

**SUBMISSION FROM  
THE MIRRAR PEOPLE**

**TO THE  
UNESCO WORLD HERITAGE  
COMMITTEE  
ICCROM & ICOMOS**

In relation to the Australian Government's Report  
***"AUSTRALIA'S KAKADU:  
PROTECTING WORLD HERITAGE"***



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**Arising from the identification by the World Heritage Committee in December 1998 of threats to the cultural and natural values of Kakadu sufficient to include Kakadu on the List of World Heritage In Danger.**



*This submission has been prepared by staff and members of the Gundjehmi Aboriginal Corporation, an organisation managed and controlled by the Mirrar people. It has been prepared at the direction of the Mirrar. All contents are **strictly confidential** and should not be reproduced or cited without written permission.*

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# Preface

## The Gundjehmi Aboriginal Corporation

Gundjehmi Aboriginal Corporation is an organisation established, managed and controlled by the Mirrar independently of any agenda influenced by mining. The establishment of Gundjehmi Aboriginal Corporation occurred due to the Mirrar people's dissatisfaction with jurisdictional and institutional arrangements on their land, including their ability to exercise their rights under the *Aboriginal Land Rights (Northern Territory) Act, 1976*.

It was the intention of the Mirrar to establish Gundjehmi Aboriginal Corporation to provide both for its own members and for those Aboriginal people affected by the Ranger uranium mine consistent with their cultural obligations. It was intended Gundjehmi Aboriginal Corporation would:

- assist with housing and community services;
- raise funds where appropriate for furthering their objects;
- publish and disseminate information;
- maintain culture and protect heritage;
- assist in establishing an economic base;
- represent the interests of members in the development of regional agreements and other matters that will further self-determination;
- assist with education, family programs, and community development.

Gundjehmi Aboriginal Corporation has not sought to duplicate any of the present functions of the existing organisations operating in the region. Gundjehmi Aboriginal Corporation exists to assist the Mirrar participate in informed decision-making regarding all matters and activities in relation to their land.

As reflected in clause 6.1 of the Gundjehmi Aboriginal Corporation Rules, Gundjehmi Aboriginal Corporation assists the Mirrar to protect and advance their rights and interests; and as reflected in clause 7.2 of the Rules to ensure that the Mirrar responsibilities and obligations to other Aboriginal people are carried out.

Gundjehmi Aboriginal Corporation does this by undertaking activities in accordance with the direction given by Mirrar people through their elected governing committee.

## The Structure of the Mirrar Submission.

The following submission seeks to clarify, correct and critique the Australian Government's response to the UNESCO World Heritage Committee regarding inclusion of the Kakadu World Heritage Area on the List of World Heritage In Danger.

The Australian Government's response is entitled *Australia's Kakadu: Protecting World Heritage*. In this submission it is simply referred to as "the Australian Government's Report".

This submission will address the Australian Government's Report in the context of the concerns and recommendations of the World Heritage Committee's Mission to Kakadu. It seeks to defend

the integrity of the Mission's recommendations accepted as thorough and credible by the World Heritage Committee in Kyoto in November 1998 and reveal the manner in which the Australian Government's Report employs misleading and deceptive measures in an attempt to discredit and dismiss the Mission's concerns.

This submission focuses on those recommendations and concerns of the Mission which relate to threats to the cultural values of the Kakadu World Heritage Area. The Mirrar remain acutely concerned about the threats to the natural values of the Kakadu World Heritage Area posed by Jabiluka, however given the time available to prepare this response it has been necessary to prioritise an examination of the cultural threats.

Some of the Mission's recommendations (specifically Recommendations 8, 9 and 13) while relating to the cultural values of the Kakadu World Heritage Area, involve issues relating directly to the country of other Aboriginal Traditional Owners. For example, Recommendations 8 and 9 are matters most appropriately addressed by the Kakadu Board of Management and responses on these issues should be provided by the Board. Recommendation 13 relates directly to a proposed uranium mine which is not on Mirrar land and it is therefore inappropriate under Aboriginal Traditional Law for the Mirrar to provide comment on this recommendation.

The Australian Government's Report seeks to defend the Australian Government's decision to allow the development of Jabiluka by including many misleading historical and political assertions which do not directly relate to the Mission's recommendations and concerns. The Mirrar have responded to each of these assertions within the context of the Mission Recommendation most logically connected with the Australian Government's assertion. For example, where the Australian Government has falsely claimed that the Ranger uranium project has had no significant impact on World Heritage values, this is addressed within the context of Recommendation 1.

# Chapter 1

## Addressing: **Recommendation 1**

*The Mission has noted severe ascertained and potential dangers to the cultural and natural values of Kakadu National Park posed primarily by the proposal for uranium mining and milling at Jabiluka. The Mission therefore recommends that the proposal to mine and mill uranium at Jabiluka should not proceed.*



## 1A: The Mirrar Position

The cultural values of the Mirrar people are under serious ascertained and potential threats from the development of the Jabiluka uranium mine. The Mirrar are already experiencing cultural decline resulting from construction of the Jabiluka Project. If the project is completed, the total loss of cultural values will be inevitable.

The loss in cultural values encompasses both the destruction of cultural sites of significance by specific mining activity and a structural decline in the Mirrar living tradition resulting from imposed industrial development manifested as an attack on the rights of the Mirrar.

It must be remembered that Mirrar have opposed mining on Mirrar land ever since it was first proposed by the Australian Government. The Mirrar nevertheless had the Ranger uranium mine imposed upon Mirrar land and were forced into agreeing to the Jabiluka Project.

Ever since the loss in cultural values resulting from mining on Mirrar land has become apparent, the Mirrar have clearly and consistently reiterated their desire to halt the decline of Mirrar culture by seeking to prevent any further mining on Mirrar land.

**The serious and ascertained threats posed by the Jabiluka uranium mine are confirmed by all Mirrar and by all other Aboriginal people with close cultural connections to the Mirrar.**

Mirrar cultural values are integral to the cultural values of Kakadu National Park. Mirrar culture, language, food and traditional practices form a substantial amount of the living cultural tradition presented to visitors to Kakadu. The Park Visitor Centre is on Mirrar land. The Mirrar hold official status on the Park's Board of Management.

**It logically follows that the Jabiluka uranium mine poses a serious and ascertained threat to the cultural values of Kakadu National Park.**

However, for reasons which the Mirrar do not understand, the Australian Government has chosen to ignore the Mirrar, Aboriginal people with close cultural connections to the Mirrar and its own research in relation to such threats.

**The Australian Government seems to claim that it knows more about the state of Mirrar culture than the Mirrar themselves.**

It is the sincere and honest belief of the Mirrar that the Australian Government has never seriously considered whether the continuance of Mirrar cultural values and the development of the Jabiluka uranium mine are incompatible. In fact the Mirrar believe that no amount of compelling evidence about the destruction of cultural values would alter the Australian Government's desire to develop Jabiluka.

Over the last three years, the Mirrar have been able to express their grave concerns about the impact of Jabiluka to the Australian public and the international community via a range of official and ad hoc processes. As a result, the Australian Government has been obliged to explain its position on the Mirrar concerns.

Unfortunately, when the Mirrar expressed to the Australian Government that no amount of money, committee representation or other inducements would prevent the decline of their living tradition as a result of Jabiluka's development, the Australian Government adopted an approach of

systematically discrediting and dismissing Mirrar concerns.

This aggressive and confrontational approach is most apparent in the Australian Government’s report to UNESCO. The Australian Government’s position can in no way be characterised as an “independent assessor” but rather as an outspoken advocate for the Jabiluka mine. It has presented an argument on behalf of a mining company rather than an balanced and rigorous assessment of the impacts on World Heritage cultural values.

**The Mirrar wish to stress that the only reason the Mirrar are opposed to the development of Jabiluka is because they know it will destroy the unique source of Mirrar language, culture, sacred sites and living tradition.**

The Mirrar are the only people in the world who can fully comprehend the impact that the Ranger uranium mine has on Mirrar society over the last twenty years. Unlike any other party in this issue the Mirrar live on Mirrar country every day of their lives and have done so for untold generations. As a result of direct experience with uranium mining the Mirrar are certain that another uranium mine on Mirrar country will destroy the Mirrar forever.

The Mirrar will not gain financial rewards for their position on Jabiluka. In fact the Mirrar have consciously decided to forgo millions of dollars in order to protect Mirrar culture and country. Unlike any other party in this issue the **only** concern for the Mirrar is the protection of the Mirrar unique cultural values.

In order to prevent the tragic demise of a unique and distinct culture and society Mirrar opposition to a second unwanted uranium mine on Mirrar country must, on this occasion, prevail against the short-term interests of industry and Government policy. For this reason the Mirrar support Recommendation 1 and reject the Government’s assertions that appropriate measures have been put in place to protect the cultural values of the Kakadu World Heritage Area.

## **1B: Rewriting History - The Australian Government’s examination of the Ranger Project, including the Ranger Environmental Inquiry (“the Fox Inquiry”)**

The Australian Government’s Report seeks to counter the intent of the Mission’s Recommendation 1 by claiming that the development of Jabiluka is consistent with the findings of the Fox Inquiry and based on the unblemished record of the Ranger uranium mine. The Australian Government also seems to suggest that Aboriginal opposition to mining in Kakadu is a recent phenomena based on the “emerging politics of anti-uranium mining” (p. 27).

The Mirrar submit that the Australian Government has misrepresented or failed to disclose key aspects of the Fox Inquiry, including its recognition of Aboriginal opposition to mining, and has ignored the indisputable negative impacts that Ranger has had on the cultural values of the Kakadu World Heritage Area.

### **1B(a): The Fox Inquiry**

The Australian Government’s Report refers to the Fox Inquiry in the following terms:

The Ranger Inquiry sought a compromise between the problems of conflicting and competing land uses, including Aboriginal people living on the land, establishing a national park, uranium mining, tourism and pastoral activities in the Alligator Rivers Region. (p. 18)

Overall, the Australian Government report seeks to assert that:

The current Jabiluka traditional owners have recently initiated objections to the mine... (p. 94)

The 1975-77 Ranger Uranium Environmental Inquiry (“the Fox Inquiry”) was very clear in its assessment of Aboriginal attitudes to uranium mining, including the inability to reach a compromise between mining and Aboriginal interests. The Australian Government has failed to disclose to UNESCO that the Fox Inquiry found the following:

“The evidence before us shows that the traditional owners of the Ranger site [the Mirrar] and the Northern Land Council (as now constituted) are opposed to the mining of uranium on that site. The reasons for the opposition... would extend to any uranium mining in the Region.

...there was a general conviction that opposition was futile. The Aboriginals do not have confidence that their own view will prevail; they feel that uranium mining development is almost certain to take place at Jabiru, if not elsewhere in the Region as well. They feel that having got so far, the white man is not likely to stop.

Having in mind, in particular, the importance to the Aboriginal people of their right of self-determination, it is not in the circumstances possible for us to say that the development would be beneficial to them...

***There can be no compromise with the Aboriginal position; either it is treated as conclusive, or it is set aside... In the end, we form the conclusion that their opposition should not be allowed to prevail.” (emphasis added)***

*Ranger uranium environmental inquiry second report, AGPS, Canberra, 1977, p.9*

“In the face of mining exploration, and the threat of much further development, they feel helpless and lost. Their culture and their traditional social organisation do not enable them to cope with the many problems and questions to which this development gives rise.”

*Ranger uranium environmental inquiry second report, AGPS, Canberra, 1977, p.46*

“While royalties and other payments...are not unimportant to the Aboriginal people, they see this aspect as incidental, as a material recognition of their rights... Our impression is that they would happily forgo the lot in exchange for an assurance that mining would not proceed.

*Ranger uranium environmental inquiry second report, AGPS, Canberra, 1977, p.269*

The Fox Inquiry demonstrates that Aboriginal people in the Kakadu region have been opposed to mining on their land from the outset. It seems that the Government would like to characterise the Mirrar opposition to mining as a recent phenomena associated with the views of the current Senior Traditional Owner. This is clearly not the case.

The Australian Government Report seeks to assert that the Fox Inquiry recommendation about the need for the sequential development of mining did not include the concurrent development of the Jabiluka mine (see page 106 of the Australian Government’s Report). The Mirrar submit that the Fox Inquiry makes no such exemption for Jabiluka – it simply acknowledges that the then Australian Government supported the development of Jabiluka and therefore there was a distinct possibility that it would be developed regardless of Aboriginal opposition and the resultant negative impacts on cultural values.

