

Gundjehmi Aboriginal Corporation

Report to the Twenty-Third Session of the World Heritage Committee, the World Heritage Centre, ICOMOS and ICCROM

It is with a profound sense of disappointment that the Mirrar people report little progress in the protection of the unique cultural values of the Kakadu World Heritage Area from the destructive impacts of the Jabiluka Uranium Project.

Unfortunately, the Mirrar must inform the Committee that the cultural values of the Kakadu World Heritage Area remain subject to serious ascertained and potential threats.

Construction Activity

While all work at the minesite has now stopped for an indefinite period, the cessation has occurred because the Mirrar have withheld consent for the milling of Jabiluka ore at the existing Ranger Mine – thereby making the project economically non-viable under the current market conditions. The Australian Government has not imposed any formal restrictions on Energy Resources of Australia Ltd (ERA) proceeding with the Jabiluka Project.

In addition, ERA did not cease work until they had carried out extensive drilling in the vicinity of the Boyweg-Almudj Sacred Site Complex. This matter was the subject of correspondence with the Chairperson of the World Heritage Committee on 22 August, 1999.

Kakadu Region Social Impact Amelioration Measures

With the exception of some preparatory work associated with the development of an Aboriginal Education Unit in Jabiru, the Mirrar are not aware of other undertakings made by the Australian Government at the Third Extraordinary Meeting of the World Heritage Committee having been implemented in the Kakadu region.

For example, the Mirrar are also not aware of any legislation being introduced to either the Northern Territory or Commonwealth parliaments which will serve to enforce environmental conditions associated with Jabiluka. A number of undertakings with regard to social and economic development also appear to have been stalled.

The Mirrar look forward to receiving an interim report from the Australian Government on the progress of these undertakings during the Twenty-Third Session of the World Heritage Committee.

Sacred Site Baseline Assessment & Cultural Heritage Management Plan

As the World Heritage Committee was informed by the Senior Traditional Owner at the Third Extraordinary Session of the Committee in July of this year, a key element in the aversion of the serious threats to the Kakadu World Heritage Area is the assessment and protection of extremely significant sacred sites in the vicinity of the proposed Jabiluka uranium mine.

These sites within the Jabiluka mineral lease excision are inextricably linked to sites within the Kakadu World Heritage Area and provide a foundation for the cultural values for which Kakadu has received inscription as a World Heritage Area.

The need for baseline assessment and protection of these sites was a key requirement the Mirrar put to the World Heritage Committee Mission to Kakadu. The Mission Report

confirmed the need for such studies and the report was accepted as thorough and credible at the Twenty-Second Session of the Committee in November 1998.

Recommendation Five of the Mission's Report stated:

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 importance of the protection of these sites to the Mirrar has been raised in numerous items of correspondence to the World Heritage Committee throughout 1999. At the Third Extraordinary Session of the World Heritage Committee the Mirrar Senior Traditional Owner spoke at some length about the importance of sacred site protection.

On 19 May 1999, after many requests and representations by the Mirrar to the Australian Government and the mining company failed to provide for sacred site baseline assessment and protection, the Mirrar made an application for both emergency and permanent protection under the Australian Government's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. ERA had informed the Mirrar that they would begin work in this area on 22 May 1999.

The Australian Government, as represented by the Minister for the Environment and Heritage, Senator Robert Hill, denied the application for emergency protection and the mining company subsequently carried out drilling and blasting in the vicinity of the sacred sites.

Despite the fact that the *Heritage Protection Act* application had failed to protect the sacred sites from construction activity, the Mirrar accepted assurances made by the Australian Government during mediation talks associated with the Third Extraordinary Session of the World Heritage Committee that further assessment under the *Heritage Protection Act* could provide both baseline data and appropriate assessment of the impact of Jabiluka on sacred sites. As a matter of course, this could lead to permanent protection of the sites from detrimental mining activity as part of an overall Cultural Heritage Management Plan.

The Mirrar welcomed these assurances from the Australian Government and accordingly ensured that the *Heritage Protection Act* application remained active.

Unfortunately, upon returning to Australia, the conciliatory approach of the Australian Government began to dissipate. Genuine approaches from the Gundjehmi Aboriginal Corporation to establish an appropriate process of assessment received no constructive response.

