

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976

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

**Lower Roper River Land Claim No. 70; Mataranka Area (NT Portion 916)
Land Claim No. 129; Western Roper River (Bed and Banks) Land Claim No.
141; Roper Valley Area Land Claim No. 164**

Submissions on behalf of the Claimants

1 Introduction

- 2 Submissions to the Review on with respect to other land claim groups have included or referred to submissions on general matters concerning permits, fishing, pastoral, mining and agreement making. We have also drawn attention to what we consider to be relevant developments since the respective land claim reports were published. Those submissions and comments are adopted for these submissions as well, to the extent that they are applicable and relevant, and will not be separately reproduced.

Land Claim No.245: Old Elsey Homestead – NT Portion 5604

- 3 Neither the land claim report nor the NT Submissions to the Review explain that there is nothing to see at the site of the Old Elsey Homestead except a bronze plaque on a cairn just off the road, the old Stuart Highway, that explains that “On this site stood the Old Elsey Homestead...etc”, as made famous by the book ‘We of the Never Never’. Tourists diverting to the site expecting to see something significant will be disappointed because apart from the cairn there is just rubble and bush. Survey plan S.98/242E for NT Portion 5604 and a GoogleEarth image of the site are attached [**Attachments 1 & 2**]. Apart from the contents of the plaque, the site can be viewed from the road.
- 4 A replica homestead has been built at the Mataranka Homestead Tourist Park, near Mataranka township (presumably a location considered more likely to attract tourists) and is listed on the Northern Territory Tourism website, whereas the site of the Old Elsey Homestead is not. Nor is the site of the Old Elsey Homestead listed among other attractions in the immediate area featured on the same website. The building of a replica homestead elsewhere and the apparent absence of promotion of the site would arguably have reduced tourist interest and visitation to it. The NT’s implication that loss or restriction of access would reduce tourism in the region and impact the economy is not accepted.
- 5 The claimants for this area are agreeable to continued tourist access to the site to look around and take photographs. They prefer that visitors do so by permit and the NLC permit system is considered a viable solution for facilitating continued access

in a manner that respects protocol of seeking permission and protects the natural environment. Tourists wishing to view the site may have a special interest and would not be readily deterred by the small delay or modest cost (if any) of acquiring a permit. An automated online permit system accessible to tourists on the road could not have been envisaged as a possible solution to facilitating continued public access at the time of the land claim, but the NLC's online system is intended to be up and running by the end of 2018.

- 6 An Open Area Declaration under the *Aboriginal Land Act* is not considered a suitable option by the claimants. As conditions cannot be included in such a declaration there would be no restriction on activities such as camping, trail and quad bike use, fires and so on. The claimants also use NT Portion 5604 to access an important area immediately to the south located on the Mangarrayi Aboriginal Land Trust, for fishing and camping and there is a sacred site nearby. Permit conditions could enable respectful co-access to the area.

Mataranka Area (NT Portion 916) Land Claim No.129

- 7 NT Portion 916 is a discrete parcel of land that is bounded, substantially, by part of the area claimed in the Western Roper River (Bed and Banks) Land Claim No. 141. A copy of the NLC's letter to the Commissioner about this area dated 14 March 2017, is attached together with a copy of the 'further large-scale map' enclosed with that letter [**Attachment 3**].
- 8 In our submission no detriment to pastoral operations would arise from the grant of that part of the bed and banks of the river that lies between Mangarrayi Aboriginal Land Trust and NT Portion 916. No neighbouring pastoralist draws water from this area. As to NT Portion 916, it is possible that cattle may from time to time need to be recovered from that area by any of Moroak, Flying Fox or a grazing licence holder on Mangarrayi Aboriginal Land Trust. It is a simple matter to make arrangements for that.

Recreational fishing

- 9 This is an interesting series of land claims because substantial parts of the claim areas are accessible only via land held under a pastoral lease or owned by an Aboriginal land trust.

Recreational Fishers and Permits

- 10 Paragraphs 40 and 41 of Mr Ciaravolo's statement [the AFANT submission] set out AFANT's position on permits, which is, in brief, that the time taken to obtain a permit and any associated financial cost may result in a detriment, and that refusal of a permit would result in a detriment. The submission also asserts that to date the NLC has "been largely unable to effectively consult with traditional owners and where desirable to the traditional owners to organise standing orders to enable a reasonable and reliable permit system for access to Aboriginal lands." No source for that statement is provided, and it is not correct.

- 11 In land claim evidence, including in questions to Mr Ciaravolo, there has been mention of the example of the delegation by the NLC to Dhimurru in east Arnhem Land of the function to issue permits, obviously based on standing instructions of the traditional owners. Similarly there are various roads such as the Central Arnhem Highway, the road to Wadeye, roads from Cahills Crossing to Gunbalanya and to Cobourg National Park, and others for which the NLC has standing instructions. There are a number of other examples that it has not been thought necessary to document for the Review so far. The NLC is presently engaged in the exercise of obtaining instructions with respect to other areas of Aboriginal land. There is no basis for Mr Ciaravolo's observation on this point.
- 12 While the NLC has recorded views of claimant groups in some of the land claims subject to the Review strongly supporting permits for access, detailed consultations by the NLC are not warranted at this stage so far in advance of any possible grant. As mentioned in paragraph 5 above the system to enable permit applicants to download an App and obtain a permit on-line is to be established by the end of 2018, well before any possible grant of title.
- 13 Appendix A to the AFANT submission includes a question not included in any versions of the survey attached to earlier AFANT submissions about the land claims subject to the Review. With respect to Land Claims 141 and 129, question 16 asks respondents

~~“can you tell us how you accessed the river and where you got permission from?”~~

None of the earlier surveys have included this question. 88 of the respondents to this part of the survey answered the questions (no conclusion may be drawn from the 197 people who skipped the question). Similar sub-questions are included in questions 17 and 18 which ask about the areas of land claims 164(i) & (ii) and 164(iii). The permission referred to is for access to the place where the fishers want to go fishing. They are small samples but the responses are informative.

- 14 Of the 88 respondents to question 16, 32% said they got permission from 'traditional owners' and 68% from 'pastoral operation'. No respondent to the question volunteered a complaint about needing to get permission. Of the 36 comments included with the response to question 16 it seems that 26 respondents got permission from a pastoralist and 15 from traditional owners. Counted in the latter group are those who obtained permission from 'Max Gorringe' or 'Elsy Station', Mr Gorringe being the manager some years ago of the cattle operation on the Land Trust, and 'Elsy Station' being the original and current colloquial name of the property that is now Mangarrayi Aboriginal Land Trust. Similarly 'Jilkminggan' is a community within but not part of the land trust, where local traditional owners live. Some respondents obtained permission from both which is probably because they fished at more than one place from time to time.
- 15 The responses to question 16 clearly indicate that in circumstances where people needed to seek permission they did so without apparent complaint. The fact that the

perceived need to seek permission in the circumstances carries the necessary implication that permission may be refused, deferred or conditional, is also not a source of complaint.

