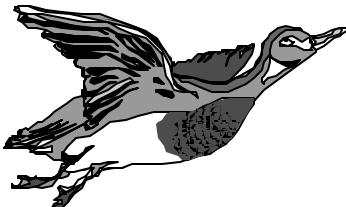

Gundjehmi Aboriginal Corporation



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

**Information for the Twenty-Fifth Session of the
World Heritage Committee, Helsinki, Finland
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1. Introduction

The Mirrar submit that those ascertained and potential threats to Kakadu posed by the Jabiluka uranium mine identified by the 1998 World Heritage Committee Mission remain. It is for this reason that the Mirrar community remains committed to the inclusion of Kakadu National Park on the List of World Heritage Properties In Danger.

The Mirrar contend that the corrective measures called for by the Committee (under paragraph 86 of the *Operational Guidelines*) to guarantee the preservation of Kakadu's natural and cultural heritage have not lessened the threats posed by the Jabiluka mine.

These threats to Kakadu constitute a significant detriment to the living cultural tradition of the Mirrar People. Mirrar make no distinction between the natural and cultural values of their traditional lands. Threats posed to Kakadu's natural values also threaten the cultural integrity of the Mirrar living tradition.

The Mirrar believe that a significant body of considered Australian and international opinion exists to warrant the inclusion of Kakadu National Park on the List of World Heritage Properties In Danger.

2. Natural Values

2.1 Jabiluka water management problems persist

Water management problems continue to plague the Jabiluka development, despite a variety of remedial measures implemented by the company. Key events in the recent water management of Jabiluka are detailed below.

The reverse osmosis (RO) unit installed by ERA in August 2000 has experienced repeated malfunction and failed to reach and sustain expected targets. The company has also failed to predict the overall amount of contaminated water on site. These ongoing problems have further eroded what little confidence the Mirrar already have in the ability of the company and Government to adequately protect the Kakadu environment.

At a meeting of the Governing Committee of Gundjehmi Aboriginal Corporation on September 18 2001, the Mirrar were informed by the Northern Land Council (NLC) that ERA had made

an application to spray irrigate both RO treated water and untreated water from the so-called Interim Water Management Pond (IWMP) at Jabiluka. This new water management system, which subsequently received approval from the mine regulator (the Northern Territory Department of Mines and Energy), results in a land application of both treated and untreated contaminated water onto 6.34 hectares of land within the fenced area at Jabiluka.¹

Also, the ever-changing nature of water management at Jabiluka has the effect of undermining the relevance of key recommendations of the Independent Science Panel (ISP) of ICSU. For example, the area of land irrigation for RO-treated water approved by the ISP of ICSU (3.6 hectares) has been almost doubled to cope with the burgeoning water problems.

Essentially, there is too much contaminated water accumulating on-site at Jabiluka, placing an increasing strain on the interim water management system. This naturally increases the likelihood of contamination of the surrounding environment. The high concentration of uranium in the IWMP (506 parts per billion in September 2001) and in the mine decline (varying from 1,000 to 4,000 parts per billion) only adds to these concerns.

The Mirrar are also concerned at the shift in the company's focus at Jabiluka (approved by the regulatory authorities, the Northern Territory Department of Mines and Energy and the Supervising Scientist) from 'operations' to 'outcomes'.² The water management system will be judged by its outcomes (based on readings of contaminant levels downstream) today rather than by the possible or even likely effect of its operations in the long-term.

For example, analysis of the net effect of repeatedly spraying uranium and other contaminants on a 6.34ha land application area is of less priority than regular monitoring downstream. The Australian environment movement shares the Mirrar's concerns at this apparent philosophy of the end justifying the means.

Given that in the past 12 months alone there have been considerable revisions of the Jabiluka water management system, the Mirrar also find it completely inadequate and unacceptable that the Supervising Scientist proposes to conduct comprehensive reviews of environment performance at Jabiluka every five (5) years. Firstly, such a period is no less than half that suggested (by Rio Tinto) for Jabiluka to remain on 'environmental management and standby' mode. Secondly, the fluid nature of the Jabiluka proposal in recent years and persistent water

¹ Letter, Supervising Scientist, 30 October 2001.

