
Gundjehmi Aboriginal Corporation



*An organisation managed and controlled by
the Mirrar People of Kakadu*

**Information for the Twenty-Fifth Session of the
Bureau of the World Heritage Committee**

1 May 2001

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1. Introduction

The Mirrar submit that ascertained and potential dangers to the cultural and natural values of Kakadu National Park continue to exist. The Mirrar believe that grounds for inscribing Kakadu on the List of World Heritage In Danger still exist.

Mining at Jabiluka would result in an important loss of cultural significance¹. The Mirrar submit that the cultural deteriorations to which Kakadu National Park has been subjected by existing mining activities, combined with the escalating impact of activities associated with the Jabiluka uranium mine, are of the highest intensity².

Mirrar country is Aboriginal land and the normal evolution of the social and economic framework of that land is of a kind in which Aboriginal people must decide on development issues in the region. The Mirrar do not consider the threats posed by Jabiluka to be part of the normal or socially responsible evolution of the social and economic framework of Kakadu.³ The continuing imposition of this development against the wishes of Traditional Owners exacerbates cultural uncertainty and underlies the arguments presented by the Mirrar in this document.

The Mirrar believe that recent events regarding water management at Jabiluka provide testimony to their long-held concern for the protection of Kakadu's World Heritage values. The Mirrar contend that the World Heritage Committee did not have access to the full range of information required when it concluded that "the currently approved proposal for the mine and mill at Jabiluka does not threaten the health of people or the biological and ecological systems of Kakadu National Park"⁴. In particular, the Mirrar do not consider the work of the Independent Scientific Panel (ISP) of the International Council of Science (ICSU) to have assessed the possible health effects of the Jabiluka proposal.

Dialogue between the Mirrar and the Australian Government regarding a process to protect Kakadu's cultural heritage is ongoing but continues to be strained. Mirrar hold significant concerns over the inadequacy in scope and volume of on-the-ground information being sought by the Minister for Environment and Heritage.

The Mirrar submit that in relation to Kakadu the Australian Government has not honoured its commitments under Article 4 of the World Heritage Convention, namely, to protect, conserve, present and transmit to future generations Kakadu's unique natural and cultural values. Specifically, the Mirrar contend that the current situation at Kakadu is such that the Australian Government must acknowledge that the "international assistance and co-operation" cited in Article 4 is now entirely appropriate. Mirrar view such assistance as a valuable and necessary tool to help realise the goal of the protection of the unique World Heritage properties and values of the Kakadu region.

¹ Paragraph 82(i)(f) of the *Operational Guidelines for the Implementation of the World Heritage Convention*, March 1999.

² Paragraph 85(b) of the *Operational Guidelines for the Implementation of the World Heritage Convention*, March 1999.

³ Paragraph 85(c) of the *Operational Guidelines for the Implementation of the World Heritage Convention*, March 1999.

⁴ Decision of the 24th Committee Session regarding Natural Values

The Mirrar tradition does not draw any distinction between natural and cultural values. However, we have done so in this submission for the convenience of the Bureau of the World Heritage Committee and to assist with the Bureau's consideration of this matter of pivotal importance to the Mirrar. The submission first addresses natural and cultural values, then makes a recommendation to the Bureau.

2. Natural Values

2.1 Mirrar objection to Committee finding, November 2000

The Mirrar submit that in stating "that the currently approved proposal for the mine and mill at Jabiluka does not threaten the health of people or the biological and ecological systems of Kakadu National Park that the 1998 Mission believed to be at risk"⁵ the Committee erred, as this has not been scientifically proven and there exists an absence of baseline data to support this.

This Committee decision was informed by the September 2000 report of the Independent Scientific Panel (ISP) of the International Council of Science (ICSU). The Mirrar contend that the ISP's investigations and terms of reference were neither conclusive nor broad enough to justify the apparent certainty in the Committee's decision.