- 16 Responses to earlier AFANT surveys where the idea of ‘permission’ was not broached in any questions, included comments that fishers entered via cattle stations with permission, and even that they paid to enter. Again, no complaint was made about paying in those circumstances.
- 17
- 18 The ‘surveys’ appended to AFANT submissions on the Lower Daly River Land Claim, Group 1 & 4 Land Claims, and also the Roper Valley Land Claims, all included questions carrying the inference that if the area(s) under claim were granted respondents would not be able to fish there. To labour this point-

Lower Daly Land Claim ‘survey’-

Questions 11, 23 and 24 ask for a response “if you could not...” (go fishing or move through the claim area); questions 9 and 25 invite a response to the proposition “...if access to all or parts of the claim area ...was changed or restricted?” or “If access was changed or denied...”

Group 1 & 4 land claims ‘survey’-

Questions 8 and 10 included the phrases “...if you could not go fishing...” and “...if people could not fish...”. Question 9 starts “If access was changed/denied in the future...”

Roper Valley Land Claims ‘survey’ questions 11, 13 and 14 virtually repeat the same phrases as in Group 1 & 4 land claims ‘survey’.

- 19 The repeated suggestions that access may be denied or restricted, without any direct question or information about the possibility of permission being provided by the traditional owners, may be the reason so many of the comments in the final section of those ‘surveys’ unreasonably rail against the land claims. In the circumstances those comments, as well as the other group of comments about permits (usually complaining in pejorative terms about the possible cost) should not be afforded any weight by the Review.
- 20 The responses to a direct question about where permission was obtained, mentioned earlier, are probably a much more balanced indicator about ‘permission’. Fishers who wanted to access areas where they needed permission seem to have readily sought permission without complaint. The concept of a permit system for areas that might become Aboriginal land was not included in any of the surveys.

- 21 Comments left in the various surveys show that some of the respondents seemed to have a level of awareness that a permit system could apply for entry to Aboriginal land, but many of the respondents were commenting about a situation post-grant in which they would not be able to fish the granted areas. As there is no explanatory material produced by AFANT that was provided to persons invited to participate in the survey, it is puzzling why so many respondents seem to believe, judging by their comments, that they would be prevented from fishing if the claimed areas became Aboriginal land. The answer may well lie in the way questions were phrased.
- 22 Financial cost and ‘detriment’: it appears that there has been a significant misunderstanding among a substantial number of the respondents to the surveys, perhaps a substantial majority. Of those respondents who commented about permits many seem to have assumed that there would be an objectionable cost associated with obtaining a permit. Again the reason for that belief is unknown. Given that so many questions and comments relate to the benefits to local economies, as also attested by the NT Submissions e.g. pp5-6 and again on p.13-16, and some of the ‘survey’ comments also record substantial sums expended on fishing outings that will be lost of access is ‘refused’, the possible modest cost of a permit must be seen in the context of the expenditures mentioned. Any fee would of course ultimately benefit the local NT economy in the same way as any other item of expenditure.
- 23 In our submission in the context of the claimed benefits to the economy of recreational fishing, all due to expenditure by fishers, the possible and modest cost of a permit would be a very minor detriment indeed, and would contribute an economic benefit to the economy, in the same as is claimed for all other expenditure.
- 24 In essence comments founded on an understanding that permission will be denied, seem to cast the traditional owners as ‘the other’ because in their essence these complaints suggest that traditional owners are not part of the broader community, and will not be reasonable in responding to desired access for recreational fishers. And that is in spite of the agreements for open access that were made some years ago to enable access to high value fishing areas on Aboriginal land. On that evidence traditional owners have demonstrated a capacity to recognise and respect broader community interests – whether in recreational fishing, or businesses that service tourism. As has been demonstrated by the responses to the only ‘survey’ question that directly asked about ‘permission’, it was obtained and no complaints were recorded. That goodwill should be reciprocated.

Minerals and Petroleum

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

- 25 Paragraphs 28 to 38 of the Submissions to the Review on behalf of the Claimants in the Group 5 land claims have already addressed issues raised by NTIO. Those submissions are adopted here.

Petroleum interests

- 26 The NLC and the Native Title Parties have entered into a comprehensive ILUA dated 26 June 2013 with Imperial Oil & Gas Pty Ltd with respect to EP 184. [NT Submissions paragraph zz.]. With regard to EP(A) 182 the NLC has also been involved in sacred site clearances and substantial negotiations towards an agreement with Imperial.

Pastoral

- 27 In the Submissions to the Review on behalf of claimants with regard to the Urupunga Stock Route we included information on the basis of which we submitted that it was a relatively simple matter for a party to ascertain the land claim status of the stock route. We concede that the same could not be said about land claim areas Nos.164(i) & (ii), and land claim No.141.
- 28 Insofar as the general remarks in paragraphs 41 to 53 of the Claimants Submissions to the Review in the Lower Daly Land Claim No.68 apply, they are adopted in these submissions. We also adopt paragraph 24 from Submissions to the Review on behalf of Claimants in the Group 1 and 4 land claims, as reproduced below under the Moroak and Goondaloo subheading, with respect to current pastoral operations.

NTCA

- 29 The letter dated 19 April 2018 from Mr Burke, the former CEO of the NTCA Two raises matters of general policy of the NTCA towards land claims and will not be addressed.

Moroak and Goondooloo – Mr Simon Hoar

- 30 Following an informal conversation with a member of the law firm that provided the submission on behalf of Mr Hoar, the proprietor of these properties, an email was sent to them the relevant text of which was –

“Just following up on how we are approaching detriment for pastoral lessees adjoining beds & banks land claims. The excerpt below is a dot point framework for a licence that I have cut out of submissions we made to the Review in another area. There’s a long way to go if the licence is to be developed into something acceptable to all parties. Also – it is on the basis of if or when the land is granted, and I would not be realistic if I did not think the ‘if’ is significant. In the case of Goondooloo where there is supporting infrastructure on the bank adjacent to the residence, the pastoral title goes to the top of the bank and I would expect that the lessee may want the security of having the same rights at the bottom of the bank as at the top in order to fully control that facility. All of this is subject to the instructions we receive from claimants – but given the nature of these land claims I can’t see a grant of title eventuating unless the lessee’s interests are accommodated first.

