Unlike the test for native title under the *Native Title Act 1993* (Cth), a finding of traditional ownership under the ALRA does not require evidence of traditional rights that have been held and enjoyed continuously by claimants and their predecessors since the settlement of colonies in Australia. The relevant issues are primarily whether there are traditional

Aboriginal owners in relation to the claimed land (as that expression is defined in section 3 of the ALRA), and, because there are disputes between certain clans or family groups, the identification of the traditional Aboriginal owners by reference to that defined expression. That is, the Inquiry is as to the contemporary rather than to the historical state of ownership. It requires identification of a local descent group or groups of Aboriginal people who have common spiritual affiliations to a site or sites on the land that place that group or groups under primary spiritual responsibility for the sites and the land at the time of the Inquiry by the Commissioner. Contemporary circumstances which have increasingly caused disruptions to Aboriginal people's relationships to their land are sometimes an obstacle to the demonstrated existence of such a relationship, but that is not a significant obstacle in the present circumstances. The Cobourg Peninsula is a remote and little disturbed environment. Nevertheless, as will be exposed below, some personal circumstances of the apical ancestor of the Minaga clan claimants do provide a matter requiring careful consideration. I have not specifically referred to the additional criterion for traditional Aboriginal ownership in subclause (b) of the definition of traditional Aboriginal ownership in section 3 of the ALRA, namely the right to forage over the claimed land, as it was not a significant feature of the evidence. I have made findings about that criterion later in this Report.

14. As noted, at the beginning of the Inquiry, it was thought that such issues of contested traditional Aboriginal ownership only arose in one small area located in the north-west tip of the Cobourg Peninsula where two clans, the Agalda and Minaga, had competing claims to traditional ownership. In the notice of commencement of Inquiry, this area was termed the Disputed Area. The balance of the land claimed, the Non-Disputed Area, was understood to be shared between members of the Agalda, Madjunbalmi, Ngaynjaharr and Murran clans. It was anticipated at the outset of the Inquiry that the claim over that area would be settled by agreement between the Northern Territory and the NLC.
15. Consequently, the Inquiry initially commenced concerning the Disputed Area and Mogogout Island only.
16. However, over the course of the Inquiry, the nature of those two nominal areas changed in unexpected ways. Firstly, some evidence arose from the first traditional Aboriginal ownership hearing in September 2021 which suggested that the Minaga clan might have a traditional claim to land that lay beyond the boundary of the Disputed Area. This led to a further hearing of evidence in October 2022 to determine the traditional ownership of the small portion of land just outside the boundary of the Disputed Area which was then referred to as the 'Remnant Disputed Area.' Section 50(1)(a)(i) of the ALRA requires the Commissioner to determine whether the claimants or any other Aboriginals are the traditional Aboriginal owners of the claimed land or parts of it, so that evidence could not simply be ignored.
17. The indeterminacy regarding the extent of the Disputed Area (or the possibility that the Minaga clan interests might extend a little beyond the Disputed Area) had the consequence that the identification of the traditional Aboriginal owners of the relevant Non-Disputed Area without an Inquiry into traditional Aboriginal ownership by the Commissioner on this issue could not be effected. To resolve this, the Commissioner brought the Remnant Disputed Area under the Inquiry in October 2022 on the understanding that traditional ownership for the rest of the Non-Disputed Area was

still not likely to be in dispute. However, at the end of 2022 it came to light that there were two groups within the Murran and Ngaynjaharr clans who claimed to be included as traditional owners of the land of the Murran and Ngaynjaharr clan estates in the Non-Disputed Area. They said they had not been recognised as such by the NLC in its proposal to the Northern Territory to resolve by agreement the traditional Aboriginal ownership of the Non-Disputed Area. That is, the persons within the Murran clan and the Ngaynjaharr clan who were the traditional Aboriginal owners of their parts of the claim area became contentious. The Inquiry then had to extend to address those issues. A further hearing was held in April 2023 to hear the evidence of the new families or groups beyond those groups as represented by the NLC, and who claimed to be part of the same clans.

18. In this Report, I have set out the relevant details of each of the claims made on behalf of the separate groups of claimants in this Inquiry. I have also described the process and procedure of the Inquiry and the evidence produced in support of each claim to traditional Aboriginal ownership of the claimed lands. I have made detailed findings which lead to my recommendations on that aspect.
19. I have also referred to the evidence adduced by a range of interested persons, groups and entities who claimed that they might suffer detriment if the claim were acceded to. I have reported on that potential detriment in accordance with section 50(3)(b), and on the matter referred to in section 50(3)(c). There were several parties who gave evidence in relation of these sections: in response, some claimants provided evidence of ways the asserted detriment might be addressed.
20. It is not the function of the Commissioner to make recommendations to the Minister on how the Minister should exercise the discretion under section 11 of the ALRA whether to make a grant of the claimed land where the Commissioner has recommended a grant of the claimed land (as I have done in this Report). However, I have addressed each submission on detriment in a manner which I believe will be of assistance to the Minister in exercising that discretion, having regard to the categories of interests specified in section 50(3) of the ALRA.
21. I note that one of the claimant groups asserted that they would suffer detriment if, in the event that I did not find that particular group to be the traditional Aboriginal owners, other claimant groups were found to be traditional owners to their exclusion and the Minister acceded to the claim: see section 50(3)(b) of the ALRA. This was not an extensive submission. I have explained and commented upon it.
22. I also note that the claim does not relate to alienated Crown land, so the matters to which section 50(3)(d) refers are not required to be addressed in this Report.
23. Subject to those comments, this Report, as required, contains my findings and recommendations in respect of the Cobourg LC.

2. THE CLAIM AREA, HISTORICAL BACKGROUND AND THE INQUIRY

2.1. THE CLAIM AREA

24. The claim area for the Cobourg LC includes all the land known as the Cobourg Peninsula located in the north-western tip of the Northern Territory. Since 1924, most of the Peninsula has been classified as a national park which has been owned and managed by the Northern Territory.¹ The national park known as the Garig Gunak Barlu National Park now encompasses all land on the Peninsula and all surrounding waters and, as noted above, is jointly managed between the traditional owners and the Parks and Wildlife Commission of the Northern Territory. Section II of the originating application filed by the NLC on 30 March 1978 makes a land claim over:

All that piece or parcel of land in the Northern Territory known as the Coburg [sic] Peninsula commencing at its boundary with the Arnhem Land Aboriginal Reserve and including all the adjacent coastal islands including Endyalgout Island, and all other islands within the area indicated on the attached map.

25. The attached map can be found at Annexure A of this report.
26. Despite not being explicit in the originating application, the NLC's Responsive Submissions on the Status of Land Claimed dated 31 March 2023 confirm that broadly speaking, the claim area includes the Cobourg Peninsula and the surrounding islands to the low water mark.
27. The Peninsula consists of a narrow neck of land that abuts the western boundary of the Arnhem Land Aboriginal Land Trust, being land granted to the traditional Aboriginal owners pursuant to Schedule 1 of the ALRA, and extends over to Cape Don on the Dundas Strait. It is positioned between Melville Island (one of the Tiwi Islands) in the west and Croker Island in the east, each separated by the Dundas Strait and the Bowen Strait respectively. The northern boundary of the claim area is surrounded by the Arafura Sea, and the southern area encloses the Van Diemen Gulf.
28. As well as the mainland Peninsula, the claim area also extends to adjacent islands, and includes all land around both the Peninsula and the adjacent islands up to the low water mark. Islands in the claim area include Sandy Island No. 1, Sandy Island No. 2, Allaru Island, High Black Rock, Burford Island, Greenhill Island, Warla Island, Wangoindjung Island, Wardagawaji Island, Morse Island, Wunmiyi Island, Mogogout Island, Endyalgout Island and two unnamed Islands in Raffles Bay.
29. The Map attached to the original Cobourg LC application, titled 'Map A,' and annexed to this Report as Annexure A, is a rough map which demonstrates the original extent of the land claim across both the Peninsula and adjacent islands.
30. There is a dispute about what area is excluded from the claim because, at the time of the application, it was alienated Crown land as defined in section 3 of the ALRA.

¹ Known first as the Flora and Fauna Reserve at the time of its original classification, the park was gazetted as the Cobourg Peninsula Wildlife Sanctuary and Flora and Fauna Reserve on 21 March 1978, before being renamed in 1979 as the Cobourg Peninsula National Park following the acquisition of the Cape Don Lighthouse and surrounding area by the Commonwealth government pursuant to section 70(2) of the *Northern Territory (Self-Government) Act 1978* (Cth).

According to the original application, the land available for claim did not include the area of Special Purpose Lease No. 153, or the Pearl Culture leases numbered 1-8 which lie below the low water mark in Knocker, Curlew and Berkeley Bay and Port Bremer. The area covered by Special Purpose Lease No 153 is the area identified as Northern Territory Portion 900 (NTP 900). It is convenient to address that issue now: with the exception of NTP 900, there is general acceptance that the area now claimed, and claimed at the time of the application, is available to be the subject of a recommendation by the Commissioner (if appropriate following the Inquiry) for grant by the Minister to the traditional Aboriginal owners.

31. It has been accepted by all those interested that the Cobourg Act, and structural steps taken pursuant to it, must be subservient to the ALRA by reason of section 67A(1) (b) of the ALRA. Consequently, it is also accepted that the establishment of the Cobourg Land Trust under the Cobourg Act, and the subsequent Deed of Grant of the land to the Cobourg Land Trust by the Administrator of the Northern Territory, made on 1 May 1984, are also subject to the grant of any or all of the claimed land, if so recommended by the Commissioner and if the recommendation is acted upon by the Minister. See generally *The Queen v Kearney; ex parte Northern Land Council* [1984] HCA 15; (1984) 158 CLR 365 (the Kearney case).
32. NTP 900 is depicted on Compiled Plan 4480 in the vicinity of Knocker Bay and is physically within the general claimed area.
33. It is clear that, at the time of the original claim made on 30 March 1978, it was not intended by the NLC on behalf of the then claimants to include NTP 900, despite it being within the hatched area on the map attached to the application (Annexure A). Part III of the application says that: ‘Some estates and interests held over parts of [the claimed area] are listed in Part IV of this Application. Any such alienated Crown land is not the subject of this Application.’
34. Part IV then refers explicitly to two Special Purpose Leases, including Special Purpose Lease No 153 to Paspaley Pearling Company Pty Ltd (PPC). As noted, Special Purpose Lease No 153 is over the land in NTP 900.
35. Special Purpose Lease No 153 expired on 5 July 1986.
36. The claimants submit that, upon the expiry of Special Purpose Lease No 153 on 5 July 1986, the land in NTP 900 reverted to the status of unalienated Crown land, and so became available for claim. So much is common ground. Indeed, it then remained available for claim under section 50 of the ALRA, and still would be but for the procedural impediment by reason of the 1997 sunset clause under section 50(2A), inserted into the ALRA by the *Aboriginal Land Rights (Northern Territory) Amendment Act 1987*.
37. The critical issue between the claimants on the one hand and the Northern Territory and PPC on the other is whether the application in its terms should be read so that NTP 900 became part of the claimed area upon the expiry of the lease. If it did, then the Inquiry must address that area before the claim can be said to be finally disposed of under section 67A(2) of the ALRA.

38. There is an obvious attraction in the claimants' position. But for the lease, the area within NTP 900 would clearly have been included within the claimed area. However, it is necessary to have regard to the terms of the application itself. Section II 'Description of the Land claimed', if it stood alone, would clearly have included NTP 900 as it is within the Cobourg Peninsula and within the hatched area on Annexure A. Section III 'Status of Land' must also be considered. It says that all the land claimed is unalienated, but then immediately recognises that there are some estates and interests listed in Section IV about which it says: 'Any such alienated Crown Land is not the subject of this Application'. Special Purpose Lease No 153 is one of those estates and interests.
39. I do not consider it open to the claimants to assert in those circumstances that the application should be read as if it says that NTP 900 is also to be included in the claimed area if and when Special Purpose Lease No 153 expires. It simply does not say that. The consequence of its expiry was not then in contemplation. That is understandable, as the initial hearing of the claim, as noted, was scheduled for 1980. Nevertheless, the application must be read as a coherent whole.
40. In addition, in my view, the capacity of the Commissioner to make a recommendation to the Minister (and to report on detriment) is determined by reference to the terms of the application at the time of the application. If that were not the case, the Inquiry in particular circumstances could extend its ambit, potentially at the expense of those who were not made aware of the extent of the extended claim by access to the application itself, or by reference to the notice of a proposed Inquiry. The focus is on the Commissioner's Inquiry being into the claimed area, not in relation to an extended area. That is the focus of the High Court in the Kearney case, for example per Gibbs CJ at page 374.
41. It is necessary to note one further submission put forward on behalf of the claimants. I doubt that the proper construction of the application can be informed by the terms of the subsequent Cobourg Act in 1981. It is a subsequent event, some years later than the application. The fact that the Cobourg Act provides for NTP 900 to become part of the land the subject of the Cobourg Land Trust when Special Purpose Lease No 153 expires (see section 6 and Schedule [e]) does not therefore assist the claimants' position. At the time of the Cobourg Act, clearly attention was given to the potential expiry of the lease, but that attention was not given in the same way at the time of the application. The Deed of Grant of 1984 also then specifically excluded NTP 900 from its operation.
42. For those reasons I do not consider that any recommendation to the Minister as a result of this Inquiry can include NTP 900.

2.2. HISTORICAL BACKGROUND TO THE COBOURG LC

43. Much of the detail about the history of Aboriginal people in the Cobourg Peninsula and their early contact with Macassan trepang fishermen and Europeans can be found in the Draft Report of Nicolas Peterson and Myrna Tonkinson as contained in the claim book for the 1980 proposed hearing of the Cobourg LC (The Peterson Draft Report). It was drafted in 1979 shortly after the Cobourg LC was lodged. I have used that descriptor as it was used by the parties during the Inquiry and Professor

Peterson gave some evidence about it; Dr Tonkinson did not give any evidence during the Inquiry. The Peterson Draft Report was relied on by both Mr Gareth Lewis, anthropologist for the claimants represented by the NLC (the NLC claimants), and Dr John Avery, anthropologist for the claimants represented by the Midena Lawyers (the Midena claimants), in their initial anthropology reports relating to the Disputed Area. Mr Lewis' Report is dated March 2021 (the Lewis First Report). In broad terms, he takes the view that the traditional owners of the Disputed Area are both certain Agalda clan and Minaga clan members. Dr Avery's initial Report also dated March 2021 (the Avery First Report) took the view that the traditional owners of the Disputed Area were and are certain members of the Agalda clan only. Each Report cited works of a number of anthropologists, educated observers and linguists, and naturalists who had been on the land since the 1940s. The historical backgrounds in these Reports are not contentious and have been summarised below.

44. The earliest written accounts of Aboriginal people on Cobourg Peninsula describe the area as being run by 4 distinct tribes: Bijenelumbo, Limbakarajia, Limbapyu, and Terrutong. According to Naturalist John MacGillivray, these tribes were situated at Port Essington; around the southern coast of the Peninsula and Van Diemen Gulf; on the north-west of the Peninsula around the area called Blue Mud Bay; and on Croker Island and adjacent coasts of the mainland. The tribes were said to interact frequently with each other, speak similar languages, and be alike in physical character, manners, and customs.
45. From 1720 to the 1800s, the Cobourg Peninsula Aboriginal people's main contact with the outside world was with trepang fishermen from Southeast Asia, chiefly from Macassar. These people regularly visited the area for extended periods to collect and process sea cucumbers and take them back for Chinese markets. Because the Macassans visited so often, they naturally developed trade and other relationships with the Aboriginal people, which brought substantial economic benefits for people on the Cobourg Peninsula.
46. In March-May 1818 the Cobourg Peninsula was visited by Captain Phillip Parker King, who sailed from Sydney to survey the north coast of Arnhem Land. During his trip, Captain King gave names to many of the places that appear on maps of the Peninsula today, including Croker Island, Raffles Bay, Smith Point, Port Essington, Vashon Head, Popham Bay, Cape Don, Mounts Bedwell and Roe, and Greenhill Island.
47. In 1827 the British made the first of two attempts to establish a military presence and foothold in the Macassan trade in the Cobourg Peninsula (after a failed attempt on Melville Island) by creating a settlement at Fort Wellington at Raffles Bay. This was abandoned in 1829 following problems and hostility between the Aboriginal people and Europeans. A second settlement, called Victoria, was then established in 1838 at Port Essington by a small group of military people and convicts. However, the spread of illness and lack of trade development caused this settlement also to be abandoned in 1849.
48. In the late 1800s and early 1900s, many Aboriginal people in the Cobourg Peninsula found employment on cattle stations run by pastoralists, and with independent trepangers who had established bases on the Peninsula. Timber milling also operated

on the Peninsula throughout this period, with Mr Reuben Cooper Arramuniga establishing a small-scale timber milling business in Mountnorris Bay in 1920.

49. In 1917 the Cape Don lighthouse was established to serve ships passing through the Dundas Straits between Melville Island and the Peninsula. This introduced a permanent white population to the western tip of the Peninsula until the 1940s when many Europeans and trepang fishermen vacated upon the outbreak of World War II.
50. After the outbreak of World War II, the Welfare Branch of the Australian Government began to urge Aboriginal people in remote places like the Cobourg Peninsula to relocate to places where rations and services could be provided to them. Cobourg Aboriginal people were given the option of moving to either Snake Bay on Melville Island, Bagot or Dellissaville (now known as Belyuen) on the Cox Peninsula, Oenpelli in West Arnhem Land, and Croker Island. This proposal was initially met with resistance from the locals, who wished to stay close to their country and feared sending their children to missions which had policies of keeping tribal Aboriginal people away from the part-Aboriginal children for whom the mission was run. However, the pressures exerted by officials eventually resulted in a wide-scale evacuation to one of those 5 communities, with the final group leaving the Cape Don area for Croker Island in 1970.
51. When Professor Peterson began writing the Peterson Draft Report for the Cobourg LC in 1978, he found a number of the claimants still living on Croker Island. It was only in 1981 that the claimants began to return to country in any number, after an agreement was reached with the Northern Territory for access and use of the land under the Cobourg Act.

2.3. EARLY PROCEDURAL HISTORY OF THE COBOURG LC

2.3.1. 1978-1995: Lodging of the land claim and management under the Cobourg Act

52. The Cobourg LC was made on 30 March 1978 by the NLC on behalf of 23 Aboriginal persons claiming to be ‘traditional Aboriginal owners’ of the land within the meaning of section 3 of the ALRA. As noted in the Introduction, the hearing for the land claim, listed for 11 February 1980, was adjourned after the Northern Territory, following settlement negotiations with the NLC, agreed to pass legislation that vested freehold ownership of the Cobourg LC area, save for some adjacent islands, in the Cobourg Land Trust.
53. This legislation, referred to in this Report as the Cobourg Act, set out the way the park was to be managed for the benefit of the group of traditional Aboriginal owners and Aboriginal people entitled to use or occupy the sanctuary. Traditional Aboriginal owners were to be identified by the NLC on the basis of the same criteria outlined in the ALRA – a local descent group with common spiritual affiliations, primary spiritual responsibility and a right to forage. As under the ALRA, the Cobourg Act required the NLC to consult with all members of the group, and obtain consent from traditional Aboriginal owners, regarding certain matters that arose in relation to the park management.

54. The Cobourg Act also established the Cobourg Peninsula Sanctuary and Marine Park Board (the Cobourg Board) as the administrative body responsible for the management of the national park. The Cobourg Board's functions included preparing plans of management for the control and management of the sanctuary; protecting and enforcing the right of the group to use and occupy the sanctuary; determining rights of access to parts of the sanctuary of persons who were not members of the group; and ensuring adequate protection of sacred sites on the sanctuary. It was comprised of 4 nominees from the Northern Territory and 4 traditional owners nominated by the NLC.
55. As noted above, on 1 May 1984 the Administrator of the Northern Territory executed a Deed of Grant to the Cobourg Land Trust in respect of the land claim area. This included adjacent islands but excluded areas below the low water mark and an area situated on the eastern shore of Knocker Bay, Port Essington known as NTP 900, which was subject to Special Purpose Lease No 153. A Plan of Management was prepared by the Conservation Commission of the Northern Territory on behalf of the Cobourg Board in March 1987.
56. Due to these developments, the Cobourg LC was listed in the Commissioner's Annual Reports until 1995 as 'claim discontinued or otherwise disposed of without an inquiry', with a note stating that 'the claimed land is now vested in a land trust in perpetuity under the *Cobourg Peninsula Aboriginal Land and Sanctuary Act 1981* (NT) as Gurig National Park.' In 1995, the NLC clarified by letter to Commissioner Gray that the claim was adjourned sine die and could be continued if, for instance, there were amendments to the Cobourg Act which adversely affected Aboriginal interests.

2.3.2. 1984-2011: Identification of new traditional owners on the Cobourg Peninsula

57. The 4 traditional owners nominated to the Cobourg Board by the NLC from time to time were to be representatives of each of the 4 land-owning clans on the Cobourg Peninsula: Murran, Ngaynjaharr, Madjunbalmi and Agalda. The Peterson Draft Report provided the basis for the identification of such clans. The authors of the original draft claim book had also identified an area from Garrwil (also spelled Garrwuy and Garrwill) in Curlew Bay west along the north coast to Adbanari in Trepang Bay as land 'that used to be owned by the Minaga clan' whose clan members had 'all died out'. They indicated that this land was now held jointly by two adjacent land-owning groups: Agalda and Madjunbalmi 'because the senior members of both called Minaga FM' – in other words, affiliated to that clan through their father's mother.
58. In 1989, a family known as the Hunters/Bairds made inquiries with the NLC about their status as traditional Aboriginal owners of the Cobourg Peninsula. It was the understanding of this family that they were descendants of the fifth clan that the Peterson Draft Report had noted as having 'all died out,' being the Minaga clan. Further details on the recognition of the Hunter/Baird claim will be explored in more detail in the summary of evidence. For the purpose of this brief history, it is noted that there were 3 clear instances over time where the NLC took different positions in relation to the status of the Hunter/Baird family under the Cobourg Act.

59. Initially, the NLC, by letter to the Chair of the Cobourg Board in 1989, acknowledged the Hunter/Baird family as having land interests but not traditional Aboriginal owner interests in the area claimed as Minaga within the Disputed Area. However, on 8 June 2000 at the 70th meeting of the Cobourg Board, a resolution was made to seek to amend the Cobourg Act and Plan of Management to include the Minaga clan, and in the interim period to include a member of the Minaga clan on the Board as an observer. This led the Chief Executive Officer (CEO) of the NLC to write to the Director of the Parks and Wildlife Commission of the Northern Territory on 30 October 2000 stating that the NLC now recognised the Hunter/Baird family as traditional Aboriginal owners of the Minaga clan estate within the area here referred to as the Disputed Area. Then, following a number of meetings between the NLC, the Minaga clan, and the Agalda clan, the NLC CEO wrote again to the Chair of the Cobourg Board on 20 December 2005 to the effect that the NLC were no longer of the opinion that the members of the Hunter family came within the definition of traditional Aboriginal owners in the ALRA and that the letter of 30 October 2000 was inaccurate to the extent that it suggested otherwise. This position taken by the NLC persisted until shortly before the commencement of the Cobourg LC Inquiry in 2021.
60. The fact that a representative of the Minaga clan continued to remain on the Board as an observer following the 8 June 2000 decision caused some discontent amongst some members of the Agalda clan, being one of the clans which the Peterson Draft Report had acknowledged to have taken over the Minaga estate. In 2007 and 2010 Mr Robert Cunningham, a senior member of the Agalda clan and one of the original claimants listed on the Cobourg LC application, wrote to the Commissioner both directly and through his representative Midena Lawyers to request that the Cobourg LC be progressed so that he and his family could pursue their interests through an inquiry under section 50(1)(a) of the ALRA.
61. In effect, he and the family supporting him wished to have confirmed that the Minaga clan estate had passed to the Agalda clan, with Robert Cunningham Senior as the senior elder of that clan.
62. On 7 April 2010 the Commissioner held an informal conference between parties in an attempt to determine what next steps may be available to address that correspondence. However, because the Deed of Grant executed in 1984 had on its face vested Cobourg LC area in the Cobourg Land Trust to be held on behalf of Aboriginal people, the Commissioner considered that he could not proceed with his functions under section 50(1)(a) of the ALRA without the consent of the landowner (that is the Cobourg Land Trust) pursuant to section 50(2C) of the ALRA. It is now accepted that that position need not have been taken.

2.3.3. 2011-2019: Steps taken towards settlement under the ALRA

63. In 2011, the Northern Territory and the NLC commenced discussions to settle the Cobourg LC with a view to finalising the land claim under the ALRA. I was informed by letter from the Northern Territory on 9 March 2012 that it was hoped that this settlement would ensure the stability of the park management and the commercial operations at the Cobourg Peninsula, principally, the Seven Spirit Bay Wilderness Resort.

64. On 9 October 2012, draft Settlement Principles were considered by the Northern Territory as provided to the NLC and the Midena Lawyers. According to these Principles, the settlement of the Cobourg LC would involve minor legislative amendment to add the Cobourg LC area to Schedule 1 of the ALRA followed by a leaseback of the land to the Northern Territory. The Cobourg Act was to be replaced by a new Act which would mirror as closely as possible the arrangements established under the Cobourg Act, while also providing for the terms of the leaseback and facilitating the recognition of the land as Aboriginal land under the ALRA instead of freehold title under Northern Territory legislation.
65. During this period, Midena Lawyers attended callover/reviews for the Cobourg LC on behalf of a subset of the Agalda group (some of the immediate family of Robert Cunningham Senior), but declined to take a position on whether or not their clients supported the proposed arrangements on the basis that they did not have enough information about the terms of the proposed arrangements between the Northern Territory and the NLC. In January 2014 I arranged for mediation to take place through Midena Lawyers, the NLC and the Northern Territory to promote agreement, if possible, between the 3 interested groups on the progression of the land claim. This mediation continued into 2015 with no resolution.
66. In the meantime, the NLC and the Northern Territory continued to progress settlement through the exchange of correspondence and draft settlement documents in accordance with the draft Settlement Principles. In October 2014 the NLC consulted with traditional Aboriginal owner claimants, not including the Midena claimants, and confirmed by letter to my Office dated 28 November 2014 that the Settlement Principles were accepted by the majority of members of the 4 land-owning clans for the Non-Disputed Area. In a letter dated 20 November 2019 the NLC and the Northern Territory informed me that the principles of settlement had been agreed between the NLC and the Northern Territory, and the NLC were in the process of reviewing a Framework Deed and Draft Bill. It was not apparent at this stage that the NLC or the Northern Territory faced any further issues in finalising the settlement. For reasons discussed below, that state of affairs, and in particular, the position taken by the NLC until 2022 about the members of the Murran clan as one of 4 land holding groups for the Non-Disputed Area, is significant.

2.3.4. 2019-2021: Invalidity of grant and revival of the Cobourg LC

67. In December 2019, Midena Lawyers sent a letter to the NLC and my Office on behalf of the Midena claimants. The letter asserted that the Midena claimants had made the decision to pursue their interests through the Cobourg LC and not through the settlement negotiations. It proposed that the grant of land to the Cobourg Land Trust may in fact not impede the Commissioner from proceeding with his functions under section 50(1)(a) of the ALRA. According to this letter, the grant of land made in 1984 to the Cobourg Land Trust under the Cobourg Act may have been of no effect because of section 67A(1)(b) of the ALRA, and therefore the Cobourg Board's consent would not be required under section 50(2C) before such an inquiry could commence.

68. In early 2020, the NLC and the Northern Territory provided their views on this proposal via correspondence to my Office. In each case, the parties came to the conclusion that the inquiry may proceed in spite of the grant of land to the Cobourg Trust, and that the understanding of the previous Commissioner on this issue had been incorrect. In further correspondence to my Office on 23 January 2020, the NLC expressed a desire to limit any hearing of the Cobourg LC to the area known as the former Minaga estate (the Disputed Area), on the basis that the traditional ownership of the rest of the Cobourg Peninsula, held by the Murran, Ngaynjaharr, Agalda and Madjunbalmi clans, was uncontested, and could continue to be settled according to the Settlement Principles between the Northern Territory and the NLC. Again, that position taken by the NLC in relation to the Non-Disputed Area and in particular as to the members of the Murran clan is significant.
69. On 20 November 2020, I made directions to commence a hearing of traditional ownership in respect of the area of the former Minaga estate, referred to as the 'Disputed Area.' The directions included a request for claim materials from parties; a date for the commencement of mediation between the two competing groups of Agalda claimants, represented by both Midena Lawyers and the NLC, for the purpose of narrowing the issues of the dispute.
70. This mediation, which was conducted from January to February 2021 was not successful either.
71. The directions made on 20 November 2020 also included a request for further information as to the traditional ownership of Mogogout Island, a small island off the Cobourg Peninsula, in respect of which there was also thought to be a traditional owner dispute. A map of the land claimed by the Midena claimants in correspondence from Midena Lawyers dated 3 December 2019 included Mogogout Island, therefore bringing the traditional ownership of Mogogout Island into contention. The Midena claimants filed their submissions for the basis of the Agalda claim to Mogogout Island a week after the date of the directions, on 27 November 2020.
72. Following this correspondence from Midena Lawyers on the issue of traditional ownership of Mogogout Island, I directed parties on 15 February 2021 to provide claim documents for Mogogout Island, thereby extending the Disputed Area in the Inquiry to include Mogogout Island.