### **1B(b): The Ranger Uranium Mine**

The Australian Government refers to the Ranger Uranium Mine in the following terms:

Following endorsement by the Government of the Ranger Inquiry’s recommendations regarding the conduct of the Ranger Project, the project was gazetted in mid-1978. Agreement to mine was reached with the Aboriginal

Traditional Owners in November 1978 through the Northern Land Council and operations were approved in January 1979. (p 21)

The traditional owners and the NLC have agreed to the Ranger mine continuing under existing terms and conditions for a further 26 years, pending possible future renegotiation and arbitration of those terms. Those terms and conditions include the continued payment of annual rental (\$200,000) and royalty equivalents to Aboriginal interests, including the Mirrar Gundjehmi as the traditional owners. (p. xiii)

Since agreement was reached with traditional owners in 1978, a total of \$145.8 million in payments has been made to Aboriginal interests, of which \$1.9 million was in up front payments; \$3.4 million was in rental payments and \$140.5 million was in royalty equivalent payments. (p.21)

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) provides indigenous people of the Northern Territory the right of veto over mining on their land. (p. 87)

The distribution of mining royalties has created many financial investment, employment and economic development opportunities for Aboriginal communities in the Park. (p.114)

In the twenty years of the mine's development and operation there have been no significant environmental impacts of the mine on the values of Kakadu National Park. (p.60)

It can be concluded that the Australian Government has not been requested by the World Heritage Committee to close the Ranger mine because the mine has operated without any significant environmental impact on the World Heritage property. (p. 89)

For the Park itself, potential issues relating to natural and cultural values have been identified in the Kakadu Plan of Management, while those arising from activities on the Jabiluka Mining lease are managed in accordance with stringent environmental requirements built upon nearly twenty years of experience at the Ranger mine. (p. 121)

The impact of the now proposed Jabiluka mine will be much less than Ranger and much less than originally envisaged by the Fox Inquiry. To this extent, any threat from mining on World Heritage values in areas never included in the World Heritage property has diminished since the Park's listing. (p.106)

It seems that the Australian Government is intent on portraying the Ranger Uranium Mine as:

- a) Having been developed with the support of Traditional Owners and that such support exists to this day .
- b) Having provided significant economic benefits
- c) Having operated for 20 years with no impact on the World Heritage values of Kakadu.

All of these propositions are false.

**As Traditional Owners of the Ranger Project Area, the Mirrar have never had the ability to veto the Ranger mine.** Predicting continuing Aboriginal opposition to Ranger, the Australian Government legislatively removed the power of the Mirrar to stop the Ranger Project in 1976 by amending the *Aboriginal Land Rights (Northern Territory) Act*. The Northern Land Council has retained the right to negotiate terms on the Ranger Project Area, but the Traditional Owners have no ability to stop the development proceeding.

The Australian Government made it clear what drastic measures it would undertake to see Ranger go ahead despite Aboriginal opposition. At a meeting at Red Lily Lagoon in Arnhem Land in 1978, the NLC chairperson Galarrwuy Yunipingu was quoted as follows:

If we don't sign the agreement, [Prime Minister] Mr Fraser has told me he has power to block the Aboriginal

Land Rights Act, and that he will stop the funds to the outstations.

If the Land Council makes a mistake on this question the whole of Australia will know and many people will support those who want to see Aboriginals without land, without any right to make their own decisions, and without a Land Council to represent them.

(Carrol P 1978, *Uranium mining: the Oenpelli viewpoint*, *Nungalinga Occasional Bulletin No 1*, Nungalinga College, Darwin.)

**The Ranger mine has not delivered its promised economic benefits.** It must be noted from the outset that local Aboriginal people have only received 30% of the royalty equivalent payments from Ranger. The other 70% has gone to the Northern Territory's Land Councils and the Aboriginal Benefits Reserve. Out of the 30% remaining local Aboriginal people must pay for services provided to most other Australian citizens as "citizenship rights" (e.g. water, sewerage, roads, education, electricity generation etc). There have been no effective businesses created out of Ranger royalties. The Gagudju Association, which has received approximately 90% of all royalty payments, is currently some millions of dollars in debt and is in the process of selling off its prime assets.

Social and economic conditions within the Kakadu region are abysmal. The Kakadu Region Social Impact Study found that the mining royalties had produced no demonstrable benefit to the local Aboriginal community. Researchers from the National Aboriginal Health Strategy Team recently described Kakadu outstations as the worst in the Northern Territory.

### **1B(c): The Impact of the Ranger mine on Cultural Values**

The Ranger mine has had a significant impact on the World Heritage values of Kakadu National Park, especially the unique cultural values of the Mirrar. It is most peculiar indeed that the Australian Government's Report gives no consideration to the findings of a five year social impact study of the Ranger mine carried out by one of its own agencies. The Report of this five years of research by the Australian Institute of Aboriginal Affairs is entitled, *Aborigines and Uranium – Consolidated Report to the Minister for Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory (1979-84)*

This exhaustive study of the uranium mining in the Kakadu region comprised four major aspects: the collection of baseline data prior to the commencement of mining; an examination of *input* factors, such as royalty monies and employment in the mining industry; examination of issues arising from mining, such as the creation of Kakadu National Park and Jabiru; and field work recording bininj attitudes.

The seminal statement from the Report remains all the more shocking given that it was made 15 years ago and the stated impacts have continued unabated and without the establishment of ameliorative programs:

#### **(ix) The Social Impact of Mining on the Aboriginal Civic Culture**

Aborigines in the Region are in a state of transition between a system of imposed wardship and an assertion of independence, one encouraged by the Government. But the current civic culture is one in which disunity, neurosis, a sense of struggle, drinking, stress, hostility, of being drowned by new laws, agencies, and agendas are major manifestations. Their defeat on initial opposition to mining, negotiations leading to Ranger and Nabarlek, the fresh negotiations on Jabiluka and Koongarra, new sources of money, the influx of vehicles, together have led the Project to an unhappy verdict **THAT THIS IS A SOCIETY IN CRISIS.** (p. 299, emphasis transcribed).

The Report found that an appalling lack of attention had been paid to the social and cultural impacts of Ranger, in sharp contrast with measures taken to protect the physical environment:

There is a reversibility built into present legislation such that if something improper occurs – a release of contaminants into Magela Creek, for example, or some other breach of regulations – the mining or milling can be instantly brought to a halt. However, if it could be proved that few males are likely to survive beyond the age of 35, could the mining be stopped on those grounds? Certainly there are no procedures set down to cover such situations. In any case it could be expected that there would be a rash of arguments to prove that this state of affairs had to do with excessive consumption of alcohol, and/or motor vehicle accidents – and not to do with mining. However, what if these explanations, taken as an assemblage, attributed each of the deaths to a human activity related to mining: the digging of this or that hole, the bulldozing of this or that tree, etc? Would grounds then be available for bringing the mining to a halt? (pp 287-288)

The Australian Government has ignored its own advice and research on the impact of Ranger. Even though the current Supervising Scientist has admitted (*Letter to the Minister for Environment, August 21, 1998*) that Ranger has had a significant impact on Aboriginal cultural values, the Government continues to trumpet Ranger as a benign development.

Apparently unlike the current Australian Government, the Social Impact Study team recognised the impact of further mining development. After five years of continually observing the cultural impact of Ranger, its primary recommendation to the Minister was:

1. Given the findings of this Project and the demonstrated fragility of the community at this point, any new mining or other major development in the Region, including tourism, in the present circumstances and under prevailing conditions will seriously intensify the grave problems already being faced by people in the Aboriginal domain. (p. 305)- *see attachment one for all recommendations*

It seems that the Australian Government has deliberately chosen to withhold information on this Report from UNESCO because it runs counter to its objective of portraying Ranger as a safe model for Jabiluka. The Mirrar question the ability of the Australian Government to properly inform UNESCO on these issues given their disregard for such important research.

Of course, the Mirrar do not require non-Aboriginal studies to confirm the overwhelmingly negative effect that Ranger has had on their cultural values – the Mirrar experience this social and cultural dysfunction every day of their lives. However the Mirrar remain astonished that the Australian Government refuses to consider or accept Mirrar accounts of this experience.

# Chapter 2

## Addressing: **Recommendations 3 & 14**

### **Jabiru**

*Further visual encroachment on the integrity of Kakadu National Park through uranium mining and the associated incremental expansion of urban and infrastructure development in and associated with the town of Jabiru, located within the World Heritage property, should be prevented.*

*In noting that the mining and tourism town of Jabiru is located within the World Heritage property, the Mission questioned the compatibility of the incremental development and expansion of Jabiru with World Heritage conservation. The Mission is of the view that urban and infrastructure development at Jabiru should be strictly controlled and recommends that Parks Australia North and the Board of Management play a greater role in the present management of, and future planning for, the town of Jabiru in cooperation with the traditional owners. The World Heritage Committee may wish to be appraised of the future of Jabiru and therefore may wish to ask for submission of a plan that describes the future of the town in line with objectives to protect the World Heritage values of the Park.*

### 3/14A: Jabiru - A Non-Aboriginal Town with a Big Future

In relation to the township of Jabiru, the Australian Government's report asserts that:

The town provides infrastructure which supports the good management of the World Heritage property. It also provides useful infrastructure for Kakadu's traditional owners. Town development is rigorously controlled to ensure it does not impact on the World Heritage values of the property. (p. 79)

There is no process of incremental development and expansion. Jabiru has evolved from being a closed town servicing uranium mining to a town that provides essential services to the tourism industry, Park visitors and the mining industry as well as being a service centre for Aboriginal groups living in the Park. The population ceiling set at inception and at the time of nomination was 3500. The current population now is approximately 1480. The ceiling will not be reached in the foreseeable future. Activities in Jabiru are subject to a range of legal and administrative mechanisms outlined in the Park Plan of Management in order to ensure that World Heritage values are protected. (p. 98)

The linkage made between the opening of a new mine at Jabiluka and a concordant expansion of urban and infrastructural development is based on a false assumption and does not account for the history of population change in Jabiru. (p. 118)

Much of Jabiru's infrastructure was constructed to cater for a population of up to 6000, and will not require expansion. It is estimated that existing housing stock in Jabiru will accommodate any net increase in population as a result of the Jabiluka development. (p. 118)

The township of Jabiru is administered by the Jabiru Town Development Authority (JTDA). The JTDA is comprised of appointees from the Northern Territory Government, ERA and a representative from the Jabiru Town Council. There is no Aboriginal representation on the JTDA.

The objectives of the Northern Territory Government and ERA for the future of Jabiru are articulated in the 1995 JTDA document entitled: *"Development Strategy for the Normalisation of Jabiru"*. The key objectives and statements of intent include:

"The grant of individual property leases...to permit the subsequent sale of leases on the open market." (p. 3)

"...a less prescriptive, performance based approach to development control..." (p. 3)

"...reduce the number of prescriptive consent controls over land usage..." (p. 7)

"...that freehold title to the land within the town be available for purchase." (p. 8)

"...that Northern Territory laws, in this case the NT Planning Act, have application in the Kakadu National Park area." (p. 11)

"...the Jabiru Town Council proposed...that its future boundary should form an approximate 20km by 15 km rectangle around Jabiru and incorporate Mudginberri...and the Park Headquarters." (p. 12)

"It is not considered necessary to wait...for the introduction of a new Plan of Management before implementing the changes identified...the proposed changes could be implemented, with the approval of [Parks Australia], on the basis of an 'exchange of letters' which would indicate the revisions intended with respect to the new Plan." (p. 22)

"The strategy for success relies in part upon enhancing the attractiveness of land within Jabiru to potential developers and investors by reforming the current land tenure arrangements." (p. 22)

The Australian Government fails to disclose to UNESCO this stated policy position of the Northern

Territory Government and ERA to massively expand the size and kind of development in Jabiru. The development of Jabiluka will see ERA continue to dominate the jurisdictional arrangements in Jabiru and will help ensure that the 'normalisation' process as outlined above is instituted.

In this way the expansion and development of Jabiru is intrinsically linked with the development of Jabiluka.

The Australian Government's report fails to disclose that achieving Aboriginal ownership of Jabiru was the primary recommendation of the Kakadu Region Social Impact Study. The Northern Territory Government stridently and publicly opposes Aboriginal ownership or governance of Jabiru. The Commonwealth Government has also indicated its opposition to the Mirrar native title claim.

The statutorily independent Director of Commonwealth Parks and Wildlife currently decides whether or not to extend leases in Jabiru. The *Environment Protection and Biodiversity Conservation Bill (No 2) 1998*, abolishes the Director's position and gives the Commonwealth Government the ability to make these decisions without reference to the Board or the Australian Parliament. If the *Environment Protection and Biodiversity Conservation Bill (No 2) 1998* is enacted the future expansion of Jabiru could occur regardless of the Plan of Management or the opposition of the Board of Management.

