



Northern Land Council

Kenbi Land Claim

Kenbi (Cox Peninsula) Land Claim – Background and Timeline
30 January 2009

Timeline – the last ten years...

2000 **December** - Justice Gray delivers his report to the Federal Minister for Aboriginal & Torres Strait Islander Affairs and to the Administrator of the Northern Territory, and in relation to the Kenbi Land Claim, recommends that:

“the whole of the land claimed... be granted to a land trust, for the benefit of all Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.”

2000 to present the Northern Land Council (NLC) undertakes consultations, pursuant to the *Land Rights Act*, with the traditional Aboriginal owners of the land; other Aboriginal people with traditional interests in the land; and any affected Aboriginal community or group.

2001 **18 August** Labor government voted into Northern Territory Legislative Assembly for the first time ever – led by Clare Martin who changed the NT government’s strategy from opposing to settling the Kenbi Land Claim.

2002 The NLC, the Aboriginal claimants and the Northern Territory Government (NTG) begin negotiating a proposed settlement agreement.

2009 **30 January** – the Northern Territory Government (NTG) announced that the Larrakia claimants, the Northern Land Council (NLC) and the NTG have reached in principle agreement on the settlement of the Kenbi Land Claim.

The land claim can only be granted as Aboriginal land by the Federal Government.
The Federal Minister will not make a decision to hand back the land until the interests of all stakeholders on the Cox Peninsula are considered. This includes those who were identified by the Land Commissioner as suffering “detriment” (eg Telstra, Federal Government departments), and those who would not suffer detriment, but will nevertheless be affected by the grant of land (eg squatters at Bynoe Harbour).

Timeline – the last 32-years...

1977 **26 January** - Almost all the provisions of the *Aboriginal Land Rights (NT) Act 1976* come into operation. An area of 4,091 hectares, designated as Delissaville, became Aboriginal land – that land is now known as Belyuen on the Cox Peninsula (across the harbour from Darwin near where Mandorah is situated).

1978 **29 June** – the Dum-In-Mirrie Island Land Claim No. 18 lodged by Northern Land Council on behalf of claimants, Bobby Secretary, Tommy Lyons, Olga Singh and Prince of Wales. This claim is later withdrawn (26 June 1979) and becomes part of the present Kenbi Land Claim.

Date unknown - Prior to the present claim and prior to NT self-government the NLC wrote to the Lands Branch of the Department of the Northern Territory foreshadowing the application and asking that no step be taken to alienate any of the land over which the claim was to be made.

29 December - The first ever NTG under Chief Minister, Paul Everingham uses the *Town Planning Act* (NT) and gazettes new Darwin Town Land Boundary *effectively increasing the city of Darwin to three times the size of greater London* - from an area 124 square kilometres to approximately 4,350 square kilometres with Darwin's population approximately 50,000. Parts of the new town plan were 120 square kilometres by road from Darwin. Land claims cannot be made within town boundaries. The Cox Peninsula which is now the subject of this land claim falls within the new town boundaries.

1979 **20 March – Kenbi Land Claim application lodged with Aboriginal Land Commissioner, Mr Justice Toohey by the Northern Land Council on behalf of Larrakia traditional owners.**

26 June – Kenbi Land Claim initial hearing commences. The NLC challenges the validity of the 1978 regulations on the basis that their promulgations was not a proper exercise of the regulation-making power under the *Town Planning Act* (NT) and that the this act was for the ulterior purpose to defeat the impending land claim.

3 August – the *Town Planning Act* (NT) was repealed and the *Planning Act* 1979 (NT) came into operation including the Planning Regulations.

20 December – Justice Toohey rules that the Planning Regulations are valid and that land covered by the regulations was not available for claim, and therefore not able to be heard by Justice Toohey.

1980 **March** – Justice Toohey rules that Cox Peninsula is no longer unalienated Crown land after the NTG declared the land as part of the Darwin town plan.

The NLC appeals to the High Court on the grounds that the claim was lodged well before the NTG made this proclamation, and that the NTG's subsequent actions were irrelevant to the claim.

27 June - Justice Toohey rules that four islands off the Cox Peninsula near Darwin are unalienated crown land and can be claimed – Bare Sand, Quail, Dum-in-Mirrie and Indian Islands.

Since 1942 Quail Island is used by the RAAF as a bombing range.

1973 – Four Aboriginal people camp on Quail Island during a bombing exercise in protest over the bombing.

1974 – The people of Delissaville (now known as Belyuen) sign a petition asking for the bombing to stop – despite this bombs were dropped in the area up to 1979.

1981 **24 December** – In a landmark decision the High Court rules in favour of the NLC's appeal against the Toohey ruling that the Land Commissioner was in fact able to hear the claim. *R v. Toohey; Ex parte Northern Land Council* (1981) 151 CLR 170.