2.4. THE COBOURG LC INQUIRY

2.4.1. February 2021 – March 2022: Hearing of the Disputed Area

73. On 26 February 2021 the NLC lodged the Submission on the Status of Land Claimed. The document was written in respect of the status of the Disputed Area only, being the only area at this stage which was under the Commissioner's inquiry. The map depicting the overall claim area, and identifying the Disputed Area and the Non-Disputed Area and Mogogout Island in the waters to the south of the Peninsula and in a rough line to the south west of the closing line of the claimed area is annexed to this Report as Annexure B. There was at the time, and consistently (but for the area described as the Remnant Disputed Area in the evidence and submissions) no issue between the parties appearing at the Inquiry about that proper position of the two areas.

74. On 27 March 2021 a notice of intention to commence an inquiry into the Cobourg LC was publicly advertised in the NT News and The Australian. On 29 March 2021 I provided that notice by letter to the Agalda and Minaga claimants represented by the NLC (the NLC claimants), the Agalda claimants represented by Midena Lawyers (the Midena claimants), the Northern Territory, and other potentially interested persons and entities. The notice listed the hearing of the Cobourg LC for 4 May 2021 at Black Point Ranger Station. It contained two Schedules: Schedule 1 set out the boundaries of the Disputed Area in accordance with the Submission on Status of Land Claimed and Schedule 2 established the boundaries of the Non-Disputed Area. The notice also provided that the Inquiry in so far as it related to traditional Aboriginal ownership would be limited to land described in Schedule 1, and that evidence in respect of detriment to persons or communities would be heard at a later date in respect of land described in both Schedules 1 and 2. A copy of the notice containing the detailed description of the Disputed Area and the Non-Disputed Area is also annexed to this Report as Annexure C. I note that NTP 900 appears to be included within the claimed area. For reasons given above, I have concluded that it was not included within the claimed area.
75. The primary claim materials for the Disputed Area of the NLC claimants and the Midena claimants were lodged with my Office on 30 March 2021. The materials included the Lewis First Report for the NLC claimants and the Avery First Report for the Midena claimants, as well as site maps, site registers, claimant profiles and genealogies from both parties. Notably, the Lewis First Report represented a firm statement of recognition of the Hunter/Baird family as traditional Aboriginal owners of the Minaga estate. The position taken by that Report was therefore the opposite to the position adopted by the NLC from 2005.
76. Apart from the proper interest of the Northern Territory in the identification of the traditional Aboriginal owners, the 3 entities who initially responded to the notice of intention to commence the inquiry were concerned with the matter of detriment. These entities were Telstra Corporation Ltd ('Telstra'), Venture North Australia Pty Ltd ('Venture North'), and Australian Maritime Safety Authority ('AMSA'). Subsequently submissions were received from them and also received from Outback Spirit Tours Pty Ltd ('OST') and PPC. PPC also made a submission about the status of NTP 900, a topic I have addressed above. In addition to a notice of interest, Telstra also provided some submissions which were not expanded on when the opportunity to provide submissions arose at a later date.
77. On 14 April 2021 Midena Lawyers wrote to my Office in respect of the NLC's Submission on the Status of Land Claimed. The letter noted that the Midena claimants were not provided an opportunity to comment on the Submission before its lodgement and did not agree to the proposition that the areas outside of the Disputed Area should not be subject to inquiry. It also included a request that the Northern Territory and the NLC include the Midena claimants in their settlement negotiations for the Non-Disputed Area.
78. The proposed hearing for the Cobourg LC was postponed a number of times due to unforeseen circumstances. In the first instance, accessibility of the claim area was an issue following a heavier than usual wet season in the Top End. The hearing was thus rescheduled for 31 May 2021. Then, between May and July 2021 significant COVID

outbreaks resulted in further hearing dates being cancelled or rescheduled because of concerns about the risk of interstate-based legal representatives transmitting the disease, including to vulnerable people in the community.

79. On 18 May 2021, I set a timeline by directions for outlines of evidence and witness statements to be provided in respect of detriment from those entities who had responded to the notice of intention to commence inquiry. The Northern Territory provided their witness statements in respect of detriment on 9 July 2021. Written summaries from Venture North and AMSA were lodged with my Office on 26 and 30 July 2021 respectively, and subsequently from OST and PPC.
80. On 25 May 2021 the NLC and Midena claimants, together with the Northern Territory, provided a Statement of Agreed Facts for the Disputed Area to my Office. A number of these agreed facts are noted in sections 2.3-2.5 of this Report.
81. On 16 August 2021 the Midena claimants provided a further anthropology report from Dr Avery titled 'Interim Response to Lewis' with supplementary material attached (Avery Interim Response Report).
82. On 10 August 2021 and 27 August 2021 the NLC and Midena claimants lodged their respective responsive detriment submissions.
83. The hearing of the Inquiry into the Disputed Area of the Cobourg LC finally took place on the week of 27 September 2021 to 1 October 2021. The hearing was located at Muirella Park near Jabiru, which was selected by the NLC as a suitable alternative (for accessibility and proximity to the claim area) following the passing of a senior member of the Madjunbalmi clan, on whose country the hearing was originally to have taken place. On the first day of the hearing, separate site visits were conducted by helicopter over the Disputed Area in the Cobourg Peninsula with representatives of the Midena claimants, NLC Minaga claimants, and NLC Agalda claimants. Over the course of the next 3 days, these same claimants provided their evidence of traditional Aboriginal ownership.
84. At one point during the hearing, one of the NLC witnesses for the Minaga clan, Mr Fred Baird, referred to some tape recordings that he had made of Mr Robert Cunningham Senior talking to him about the places and stories of the Cobourg Peninsula in the 1990s, as well as a map that he had drawn up to locate these places geographically. On the request of the Northern Territory, I asked the NLC to make this material, referred to as the 'Baird material,' available to the Northern Territory and Midena claimants. The evidence provided by Mr Baird and Ms Rosie Baird also raised some questions about the NLC's description of the extent and nature of the Minaga claim which parties would seek to clarify in further hearings.
85. Following the conclusion of this hearing of traditional ownership evidence, the NLC provided its supplementary anthropological reports from Mr Lewis on the 12 November 2021 (the Lewis Second Report), and the Midena claimants provided a supplementary anthropological report from Dr Avery, assisted by Professor Merlan, on 14 November 2021 (the Avery/Merlan Report). Dr Avery was restricted in his activities due to illness, so Professor Merlan supported him and shared his views.

86. On 17-18 November 2021, a hearing of further non-expert evidence was held via Microsoft Teams to clarify the contemporary status of some of the documentary evidence relied on by parties during the September 2021 hearing. Persons called on to give such evidence included former NLC anthropologist Dr Adrian Peace, in respect of his draft document titled ‘The Cobourg Peninsula and the NLC: Second Position Paper – June 2011’; Professor Peterson in respect of the Peterson Draft Report (titled the Coburg Peninsula and Adjacent Island Land Claim Report) that he co-wrote with Dr Tonkinson in December 1979; Fred Baird in respect of the Baird materials; and Rosie Baird regarding the question of whether she was claiming an exclusive or non-exclusive ownership of the Minaga estate.
87. Between November and December 2021, the NLC and Midena claimants both tendered bundles of materials responding to matters raised during the November 2021 evidence. These bundles were received in evidence and marked in accordance with the party who tendered them. They contained documentary evidence of the history of engagement between the Midena claimants and other NLC claimants and the NLC itself regarding the management of the Cobourg Peninsula during the period leading up to the commencement of this Inquiry.

2.4.2. March 2022 – October 2022: Issue of the Extent of the Disputed Area

88. The evidence from Ms Rosie Baird in the November 2021 hearing left unresolved the questions of the nature and extent of the Minaga claim to the Cobourg Peninsula. During a directions hearing held on 6 December 2021, I accepted the NLC position (as confirmed by counsel) that there was no difficulty in the NLC representing the NLC Agalda claimants and the NLC Minaga claimants, despite the suggestion in evidence of an exclusive Minaga clan estate within the Disputed Area, and also the suggestion in evidence that the Minaga Clan estate might extend outside the Disputed Area. That assurance was given after the NLC had had the opportunity to confer with the Minaga claimants, and the position was confirmed by the terms of the final submissions made on behalf of the Minaga claimants, jointly with the Agalda claimants represented by the NLC. The Minaga claimants only sought to be acknowledged as traditional Aboriginal owners for the Disputed Area as described in Schedule 1 of the notice of intention to commence inquiry, despite evidence suggesting that sites just outside of the boundary of the Disputed Area may also belong to the historical Minaga estate. The Minaga claimants also did not seek to establish any exclusive Minaga claim area within the Disputed Area. Nevertheless, having regard to the terms of section 50(1)(a)(i) of the ALRA, I have borne all the evidence in mind. It is discussed later in this Report. It was also clear that it was desirable to ensure that all the relevant evidence which any of the parties might rely upon was adduced.
89. In the same directions hearing, parties also indicated that they did not wish to cross-examine any of the detriment parties on the material provided by them. They were prepared to accept the accuracy of the factual contentions made in the submissions on detriment made by those entities. That has facilitated the consideration of detriment issues for the purposes of this Report.

90. On 28 January 2022 the Northern Territory provided an anthropology report from its appointed expert, Mr Craig Elliott, in response to the anthropological reports of Mr Lewis, Dr Avery and Professor Merlan (the Elliott First Report). Professor Merlan had been engaged by the Midena claimants when it became apparent that Dr Avery due to illness might not be able to participate as fully as desirable in the future conduct of the Inquiry on their behalf.
91. On 22 February 2022 the Northern Territory and the NLC claimants lodged with my Office a Statement of Agreed Facts in respect of the Non-Disputed Area. The statement set out that the Northern Territory, in light of the Elliott First Report, was no longer able to agree on traditional ownership in relation to any parts of the Non-Disputed Area which, in light of recent evidence, may to a small extent be part of the Minaga estate. The section of the Non-Disputed Area containing sites that Minaga witnesses had suggested could form part of the Minaga estate was referred to as the Remnant Disputed Area.
92. On 3-4 March 2022, the hearing of expert evidence took place in Darwin. Anthropologists giving evidence included Mr Lewis for the NLC claimants, Mr Elliott for the Northern Territory, and Dr Avery and Professor Merlan for the Midena claimants. During the hearing, it was agreed between parties that the issue of the extent of the Disputed Area should be a matter for submissions. It was also noted that the Statement of Agreed Facts made between the NLC and the Northern Territory, in respect of the Non-Disputed Area, varied the previous agreement between all 3 parties in respect of the boundary of the Disputed Area, having regard to the Remnant Disputed Area. In the interests of fairness, it was agreed that the Midena claimants should also be given the opportunity to raise any issues that they had not yet had a chance to address because of this previous NLC/Northern Territory agreement about the Non-Disputed Area.
93. On 10 March 2022 I requested the Midena claimants to provide notice of intention to call any further evidence arising from the revised Statement of Agreed Facts of 22 February 2022. I also set a deadline of 8 June 2022 for the completion of settlement negotiations for the Non-Disputed Area between the NLC and Northern Territory, and set a timetable for final submissions. I asked parties to consider whether it would be necessary to call former NLC anthropologist Mr Ian White to attest to genealogical records and other documents tendered by the NLC of which he was the author. I then notified the detriment parties that there was no cross-examination proposed on the detriment materials and that their material would be received in due course with exhibit numbers attached.
94. Over the next few months, the 3 principal parties outlined their positions on the calling of further evidence from both Mr White and the Midena claimants. This included a further report from Mr Elliott, titled 'Two Minaga Report,' to clarify the difference between the Cobourg Minaga clan and the neighbouring Murganella Minaga clan in response to some questions that had arisen during the expert evidence hearing (the Elliott Second Report). In the event, there was no need to further address those questions.

95. Following proposals made by the Northern Territory and Midena claimants in their April/May correspondence, I ruled that Mr White should give evidence regarding the extent and existence of the Minaga claim area. I also rejected the proposition that the uncertainty around the extent or existence of the Minaga estate and its impact on the Agalda estate within part of the Non-Disputed Area, namely the Remnant Disputed Area, meant that settlement negotiations over the Non-Disputed Area could no longer be finalised until after findings of the Commissioner over the whole area had been made.
96. This would have left the Non-Disputed Area for the future, in anticipation of ultimate agreement between the NLC on behalf of the 4 claimant groups over the Non-Disputed Area and the Northern Territory. I did not accept that position. It might have led to two separate hearings, apart in both evidence and time, when there was no real assurance that the NLC would be able to participate for all those clans affected by the claim over the Non-Disputed Area. As it transpired, in any event, a dispute arose in relation to the membership of the Murran clan who were traditional owners of the Murran estate in the Non-Disputed Area. Belatedly, too, the membership of the Ngaynjaharr clan also became contentious. Those disputes also needed to be addressed in this Report. That is explained in the next section of this Report.
97. Accordingly, on 9 May 2022, I made directions for further evidence from Mr White and to receive formal submissions from parties on the future course of the Inquiry. On that same date, the Northern Territory lodged a further report from Mr Elliott of 9 May 2022 titled 'Summary Report on Strengthening Traditional Ownership Evidence' which outlined gaps in the evidence that Mr Elliott believed would need to be addressed during a further hearing and included questions that the Northern Territory intended to ask Mr White during the hearing. On 3 June 2022 this report was supplemented by a further report from Mr Elliott titled 'Further Evidence Required Report.' As Senior Counsel for the Northern Territory acknowledged, these reports were more in the nature of an analysis of the evidence to date rather than adding to the anthropological information available, and so were received largely in the nature of submissions.
98. On 10 June 2022, I requested the Midena claimants to indicate the additional anthropological and lay evidence they sought to adduce to respond to the possibility of the Minaga claimants' evidence supporting the entitlement of Minaga claimants to traditional ownership in the Remnant Disputed Area. The Midena claimants indicated that they would provide witness statements and further expert opinion from Professor Merlan to respond to the assertions made by Ms Rosie and Mr Fred Baird in the September and November 2021 hearings about the scope of the Minaga interests.
99. On 29 July 2022 I provided a Ruling on Further Evidence for the Cobourg LC. In this Ruling I accepted that, in light of parties' submissions, it would be appropriate for the Midena claimants to have an opportunity to provide further lay and expert evidence in respect of the Remnant Disputed Area, being that area where, as a result of the evidence given in the inquiry to date, there was prospect by reason of section 50(1)(a) (i) of the ALRA that a finding may be made which adversely affected the interests of the Midena claimants. I then made directions for a timetable towards a further hearing of evidence during October 2022.

100. On 2 September 2022 Professor Merlan provided her report on further material to be adduced by the Midena claimants in a further hearing. Attached to this report was a joint statement from 3 of the Midena claimants. On 26 September 2022 Mr Lewis provided his response to this report, entitled 'Extinction, succession and return: a response to Professor Merlan's September 2022 report on LC 6'. I will call those reports respectively the Merlan 2022 Report and the Lewis Third Report.
101. On 26 September 2022 my Office received correspondence from OST, the owners and operators of the Seven Spirit Bay Wilderness Lodge located in the Disputed Area. It indicated a desire to be heard and to make submissions as a detriment party to the Cobourg LC.
102. A further evidence hearing for the Cobourg LC was held on 3-4 October 2022 at the George Brown Darwin Botanic Gardens. Evidence was heard from the 3 Midena claimants who had provided witness statements, as well as evidence from Professor Merlan for the Midena claimants and from Mr Lewis for the NLC claimants. During the hearing, I was also presented with a draft timetable for submissions which had been agreed upon between parties and which suggested that submissions could not be made until 2023 due to availability of counsel. I also reset a timetable for final submissions on detriment for the entire claim area.

2.4.3. October 2022 – June 2023: Hearing of the Non-Disputed Area

103. In correspondence to my Office between April-June 2022, the NLC and the Northern Territory had expressed different opinions as to whether the negotiations for the settlement of the Non-Disputed Area could continue to be finalised now that there was uncertainty regarding the extent of the Minaga estate in relation to the Remnant Disputed Area within the Non-Disputed Area. The decision to hear evidence over the Remnant Disputed Area only was intended to preserve the option for finalising settlement negotiations over the balance of the Non-Disputed Area.
104. On 17 October 2022 I proposed that to progress the claim over the Non-Disputed Area, it could be included in the Inquiry. This was a position that the Northern Territory and the Midena claimants had supported in April 2022.
105. I received correspondence from the Northern Territory and Midena Lawyers on 1 November 2022 and 3 November 2022 confirming that they supported the extension of the Inquiry over the entire claim area. In their letter, the Northern Territory included a list of materials the NLC should provide to assist with a finding of traditional ownership over the balance of the Non-Disputed Area.
106. On 8 November 2022 the Northern Territory, Midena Lawyers and the NLC provided my Office with a Minute of Proposed Consent Directions agreeing to finalise the Cobourg LC Inquiry including the Non-Disputed Area. Further directions to that end were given on 17 November 2022. As it was still understood that traditional Aboriginal ownership over the Non-Disputed Area was uncontested, these directions did not include a provision for a further hearing. Instead, they set out a process whereby parties would make submissions on the basis of updated claim materials, including anthropology reports on this part of the claim area from Mr Lewis and Mr Elliott, which were to be lodged with my Office between December 2022 and

January 2023. Subject to the impact of any ruling on the status of the Minaga claimants in relation to the Remnant Disputed Area, it was still the case that the NLC and the Northern Territory anticipated that the 4 named clans referred to in the Introduction to this Report – the Agalda, Madjunbalmi, Ngaynjaharr and Murran clans – would be recognised as the traditional Aboriginal owners of their respective areas claimed within the Non-Disputed Area.

107. It remained the case that the territorial division of the Non-Disputed Area between those 4 clans was not contentious.
108. However, between 5 and 9 December 2022 I received correspondence from Ms Maria Stephens and Ms Liz Cooper which suggested that, contrary to anticipation of the NLC during the course of this inquiry, there was in fact some disagreement regarding the identification of traditional Aboriginal owners in the Non-Disputed Area. This disagreement arose because the NLC at that point recognised the patrilineal descendants of one apical ancestor in the Murran clan, to the exclusion of another. Such a dispute had not previously been foreshadowed by the NLC. It was thus suggested by Ms Maria Stephens on behalf of descendants of the excluded apical ancestor and the NLC that an on-country hearing be scheduled in 2023 to determine the traditional Aboriginal ownership of the Murran estate within the claim area.
109. On 13 December 2022 I directed the NLC and Ms Maria Stephens to provide statements of issues and supporting documents in preparation for a further hearing on that issue and set a date for a directions hearing in January to discuss the issue in further detail.
110. In the meantime, the timetable for submissions set out in the 17 November 2022 directions continued to operate. On 9 December 2022 the claim materials for the Non-Disputed Area were lodged by the NLC; on 16 December 2022 OST provided its materials on detriment (subject to a restrictive direction based on commercial confidentiality).
111. Then, another issue arose. On 13 January 2023 I received an email from Ms Margaret Siebert asking to be heard on the issue of the identification of the traditional Aboriginal owners of the Ngaynjaharr estate within the Cobourg Peninsula. Ms Siebert was invited to attend the upcoming directions hearing to discuss her claim in further detail.
112. The directions hearing to discuss issues of traditional Aboriginal ownership in the Non-Disputed Area took place on 19 January 2023. It became necessary for there to be a further on-country hearing at Jabiru to hear traditional Aboriginal ownership evidence in respect of the composition of the Murran and Ngaynjaharr estates. As Reuben Cooper Senior Arramuniga was identified as one of the apical ancestors of the now contested Murran claimants, this group was thenceforth referred to as the Reuben Cooper Senior claimants or the Arramuniga claimants. The new Ngaynjaharr claimants were referred to as the Siebert family claimants.
113. It remained the case that the composition of the Agalda clan and the Madjunbalmi clan traditional owners was not contentious as between the NLC and the Northern Territory.
114. On 20 February 2023 my Office received correspondence from PPC who held commercial leases in both the Disputed and Non-Disputed Area. PPC indicated an

intention to pursue its detriment concerns. The materials and supporting submissions, and responsive submissions were duly received. I have also referred to the several 'detriment' interests in the Introduction to this Report. Consideration to the issue of detriment is given later in this Report.

115. Until this point, because it was thought that there would be no contention about the status of land claimed in the Non-Disputed Area, I had not made any directions requiring the NLC to assess the status of the land claimed when the inquiry was extended over that area by direction on 17 November 2023. PPC as well as the Northern Territory challenged the availability for claim of a portion of land in the Non-Disputed Area known as NTP 900. I have addressed this issue earlier in this Report.
116. By 13 March 2023, the timetable in respect of the detriment submissions and traditional ownership submissions for the Disputed Area had been completed.
117. There remained the completion of the Inquiry in relation to the Non-Disputed Area. A number of further documents were also received by my Office in March 2023 in preparation for a further evidence hearing. This included a consolidated tender bundle from the NLC on 16 March 2023; the Submission on the Status of Land Claimed for the Non-Disputed Area from the NLC on 31 March 2023; responsive submissions on the status of NTP 900 from the Northern Territory on 4 April 2023; and reply submissions on the same issue from PPC on 28 April 2023. During this period I was also informed that the Arramuniga claimants would be represented by Roe Legal, and the Siebert family claimants would be self-represented. Neither party indicated an intention to rely on expert evidence beyond what had already been provided by Mr Lewis for the NLC.
118. The further evidence hearing for the Cobourg LC Non-Disputed Area was held on 11-14 April 2023 at the George Brown Darwin Botanic Gardens. The hearing location was moved from Jabiru by the NLC to accommodate the number of claimants who lived in or near Darwin. Evidence was heard from the NLC Murran claimants, the Arramuniga claimants, the Siebert family claimants, and Mr Lewis as the expert anthropologist for the NLC. Counsel for these groups, where appointed, was also present, as well as counsel for the Midena claimants.
119. On 14 April 2023 I established a timetable for submissions on traditional ownership for the Non-Disputed Area. Initial and responsive submissions were provided by the NLC on 4 May 2023; the Arramuniga claimants, the Siebert family claimants, and the Midena claimants on 17 and 18 May 2023; and the Northern Territory on 2 June 2023. Reply submissions were provided by the Siebert family and the NLC claimants on 8-9 June 2023.
120. By that extended process, I am satisfied that all those interested in the Cobourg LC have had an opportunity to participate in the Inquiry including, where they have chosen, by the giving of evidence as well as by the making of submissions. I have set out the procedural process in detail to explain the progressive evolution of contentious issues despite the initial notice of the Inquiry, and the need for several hearings of oral evidence, and of the procedures adopted to ensure that all interested persons and groups had an appropriate opportunity to present their materials to the Inquiry.

121. As noted at the start of this Report, the circumstances are complex and the procedures convoluted. Annexure D entitled 'Procedural Matters' sets out the legal representatives, the anthropologists, the notices of interest, the list of witnesses and the exhibit list for the hearing. Annexure E entitled 'List of Claimants' sets out the list of claimants in groups in respect of both the Disputed Area and the Non-Disputed Area.
122. I turn to consider the several issues which have been identified.

3. TRADITIONAL ABORIGINAL OWNERSHIP – DISPUTED AREA AND REMNANT DISPUTED AREA

123. Having set out the history of the claim area and the Inquiry, I now address the matters contained in sections 50(1)(a) and 50(3)(a) of the ALRA. This includes the strength of attachment of the respective claimants to the claimed land.
124. It is worth setting out again the statutory prescription. Section 50(1)(a)(i) of the ALRA requires the Commissioner, when inquiring into a traditional land claim, to ‘ascertain whether those Aboriginals or any other Aboriginals are the traditional Aboriginal owners of the [claimed] land’. Pursuant to section 3(1) of the ALRA, ‘traditional Aboriginal owners’ 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.
125. In the Disputed Area, the dominant question which influenced the parties’ position on the issues relating to traditional Aboriginal ownership was the extent to which there had been a successful succession of the Disputed Area from the Minaga clan to the Agalda clan. Some factual background is necessary context for this analysis.
126. The NLC claimants (some of the Agalda clan and the Minaga clan) assert that the Disputed Area is traditionally owned by the Agalda clan but shared with the Minaga clan. The Midena claimants (some of the Agalda clan) assert that it is traditionally owned by the Agalda clan only, as whatever interest the Minaga clan might have had in the past has in any event been taken over or succeeded to by the Agalda clan.

3.1. BACKGROUND TO DISPUTED AREA

127. It is important to understand the dispute between the NLC claimants and Midena claimants in respect of the Disputed Area as a dispute that exists between and within members of two families regarding whether or not the Agalda clan has successfully taken over, or succeeded to, the estate of the Minaga clan.
128. Before addressing the claims of traditional ownership in any detail, it is appropriate to comment on the spelling of some Aboriginal language words that were used throughout the Inquiry and which were variously spelled in the materials provided by the claimant groups. For consistency, this report uses the NLC’s spelling, given its representation of at least some members of each of the clan groups across the claim area. Particularly for site and place names, where there was inconsistency in the NLC’s spelling, this report relies on the spelling used in the updated site map prepared by Mr Lewis in July 2021 (Exhibit NLC5). For words more general than site names, this report relies on the spelling used in the final submissions of the NLC where those words were used.

3.1.1. The succession process

129. This process of succession is said to have commenced in the 1940s when a member of the neighbouring Agalda clan, Marinjuk ‘Jumbo’ Cunningham, took over responsibility for the Minaga clan’s estate after the one remaining Minaga

descendant, Henry Hunter Mullale (Mullale, using the name most often used in the course of the Inquiry), was forced to move away from the country.

130. In evidence, Ms Rosie Baird, Mullale's daughter, explained that the reason Mullale moved away was to escape an Australian government policy of rounding up Aboriginal people and removing them from country in the interests of their safety due to the outbreak of World War II. He thus moved with his mother first to an Aboriginal camp just outside of Darwin at Tree Point and then, after hiding from the welfare people when they came to take those families to another camp, he followed some people from the Tiwi Islands who spoke his language over to Melville Island.
131. Importantly, Mullale never returned to the Cobourg Peninsula after he left in 1942. He married Maureen Hunter in 1952 on Melville Island and in 1955 they moved to Central Australia and then Darwin with their children. Mullale also never told his children of their connection to the Minaga clan, so, when he passed away in 1975, he left the Minaga estate without any Minaga clan members to take care of it.
132. Professor Peterson and Dr Tonkinson wrote in the Peterson Draft Report that, after population decline had led to the extinction of two clans and the imminent extinction of a third, the people on the Cobourg Peninsula had developed a clear way of dealing with issues of succession in instances where there were no available descendants of a clan to take care of that clan's estate:

Land passes through the male children of the female landowners to their children. That is to say land is inherited from the FM in the event of a clan extinction... It is not entirely clear to us what the status of the female land-owner's children is in this transmission process, whether they are seen as simply custodial, for the following generation or whether they are conceived of as owners in their own right. Both possibilities were implied in discussions with Claimants. However, in the case of the Madjunbalmi clan, the only woman with children, Lily David Malyulgidj emphasised that her sons' children are the principal heirs.
133. Marinjuk was the nephew of Mullale's father, Ilkgirr, and the son of a Minaga woman Ngalmu. He was thus the male child of the female landowner of the Minaga estate and his son, Robert Cunningham Senior, was connected to the Minaga estate through his father's mother.
134. Based on the information given to them at the time, Professor Peterson and Dr Tonkinson wrote in the Peterson Draft Report that by 1979 the Minaga clan had 'died out' and that the estate was then 'held jointly by the two adjacent land-owning groups, Agalda and Madjunbalmi because the senior members of both called Minaga FM [father's mother's clan]. However, Professor Peterson confirmed in evidence that this was a draft report which lacked the research needed to be finalised. He did not need to complete his research and finalise the draft because, as noted, the Cobourg 1980 proposed hearing did not proceed. Therefore, two corrections need to be made which have been accepted by all parties in evidence. Firstly, the Madjunbalmi did not pursue their claim to the estate (likely, according to the NLC, because they themselves were undergoing a succession process at the time). Therefore, it has been the senior Agalda clan member Robert Cunningham and his descendants who have held responsibility over the Minaga estate up until this time. Secondly, the fact that Mullale had children means that, even though they did not live on their estate, the Minaga clan did not in fact die out.