# Chapter 3

## Addressing: **Recommendation 4**

### **Cultural Heritage Management Plan**

*The Mission recommends that the Jabiluka Cultural Heritage Management Plan should be as thorough as possible. It should be prepared according to international best practice in cultural heritage management. This should be achieved in consultation and with the participation of Australia ICOMOS, the Australian Academy of the Humanities, the Australian Heritage Commission and the Northern Territory's Aboriginal Areas Protection Authority (AAPA). The Mission recommends that every effort is made to ensure thorough participation, negotiation and communication with traditional owners, custodians and managers to ensure the compilation of an accurate cultural inventory that will ensure the conservation of the cultural sites located within the Jabiluka Mineral Lease. It is the Mission's view that the Australian Academy of the Humanities should be approached to nominate world-class Australian or international expertise to undertake the review of the Cultural Heritage Management Plan announced by the Australian Government during the Mission.*



#### **4A: The Jabiluka Cultural Heritage Management Plan - The Politics of Belligerence**

The Australian Government has attempted to justify the mining company's failure to conduct a Cultural Heritage Management Plan in the following terms:

"...the outcome provides for the protection of all sites in the lease area through a conservation management plan. Presently the traditional owners are not cooperating in the development of the plan." (p. 58)

"The State Party has asked traditional owners to discuss the cultural mapping exercise recommended by the Mission. These requests have been rejected by traditional owners." (p. 73)

"The Government remains committed to providing every opportunity for traditional owners in the Kakadu region to be fully involved in the development of measures to conserve cultural heritage." (p. 83)

"Every effort has been made to ensure the participation, negotiation and communication of traditional owners, custodians and managers, and to confirm that the information provided on sites and their boundaries in legally binding agreements in 1982 and 1991 is accurate and up to date." (p. 85)

"The current traditional owners have indicated that they are at present unable to participate in any anthropological or archaeological surveys undertaken as part of the assessment process." (p. 112)

"Traditional owners have indicated that they are unable at present to work with the mine's owners or the Australian Government to facilitate processes to avoid any possible [cultural] impacts (p. 112)

All of these claims by the Australian Government are false and misleading. The Mirrar have clearly articulated that they are willing to participate in the development of a Cultural Heritage Management Plan if blasting and drilling at the Jabiluka minesite ceases during the assessment process. This reasonable and practical request has been rejected by the Australian Government and ERA despite the fact that the Mirrar have clearly expressed their concerns about the impact of ongoing construction activity on sites of significance and the Government admits to having inadequate knowledge in this area. (*See Attachment Two*)

The Government's proposal for a Cultural Heritage Management Plan, developed without Traditional Owner consultation, is outlined on page 84 of the Australian Government's Report.

The process the Australian Government has suggested is one in which the Traditional Owners and Custodians will identify sacred sites and cultural values and ERA and the Australian Government will attempt to prove them wrong to the extent that they interfere with the development of Jabiluka. This confrontational approach is antithetical to the co-operative measures suggested in the Mission's Recommendation and is entirely inappropriate. The Mirrar support a process which accords with the principles of the Mission's Recommendation.

#### **4B: Other cultural heritage issues in the Australian Government's Report**

The Australian Government makes a number of other false or misleading assertions relating to the protection of cultural heritage, including:

##### **4B(a)**

The mine and associated facilities have been sited to avoid any archaeological or anthropological sites of significance located and recorded during the course of previous surveys in order to protect cultural heritage values. (p. 111)

In fact the ERA proposal for Jabiluka is sited much closer to the Boyweg-Almudj Sacred Site Complex than the original PanContinental proposal, and mining activities will directly interfere with this sacred and dangerous area. This is despite a detailed site survey conducted by George Chaloupka in 1997 identifying the extent of the Boyweg-Almudj Sacred Site Complex prior to construction commencing.

#### 4B(b)

Australia has comprehensive legislation, both at the Federal and State and Territory level, to protect cultural heritage values including Aboriginal sacred sites. (p. 111)

This statement stands in stark contrast to a recent speech to the Australian Parliament, by the (non-Aboriginal) Minister for Aboriginal Affairs who said:

“...reform of indigenous protection legislation is long overdue. [The current legislation] was introduced as a temporary measure only and has presented many difficulties for indigenous people...” *Second Reading Speech, Aboriginal and Torres Strait Islander Heritage Protection Bill, 1998*

In the Australian Government’s own review of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) the legislation was viewed as ineffective and unworkable. Out of the 99 applications for protection made under this legislation between 1984 and 1996 only one site has been offered permanent protection. (*See Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, Hon Elizabeth Evatt, 1996)

The Mirrar have made applications to both the Northern Territory Supreme Court and the Aboriginal Areas Protection Authority for protection of their sites of significance and associated cultural values. The Northern Territory Supreme Court (see *Margarula v Poole and Ors*, NT, 1998) refused to grant an injunction against construction of the Jabiluka tunnel because of the potential financial detriment to ERA. The AAPA has been unable to establish the extent of sites of significance near the minesite but has refused to grant ERA an authority certificate to carry out works in the area. Ultimately protection of Sacred sites under the Northern Territory Sacred Sites Act (1989) provides for the Minister for Mines and Energy(NT) to override protection afforded to a sacred site regardless of the view of AAPA.

#### 4B(c)

Comprehensive anthropological information on dreaming sites and trails and areas of spiritual significance, derived from anthropological work extending over many years and involving the full participation of traditional owners, has been taken into account by decision makers for each of the matters noted in the Mission’s report. (p. 111)

Neither the Australian Government nor ERA have conducted or considered any project-specific anthropological studies in relation to the current Jabiluka proposal.

#### 4B(d)

The traditional owners supplied no information on these [cultural] issues to the EIS process. (p. 111)

This is simply untrue. The Mirrar made submissions to the EIS through the Gundjehmi Aboriginal Corporation and the Northern Land Council. This assertion is also inconsistent with its criticism of the NLC at page 70 of the Australian Government where it states:

The next available information comes from a supplementary Northern Land Council (NLC) submission (in 1997) on the Draft EIS for the Jabiluka Project. The summary states that Boyweg is not ‘*djang*’ but is in fact recorded by the NLC as a dangerous sacred site (ie *djang andjamun*). The submission noted that ‘there is potential for the sacred integrity of this site to be compromised if the [Jabiluka] development proceeds’. (p. 70)

# Chapter 4

## Addressing: **Recommendation 5**

### **Boyweg-Almudj Sacred Site Complex 6**

*The Mission recommends, as an utmost priority, exhaustive cultural mapping of the Jabiluka Mineral Lease and the Boiwek site and its boundaries to ensure protection of these integral elements of the outstanding cultural landscape of Kakadu. This survey and cultural mapping work should be undertaken by senior anthropologists working with Aboriginal custodians.*

*The Mission recommends that the Northern Territory's Aboriginal Areas Protection Authority (AAPA) undertake and document a full site identification survey that maps site boundaries. The anthropologists should report to a committee with representation from the Northern Territory's Aboriginal Area's Protection Authority (AAPA), the Australian Heritage Commission and the Gundjehmi Aboriginal Corporation and their work should be submitted to independent expert scrutiny via objective and impartial peer review.*

## 5A: The Australian Government's Attack on Mirrar Spiritual & Cultural Beliefs

The Australian Government devotes a substantial portion of its report to attacking the credibility of local Aboriginal people's belief in the sacred and dangerous nature of what has become known by non-Aboriginal people as the Boyweg-Almudj Sacred Site Complex.

This public attack is considered by the Mirrar to be highly unethical and deliberately malicious. It is most distressing for the Mirrar to see their cultural heritage dissected, falsely defined and summarily dismissed by people who have never lived on Mirrar land, practiced Mirrar culture or even allowed Mirrar an appropriate opportunity to explain the extent and significance of their sites in a cultural context. The Australian Government's decision to place information denigrating Aboriginal cultural beliefs on the internet is an extraordinarily improper act, hardly designed to promote the reconciliation process.

It should be noted that the Australian Government's attack is based on intentionally selective citations presented in the absence of any direct consultations with Traditional Owners and Custodians. The reports relied upon by the Government were written by non-Aboriginal people without translators.

It must also be noted that this is not the first time that key decision makers in the current Australian Government have attacked the credibility of sacred sites in the Kakadu region. In fact Senator Warwick Parer, the Australian Government Minister who has approved both Jabiluka environmental assessment processes in controversial circumstances, was a very strong advocate for the desecration of Guratba (or Coronation Hill) in what is now Stage 3 of Kakadu National Park. So was Bob Collins, the Australian Government's appointee as Chair of the Kakadu Region Social Impact Study Implementation Team.

In 1991 the Jawoyn people opposed mining of platinum and palladium at Coronation Hill because of concerns about the consequences of disturbance of Sickness Country associated with a spiritual presence known as Bula.

Mr Parer's comments in the Australian Senate on 19 June 1991 about the Bula sacred site strike a disturbingly similar chord to those argued by the Australian Government about the Boyweg-Almudj Sacred Site Complex in 1999.

Mr Parer attacked the decision to protect the sacred site, claiming:

"It was previously mined by United Uranium in the 1950's and 1960's and some 25,000 to 35,000 tonnes of ore were extracted from the area."

"...the Aboriginals...had previously supported mining. No-one will dispute that. It was claimed on their behalf that the area housed a spirit called Bula who, if disturbed, would bring catastrophe to the local area and perhaps to the universe. However, there is no conclusive evidence...of Bula's presence, and there is no suggestion of his presence until some five years ago.

In 1989, Senator Bob Collins...accused those orchestrating this change of mind [in the traditional owners] of being "consummate ratbags" acting against the long term interests of the Jawoyn community."

Mr Parer went on to accuse the Prime Minister of the day of being a "born again Bula" and to claim that the losers would be the local Aboriginal community.

The Australian Government's Report refers to Coronation Hill in these terms:

Stage 3 of the Park was declared in successive stages on 12 June 1987, 22 November 1989 and 24 June 1991. The staged declaration was due to the debate over whether mining should be allowed to go ahead at Guratba (Coronation Hill). Guratba is in the middle of the culturally significant area referred to as the Sickness Country. There was intense public debate over the issue and after lengthy review and decision-making the Australian Government decided that there would be no mining in that location. (p. 24)

Not surprisingly, there is no mention that the current ruling conservative parties vehemently opposed the protection of Guratba, let alone the fact that the key Ministerial decision maker on Jabiluka, Senator Parer, was an outspoken cynic with regard to the Jawoyn spiritual beliefs.

It is therefore not unexpected that the current Australian Government would attack the credibility of the Boyweg-Almudj Sacred Site Complex.

### **5A(a): What is the Boyweg-Almudj Sacred Site Complex?**

The Australian Government's attack on the credibility of Aboriginal beliefs about the Boyweg-Almudj Sacred Site Complex contains a definitional contradiction that must be clarified from the outset.

The area in question is the Boyweg-Almudj Sacred Site Complex. It includes a number of sacred aspects in an interconnected spiritual and cultural landscape which include, but are not limited to,

- i)** the Boyweg-Bagaloi soak,
- ii)** the Boyweg-Almudj rock art site
- iii)** the dreaming track between these two places
- iv)** other places along or near the dreaming track associated with other ancestral beings.

Almudj is the Rainbow Serpent. Boyweg is the Rainbow Serpent in the form of a knob-tailed gecko.

The Australian Government attacks the credibility of Traditional Owner beliefs by contending throughout the report that a single "Boyweg" site has been "extended" to cover the Mine Valley area. It seems that this is a reference to the Boyweg-Bagaloi soak.

The reality is that for more than 20 years Traditional Owners and Custodians have provided non-Aboriginal people with an outline of the Boyweg-Almudj Sacred Site Complex – that is:

- i)** a place where a journey began (the Boyweg-Almudj rock art site)
- ii)** an indication of the direction of a journey (the Dreaming Track)
- iii)** and a place where Boyweg-Almudj sank down (the Boyweg-Bagaloi soak)

There is no single site called "Boyweg". There are various sites and tracks along a journey in which Boyweg-Almudj made Mine Valley and other landforms, including a soak on the western side of Mine Valley called Boyweg-Bagaloi.

It appears that the unknown author of the Australian Government report, while acknowledging the existence of the Boyweg-Almudj journey, seeks to isolate the Boyweg-Bagaloi soak as the only sacred site.

