

Distribution limited

WHC-99/CONF.205/INF.3B

Paris, 27 May 1999

Original : English

**UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL  
ORGANIZATION**

**CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL  
AND NATURAL HERITAGE**

**WORLD HERITAGE COMMITTEE**

**Third extraordinary session  
Paris, UNESCO Headquarters, Room XI  
12 July 1999**

**Information Document: Australia's Kakadu – Protecting World Heritage. Response by  
the Government of Australia to the UNESCO World Heritage Committee regarding  
Kakadu National Park (April 1999)**

**Background**

This Information Document contains the response of the Government of Australia to the report of the UNESCO mission to Kakadu National Park, Australia (WHC/99/CONF.205/INF.3A) as requested by the twenty-second session of the World Heritage Committee (Kyoto, Japan 30 November – 5 December 1998)

**Other relevant documents**

<b>WHC-99/CONF.205/4</b>	State of conservation of Kakadu National Park, Australia
<b>WHC-99/CONF.205/INF.3A</b>	Report on the mission to Kakadu National Park, Australia, 26 October to 1 November 1998
<b>WHC-99/CONF.205/INF.3C</b>	Assessment of the Jabiluka Project: Report of the Supervising Scientist to the World Heritage Committee
<b>WHC-99/CONF.205/INF.3D</b>	Written independent expert review of the advisory bodies (IUCN, ICOMOS and ICCROM) concerning the mitigation of threats posing ascertained and potential dangers to Kakadu National Park by the Jabiluka mine.
<b>WHC-99/CONF.205/INF.3E</b>	Review of an Independent Scientific Panel of the scientific issues associated with the proposed mining of uranium at Jabiluka in relation to the state of conservation of Kakadu National Park. Undertaken between 22 April and 13 May 1999
<b>WHC-99/CONF.205/INF.4</b>	Extracts from Draft Report of the Rapporteur of the twenty-third session of the Bureau of the World Heritage Committee (UNESCO Headquarters, 5-10 July 1999) of relevance to the discussions of the third extraordinary session of the World Heritage Committee



# AUSTRALIA'S KAKADU

P R O T E C T I N G  
W O R L D  
H E R I T A G E

RESPONSE BY  
THE GOVERNMENT OF AUSTRALIA TO  
THE UNESCO WORLD HERITAGE  
COMMITTEE REGARDING  
KAKADU NATIONAL PARK

APRIL 1999

Environment Australia, part of the Commonwealth Department of the Environment and Heritage

© Commonwealth of Australia 1999

This work is copyright. It may be reproduced in whole or in part for study, research or training purposes subject to the inclusion of an acknowledgment of the source and no commercial usage or sale results. Reproduction for purposes other than those listed above requires the written permission of the Department of the Environment and Heritage. Requests and enquiries concerning reproduction and rights should be addressed to the Assistant Secretary, Corporate Relations and Information Branch, Environment Australia, GPO Box 787, Canberra ACT 2601, Australia.

ISBN 0 642 54622 3

Photography:

*Mark Hallam*

*Michael Preece*

*Parks Australia, Environment Australia*

*Science Group, Environment Australia*

Copies of this document are available on the internet at [www.environment.gov.au](http://www.environment.gov.au)

# CONTENTS

<b>Australian Government Position: Summary</b>	<b>v</b>
<i>Summarises Australian Government case that Kakadu Park is protected not endangered</i>	
<b>Chapter One: World Heritage Values and Attributes of Kakadu National Park</b>	<b>1</b>
<i>Defines and describes the natural and cultural values which give Kakadu National Park its World Heritage significance. The criteria for World Heritage Listings are outlined and, from these, the specific values and attributes of Kakadu are identified. These defined attributes are an important starting point in evaluating claimed threats to these values.</i>	
<b>Chapter Two: Kakadu National Park – The Place and its People</b>	<b>13</b>
<i>Background to the Park, providing a picture of the place and its people. A necessary context to understand the multiple interests and uses for which the Park is managed.</i>	
<b>Chapter Three: Protecting Natural &amp; Cultural Values: The Australian Framework</b>	<b>31</b>
<i>The range of legislative mechanisms in place under Australian law to protect World Heritage values. The Jabiluka project has had to meet strict environmental, cultural scientific and economic requirements, as well as satisfy legislation relating specifically to the World Heritage values of the region.</i>	
<b>Chapter Four: Australia's World Heritage Record</b>	<b>43</b>
<i>Outlines Australia's consistently excellent record of achievements in the nomination, promotion, and management of World Heritage Properties. Australia asks that this record be considered when evaluating claims of potential threats to the values of a World Heritage property.</i>	
<b>Chapter Five: Protecting the Values of Kakadu – The Jabiluka Process</b>	<b>51</b>
<i>A review of the extensive, thorough and accountable steps of assessment and monitoring of the Jabiluka project. The values of Kakadu have been protected from potential impacts from outside the World Heritage property.</i>	
<b>Chapter Six: Response to the Mission's Report and Recommendations</b>	<b>75</b>
<i>Details Australia's response to the UNESCO Mission Report. Areas where the Mission's perceptions of threats to World Heritage values differ from those of the Australian Government are addressed. After careful consideration, those recommendations in accord with Australia's policy framework are being implemented.</i>	
<b>Chapter Seven: List of World Heritage in Danger: Criteria and Benchmarks</b>	<b>103</b>
<i>This chapter outlines the criteria for placing a property on the World Heritage in Danger List, drawing benchmarks from recent State practice. It analyses the threats outlined by the UNESCO Mission, concluding that it would not be consistent for Kakadu National Park to be placed on the List of World Heritage in Danger.</i>	
<b>Chapter Eight: Managing Values into the Future</b>	<b>125</b>
<b>Appendices</b>	<b>129</b>
<i>References Appendix 1 Appendix 2 Appendix 3 Appendix 4 Glossary</i>	

## List of Appendices

---

<b>References</b>	<b>131</b>
<b>Appendix 1</b> Further examples of Agreements and programs	<b>132</b>
<b>Appendix 2</b> Extracts relating to mining operations from the Kakadu nomination documents	<b>134</b>
<b>Appendix 3</b> Analysis of properties included on the List of World Heritage In Danger	<b>135</b>
<b>Appendix 4</b> Kakadu Statistical Data	<b>138</b>
<b>Glossary</b>	<b>139</b>

## List of Figures

---

<b>Figure 1:</b>	Relative size and location of Kakadu National Park, Jabiluka and Ranger Mineral leases	<b>5</b>
<b>Figure 2:</b>	Kakadu National Park showing major features and lease areas	<b>16</b>
<b>Figure 3:</b>	Aboriginal Land Trusts in Kakadu National Park	<b>20</b>
<b>Figure 4:</b>	Clans in Kakadu National Park	<b>30</b>
<b>Figure 5:</b>	Ranger and Jabiluka Lease Area—Landsat Image	<b>55</b>
<b>Figure 6:</b>	Jabiluka Mine Site within Jabiluka Lease Area	<b>57</b>
<b>Figure 7a:</b>	Chronology of Boiwek and Almudj sites*	<b>65</b>
<b>Figure 7b:</b>		<b>66</b>
<b>Figure 7c:</b>		<b>67</b>
<b>Figure 8:</b>	Catchment of the East Alligator River	<b>92</b>
<b>Figure 9:</b>	Koongarra, Ranger and Jabiluka Leases, and the township of Jabiru	<b>99</b>

\* Note that the orthography used in spelling place and people names varies considerably. 'Boiwek' is generally accepted spelling for the site 'Boyweg' referred to in the Mission report.

# SUMMARY OF REPORT

**Australian Government Position: Summary**



## Australian Government Position: Summary

### KAKADU NATIONAL PARK: PROTECTED NOT ENDANGERED

#### INTRODUCTION

At the twenty second Session of the World Heritage Committee in Kyoto, Japan, it was decided that:

‘the Australian authorities be requested to provide, by 15 April 1999 a detailed report on their efforts to prevent further damage and to mitigate all the threats identified in the UNESCO Mission report, to the World Heritage cultural and natural values of the Kakadu National Park, Australia.’

- This report is the Australian Government's response to the claims made in the mission report.
- After independent, expert international review, the report will be discussed by the World Heritage Committee in an extraordinary session in Paris in July 1999.
- The Committee will then decide whether Kakadu National Park could be placed on the List of World Heritage in Danger.
- This report in response to the UNESCO Mission should be read in conjunction with the Supervising Scientist Report, available separately.

While being responsive to the views of the UNESCO Mission, the Australian Government strenuously opposes placing the property on the List of World Heritage in Danger. Should the Committee choose to do so, it would be without State Party consent, and also in circumstances where the State Party fundamentally disagrees with the view that the values of the property are endangered and provides objective evidence to that effect.

In this situation, it is necessary to ensure that all decisions taken are consistent with the Convention and that the highest standards of objectivity, transparency and consistency are applied. It is necessary not only to establish that ascertained or potential dangers exist, but also that the threats are of such scale and impact that they will endanger the value of the area as a World Heritage property. To be effective, the Convention needs to be applied consistently across World Heritage properties, and consistently over time in relation to particular properties. This need becomes especially serious when considering placing a property on the List of World Heritage in Danger.

Therefore, the State Party believes it appropriate for the Committee to consider the evidence very carefully. Australia has gone to great lengths to present the evidence in full and wishes to continue to be fully transparent in reporting on its actions in protecting World Heritage values. This report is presented in that spirit.

#### THE AUSTRALIAN GOVERNMENT'S REPORT

The Australian Government's report provides evidence that the World Heritage values of Kakadu National Park are protected, not endangered. The report defines in objective terms the values and attributes of the World Heritage property; describes the history and context of Kakadu National Park; analyses the legislative framework in place in Australia to protect natural and cultural values; and outlines Australia's record in upholding the World Heritage Convention. This contextual information is provided before describing in detail the process undertaken to ensure that the Jabiluka uranium mine could proceed in an area, adjacent to but not within the Park, without any damage to the natural and cultural values of the World Heritage property. Each of the threats claimed by the Mission was analysed against benchmarks established by recent practice. The report responds specifically to each of the recommendations put forward by the UNESCO Mission.



## Australian Government Position: Summary

The report puts all the facts clearly on the table—facts which must be considered before an assessment can be made on the level of threats to the World Heritage property. The same set of facts provides essential contextual information to objectively assess the claims of the UNESCO Mission of severe ascertained and potential dangers to the cultural and natural values of Kakadu National Park.

This report seeks to address the issues raised in the UNESCO Mission's report and is without prejudice to other matters which Australia has raised or may wish to raise concerning the consistency of a listing of Kakadu National Park on the 'In Danger List' with the World Heritage Convention. Those matters include issues concerning the inscription of a property on the 'In Danger List' without the request and consent of the State Party (and against the express wishes of that Party), the consistency of parts of the Operational Guidelines with the Convention and the respective roles of the World Heritage Committee and the State Party in the protection of natural and cultural heritage situated in that State.

## THE UNESCO MISSION REPORT RECOMMENDATIONS

The Australian Government, maintaining Australia's record in upholding the World Heritage Convention, willingly supported the visit to Australia of the UNESCO Mission team in October 1998. It did so despite the fact that it considered the Mission visit unnecessary. In a very short period of time, the Mission team had to absorb, analyse and evaluate a complex and emotive situation in which facts were often disagreed.

The difficult task of the Mission was further complicated by the fact that their report was seen as an opportunity for domestic organisations to project their campaign to an international audience. The issues of uranium, indigenous peoples and conservation—significant in their own right—gained greater momentum when linked with the concept of World Heritage.

## THE AUSTRALIAN RESPONSE

In such a climate it is understandable that there are strong disagreements between the views of the majority of mission members, as expressed in the Mission's final report, and the view of the State Party, as expressed in this response. Those areas of disagreement should not obscure the fact that for the most part, the recommendations of the Mission are compatible with Australian Government policy and programs.

Since the release of the Mission report in December 1998, the Australian Government has continued to take action to ensure the protection of Kakadu. In particular, action has been taken—or was already underway—which is consistent with the intent and direction of most of the Mission's recommendations. These actions are reported in **Chapter Six**. The Government has taken the following actions:

- reviewed all the perceived threats to World Heritage and instituted necessary protective measures (Recommendations 1 & 2);
- undertaken an exhaustive independent review and further risk analysis of all claims of scientific uncertainty relating to the project (Recommendation 2);
- ascertained that any expansion of urban and infrastructure development in Jabiru as a result of the mine will be minimal, with the utilisation of existing housing stock to cater for workers on the project (Recommendation 3);
- ensured that the Interim Cultural Heritage Management Plan is subjected to independent peer review and invited further consultation with traditional owners to protect all sites in the lease area (Recommendation 4);

## Australian Government Position: Summary

- instituted dust and vibration studies to ensure the protection of rock art sites (Recommendation 4);
- ensured that existing extensive records of cultural values are complemented by a cultural mapping exercise along the lines recommended by the Mission (Recommendation 5);
- accelerated the implementation of the Kakadu Regional Social Impact Study at Commonwealth, Territory and local levels with practical projects designed to address local issues of social and economic disadvantage (Recommendation 6);
- sought the views of traditional owners, the Northern Territory Government, and the Northern Land Council on renomination of the Park on cultural criteria (iii) and cultural landscape criteria and extending the boundaries of the Park (Recommendations 8 & 9);
- engaged in high level discussions, commencing at Ministerial level, on outstanding issues relating to joint management of Kakadu National Park (Recommendation 10);
- taken positive steps to confirm Government commitment to consultation and cross-cultural dialogue (Recommendation 11);
- confirmed an ongoing presence of the Environmental Research Institute of the Supervising Scientist (ERISS) in Jabiru (Recommendation 12);
- sought the views of the Northern Land Council, traditional owners and the mining company on potential options for the Koongara Mineral Lease pending the outcomes of negotiations with traditional owners on the lease (Recommendation 13);
- ensured that mechanisms in place will effectively limit the expansion of Jabiru to prevent any threat to the World Heritage property (Recommendation 14); and
- ensured that the impact of introduced species on the wetlands of Kakadu National Park continue to be managed using best practice approaches (Recommendation 15 & 16).

These are significant efforts. It can be seen that the Australian Government has engaged the intent of the Mission recommendations in the context of its ongoing management and protection of Kakadu, considered their applicability and taken appropriate action, in line with the State Party's direct responsibility for the protection of World Heritage values in its sovereign territory.

Where qualifications have been necessary, these are reported in an open and transparent manner (see Chapter Six). In the main, these qualifications relate to the need to ensure that any commitment for action relating to Aboriginal land (as in Recommendations 8,9,10,13,14) has met all the requirements of Australian law as it defines and protects the rights of indigenous land owners.

Consultation and cross-cultural dialogue on such significant issues is time consuming and complex. While the Australian Government had indicated it is willing to initiate such consultations, the outcome and pace of implementation is in many ways set by the traditional owners, their statutory representative bodies, and the exacting requirements of legislation such as the *Aboriginal Land Rights (Northern Territory) Act 1976*. The fact that some of the traditional owner organisations are not yet willing to cooperate in implementing the recommendations needs to be carefully worked through.

## Australian Government Position: Summary

### RECOMMENDATIONS OF PARTICULAR CONCERN TO THE AUSTRALIAN GOVERNMENT

The Australian Government has an extensive framework of law, policy, program and management arrangements for its World Heritage properties. While elements of some other recommendations also cannot be supported by Australia, Recommendations 1,2,3 & 7 are, in particular, not viewed as consistent with that framework, as discussed below and more fully in Chapter Six of this report.

**RECOMMENDATION 1** claims severe ascertained and potential damages to the cultural and natural values of the Park caused by Jabiluka and recommends that the project not proceed.

This recommendation:

- gives insufficient weight to the three years of extensive environmental impact assessment work, the more than 70 binding requirements, the stringent legislative framework and the independent scientific monitoring necessary for the project to be approved;
- does not reflect the fact that Ranger, a larger, open cut mine has operated for almost 20 years without harming World Heritage values or being raised as a concern by the Committee during three separate nomination processes;
- does not demonstrate objective assessment of any purported threats to a level where the thresholds of 'In Danger' listing could be fairly applied;
- is inconsistent with the treatment of other properties or other threats in the history of the Convention;
- does not acknowledge that it is the State Party that determines the protection regime for World Heritage values within its jurisdiction;
- is inconsistent with repeated recommendations to extend and renominate the property; and
- is inconsistent with the fact that, 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.

After a comprehensive review of the scientific questions raised by the Mission in which he was assisted by expertise from the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the Bureau of Meteorology and the University of Melbourne, the Supervising Scientist has recommended some modest upgrading of engineering works at the mine site. This process of review has added an extra degree of confidence in ensuring that the project will protect natural values. The Supervising Scientist has concluded that "contrary to the views expressed by the Mission, the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and that the degree of scientific certainty is very high. There would appear, therefore, to be no justification for a decision by the World Heritage Committee that the natural World Heritage values of Kakadu National Park are in danger as a result of the proposal to mine uranium at Jabiluka."

The traditional owners of Kakadu National Park come from a variety of clan and language groups. The Mirrar-Gundjehmi are the traditional owners of the Jabiluka Lease Area, a clan group of some 27 members, and some contiguous land in the World Heritage property. Mirrar-Gundjehmi holdings in the World Heritage property are about 2% of the total Park. The mine works do not affect this land. The cultural values of the Park as a whole are not endangered by a project in a small area outside the Park. 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.

## Australian Government Position: Summary

**Chapter Six** of this report, read in the context of the legislative and management processes outlined in earlier chapters, reviews the areas in which the views of the State Party need to be reconciled with the views of the UNESCO Mission and details the Australian response to the recommendations of the Mission.

**Chapter Seven** analyses, against World Heritage Committee benchmarks, the threats which, according to the UNESCO Mission, were created by changes to the three mines policy, the environmental impact assessment process for Jabiluka, the Jabiluka and Ranger milling alternatives, and the construction of the Jabiluka mine.

*While Australia does not consider Recommendation 1 as appropriate or balanced, as an active participant in the World Heritage Committee and its associated processes, Australia wishes to be transparent in reporting to the Committee annually on how it is dealing with the potential threats that are cited by the Mission.*

**RECOMMENDATION 2** points to concerns expressed by some scientists on scientific uncertainties relating to the Jabiluka mine design, tailings disposal and possible impacts on catchment ecosystems and claims that the Precautionary Principle requires that mining operations at Jabiluka be ceased.

The Australian Government does not consider implementation of this recommendation to be necessary. The Mission's report is not consistent with the assessment of the known scientific data on these issues.

The Supervising Scientist has, for almost 20 years, undertaken a multidisciplinary environmental research program in the Alligator Rivers Region, for the specific purposes of identifying potential environmental impacts of uranium mining, and determining measures to prevent or minimise those impacts. The scope and depth of environmental data and the extent to which operational environmental protection procedures are based on sound science, are unparalleled in any other mining precinct in the world. Under this regime the Ranger Mine has operated for nearly twenty years with no impact on the World Heritage values of Kakadu. The Jabiluka mine will be managed under the same regime and to higher standards in many respects than the Ranger mine. This management will be maintained to world's best practice standards for the life of the mine and throughout the rehabilitation of the minesite after operations cease.

The uncertainties raised by the Australian scientists referred to in the Mission's report, particularly in relation to hydrogeological modelling, water catchment issues, the disposal of tailings in mine voids, and more importantly, the potential environmental consequences of those uncertainties, have not been articulated in detail in the Mission's report. Most of the issues raised by the scientists have already been addressed in the environmental impact assessment process. Where issues have not been examined in the assessment process they have now been rigorously assessed and changes to the design of the project can be implemented to guarantee safety and environmental security.

The Supervising Scientist's report on the review is presented separately to the Committee. The general conclusion of the report was that "the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high". The report on the review highlighted a number of areas where some re-design of the proposal would be, from a precautionary approach, appropriate. As in normal practice, the detailed design phase of the project has not yet commenced and these features will therefore be included as the detailed planning proceeds.

As a result of this assessment, the Supervising Scientist concluded that a "detailed review has demonstrated that there were a number of weaknesses in the hydrological modelling presented by Energy Resources of Australia (ERA) in the Environmental Impact Statement (EIS) and Public Environmental Review (PER). Accordingly, a number of recommendations have been made which should

## Australian Government Position: Summary

be implemented by ERA in completing the detailed design of the Jabiluka project. On the other hand, the review has demonstrated quite clearly that, if the design of the water management system proposed by ERA in the PER *had* been implemented, the risk to the wetlands of Kakadu National Park, and the risk of radiation exposure to people of the region would have been extremely low."

In relation to the disposal of tailings in the mine void, the Supervising Scientist concluded that "dispersal of tailings in the very long term will not constitute a hazard for future generations". On the specific issue of potential dispersal of tailings into water catchments, he concluded that "radium and uranium concentrations will remain at background levels in the Magela floodplain", and that "the contribution of mine tailings to concentrations of solutes in ground water that comes in contact with the surface waters of the region will be negligible."

*The Australian Government has a policy of being open and transparent on issues of environmental assessment and has subjected the concerns to rigorous, independent peer review. The results of these reviews, as reported by the Supervising Scientist to all members of the World Heritage Committee, show that the concerns were misplaced, or that the project design can accommodate adaptations to ensure that there is a negligible risk to the natural values of the World Heritage Area.*

**RECOMMENDATION 3** identifies threats of 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.

The Mission's report does not emphasise important issues of scale when comparing the extent of the Jabiluka mine with that of Kakadu National Park. The area of Kakadu National Park is 19,804 square kilometres (approximately the size of Wales or New Jersey, USA). The area disturbed by the Jabiluka development, including the Ranger-Jabiluka haul road, is approximately 1.3 square kilometres or less than 0.007% of the area of Kakadu National Park.

The Jabiluka mine cannot be seen from within the World Heritage property, except from the air. If a development which is only visible from the air is used as a benchmark for a potential World Heritage in Danger listing then this could have major implications for the management of all World Heritage properties.

The Mission's report gives the impression that Jabiru will be extensively expanded as a result of mining activity at Jabiluka. This impression is false. Jabiru is a small township with a current resident population of about 1480 (in 1998). Even with the Jabiluka development, Jabiru's population is not expected to exceed 1700. This figure is lower than the town's population at the peak of Ranger mine's operations, when the World Heritage Committee listed the Park and congratulated Australia on its management. The nature and development of Jabiru is strictly controlled so that it does not adversely impact on the World Heritage values of Kakadu National Park. It is the administrative and essential service centre for the National Park, tourism, and provides indigenous administrative support for the wider Kakadu region.

*The Australian Government is willing to keep the World Heritage Committee informed on the issue of potential visual encroachment, by supplying satellite photographs and landsat images on a regular basis.*

**RECOMMENDATION 7** argues that the Australian Government should recognise the special relationship of the Mirrar to their land and reconsider the status of the 1982 agreement and the 1991 transfer of ownership to ensure maintenance of the fundamental rights of the traditional owners.

The Australian Government does not support the recommendation that the 1982 agreement should be set aside. 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.

## Australian Government Position: Summary

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. In addition, the traditional owners later agreed to the transfer of ownership of the lease through comprehensive agreements which set out rights, entitlements and associated payments. Furthermore, they have lobbied senior Ministers of the Australian Government as recently as eight years ago in attempts to ensure that the mine went ahead.

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.

To set the 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 to unilaterally revoke a contract, which was freely given and accompanied by payments, at a later date;
- extending the ambit of the World Heritage Committee, unilaterally and in a manner that is not consistent with the Convention, into questions of mineral rights, property law and indigenous land ownership when the Convention itself expressly recognises that these are matters for the relevant State Party;
- injustice to the Company who have complied with every law, met every requirement, and respected every notified Aboriginal site in managing the project;
- pre-empting any domestic law processes to consider these issues; and
- a decline in the Australian public's support of the Convention and its worthy aims.

The Australian Government also recognises that the other clans outside the Jabiluka mining lease, but inside the boundaries of the World Heritage property, have a special relationship to their land. In recent times, groups such as the Jawoyn, traditional owners of the Stage 3 area of the Park and lands outside the World Heritage property, have used this special relationship and the statutory rights that this provides, to develop economic opportunities through mining agreements (outside the Park) and tourism ventures. 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. In particular the Jawoyn Association noted:

‘..the Jawoyn have since [1996] been actively planning commercial development in the southern region so as to generate income to our people.

Clearly, a significant reason why so many people visit Kakadu National Park is its World Heritage status. If your inquiry finds, as it has in Yellowstone and the Galapagos, that the proposed activities would damage World Heritage values, and you decide the Park should be relegated to “in danger” status, it would be of great concern to the Jawoyn.’

*Again, the Australian Government will be open and transparent on this issue, notifying the World Heritage Committee of any future potential changes to the status of property rights within the excluded mining lease areas, including notification of any relevant court actions and their outcomes.*

## Australian Government Position: Summary

### REQUEST FOR VOLUNTARY SUSPENSION

The Australian delegation at Kyoto made it explicitly clear that, while acknowledging the World Heritage Committee's request to voluntarily halt the mine, there was no basis for requesting a halt or delay when the company had met every requirement under Australian law, including requirements to protect World Heritage values. This view has also been conveyed by the Australian Minister to the Chair of the World Heritage Committee.

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. This extension of the site boundary is analysed in detail in **Section 5.6**. The Mirrar have repeatedly and consensually agreed to mining in the area. The Northern Land Council and the mining company stand by that agreement. The Australian Government has guaranteed that the site, as registered and agreed receives full protection. It must be recognised that there are no grounds for the Australian Government to request a halt to the mining. The agreements for site protection are not being breached. The Australian government will ensure the recognised Boiwek site is protected.

*Australia will continue to inform the World Heritage Committee on progress with mine construction and on domestic processes for site protection.*

### IMPLICATIONS FOR OTHER STATE PARTIES

The extent and level of discussion at the Kyoto meeting, and the fact of an extraordinary session of the Committee should indicate to other State Parties, the complexity and seriousness of this issue to the essence of the World Heritage Convention, and the rights of State parties under the Convention.

The inscription of Kakadu National Park on the List of World Heritage in Danger without the request and the consent of the State Party, and against the express wishes of the State Party, could place at risk some of the fundamental principles that underpin the Convention—that is the respect for the sovereignty of the State Party, the safeguarding of the property rights provided for in its national legislation, and the primacy of the role of the State Party in the protection of the natural and cultural heritage. Such action also could be at odds with the terms of both the Convention, those relevant parts of the Operational Guidelines which are consistent with the Convention, and the benchmarks of Committee practice. It would represent a significant change to the basis upon which states took the serious step of becoming a party to the Convention and may deter other states from taking that step in the future.

In short, the issue of whether the World Heritage Committee chooses to place Kakadu on the List of World Heritage in Danger is no longer an issue for Australia alone. It is a matter of vital importance to each and every State Party to the World Heritage Convention.

We respectfully submit to the World Heritage Committee, our response to the UNESCO Mission Report.



ROGER BEALE

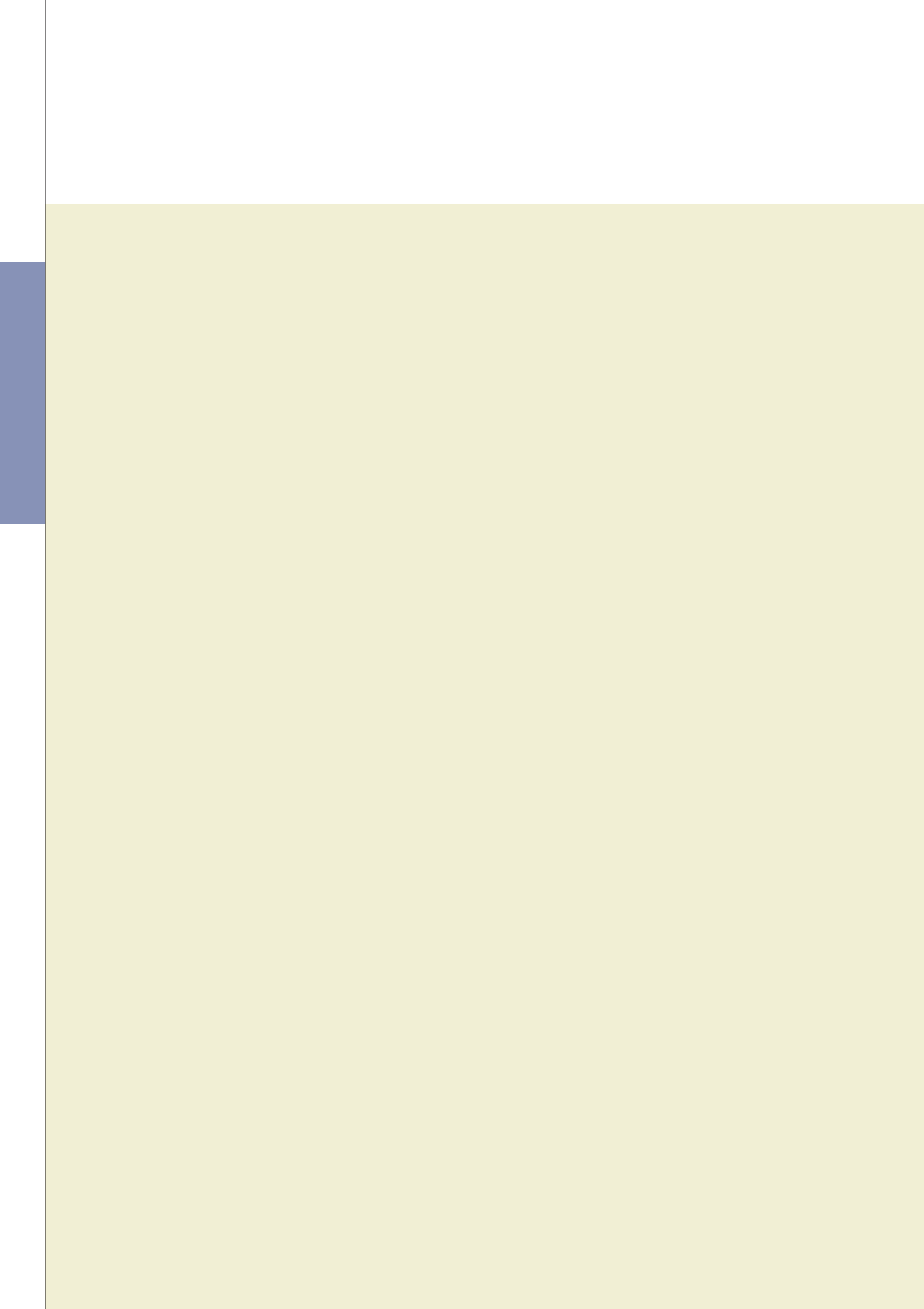
Secretary  
Department of the Environment and Heritage

# CHAPTER ONE

## **World Heritage Values and Attributes of Kakadu National Park**

- 1.1 Kakadu National Park – An Introduction
- 1.2 World Heritage Criteria
- 1.3 Natural Values and Attributes
- 1.4 World Heritage Cultural Values and Attributes
- Conclusion





## World Heritage Values and Attributes of Kakadu National Park

### CHAPTER ONE: WORLD HERITAGE VALUES AND ATTRIBUTES OF KAKADU NATIONAL PARK

The UNESCO World Heritage Committee sent a Mission to Kakadu National Park in October 1998 to investigate non government organisation and Traditional Owner claims that a proposed uranium mine at Jabiluka was a threat to the World Heritage values of the Park. The Mission report claimed that the values were threatened. In this chapter the World Heritage criteria are listed and explained and the values and attributes of the World Heritage area of Kakadu National Park are summarised. It is necessary to define the World Heritage values and attributes before it is possible to sustain an argument that the values and attributes are threatened by a project outside the boundaries. The universal significance for which the Kakadu National Park has been listed on three occasions is still protected.

#### 1.1 KAKADU NATIONAL PARK – AN INTRODUCTION

Kakadu National Park is a special Australian place. It covers an area of 19 804 km<sup>2</sup> in the wet-dry tropics of the Northern Territory, Australia (Figure 1). It extends from the coast in the north to the southern hills and basins 150 km to the south, and from the Arnhem Land sandstone plateau in the east, 120 km to the wooded savannas and rivers of its western boundary (Figure 2). Major landforms and habitats within the Park include the sandstone plateau and escarpment, extensive areas of savanna woodlands and open forest, rivers, billabongs, floodplains, mangroves and mudflats. The area is ecologically and biologically very diverse.

Aboriginal people have occupied the area continuously for at least 50 000 years. Evidence of occupation is found throughout the Park, particularly in the rich heritage of Aboriginal art and archaeological sites.

Approximately 50% of the land in the Park is Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*, and most of the remaining area of land is under claim by Aboriginal people. These claims are not disputed by the Australian Government. Title to Aboriginal land in the Park is held by Aboriginal land trusts. The land trusts have leased their land to the Director of National Parks and Wildlife.

The Park is proclaimed under the *National Parks and Wildlife Conservation Act 1975* and is managed through a joint management arrangement between the Aboriginal traditional owners and the Federal Government's Director of National Parks and Wildlife. The Kakadu Board of Management determines policy for managing the Park and is responsible, along with the Director, for preparing plans of management for the Park. The Board has an Aboriginal majority (ten out of fourteen members) who represent the Aboriginal people of the Park.

Kakadu is also on the Register of the National Estate due to its national significance to the Australian people. The wetlands of Kakadu are recognised for their international significance under the Convention on Wetlands of International Importance (the Ramsar convention).

**Kakadu is a special and significant place for all Australians.**

**Australia's indigenous people have cared for Kakadu for at least 50,000 years.**

**Australia's non-indigenous people have worked with indigenous people to care for Kakadu for 20 years, since the Park's declaration in 1979.**

## World Heritage Values and Attributes of Kakadu National Park

### 1.2 WORLD HERITAGE CRITERIA

Kakadu National Park is listed under the following criteria for natural heritage and cultural heritage values:

#### Natural Heritage

Criterion (ii): Outstanding examples representing significant ongoing geological processes, biological evolution and man's interaction with his natural environment.

Criterion (iii): Unique, rare or superlative natural phenomena, formations or features or areas of exceptional natural beauty.

Criterion (iv): The most important and significant habitats where threatened species of plants and animals of outstanding universal value from the point of view of science and conservation still survive.

#### Cultural Heritage

Criterion (i): Represent a unique artistic achievement, a masterpiece of the creative genius.

Criterion (vi): Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.

The specific attributes that make up these World Heritage values of Kakadu National Park are many and varied. These attributes range from specific sites and features to Kakadu's expansive landscapes and stories of evolution, and include less tangible features such as the cultural and spiritual associations and interactions between the landscape and a living culture.

#### Kakadu World Heritage

ecology  
geomorphology  
biology  
people and their environment  
culture and spirit  
unique and rare  
exceptional beauty  
art and culture  
creativity

*The escarpment  
of Kakadu  
(Science Group,  
Environment  
Australia)*

*Inset  
Billy-goat plum  
(Planchonia  
Careya)  
(Michael Preece)*



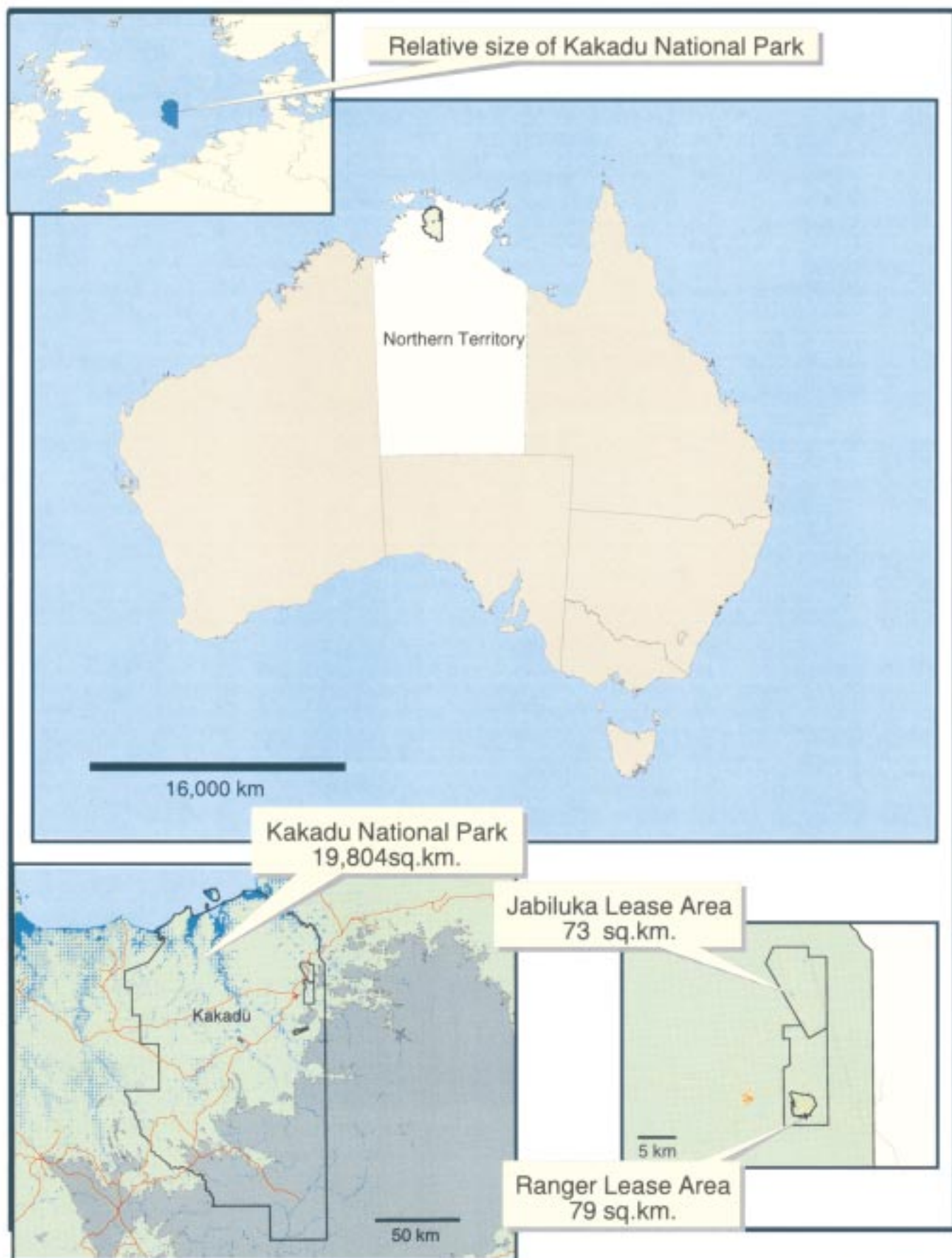


Figure 1: Relative sizes and location of Kakadu National Park, Jabiluka and Ranger Mine Leases.