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

24. As with the claimants submissions to the Review in the Lower Daly Land Claim No 68 at paragraph 62 it is proposed that the “jeopardy” could be addressed as follows –

“... a licence to be provided to the station (and this could apply for pastoral lessees elsewhere in similar circumstances) that would reflect the current usage of the claim area by the adjoining pastoral lessee include the following essential features (this is not an exhaustive recitation of the elements of a proposed licence):

- (i) To permit those pastoral activities presently undertaken in the claim area – access for mustering (replacing s.27 *Livestock Act*), repair and maintenance of fencing (if any);
- (ii) Feral animal control;
- (iii) Assume obligations to comply with the *Weeds Management Act*, and other legislation relating to the environment;
- (iv) Term will run with the pastoral lease;
- (v) Fully transferable on sale of the pastoral lease without further consent (but on notice to the Land Trust);
- (vi) No licence fee (peppercorn);
- (vii) Non-exclusive;
- (viii) Replicate current rights of an adjoining landowner under sections 11 and 13 of the *Water Act*.” (NB the reference to s.13 was inadvertently omitted in the Lower Daly submissions)

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

The latter part of the email is copied from Submissions to the Review on behalf of the Claimants in the Group 1 and 4 land claims.

- 31 We understand the submissions for Moroak and Goondooloo contained information concerning the potential economic impact if the land claim was granted without making provision for pastoral activities. It is accepted that there would be financial impact relating to pastoral activities in those circumstances. To the extent that a pastoralist may not have a future opportunity to carry out a non-pastoral activity not currently being undertaken, in our submission potential loss must be regarded as speculative and not a matter of detriment.

Lonesome Dove

- 32 The submission on behalf of DK Pastoral Company Pty Ltd dated 28 May 2018 describes familiar concerns of pastoral lessees adjoining rivers:
- Watering stock and extracting water for station purposes; and
 - Stock movement.

We would propose to seek instructions from the traditional owners to offer the company a licence consistent with the terms set out in paragraph 24 reproduced above.

- 33 The submission also expresses concerns about having to deal with more than one group of traditional owners in future, to which we respond that the NLC would undertake traditional owner consultations and would be the party negotiating with the proprietor to finalise any agreement to enable the continued conduct of pastoral operations that are currently dependent on use of the claim area.

Flying Fox

- 34 The submission on behalf of the company dated 20 April 2018 also sets out the familiar concerns of pastoral lessees adjoining rivers (and the intertidal zone). We would propose to seek instructions from the traditional owners to offer the company a licence consistent with the terms set out in paragraph 24 reproduced above.

Big River

- 35 Although no submission has been made on behalf of Big River we would propose to seek the same instructions referred to in the immediately preceding paragraphs. The remarks about this run in the land claim report are noted.

Roper Bar Store and Caravan Park.

- 36 The submission on behalf of the Estate of Veronica Janushka (dec) [Estate] is unclear and incomplete. No submission has been provided on behalf of the liquidators of the company that operates the store and caravan park business, who according to the submission are attempting to find buyers “for the store and leasehold interests”. The untimely death of Ms Janushka has undoubtedly given rise to difficulties in framing the detriment submission.
- 37 A sale listing for the business and associated freehold real estate on the Real Estate Central Commercial website was endorsed “Under Contract” at the time of preparing these submissions. Whether a sale has happened is unknown. Any purchaser of the business should be on notice of the land claim and the business should be priced accordingly if it is considered that grant of the land claimed may

be adverse to the business. By accounting for it in the price, the economic effect of any detriment qua detriment should be very substantially diminished.

- 38 If the sale is completed there will be no detriment to the vendors, on whose behalf the detriment submission has been made. There is no record of intending buyers or their representatives approaching the NLC at this stage concerning mitigation of detriment. It is assumed the vendors would inform them of the land claim to enable them to consider appropriate measures to mitigate the detriment should relevant areas of land under claim be granted as Aboriginal land.
- 39 In the circumstances it is very difficult to accept the claim of economic detriment to the Estate or indeed any party connected to the land and business.
Roper Bar Caravan Park Lot 277
- 40 Lot 277 is located as shown on survey plan S.2016/094. NT Portion 281 on the same survey plan is to be included in Schedule 1 of the Land Rights Act and the Deed of Grant for that area will be delivered to the Yutpundji-Djindiwirrit Aboriginal Land Trust so that the land trust will then own the land between Lot 277 and the top of the Roper River bank.

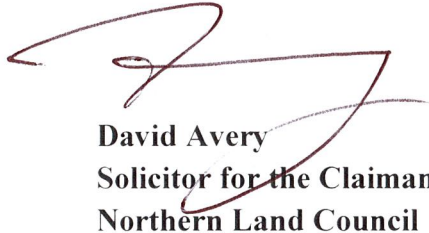
Brief comments on Aspects of NT Submissions

- 41 NT Addendum
Crown Land Estate –
- Paragraph c. Refers to the prospect of the remnant stretch of the Urupunga Stock Route (NT Portion 4717) being used for travelling stock with the possible detriment if stock can't access the river. In our submission given the absence of any pastoral properties in the area and the universal use of motorised transport to move cattle, along with the fact that the remnant leads nowhere, there is no prospect whatsoever of the land being used for moving livestock and hence no detriment arises with respect to access to the river.
- Paragraph d There is no police station located on or near the claim area.
- Paragraph e. With the construction of the all bridge at Roper Bar there is now all-weather access to the communities north of the river so that the use of the Fourmile Landing in the wet season by Police and others, referred to in the Report, is no longer necessary. (see separate comments relating to the Janushka estate).

Roads and Boat Ramps

We make no comments on public roads other than to observe that we do not agree that any of the boat ramps should be categorised as 'public roads'.

With regard to boat ramps, in our submission none should be excised from the land claimed and the appropriate measure to address detriment that may arise where boat ramps are immediately adjacent to a public road is for an agreement between the NLC on behalf of the respective claimants and the NT. In other cases we would propose an access agreement with the party (such as Mr Reed) which uses the facility.

