ABORIGINAL LAND COMMISSION (N.T.)

PO Box 2369, Darwin NT 5794
Telephone 816461
23 June 1975

The Hon. L R Johnson,
Minister for Aboriginal Affairs,
Parliament House,
CANBERRA, A.C.T. 2600

My Dear Minister,

I am honoured to present to you the report on my first investigation since my appointment as Interim Aboriginal Land Commissioner. Four copies are enclosed.

To the extent that any of the recommendations I make happen to meet with your approval, may I suggest that it is of the utmost importance that a statement be made at the earliest opportunity indicating the area of land to be granted, and the manner and conditions of the grant, so that people, Aboriginal and otherwise, may know exactly what is to be expected. The statement, in my opinion, should contain some explicit reference to any easements to be included.

At present I am engaged on my second task, an inquiry into a claim for Railway or One Mile Dam, and should be able to let you have a report on that fairly shortly.

Belated though this may be, would you kindly accept my congratulations and best wishes on your appointment to your new office.

Yours sincerely

Signed

R C Ward

Interim Aboriginal Land Commissioner.

Summary of Recommendations.

A. That a Special Purpose Lease in Perpetuity be granted under section 5B of the Special Purpose Leases Ordinance 1953 as amended over the whole of the area enclosed by the purple line in annexure "C" for the purpose of establishing, developing and maintaining a communal settlement for the use of the Larrakia and other associated Aboriginal people and ancillary purposes (paras. 43, 44).

B. That the lease be granted to trustees nominated by the Northern aboriginal Land Committee (Incorporated) or the Northern Land Council (as the case may be) having due regard to what the relevant law is or is anticipated as being at the relevant time (para. 45).

C. That the rent of any such lease be nominal, that there be no onerous improvement conditions, but that all conditions be broad and flexible, with conditions designed to preserve the existing environment where it has significance and is capable of preservation (para. 46).

D. That the lease contain provisions preserving the private and public rights now subsisting in respect of land including and the north of Section 3522 on the west of and to the mouth of Ludmilla Creek (para. 39).

E. That the lease contain an easement for the public to pass and repass over what is regarded as the beach area, the area and terms of any such easement to be determined only after full consultation with Aboriginal people affected by it (para 41).

F. That the lease contain such other easements for sewerage, drainage, water and other services as are reasonably required in the public interest, all such easements to be located and defined only after full consultations with the Aboriginal people affected (para.42).

G. That all public roads within the leased area be closed (para. 49).

H. That for the purpose of giving effect to the above recommendations the following lands within the boundaries of the lease be acquired either by agreement or compulsorily with funds to be sought under the Aboriginal Land Fund Act 1974 –

   a. The relevant parts of Section 4544 and 4545 (paras. 25, 26).
   b. The relevant part of Section 4542 (para 29).
   c. Section 4556 (para 30).
   d. Section 4557 (para 31).

I. That the Corporation of the City of Darwin be reasonably compensated for money thrown away by it in respect of the garbage dumps in the area (para 38).

J. That in the event of those parts of section 4543 and 4544 (outside the fenced area) east of the boundary of the leased area no longer being required for primary school purposes they be made available to the claimants and for that purpose the remaining relevant part of section 4544 be acquired either by agreement or compulsorily (para 45).

K. That in the event of section 4815 ceasing to be required for its present purposes it be acquired either by agreement or compulsorily and made available to the claimants (para 33).

L. That whatever legislative changes are necessary be examined to ensure that municipal rates are not payable in respect of the land while it is used for the purposes recommended in this report (paras 49, 50).

Signed

R C Ward

Interim Aboriginal Land Commissioner.

23 June, 1975

Report of the Interim Aboriginal Land Commissioner on the Kulaluk Land Claim

1. My first task on assuming appointment as Interim Commissioner was the attempted resolution of the Kulaluk land claim.

2. After contacting Messrs Lovegrove and Ford, senior officers of your department in Darwin, and obtaining from them the relevant papers, I spoke to Mr T A O'Brien, Secretary of the Department of the Northern Territory, who readily offered the assistance of his Department and arranged for my regular and immediate contact to be his First Assistant Secretary, Lands and Community Development Division, Mr V T O'Brien.