This figure is for illustrative purposes only.



## World Heritage Values and Attributes of Kakadu National Park

### 1.3 NATURAL VALUES AND ATTRIBUTES

***Outstanding examples of ongoing geological processes and illustrations of the ecological effects of sea-level change in northern Australia.***

The coastal riverine and estuarine flood plains of the South Alligator, West Alligator, East Alligator, and Wildman rivers are included within Kakadu National Park and provide important examples of ongoing geological processes and illustrate the ecological effects of sea-level change in northern Australia.

The geomorphology and ecology of these coastal floodplains have undergone considerable change in a relatively short geological period. These changes provide a useful record of the development of freshwater floodplains and the successional responses of mangrove environments across northern Australia.

***The ecosystems of Kakadu's wetlands, woodlands and the Arnhem Land Plateau provide outstanding examples of significant ongoing ecological and biological processes in the evolution and development of terrestrial, fresh water and coastal ecosystems and communities of plants and animals.***

In comparison with the rest of the Australian continent, the environments of north Australia have been little affected by European settlement. Attributes contributing to this value include:

- the scale and integrity of landscapes and environments, including extensive and relatively unmodified vegetation cover and largely intact faunal composition;
- high flora and fauna species diversity;
- rare and endangered species;
- habitat heterogeneity; and
- endemic plant and animal species.

*Waterbirds of  
Kakadu during  
the wet season  
(Science Group,  
Environment  
Australia)*



## World Heritage Values and Attributes of Kakadu National Park

***Kakadu National Park contains a wide range of environmental gradients and contiguous landscapes that constitute a significant representation of Australia's wet-dry tropics.***

Kakadu National Park contains a wide variety of habitats and vegetation types, including:

- open forest and woodlands;
- lowland and sandstone monsoon rainforests;
- wetland, riverine, and coastal environments;
- mangroves and floodplains; and
- shrubland and heath.

The diversity of landscapes, habitats and species of Kakadu National Park, combined with its vast size, are attributes of significant conservation value and provide an excellent environment for the continuation of ecological processes. This great diversity and size enhances the ability of ecosystems and species within the Park to respond to and recover from natural disturbances and catastrophic events. These key attributes contribute to maintaining a high level of protection for the integrity of Kakadu's World Heritage values.

***The natural features in the region, including the plants and animals in the Park, feature prominently in the religious beliefs and cultural traditions of the local indigenous people. The landscape reflects 50,000 years of ongoing human occupation and land management by indigenous people and represents an outstanding example of man's interaction with the natural environment.***

Kakadu National Park is a landscape of cultural, religious and social significance to local Aboriginal people. Special places in the landscape include ceremonial places, sites of religious significance, archaeological and rock art sites and other areas that have special meaning to Aboriginal people. These sites both reflect the long history of Aboriginal occupation of the landscape and remain central to Aboriginal culture in the region.

*The South Alligator River catchment is protected in the Kakadu National Park (Mark Hallam)*



## World Heritage Values and Attributes of Kakadu National Park

The joint management arrangements for Kakadu National Park specifically provide for the ongoing use and occupation of the Kakadu landscape by its indigenous landowners and the maintenance of Aboriginal cultural traditions. The continuing practice of fire management by indigenous landowners is one example of how ongoing traditions are directly linked to the conservation management of the Park.

***Kakadu National Park includes several important and significant habitats where threatened species of plants and animals of outstanding universal value from the point of view of science and conservation still survive.***

While the diversity of plant and animal species of Kakadu is a significant value in itself, Kakadu also contains the habitats of a variety of species which are of outstanding scientific and conservation value. These include species listed as rare or threatened, species recognised as having special conservation status under international treaties, and species which have experienced drastic range reductions, or are of particular scientific interest, such as relict species.

Several important plant associations are also restricted to Kakadu National Park, including those associated with *Eucalyptus koolpinensis*, the heath vegetation on the margins of the Marrawal Plateau, and woodland containing *Terminalia platytera* on Snake Plains.

***The landscape of Kakadu National Park is of exceptional natural beauty and aesthetic importance and contains superlative natural phenomena***

Kakadu National Park contains features of great natural beauty and magnificent sweeping landscapes. The on-ground attributes which contribute to the values of Kakadu include the:

- expansive and varied landscapes including coastline, wetlands, floodplains, the Arnhem Land Plateau and outliers;
- exceptional natural beauty of viewfields;
- unusual mix and diversity of habitats found in such close proximity; and
- scale of undisturbed landscape.

The north of the Park is characterised by extensive lowlands and a vast expanse of wetlands. These extensive wetlands are listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (the Ramsar Convention). The Ramsar wetlands comprise the catchments of two large river systems, the East and South Alligator Rivers, seasonal creeks and the lower reaches of the East Alligator River, the Magela Creek floodplain, the West Alligator River system, and nearly all the Wildman River system. The wetlands support about one million waterbirds of over 60 species, as well as many other vertebrate and invertebrate species. The two river systems of the wetlands are outstanding examples of the series of large rivers of the Torresian monsoonal biogeographic region draining to the Arafura Sea.

### Kakadu Natural Values

plants and animals  
escarpments  
and plains  
wetlands and  
woodlands  
cliffs and coasts  
billabongs and ocean  
big rivers and  
small streams  
caring for country  
science and  
conservation





*Termite Mounds  
and Woodland  
in Kakadu  
National Park*



*Exquisite  
Leichhardt's  
grasshoppers  
(Petasida  
ephippegera)  
(Michael Preece)*



## World Heritage Values and Attributes of Kakadu National Park

### 1.4 WORLD HERITAGE CULTURAL VALUES AND ATTRIBUTES

*The rock art sites of Kakadu represent a unique artistic achievement. The art spans an unrivalled continuum of at least 10 000 years to the present. This collection of art is strongly linked and integral to the living traditions of contemporary indigenous landowners and a strong physical expression of the long history of the indigenous occupation of the Kakadu landscape.*

Kakadu National Park contains one of the greatest concentrations of rock art in the world. It is estimated that there are more than 15 000 rock art sites in the escarpment and plateau country, of which some 5000 have been recorded by Park staff. Many of these sites contain a large number of individual paintings. Areas of particular significance for rock art include Cannon Hill, Ngarradj Warde Djokkeng, the Nourlangie-Mt Brockman massif, Ubirr, Namarrgon Djahdjah, and Deaf Adder Creek.

A significant aspect of the art is the range of art forms and styles found in Kakadu. This includes hand and other stencils, depictions of animals and humans, battle and hunting scenes, and elaborate multicoloured X-ray art. Drawings in beeswax and 'contact art', which depicts the first contact of Aboriginal people with the Macassan and European cultures, are also found in the National Park.

A strong association exists between Aboriginal cultural sites (including rock art sites) and the living traditions and beliefs of Aboriginal people in the Park. This association continues in the social and cultural activities of communities today. Paintings reflect the history of Aboriginal occupation of the landscape, can portray the spiritual figures that created the landscape and embody the cultural beliefs and traditions of Aboriginal people in the region.

In addition to their religious significance, rock paintings also provide a valuable storehouse of traditional knowledge—showing objects, animals and activities familiar to Aboriginal people today, mythological heroes, and paintings of religious and ceremonial life. Paintings were often used for teaching children, for artistic expression, as a record of events such as a successful hunt, and to illustrate stories.



Ubirr  
rockshelter,  
Kakadu is  
renowned for  
its rock art  
(Mark Hallam)

## World Heritage Values and Attributes of Kakadu National Park

***Kakadu provides outstanding examples of the hunting and gathering way of life that has dominated the Australian continent to modern times. Kakadu is particularly significant on a global scale because it represents a continuing cultural tradition that can be traced back to the earliest known human occupation of the continent.***

Kakadu reflects an outstanding example of a landscape that has evolved in company with continuing Aboriginal occupation and 50,000 years of a hunting and gathering culture. While sites provide the earliest available evidence of human occupation of the Australian continent, dating as far back as 50,000 years, they also provide a valuable record of human responses and adaptation to environmental changes since that time.

***Kakadu represents an outstanding example of where the landscape is embedded in the continuing and developing cultural tradition of indigenous communities.***

The Aboriginal people have an important spiritual bond with the land. Their spiritual belief centres on spirit beings from the creation era, who emerged to give form and life to the earth. At the end of their work, these beings departed or rested in the landscape. They retained their powers to influence the life of humans and are considered to be a vital force in the continuation of human life, local Aboriginal culture and the productivity of the land.

Throughout Kakadu National Park lies a collection of places and landscapes associated with these spirit beings which are of significant cultural, religious or social importance to the Aboriginal people.

Traditional beliefs and practices remain important in the daily life of Aboriginal communities and rites and ceremonies continue to be practiced. The continuing ability of these communities to undertake and develop the cultural practices, traditions and customs associated with caring for country, contributes to the values of Kakadu as a World Heritage Area.

### Kakadu Cultural Values

people and culture  
culture and art  
art and people  
people and environment  
people and belief  
people and ceremony  
caring for country  
rock art past present  
future  
cultural tradition  
archaeology and science  
hunting and gathering

## CONCLUSION

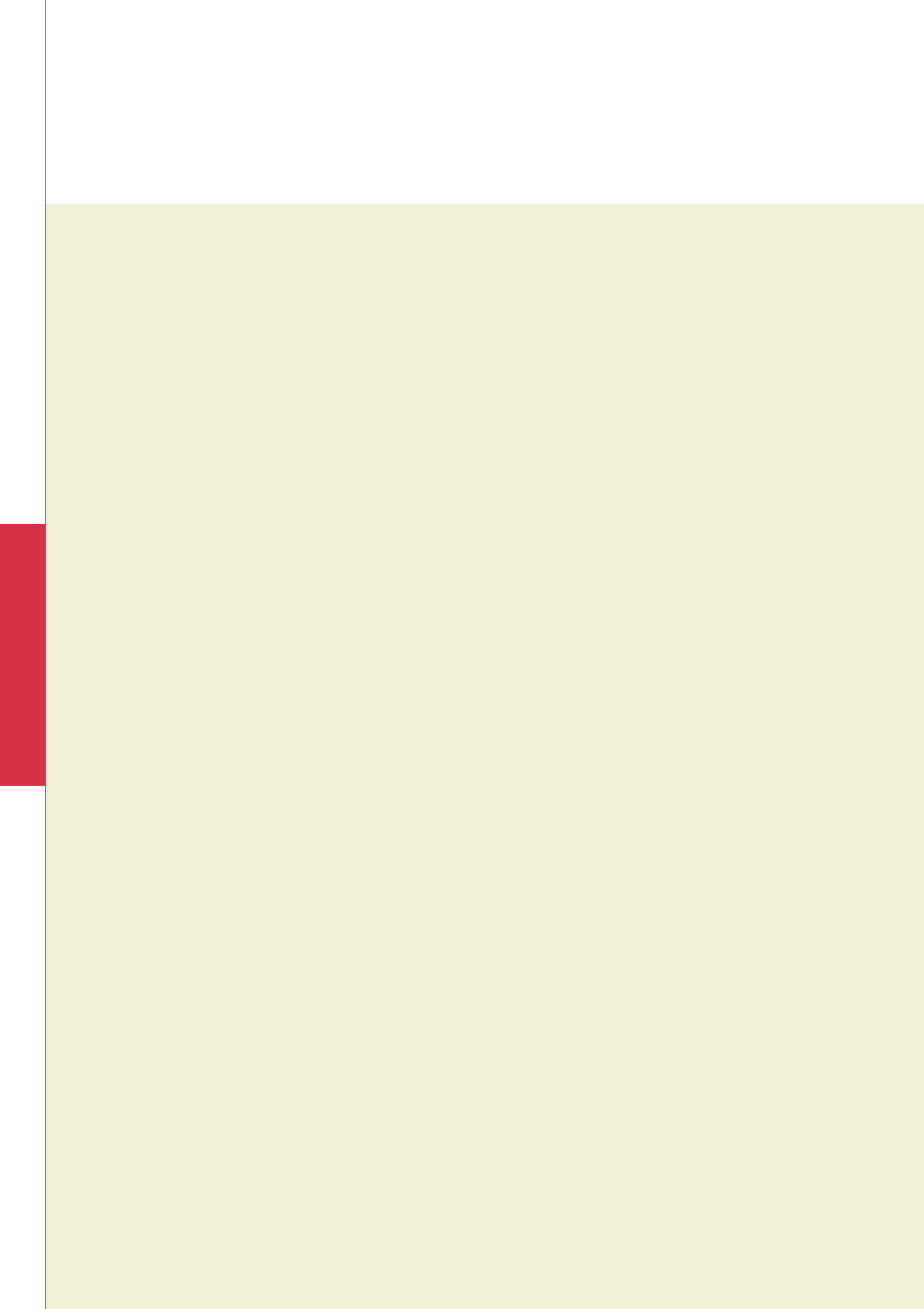
*Kakadu National Park is a special Australian place. The World Heritage natural and cultural values and attributes for which Kakadu National Park has been inscribed are recognised, protected and promoted. Australia can show that these values and attributes are protected while responding constructively to suggestions for improvement. Australia recognises that it holds and cares for the values of Kakadu National Park for all Australians and for the world.*



# CHAPTER 2

## **Kakadu National Park – The Place and its People**

- 2.1 Kakadu – The Place
- 2.2 Kakadu – The People
- 2.3 Inscription on the World Heritage List
- 2.4 Mission Visit
- Conclusion



## Kakadu National Park – The Place and its People

**CHAPTER TWO: KAKADU NATIONAL PARK—THE PLACE AND ITS PEOPLE** In this chapter the Australian Government gives an historical, social and cultural background to the Park. This context is necessary to be able to assess claims that the World Heritage area is under threat. The chapter describes:

- *The history of the Park*
- *The fact that from its beginnings the Park co-existed with Aboriginal land owning interests, mining interests, and tourism interests*
- *The history of the town of Jabiru and the mechanisms to ensure that it does not harm the values of the Park*
- *The history of the mining enclaves located in the region*
- *The management principles of Kakadu National Park*
- *The role of traditional owners in the Park*
- *Its inscription on the list of World Heritage*

*Only with the full appreciation of the way in which Kakadu National Park came into existence and was entered onto the World Heritage listing in three stages, is it possible to assess the impact of the Jabiluka proposal on the overall values and attributes of Kakadu National Park.*

### 2.1 KAKADU—THE PLACE

#### 2.1.1 History of the Park

Aboriginal people have been associated with the area of land now known as Kakadu National Park for a very long time. Archaeological evidence suggests that humans have lived in the Kakadu region continuously from around 50 000 years before the present; the earliest date that humans are believed to have arrived in Australia (Roberts and Jones 1994, Roberts et al 1990). Aboriginal people believe that they were placed in this land at the time of the first people by creation figures such as the Rainbow Serpent. Some figures, like the Rainbow Serpent, are regarded as still present in the landscape and active today. These creation figures gave the people laws, a way of life and a model for social organisation. That Aboriginal people have lived continuously within Kakadu for 50 000 or more years is one of the most important aspects of the cultural significance of the Park.

The first European settlements in the top end of the Northern Territory influenced the Park area in an indirect but major way. Water buffalo (*Bubalus bubalis*) that were introduced to the settlements from the 1820s for food either escaped or were abandoned when the settlements closed. The buffalo spread across the top of the Northern Territory and became an important economic resource to both Aboriginal and non-Aboriginal people in the region. The buffalo also had a strong impact on the physical and biological environment of the region.

**Non-indigenous people have been associated with the land called Kakadu since the 1820s.**

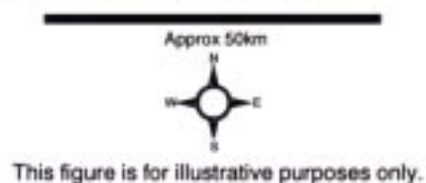
**Non-indigenous settlement of Northern Australia impacted on indigenous communities in many ways.**

**Changes included the introduction of water buffalo, missionaries, pastoral activity, mining, forestry and tourism.**





Figure 2. Kakadu National Park showing major features and lease areas.



From the latter part of the 1880s, small European settlements in the area of the Park were based on buffalo hunting. In addition to buffalo hunting, other small scale 'industries', such as mining, forestry, pastoral activity and tourism, developed over time. These enterprises had a significant impact on Aboriginal society. The work of missionaries, particularly at nearby Oenpelli, also had a major influence in the region. In recent years wildlife conservation, mining and tourism have become major land uses.

Kakadu was established at a time when the Australian community was becoming more interested in advocating for the declaration of national parks for conservation and in recognising the land interests of Aboriginal people. A national park in the Alligator Rivers Region was proposed as early as 1965. Over the next decade several proposals for a major national park in the region were put forward by interested groups and organisations.

### 2.1.2 The Woodward Inquiry

In 1973 the Commonwealth Government set up a Commission of Inquiry into Aboriginal land rights in the Northern Territory. This Commission specially considered how to recognise Aboriginal people's land interests while providing for conservation management of the land.

The Commissioner of this inquiry, Mr Justice Woodward, concluded that:

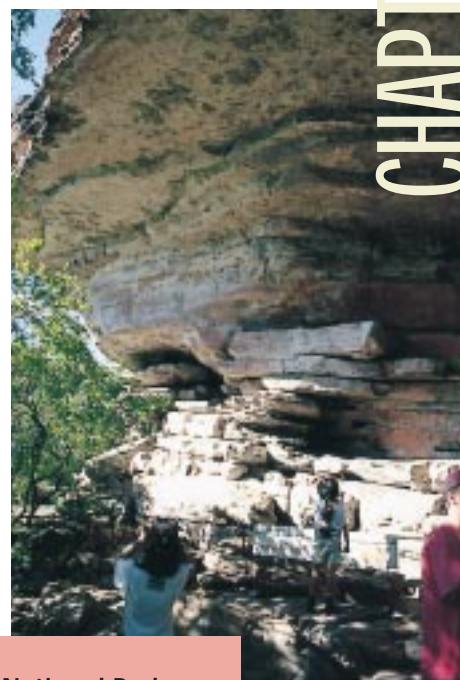
'It may be that a scheme of Aboriginal title, combined with national park status and joint management would prove acceptable to all interests' (Woodward 1973).

Kakadu National Park was born from that vision of compromise and shared land use.

### 2.1.3 The Ranger Inquiry

Uranium mining in Australia has been constantly debated since uranium was first discovered in 1949. The passage of the *Atomic Energy Act 1953* (Commonwealth) was motivated primarily by a desire to develop the industry for defence purposes. This led to the opening of a number of mines over the following 10 years. In the early 1960s, a moratorium was imposed on further uranium mining activities, including export, as a result of market contractions. In 1967, the moratorium was lifted, as the potential for cheap commercial use for power generation became apparent. In 1974, a new moratorium was placed on uranium exports, this time despite high uranium prices. This was motivated in part by the rising importance of environmental issues in the eyes of the Australian public. Uranium mining policy has been an issue of national significance prior to 1975.

Significant uranium deposits were discovered in the Alligator Rivers Region at Ranger, Jabiluka and Koongarra in the early 1970's. A formal proposal to develop the Ranger deposit was submitted to the Australian Government in 1975. At this time, uranium mining, Aboriginal land ownership and conservation were major national and regional issues, and the Australian governments of the day chose a transparent process to choose a way forward through sometimes conflicting options.



#### A National Park

National Park proposed for the Alligator Rivers region as early as 1965 (now part of the Kakadu National Park).

Indigenous land interests and joint management were considered in the earliest proposals for a National Park.

*Ubirr  
rockshelter,  
Kakadu  
(Mark Hallam)*



## Kakadu National Park – The Place and its People

**Mineral Resources**

Uranium discovered in the Alligator Rivers region (at Ranger, Jabiluka and Koongarra) in the early 1970s.

Ranger Uranium Environmental Inquiry established 1975.

Pre-existing mineral leases at Ranger, Jabiluka and Koongarra when the National Park was established.

In July 1975, the Government established the Ranger Uranium Environmental Inquiry (also known as the 'Fox Inquiry' after Justice Fox who headed the Commission of Inquiry) under the *Environment Protection (Impact of Proposals) Act*. 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.

Around the same time as this inquiry was set up, the *Aboriginal Land Rights (Northern Territory) Act 1976* was passed by Federal Parliament. This Act allowed the Commission, set up to conduct the Ranger Inquiry, to determine the merits of a claim by the Aboriginal traditional owners to land in the Alligator Rivers Region. The Act also established the office of the Aboriginal Land Commissioner to inquire into subsequent land claims under the Act.

In August 1977 the Government accepted almost all the recommendations of the Inquiry including those relating to granting Aboriginal title, establishing a major national park in stages, and establishing a uranium industry. Mining would occur in

areas not established as national park. The Ranger Inquiry's recommendations on uranium mining referred to the sequential development of uranium mining in the Region; they did not specify that only one mine be allowed to operate at any one time. The Ranger Inquiry referred to what was the then Pancontinental proposal for a mine at Jabiluka and discussed it in terms of the mine proceeding in the near future, once the necessary approvals had been given.

**2.1.4 Aboriginal land grants and the declaration of the Park**

Most of the land that was to become Stage 1 Kakadu National Park, excluding the proposed Jabiru townsite, was granted to the Kakadu Aboriginal Land Trust in September 1978. The southern half of the land in the Ranger Project Area was also included in this grant of land. In November 1978 the Director of National Parks and Wildlife (a statutory office under Commonwealth legislation, the *National Parks and Wildlife Conservation Act 1975*) and the Land Trust entered into a lease agreement to enable the Director to manage the land as a national park. Stage one of Kakadu National Park was declared on 5 April 1979 under the *National Parks and Wildlife Conservation Act 1975*.

In June 1982, the entire Jabiluka Project Area (73km<sup>2</sup>) was granted to Jabiluka Aboriginal Land Trust under the Land Rights Act (refer Figure 3).

In March 1978, an Aboriginal land claim was made under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) for the land that was proposed to be included in Stage 2 of Kakadu National Park. Stage 2 was proclaimed on 28 February 1984. The land claim was partially successful and in November 1986 three areas of land to the west and north of the Jabiluka Project Area were granted to the Jabiluka Aboriginal Land Trust, including the northern half of the Ranger Project Area. A lease agreement between the Director and the Land Trust was entered into in March 1991. The areas in Stage 2 that were not granted have been claimed again under the Land Rights Act but the claims have yet to be determined.

In June 1987 a land claim was made for the former Goodparla and Gimbat pastoral leases in the proposed Stage 3 area of Kakadu National Park. Other areas of land in the south of the Park known as the Gimbat Resumption and the Waterfall Creek Reserve (formerly known as UDP Falls) were later added

# Kakadu National Park – The Place and its People

to this land claim. 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. In January 1996 about half of the land in Stage 3 of the Park, including Guratba, was granted to the Gunlom Aboriginal Land Trust (refer Figure 3). A lease was entered into between the Director and the Land Trust in March 1996. The land claim over the rest of Stage 3 has yet to be determined.

Some areas of land within the Park remain subject to claim under the Land Rights Act. These areas do not include the Jabiru township, which has been claimed under the *Native Title Act 1993*. In 1978, when announcing its decision following the Ranger Inquiry, the Commonwealth Government made a commitment that Aboriginal people would be able to participate in the planning and management of the whole national park and not only those areas which are to be granted as Aboriginal land. This commitment was based upon the Ranger Inquiry recommendations and the Park is managed in accordance with this commitment.

## 2.1.5 Uranium Mining and the Mining Enclaves

Mining has a 50 year history in the area now largely enclosed by the Kakadu National Park boundary. A number of small uranium mines operated in the area, notably in the South Alligator Valley during the 1950s and 1960s. The three current mining enclaves (the Ranger Project Area and the Jabiluka and Koongarra leases) (refer Figure 2&9) date from the early 1970s—before the existence of the Park.

The Ranger mineral deposits were discovered in 1970 and a Special Mineral Lease was applied for in 1972 by a consortium of the Electrolytic Zinc Company of Australasia (EZ) and Peko-Wallsend Operations Limited (Peko). A new Federal Government in December 1972 reassessed the issue of uranium mining and in 1975 instituted the Ranger Uranium Environment Inquiry to examine all aspects of uranium mining and especially the Ranger orebody development.

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

### Aboriginal Land Grants and declaration of Kakadu National Park

**1978**

Aboriginal land claim for part of proposed stage 2 of Park

**1978**

stage 1 land granted to Kakadu Aboriginal Land Trust (KALT)

**1978**

lease agreement between Director National Parks and KALT to manage land as a national park

**1979**

stage 1 declared Kakadu National Park

**1984**

stage 2 declared Kakadu National Park

**1986**

the 1978 land claim successful in part

**1987**

Aboriginal land claim for part of proposed stage 3 of Park

**1987**

part of stage 3 declared National Park

**1989**

part of stage 3 declared National Park

**1991**

part of stage 3 declared National Park

**1996**

half of the stage 3 land granted to Gunlom Aboriginal Land Trust

**1996**

lease agreement between Director National Parks and Gunlom to manage land as a national park

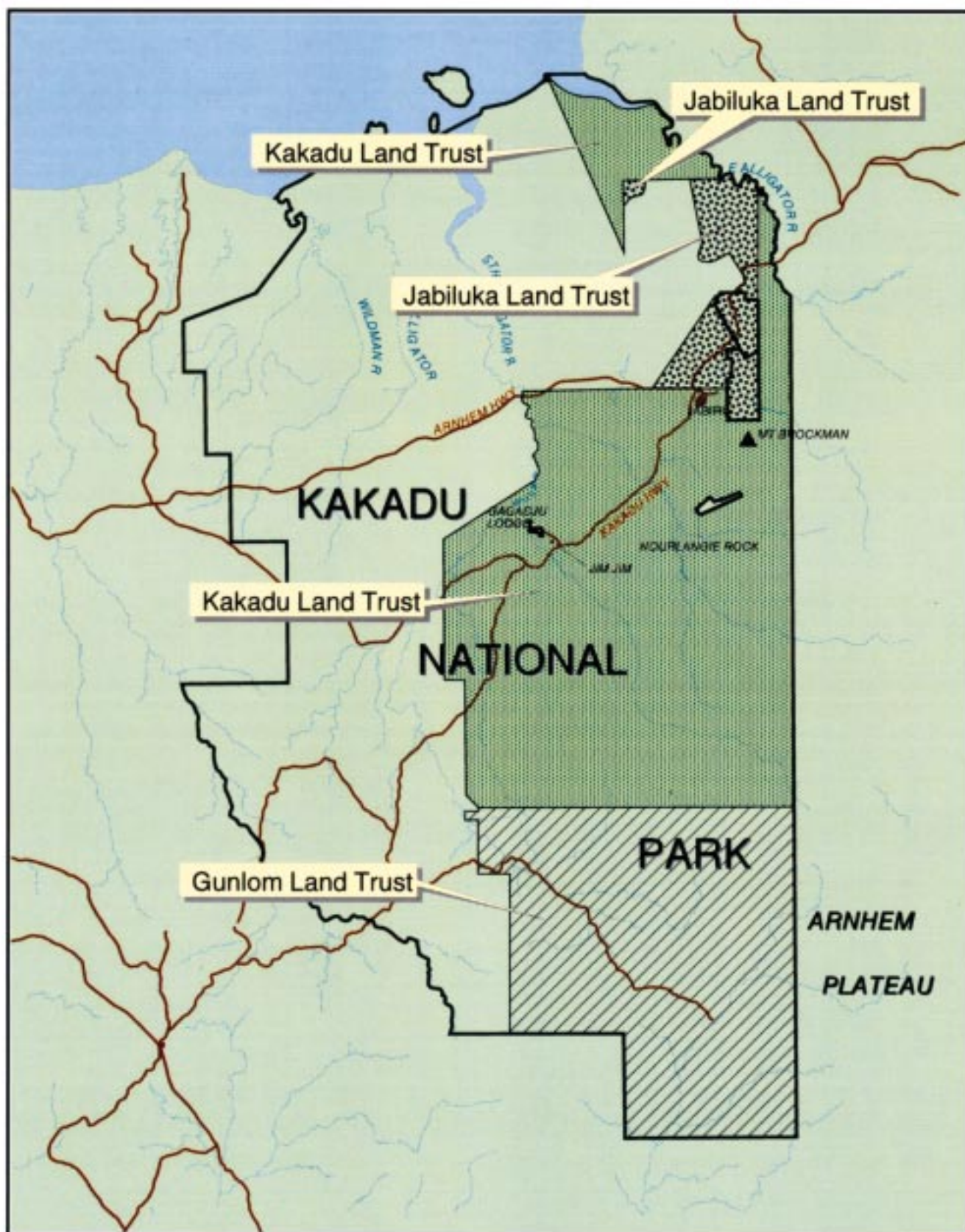



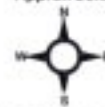


Figure 3. Aboriginal Land Trusts in Kakadu National Park.

Aboriginal Land Trust

-  Gunlom
-  Jabiluka
-  Kakadu

Approx 50km



This figure is for illustrative purposes only.



## Kakadu National Park – The Place and its People

owners in November 1978 through the Northern Land Council and operations were approved in January 1979. Excavation of the orebody commenced in August 1980. The initial operator was a consortium comprising the Commonwealth, represented by the Australian Atomic Energy Commission, EZ and Peko.

In December 1979 the Commonwealth agreed to divest its interests in the Ranger mine to Peko and a new Australian public company, Energy Resources of Australia (ERA), was established. In September 1980 the Commonwealth, EZ and Peko assigned all their interests to ERA, which has continued to operate the Ranger mine. Mining of Orebody #1 was completed in 1994. Mining of Orebody #3 commenced in 1996 and is continuing.

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.

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. Royalty payments from Ranger totalled \$8.1 million in 1997/98, of which the traditional owners received \$2.4 million.

Following discovery of the Jabiluka orebody in 1971, application to mine was made by Pancontinental Mining Limited in 1975 and a mineral lease was granted by the Northern Territory Government in August 1982, following Pancontinental signing an agreement with the Aboriginal Traditional Owners in July 1982. An Environmental Impact Statement (EIS) was submitted and accepted, and permission to mine was granted. Following a change in Federal Government in 1983, refusal to grant an export licence led to the mine not being developed. With the agreement of the NLC, on consent of Aboriginal traditional owners, the Jabiluka Lease was transferred to ERA in August 1991. In the same year, Aboriginal traditional owners lobbied the Government through senior ministers to allow mining on their land at Jabiluka. ERA carried out a drilling program in 1993 to provide additional resource information. The issue of mining at Jabiluka was re-opened following a change in Federal Government in 1996. An EIS process, followed by a Public Environmental Review (PER), assessed the environmental impacts of mining at Jabiluka and resulted in conditional approval to proceed (see Chapter Five for more detail).

The proposed Jabiluka mine has already generated \$5.2 million in benefits for Aboriginal people. While no production-based royalties can be paid before production commences, it is expected that over its life, the Jabiluka mine will contribute a further \$230 million to Aboriginal interests. It is expected that these funds will be used to complement Government programs and provide additional benefits in the areas of: housing and the development of community infrastructure; community-based education, training and health programs (including aged care); cultural heritage and land management programs; development of a regional Aboriginal languages interpreting service; cultural revitalisation activities; small business and enterprise development; and financial investment to ensure access to economic resources over the long term.

### **Mining leases are not and have never been part of the Kakadu National Park or the WHA**

**1980** WH nomination clear and upfront about mineral exploration and mining in the region.

**1991** nomination clearly identified the Ranger mine and the Jabiluka and Koongarra Mineral Leases as outside the park boundaries.

**1991** IUCN Technical Evaluation noted the mine and leases before reporting that “all conditions of integrity are met”.

## Kakadu National Park – The Place and its People

The Koongarra uranium deposit was discovered by Noranda (Australia) Limited in 1970. The company prepared a draft EIS, which was submitted in December 1978. Following acceptance of the Final EIS, development approval was given in 1981 and the owners reached agreement with the Aboriginal Traditional Owners in June 1983 for mining to proceed. Following a change in Federal Government in 1983, the Government did not give necessary consents which would have allowed the development to proceed. As such, the project has not been developed. The ownership of the lease has changed hands over the years and it is presently owned by the French Government utility COGEMA.

The stop-start nature of uranium mining approvals has been the result of the policy decisions taken by different Australian Governments. Between March 1983 and March 1996 the Australian Government had a three mines policy with respect to uranium mining. This policy limited the number of operational uranium mines in Australia to three, named mines (Ranger and Nabalek in the Northern Territory and Olympic Dam in South Australia) and therefore effectively excluded the possibility of uranium ore extraction at either the Jabiluka or the Koongarra Mineral Leases. In March 1996, a change in Government policy meant that this limitation on the construction of new uranium mines in Australia ended.

The Australian Government's policy is not that proposals relating to uranium mines automatically be approved. The policy instead notes that the Government will provide the necessary approvals only if such proposals can meet stringent assessments that address any potential impacts on natural and cultural values. The Jabiluka uranium mine has been the subject of the most stringent assessment of such potential impacts and, as a result, is subject to more than 70 requirements to protect the natural and cultural values of the Kakadu region, including World Heritage values.

### 2.1.6 Jabiru

The township of Jabiru (refer Figure 2 & 9) was established within Kakadu National Park to house people directly or indirectly associated with uranium mining in the region and, in line with recommendations of the Ranger Uranium Environmental Inquiry, the Commonwealth developed the town according to the following principles:

#### Jabiru

- Township originally developed for people associated with uranium mining.
- Jabiru now an important centre for indigenous people and the tourism industry.
- Strict planning controls.
- 1480 people living in Jabiru

- the site be within the national park on land excluded from Aboriginal land grants;
- the town be 'closed', catering only for the mining companies, agents and Government officials;
- the population of the town be less than 3500 (in June 1998, the population was 1480—the population is not expected to exceed 1700 with the Jabiluka development);
- the principles for designing the town be set out in the Plan of Management for Kakadu National Park;
- the area of the town be leased from the Director of National Parks and Wildlife; and
- the Northern Land Council be consulted in the proposals for the town.

In 1981, a 13 km<sup>2</sup> area of the Park (NT Portion 2272) was leased by the Director to the Jabiru Town Development Authority (JTDA), a Northern Territory Government authority, to establish and develop the township of Jabiru. Under the terms of the lease agreement, the

## Kakadu National Park – The Place and its People

JTDA subleases sites to occupants and controls leases and licences to commercial and business activities in Jabiru.

The idea of Jabiru as a 'closed town' allowed for a town lived in by people connected with mining operations, government services and service industries. A secondary role for Jabiru, as a tourism service centre, developed later as visitors to Kakadu National Park began to use facilities in the town and the Park's second Plan of Management allowed for tourism accommodation 'with the concurrence of the NLC and the traditional Aboriginal owners'. The town is now a vital hub for the work of Aboriginal organisations and community groups.

In 1988 the Gagudju Crocodile Hotel owned by traditional owners was opened in Jabiru and since then a caravan park with lodge accommodation and other facilities for park visitors have been developed in the town. As Kakadu has become more important as a place where tourists come and as tourism has become more and more significant in the regional economy there has been further interest in developing tourism services in Jabiru.

The lease between the Director and the Jabiru Town Development Authority requires the Authority to use the town in conformity with:

- the *National Parks and Wildlife Conservation Act 1975* and those parts of the National Parks and Wildlife Regulations relating to the town;
- the Kakadu National Park Plan of Management (the fourth plan commenced in March 1999) describes how Jabiru will continue to be developed in an orderly way that is consistent with the wishes of Aboriginals and the protection of the Park environment);
- the lease;
- the Jabiru Town Plan approved by the Director under the National Parks and Wildlife Regulations;
- the *Jabiru Town Development Act 1978*; and
- other laws applicable to the Park.