In its statement on Kakadu at the 24th Session of the Committee the IUCN highlighted that there are other values "which were not examined by the ISP but which are affected by the mine"⁶.

One of these values is the physical health of the Mirrar. To date there has been scant investigation or analysis of the potential impact on human health of the Jabiluka project. This is despite the revelation of continuing and dangerous leaks from the Ranger mine into Mirrar country and within the bounds of Kakadu National Park on Mirrar country, including that of extremely elevated levels of Manganese (the toxicology of which is little understood but known to be associated with mental dysfunction) that entered Kakadu from the long-term leak of a tailings pipe at Ranger in 2000.

The Mirrar, therefore, stress that until a complete investigation of all the potential impacts of the Jabiluka project is conducted there can be no security such as that suggested in the decision of the 24th Session of the Committee.

2.2 Ongoing water management problems

Despite the assurances of the Australian Government and Energy Resources of Australia the Jabiluka mine site is beset with significant water management problems. The Mirrar contend that these continuing and escalating problems pose real and ascertained threats to the natural values of Kakadu.

The so-called Jabiluka Interim Water Management Pond (IWMP) was designed to contain contaminated water from the construction of the mine. When construction of the mine was halted in September 1999 all work on the mine's water management system also ceased.

⁵ Decision of the 24th Committee Session regarding Natural Values

⁶ UNESCO WHC-2000/CONF.204/21, Annex XII.

As with its Ranger uranium mine, ERA is constantly plagued by water management problems at Jabiluka. Simply put, the wet/dry tropical weather pattern means there is either too much or not enough water. In April 2000 the Mirrar revealed, amid accusations of ‘scare-mongering’⁷, that the IWMP was too small to contain the water expected to enter it. It was further revealed that the pond contained heavy metals such as lead, copper and zinc and extremely high levels of uranium. The level of uranium in the pond at that time was 100 times the World Health Organisation drinking water standard and 2,000 times the level of uranium in the surrounding wetlands.⁸

Later in the year (2000) ERA commenced a reverse osmosis (RO) treatment of contaminated IWMP water with the subsequent land application or spraying of treated water around the mine site. It was expected the RO plant would reduce the level of the pond in preparation for the approaching wet season.

The RO plant, however, did not operate as efficiently as expected and with the onset of heavy rain in February 2001 it was clear another solution had to be found. The company resorted to dumping the contaminated IWMP water into the mine decline. Pumping commenced on 13 February 2001.

The mine decline at Jabiluka is lined with ‘shotcrete’ (sprayed concrete) and was not designed to contain water. The concrete is permeable and increasingly greater volumes of water dramatically increased the pressure on the decline’s lining. The Mirrar and environmental scientists believe that water pumped to the mine decline has been further contaminated, with increasing uranium levels due to interaction with the ore body. The problem is set to escalate.

Further contamination of water will place further strain on the already under-performing RO plant. There is no guarantee that the vast amount of water currently being pumped to the decline can be effectively treated and disposed of before the commencement of the 2001/2002 wet season.

The inadequacy of the water management system at Jabiluka and the poor performance of the RO plant also highlights the inadequate and segmented assessment and approvals processes of both the Commonwealth and Northern Territory governments.

2.3 Failure to appoint water specialist to Supervising Scientist

In its September 2000 report the ISP of ICSU recommended that the Office of the Supervising Scientist appoint a water resource specialist to oversee the Jabiluka project⁹. At the December meeting of the World Heritage Committee in Cairns the Australian Government committed itself to extend the work at Kakadu regarding Jabiluka “in the manner recommended by the ISP”¹⁰. Despite this commitment, the clear intent of both the ISP and the Committee and the escalating water management issues being faced by ERA, the Supervising Scientist has to date made no efforts whatsoever to appoint a water specialist. Mirrar view such a response as both inadequate and unacceptable.

⁷ ABC Radio Darwin interview with Northern Territory Government Minister for Mines and Energy, Daryl Manzie, April 2000.

