



Our Ref: JB-180213
Your Ref:

ABN 82 447 450 981

29 May 2018

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The Hon John Mansfield AM QC
Aboriginal Land Commissioner
GPO Box 9932
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Your Honour,

Lawyers
James Burke
Michael Vailas

RE: Submissions on behalf of Mr Simon Hoar – Goondooloo and Moroak Stations

Legal Consultant
Vincent Close

We refer to your correspondences dated 13,17 & 20 April 2018. We act for Mr Simon Hoar, owner of Goondooloo and Moroak Stations (the 'stations'). We write with respect to Land claims 141 and 129 (the 'land claims') which form part of the stations' southern boundaries.

Licensed Conveyancer
Coralie Waters

Background

Land claim numbers 141 and 129 (the 'land claims') are over parts of the Roper River that form the Southern boundaries of the stations. The land on the other side of the Roper River was previously granted to various traditional owners pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* (the 'Act').

Mr Hoar farms cattle on the stations. Together they cover approximately 230 000 hectares on which he has approximately [REDACTED] head of cattle.

Mr Hoar has good relationships with his neighbours. He has some informal arrangements in place with the Northern Land Council (NLC) Katherine office as well as with various elders and other representatives of traditional owner groups, particularly Mr Terrence Willie and Ms Sheila Conway. He has, for example, with the assistance of the NLC sought and obtained permission from traditional owners to enter their land to retrieve stray cattle. Mr Hoar is also approached from time to time by traditional owners from the Mangarrayi Aboriginal Land Trust land (Mangarrayi land) for permission to enter his land to access fishing points and to hunt turtle. Mr Hoar's brother now leases land to the South of Goondooloo Station (which forms part of the Mangarrayi Aboriginal Land Trust) from the traditional owners via the NLC.

Mr Hoar's chief concerns are that any change to his right to access the Roper River for water not have a significant adverse impact on:

- Habitability, as the homestead draws water from the Roper River;
- Business sustainability, his cattle farming business relies on access to the Roper River;
- Future business growth, both in terms of increasing his herd and using parts of the stations for crops.

Attachments:

Please find attached and marked Attachment 1:

- Photo of Moroak Station Homestead on the Roper River;
- Letter dated 28 May 2018 from Acute Business Services (ABS);
- Roper River Land Claims Costs Analysis authored by ABS; and
- Dam Construction Quote by S & J Bozanich Earthmoving.

Preferred Outcome

Mr Hoar requests:

- a delay of 24 months, or such time as your recommend, of any decision to grant the land claims to enable he, the NLC and the traditional owners' time to negotiate agreements in the event a grant is ultimately made, **or**;
- asks that a grant not be made because the financial costs of losing the right of access to the Roper River to him are estimated to be 'in excess of [REDACTED]' with consequent cost to the Katherine region economy, **or**;
- if the claims are granted, the embankment improvement and land between it and the homestead is definitively excised from the grant(s) and protect Mr Hoar's rights to access(photo attached).

At present, Mr Hoar can access the river as a right. A grant over the river is a loss of Mr Hoar's 'right' to access the river. That on its own is a significant change. Further, access to the river must then be negotiated which may involve a cost which does not presently have to be borne. That cost is separate to the detriment of a loss of a right.

Timing Issue

Mr Hoar purchased the properties on or about 1 May 2015. He was not aware of the land claims until he received your correspondence dated 13 April 2018. He does not re-call being advised by anyone of the land claims. As the claims are outside the borders of the stations, there was not any notation regarding them on the land titles. Further, there has not been any activity with respect to these claims since Commissioner Olney provided his report² (the 'Report') to the then Minister and the Administrator of the Northern Territory.

Mr Hoar has actively sought to engage with traditional owners and the NLC. The prospect of grants of title over the river under the Act has not ever been raised. No criticism of traditional owners or the NLC is meant. However, we submit it does add weight to our further submission that in the circumstances, you accept that Mr Hoar did not know of the claims or the Report at the time he acquired the stations and did not become aware of them subsequently and find that he should not be presumed to have known about them.

Financial detriment

Attachment 1 includes financial analysis by ABS and is provided as support for the claimed financial detriment.

We will not repeat the details contained in Attachment 1. The financial detriment contained therein are the main submissions.

The Roper River is an important water source for both cattle and the Hoar family and its workforce. The Goondooloo Station homestead is not used but there is a water pump that can supply it as well as 4 paddocks; a total of approximately 200Km².

For many years the stations have been owned and operated as one but the option to sell off or lease one of the stations as the economic climate develops or changes ought not to be

¹ Letter dated 28 May 2018 from Acute Business Services (attachment 1)

² Upper Roper River Land Claims, Report and recommendations of the Acting Aboriginal Land Commissioner, March 2004

discounted. The loss of access to water from the Roper River would negatively impact the financial viability or attractiveness of that option.

Likewise, there is a water pump servicing the Moroak homestead and 4 paddocks of similar size on Moroak Station. The loss of water to the homestead would require at least 1 extra bore. The stations together have five bores all in the northern part of the properties about 15km from the river.