The Ranger Inquiry (Second) Report states (p 223, Conclusion, paragraph 1):

*'We recommend strongly that the number of people in the town [Jabiru] not exceed 3500; but the smaller the better. This is a much larger number than will be necessary to accommodate people associated with the Ranger mine but it allows for the possibility of the Pancontinental Mine [Jabiluka] getting into production during the life of the Ranger mine.'*

*The small town of Jabiru (Science Group, Environment Australia)*

Jabiluka will begin production towards the end of the life of the Ranger mine. The infrastructure impact of the Jabiluka mine will be minimal compared with the existing adjacent Ranger facilities and mining of ore at Ranger will cease within four years after mining of ore begins at Jabiluka. It is immediately adjacent to the Ranger Lease and will not lead to the creation of any new township (see Photograph 1). Population growth for Jabiru will be much lower than that envisaged by the Ranger Inquiry. The mining of ore at Ranger will cease in 2004, approximately three to four years after the mining of ore begins at Jabiluka.



## Kakadu National Park – The Place and its People

### 2.1.7 Managing the Park Together — joint management and planning

Joint management in Kakadu encompasses the legal structural framework set in place by the *National Parks and Wildlife Conservation Act 1975*, lease agreements with the traditional owners of Aboriginal land in the Park, and the continuing day to day relationship between park staff and traditional owners.

#### Joint management

Kakadu Board of Management has an indigenous majority

Best practice management in:

- planning
- interpretation of indigenous culture
- management of art sites
- fire regimes
- weed management
- introduced buffalo eradication

World Heritage Committee recognised Australia's success in World Heritage management in Kakadu in 1992

Over half of Kakadu is owned by indigenous people who lease their land to the Director of National Parks

The *National Parks and Wildlife Conservation Act 1975* establishes the statutory office of the Director of National Parks and Wildlife and provides for Boards of Management to be established for park areas on Aboriginal land. The Act provides for majority membership of Aboriginal representatives on these Boards and sets out the Board's tasks. The Kakadu Board of Management was established in 1989. The Aboriginal representation on the Board covers the geographic spread of Aboriginal people in the region as well as the major language groupings. Membership is not confined to representatives of Aboriginal traditional owners who have been granted land under the *Aboriginal Land Rights (Northern Territory) Act 1976*.

The lease agreements both protect and promote the interests of Aboriginals, and commit the Director to managing the natural and cultural environment of the Park in accordance with national park best practice. An important objective of the joint management partners is to make sure that traditional skills and knowledge in caring for country in the Park continue to be practised. The traditional owners want their joint management partners to contribute current 'best practice' knowledge about park management to complement their traditional management practices and this desire is reflected in the leases for the Park. Park practices in weed management, buffalo eradication, fire regimes, management of art sites, interpretation of Aboriginal culture and planning are widely recognised as achieving best practice. The World Heritage Committee complimented Australian authorities in 1992 for the exemplary management of the Park.

The Act requires that the Park has a Plan of Management (see Chapter 4) and the Park's fourth Plan of Management has recently come into operation. The Plan of Management is produced jointly by the Director of National Parks and Wildlife and the Kakadu Board of Management. The main purpose of a

## Kakadu National Park – The Place and its People

Plan of Management is to describe how it is proposed to manage the Park. A main part of traditional culture is that *Bininj/Mungguy* (Aboriginals) are responsible for caring for country—this is a responsibility with important obligations to past, current and future generations of traditional owners. The current Plan articulates four guiding principles for how the Park should be managed relating to protection of Aboriginal interests, caring for country, providing for tourists and telling people about the Park. Plans generally run for a five year period and take nearly two years to produce, from advertising of intent to passage through Parliament

The Plan of Management is complemented by subsidiary area planning documents at a more detailed level. The preparation of individual area plans has the benefit of addressing site specific issues that could otherwise not be addressed in the Plan of Management. As with the Plan of Management, the development of the area plans requires extensive consultation with traditional owners and relevant Aboriginal people. Other stakeholders are involved through public comment processes and, in relation to tourism and research issues, through consultative committees.

The traditional owners expect to benefit from their land being managed as a national park through direct employment in the Park and by providing services to the Park management authority. These expectations are being met. The traditional owners particularly desire to receive more benefit from the use of their land for tourism and they have requested that prime tourism resources or activities are reserved for their benefit. This, of course, would not prevent partnerships between *Balanda/Mam* (non Aboriginals) and *Bininj/Mungguy* to develop tourism ventures. They also wish to be able to explore and develop new opportunities to benefit from their land where these new activities do not detract from the value of the Park. The Plan of Management outlines how these expectations will be progressed.

As well as being important to traditional owners, Kakadu is a special and important place to many other people. To local residents and neighbours, the Park is not only a place where they live and work, but a place for recreation. Many of these people also feel a strong sense of attachment to the Park.

Kakadu is especially significant as a conservation area in northern Australia. It is also important to the regional economy, especially the tourism industry. Kakadu is a place of national tourism and conservation significance; many Australians pushed for the Park to be established as a conservation area. The Park was one of the first Australian places to be listed as a site of World Heritage significance.

### Kakadu

- caring for country
- cultural landscape
- conservation area

*The Aboriginal Cultural Centre, Cooiinda and an interpretive display of the seasons*  
(Mark Hallam)





## Kakadu National Park – The Place and its People

### Kakadu

- tourism and recreational use
- tourism not to be more important than caring for country

### 2.1.8 Agreements and Programs

In addition to the joint management arrangements and lease agreements in place with the traditional owners of the Park, a wide range of joint initiatives and programs have been undertaken with indigenous communities to ensure their interests were represented and that cultural heritage values were protected and conserved.

Of particular interest are initiatives such as the opening of the Warradjan Cultural Centre in 1995, the incorporation of traditional fire practices into park management, the establishment of the Cultural Resource Management Committee, the review of cultural heritage management in 1995, and the Kakadu Region Social Impact Study in 1996.

Further examples are provided in Appendix 1.

## 2.2 KAKADU—THE PEOPLE

There are two classes of affiliation that identify Aboriginal people with an area of land in the Kakadu region. Both of them are inherited through the paternal line. These are language and *gunmogurrurr*. The origin of these affiliations is located in the Dreaming when creator figures deemed or caused particular tracts of country and landscapes to be of a certain language (eg Gagudju, Erre, Gundjehmi) or of a certain *gunmogurrurr* (eg Mirrar, Badmardi, Wilirrgu) and further, distributed the first generation of human beings to occupy the central sites of each territory. The patrilineal descendants of this original generation inherited the language and the *gunmogurrurr* of their respective tracts of country.

There are about 16 extant clans of Kakadu traditional owners. Currently there are 11 language groups in the area covered by the Park (See Figure 4 page 30). Title to Aboriginal land in the Park is held by Aboriginal land trusts.

Kakadu National Park is an Aboriginal place. While the Park has been established to conserve its natural and cultural values and to provide for appropriate visitor use, it is also a place where the rights of Aboriginal people as the traditional owners and managers of the land are recognised and can be enjoyed. It is especially important to the traditional owners that their children and future generations of traditional owners can enjoy the same rights, responsibilities and understanding of their culture as the current traditional owners. The Aboriginal population of the Park has grown substantially since its establishment,

*The 'Window on the Wetlands Visitor Centre' near Kakadu presents and interprets the landscape to visitors (Mark Hallam)*



## Kakadu National Park – The Place and its People

being supplemented by migration from other areas and the return of people with traditional associations to the area. The migration and return was triggered by the policy developments of the late 1970s which made the region more accessible to Aboriginal occupation, particularly the granting of land rights to Aboriginal communities. In 1996, there were 533 Aboriginal people living in the Park. This contrasts with a population of around only 139 in 1979 when the Park was created.

### 2.2.1 Aboriginal Groups and Organisations

There are several Aboriginal groups in Kakadu with traditional land interests in the Park. Naturally, the groups are not always in agreement on their views and priorities on land management issues in Kakadu. The Kakadu Regional Social Impact Study Report (KRSIS) observed and reported on some disagreements among and between the groups over ownership of country, and relative associations with places and historical connections. Recently, emerging politics of anti-uranium mining has exacerbated divisions and resentments between individuals, clan groups and organisations.

The three groups with a direct interest in land decisions and management of Jabiluka are the Gagudju Association, the Djabulukgu Association, and the Gundjehmi Aboriginal Corporation. The Gagudju Association was established in 1980 as a consequence of the mining agreement for the Ranger Uranium Mine. The association has about 300 members from a number of land owning clans in the Kakadu region. The Mirrar Gundjehmi clan have had a close relationship with the Gagudju Association for many years. The previous senior traditional owner of the Mirrar Gundjehmi is a past head of the association and he witnessed the association develop to become the central service and business organisation for Aboriginal people in the region. The Gagudju Association made major investments in the regional economy, especially in tourist accommodation developments in order to secure long-term income for its members.

The association between the Mirrar Gundjehmi and the Gagudju Association became complicated in 1994 when the Mirrar Gundjehmi became dissatisfied with the direction and priorities of the Gagudju Association, and formed the Gundjehmi Aboriginal Corporation in July 1995.

The Gundjehmi Aboriginal Corporation represents the interests of the Mirrar clans and supports those Aboriginal people affected by the Ranger Uranium Mine. It has a membership of 27 adult Aboriginal people or 5% of the traditional owners of Kakadu National Park. All members of the Gundjehmi Aboriginal Corporation are also members of the Gagudju and Djabulukgu Associations. On splitting from the Gagudju Association, the principal focus of the Gundjehmi Aboriginal Corporation has been opposition to the Jabiluka mine and the review of the end-use of mining royalties from the Ranger Uranium mine.

The Djabulukgu Association was established as a consequence of the 1982 agreement for the Jabiluka uranium mine. Under the 1982 mining agreement, the Djabulukgu Association is the primary local recipient of mining-related payments from the Jabiluka mine. The association comprises 90 traditional owners and membership is based on the land owning clans of the Jabiluka lease and clans adjoining the lease. All members of the Gundjehmi Aboriginal Corporation are also members of the Djabulukgu Association. The Djabulukgu Association has become more active in the last decade and is actively establishing income-generating businesses in the region.

## Kakadu National Park – The Place and its People

### 2.2.2 Kakadu Regional Social Impact Study

The Kakadu Regional Social Impact Study (KRSIS) was commissioned in 1996 to provide a clear statement of Aboriginal experiences, values and aspirations regarding development of the region and to develop a community development program to enhance or mitigate impacts associated with development of the region.

KRSIS was jointly sponsored by the Australian and Northern Territory Governments, Energy Resources of Australia Ltd and the Northern Land Council (NLC). The two-stage approach included an Aboriginal Project Committee (comprising Aboriginal people from Kakadu, including representatives of the Mirrar Gundjehmi) and an independently chaired Study Advisory Group (comprising key stakeholders including the chairs of the Project Committee and of the NLC).

In November 1998, the Commonwealth and Northern Territory governments appointed Mr Bob Collins to lead a team to implement government-endorsed recommendations of the 1997 KRSIS Community Action Plan.

A key aspect of the KRSIS is to maximise benefits and mitigate negative social impacts arising from all developments in the Kakadu region.

Mr Collins, intends to focus in the short term on developing an effective implementation structure and immediate attention to issues such as environmental health (including housing issues) and service provision to indigenous people.

### 2.3 INSCRIPTION ON THE WORLD HERITAGE LIST

The various stages of the Park were declared under the *National Parks and Wildlife Conservation Act 1975*: Stage 1 in 1979; Stage 2 in 1984; and Stage 3 in successive phases in 1987, 1989 and 1991.

The first stage of the Park was nominated for the World Heritage List in 1980 and inscribed in 1981. Subsequent renominations (1986, 1991) and resultant inscriptions (1987, 1992) have followed the staged development of the Park (see Appendix 2).

The boundaries of the World Heritage property are the same as those of the Kakadu National Park. None of the currently operating or proposed mines in the region are within the Park or have ever been within the proposed Park or the Gazetted Park. On the occasion of the most recent inscription of the Park on the World Heritage List, the World Heritage Committee was explicitly advised of the current and proposed uranium mines (including Jabiluka). The Committee accepted the integrity of the listing and commended Australia on its management of Kakadu and on its extension of the Park's boundaries.

### 2.4 MISSION VISIT

At its June 1998 meeting, the World Heritage Bureau considered representations from non-government organisations that the proposed Jabiluka uranium mine would threaten the World Heritage values of Kakadu National Park.

The Australian Delegation to the meeting advised of the progress to date in imposing conditions on mining such that it does not affect the World Heritage values or other natural and cultural values in the Kakadu area. In its report, the Bureau noted that "progress had been good, and the care taken to protect World Heritage values is adequate".

## Kakadu National Park – The Place and its People

However, because of the importance, complexity and sensitivity of the issue the Bureau proposed that a mission to Kakadu be undertaken by a team headed by the Chairperson of the World Heritage Committee with the participation of the Director of the World Heritage Centre, IUCN and ICOMOS. This mission would examine the situation further, have discussions with relevant Aboriginal groups, officials, non-government organisations and the mining company, and report to the World Heritage Bureau and Committee sessions in November-December 1998.

### CONCLUSION

*The World Heritage property of Kakadu National Park emerged from national consideration of the complex issues of traditional Aboriginal land connections, a commitment to conservation and protection, and the need to exploit mineral resources for the benefit of the economy as a whole. Co-existing multiple land use has always been a feature of the Park, with balance being achieved through an over-riding commitment, given legislative force, to protect the natural and cultural values of the World Heritage property. That commitment remains in place and has characterised the careful development of the Jabiluka project.*





Figure 4: Clans of the Kakadu Region  
(based on work by George Chaloupka)



Approx. 50km

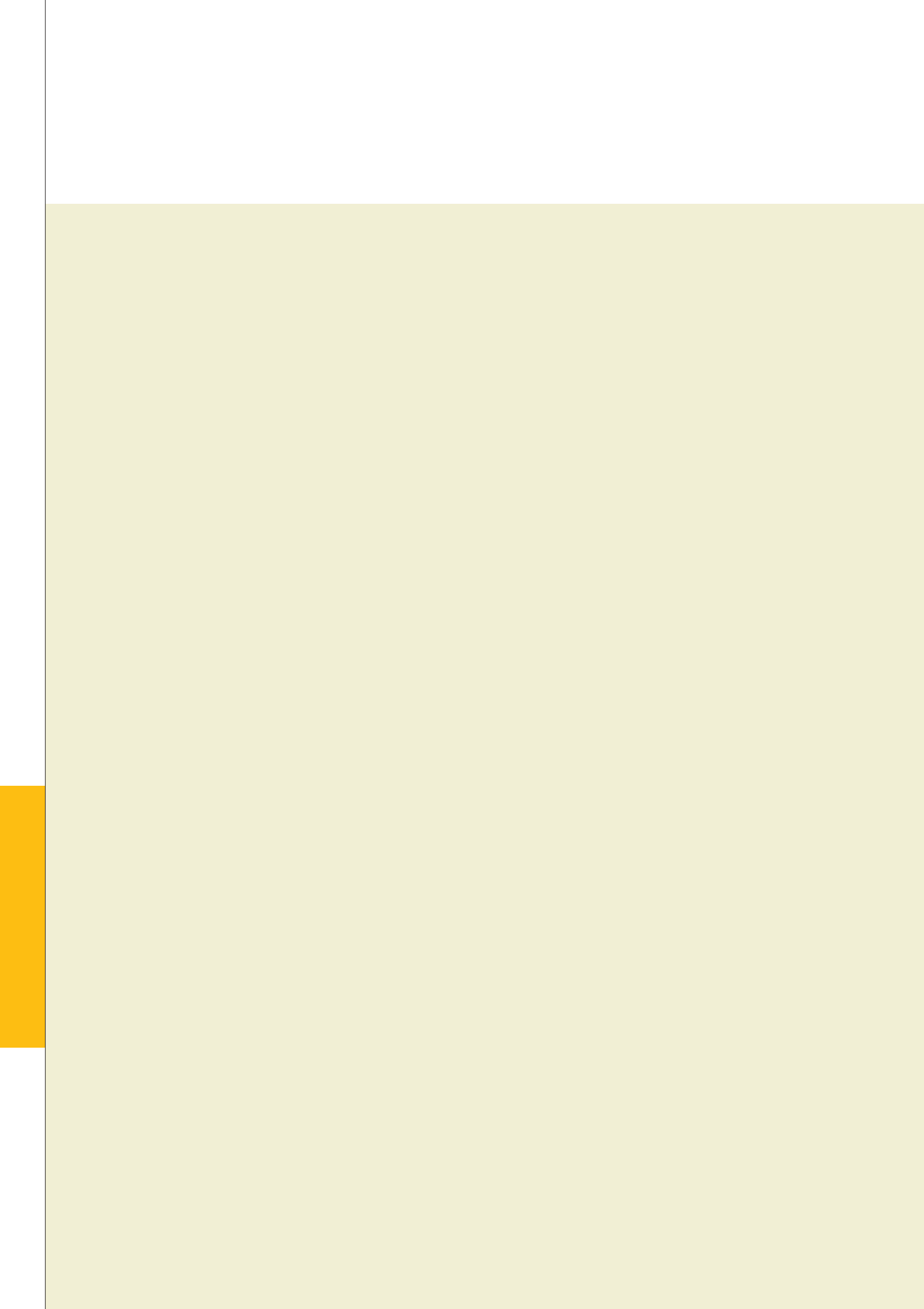


This figure is for illustrative purposes only.

# CHAPTER 3

## **Protecting Natural & Cultural Values: The Australian Framework**

- 3.1 The Australian Federal System
- 3.2 Environment and Heritage Legislation (Commonwealth)
- 3.3 Aboriginal Land, Sacred Sites and Native Title Legislation
- 3.4 Uranium Mining
- 3.5 International Conventions and Agreements
- Conclusion



## Protecting Natural & Cultural Values: The Australian Framework

**CHAPTER THREE: PROTECTING NATURAL AND CULTURAL VALUES: THE AUSTRALIAN FRAMEWORK** To assess whether the values and attributes of the World Heritage property are under threat, it is necessary to consider the framework of environmental and heritage legislation that applies to the region. This chapter describes the Australian Federal system, outlines the extensive framework of environmental and heritage legislation, discusses the applicable Aboriginal land and cultural heritage legislation, examines the impact of specific uranium mining control legislation and looks at Australia's participation in international conventions and agreements.

*The proposed mine site is not and never has been part of the World Heritage property or the Kakadu National Park and as a pre-existing property right was specifically excluded from the World Heritage property at the time of nomination. However, the project was subjected to the most stringent legal framework and EIS process because of its location and the Government's priority emphasis on ensuring that the values of Kakadu National Park were not damaged.*

### 3.1 THE AUSTRALIAN FEDERAL SYSTEM

Australia has a federal system of government in which the legislative, executive and judicial powers are shared or distributed between the Federal, State and Territory Governments. There are six State Governments and three self-governing Territories, including the Northern Territory, where the Kakadu National Park is located.

Under the Australian Constitution the Federal Parliament has a list of enumerated legislative powers. The Federal Parliament does not have a comprehensive legislative power in relation to environmental matters. However, it has passed a range of laws in that area by relying on existing heads of powers under the Australian Constitution. These include the powers allowing the Commonwealth to pass legislation dealing with external affairs, Australia's Territories, corporations and trade and commerce.

The Australian States and Territories, under their own constitutions or self-government legislation, each have a general legislative power. In relation to a number of subject matters, the legislative powers of the Federal, State and Territory legislatures are concurrent. However, if there is an inconsistency between a State or Territory law and a valid law of the Federal Parliament, then the federal law will prevail.

Through the Territories power, the Federal Parliament retains the ability to legislate comprehensively with respect to the Territories, including the Northern Territory. However, given the self-governing status of the Northern Territory, there have been few occasions on which the Federal Parliament has exercised that power in a manner that would result in the Northern Territory being treated differently to an Australian State.

Pursuant to the powers mentioned above, the Federal Parliament and the Northern Territory Legislative Assembly have each passed laws relevant to the protection of the natural and cultural values of the Kakadu World Heritage property (see Chapters 3.2 to 3.4). A combination of these laws enables Australia to give effect to its obligations under the World Heritage Convention with respect to the Kakadu World Heritage property. This use of both Federal and Territory laws to give effect to those obligations is consistent with the position agreed between the Federal, State and Territory Governments that where Australia's treaty obligations impact on the States and Territories, they should be given effect in a cooperative manner.

**Australia has three levels of government:**

- federal
- state/territory
- local



### 3.2 ENVIRONMENT AND HERITAGE LEGISLATION (COMMONWEALTH)

(a) *Environment Protection (Impact of Proposals) Act 1974*

The *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act) is the Commonwealth's environmental impact assessment legislation. Both the Ranger and Jabiluka mining proposals were assessed under this Act (see Chapter 5.1 in relation to Jabiluka). The object of the EPIP Act is to ensure that, to the greatest extent practicable, matters affecting the environment to a significant extent are fully examined and taken into account in and in relation to actions by the Commonwealth Government.

**Relevant Australian Environment and Heritage Legislation**

*Environment Protection (Impact of Proposals) Act 1974*

*National Parks and Wildlife Conservation Act 1975*

*Australian Heritage Commission Act 1975*

*World Heritage Properties Conservation Act 1983*

*Environment Protection and Biodiversity Conservation Bill (No 2) 1998*

Commonwealth action is defined broadly by the Act. It includes:

- formulation of proposals;
- carrying out of works and other projects;
- negotiation, operation and enforcement of agreements and arrangements;
- making, or the participation in the making of, decisions and recommendations; and,
- incurring of expenditure

by, or on behalf of, the Australian Government and Australian Government authorities, either alone or in association with any other government, authority, body or person.

The Commonwealth Minister or authority responsible for taking the relevant Commonwealth action (which in the case of the Jabiluka mine proposal was the Minister for Resources and Energy) must determine whether the action is a matter affecting the environment to a significant extent.

Action will be environmentally significant if it will, or is likely to:

- affect the environment to a significant extent or result in such an effect; or
- permit or cause an action that is otherwise unlikely to happen and that will, or is likely to, affect the environment to a significant extent or result in such an effect; or

- promote or facilitate action that will, or is likely to affect the environment to a significant extent or result in such an effect.

If the Minister or authority responsible for the Commonwealth action so determines, the proposal is referred to the Minister for the Environment who determines the appropriate level of environmental impact assessment. The EPIP Act and administrative procedures approved under the Act provide for four possible levels of environmental assessment and the requirements for assessment (which include public consultation). The four levels are: examination by a Commission of Inquiry; assessment following the preparation and public review of an Environmental Impact Statement; assessment following the preparation and public review of a Public Environment Report; and, assessment without the preparation of an Environmental Impact Statement or a Public Environment Report.

The Act and administrative procedures authorise the Minister for the Environment to make such comments, suggestions or recommendations to the Minister or authority responsible for the Commonwealth action that the Minister for the Environment thinks necessary or desirable for the protection of the environment. This may include suggestions or recommendations concerning conditions to which the action should be subject. The Minister or authority responsible for the action must ensure that the suggestions or recommendations made by the Minister for the Environment (any Environmental Impact Statement or Public Environment Report) are taken into account in relation to the action.

(b) *National Parks and Wildlife Conservation Act 1975*

The *National Parks and Wildlife Conservation Act 1975* (the NPWC Act) provides for:

- the establishment of parks and reserves in Commonwealth areas;
- the management of those parks and reserves by the Director of National Parks and Wildlife; and
- joint management between the Director and Aboriginal people where parks and reserves are wholly or partly within Aboriginal owned land.

The Act commenced in 1977 and since that time 16 parks and reserves, of which Kakadu National Park is one, have been established under it.

Three of the parks: Kakadu, Uluru-Kata Tjuta and Booderee are on Aboriginal owned land, which is leased to the Director of National Parks and Wildlife. The NPWC Act provides for these parks to be managed by the Director in conjunction with a Board of Management, of which the Aboriginal owners of the land choose a majority of members. The Act also preserves the right of Aboriginals to use the land for hunting or food gathering and for ceremonial and religious purposes.

Parks and reserves must be managed in accordance with a plan of management. The Director and Boards of Management prepare a plan with input from the public. In preparing a plan regard must be had to a number of specific objects, including:

- the encouragement and regulation of the appropriate use, appreciation and enjoyment of the park by the public;
- the interests of the traditional Aboriginal owners of land in Kakadu, Uluru-Kata Tjuta and Booderee National Parks;
- the preservation of the park or reserve in its natural condition and the protection of its special features, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest;
- the protection, conservation and management of wildlife within the park or reserve; and
- the protection of the park or reserve against damage.

(c) *Australian Heritage Commission Act 1975*

The *Australian Heritage Commission Act 1975* (the AHC Act) establishes the Australian Heritage Commission to keep the Register of the National Estate and advise the Commonwealth government in relation to the national estate.



*Mt Cahill from  
Nourlangie Rock  
(Michael Preece)*

## Protecting Natural & Cultural Values: The Australian Framework

The national estate consists of places that are part of the natural or cultural environment of Australia that have aesthetic, historic, scientific or social significance or other special value. A place may form part of the National Estate even if its conservation, improvement or presentation is dealt with by another Commonwealth Act.

The Alligator Rivers Region, which includes most of Kakadu National Park, was included in the Register in 1980. The southeastern corner of the Park, which lies outside the Region, was included in 1989.

The AHC Act requires the Commonwealth government not to take any action that will adversely affect the National Estate values of a place that is in the Register unless there is no feasible and prudent alternative; and, all measures that can reasonably be taken to minimise the adverse effect will be taken.

Before the government takes any action that might affect to a significant extent the National Estate values of a place that is in the Register it must inform the Australian Heritage Commission of the proposed action and give the Commission a reasonable opportunity to consider and comment on it.

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. This includes Malakunanja II, currently the oldest dated archaeological site in Australia (50,000-60,000 years). The sites within the AHC exclusion areas have been mapped and are subject to stringent access prohibitions and protection measures. As required under the AHC Act, advice from the AHC was taken into account by the Minister for the Environment when making his recommendations under the EPIP Act on the Jabiluka mine proposal.

### (d) *World Heritage Properties Conservation Act 1983*

The *World Heritage Properties Conservation Act 1983* (the WHPC Act) provides for the protection and conservation of properties in Australia that are of outstanding universal natural or cultural value. Such properties include those inscribed or nominated for inscription on the World Heritage List, such as Kakadu.

The WHPC Act enables the Commonwealth Government to specify activities, which will be prohibited in relation to a World Heritage property which is being or is likely to be damaged or destroyed. The WHPC Act also makes specific provision for the protection or conservation of sites, which are of particular significance to Aboriginal people within properties to which the WHPC Act applies.

The WHPC Act is not the only legislation relevant to the protection of World Heritage within Australia. There is a wide range of Federal, State and Territory legislation used to protect World Heritage properties within Australia, much of which is mentioned in this response. However, the WHPC Act enables the Commonwealth to take action where a World Heritage property is likely to be damaged or destroyed. On occasions, the Commonwealth has intervened under the WHPC Act.

The Commonwealth has not found it necessary to use its powers under the WHPC Act in relation to Kakadu National Park, because the stringent 3 year EIS process specifically addressed the protection of World Heritage values, and laid down conditions which assure this.

### (e) *Environment Protection and Biodiversity Conservation Bill (No 2) 1998*

The *Environment Protection and Biodiversity Conservation Bill (No 2) 1998* (the EPBC Bill), which is currently before the Commonwealth Parliament, if passed, will replace the EPIP Act, NPWC Act, WHPC Act, *Endangered Species Protection Act 1992* and the *Whale Protection Act 1980*.

In relation to environmental protection, the EPBC Bill will apply to any action that has, will have, or is likely to have a significant impact on a matter of "national environmental significance". The EPBC Bill expressly provides that World Heritage is one of several matters of national environmental significance. The EPBC

## Protecting Natural & Cultural Values: The Australian Framework

Bill is intended to simplify existing legislation and remove duplication between Commonwealth and State legislation, while providing greater protection to the matters of national environmental significance.

The parts of the EPBC Bill relating to World Heritage provide improved protection for the World Heritage values of World Heritage properties. In particular the EPBC Bill:

- prohibits any action that has, will have or is likely to have a significant impact on the World Heritage values of a World Heritage property unless:
  - (a) the action has been approved by the Minister for the Environment; or
  - (b) no approval is required because the proposal has been considered under an approval process accredited by the Commonwealth.
- creates an improved environmental impact assessment process for proposals that may have a significant impact on World Heritage values (a proposal that requires approval from the Minister must be subject to this process in order to obtain approval); and
- provides a wider and more effective range of enforcement options for the protection of World Heritage properties, including penalties of up to \$5.5 million.

The EPBC Bill also sets out requirements for creating and managing Commonwealth reserves (including existing reserves such as Kakadu National Park). These include requirements for the preparation of management plans and the joint management of Commonwealth reserves on Aboriginal land. There will be no diminution of powers over the environment.

The EPBC Bill has been referred to a committee of the Commonwealth Parliament which has conducted an inquiry (including public hearings and submissions). The Committee is expected to report to the Parliament on 27 April 1999. The Minister for the Environment has also recently had discussions with the Aboriginal traditional owners of Kakadu and Uluru-Kata Tjuta National Parks in relation to the provisions of the EPBC Bill dealing with joint management.

### 3.3 ABORIGINAL LAND, SACRED SITES AND NATIVE TITLE LEGISLATION

#### (a) *Aboriginal Land Rights (Northern Territory) Act 1976* (Commonwealth)

The main purpose of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) is to grant traditional Aboriginal land in the Northern Territory to, and for the benefit of, Aboriginals. Other purposes of the Land Rights Act include: recognition of traditional Aboriginal interests in, and relationships to, land; and, to provide Aboriginal people with effective control over activities on the land granted under the Land Rights Act.

The Land Rights Act recognises the special status of indigenous Australians and gives them rights not available to other Australians, especially the right to claim land, and to reject certain uses of their land, including mining.

The title to land that is granted under the Land Rights Act is held by a Land Trust. It is held for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land. The land cannot be sold or transferred (except that it can be transferred to another Land Trust or surrendered to the government). In certain circumstances a Land Trust can grant an estate or interest in the land, for example a lease to a third party.

Since the Land Rights Act commenced in 1977 approximately 42% of the land in the Northern Territory has been granted to Aboriginal Land Trusts under the Land Rights Act. This includes about 50% of the land in Kakadu National Park, and the entirety of the Jabiluka Mineral Lease.

### Aboriginal Land and Cultural Legislation

Aboriginal Land Rights  
(Northern Territory)  
Act 1976

Northern Territory  
Aboriginal Sacred Sites  
Act 1989

Aboriginal Land Act  
(Northern Territory)

Aboriginal and Torres  
Strait Islander Heritage  
Protection Act 1984

Native Title Act 1993

The Land Rights Act provides for the establishment of Aboriginal Land Councils. The functions of a Land Council are broadly:

- to find out and express what Aboriginal people think about how Aboriginal land should be managed;
- to protect the interests of traditional owners of land;
- to consult the traditional owners about proposals for use of their land;
- to negotiate on behalf of the traditional owners; and,
- to assist Aboriginal people seeking a grant of land under the Land Rights Act.

Kakadu and the Jabiluka Mineral Lease are areas within the responsibility of the Northern Land Council, an Aboriginal Land Council established under this Land Rights Act.

Exploration for minerals cannot be carried out and mining rights cannot be granted in relation to Aboriginal land unless an agreement has been entered into between the intending miner and the relevant Land Council. The agreement sets out the terms and conditions on which exploration will be allowed or that the mining interest will be subject to. The Commonwealth Minister responsible

for the Land Rights Act must also give his or her consent. The Northern Land Council entered into such an agreement in relation to the Jabiluka Mineral Lease in 1982.

The Land Rights Act also includes provisions restricting the ability of non-Aboriginal people to access sacred sites and Aboriginal land.

The Commonwealth government has commissioned a review of the operation of the Land Rights Act. The report of that review has been referred to a committee of the Commonwealth Parliament. The committee is now seeking the views of interested people on the report.

#### (b) *Northern Territory Aboriginal Sacred Sites Act 1989*

The *Northern Territory Aboriginal Sacred Sites Act 1989* (the NTASS Act) establishes the Aboriginal Areas Protection Authority. The Authority is comprised of 12 members. Ten of the members are Aboriginal custodians of sacred sites who are appointed from a panel nominated by the Land Councils. The AAPA establishes and maintains a register of sacred sites, issues certificates allowing work to be done on sacred sites and facilitates discussions between custodians of sacred sites and persons performing or proposing to perform work in the vicinity of a sacred site.

This Act makes it an offence to enter or remain on a sacred site, to carry out work on or use a sacred site, or to desecrate a sacred site unless authorised to do so under the NTASS Act.

#### (c) *Aboriginal Land Act (Northern Territory)*

The *Aboriginal Land Act (Northern Territory)* makes it an offence for persons other than Aboriginals entitled by tradition, to enter or remain on Aboriginal land. It provides however for permits to enter and remain on Aboriginal land to be issued by the relevant Land Council or the traditional owners of the land. The Northern Territory Government may also issue permits to government employees who need to enter Aboriginal land in the course of their employment.

## Protecting Natural & Cultural Values: The Australian Framework

### (d) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Commonwealth)

The purposes of this Act are the preservation and protection from injury or desecration of areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

The Act enables the Commonwealth government to make declarations in relation to significant areas and objects that are under threat of injury or desecration and makes it an offence to contravene such a declaration. The Act also makes provision in relation to the discovery of Aboriginal remains including: reporting; consultation with relevant Aboriginals; and, the return and disposal of Aboriginal remains.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* protects Aboriginal significant sites for the benefit of all Australian's. The *Aboriginal and Torres Strait Islander Heritage Protection Bill* (the ATSIHP Bill) is presently before the Commonwealth Parliament. If passed, it will replace the 1984 Act.

As in the 1984 Act, the ATSIHP Bill provides for the Commonwealth to protect areas and objects of particular significance to Aboriginal peoples and Torres Strait Islanders. The ATSIHP Bill reforms the processes for dealing with applications for protection under the Act. It also seeks to engage the States and Territories in protecting indigenous heritage.

The ATSIHP Bill includes provision for the accreditation of State and Territory heritage protection regimes; heritage protection issues to be resolved by negotiation and/or mediation; significance to be assessed according to indigenous traditions, observances, customs and beliefs and that primacy be given to the views of indigenous people in making assessments of significance.

### (e) *Native Title Act 1993* (Commonwealth)

The *Native Title Act 1993* recognises and protects Aboriginal and Torres Strait Islander peoples' native title rights and interests. The Act provides ways to determine native title and protect the existing rights of Governments, industry and the general public. It also provides ways to negotiate future public works and business activity on land or waters where indigenous people may have native title rights and interests.

The township of Jabiru and some adjoining areas in Kakadu National Park have been claimed under the Native Title Act. The claim has yet to be determined.

## 3.4 URANIUM MINING

### (a) Policy and Legislation Framework

In 1975, the Commonwealth Government established the Ranger Uranium Environmental Inquiry under the Environment Protection (Impact of Proposals) Act to determine whether uranium mining should be permitted to proceed in the Alligator Rivers Region of the Northern Territory, and if so, under what conditions. The inquiry estimated the environmental impacts expected to occur as a result of mining in the Region, and recommended ways to minimise those impacts. It concluded 'The hazards of mining and milling uranium, if those activities are properly regulated and controlled, are not such as to justify a decision not to develop Australian uranium mines'. It recommended the establishment of Kakadu National Park, and the creation of the position of Supervising Scientist for the Alligator Rivers Region to oversee the environmental aspects of mining operations in the Alligator Rivers Region.

### (b) *Environment Protection (Alligator Rivers Region) Act 1978*

The Environment Protection (Alligator Rivers Region) Act 1978 establishes the position of Supervising Scientist whose functions include:



## Protecting Natural & Cultural Values: The Australian Framework

- to devise, develop, coordinate the implementation of, and assess programs for research into the environmental effects of uranium mining in the Alligator Rivers Region;
- to devise, develop and promote standards and practices in relation to uranium mining operations and rehabilitation in the Alligator Rivers Region;
- to coordinate and supervise the implementation of requirements, under any prescribed instrument, associated with environmental aspects of uranium mining in the Alligator Rivers Region; and
- to advise the Minister for the Environment on environmental matters within and beyond the Alligator Rivers Region.

The *Environment Protection (Alligator Rivers Region) Act 1978* also establishes:

- an Alligator Rivers Region Research Institute (ERISS) to undertake research into the environmental effects of uranium mining in the Alligator Rivers Region, and into other environmental issues elsewhere as appropriate;
- an Advisory Committee as a formal forum for consultation on matters relating to the environmental effects of uranium mining in the Alligator Rivers Region; and
- a Technical Committee to consider programs for research into, and programs for, the collection and assessment of information relating to, the effects on the environment in the Alligator Rivers Region of mining operations in the Region.

### Australia is a signatory to many international conventions:

- protecting the environment
- protecting and valuing heritage
- respecting indigenous rights
- ensuring human rights

Australia a world leader developing international environmental regimes

### 3.5 INTERNATIONAL CONVENTIONS AND AGREEMENTS

Australia recognises the importance of international cooperation for environment, heritage and biodiversity management. This is evidenced by its early ratification of major conventions and the active, and often leading, role it has played in the development of international environmental regimes. Australia is a party to a number of international agreements relating to protection and conservation of the environment and biodiversity that have particular relevance to Kakadu. These include-

- The Convention for the Protection of the World's Cultural and Natural Heritage 1972 (the World Heritage Convention). Thirteen Australian properties, including Kakadu National Park, have been inscribed on the World Heritage List under the Convention.
- Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (the Ramsar Convention). The entire Kakadu National Park is listed under the Convention.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES).
- Convention on the Conservation of Migratory Species of Wild Animals 1979 (the Bonn Convention).
- Convention on Biological Diversity adopted at Rio de Janeiro on 5 June 1992 and which entered into force generally and for Australia on 29 December 1993.