² Minutes, Jabiluka Minesite Technical Committee, 21 September 2001.

management problems – which have necessitated major changes in water management – make a five-yearly review patently inadequate. Events will simply overtake the Supervising Scientist's regular reviews; they will have meaning in name only.

Finally, the Mirrar strongly dispute the claim made by Mr Roger Beale of Environment Australia in his letter to the Committee dated 27 June 2001, that Mirrar have been “fully involved in the decision making processes”³ regarding the Jabiluka mine site. In her letter of 26 June, Ms Yvonne Margarula stated the Mirrar, “are consistently excluded from decision-making processes regarding work at Jabiluka and, specifically, refer the Bureau to water management problems at the site”.⁴

Ms Margarula’s written statement was based on the fact that Mirrar first received notice of the inadequacy of the IWMP to contain accumulating water on 31 March 2000 in a letter from the NLC. This letter also notified the Mirrar that a meeting to discuss remedial measures was conducted two (2) days prior and that a range of measures were considered at this meeting and, indeed, one chosen. The Mirrar were neither invited to attend this meeting nor informed of it until two days afterwards. These statements, as with Ms Margarula’s letter, are based entirely on correspondence. Mr Beale’s sentence, “The NLC has advised the Supervising Scientist it consulted the Traditional Owners including the Mirrar”, is obviously incorrect and misleading. At no stage whatsoever were the Mirrar consulted regarding the inadequacy of the IWMP and what remedial measures were available.

2.2 Greater impacts from Ranger mine

In September 2001 the Mirrar received formal notification from the NLC⁵ that ERA is considering further mining on the Ranger Project Area, namely, the deep aspect of ore body number three (3). This deposit lies below and to the east of the current open cut operation in Pit #3 and contains approximately 6,000 to 8,000 tonnes of contained uranium oxide.

With additional mining and processing, the Land Council now estimates the closure of the Ranger Mine could be extended from 2009 to “somewhere in the vicinity of 2012 to 2015”.⁶

³ Letter, Roger Beale to Francesco Bandarin, 27 June 2001

⁴ Letter, Yvonne Margarula to Francesco Bandarin, 26 June 2001

⁵ Letter, NLC Senior Project Officer Mining and Environment to Yvonne Margarula, 18 September 2001

⁶ Letter, NLC Senior Project Officer Mining and Environment to Yvonne Margarula, 18 September 2001

This is some five (5) years beyond the period previously submitted to the World Heritage Committee. In the Report of the Rapporteur for the 25th Session of the Bureau of the Committee it was stated, for example, that, “Current estimates of the remaining life of Ranger indicate that mining at Jabiluka could commence between 2008 and 2010”.⁷

The Mirrar stress that such an extension to the Ranger mine will place greater strain on the mine site (the infrastructure of which is now over 20 years old), the surrounding Kakadu National Park (which has already suffered over a hundred documented ‘incidents’ from Ranger) and the Mirrar community itself.

In this context especially, mining at Jabiluka, already opposed by the Mirrar, constitutes an unacceptable deterioration of Kakadu’s living cultural tradition.

3. Cultural Values

3.1 Protecting not managing cultural heritage

In its August 1997 *Environment Assessment Report: Proposal to Extract, Process and Export Uranium from Jabiluka Orebody no 2*, Environment Australia specifically recommended that, “ERA must develop a cultural heritage management plan in consultation with Traditional Owners, and Environment Australia and relevant NT authorities, prior to construction commencing.” Since its initial recommendation the Mirrar have opposed this process, which would see culturally sensitive information provided to the mining proponent in order for it to develop a ‘management’ plan prior to construction. These arguments have been detailed in earlier submissions to the Committee. They are also the subject of much correspondence to the Minister for Environment and Heritage.

The Mirrar maintain that sites of cultural significance cannot be ‘managed’ during the construction and operation of a mine that would destroy the fundamental integrity of such sites.