3.1.2. The split in the Agalda Group

135. The dispute which exists today exists between some descendants of Robert Cunningham Senior, who claim they are the rightful owners of the land as he had taken it over from Mullale, and some other descendants of Robert Cunningham Senior, who claim to support the Minaga in their assertion that they share ownership of the land with the Agalda clan.
136. The contrasting, and sometimes dogmatic, submissions which have been put forward by different members of the one family at the next generation down must be understood in the context of their father's variable attitude towards the Minaga clan while he was alive, as well as the NLC's variable position of support for the continued existence of, and interest of, the Minaga clan.
137. This was analysed by NLC anthropologist Dr Adrian Peace in a paper titled 'the Cobourg Peninsula and the NLC: Second Position Paper (June 2011). I have considered all the evidence and consider that Dr Peace's assessment of the situation is quite accurate. I will be referring to some of his quotations in the following paragraphs.
138. Between 1988 and 2010 (when he passed away), Robert Cunningham Senior engaged in what Dr Adrian Peace referred to as a 'strategy of control by disruption' which involved him being 'conciliatory and responsible' in attitude towards the Minaga clan, only to take off in 'unpredictable and disruptive directions' when it suited. He was able to do this because the NLC, as a result of the Peterson Draft Report, saw Robert Cunningham to be the most senior person to speak generally for the Cobourg Peninsula, and treated him as such.
139. This behaviour began when Robert Cunningham Senior decided the Minaga clan could come under Agalda aegis, and told NLC anthropologist Mr White to include them, only to ask for them to be removed a month later after (it is said) Maureen Hunter refused his hand in marriage.
140. It continued when Robert Cunningham Senior conceded that Mullale's children were free to visit 'their' land in a meeting of traditional Aboriginal owners at Ja Ja in 1989, and allowed Rosie Baird and her husband to live near the Cunninghams and enjoy a positive relationship with them (Ms Baird in particular stated that her relationship with Robert Cunningham was 'loving' at this time), only to fall into conflict with Andrew Hunter at a meeting at Murganella in 1993 and to declare that he was in charge of the Minaga estate and he should be the only one the NLC consulted with.
141. The status of the Minaga clan then seemed to subside significantly as an issue during the period of 1995 and 2002, during which the Hunter family built an outstation near Tre pang Bay with Robert Cunningham Senior's permission. Fred Baird and his wife Judith Cunningham moved to Araru with Robert Cunningham Senior and Judith's parents (Judith was Robert Cunningham Senior's granddaughter), and Andrew Hunter moved to Adbanae Outstation to live for a couple of years. In fact, Robert Cunningham Senior put Mr Baird through two ceremonies during this period, and shared with him information about the country and site names, including where Mullale was born at Lingi Point. He also agreed at a meeting of the NLC Board on 8 June 2000 that Minaga clan people could sit on the Cobourg Board and be included

in a new Plan of Management, because ‘Minaga is still here and has a country relationship standing alongside Agalda. Minaga and Agalda are family together.’

142. However, it started up again when Robert Cunningham took issue with the Hunter/Baird family’s occupation of the Adbanae station under the assumed membership of the Minaga clan and declared in a meeting of Cobourg traditional owners in 2002 that he no longer wanted to recognise Minaga as a fifth clan and was only willing to allow the family to stay on the outstation under certain conditions. At this meeting, the youngest children in the Cunningham family, Dulcie May and Kathleen (who each gave evidence), took even harder positions than their father, and joined their father in outlining a letter that stipulated that the Agalda were on top, and if their conditions were not met by the Minaga at Adbanae, they would be ‘out.’ The other two and elder children of Robert Cunningham Senior, Queenie and Charlie (who also gave evidence) have sided with the Minaga clan throughout and are in the group of NLC claimants.
143. During this time, it was Dulcie May and Kathleen, and Veronica (the next generation) and children who lived with Robert Cunningham Senior, and had the biggest stake in what would happen to the area when he died. Veronica also gave forceful evidence.
144. White noted that their hard-line approach was because the youngest children would want to nail down recognition of overarching ownership rights of Agalda group before Robert Cunningham Senior died.
145. The Adbanae Outstation burnt down in 2006. In 2007 Robert Cunningham Senior sought legal assistance to pursue the Agalda claim over the former Minaga estate and their own estate in Cobourg Peninsula. When Robert Cunningham Senior passed away in 2010, Dr Peace suggested to the NLC that they should review their position in relation to the Minaga clan.
146. I do not think that it is necessary at this point to recite the extensive internal documentation of the NLC, or to pass remarks upon the witnesses. On this topic, each held strong views, and expressed themselves forcefully and sometimes quite dogmatically. The family breakup has been now quite longstanding. The Midena claimants have now lived on the Cobourg Peninsula for some years, and have at times made it difficult for others to visit the country by their attitude and by physical fencing constraints.
147. In the following paragraphs I analyse the claims of each group. What I keep in mind is the fact that the Minaga clan have had a challenging time in trying to assert their interest in the area, and that some descendants of the Agalda clan have been heavily influenced by the strong figure of Robert Cunningham Senior until his death.

3.2. A LOCAL DESCENT GROUP

3.2.1. The meaning of ‘local descent group’

148. The oft-cited quotation from Toohey J as Commissioner in the *Finniss River Land Claim (No. 39) Report No. 9* (22 May 1981) (*Finniss River LC Report*) at [161], as approved by the Full Court in *Northern Land Council v Aboriginal Land Commissioner* (1992) 105 ALR 539 (*NLC v Olney*), forms the basis for a common understanding of

the meaning ‘local descent group’ under the ALRA. That is, there must be ‘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.’

149. The facts of this particular land claim require attention to the following points regarding this definition.
150. Firstly, the word ‘local’ does not require the group to be, or have been, resident on the area of land which it claims to own. In *Yingawunarri (Old Top Springs) Mudbura Land Claim (No. 17) Report No. 5* (19 October 1979), Toohey J understood the definition to accommodate for the movement of people away from traditional lands, which may occur, as it has in this land claim, when certain opportunities or services are more readily available elsewhere. To satisfy the requirement of locality, the Commissioner accepted the view that a group only needs evidence of association with a particular tract or tracts of country and to be able to demonstrate primary responsibility for that country: See also *Lander Warlpiri/Anmatjirr to Willowra Pastoral Lease Land Claim (No. 24) Report No. 7* (30 June 1980) at [66] (Toohey J) (*Willowra Pastoral Lease LC Report*); *Anmatjirra and Alyawarra (Utopia Pastoral Lease) Land Claim (No. 21) Report No. 6* (30 May 1980) at [115] (Toohey J) (*Utopia Pastoral Lease LC Report*).
151. Secondly, the court in *NLC v Olney* confirmed that the word ‘descent’ should not be interpreted solely in a biological sense. Thus, persons not claiming biological affiliation may be adopted into and become part of a group: at [64]. The traditional rule of descent in western Arnhem Land is said by the anthropologists to be patrilineal, but that rule is capable of evolution and adaptation.
152. Thirdly, the court in *NLC v Olney* drew attention to the element of flexibility imbued in the phrase ‘principle of descent deemed relevant by the claimants.’ That is to say, the principle of descent may be one that is familiar to anthropologists (i.e. patrilineal, matrilineal or ambilineal), or ‘some other principle’ so long as it is ‘recognised as applying in respect of the particular group.’ It was also recognised that a particular descent traditionally operating may change over time, for example when clans are dealing with issues of succession: at 553-54. However, the court cautioned that such a principle may not be simply changed by a group at whim so as to fit the circumstance of the claim. An assessment of whether a principle is recognised by the jural public may assist to identify whether or not it is a genuine one.
153. The explanation of ‘local descent group’ in *NLC v Olney* and its accompanying descent criteria has been applied in many subsequent Reports since that decision: see, e.g., *Ngaliwurru/Nungali (Fitzroy Pastoral Lease) Land Claim; Victoria River (Beds and Banks) Land Claim (Nos. 137 and 140) Report No. 47* (22 December 1993) at [3.1] per Gray J as Commissioner; *Frances Well Land Claim (No. 64) Report No. 73* (16 June 2016) at [58]–[60].
154. Finally, Toohey J in the *Utopia Pastoral Lease LC Report* noted that as claims are usually determined with regard to the way in which they are presented, evidence which shows that people share the characteristics of ‘local’, ‘descent’ and ‘group’ will not be rejected merely because their grouping is novel to anthropology or has not been recognised in a land claim: at [32].

3.2.2. The respective claims

155. As noted above, there are two separate claims for the Disputed Area which have been put forward by the NLC claimants and the Midena claimants respectively. There are many family ties and a general history of association between these claimant groups. While there is some overlap between the two claims, including mutual recognition of some claimants by both claim groups, each claim is rooted in a different understanding of succession and descent principles as applicable to the Cobourg Peninsula at this time.
156. One matter that all claimants in the Disputed Area, and in fact in the Non-Disputed Area as well, agree on, is the fact that they belong to the Iwaidja language group, which is said to be the main Indigenous language associated with the Cobourg Peninsula and northwest Arnhem Land area through Murganella to Tor Rock: Lewis First Report at 2.11.
157. It is also broadly accepted by claimants for the Disputed Area that the system of land ownership in the Cobourg Peninsula has traditionally been associated with the concept of yuwurumu (also variously spelled in the anthropology and submissions as yiwurumu), or patrilineal land-owning clans. Further, the fact that a process of succession was commenced by the Agalda clan in respect of the Minaga estate in the absence of Mullale is also not contested.
158. The disagreement between claimants thus exists on the questions of whether the descent principle remains the same or has shifted to a principle of cognatic descent, and whether or not the succession process has been completed – thus removing the right of the Minaga claimants to assert or reassert their rights to country.
159. The NLC claimants submit that the process of succession has not ended, and thus both Minaga and Agalda local descent groups should be found to have shared traditional Aboriginal ownership over the Disputed Area. To this end, the NLC also maintain that the recognised and operational principle on the Cobourg Peninsula continues to be that of patrilineal descent.
160. The Midena claimants on the other hand submit that the succession process has been completed. They therefore do not recognise the claim of the Minaga group over the area. The local descent group put forward by these claimants includes individuals connected to the clan through both the patriline and matriline, on the understanding that during the succession process there was a shift from patrilineal to cognatic descent.
161. I consider each of these claims in more detail below.

3.2.3. The Agalda Group

162. Patrilineal descent is the acknowledged descent system for West Arnhem Land, and the Cobourg Peninsula is either abutting that area or is towards its western extremity. It is important to note that both the NLC claimants and Midena claimants recognise the patrilineal descendants of Robert Cunningham Senior to be members of the local descent group for the Disputed Area. Despite some inconsistent remarks in lay evidence from Midena claimants, it appears that it is also agreed that adoption is a valid method of inclusion into this local descent group. This also applies to the Agalda clan estate in the Non-Disputed Area.

163. It is the inclusion into the local descent group of those grandchildren and great-grandchildren who are connected to Robert Cunningham Senior through the matriline which is disputed by the NLC claimants.
164. There is substantial expert evidence supporting a patrilineal system of local group affiliation to the land. The Peterson Draft Report cited accounts of patrilineal land-owning groups being recorded at Raffles Bay as early as the 1880s, and then in the larger Oenpelli-Goulburn Island area in 1951 – an area which includes Iwaidja speakers whose territory lies on the Peninsula: pg 38. Anthropologists for the Midena claimants and the Northern Territory affirmed respectively that ‘the normal form of connection to land is or was the Iwaidja *yiwurru*’ and there was ‘strong evidence of a local descent group (or patri-clan [*yiwurru*]) named Agalda’: Avery First Report, August 2021; Elliott First Report, March 2022; see also Avery/Merlan Report. Mr Lewis, anthropologist for the NLC claimants, drew from his own experience working across the West Arnhem and Kakadu regions since 1998 to conclude that the patrilineal local descent group is the ‘accepted, normal and regular form of Aboriginal land tenure and territoriality’ in these areas, and that any exceptions to this which may be found in the north-western part of Kakadu do not apply to the Cobourg Peninsula or the Disputed Area: Lewis First Report.
165. In lay evidence, a significant number of patrilineal and matrilineal members of the Agalda clan also made statements to confirm that in their experience, ownership of country was based on *yiwurru* membership, that this membership was determined by one’s father and/or grandfather.
166. The Midena claimants provide two arguments for why a shift from patrilineal to cognatic descent has occurred since the succession commenced in respect of the Minaga estate. The first is that the inclusion of matrilineal members in the Agalda local descent group was a testamentary intention of Robert Cunningham Senior, as the senior member of the Agalda clan. The second is that in contemporary circumstances there is evidence that clans now work with factors other than patrilineal descent, such as long-term residence, to enable successions that are ‘less than normative.’
167. In my opinion, the evidence clearly shows that it was in fact the intention of Robert Cunningham Senior to include all of his descendants in the Agalda local descent group, and that Robert Cunningham Senior communicated this intention most clearly to his youngest children and grandchildren towards the end of his life while living at Araru Outstation. Veronica Cunningham and her children, who are linked to Robert Cunningham Senior and the Agalda clan through the matriline, all gave evidence that they saw their entitlement to land as deriving from Robert Cunningham Senior himself because he had bestowed on them Agalda names, and passed down to them knowledge of the land and the sites on the land.
168. However, I am not prepared to make a finding that one person, especially one with a history of erratic behaviour in relation to succession, could have had the power under the traditional Aboriginal law and custom to change on his own accord a descent principle which has organised the system of land tenure in the Cobourg Peninsula and broader region, certainly since at least the 1950s, and possibly considerably longer according to the anthropological evidence. The Midena claimants’ submissions on this point refer to the Avery First Report, where he maintains that Madjunbalmi elder Lily Davis Malyulgidj’s wish to have her son’s children made the principal heirs of

the clan formed the basis for the Madjunbalmi local descent group at the time, and that this is indicative of the ‘influence’ the will of a deceased ancestor could have on the inheritance of land, and the way in which it could be invoked ‘even against customary preferences.’ However, unlike the Madjunbalmi clan, which faced clan extinction should this wish not have been adhered to, the Agalda clan already has a strong patriline which does not need the support of matrilineal descendants to continue. Further, evidence from Professor Peterson indicates that Lily Davis’s wishes were never in fact determinative in and of themselves, as one person does not have ‘an ability to bestow a country on someone else’ without regional acceptance.

169. The fact that outside of the Midena claimants, members from both within the Agalda clan and outside of it maintain that yiwurumu continues to be the determining factor of land ownership, shows that such regional acceptance does not exist. To use a more contemporary expression, the ‘jural public’ of the Cobourg Peninsula have not routinely adopted any alternative to the patrilineal descent system, save for particular circumstances. It is not the function of one person to dictate such a change. Further, the acceptance of Veronica Cunningham’s children of royalties from their father’s clans suggests that at the very least, there is more confusion about whose clan they belong to than the Midena submissions suggest there is.
170. The second argument put forward by the Midena claimants is also difficult to sustain without indication of regional support outside of the Midena claimants, and in light of clear evidence of a strong patriline within the Agalda clan.
171. Even if this were not the case, the balance of evidence strongly suggests that those ‘less-than normative’ factors such as presence, engagement, and long-term residence, which the Midena claimants assert to amount to traditional Aboriginal ownership, are in fact opportunities or experiences which people affiliated to the land through the matriline or patriline can enjoy even in a patrifilial land-owning system. This was most clearly outlined in paragraph 2.2.10 of the Lewis Second Report:

I note here that the choice of residence expressed in the above extract is not at question, residence is not fixed by Yiwurumu, subsection or matry. Rather residence is a choice made around a range of available opportunities and possibilities that are often shaped by traditional rights and interests. Living on mother’s country is one of the available choices recognised as a traditional right across the region. But herein lies the root of the problem: for the Wauchopes and for the Midena claimants generally, residential choice, land usage activity and consequential acquisition of knowledge about country derived from rights of matrilineal affiliation to Agalda county [sic], have been conflated with Agalda territoriality and Yiwurumu membership. In my opinion these claims represent a corruption of the recognition afforded the Wauchope’s grandfather, old Jimmy Wauchope, via his adoption into the Ildugidj yiwurumu, as well as a contradiction with the regional norms of territoriality via patrilineal yiwurumu. Choosing to live on and associate with one’s mother’s country is not problematic, choosing to claim the yiwurumu of your mother or your mother’s mother is highly problematic, and in my opinion fatal, to the Midena clients’ claims of traditional ownership (excepting of course yiwurumu members Dulcie May and Kathleen Cunningham).

172. Thus while these factors may indicate some ‘interest in the area’ (see Professor Peterson, cited in Midena claim submissions) I do not find them to be persuasive indicators of traditional land ownership. There were no specific circumstances applicable to the Cobourg Peninsula which would or might have induced the evolution

of the patrilineal succession rule to be adapted to accommodate matrilineal succession or residential succession. Indeed, as Mr Lewis pointed out, once the element of choice is introduced into a normative system the capacity to acquire traditional ownership rights becomes not much more than a matter of choice of particular individuals within a group who might secure knowledge of country by the experience of living on the land.

173. I also reject the submission that the Midena claimants' new understanding of traditional attachment to land is no different than other less-than-normative ways of including people into descent groups such as adoption and succession principles, as it is clear that in instances where both succession and adoption have occurred in clans in the Cobourg Peninsula, it has been done to strengthen or maintain, and not dilute, the patriline.
174. On these bases, I accept that the local descent group for the Agalda clan comprises of all biological and adoptive patrifiates of Robert Cunningham Senior, but not those people connected to the clan through the matriline.

3.2.4. The Minaga Group

175. The local descent group put forward by the NLC Minaga claimants is comprised of members of the Hunter and Baird families who are patrilineal descendants of Henry Hunter Mullale and Rodney (or Jack) Spencer Ilkgirr.
176. The fact that Mullale was a Minaga man whose estate was at least the historic estate identified by Professor Peterson and Dr Tonkinson in the Peterson Draft Report has not been seriously disputed. While there was some disagreement in evidence about whether Ilkgirr was Mullale's natural or adoptive father, the evidence shows that he was recognised as Mullale's father, and as the person from whom Mullale inherited his clan status, by senior men like Robert Cunningham Senior, Nelson Mulurinj and Big Bill Neidjie.
177. In respect of the principle of descent for this clan, I do not need to repeat the above discussion regarding the strong anthropological evidence of a regional system of patrilineal land-owning groups across West Arnhem Land. I also find convincing the fact that, despite appearing to be the most informed member of the Hunter/Baird family in evidence, Fred Baird, the son of claimant Rosie Baird, has not made a claim to traditional Aboriginal ownership on the basis that he is only connected to the clan by the matriline.
178. I therefore accept that Minaga claimants are biological descendants of the Minaga clan, and that this clan is organised by a system of patrilineal descent. However, due to the circumstances of this claim, it does not routinely follow that the patrilineal line of the Minaga clan from Mullale necessarily now holds the former Minaga estate. To this point, it means only that the Minaga claimants on the patrilineal line would have had rights to the Minaga estate had their father not 'severed' his connection to the estate, and if the process of succession to the Agalda clan by Robert Cunningham Senior taking on the responsibility of looking after that estate in the absence of Mullale not been completed.
179. That these events have occurred makes it clear that a new inquiry is in order. That is, an inquiry into whether these historical rights to the Minaga estate can now be 'revived' in the context of Mullale's descendants reassuming their identity as members of the Minaga clan in the years following his death.

180. In submissions, both the NLC claimants and the Midena claimants appear to accept that the Minaga group must show evidence demonstrating that they are still a biosocial group identifying as Minaga, and that the asserted succession has not yet been completed, in order to be considered a local descent group for the Disputed Area.

181. These two concepts were first brought up in evidence by the anthropologists.

182. The idea of what a completed succession might look like and how it could be achieved was considered widely during expert evidence hearings. In the Peterson Draft Report, Peterson and Tonkinson made the following comment on succession:

The process of succession means that ultimately an estate gets taken over by another descent group which is recognised as the landowner. Pre-sovereignty, this would take generations.

183. This was then expanded on by Professor Peterson in November 2021, who made the following salient comments which were accepted by both Mr Lewis and Professor Merlan:

PROF PETERSON: Yes. Well, the situation with succession prior to

35 European arrival was rather different in some ways to that post European arrival, and prior to European arrival of course there was no documentation; it was all oral memory and over several generations the memory of the people who had originally been identified with a clan estate would have died out, and those people who were the descendants of the occupants over a long period and
40 who had come to be accepted by the regional population as the legitimate holders of the country, that would all take place over quite - several generations.

Now we're wanting immediate decisions with absolute sort of finality and
45 clarity of the sort that wouldn't have existed in the same way previous - prior to Europeans arriving.

184. This finality, of course, is sought as a result of the ALRA, which calls for an identification of the relevant criteria at points of time when positions may not be as concrete as they would be several generations in the future. One could suggest that a solution for developing such a finding would be to use traditional law to hypothesise about where claimants might stand in a number of years should their trajectories continue. However, as I observed in October 2022 to Professor Merlan, traditional Aboriginal law does not routinely have the same predictive capabilities as Western law, with people preferring to deal with issues as they arise in ways that are appropriate to each unique situation. Professor Merlan accepted that proposition. That was the thesis underlying the views of Mr Lewis.

185. In the Merlan 2022 Report, Professor Merlan then raised the concept of biosocial continuity or biosocial extinction as an additional necessary factor which needed to be present for the Minaga clan to establish traditional Aboriginal ownership. This report was significant as it was the first time an anthropologist for the Midena claimants had acknowledged the biological connection of the Minaga claimants to their clan. Professor Merlan did not provide a definition for the term biosocial continuity. Nor did she come to any conclusions as to whether or not biosocial continuity had been established. However, she drew attention to the fact that the biological descendants of Mullale did not know themselves to be successors of

Minaga country for a considerable period of time, and that there was a regional understanding that the country was being authoritatively held and looked after by Robert Cunningham Senior, as matters which should be taken into account when considering whether they still had a right to revive their rights.

186. The Midena claimants put forward a number of pieces of evidence to demonstrate that there exists a regional understanding that the succession from the Minaga clan to the Agalda clan is complete, the first piece of evidence being that the Peterson Draft Report said that the Minaga claim had 'died out'. As I have noted, Professor Peterson has already confirmed that as a preliminary observation in a draft report which may well have been amended had the report been further researched and finalised. He did not assert that as a concluded view he had reached at that time. The second piece of evidence is that, according to Queenie and Dulcie May Cunningham, Mullale declined an offer from Robert Cunningham Senior in the late 1970s to assist in preparing the land claim over the Cobourg Peninsula. The Midena claimants state that this is proof that Mullale had recognised Robert Cunningham Senior as having taken over the Minaga estate so as to have become exclusively Agalda country: Midena claimant submissions page 6. However, there is serious doubt as to whether this could have happened given Mullale passed away in 1975, 3 years before the Cobourg LC was lodged and before the enactment of the ALRA. So I place no weight on that evidence. Further, the NLC submits that if it were true that Robert Cunningham Senior approached Mullale for assistance, this should be seen as indicating an acceptance that Mullale retained certain rights as a member of the Minaga clan over the Minaga estate: NLC submissions page 37. As I am not satisfied that the event occurred, I also place no weight on that alternative submission. The third piece of evidence is an interpretation of statements made by Charlie Mungulda to the effect that you 'can't change the law.' This piece of evidence is not convincing on its own as the NLC and Midena claimants have put forward different interpretations about what 'law' Charlie was talking about. I did not understand that Charlie Mungulda was saying that the succession had been completed, and that it could not be reversed. For these reasons, I do not find this evidence persuasive.
187. It is however clear that Robert Cunningham Senior himself at certain points in time believed that succession was complete, and wanted his descendants to believe this too.
188. Even if Robert Cunningham Senior was the authoritative controller of the Minaga estate while the Minaga clan were absent, I consider there to be considerable evidence demonstrating that members of the regional or jural public considered that the door remained open for the Minaga to come back. Rosie Baird gave evidence that while she was living in Darwin a number of senior men from the Cobourg Peninsula would visit the Hunter family and tell her of her connection to the Minaga clan and tell her that she should go back to her country on Cobourg when she was older. Andrew Hunter also gave evidence that when he returned to the Cobourg Peninsula in 1984 to help build a road to Araru, a number of the senior men other than Robert Cunningham Senior told him he was Minaga. They would point out his country and tell him to come back to country rather than stay in Darwin. At the Ja Ja meeting in 1989, attendees, who included senior men of the Cobourg Peninsula, agreed that the children of Mullale were traditional owners of Cobourg Peninsula as their father's father was a Minaga clansman.

189. The fact that during the meetings which took place between 1989-2002 Robert Cunningham Senior recognised Minaga interests at least on some occasions, and that senior members of the Agalda clan recognise the claim of the Minaga people over the land is also very persuasive. Robert Cunningham Senior himself told the NLC to accept their status. He undertook lengthy educational sessions with Fred Baird. He supported the inclusion of a Minaga representative at the Cobourg Board meetings.
190. On the point of biosocial continuity, the Midena claimants have suggested that the Minaga clan, while not biologically extinct, became socially extinct at the time that Mullale left the Minaga estate and did not pass on any Minaga knowledge or connection to land. They argue that the Hunter/Baird family's attempt to assert their identity as Minaga in the 1990s after not knowing who they were before this is not legitimate because it is an 'innovation' and not a 're-assertion or re-instatement of something they already knew': Midena claimant submissions page 31.
191. As briefly noted above, the question of succession under traditional Aboriginal law and custom is not a straightforward one. The general tenor of all the evidence, both from Indigenous witnesses and from the anthropologists, is that it is an evolutionary process. There is no pre-existing rule book, no Bible or set of Ten Commandments, to guide or direct the particular Aboriginal society in the correct course to follow. But for the ALRA (and more recently the *Native Title Act 1993* (Cth)) the need to determine precise status at precise times and to draw precise lines of territorial limits does not arise. I accept the general evidence, explicitly explained by Professor Peterson, that for each society the response to particular circumstances is an evolutionary one. The issue as to the Minaga estate when Mullale left the Cobourg Peninsula was a confronting circumstance. All the evidence accepted that there was no automatic right of succession to the Agalda clan, or to Robert Cunningham Senior. The Agalda clan, on learning of the departure of Mullale, through Robert Cunningham Senior as the senior Agalda man, assumed responsibility for the country in his absence. It is accepted that this was a proper and traditional response to that circumstance. It is also accepted that that was not an instantaneous transfer of the Minaga estate to the Agalda clan. Over time, depending on circumstances, that estate may have passed to the Agalda clan. As Professor Peterson said, that may have taken some generations, perhaps to the point of there being no real memory of any Minaga estate. I did not understand that there was any submission that traditional Aboriginal law and custom for that area, or generally, entitled a senior member of a clan (such as Robert Cunningham Senior) to then determine unilaterally that the estate had been transferred to him. Nor was there any specific evidence that a senior member of a clan (again such as Robert Cunningham Senior) could determine unilaterally the adoption of a matrilineal succession rule without any circumstances giving rise to such a need. I have rejected the latter submission. Indeed, such unilateral powers, which might be exercised for selfish reasons, or even whimsically, would be unlikely to be traditional.
192. The question nevertheless remains as to whether in fact the Minaga estate had passed to the Agalda clan to the permanent exclusion of the Minaga clan by the actions of Robert Cunningham Senior on behalf of the Agalda clan by taking over responsibility for that country upon the departure of Mullale and maintaining that responsibility thereafter, at least until members of the Minaga clan indicated a desire and preparedness to re-assume that responsibility.

193. In the circumstances, I reject the proposition that Robert Cunningham Senior either personally, or on behalf of the Agalda clan, had succeeded to the Minaga estate, as distinct from holding responsibility for it while over time the Minaga descendants of Mullale revived their interest in that country. I reject the proposition that the process was complete under traditional law, so that there was then, and that there is now, a completed transfer of the Minaga estate to the Agalda clan to the exclusion of the Minaga clan. In my view, that process was still evolving and would have been evolving until the relevant jural public had come to accept that it had occurred.
194. The anthropological opinion of Mr Lewis is firmly in favour of the finding that the process of transfer to permanency, exclusively in favour of the Agalda clan, had not been completed according to traditional law and custom. I have also reached that conclusion. I bear in mind that in relatively recent history Indigenous Australians have been forced to leave their country for a variety of reasons, while wishing to adhere to their traditional lands and to maintain their very strong connection to country. There are many contemporary strong examples. In the present circumstances, it is known why Mullale left the Cobourg Peninsula. At the time, many of his contemporaries also did so or were forced to do so. Their personal circumstances thereafter varied immensely. But the evidence clearly shows on the part of a number of persons within the Agalda/Minaga larger grouping an awareness of the Minaga estate, and of the offspring of Mullale. Robert Cunningham Senior himself had that awareness and from time to time recognised that interest. It is evidence which strongly suggests that the jural public, or more simply put many of the people living on the Peninsula during the last decade of the last century and thereafter, recognised that the process of transfer was incomplete and welcomed back the Minaga clan members. Robert Cunningham Senior was among them. It is very hard to understand why he might have done so if the transfer was complete. There would have been no apparent reason to do so. The fact that he adopted a different attitude at other times does not explain that conduct. The NLC itself, charged with responsibility for identifying the traditional owners of the relevant country, recognised the Minaga clan and their status, although it must be acknowledged that the NLC's view changed from time to time, apparently influenced by the conduct of Robert Cunningham Senior. There is a clear and strong thread on internal anthropological opinion within the NLC, quite apart from the current views of Mr Lewis, that the connection of the Minaga clan to their country had not been finally severed, and indeed there were internal efforts to restore that connection in the face of some administrative opposition.
195. The idea that a clan who has lost their identity cannot reclaim it is also not one that is supported by previous land claims. In the Finnis River LC Report, Toohey J as the Commissioner was faced with the issue of succession and considered that there was a historical process by which traditional ownership may be lost and by which it may be acquired again:

Evidence that ownership has been lost lies in the absence of traditional associations with land, as Dr Layton recognised, and the loss of awareness of those associations. It may be found when a belief in ownership and the presence of traditional associations have sufficiently crystallised. That process may be interrupted or subverted: the extent and implications require an analysis of the evidence.