## Protecting Natural & Cultural Values: The Australian Framework

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).
- The International Covenant on Economic, Cultural and Social Rights (ICESCR).
- The International Covenant on Civil and Political Rights.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The Convention on the Rights of the Child.

### CONCLUSION

Australia's environment and heritage protection legislation is stringent and comprehensive. In conjunction with specific legislation relating to the mining and processing of uranium, it provides a high level of control and management ensuring that the values and attributes of Kakadu National Park are protected.

*In relation to the Jabiluka mine proposal, Australia has applied its environment protection, heritage protection and Aboriginal land rights legislation methodically and in an open and transparent manner. The Australian government has met every obligation required under its own legislation and can guarantee to the World Heritage Committee that the values and attributes of Kakadu National Park have been protected and will continue to be protected.*

*Under the framework of legislation outlined in this Chapter, the proposed new mine at Jabiluka has been subject to three years of rigorous public environmental impact assessment, which has been independently monitored and evaluated. This included careful examination of any effect on World Heritage values. The mine operator has met all of the very exacting environmental conditions imposed during the assessment process. The company must meet more than seventy stringent conditions. In exercising its right as a State Party to the World Heritage Convention to decide on how the World Heritage values of its properties should be protected, Australia has subjected the Jabiluka mine proposal to the strictest scrutiny.*





# CHAPTER 4

## Australia's World Heritage Record

- 4.1 Australia's World Heritage Properties
- 4.2 Management and Funding
- 4.3 Indigenous Involvement
- 4.4 Multiple Land Use, Ecologically Sustainable Development
- 4.5 Australia's role on the World Heritage Committee and Bureau
- 4.6 Commitment to Rights of State Parties
- Conclusion



## Australia's World Heritage Record

**CHAPTER FOUR: AUSTRALIA'S WORLD HERITAGE RECORD** This chapter outlines and reaffirms Australia's support for the World Heritage Convention and its application. Australia takes its commitments to the Convention seriously and demonstrates this through its thirteen World Heritage properties, and its high standards of management, community involvement, and protection. In Kakadu, indigenous involvement in management is an integral and primary means of protecting the values of the Park, which is acknowledged as world class. The management of Kakadu National Park has become an exemplary example of Australia's excellent record.

### 4.1 AUSTRALIA'S WORLD HERITAGE PROPERTIES

Australia is rich in places of outstanding universal value, and the Australian community has long recognised the significance of those places to Australia and the world. The Australian Government, as one of the first to ratify the World Heritage Convention in 1974, has continued to promote the objectives of the Convention throughout the succeeding quarter of a century. Australia has taken an international leadership role in the promotion of the Convention and has set high standards as a State Party through its approach to meeting all of its obligations under the Convention.

Australia now has thirteen properties inscribed on the World Heritage List, the most recent of which were listed in 1997. Australia's involvement in the practice of World Heritage identification and management extends throughout the life of the World Heritage Convention, and includes many pioneering developments, some which are unique among States Parties to the Convention. For example, Australia is the only State Party to have put in place domestic legislation specifically addressing its obligations under the World Heritage Convention. New legislation currently before the Australian Parliament will further improve the Australia's ability to meet our obligations under the World Heritage Convention.

Apart from Australia's unique domestic legislation, there have been many achievements in Australian World Heritage management. Of particular note are the:

- implementation of best practice management frameworks in each of Australia's World Heritage properties, including the development of strategic plans which aim to protect World Heritage values;
- enhanced mechanisms for consulting and involving local communities and interested stakeholders in the management of properties;

- 13 World Heritage areas
- 18 years experience in nomination, planning and management of World Heritage in Australia
- Legislation to protect World Heritage in Australia
- A greater area under World Heritage protection than any other State Party

#### Australia is very proud of its World Heritage management:

- World's Best Practice Management
- Management plans
- Consultation and public involvement
- UNESCO Picasso Gold Medal to Uluru's Board of Management in 1995
- UNESCO Einstein medal to Great Barrier Reef Marine Protected Area
- \* "exemplary management operation at the Park", WHC on Kakadu in 1992

## Australia's World Heritage Record

- cooperative management and administration arrangements developed with State governments responsible for managing World Heritage properties.

These efforts have been recognised at the international level on several occasions, including:

- in April 1995, the Board of Management of the Uluru-Kata Tjuta National Park and the Australian Nature Conservation Agency were awarded the UNESCO Picasso Gold Medal for World Heritage management;
- the Great Barrier Reef Marine Park Authority was awarded the UNESCO Einstein Medal for the quality of its planning and management processes;
- Dr Jim Thorsell as IUCN Senior Advisor, noted that "Australia has done more to implement the World Heritage Convention than any other single country"; and
- when approving the renomination of Kakadu National Park in December 1992, the World Heritage Committee commended Australia on its "exemplary management operation at the Park".

**\$50 million a year in  
Federal funding  
Australia's World Heritage  
properties plus money  
from the States**

*Tourists are  
a major user  
of Kakadu  
National Park*

### 4.2 MANAGEMENT AND FUNDING

Environment Australia (part of the Commonwealth Department for the Environment) is the federal agency responsible for ensuring Australia meets its obligations under the World Heritage Convention. The agency incorporates a specialist World Heritage Unit which provides advice to the Australian Government in relation to the Convention, manages national programs relating to World Heritage, is responsible for liaising with international bodies, State governments, and on-ground

managers of Australia's World Heritage properties. Environment Australia also administers the *World Heritage Properties Conservation Act 1983*.

While responsibility for on-ground management varies from property to property, the Commonwealth Government has pursued the development of best practice management arrangements across all World

Heritage properties with the aim of ensuring Australia's obligations under the Convention are met and that all the properties are managed to a consistently high standard. To further achieve these aims, the Commonwealth also provides funding of more than \$50 million per annum towards the management of World Heritage properties.

Australia has placed a high priority on ensuring that each World Heritage property has an up-to-date management plan, prepared to best-practice standards and providing comprehensive and specific protection of World Heritage values. These management plans are prepared in consultation with the relevant State management agencies, local communities,



## Australia's World Heritage Record

and interested stakeholders. In the case of Kakadu, the National Park Plan of Management is prepared in consultation with traditional owners, then approved by the Board of Management and the Minister for the Environment and Heritage, and subsequently tabled in the Australian Parliament.

Where properties are managed by a State government, arrangements are in place for effective coordination and communication between the State and Commonwealth governments. Typically, this occurs at the highest levels of government through a Ministerial Council, comprising Ministers from both Commonwealth and State governments, which is supported by a committee of Commonwealth and State officials.

Australia gives a high priority to providing World Heritage "...a function in the life of the community..." (Article 5 of the Convention) and, in so doing, has tapped into the wealth of relevant expertise found in the community. Community advisory committees are in place or being established for each property, which include representatives of local communities, industry groups, tourism operators, environmental organisations and recreational user groups. These committees are complemented by a scientific advisory committee which provides expert and technical input to management decision making. Within this framework, the interchange of ideas between scientific and community based groups is encouraged and facilitated.

Ministerial Council and  
Community and Scientific  
Advisory Committee's  
established for most Australian  
World Heritage Areas

Effective day to day  
management arrangements to  
protect World Heritage values

Federal legislation to protect  
World Heritage values

### 4.3 INDIGENOUS INVOLVEMENT

From the earliest World Heritage property inscriptions in Australia, the culture of Australia's indigenous people has been celebrated as representing outstanding universal value. Accordingly, indigenous people have been consistently involved in the development and implementation of World Heritage policies and programs in Australia.

In the particular cases of Kakadu National Park and Uluru-Kata Tjuta National Park, indigenous people are effectively engaged in joint management of these properties. Traditional owners form a majority on the Parks' Boards of Management, which are responsible for determining policy for managing the Parks and preparing plans of management.

In April 1995, the Board of Management of the Uluru-Kata Tjuta National Park and the Australian Nature Conservation Agency were awarded the UNESCO Picasso Gold Medal for World Heritage management. The medal recognised Australia's efforts in setting new international standards for World Heritage management by indigenous people through the arrangements put in place at the Park.

Australia a driving force behind  
cultural landscape criteria in  
World Heritage assessment

Cultural and geographic diversity  
extended since cultural  
landscape criteria adopted.

This criteria enabled the rich,  
living traditions of indigenous  
people to be recognised  
internationally.

Indigenous involvement on the  
Boards of Management at  
Kakadu and Uluru

Indigenous involvement in  
management and planning in  
Wet Tropics and Tasmanian  
Wilderness World Heritage Areas



#### 4.4 MULTIPLE LAND USE, ECOLOGICALLY SUSTAINABLE DEVELOPMENT

As is the case for all World Heritage properties, Australia's World Heritage properties must be managed in a way which provides for a variety of different land uses. Australia has in place management plans to ensure that the variety of land uses, such as tourism, conservation, research and extractive industries, do not adversely impact on identified World Heritage values.

**Multiple land uses managed in World Heritage areas to protect values.**

A guiding principle of the 1992 National Strategy for Ecologically Sustainable Development, agreed by all Australian Governments, is that decision making processes should effectively integrate both long and short-term environmental, economic and social considerations. The principle of multiple land use is embodied in the National Strategy and is common to protected area management throughout Australia.

Australia recognises that there is a range of different land uses that must be managed, both strategically and on a day-to-day basis. Further, in the context of progressing ecologically sustainable

development, multiple land use is supported in World Heritage areas where those uses do not impact on the World Heritage values.

For example, within Australian World Heritage properties, such as the Wet Tropics of Queensland, Shark Bay, the Great Barrier Reef and Kakadu National Park, there are a number of different and ongoing uses of land and other resources. These include tourism, recreation, fishing, apiary, agriculture, mining, and provision of general infrastructure for transport, communications and electricity supplies. Consistent with the management of all Australian World Heritage properties, the primary objective for management is the protection of World Heritage values.

#### 4.5 AUSTRALIA'S ROLE ON THE WORLD HERITAGE COMMITTEE AND BUREAU

Australia has been an active and constructive member of the World Heritage Committee and Bureau since the earliest days of the Convention. As a member of the first Committee established under the Convention, Australia has since been re-elected to the Committee on two further occasions, and is a current member of the Committee presently sitting.

In recent years, Australia has advanced its international role in promoting the objectives of the Convention and protecting World Heritage. In particular, we have encouraged other nations, especially those in the Asia/Pacific Region, to become signatories to and be active participants in the World Heritage Convention.

**Australia an active and constructive member of the WHC**

**Australia has encouraged other Asian/Pacific nations to sign the World Heritage Convention**

Throughout the Asia-Pacific region, Australia has actively promoted best practice management through facilitating and supporting workshops for World Heritage managers in the region. Australia hosted the 1996 regional workshop in Ravenshoe, Queensland, which successfully established a network of regional World Heritage managers in South-East Asia, the West Pacific, Australia and New Zealand.

Australia intends to continue its active involvement in and contribution to the advancement of World Heritage management and protection.

## Australia's World Heritage Record

### 4.6 COMMITMENT TO RIGHTS OF STATE PARTIES

Australia recognises and respects the important role of the World Heritage Committee, provided to it under the World Heritage Convention, in promoting the protection of World Heritage values.

It is however important to note that, while the Convention recognises the value of World Heritage to the international community as a whole, it also clearly recognises the primacy of State sovereignty and the principal role of the State Party in protecting World Heritage properties situated within its territory. Under the Convention, it is the territorial State which:

- nominates properties for inclusion on the List;
- is responsible for the protection of the property; and
- seeks assistance in the protection of one of its properties which may be under threat.

An inscription of Kakadu National Park on the List of World Heritage in Danger without the request and the consent of the State Party, and against the express wishes of the State Party, could place at risk some of the fundamental principles that underpin the Convention. In particular, the principles of respect for the sovereignty of the State Party, the safeguarding of the property rights provided for in its national legislation, and the primacy of the role of the State Party in the protection of the natural and cultural heritage. Such action would also, in Australia's view, be at odds with the terms of both the Convention and those relevant parts of the Operational Guidelines which are consistent with the Convention. It would represent a significant change to the basis upon which states took the serious step of becoming a party to the Convention and may deter other states from taking that step in the future.

**Cooperative spirit  
between the World  
Heritage Committee and  
State Parties**

**Convention "fully  
respects the sovereignty  
of the State"**

**Protection of World  
Heritage values  
paramount**

### CONCLUSION

*When the UNESCO World Heritage Committee sent its Mission to Kakadu National Park in 1998 to investigate claims that the proposed uranium mine at Jabiluka threatened the World Heritage values of the Park it did so knowing the record of the State Party. Australia has worked closely and cooperatively with indigenous owners on the establishment and management of Kakadu National Park. Australia will take every necessary step to ensure those values are protected. The IUCN has said that "Australia has done more to implement the World Heritage Convention than any other single country". The World Heritage Committee in 1992 was aware of the Jabiluka project when it commended Australia on the "exemplary management operation at the Park". Our intensive, stringent and accountable process for managing the project development at Jabiluka confirms that that record is worthy and will continue into the future.*



# CHAPTER 5

## Protecting the Values of Kakadu: The Jabiluka Process

- 5.1 The Environmental Impact Assessment Process
- 5.2 Consultation and Decision Making
- 5.3 Permits
- 5.4 Environmental Monitoring
- 5.5 Mechanisms used by the Supervising Scientist to Protect the Environment
- 5.6 Cultural Heritage Places Protection: The Boiwek and Almudj Sites
- Conclusion



## Protecting the Values of Kakadu: The Jabiluka Process

**CHAPTER FIVE: PROTECTING THE VALUES OF KAKADU—THE JABILUKA PROCESS** The report of the UNESCO Mission claiming that the values of Kakadu were threatened did not account for the extensive environmental impact assessment process undertaken by the Australian government in relation to the proposal. Under Australian law binding measures have been imposed on the company to provide proper assessment to protect biological and social values within and outside the lease area. The measures imposed by the government will ensure that any potential impacts on World Heritage values are monitored and assessed and where necessary remedied. Public consultation has been a key element of that process. Accordingly, there will be no impact on World Heritage values. The history of site assessment relating to Boiwek site is outlined. Any assessment of impact on World Heritage values needs to take into account the history of actions taken by the Australian Government to protect those values.

### 5.1 THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

#### 5.1.1 Environmental Impact Assessment of Jabiluka

The Jabiluka mineral lease is not and never has been part of the Kakadu National Park. The proposals to mine and mill uranium ore at Jabiluka have been subject to a transparent environmental impact assessment process (EIA) under the *Environment Protection (Impact of Proposals) Act 1974* (the EPIP Act). The assessment process has been

#### Environmental Impact Assessment

- mandatory
- transparent
- comprehensive and exhaustive
- protecting World Heritage values

*Magela floodplain and the Jabiluka outlier, Kakadu National Park*  
(Michael Preece)





## Protecting the Values of Kakadu: The Jabiluka Process

comprehensive and exhaustive, carried out over a three year period, with wide public and expert input. Assessment was conducted jointly with the NT Government which separately evaluated the outcomes.

The EIA process has adhered to the highest standards. Where any doubt has existed in relation to the Company's proposals, stringent conditions have been applied, and/or unsatisfactory options rejected. Throughout the process, and articulated clearly in the Minister's consideration, has been a careful assessment of the potential threat to World Heritage values, and provision for the protection of these values.

### The EIA Process

- Environmental Impact Statement subject to public comment
- ensured protection of World Heritage values in Kakadu
- over 70 stringent environmental conditions placed on the Jabiluka project to protect Kakadu

### Ranger Mill Alternative (RMA)

- underground mine at Jabiluka
- ore to Ranger for milling, processing and tailings disposal:
  - no tailings at Jabiluka
  - no polluted water at Jabiluka
  - minimal visual effects at Jabiluka

### 5.1.2 The Ranger Mill Alternative

Under ERA's initial preferred option, the Ranger Mill Alternative (RMA), an underground mine was to be established at Jabiluka with the ore being transported to the existing Ranger mine for milling, processing and tailings disposal (refer Figure 5). Under this proposal there would be no tailings dam on the Jabiluka site, visual effects would be minimised, and a policy of zero water release from the mine site would be implemented.

The mining aspect of the RMA was covered by the 1982 Agreement and consent of the traditional owners, the Mirrar. Milling ore extracted from the Jabiluka mine at Ranger would require additional consent from traditional owners.

ERA was directed to prepare an Environmental Impact Statement (EIS) of the Jabiluka RMA proposal, in accordance with the Commonwealth's *Environment Protection (Impact of Proposals) Act 1974* in 1996. The proposal was also subject to Northern Territory impact assessment under the *Environmental Assessment Act 1982*. Guidelines for the EIS were made available for public comment for a period of four weeks.

The Draft EIS prepared by ERA was released for almost 12 weeks for public comment. After this ERA was required to prepare a supplement to the EIS which specifically addressed the issues raised during public review, including those raised by the Gundjehmi Aboriginal Corporation, which strongly opposed the mine. The final EIS, which took into account public comments, was submitted to the respective Commonwealth and NT Environment Ministers. Thereafter the Department of the Environment and the NT Department of Lands, Planning and Environment prepared assessment reports for consideration by the respective Ministers.

The Minister for the Environment examined the assessment report, and with particular attention to the protection of World Heritage values, proposed that more than 70 stringent conditions be met by ERA for the project to proceed. These conditions will ensure there is no impact on World Heritage values.

The Minister for Resources and Energy, endorsed the intent of the Minister's recommendations, and took them into account in his advice to ERA. The Minister for Resources and Energy stated that ERA would need to comply with the requirements before the Commonwealth government would consider issuing an export permit for uranium when the mine became fully operational, at that time expected to be around the year 2000.



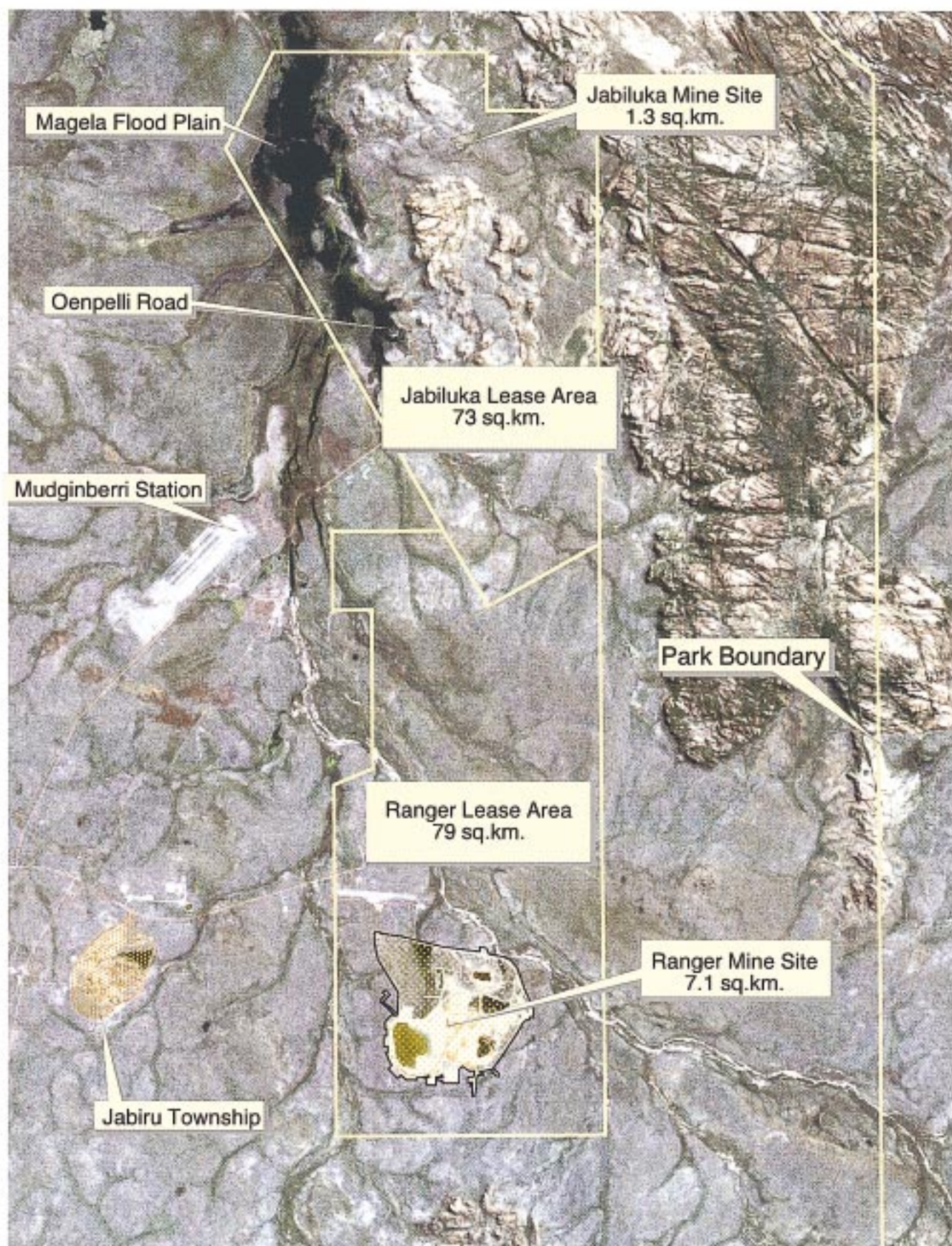


Figure 5: Ranger and Jabiluka Lease Areas - Landsat Image



Approx. 5km



This figure is for illustrative purposes only.



## Protecting the Values of Kakadu: The Jabiluka Process

### 5.1.3 The Jabiluka Mill Alternative—Public Environmental Report

Under the terms of the 1991 transfer agreement ERA needs the approval of the Aboriginal owners to mill Jabiluka ore at Ranger. The senior traditional owner, (daughter of the senior traditional owner who was party to the 1982 agreement with the mining company) has not given her consent to this milling option. Therefore, in accordance with the Australian governments commitment to indigenous rights, under the Land Rights Act, ERA sought environmental clearance for an alternative method to mill the ore and dispose tailings at the Jabiluka mine site (refer Figure 6), referred to as the Jabiluka Mill Alternative (JMA). The JMA is fully consistent with the consent of the Mirrar recorded in the 1982 Agreement. As a result a further assessment process, a Public Environment Report (PER), was required of the company by the Commonwealth and Northern Territory Governments.

Formal environmental assessment of the JMA proposal was carried out in 1998 by the Commonwealth Government, under the *Environment Protection (Impact of Proposals) Act 1974*, and by the Northern Territory Government under the *Environmental Assessment Act 1982*. Guidelines for the PER were made available for public comment.

The PER was released for public review in June 1998 for a period of four weeks. Environment Australia and the NT Department of Lands, Planning and Environment prepared Assessment Reports, taking account of public comments for consideration by their Ministers. The Gundjehmi Association (representing traditional owners) did not make a submission to the JMA PER and made comment in the media that they would not participate in the process. The Northern Land Council and the Aboriginal and Torres Strait Islander Commission (ATSIC) made submissions to the JMA PER. The Gundjehmi Association had made submissions to the earlier RMA EIS, as did the NLC and Kakadu Board of Management.

ERA's preferred option for the JMA as described in the PER involved the mixing of tailings with a cement paste and the disposal of 50% of the tailings on site in purpose built pits, with the remainder deposited in mined-out underground workings. At the end of the statutory decision making period the Environment Minister obtained an extension of three weeks to make his decision. During this time the Minister sought an independent review by scientists at the University of NSW of the proposed management of tailings. ERA Ltd also provided additional information at this time.

The Minister for the Environment reported on the PER to the Minister for Resources and Energy in August 1998. In making his decisions in relation to the mine and the milling options, the Minister also gave full consideration to the report of the Kakadu Regional Social Impact Study and reports prepared by the Department of Foreign Affairs and Trade, on international safeguards and agreements governing the use of uranium.

Because of a number of scientific uncertainties relating to the processing and disposal of tailings, the Environment Minister recommended that more stringent measures be required than the company's preferred option as indicated in the PER.

ERA was required to comply with an additional 15 recommendations covering issues such as protection of World

#### Jabiluka Mill Alternative (JMA)

- senior traditional owner did not approve the RMA
- ERA developed an alternative to mill ore and process tailings at Jabiluka (the JMA)
- further environmental assessment—the Public Environment Report
- additional environmental measures:
  - protection of values in nearby Kakadu
  - effective communication with indigenous people
  - strict standards for environmental management and site rehabilitation



View west (approx) of Jabiluka mine site taken from within the Lease boundary. Note that the ridge between the two outliers separates the mine site from the Oenpelli Road and the Magela floodplain beyond and blocks visibility of the mine site from the ground.

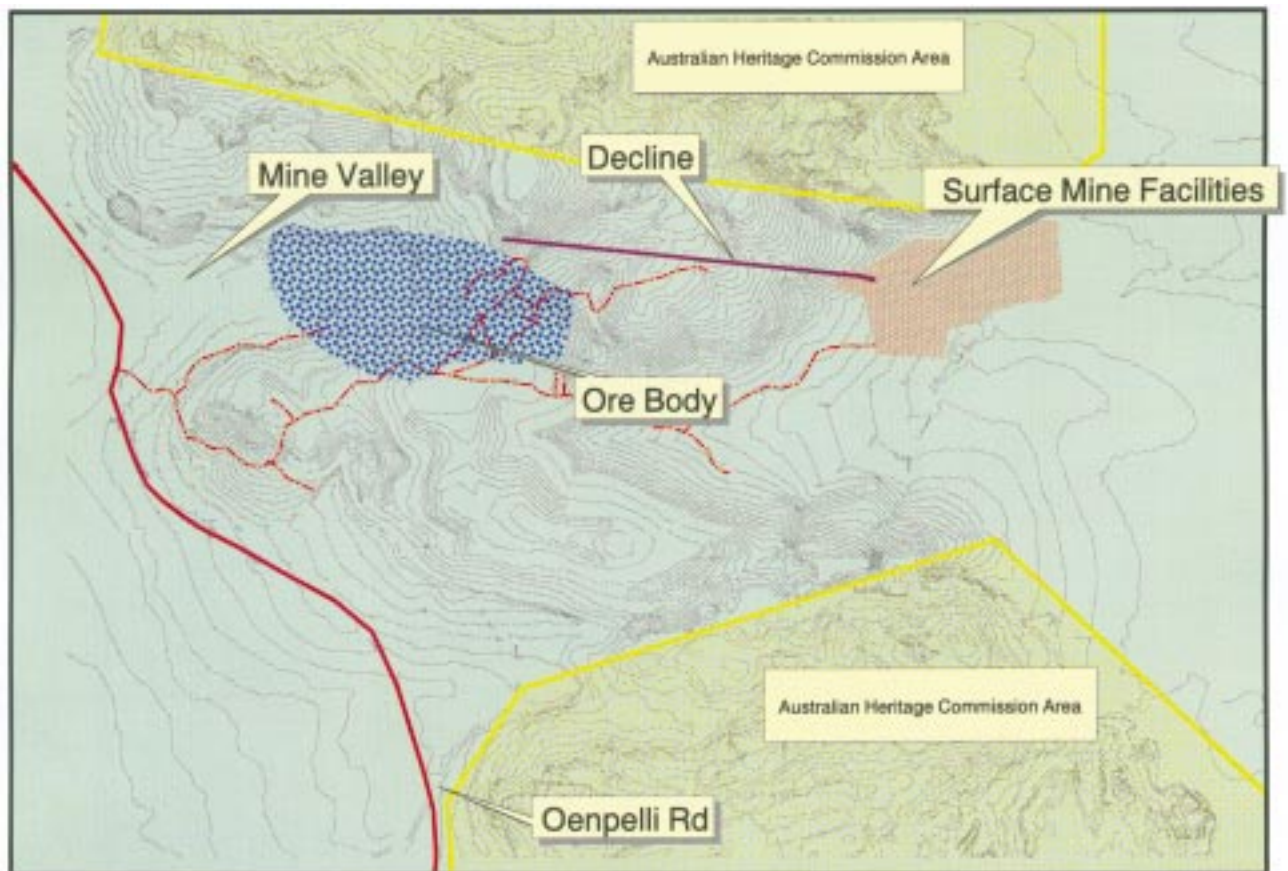


Figure 6: Jabiluka Mine Site within Jabiluka Lease Area



Approx 1km



This figure is for illustrative purposes only.

## Protecting the Values of Kakadu: The Jabiluka Process

Heritage values, communication with Aboriginal people, rehabilitation of the site and environmental management. In addition, the Minister for Resources imposed a further two requirements on ERA: one was the disposal of 100% of tailings deep underground into the mine void, and the other relating to a process for ERA to follow if it wishes to pursue an alternative option.

The measures developed by the Government and ERA have been designed to provide proper assessment and protection of biological and social values within and outside the Jabiluka Lease and will adequately address any potential impacts on these values. It is important to note that these environmental standards and conditions to be applied to Jabiluka are in all cases equal to or exceed those set for the Ranger Mine, which has operated without any significant environmental effect on the neighbouring World Heritage property for twenty years. The JMA will have no impact on World Heritage values.

While both the RMA and the JMA have received environmental clearance, subject to compliance with over 70 conditions, the Australian Government, the Northern Territory Government and ERA consider the RMA to be a superior proposal in terms of environmental considerations, project economics and logistics. ERA understands that consent for the development of the RMA has not been given by the traditional owners and it is possible that the JMA will be progressed.

### Consultation and decision making

- extensive and effective
- 6 months public review
- local indigenous community declined to participate in environmental assessments at Jabiluka
- Northern Land Council discussed issues with Environment Australia
- NLC and ATSIC submitted written proposals
- archaeological and anthropological work has generated much information on sites in the mineral lease area

## 5.2 CONSULTATION AND DECISION MAKING

The assessment process for the Jabiluka RMA and JMA options involved extensive periods of public consultation. In total almost six months was allowed for public review. Additionally, two general public meetings were held in relation to the EIS, one at Darwin and one at Jabiru.

The decision of the Aboriginal community not to participate in either of the environmental assessments meant that the treatment of Aboriginal cultural issues in the final EIS and the PER was based on information drawn from discussions with relevant agencies and secondary sources rather than on new field based research with the appropriate Aboriginal People. Despite this, officers of Environment Australia met with Northern Land Council staff in relation to both assessments and submissions from NLC and ATSIC were taken account of in the preparation of Environment Australia's assessment reports.

Additionally, at least three major archaeological and anthropological surveys have previously been conducted within the lease area, and the extent and nature of a majority of sites within the area is very well known. These were not detailed in the EIS out of respect for the traditional owners' wishes. However 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.

## Protecting the Values of Kakadu: The Jabiluka Process

### 5.3 PERMITS

The special nature of the uranium mining activities in the Alligator Rivers Region is reflected in the roles and responsibilities of various authorities and in the nature of the legislation and the working arrangements between Federal and State governments.

Working arrangements between the Northern Territory (NT) Government and the Commonwealth Government for the coordination and regulation of environmental aspects of uranium mining in the Alligator Rivers region were endorsed, through a Memorandum of Understanding, by the Chief Minister for the NT and the Prime Minister in 1979, and updated in 1995.

The interlocking arrangements in the NT reflect an appreciation of the respective roles of the Supervising Scientist and his Science Group (SG) and the Northern Territory Department of Mines and Energy (NTDME). The NTDME is responsible for the day-to-day regulation of uranium mining in the Region and the SG is responsible for research and advice on the effects on the environment of the Region and for the development of standards, practices and procedures for the protection and restoration of the environment from the effects of mining.

As a result of the environmental assessments of the Jabiluka project under the *Environment Protection (Impact of Proposals) Act 1974*, the Minister for the Environment and Heritage proposed that over 70 stringent conditions be met by the mine's operator.

The Resources Minister transferred all the recommendations into requirements placed on ERA. In addition to this, the Minister's requirements used the existing legislative and administrative overlay to provide an effective means of implementing the Environment Minister's recommendations.

To that end the Minister for Resources and Energy sought and received from the NT Minister for Resource Development an undertaking that the NT Minister would give effect to such requirements in Authorisations he issued under NT legislation. This legislation is the *Uranium Mining (Environment Control) Act 1979* (UMEC). This mechanism gives a 'force of law' to these requirements. When the company applies for an Authorisation under UMEC, the Commonwealth's Supervising Scientist is consulted, and makes such recommendations as are considered appropriate. The Northern Land Council (NLC) is similarly consulted and can make recommendations.

The object of the *UMEC Act* is to control the mining of uranium in the Alligator Rivers Region in order to lessen any damage, which may be caused to the environment of the Region. The Act requires that no person shall mine land for 'prescribed substances', including uranium, within the region except in accordance with any requirements imposed by the Act and the Soil Conservation and Land Utilisation Act (NT), the Control of Waters Act (NT), and any regulation made under either of those Acts.

In addition to this, the Minister based relevant requirements on the context of the Environmental Requirements attached to the Jabiluka lease, which was issued by the Northern Territory in 1982. The Environmental Requirements were attached to the lease by the Northern Territory, on instruction from the then Minister administering the Commonwealth's Atomic Energy Act, as is required by the Northern Territory's Mining Act.

Export permits for uranium are issued on a shipment-by-shipment basis by the Commonwealth Minister for Industry, Science and Resources. No permits have been issued for Jabiluka uranium and this will not happen until about 2001.

When considering an application for an export permit for Jabiluka uranium, the Minister will need to be satisfied that the requirements he has placed on ERA, which give effect to the recommendations from the Minister for the Environment, have been met. In the case of many of the requirements, ERA will have an ongoing responsibility to ensure that the requirements are met over the life of the mine. This will be supported by Northern Territory regulatory arrangements.



## Protecting the Values of Kakadu: The Jabiluka Process

### 5.4 ENVIRONMENTAL MONITORING

In recognition of the unique environment of the Kakadu region, statutory environmental measures were established in addition to those available under the *National Parks and Wildlife Conservation Act 1975*. The *Environment Protection (Alligator Rivers Regions) Act 1978* specifically provides for the protection of the environment of the Alligator Rivers Region, and ongoing scrutiny of the environmental effects of mining. The Region includes the area covered by the Kakadu World Heritage property.

#### Monitoring

- specific legislation to protect the Alligator Rivers Region (includes Kakadu National Park)
- Supervising Scientist for Alligator Rivers Region to provide independent monitoring, reporting and supervision
- Environmental Research Institute of the Supervising Scientist in Jabiru to conduct environmental audit of the mine
- Ranger mine often described as the most closely regulated mine in the world
- in 20 years of mining at Ranger there have been no environmental impacts on Kakadu National Park

The *Environment Protection (Alligator Rivers Region) Act 1978* establishes the position of Supervising Scientist for the Alligator Rivers Region, whose role is, by independent monitoring, reporting and supervising, to protect the environment of the Alligator Rivers Region from the impact of uranium mining. This Act works in association with the Northern Territory *Uranium Mining (Environmental Control) Act 1979*. The Supervising Scientist protects the environment by providing independent and expert advice based on scientific research undertaken by the Environmental Research Institute of the Supervising Scientist (ERISS) located at Jabiru, in Kakadu National Park; by environmental audit and technical review of the mining operation and stakeholder consultative mechanisms; and by developing standards, practice and procedures for environmental protection. The research and supervisory regime is additional to the day to day monitoring and regulation of the mine by the Northern Territory Department of Mines and Energy. Under Northern Territory law, the mining company must conduct a stringent monitoring program and conform to environmental protection standards established through consultation with the Supervising Scientist and the Northern Land Council.

As a result of this regime, the Ranger mine is frequently described as the most closely regulated mine in the world. The Supervising Scientist researches and monitors every aspect of the mining operation which could impact on the environment, publishes twice yearly public environmental reviews and reports to Parliament once a year.

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. Where measured elevations of radionuclides above background levels have occurred in the water or air in the World Heritage property, these elevations have been

well within established limits and are not judged by the Supervising Scientist to have resulted in any harm to either people or ecosystems. Claims to the contrary have been made by members of the public but these are not, in the judgement of the Supervising Scientist, consistent with the monitoring data.



*Mt Brockman in the dry season  
(Michael Preece)*

### 5.5 MECHANISMS USED BY THE SUPERVISING SCIENTIST TO PROTECT THE ENVIRONMENT

A number of mechanisms are used by the Supervising Scientist to ensure adequate protection at the Ranger mine, and to a lesser extent, the Nabarlek mine which is in the rehabilitation phase. These mechanisms will also apply to any other mine which is approved in the Alligator Rivers Region (ARR), including the Jabiluka mine. The main mechanisms are:

#### Research

The Environmental Research Institute of the Supervising Scientist (ERISS) at Jabiru near the Ranger uranium mine was established to develop techniques to detect and minimise the environmental impacts of uranium mining in the Alligator Rivers Region. In addition to research projects conducted throughout the region, ERISS established several co-operative research projects with ERA to address key environmental issues at Ranger, including water management, rehabilitation and final tailings disposal. Current research at Nabarlek comprises monitoring of radon emissions from the infilled and rehabilitated mine pit. ERISS manages the Alligator Rivers Region Technical Committee which is a forum of stakeholders and research organisations with interests in the setting of research priorities and development of research programs in the Region.

In 1993 the role of ERISS was expanded to undertake other research relevant to its expertise, principally research into wetlands management.