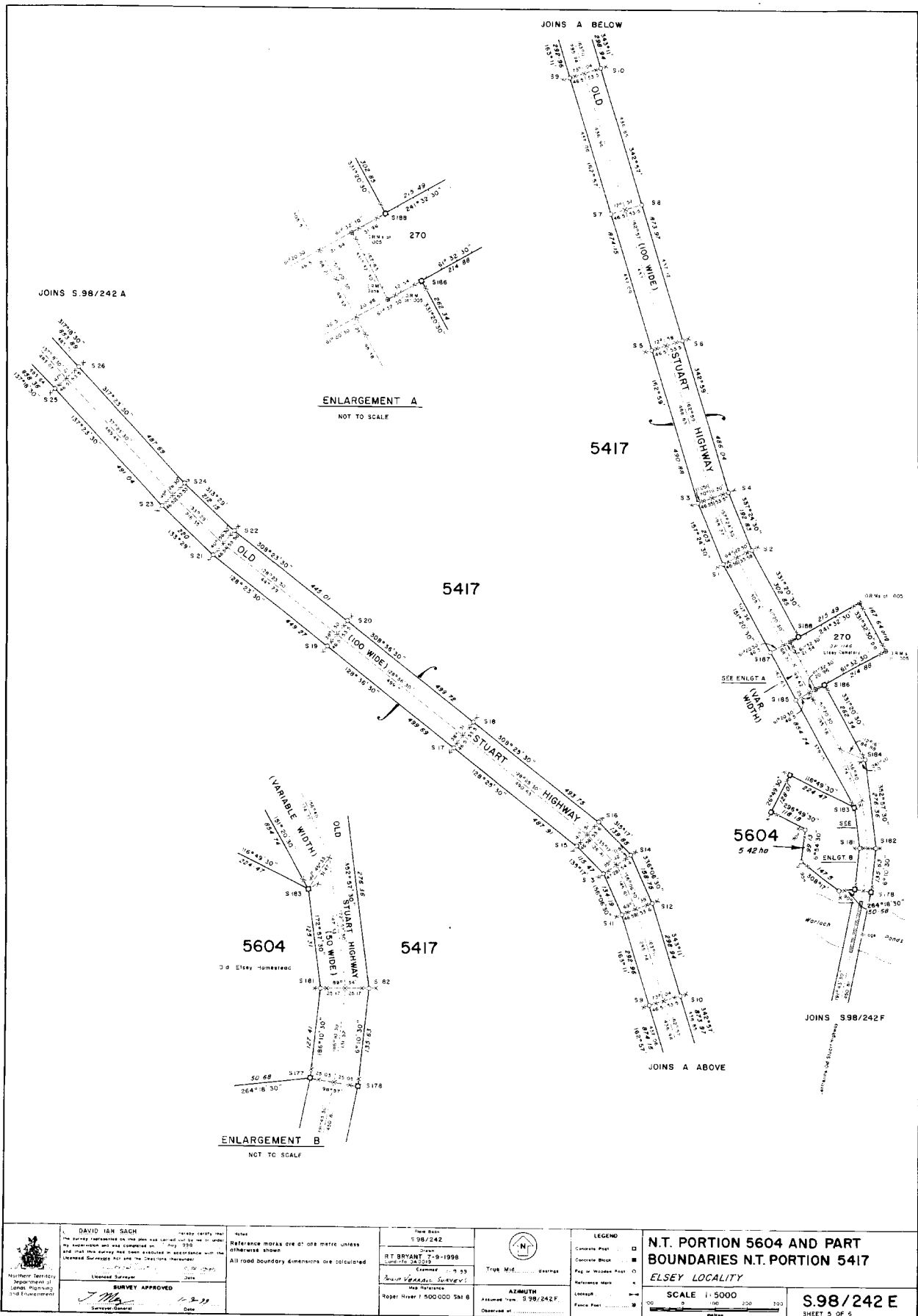


David Avery
Solicitor for the Claimants
Northern Land Council

1 September 2018

Attachments.

1. Survey plan S.98/242E for NT Portion 5604
2. GoogleEarth image of NT Portion 5604
3. Letter NLC to Executive Officer for Aboriginal Land Commissioner



	DAVID IAN SACH Licensed Surveyor Date: 01/08/2018	IAN SACH Licensed Surveyor Date: 01/08/2018	New Plan S.98/242E RT BRYANT, 7-9-1998 License No. 24239 Created: 5/53 Survey Reference Roper River 1:500000 SAI 8	TRUE MID. bearing	LEGEND Concrete Post □ Concrete Block □ Peg or Wooden Post □ Reference Mark □ Locust □ Fence Post □	N.T. PORTION 5604 AND PART BOUNDARIES N.T. PORTION 5417 ELSEY LOCALITY SCALE 1:5000 SHEET 5 OF 5
	SURVEY APPROVED Date: 01/08/2018		AZIMUTH Assumed from S.98/242 F Observed at:		SCALE 1:5000 0 100 200 300 METRES	

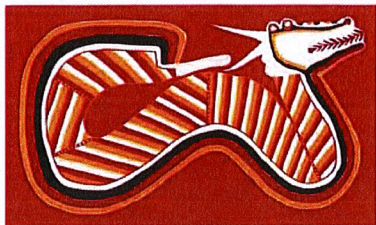
WARNING - Damaged or crossed plan will be rejected



Eisey Cemetry

Eisey Cemetry

Eisey Cemetry



Northern Land Council

ABN 56 327 515 336

Address all correspondence to:
CHAIRMAN
GPO Box 1222
DARWIN NT 0801

45 Mitchell Street, Darwin NT 0800
Phone: (08) 8920 5100
Fax: (08) 8945 2633
Freecall: 1800 645 299

10 March 2017

Anna Gilfillan,
Executive Officer to the
Aboriginal Land Commissioner
GPO Box 9932
DARWIN NT 0801

Dear Anna,

Re. Mataranka Area (NT Portion 916) Land Claim No.129

I refer to the discussion at the call-over in January concerning the grouping of beds & banks land claims.

We have no issue about the groupings, with the exception of the inclusion of the above land claim among beds and banks claim. It is the NLC's contention that NT Portion 916 should not be treated as a 'beds and banks' land claim and should be dealt with separately as a discrete parcel of land that is bounded, substantially, by beds and banks land claim No.141.

NT Portion 916 has been the subject of two land claims and two recommendations for grant. It was part of the Mataranka Area Land Claim heard in 1986, being recommended for grant in the Mataranka Area Land Claim Report No.29 (1988). It was described in the report as follows –

Area 6

2.13.1 An application with respect to Area 6 was first received on 11 March 1986.

It is described as:

All that parcel of land being Northern Territory Portion 916 as shown hatched on the attached plan, and all those beds and banks of and islands in all those parts of the Roper River in the Northern Territory of Australia that form the boundaries of the said Portion 916.