⁸ Northern Land Council correspondence, 5 April 2000.

⁹ UNESCO WHC-2000/CONF.204/INF 20, section 8.1, p26

¹⁰ UNESCO WHC-2000/CONF.204/21, p24 (paragraph 7)

2.4 Ministerial recommendations and requirements ignored

Current water management problems highlight a fundamental problem with the approvals process and environmental management at Jabiluka.

The Minister for the Environment in 1997 recommended that, “the degree of connection between deep and shallow aquifers [at Jabiluka] must be established during the collection of groundwater quality and quantity baseline data, before the proposal commences”¹¹.

This recommendation became a ‘requirement’ from the Minister for Resources, who obliged “ERA to take all reasonable steps to prevent contamination of groundwater. This includes the conduct of baseline studies to establish the degree of connection between deep and shallow aquifers. These studies are to be carried out before any construction that might compromise the integrity of the data. Ongoing assessment of the level of connection will be required”¹².

These baseline studies have not been conducted and the degree of connection between the deep and shallow aquifers at Jabiluka and their likely impact on the mine decline has not been determined. The Mirrar believe there is sufficient evidence to indicate that the absence of these studies has compromised water management practices at Jabiluka in the present context and for future planning.

The Mirrar submit that it behoves the Australian Government to immediately investigate why these Ministerial recommendations and requirements were not taken up by the mining company and what role, if any, was played by the Australian Supervising Scientist.

2.5 Inadequate Traditional Owner involvement

Every stage of the water management ‘saga’ at Jabiluka has been marked by the noticeable absence of any input from the Mirrar into the decision-making process. The Mirrar were not consulted to determine their view on the introduction of a reverse osmosis plant. To date, the Mirrar have received no formal notification from either the Office of the Supervising Scientist or Energy Resources of Australia that the pumping from the IWMP to the mine decline commenced in February. Neither organisation has at any point sought Mirrar input into the decision-making process.

This exclusion of the Jabiluka’s Traditional Owners is clearly in contrast with the recommendations of the ISP report and the advice of all expert advisory bodies to better involve Traditional Owners in decision-making. Also, this exclusion openly contradicts clear commitments by the Australian Government to better involve the Mirrar.

It is in this climate that the Supervising Scientist has recently sought Mirrar approval for ‘rainfall simulation’ tests to be carried out at Jabiluka. Given the ongoing relegation of Mirrar to the status of a mere ‘stakeholder’ – one that has not been included in the decision-making process – this request has to date not been granted.

The current perception of the Mirrar, one confirmed by recent events, is that any scientific tests conducted at Jabiluka take place as part of and according to the development agenda. The Mirrar see the process of baseline data collection as one that

¹¹ Implementation of 1997 Ministerial Recommendations, Supervising Scientist Status Report, July 1999.

¹² Ibid.

both excludes them as people and their knowledge as Traditional Owners and is primarily aimed at facilitating the development of the Jabiluka mine.

In addition, the Mirrar believe the proposed rainfall simulation study as it currently stands would not be representative of a tropical rain event. The Mirrar consider the suggestion that “three replicates”¹³ be used in the study to be insufficient and not representative of the wasterock dumps that would be created if the Jabiluka project proceeded.

3. Cultural Values

3.1 Development of a process to protect Kakadu

At its 24th Session (Cairns, 2000) the World Heritage Committee expressed its disappointment that talks between the Australian Government and the Mirrar aimed at developing a process to protect Kakadu’s World Heritage values had broken down¹⁴. The reasons for this breakdown were given in correspondence to the Director of the World Heritage Centre and incorporated into the report of the Committee.¹⁵

Since the Cairns meeting the Mirrar have met with representatives of the Australian Government on three separate occasions to discuss the protection of the living cultural heritage of Kakadu.