But for the claim to be heard, the claimants needed to examine documents used by the NT Government to make the 1978 Town Planning regulations and the subsequent 1979 Planning Act.

1984 The NTG claimed the bulk of the documents were privileged. Following years of legal to-ing and fro-ing, the next Aboriginal Land Commissioner, Mr Justice Kearney, finally ruled on **3 February 1984** that the NTG produce all documents.

1985 The NT appealed to the Federal Court of Australia against the ruling, where a Full Bench found against it. The NTG appeals to the High Court its appeal is dismissed on **25 September 1985**.

The next Land Commissioner, Mr Justice Maurice, then set aside dates in March, April and June 1987 for hearings to challenge the validity of the Town Planning regulations.

1988 Before the hearings started the NT argued that Maurice should disqualify himself from hearing arguments on the grounds of bias – based on comments he made that could be construed as critical of ministers in the NT Government - and went to the Federal Court again for an order restraining him from hearing the claim. The Full Bench upheld the NTG argument and the High Court refused the NLC leave to appeal. (**At March 1988**)

May- Mr Justice Howard Olney is appointed as new Aboriginal Land Commissioner.

8 December - Aboriginal Land Commissioner Mr. Justice Olney rules that the Kenbi Land Claim can go ahead. He finds that the NTG's 1978 widening of Darwin's town planning boundaries was "*planned, from start to finish, ensuring that no Aboriginal land claim can now go ahead on the subject area*". During the hearings NT Chief Minister, Marshall Perron – who was Lands Minister in 1978 – admitted that he was determined to stop the claim.

23 December – The NTG filed an application with the Federal Court to quash this ruling because, it says, it contains "errors of law". It also asked for the Federal Court to disqualify Justice Olney from any further hearing of the claim – the second time it has called for an Aboriginal Land Commissioner to be disqualified in the long history of the Kenbi Land Claim.

1989 **28 June** – the Federal Court dismisses the NTG's application. The NTG then applies to the High Court for special leave to appeal against the Federal Court's decision – but is refused (**15 September**).

13 November – Kenbi Land Claim commences before Olney J at Belyuen, on the Cox Peninsula where Larrakia claimants present their evidence. The inquiry occupies 30 sitting days, the last of which was 8 December 1990.

1990 **21 May** – NTG presents evidence of detriment to Land Commissioner Olney, arguing that the land is needed to accommodate an expansion of population in the long-term. But Darwin's population is in decline for the last two years and had just levelled out to zero population growth.

July – Olney J continues to take evidence by Larrakia claimants in Darwin and Belyuen.

1991 **22 February** – Olney J announces that the 13-year-old Kenbi Land claim is

unsuccessful because there was only one person remaining of the Danggalaba clan within the Larrakia with enough knowledge of sacred sites on the Cox Peninsula to be recognised as a traditional landowner. Olney J. said there must be at least two people to satisfy the definition of traditional land ownership under *Aboriginal Land Rights (NT) Act 1976*. The *Land Rights Act* requires the Commissioner to recognise a ‘local descent group’.

Olney J. further said that had another member of the Danggalaba clan, who died in 1989, been alive at the time of the hearing she would have been likely to satisfy the definition of traditional land owner and the land claim may have succeeded. He added that “...*the ravages of time had severely depleted their [Larrakia] numbers*” and said the Land Rights Act was inadequate in dealing with people like the Larrakia.

The Larrakia say the NTG had been able to defeat their legitimate claim by delaying the case with court action since the first claim was lodged in 1978. As a result, the elders with the knowledge necessary to prove the claim had died.

Further the Larrakia say the NTG has exploited the legal victory by refusing to negotiate with them and saying the matter was “not open to discussion”.

The NTG has offered less than 5% of the original claim area and claims the rest of the Cox Peninsula is required for Darwin’s suburban development and a deep-water port – despite the fact that Darwin has one of the lowest rates of population growth of any Australian capital city.

11 April – NLC appeal Olney’s decision in the Federal Court arguing that Olney J made serious errors in law in his consideration – specifically that he only considered patrilineal links in determining who traditional owners were. The NLC contends he should also have considered matrilineal links as well.

1992 **27 February** - The Federal Court uphold the NLC’s appeal and sets aside Justice Olney’s findings, and orders it to be re-heard by an Aboriginal Land Commissioner. In the meantime, Justice Olney’s term expires and Justice Gray is appointed new Aboriginal Land Commissioner.

1995 **16 October** – Justice Gray commences a further inquiry into the claim which occupies 57 sitting days and runs until 4 June 1999.

1999 Justice Gray completes his inquiry.

2000 **December** - Justice Gray published his report and in relation to the Kenbi Land Claim, recommending that:

“... the whole of the land claimed be granted to a land trust,...for the benefit of all Aboriginal people entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.”