Finally, on 15 September, Senator Robert Hill's office, without prior consultation, advised the Mirrar that the Minister intended to appoint a South Australian lawyer, Mr Alistair McFarlane, to assess and report on the Mirrar sacred sites.

The Mirrar, after meeting as a clan, rejected the appointment of Mr McFarlane because:

- i) Mr McFarlane's only previous connection with the *Heritage Protection Act* has been in his role as a partner in a legal firm that was directly involved in overturning a sacred site protection order made under the *Heritage Protection Act*.
- ii) Mr McFarlane has acted in a number of native title matters –in every case representing mining companies, farmers and the fishing industry against Aboriginal applicants.

- iii) Mr McFarlane sits on the South Australian Chamber of Mines and Energy.
- iv) Mr McFarlane had no experience with Aboriginal people in Northern Australia nor any experience in assessing complex anthropological information.

The Senior Traditional Owner wrote directly to Senator Hill outlining her clan's concerns with Mr McFarlane's appointment. By letter dated 24 September 1999, Senator Hill rejected the Mirrar concerns. Mr McFarlane was then officially appointed and he published advertisements in the press calling for written representations in relation to the Boyweg- Almuđj sacred sites to be made to him by "all interested parties" by 22 October 1999.

The Senior Traditional Owner again wrote to Senator Hill reiterating the Mirrar concerns and calling for mediation under section 13(3) of the *Heritage Protection Act* before the process went any further.

On 11 October 1999, Mr McFarlane wrote to a number of "interested parties", including the Mirrar, with regard to his proposed process. Again, the Mirrar were not consulted before this letter was circulated.

On the same day, the Mirrar, meeting as a clan, withdrew their application under the *Heritage Protection Act* as they apprehended bias in the ability of Mr McFarlane to assess the Mirrar sacred sites and held grave concerns in the manner in which the process was proceeding.

On 13 October 1999, a letter from the Senior Traditional Owner formally withdrawing the Mirrar application was received by Senator Hill's office. The Mirrar informed the Northern Land Council of their decision. A statement was issued by the Gundjehmi Aboriginal Corporation to the same effect.

On the same day, a letter was received from the Minister rejecting the Mirrar request for mediation.

On 14 October 1999, the Minister sent a letter to the Senior Traditional Owner acknowledging the withdrawal of the application, yet claiming that the Senior Traditional Owner's concerns with Mr McFarlane were "offensive". The letter contained a number of allegations about Mirrar actions. As the Australian Government is likely to present these same allegations to the World Heritage Committee, it is necessary to address them in this report.

The Minister claims that the Mirrar have not carried out objective research on Mr McFarlane. The fact is the Mirrar contacted a number of Aboriginal organisations in South Australia and many people in the legal profession in forming their opinion. The Minister refuses to acknowledge that all Mr McFarlane's experience in native title matters is representing interests adverse to Aboriginal native title holders. Mr McFarlane may be well respected in non-Aboriginal legal circles – just as ERA is well respected in mining circles – this does not mean he has the ability to impartially assess the significance of Aboriginal sacred sites.

The Minister also seeks to obfuscate the fact that Mr McFarlane is a partner in a legal firm which was directly involved in overturning a sacred site protection order made under the *Heritage Protection Act*. This is Mr McFarlane's only previous connection with the Commonwealth legislation.

The Minister claims he has involved the Mirrar in the *Heritage Protection Act* process. The Mirrar believe that "involvement" should include, at the very least, agreement on the persons conducting the inquiry and the manner in which "facts" are established. This has not occurred. Senator Hill appears to believe that "involvement" can be limited to designating a

staff member to inform the Mirrar when decisions are made by the Minister and his appointees.

Senator Hill has claimed that a letter from Mr McFarlane which was sent to various parties on 8 October 1999 “makes a mockery” of the Mirrar concerns with the assessment process. Senator Hill particularly highlights Mr McFarlane’s statement in this letter that “no particular process has been determined”. Quite aside from the fact that the Mirrar believe that a process *should* be determined before assessment begins, this statement is contradicted by Mr McFarlane’s decision that written representations must be “delivered on or before 22 October 1999” and his statement in the letter that further actions would be “dictated by the representations”.

The Mirrar have stressed on many occasions that detailed sacred site information can only be *given orally on country*. The Mirrar living tradition, recognised as an unique cultural heritage under the World Heritage Convention, is an oral tradition. This was precisely the manner in which representations on sacred sites were given to the World Heritage Committee Mission to Kakadu.