#### Environmental audits

A key component of the Commonwealth's supervisory arrangements for the uranium mines of the Alligator Rivers Region is a twice-yearly review of the environmental performance of each uranium mining operation (Environmental Performance Review). The reviews are undertaken jointly with the Northern

## Protecting the Values of Kakadu: The Jabiluka Process

Territory Department of Mines and Energy (NT DME). Ten EPRs of Ranger and Nabarlek have been conducted to date and two during the construction phase of Jabiluka.

The EPR protocol involves design of an extensive questionnaire on environmental performance, meetings with the companies to gather responses to the questionnaire, examination of documentary evidence to verify the responses given, a site inspection, and an evaluation of the adequacy of the response given to each question. The review team then prepares a summary report for presentation to the Alligator Rivers Region Advisory Committee following completion of the EPR. This is a community based committee established to discuss environmental issues in the ARR and to exchange information.

### Technical assessment

The Supervising Scientist is represented on the Minesite Technical Committees established for each mine in the ARR. The committees receive regular environmental reports and special reports (eg. relating to development of new operational techniques) and applications from the companies to the NT Minister for Mines and Energy for the introduction of new procedures and changes in mining operations. These reports are evaluated and feedback is provided, mainly to the company and/or to the NT authorities. The NT Minister for Mines and Energy must “have regard to” recommendations made by the Supervising Scientist in making his decisions on matters which relate to environmental protection at the uranium mines.

The Ranger Environmental Requirements specify that operations must be consistent with Best Practicable Technology (BPT). Assessments of major applications from ERA are made under a BPT assessment framework, a process commonly strongly influenced by the Supervising Scientist as a member of the Minesite Technical Committee.

### Working Arrangements

The ‘Working Arrangements’ is a memorandum of understanding between the Commonwealth and Northern Territory Governments. The MOU clarifies the roles of NT DME and the Supervising Scientist in implementing the procedures described above, describes expectations for appropriate reporting and exchange of information, and emphasises the need for close consultation between NT DME and OSS and between those two parties and the Northern Land Council as representatives of the traditional owners. The Working Arrangements are generic in wording and apply to all uranium mines in the Alligator Rivers Region. The document also contains a general description of the functions of each currently operating Minesite Technical Committee.

## 5.6 CULTURAL HERITAGE PLACES PROTECTION: THE BOIWEK AND ALMUDJ SITES

The UNESCO mission recommended cultural mapping of the Boiwek-Almudj site complex. The traditional owners have declined opportunities to participate in such processes. In order to inform the World Heritage Committee of the background and current status of this issue the State party submits:

- an introduction to sacred sites in Kakadu;
- a chronology of events in the recording and mapping of Boyweg, its significance, and its connections to other sites; and
- a description of the statutory regime for site protection and its applications in this case.

## Protecting the Values of Kakadu: The Jabiluka Process

In Australia in general, and in the Northern Territory in particular, an extensive network of laws and regulations controls access to and management of sacred sites. On Aboriginal land in the Northern Territory, permission must be sought and given from traditional owners or custodians before the land can be used by any outside party, including Governments. The Northern Land Council has the statutory responsibility to consult and negotiate for such use. They have a responsibility to ensure that sites are protected, and traditional owners fully consulted before any development can take place. The Aboriginal Areas Protection Authority also has a statutory role in the protection of sites. Commonwealth heritage protection legislation is also available to respond to community requests for the protection of sites.

A number of issues arise that illustrate the complexity of the situation for Aboriginal people, the proponents and the State Party. These issues relate to the ways in which sacred sites, a key element of the land based cultural heritage cared for by Aboriginal people and respected under Australian law, can be accommodated in changing circumstances. In the interface between an oral tradition and a system of laws and negotiated land use agreements, there are often points of tension. The Australian Government is committed to ensuring that these points are acknowledged and understood.

### 5.6.1 Sacred sites in Kakadu

Kakadu National Park is inscribed on the World Heritage List for its direct association with living traditions of outstanding universal significance and is protected as such in the management of the Park. Particular groups are associated by descent with areas of land, their inherited clan estates.

As Chaloupka (1993:72) explains, "The extent of the clan estate is defined by a set of Dreaming sites... Clan members have the responsibility to physically protect, and ritually look after, the Dreaming sites within their estate. They may also share responsibility for sites located in adjacent or even more distant clan territories." Those shared responsibilities are defined through marriage and other forms of relatedness. On the Jabiluka lease, the Mirrar clan holds primary responsibility, as traditional owners, for protecting the sites in their clan estate. Traditional owners from other clan estates share custodial responsibilities.

Aboriginal sacred sites within Kakadu National Park vary in type or power from being:

- Djang*: places that relate to creation or the Dreaming, through to sites that are,
- Djang andjamun*: places that relate to creation and because of their particular religious significance are considered especially dangerous and have restricted access.

For any development process to commence, in accordance with Australian law, measures for the identification and protection of all the sites in the project area were necessary. While many significant archaeological and rock art sites are on the lease area and are being protected, recent public comment has focussed attention on the sites of Boiwek (or Boyweg) and Almudj as sacred sites.

The site of Boiwek has been described in reports by anthropologists on sacred sites in the Jabiluka region since 1975. Boiwek was listed as a '*djang*' sacred site involving the ancestral dreaming figures the Knob-tailed Gecko ('Boiwek') and the Rainbow Serpent ('Almudj'). Anthropologists have documented these sites in conjunction with the Aboriginal traditional owners, including the father of the current senior traditional owner. 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 on access by traditional owners and others.

### THE BOIWEK SITE

Claims have been made that the Jabiluka project threatens the sacred site complex of Boiwek-Almudj. Boiwek and Almudj, according to all reports reviewed by the Australian Government, are not in the World Heritage property nor linked to sites in the World Heritage property.

From 1975 on, the site of Boiwek has been studied, photographed, mapped and protected. 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. It was a sacred, but not necessarily a dangerous site. There will be no damage or disturbance to this site. It is protected by conditions of approval.

This site is linked by a dreaming track to another separate site, known as Almudj, also protected and registered. 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. It is this extended area which, it is claimed, will be threatened or disturbed.

The location and definition of the Boiwek site as a discrete swamp or soak on the edge of the wetlands were discussed and confirmed in:

- The 1977 Fox Inquiry;
- The claim book for the 1982 Alligator Rivers stage two land claim;
- The research necessary for registration on the National Estate for sites on the lease, including Boiwek and Almudj; and
- Decisions by traditional owners and the Northern Land Council on site permits for workers in the Jabiluka lease area.

Between 1971 and 1978, Pancontinental drilled some 250 holes in Mine Valley in the area, now claimed to be part of the sacred site between Boiwek and Almudj.

When negotiating agreements for access and mining, the previous and current senior traditional owners consistently indicated to the owners of the Jabiluka Mineral Lease that the major site was confined to the area of the soak. This is reflected in the 1982 Agreement. 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.

It was not until 1997 that claims were made about a possible extended area for Boiwek, possibly covering the whole of Mine Valley. These revisions also upgraded the category of the site from sacred to sacred and dangerous, and involving sub-surface manifestations, perhaps defined by the ore body. The recent claims are not consistent with anthropological records or the previous statements and permissions given between 1976 and 1997 by traditional owners, including the current senior traditional owner. Those permissions were freely given and the Northern Land Council has confirmed the consultation process was adequate and effective.

In 1997 the Aboriginal Areas Protection Authority, with a majority of Aboriginal site custodians, declined to register the extended site, citing disagreement amongst custodians over its location and significance.

The Jabiluka mine will proceed in accordance with the extensive provisions in Australian law applying to indigenous heritage.





Figure 7(a): 1970s to 1990s Boiwek and Almudj sites.



Approx. 2.5km



This figure is for illustrative purposes only.





Figure 7(b): 1997 Boiwek and Almudj sites:  
Location as proposed by Northern Land Council and acknowledged  
by proponent in mine management.



Approx. 2.5km



This figure is for illustrative purposes only.





Figure 7(c): 1999 Boiwek and Almudj sites:  
Figure based on Mirrar publicity materials.



Approx. 2.5km



This figure is for illustrative purposes

## Protecting the Values of Kakadu: The Jabiluka Process

### 5.6.2 Boiwek: Chronology of Site Recording

**Note:** the orthography of the region has undergone several revisions. Place names (and the names of people and clans) vary according to different sources. The following account uses the spelling recorded in the documents quoted.

#### *Phase One: Pre Land Rights*

In 1975, George Chaloupka, a respected site recorder and rock art specialist working for the Northern Territory museum and Dr Ian Keen, an Australian National University anthropologist, mapped the Mirrar Gunjeimbi clan estate with senior owners. With Toby Gangali, Jimmy Madjandi, Nipper Gabarrigi and George Namingum, Chaloupka located 35 places and depicted the routes taken by mythological creator beings.

In 1976, Chaloupka recorded Boywek Bagolui as a spring on the edge of Wirrmuyurr swamp that had been degraded as a result of trampling by feral buffalo (Figure 7a). He was told (by Frank Djandjul) that the ancestral being associated with Boywek had travelled from another site, Almudj, located some 5 km south-east on the eastern escarpment of the Jabiluka outlier.

In 1977, Justice Fox of the Ranger Uranium Environmental Inquiry considered Chaloupka's report and commented that it is "detailed; obviously was prepared with care, and, we believe, with objectivity".

In 1978 Dr Ian Keen in reviewing sites of significance in the vicinity of the proposed Arnhem Highway extension with Nipper Kabiriki, Thomas Balmana, Albert Balmana, Kenny Alderson and Matthew Kamarrawu, noted the Almudj (Rainbow Snake) and Buyweg Dreaming. A female traditional owner (not named) accompanied the research team. One design at Almudj was said to "probably represent Buyweg who travelled from that place to the swamp where it made permanent spring waters." He quoted a senior traditional owner, "That one went right through to Buyweg - where that Buyweg are - that's dreaming. I don't reckon -spring water is that bit of ground there. Buyweg made it that way." He noted that the springs associated with Buyweg are located in the Pancontinental deposits, and test drillings have been made immediately beside it.

Between 1971 and 1978, before the area became Aboriginal land, Pancontinental had drilled some 250 holes in Mine Valley in the area between Boiwek and Almudj.

In 1978, 1979 and 1980, Dr Ian Keen, as part of land claim research visited Mirrar sites with senior traditional owners including the current owner's father and mapped twenty sites, including a *djang* site known as Buywek bakulwuy (knob tailed gecko came down). The claim book describes its significance: 'A permanent spring at the edge of the flood plain. Buywek came down from the outlier to the east, stopped here and made himself a dreaming' (Keen 1980).

In 1978 Chaloupka prepared a comprehensive outline of the Djawumbu-Madjawnja site complex for inclusion on the Register of the National Estate. He includes Bojweg Bagolu, photographing the spring, describing it: "*Djang*, a dreaming site of *bojweg*, a knob tailed gecko (*Nephurus asper*), an actual animal but also a dangerous mythological being. The soak never dries up, even when during extreme drought the wetlands dry out. This is believed to be because Almudj, the Rainbow Snake is below ground here."

The 1978 Chaloupka report describes Boiwek as a sacred site as a small, discrete soakage or swamp located to the west of the Jabiluka Mine Valley. The site lies immediately to the west of what is now the Oenpelli road. The report states that Boiwek is connected by a dreaming track to a sacred site to the east of the mine valley named 'Almudj'. 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).

## Protecting the Values of Kakadu: The Jabiluka Process

### *Phase Two: Alligator Rivers Stage Two Land Claim*

In 1980, Justice Toohey heard evidence in the Alligator Rivers Stage Two Land Claim. Evidence was provided by Toby Gangale, the current traditional owner's father who described Boywek Balgoluyi as "just up here where the buffalo wallow is now...It used to be a sacred place before but people are just walking up there back and forth now...".

In 1981, Justice Toohey reported his findings on the Land Claim. While his report gives considerable attention to the proposed Jabiluka project (as it was planned then), including the reproduction of a model showing the effect of the project on the Jabiluka outlier and consideration of changes to the siting of facilities, and to the protection of sacred sites, no concerns over Boywek or Almudj were noted.

Although the proposal was much larger than the present initiative, the site does not appear to have been perceived by Justice Toohey, on the basis of evidence before him from traditional owners, to be under any threat.

### *Phase Three: The Agreement: 1982–1997*

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. Traditional Aboriginal owners have instructed NLC that they have no present intention of conferring upon any place the status of a sacred site within the Fenced Area during the term of this deed." The Agreement defines the extent of the operational area and refers to it as the 'Fenced Area'.

The 1982 Agreement also set out processes to be followed should sacred site issues arise, including a Bininj Working Committee, formed by traditional owners (including at the time Toby Gangele, Jacob Nayinggul and Big Bill Neidjie) on which the NLC has representation. The Committee was not asked to consider the status or boundaries of Boiwek, or to consider issues arising from the drilling program in Mine Valley (including the new extended site area) by Pancontinental.

After the 1982 Agreement, Pancontinental (and later ERA) sought and received a succession of approvals from the traditional owners through the NLC for drilling works in and around Mine Valley, as well as approval for the construction of the access road to the mine.

In 1989, the Oenpelli Road realignment was surveyed by the NLC and a works clearance provided which restricted gravel extraction on the western (Boiwek side) of the proposed road but allowed unrestricted extraction on the eastern (Mine Valley) side of the road (Figure 7a). A gravel pit was excavated within Mine Valley for this purpose.

Between 1992 and 1993 a further 31 drill holes were made by ERA, including 5 in the area that was later to become restricted.

In August 1992, the Bininj Working Committee (including Yvonne Margarula, Joseph Bumarda, Mick Alderson, Liam Maher and Jonathan Nadji) discussed a "map to be attached to all permit applications to avoid confusion and to ensure people going into Area A near Boywek and other sacred sites are identified." The minutes indicated that all agreed to use a map showing Boywek as a small site at the spring and Almudj as a separate site. The Mine Valley was clear of sites.

## Protecting the Values of Kakadu: The Jabiluka Process

### *Phase Four: The Jabiluka campaign 1997–1999*

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'. No information was provided on why the site was dangerous, the sources of the information, the apparent contradiction of the 1982 Agreement, inconsistencies with the extensive anthropological research, and the findings of Justice Toohey.

During 1997, ERA was presented with a series of maps depicting several boundaries for a new site of several square kilometres described as the Boyweg/ Almudj site complex. These maps were understood to be based on anthropological research carried out by the NLC (Figure 7b). One map had a kilometre wide corridor in which mining was banned, including an area directly over the mine site, which has been extensively and consistently cleared. Another boundary extends over most of the western lease area. These reports have not been supplied to the Australian Government.

In mid 1997, following the preparation of the Draft EIS for the Jabiluka Project, the traditional owners approached the NLC seeking registration of the site complex Boyweg-Almudj. A comprehensive anthropological investigation was carried out by the NLC which resulted in an enlarged area of influence being listed by the NLC for Boyweg (Figure 7b). This area is many times larger than that of the immediate soakage or swamp, which in the past had been recorded as the Boyweg site. Much of the enlarged area extends into the Fenced Area and covers localities planned for the installation of mine facilities (particularly mine vents) by ERA in the 1996 Draft EIS. The NLC advised ERA of the location of this area of influence and the area is shown in ERA's Public Environment Report. The company bans entry by mine staff into the area.

A comprehensive anthropological investigation was undertaken by AAPA of the claimed significance of the site and they noted at their 36th meeting, held 2–3 June 1998, that:

'In the course of discussion it was noted that on a number of key issues, including the location and extent of the site and the physical features that constitute the site and the significance of the site according to Aboriginal tradition, there were widely divergent and strongly held positions taken by various custodians. Disagreement on the part of some senior custodians with the proposed registration had the effect of creating substantial doubt from a legal point of view that the area proposed for registration is a sacred site.'

AAPA also declined to issue ERA an approval for works in the form of an Authority certificate for works in Mine Valley, given the continuing doubts around the issue. AAPA has been kept fully informed of the works being carried out by the Company and has not sought to use its powers to limit or restrict those works.

At the request of the NLC, the AAPA carried out a further investigation into possible desecration of Boiwek, after police contractors cleared areas adjacent to the Oenpelli Road vacated by a protest camp. The AAPA decided not to take action, due to insufficient evidence and disagreement between traditional owners on the nature and extent of the site.

### *Recent Actions*

At a meeting between the Minister for Environment and Heritage, on 9 February 1999, and the traditional owners of the Jabiluka Mineral Lease, the senior traditional owner made several statements concerning Boiwek. In brief these were:

- the site is three ancestors;
- the site has sub-surface manifestations; and
- any disturbance would destroy the community.



## Protecting the Values of Kakadu: The Jabiluka Process

These are inconsistent with previous information provided by traditional owners, researched by anthropologists, and spelt out in legal agreements and site permits agreed by the current senior traditional owner as recently as 1992. Despite requests, no other evidence has yet been supplied by traditional owners to the Australian Government to substantiate the recent claims.

Traditional owners, in comments made to Australian Government officers, claim that the subterranean ore body below the Boiwek-Almudj site complex is the manifestation of the 'kudduk' (faeces) of the Almudj (rainbow creation figure) and Boiwek, mixed up underground. It has been explained by the traditional owners that disturbance of this ground will cause it to sink, become boggy and that water will bubble up from the ground, causing flooding and serious harm to the people.

The Australian Government has not previously been provided with the information that the site is related to the two additional dreaming ancestors, that it has sub-surface manifestations and that its disturbance could destroy the community. In 1999, the official Mirarr web site displayed a map showing an even larger location for the boundaries of the site (see Figure 7c). Independent anthropological assessment requested by the Australian Government has confirmed that this information on boundaries and significance is not consistent with previous descriptions of the site.

### Statutory regime and comment

#### *The Aboriginal Land Rights (Northern Territory) Act 1976 (the Act)*

The 1982 Agreement between the Northern Land Council (NLC) and Pancontinental states that sacred sites will be protected. The Agreement was signed under the *Aboriginal Land Rights (Northern Territory) Act 1976*, which includes provisions for the protection of sacred sites on Aboriginal Land.

The 1982 Agreement has provisions to protect sacred sites from mine construction. The provisions relate to the protection both of sacred sites known at the time of the 1982 Agreement and those places which may take on that status over time. The provisions relate especially to the protection of sacred sites within the area of the Mineral Lease covered by the operational area of the mine.

ERA states in the Supplement to its Interim Cultural Heritage Management Plan (October 1998) that they have not received complete advice as to the impact of the extended area of Boiwek (ie whether there would be any restrictions on operational or monitoring activity within it), however they have been requested not to carry out any work in the area other than to cross it via the existing track.

Under the 1998 Deed Poll (resulting from arbitration over changes to the Jabiluka development), ERA has agreed to a number of additional measures while awaiting confirmation and complete advice on the site boundary:

- to not, without the prior written approval of the NLC, enter upon or occupy any part of the extended area,
- to realign the Access Road to a route acceptable to the NLC, and
- to comply with the decisions and requirements of the Northern Territory Aboriginal Areas Protection Authority with respect to whether or not the vents which it has proposed to construct on the Boiwek-Almudj complex can be constructed within those sites.

ERA has listed in the Supplement the measures which it has undertaken to comply with each of these agreements, and also the recommendations and requirements set by Australian Ministers (for information on the latter see earlier sections of this chapter).

ERA states in the Supplement that it is very conscious of the importance of the Boiwek area of influence and, both in mine design and environmental practice, has sought to take account of the concerns of the landowners and custodians.



## Protecting the Values of Kakadu: The Jabiluka Process

It would therefore seem that the locality covered by what is now the extended area of influence of Boiwek which lies within the Fenced Area (ie most of the extended area) was not of sufficient concern to the NLC at the time to be noted in the 1982 Agreement (Figure 6b). This is despite there being an opportunity for such issues to be raised.

The traditional owners have made no moves under Australian law to rescind the 1982 Agreement.

### *The Northern Territory Aboriginal Sacred Sites Act 1989*

The Northern Territory Aboriginal Sacred Sites Act 1989 provides for the protection of sacred sites in the Northern Territory and is administered by the Territory's Aboriginal Areas Protection Authority (AAPA). The AAPA consists of 12 members, ten of which are Aboriginal custodians of sacred sites.

The application to register the site was rejected. The Chief Executive of the AAPA noted that the application could be reconsidered in the light of any new evidence regarding the significance of the site.

It is understood that one of the main areas of disagreement between senior custodians was on whether the site was a dangerous sacred site. There may have been a difference of opinion between the senior traditional owner of the Mirrar Gundjehmi clan and the senior traditional owner of a neighbouring clan. This latter person is a contemporary of the father of the current senior traditional owner of the Mirrar-Gundjehmi. He has a deep and comprehensive knowledge of the sacred sites of this area of Kakadu and is understood that he has a long-term understanding of the site and its significance which stretches back to his boyhood.

### *Jabiluka Project statutory requirements*

Under the recommendations and requirements listed by the Minister for the Environment and the Minister for Resources and Energy, ERA is required to take all reasonable steps to identify potential dewatering effects at the Boyweg site. It is also required to prevent contamination of groundwater and conduct baseline studies to establish the degree of connection between deep and shallow aquifers.

Due to access restrictions imposed by the traditional owners, ERA has relied on desktop modelling to address these requirements. The modelling suggests that there could be little or no connections between the deep and shallow aquifer and thus mine construction could expect to have little or no hydrological impact on the site.

In terms of other possible impacts relating to Boiwek, ERA undertook to move any surface facilities (mainly ventilation shafts, weather monitoring post, access tracks) away from the area of influence of the site as identified by the NLC to the AAPA.

## CONCLUSION

*The Jabiluka project has been subjected to three years of intensive, exhaustive open and transparent environmental impact assessment. There is an extensive and comprehensive program of environmental monitoring in place. This assessment process specifically included binding measures to ensure no damage to the World Heritage values of the Park, or to sacred sites in the project area.*

*The sacred and significant site protection measures available to traditional owners include both Commonwealth and Northern Territory legislation through which traditional owners could apply for sites to be protected. For over 20 years the site at Boiwek located at the soakage and Almudj on the outlier have been recognised and protected.*

*Recent claims that the site is larger, (covering a wider area) deeper, (extending lately to the ore body) and of greater significance (more ancestors, more dangerous) needs to be weighed against the historical facts*

## Protecting the Values of Kakadu: The Jabiluka Process

*that approvals for any mine project, including exploratory drilling needed to be provided by traditional owners before any work could commence. These permissions were given. The recent claims are not consistent with anthropological evidence or the previous statements and permissions given between 1976 and 1997 by traditional owners, including the current senior traditional owner. Those permissions were freely given and the Northern Land Council has confirmed that the consultation process was adequate and effective.*

*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.*

*The World Heritage Committee needs to consider these issues on objective and factual evidence. It needs to consider these issues carefully, with awareness of the rights of the State party to uphold and manage the values of the World Heritage property and also the extensive rights of Aboriginal people under domestic law to seek and receive protection for sacred sites.*



# CHAPTER 6

## Response to Recommendations

- 6.1 Mission Recommendation 1: Potential Impacts of the Jabiluka Mine
- 6.2 Mission Recommendation 2: Addressing Scientific Uncertainties
- 6.3 Mission Recommendation 3: Visual Encroachment—Jabiru
- 6.4 Mission Recommendation 4: Cultural Heritage Management Plan
- 6.5 Mission Recommendation 5: Boiwek
- 6.6 Mission Recommendation 6: KRSIS
- 6.7 Mission Recommendation 7: The 1982 Agreement
- 6.8 Mission Recommendation 8: Lack of recognition of the Kakadu Cultural Landscape
- 6.9 Mission Recommendation 9: Limitations to the Boundaries of Kakadu National Park
- 6.10 Recommendation 10: Threat to the continuation of the “joint management” regime at Kakadu National Park
- 6.11 Recommendation 11: Overall Breakdown in Trust and Communication
- 6.12 Recommendation 12: Interaction with the Science Group
- 6.13 Recommendation 13: The Koongarra Mineral Lease
- 6.14 Recommendation 14 The Town of Jabiru
- 6.15 Recommendation 15: Introduced Weeds
- 6.16 Recommendation 16: Cane toads
- Conclusion



## Response to Recommendations

**CHAPTER SIX: RESPONSE TO RECOMMENDATIONS** Chapter Six outlines Australia's response to each of the sixteen UNESCO Mission recommendations. The great majority of recommendations are largely consistent with Australian Government policy and objectives, in many cases action to give effect to these objectives is underway. The Australian Government has particular concerns about recommendations one, two, three and seven.

### 6.1 MISSION RECOMMENDATION 1: POTENTIAL IMPACTS OF THE JABILUKA MINE

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.

It is the Australian Government's view that the evidence does not substantiate the case for ascertained or potential danger. A balanced weighing of the available evidence demonstrates that the natural and cultural values of Kakadu National Park are not threatened by the mine development, particularly when twenty years of experience at the similarly situated Ranger mine is taken into account. A three year environmental impact process has been carefully followed and specific conditions put in place to address identified threats to values. The highest level of scrutiny and monitoring will be applied to Jabiluka to ensure the protection of values is maintained and that necessary corrective action is swiftly taken if there is any evidence of danger to the values and attributes of the World Heritage property.

To ensure we met our responsibilities under the Convention, the Australian Government closely examined the question of whether the Jabiluka mine, situated outside the Park, would have any impact on the World Heritage values inside Kakadu National Park. With the legislative, regulatory and monitoring environment in which the Jabiluka mine will operate, the Australian Government is confident that the World Heritage values of Kakadu, both natural and cultural, are safe.

The values defined in Chapter One are the key values and attributes of the World Heritage property. These are the natural and cultural values the Australian Government has an obligation to protect.

A three-year, comprehensive environmental assessment was undertaken before approval for the mine project was given. This assessment process followed Australia's rigorous legislative requirements, considered impacts on natural, cultural and social values, and included widespread consultation. This process is discussed in more detail in Section 5.1 of this Report.

Where mine activities have been identified in the assessment process as a potentially threatening process to the World Heritage and other values of the National Park, Australia has developed and implemented strict measures to protect these values. Additional measures are also in place to ensure the mine operator meets the Government's approval conditions throughout the life of the mine.

Australia's experience in successfully protecting and managing the World Heritage values of Kakadu National Park throughout the operation of the Ranger uranium mine provides further evidence that, with the appropriate precautions and controls, mining does not pose a threat to World Heritage values.

The Ranger mine was operating at the time Kakadu National Park was first inscribed on the World Heritage List and throughout the successive re-inscriptions of the Park. The Jabiluka mine will be managed under the same regime as the Ranger mine and, in many respects, to higher standards than Ranger.



## Response to Recommendations

The Australian Government notes that the World Heritage Committee has not to date raised any concerns relating to any potential impacts of the Ranger mine on the World Heritage values of Kakadu National Park.

The Jabiluka mine project is significantly smaller than the Ranger mine, and will be an underground mine rather than open cut (Figures 5 and 6). The Ranger mine and its associated facilities presently occupies some 7.1 sq km in area, while the Jabiluka mine will cover a much smaller area of about 1.3 sq km (including the access road from Ranger). Apart from access restrictions to approximately 2.8 sq km, or about 4% of the total lease area, the remainder of the lease area will be open to access by traditional owners.

Among the many conditions of their mining approval, ERA are specifically required to ensure that the Jabiluka mine does not have any adverse impact on the World Heritage values of Kakadu National Park. Ensuring compliance on these requirements is a specific legislative function of the Minister for the Environment and Heritage.

Traditional owners have consented to the Jabiluka mine. Action has been taken to ensure that all recognised sacred sites are fully protected. The Mirrar people are the owners of approximately 2% of Kakadu National Park. To suggest that the claims by the Mirrar justify listing lands belonging to other traditional owners (98% of Kakadu National Park) as World Heritage In Danger is not sustainable. 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.

### 6.2 MISSION RECOMMENDATION 2: ADDRESSING SCIENTIFIC UNCERTAINTIES

**The Mission noted the serious concerns and preoccupations expressed by some of Australia's most eminent scientists as to the unacceptably high degree of scientific uncertainties relating to the Jabiluka mine design, tailings disposal and possible impacts on catchment ecosystems. The Mission shares these concerns and therefore recommends application of the Precautionary Principle which requires that mining operations at Jabiluka be ceased.**

The Australian Government, after considering this recommendation, has subjected the proposed areas of uncertainty to further independent scientific review and analysis. Claims made in the Mission's report have not been balanced against the assessment of the known scientific data relating to these issues. While no objective evidence is provided to support this recommendation, the Australian Government has nevertheless undertaken to examine the claims and carry out further modelling and research to be sure that there is no threat to values. The claims have been subjected to independent review by the Supervising Scientist and any necessary modifications will be made to project design.

The Supervising Scientist has conducted a full review and prepared a report addressing the areas of scientific uncertainty with respect to the development of the Jabiluka uranium mine. This has included a detailed assessment of the four main issues of concern:

- hydrological modelling;
- prediction and impact of severe weather events;
- storage of uranium ore on the surface; and
- the long-term storage of mine tailings.

## Response to Recommendations

The Supervising Scientist has also commissioned four separate consultancies to address specific issues raised by the World Heritage Committee. These consultancies relate to:

- hydrometeorological analysis;
- climate change analysis;
- hydrological analysis relevant to surface water storage at Jabiluka; and
- hydro-geochemical analysis relevant to storage of tailings at Jabiluka.

The Supervising Scientist's report on the review is presented separately to the Committee. The general conclusion of the report was that "the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high." The report on the review highlighted a number of areas where some re-design of the proposal would be, from a precautionary approach, appropriate. As in normal practice, the detailed design phase of the project has not yet commenced and these features will therefore be included as the detailed planning proceeds.

### 6.3 MISSION RECOMMENDATION 3: VISUAL ENCROACHMENT—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.**

It is the Australian Government's view that the evidence leading to this recommendation does not substantiate the case for visual encroachment as a significant issue or as a threat.

The project at Jabiluka is not visible from the World Heritage property, except from the air. Even there, the visual intrusion is minuscule by comparison to the existing Ranger mine, which has been present in the region at the time of previous nominations. The town of Jabiru has a stable population (the current population of 1480 is lower than the planned figure of 3500). The Australian Government has ascertained that any expansion of urban and infrastructure development in Jabiru as a result of the mine will be minimal, with the utilisation of existing housing stock to cater for workers on the project. Jabiru is the administration and service centre for Park, tourism and indigenous administrative support for the region. The growth of Jabiru is controlled by Territory and Commonwealth authorities and regulated through the Kakadu National Park Plan of Management.

The Australian Government recognises the need to manage visual impacts in properties listed for their outstanding natural beauty. However, it is apparent that the Jabiluka mine and the township of Jabiru do not pose a threat to the aesthetic value or integrity of the Kakadu World Heritage property.

As noted in the Mission's report, the Jabiluka mine is not visible from tourist access points within the World Heritage property. The mine will also not be visible from main access roads in Kakadu National Park. For the public, the mine site can only be viewed from the air. The Ranger mine, which occupies a substantially larger area than the Jabiluka mine when it will be in full production, has been visible from overflights since the property was first inscribed on the World Heritage List. To the knowledge of the Australian Government, no complaint has been made about the visual impact of Ranger from the air. The issue has never been raised by the World Heritage Committee or Bureau.

*View east towards the Jabiluka mine site above Magela floodplains from the aerial tourist route at 700ft. The tourist route is within the lease boundaries. Magela floodplain and Oenpelli Road is in the foreground and the mine site is approx 3.5km away.*







*Looking west towards the Jabiluka mine site from the tourist air route over East Alligator River at approx 700ft altitude. The mine site is approx 8km away. The Magela floodplain is visible in the far distance beyond the ridge separating outliers.*



*The small town  
of Jabiru  
(Science Group,  
Environment  
Australia)*

The World Heritage Committee has not previously raised any concern relating to the development of Jabiru. 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.

In 1977, the Fox Inquiry recommended that the town should be located in the Park, (refer Figure 2 and 9) and provided guidelines concerning its absolute size and appropriate approaches to its planning and management. The Second Fox Report (1977) recommended (p 223, Conclusion, Paragraph 1):

"We recommend strongly that the number of people in the town [Jabiru] not exceed 3500; but the smaller the better. This is a much larger number than will be necessary to accommodate people associated with the Ranger mine but it allows for the possibility of the Pancontinental Mine [Jabiluka] getting into production during the life of the Ranger mine."

A town plan was developed in 1978, in response to the recommendations of the Fox Inquiry, by the Director of National Parks and Wildlife. The Jabiru Town Development Authority, when it was established in 1979, took over the responsibility for developing and implementing the plan. Since that time, the plan has provided for a maximum population of 3500, while acknowledging that a lower population level was desirable.

At the time of the 1991 World Heritage Nomination of Kakadu National Park, the population of Jabiru was approximately 1200. The population then grew to 1480 in 1998. The estimated maximum future population of Jabiru, in response to the development of a mine at Jabiluka, is approximately 1700. This maximum level is less than half that recommended by the Fox Inquiry, and half the number provided for under the current town plan.

## Response to Recommendations

It should also be noted that Kakadu is not the only World Heritage property with developments, such as towns, within or near its borders. For example, the Canadian Rocky Mountain Park World Heritage property has four towns within its boundaries, with a total resident population of some 10,000 people. Numerous World Heritage properties, including several in Australia, contain tourist developments, service facilities and other infrastructure which are managed in accordance with established management planning arrangements. Establishing a benchmark for listing World Heritage in Danger based solely on the visibility of a development from the air, would have major implications for the management of World Heritage properties across the globe.

### 6.4 MISSION 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.**

The Australian Government, through Environment Australia, has invited participation in the further development of the Interim Cultural Heritage Management Plan from the organisations identified in the Mission recommendation. Every effort has been made to ensure thorough participation, negotiation and communication with traditional owners, custodians and managers to ensure the compilation of an accurate cultural inventory for the conservation of the cultural sites located within the Jabiluka Mineral Lease. The issues of potential dust and vibration impact are being rigorously and independently assessed. The Australian Academy of the Humanities has been approached to nominate a world-class Australian or international expert or experts to undertake the review of the Cultural Heritage Management Plan in line with the Mission recommendations.

The Government announced its intention to review the Interim Jabiluka Cultural Heritage Management Plan during the Mission visit in 1998, and is committed to ensuring the Plan meets, as far as practicable, the highest levels of international best practice. Australia was pleased to receive the Mission's endorsement of this approach in the Mission's report to the World Heritage Committee.

The Australian Government, acknowledging the decision taken by Mirrar-Gundjehmi not to participate in any management planning process at this stage, is developing measures for the management of cultural heritage on the Jabiluka Mineral Lease. 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.



## Response to Recommendations

The Government has started the process of reviewing the Interim Cultural Heritage Management Plan by inviting Mirrar-Gundjehmi, the Northern Land Council, Australia ICOMOS, the Australian Academy of the Humanities, the Aboriginal Areas Protection Authority and the Australian Heritage Commission to make submissions on the plan and provide practical proposals for the management of the cultural values in the area. At the same time, the Government invited these organisations to nominate independent experts to undertake the review and to provide a more comprehensive Plan. Nominees with suitable standing and expertise will be approached to undertake this work.

The independent expert reviewer will be assisted by a Steering Committee comprising, but not necessarily limited to, key stakeholders. Environment Australia will convene the Steering Committee. The Government informed all the major stakeholders of its intention to establish a Steering Committee and invited the key stakeholders, including the Northern Land Council, Mirrar-Gundjehmi, and ERA, to nominate a representative.

The review will identify any potential gaps in the current knowledge of cultural heritage on the Jabiluka Mineral Lease through a critical analysis of existing cultural inventories and cultural information, including information on the location, extent and danger of sacred sites. Australia has undertaken an audit of available cultural heritage information for the area and the significant collected data and the audit will be available to the reviewer. The submissions made by the major stakeholders will be analysed by the independent reviewer and the comments will be incorporated into the report.

The review will form the basis for developing a revised plan for the interim protection of cultural heritage values and attributes on the Jabiluka Mineral Lease pending the participation of traditional owners. On completion of the review project, the Australian Government will invite the Mirrar-Gundjehmi to propose any associated practical measures to protect the cultural World Heritage values of the adjoining Kakadu National Park. It is anticipated that the independent expert will be able to complete the necessary work to ensure a draft plan will be available before the World Heritage Committee meets.

Potential threats to rock art and archaeological sites from dust and vibrations associated with mining activities were identified during the Environmental Impact Assessment. Australia made the UNESCO Mission aware of these potential impacts and indicated it was commissioning studies to collect baseline data to monitor and identify any potential impacts.

**Dust:** A leading international expert has commenced work on collecting baseline data so that any potential incremental impacts on rock art of dust associated with mining can be identified and monitored. If the project identifies potential incremental impacts of dust on rock art arising from mining activities, standards will be developed to minimise these potential impacts. Methods for monitoring compliance will also be developed and trialed.

As atmospheric dust levels are known to vary between the wet and dry season the study of the potential impacts of dust on rock art requires the collection of data over a full annual cycle. It is expected that the study will take seven months and should be completed by 1 November 1999, although this is dependent on weather.

On completion of the study the standards for, and monitoring of, dust levels will be integrated into the Interim Cultural Heritage Management Plan and fully discussed with traditional owners. Adherence to the standards for dust levels will also be included as environmental requirements for the operation of the Jabiluka Mine and will be monitored and reported on through the Office of the Supervising Scientist.