196. Toohey J then adverted to an alternative analysis, which in the present circumstances would lead to the same conclusion. It acknowledges that traditional ownership of Aboriginal land may be lost through absence from land and the extinguishment of any responsibility for the land. Whether that stage has been reached is a question of evidence, and in more recent usage of terms would depend to an extent on the relevant juristic public. In that alternative analysis, for reasons which would be apparent from the material referred to, the conclusion I have reached is the same. The relationship with the land and the responsibilities of the Minaga claimants was not extinguished in the necessary sense.
197. The evidence in this case shows that Rosie Baird and her siblings, upon finding out about their identity, have come back to learn about their connection to land and re-activate their rights over their country.
198. I consider that, based on the above analysis, the Minaga descendants have shown that they have restored their entitlement as the local descent group for the Disputed Area of the Cobourg LC.

3.3. COMMON SPIRITUAL AFFILIATIONS AND PRIMARY SPIRITUAL RESPONSIBILITY

199. The next task of the Commissioner in respect of the issue of traditional Aboriginal ownership is to determine whether any of the claimant groups can be said to 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’: ALRA s 3(1)(a).

3.3.1. Relevant Principles

200. It is accepted that the site(s) in respect of which common spiritual affiliations and primary spiritual responsibility may be established do not necessarily need to be located on the land the subject of a claim. However, if claimants are relying on sites outside of the claim area to establish these elements of traditional Aboriginal ownership, ‘cogent evidence would no doubt be required in the form of dreaming tracks or other material to link the land, the subject of the claim, to those sites and so establish a primary spiritual responsibility for it’: *R v Toohey: Ex parte Stanton* (1982) 44 ALR 94 at 97 (Wilson J); see also *R v Kearney; Ex parte Jurlama* (1984) 158 CLR 426; [1984] HCA 14.
201. In *NLC v Olney*, the Full Court confirmed that while it is not necessary in a land claim hearing for each member of the group to give evidence to establish that they have the appropriate spiritual affiliation, it is necessary to establish that common spiritual affiliations are possessed by individuals who comprise the group rather than the spiritual affiliations of the group collectively. Thus, those members of a local descent group who lack requisite spiritual affiliation to a site(s) on the land must be excluded from the group in a finding of who are the traditional Aboriginal owners: [80]-[84] (Northrop, Hill and O’Loughlin JJ).

202. A finding of primary spiritual responsibility requires an investigation into the level of responsibility discharged by those claiming to be traditional Aboriginal owners and ‘ask whether that level of responsibility is more important than that discharged by others and how it lies as between themselves’: *Willowra Pastoral Lease LC Report* [91] (Toohey J).
203. The Commissioner and the Courts have considered the issue of shared primary spiritual responsibility in the context of mutual recognition and exclusive claims and in both cases left open the possibility for more than one local descent group to demonstrate primary spiritual responsibility for a claim area.
204. With respect to mutual recognition, Commissioner Olney made the following statement in the *McArthur River Region Land Claim (No. 184) and part of Manangoora Region Land Claim (No. 185) Report No. 62* (15 March 2002) at [10]:
- The use of the indefinite article [in section 3(1) of the ALRA] leaves open the possibility that primary spiritual responsibility for sites and land need not be exclusive to a single local descent group... It follows that when circumstances arise in which more than one local descent group of Aboriginals claim, and are recognised by each other as having a primary spiritual responsibility for a site or an area of land, even though there may be no descent link or common spiritual affiliations as between members of the separate local descent groups, it is entirely consistent with the Act that both or all of such groups be recognised as traditional Aboriginal owners.
205. Wilson J in *Re Toohey; Ex parte Stanton* (1982) 44 ALR 94 stated that it would be ‘surprising’ to construe the Act as allowing more than one local descent group to satisfy the description of traditional Aboriginal owners in respect of the same area of land where there are opposing groups with mutually exclusive claims. However, the Court in *Myoung v Northern Land Council* (2006) 154 FCR 324 (*Myoung*) found that as a matter of statutory construction, the ALRA could allow for such a finding in cases where the country of each group overlapped around the boundary areas. In obiter, I also noted that the ALRA does not exclude ‘the possibility of there being two groups of traditional Aboriginal owners, or that in all circumstances where there are competing groups making exclusive claims there cannot as a matter of law be found to be two groups of traditional Aboriginal owners’: *Myoung* at [78].
206. Ultimately the fact that there are competing groups means that ‘making mutually exclusive claims is simply a matter the decision-maker must take into account’, and make a decision based on the facts before them: *Myoung* at [83]; Northern Territory submissions; Miden claimant submissions.
207. Before turning to each group’s claim, I make one further observation. It would be surprising, given the original claim and form of outcome and the de facto operation of the national park through a board including traditional owners for 30 years, that there would be no traditional Aboriginal owners of the land claimed. The Northern Territory has acknowledged this by not making a submission that there are no traditional owners. Nevertheless, unlike in other land claims, the Aboriginal traditions of the Cobourg Peninsula do not appear to include the typical ceremonial functions, sacred designs, dances, songs and symbols which are usually used as evidence of affiliation with and responsibility over sites in a land claim. So much is observed by Dr Avery in the Avery First Report with reference to comments made about the ‘usual’ course of evidence that were made by Commissioner Kearney in his report

on the Upper Daly River Land Claim: Avery First Report paragraphs [213]-[218]. Instead, the evidence supports an understanding that connection to and responsibility for sites is exhibited through knowledge of sites and place names, stories associated with sites, and use of country in accordance with traditional knowledge. In this sense, as Dr Avery points out, the spiritual relationship of claimants is just as ‘transactional and performative’ as ceremony, but enacted through different means.

208. Finally, while residence on country may be an important way for the transmission of information and responsibility from generation to generation between patrilineal descendants, I do not accept the submission of the Midena claimants that residence of itself is sufficient to this analysis on the basis that it is not a display of Aboriginal tradition in respect of specific sites.
209. I turn now to each group’s claim that their common spiritual affiliations place them under primary spiritual responsibility for the Disputed Area within the Cobourg LC area, in whole or in part.

3.3.2. The Minaga Group

210. The Minaga group claim that they share common spiritual affiliations and primary spiritual responsibility of sites in the former Minaga estate (putting aside the Remnant Disputed Area) with the Agalda clan. This shared responsibility is a product of succession.
211. As detailed in the factual background to the Disputed Area, there have been a number of factors present which have made it difficult for the Minaga claimants to connect with their country. These include growing up away from country, losing their father at a young age, not being told about their connection to country by Mullale, and losing access to country as a result of the dispute which arose between themselves and some members of the Agalda clan who now consider the Disputed Area to be exclusively theirs.
212. In spite of this, the evidence shows that Mullale’s descendants have still found opportunities to gain knowledge of their clan’s estate. Both Rosie Baird and Andrew Hunter learned about hunting and fishing from their father prior to his death; Andrew Hunter learned about the country from the Cobourg men when he worked on the road to Araru; Andrew Hunter, Fred Baird and Rosie Baird all lived on country at different stages of their lives; Fred Baird compiled maps and recordings of senior men talking about country so that he could pass on the knowledge to the rest of the clan, and was also put through two ceremonies by Robert Cunningham Senior.
213. In the lay evidence hearing, Fred Baird was able to identify the two frilled neck lizard (*Kurndaman*) dreaming sites in the Disputed Area (sites 91 *Warutha* and 171 *Kurndaman* on the Midena site map, sites 620 *Warutha* and 1013 *Kurndaman* on the NLC site map). The evidence as to the location of the sites corresponds with the site mapping undertaken in 1978-79 by Chaloupka and by Bruce Birch in 2009: Lewis First Report. Fred and Rosemary Baird also showed knowledge of a story behind the sites, where in 1906 the frill neck lizard grabbed the *Australian* steamship with its tongue, sinking the ship off the coast some 3 kilometres to the north. Mr Lewis in the Lewis First Report confirms that the *Australian* was a two mastered steel steamship

which hit Vashon Head reef and sank in November 1906, and that remains of the ship are visible on lower tides.

214. Fred Baird also displayed impressive knowledge of the names of many other sites in the Disputed Area, as well as certain features of the environment around the sites such as where a billabong was, where a good place for yams was, and where a Banyan tree was. Some of Mr Baird's knowledge is derived from his experiences living in the area and being put through two ceremonies by Robert Cunningham Senior: a Lorrokon ceremony at Gumeraghi and a Kunapipi ceremony at Croker Island. However, he also refers to a map which he consistently updates with site names and personal reflections on the Cobourg Peninsula, as well as recordings which he made from the mid to late 1990s of Robert Cunningham Senior, Hubert Cunningham and others talking about country and sharing site names.
215. While Fred Baird is a matrilineate for the Minaga clan, he confirms that he feels he has a responsibility to get knowledge for his country so he can 'pass it on' to the other members of the clan 'to help keep it going'.
216. There is also clear evidence of regional acceptance of Minaga interests in the land, and support for the passing on of knowledge to Minaga people by members of the Agalda clan who have up until now been caring for the estate. The 3 oldest surviving children of Robert Cunningham Senior, and the daughter of Hubert Cunningham, support the Minaga claim to country. At the Murganella meeting Senior Madjunbalmi traditional Aboriginal owner Johnny Williams stated that Robert Cunningham Senior should 'teach his children' [referring to the Hunters who called Robert bunji, father] and Galarrwuy Yunupingu, then NLC Chairman, stated that the Hunter children still belonged to the land, and that if they did not know the names and places then they could be taught. Further, Robert Cunningham Senior himself recognised the interests of Minaga at times, including when he attempted to include the Minaga in meetings about the building of Seven Spirit Bay on the historic Minaga estate, when he put Fred Baird through ceremony, and when he gave permission to Minaga to build an outstation at Adbanae because Minaga have a 'land standing alongside Agalda'. The mapping work of Freddie Baird with Robert Cunningham Senior and others may be properly seen, as Mr Lewis suggested, as part of the process of transmission of knowledge. It certainly cannot be seen as indicating that the Minaga claimants were dismissed as having no ongoing interest in the land.
217. On this basis, despite the difficulties the Minaga have had in asserting their responsibility to country, and the fact that their primary spiritual responsibility may have been weakened by historical circumstances, I am confident that they have shown that they are committed to further learning and at this point have established common spiritual affiliations and primary responsibility over the Disputed Area.

3.3.3. The Agalda Group

218. It is accepted by all parties that Robert Cunningham Senior had primary spiritual responsibility and common spiritual affiliations over sites in the Disputed Area in the absence of any Minaga descendants, and that he took steps while he was alive to pass down this knowledge and responsibility to his descendants. Responsibilities of the Agalda group in relation to the claim area have been recognised outside of this

claim by the NLC and the Northern Territory through the joint management scheme, whereby one (patrilineal) Agalda member sits on the Board to speak for the Agalda estate, including the former Minaga estate. While Fred Baird has also been included on the Board as a member of the Minaga clan since 2000, his role has only been as an observer.

219. The claim materials indicate that the members of the Agalda group, including both NLC claimants and Midena claimants, consider themselves to have primary spiritual responsibility for most sites in or around the Disputed Area. The difference between these two groups is that while the NLC group consider this responsibility to be shared with Minaga, the Midena group consider themselves to hold exclusive primary spiritual responsibility for the area.
220. Claimants referred in evidence to some of the dreaming sites within the area, as well as a number of other sites which were known for providing certain resources in the area.
221. Both NLC and Midena claimants were able to identify the two frill neck lizard dreaming sites during the lay evidence hearing. The claimants also showed knowledge of the story behind these sites. *Kurndaman* is credited with wrecking ships on the reef and *Warutha* is one of the sites of these shipwrecks. Dulcie May Cunningham provided evidence that *Warutha* is a point and rock offshore where a schooner from Japan sunk because the frilled neck lizard put up a screen of dust or fog. The Midena claimants further demonstrated their responsibility over this area through their understanding that this was a dangerous site and people could not visit without first understanding what the dangers were.
222. Two other dreaming sites which came up in evidence included the dreaming site for the blue-ringed stingray (*Madbagan*, site 613 NLC site map) and a dog dreaming site in Kennedy Bay (*Waladiki Naki*, site 160 on Agalda site map 2). The former was located by Robert Cunningham Junior for the NLC claimants during the flyover with the Commissioner. The latter was identified by the Midena claimants in the flyover with the Commissioner. In evidence, Dulcie May Cunningham, Kathleen Cunningham and Tristan Cunningham showed responsibility over the dog dreaming site through knowledge that if you moved the rocks at the site you would release a big storm or strong winds. It is unclear however whether they were talking about this dog dreaming site in the Disputed Area, or another dog dreaming site identified at Araru point.
223. According to West Arnhem Land tradition, all dreaming sites on the Cobourg Peninsula, as well as the customs, languages, plants and creatures were put on the country by Warramurrungunji (also spelled Warramurrangundji or Warramurrangunji) or Dalmana who is the Earth Mother, Mother Earth or Mother Nature. This was confirmed in evidence by both NLC and Midena claimants, with Veronica Cunningham referring to Mother Earth putting down the jang on country, and Queenie Cunningham noting that Warramurrungunji is big mother: see also Kathleen Cunningham outline of evidence. Dr Avery explains in the Avery First Report that Warramurrungunji underpins people's material and reciprocity with their natural environment through protecting sites, using correct names for places, and behaving as custom requires: see paragraphs [37], [50]. As noted above, these practices are significant indicia for responsibility over sites in the region.

224. A number of other sites were also described by both groups of claimants by reference to certain resources available at those sites including dugong, geese, palm trees, yams and water. Responsibility in relation to these sites was demonstrated through knowledge and observation of the practices involved in obtaining these resources (e.g. Queenie Cunningham; Veronica Cunningham; and Jayden Cunningham), and the practice of passing down this knowledge to younger generations (e.g. Queenie Cunningham, Dulcie May Cunningham, and Kathleen Cunningham).
225. The Midena claimants' submissions suggested that country was bestowed onto the descendants of Robert Cunningham Senior through the practice of 'yal'. Dr Avery describes this practice in the Avery First Report as a rite of passage for women and newborn babies after childbirth which involves a mixture of ashes and sand to symbolise a return to hearth and home: paras 245-251. As this is broadly speaking 'women's business', I accept the NLC claimants' submission that 'yal' does not confer or indicate land ownership. There is a strong preponderance of evidence supporting the conclusion that succession was, and still is, patrilineal.
226. I am reluctant to recognise the value in any submissions that the primary spiritual responsibility or common spiritual affiliations of the NLC claimants is undermined by the fact that they may have spent less time on country than the Midena claimants. All claimants from both groups have at some point or another moved away from Cobourg to other places in order to contend with work, family, education and medical matters. This much is recognised in Mr Lewis' reports, as well as in the Midena claimant submissions at paragraph [30]. Based on the above summary of knowledge demonstrated by claimants, I further accept the view of Mr Lewis that that all Agalda claimants have shared life histories together and have had knowledge passed onto them by their father Robert Cunningham Senior, and that the evidence given by the NLC claimants 'at least matched' the details provided by the Midena claimants.
227. I consider that the substantive knowledge which the Agalda clan has obtained as a result of the succession process is enough to establish that this clan has primary spiritual responsibility for the sites and the land in the Disputed Area. In doing so, I reject the argument by the Northern Territory that the revival of Minaga has displaced the Agalda clan's primary spiritual responsibility and placed them in a 'secondary' position whereby their responsibility is merely to transfer knowledge to the Minaga and to assist the Minaga to manage their estate. As stated above, this is a 'point in time' Inquiry, requiring me to assess where rights and interests lie at this particular point in time even when, absent such an Inquiry, positions may not have been yet concrete: Midena claimant submissions paragraph [86]. Given that the process of succession is generally a highly negotiated process which may take many years to complete, I cannot imagine that its reversal, being the transmission of knowledge back to the original clan, could happen overnight. It appears clear to me that the fact that the Agalda clan still holds a significant amount of knowledge about this estate and continues to exercise responsibility over sites is an indication that the children of Robert Cunningham Senior still hold some rights as traditional Aboriginal owners. The fact that the Minaga clan acknowledged their country was shared with Agalda in an 'at the moment' sense serves to support and not undermine this argument.
228. Finally, while I have already outlined the reasons why I do not consider the matrilineal members of the Agalda clan to be part of the local descent group and

therefore traditional Aboriginal owners of the Disputed Area, I note that these claimants displayed impressive knowledge of all of the sites in the area, and clearly have a strong attachment to the area. This is a matter which is explored further below when discussing section 50(3) of the ALRA.

3.3.4. Remnant Disputed Area: Extent of the Shared Minaga/Agalda estate

229. The final issue to consider in this section is the extent of the Minaga estate. As noted in section 2.4.2 of this Report, during the September and November hearings Rosie Baird and Fred Baird gave evidence that they understood the extent of the Minaga estate to be larger than the Disputed Area. Fred Baird gave evidence of the area extending to boundary sites Garrwil (site 599 NLC site map), *Wumaritji* (site 151 NLC site map) and *Bulganbulgan* (site 1504 NLC site map), while evidence about Minaga country extending to *Wumaritj* was also provided by Queenie Cunningham and Bunitj man Charlie Mungulda. Fred and Rosie Baird also showed knowledge of the Mudcrab dreaming site at *Maldiwadj* and associated rituals (site 1029 NLC site map, site 194 Midena site map), and Andrew Hunter gave evidence that toward the end of his life, Robert Cunningham Senior ‘handed over responsibility for the crab dreaming and he got my big brother, Charlie, to come and teach me or show me where it was and teach me the story’.
230. Nevertheless, as is the case in any hearing, my findings on the extent of the estate over which a clan has traditional Aboriginal ownership must have regard to the wishes of claimants as reflected in submissions. In the NLC’s submissions, it is asserted at paragraph 200(b) that the Minaga claimants do not seek to be recognised as traditional Aboriginal owners of any of the wider claim areas beyond the Disputed Area. I have noted above that the counsel for the NLC claimants, when the issue first arose, confirmed that there was no conflict of interest in relation to the representation of both Agalda and Minaga interests as they existed outside of the Disputed Area, or indeed of the interests of the other claim groups for the Non-Disputed area. The NLC has a particular responsibility to ensure that it properly identifies the correct claimants for a particular area (when it can) and through its counsel on behalf of the Minaga claimants it represented in this Inquiry it has made the submission noted above. It did not include any Minaga interests in the assertion it put forward as to who are the traditional owners of the Non-Disputed Area. As that is a specific position taken after opportunities to consider the position of the Minaga claimants represented by the NLC and to consult with, and take specific instruction from them, I conclude that – whatever might have been the potential impact of their evidence about areas within the remnant Disputed Area – the Minaga claimants do not assert that they are traditional owners of any of the areas about which they gave evidence within the Remnant Disputed Area.
231. On this basis, although I accept the Northern Territory’s submission that I should consider the evidence of knowledge of these sites in the Remnant Disputed Area as potentially strong enough to make a finding of traditional ownership of Minaga people, on balance I do not conclude that this is the case. The clear instruction of the Minaga claimants of the NLC indicates that, whatever the apparent significance of the evidence referred to, they themselves do not (and did not) intend that it should amount to evidence sufficient to support such a conclusion.

232. I therefore consider that the submission of the NLC claimants at paragraph 200 regarding primary spiritual responsibility of the Minaga claimants for the ‘big area’ of Adbanae in the Remnant Disputed Area must be understood in the context of the subsequent paragraph 200(b). That is to say, any primary spiritual responsibility which the Minaga claimants claim exists in relation to those sites in the Remnant Disputed Area, which are identified by redrawing the line of the Minaga estate from Garrwil (site 599 NLC site map) to Adbanae Outstation (site 1509 NLC site map), must not be primary spiritual responsibility that amounts to, or gives rise to, traditional Aboriginal ownership on their part.
233. The Minaga claimants’ assertion of primary spiritual responsibility over the ‘big area’ of Adbanae can be contrasted to the claim of the Agalda claimants over the same area. Unlike the Minaga claimants, the NLC Agalda claimants and Midenaga claimants express a clear desire to be recognised as traditional Aboriginal owners, and to have clear knowledge and responsibility over the sites over the area within the Remnant Disputed Area which at least equals that of the Minaga people. This includes knowledge of the Mudcrab dreaming site at *Maldiwadj* and associated rituals, the Hawkesbill turtle dreaming site, and resources at *Bulganbulgan*. As appears specifically in the consideration of the Non-Disputed Area, which is within the Agalda clan section of that area, I have concluded that the claim is to be accepted. That is, the Agalda claimants (both represented by the NLC and represented by Midenaga lawyers) are the traditional Aboriginal owners of that area. That area includes the Remnant Disputed Area. In terms of section 50(1)(a)(i) of the ALRA, having reached that conclusion, I am not confident that it would be appropriate to then consider whether ‘any other Aboriginals’ are the traditional Aboriginal owners of the Remnant Disputed Area. To take the additional step of concluding that the traditional Aboriginal owners in part (within sections of the Remnant Disputed Area) include some other Aboriginal persons who do not want to be so recognised, and by inference do not want to undertake the heavy responsibility that goes with traditional ownership, seems unwarranted.
234. On this basis I consider the claim of the Minaga people, which they share with Agalda people, does not extend further than the Disputed Area.
235. I have noted above that section 50(1)(i) of the ALRA requires me to ascertain whether ‘those Aboriginals [referring to the Aboriginals on whose behalf the Cobourg LC was originally made] or any other Aboriginals’ are the traditional Aboriginal owners of the claim area. Clearly, given the elapse of time from the initial application, it is not surprising that the NLC claimants and the Midenaga claimants and other groups presented by the NLC as the traditional Aboriginal owners of the Non-Disputed Area differ from the original claimants named in the application. But it is a significant step take to conclude that, in respect of part of the Non-Disputed Area (called the Remnant Disputed Area), traditional Aboriginal ownership lies with a group who do not want to be so recognised and presumably therefore are not prepared to assume responsibility for looking after such sites and the related area. So far as I am aware, the Commissioner has not previously been asked to make such a finding, and for the reasons I have set out above I do not propose to do so in relation to the Remnant Disputed Area in favour of the Minaga claimants represented by the NLC.

3.4. RIGHTS TO FORAGE

236. The definition of traditional Aboriginal ownership as it appears in the ALRA also requires a finding that the claimants ‘are entitled by Aboriginal tradition to forage as of right over [the claimed] land’: ALRA s 3(1)(b).
237. Foraging means obtaining the means of day-to-day material subsistence. It is usually taken to include the hunting and gathering of food and obtaining firewood and water: *Cox River Land Claim Report (No. 14), 18* (26 April 1978) at [198] (Kearney J).
238. It was clear from the evidence that the commencement of succession of the Agalda over the former Minaga estate had given them rights to forage over that land. Claimants represented by the NLC and Midena Lawyers gave evidence of hunting and fishing for various animals on country including yams, stingray, hawksbill turtle, catfish, buffalo, crab and dugong. It was clear that a lot of what they had learned had come from Robert Cunningham Senior as the person who had primary spiritual responsibility for the Disputed Area while he was alive.
239. The right of the Agalda matriliates to forage on the land, including those who form part of the Midena claimants, was explicitly recognised by the NLC claimants in submissions. However, it was not endorsed in the submissions of the Northern Territory, who maintain that the rights of the Agalda clan are limited to transferring knowledge and assisting the Minaga manage their estate.
240. The Minaga claimants also gave evidence of hunting and fishing in the Disputed Area with the endorsement of Robert Cunningham Senior and, in the past, Mullale. Andrew Hunter first learned to hunt from Mullale, and then was later taught the correct way to hunt, cut and cook turtle by Robert Cunningham Senior while living at Adbanae Outstation. Rosie and Fred Baird also gave evidence of foraging on country at different times.
241. There was an acknowledgement in the evidence that the Minaga claimants had not been able to access the land for some time as they were told by members of the Midena claimants they were not welcome and the gate to Adbanae Outstation was locked. The Midena claimants also provided evidence that they had doubts as to the Minaga claimants’ connection to the land, suggesting that they in fact may not recognise such a right.
242. However, given these sentiments are shared only between the families of the younger members of the Cunningham family, and in light of the fact that there are other, more senior members of the Agalda clan who do show support for the right of Minaga people to access and hunt on the land, including Robert Cunningham Senior at times when he was alive, I consider that these sentiments do not controvert my conclusion that both the NLC claimants, including the Minaga claimants, and the Midena claimants have the right to forage over the land.
243. I accordingly find that each of the claimant groups over the Disputed Area in the Cobourg LC are entitled to forage as of right over the Disputed Area. Those claimant groups are the NLC claimants (including both the NLC Agalda claimants and the Minaga claimants) and the Midena claimants who are part of the Agalda clan.

3.5. MOGOGOUT ISLAND

244. Mogogout Island is a small island located just within the Garig Gunak Barlu Marine Park in the north-eastern Van Diemen Gulf some 5 kilometres north-east of Endyalgout Island. It is described by Dr Avery as dry and uninhabitable in the Avery First Report, and has therefore not been occupied by any one group.
245. In the 1979 draft claim book prepared for the Cobourg LC, Peterson and Tonkinson in the Peterson Draft Report described an area of land that included Mogogout Island as being part of the territory of the former Mamagad clan which had been succeeded to by the Murran clan:
- Similarly the south coast area from Wangarlu Bay east and the western portion of Endyalgout Island were Mamagad clan territory but they too have died out. However the last Mamagad woman was FM for Peter Namunur and siblings so the land is now held by Muran clan.
246. However, in other documents, Mogogout Island has been recorded as being part of Agalda territory. Thus, a note filed by Professor Peterson which was believed to be written by George Chaloupka notes that the Agalda clan ‘owns all the islands in the northern section of the Van Diemen Gulf, including the Endyalgout Island’ which Chaloupka describes as having been succeeded by Agalda from the Mamagad clan ‘while that on the peninsula was succeeded to by Murwan’. Further, in Peter Cooke’s 1995 draft report titled ‘A Survey of Sites of Aboriginal Interest in Waters, Islands and Submerged Lands in the Eastern Van Diemen Gulf,’ the boundary of the Murran territory is drawn to the north and east of Mogogout Island, and the island itself appears to fall within Agalda Territory.
247. Somewhat inconsistent with the assertion in the Peterson Draft Report, Peterson and Tonkinson also recorded in their site register a site on Mogogout Island called *Nalamir* (site 325 NLC site map) as being Agalda. This site and its affiliation to the Agalda clan was also noted in Bruce Birch’s 2008-9 recordings. Dr Birch also recorded a sacred site called *Buwa Balu* located 400 metres offshore of Mogogout Island, noting that ‘RCS’s grandfather speared the rainbow serpent here and for this reason there is no water on *Mawurikbanyan* (Morse Island) and bad water on *Malkujkuj*’ (Mogogout Island).
248. In this claim, both the Midena claimants and NLC Agalda claimants assert primary spiritual responsibility and common spiritual affiliations to sites on Mogogout Island. While the Midena claimants assert that Mogogout Island exclusively belongs to Agalda, the NLC claimants (including those of the Agalda clan) assert shared responsibility with the Murran claimants.
249. The assertion of exclusive primary spiritual responsibility and common spiritual affiliations of the Midena claimants rests on the evidence from those anthropologists that have classified the Island as being within Agalda territory, as well as evidence from present claimants about two sites and two traditions associated with the Island.
250. Nevertheless, closer analysis of this evidence brings the strength of such a claim to exclusivity into question.