At best this insupportable and erroneous contention may be attributed to a lack of understanding

resulting from the failure to ensure that detailed cultural mapping was carried out for the current Jabiluka project.

However an examination of the site surveys relied upon in the Government report makes it difficult to understand how this misunderstanding could have arisen. Unfortunately it seems that the Australian Government is seeking to deliberately obscure the fact that a significant part of Boyweg-Almudj's journey rather inconveniently traverses the Jabiluka Ore Body No. 2.

### **5A(b): Sacred Site Recording on the Jabiluka Project Area**

Most of the recording of sacred sites in the Jabiluka Project Area has been carried out by Mr George Chaloupka, a non-Aboriginal person. Mr Chaloupka is a world famous rock art expert. Mr Chaloupka is acknowledged as having close relationships with local Aboriginal people over a long period of time and a good understanding of Aboriginal cultural beliefs.

In early 1975, George Chaloupka documented the first sites of significance in written evidence to the Fox Inquiry. (*Chaloupka, G 1975a. Namirrar gunmugurgur; Evidence to the Ranger Environmental Inquiry, Museum and Art Galleries of the Northern Territory, Darwin*). Mr Chaloupka's evidence, based on discussions conducted with the then Mirrar Senior Traditional Owner, recorded only one sacred site in the entire Jabiluka Project Area. Mr Chaloupka attributes this lack of information release to the fact that the Fox Inquiry was focusing on the Ranger uranium mine which threatened sites in the southern part of the Mirrar estate. The Jabiluka Project Area is in the northern part of the Mirrar estate.

Later in 1975 Mr Chaloupka conducted another site study for the NLC with the then Mirrar Senior Traditional Owner and his brother. (*Chaloupka, G 1975b, Report on Aboriginal Traditional land-ownership of the Alligator Rivers Region, PartII, Report to the Northern Land Council, Darwin*). The wet season prevented site visits, but on this occasion knowledge was released about four sacred sites on the Jabiluka Project Area.

Traditional Owners did not reveal any information regarding the Boyweg-Almudj Sacred Site Complex in either of the 1975 studies.

In 1976, Mr Chaloupka had established from his ongoing research that there was a wealth of Aboriginal places of religious significance in the Jabiluka Project Area and nominated the Djawumbu-Madjawarrnja Sites Complex for listing on the register of the National Estate.

Work on the nomination included further cultural mapping with two custodians who identified the Boyweg Bagaloi soak and the Boyweg-Almudj rock art site as sacred and dangerous places and referred the dreaming track between. Mr Chaloupka did not ask the custodians to consider that status of the dreaming track or the areas of restriction nor the detail of associated mythologies.

As a result Mr Chaloupka included the area now referred to as the Boyweg-Almudj Sacred Site Complex in his nomination for listing of the Djawumbu-Madjawarna sites complex on the Register of the National Estate. (*Chaloupka, G 1976, Nomination of Sites for Inclusion on the Register of the National Estate, Museum and Art Gallery of the Northern Territory, Darwin*) The Australian Heritage Commission placed the Djawumbu-Madjawarna sites complex on the interim Register of the National Estate in 1980 but after representations from the mining company excised the extent of Jabiluka mining activity from the area to be protected. The Mirrar were not provided with an explanation as to why one of their most important sacred site areas was excluded from the listing.

In 1978 Pancontinental Mining Ltd (the original Jabiluka lease holder) produced an Environmental Impact Statement for a proposed highway which was to run along the eastern margins of the Djawumbu-Madjawarna massif. The mining company's EIS stated there were no known sacred sites in the area of the proposed road.

Mr Chaloupka made submissions to the Government that the mining company's claim was incorrect. The Government sent an investigator who was accompanied by Dr Ian Keen, a Northern Land Council representative. Dr Keen reported to the NLC that custodians had recorded a number of sacred sites along the proposed highway route, including the Boyweg-Almudj rock art site. (See Chaloupka G, 1978, *Djawumbu-Madjawarna Site Complex, Museum and Art Gallery of the Northern Territory, Darwin*).

In August 1980 Dr Keen prepared the "Claim Book" for the Alligator Rivers Stage Two Land Claim. He recorded the Boyweg-Bagaloi soak, the Boyweg-Almudj rock art site and referred to the dreaming track between them based on the evidence collected by Chaloupka in 1976-8 and his own recording of Boyweg-Almudj rock art site in 1978.

Also in 1980 a number of hearings were conducted for the Alligator Rivers Stage Two Land Claim. Again custodians identified the Boyweg-Bagaloi soak, the Boyweg-Almudj rock art site and the journey between them. Importantly, the then Mirrar Senior Traditional Owner identified Mr Jimmy WogWog as the person responsible for sites in the area. (See *Aboriginal Land Commissioner, 1980-1, Alligator Rivers Stage II Land Claim, Hearing Transcripts*) Unfortunately, the land claim hearings incorrectly recorded the Boyweg-Almudj rock art site as two separate sites: "Almudj" (incorrectly plotted) and "Berewuk" (non-existent) without reference to previously documented information.

In early 1981 Mirrar Traditional Owners were advised by the Northern Land Council to enter into discussions with Pancontinental Mining Ltd about the Jabiluka mine or risk losing their land claim. (*Transcript, Meeting at Djarr Djarr Camp, 26-7 January, 1981*) These discussions quickly developed into the drafting of the 1982 Jabiluka mining agreement.

The Mirrar do not recollect, nor are there any records to indicate, any project-specific field anthropological work being carried out during this process. The Senior Custodian, Mr WogWog claims he was not consulted about sacred sites in the minesite or Mine Valley area.

There are however records which suggest that despite the lack of anthropological investigation, the mining company was aware of the Boyweg-Almudj Sacred Site Complex. In early 1982 a well-known anthropologist wrote to Pan Continental warning the mining company that there were serious concerns within the Aboriginal community that appropriate custodians had not been consulted about sacred sites in the Jabiluka area; that sacred sites underground could be disturbed by mining activities with "severe" consequences; that important dreaming tracks, including that associated with Boyweg, had not been detailed; and that as a result local Aboriginal people may not regard any concluded Jabiluka agreement as binding. (See *Attachment Three*)

The letter has never been made public and has only recently been supplied to the Mirrar. The letter confirms the recollections of many Senior Aboriginal people that there was a general reluctance to provide information to non-Aboriginal people about sacred sites during the 1982 Agreement process and that the "right" people had not been consulted about sacred sites. (See also statement below from Senior Traditional Owners and Custodians). Such reluctance to reveal esoteric information is in accordance with Aboriginal values systems from throughout Australia.

A site map is attached to the 1982 Agreement. It is claimed by the Australian Government that this site map was confirmed as correct in 1992. **The site map in the 1982 Agreement is clearly incorrect.** Most significantly, it has transcribed the mistake from the 1980 Land Claim hearings in which the Boyweg-Almudj rock art site was incorrectly recorded as two separate sites: “Almudj” (incorrectly plotted) and “Berewuk” (non-existent). As such, there is no record in the 1982 Agreement of the undisputed dreaming track link between the Boyweg-Almudj rock art site and the Boyweg-Bagaloi soak.

This (still uncorrected) mistake confirms claims by the Mirrar and other custodians that they were not properly consulted during the 1982 Agreement process. It is simply not possible that the Boyweg-Almudj rock art site could have been incorrectly recorded in 1982 in exactly the same way as it was in the 1980 Land Claim hearings. It is clear that information from the 1980 Land Claim hearings has simply been transcribed into the site map for the 1982 Agreement without checking it with the Mirrar and other custodians.

As the Senior Custodian and Traditional Owner are illiterate, later confirmation of this map in the absence of an interpreter is irrelevant.

There was no consultation carried out about sacred sites during the 1991 Deed of Transfer process.

The next recording of the sites in the Jabiluka minesite area was carried out in 1992 pursuant to a request from ERA to carry out drilling in the Mine Valley area. Mr Chaloupka again carried out the work for the NLC, this time with the Senior Custodian Mr Jimmy WogWog. (*Chaloupka, G, 1992, Jabiluka Project Area Consultancy, Report to the Northern Land Council*) Representatives from ERA accompanied Mr WogWog and Mr Chaloupka during the site visit. Mr Wogwog informed all those present that the Mine Valley area was a dangerous proximity; that the Mirrar Senior Traditional Owner who had “consented” to the 1982 Agreement had directed him not to allow the place to be disturbed; and that serious consequences would result from such disturbance.

In 1993 the drilling was carried out regardless.

In 1996 ERA released their Draft Environmental Impact Statement for the current Jabiluka proposal. ERA’s proposal brought mine activities much closer to the path of Boyweg-Almudj. The Senior Traditional Owner requested the NLC to protect all sites on the Jabiluka lease by registering them with the Northern Territory Aboriginal Areas Protection Authority.

In 1997 the NLC carried out site surveys with five Senior Custodians and another person who is not considered a Custodian of the Jabiluka land. Mr Chaloupka once again carried out these consultations. (*Chaloupka, G, 1997, Sacred Sites in the Jabiluka Project Area, Report to the Northern Land Council, Darwin*)

**Most importantly, Mr Chaloupka’s 1997 site surveys were the first to be carried out in Aboriginal language with an accredited interpreter.** As a result, far more information was supplied than the previous recordings conducted in English which had previously recorded only an outline of the Boyweg-Almudj sites.

This information included confirmation of the Boyweg-Almudj Dreaming Track as a sacred and dangerous area and the identification as sacred and dangerous of places linked with other ancestral beings associated with Boyweg-Almudj. As a result Mr Chaloupka recommended that land between

the Boyweg-Bagaloi site and the Boyweg-Almudj site, including the Mine Valley area, be registered for non-disturbance by the AAPA. He called this area the Boyweg-Almudj Sacred Site Complex.

Unfortunately the Northern Territory Government's AAPA declined to register the site largely because of evidence provided by a person not considered to be a custodian for the Jabiluka land contradicted that of the five Senior Custodians identified in Mr Chaloupka's report. The AAPA also declined permission for an authority to be granted to ERA to work in the Mine Valley area. In effect, the AAPA decided to make no decision at all.

Meanwhile, in May 1998, the NLC and ERA entered into an agreement which included recognition of the Boyweg-Almudj Sacred Site Complex and restrictions being placed on ERA's surface activities in the area of Mine Valley. The Mirrar and other custodians do not understand why the restrictions were limited to the surface as this was contrary to the information they had provided to Mr Chaloupka in 1997.

In June 1998 construction of the Jabiluka tunnel began in the absence of a Cultural Heritage Management Plan and with the status of the Boyweg-Almudj Sacred Site Complex unresolved. This was despite the Senior Traditional Owner, Yvonne Margarula, bringing legal action against the Northern Territory Minister for Resources and Energy challenging his decision to authorise the commencement of construction under the *Uranium Mining (Environmental Control) Act* (NT). Ms Margarula informed the NT Supreme Court of Mirrar concerns about destruction of sacred sites by the Jabiluka tunnel and argued that this had not been taken into account by the Minister in his decision to grant ERA a UM(EC) Authority. Unfortunately the Court was persuaded that the potential economic detriment to ERA of granting an injunction outweighed Mirrar cultural concerns and refused to prevent construction commencing. Ms Margarula's application was subsequently dismissed.

In October 1998, the World Heritage Committee sent a Mission to Kakadu. The Mirrar informed them about the Boyweg-Almudj sites and associated ancestral beings. In November 1998 the World Heritage Committee passed a resolution calling for construction at Jabiluka to stop while the Australian Government collected more information about the impact of the Jabiluka mine on cultural values. This resolution was rejected by the Australian Government.

Since the World Heritage Committee decision, the Mirrar have written to and visited the Australian Government's Minister for Environment & Heritage on a number of occasions asking for blasting and drilling to stop at the Jabiluka minesite so that further cultural mapping can take place in the minesite area. The Australian Government has rejected the Mirrar requests.

## **5B: The Position of Sacred Site Custodians for the Jabiluka Land**

At meetings held on April 7, 12, and 13 all the mutually acknowledged Traditional Owners and Custodians of the Jabiluka area agreed to the following statements with regard to the Boyweg-Almudj Sacred Site Complex:

- 1) The Boyweg-Almudj Sacred Site Complex (which includes the Boyweg-Almudj site, the Boyweg-Bagaloi site, the dreaming track between these two sites, and other sites of significance) is a sacred and dangerous area which should not be disturbed on the surface or underground.
- 2) The sacred sites within and associated with the Boyweg-Almudj sacred site complex have existed

for untold generations and their integrity is essential to the survival of Aboriginal culture in present and future generations.