**Vibrations:** The Jabiluka area has a background of naturally occurring low frequency vibrations resulting from seismic events in the Indonesian Archipelago. The vibration study will identify whether there is any potential incremental threat to rock art and archaeological sites from low frequency vibrations produced by blasts associated with mining. Standards to minimise any impacts from blasting will be developed if

## Response to Recommendations

the study identifies any incremental threats to rock art and archaeological sites. Experts from the Australian Geological Survey Organisation and the CSIRO have started work on this project.

It is expected the study will take six months and should be completed by the 4 October 1999. Once again, any standards will be incorporated into the Interim Cultural Heritage Management Plan and fully discussed with traditional owners. Adherence to the standards for low frequency vibration will also be included as environmental requirements for the operation of the Jabiluka Mine and will be monitored and reported on through the Office of the Supervising Scientist.

The contracts for the dust and vibration studies include provisions for participation of, and negotiation and communication with traditional owners, custodians and managers and other major stakeholders. In initiating these measures for the protection and management of the cultural heritage attributes and values, Australia is committed to providing any necessary further opportunities for the participation and active involvement of traditional owners and other major stakeholders in developing plans for the management of cultural heritage values and attributes.

### 6.5 MISSION RECOMMENDATION 5: BOIWEK

**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.**

Research, including detailed cultural mapping, on the status and location of Boiwek over the last twenty years has been reviewed by the Aboriginal Areas Protection Authority of the Northern Territory. The Authority has declined to register the site due to disagreements amongst custodians over the significance of the site and its boundaries. The Australian Government, through Environment Australia, has carried out an audit of all previous work on the cultural mapping of the lease area. 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.

From 1975 on, the site of Boiwek has been defined by anthropologists, working closely with traditional owners, including the father of the current senior traditional owner, as a small, discrete soakage or swamp on the edge of the wetlands located to the west of the Jabiluka mine valley. It was a sacred, but not necessarily a dangerous site.

Section 5.6 of this Report addresses the issues raised in this recommendation in detail.

## Response to Recommendations

### 6.6 MISSION 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).

The Australian Government has already commenced appropriate action to implement agreed KRSIS outcomes. The Australian Government has accelerated the implementation of KRSIS and will ensure that effective structures are in place within twelve months. Traditional owner support for these 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. It should be recognised that the KRSIS report did not define mining as the primary cause of disadvantage and that traditional owners in the Park have access to a broad variety of programs for economic and social development. Varying interpretations over the extent of any potential threats to the cultural values are discussed in Chapter Seven.

The Australian Government has commenced action to implement the recommendations of the 1997 KRSIS Community Action Plan. The Government accepts the finding of the KRSIS that twenty years of development in the Kakadu region has not generally translated into the social and economic benefits for Aboriginal people that were originally expected.

In late 1998 the Australian and Northern Territory Governments announced their formal response to the recommendations of the KRSIS Community Action Plan and the appointment of the Honourable Bob Collins as the independent Chair of the KRSIS Implementation Team. Mr Collins is a well-respected former Senator for the Northern Territory with a strong record of working to progress Aboriginal peoples' interests. Both Australian and Northern Territory Governments have committed to the KRSIS implementation process with a comprehensive response to the KRSIS Community Action Plan. They have also made clear to the Chair of the Implementation Team their desire for positive, and timely, KRSIS outcomes.

Since his appointment Mr Collins has worked with the Australian and Northern Territory Governments, and other organisations in the Kakadu region, to develop a draft KRSIS action plan for consideration and endorsement by the KRSIS Implementation Team. He has also held discussions with agencies, Aboriginal organisations and individuals in the Kakadu region to re-affirm priorities and initiate proposals for KRSIS action.

The Prime Minister of Australia has agreed with the need for a positive and comprehensive response by the Australian Government to those social impact issues in the region where the Commonwealth Government has direct responsibilities and charged his Ministers with appropriate action.

Under the Australian constitution, responsibility for addressing the full range of issues raised in the KRSIS Community Action Plan is shared with the Northern Territory Government, organisations operating in the region (including the Northern Land Council and local Aboriginal associations) and the indigenous community. In particular, the Northern Territory Government is constitutionally responsible for the delivery of health, education and other 'state' Government responsibilities in the region.

## Response to Recommendations

The Australian Government recognises that the significant involvement of Aboriginal people is central to the KRSIS and that the on-going support of Aboriginal people in the region is a fundamental requirement to produce the desired outcomes.

During March 1999 both the Northern Land Council and the Gundjehmi Aboriginal Corporation requested that establishment of the Implementation Team be delayed to allow Aboriginal people to re-assess priorities for KRSIS action and ways in which the KRSIS Implementation team can be integrated into other regional initiatives. This stance requires patient handling by the Chair of KRSIS.

### 6.7 MISSION RECOMMENDATION 7: THE 1982 AGREEMENT

**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.**

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. Australian law recognises the Mirrar special relationship to their land and has enabled the Mirrar to participate in all decisions affecting them in statutory environmental assessment processes. Australia will report to the World Heritage Committee on any future potential changes to the status of property rights within the excluded mining lease areas.

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. The legislation in Northern Territory is currently the strongest operating in Australia. The right of veto provided by this Act does not apply to land owned by non Indigenous Australians. Although possessing this power of veto, the traditional owners of Jabiluka instead chose to consent to the mine for the economic benefits and other protections negotiated in the 1982 Agreement.

The 1982 Agreement and the 1991 Transfer of Ownership were statutory agreements undertaken by the Northern Land Council on behalf of the traditional owners under the Act. 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.

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.

In 1982, following the signing of the Agreement, the Chairman of the Northern Land Council, Mr Gerry Blitner, said 'We believe it is a fair agreement for both parties'. Mr Blitner went on to say that 'Because of the fairness of the negotiations and the careful and delicate way in which they have been handled, and the long-lasting benefit to the Aboriginal people, the Northern Land Council is proud to have been a part of them'.

The views of the traditional owners were further expressed by the Northern Land Council in their Annual Report for 1984/85, in the context of the then Federal Government's decision not to allow new mines in Kakadu. The following quotes appear in a special Chairman's report (section 11, pp 69-74) of the Annual Report, which lists a number of events from November 1983 to August 1984 in their campaign to lobby the Government to allow the mines to proceed:

## '11.0 SPECIAL CHAIRMAN'S REPORT (URANIUM CAMPAIGN)

8 November 1983

Telex to Prime Minister, Minister for Aboriginal Affairs, Shadow Minister for Aboriginal Affairs, Chief Minister Northern Territory, Opposition Leader Northern Territory.

Expressing deep concern at the Government's decision on uranium mining. Agreement has been reached from both Jabiluka and Koongarra traditional owners for these mines to go ahead and this decision by the Government is in direct contravention of the policy of Self Determination for Aboriginal people, and will therefore have serious consequences for the social and economic advancement of the Aboriginal people.

22 November 1983

Meeting of Traditional Land Owners held at Coonjimba. The position of Federal Government policy on Uranium mining outlined in detail by Chairman and legal officer. Group discussions took place and the following resolution passed.

"The NLC should keep talking but ..... If NLC fails to change the situation with the Government, then you want the NLC to ask for compensation to be paid to you for the two mining areas Koongarra and Jabiluka." ' "

In 1991 Bill Neidjie, one of the traditional owners who was a principal to the 1982 Agreement, referred to the importance of the 1982 Agreement being kept because it was Bininj (Aboriginal) law that since the two old men who had agreed to the mine proceeding were now dead, their word was law and must be followed. Mr Neidjie and his family reiterated their support for the 1982 Agreement in a letter submitted to the 1998 meeting of the World Heritage Committee.

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. There has been no attempt to challenge them in law.

The Northern Land Council, an Aboriginal organisation which has the statutory role to undertake agreements in consultation with the traditional owners, maintains their commitment to the 1982 Agreement and the 1991 transfer of rights. The 1982 Agreement also has the ongoing support of senior and key members of the Kakadu Aboriginal community who would like to see regional development, including the Jabiluka mine, continue (under appropriate controls) to ensure a strong economic future for Aboriginal people in the region.

This position was further demonstrated during a visit of traditional owners to Canberra in 1991 in which they lobbied the Commonwealth Government in favour of the Jabiluka mine. The present senior traditional owner attended these meetings.

Should the legally binding agreements of 1982 and 1991 be dissolved outside the appropriate legal processes, the capacity of Aboriginal people to enter into future obligations that bind themselves and their successors would be damaged.



## Response to Recommendations

The consequences of such a precedent would result in large areas of Australia under Aboriginal ownership as possibly being regarded as “out of bounds” for any future negotiated agreements. This would deny Aboriginal people the right to enter into such agreements and thus limit their ability to maximise the returns from their unique property rights in relation to mineral development on their lands.

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;
- extending the ambit of the World Heritage Committee, unilaterally and in a manner that is not consistent with the Convention, into questions of mineral rights, property law and indigenous land ownership when the Convention itself expressly recognises that these are matters for the relevant State Party;
- injustice to the Company who have complied with every law, met every requirement, respected every notified Aboriginal site in managing the project; and
- pre-empting any domestic law processes to consider these issues.

Again, the Australian Government will be open and transparent on this issue, notifying the World Heritage Committee of any future potential changes to the status of property rights within the excluded mining lease areas, including notification of any relevant court actions and their outcomes.

### 6.8 MISSION RECOMMENDATION 8: LACK OF RECOGNITION OF THE KAKADU CULTURAL LANDSCAPE

**The Mission is of the opinion that the full extent of the outstanding cultural landscape of Kakadu should be recognised and protected. The Mission recommends that the State Party be asked to propose to the World Heritage Committee further recognition of the outstanding living cultural traditions of the traditional owners of Kakadu through application of cultural heritage criterion (iii) and the World Heritage cultural landscape categories. The Mission is of the opinion that the living traditions of the traditional owners and custodians of Kakadu, and their spiritual ties to the land form the basis of the integrity of the cultural landscape.**

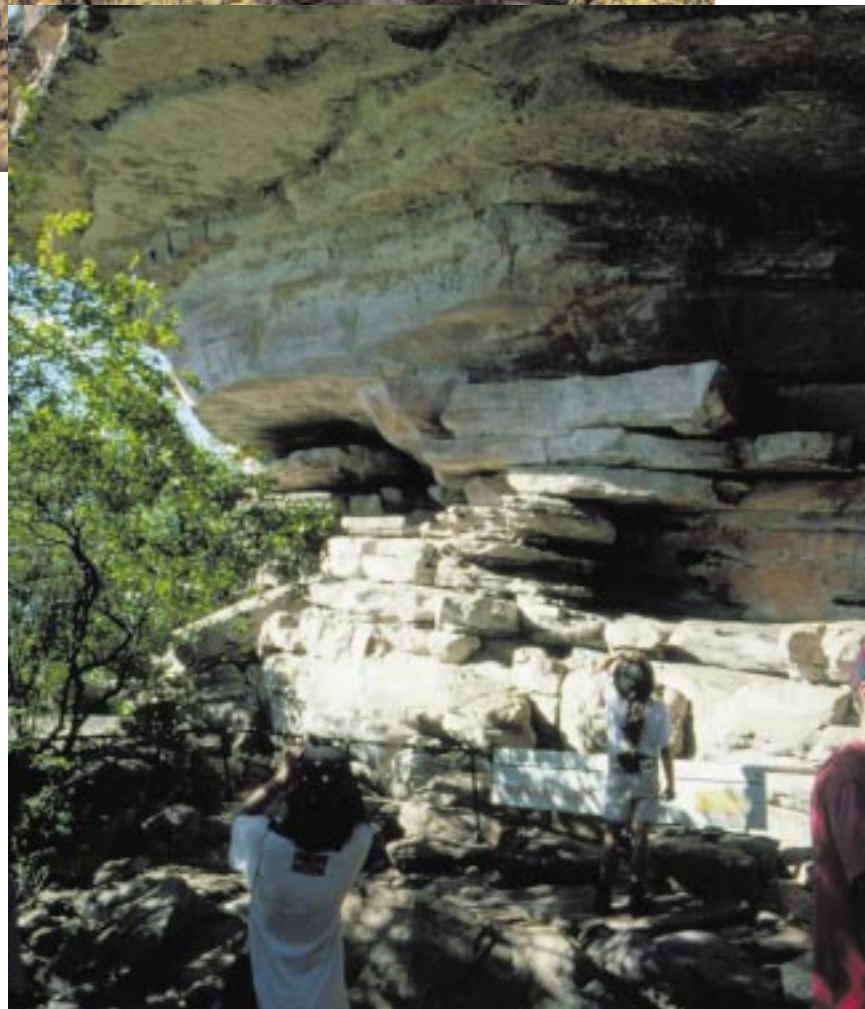
The State Party appreciates the confirmation from the Mission that the cultural values of the Park maintain their integrity. They have not been threatened by the 20 year co-existence with the Ranger mine. Any proposal to re-nominate would require the consent and active participation of the majority of traditional owners as expressed by the Board of Management and the Government of the Northern Territory. At this stage, the Kakadu Board of Management has requested such a nomination and the matter will be considered at the next Northern Territory World Heritage Ministerial Council before further consultation with landowners takes place.

The Australian Government notes that this recommendation could be implemented only if approval to proceed with such a World Heritage nomination is given by all of the traditional owners and local communities for the area in question. This is consistent with the requirements for the development of cultural landscape nominations as stated in Paragraph 41 of the Operational Guidelines for the World Heritage Convention:

‘nominations should be prepared in collaboration with and the full approval of local communities.’



*Ubirr area,  
Kakadu  
(Mark Hallam)*



*Ubirr  
rockshelter,  
Kakadu  
(Mark Hallam)*

## Response to Recommendations

The Australian and the Northern Territory Governments resolved at the first meeting of the Northern Territory World Heritage Areas Ministerial Council, held on 20 May 1998, to undertake a study to assess the potential of a World Heritage cultural landscape nomination for the greater Kakadu region. This region includes Kakadu National Park. The matter of a cultural landscape nomination will be discussed further at the next meeting of the Ministerial Council, later this year. Currently, the traditional owners who are members of the Board of Management for Kakadu National Park support a cultural landscape nomination for Kakadu National Park, but not for the greater Kakadu region.

The Australian Government, and other States Parties, may be less inclined to develop a cultural landscape nomination if a World Heritage Listing implies an exclusion of mining activities. Such an exclusion would impact on the property rights of Aboriginal traditional owners in the broader region. It would therefore seem unlikely that the traditional owners outside Kakadu National Park would approve a nomination on such terms. Under Australian law, their right to decide on the future of their land is protected and the Australian Government would accept their decision.

### 6.9 MISSION RECOMMENDATION 9: LIMITATIONS TO THE BOUNDARIES OF KAKADU NATIONAL PARK

**The Mission recommends that the Australian Government should examine the feasibility of extending the boundary of Kakadu National Park and World Heritage property to ensure increased protection of more of the catchment of the East Alligator River. The Mission recognised that this may be a lengthy procedure. It should involve the full engagement of the traditional owners whose consent would need to be gained, particularly if the expansion was to include land held under inalienable Aboriginal freehold title. The Mission is of the opinion that work towards the recommended expansion of the Park should not detract from efforts to address the more immediate and urgent issues identified in this report.**

Australia welcomes the fact that the Mission Report endorses Park management practices and an extension of the area of the Park. The recommendation confirms that the values of the Park are well looked-after. Any such proposal would require the consent and active participation of traditional owners in the region after consultation by the Northern Land Council as well as with the Government of the Northern Territory. No request for such a change to the boundaries of the Park has been received. It should be noted that the proposed extension would include a significant area where Aboriginal landowners have negotiated permits for exploration of uranium and other minerals.

The recommended area of land to the east of the World Heritage property is inalienable Aboriginal freehold land, held under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Any use of this land requires the permission of the traditional owners.

There has been no move by Aboriginal communities to support the World Heritage listing of this region. The Australian Government would be reluctant to take any action to change the management regime of this land without the support of the traditional owners. The catchment of the East Alligator River is shown on Figure 8.

The Mission's report strongly implies that mining activities near World Heritage properties are incompatible with the protection of World Heritage values. This would seem to be logically inconsistent with the fact that mining has occurred at Ranger, located near Kakadu National Park, for nearly 20 years with the full knowledge of the World Heritage Committee. There has been no request by the Committee for Australia



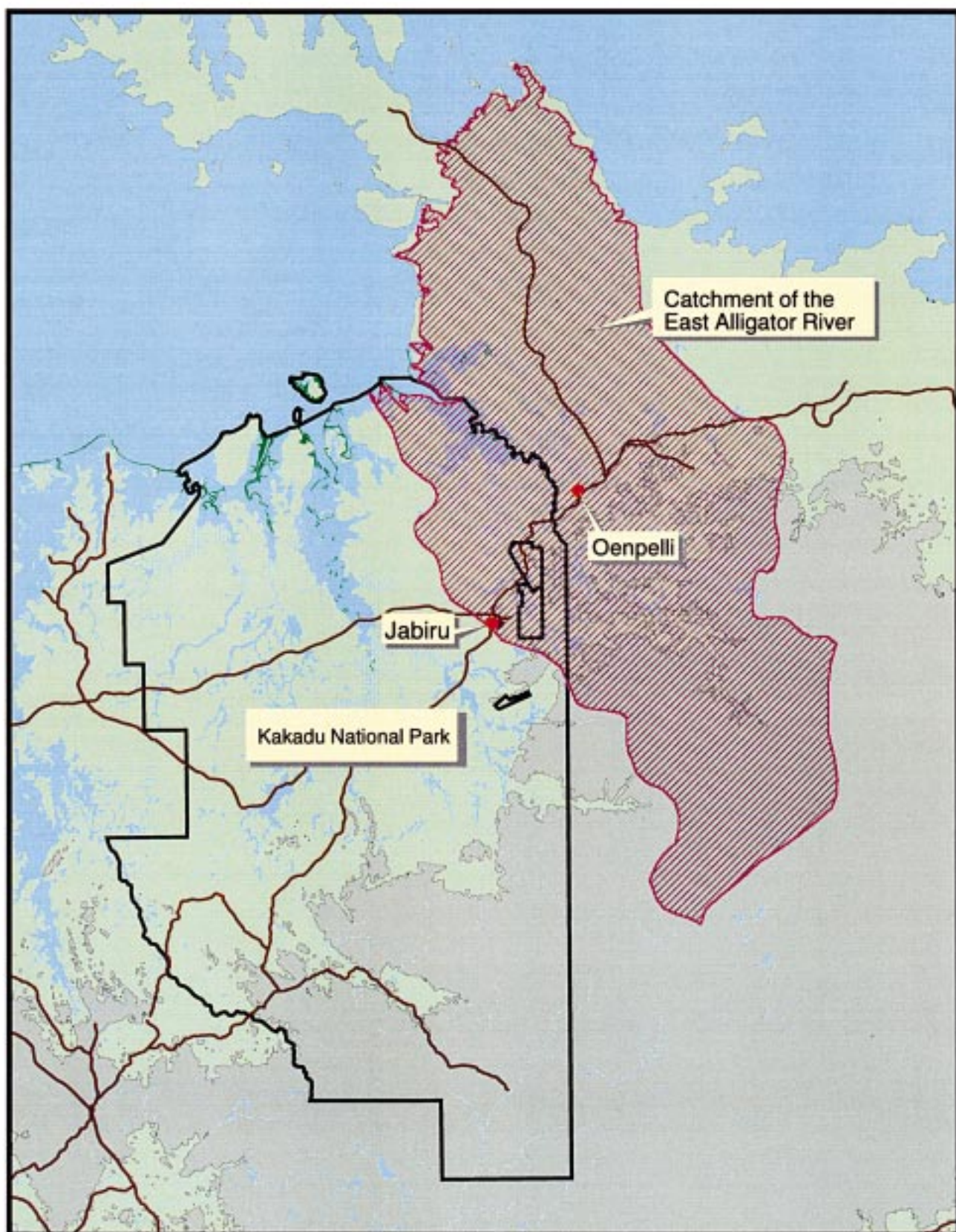



Figure 8. Catchment of the East Alligator River.

Legend

 Catchment of the East Alligator River

Approx 50km



This figure is for illustrative purposes only.

## Response to Recommendations

to cease operation of that mine. Similarly, the Mission's report itself has not made a request for the Ranger mine to cease operation. There would therefore seem to be a logical inconsistency in the Mission's approach.

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. This in turn supports the Government's view that mining operations adjacent to the World Heritage property, as long as they are strictly controlled and regulated, can be compatible with the protection of World Heritage values.

The traditional owners in the region outside Kakadu National Park have given their consent to mining related projects. It is unclear whether the Mission would suggest that the approvals be overridden (contrary to the wishes of the traditional owners) if the areas are nominated to the World Heritage List on the understanding that mining would be disallowed. The Australian Government and the Northern Territory Government will ensure that any mining is subject to strict environmental controls (eg no damage to World Heritage etc).

### 6.10 RECOMMENDATION 10: THREAT TO THE CONTINUATION OF THE "JOINT MANAGEMENT" REGIME AT KAKADU NATIONAL PARK

**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.**

Since the Mission report additional negotiation has been carried out, including at Ministerial level, with the Board of Management on these complex and significant issues. The clear majority held by traditional owners will be maintained as it is integral to maintaining the values of the Park. Northern Territory representation would add value to effective management of the Park in the context of the region as a whole. The proposed changes to the status of the Director of National Parks will be reconsidered in relation to these negotiations. In the interests of sound policy and consistency with other World Heritage properties significant other alterations have been made in response to the requests of traditional owners and direct negotiations with the Minister.

The World Heritage Committee recognised in 1992 the exemplary management operation at the Park and its level of management has not changed. The Australian Government is committed to continuing full consultation with the Kakadu Board of Management on all matters affecting the joint management of the Park, including the current reforms under active consideration.

In all areas of Park service provision, the Government will continue to respect and abide by its lease obligations to traditional owners. Their rights as joint partners will be maintained and respected. The fourth Plan of Management for Kakadu National Park outlines the depth of the commitment of all parties to joint management and its consultative processes (see Chapter Two). This plan has the full endorsement of the Kakadu Board (with its traditional owner majority), the Director and the Minister.



## Response to Recommendations

The Government has referred the new EPBC Bill to a Senate Inquiry and will take into account the Inquiry's outcomes in considering any amendments to the Bill. Traditional owners and their representatives have made proposals to the Committee conducting the Inquiry and, as mentioned above, the Minister has indicated that he is willing to consider a range of options.

The Government will continue to respect and abide by its lease obligations to traditional owners in the management of the Park. The proposed new administrative arrangements under the EPBC Bill will not affect on-ground management or Board powers.

The Minister for the Environment and Heritage has met with the Kakadu traditional owners three times and has outlined a proposed negotiating process for reaching resolution. The Director and his staff consult regularly with traditional owners through the Kakadu Board of Management and other fora. Officials also consulted with traditional owners and their representatives about the legislative reforms during their formative stages.

It would be of concern to the Australian Government, and to any Government managing a World Heritage property, if the World Heritage Committee considered that 'any tensions' in joint management arrangements could threaten the management of a World Heritage property. Occasional disagreements can be expected in any healthy ongoing dialogue between parties who jointly entered into an agreement.

### 6.11 RECOMMENDATION 11: OVERALL BREAKDOWN IN TRUST AND COMMUNICATION

**The Mission considers that it is imperative that the breakdown in trust and communication that was perceived by, and articulated to, the Mission be repaired. The Mission is of the opinion that in accordance with the Aboriginal Land Rights Act, proper consultation with traditional owners must continue to be a requirement when considering any issues relating to the management of their lands. Furthermore the Mission urges all indigenous and non-indigenous stakeholders with an interest in the Kakadu region to engage in a cross-cultural dialogue to ensure conservation of the outstanding heritage values of Kakadu for future generations.**

While the Australian Government does not accept a general breakdown in trust and communication, it remains committed to consultation on land management and cross-cultural dialogue on conservation issues.

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. The current Jabiluka traditional owners have recently initiated objections to the mine, and have therefore chosen not to participate in any process that might be construed as facilitating the mine or related activities.

However, it should not be assumed that there is any general breakdown in trust and consultation with most of the 530 Aboriginal residents of Kakadu, many of whom have been actively engaged in ongoing consultation, participation and decision making on Park issues. Forums include daily Park management, the Kakadu Region Social Impact Study (KRSIS), the Kakadu Board of Management as well as consultations and negotiation for the continued operation of the Ranger mine.

Recognising that Mirrar traditional owners have not been willing to discuss relevant issues (eg. completion of the cultural heritage management plan), or to allow otherwise unauthorised works on their

## Response to Recommendations

lands that relate to the Jabiluka mine, eg. dust and vibration monitoring, officials of the Australian Government have respected the rights of traditional owners and attempted to find workable solutions.

The Australian Government upholds the principles in the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act). Proper consultation with traditional owners was exactly the process which was followed with the development and signing of the 1982 Agreement and the 1991 transfer of ownership of the Jabiluka mine. Recommendation 11 does not recognise the responsibilities of the Northern Land Council (NLC) under ALRA in representing the interests of traditional owners (see sections 7.6 and 7.7). This is reinforced by the NLC requesting the Commonwealth to deal directly with it and not directly with traditional owners.

It should be noted that officers of Parks Australia, ERISS and ERA already undergo cross-cultural training and as well, many other initiatives to improve the trust and communication between Aboriginal people and the organisations with which they deal are already in place.

The Australian Government is supporting mechanisms to ensure that indigenous involvement in the management of the Kakadu region, and particularly in relation to the development of mining in the region, is continually enhanced not diminished. A range of indigenous based committees and organisational structures within or affecting the Kakadu region have been established with the Australian Government's support, including by legislation in several cases. Examples of these include:

- the Kakadu Board of Management (which will continue to comprise a majority of Bininj);
- Alligator Rivers Region Advisory Committee;
- the Northern Land Council (registered traditional owners are members, and they elect their Chair and Deputy Chair and appoint Committees);
- the Djabulukgu, Gagudju and Gundjehmi (mining) Royalty Associations;
- liaison committees established under the Ranger and Jabiluka Agreements;
- specific community action groups to monitor and report on social issues (for example, committees on housing and alcohol);
- a social impact monitoring committee arising from the Deed Poll between ERA and the NLC; and
- the Aboriginal Areas Protection Authority (Aboriginal custodians of sacred sites are 10 of the 12 members).

These avenues, as well as the option of specific purpose direct discussions with the responsible Minister and senior officials, also remain open to the Jabiluka traditional owners should they elect to participate at some future date. In the meantime their right not to participate is respected.

Appendix 1 outlines the range of cultural and other programs which have been developed by the Park and the Board and which illustrate a strengthening of the involvement of Aboriginal people and of cultural life in the Park.

### 6.12 RECOMMENDATION 12: INTERACTION WITH THE SCIENCE GROUP

**With reference to the need to develop stronger community trust of, and communication with, the Supervising Scientist Group [now the Science Group], the Mission recommends that the presence of ERISS be maintained in Jabiru and that the question of membership of the Advisory Committee should be reconsidered.**

## Response to Recommendations

The Australian Government will maintain a presence in Jabiru but finds this recommendation somewhat contradictory to Recommendation 3 of the Mission's report cautioning against incremental growth at Jabiru. To maintain a core of quality scientific experts in the region, it is necessary to ensure that they are located close to the universities and research facilities of the city of Darwin.

The Kakadu Region Social Impact Study found that there was low awareness among Aboriginal people in the region of the role of the Environmental Research Institute of the Supervising Scientist (ERISS), a need for ERISS to better explain research results to local Aboriginal people and a need for ERISS to give more attention to Aboriginal knowledge. Historically, the Supervising Scientist accepted an arrangement where the Supervising Scientist communicated with traditional owners through the Northern Land Council (NLC) rather than developing its own direct relationship with local Aboriginal people.

In 1997 the Supervising Scientist appointed a senior officer (with long successful experience working with Aboriginal people in the region) to develop and implement an Aboriginal communications program at ERISS.

The Aboriginal communications program aims to develop:

- better understanding by local Aboriginal people of the role of the staff of ERISS and the Supervising Scientist;
- more interaction and engagement with the Aboriginal community;
- a stronger relationship with local Aboriginal people, and Aboriginal organisations, based on confidence and trust in the work of ERISS;
- more understanding of the environmental protection issues that are important to Aboriginal people in the Alligator Rivers Region;
- a stronger sense of accountability to the Aboriginal people, especially land owners, among the staff of the ERISS; and
- more involvement of local Aboriginal people in the planning and the conduct of ERISS projects.

Practical outcomes have included:

- more regular information exchange with local Aboriginal people;
- regular direct reporting to Aboriginal people, and their representative organisations about ERISS research and work programs—this has included reports on environmental research work associated with the Jabiluka mine;
- cooperating with the NLC in the delivery of mining-related information programs;
- completion by most staff at ERISS of a cross cultural course with a focus on cross cultural communications issues; and
- a number of staff have participated in short courses in the local (Aboriginal) Kunwinjku and Gundjehmi languages.

### Relocation of ERISS

In August 1998 the Government announced that it would establish a National Centre for Tropical Wetlands Research (NCTWR) at the Northern Territory University (NTU) in Darwin. It was also announced that the Environmental Research Institute of the Supervising Scientist (ERISS) would be relocated from the township of Jabiru to the NTU campus in Darwin (2.5 hours by road from Jabiru).

## Response to Recommendations

The relocation of the majority of ERISS staff to Darwin will significantly improve the capacity of ERISS to meet its responsibilities. ERISS will be located close to university and research facilities in Darwin and as a consequence be better able to attract and retain further world class scientists, benefit from purpose built facilities, better access the scientific community and develop collaborative research ventures. These opportunities will enhance the abilities and functions of ERISS and ultimately improve the management of the World Heritage property.

ERISS will maintain a field office and laboratory in Jabiru with five staff all of whom will be required (as a core part of their duties) to maintain strong communications links with Aboriginal people in the region.

### Alligator Rivers Region Advisory Committee

The Alligator Rivers Region Advisory Committee is established under the *Environment Protection (Alligator Rivers Region) Act 1978* as forum for the exchange of information between the mining companies, Commonwealth and Northern Territory Government authorities and Aboriginal, environment and community groups. Membership of the Committee was most recently reviewed in 1998 and as a result of that review membership was extended to include representatives of the three major Aboriginal associations operating in the northern part of Kakadu National Park.

While the Committee remains the main focus for formal exchange of information between the Supervising Scientist and other interest groups it is recognised that there may be a need to establish a separate Aboriginal consultative committee to focus on issues of interest and concern to Aboriginal people in the region. The Supervising Scientist is investigating the most appropriate way of establishing such a group and whether there is any support from Aboriginal people for this initiative. The Supervising Scientist has also started to meet more regularly with the Kakadu Board of Management to report on and discuss the work of the Supervising Scientist.



*Spinifex and sandstone, Koongarra (Michael Preece)*

## Response to Recommendations

### 6.13 RECOMMENDATION 13: THE KOONGARRA MINERAL LEASE

**The Mission is of the opinion that the Australian Government should discuss rescinding the 1981 Koongarra Project Area Act (which proposes amendment of the boundaries of Kakadu National Park to accommodate a mine at Koongarra) with the traditional owners and seek their consent to include the Koongarra Mineral Lease in the Park and therefore preclude mining.**

This Recommendation is supported in principle. The Government has raised the scope of this recommendation with the Aboriginal parties concerned.

This recommendation is based on a misunderstanding about the process that the company must undergo before it can contemplate mining in the area. Under Australian law, as this is Aboriginal Land, the company must first negotiate a satisfactory legal agreement with the traditional owners of the area concerned, through the statutory Aboriginal body, the Northern Land Council. The Australian Government must also endorse such an Agreement.

The previous and current owners have not been able to conclude this process, particularly for the area specified under the 1981 Koongarra Project Area Act (refer Figure 9).

Should the current owners finalise a satisfactory Agreement sometime in the future and/or if the company still contemplated mining in the area of the original lease, the project could not commence without a rigorous and transparent environmental assessment under both Australian and Northern Territory environmental law. The Australian Government will not approve a mine that would damage World Heritage values.

### 6.14 RECOMMENDATION 14: THE TOWN OF JABIRU

**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.**

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. The Australian Government is willing to supply further information to the World Heritage Committee on this issue.



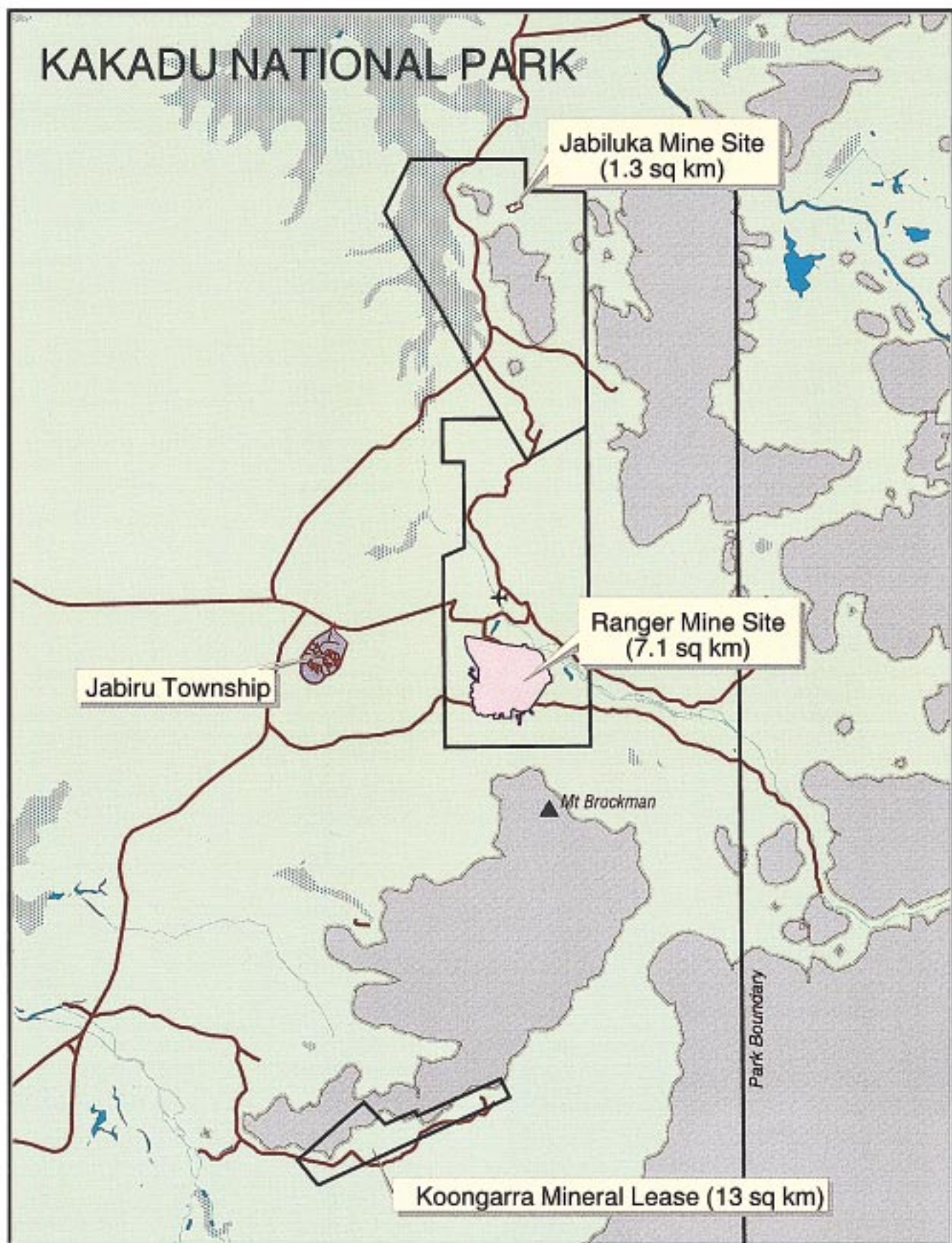


Figure 9. Koongarra, Ranger & Jabiluka leases, and the township of Jabiru.

Approx 10km

This figure is for illustrative purposes only.

## Response to Recommendations

The nature and development of Jabiru is strictly controlled so that it does not adversely impact on the World Heritage values of Kakadu National Park. Jabiru, which forms part of the Park, is a planned township established under a legal framework which protects the values of the Park.

Jabiru is leased by the Director of National Parks and Wildlife to the Jabiru Town Development Authority. The Authority is required to manage the land in accordance with the *National Parks & Wildlife Conservation Act 1975*, the National Parks and Wildlife Regulations, the Kakadu Plan of Management, and a town plan which must be prepared and approved by the Director in accordance with the requirements of the Act and Regulations.

The planning and growth of Jabiru is strictly controlled and does not present a threat to the World Heritage values of the Park. Jabiru in fact plays a useful role in the effective management of Kakadu National Park. Because of its location and remoteness from other centres, being the only township within a radius of 150 km, Jabiru has become an administrative centre for staff managing the Park and the World Heritage property (refer Figure 2).

The Senate Standing Committee (1988) found that (p 161, para 14):

“Jabiru offers a convenient living base for those Aborigines employed by Ranger or ANPWS. It also offers a base for other Aborigines who wish to live in the Park and is a location for essential services”.

Jabiru has continued up to the present to provide for Aboriginal people in this way.

Development in Jabiru is administered through a town plan, which must be approved by the Director of National Parks in accordance with the Act. The fourth Plan of Management makes clear the stringent processes associated with approval to changes to the town plan. For example, before approving changes to the town plan, the Director requires an assessment of the expected positive and negative impacts of the proposed change on the natural and cultural environment of the Park, on Bininj/Mungguy interests, and on appropriate use, appreciation and enjoyment of the Park by the public.