251. Firstly, Mr Lewis notes that the main informant for two of the anthropologists that did record Mogogout Island as Agalda territory was Robert Cunningham Senior, an Agalda man. There is no evidence that Bruce Birch or Peter Cooke talked to anyone from the Murran clan to verify that the Island did not fall within their territory, and indeed, as noted in the documents produced by the NLC, Birch was not seeking to obtain information in relation to the traditional ownership of the Cobourg Peninsula.
252. Secondly, the evidence regarding the two sites does not strongly link them to the Agalda clan. In evidence, Dulcie May Cunningham stated that her father had named the site *Nalamir* after his dog. However, she clarified under cross-examination that this did not, in itself, make it an Agalda site. Further, despite the evidence given by Dr Birch, no traditional ownership evidence was given in relation to the second site, *Buwa Balu*. Thereby making it difficult to connect the present Midena claimants with exclusive responsibility over this site.
253. The Midena claimants did give evidence about two Aboriginal traditions that lie around (but do not touch) Mogogout Island, but I am not persuaded that these traditions can be seen as belonging only to the Agalda clan and thus assign spiritual affiliation of the island specifically and exclusively to the Agalda clan. The two traditions are the rainbow serpent tradition, which the Midena claimants say lies across the area of sea immediately west of Mogogout Island with its head off Mogogout Island and tail to the west toward Greenhill Island, and the 'Tall Man' (Wuraka) tradition where the body of the Tall Man is aligned in parallel orientation to the rainbow serpent across the Van Diemen Gulf: see Dr Avery's Memorandum on Mogogout Island. However, Mr Lewis notes in the Lewis First Report that such traditions are in fact major regional traditions which travel through and around the Cobourg Peninsula, passing through numerous clan territories as well as language areas. Mr Lewis therefore asserts that it is 'highly likely' that past Mamagad yuwurumu members would have held, and now Murran as their successors, hold knowledge of these traditions, and that Solomon Cooper, a senior Murran man, was in fact familiar with the Tall Man tradition.
254. While a number of Midena claimants asserted that Mogogout Island was Agalda only, the evidence must be balanced against the evidence of NLC Agalda claimants and Murran claimants who noted the Island was shared between the two clans. As the evidence from the NLC claimants came from two senior Agalda members and one senior Murran member, this in my view is more persuasive than the evidence of Robert Cunningham Senior's younger children and grandchildren.
255. I also note Mr Lewis' discussion on the well-documented occurrence of a 'lack of precision or clarity in indigenous group boundaries': Lewis First Report. While that does not support any specific conclusion, the location of Mogogout Island, and the evidence of access to it over time does incline to a conclusion that more than one clan regarded it as a significant location. That is reflected in the references noted above. Dr Avery's support for the Agalda clan exclusivity was based on his assessment of the respective strengths of the competing evidence, but I incline to also give significant weight to the Peterson conclusion where the accompanying mapping gives a clear picture of Murran entitlement.

256. The evidence focussing on of the ownership of Mogogout Island was sparse, perhaps because of the relative size of the island and also perhaps because the main focus of the evidence was on the mainland areas. I have considered the evidence relating to it. On the basis explained, I accept the NLC submission that the balance of traditional owner claimant and expert evidence supports a finding that ownership is shared between Murran and Agalda yuwurumu. I conclude that both groups have shared spiritual responsibility for Mogogout Island.

3.6. STRENGTH OF ATTACHMENT

257. Section 50(3) of the ALRA requires the Commissioner, when reporting to the Minister, to have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed. This consideration is of course secondary to the findings of traditional ownership in the previous section: *Jungarrayi v Olney* (1992) 34 FCR 496 at 501-3 (Northrup, Hill and O’Loughlin JJ).
258. There are a wide range of factors which previous Commissioners have taken into account when assessing strength of attachment. These include visits to and occupation of the land in the claim area; people wanting to be buried in the claim area; knowledge of sites and dreaming tracks in the claim area; and the need to learn and conduct ceremonies: see e.g. *Borrooloola Land Claim (No. 1) Report No. 1* (3 March 1978) at [101] (Toohey J); *Warlpiri Land Claim (No. 2) Report No. 2* (4 August 1978) at [212], [215] and [216] (Toohey J); and *Yutpundji-Djindiwirritj (Roper Bar) Land Claim (No. 36) Report No. 15* (31 March 1982) at [89] (Toohey J).
259. While a strength of attachment will vary across a large group, the relevant measure is whether there is sufficient strength of attachment to justify a recommendation: *The Alcoota Land Claim (No.146) Report No. 69* (24 May 2007) at [5.1] (Gray J).
260. Each of the claimant groups has demonstrated a strong sense of attachment to the Disputed Area. This can be appreciated notwithstanding that members of these groups have at some point all moved away from Cobourg for periods of time for work, family, education and medical reasons. In general terms, as far as reasonably practicable in their particular circumstances, the claimants have each participated in the protection, management and development of the claim area over the relevant period.
261. The Minaga claimants have maintained connections to the land despite being disconnected from it for periods due to circumstances. This includes through working on the Araru Road with seniors from the area in 1984, living at Araru and Cape Don, constructing and living or holidaying at Adbanae Outstation before it burned down, and going through ceremony on the land. The fact that Fred Baird created the map and recordings shows a willingness to pass on cultural knowledge including in relation to the naming of sites. Despite difficulty accessing the area as adults, they have still been able to hunt, fish and forage in the claim area, and Rosie and Fred Baird have continued to be involved in the Cobourg Board as interim members or as observers. As strength of attachment is focussed on whether the connection is maintained and not how the connection has been maintained, I reject the Midena claimants’ argument that the Minaga do not have a traditional attachment because their knowledge did not come from their father directly.

262. The NLC Agalda claimants have also maintained connections to the Disputed Area despite moving away to live or work elsewhere. Many of Robert Cunningham Senior's children were born on Agalda country and grew up at Cape Don, and have learned traditional practices such as rubbing sweat onto objects to observe entry protocols, traditional weaving and dyeing practices, and the performance of the yal ceremony. Some claimants have also been through ceremony themselves, and all have provided evidence of teaching and passing on cultural knowledge to younger generations, including in relation to hunting, fishing and foraging. Ronald Cunningham and Charlie Cunningham both worked as rangers at Cape Don and Black Point, and Robert Cunningham Junior is the current Chairman of the Cobourg Board. All claimants have also continued to visit the claim area for hunting, fishing and foraging.
263. The Midena Agalda claimants show similar strength of attachment to the area as the NLC Agalda claimants. In particular, it is clear that the matrifiates, as a result of their experience living at Araru Outstation and learning stories, traditions and sites from Robert Cunningham Senior, have enjoyed the same strength of attachment to the area as the patrifiates.
264. The efforts of each of the claim groups to engage with the evidentiary arduousness of the land claim process for the Cobourg LC also indicates their desires to be recognised in this context. Such efforts are clearly demonstrative of a strong attachment to the Cobourg LC area.

3.7. ADVANTAGE OF A GRANT

265. Section 50(3)(a) of the ALRA also requires the Commissioner to comment on 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.
266. That comment is not limited to those claimants found to be traditional Aboriginal owners in the sense required by the ALRA. It extends to all Aboriginal persons with traditional attachments to the claim area, such as through spiritual links and foraging rights: see, e.g., *Cox River (Alawa/Ngandji) Land Claim (No. 14) Report No. 18* (26 April 1978) (*Cox River LC Report*) pp 39-40 per Kearney J as Commissioner; *Warlpiri and Kartangarurru-Kurintji Land Claim (No. 2) Report No. 2* (4 August 1978) [243] per Toohey J as Commissioner.
267. Comment on the nature and extent of advantage may include economic benefits, spiritual and psychological benefits, security of tenure, and the legal capacity to control entry to land: See e.g. *Borrooloola Land Claim Report* (No. 1) (3 March 1978), at [170]-[173] (Toohey J); *Warlpiri Land Claim*, at [247]-[253].

268. A list of those claimants who I have found to be traditional owners of the Disputed Area of the Cobourg LC area (i.e. the Agalda and Minaga patrifiates) is contained at Annexure E to this Report. So far as those claimants are concerned, a grant of land would have the following advantages for their respective sections of the claim area:
- (a) the security of inalienable freehold title which preserves the country, not only for themselves, but also for their descendants,
 - (b) a higher degree of control over the claim area, and
 - (c) an enhanced capacity to protect areas of cultural or historical significance.
269. Other persons who may be advantaged include non-claimants:
- (a) who are affiliated with a claimant group/s by more distant genealogical connections
 - (b) who are connected to the claim areas through place of birth or Dreaming affiliation
 - (c) whose own country neighbours or is near the claim areas
 - (d) who are entitled to forage in the claim areas pursuant to Aboriginal tradition
 - (e) who have a strong historical link to the claim areas, perhaps through living or working on the claim area
 - (f) who are married to or are children of the claimants.
270. The primary advantage which would be enjoyed by this second group of individuals in the circumstances of this particular land claim is security of tenure. As outlined in the NLC submissions, the uncertainty of current arrangements pertaining to joint management, which were made pursuant to an invalid grant to the Cobourg Land Trust, will be rectified by the inalienable title conferred by a grant of Aboriginal land and the negotiation of relevant agreements. The consequent commercial certainty will benefit the traditional Aboriginal owners, others with traditional interests, as well as any other interest holders, and rectify the legal uncertainty of the grant to the Cobourg Land Trust.
271. It is clear that the Midena claimants with matrifiatal links to the claim area would fall into this second category of individuals positioned to benefit from the security of tenure which will arise from the grant. These claimants have also been identified by the NLC as persons who have ongoing traditional interests in the Cobourg LC area. This means that they will benefit from rights of use and occupation in accordance with section 71(1) of the ALRA, as well as the entitlement to be consulted in relation to any proposed use of the land.
272. Finally, acceptance of the claim would afford an ‘intangible’ advantage in the form of formal and significant recognition of the claimants’ strong and meaningful relationship to country: See *Malgnin and Nyinin Land Claim to Mistake Creek Land Claim (No. 133) Report No. 50* at [6.2.3].
273. For the Minaga claimants in particular, a grant of land will afford formal recognition of their efforts to revitalise their traditional knowledge and maintain connection and responsibility to land, despite the forces which removed Mullale from the land and the subsequent historical disconnection of his descendants.

3.8. OTHER MATTERS FOR COMMENT

274. As no part of the Disputed Area or Non-Disputed Area in the claim relates to alienated Crown land, section 50(3)(d) of the ALRA is not applicable. As above in Section 2.1, I have addressed the matter of NTP 900 and concluded that the area was not included in the original application.
275. For the sake of completeness, I also raise section 50(4) of the ALRA. That section requires the Commissioner, in carrying out their inquiry function, to have regard to the following ‘principles’:
- (a) Aboriginals who by choice are living at a place on the traditional country of the tribe or linguistic group to which they belong but do not have a right or entitlement to live at that place ought, where practicable, to be able to acquire secure occupancy of that place;
 - (b) Aboriginals who are not living at a place on the traditional country of the tribe or linguistic group of which they belong but desire to live at such a place ought, where practicable, to be able to secure occupancy of such a place.
276. The claimants did not make any submission nor lead any evidence specifically directed at these principles. That is understandable in relation to Mogogout Island, given that the claim area consists largely or entirely of land subject to tidal waters. More importantly, in relation to the Disputed Area, I have noted in my discussion of the evidence, the extent to which matrilineal claimants have, and continue to have, access to the Disputed Area and a strong knowledge of its spiritual and physical features. It will be important in the final recommendations of this Report to reflect that close and deep association with the land, making allowance for personal circumstances and for the period from which the Midena claimants have sought to exclude the Minaga claimants from the land and to some extent also the NLC Agalda claimants. That more recent history should not, and in my view does not, preclude those with strong matrilineal attachments to the Disputed Area from re-establishing their enjoyment of the area.

3.9. FORMAL FINDINGS

277. For those reasons I conclude that the traditional Aboriginal owners of the Disputed Area are the patrilineal members of the Minaga clan and the patrilineal members of the Agalda clan (including the NLC claimants and the Midena claimants). I will make my formal recommendations to the Minister and to the Administrator in the Conclusion to this Report.

4. TRADITIONAL ABORIGINAL OWNERSHIP – NON-DISPUTED AREA

4.1. FACTUAL BACKGROUND

278. The Non-Disputed Area is comprised of Agalda, Madjunbalmi, Murran and Ngaynjaharr clan groups. The map showing the areas of the Non-Disputed Area claimed by each of the 4 clan groups is Annexure F to this Report.
279. These groups and their respective estates were first identified by Professor Peterson and Dr Tonkinson in the Peterson Draft Report for the Cobourg LC. Mr Lewis accepts that the primary and most substantial anthropological research into the Non-Disputed Area is that reflected in the Peterson Draft Report. Although certain issues have arisen about the composition of two of the 4 estate holding clan groups over the Non-Disputed Area, they were not anticipated at the time Professor Peterson gave evidence, so his comments upon those disputes were not sought. His views, but more particularly the identification of the appropriate persons as traditional owners of each of their areas (including the two disputed ownership issues) have been taken into account and then reviewed by Mr Lewis. They are the subject of two separate reports by Mr Lewis. One is entitled Supplementary Anthropological Statements: (a) Madjunbalmi and Ngaynjaharr Groups; and (b) Mogogout Island, dated 9 December 2022 (the Lewis Madjunbalmi and Ngaynjaharr Report). The second is entitled Anthropologist's Supplementary Report on Murran and Ngaynjaharr Clans, dated March 2023 (the Lewis Murran and Ngaynjaharr Report).
280. There is no issue about the geographical division of the Non-Disputed Area between those 4 clan groups.
281. The traditional Aboriginal ownership of the Agalda estate has been addressed in the previous section. That consideration applies not only to the Disputed Area but also includes the Agalda estate in the Non-Disputed Area (including the Remnant Disputed Area). For reasons given above, the Remnant Disputed Area is not significant at this point in the Report. The original Agalda estate was described in the Peterson Draft Report as occupying the western end of the Peninsula and the adjacent Islands of Allaru, Murnurnurnu, Burford, Greenhill, Warla, Wangondjung, Warldagawaji, Morse, Wunmiyi and the eastern portion of Endyalgout Island.
282. The Madjunbalmi estate is located centrally in the Cobourg Peninsula between the Arafura Sea and Van Diemen Gulf in the south. It extends across much of Port Essington and is bounded by Agalda country in the southwest, Agalda/Minaga country in the northwest and the Ngaynjaharr clan group area in the east.
283. The Murran estate runs from beyond the eastern boundary of Cobourg Wildlife Sanctuary (as it was then known) along the north coast of the Cobourg Peninsula on the western side of Raffles Bay including the two unnamed islands in that bay. On the southern side of the Peninsula, its estate runs west to Widiyini in Wangarlu Bay. Its estate also includes Mogogout Island (shared with the Agalda estate, as discussed above) and the western portion of Endyalgout Island.

284. The Ngaynjaharr estate is also located centrally on the Cobourg Peninsula between the Arafura Sea in the north from Gul Gul (Danger Point) to Van Diemen Gulf in the south and is bounded by Madjinbalmi country to the west and Murran country to the east.
285. As detailed earlier in this Report, it was initially intended that the traditional Aboriginal ownership for the Non-Disputed Area would be agreed between the NLC and the Northern Territory and that settlement negotiations with respect to this area would be finalised independent of the Commissioner's Inquiry over the Disputed Area. However, in the circumstances described above, including in light of uncertainty regarding the Remnant Disputed Area, the parties agreed in October 2022 to support the extension of the Inquiry over the entire claim area.
286. This section of the Report considers the evidence provided in respect of the Non-Disputed Area, and in particular focusses on the evidence in respect of the following groups which contested the composition of traditional Aboriginal ownership put forward by the NLC claimants for the Murran and Ngaynjaharr estates:
- (a) The descendants of the Reuben Cooper Arramuniga Senior (Reuben Cooper Senior claimants or Arramuniga claimants) for the Murran estate, and
 - (b) Margaret Siebert and her family (Siebert family claimants) for the Ngaynjaharr estate, again adopting the definitions previously used.
287. I note that during the hearing of 11-14 April 2023, the Siebert family claimants were self-represented. I am satisfied that they had the opportunity to put their case to the Inquiry. I have kept their self-represented position in mind when assessing the oral and written material.
288. Each of the contesting claimants also relied on the two reports provided by Mr Lewis referred to above, namely the Lewis Madjunbalmi and Ngaynjaharr Report and the Lewis Murran and Ngaynjaharr Report rather than advancing alternative anthropological evidence.
289. There is one additional matter to note in this introductory section. When the NLC provided the claim materials for the Non-Disputed Area on 9 December 2022, it included revised claimant profiles and genealogies for the Murran clan. As noted by Mr Elliott in his 'Review Report of the Non-Disputed Area' of 16 January 2023, these documents excluded two families that had previously been included in the original Murran claim materials for Disputed Area B – Mogogout Island, also provided by the NLC. The families excluded were the descendants of John Christopherson and the descendants of Reuben Cooper Arramuniga Senior, previously shown as having adoptive links to the Murran clan in the original genealogies, and they were described as such in the Lewis First Report of March 2021. The revised version of the genealogy showed John Christopherson's link to adoptive father Tim Milbur with an unbroken line, and the statement 'John Christopherson ceremonially affiliated to Murran.'
290. These changes in the Murran genealogies and claimant profiles were only briefly explained in the Lewis Murran and Ngaynjaharr Report and only the changes made to the material concerning the descendants of Reuben Cooper Arramuniga Senior were explained. I assume that is because only the Arramuniga claimants had sought to be heard in the Inquiry in relation to their status under the ALRA.

291. With respect to the Christopherson family, I will therefore take the latest version of the NLC documents to indicate that there is a formal entitlement to the Murran estate that falls short of traditional Aboriginal ownership. The fact that John Christopherson is included in the claimant profiles and genealogy and his descendants are not is something for the community to address with the NLC in future consultations.

4.2. LOCAL DESCENT GROUP

292. The definition of ‘local descent group’ is addressed at section 3.2.1.

4.2.1. The respective claims

293. As in the Disputed Area submissions, the NLC, with the agreement of the Northern Territory, continue to assert that the Aboriginal land tenure of Cobourg Peninsula and the surrounding region including the Non-Disputed Area is a system of patrilineal clans or yuwurrumu as explained in the Lewis First Report.
294. The NLC also recognise as traditional owners the descendants of people who have been incorporated into the Ngaynjaharr and Madjunbalmi group by way of adoption or FM connection as a way of dealing with succession issues.
295. The Siebert family claimants appear primarily to assert a claim to a small area of the Ngaynjaharr estate, known as Gul Gul (Danger Point) on the basis that this is ‘mother’s country’ and can be claimed through the matriline. In making their claim, the Siebert family claimants do not dispute the existence of patrilineal yuwurrumu as the traditional land tenure system, but question the relevance of its application to adoptees within the clan. That is quite a refined and limited issue.
296. The Arramuniga claimants do not dispute that the NLC Murran claimants are traditional Aboriginal owners within the meaning of section 3(1) of the ALRA. However, they provide a number of different reasons (addressed below) for why they should also be recognised as part of the local descent group for the Murran clan in the Cobourg LC. It appears from this list that the Arramuniga claimants believe membership to the Murran local descent group can occur through either patrilineal or matrilineal descent, and that adoption is also a valid method of incorporation into a clan.
297. In essence, they are the two remaining disputed matters. The balance of the matters to be addressed in respect of the Non-Disputed Area are not contentious and can be addressed relatively briefly.

4.2.2. The Murran Group

298. The claimant group for the Murran estate as presented by the NLC trace their lineage to apical ancestor Gungajirr Gunjalarr through the patriline. These claimants assert exclusive ownership of the estate to the exclusion of the Arramuniga claimants, who trace their lineage to apical ancestor Reuben Cooper Arramuniga Senior, the adoptive son of Gungajirr Gunjalarr’s father’s brother Ngangadbali. Membership to the Arramuniga claimants is purportedly determined through a form of cognatic descent which accepts membership through adoptive and biological links to the matriline

and patriline. Unlike the NLC claimants, the Arramuniga claimants have not claimed their estate to the exclusion of any other claimant group. They seek to be added to the Murran clan claimants put forward by the NLC. I observe that the description of the Arramuniga claimants as being descendants of Reuben Cooper Arramuniga Senior who in turn was an adopted descendant of Ngangadbali is taken from their written opening submissions. At a later point, it appears from the Lewis Murran and Ngyanjaharr Report that they alternatively say that Reuben Cooper Arramuniga was never adopted, but this entitlement to Murran status arises from a cognatic descent system through his mother Alice Marawuldan.

299. The descent principle of the NLC claimants is supported by evidence given by Mr Lewis in respect of the Disputed Area regarding a regional patrilineal system of local group affiliation to land which extends across the west-Arnhem region. It is also supported by both Agalda and Murran NLC witnesses in the hearings for the Disputed and Non-Disputed Area. Mr Lewis then prepared the Lewis Murran and Ngyanjaharr Report in March 2023 following an extensive inquiry into the status of the Arramuniga claimants.
300. While the submissions of the Arramuniga claimants did not seem to favour one particular descent principle over another, the fact that there were witnesses who claimed to be part of the local descent group through both the matriline and patriline suggests that the Arramuniga claimants contended for both forms of recruitment. To support this claim, matrilineal descendants Maria Stephens and Joy Cardona gave evidence that they were Murran yuwurumu through their mothers, and that they had been told this by their elders. Maria Stephens also provided an extract from a journal article from Ronald Berndt which, she claimed, endorses the view that the Cobourg Peninsula is a dual matrilineal and patrilineal system of land ownership. However, as the Northern Territory noted in submissions, Ms Stephens' interpretation of Berndt's article was a 'misreading of the source' as the article, written in defence of a prior article of Berndt's titled 'Murngin' (Wulamba) social organization,' was describing the social and not the land tenure organisation of the Wulamba and other people in West Arnhem Land. This claim was then undermined by evidence provided by other members of the Arramuniga claimants suggesting an understanding that matrilineal rights were in fact secondary to patrilineal rights, as the only way one can take over mother's country was when the members of the patriline were no longer present. It thus appears that the balance of the evidence weighs in favour of a patrilineal local descent group for the Murran estate.
301. I accept that the yururumu or patrilineal descent system applies generally through the Cobourg Peninsula, including the Non-Disputed Area. That is consistent with the strong balance of the evidence, and reflects my conclusion in respect of the Disputed Area.
302. The next question to determine is whether the Murran local descent group includes the patrilineal members of the Arramuniga claimants; membership of the Murran clan estate by the NLC Murran claimants was not in issue. This may include an inquiry into genealogy as well as into the status of these groups according to the jural public, noting that the opinions of other clan members as well as respected elders in the broader region may have the effect of strengthening or weakening a claim.
303. The evidence shows that at least since the lodging of the Cobourg LC, the status of Gungajirr Gunjalarr's patrilineal descendants as land-owning members of the Murran

clan has never been questioned by the jural public in the Cobourg region. In 1978, Gungajirr Gunjalarr's descendants were listed on the Cobourg LC application and described as owners of the estate in the Peterson Draft Report. Since then, they have always been included in NLC Land Interest Research documents of the NLC as the decision-makers for the estate. Indeed, the NLC claimants, Gungajirr Gunjalarr's descendants' status as Murran traditional Aboriginal owners remains unchallenged by both the Northern Territory and the Arramuniga claimants.

304. It is only the NLC claimants' refusal to recognise the Arramuniga claimants as traditional Aboriginal owners for the estate which requires further analysis.
305. The status of the Arramuniga claimants as Murran clan members has been contentious for a long time. Before 2004, there is some evidence that the Arramuniga descendants were identified as yuwurumu for the Murran clan in NLC Land Interest Research reports, the 1997 Peterson and Devitt's Anthropology Report for the Croker Island Native Title Sea Claim, the Federal Court's 1988 ruling in *Yarmirr v Northern Territory*, and in statements made by Murran elders such as Khaki Marrala and Brian Yambigbig.
306. However, this position was not undisputed. Neither Ngangadbali nor his reputed adoptive son Reuben Cooper Arramuniga Senior were included in the Peterson Draft Report in support of the Cobourg LC in 1979. The status of Ngangadbali himself in some material after that date is not given as Murran but as Gamulkban. Despite Mr White recording Reuben Cooper Arramuniga as Murran at certain points, Mr White elsewhere records Ngangadbali (and an alternative apical ancestor Nawurringyuk) as Gamulkban rather than Murran. Mr White has also noted internal concerns within the Murran clan about the status of the Arramuniga claimants over many years. In 2004 the issue was explicitly addressed at a meeting requested by senior Murran men convened by the NLC. This changed after a decision was made by broader clan members to relegate the standing of Arramuniga claimants to 'secondary rights' holders at a meeting at Marayia (also spelled Marriyah) Outstation on 6-7 July 2004, after which both the NLC (in Land Interest Research documentation) and other clan members (in recorded conversations with anthropologists) clearly distinguished the Arramuniga group from the 'traditional Aboriginal owner' group.
307. The NLC claimants have provided 3 main submissions to explain why it should be decided that the Arramuniga should not be accepted as within the group of traditional owners of the Murran estate in the Non-Disputed Area, despite some previous recognition of the Arramuniga claimants as traditional Aboriginal owners.
308. The first submission concerns the genealogical link of the Arramuniga claimants to the Murran clan. This goes to the clan status of Arramuniga himself: the biological son of a European man Joel Cooper and an Aboriginal woman Alice Marawuldan who was adopted into an Aboriginal clan by a man named Ngangadbali. According to the NLC claimants, the genealogies produced by NLC anthropologists suggest that Arramuniga's adoptive father was of the Gamulkban clan, and his mother was Ngaynjaharr. For this reason, and based on statements provided by NLC claimants in lay evidence, they state that it is 'likely' that Arramuniga himself was Gamulkban.

309. This contrasts with the claim of the Arramuniga claimants, who assert that they were told by their elders that they were Murran from either Arramuniga or Alice Marawuldan.
310. The second, related submission, is that any identification of the Arramuniga claimants as Murran can be explained by the close 'one-countryman' relationship between the Murran and Gamulkban clans, which has allowed for names and residential rights to be exchanged between the two clans, but not traditional Aboriginal ownership. Mr Lewis, in the Murran and Ngaynjaharr Report, used this relationship to explain any assertions that Arramuniga was given a Murran name, as well as the fact that his descendants have been living on Wiliji Outstation, in the Murran estate, since the 1970s. He also referred to a historical decision made by Murran senior people to allow these descendants onto Murran land in order to resolve a dispute between the Arramuniga descendants and the rest of the Gamulkban clan – a claim which was supported both in lay evidence and the NLC claimant submissions.
311. The Arramuniga claimants suggested if Arramuniga was found to be Gamulkban, it should be open to conclude that traditional Aboriginal ownership should be found through the sharing of primary spiritual responsibility and commons spiritual affiliations between clans.
312. The final main submission from the NLC claimants is that if the Arramuniga claimants did have a recognised (as opposed to actual/genealogical) status as Murran members/traditional Aboriginal owners, this was then lost after the meeting at Marayia Outstation. On 5-7 July 2004 the decision at this meeting was that adoptees should not be seen routinely to have primary yuwurrumu rights but instead to hold what is in the nature of a verbal lease agreement with the yuwurrumu holders which required them to ask for permission before they did anything on country. It was made by Mary Yarmirr, a member of the jural public in an attempt to resolve some years of dispute between the two sub-groups regarding activities that were taking place at Wiliji Outstation. The Lewis Murran and Ngaynjaharr Report explains in some detail the nuances of 'adoption', including its use to describe a range of relationships, and that direct adoption at an early age and responsibility for bringing up a young man is the circumstance where, generally, there becomes an apical ancestral relationship. That, on the evidence, is not the type of 'adoption' said to have applied to Reuben Cooper Arramuniga Senior.
313. The Arramuniga claimants seemed to accept that this decision gave them secondary rights, but contradictorily suggested secondary rights should still amount to traditional Aboriginal ownership rights.
314. On analysis of the evidence, I do not find persuasive the submission that, through a formal adoption of Reuben Cooper Arramuniga Senior, the present Arramuniga claimants or their forebears became full land-owning members of the Murran clan. All of the documentary evidence provided by NLC to support the contention that Ngangadbali was Gamulkban suggests in fact that there was uncertainty as to whether he was Gamulkban or Murran. As for the lay evidence, I do not consider the more recent evidence of Charlie Mungulda to have been of assistance, given he stated at different points that Arramuniga was both Gamulkban and Murran, and that he was one of the persons attending the 2004 meeting where the status of the

Arramuniga claimants was more formally determined. I also do not take much from Nancy Rotumah's evidence that Nawurringuk was Gamulkban given the uncertainty as to whether Nawurringuk and Ngangadbali were the same person or brothers.