Mr McFarlane has made it absolutely clear that he would not visit Mirrar country until some weeks after the due date for representations. It would therefore be impossible for Mr McFarlane to receive oral representations from custodians before the due date had passed. In this way the Mirrar would have been excluded from making a representation, despite the fact that these representations were to “dictate” Mr McFarlane’s actions.

It is difficult to understand how any objective observer could not view this process as negatively affecting the Mirrar people’s active participation in the assessment of their sacred sites.

Senator Hill has implied in his correspondence that the Mirrar concerns are not genuine, but rather have “conveniently appeared...on the eve of the withdrawal of the application”. In particular Senator Hill disputes that the Mirrar have ever raised the idea of mediation to resolve the issues. This is an astonishing claim. Not only did the Mirrar insist on having an observer/mediator present at all meetings between the Mirrar and the Minister in the period before and during the Third Extraordinary Meeting in July of this year, but in fact there were specific discussions during these meetings about a role a mediator could play in future processes. Indeed, the Minister himself suggested that a high profile Aboriginal person could facilitate these discussions.

Equally bewildering is Senator Hill’s claim that the Mirrar have never raised the need for an assessment process to begin with baseline anthropological studies. As stated above, this has been the assessment process consistently proposed by the Mirrar since the World Heritage Committee Mission to Kakadu in October 1998.

The Mirrar have constantly reiterated the need for baseline studies before a Cultural Heritage Management Plan can commence. It would seem to defy logic to argue that any assessment of the impact of sites can occur before baseline information is obtained. It was the understanding of the Mirrar that Senator Hill had accepted this point in Paris.

In addition, Senator Hill has claimed that the Mirrar have never raised with him the need for additional matters to be prescribed for any reporter under the *Heritage Protection Act*. This is simply not true. At every stage the Mirrar and their staff have highlighted the need to examine the events leading up to the NLC entering into the 1982 Jabiluka Mining Agreement. This issue was raised in the Mission’s Report and was discussed several times during talks in Paris and Australia.

Mirrar Commitment to Future Action

The cultural values of the Mirrar people are under serious ascertained and potential threats from the development of the Jabiluka uranium mine. The Mirrar have already experienced cultural damage resulting from the construction activity that has taken place in association with the Jabiluka Project. If the project goes any further, 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.

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.

For the entire period between July 1998 and June 1999 the mining company and the Government criticised the Mirrar for refusing to participate in sacred site assessment while construction activity was proceeding in and around the Mirrar sacred areas. In Paris, they admitted that the Mirrar refusal was reasonable and committed to a new process of dialogue.

It is now the case that the Mirrar have been forced to withdraw an application under the *Heritage Protection Act* because of the absolute failure of the Australian Government to address Mirrar concerns about lack of meaningful participation in the assessment process.

The Mirrar wish to stress to the Committee that the Mirrar remain absolutely committed to conducting baseline anthropological studies, impartial sacred site assessment and developing appropriate protection measures. As the Mirrar have previously stated, the Mirrar are the only party in the Jabiluka debate whose **only** concern is the protection of the Mirrar unique cultural values.

As demonstrated in Paris, the Mirrar remain willing to actively participate in any process of discussion and resolution in which the Mirrar are respected as equal partners and can exercise a measure of control over the fate of the Mirrar cultural tradition.

Urgent Request for Assistance from the World Heritage Committee, ICOMOS and ICCROM

Given the failure of processes under Australian legislation, the Mirrar urgently request that ICOMOS and ICCROM representatives visit Mirrar country in the very near future with the view to developing an appropriate sacred site assessment process on the Jabiluka Mineral Lease.

The Mirrar have faith in the ability of ICOMOS and ICCROM to assist in designing a "World's Best Practice" assessment process. In addition, the Mirrar believe that the experience of the Third Extraordinary Meeting in Paris demonstrates that World Heritage Committee members and expert advisory bodies can play an invaluable observer role in relations between the Mirrar and Australian authorities.

As domestic legislative processes now appear to have been exhausted, the Mirrar view it as entirely appropriate that ICOMOS and ICCROM work with the Mirrar to complete the baseline anthropological studies necessary for any Cultural Heritage Management Plan to take place.

It is hoped that with the active participation of ICOMOS and ICCROM, a far more positive report can be provided to the Bureau of the World Heritage Committee in July, 2000.