Relevant parts of the Report, were reproduced in paragraph 7 of the later Upper Roper River Land Claims Report (No.68):-

7. The Mataranka report was submitted on 14 December 1988. It contains findings of traditional Aboriginal ownership in respect of a number of areas of land in the Mataranka region including NTP 916, and a recommendation that those areas be granted to a Land Trust. In the report the Commissioner said of NTP 916:

2.13.2 The Area comprises 19.4 km2 of land located at the place where Elsey, Moroak and Roper Valley Stations meet. This is an area where the Roper River follows several channels. Portion 916 straddles those several channels and is contiguous with the Urapunga Stock Route (Area 4). This section of the River is non-tidal.

BORROLOOLA
PO Box 453
Borroloola NT 0854
Ph: (08) 8975 8848
Fax: (08) 8975 8745

JABIRU
PO Box 18
Jabiru NT 0886
Ph: (08) 8938 3000
Fax: (08) 8979 2650

KATHERINE
PO Box 396
Katherine NT 0851
Ph: (08) 8971 9899
Fax: (08) 8972 2190

NGUKURR
PMB 85
Via Katherine NT 0851
Ph: (08) 8975 4755
Fax: (08) 8975 4601

NHULUNBUY
PO Box 820
Nhulunbuy NT 0881
Ph: (08) 8986 8500
Fax: (08) 8987 1334

PALMERSTON
PO Box 1249
Palmerston NT 0831
Ph: (08) 8931 5500
Fax: (08) 8931 1875

TENNANT CREEK
PO Box 55
Tennant Creek NT 0861
Ph: (08) 8962 1884
Fax: (08) 8962 1636

TIMBER CREEK
43 Wilson Street
Via Katherine NT 0852
Ph: (08) 8975 0789
Fax: (08) 8975 0664

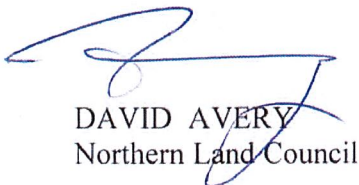
2.13.3 By notice in the Northern Territory Government Gazette No. G35 on 29 August 1980, Portion 916 was offered for lease to adjoining pastoral leases, the Minister for Lands having determined that it 'does not constitute an economic area and is suitable only for occupation as part of an adjoining pastoral lease'.

2.13.4 The Northern Territory objects to the competency of the claim insofar as it relates to the beds and banks of the Roper River where the River forms the boundary of a pastoral lease. From an examination of the titles to adjoining pastoral leases, this appears to occur in two instances. The River forms the northern boundary of the Elsey pastoral lease on the eastern side of that Station. For a distance of a little over 1 km, the southernmost channel of the River forms a common boundary between Portion 916 and this pastoral lease. The River also forms the southern boundary of Moroak, although in the south-eastern corner it extends only to the northern most channel. It is this channel which forms a common boundary between the Moroak pastoral lease and Portion 916 for a distance of several kilometers.

At the time the Upper Roper River Land Claims were heard in August and November 2003, Elsey Station was Aboriginal land held by the Mangarrayi Aboriginal Land Trust. Land Claim No 141 to the beds and banks of the Roper River was heard as part of the group of claims. The latter claim covers the bed and banks of the channel of the Roper River between NT Portion 916 and Moroak to the north, and another channel between NT Portion and Mangarrayi Aboriginal Land Trust on the south-west part of the southern boundary of NT Portion 916. In our submission it is not relevant that minor channels of the braided river system at this point may transect parts of NT Portion 916.

The relevant map of both land claims is reproduced in the Upper Roper River Land Claims Report. Attached herewith is a further larger scale map prepared by the NLC. There is a slight inaccuracy in the map in that it depicts the river between Mangarrayi Aboriginal Land Trust and NT Portion 916 as being part of NT Portion 916, which it is not.

Yours faithfully



DAVID AVERY
Northern Land Council

Cc Poppi Gatis, c/- Solicitor for the NT

BORROLOOLA
PO Box 453
Borroloola NT 0854
Ph: (08) 8975 8848
Fax: (08) 8975 8745

JABIRU
PO Box 18
Jabiru NT 0886
Ph: (08) 8938 3000
Fax: (08) 8979 2650

KATHERINE
PO Box 396
Katherine NT 0851
Ph: (08) 8971 9899
Fax: (08) 8972 2190

NGUKURR
PMB 85
Via Katherine NT 0851
Ph: (08) 8975 4755
Fax: (08) 8975 4601

NHULUNBUY
PO Box 820
Nhulunbuy NT 0881
Ph: (08) 8986 8500
Fax: (08) 8987 1334

PALMERSTON
PO Box 1249
Palmerston NT 0831
Ph: (08) 8931 5500
Fax: (08) 8931 1875

TENNANT CREEK
PO Box 55
Tennant Creek NT 0861
Ph: (08) 8962 1884
Fax: (08) 8962 1636

TIMBER CREEK
43 Wilson Street
Via Katherine NT 0852
Ph: (08) 8975 0789
Fax: (08) 8975 0664



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

Address all correspondence to:

Chief Executive Officer

GPO Box 1222 Darwin NT 0801
45 Mitchell Street Darwin NT 0800

P: 08 8920 5100 • F: 08 8945 2633

Freecall: 1800 645 299

www.nlc.org.au

ABN 56 327 515 336

13 November 2018

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

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

Dear Commissioner

Re: Detriment Review: Mataranka Area Land Claim No.69 – Area 4 – Urupunga Stock Route [NT Portion 2193]; Roper Valley Area Land Claim No.164 – Area (i); Mataranka Area Land Claim No.129 – NT Portion 916: Sale of Flying Fox PPL 1179 [NT Portion 4775.]

I apologise for this late correspondence concerning the above land claim areas. However, on 3rd November 2018, the ABC broadcast an item in its Country Hour programme reporting the sale of Flying Fox Station (the sale). A print-out of the news item from the ABC website is attached [Attachment 1]. In view of certain submissions made to the Inquiry I believe I am duty bound to bring the transaction to your attention because the sale is relevant to certain submissions that were made to the Review.

A search of the title confirms the registration of the transfer of PPL 1179 to Kupang Agricultural Management Pty Ltd was registered on 25 October 2018. The transfer was for \$8,900,000. [Attachment 2 – Search Certificate and pp 1 & 2 Record of Administrative Interests].