3. Discussions with these officers convinced me that the problems involved were so complex and varied that the holding of a public enquiry was the best course to take. Accordingly I arranged for the notice, annexure "A" to be inserted in the "NT News" newspaper on 8th, 9th and 12th May 1975 and the NT Gazette of that week.

4. Public hearings were held on 15th, 22nd, 26th and 28th May 1975. On the morning of 27th May 1975 I attended with departmental officers and others to inspect the land the subject of the claim, and to hear what Mr Bobby Secretary, Mrs Topsy Secretary and Mr Johnny Fejo, as representatives of the Larrakia, wished to tell me about it.

5. In the course of the enquiry I took oral evidence and written submissions put to me by Mr Bradley for the Northern Land Committee (Incorporated) and Mrs N Withnall for Paspalis Drive-In Theatre Pty Ltd.

8. The Darwin cyclone and the setting up of the Reconstruction Commission to carry out planning functions in Darwin put an end to the proposal that there should be further interdepartmental negotiations.

12. Section 56 of the [Darwin Reconstruction] Act [1975] provides, inter alia, that during the prescribed period a freehold or leasehold title to Crown Land in the Darwin area shall not be granted without the concurrence of the Commission.

13. It was obviously necessary for me to obtain, if possible, approval in advance from the Commission for anything which I might be disposed to recommend. Arrangements were made for Mr David Hain, the Commission's Chief Planner, to be available and give evidence before me as might be necessary. Mr Hain in fact rendered valuable assistance.

14. A new planning factor introduced by the Commission was the tidal surge line concept. Originally it was intended there should be two lines of tidal surge, one 10 metres above the town datum and the other 10.8 metres above. These were called respectively the primary and secondary surge lines. The Government proposed acquiring as soon as possible all residential land held below the 10 metre line and giving the option to the residential landholders within the boundaries of the 10 metre and 10.8 metre lines of having the land acquired or continuing to live on it.

15. While the inquiry was proceeding it was announced that the primary surge line was reduced to 8 metres and the secondary line to 9.5 metres. The same acquisition principles were to apply to the revised areas respectively. The revised surge lines are shown on the plan, annexure "C".

16. The lines marked 25 NEF and 30 NEF on the same plan are intended to represent the noise exposure factors arising from the aerodrome flight path. It would be the policy of the Commission not to permit residential development within the 30 NEF limits and to discourage it within the 25 and 30 NEF limits.

18. Dealing with the Kulaluk claim as it was advertised (the area enclosed by the green line in annexure "C"), Mr Hain said there were no town planning objections to the proposals. There could be objections only if the claim were extended to take in additional areas which the Commission regarded as more appropriate for other and existing uses. The camping, communal and conservation purposes proposed for the land originally claimed would be completely compatible with the Commission's planned use of land in Darwin.

33. Section 4815 (Retta Dixon Homes), although in the claim as extended at the hearing, has now been excluded. However, as requested by the claimants, I recommend that, if and when it is no longer required for its present purpose, it be made available to them.

34. The next features to be considered are the two garbage dumps, the northern one shown as "proposed", and the southern one as "existing". These are on vacant Crown land but have been operated by the Corporation of the City of Darwin. The use of the "existing" one has almost ended but little more than the preparation of the sire for dumping purposes has been done in the case of the "proposed" one.

35. For some time the City Corporation has been concerned about its lack of title to the land, which it considered should be vested in it for the purpose of the raising and levelling which has taken place. In fact this is the same type of use contemplated by the Aboriginal people, who propose using this land for sporting ovals.