Mr Hoar is undertaking a program of improving paddocks to increase the stations' capacities for cattle. He has also identified areas that may be viable for crops, thereby diversifying production from the stations. The prospect of growing crops is in its very early stages and Mr Hoar wants to be clear he has not committed to detailed investigation but loss of access to water would make it a far less attractive and problematic exercise.

Physical/ access detriment

The Report at paragraph 50 recorded the previous owner of the stations raised:

- road access;
- hindrance to future development including irrigation of the river, and;
- weed management.

Road access was dealt with by Commissioner Olney at paragraph 51 and beyond requesting it is made clear that the relevant portions of the road crossings have the same status as a road 'over which the public have a right of way' we make no submissions.

Retrieving cattle from the river and neighbouring Mangarrayi land was not an issue raised by the previous owners. As detailed earlier, this is currently dealt with expeditiously on an *ad hoc* basis although Mr Hoar plans to approach the NLC and traditional owners about a standing arrangement negating the need to call to get permission on each occasion.

An extension of the Mangarrayi land to the north side of the river will make access requests more frequent. When the Roper River floods, flood gates go up and the cattle can and do get out. Retrieving them from the river currently does not require advising anyone. Obviously, if the river becomes part of Mangarrayi land then Mr Hoar will need to obtain permission to retrieve cattle.

The right to access the river to pump water to the stations is another access right Mr Hoar will lose if the proposed grant over the Roper River is made. We have dealt with the financial implications but here submit this has a detrimental impact on his enjoyment of his own properties. The water taken is not purely for financial gain but for sustaining his family and workforce. It impacts liveability and amenity.

Mr Hoar and those on his land access the river for recreational fishing. As referred to above, he grants permission to people to enter his land to access points in the river not otherwise accessible. A grant of the river as proposed destroys that right for him to enjoy the river for fishing without permission.

Weed Management

Mr Hoar purchased a spray tanker so he could poison along the river bank. This augments the weed control and eradication program undertaken by the Roper River Land Care rangers to whom he grants access to his property. The ranger group is funded by government and has a large area of responsibility. Mr Hoar assists at his own expense as controlling the weeds along the river obviously is of great benefit to him keeping weeds out of the stations.

We submit that Mr Hoar's ability to access the Roper River without negotiating permission is an important aspect of his enjoyment of living at Moroak Station. His weed control activities benefit himself but also the wider community through the containment of weeds that would otherwise be a greater problem.

Homestead

The attached photo shows the constructed embankment immediately in front of Mr Hoar's home is arguably within the 'river bank' subject to the claims. If you recommend granting the land claims, we submit that the improvement of the embankment is excised from the grants and, if possible, Mr Hoar is allowed such access to the river to maintain the embankment. The importance of the embankment for the structural integrity of the homestead and the land immediately between the homestead and the embankment is readily apparent.

Conclusion

As stated earlier in these submissions, Mr Hoar's chief concerns are that any change to his right to access the Roper River for water not have a significant adverse impact on:

- Habitability, as the homestead draws water from the Roper River;
- Business sustainability, his cattle farming business relies on access to the Roper River;
- Future business growth, both in terms of increasing his herd and using parts of the stations for crops.

Mr Hoar is very keen to commence discussions with traditional owners and the NLC regarding the detriment issues he has raised. He would like consideration of the grant postponed to enable such discussions to occur. They have not occurred to date because Mr Hoar only became aware of the possibility when he received your letters in April. His first priority was to make submissions to you.

If a decision regarding the grant is delayed then he will commence discussions with the traditional owners and NLC with a view to resolving his concerns. It may well be that all his concerns can be satisfactorily resolved which we submit would be the ideal outcome. It may be that they cannot and we submit that is a fact that would be material to any decision whether or not to grant the titles claimed under the Act.

Alternatively, if a decision cannot be delayed at this time, that the grants of the land claims not be made on the basis that the detriments to Mr Hoar are significant.

Yours faithfully

Bowden McCormack



James Burke

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26 September 2018

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RE: Submissions on Behalf of Mr Simon Hoar – Response to NLC Submissions dated 1 September 2018

Legal Consultant
Vincent Close

Paragraph 30 of the NLC's submissions with respect to Moroak and Goondooloo Stations contains a proposal for a licence that could be agreed between the parties for a peppercorn rent. The proposal put forward by the NLC on behalf of the claimant, subject to more detailed discussions, is acceptable to our client.

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Coralie Waters

In relation to Paragraph 31 of the NLC's submissions, we submit that there remains an element of detriment to our client that should be taken into account. The law has long recognised that a loss of opportunity is a compensable loss and therefore, by extension, there is a detriment to the rights of a party that has suffered such loss.

Response to your letter dated 28 August 2018

Given the proposal contained in the NLC's submissions at Paragraph 30 referred to above, our client does not rely on the financial information previously provided as part of the submissions to Your Honour.

The discussions between Bowden McCormack and Mr Avery, the NLC's representative, have been productive and our client is grateful for the way in which the NLC has approached these issues.

Please advise if you would like us to provide amended submissions removing reference to the financial information.

Please do not hesitate to contact us if you require anything additional.

Yours faithfully

Bowden McCormack

James Burke

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Cc. Mr David Avery of the Northern Land Council