On Wednesday 12 September 2018 I received a phone call from Paul Maher Solicitors. The caller said they were acting on behalf of a possible purchaser of Flying Fox, and she was inquiring about the Urupunga Stock Route Land Claim. She followed the conversation up with an email [Attachment 3] saying that her firm was “acting for the proposed buyer” of the property, to which I responded the following day [Attachment 4 – letter NLC to Paul Maher Solicitors dated 13 September and enclosed map]. As you will note my letter also drew attention to the land claim over NT Portion 916 adjoining the western boundary of Flying Fox.

The sale is relevant to certain aspects of the submissions made by Flying Fox and on behalf of the NTCA as follows:

1. The submissions by Mark Sullivan on behalf of Flying Fox Pty Ltd, the owner of the lease, stated -

At the time of purchase (October 2003) the current owners undertook Due Diligence prior to purchase. During this process the Urupunga Stock Route was identified as Crown land and no reference to the land claim was discovered.

No mention of the pending land claim was offered by the vendors or their agents.

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

There was no way of knowing whether that was an accurate statement, but certainly the new owners could not say the same thing.

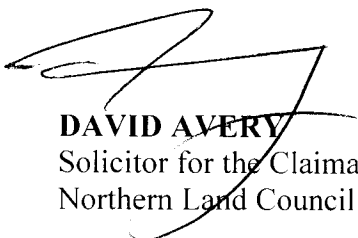
2. The submissions made on behalf of Flying Fox Pty Ltd are now largely irrelevant as a result of the sale, and should be accorded little weight. The issues of access and pastoral infrastructure on the stock route were detriment issues raised in the land claim, and the observations in this letter should not be taken as any indication that the claimants do not acknowledge the need for arrangements to be made that would enable the proprietor of Flying Fox access over the claim area to conduct pastoral operations on the pastoral lease
3. While we do not know whether the inquiry by Paul Maher Solicitors was on behalf of the eventual buyer of Flying Fox, from the timing we believe it was, and if so the buyer was informed of all of the land claims prior to purchase. In our submission the buyer has bought with notice of the land claims and the price would take into account the buyer's assessment of any risk involved.
4. The submission by the NTCA dated 4th July 2018 is also of less relevance in the light of the sale. The NTCA submission mentioned and discussed "Investor Insecurity" allegedly arising from land claims. In our submission that claim is also contradicted by the sale and it should be assumed that the buyer, being properly informed, has taken the existence of the land claims into account in making the purchase.

In our submission to the inquiry we commented about the NTCA submission as follows:

"The principal point Mr Nott seems to want to make is that land claims cause investor insecurity. Whatever is intended to be captured by the term 'investor insecurity' the point seems not to be well made in the context of this land claim."

The recent sale adds considerable weight to that submission: the land claim has not dissuaded the purchaser from investing in the purchaser, belying Mr Nott's assertion of "investor insecurity"..

Yours faithfully,



DAVID AVERY
Solicitor for the Claimants
Northern Land Council



Rural

NT's Flying Fox cattle station sells for \$8.9m, with potential for cotton development

NT Country Hour By [Daniel Fitzgerald](#)

Posted Tuesday at 05:04

The Northern Territory's Flying Fox Station has been bought for \$8.9 million by an Australian buyer who is potentially interested in developing the property for cotton.

The 89,500-hectare property sits on the Roper River, 540 kilometres south-east of Darwin, and was sold with about 6,500 head of Brahman cattle.

Documents obtained from the NT Land Titles Office show the cattle station was bought by Kupang Agricultural Management, a company registered in August, based in New South Wales.

Andrew Gray from Territory Rural, who sold the property alongside CBRE Brisbane, said Flying Fox Station had soil well suited to cropping, which had interested the buyers.

"Flying Fox includes large areas of black soil which I am advised is very similar, if not the same, as the black soil plains found in the Ord Valley," he said.

"The [previous] owners of Flying Fox had undertaken a range of development assessments on that property to trap overland water, not the rivers, just the normal flow of rivers across the land, and flood irrigate the black soil.



[The black soil on Flying Fox Station drew interest from a number of parties for its cropping potential.](#) Supplied: Flying Fox Station

Rural news in your inbox?

[Subscribe](#) for the national headlines of the day.

"The purchaser has seized upon that opportunity and will hopefully see some development in that space in regards to flood irrigation."



Flying Fox Station was sold with about 6,500 head of Brahman cattle. (Supplied: Flying Fox Station)

Potential for cotton development

Mr Gray said the new owners would initially be looking to sow improved pastures to allow the property to run more cattle.

"At this stage [development] will be slow and steady. There are areas cleared already and there are assessments being done on the soil and what type of pasture could be grown," he said.

"The black soil is lightly timbered with coolibah trees, so it won't take much to even leave the trees there and sow in between, but that's up to the new owners."

Flying Fox Station had a number of parties interested in its cropping potential, including a large Ethiopian cotton grower.

With the harvest of the Ord Valley's first commercial cotton crop since the 1970s, Mr Gray said there was "a real sense that cotton could be a massive industry for the Northern Territory".

"With the genetically modified cotton varieties we have these days, we don't have the fear of chemical over-sprays and the massive amount of difficulties that New South Wales and Queensland cotton growers have faced," he said.

"But we need a gin to gin the cotton, and while there isn't one in the Northern Territory, the likelihood of it happening today is probably greater than it was four or five years ago."

Flying Fox Station is one of a number of Top End properties to change hands in the past few months, with Mt McMinn, Margaret Downs and Edith Springs stations all selling since June.

Date Registered: 25/10/2018

Volume 829 Folio 652

Duplicate Certificate as to Title issued? No

SEARCH CERTIFICATE

PERPETUAL PASTORAL LEASE 01179

N.T. Portion 4775 from plan(s) S95/218A

Area under title is 895 square kilometres 80 hectares

Owner:

Kupang Agricultural Management Pty Ltd (ACN 628 156 114)
of Canonbar, Gundy NSW 2337

Registered Date	Dealing Number	Description
		Previous title is Volume 745 Folio 956
25/10/2018	910374	Mortgage Incanus Investments Limited
13/05/2015	849229	Miscellaneous Application - Non Pastoral Use Permit Number NPU 15/2
End of Dealings		