40. Turning now to the coastal area, the Lands Branch changed its viewpoint during the course of the hearing. The Lands Branch originally contended that any lease should only be to high water mark. In the case of the land in question, this was some distance east of what appears as the coast line in the plan, annexure "C", on a line of beach running approximately north and south, more or less in the position of the roadway which is shown to the east of the dotted area along the coast (this is in fact mangrove swamp regularly inundated by the tide). The Lands Branch came to realise the importance to the Aboriginal people of the mangrove swamp and conceded that this was a special case. To avoid the difficulties involved in defining with particularity the outline of what might be described as the coast itself, it was suggested that the area to be granted in the special purposes lease be enclosed by the line shown as the western boundary and coloured purple in annexure "C", proceeding from a point on the southern or western boundary of Ludmilla Creek northerly, but west of the coast line to the northern boundary of the area claimed. As the line is drawn by way of definition only, so fixing it does not conflict essentially with the government view expressed in para 6(b) above, about not including any areas of sea.

41. The Lands Branch also expressed the opinion that persons other than Aborigines should have free and unrestricted access to the beach area east of the mangroves in conformity with its principle that all beaches should be available for public use. It considered that to make an exception in this case would create a precedent which other persons and bodies having beach frontage would seek to exploit. The fact is, of course, that at present the public not only has a right of access to the beach but to the great bulk of the area claimed. Although the opinion of the Aborigines is that they should have exclusive rights to the beach (and in this case, situated

as it is, I understand the significance they attach to it), I consider the Lands Branch attitude to be reasonable and I would recommend the inclusion in any lease of an easement allowing the public a right to pass and re-pass on foot over the beach area, which the Lands Branch would have to define specifically prior to the grant of the lease. In my view very few of the public are likely to seek the use of the beach. In any event, in defining the area and terms of the easement it is important that there be full consultation with the Aboriginal people. The grant of the easement would conform with the governmental approval referred to in para 6(b)(iii) above.

42. In addition to the beach easement a number of other easements for sewerage, drainage, water and other services will necessarily be involved. As far as possible these also should be defined only after full consultation with the Aboriginal people. Particular regard should be had as far as possible to ensuring that the easements do not intrude on any areas which the Aboriginal people might regard as being of some special significance to them. Again this accords with the principle set out in para 6(b)(iii) above.

43. Accordingly I recommend that there be made available for Aboriginal purposes the whole of the area enclosed by the purple line on the plan, annexure "C". Questions then arise as to the nature of the grant to be made, its purpose, to whom it is to be made, and its conditions.

44. In my view the lease should be a Special Purpose Lease in perpetuity for the purpose of establishing, developing and maintaining a communal settlement for the use of the Larrakia and other associated Aboriginal people and ancillary purposes. The Larrakia themselves have indicated their agreement with other compatible Aboriginal people having the use of the land, which, in area (some 847 acres) would appear to require a use more extensive than that of the Larrakia alone.

45. Mr Justice Woodward in his second report expressed the view that the title should be held by trustees nominated by the Northern Land Council (para. 295). The Aboriginal Land (Northern Territory) Legislation would establish a Northern Aboriginal Land Council. The role this body would perform is at present performed by the Northern Aboriginal Land Committee (Incorporated), registered under the Associations Incorporated Ordinance 1963. If it was desired to proceed with the grant of a lease prior to the passage of the proposed

legislation, the trustee could be nominated by the existing committee. Regard should be had to Part IV of the proposed Aboriginal Land (Northern Territory) legislation.

46. Since the land will be used primarily for Aboriginal communal purposes, I would recommend that the rent of the lease be nominal, that there be no onerous improvement conditions, and that all conditions be broad and flexible. There should be conditions designed to preserve the existing environment where it has significance and is capable of preservation.

47. It will be necessary to close all public roads on the land to be leased and I recommend that this be done.

48. In the event that these recommendations are accepted, the result would be that the relevant group of Aboriginal people would be granted a lease of an area of some 847 acres – and area in excess of the area which was originally the Bagot Reserve. The sorry history shown by dissipation of that reserve for other than Aboriginal purposes is set out in Mr Justice Woodward's second report, paras. 305-326. The area now proposed to be granted does not take into account the existing Bagot Reserve, which has a separate and residential purpose. Acceptance of the recommendations in this report would be the first step in putting into effect what Mr Justice Woodward proposed in para. 285 of his report.