Kakadu National Park is an excellently managed park. It is not alone in World Heritage properties in having to balance developments within its borders. For example, the Canadian Rocky Mountain Parks World Heritage property (23,069 sq km) has four towns within its boundaries, Banff, Jasper, Lake Louise and Field, comprising a total resident population of 10,000 people. According to the 1991 census, the town of Banff alone had a population of 5,165, while situated in the Banff National Park which is 6,641 sq km in size (an area approximately a third the size of Kakadu National Park). Other World Heritage properties have substantial population centres near their boundaries. For example, Yosemite National Park has a population of 100,000 people living in communities near, but outside, the Park.

The limited extent of Jabiru compared to the size of Kakadu National Park, and the town's small population level were designed to minimise potential impacts on the National Park. As noted earlier in this report, the town of Jabiru only covers an area of 13 square kilometres, or 0.07% of the total area of the National Park.

In 1998, when the Senate Standing Committee on Environment, Recreation and the Arts tabled its report on *The Potential of the Kakadu National Park Region*, the population of Jabiru was 1200. The population was estimated at 1480 in 1998 and the estimated maximum future population, in response to the requirements of operating a mine at Jabiluka, is about 1700 - less than half that proposed by the Fox Inquiry and half that for which the town plan provides.

During the development of the Jabiluka mine, there will be no significant increase in the size of the Jabiru township. This is primarily because the mining company, ERA, will use housing which will be vacated by the relocation of Environmental Research Institute of the Supervising Scientist staff to the capital city of



## Response to Recommendations

Darwin. Additionally, Jabiru has a number of vacant housing sites on which further accommodation may be built if required.

### 6.15 RECOMMENDATION 15: INTRODUCED WEEDS

The Mission recommends that for both *Mimosa pigra* and *Salvinia molesta*, adequate funds (separate from general management funds) should be identified and guaranteed, but not to the budgetary detriment of other Park management and protection priorities.

The Australian Government recognises that funding for specific weed and pest issues are determined by Parks Australia and the Kakadu Board of Management as part of the annual Park budget and according to management priorities. The new Plan of Management, tabled in the Australian Parliament, documents that this work is being carried out. The World Heritage Committee commended Kakadu National Park on the significant extra steps being taken by the Australian Government on these threats.

The control of *Mimosa pigra* and *Salvinia molesta* are recognised as a priority under the Kakadu National Park Plan of Management. These weeds pose a significant threat to both natural and cultural values of the Park if not controlled.

A weed management strategy was developed through extensive consultation with Aboriginal traditional owners, Park staff and weed experts. With the approval of the Board, this strategy will be followed and reviewed during the life of the management plan. The strategy is based on the principle of integrated habitat management and is being implemented in cooperation with indigenous communities, the Jabiru township, and mining operators.



Protecting  
Kakadu:  
spraying  
*Mimosa pigra*  
(Michael  
Preece)

## Response to Recommendations

The Park devotes some \$700,000 per year on the control of invasive species such as mimosa and salvinia. This funding provides resources for weed control, monitoring, research and education. A weed survey of the Park will be carried out by Parks Australia during the next five years.

Weed management within the Park is recognised as best practice. At the time of listing the World Heritage Committee complimented the Park managers on the standard of management. This was confirmed in the Mission's comments on how impressed they were by the efforts to control outbreaks of weed in the Park and the remarkable success achieved. This high level of standard will be maintained. Threats to the Park from introduced species have in fact declined significantly since listing, because of these programs.

### 6.16 RECOMMENDATION 16: CANE TOADS

**The Mission recommends that additional necessary funds and resources be provided to research the potential threat of cane toads to Kakadu National Park and to develop measures to prevent such a threat.**

The Australian Government notes that funding for specific weed and pest issues are determined by Parks Australia and the Kakadu Board of Management as part of the annual Park budget and according to management priorities. The Australian Government has previously allocated extensive scientific research resources to curb or eliminate this imported threatening pest with little success.

The Plan of Management for Kakadu National Park recognises that cane toads may arrive in the Park within the next decade (Kakadu Board of Management & Parks Australia 1998). However, there is no clear consensus that cane toads pose a significant threat to biodiversity.

The Australian Government invested \$3.3 million between 1990 and 1995 on research on biological controls for the cane toad. Despite this funding, these studies failed to discover any viable and effective control measure.

Without an effective and viable control measure, efforts are now focussed on improving the early detection of cane toads. The Park will also develop and undertake a monitoring program targeting native vertebrates to assess the short and long term impacts of cane toads on native species.

## CONCLUSION

*The Australian Government has, since becoming a member of the Convention, established an extensive framework of law, policy, program and management arrangements for its World Heritage properties. Always, the obligation to protect the World Heritage values has been the primary consideration and the major driving force. The UNESCO mission has provided advice on a broad range of issues relating to Kakadu National Park. This advice has been given careful consideration and where consistent with Australia's policy position, action has been taken. A minority of recommendations, especially these relating to the Jabiluka mine process cannot be accommodated. They are either inconsistent with Australia's policy position, based on contradictory or flawed evidence, or pay insufficient regard to Australia's legal, policy and program framework and the ways in which Australia has managed and protected the values of the World Heritage property.*

# CHAPTER 7

## List of World Heritage in Danger: Criteria and Benchmarks

- 7.1 The World Heritage System
- 7.2 Criteria for Placing a Property on the World Heritage in Danger List
- 7.3 Benchmarks
- 7.4 Kakadu: Integrity and Protection
- 7.5 Analysis of Mission Findings Relating to Ascertained and Potential Threats
- 7.6 Delineation of the World Heritage Boundary—History and Reasoning
- 7.7 The Burden of Proof in Considering a World Heritage in Danger Listing
- 7.8 Consistency and Equity Issues
- Conclusions





## List of World Heritage in Danger: Criteria and Benchmarks

### CHAPTER SEVEN: THE LIST OF WORLD HERITAGE IN DANGER—CRITERIA AND BENCHMARKS

This Chapter examines the need for the practices and decisions of the World Heritage Committee and Bureau to be informed, consistent and certain in order to respect the sovereignty of States Party to the Convention. By examining recent practice, it derives criteria and benchmarks for placing a property on the List of World Heritage in Danger. It examines, in summary form, the threats cited by the Mission report and considers their applicability against these benchmarks. Further information on each recommendation is also included in the annotated Mission report.

#### 7.1 THE WORLD HERITAGE SYSTEM

A State Party's decision to nominate a property for inclusion on the World Heritage List requires a substantial commitment of resources, both physical and financial, that must be balanced with its social, cultural and economic aspirations. To make such a commitment, a State Party must be confident in the system created by the World Heritage Convention. The practices and decisions of the international bodies created within this system must be informed, consistent and certain to maintain the confidence of all States Party.

A decision by the Committee to inscribe a nominated property on the World Heritage List is an endorsement of the values, boundaries and related circumstances of the property as they are detailed in the nomination. Such a decision commits the Committee to respect the integrity of the property over time in the terms in which it is inscribed. The decision may well form the basis for long term and substantial investment decisions in areas adjacent to or within the property. Decisions on listing, whether on the List of World Heritage or the List of World Heritage in Danger, must be made on the basis of robust, objective evidence and should draw on the body of knowledge and precedent developed through previous decisions and actions. States Party rely on the consistency and reliability of decisions of the Bureau and Committee to implement effective domestic management arrangements that meet their obligations under the Convention.

#### 7.2 CRITERIA FOR PLACING A PROPERTY ON THE WORLD HERITAGE IN DANGER LIST

In Danger Listing must not be taken lightly. A mere possibility of an impact on World Heritage values is not sufficient to justify listing by the Committee. It would be an impractical and inappropriate use of the precautionary principle to proceed in this way, as most World Heritage properties would probably be listed.

Article 11.4 of the Convention establishes a list of inscribed properties, “for the conservation of which major operations are necessary and for which assistance has been requested.” Considerations for placing a World Heritage Property on the List of World Heritage in Danger are contained in the World Heritage Convention and the Convention's *Operational Guidelines* (paragraphs 76–89). The list is intended to be the means by which assistance is provided to deal with natural or human-made conditions which threaten the values for which the Property was originally inscribed on the World Heritage List. Broadly, listing results from deterioration needing remedial conservation action, or from a “serious and specific” danger, to the values of a Property. Dangers can be ‘ascertained’ (ie, specific and proven imminent danger) or ‘potential’ (threats which could have deleterious effects on its inherent characteristics).

It is necessary not only to establish that ascertained or potential dangers exist, but also that they are of such scale and likelihood of occurrence that they are a significant threat to the values. The *Operational Guidelines* at paragraph 85 (b) indicate that “physical or cultural deteriorations...should be judged according to the intensity of its effects and analysed case by case”. Since the *Operational Guidelines* do

## List of World Heritage in Danger: Criteria and Benchmarks

not specify how these matters of scale and probability are to be determined, it is necessary to examine how the World Heritage Committee has previously determined these terms in practice by referring to the process and reports for properties already listed. Without explicit guidelines, the precedents established in practice provide de facto benchmarks.

### 7.3 BENCHMARKS

A full listing of properties placed on the List of World Heritage in Danger is at Appendix 3.

The World Heritage Convention provides for listing of a property on the 'In Danger' list only with the request and consent of the State Party. Australia has not requested, nor has it given consent to the inclusion of Kakadu National Park on the 'In Danger' list because the World Heritage values of Kakadu National Park are not threatened. Australia believes a decision to list Kakadu National Park as 'In Danger' would therefore be inconsistent with the Convention's own requirements.

Leaving aside the issue of the request and consent of the territorial State, these listings provide the benchmarks for World Heritage Committee practice since changes to the *Operational Guidelines* were made in 1992. In that year, the Committee (Australia was not a member at the time) decided sites could be inscribed on the In Danger List without a request by the State Party concerned. The *Operational Guidelines* are, however, secondary to the Convention and their correct role and sphere of operation must be recognised.

Since the changes to the *Operational Guidelines* in 1992, listings have had a high degree of consistency in terms of the intensity of threat concerned. The properties have:

- clearly ascertained and substantial threats to the values of the World Heritage area; and
  - either an apparent inability of the State Party to manage the threats and remedy the problem;
  - or have been the subject of a request by the State Party for support for the property.

The dangers faced by these properties have been serious and specific. They have suffered impacts such as war, armed unrest, earthquake, continuing poaching, unplanned road construction, uncontrolled mining, hurricane, ecological collapse and uncontrolled pollution.

Most properties have been located in areas where the provision of adequate management and threat abatement strategies has been severely constrained by a lack of resources or where the State party, for reasons such as civil unrest or war, has been unable to cope with the requirements of the situation. Many States have not responded to repeated requests for advice from the World Heritage Committee or Bureau.

Alternatively, some states have requested listing in order to either gain resources or to focus attention on problems and garner support for solutions.

It is noteworthy that there is no property on the List of World Heritage in Danger where the State Party:

- can demonstrate that values are not endangered;
- has effective legislative and management strategies in place; and
- has reported on those strategies in detail to the World Heritage Committee.

In short, the Committee needs to be consistent in the standards it applies to different properties, and consistent over time in relation to a property in the judgments it makes about matters so serious that they could lead to a property being placed on the In Danger list.



*Mt Brockman in  
the wet season  
(Michael Preece)*

#### 7.4 KAKADU: INTEGRITY AND PROTECTION

In order to ascertain whether Kakadu National Park meets the threshold for listing as World Heritage in Danger, the Australian Government has carefully examined the Mission report to ascertain:

- What threats it specifically identified.
- The objective evidence for each of these threats.
- The increment of threats and any increase in their severity since its most recent World Heritage listing in 1992.
- What remedial action might be required to minimise or eliminate the threats identified by the Mission.

In the following section of this report, the threats cited by the Mission are summarised followed by a discussion of the evidence to support each threat and an analysis of the degree of change in the level of threat since 1992.

## List of World Heritage in Danger: Criteria and Benchmarks

### 7.5 ANALYSIS OF MISSION FINDINGS RELATING TO ASCERTAINED AND POTENTIAL THREATS

#### 7.5.1 Changes to the 'three mines policy'

**Mission's Findings:** *That changes to the 'three mines policy' allows for two uranium mines to be in operation at one time and that this is in contrast to the recommendations of the Fox Inquiry for the sequential development of mines. This change will have a profound effect on values as it has opened the way for the construction of at least one new mine (ie, Jabiluka).*

**The Evidence:**

- The Second Fox Report (1977) stated (p 223):

'We recommend strongly that the number of people in the town [Jabiru] not exceed 3500; but the smaller the better. This is a much larger number than will be necessary to accommodate people associated with the Ranger mine but it allows for the possibility of the Pancontinental Mine [Jabiluka] getting into production during the life of the Ranger mine.'

and (op cit p 335):

'That if the Ranger proposal is allowed to proceed, no other mining, with the possible exception of that proposed by Pancontinental [ie Jabiluka] , be allowed in the [Alligator Rivers] Region west of the Arnhem Land Reserve, for the time being at least.'

- Thus the operation of Jabiluka is not in conflict with the Fox Report.
- The Fox Inquiry further referred to the (significantly larger) Pancontinental proposal and discussed it in terms of the mine proceeding in the near future, once the necessary approvals had been given. The Mission's report does not recognise this.
- By 1982, Pancontinental's proposal to develop Jabiluka had completed environmental approvals under the EPIP Act. With the change in Government in March 1983, and the institution of the 'three mines policy', Jabiluka did not proceed.

**Changes in the level of threat:**

- There has been no increase in threats to Kakadu, incremental or otherwise, as a result of this policy change. The World Heritage nomination documents made it clear that the three mine lease areas were not included in the nominated property and the World Heritage Committee was alerted to the possibility that mining development could proceed (see nomination documents 1980, 1986 & 1991).
- 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.

**Mitigation:**

- The Australian Government has ensured and will continue to ensure that environmental impact assessment processes, scientific monitoring and world class park management strategies are in place to eliminate any threat to the values of the Park.
- The Australian Government will continue to openly report on this issue.



## List of World Heritage in Danger: Criteria and Benchmarks

### 7.5.2 Nature of the Environmental Impact Assessment process for Jabiluka

**Mission's Findings:** *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 Evidence:**

- The Mission's report did not analyse the more than 70 environmental requirements, raised no issues about their adequacy and gives no indication of any perceived shortfalls or omissions.
- The translation of 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.

**Changes in level of threat:**

- There is no change in the level of threat to World Heritage values as a result of this process. In fact, the environmental safeguards and the scrutiny of their implementation are more stringent than those which applied to the development of Ranger and which have successfully protected Kakadu's World Heritage values for over 20 years.

**Mitigation:**

- The Australian Government has ensured and will continue to ensure that environmental impact assessment processes are of a standard that will eliminate any threat to the values of the Park.
- The Australian Government will continue to openly report on this issue.

### 7.5.3 The Jabiluka and Ranger Milling Alternatives

**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.
- While both the RMA and JMA have received environmental clearance, subject to compliance with over 70 conditions, the Australian Government, the Northern Territory Government and ERA consider the RMA to be a superior proposal in terms of environmental considerations, project economics and logistics. ERA understands that consent for the development of the RMA has not been given by the traditional owners and it is possible that the JMA will be progressed. The JMA is consistent with the traditional owners consent in the 1982 Agreement.

## List of World Heritage in Danger: Criteria and Benchmarks

- The Mission implies that the RMA option is preferred for environmental reasons, regardless of the wishes of traditional owners. This is in conflict with other threats identified and recommendations made by the Mission.

### **Changes in the level of threat:**

- There is no change in the level of threat to World Heritage values as a result of this process. Both options have been extensively assessed to ensure that there is no damage to the World Heritage values.

### **Mitigation**

- The Australian Government, as milling options are further considered, will ensure there is no threat to the values of the Park.
- The Australian Government will continue to openly report on progress.
- The Australian Government will continue to respect the legal rights of the traditional owners to control various aspects of the mine development, including their choices on the RMA/ JMA options.

### **7.5.4 Construction of the Jabiluka uranium mine**

**Mission's Finding:** *The Mission seriously questioned the fact that the underground mine requires significant surface works and facilities and the compatibility of uranium mining and milling in such close proximity to, and upstream from, a World Heritage property .*

### **The Evidence:**

- The Mission's report provides no evidence for a lack of compatibility between World Heritage listing and mining in areas adjacent to, but not within, the World Heritage property.
- It does not give weight to the important fact that the nearby Ranger uranium mine has been in continuous operation throughout the period that Kakadu National Park has been inscribed on the World Heritage List, with the full knowledge of the World Heritage Committee and with no reported adverse effect on or threats to World Heritage values.
- The preferred Jabiluka development will occupy less than 1.3 sq km of the surface area, significantly less than the 7.1 sq km occupied by the Ranger mine. The original Jabiluka mine proposal approved in 1982 would have been over forty times larger in surface works than the present preferred proposal.
- The separate report from the Supervising Scientist on the Mission's findings has concluded that:
 

"contrary to the views expressed by the Mission, the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high. There would appear, therefore, to be no justification for a decision by the World Heritage Committee that the natural World Heritage values of Kakadu National Park are in danger as a result of the proposal to mine uranium at Jabiluka." (Executive Summary)
- There are several notable examples of mining activities occurring within and adjacent to World Heritage properties internationally.

## List of World Heritage in Danger: Criteria and Benchmarks

### *Changes in level of threat:*

- The safe operation of the Ranger mine for 20 years and the extra safeguards put in place for the much smaller adjacent Jabiluka mine indicate that there has been no significant increase in the threat from uranium mining since 1992.

### *Mitigation:*

- The Australian Government will continue to openly report on progress.

### 7.5.5 Scientific uncertainties and the need for risk assessment

**Mission's Finding:** The Mission identified three issues of scientific uncertainty that lead to a finding of potential danger: (i) the degree of uncertainty concerning the quality of the hydrological modelling carried out in designing the water management plan for the mine site and the implication that this may lead to the release of water from the mine site into the Swift Creek system; (ii) the degree of uncertainty concerning the effectiveness of the concrete pasting process as a means of storing the tailings in the mine void, and (iii) the possible impacts on catchment ecosystems. The Mission made general references to the concerns of some scientists, and suggested that formal risk assessment processes had not been undertaken.

### *The Evidence:*

- The views of the Supervising Scientist on the precise proposals in the EIS and PER, supported by nearly 20 years of multidisciplinary field research in the region, do not accord with those of the scientists who have raised issues of uncertainty.
- The detailed evidence provided in the Australian Government's submission to the Mission on scientific issues was not assessed or questioned in the report.
- Risk assessments were completed as part of the Australian Government's environmental impact assessment process and were undertaken for those components of the project where the risk assessment technique is effective and can be used to determine such factors as engineering design parameters. They included formal risk assessments for hydrological impacts, water management, transport, haulage and spillage and are described in both the EIS and PER.
- The Australian Government has undertaken a comprehensive and thorough independent scientific review of all alleged threats to the Park arising from technical proposals for mining and has demonstrated in the scientific review that any necessary modifications can be made in project planning.
- The separate report from the Supervising Scientist on the Mission's findings has concluded that the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and that the degree of scientific certainty that applies to this assessment is very high.

### *Changes in the level of threat:*

- Taking into account the 20 years of safe operation of the Ranger mine, and the even more rigorous review of the proposed Jabiluka mine, it cannot be argued that there is any increase in threat from mining since the inception of the Park.

## List of World Heritage in Danger: Criteria and Benchmarks

### **Mitigation:**

- The Australian Government will ensure that the results of the comprehensive and thorough independent scientific review of issues of scientific uncertainty are incorporated as necessary so that there are no threats to the natural values of the Park arising from mining operations.
- The Australian Government will continue to openly report on progress.

### **7.5.6 Visual impact**

**Mission's Findings:** *While recognising that the Jabiluka lease is not legally within the Park and World Heritage property, the mission found that the location of the mine site, diminishes the natural beauty of the wetlands and adjacent escarpment. The mission therefore found that the visual impact of Jabiluka is a distinct and significant additional intrusion and that the vivid visual intrusion of Jabiru on the integrity of Kakadu National Park cannot be disputed. The Mission found that this constitutes an ascertained danger for the natural World Heritage values of Kakadu in that it constitutes a deterioration of the "natural beauty or scientific value of the property" as set out in Paragraph 79 (i)(b) of the Operational Guidelines.*

### **The Evidence:**

- As was acknowledged by the Mission, the Jabiluka mine cannot be seen from any point in the World Heritage property.
- If a development which is only visible from the air is used as a benchmark for a potential World Heritage in Danger listing then this could have major implications for the management of all World Heritage properties.
- Scenic flights, which operate from Jabiru Airfield on the Ranger lease, generally do not fly over the Jabiluka project area. Any view of the Jabiluka project area would be very minor compared to the view of the Ranger Project Area which occurs at take off and landing.
- Jabiru is a very small town in a Park the size of Wales. Much larger towns are found in other, smaller, natural World Heritage properties.
- See also Section 7.5.16.

### **Changes in level of threat:**

- The extension of the threat to visual integrity since inscription is minimal. The World Heritage Committee accepted both the exclusion of the mining leases and the existence of Jabiru on all three occasions that the Park was listed.

### **Mitigation:**

- The Australian Government has ensured and will continue to ensure that the Jabiluka project will not be visible from the World Heritage property.
- The minimal growth of Jabiru will be closely monitored and managed.
- The Australian Government will continue to openly report on this issue.

## List of World Heritage in Danger: Criteria and Benchmarks

### 7.5.7 Dangers to the cultural values of the Jabiluka Mineral Lease

**Mission's Findings:** *The Mission claimed that the cultural integrity of the Jabiluka Mineral Lease (and in particular of the Australian Heritage Commission areas including the Jabiluka Outlier and Malakananja II) is potentially under direct threat from the proximity and scale of the mine construction. This has the potential to impact on the cultural values of the adjoining World Heritage property.*

*In the view of the Mission, the existence of areas of particular spiritual significance to Aboriginal people were not fully considered in the course of establishing (1) the original boundaries of the Jabiluka Mineral Lease, (2) the mine construction site, (3) the boundaries of the areas identified as significant by the Australian Heritage Commission, or (4) the boundaries of the World Heritage area. They also claimed that there has been no recent comprehensive archaeological and anthropological survey performed as part of the Environmental Impact Assessment process.*

**The Evidence:**

- No argument is advanced as to what the direct threats to cultural values are on the Jabiluka lease or, by extension, how they will impact on the World Heritage property.
- The Mission did not report on the range of measures designed to ensure that the cultural values of the Jabiluka Mineral Lease, including those of the Djawumbu-Madjawarna Sites Complex, would not be harmed by mining. 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.
- Australia has comprehensive legislation, both at the Federal and State and Territory level, to protect cultural heritage values including Aboriginal sacred sites. The Mission did not report on measures developed to protect cultural heritage values as part of the environmental assessment process.
- 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.
- 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. The traditional owners supplied no information on these issues to the EIS process.

**Changes in level of threat:**

- The delineation of the boundaries of Kakadu National Park and the management of both the Park and cultural sites on the lease areas, have taken into account current, agreed information on natural and cultural values. Further strategies for site protection and surveys will ensure that there is no damage to the cultural values of the World Heritage property.

**Mitigation:**

- The Australian Government has ensured and will continue to ensure that the Jabiluka project does not impact on the cultural values of the World Heritage property and is implementing the recommendations of the Mission.
- The Australian Government will continue to openly report on progress.



## List of World Heritage in Danger: Criteria and Benchmarks

### 7.5.8 The Boiwek Djang (Gecko Dreaming) site

(Note: The mission report is unclear in listing this specific site as a threat. The Australian Government understands that it was intended to refer to possible damage to the site through mining developments.)

**Mission's Findings:** *The Mission noted that while the fact that the landscape of Kakadu is spiritually imbued was used in the justification of the World Heritage nomination and inscription, the Boiwek site was not referred to specifically. It noted that some Mirrar people, and in particular their senior spokesperson were fundamentally fearful of the possible destructive impact of the Jabiluka uranium mine on the Boiwek dreaming site. The Mission claimed that this fear mirrors concerns of the late father of the senior spokesperson about the potentially destructive impacts of the Ranger mine on the indigenous religious/spiritual landscape. Given the scale and depth of the Jabiluka mine decline, and its underground proximity to the Boiwek site, such uncertainty and concern was regarded by the Mission as understandable.*

**The Evidence:**

- See also Section 5.6.
- The Boiwek site is not within the World Heritage property.
- The Mission relied for evidence on this issue on the advice and current views put by the current traditional owners of the Mirrar estate. The Australian Government agrees that this is the current view of the Mirrar, but it seems that the views of other traditional owners with custodial rights over the site were not considered.
- 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 36th 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.
- 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. The late father of the senior traditional owner was a willing party to that agreement. Recent claims relating to the extent of the Boiwek site are not consistent with the 1982 Agreement and previously available documented anthropological evidence.
- Under the base agreement there is clear provision for the identification of additional or more extensive sites. Over the first 17 years of the Agreement, including when the transfer of the lease from Pancontinental Mining to ERA was negotiated in 1991, no such proposals were made. In 1991, the traditional owners lobbied the government to allow the mine to proceed, indicating at that time that they accepted that the protection of Boiwek, pursuant to the base Agreement, was adequate.
- 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 impacts to the site.
- Claims that the extent of the ore body is now the understood definition of the sacred site are discussed in Chapter Five of this report.

## List of World Heritage in Danger: Criteria and Benchmarks

### **Changes in the level of threat:**

- No verifiable evidence is presented by the Mission of any direct ascertained or potential threat to the defined and agreed boundaries of the Boiwek site, or for damage beyond that site to the broader cultural values of the World Heritage property.
- The World Heritage Committee accepted the boundaries of the World Heritage property, with the specific exclusion of the Jabiluka lease in 1992.

### **Mitigation:**

- The State Party has indicated its willingness to work with the traditional owners and the proponent in defining the boundaries and ensuring the protection of the site.
- The Australian Government will continue to openly report on progress.

### **7.5.9 Threats to the living cultural heritage of Kakadu**

**Mission's Findings:** *The Mission argues that the integrity of the World Heritage associative values recognised by the inclusion of Kakadu National Park on the World Heritage List on the basis of cultural criterion (vi) depends on the ability of affected Aboriginal communities to continue their traditional relationships to the land. It states that this ability, and therefore the living cultural heritage values for which Kakadu National Park was listed, are demonstrably under threat. It claims that the living traditions are being directly and indirectly impacted by mining activity at Jabiluka and by other social and economic distresses. The mission is of the opinion that threats to the living cultural traditions of Kakadu have increased since its inscription on the World Heritage List in three stages in 1981, 1987 and 1992. The nature of incursions into the Kakadu area which include mining, tourism, urbanisation and resident population growth have been thoroughly documented in the Kakadu Region Social Impact Study (KRSIS) completed in July 1997.*

### **The Evidence:**

- 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. The Jawoyn and other traditional owners have conveyed their concerns on this issue to the Mission.
- 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. This has strengthened cultural continuity in the Park and shows that traditional owners are able to continue their traditional relationships to land. It is not consistent with a view that the overall attractiveness of the area to traditional owners has decreased since the introduction of mining.
- The Australian Government has given high priority to the support of cooperative initiatives for sustaining and enhancing the living cultural traditions of Kakadu since the declaration of Kakadu National Park, especially working through the Kakadu Board of Management. A range of initiatives has been implemented including an extensive number of agreements with traditional owners for cultural heritage protection and programs for ensuring that cultural values are an essential part of Park management and the visitor experience (see Appendix 3).

## List of World Heritage in Danger: Criteria and Benchmarks

- KRSIS found that the social conditions of Aboriginal people in the Kakadu region are neither demonstrably better nor worse than other Aboriginal communities in the Northern Territory.
- The distribution of mining royalties has created many financial investment, employment and economic development opportunities for Aboriginal communities in the Park.

### **Changes in the level of threat:**

- No evidence is presented by the Mission of a direct ascertained or potential threat to the cultural values of the World Heritage property of Kakadu National Park. Only the mine working area, a small part of the lease, cannot be accessed by traditional owners. This restriction has been agreed. The lease is not in the World Heritage property.

### **Mitigation:**

- The Australian Government will continue to openly report on progress.
- KRSIS initiatives are being accelerated with the full cooperation of most traditional owners.

### **7.5.10 The 1982 Agreement**

**Mission's Findings:** *The Mission noted that the strongly held beliefs of the traditional owners must be respected and that the implementation of the World Heritage Convention (in this case the protection of the living cultural traditions recognised through World Heritage inscription) must take into account the fundamental rights of the indigenous people and reconsider the status of the 1982 agreement and the 1991 transfer of ownership.*

### **The Evidence:**

- The Mission relied on the views of the current traditional owners of the Mirrar estate that previous agreements by traditional owners were signed under duress or not fully understood and their view that the Park's cultural values will be irretrievably damaged if mining goes ahead. The Mirrar gave consent in 1982 and 1991. There is no evidence of duress, and no challenge to the validity of the agreements has been made.
- 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.
- The Northern Land Council as well as senior and key members of the Kakadu Aboriginal community continue to support the 1982 Agreement and the 1991 transfer of rights. Legislation dictates that the traditional owners' consent to the Jabiluka mine, as provided for by the 1982 Agreement, could only have been given if the traditional owners themselves had been fully consulted about the proposal and, as a group, consented to it.
- The previous senior Mirrar traditional owner was a party to the 1982 Agreement. None of the principals associated with the 1982 Agreement have disowned it or the process. In 1991 Bill Neidjie, one of the traditional owners who was a principal to the 1982 agreement, referred to the importance of the 1982 Agreement being kept because it was *Bininj* (Aboriginal) law that since the two old men who had agreed to the mine proceeding were now dead their word was law and must be followed.

## List of World Heritage in Danger: Criteria and Benchmarks

- 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.

### **Changes in the level of threat:**

- The World Heritage Committee reinscribed Kakadu National Park in 1987 and 1992, making no comment on the 1982 agreement which allowed for mining in the areas adjacent to the World Heritage Area.

### **Mitigation:**

- The Australian Government will continue to openly report on progress and to support the traditional owners' legal and negotiated rights to control aspects of the mining proposal.

### **7.5.11 Lack of recognition of the Kakadu cultural landscape**

**Mission's Findings:** *The Mission stated that the full extent of the outstanding cultural landscape of Kakadu had not been recognised and protected while acknowledging that at the time of the most recent listing, the cultural landscapes criteria had not yet been established under the Convention.*

### **The Evidence:**

- In response to requests for its nomination on cultural landscape criteria, the Australian Government has set in motion a consultation process on the issue with relevant stakeholders.

### **Changes in the level of threat:**

- The fact that the Kakadu World Heritage property has not yet been nominated or listed under the relatively recent cultural landscapes criteria cannot be construed as a threat to the values of the region.

### **Mitigation:**

- The Australian Government has established a consultation process on the issue of whether Kakadu National Park should be re-nominated as a cultural landscape under the World Heritage Convention.
- The Australian Government will continue to openly report on progress.

### **7.5.12 Limitations to the boundaries of Kakadu National Park**

**Mission's Findings:** *The Mission considered that, without protection by boundary extension, the ecological integrity of the existing World Heritage property is in potential danger as the possibility of additional mining projects commencing on the upper catchment has not been excluded.*

### **The Evidence:**

- The land in question is owned by Aboriginal people. Any decision to make it part of the Park would have to be their decision.
- The Ranger mine has operated without any significant environmental impact on the World Heritage property and the World Heritage Committee has not recommended its closure. This provides evidence that mining operations adjacent to the World Heritage property, as long as they are strictly controlled and regulated, can be compatible with the protection of World Heritage values.

## List of World Heritage in Danger: Criteria and Benchmarks

- The traditional owners in the areas outside of Kakadu National Park have actively sought exploration for minerals, and have given their consent to mining related projects on their lands.

### ***Changes in level of threat:***

- Threats from mining outside the boundaries of the Park have clearly not increased since the time of listing, since the World Heritage Committee did not identify the existing Ranger mine as a threat in 1992. Under Australian legislation, any project that could possibly impact on the World Heritage property is subject to rigorous environmental assessment and control.

### ***Mitigation:***

- The Australian Government will ensure that the World Heritage property will be protected from any activities on land outside the World Heritage property, according to land tenure and the wishes of traditional owners.
- The Australian Government will consult with the traditional owners of the lands in question about the Mission proposal.
- The Australian Government will continue to openly report on these issues.

### **7.5.13 Threat to the continuation of the “joint management” regime at Kakadu National Park**

***Mission’s Findings:*** *The mission notes that, generally speaking, the parties involved feel the concept of “joint management” has worked well but claimed that existing and proposed management and legislative changes are fostering a deterioration of trust. The Mission expressed concern that any tensions in the exemplary joint management practice of Kakadu could threaten the management of the World Heritage property.*

### ***The Evidence:***

- The mission, while acknowledging that joint management arrangements has worked well, does not produce any objective evidence of a threat to the natural or cultural values of the Park.
- No argument is advanced as to what direct threats to natural or cultural values of the World Heritage property are posed by administrative changes to the National Parks and Wildlife Service’s head office or the addition of a Northern Territory member to the Board. Neither will impact on the day to day management of the Park or change the clear majority of traditional owners on the Park’s governing Board.
- The Australian Government agrees that the Mission’s report of traditional owner concern about these proposed arrangements is an accurate reflection of their view. The Government is responding to those concerns at the highest level, including through direct Ministerial negotiations.

### ***Changes in level of threat:***

- The implication that “any tension” in such a complex joint management arrangement could constitute a direct ascertained or potential threat to the values of the World Heritage property of Kakadu National Park is neither realistic nor a logical assertion. The presence of tensions over certain issues from time to time is to be expected.



## List of World Heritage in Danger: Criteria and Benchmarks

### **Mitigation:**

- As is standard practice under the joint management arrangements in place for Kakadu National Park, negotiations over points of disagreement continue towards a mutually acceptable outcome.
- The Australian Government will continue to openly report on progress.

### **7.5.14 Overall breakdown in trust and communication**

**Mission's Findings:** *The Mission observed a decrease in effective indigenous influence in the Park, and a breakdown in communication and trust which has the potential to jeopardise the conservation and management of the Park.*

### **The Evidence:**

- Certain members of the Park's Board of Management expressed the view that, in general, they experienced poor communication with government authorities and had concerns about a number of proposed changes. The Fourth Plan of Management is clear evidence, however, of the influence of indigenous decision-makers on the Kakadu Board.
- The Australian Government is supporting mechanisms to ensure that indigenous involvement in the management of the Kakadu region, is continually enhanced not diminished. A range of indigenous based committees and organisational structures within the Kakadu region have been established with the Australian Government's support.
- A range of programs and initiatives aimed at strengthening indigenous involvement and cross-cultural understanding are summarised elsewhere in this report (see for instance, Appendix 3).

### **Changes in level of threat:**

- Since the Park's first listing for World Heritage values, the Park's returning Aboriginal population has increased dramatically and the Board has introduced a wide range of measures which protect and promote cultural values.
- Some issues are under negotiation between the Aboriginal owners and government authorities. Traditional owners have clear rights in these matters which they are freely exercising. This is a clear indication of the ongoing strength of cultural life in Kakadu.

### **Mitigation:**

- The Australian Government is giving close attention to both increasing and improving its dialogue and discussion with Aboriginal people over issues of concern and common interest.
- The Australian Government will continue to openly report on progress.

### **7.5.15 The Koongarra Mineral Lease**

**Mission's Findings:** *The mission noted that the Koongarra Mineral Lease excised from Kakadu National Park was located near the highly culturally significant Nourlangie outlier with its outstanding galleries of rock art. It was acknowledged that the legal rights of traditional owners under Australian law include the opportunity to oppose this view.*

## List of World Heritage in Danger: Criteria and Benchmarks

### ***The Evidence:***

- The agreement of both the traditional owners and the Australian Government would be required for mining to proceed at Koongarra. At present, no approval by Government has been given or is under consideration.
- The World Heritage Committee has been advised regularly on the status of the Koongarra Mineral Lease and has not previously expressed concern.
- Any potential threat to the World Heritage values of the Park, including the Nourlangie outlier, will be identified in a comprehensive environmental assessment that would be required under Australian law if the project was to be considered. The project would not proceed if it would damage the World Heritage values.

### ***Changes in level of threat:***

- There is little evidence to support the view that any direct ascertained or potential threat to the values of the World Heritage Area of Kakadu National Park exists as a result of the presence of the Koongarra lease.

### ***Mitigation:***

- The Australian Government has formally sought the views of traditional owners, the leaseholder and the Northern Territory government over the future of the Koongarra lease area.
- The Australian Government will continue to openly report on progress.

### **7.5.16 The town of Jabiru**

***Mission's Findings:*** *The Mission is concerned that the town of Jabiru will continue to grow beyond a level consistent with the management objectives of a World Heritage property.*

### ***The Evidence:***

- 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.
- 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. The number of mine workers who will require accommodation in Jabiru from the Ranger and Jabiluka operations combined is less than the number previously accommodated at the peak of operations at Ranger alone.
- The development of Jabiru is strictly planned under a legal framework which protects the World Heritage values of the Park. It is the administrative centre for the management of the Park and also functions as an important service centre for Kakadu's traditional owners. Traditional owners support the maintenance of Jabiru as a focus for tourism activity.