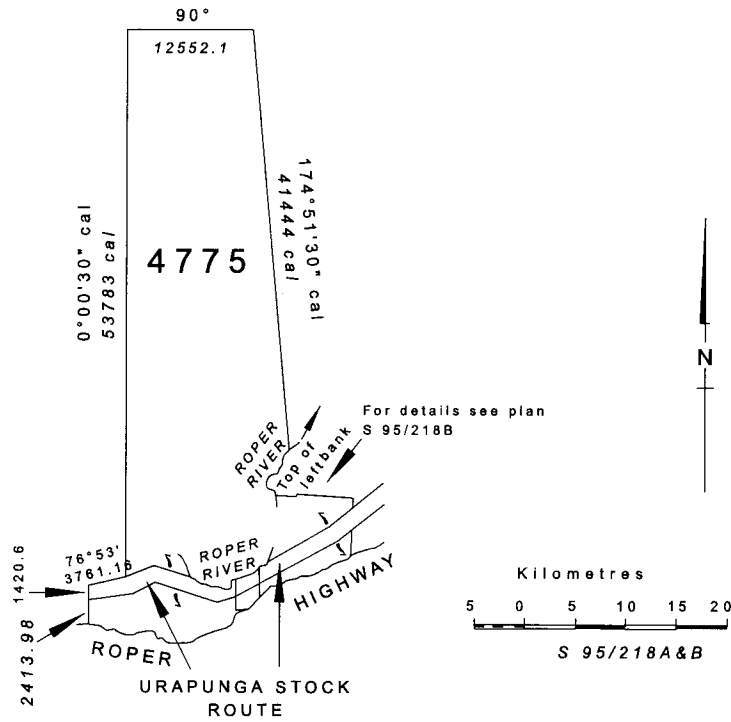
Commencement Date: 11th November 2003

Expiry Date: In Perpetuity

Conditions and Reservations:

The lease is subject to the conditions and reservations set out in Sections 38 and 39 of the Pastoral Land Act.

NOTE: Lease excludes Urapunga Stock Route



NOTE: The trigonometric surveys not being sufficiently advanced to enable the preparation of correct plans, this plan is issued on the distinct understanding that it is liable to correction on completion of surveys so as to secure original boundaries to prior applicants. All corrections of boundaries and areas to be subject to the approval of the Surveyor-General whose decisions in all cases shall be final.



NORTHERN TERRITORY OF AUSTRALIA

Record of Administrative Interests and Information

Record of Administrative Interests and Information

The information contained in this record of Administrative Interests only relates to the below parcel reference.

Parcel Reference: N.T. Portion 04775 plan(s) S95/218A

(See section 38 of the Land Title Act)

Note: The Record of Administrative Interests and Information is not part of the Land Register and is not guaranteed by the Northern Territory of Australia, and the NT Government accepts no Liability for any omission, misstatement or inaccuracy contained in this statement.

Registrar General

Government Land Register

(none found)

Custodian - Registrar General (+61 8 8999 6252)

Current Title

CUFT 829 652 (order 1)

Tenure Type

PERPETUAL PASTORAL LEASE 1179

Tenure Status

Current

Area Under Title

895 square kilometres 80 hectares

Owners

Kupang Agricultural Management Pty Ltd (ACN 628 156 114)
Canonbar, Gundy NSW 2337

Easements

(none found)

Scheme Name

(none found)

Scheme Body Corporate Name

(none found)

Reserved Name(s)

(none found)

Unit Entitlements

(none found)

Transfers

25/10/2018 for \$8,900,000
31/03/2010 for \$5,491,000
16/04/2009 for \$8,400,847
19/11/2003 for \$1,900,000
22/09/2000 for \$790,000
21/03/1996 for \$200,000
20/12/1995 for \$170,000
13/12/1995 for \$387,750

Tenure Comments

(none found)

Historic Titles

CUFT 745 956 (order 1)
CUFT 735 329 (order 1)
CUFT 668 810 (order 1)
CUFT 668 514 (order 1)
CUFT 668 480 (order 1)
CUFT 630 031 (order 1)
CUFT 463 083 (order 1)
CUFT 451 030 (order 1)
CUFT 450 024 (order 1)
CUFT 450 022 (order 1)

Visit the website http://www.nt.gov.au/justice/bdm/land_title_office/

Custodian - Surveyor General (+61 8 8995 5319)**Address**

10805 ROPER HWY, FLYING FOX

Property Name

FLYING FOX

Survey Plan

S 95/218A

Survey Status

Approved

Parcel Status

CURRENT

Parcel Area

895 square kilometres, 80 hectares

Map Reference

Code 670 Scale 500000 Sheet 00.08

Parent Parcels

N.T. Portion 00712 plan(s) S 931033

Parcel Comments

PROPERTY NAME 'FLYING FOX'. TELSTRA SITE NT POR 5116(A) OVER PART - S97/167.

Survey Comments

SUBDIVISION OF NT PORTION 712 'ROPER VALLEY'. SURVEY ON PLANS A & B.

David Avery

From: Cathy Hernandez-Cusi <cathy.hernandez-cusi@mahersolicitors.com.au>
Sent: Wednesday, 12 September 2018 11:51 AM
To: David Avery
Subject: Due Diligence Enquiries - NT Portion 4775 - Flying Fox Station

Dear David

Further to our telephone conversation this morning, I confirm that our firm is acting for the proposed buyer of NT Portion 4775. As part of the buyer's due diligence enquiries, I would be grateful if you could provide information on the Urapunga Stock Route (NT Portion 2193) land claim and the Roper River Bed and Bank land claim.

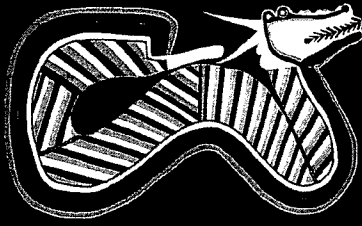
Thanks for your assistance.

Regards,

Cathy Hernandez-Cusi

PAUL MAHER SOLICITORS
cathy.hernandez-cusi@mahersolicitors.com.au
(08) 8941 4754
(08) 8941 4753
GPO Box 3478, Darwin NT 0801

This email and any attachments transmitted with it are intended solely for the use of the named recipient. It may contain information that is confidential and legally privileged. If you have received this email in error, please delete immediately from your system and notify us by return email or by telephone on (08) 8941 4754.



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

Address all correspondence to:

Chief Executive Officer

GPO Box 1222 Darwin NT 0801
45 Mitchell Street Darwin NT 0800

P: 08 8920 5100 • F: 08 8945 2633

Freecall: 1800 645 299

www.nlc.org.au

ABN 56 327 515 336

13 September 2018

Ms. Cathy Hernandez-Cusi
Paul Maher Solicitors
GPO Box 3478
DARWIN NT 0801

By email: cathy.hernandez-cusi@mahersolicitors.com.au

Dear Ms. Hernandez-Cusi.