It is double-speak to talk of managing sacred sites while destroying them. Mirrar stress that culturally significant sites must be protected, not ‘managed’ as part of a mining project. This fundamental point of difference between the Australian Government and the Mirrar has dogged the cultural heritage management plan from its inception.

⁷ Report of the Rapporteur, Bureau of the World Heritage Committee, 25-30 June 2001, paragraph V.171

3.2 Mirrar dialogue with Australian Government

There is a long history of dialogue between the Mirrar community and the Australian Government over the issue of cultural heritage protection. A brief summary of recent key events is provided below. Much of this information can be found in earlier submissions to the Committee by the Mirrar.

In May 1999, the Mirrar applied for protection of the Boyweg-Almudj Sacred Site Complex under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. The Minister for Environment and Heritage decided against the application to protect the site but chose to nominate a person to prepare a report to him on the importance or otherwise of the site to Aboriginal people.

The Minister appointed a reporter unacceptable to the Mirrar (because his background indicated a distinct bias) and promptly refused to enter into any dialogue on the matter. In October 1999, the Mirrar withdrew their application for a report under the Act.

In July 1999, the report of the Australian Senate inquiry into Jabiluka recommended that construction be suspended, “until cultural mapping of the site area can be conducted in cooperation with the Traditional Owners”⁸.

In February 2000, the Australian Government formally proposed the Mirrar join a reference group that “would assist ERA in developing the Plan”. The group would comprise traditional owners and site custodians, the Northern Land Council, the Northern Territory Aboriginal Areas Protection Authority, ERA and Environment Australia.⁹ Such a reference group process, tailored by the Australian Government for ERA, is exactly the type of forum the Mirrar oppose.

This was recognised by the Northern Land Council in its submission to the 24th Session of the Bureau when it stated:

⁸ Australian Senate, *Jabiluka: The Undermining of Process*, Report of the Senate Environment, Communications, Information Technology and the Arts References Committee, June 1999.

⁹ Letter, Senator Robert Hill to Yvonne Margarula, 27 February 2000.

*“this proposal was unilaterally designed and composed by the Australian Government and clearly offers no comfort to traditional owners or custodians that their views will be listened, respected or acted upon”.*¹⁰

The NLC further stated that,

*“From previous experience the NLC can advise that such bureaucratic forums are inevitably alienating to and incompatible with the particular cultural perspective and life-experiences of Aboriginal participants in the region. With this perspective in mind, it should be of no surprise that traditional owners have rejected the reference group idea. The Australian Government has been advised that the NLC supports the traditional owners in this matter.”*¹¹

While stating that the Mirrar were prepared to participate in a reference group, Mirrar Senior Traditional Owner Yvonne Margarula stressed 10 bottom line principles of Mirrar involvement.¹² These included that ERA and the NLC not participate in the Group (due to conflicts of interest) and that the group’s membership mirror that of the Kakadu National Park Board of Management (two-thirds Aboriginal).

In response, the Minister stated, “I cannot accept your first condition which seeks to exclude ERA”¹³. Ignoring Mirrar concerns, the Minister next proposed that the reference group meet within several months.

During the 24th session of the Committee in Cairns a Mirrar delegation met with the Minister to discuss a process to progress dialogue on cultural heritage protection. The Mirrar proposed the assistance of the World Heritage Committee in the preparation of terms of reference and the development of a new process. Despite the Government’s admission (in the mutually agreed Bureau text just a week earlier) that an impasse had been reached, it rejected any form of international involvement in resolving the impasse.

The 24th session of the Committee adopted the following decision on the protection of cultural values at Kakadu: -

¹⁰ Submission by the Northern Land Council to the 24th Session of the Bureau of the World Heritage Committee, June 2000, p.4.

¹¹ Submission by the Northern Land Council to the 24th Session of the Bureau of the World Heritage Committee, June 2000, p.4.

¹² Letter, Yvonne Margarula to Senator Robert Hill, 17 May 2000.

¹³ Letter, Senator Robert Hill to Yvonne Margarula, 23 June 2000.

“17. Encouraged the State Party and the Mirrar Traditional Owners to resume and continue their efforts in a constructive dialogue, in order to develop together a process leading towards the protection of Kakadu’s cultural heritage.