315. I also do not consider it of any real assistance to analyse the clan membership of Alice Marawuldan, given evidence that this is a patrilineal clan succession system and there is no issue of succession present that would warrant a FM linkage to the Murran clan. The evidence put forward that Alice Marawuldan was Ngaynjaharr will be further addressed in the Ngaynjaharr Group analysis below.
316. The fact that Reuben Cooper Arramuniga's descendants appear to have obtained a form of Murran clan status over time which was recognised by both NLC anthropologists and Murran elders, at least until 2004, and thereafter a status which stood below traditional ownership with succession entitlements suggests that any uncertainty regarding the genealogy did not have a determinative effect on their clan status.
317. I note the statements of Mr White in an email sent to NLC lawyer Gareth Smith on 9 June 2011 which supports this concept:

Late in his life [Ron Cooper] (along with his sisters) was eventually accepted by Murran traditional owners...as having authentic connections to the Murran group, connections which for the purposes of ALRA allowed the NLC to treat him and his siblings as "traditional owners"... This notwithstanding that some younger Murran continued to question the ancestral linkages from which the 1991 gathering based their acceptance of Ron Cooper on. [Argument ultimately based around the ambivalence and fact that Murran traditional personal names and those of neighbouring Gamulkban share the same bucket of names.]
318. Indeed during the years 1993 to 2003, Mr White's notes suggest that the question was not whether or not the Arramuniga claimants were Murran, but rather whether the Murran estate was made up of one indivisible clan, or two sub-groups who had separate estates within the broader Murran estate and a consequent division of resources. These separate sub-groups were described as the Maraiya group/Wara Mangu (made up of Gungajirr Gunjalarr descendants who lived in the Maraiya/Raffles Bay area) and the Gailang group/Wara Adjalagari (made up of Arramuniga descendants who lived in the Wiliji region). The line between the estates was also the line which marked the end of the Cobourg Land Trust area.
319. The views so expressed by Mr White broadly reflect the sentiments of the Arramuniga claimants, who have grown up as Murran members and have been told they were Murran by senior members for their whole lives. An example is the Dennis Cooper statement.
320. As is clear from above, the submissions of the Arramuniga claimants proposed a number of different ways that they could be seen to be included in the Murran local descent group, including through Ngangadbali as a Murran yuwurumu member, through incorporation of Arramuniga into the Murran clan, through Arramuniga's mother Alice Marawuldan, through shared equal responsibility as members of the Gamulkban local descent group, or through the matriline. I did not consider any one of these submissions particularly strong or fully developed. However, I do consider that, as a whole, the evidence provided by the Arramuniga claimants demonstrates

the difficulties that a group like this may have when asked to explain a history of recognition as traditional Aboriginal owners under traditional Aboriginal law in a way that accords with the principles understood by the law encapsulated in the ALRA.

321. I therefore accept that the status of the Arramuniga claimants, as recognised by the NLC Murran claimants since the Marayia Outstation meeting in 2004, has the result the Arramuniga claimants at least from that time are not now, and probably never were, traditional owners of the Murran estate and do not now have that status in relation to the Murran estate on the Cobourg Peninsula.
322. As I have stated earlier in this report, traditional Aboriginal law is not static, and must evolve to deal with circumstances as they arise. The circumstances which faced the Murran clan at the time of the Maraiya Outstation meeting was that a number of members of the Arramuniga group were not asking for permission or consulting with the broader group before taking actions with respect to tourism activities at Wiliji Outstation. The evidence shows that the group had tried a number of times to manage this themselves, but to no avail. It was not a meeting in a vacuum. It was in a context of concern (on the part of some, and assertion on the part of others) about the entitlement to conduct certain activities on the Murran estate without specific permission from others.
323. At this time the Murran clan, and other clans, were also being regulated by a formal legal scheme, as set up by the Cobourg Act, which gave decision-making power exclusively to those people nominated by the clan as traditional Aboriginal owners as determined by the NLC, together with nominees from the Northern Territory. In that context, a meeting of the Murran clan to resolve their concerns was an appropriate means of addressing the dispute. It is clear enough that the decision of that meeting was that the Arramuniga claimants did not have the entitlement on their own initiative to make use of the Murran estate without the approval of the other senior members of the Murran clan. Their interest in the Murran estate was recognised at a lesser level, effectively with the same secondary rights as are recognised for matrilineal descendants.
324. In my view, that demonstrates that the NLC Murran clan group have the power to identify the persons primarily responsible for the Murran estate. The fact that there has been no challenge of the status of the Gungajirr Gunjalarr descendants in this claim suggests that for whatever reason, their status as traditional Aboriginal owners appears to have been, and to be, stronger than that of the Arramuniga claimants. I do not think this can be explained only by the adoptive links of the Arramuniga descendants, as an assessment of the Murran genealogy shows that there are adoptive links even on the side of the Gungajirr Gunjalarr descendants. However, it may be a combination of both the adoptive links and uncertainty regarding the genealogical links of the Arramuniga descendants which makes their status more fragile and able to be defined or altered by the broader group should the situation arise. Consistent with my observations about the status of the Minaga claimants in relation to the Disputed Area, I consider that the precise identification of the rights of the Arramuniga claimants on the Murran estate had not been the subject of specific focus until 2004, although it had obviously been an increasingly important issue in the period leading up to that meeting. It probably had not needed to be a matter of specific focus. But the meeting and its outcome demonstrate that, under the Murran

traditional laws and customs, the Gungajirr Gunjalarr group were recognised as the more significant members of the clan with the function and right of resolving such disputes. That is indicative of that group being the traditional Aboriginal owners of the Murran estate in the Cobourg Peninsula. It is accepted that they have that status. I also consider that it is indicative of the Arramuniga claimants not then having those rights and not then, or now, being persons within the Murran clan with the yuwurumu or patrilineage which entitles them to share that traditional Aboriginal ownership.

325. The question about the identity of the traditional Aboriginal owners of the Murran estate is one dictated by the terms of the ALRA and the processes it prescribes. It is not a question which the Murran community (using a wide expression) needed to routinely address before the enactment of the ALRA. The Cobourg LC, when instituted, required some focus on that question in 1978 and 1979. At that time, no predecessor of the present Arramuniga claimants was named as a claimant. Nevertheless, in the lengthy period leading up to the time of this Inquiry, the 2004 meeting was the only occasion when circumstances specifically required the Murran clan to focus on the persons entitled to take steps dealing their estate. The result of that meeting was that the Arramuniga claimants were precluded from that status. To again adopt a more current expression, the jural public did not then accept the status of the Arramuniga claimants as they asserted it to be. On the evidence, the jural public has since 2004 not accepted the Arramuniga claimants as having that status.
326. That is not to exclude the Arramuniga claimants as having any status on the Murran estate. They clearly have. But it is a status not equivalent to that of traditional Aboriginal owners for the purposes of the ALRA. There is ample evidence of the Arramuniga claimants, some more than others, enjoying the issue of the estate, educating others, learning about the estate and its stories, and participating with others in activities on the estate. No doubt some of them are respected for their wisdom and counsel. Those individual circumstances will no doubt persist. For the purposes of section 70 of the ALRA, this report will include their rights as matters to be considered by the Minister.
327. An alternative way of reaching much the same outcome is to regard the meeting in 2004 as one which altered the status of the Arramuniga claimants rather than properly identifying it. I would then regard that meeting as excluding the Arramuniga claimants from rights which they previously enjoyed, because of their conduct. That assumes that they were at the time of that meeting, and would have been but for that meeting, traditional owners of the Murran estate, of course shared with others. That scenario would in any event represent the process of change under traditional laws and custom, dictated by the events causing the meeting, and then persistently recognised by the jural public from that time. It is not like the unilateral decision of Robert Cunningham Senior, discussed in relation to the status of the Minaga claimants, and where in any event the jural public did not routinely accept his decision.
328. In either scenario, where I have accepted that matrilineal descendants have secondary rather than primary rights, I would recognise that the Arramuniga claimants have similar rights. Despite genealogical evidence provided which suggests that they may have links to the Gamulkban clan, it is clear that for the past 50 years this group has

lived on the Murran estate and identified as Murran members. Indeed, a review of the evidence suggests that any statements that they are Gamulkbun have only been made formally in respect of this Inquiry.

4.2.3. The Ngaynjaharr Group

329. There are 3 male apical ancestors for the Ngaynjaharr estate group: the unnamed father of Wajirr (deceased), Sandy Wandijag (deceased), and Wadarrdbin (deceased). These men also had a sister, Alice Marawuldan (deceased), who was a patrilineal descendant of the group: see NLC genealogies December 2022.
330. There are two conflicting interpretations of the Ngaynjaharr local descent group as it exists today.
331. The NLC claimants assert that the Ngaynjaharr local descent group is a patrilineal land-owning clan defined by identification through one's father's father or wawu. The local descent group as defined in the NLC submissions includes adoptive and biological patrilineal descendants of Wajirr and Sandy Wandijag. It does not include matrilineal descendants.
332. The Siebert family claimants assert that they are members of the Ngaynjaharr local descent group through their matrilineal 'bloodline', connection to ancestor Alice Marawuldan. While the Siebert family claimants provide material in support of the coexistence of matrilineal and patrilineal land-owning rights, the claimants in submissions and evidence appear to indicate that they do not believe patrilineal clan members can claim traditional Aboriginal interests to the Ngaynjaharr estate.
333. There is considerable material before me which supports the existence and maintenance of a strong patriline for the Ngaynjaharr clan.
334. The land claim application for the Cobourg LC lists as claimants the 3 patrilineal descendants of Wajirr: 'Jacky Brown', 'Alf Brown' and 'Alice Goangil'.
335. In 1979, the Peterson Draft Report noted that patrilineal Jack Brown Walumag had adopted his sister's son Ronnie Waraludj as his own and given Ronnie a Ngaynjaharr name as a way of dealing with succession issues. In doing this, Jack Walumag, who otherwise had no children of his own, and whose siblings only had female biological descendants, ensured the patriline would continue for the descendants of Wajirr.
336. On 31 August 2001, the NLC held a meeting with the Ngaynjaharr clan to determine who was entitled to royalties from the Cobourg Ngaynjaharr land. During that meeting, 4 individuals who the NLC had identified as patrilineal descendants of Sandy Wandijag were added to the Ngaynjaharr genealogy, along with Jack Brown's second adopted son Gerald 'Shorty' Brown, with the support of the broader Ngaynjaharr group.
337. The evidence provided by Mr Lewis in respect of the applicable descent principle for the Disputed Area is also clearly relevant here. That is to say, there is strong anthropological evidence to support the fact that a patrilineal system remains a vital and essential component of social organisation not just in the Disputed Area, but the broader Cobourg Peninsula.

338. Clear lay and documentary evidence was also provided to confirm that Alice Marawuldan was Ngaynjaharr from both the Siebert family claimants and NLC Murran claimants, despite any assertions from the Arramuniga claimants to the contrary. This is also supported by the Northern Territory.
339. However, the submission put forward by the Siebert family claimants states that yuwurumu for the Ngaynjaharr clan is claimed through the female line and that Ngaynjaharr is women's country. That sits well outside the general regional understanding. It does not appear to be supported by Margaret and Pamela Siebert's brothers, James and Patrick May, who claimed Murran status in or around 1998 or 1999 and had a supporting letter from Lorna Brahim (daughter of Arramuniga) dated 13 May 1998 to that effect. It also does not appear to be supported by the broader Ngaynjaharr clan, who made the decision to exclude people with mother's mother's country connections from the list of people with Ngaynjaharr group interests at the meeting on 31 August 2001, while including all patriliates (father's country and father's father's country), adoptees, and people with mother's country connections.
340. The Siebert family submit that it was senior elder Illidjilli Lamilami who told them that the Ngaynjaharr estate was mother's country, and who gave them their kinship and totem. They have provided as evidence a statutory declaration from Illidjilli Lamilami which states that she is the senior traditional owner of Gul Gul, and that next in line for her country is Margaret Siebert and Isobel Lamilami.
341. Illidjilli is included on the NLC Ngaynjaharr genealogy as Wajirr's granddaughter who is connected to the Ngaynjaharr clan through her mother, Alice Guwangil. Illidjilli's father is a Mandilarri man, Henry Namaladaji. I am not convinced, based on the evidence, that Illidjilli could have had the authority to deem who inherited her country upon her death. As I have noted previously, there needs to be regional acceptance for such wishes to have effect on the inheritance of a clan or group. This does not appear to be the case here.
342. As both the NLC and Northern Territory have identified, all other evidence referred to by the Siebert family claimants to show support of others for their claim is evidence of support for the Siebert family claimants' matrilineal connection to the clan, and not of their status as traditional Aboriginal owners or members of a land-owning group. This is an important distinction, and one which the Siebert family claimants may not have entirely appreciated through the course of the hearing. It is readily understandable that they should not have had that degree of understanding of that aspect. Such circumstances require a careful analysis of their specific evidence. That Margaret Siebert, Pamela Clarke and Lisa Siebert have connections to the Ngaynjaharr clan through Pamela's mother Fanny May, and her mother Ethel May, tracing back to Alice Marawuldan, is not in dispute. However, I do not agree that this matrilineal connection in itself equates to membership of the Ngaynjaharr yuwurumu.
343. I therefore consider the local descent group for the Ngaynjaharr clan to be the patriliate descendants of Sandy Wandijag and Wajirr.

4.2.4. The Madjunbalmi Group

344. The Madjunbalmi estate is, as noted, located centrally on the Cobourg Peninsula between the Arafura Sea in the north and Van Diemen Gulf in the south, it extends across much of Port Essington and is bounded by Agalda country in the southwest, Minaga to the northwest and Ngaynjaharr in the east.
345. No submissions have been put forward to contest the local descent group of the Madjunbalmi clan as put forward by the NLC. That is, a local descent group whose members are recruited through the patriline and which was adapted following a process of succession that was outlined in the 1979 Peterson Draft Report.
346. The apical ancestors of the new ‘succeeded’ group are the sons of original Cobourg LC applicant Lily Marijurgi, Nelson Blake Mulurinj (deceased), John Williams Senior (deceased), and David Buckley Minyimak (deceased). The connection of these sons to the Ngaynjaharr clan was thus originally through the matriline. However, as Lily was the only one of her siblings to have any children, she emphasised that her sons’ children would be the principal heirs when she passed away.
347. As has been emphasised earlier in this report, the wishes of Lily Davis alone were not determinative in the Madjunbalmi succession, as one person does not have ‘an ability to bestow a country on someone else’ without regional acceptance. However, the NLC have established in their submissions that these instructions were then affirmed through subsequent meetings that the NLC held with the Madjunbalmi group, which included Lily’s other sister Daisy Indjarlatj, who was also a Cobourg LC applicant, and brother Jerry Yirritjin.
348. Mr Lewis also notes that in 2007 Lily Davis’ descendants became aware of a surviving daughter of Lily’s brother Jerry, Muriel Djorlom/Nabegeyo Indjarladj, who was then recognised as a final surviving patriline of the Madjunbalmi clan as it existed before the succession. However, she passed away shortly afterwards and Mr Lewis confirms that the existing succession arrangements for the Madjunbalmi estate have remained in place since then. Muriel’s descendants are listed by the NLC as matrilineates in light of her acceptance by the broader group.
349. The Northern Territory has expressed their position that the material provided by Mr Lewis in December 2022 concerning Madjunbalmi is internally consistent and broadly consistent with the Peterson Draft Report and earlier documentation for the estate.
350. I therefore find that the traditional Aboriginal owners of the Madjunbalmi estate are the patrilineal descendants of the children of Lily Davis Malyurggi.

4.2.5. The Agalda Group

351. There is no need to revisit the consideration of the status of the Agalda group in relation to the Non-Disputed Area. I have made findings favourable to that group earlier in this report.

4.3. COMMON SPIRITUAL AFFILIATIONS AND PRIMARY SPIRITUAL RESPONSIBILITY

352. The relevant principles are addressed at 3.3.1.

353. I note that submissions for the Non-Disputed Area did not put great emphasis on presenting the evidence necessary to satisfy the requirement that to be traditional Aboriginal owners, a group must 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. This may be in part because, unlike the hearing for the Disputed Area, no flyovers were conducted during the hearing for the Non-Disputed Area as a result of the late onset of these issues.

4.3.1. The Murran Group

354. The Murran estate, as noted, was described in the Peterson Draft Report as running from beyond the eastern boundary of the Cobourg Wildlife Sanctuary along the north coast of the Peninsula to Gurmud on the west side of Raffles Bay including the two unnamed islands in the Bay. On the south coast of the Peninsula it runs west to Widiyini in Wangarlu Bay. Also included are Mogogout Island (discussed above as being shared with Agalda patrilineates) and the western portion of Endyalgout Island.

355. During the lay evidence for the Non-Disputed Area, only 3 dreaming stories were provided as evidence of primary spiritual responsibility for the Murran estate.

356. The first dreaming story was provided by Captain Brown, matrilineate for the Murran clan, who was assisting Solomon Cooper as the NLC claimant. This story related to site *Banibunyi*, marked as site number 850 on the NLC site map with the annotation 'sun.' According to Captain Brown, Banibunyi was the woman that went looking for an oyster and became the totem for Gudjali, which is the fire totem.

357. The second two dreaming stories were provided by Raphael Perez, a matrilineate for the Murran clan who is also an Arramuniga claimant. Raphael noted that he was given the story for Josephine Springs, being a place where Reuben Cooper Arramuniga's sister Josephine appeared in a fire lit by Arramuniga and John Cooper to show them where water was shortly after they had returned to the mainland from Tiwi Islands. He also told the story of Wiliji (also spelled Wiligi), being a place where the Dreaming arrived and lay its nets in the water to create the land in paradise, known as the Garden of Eden, which became a sit-down place for holiday camps.

358. Maria Stephens, another Arramuniga claimant through the matriline, also demonstrated knowledge of two regional traditions that passed through Murran country, as well as the names of a number of dreaming sites in the area. According to Maria, Warramurrungui came through Malay Bay from Indonesia to place children and tell them their language, where to live and provide food, and Imbamora did the same journey as Warramurrungui but had to repeat her process of placing children twice as the children did not receive food the first time.

359. In addition, John Cooper and Maria Stephens provided evidence that knowledge of sites and how to look after and develop the land had been passed down to the Arramuniga claimants from elders in the clan.

360. What this evidence does establish is that both the NLC claimants and Arramuniga claimants hold knowledge of and historical connections to the claim area and sites. However, there are a number of reasons why this lay evidence alone cannot establish common spiritual affiliations and primarily responsibility over the named sites.
361. Firstly, it is clear that none of the spiritual affiliations noted by the two claimant groups are held in 'common.' Indeed, the site identified by the NLC claimants is located close to Marayia Outstation, whereas the sites identified by the Arramuniga claimants are concentrated around the Wiliji Outstation area. This division appears to represent the historical separation of estates and resources between the two subgroups within the Murran clan.
362. Secondly, none of the evidence on its own is enough to establish primary spiritual responsibility as distinct from historical, social or emotional ties. The stories provided by Captain Brown and Raphael Perez did not demonstrate how each claimant had responsibility over the specific site. Maria's knowledge of the two regional traditions that passed through the area was also not linked to specific sites over which she or her group had been given responsibility.
363. The most persuasive piece of evidence which I must rely on to make a finding of common spiritual affiliations and primary spiritual responsibility in respect of each claimant groups is the designation of primary and secondary rights between groups which was made at the meeting of Marayia Outstation in 2004 which appears to have persisted to this day. For indeed, the word 'secondary' itself, acknowledged and accepted in the Arramuniga claimant submissions, implicitly excludes a finding of 'primary' spiritual responsibility as required by the Act, thus leading to the conclusion that despite knowledge held by the Arramuniga claimants this group do not possess the spiritual knowledge and responsibility necessary to be identified as traditional Aboriginal owners.
364. As for the NLC claimants, despite the paucity of evidence provided regarding sites and responsibility over them in the lay evidence hearing, it is clear that the designation of primary yuwurumu holders must carry with it a primary spiritual responsibility for that group over sites in the area. The fact that as much has been confirmed by the Northern Territory in submissions is also persuasive to me. For this reason, I accept that the NLC claimants possess the appropriate common spiritual affiliations and primary spiritual responsibility over the Murran area.

4.3.2. The Ngaynjaharr Group

365. The Ngaynjaharr estate is also located centrally on the Cobourg Peninsula between the Arafura Sea in the north from Gul Gul (Danger Point) to Van Diemen Gulf in the south and is bounded by Madjunbalmi country to the west and Murran country to the east.
366. Despite the genealogy indicating that there exist a number of living members of the Ngaynjaharr clan as represented by the NLC, the claimants only tendered one witness statement in evidence. This witness, Ronnie Waraludj Ngaundurrwuy, confirmed in his statement that he was born at Cape Don but moved to Minjilang (on Croker Island) when he was around 10 and has lived there ever since. The statement also confirmed that Ronnie was unable to attend the hearing due to ill health. As a result,

no lay evidence was provided by the NLC claimants with respect to primary spiritual responsibility and common spiritual affiliations.

367. The Siebert family claimants at various points in lay evidence and submissions referred to the fact that they considered themselves to be traditional Aboriginal owners of Gul Gul. Whether or not they also saw themselves as traditional owners of any other part of the Ngaynjaharr estate was not explored in evidence.
368. The Siebert family claimants supported their claim of spiritual affiliation and responsibility to this site with knowledge of two dreaming stories associated with the site. The first is Burmangba, a Lightning Dreaming cliff off the east side of Port Bremer (NLC site number 804), which Lisa Siebert noted was a dangerous site which would cause a person to be killed if they touched it. The second was the Rainbow Dreaming reef at Gul Gul. At this site, Lisa noted that no one is allowed to throw sugarbag wax or wallaby bones in the sea as it would kill the boats, and that you are also not allowed to dig holes any deeper than the wells in the area because otherwise the serpent will emerge and make people sick.
369. This knowledge is impressive and clearly shows a strong connection to the area. However, it does not establish that the claimants have responsibility over sites which is 'primary', in the sense required by the definition of 'traditional Aboriginal owners'.
370. Given that common spiritual affiliations and primary spiritual responsibility are largely a matter of descent, I must make the finding, despite the lack of evidence on both sides, that the NLC claimants exercise primary spiritual responsibility and have common spiritual affiliations to the Ngaynjaharr estate to the exclusion of the Siebert family claimants.

4.3.3. The Madjunbalmi Group

371. No evidence was provided by the NLC in relation to common spiritual affiliations and primary spiritual responsibility for the Madjunbalmi group. However, as the traditional Aboriginal ownership for this area is uncontested and agreed upon between the NLC and the Northern Territory, I find that these elements must be established.

4.3.4. The Agalda Group

372. Again, there is no need to revisit the findings made on this topic in relation to the Agalda group.

4.4. RIGHTS TO FORAGE

373. The relevant principles relating to the right to forage are addressed at section 3.4. The Agalda claimants have been found to have the right to forage in relation to their country on the Cobourg Peninsula earlier in this Report.
374. As with common spiritual affiliations and primary spiritual responsibility, not all claimants provided enough evidence to establish that they had a right to forage on the land.

375. Two NLC Murran claimants provided evidence of hunting, fishing and camping with family in the area, and of asking permissions or informing neighbouring clan members before going onto the country of other clans as a form of cultural protocol.
376. With respect to the Arramuniga claimants, Maria Stephens gave evidence that her and her family forage for food in the mangroves, beaches, sea and land, as well as hunt for fish on the Murran estate. Maria Stephens also confirmed that she goes out to the Cobourg Peninsula with her cultural coach to learn about bush medicine and poisons. A number of claimants in this group also gave evidence that they reside at Wiliji or Woodji Outstation, and Joy Cardona confirmed that at Wiliji the claimants hunt, camp and light a fire.
377. Given the emphasis at the Marayia Outstation meeting was on seeking permission before engaging in tourism activities, building and construction and issuing visitor permits, it is possible that permission in accordance with tradition would not be required from the NLC Murran claimants for the Arramuniga claimants to continue to exercise this right to hunt and fish on the land.
378. I turn now to the Ngaynjaharr and Madjunbalmi claimants.
379. No evidence was provided by the NLC claimants from both groups with respect to the right to forage.
380. Some evidence was provided by the Siebert family claimants to show that they visited families in the Cobourg Peninsula at Smith Point and Araru. Though these claimants were not asked about whether they also visited Gul Gul, and whether they conducted any activities there which would amount to foraging or hunting during the hearing, this may be a possibility based on their asserted connection to the land.
381. I accordingly find that each of the claimant groups in the Cobourg LC are entitled to forage as of right over the Cobourg LC area.

4.5. STRENGTH OF ATTACHMENT

382. The relevant principles relating to this topic are addressed at Section 3.6 of this Report. Each of the 4 claimant clans for the Non-Disputed Area is accepted as having a strong and ongoing degree of attachment to their respective estate areas. The history of how the Non-Disputed Area has been managed and occupied since about 1984 demonstrates that strong connection. It is affirmed in the reports, namely the Lewis Murran and Ngaynjaharr Report and in the Lewis Madjunbalmi and Ngaynjaharr Report, and in the case of the Agalda clan in his earlier reports concerning the Disputed Area.
383. There are others with a strong attachment to parts of the claim area. The Arramuniga claimants have resided on either Wiliji or Woodji Outstations within the Murran estate for a considerable period. Other parts of the Murran estate have been occupied by the NLC Murran claimants, such as Gumeragi and Gul Gul Outstations. The estate area is much visited. The Siebert family claimants frequently visit families within the Ngaynjaharr estate, and there is other evidence of continuing occupation and use.

384. The evidence demonstrates the preservation of spiritual connections with the estate and of traditional life and the holding of stories in relation to sites and some rituals. There is evidence of the practice of social cultural protocols, and of the ongoing steps to teach and on the other hand to learn cultural laws and customs and stories. The ongoing involvement is also shown through membership of the Cobourg Board. At the time of the evidence, Solomon Cooper was the Murran representative, Michael Coombes (Daniels patriline) was the Ngaynjaharr representative and Benjamin Williams was the Madjunbalmi representative.
385. There is no doubt about the strong attachment of each of the 4 claimant clans to their estate within the Non-Disputed Area.

4.6. ADVANTAGE OF A GRANT

386. The relevant principles to address this topic are addressed in Section 3.7 of this Report. I need not repeat them, as they apply equally to the Non-Disputed Area.

4.7. OTHER MATTERS FOR COMMENT

387. The relevant principles to assess this topic are addressed in Section 3.8 of this Report. I need not repeat them, as they also apply equally to the Non-Disputed Area.

4.8. FORMAL FINDINGS

388. For the above reasons I have concluded that the traditional Aboriginal owners of the Non-Disputed Area are the members of each of the claim groups who are on the patriline. I have also concluded that the Arramuniga claimants are not traditional owners of the Murran estate and that the Siebert family claimants are not traditional owners of the Ngaygjaharr estate.

5. DETRIMENT AND PATTERNS OF LAND USAGE

389. Section 50(3)(b) of the ALRA requires the Commissioner, when reporting to the Minister and to the Administrator, to comment on the detriment to persons or communities including other Aboriginal groups that might result if the Cobourg LC were acceded to either in whole or in part.
390. Given the previous history of the Cobourg LC and the Cobourg Act and the matters implemented by reason of the Cobourg Act, it is clear (as I have found) that I recommend the Cobourg LC be acceded to in its entirety (noting that NTP 900 was not included in the claim area). The same history makes the issues of detriment clear, and relatively easy to address.
391. For the same reasons, the further requirement of section 50(3)(c) requiring the Commissioner to comment on the effect which acceding to the claim would have on patterns of land usage in the region.
392. Furthermore, with only slight qualifications or reservations, the matters of possible detriment and the relevant patterns of land usage are not contentious. None of the evidence provided was challenged, and apart from some submissions and reply submissions between PPC and the NLC, none of the assertions adduced on those topics were challenged. These submissions are described in more detail below. Broadly speaking, the claimants, the detriment parties, and the Northern Territory all acknowledged that the detriments asserted could be appropriately accommodated.
393. In those circumstances it is not necessary to do anything other than to record the respective issues and contentions and suggestions. The issues which have required addressing in some other claims under section 50(1) of the ALRA about the requirements to constitute relevant detriment, and as to nature and extent of the Commissioner's 'comment' function, do not need to be separately explored. I refer to the comments made in *Peron Islands Land Claim (No. 190) Report No. 77* (20 March 2023) at [455]-[490]; *Woolner/Mary River Land Claim (No. 192) Report No. 75* (8 December 2021) at [163]-[195]; *Report on Review of Detriment: Aboriginal Land Claims Recommended For Grant But Not Yet Finalised* (24 December 2018).
394. The evidence concerning detriment was produced mainly by the Northern Territory, in relation to its own activities and usage of the claimed area but also in relation to the fishing, tourist activities and service activities over the claim area. That evidence included the uncontroverted statements of senior officers in the Northern Territory public service, in a range of departments. In addition material was separately produced by OST as the operators of the Seven Spirit Bay Resort, by Telstra Corporation Limited (Telstra) as the owner and operator of significant facilities to provide extensive services to the claim area and adjacent areas, by the Australian Maritime Safety Authority (AMSA) in relation to the operations of the Cape Don Lighthouse, by Venture North Australia Pty Ltd as operator of its business Venture North Safaris, and (as noted earlier) by PPC in relation to its commercial activities in and adjacent to the claim area and adjacent waters, in particular at Knocker Bay and at Port Bremer. As I have concluded that NTP 900 is not within the claim area, its concerns about Knocker Bay are perhaps academic; in any event, the assessment made in respect of detriment in relation to PPC would be the same. I add in the case

of PPC that its two specified leased areas are (according to the NLC) lapsed leases and are continuing informally with the expectation that they will be renewed.