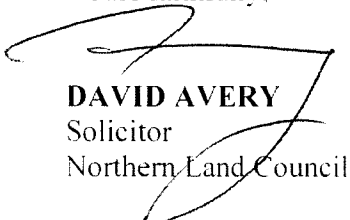
Re: Mataranka Area Land Claim No. 69 - Area 4 - Urupunga Stock Route [NT Portion 2193]; Roper Valley Area Land Claim No. 164 – Area (i) - Roper River bed and banks between NT Portions 4775 and 4972; Mataranka Area Land Claim No. 129 – NT Portion 916.

You have requested information about the first two land claims mentioned above as they affect NT Portion 4775 (Flying Fox). Both land claims have been recommended for grant, and on behalf of the traditional owners the NLC continues to seek grant of them to a land trust.

Recent submissions on behalf of the claimants to the 'Review of Detriment on Aboriginal land claims recommended for grant but not yet finalised' currently being conducted by the Aboriginal Land Commissioner, recognised the need to reach agreements with pastoral leaseholders to address ongoing use of the stock route area and the Roper River bed and banks for normal pastoral activities, including cattle management, access, and pumping and piping water from the river for domestic and pastoral purposes. Any agreements would be made pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976*

Mataranka Area Land Claim No.129 over NT Portion 916 (see map attached but note NTP 916 does not include the banks or bed of the Roper River) adjoins the western boundary of Flying Fox. This area has also been recommended for grant (in two separate land claims) and the NLC continues to seek the grant of it to an Aboriginal Land Trust.

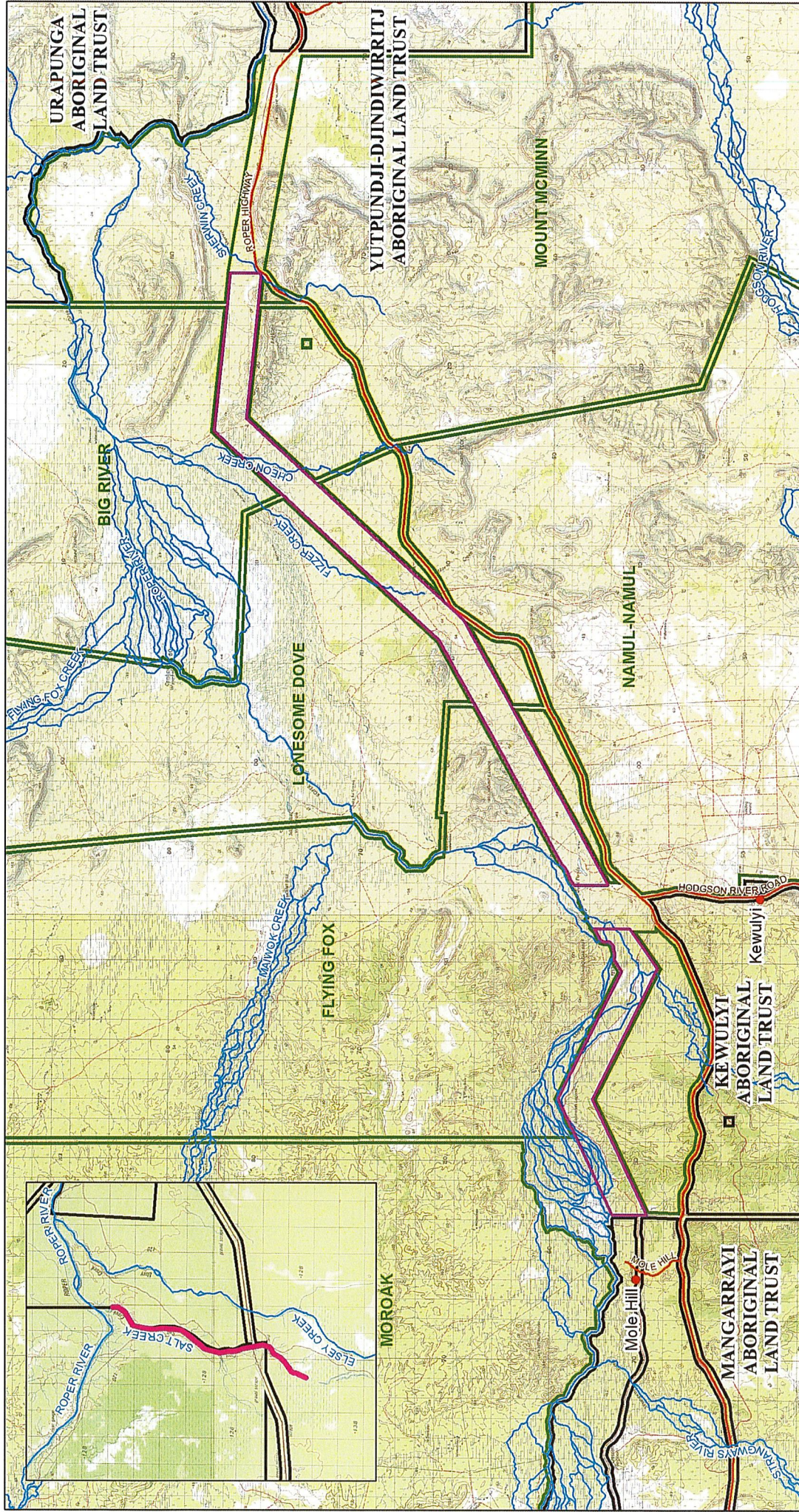
Yours faithfully,



DAVID AVERY
Solicitor
Northern Land Council

Attachment: NLC map of NT Portion 916

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

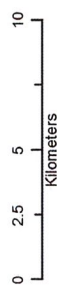


LIR Request

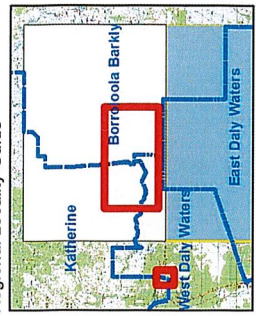
Mataranka Area Land Claim No. 69
 Date: 3/01/2018
 GIS#: 2017_0952_A3
 Requesting Officer: Matilda Hunt

Legend

- Major
- Minor
- Family Outstation
- Town Camp
- Rivers
- Roads
- Pastoral Properties
- Land Trust
- Salt Creek Beds and Banks (Part of Area 3)
- NTP 2193 (Area 4)



Regional Locality Guide



Mapsheet Locality Plan

5669	5769	5869
5668	5768	5868
5667	5767	5867