“18. In the event that the interruption in the dialogue continues, requested that the State Party and the Mirrar Traditional Owners consider a facilitated dialogue to achieve an agreed-upon process by the twenty-fifth session of the Committee in 2001.”

3.3 Cultural mapping

The Mirrar submit that they have already provided culturally sensitive information to non-Aboriginal people regarding the Jabiluka area on numerous occasions from 1975 to the present. This information was collected for a variety of reasons, notably land claims and environmental inquiries. The Mirrar remain opposed to providing further information to non-Aboriginal people as part of the development of the Jabiluka Project.

In the interests of advancing dialogue with the Australian Government on the protection of cultural heritage at Kakadu, the Mirrar, however, are willing to examine a process of cultural mapping removed and separate from the management/development of the Jabiluka Project.

The Northern Land Council in its submission to the 24th Session of the Bureau outlined such a possible process: -

“Stage One: cultural mapping of the Jabiluka Mineral Lease to identify and assess all cultural heritage values – to be done via Mirrar with the NLC to produce a definitive and confidential document listing values in a manner endorsed by Mirrar, in concert with an abridged document which presents data in a basic format suitable for planning/management;

Stage Two: review of the definitive documentation produced in Stage One via an appropriate independent assessor¹⁴ to endorse both the definitive documentation and the abridged version; and

¹⁴ ICOMOS could be one such organisation considered suitable for the role of independent assessor

*Stage Three: abridged version presented to ERA to further develop the CHMP in conjunction with the Australian Government.”*¹⁵

While the Mirrar regard this proposal as merely preliminary and neither complete nor adequate, it provides the beginnings for the development of a process and as such is worthy of consideration.

The Mirrar foreshadowed a similar process earlier in correspondence with the Minister.

*“The Mirrar believe the only way that cultural mapping and assessment can legitimately commence on the Jabiluka Mineral Lease is for selected custodians and elders from throughout the region to gather in the area and conduct various activities associated with the sacred sites of the region. Some of this information may then be conveyed to non-custodians and dealt with in a mutually agreeable process.”*¹⁶

While the Minister chose to ignore this suggestion by the traditional owners (and instead developed the Reference Group plan) the Mirrar remain committed to it being the most suitable course of action.

Mirrar welcome the ongoing vigilance of the World Heritage Committee regarding the development of an agreed process to protect Kakadu’s cultural heritage. Any dialogue with the Australian Government should continue on the basis that its primary objective is the best possible outcome for the protection of Kakadu’s cultural heritage. This process should not be driven by external deadlines, such as that incorporated into the decision of the 24th session of the Committee.

It was with a view to commencing a dialogue aimed at securing the above process (with modifications) that Mirrar representatives met with the Australian Government on 23 October 2001. At this meeting it was established that the World Heritage Branch of Environment Australia and Gundjehmi Aboriginal Corporation should work together to provide support for a Mirrar-controlled process to develop strategies for the cultural protection of places on the Mirrar estate, including places on the Jabiluka Mineral Lease.

The proposed support process would be based on the “Protecting Heritage Places” kit developed by the Australian Heritage Commission. This incorporates the Australian ICOMOS

¹⁵ Submission by the Northern Land Council to the 24th Session of the Bureau of the World Heritage Committee, June 2000, p.6.

¹⁶ Letter, Yvonne Margarula to Senator Robert Hill, 15 December 1999.

Burra Charter and the Australian IUCN Natural Heritage Charter. The Mirrar accept that such a process, which may be tailored by Mirrar to accommodate their unique situation, is an appropriate means of furthering a constructive dialogue with the Australian Government.

While this dialogue progresses and a process to secure the protection of Kakadu's cultural heritage is developed, the Jabiluka area itself continues to remain under severe threat from the Jabiluka mine.

4. Recommendation

The Mirrar recommend: -

that Kakadu National Park, preferably with State Party consent, be inscribed on the List of World Heritage Properties In Danger,

and that immediate remedial measures be put in place to ensure the Park's World Heritage natural and cultural values will be protected to the satisfaction of Mirrar Traditional Owners.