- 3) The access tunnel being constructed for the proposed Jabiluka uranium mine is now in the immediate vicinity of the Boyweg-Almudj Sacred Site Complex, and must stop immediately in order to avoid desecration of sacred sites, with catastrophic consequences for local Aboriginal people.
- 4) Assertions made by the Northern Land Council in the 1982 mining agreement that there are no sacred sites in the area of the Jabiluka mine site are not correct.
- 5) Such assertions were made by the Northern Land Council without consulting with senior key custodians for the Jabiluka area.
- 6) In particular the Primary Custodian for the Jabiluka area has informed the Northern Land Council mining companies, and other officials on many occasions that the sacred sites within the Boyweg-Almudj sacred site complex should not be disturbed.
- 7) That the Senior Traditional Owner, who “consented” to the 1982 agreement did so under duress and later informed senior custodians that the area should not be disturbed because of dangers associated with sacred sites.
- 8) There are a number of burial sites in the area of the Jabiluka mine site, which remain unknown to non-Aboriginal people.
- 9) The Senior Custodians and Traditional Owners who have attended and/or been identified at the meetings of Apr 7, 12, and 13th are the only Aboriginal people who are permitted under Aboriginal law to speak about sacred sites on the Jabiluka land, and have spoken with one voice about the need to protect the Boyweg-Almudj sacred site complex.
- 10) The Senior Traditional owners and custodians for the Jabiluka land call on local Aboriginal organisations, the Northern Land Council, the Australian Government and all other concerned citizens and organisations to support our urgent demand to protect sacred sites within and associated with the Boyweg-Almudj sacred site complex.

At the time of writing the Jabiluka mine tunnel is only a few weeks away from the boundary of the Boyweg-Almudj Sacred Site Complex as identified by Mr Chaloupka. The Traditional Owners and Custodians believe that sacred sites in the area are already being affected by mining activities.

The Mirrar are now preparing domestic legal action to protect the Boyweg-Almudj Sacred Site Complex, but are most concerned that the Australian Government and the mining company will use their considerable resources to publicly ridicule Mirrar spiritual beliefs if this issue is played out in a public forum.

It is for this reason that the Mirrar have turned to the World Heritage Committee, the world’s pre-eminent cultural protection body, to recognise the dangers to cultural values, including sacred sites, posed by the Jabiluka mine.

### **5C: The Australian Government Claims**

Below is a summary of the Australian Government’s claims about the Boyweg-Almudj Sacred Site Complex and responses from the Mirrar:

**5C(a)**

The senior traditional owner has, in recent months, asserted that the current progress of the decline to the ore body threatens the sacred site of Boiwek. In making these claims, the Senior Traditional Owner is asking the Australian government to recognise a significant extension of the boundaries of the site. The extension is not consistent with earlier anthropological evidence or statements by traditional owners. (p. xiv)

The Australian Government continually seeks to characterise that only the Senior Traditional Owner has asserted that the decline to the ore body threatens a sacred site. This is untrue. All Traditional Owners and mutually acknowledged Custodians for the Jabiluka land, including the Senior Custodian who accompanied the Mission on their 1998 visit, have expressed this concern.

The Boyweg-Almudj sites have been consistently recorded as traversing the Mine Valley area. This includes:

- a) Chaloupka, Nomination for inclusion of the Djawumbu-Madjawarnja Site Complex on the Register of the National Estate, 1976 (cited above)
- b) Chaloupka, Djawumbu-Madjawarnja Site Complex Report, 1978 (cited above)
- c) Keen, NLC Report, 1978 (cited above)
- d) Keen, Alligators Rivers Stage Two Land Claim Book, 1980
- e) Chaloupka, NLC Report, 1992 (cited above)
- f) Chaloupka, NLC Report, 1997 (cited above)

The information provided about Boyweg-Almudj sites in 1997 (the first time in Aboriginal language) is not in any way inconsistent with the outline previously provided in English. It is simply more detailed (as one would expect when a subject is first recorded in the interviewee's first language).

**5C(b)**

The Jabiluka Mineral Lease contains approximately 230 art, archaeological and sacred sites. The vast majority are within the Djawumbu-Madjawarna site complex, which is listed on the Register of the National Estate under the AHC Act and protected within two designated Australian Heritage Commission (AHC) exclusion areas. (p. 36)

The area of the Boyweg-Almudj Sacred Site Complex was included in the nomination for the listing of the Djawumbu-Madjawarna Site Complex on the Register of National Estate. The exclusion of the Jabiluka minesite area from the eventual listing has never been explained to the Mirrar.

**5C(c)**

Several highly regarded anthropologists, working closely with traditional owners, including the father of the current senior traditional owner, have defined the site of Boiwek as a small, discrete soakage or swamp on the edge of the wetlands located to the west of the Jabiluka mine valley. (p. 64)

Reports by George Chaloupka and Dr Ian Keen have recorded the Boyweg-Bagaloi soak, the Boyweg-Almudj rock art site; the dreaming track between these two areas; and a number of sacred places linked with associated ancestral beings.

There is no single "Boyweg" site to "define". In addition, anthropologists working with Aboriginal people in Australia are usually at pains to point out that cultural information is often released slowly and therefore do not characterise their recordings as "definitions" or "confirmations".

**5C(d)**

The area between these sites (including the earth beneath this area) is now claimed by the senior traditional

owner to be a sacred site. This claim was first made in 1997 and an expanded claim then made in 1999. (p. 64)  
(See also Figure 7(c))

There has been no “expanded” claim in 1999. The Mirrar website contains a picture of the minesite area which has approximately superimposed the Chaloupka-NLC defined area for the Boyweg-Almudj Sacred Site Complex. If the Australian Government had communicated with Traditional Owners on this issue they would have been informed as to their mistaken assumption about an “expanded” claim. Unfortunately, the Mirrar can only conclude that the Australian Government is deliberately attempting to create the false impression that the Mirrar are arbitrarily changing the boundaries of the Site Complex .

#### **5C(e)**

As a member of the Bininj Working Committee the current senior traditional owner ratified in 1992 a map showing Boiwek as a small site at the soak. This map identified the parts of the lease where particular conditions would be attached to any permits issued to non-Aboriginal people. The map was to be attached to any permits so permit holders would not inadvertently enter the area of any sacred sites. (p. 64)

In 1992 a meeting at which the Senior Traditional Owner was present ratified a Jabiluka sacred site map which is irrefutably incorrect because it contains a non-existent site. The Senior Traditional Owner could not read the map because she is illiterate.

At the same meeting the Senior Traditional Owner requested that the issue of sacred sites in the minesite area be re-evaluated. The Australian Government fails to disclose this far more important decision. (*See Attachment Four*)

#### **5C(f)**

Until 1997 the Australian Government was not aware of any claim that Boiwek was a *Djang andjamun* place that was especially dangerous or had specific restrictions access by traditional owners. (p. 63)

It was not until 1997 that claims were made about a possible extended area for Boiwek, possibly covering the whole of Mine Valley. (p 64)

These statements are untrue. George Chaloupka has recorded both the Boyweg-Bagaloi soak and Boyweg-Almudj rock art site as sacred and dangerous since 1976. (see Chaloupka, 1976, cited above)

In 1992 the Senior Custodian, Mr WogWog, informed the NLC and ERA that the Mine Valley area in which Boyweg-Almudj had travelled was a dangerous proximity. (see Chaloupka, 1992, cited above)

#### **5C(g)**

In the years leading up to 1982, the Northern Land Council carried out extensive consultation with traditional owners and affected Aboriginal communities over the Jabiluka project. Traditional owners were fully informed about the project by NLC staff and consultant anthropologists and had ample opportunity to express their views on sites that required protection and to have those views reflected in the final agreement.

In 1982, after this exhaustive consultation process, an agreement (the 1982 Agreement) was signed that stated, in part, “It was agreed by NLC on behalf of traditional Aboriginal owners that there are no sacred sites within the fenced area. (p. 69)

The Mirrar do not recollect, nor are there any records to indicate, any project-specific anthropological field work being carried out during the 1982 Agreement process.

The Senior Custodian, Mr Jimmy WogWog, claims he was not consulted about sacred sites in the minesite or Mine Valley area before 1992.

In fact, a senior anthropologist wrote to Pancontinental Mining Ltd in early 1992 expressing serious concern at the non-identification of sacred sites in the Jabiluka Minesite area. (*See Attachment Three*)

The Mirrar have extensively articulated their concerns about duress associated with the 1982 Jabiluka Agreement. Such duress extended to the non-identification of sacred sites because of a sense of inevitability that the Jabiluka mine would proceed despite their opposition.

The Northern Land Council has admitted that its assertion in the 1982 Agreement that there are “no sacred sites in the Fenced Area” was incorrect. Both the NLC and ERA acknowledge the Boyweg-Almudj Sacred Site Complex and its location in the Fenced Area (*See Attachment Five.*)

#### 5C(h)

Exhaustive cultural mapping of the site of Boiwek, including any known cultural associations which the site has within both the Jabiluka Mineral Lease and the Kakadu National Park World Heritage property, had in fact been completed at the time of the Mission’s visit. The work was carried out by the AAPA who comprehensively reported on this project to the Mission during its time in the Northern Territory. The reporting included an account of the decision of the Authority’s 36<sup>th</sup> meeting, based on the results of the mapping work, that the site of Boiwek did not satisfy the relevant requirements for registration as a sacred site under the AAPA’s Act. (p. 112)

Yet again this is a misleading account of the facts. The AAPA has not conducted exhaustive cultural mapping of the Boyweg-Almudj Sacred Site Complex. The AAPA has considered non-Aboriginal reports compiled on the area but has not conducted a detailed site analysis in conjunction with Traditional Owners and Custodians.

The AAPA has not registered the Boyweg-Almudj Sacred Site Complex apparently because of conflicting information provided by a non-custodian. The Mirrar have not been provided with any written assessment carried out by AAPA staff.

The AAPA has also declined to grant ERA an authority certificate to carry out works in the area of the Boyweg-Almudj Sacred Site Complex. The AAPA has not said that the Boyweg-Almudj Sacred Site Complex is not a sacred and dangerous area, only that a number of questions remain to be settled before registration can take place.

#### 5C(i)

The site of Almudj relates to the Rainbow Serpent, a prominent Dreaming figure across large areas of Australia. A map in the report shows the line of the dreaming track. It travels the length of the Mine Valley, connects Boiwek and Almudj, and is confined to the area now covered by the Jabiluka Mineral Lease. The dreaming track has no connection with the World Heritage property (see Figure 7a). (p. 68)

This statement belies an acute lack of understanding on the part of the Australian Government as to the interdependence of Aboriginal cultural values and highlights a major inconsistency in the Australian Government’s approach on the issue of sacred sites.

The ancient cultural values of the Mirrar are not able to be partitioned within arbitrary administrative borders created in the last twenty years. Furthermore, the Australian Government (correctly) sites in its report that:

“Creation figures such as the Rainbow Serpent gave the people laws, a way of life and a model for social organisation.” (p. 15)

The Boyweg-Almudj Sacred Site Complex is a creation story about the Rainbow Serpent (who is called “Almudj” in Gundjehmi). How then can impacts on a sacred site complex associated with “laws, a way of life and a model for social organisation” be possibly contained to the Jabiluka Mineral lease given the Australian Government has admitted that such spiritual beliefs form a foundation for cultural values which rest in Aboriginal society and not merely a geographical area?

### 5C(j)

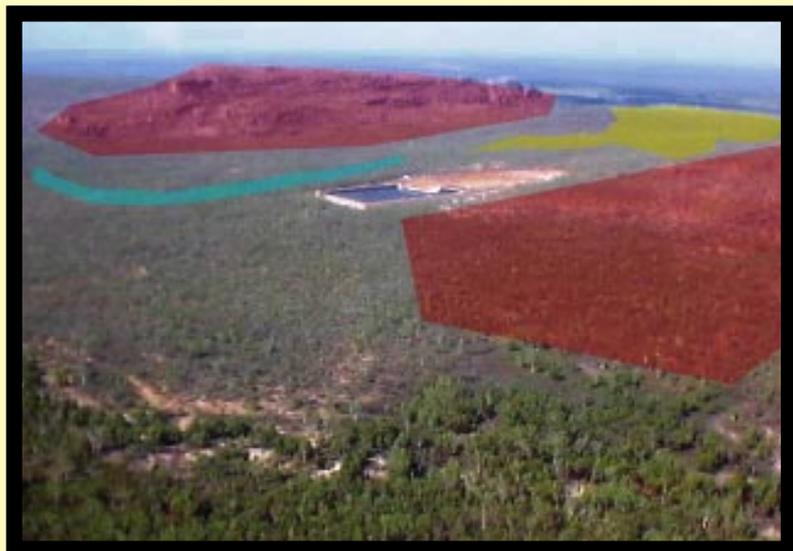
“...no other evidence has yet been supplied by traditional owners to the Australian Government to substantiate the recent claims.” (p. 71)

The Traditional Owners and Custodians have provided information on the Boyweg-Almudj Sacred Site Complex on a number of occasions over more than 20 years. They have recently expressed their deep and fearful concern about desecration of the sacred sites associated with Boyweg-Almudj by the Jabiluka tunnel. Such information is very reluctantly released to non-Aboriginal persons as there are severe penalties, including death, associated with improper use of sacred and dangerous knowledge.