49. However, there is a problem of some magnitude. As the law now stands, holders of the Special Purpose Lease, if approved, would be obliged to pay municipal rates, which because of the size of the area involved, would be very considerable. Section 175C of the local Government Ordinance 1954 as amended provides that subject to Section 175B, all land in the municipality is ratable land [sic]. Section 175B is as follows –

1. Unleased Crown Land in a municipality is not ratable if it is not occupied by a person other than the Commonwealth.
2. Land in a municipality is not ratable land if it is land which is exempt from payment of rates by reason of the provision of an Act or Ordinance other than this Ordinance.
3. Land in municipality is not ratable land if it is –
    (a) land which is used as a public reserve, public park, public sports ground, public playground, public garden, public cemetery or public road;

(b) land on which is built a church, chapel or building used exclusively for public worship or a building used solely for the accommodation of the official head of a religious denomination or order in the Territory or of ministers of religion or members of a religious order;

(c) land which is used or occupied for the purposes of a public hospital, public benevolent institution or public charity;

(d) land which is used or occupied solely in connexion with a school or kindergarten or an institution declared by the Administrator in Council to be a youth centre;

(e) Land which is used or occupied solely for the purposes of a public library or public museum;

(f) land which is owned by a council but not leased or let for private use; or

(g) Crown land which is leased at a nominal rent to a person employed by the Commonwealth as a caretaker of that land.

50. Annexure "D" is copy of a submission made to me on this issue by Mr [Hugh] Bradley, Counsel for the Northern Aboriginal Land Committee (Incorporated). Obviously a change in the law is required to meet this particular case and I recommend that your Department, with the services of a legislative draughtsman, undertake the task of meeting the situation.

R. C. Ward,
Aboriginal Land Commission,
Darwin

23 June 1975

ANNEXURE "D"

12 June 1975

Mr Justice Ward,
Law Courts Building,
Mitchell Street,
DARWIN, NT

Dear Sir,

Re: KULALUK LAND CLAIM

We thank you for the opportunity of making a further submission to you in relation to the question of rates.

Whilst we are without specific instructions from the applicants themselves we feel that the tenor of their past instructions were such that we can confirm the writer's observations made to your associate on the 10th June.

The proposed Aboriginal Land Act does not, it would seem from the drafts, intend to deal with the question of rates applicable to town lands occupied by aboriginals. It therefore seems that there will be no exemptions pursuant to 175 (B) 2 of the Local Government Ordinance 1954-74.

The Northern Land Council would never propose that all land occupied by aborigines be exempt from rates however for the following reasons it believes that some special consideration should apply –

1. The land to be granted by this Commission will usually have an element of public use insofar as it is in the Kulaluk case (and in others to follow) land which is to be available to all compatible aborigines;
2. Some of the land is land which would not, in the ordinary course, be used by other members of the community for their own benefit. In the particular instance the land is substantially below the primary surge line and within the 25 NEF lines;
3. The aboriginal people are simply not capable of meeting the rates in respect of an area the size of the Kulaluk claim.
4. The local community and the its representative body (CCD) need do little if anything to service the claim for aboriginals who intend to occupy it;

5. Some of the areas claimed by aboriginals are intended to be used for the benefit of the public as a whole;

The applicable sections of the Local Government Ordinance do not make it clear whether part only of a lease can be subject to rates and perhaps the better view is to look at the use the land is put to in a general way.

No matter what view is taken on the above it seems that none of the provisions of Section 175 B (3) are sufficient to exempt Kulaluk from being liable to rate charges.

Perhaps however, you would consider that an appropriate amendment to this section (175 B (3)) would be sufficient to resolve the difficulty in relation to both present and future claims to by Aborigines.

We do not believe that the Aborigines would have any objection to paying rates in respect of land which they put to a use that members of the wider community would pay rates in respect of. We mean that no objection to rates would be made in respect of that part of the land which was used for a commercial undertaking or for the construction of permanent serviced homes.

For the above reasons we submit that a further subsection be added to Section 175 B (3) of the Ordinance and ask you to recommend that a draughtsman be instructed accordingly.

Yours faithfully,

WARD KELLER

Per: H. Bradley