395. PPC's detriment submissions of 7 March 2023 raised 3 key arguments. Firstly, that PPC enjoy an inferred 'strong quality of permanence' in regards to their tenure over NTP 900 and NTP 2123 and that they would suffer detriment in the form of more insecure tenure over their land leases in the case of a grant of land and tenure and access agreements not being reached beforehand. These two land leases have been in holding-over status between PPC and the Cobourg Land Trust since 1981 for the Port Bremer lease and 1986 for the Knocker Bay lease. PPC's second argument is that considerable time, energy and resources had been spent in negotiations for renewing the leases and those efforts could be best preserved through establishing a section 11A lease under the ALRA. Thirdly, PPC will be required to engage with, and even in the best case scenario build relationships with, a wider group of recognised traditional owners when negotiating tenure and access agreements. PPC further responded on 28 April 2023 in the light of the NLC response referred to in the succeeding paragraph.
396. NLC in their PPC Responsive Submissions of 20 March 2023 (NLC PPC Response) queried PPC's inference of relatively secure tenure. NLC stated that due to the nature of the holding-over status of the PPC leases and that the Cobourg Land Trust could terminate the tenancy on notice, PPC's tenure over the two areas has always been insecure. NLC submitted that the NLC Claimants are willing to negotiate both a suitable agreement for appropriate compensation with detriment parties, including PPC, and are willing to enter into negotiations for a section 11A or section 67B agreement to secure PPC's interests in both Knocker Bay and Port Bremer: see NLC PPC Response at [13] and [14]. NLC also posited that a tenure arrangement under the ALRA would provide PPC with tenure security that it has not enjoyed since 1986 in respect of the Knocker Bay lease, and has never enjoyed in respect of the Port Bremer lease: see NLC PPC Response at [13]. Any detriment PPC might suffer from a grant of the claim area to the traditional Aboriginal owners can be satisfactorily remedied through the ALRA tenure and access arrangements suggested by the NLC. Regarding PPC's third submission, the ALRA does not require that third party proponents, such as PPC in this instance, consult directly with the traditional Aboriginal owners about access to and tenure on Aboriginal land; this is a function and obligation of the NLC. As discussed below in this chapter, the NLC is obliged to undertake the making of agreements in the interests of the traditional owners after appropriate consultation. This Report will assist in identifying who those traditional Aboriginal owners are. Additionally, I note that PPC's concerns regarding the suggestion of consulting a larger group of traditional Aboriginal owners than the group that PPC has previously consulted with as part of their dealings with the Cobourg Land Trust is a concern that goes directly to the purposes and objects of the ALRA itself. I note also that I have concluded that NTP 900 is not included in the claim area.
397. This section of the Report may be helpful to the Minister, when considering whether to make a grant of the claim area to the traditional Aboriginal owners, and when considering the matters of detriment. That is because of the long history of the Cobourg LC and the related arrangements which existed between the Northern Territory and the Cobourg Land Trust and the Cobourg Board for the many years that that arrangement was (at least in practical terms, and in the belief as to the

validity of those arrangements) in place from 1984, the year of the purported grant of the claimed area to the Cobourg Land Trust. That period of about 40 years will be able to indicate to the Minister the nature and extent to which those other than the Cobourg Land Trust required or were given access to the claim area over that period, and the terms on which they were permitted to do so. The arrangements which have been in place between the Northern Territory and/or the NLC on behalf of the traditional owners and/or the Cobourg Land Trust and other persons and entities in that lengthy period will serve to indicate in general terms the sort of arrangements which, in the future, may be appropriate to respond to any ongoing detriment concerns and the Minister may be guided by those arrangements in the event of a grant of the claim area. Where there is or has been in force an arrangement between the Northern Territory and/or the NLC on behalf of the traditional owners and/or Cobourg Land Trust with another person or entity, even though it might now appear that the particular arrangement is not enforceable, the Minister might decide to insist upon its preservation or upon another arrangement in substantially the same terms. In short, that past history is uniquely available to the Minister to assist the Minister in considering issues of detriment, and might be used by the Minister as a starting template for the Minister's consideration of those issues.

398. The use to which the claim area was put from 1984, including the establishment of the Garig Gunak Barlu National Park, is in my view sufficient to report to the Minister that the grant of the claim area to its traditional Aboriginal owners would be unlikely to have any effect on the existing or proposed patterns of land usage in the region of the Cobourg Peninsula. It is very likely that the patterns of land usage will remain the same. I do not consider that more needs to be reported concerning section 50(3)(c) of the ALRA.
399. The detriment to Telstra is the risk that it will not have title to its facilities. Its access for its officers is protected by section 70(2A)(e) of the *Telecommunications Act 1997* (Cth). It realistically acknowledges that its tenure in relation to its physical facilities will be preserved by an appropriate arrangement with the relevant traditional owners under either section 11A or section 19 or section 67B of the ALRA.
400. AMSA also took the same attitude in relation to the Cape Don Lighthouse, as it has done in other areas the subject of Inquiries by the Commissioner under the ALRA. It has previously in those matters made appropriate arrangements with the NLC or the relevant land trust for the occupation of the area of its lighthouse and related facilities, and for access to them, and such arrangements have been made.
401. The submissions raise some issues about which of those alternative provisions for agreement (via the vehicles of section 11A in the case of agreements made in respect of land under claim, section 19 or section 67B) is preferable, in part depending on the time at which the agreement is made, I do not consider it necessary to comment upon that issue, subject to one observation. The NLC, after appropriate consultation is able to enter into such agreements on behalf of the traditional owners. Sometimes there is a significant delay between a Report from the Commissioner to the Minister and the decision of the Minister to act on the recommendation. The Minister is not obliged to accept and adopt the Report of the Commissioner within any time period or at all. That period may also involve allowance for periods of negotiating with the traditional owners before any grant or sometimes as a condition of any grant. That is a matter

for the Minister. There is also sometimes a lengthy period between the decision of the Minister to recommend a grant of the claim areas and its physical implementation, including a period for surveying the claim area and other administrative processes.

402. Therefore, before any recommendation to the Minister is adopted and then fully effected by the recommendation to the Governor-General of a grant of the land to a land trust, the NLC has a very important role to act in the interests of the traditional owners, including with the power to enter into agreements with third persons or entities. The observation to be made, which I am confident is a matter of which the NLC is fully aware, is that – in the light of the Report of the Commissioner – the NLC must undertake any such agreements in the interests of the traditional owners after appropriate consultation: see sections 11A(3) and 19(5) of the ALRA. The Midena claimants with patrilineal affiliation are some of the traditional Aboriginal owners of the Disputed Area with the NLC Agalda patrilineal claimants and the Minaga patrilineal claimants, and they are also some of the traditional Aboriginal owners of the Agalda estate within the Non-Disputed Area together with the NLC Agalda patrilineal claimants. I make that observation as the Midena claimants in their detriment submissions expressed some concern that their interests should not be overlooked by the NLC. I do not suggest that has happened in the past, or might happen in the future. I make the observation simply to indicate the concern of the Midena claimants. In other respects, they generally agreed with the NLC submissions on detriment.
403. Beyond those general observations, and having addressed the position of Telstra and AMSA, it is appropriate briefly to note the types of detriment which the Minister is to be informed about, as required by section 50(3)(b) of the ALRA. They include:
- (a) general access to the claim area;
 - (b) existing commercial and non-commercial activities, including commercial fishing;
 - (c) existing and prospective recreational fishing; and
 - (d) existing physical structures.

Those 4 headings cover the topics on which detriment submissions were made. The following paragraphs of this Report address those 4 general topics separately.

404. General access to the claim area outside the other 3 categories was not seen as too confronting by any participating party. To recent times, access to the claim area has been controlled by the Cobourg Board. During that period proper Northern Territory activities have been effected apparently without significant disputation. There is no reason why that will not be able to continue. There is a shared interest and benefit in the provision of governmental facilities and support. In respect of non-governmental activities and access, in the future, they will be controlled by the NLC in consultation with the relevant traditional owners for the various parts of the claim area until (and if) a grant of the area is made by the relevant land trust or land trusts. There is nothing to indicate that external persons or entities will have any greater challenges to legitimate access than previously over the last decades. It would no doubt be relevant to the Minister, if it comes to pass, that more routine access comes to be regulated by a system of permits to be issued in reasonable terms and conditions, including possibly a viable online permit system. In broad terms such a system is already in place elsewhere, or is being established by the NLC.

405. Existing commercial and non-commercial activities, including commercial fishing, should generally be able to be secured for the future (if appropriate) by agreement with the NLC prior to any grant of the claim area, or by the Cobourg Land Trust on behalf of the traditional Aboriginal owners following a grant of land. However, depending on the terms and the circumstances, there may be good reason for traditional Aboriginal owners to no longer to support particular activities on land subject to a grant. Again, given the history, there is no reason to anticipate that reasonable private activities as previously permitted will be able to continue to the extent of existing arrangement, and new arrangements will be able to be negotiated with the NLC or the relevant land trust.
406. In terms of commercial fishing in the claim area specifically, the Northern Territory Government provided submissions about the extent of the commercial fishing operations for mud crab fishing, trepang (sea cucumber) harvesting, and aquarium harvesting. According to the Northern Territory's submission, 49 licences for mud crab fisheries, 6 commercial trepang fishery licences and 12 licences for aquarium fisheries have been issued across the Northern Territory. All of the trepang fisheries have operated in the claim area and aquarium fisheries have also accessed the area. The submissions also demonstrate how gross value of production (GVP) has fluctuated from year to year. The detriment asserted by the Northern Territory is that losing access to the claim area as a consequence of a grant of the claim area to the traditional Aboriginal owners could result in detriment to commercial fishing operations in these 3 commercial operations. I repeat my comments in the paragraph above in relation to the continuation of commercial fishing through ALRA access arrangements.
407. It was said that the intertidal zone, above the low water mark, is the primary area of activity for the trepang and mud crab fisheries and those activities will be impacted if access to the claim area is restricted or lost. Regarding trepang fishing, the Northern Territory submitted that if trepang fishing operations were to lose access to the claim area (being the land mass and the intertidal zone together), this industry would be displaced to the waters surrounding Groote Eylandt, which is the only other location in the Northern Territory where the only other trepang fishing licences in the has been granted. The Northern Territory accepted that it would be incumbent on it to determine whether the level of fishing effort was appropriate to ensure the harvest level was sustainable and localised depletion of trepang stocks in the area could not occur. This assertion was not expanded upon in any further detail. Submissions about the economic consequences of the pressure that may be placed on trepang fishing in the waters around Groote Eylandt if trepang fishing were to potentially be prohibited on the Cobourg Peninsula were not further advanced.
408. The Northern Territory Seafood Council (NTSC), an incorporated association that represents the Northern Territory seafood industry's interests, did not make submissions on detriment to this Inquiry.
409. Existing and prospective recreational fishing in the claim area is also straightforward. This was also a matter promoted by the Northern Territory. To date, to the extent of such activities, there is no evidence of any significant disputation and consequently little evidence of specific detriment. Indeed, there is little evidence of recreational fishing being carried out in the claim area. More generally, within the Northern

Territory, the NLC in conjunction with the participating land trusts, is establishing a fishing permit system which can be accessed online. If the Minister is satisfied that there is a realistic detriment to recreational fishers in the claim area by the making of a grant of the land to the traditional owners, the Minister may have regard to the structure in place for the traditional Aboriginal owners to permit recreational fishing in the Northern Territory on Aboriginal land more generally. It is obviously appropriate for the traditional owners not to permit, or to be obliged to permit, recreational fishing in sensitive areas, or where access may expose significant traditional law areas to risk.

410. The Amateur Fisherman's Association of the Northern Territory (AFANT), the peak representative body in the Northern Territory for recreational fishing, did not make submissions on detriment to this Inquiry.
411. Existing physical structures (such as the Telstra facilities and the Cape Don Lighthouse) should not be exposed to removal, so their continuance should be secured by an appropriate agreement between the traditional Aboriginal owners or (in the interim period) the NLC and the relevant 'owners' of the sites of those improvements on the same general basis as presently exists, including the government buildings in the Black Point area.
412. I note that the ongoing use of government infrastructure (as distinct from its placement and occupation of land) and access to that infrastructure on the part of the Northern Territory is protected under section 14 of the ALRA.
413. Obviously, in the case of the more substantial commercial activities which might be exposed to detriment in the event of a grant of the claim area, the Minister will have regard to the invested capital or other financial commitment and the terms of any existing or past lease or agreement, or in some cases, of the licence or permit. That observation applies clearly to the commercial activities of OST, PPC and to Venture North Safaris, and other providers of tourist activities. There is detailed material from each of the 3 named entities about the extent of their activities and their investment, and about the financial benefit they provide for the benefit of the traditional owners. I did not discern that there is likely to be any real issue that, provided appropriate terms for the continuing conduct of those businesses can be agreed, at the expiry of the relevant existing arrangements, those businesses should not be permitted to continue for the time being. In the short term, and until any grant of the relevant sections of the claimed area, that process of agreement making will be carried out by the NLC in accordance with its functions.
414. I note that there are no presently operative mining or petroleum leases or permits which require comment. Part IV of the ALRA provides for those interests to be addressed if they arise.
415. I note that the land claim is bounded at the southern boundary by an adjacent Aboriginal land trust, being the Arnhem Land Aboriginal Land Trust. The interests of the Traditional Owners of that Land Trust were not raised in the submissions of the NLC, which has functions under the ALRA to consult with and represent the views of the traditional Aboriginal owners of the relevant area: see section 23 of the ALRA for the NLC's functions broadly.

416. Detriment submissions were received from the Northern Territory with respect to the functions and duties of the Northern Territory regarding the management of livestock animals, companion animals, feral animals and wildlife for notifiable animal diseases and biosecurity health and welfare inspection services, treatment and certification of livestock for movements within, into and out of the Northern Territory, including the claim area. The Northern Territory acknowledged that while it has a statutory defence for entering onto Aboriginal land through section 70(2A)(e) of the ALRA, it would prefer that an ALRA access arrangement be established out of respect for the traditional Aboriginal owners. A permit or ALRA access arrangement deemed suitable by the traditional Aboriginal owners and the Northern Territory would be sufficient to alleviate any detriment suffered by the Northern Territory as a result of it not being able to carry out its functions in animal control and biosecurity management on the claim area. I refer to my comments above that the Minister may consider relevant a system permitting access to the claim area that bears the same or a similar resemblance to how the claim area has been governed by the Cobourg Board and Northern Territory since the claim area was granted to the Cobourg Land Trust in 1984.
417. It is appropriate also to make some observations about the status of the Garig Gunak Barlu National Park. Its status is accepted as contentious as it was established, and its management structured, on the assumption of the validity of the Cobourg Act. There is some evidence indicating some dissatisfaction with the management structure, although (as the Northern Territory points out) the Cobourg Board was ultimately controlled by the members nominated by the NLC and all of its net proceeds were applied to the owners. The Parks and Wildlife Commission of the Northern Territory provided some members to the Cobourg Board. The NLC and the Northern Territory had for some time been in negotiation about the principles on which the claim area would be granted to the traditional owners under the ALRA, and the area of the existing park would be re-leased to the Northern Territory for the re-establishment of the Park under fresh legislation of the Northern Territory.
418. The proposed arrangement had not settled to the point of agreement, and in the light of this Report, the NLC will (I suspect) have to consult with a somewhat wider group of traditional owners than was previously the case. It may already have done so. That is a course of action available to the traditional owners of the claim area, or those affected by the area of the park – through the NLC – and the Northern Territory. If such an agreement were to be made, its implementation could involve such a structure for a national park and a marine park, and as a first step the consensual listing of the claim area in Schedule 1 of the ALRA to the traditional owners. This Report, apart from specifying the traditional owners of the claim area, would not impede that process. This form of potential agreement is illustrative of the Northern Territory's wider interest in the economic well-being of the Northern Territory itself including environmental concerns and the preservation of resources. I make no comment about its detailed policy implementation.

6. CONCLUSION

419. In respect of both the Disputed Area and the Non-Disputed Area, I have concluded that there are traditional Aboriginal owners of the claim area.
420. In the case of all the claimed area, I have concluded that the primary system for succession of traditional ownership is yuwurumu, or patriline descent, subject to exceptions in particular circumstances which do not presently apply.
421. Consequently, in respect of the Disputed Area, the traditional owners are the present Agalda claimants (both NLC claimants and Midená claimants) of the patriline and the Minaga claimants of the patriline.
422. In respect of the Non-Disputed Area, and within the 4 separately designated estate areas, the traditional owners are the patrilines:
- (a) For the Agalda estate, the present Agalda claimants (Both the NLC claimants and the Midená claimants) of the patriline;
 - (b) For the Murran estate, the present Murran claimants of the patriline (as represented by the NLC);
 - (c) For the Ngaynjaharr estate, the present Ngaynjaharr claimants (as represented by the NLC); and
 - (d) For the Madjinbalmi estate, the present Madjinbalmi claimants.
423. I have not accepted that the Arramuniga claimants are traditional owners of any part of the Murran estate, although they have interests in that estate.
424. I have not accepted that the Siebert family claimants are traditional owners of any part of the Ngaynjaharr estate, although again they have interests in that estate.
425. I accordingly recommend that the whole of the land within the Cobourg LC, being the land claimed as described in the NLC's originating application and to the low water mark of the Peninsula and the claimed islands, be granted to either a single land trust, or to several land trusts to accommodate the range of traditional Aboriginal owners.
426. It is clear that, although the Cobourg LC has survived to the present time, for some decades it was thought that the Cobourg Act and the structure that was developed under it was largely effective and accommodated all of the then relevant interested estate groups. It was obviously desirable, given the geographical size of the Cobourg Peninsula and the problems associated with multi-land trust management, that a single management structure was preferred.
427. It is my view that it would be highly preferable that there 'continue' to be one land trust only. The Minister will no doubt request the NLC to confer with all the traditional owners to determine if an appropriate and suitable agreement can be reached between them for a single management structure. It need not necessarily be based upon the structure of the present Cobourg Land Trust although that model will provide a starting point for such consideration. It is likely that the NLC will have undertaken such a process in any event, given the past history of the Cobourg LC.

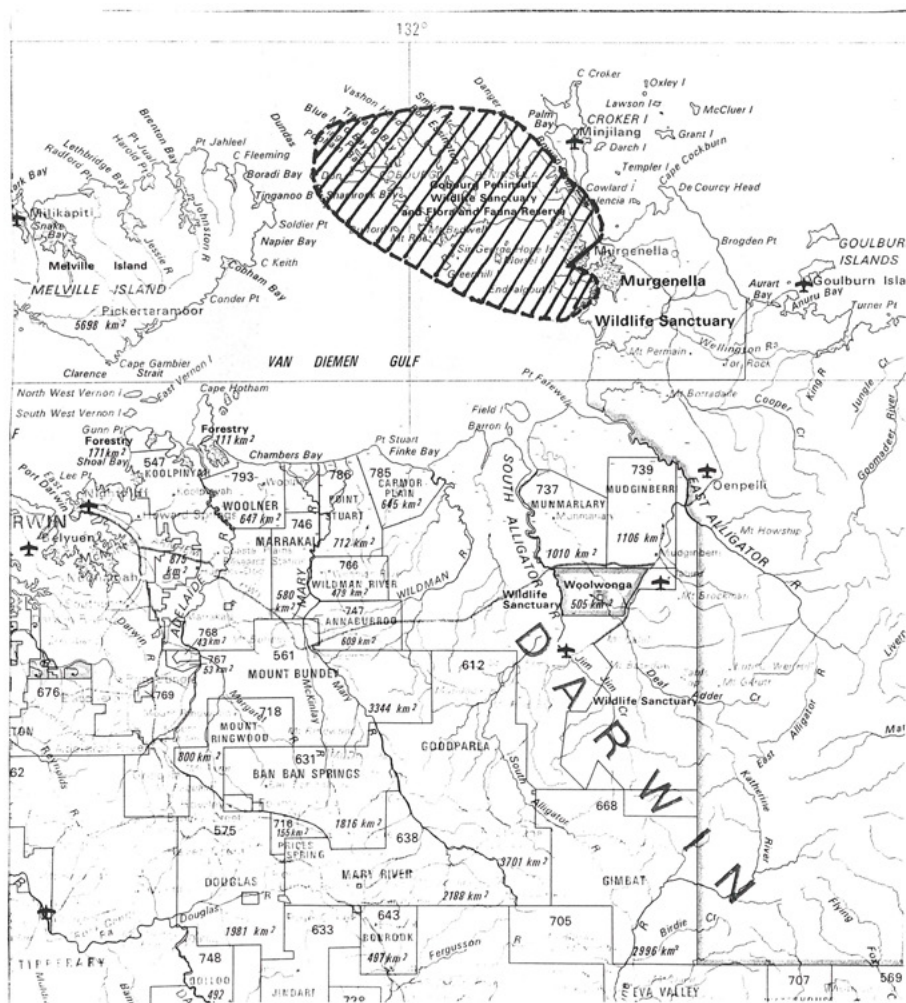
428. I have also commented in the course of this Report about those other Aboriginal persons who have interests in the claim area or parts of it. Generally, but not exclusively, those interests are through the matriline. The Minister will no doubt wish to ensure that such interests are appropriately accommodated at the time of making any grant of the claim area.
429. I have also commented on the other matters requiring consideration, including detriment. In this matter, having regards to the past history and the submissions, I do not anticipate that the Minister will have too great a difficulty in deciding whether to recommend a grant of the claim area in light of those considerations. Indeed, it is quite probable that appropriate arrangements to accommodate realistic detriment concerns will have been put in place by the NLC, after consultation with the relevant traditional Aboriginal owners before the time of any grant of the claim area. Of course, ultimately, the Minister must consider the relevant detriment issues, and how (if at all) they might be accommodated in the process of deciding whether to make a grant of the claim area.

ANNEXURE A: MAP OF COBourg PENINSULA LC 6 FROM ORIGINATING APPLICATION

THE COBURG PENINSULA CLAIM

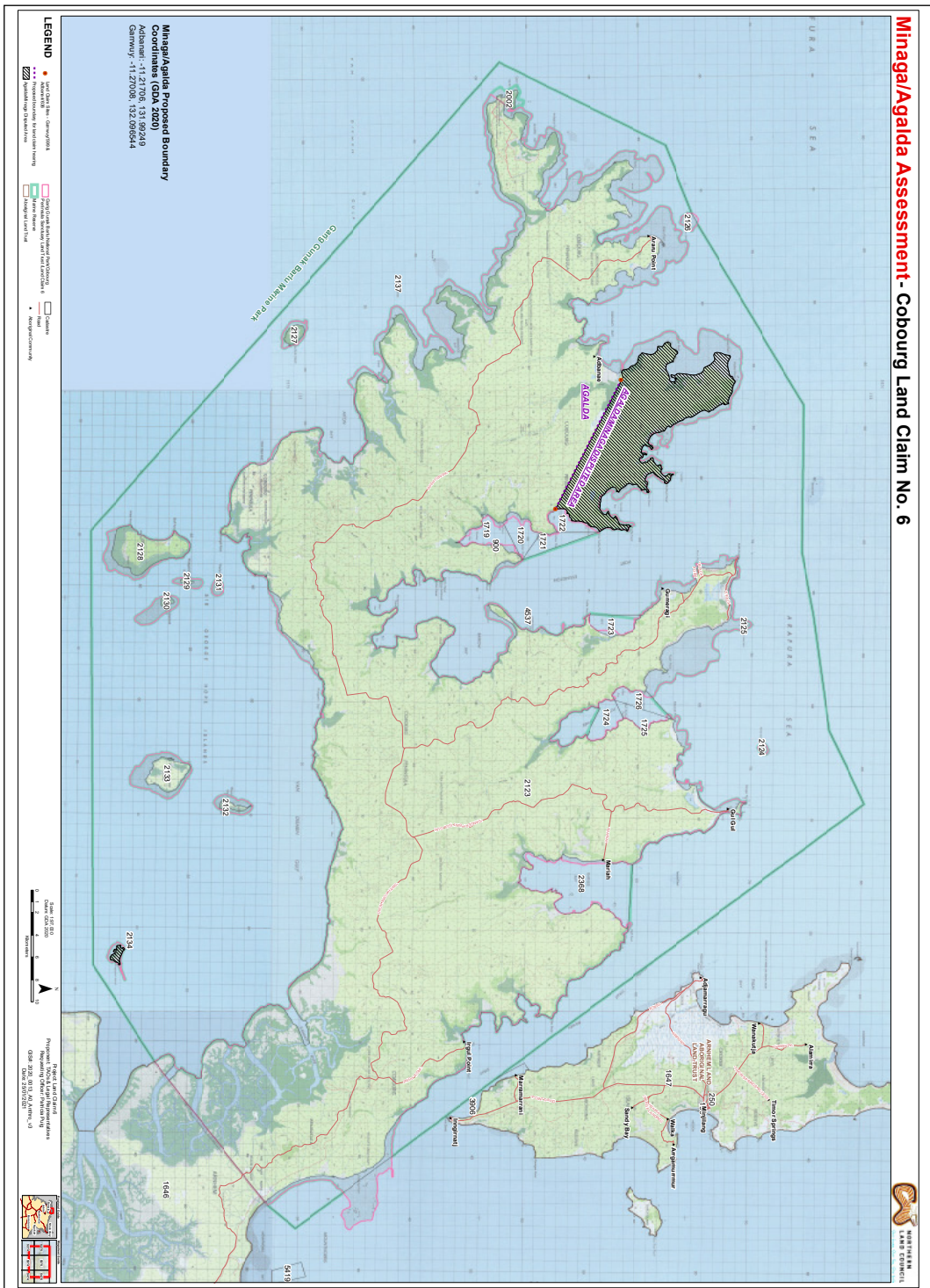
Extracted from the Pastoral Map of the
Northern Territory

Scale 1:2,000,000
1 centimetre = 20 kilometres



Source: Northern Land Council

ANNEXURE B: DISPUTED AREA AND NON-DISPUTED AREA AND MOGOGOUT ISLAND



Source: Exhibit NLC29 –Responsive Submissions of the NLC Claimants on the Status of the Land Claimed, Attachment 4

ANNEXURE C: NOTICE OF INTENTION TO COMMENCE INQUIRY



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

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

COBOURG PENINSULA LAND CLAIM NO. 6

NOTICE OF INTENTION TO COMMENCE INQUIRY

The Northern Land Council, on behalf of Aboriginals claiming to have traditional land claims to the land more particularly described in the schedules hereto (the claim areas), having lodged applications with the Aboriginal Land Commissioner pursuant to s 50(1) of the Aboriginal Land Rights (Northern Territory) Act 1976 for the determination of their claims, the Aboriginal Land Commissioner intends to commence an inquiry in respect of the claims at a hearing of evidence of traditional Aboriginal ownership on Tuesday 4 May 2021 at 01:00PM at Black Point Ranger Station, Cobourg NT 0822. The inquiry in so far as it relates to traditional Aboriginal ownership will be limited to land described in Schedule 1. Any evidence in respect of detriment to persons or communities in respect of the land described in Schedules 1 and 2 will be heard as necessary on a date to be fixed.

Schedule 1

Cobourg Peninsula Land Claim (No. 6) – ‘Disputed Area’

1. All that piece or parcel of land in the Northern Territory known as Cobourg Peninsula within Northern Territory Portion 2123, stretching from Adbanari in the west (GPS -11.21351, 131.99552) in a straight, diagonal line to Garrwuy in the east (GPS -11.26968, 132.09663). GPS coordinates are under the Geocentric Datum a/Australia 2020. This includes all that land stretching from Adbanari on the northern bank of Alaru Creek, heading in a southerly and westerly direction along the northern bank of Alaru Creek all the way to the coast at the cadastral boundary of Northern Territory Portion 4537, and all that land from Garrwuy at the coastal boundary of Northern Territory Portion 2123 bordering the cadastral boundary of Northern Territory Portion 4537 heading in a northerly direction toward Vashon Head and all the way from Vashon Head in a southerly direction along the coast at the cadastral boundary of Northern Territory Portions 4537 and 2123 to Adbanari; and
2. All that piece or parcel of land in the Northern Territory of Australia known as Mogogout Island within the cadastral boundary of Northern Territory Portion 2134.

Schedule 2

Cobourg Peninsula Land Claim (No. 6) – ‘Non-disputed Area’

1. The ‘Non-disputed Area’ of the Cobourg Peninsula subject to settlement negotiations between the Northern Territory and Traditional Owners includes all that piece or parcel of land in the Northern Territory within the cadastral boundary of Northern Territory Portion 2123, excepting the area within the northern section of Northern Territory Portion 2123 as described above in Schedule 1 between Adbanari in the west and Garrwuy in the east; and
2. All that piece or parcel of land within the cadastral boundary of Northern Territory Portions 900, 2002, 2380, 2381, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, and 2137.

All persons wishing to establish an interest in any part of the claim areas, or who wish to contest the claims, or who claim to be adversely affected thereby, or who on any other ground wish to be heard by the Commissioner concerning the claims should, on or before Friday 30 April 2021 give to the Aboriginal Land Commissioner written notice of their interest and a brief outline of the points they wish to raise.