The Aboriginal people of Australia record their cultural traditions orally. It is not clear what further evidence Aboriginal custodians could give the Australian Government.

More importantly, neither the Australian Government nor the mining company have allowed any co-operative cultural assessment for the current Jabiluka project to take place in order to substantiate their claims that the Boyweg-Almudj Sacred Site Complex does not exist. The Australian Government is required to ensure that all relevant information is considered before allowing major mining projects to proceed. This has simply not occurred with the Jabiluka project.

-  Approximate Location of Boyweg-Almudj Sacred site Complex
-  Australian Heritage Commission Areas
-  Approximate path of proposed haulage road



# Chapter 5

## Addressing: **Recommendation 6**

### **KRSIS**

*The Mission recommends that the Australian Government take a leading and decisive role in overseeing the immediate and effective implementation of the Kakadu regional Social Impact Study (KRSIS) recommendations. Implementation of the KRSIS recommendations should ensure that structures are in place within 12 months to begin to ameliorate the negative regional socio-cultural impacts of development on Aboriginal people that are a potential danger to the cultural values recognised when Kakadu National Park was inscribed on the World Heritage List according to cultural heritage criterion (vi).*



## 6A: Establishing Long Term Solutions to Long Term Problems

The Mirrar welcome the Mission's Recommendation that measures are put in place to ameliorate the appalling socio-economic position of Aboriginal people in Kakadu. The Mission's Recommendation, harnessed with the threat of an "In Danger" listing, has been successful in promoting action by Governments which have ignored the chronic social problems of the region for decades.

The Mirrar retain concerns about the independence of the Australian Government's appointee to the Chair of the Kakadu Regional Social Impact Study Implementation team, Mr Bob Collins. Mr Collins is an outspoken critic of the Mission's Report and an outspoken supporter of the Jabiluka project. It is Mr Collins who has promulgated the blatant untruth that Yvonne Margarula lobbied for the Jabiluka mine to proceed in 1991.

The Australian Government has made the false assertion that:

Traditional owner support for these [KRSIS] initiatives has not been forthcoming from the Mirrar at this stage, although the vast majority of traditional owners from other clans in the region are participating. (p. 87)

There have been no KRSIS Implementation meetings yet called. This is due to **all** Aboriginal organisations in the region, calling for the process to begin with the identification of framework and priorities in an all-Aboriginal forum.

It is therefore most surprising that the Mirrar are being characterised as not supporting the initiatives and equally surprising that a "vast majority" of local Aboriginal are "participating".

The Mirrar have indicated that they will be unable to support those KRSIS recommendations which rely on funds from the Jabiluka Project. It would be grossly hypocritical for the Mirrar to do otherwise and would only serve to perpetuate the fundamental inequity of substituting mainstream government services with outlays from compensatory mining royalties.

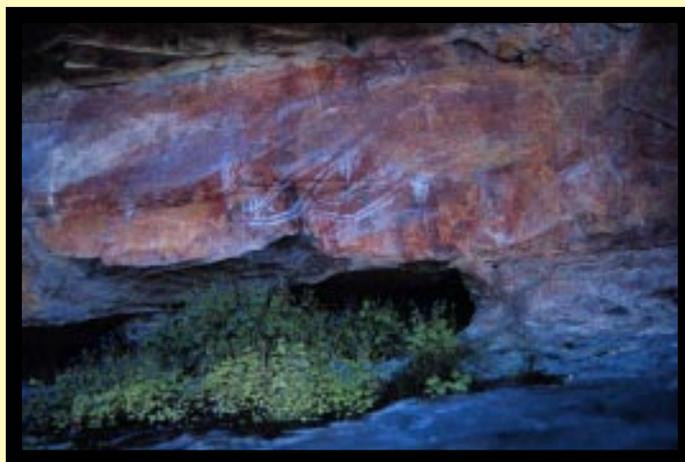
It is interesting to note that the Australian Government's Report fails to mention the lack of Australian and Northern Territory Government support for the key KRSIS recommendation that Jabiru become Aboriginal land.

# Chapter 6

## Addressing: **Recommendation 7**

### **1982 Agreement and 1991 Deed of Transfer**

*The Mission notes the existence of the mining rights of Energy Resources Australia Ltd (ERA) in relation to the Jabiluka Mineral Lease. The Mission also recognises the customary rights (and responsibilities) of the senior traditional owner, Ms Yvonne Margarula, to oppose a development that she believes will irretrievably damage her country and her people. The Mission is of the view that it is incumbent on the Australian Government to recognise the special relationship of the Mirrar to their land and their rights to participate in decisions affecting them. Therefore the Mission is of the opinion that the Australian Government, along with the other signatories, should reconsider the status of the 1982 agreement and the 1991 transfer of ownership to ensure maintenance of the fundamental rights of the traditional owners.*



## 7A: The 1982 Jabiluka Agreement: “We are Not Talking About Mining”

The Australian Government refers to the 1982 Jabiluka Mining Agreement in the following terms:

The Mirrar gave consent to mining at Jabiluka in 1982. The agreement was signed after exhaustive consultation with traditional owners, as required under the Australian legislative regime, and has not been challenged under Australian law. (p. xiii)

The Aboriginal people of the Northern Territory have a right of veto over mining on their land under the *Aboriginal Land Rights (Northern Territory) Act 1976* that does not apply to land owned by non-Aboriginal Australians. The traditional owners of Jabiluka had the right to veto the mine but instead chose to consent to the mine for the economic and other benefits they negotiated. (p. xiii)

The Traditional Owners have made no moves under Australian law to rescind the 1982 Agreement. (p. 72)

Traditional owners have consented to the Jabiluka mine. (p. 78)

The Australian Government considers, and all evidence provided indicates, that these agreements were reached through the informed consent and strong support of traditional owners at that time as required under the Act. (p. 87)

The development and finalisation of the 1982 Agreement involved a number of years of negotiations with traditional owners and included hundreds of meetings with these people and the other Aboriginal custodians in the Kakadu region who had an interest in the Jabiluka mine. In contrast to recent concerns regarding the Agreement process, none of the principals associated with the Agreement have disowned the Agreement or the process which led to its finalisation. (p. 87)

The Government notes that the parties to the 1982 and 1991 agreements have the right to legally challenge them if they consider that the terms of the agreements have not been satisfied or were entered into under duress. (p. 88)

The 1982 Agreement, negotiated under relevant legislation protecting the rights of Aboriginal people to their land, includes measures to protect sacred sites within the Jabiluka Mineral Lease from any damage from the construction of the mine (p. 112)

The 1982 Jabiluka Agreement is one of the most controversial contracts in Australia’s history. In order to understand why Traditional Owners and other Aboriginal people in Kakadu reject its legitimacy, and why it stills stands, it is important to consider the following irrefutable facts omitted from the Australian Government’s Report:

- i) The Mirrar opposed the Ranger mine and it went ahead anyway.
- ii) The Mirrar were told that their Land Claim could be defeated if they did not agree to the Jabiluka mine. (*Transcript, Meeting at Djarr Djarr Camp, 26-7 January, 1981*)
- iii) All living Traditional Owners and acknowledged Custodians for the Jabiluka area, including a number of people who were present during the original negotiations maintain that important sacred sites information was either not revealed or suppressed in 1982. This existence of previously unrecorded sites of significance was confirmed by the Northern Land Council in 1997 and accepted by ERA in 1998.
- iv) The Australian Government amended the *Aboriginal Land Rights (Northern Territory) Act* in 1980 so that mining agreements would stand even if it could be proved that informed consent was not given.

- v) The Mirrar are not a party to the 1982 Jabiluka Agreement. The agreement is between the Northern Land Council and Energy Resources of Australia.
- vi) Both the current Senior Traditional Owner and the Senior Custodian for the Jabiluka land are adamant that the previous Senior Traditional Owner asked them to ensure that the Jabiluka Project did not ever proceed after it was stopped by Government policy in 1983.
- vii) There was no accredited interpreter services provided to any local Aboriginal people during the entire 1982 Agreement process (a local Aboriginal employee of the NLC was used for this purpose at some meetings) and most of the key Aboriginal decision makers were (are) illiterate.

Of course the Mirrar maintain that many other acts of duress and unconscionable behaviour accompanied the 1982 Agreement. These arguments are set out in the paper entitled: “*We are Not Talking About Mining: The History of Duress and the Jabiluka Project*” and the section of this document concerning the Boyweg-Almudj Sacred Site Complex. However the seven facts presented above are in the knowledge of the Australian Government and stand without refutation.

It is therefore misleading for the Australian Government to claim that there is no evidence that the 1982 Agreement was signed in questionable circumstances. There is much evidence that the Australian Government continues to disregard. The Mirrar can only conclude that the Australian Government does not wish to address all the issues before it and is therefore unable to complete a balanced assessment. It is for this reason that on April 26, 1999 the Australian Senate resolved to conduct an Inquiry into the Government’s approval processes for Jabiluka.

The Mirrar are eager to bring court action to challenge the 1982 Agreement and have developed a persuasive and powerful case. However the Australian Government has passed legislation which prevents mining agreements under the *Aboriginal Land Rights (Northern Territory) Act 1976* from being quashed even if it is established that they were reached without informed consent. Section 48D(3) states:

Where a Land Council, in entering into an agreement under subsection (1), fails to comply with subsection 23(3) [the “Traditional Owner consent” section] in respect of Aboriginal land to which the agreement relates, that failure does not invalidate the entry by the Land Council into the agreement.

This is the only reason that the legal action has not yet commenced and it is deliberately misleading of the Australian Government not to disclose this fact.

The Australian Government also claims that:

To set the 1982 agreement aside would risk...creating a precedent that would unjustly privilege one set of acquired rights over another, to the extent of allowing one party unilaterally to revoke a contract, freely given and accompanied by payments, at a later date [and cause] injustice to the Company who have complied with every law, met every requirement, respected every notified Aboriginal site in managing the project;

The fact is that ERA can effectively revoke the 1982 Agreement whenever it wishes by not proceeding with construction– neither the NLC nor Traditional Owners have this power. The Australian Government has failed to disclose to UNESCO that it has indicated both in Court and in Parliament that ERA is proceeding with construction at its own financial risk and that ERA has no administrative decisions to rely upon for compensation should the need arise to stop the Jabiluka Project.

ERA’s impending desecration of the Boyweg-Almudj Sacred Site Complex in the face of continual

notification and the lack of a Cultural Heritage Management Plan makes a nonsense of the claim that it has “respected every notified Aboriginal site”.

## 7B: The 1991 Jabiluka Deed of Transfer

The Australian Government refers to the 1991 Deed of Transfer in the following terms:

With the agreement of the NLC, on consent of Aboriginal traditional owners, the Jabiluka Lease was transferred to ERA in August 1991. (p. 21)

...through the Northern Land Council, traditional owners gave informed legal consent to mining in 1982 and consented to the transfer of those mining rights to Energy Resources Australia in 1991. (p. 73)

The Australian Government does not support the course of action outlined in the Recommendation. Australian Law gives traditional owners a right to veto. In 1982 and 1991, traditional owners consented. (p. 86)

In 1991 Pancontinental Mining Ltd sought to sell (assign) its interest in the Jabiluka Mineral Lease, including the 1982 Agreement, to the owner of the nearby Ranger uranium mine, Energy Resources of Australia.

The 1982 Agreement contains provisions to allow assignment to another mining company. The relevant section is Clause 27. In particular clause 27.1 states:

“...[Pancon] may assign, or otherwise dispose of the whole or any part of its interests, rights and obligations under this Deed...provided that Pancon shall not assign its rights as operator of the Jabiluka Project without the consent of the NLC **which consent shall not be unreasonably withheld.**” (emphasis added)

The effect of this clause is that, provided the mining company is prepared to enter into genuine negotiations with the NLC about a transfer, neither the NLC nor the Traditional Owners can prevent the sale of the mining interest.