During a meeting in April with the Minister for Environment and Heritage, the Minister acknowledged he was largely unaware of the situation ‘on the ground’ in Kakadu. It became evident to the Mirrar delegation that the Minister was particularly poorly informed on the question of sacred sites at Jabiluka.

The continued failure of various Commonwealth Government programmes to ameliorate the social disadvantage of Aboriginal people in Kakadu was also discussed with the Minister.

The Mirrar suggested that in order to best approach the issue at hand, namely the development of a process to secure the protection of Kakadu’s cultural heritage, the Minister send a delegate to visit Kakadu. The Mirrar understand the Minister is amenable to this suggestion and that plans are currently being made for such a visit. The Mirrar suggest that the participation of a representative of the World Heritage Committee would provide constructive and welcome input to substantively develop the process in line with international best practice.

3.2 Corporate rhetoric

In recent months the majority shareholder of ERA, Rio Tinto, has indicated it would not develop the Jabiluka deposit in the short-term. These statements have received much attention from the media.

Other than the recent announcement by Rio to increase the life of Ranger mine, these plans are in line with previous commitments from both the Australian Government and

¹³ Correspondence from the Environmental Institute of the Supervising Scientist to Northern Land Council, 19 March 2001.

¹⁴ Decision of the 24th Committee Session regarding Cultural Values

¹⁵ WHC-2000/CONF.204/21, Annex XIV.

ERA to develop Jabiluka during the phase-out of the Ranger mine. This option, first presented to the World Heritage Committee in Paris in 1999, is sometimes called 'sequential' development.

Rio Tinto's 'announcement' of the sequential development of Jabiluka is of no comfort to the Mirrar and fails to adequately identify or address the key threats and issues facing Mirrar culture.

The Mirrar reiterate that the Jabiluka project continues to threaten the natural and cultural values of Kakadu National park and calls on the Bureau to support their call for Rio Tinto to permanently cease all development at Jabiluka and to rehabilitate the site forthwith.

3.3 Continued destruction and development on a sacred site

As Traditional Owners of the Jabiluka area, Mirrar have rights and interests in this country flowing from Mirrar law and custom. In exercising these rights the Mirrar also have obligations to other Aboriginal people, including the protection of Jabiluka's sacred sites.

The Mirrar maintain that a complex of sacred sites of universal significance will be destroyed if the Jabiluka project were to proceed.

The Mirrar submit that a variety of Australian Government agencies, most notably the Northern Land Council, have abrogated their responsibilities to protect these sacred sites.

Accordingly it has been left solely to the Mirrar to analyse the complex legal framework regarding the protection of sacred sites at Jabiluka and to call on responsible government agencies to fulfil their statutory obligations. This has placed an unreasonable strain on the limited resources of the Mirrar, who have recently discussed the possibility of directing the Northern Land Council to fulfil its statutory obligations with the Minister for Environment and Heritage.

Within the Jabiluka mineral lease are rock art sites and ancestral living areas of universal significance recognised by European law under the Australian Heritage Commission (AHC). It is worth recalling that the entire Jabiluka mineral lease was covered by AHC listing until objections by mining companies saw the AHC areas reduced.

4. Recommendation

Given the Mirrar's serious concerns, not only raised in this submission but by environment groups, the Australian Senate and at varying times the expert advisory bodies ICOMOS, ICCROM and IUCN, we recommend the following resolution.

Mirrar recommend to the Twenty-Fifth Session of the Bureau of the World Heritage Committee:

That UNESCO-sponsored international participation in the current discussions between the Mirrar and the Australian Government is required. This is requested on the following basis:

- 1. To ensure that the proposed “new process” referred to at the 24th Session of the Committee is advanced by: -**
 - ensuring that framework discussions have regard to international best practice;**
 - facilitating the identification of measures to protect cultural and natural world heritage values of the Kakadu region.**
- 2. To assist the World Heritage Committee deliberations on this matter at its forthcoming meeting in Finland.**