Notices of interest should be in writing, addressed to the Aboriginal Land Commissioner, 5th Floor, 39-41 Woods Street, DARWIN NT 0800 or GPO Box 9932, DARWIN NT 0801 or by email to AboriginalLandCommissioner@official.niaa.gov.au and be provided by Friday 30 April 2021. If in writing, please allow for a minimum of ten (10) business days to accommodate for COVID-19 affected postage circumstances. Copies of notices will be provided to the Solicitor for the Northern Territory and the representatives of the claimant groups, the Northern Land Council and Miden Lawryers.

Only those persons who give notice of their interest in this way will receive further advice about the hearing of the claims. Inquires may be directed to the Office of the Aboriginal Land Commissioner on +618 7972 4111.

Dated this 27th day of March 2021.

Hon John Mansfield AM QC
Aboriginal Land Commissioner

ANNEXURE D: PROCEDURAL MATTERS

1. Legal representatives

Party	Name
For the NLC claimants	Mr Tim Goodwin, counsel, with Mr Tom Weston (Northern Land Council)
For the Midena/Agalda claimants	Ms Susan Phillips, counsel, with Mr Brett Midena (Midena Lawyers)
For the Arramuniga/Murran claimants	Mr Greg McIntyre, counsel, with Ms Raquel Woodcock (Roe Legal)
For the Siebert family/Ngaynjaharr claimants	Ms Margaret Siebert (unrepresented)
For the Northern Territory:	Ms Raelene Web KC, with Ms Kalliopi Gatis (Solicitor for the Northern Territory)

2. Anthropologists

Party	Name
For the NLC claimants	Mr Gareth Lewis
For the Midena/Agalda claimants	Dr John Avery, Professor Francesca Merlan
For the Northern Territory:	Mr Craig Elliott

3. Notices of Interest

Individual, Group or Entity	Date Received
Venture North	29 March 2021
Northern Territory Government	29 March 2023
Australian Marine Services Association (AMSA)	21 April 2021
Telstra	30 April 2021
Outback Spirit Tours Pty Ltd	5 October 2022
Paspaley Pearling Company	14 February 2023

4. List of witnesses

Party	Names (on behalf of which clan)
NLC Minaga claimants	Rosemary Baird (Minaga) Andrew Hunter (Minaga) Fred Baird (Minaga)
NLC Agalda claimants	Charlie Cunningham (Agalda) Queenie Cunningham (Agalda) Ronald Cunningham (Agalda) Judith Cunningham (Agalda) Robert Cunningham Jnr (Agalda) Solomon Cooper (Murran) Shane Cooper (Murran) Sammy Cooper (Murran) Charlie Mungulda (Bunitj)

Party	Names (on behalf of which clan)
NLC additional expert witnesses	Professor Nicholas Peterson Mr Ian White
Midena Agalda claimants	Dulcie May Cunningham (Agalda) Kathleen Cunningham (Agalda) Veronica Cunningham (Agalda) Jayden Cunningham (Agalda) James Wauchope (Agalda) Dwayne Wauchope (Agalda) Tristan Cunningham (Agalda) Shierese Cunningham (Agalda) Justin Cunningham (Agalda) Kristian Cunningham (Agalda)
NLC Murran claimants	Nancy Rotumah (Murran) Solomon Cooper (Murran) Captain Brown (other) Steven Bamardulbu (Murran) Ruth Fejo (Murran) Junior Brown (Murran) Dylan Cooper (Murran) June Fejo (Murran) Nathan Fejo (Murran) Shane Cooper (Murran) Charlie Mungulda (Bunitj)
Arramuniga Murran claimants	Maria Allen (nee Perez) (Murran) Rosemary Hewitt (nee Perez) (Murran) Raphael Perez (Murran) Elena Joy Cardona (Murran) Stephen Fejo (Murran) Ronald Abala (Murran) Sally McDowell (Murran) Paula Nichols (Murran) Jolene Riddle (Murran) Lydia Riddle (Murran) Reuben Cooper Jnr (Murran) Dennis Cooper (Murran) John Cooper (Murran) Sammy Cooper (Gamulkban) Jimmy Cooper (Murran) Jimmy Marimowa (Mandilari) Steven Fejo (Murran)
Siebert family Ngaynjaharr claimants	Margaret Siebert (Ngaynjaharr) Lisa Siebert (Ngaynjaharr) Pamela Clarke (Ngaynjaharr) Michelle Siebert (Ngaynjaharr)

5. Exhibits

Exhibit Ref. Tendering party

MID	Tendered on behalf of the Midena/Agalda claimants
NLC	Tendered on behalf of the NLC claimants
NT	Tendered on behalf of the Northern Territory
R	Tendered on behalf of persons or entities claiming detriment
RCA	Tendered on behalf of the Arramuniga/Murran claimants
SIE	Tendered on behalf of the Siebert family/Ngaynjaharr claimants

Access to exhibits marked 'R' is restricted by direction of the Aboriginal Land Commissioner

Exhibit No.	Restricted	Title of Exhibit
MID1		Agalda sites in the disputed area – Midena Clients
MID2		Outline of evidence of Veronica Cunningham being Annexure 2.4 to the Avery Report
MID3		Outline of evidence of Kathleen Cunningham
MID4		Outline of evidence of Dulcie May Cunningham
MID5		Amended outline of Evidence on behalf of Agalda claimants of Dwayne Wauchope
MID6		Outline of evidence on behalf of Agalda claimants of Shierese Cunningham
MID7		Outline of evidence of Tristan Cunningham
MID8		Outline of evidence of Justin Cunningham
MID9		Outline of evidence of Jayden Cunningham
MID10		Outline of evidence of Kristian Cunningham
MID11		Dr Avery's memorandum on Mogogout Island Provided 27.11.2020
MID12	R	Dr Avery's report lodged 30 March 2021
MID13		Dr Avery's interim response to Lewis lodged 26 August 2021
MID14	R	Annexure 4 – specifically p 92 – of Gareth Lewis report of March 2021
MID15		Northern Territory Supreme Court decision, <i>Baird v The Coroner of the Northern Territory</i> (2020) NTSC 67, specifically paragraphs [8] and [9]
MID16		Site register and related maps and tables which represent an update to Dr Avery's report, lodged on 30 July 2021
MID17		Affidavit of Veronica Cunningham dated 11 November 2021
MID18		Supplementary Anthropological Report of Dr J Avery and Prof. F Merlan dated 14 November 2021
MID19		Document bundle and list provided on 3 December 2021
MID20		Genealogy showing connections between Muran, Ildugidj / Madilari, Kumulkban and Ngaindgjaiaar, dated 1988, prepared by Ian White, NLC

Exhibit No.	Restricted	Title of Exhibit
MID21		Affidavit of Shelley Landmark dated 30 April 2021 with annexures – NLC Claim materials for Non-Disputed Area
MID22		Report of Francesca Merlan dated 2 September 2022 including annexures and appendices
MID23		Document headed ‘Land Industry Registry Material Release/Cobourg Peninsular: mapping of sites by George Chaloupka 1978; 1979’ and as prepared on 13 October 2020
MID24		Joint statement of Kathleen Cunningham, Dulcie May Cunningham and Veronica Cunningham dated 4 August 2022
MID25		Aboriginal Land Rights Commission: First Report July 1973
MID26		Aboriginal Land Rights Commission: Second Report April 1974
MID27		Cobourg Board minutes of 2 July 2004 Internal note of Northern Land Council of 10 September 2004 Northern Territory government memo of 22 September 2004 recording information provided by Rosie Baird
MID28		Submissions on traditional Aboriginal ownership in relation to the disputed and non-disputed areas on behalf of the Agalda Claimants represented by Midena lawyers dated 21 February 2023
MID29		Submissions on behalf of the Agalda Claimants represented by Midena Lawyers following the lay and expert evidence regarding the Murran and Ngaynjaharr dated 17 May 2023
NLC1	R	Cobourg Peninsula Land Claim (No. 6) – Sites Map
NLC2	R	Report of Gareth Lewis of March 2021 with 5 annexures
NLC3	R	Genealogies for the Agalda, Minaga and Murran groups prepared on behalf of the claimants by Gareth Lewis of March 2021
NLC4	R	Claimant personal particulars prepared on behalf of the claimants by Gareth Lewis of March 2021
NLC5	R	Updated site register prepared on behalf of the claimants by Gareth Lewis in July 2021
NLC6		Outline of evidence of Nick Peterson dated 10 November 2021
NLC7		Cobourg Land Claim – Draft Claim Book by N Peterson and M Tonkinson dated 1979
NLC8		Statement of Rosie Baird dated 5 November 2021
NLC9	R	Photos of bundles of maps prepared by Freddy Baird
NLC10	R	Recording by Freddy Baird entitled ‘Cobourg Names’ recording Robert Cunningham Snr, Hubert Cunningham, David Cunningham, Frederick Baird, and Matthias Baird
NLC11	R	Recording by Freddy Baird entitled ‘Track 2’ recording Robert Cunningham Snr, Hubert Cunningham, David Cunningham, Frederick Baird, and Matthias Baird

Exhibit No.	Restricted	Title of Exhibit
NLC12	R	Recording by Freddy Baird entitled ‘Track 1’ recording Robert Cunningham Senior, Dulcie May Cunningham [or Queenie Cunningham], Frederick Baird, and Judith Baird
NLC13		Outline of evidence of Adrian Peace dated 10 November 2021
NLC14		Supplementary report of G Lewis dated 12 November 2021
NLC15		Tender bundle index and documents to which it refers provided on 12 November 2021
NLC16		Index and documents to which it refers provided on 3 December 2021 in response to Aboriginal Land Commissioner correspondence of 24 November 2021
NLC17		Statement of Agreed Facts in respect of the Non-Disputed Area filed on behalf of the Northern Territory and the Northern Land Council on 25 February 2022. <i>*Note qualifications to the agreement of the Northern Territory to tender this exhibit provided in exhibit NT14.</i>
NLC18		Document entitled ‘Extinction, succession and return: a response to Professor Merlan’s September 2022 report on LC 6’ issued by Gareth Lewis and dated 26 September 2022
NLC19		Claim documents prepared by Gareth Lewis for the non-disputed area lodged 9 December 2022, including genealogies, claimant profiles, and supplementary anthropological statements
NLC20		Outline of Evidence of Nancy Rotumah filed 6 February 2023
NLC21		Outline of Evidence of Solomon Cooper filed 6 February 2023
NLC22		Outline of Evidence of Charlie Mangulda filed 6 February 2023
NLC23		Summary of issues concerning the composition of the Ngaynjaharr Group filed 6 February 2023
NLC24		Summary of issues concerning the composition of the Murran Group filed 6 February 2023
NLC25		Submissions on Traditional Ownership of Disputed Area on behalf of Agalda and Minaga claimants represented by the Northern Land Council dated 21 February 2023, including attachment ‘Map showing further area for which Agalda and Minaga share primary spiritual responsibility’ dated 13 June 2023. <i>*Note the comments provided to the Commissioner in relation to the attached map by both Midena Lawyers and the Northern Territory in separate emails on 21 June 2023</i>
NLC26		Supplementary Report of Gareth Lewis on Murran and Ngaynjaharr Issues, dated 16 March 2023
NLC27	R	NLC Consolidated Tender Bundle of Documents, including index and documents numbered 1-64

Exhibit No.	Restricted	Title of Exhibit
NLC28		Statement of Ronnie Waraludj Ngunurrwuy filed 28 March 2023
NLC29		Submission on Status of Land Claimed for the Non-Disputed Area and Attachments 1-36 dated 31 March 2023
NLC30	R	Cobourg Peninsula Land Claim (No. 6) Genealogies for Agalda, Minaga & Murrar Groups, prepared on Behalf of the Claimants by Gareth Lewis dated March 2021
NLC31		Submissions on Traditional Ownership of Non-Disputed Area dated 4 May 2023
NLC32		Peterson and Devitt Report for the Croker Island Native Title Determination, January 1977, pages 33 and 39
NLC33		Reply Submissions on Traditional Ownership of Non-Disputed Area dated 9 June 2023
NT1		Report by Craig Elliott on evidence and response to the Anthropological Reports by Mr Lewis, Dr Avery and Professor Merlan dated 28 January 2022
NT2		Statement of Michael Wells signed 05 July 2021
NT3		Statement of Ian Scrimgeour signed 06 July 2021 including attachment A
NT4		Statement of Louise McCormick signed 06 July 2021 including attachment A
NT5		Statement of Sally Egan signed 08 July 2021 including attachments A-B
NT6		Statement of Julianne Hudd signed 09 July 2021 with attachment A
NT7		Statement of Valerie Smith signed 19 July 2021 including attachment A.
NT8		Statement of Suzanne Fitzpatrick signed 22 July 2021
NT9		Statement of James Pratt signed 27 July 2021 including attachments A-C
NT10		Statement of Will Bowman signed 30 July 2021 including attachments WB1 and WB2.
NT11		Two Minaga Report by Craig Elliott dated 4 April 2022
NT12		Part 3, "Mr Ian White", in Summary Report on Strengthening Traditional Ownership Evidence and Questions for Mr Ian White dated 9 May 2022.
NT13		Statement of Agreed Facts in respect of the Disputed Area and Mogogout Island filed on behalf of the Northern Territory and the Northern Land Council on 25 May 2021. <i>*Note qualifications to the agreement of the Northern Territory to tender this exhibit provided in exhibit NT14.</i>
NT14		Letter from Solicitor for the Northern Territory to the Aboriginal Land Commissioner regarding the extent of the Disputed Area in the Cobourg Peninsula Land Claim No. 6 with 'Attachment 2: 'Extended Dispute Area Map', dated 6 July 2022, providing qualifications to agreement to tender exhibits NT13 and NLC17.

Exhibit No.	Restricted	Title of Exhibit
NT15		Northern Territory's Submissions on Traditional Ownership dated 10 March 2023
NT16		Submissions on Status of NT Portion 900 dated 4 April 2023
NT17		Northern Territory's Responsive Submissions on Traditional Ownership of the Non-Disputed Area dated 2 June 2023
R1		Telstra Interests and Submissions
R2		Venture North Submission on detriment and attachments A–L.
R3		AMSA Submission on detriment
R4	R	Outback Spirit Tours Submissions on detriment
R5		Paspaley Pearling Company Submission on detriment and related matters and attachments
R6		Paspaley Pearling Company Submission in reply to 'Responsive Submissions of the NLC Claimants on the Status of Land Claimed' dated 28 April 2023
RCA1		Arramuniga Claimants Outline of Opening Submissions dated 10 April 2023
RCA2		Arramuniga Claimants Chronology of Events dated 5 April 2023
RCA3		Meeting Attendance List and Minutes – Mungeegerdad Association 24 February 1982
RCA4		Photograph Reuben Cooper Senior, undated
RCA5		Extract of Peterson and Devitt, Croker Island Sea Claim Anthropology Report
RCA6		Transcript of Evidence of Mr B Yambigbig – Croker Island Seas Claim pp. 370-374 dated 24 April 1997
RCA7		Extract from 'Clever Man: The Life of Paddy Compass Namadbara' pp. 40-41 dated 1 November 2020
RCA8		Extract from 'Gagudji Man: Bill Neidjie' pp. 11 and 21 dated 2007
RCA9		Outline of Evidence of Maria Josephine Stephens [B.5.32] signed and dated 11 April 2023
RCA10		Report to Land Commissioner and response to NLC email 19 December 2022 prepared by Maria Stephens
RCA11		Alda Josephine Perez (nee Cooper) genealogy dated March 2021
RCA12		Muran 1981 genealogy
RCA13		Muran genealogy 31 October 1988
RCA14		Alice Rose Maraoldian Genealogy
RCA15		Outline of Evidence of Reuben William Cooper signed and dated 11 April 2023

Exhibit No.	Restricted	Title of Exhibit
RCA16		Outline of Evidence of Joy Cardona [B.5.39] signed and dated 11 April 2023
RCA17		Outline of Evidence of Sally McDowell [B.5.39] signed and dated 11 April 2023
RCA18		Outline of Evidence of Dennis Cooper [B.5.30] signed and dated 11 April 2023
RCA19		Nine photographs copied into a document in the sequence they were shown to witness Maria Stephens on 12 April 2023
RCA20		Submissions on behalf of the Descendants of Rueben Cooper Arramuniga Snr dated 18 May 2023
SIE1	R	Proposed Evidence of Margaret Siebert Family and Forebearers – Ngainjagarr Clan Group and Annexures A-I dated 24 March 2023
SIE2		Closing Summary of Margaret Siebert Family and Forebearers – Ngaindjagar Clan Group and Provision of Evidence in Connection to Country dated 13 April 2023
SIE3		Cobourg Land Claim – Draft Claim Book by N Peterson and M Tonkinson dated 1979
SIE4		Extract from NT Dictionary of Biography, Revised Division, CDU Press page 109-110, containing entry regarding Katherine Cooper/Pett
SIE5		Cape Don Lighthouse Census 1968, from National Archives of Australia Darwin, two entries highlighted - Nelson Wagbara and Elsie Indibu of Iwaidja Tribe
SIE6		Gurig National Park Plan of Management No. 151, dated 15 September 1987, 6 pages
SIE7		Original genealogy prepared by Siebert Family, also located in Annexure E of SIE1
SIE8		Submissions on behalf of the Siebert Family Claimants dated 17 May 2023
SIE9		Siebert Claimants Submission in response to Northern Territory's Responsive Submissions on Traditional Ownership of the Non-Disputed Area dated 8 June 2023

ANNEXURE E: LIST OF CLAIMANTS

Minaga (NLC) – Group A

Names of Claimants

Ngalmu (deceased)	Marita Hunter
Jack Spencer Ilkgirr (deceased)	Nicholas Hunter Nawunjardi
Malimaju (Na-madagu) (deceased)	Leonie Hunter
Henry Nicholas Hunter Mulalle (deceased)	Kelly Marie Hunter
Bernadette Gunderson	Bradley John Carter
Rosemary/Rosie Baird	Keiran Neil Hunter
Michaeline Hunter	Darcy Henry Hunter
Anita Hunter	Braydon Reece Hunter
Henrietta Hunter	Noel Hunter
Henry Hunter Mulalle	Amber Hunter
Andrew Hunter Minindji	Kayla Hunter
Theresa Hunter	Jade Hunter

Agalda (NLC) – Group B

Names of Claimants

Jumbo Cunningham Mandjarlwarli (deceased)	Daniel Cunningham
Robert Cunningham Snr (deceased)	Roland Cunningham
Hubert Cunningham Adjibindu (deceased)	Jarrad Cunningham
Charlie Cunningham Marbidja	Larry Cunningham
Queenie Cunningham Mangadawu	Antonia Cunningham
Ronald Cunningham Dardar	Alani Cunningham
Kathleen Cunningham Wanamungi	Kaysa Cunningham
Dulcie May Cunningham Mamungaynkupa	Charlene Cunningham
Judy/Eleanor Cunningham Ngayaringgama (Deceased)	Trina Cunningham
Judith Cunningham Ngalgwunu/Ngarlunu	Frank Cunningham
Abel Cunningham	Richard Cunningham
Jessica Cunningham	Gabriella/Kimberley Cunningham
Fiona Cunningham	Jessie Cunningham
Joelene Cunningham	Kathleen Cunningham
Charles Cunningham	Jasmine Cunningham
Douglas Cunningham	Trenton Jnr Cunningham
Jason Cunningham	Hubert Jnr Cunningham
Patrick Cunningham	Roberta Cunningham
Jennifer Cunningham	Dale Cunningham
Byron Cunningham	Tyrone Cunningham
Loretta Cunningham Namurulka	Danielle Cunningham
Trenton Cunningham	Shakira Cunningham
Robert Cunningham Jnr	Isla Cunningham
	Jersey Cunningham

Tamaya Cunningham
Cecelia Cunningham
Jerome Cunningham
Rammalda Cunningham
Ingrid Cunningham
Geraldine Cunningham

Jarrad Jnr Cunningham
Aylira/Aileen Cunningham
Larry Jnr Cunningham
Jarrad Cunningham
Dayleisha Cunningham
Destina Cunningham

Agalda (Miden) – Group C

Names of Claimants

Charlie Cunningham Marbidjar
Queenie Cunningham Mangadawu
Judith Cunningham Ngarlunu
Ronald Cunningham Darra
Dulcie May Cunningham Mamungaynupa
Kathleen Cunningham Warnamangi
Ngalmuwurra
Elizabeth Wauchope Arrlungu
Dwayne Robert Wauchope Wirrlmuny
James Wauchope Albinyara anggu/

Arawurrlmatj
Veronica Cunningham Galminda
Shierese Cunningham Djadjagali-
Galalmurmidja
Tristan Cunningham Gurumbi
Justin Cunningham Jnr Maniyan
Jayden Cunningham Andimurut
Jayde Cooper Inmalunga
Kristian Cunningham Malamayi
Priscilla Cunningham Galyunga

Murran (NLC) – Group D

Names of Claimants

Ngangadbali (deceased)
Gungajirr/Gunjalarr (deceased)
Muryurd (deceased)
Diamond Nangu...yarri (deceased)
Yambigbig (deceased)
Yinjarrba Warruwayiwi (deceased)
Peter Namumura (deceased)
Tim Milbur (deceased)
Sam Nayuraj (deceased)
Narrumalu (deceased)
John Christophersen Bugigugi/bagibagi
(deceased)
Peter Naminur (deceased)
Brian Yambigbig (deceased)
Norma (deceased)
Philip Galbinyara (deceased)
Nancy Rotumah Manguraynmag
Khaki Narrala (deceased)

Ruth Fejo Marnubi
Steven Fejo Garnangu
June Fejo Mungkumaya
Solomon Cooper Ariyalbung
Shane Cooper
Philippa Cooper
Pauline Cooper
Peter/Hank Cooper
Tonisha Cooper
Nathan Fejo Jarramanjarraman
Karina Williams Ngalmangga/Mawunarr
(deceased)
Rhys Cooper/Wauchope
Dylan Cooper/Wauchope
Steven Cooper
Libia Cooper
Peter Cooper
Michael Cunningham

Murran (Arramuniga) – Group E

Names of Claimants

Not provided.

Ngaynjaharr (NLC) – Group F

Names of Claimants

Alice Cooper Maruwuldan (deceased)	Murray Daniels Snr (deceased)
Sandy Wandijag (deceased)	Lesley Brown
Wadarrdbin (deceased)	Terry Brown
Wajirr (deceased)	Rae Brown
Alice Munamuna (deceased)	Joseph Stuart Brown
Paddy Wundirwi (deceased)	Leanne Brown
Dan Murray (deceased)	Tracey Brown
Alice Fejo Midayal (deceased)	Hilda Moreen
Albert Gulubagu (deceased)	Arthurina Moreen
Alice Guwangil (deceased)	Maxine Daniels
Jack Brown Walumag (deceased)	Liam Daniels
Alf Brown Injarrurri (deceased)	Alice Daniels
Jerry Brown Gulurruwini (deceased)	Michael Coombes
Nancy Nawundurrugi (deceased)	Alison Jamiela Daniels
Agnes Tipoloura Purunti	Francis Xavier Vigona Daniels
Max Daniels (deceased)	Kiesha Vigona Daniels
Harrison Daniels (deceased)	Nathan James Daniels
Gerald ‘Shorty’ Herbert Brown (deceased)	Nigel Tipungwuti
Ronnie Waraludj Ngundurrwuy	Daryl Daniels
Mary Yugal (deceased)	Bianca Daniels
Maureen Brown Mindayal/Munamuna (deceased)	Darren Daniels
Arthur Moreen	Murray Daniels Jnr
Dion Daniels	Vanessa Daniels
Leonie Sandra Bourke	Shonelle Daly
Miriam Rose Daniels	Nathaniel Daniels
Ricardo Edmond Daniels	Tyler Daniels
Cassandra Daniels	Dane Daniels
Phillip Edmond Daniels	Lebron Daniels
	Azarah Rioli

Ngaynjaharr (Siebert family) – Group G

Names of Claimants

Not provided.

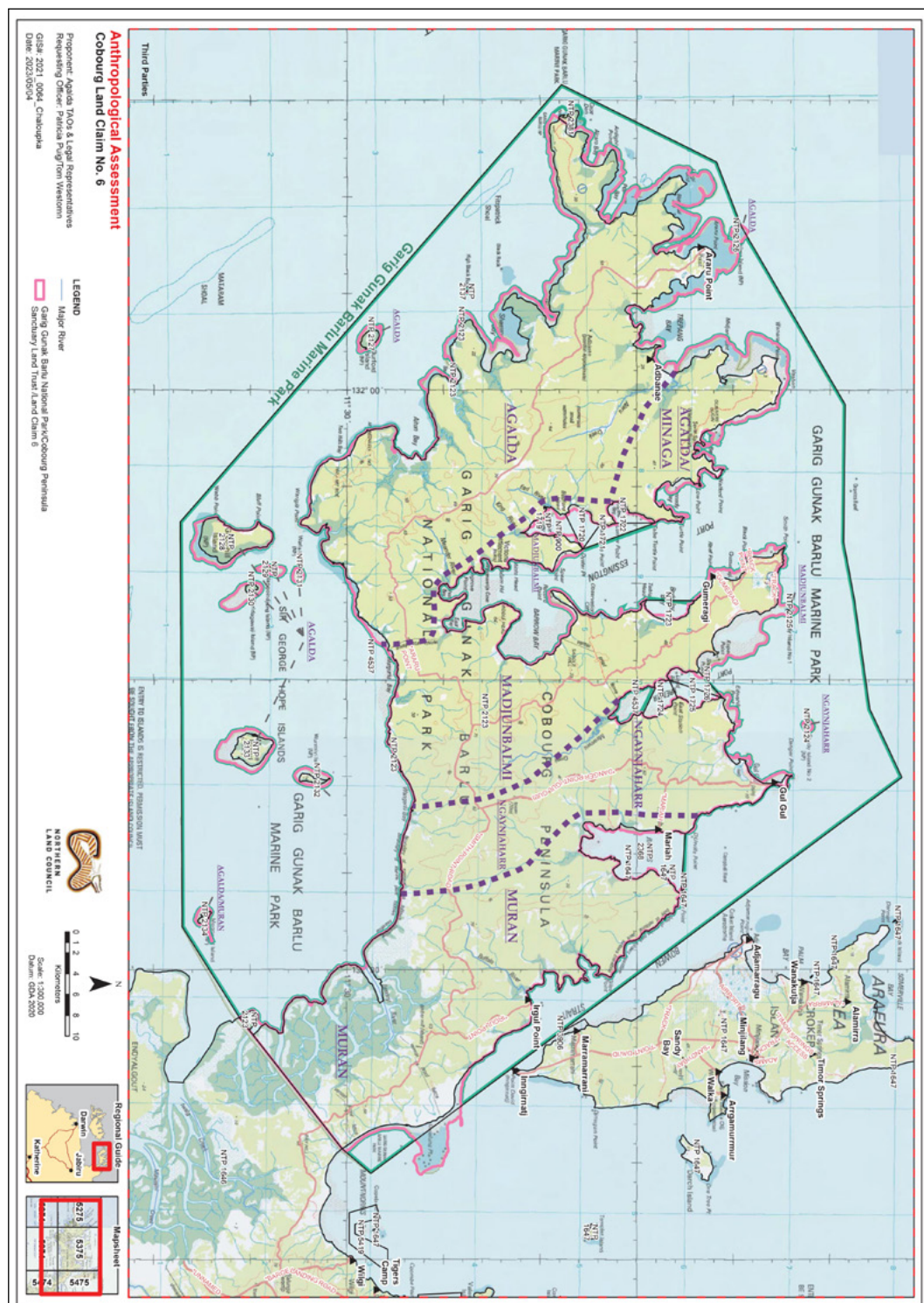
Madjunbalmi (NLC) – Group H

Names of Claimants

Jack Davis (deceased)
Fred Davis (deceased)
Lily Davis Malyurrgi (deceased)
Daisy Injarraldgi/Maguldagi (deceased)
Jerry Yirritjin (deceased)
Nelson Blake Mulurinjin (deceased)
John Williams Snr (deceased)
David Buckley Minyimak (deceased)
Muriel Djorlom/Nabegeyo Indjarladj (deceased)
Kathy Blake Marraganan
David Cunningham Numirrid
Ruby Blake Djumbilil (deceased)
Rosemary Jean Williams
Victor John Williams
Phyllis Dedja Williams
Tanya Lee Williams Panuel
Edward Williams (deceased)
Lillian Emily Williams (deceased)

Kathleen Dawn Williams Browne
John Jnr Williams
Gregory Allen Williams Snr (deceased)
Norman Barry Williams Madida
Elaine May Williams Yukul
Remo Williams
Allie Williams
Noah Williams
Isiah Williams
Michaela Williams
Danika Williams
Gregory Williams Jnr
Benjamin Williams
Alicia Williams
Elijah Williams
Sienna Williams

ANNEXURE F: COBOURG PENINSULA MAP SHOWING CLAN ESTATES



Source: Exhibit NLC31 – NLC Submissions on Traditional Ownership of the Non-Disputed Area, Annexure A