In 1991, 1992 and 1993 the Senior Traditional Owner informed the NLC that the Mirrar were opposed to the development of Jabiluka. (*See Attachment Six*) This opposition was unable to be exercised by not agreeing to the 1991 Deed of Transfer. The best that the NLC could negotiate was to give Traditional Owners the right to veto the milling of Jabiluka ore at Ranger.

It is deliberately misleading of the Australian Government to infer that Traditional Owners supported the Jabiluka Project being developed by ERA in 1991 or at any other time.



*The Mirrar Clan (Photo: D. Hancock/ Skyscans)*



*The Next Generation of Mirrar (Photo: D. Hancock/ Skyscans)*

# Chapter 7

## Addressing: **Recommendations 10 & 11**

### Joint Management & the Breakdown in Communication and Trust

*The Mission recommends that the Australian Government undertake considerable additional negotiation before requiring an immediate place for a Northern Territory Government representative on the Kakadu Board of Management. The Mission further recommends that the Australian Government ensure that if a Northern Territory Government representative is placed on the Kakadu Board of Management, that two additional Aboriginal members be appointed (as offered by Minister Hill in a meeting with the Mission team) to maintain a clear two-thirds majority for Aboriginal membership of the Board. The Mission also recommends that the proposed changes to the status of the Director of National Parks be reconsidered.*



## 10/11A: Australia's "Race Debate"

In the context of these Recommendations, the Mirrar feel it is vital to briefly address the widespread breakdown in communication and trust between the current Australian Government and Indigenous people.

In addition it is important to examine the way in which the Australian Government's Report seeks to discredit the cultural concerns of the Mirrar and falsely portray the Mirrar as isolated from the Aboriginal community in Kakadu.

The Australian Government refers in its report to a number of general issues relating to recognition of Aboriginal rights. Specifically the Australian Government states:

### 10/11A(a)

The staged declaration was due to the debate over whether mining should be allowed to go ahead at Guratba (Coronation Hill). Guratba is in the middle of the culturally significant area referred to as the Sickness Country. There was intense public debate over the issue and after lengthy review and decision-making the Australian Government decided that there would be no mining in that location. (p. 19)

The current Australian Government, comprised of a conservative party coalition, has been in continual and bitter conflict with Australia's Indigenous population since coming to power in 1996. During its thirteen years in opposition, the conservative parties systematically opposed advances in Aboriginal rights, including the recognition of Aboriginal native title. In particular, the conservative parties, including many Ministers in the current Government, were strongly in favour of mining proceeding at Guratba (Coronation Hill) and went to considerable lengths to discredit the cultural concerns of the area's Traditional Owners (see discussion at 5A)

### 10/11A(b)

Australia is party to a number of international conventions and agreements on human rights and indigenous peoples rights. These agreements include:

- The International Convention on the Elimination of all forms of Racial Discrimination (CERD)...(p. 41)

The current Australian Government's amendment of the *Native Title Act* has seen Indigenous leaders forced to approach the Committee for the International Convention on the Elimination of all forms of Racial Discrimination to have the Australian Government's actions declared racist. The Committee made a declaration in these terms last month.

The current Australian Government is engaged in a high profile and acrimonious Court action against a number of Aboriginal people seeking compensation as a result of the Australian Government's historical policy of removing Aboriginal children from their families.

The current Australian Government has opposed the use of the word "self-determination" in the Draft Convention on the Rights of Indigenous Peoples.

The current Australian Government has refused to acknowledge Aboriginal people's custodianship of the land in Australia in the proposed changes to the Australian Constitution.

### 10/11A(c)

The relations between the Australian Government and the Aboriginal people of Kakadu are a vital ingredient in the success of the Park, and demonstrate Australia's clear commitment to reconciliation, focussing particularly at the local level. (p. 94)

"...it should not be assumed that there is any general breakdown in trust and consultation with most of the 530

Aboriginal residents of Kakadu....” (p. 94)

The Kakadu Board of Management’s concerns about the *Environment Protection and Biodiversity Conservation Bill (No 2) 1998* are so great that there is now legal action pending to terminate all leases with the Government in Kakadu National Park, the effect of which will be to bring the joint management regime to an end. The Government has deliberately failed to disclose this fact to UNESCO. (*See Attachment Seven*)

#### **10/11A(d)**

The Aboriginal population of the Park since inscription has risen from about 140 to about 530 (1996 estimate) as a result of mining royalties and Park activities. (p. 113)

The reason that Aboriginal people have returned to their homelands since the late 1970’s is because they have been successful in claiming their land back under the *Land Rights Act*. This is a phenomena which has occurred all over the Northern Territory and in many areas where there is no mining. In addition, many people who receive royalties from Ranger do not live in Kakadu.

### **10/11B: Divide & Conquer - The Australian Government’s Approach to Mirrar Concerns**

The Australian Government has devoted considerable effort to creating an impression that the Mirrar are an isolated or minority “dissident” group within Kakadu National Park. It has deliberately avoided making reference to the strong support received by the Mirrar by the great majority of Aboriginal people in Kakadu, including the pan-representative West Arnhem Regional Council. It has avoided making any reference to the Mirrar people’s active involvement in the Kakadu Board of Management. It has not disclosed that the Mirrar are linked by familial and kinship relationships to every other clan in the region. It has obscured the fact that despite the lure of millions of dollars, and considerable effort by both the mining company and the Government, not one single clan group in Kakadu has publicly supported the Jabiluka proposal.

The Australian Government is clearly not interested in building trust and communication with the Mirrar or any of the many other Aboriginal people who support the Mirrar right to protect Mirrar country and culture. The Australian Government’s Report is reflective of an historical “divide and conquer” approach to Aboriginal issues. Examples include:

#### **10/11B(a)**

The Australian Government understands that the view expressed in the Mission’s report is not shared by all of the traditional owners of the land covered by the World Heritage property. The Mirrar people are the owners of 2% of Kakadu National Park. To suggest that the claims by the Mirrar justify listing lands belonging to other traditional owners as World Heritage in Danger is not sustainable. (p. 113)

Other traditional owners have indicated that they oppose any listing of Kakadu National Park on the List of World Heritage In Danger and have conveyed that view to the UNESCO Mission. (p. x)

Recently, emerging politics of anti-uranium mining has exacerbated divisions and resentments between individuals, clan groups and organisations. (p. 27)

In their submission to the UNESCO Mission, the Jawoyn Association noted their concerns regarding the possible implications of an ‘In Danger’ listing on the economic opportunities for their people. (p. 78)

This is only one view of a complex situation. The Mirrar, owners of 2% of the Park, are only one of the approximately 16 Aboriginal land owning groups in the Kakadu region. Aboriginal people in the Park all have

an interest in mining and their views also need to be considered on this issue. Apart from the traditional owners of the Jabiluka and Ranger areas, there is a considerable degree of support for mining by those Aboriginal people affected by the existing mine. (p.114)

The fact that the Australian Government seems incapable of understanding that impacts on Aboriginal cultural values cannot be contained within a artificially defined geographical area is of tremendous concern. The Mirrar are integral to the cultural values of Kakadu National Park. The previous Mirrar Senior Traditional Owner was key figure in the creation of Kakadu. The main Kakadu Visitor Centre is on Mirrar land. Gundjehmi language and Mirrar food gathering techniques are presented to Park visitors as an example of Aboriginal living tradition. The Mirrar live within the World Heritage Area. The Mirrar are responsible for a number of sites of significance within the World Heritage Area with connections to sites on the Jabiluka mineral lease. The Mirrar demonstrate this interconnectedness through an analogy with the human body – for example, the kidney may only make up a tiny part of a person’s anatomy but if the kidney is destroyed the rest of the body will die.

The Australian Government’s assertions about “considerable” Aboriginal support for uranium mining are baseless. They do not provide any evidence of this support because, with the exception of statements from a single family, no such support for Jabiluka exists.

Aboriginal people in Kakadu, and indeed throughout Australia, hold as their most fundamental law the primacy of Traditional Owner decision-making. It is the law which ensures that rights and responsibilities to land are exercised in accordance with custom and tradition. It represents the inherent link between people and country. The Australian Government’s apparent disrespect for this fundamental principle is a danger to the cultural values of Kakadu in itself.

The Jawoyn Association devoted the majority of their submission to the UNESCO Mission outlining their support for the right of the Mirrar to make decisions about their Traditional Lands - a principle which the Jawoyn hold very seriously. That the Government has attempted to characterise the Jawoyn concern about an “In Danger” listing as lack of support for the Mirrar is a serious misrepresentation apparently presented without any consultation with the Jawoyn. The Mirrar also have grave concerns about an “In Danger” listing – but it is the development of Jabiluka, not actions of Aboriginal people, which is leading to this outcome.

#### **10/11B(b)**

The Australian Government’s Report also attempts to trivialise the concerns of Aboriginal people in Kakadu. A key example is:

In terms of the need for listing, previous listings In Danger without consent of States Parties have been strongly justified by an irretrievable loss of or serious damage to World Heritage values or in the integrity of a World Heritage property. It is clear that listing In Danger is primarily undertaken when there is a real and serious threat to the site, for example in cases of civil unrest, poaching or illegal occupations, or unmanaged development within a property. (p.122)

The Mirrar are appalled that the Australian Government does not consider the potential loss of a distinct language, culture, spirituality and society as an “irretrievable loss” or “serious damage”. The Australian Government’s inference that poaching is more serious than the desecration of Aboriginal culture is grossly insulting, but unfortunately not surprising.

#### **10/11B(c)**

The Australian Government Report seeks to attack the credibility and consistency of the Senior

Traditional Owners' opposition to Jabiluka. The Australian Government's repeated misrepresentation is:

The senior traditional owner came to Canberra in 1991 with a group of traditional owners, to lobby senior Australian Government Ministers that the mine should go ahead in accordance with the 1982 Agreement. (p. 114)

The Mirrar are astounded at the way the Australian Government continues to infer that the Mirrar have lobbied for Jabiluka to proceed when this is utterly and completely untrue. **No Mirrar have ever lobbied for the Jabiluka Project to proceed.**

In 1991, the Senior Traditional Owner, upon learning that Aboriginal persons from Kakadu who are not Traditional Owners for the Jabiluka land had been seconded by a lawyer to lobby for Jabiluka to proceed, insisted that she accompany the "lobbyists" on their trip to Canberra. Ms Margarula, illiterate and having just been thrust into the position of Senior Traditional Owner following her father's death, either remained silent in the meetings or informed politicians of her opposition to Jabiluka proceeding.

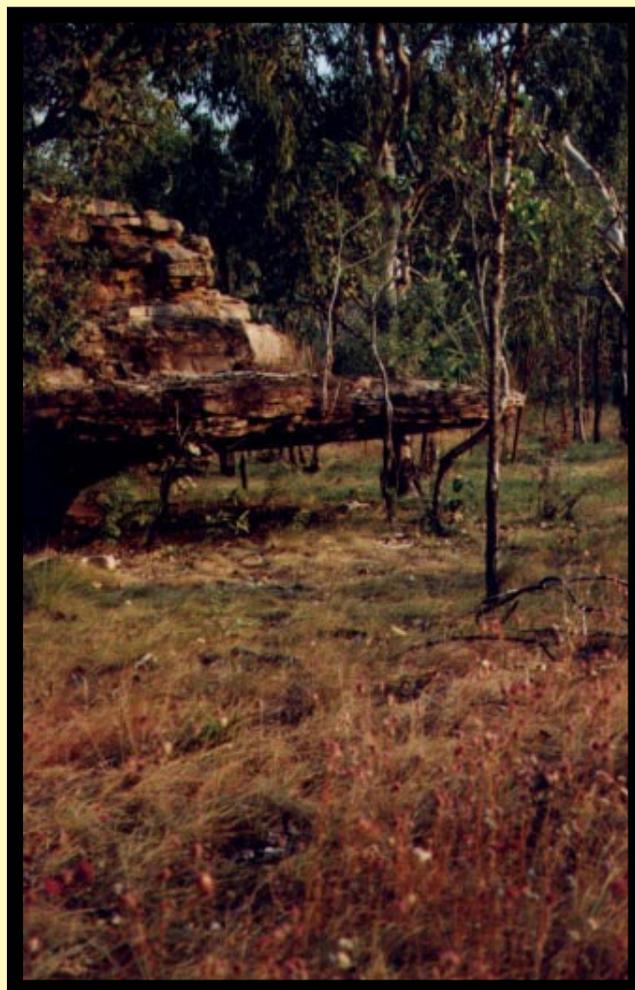
Note that the Australian Government has carefully worded its statement so as to avoid directly stating that Ms Margarula lobbied for Jabiluka to proceed. This use of deceptive language and misleading "facts" in the Australian Government's Report demonstrates the reluctance of the Australian Government to provide UNESCO with a fair and honest appraisal of the Jabiluka project.

The Mirrar informed the NLC in 1991 that they were opposed to Jabiluka.

# Chapter 8

Addressing:

**Other Concerns Noted By The Mission**



## Other Concerns Noted By the Mission

Aside from its recommendations, the Mission noted some other concerns in its report which have a direct impact on the cultural values of the Mirrar. The Australian Government's Report yet again employs deceptive and misleading measures to address these concerns.

### The Jabiluka Mill Alternative & The Ranger Mill Alternative

The Australian Government's Report addresses the Mission's concern about the development of the Jabiluka Mill Alternative in the following manner:

***Mission's Finding:** The Mission noted that the government has assessed two options for the milling of the ore proposed to be extracted from Jabiluka - the Jabiluka Milling Alternative (JMA) and Ranger Milling Alternative (RMA). The mission recognises that the RMA would have less direct impact on the Jabiluka area but that this has been opposed by the senior traditional owner. Despite not being the preferred environmental option, ERA is currently intending to install a mill at Jabiluka.*

#### *The Evidence*

- No final decision has been taken on which milling option will proceed.
- The Government has assessed both milling options, and they both comply with the Government's decision that all tailings from the Jabiluka mining proposal be stored underground and do not threaten the natural values of the World Heritage property. The JMA is inconsistent with the traditional owners' consent in the 1982 Agreement. (p. 107)

Contrary to the Australian Government's assertions, a final decision has been taken on which milling option is available to ERA. All the Traditional Owners, not just the Senior Traditional Owner, have resolved to exercise their legal right to prevent ore from Jabiluka being processed at Ranger. Their decision is final. ERA has no other option but to mill ore at Jabiluka.

It is the understanding of the Mirrar that ERA has continued with construction of the Jabiluka decline in the hope that this would demoralise the Mirrar and lead to them changing their position on the extension of operations at Ranger. This premise is supported by the enormous cost additions which would be required to develop a mill at Jabiluka (approximately \$200 million or an amount roughly equivalent to some 15 years of ERA's current net profit). The fact that ERA still refuses to accept that they must mill at Jabiluka would seem to provide further proof. If this is the case, ERA's decision to proceed with construction is an act of cultural and environmental vandalism on a globally significant scale.

The JMA is not consistent with the 1982 Agreement. The current ERA proposal is in a totally different position (much closer to the Boyweg-Almudj Sacred Site Complex) and involves the construction of a road to Ranger for a variety of support services. There are many other differences between the 1997 ERA proposal and the 1982 Agreement. The Northern Land Council has vehemently opposed ERA's current proposal, notwithstanding its binding obligation to the 1982 Agreement.

The Public Environment Report prepared by ERA for the Jabiluka Mill Alternative contains no proposal for the underground disposal of tailings and is currently subject to domestic legal challenge. The Mirrar trust that this crucially important fact will be addressed by the World Heritage Committee's expert advisory bodies on natural values.

## The Jabiluka Environmental “Conditions”

The Australian Government refers to the Mission’s concerns about the apparent ineffectiveness of the Jabiluka environmental conditions in the following terms:

*Mission’s Finding: The Mission noted that “some stakeholders” felt that the process of translating the Minister for the Environment’s recommendations on safeguards into requirements made of the mining company during the EIS process may have led to the possibility of a diminution in environmental controls.*

- The translation or recommendations into requirements provided the recommendations of the Minister for the Environment with statutory force in relation to the Government’s statutory approval processes. Changes in wording relate to the recognition of existing Commonwealth and Northern Territory statutory and administrative regimes and the use of these regimes to give practical effect to the recommendations. In this sense, the requirements assume a ‘force in law’ in the regulation of the mine. (p. 107)

A comparison of the initial (much publicised) recommendations and the subsequent requirements, as they relate to cultural values reveals an irrefutable diminution of safeguards. For example:

### **Recommendation 75:**

ERA *must comply* with all relevant agreements between it and the NLC (on behalf of traditional owners)

### **Requirement 75:**

ERA is *to note* this recommendation.

### **Recommendation 72:**

ERA *should ensure* that the proposal is implemented in accordance with the environmental commitments and safeguards identified in the Jabiluka Draft EIS, or modified in the Supplement to the draft EIS, and the assessment report prepared by Environment Australia

### **Requirement 72:**

The project as described in the EIS and subsequent reporting documents is recognised for all environmental purposes as the primary project description. The EIS should *form the basis of the first draft of an Environmental Management Plan* and will be covered by an Authorisation under the UM(EC) Act 1979 (NT).

### **Recommendation 70:**

ERA must ensure that the Jabiluka proposal *does not have any* adverse impact on the world heritage values of Kakadu National Park

### **Requirement 70:**

*To the extent reasonably practicable*, ERA must ensure that the Jabiluka proposal does not have any adverse impact on the world heritage values of Kakadu National Park.

### **Recommendation 57:**

The study on the dewatering of Boyweg Bagaloi *must be conducted in accordance with the recommendations of the Traditional Owners*

### **Requirement 57:**

ERA must comply with *the principles of this recommendation* and ensure appropriate consultation with the NLC.

### **Recommendation 56:**

ERA *must develop* a Cultural Heritage Management Plan in consultation with Traditional Owners’s Environment Australia and relevant NT authorities *prior to project construction commencing*.

### **Requirement 56:**

In complying with Jabiluka Environmental Requirement’s 3, 6 and 32, ERA *must take into account* the intent of recommendation 56.

### **Recommendation 53:**

ERA *must undertake* detailed negotiations on potential impacts (including social impacts) and mitigation

measures with the NLC and the Aboriginal community *prior to the project proceeding.*

**Requirement 53:**

ERA *take into account* this recommendation in the context of the Section 43 Agreement.

The effect of the re-wording that has taken place in the translation from recommendations into the requirements is that it is practically impossible to take any domestic legal action against ERA when they fail to comply with the recommendations/requirements.

For example, ERA has not ensured that a Cultural Heritage Management Plan take place before commencing construction as set out in Recommendation/Requirement 56. In addition, ERA has not undertaken detailed negotiations on the social impacts of Jabiluka with the Aboriginal community (remembering KRSIS specifically excluded examination of the Jabiluka Project) as set out in Recommendation/Requirement 53.

However because the requirements diminish ERA's duty merely to "take into account" these recommendations, there is no ability to take legal action against ERA when they fail to comply.

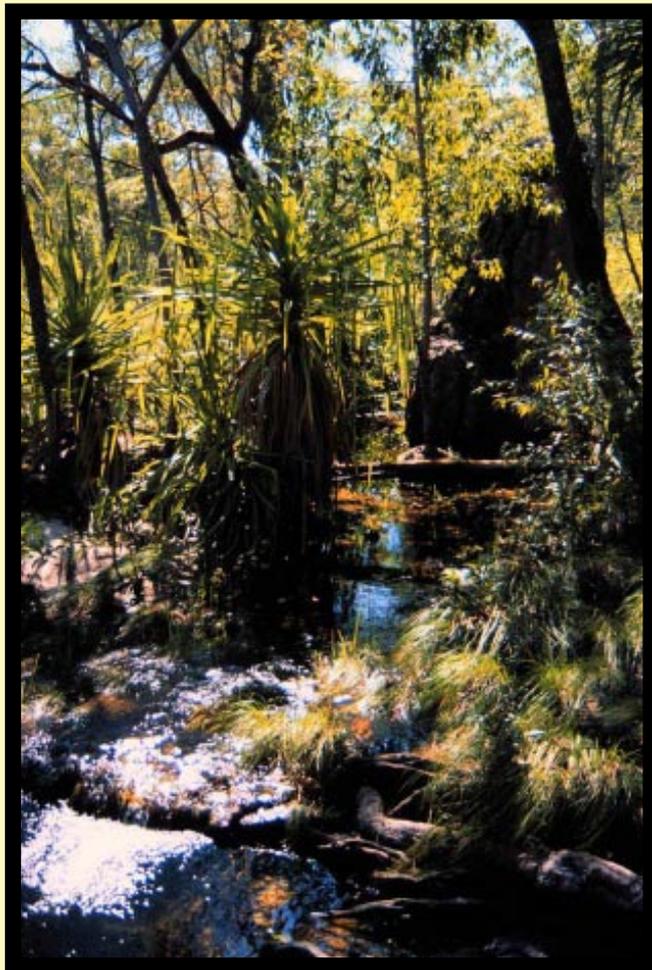
It is important to note that statements in the Australian Government's Report such as:

The government legislative requirements on ERA, and commitments by the proponent, are more than adequate to ensure that there is no impact on the World Heritage values of the Park. (p.121)

are misleading and inaccurate. The Government has not ensured that there is "no" impact on the World Heritage Area, only that impacts are limited to what is practical for ERA to operate a profitable mining enterprise.

The Australian Government's Report also fails to indicate what would happen in the event that ERA failed to comply with a number of outstanding Ministerial requirements. It has been indicated to the Mirrar by Commonwealth representatives that these conditions are merely "guidelines" which do not have to be complied with until uranium ore from Jabiluka is ready for shipment. Requests from the Mirrar to clarify the status of the conditions have not been met.

# ***Conclusions***



The Mirrar Senior Traditional Owner, Yvonne Margarula, has continued an appeal to the international community for support to protect Mirrar living tradition. The following is an extract from her most recent statement.

In October 1998 the World Heritage Bureau and Committee sent a Special Mission to my country to listen to the Traditional Owners and Custodians of the Kakadu region and our grave concerns about the proposed Jabiluka uranium mine.

The Mission heard how the Mirrar living cultural tradition has existed for untold generations and was integral to Kakadu receiving inscription on the World Heritage List for cultural and natural values.

The Mission visited some of our sacred sites which are being disturbed by current construction at Jabiluka with potentially cataclysmic consequences for our people. The Mission saw for themselves that our cultural landscape exists within the Kakadu World Heritage Area and the Jabiluka Mineral Lease. The Mission witnessed how the negative impacts associated with activities on the Jabiluka Mineral Lease negatively impacts on the unique cultural qualities for which Kakadu has been inscribed as a World Heritage Area.

The Mission observed the abysmal conditions in which Mirrar and other Aboriginal people live within the Kakadu World Heritage Area. The Mission heard how our people living within the Kakadu World Heritage Area have one of the lowest life expectancies in the world and continue to die from preventable diseases. The Mission received information from us which shows that mining, and its associated impacts, has been imposed against our wishes; is destroying our ancient political, social and cultural fabric; and is pushing our people to alcoholism, depression and hopelessness.

We know that mining is responsible for these grave dangers to our living tradition because we have directly experienced the social dysfunction resulting from the Ranger uranium mine and the mining town of Jabiru over the last twenty years. We showed the Mission that the Australian Government has been told by its own experts that our community is in crisis and that another mine will exacerbate this danger. The Mission saw for themselves how this advice has been ignored.

Our people see the World Heritage Convention as a vital instrument defending the integrity of the values as they are listed - values which reflect our living tradition, our Mirrar society. We are placing our trust in state parties to the Convention to act upon the imminent danger to these unique values posed by additional mining in our country.

We know that the Australian Government will see any decision other than Kakadu being included on the List of World Heritage in Danger as an approval of their actions by the international community. The Australian Government and the mining company have already made statements in the media that UNESCO are going to reject the Mirrar and endorse the Jabiluka mine.

If you assist the inclusion of Kakadu on the List of World heritage in Danger the Australian Government will be forced to listen to Aboriginal people and work with us to protect the World Heritage values of Kakadu. If you do not the Australian Government will turn its back on the impending demise of our culture and people.

We ask that you listen to our reality and not the promises of the Australian Government. We ask that you do not take the Australian Government's reports about Kakadu on face value as they seek to misrepresent the situation in our country. We ask that listing Kakadu as World Heritage in Danger be supported by a range of remedial recommendations, including the halting of the Jabiluka project and the re-recognition of the political, social and cultural foundations of the Mirrar living tradition.

We ask for your help where others have failed.

The Mirrar have demonstrated the will and the determination to devise and implement solutions to overcome the profound attack on the integrity and foundation of their cultural future. However, the Mirrar believe erosion of their living tradition will continue unrecognised and unaddressed by the Australian Government unless the status of Kakadu National Park is recognised In Danger.