### ***Changes in level of threat:***

- There is no evidence that Jabiru poses or will pose a greater threat to the World Heritage values of the Park than it did in 1992 when the Park was listed. The town will not grow as a result of the Jabiluka development. Its present and estimated future population figures (1480 and 1700 respectively) are well below the maximum population of 3500 recommended by the Fox Inquiry.

## List of World Heritage in Danger: Criteria and Benchmarks

### **Mitigation:**

- The Australian Government will continue to openly report on this issue.

### **7.5.17 Fire and feral animal management**

**Mission's Findings:** *The Mission recommended greater attention to risks associated with fire and feral animal management within and between the mining leases and between these areas and the Park.*

### **The Evidence:**

- The best practice management of fire and feral animals are priorities in the Kakadu Plan of Management.
- Management regimes in the Park and on the lease areas account for these risks with good results to date.

### **Changes in level of threat:**

- There is no evidence to suggest that threats posed to the World Heritage values of the Park by feral animals and fire events within the lease areas have increased since 1992.

### **Mitigation:**

- Parks Australia and ERA will enhance cooperative arrangements for the identification and management of any potential threats posed by feral animals or fire within the lease areas.
- The Australian Government will continue to openly report on progress.

### **7.5.18 Weeds**

**Mission's Findings:** *The Mission was impressed by efforts to control outbreaks of weeds in the Park and the remarkable success achieved. The Mission emphasised the need for this intensive effort to continue.*



*Fire management  
in Kakadu  
National Park  
(Mark Hallam)*

## List of World Heritage in Danger: Criteria and Benchmarks

### ***The Evidence:***

- The threats posed by weeds in the Park, especially *Mimosa* and *Salvinia*, are recognised and reflected in the resources and attention devoted to their control by the Board of Management and all levels of government.

### ***Changes in level of threat:***

- There is no evidence that this threat has increased. In some cases, the intensive efforts underway to control and reverse the effects of weeds in the Park have effectively reduced the threat since listing.

### ***Mitigation:***

- The Board of Management and respective governments remain strongly committed to maintaining and enhancing these efforts in line with best practice and employing the best available scientific knowledge.
- The Australian Government will continue to openly report on progress.

### **7.5.19 Cane toads**

***Mission's Findings:*** *Recognising the existence of some uncertainty about the potential effects of cane toads on the Park, the Mission warned of the need to account for the possibility that these effects may be severe by ensuring protective regimes were based on the Precautionary Principle.*

### ***The Evidence:***

- Control of invasive species is recognised as a priority in the Plan of Management approved by the Board, the Director and the Minister.
- Invasive species are a significant conservation concern across Australia and cane toads need to be considered seriously but strategically within the national context. Whilst there is clear recognition of the threats posed by feral cats, foxes and rabbits, there is no consensus that cane toads are a significant threat to biodiversity.
- Management of cane toads is a regional issue, and several government agencies have an interest in assessing the potential and actual impacts.

### ***Changes in level of threat:***

- Cane toads have not yet arrived in Kakadu, and pose no greater threat than in 1992. The potential of the threat posed by their arrival is being carefully assessed and planned for as part of an integrated approach.

### ***Mitigation:***

- The Park will promote a coordinated research program, in conjunction with other land management agencies in the region, aimed at predicting and minimising the effects of toads on regional ecosystems.
- The Australian Government will continue to openly report on progress.

## List of World Heritage in Danger: Criteria and Benchmarks

### 7.6 DELINEATION OF THE WORLD HERITAGE BOUNDARY—HISTORY AND REASONING

Australia carefully considered the appropriate delineation of boundaries prior to creating Kakadu National Park and nominating it for inclusion on the World Heritage List. In creating a protected area of this size and significance, it was rightly judged that the inclusion of the pre-existing mining area as part of the World Heritage property would be inappropriate. Extensive management arrangements were established to ensure that this pre-existing use did not conflict with the values or the management objectives of the new protected area.

Each of the three World Heritage nomination documents for Kakadu National Park clearly noted and mapped the uranium mining activities outside the proposed World Heritage property boundaries. The World Heritage Committee was aware of these mining activities when it recommended that each successive stage of Kakadu National Park should be inscribed on the World Heritage List. The Committee in its decisions on inscription did not comment adversely on the boundaries, the operation of the Ranger Uranium Mine, the town of Jabiru, the impact on cultural values of mining, or the integrity of the Park. These were not considered to be ascertained or potential threats.

### 7.7 THE BURDEN OF PROOF IN CONSIDERING A WORLD HERITAGE IN DANGER LISTING

Australia has a strong record of excellence in management of its World Heritage properties. Every year, Australian governments allocate very significant financial resources to ensuring these areas are managed to the highest standard. It has also demonstrated international leadership in implementing joint management measures with indigenous owners of World Heritage properties in Australia (Kakadu and Uluru Kata-Tjuta National Parks).

The strength of Australia's World Heritage management arrangements for Kakadu ensure that the natural and cultural heritage values are safe, protected and will be maintained into the future.

To place Kakadu National Park on the List of World Heritage in Danger, the World Heritage Committee is required to identify actual or potential threats (identified as ascertained dangers or potential dangers in the *Operational Guidelines*) to the World Heritage values of the Park. It is not sufficient to point to dangers to values outside the property which might be of World Heritage interest. It is necessary to demonstrate an impact or a potential impact on the values of the property itself.

There is no ascertained danger to the World Heritage values of Kakadu National Park.

There are a number of issues which require proper management to ensure protection of World Heritage values. 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.

The comprehensive and transparent assessment process for the mine proposal identified all potential impacts, including impacts that could affect the World Heritage values of the Park. 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.



## List of World Heritage in Danger: Criteria and Benchmarks

The measures which give confidence that the potential threats will not become adverse real impacts are as follows:

- scientific research, management plans and structures in place to allow potential threats to World Heritage values to be identified and addressed;
- well-resourced government authorities with responsibility to implement measures designed to maintain the integrity of the property;
- comprehensive action being taken to preclude or mitigate any of the identified potential impacts;
- accountable structures either being developed or are already in place for the continuous monitoring of natural and cultural values and for subsequent remedial action, when required; and
- a powerful framework of legislation to ensure the property is conserved and protected.

### 7.8 CONSISTENCY AND EQUITY ISSUES

While Australia accepts that the ability of States Parties to implement management and legislative regimes protecting World Heritage values is dependent on its economic and social environment, it seriously questions the lack of a more standardised procedure in which the Committee seeks to identify properties as being In Danger.

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. It appears that in the majority of these cases, the World Heritage properties concerned lacked appropriate management plans and adequate legislation protection for their World Heritage values. These examples cannot be equated with the present situation in Kakadu National Park.

### CONCLUSION

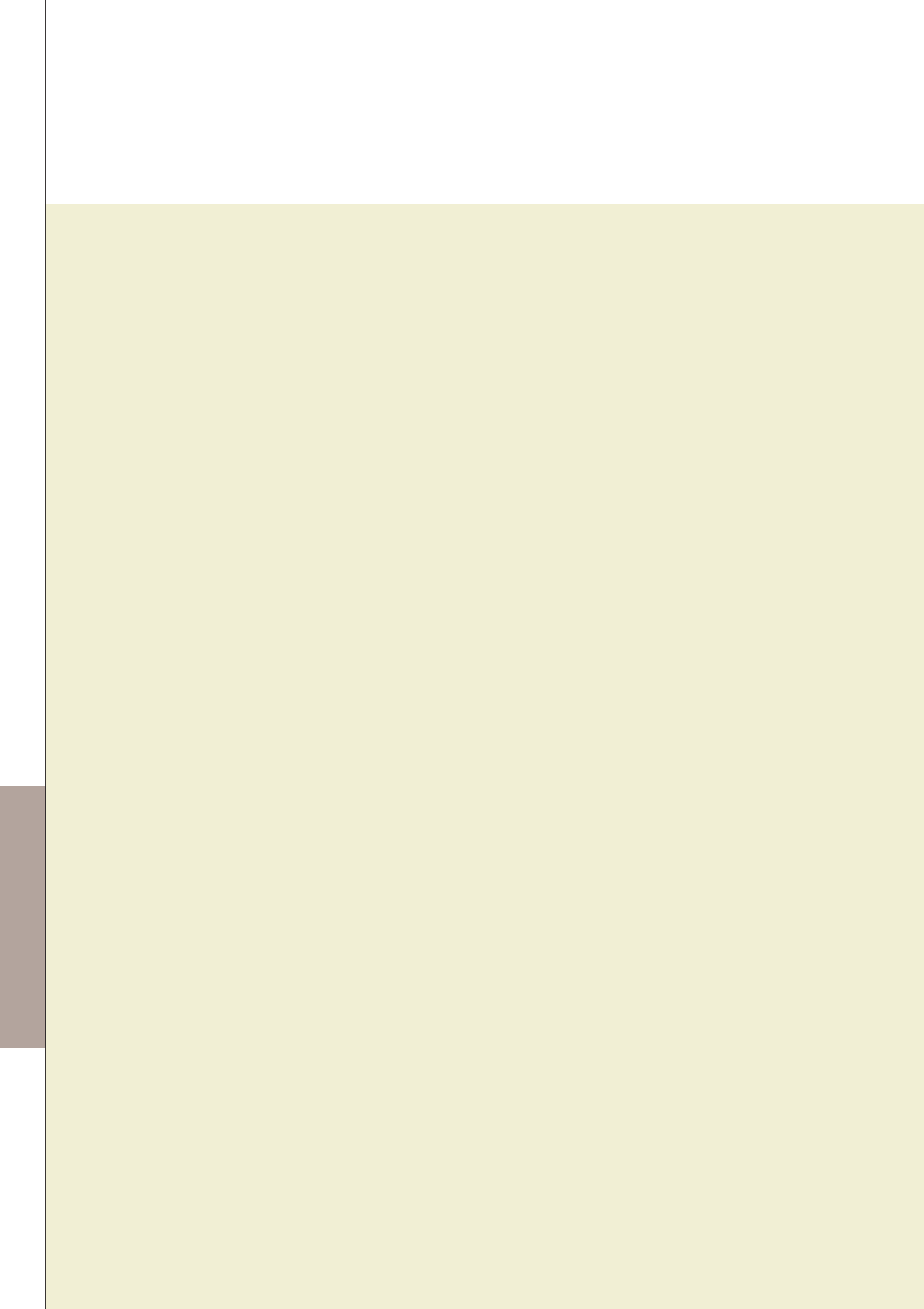
*This Australian report demonstrates that there is no basis, in terms of either ascertained or potential dangers, or inadequate legal and administrative protection, for placing Kakadu National Park on the List of World Heritage in Danger. To do so against the informed views of the State Party would be to create a new and greatly elevated benchmark that would be need to be applied consistently, over time, to all World Heritage properties and across all States Party. It would have a powerful impact on the spirit of consensus and common purpose which has been a fundamental feature of the World Heritage Convention's implementation and administration to date.*

*Australia knows of no case where a property has been placed on the World Heritage List in Danger where the country concerned has clearly and unequivocally rejected the assertion of danger, and has provided substantial and credible evidence that this is not the case. Australia also knows of no case where the World Heritage Committee has accepted a nomination based on clear presentation of facts, notably current mining, and exclusions for future mining, and then listed the property on the World Heritage List in Danger when there are no changed circumstances.*

*The choice before the World Heritage Committee is one of the utmost gravity and one which, in the interests of the future functioning and credibility of the Convention, should be taken only after careful and objective consideration of the evidence and issues of consistency and precedence.*

# CHAPTER 8

## Managing Values into the Future, Reclamation and Restoration



## Managing Values into the Future—Reclamation and Restoration

### CHAPTER EIGHT: MANAGING VALUES INTO THE FUTURE—RECLAMATION AND RESTORATION

Mining activity is a temporary land use, and a great deal of effort has already been dedicated towards ensuring that the Jabiluka minesite will be returned to a state which very closely, and to the greatest extent possible, reflects the topography, landscape and natural values of its surroundings. This process will be governed by the strict set of environmental requirements placed on the developer by the Government and in accordance with the Best Practice Environmental Management in Mining guidelines developed by the Supervising Scientist and the Australian mining industry.

At the conclusion of the mine's operating life, all tailings will be placed underground into the voids from which the uranium ore was extracted (or into contiguous purpose built voids) some 100 metres or more below the surface. Once full and sufficiently de-watered, the pit will be capped using a geotextile and waste rock. The topography of the repository will be sculptured to minimise erosion and to resemble the surrounding landforms. Having established a stable and representative landscape on the former minesite, revegetation activities will be managed to reflect, to the greatest extent practicable, the mix and abundance of species in the surrounding areas of Kakadu National Park.

The rehabilitation objectives for the Ranger Uranium Mine have been agreed to by the Commonwealth and Northern Territory Governments, the Northern Land Council and ERA. ERA has an obligation under the agreement with the Aboriginal landowners to rehabilitate the Ranger Mine such that it can be incorporated within Kakadu National Park at the cessation of the mine. Similar requirements will also apply to Jabiluka. The specific rehabilitation objectives will be agreed following discussions with the NLC and the traditional owners. This will also include agreement on the form of rehabilitation and whether facilities such as the access road are maintained.

*Red lilly*  
(*Nelumbo*  
*nucifera*)  
(Michael Preece)



*Frilled-neck lizard*  
(*Chlamydosaurus*  
*kingii*)  
(Michael Preece)



## Managing Values into the Future—Reclamation and Restoration

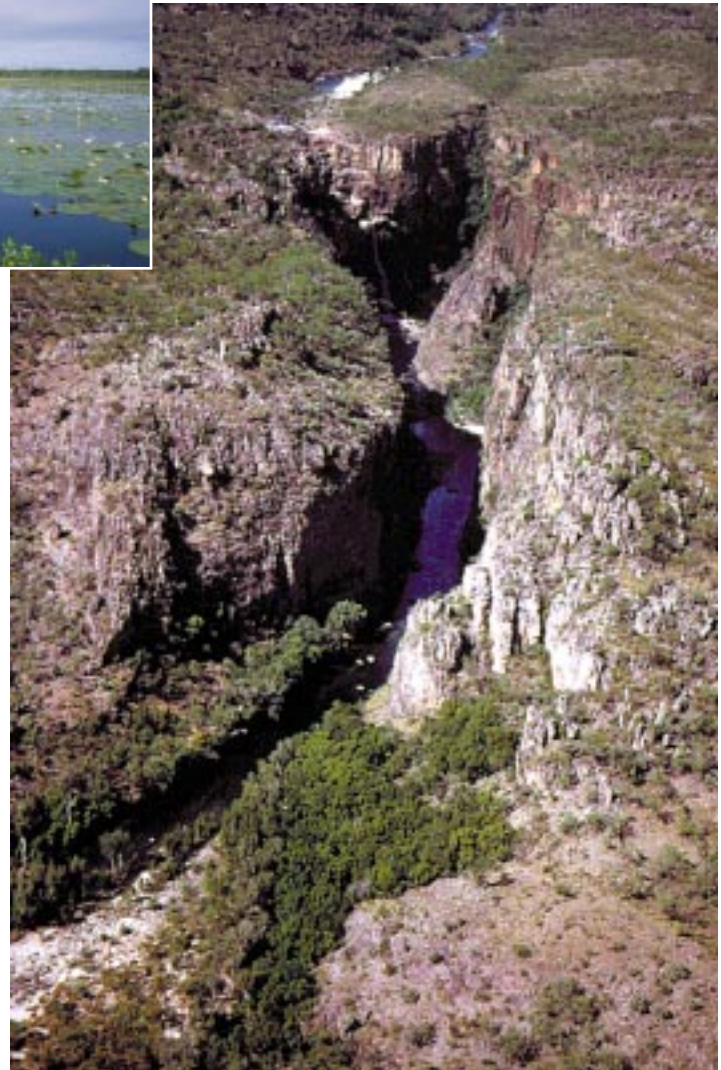
The most stringent requirements have been placed upon the company to ensure that there will be no risk of radioactive or chemical contamination of surface or ground waters, or any risk of radiation exposures to humans or the environment. Indeed, the company will be required to put in place rehabilitation measures which will avoid detrimental impacts to the environment, and conform to stringent limits on radiation doses to members of the public, for at least 10,000 years.

This carefully planned and executed process will employ the best available techniques and experience available at the time. In so doing, the minesite will be restored to a state where locally indigenous biodiversity can thrive and where use by traditional owners and visitors from all over Australia and the rest of the world can continue. The outstanding universal natural and cultural values of Kakadu National Park will continue to be protected.

*Wetlands of  
Kakadu  
(Science Group,  
Environment  
Australia)*



*Twin Falls  
Gorge, Kakadu  
National Park  
(Michael Preece)*





# APPENDICES

References

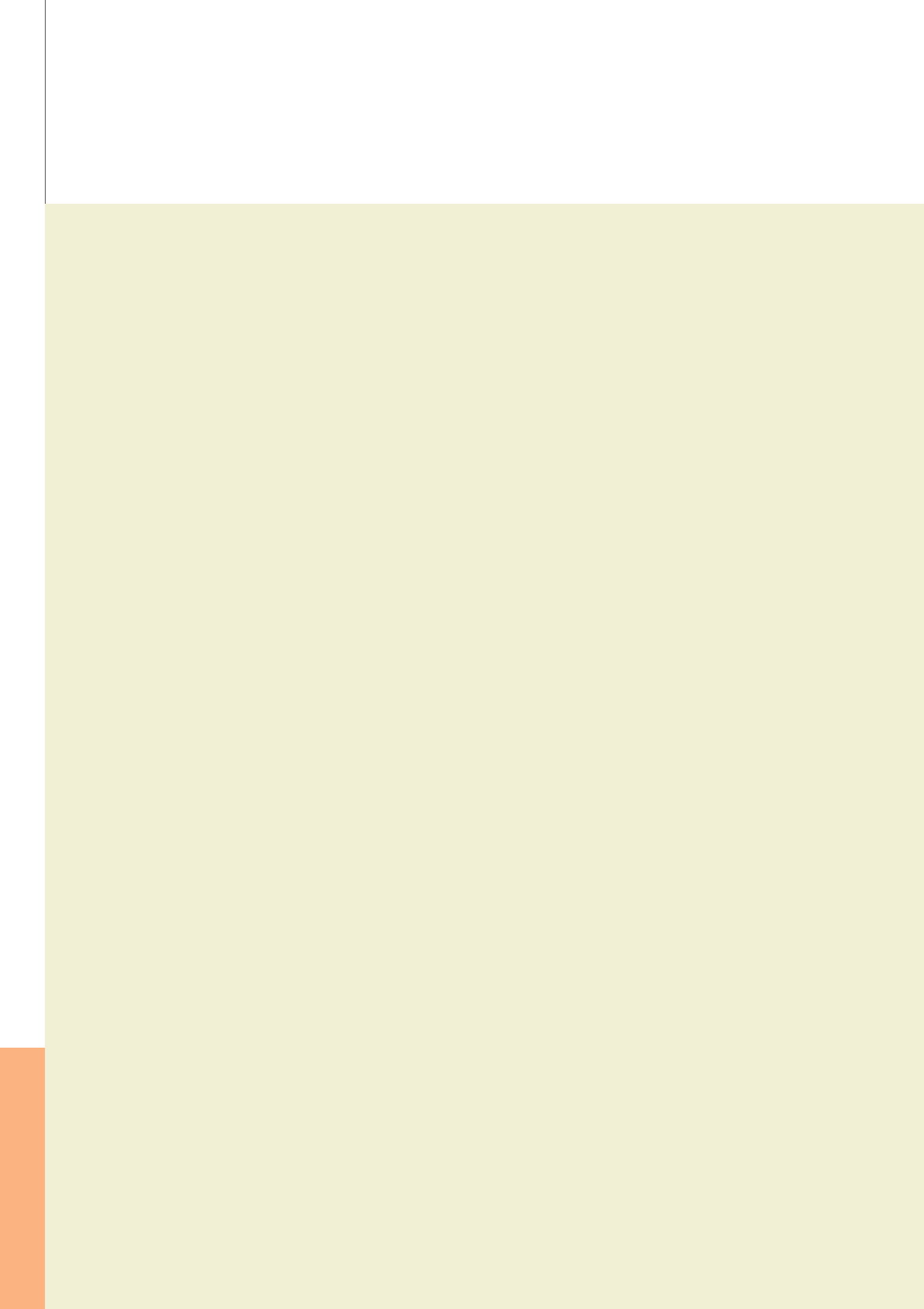
Appendix 1

Appendix 2

Appendix 3

Appendix 4

Glossary



## References

- Australian National Parks and Wildlife Service, (1980), *Kakadu National Park Plan of Management*, ANPWS, Canberra
- Australian National parks and Wildlife Service, (1980), *Nomination of Kakadu National Park for Inclusion in the World Heritage List*, ANPWS.
- Chaloupka, G. (1978), *Djawumbu-Madjawarnja Site Complex*. NT: NESR.
- Chaloupka, G. (1993), *Journey in Time: The Worlds Longest Continuing Art Tradition : The 50,000 Year Story of the Australian Aboriginal Rock Art of Arnhem Land*. Chatswood, NSW: Reed.
- Fox, Mr Justice RW. (1976), *Ranger Uranium Environmental Inquiry, First Report*, Australian Government Publishing Service, Canberra.
- Fox , Mr Justice RW, Kelleher, GG and Kerr, CB (1977), *Ranger Uranium Environmental Inquiry Second Report*, Australian Government Publishing Service, Canberra.
- Kakadu Board of Management & Parks Australia, (1998), *Kakadu National Park Plan of Management*, Jabiru.
- Kinhill Engineers Pty Ltd and Energy Resources of Australia Environmental Services Ltd (1996), *The Jabiluka Project Main Report , Draft Environmental Impact Statement*, Inprint, Brisbane.
- Kinhill Engineers Pty Ltd and Energy Resources of Australia Environmental Services Ltd (1998), *The Jabiluka Mill Alternative, Public Environment Report*, Inprint, Brisbane.
- Northern Land Council, (1980). *Alligator Rivers Stage II Land Claim*. Berrimah, NT.
- Roberts, RG and Jones, R (1994), Luminescence Dating of Sediments: New Light on the Human Colonisation of Australia, *Australian Aboriginal Studies*, No. 2, 2–17.
- Roberts, RG, Jones, R and Smith,MA (1990), Thermoluminescence Dating of a 50,000 Year Old Human Occupation Site in Northern Australia, *Nature*, 345: 153–156.
- Senate Standing Committee on Environment, Recreation and the Arts (1988), *The Potential of the Kakadu National Park Region*, Australian Government Publishing Service, Canberra.
- UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention.
- Vinnicombe, P. (1973), Independent Assessment of Sites Nominated for the Register of the National Estate: Kakadu and Katherine Area, Northern Territory. Unpublished Report for the Australian Heritage Commission.
- Woodward, AE (1973), Aboriginal Land Rights Commission, First Report, Parliamentary Paper No. 138 of 1973, Australian Government Publishing Service, Canberra.

## Appendix 1

# **AGREEMENTS SIGNED WITH TRADITIONAL OWNERS REGARDING THEIR INTERESTS OR CULTURAL HERITAGE PROTECTION (SINCE PARK DECLARED)**

2 April 1981	First plan of management for Kakadu comes into operation—prepared in consultation with Aboriginal traditional owners
26 October 1981	World Heritage listing of Kakadu Stage 1 (nomination prepared with the support of Aboriginal traditional owners)
25 June 1982	Grant of areas now in the Jabiluka mineral lease to the Jabiluka Aboriginal Land Trust
November 1986	354 km <sup>2</sup> in Kakadu Stage 2 granted to the Jabiluka Aboriginal Land Trust pursuant to the Land Rights Act
14 November 1986	Second plan of management for Kakadu comes into operation—prepared in consultation with Aboriginal traditional owners.
9 December 1987	Kakadu Stage 2 included in World Heritage list with Stage 1 (nomination prepared with the support of Aboriginal traditional owners)
26 July 1989	Kakadu Board of Management established with two to one majority representation from Aboriginal traditional owners.
27 March 1991	Lease entered into between the Jabiluka Aboriginal Land Trust and Director of National Parks and Wildlife in respect of Aboriginal land in Stage 2 of Kakadu
25 September 1991	Kakadu, including Stage 3, renominated for World Heritage listing (nomination prepared with the support of Aboriginal traditional owners)
21 January 1992	Amended lease entered into between the Kakadu Aboriginal Land Trust and Director of National Parks and Wildlife in respect of Aboriginal land in Stage 1 of Kakadu
1 April 1992	Third plan of management for Kakadu comes into operation (prepared jointly by the Kakadu Board of Management with its Aboriginal majority and the Director)
14 December 1992	Kakadu inscribed on the World Heritage list as renominated (nomination prepared with the support of Aboriginal traditional owners)
May 1995	Memorandum of Understanding Regarding the Control of Aboriginal Cultural Material in Kakadu National Park signed
January 1996	3,310 km <sup>2</sup> in Kakadu Stage 3 granted to the Gunlom Aboriginal Land Trust pursuant to the Land Rights Act
20 May 1996	Lease entered into between the Gunlom Aboriginal Land Trust and Director of National Parks and Wildlife
20 May 1996	Memorandum of Understanding Regarding the Control of Aboriginal Cultural Material in Kakadu National Park agreed (annexed to Gunlom lease)
8 March 1999	Fourth plan of management for Kakadu to come into operation (prepared jointly by the Kakadu Board of Management with its Aboriginal majority and the Director)

## Appendix 1

## PROGRAMS AND INITIATIVES CONCERNING PROTECTION OF CULTURAL HERITAGE PROTECTION IN THE PARK

1979	Traditional owner Mick Alderson appointed as cultural adviser for the central part of the park
1979	Ubirr rock art sites opened
1979	Nourlangie art sites opened
1979	Nanguluwur art site opened
1979	Aboriginal Training program established.
1985/86	Traditional fire practices introduced into park management (a contentious issue at the time)
1986	Traditional owner Jonathon Nadgi appointed as cultural adviser for northern end of park
1988	The International Centre for the Study of Preservation and Restoration of Cultural Property undertook a special rock art conservation project at Nourlangie Rock.
1990	Gagugdu Association contract for artsite maintenance continued
1991/92	Cultural Resource Management Committee formed. (predecessor to the Bininj Heritage Management Committee).
November 1995	Keeping Place Museum Tour for Aboriginal traditional owners
1995	Warradjan Cultural Centre opened
1995	Full time Secretary to Board of Management position established.
May 1995	Memorandum of Understanding Regarding the Control of Aboriginal Cultural Material in Kakadu National Park signed and the formation of the Bininj Heritage Management Committee
1995	Review of cultural heritage management initiated by traditional owners.
1996	Kakadu Region Social Impact Study undertaken
1997	Jawoyn cultural adviser Roy Anderson appointed for southern end of the park
Ongoing throughout history of park	<ul style="list-style-type: none"> <li>• Regular monitoring of art sites on average over 550 sites visited per year</li> <li>• Emphasis on oral history recording undertaken by both park staff and consultants.</li> <li>• Numerous archaeology consultancies</li> <li>• Numerous language consultancies</li> <li>• Numerous specific consultancies eg Jawoyn Boundary report.</li> </ul>



## Appendix 2

### EXTRACTS RELATING TO URANIUM MINING OPERATIONS FROM KAKADU NOMINATION DOCUMENTS

Kakadu National Park was inscribed on the World Heritage List in 3 stages. Separate nomination documents were prepared for each of these stages (in 1980, 1986 and 1991). Each document referred to the presence of uranium mining in the region in areas surrounded by the Park. In addition, each nomination contained maps that clearly delineated the mining lease area (Ranger and Jabiluka). In accepting each of these nominations for listing, the Committee was aware of the existence of the pre-existing lease area and mining activities within it. The relevant passages from the successive nomination documents are as follows:

#### 1980 Nomination:

"Mineral exploration and mining have also occurred in the region. The uranium deposits are of international importance and mining of these deposits has begun recently. A number of mineral lease areas have been excluded from the Park. However the town being developed to service the mining industry (Jabiru) is situated within the Park. An area of approximately 13 square kilometres is to be leased to a Northern Territory statutory authority, the Jabiru Town Development Authority, which will develop the town." (page 8)

"A supervising scientist is responsible for monitoring and limiting the effects of uranium mining in the Alligator Rivers Region." (page 14)

#### 1986 Nomination:

"The Ranger Uranium Mine in the Magela Creek catchment is a potential threat to areas downstream, but stringent environmental controls have prevented adverse effects on the Park." (page 13)

"The Supervising Scientist established under the Environment Protection (Alligator River Region) Act 1978 is responsible for monitoring and limiting the effects of uranium mining in the Alligator Rivers Region." (page 13)

#### 1991 Nomination:

The Ranger Uranium Mine, in the Magela Creek catchment, operates in an area surrounded by the Park (see Figure 2). Stringent environmental controls are applied to the mine and a Commonwealth agency—the Office of the Supervising Scientist—and the Northern Territory Department of Mines and Energy monitor the mine's operations and environmental impacts. Since the operation of the mine commenced in 1979, no significant effects on the water quality of Magela Creek have been detected" (page 76)

"The Office of the Supervising Scientist, established under the *Environment Protection (Alligator Rivers Region) Act 1978*, is responsible for monitoring the effects of mining operations in the Alligator Rivers region. In 1990–91 approximately \$6.7 million was allocated to the Office." (page 79)

## Appendix 3

## ANALYSIS OF PROPERTIES INCLUDED ON THE LIST OF WORLD HERITAGE IN DANGER

Date of inscription	Property	State Party	Ascertained/potential threats
26/10/1979	Natural & Cultural-Historical Region of Kotor	Yugoslavia	An earthquake caused extensive structural damage to building stock of the towns.
17/12/1982	Old City of Jerusalem & its Walls	Jerusalem	Threats arise from severe destruction followed by a rapid urbanisation.
6/12/1985	Royal Palaces of Abomey	Benin	Threats arise from extensive tornado damage to the royal enclosure and museums.
28/11/1986	Chan Chan Archaeological Zone	Peru	Threats arise from absence of appropriate measures for conservation, restoration and management of the site.
9/12/1988	Bahla Fort	Oman	The absence of appropriate conservation measures has led to degradation of the oasis and the earth structures of the fort.
12/12/1990	Timbuktu	Mali	Threats arise from sand encroachment.
14/12/1992	Srebarna Nature Reserve	Bulgaria	A series of upstream interferences, including a dam, permanently altered the hydrology of this site, and agricultural and residential use of the surrounding areas have impacted the wetlands, leading to the decline or disappearance of passerine and water bird populations.
14/12/1992	Angkor	Cambodia	Threats arise from the effects of armed conflict.
14/12/1992	Mount Nimba Nature Reserve	Cote d'Ivoire/ Guinea	Threats, including to water quality in the region, result from a proposed iron-ore mining project and the arrival of a large number of refugees.
14/12/1992	Sangay National Park	Ecuador	Threats result from heavy poaching of wildlife, illegal livestock grazing, encroachment along the Park's perimeter, and unplanned road construction.

## Appendix 3

Date of inscription	Property	State Party	Ascertained/potential threats
14/12/1992	Manas Wildlife Sanctuary	India	Political instability and military activity in and around the Park has led to damage to Park infrastructure, and an increase in poaching of rhino and other species of wildlife.
14/12/1992	Air & Ténéré Natural Reserves	Niger	Threats arise from the effects of military conflict.
11/12/1993	Everglades National Park	United States of America	Nearby urban development, pollution from fertilizers, mercury poisoning of fish and wildlife, a fall in water levels due to flood protection measures, and a hurricane have damaged the ecology of the property.
17/12/1994	Virunga National Park	Democratic Republic of the Congo	A massive influx of refugees escaping the effects of the war in a neighbouring country led to widespread deforestation and poaching at the site.
9/12/1995	Yellowstone	United States of America	Threats arise from potential impacts of adjacent mining operations on the watershed ecology, impact of sewage leakage and waste contamination; illegal introduction of non-native lake trout competitive with the endemic cut-throat trout; road construction; year-round visitor pressures, and potential threat to the bison population related to proposed control measures to eradicate brucellosis in the herds.
7/12/1996	Garamba National Park	Democratic Republic of the Congo	The population of the white rhinoceros has seriously declined and there is an ongoing threat to the species from poaching.
7/12/1996	Simien National Park	Ethiopia	The population of the Walia ibex has deteriorated, and there are ongoing threats to this and other large mammals from road construction and human population increase within the site

## Appendix 3

Date of inscription	Property	State Party	Ascertained/potential threats
7/12/1996	Rio Platano Biosphere Reserve	Honduras	Threats arise from commercial and agricultural intrusions into the site, including massive extraction of valuable timber, reducing the forest area of the Reserve, uncontrolled commercial hunting of wild animals, introduction of exotic species, absence of a management plan and insufficient park management staff.
7/12/1996	Ichkeul National Park	Tunisia	Construction of three dams on rivers supplying the Lake and its marshes has cut off inflow of fresh water, resulting in increased salinity, replacement of fresh-water plant species by halophytic plants, and reduction in migratory bird populations.
6/12/1997	Butrinti	Albania	Looting of the site museum during civil disturbances in the country damaged the values of the site, and there is a continued lack of adequate protection, management, and conservation of the site.
6/12/1997	Manovo-Gounda St. Floris National Park	Central African Republic	Illegal grazing and poaching has heavily impacted on the park's wildlife.
6/12/1997	Kahuzi-Biega National Park	Democratic Republic of the Congo	Portions of the park have been deforested and hunting has been reported there. Park facilities have been looted and destroyed, and most of the park staff have left the area. The park may also be serving as a hideout for militant groups.
6/12/1997	Okapi Wildlife Reserve	Democratic Republic of the Congo	Armed conflict has led to the looting of facilities and the killing of elephants in this site. Most of the staff have fled the park. There are reports of gold mining within the park.

## Appendix 4

### KAKADU STATISTICAL DATA

#### Areas

• Kakadu National Park	19,804 sq km
• Jabiluka Mineral Lease	73 sq km
• Jabiluka mine site (JMA option)	1.3 sq km
• Jabiluka mine site (RMAoption)	0.8 sq km
• Ranger Mineral Lease	79 sq km
• Ranger mine site	7.1 sq km
• Jabiru township	13 sq km

#### Populations

- Aboriginal people in Kakadu National Park in 1979—139 people
- Aboriginal people in Kakadu National Park in 1996—533 people
- Jabiru township in 1998—1480 people

#### Dates

- Proclamation of the three Stages of Kakadu National Park
  - Stage 1: 1979
  - Stage 2: 1984
  - Stage 3: Phase 1: 1987; Phase 2: 1989; Phase 3: 1991
- Inscription of the three Stages of Kakadu National Park on the World Heritage List
  - Stage 1: 1981
  - Stage 2: 1987
  - Stage 3: 1992
- The Ranger mine commenced—construction in 1979 and operation in 1981

#### Payments to Aboriginal interests

- From the Ranger mine since the 1978 agreement to allow mining—\$145.8 million
- Total anticipated from the Jabiluka mine—\$231 million

#### World Heritage Funding in Australia

- Annual Australian Government funding (not including State Government funding)—\$50 million.



## Glossary

AAH	Australian Academy of Humanities
AAPA	Aboriginal Area Protection Authority
AHC	Australian Heritage Commission
Almudj	Rainbow Snake/creation figure
ANPWS	Australian National Parks and Wildlife Service (subsequently renamed the Australian Nature Conservation Agency, and then later renamed Parks Australia)
Arnhem Land	Aboriginal owned land adjacent to the eastern boundary of Kakadu National Park
ARR	Alligator Rivers Region
ATSIC	Aboriginal and Torres Strait Islander Commission
Balanda/Mam	Non-Aboriginal
Bininj/Mungguy	Aboriginal
Boiwek/Boyweg	Sacred site—small, discrete soakage/swamp located to the west of the Jabiluka mine valley
BPT	Best Practicable Technology
COGEMA	French Government utility which presently owns the Koongarra lease
EIS	Environmental Impact Statement
Environment Australia	Federal Department of the Environment and Heritage
EPR	Environmental Performance Review
ERA	Energy Resources of Australia
ERISS	Environmental Research Institute of the Supervising Scientist
EZ	Electrolytic Zinc Company of Australiasia
Djang	Places that relate to creation or the Dreaming
Djang adjamun	Places that relate to creation and because of their particular religious significances are considered dangerous and require heavily restricted access
Fox Inquiry (1 & 2)	Also referred to as the Ranger Uranium Environmental Inquiry
Gundjehmi	Traditional owner—clan group
GAC	Gundjehmi Aboriginal Corporation
Gunmoggurrurr	Inherited clan group
ICOMOS	International Council for Monuments and Sites
IUCN	World Conservation Union
Jabiluka	Mining development
Jabiru	Township which serves Ranger and Jabiluka mine sites
JMA	Jabiluka Milling Alternative
JTDA	Jabiru Town Development Authority (Northern Territory government authority)

**Glossary**

KRSIS	The Kakadu Regional Social Impact Study Report
Mirrarr	Traditional owners—clan group
NCTWR	National Centre for Tropical Wetlands Research
NLC	Northern Land Council
NTDME	Northern Territory Department of Mines and Energy
NTU	Northern Territory University
Pancontinental Mine	Now known as the Jabiluka Mine
Peko	Peko–Wallsend Operations limited
PER	Public Environmental Review
PMP	Probable maximum precipitation
Ranger Inquiry	1975 Inquiry into the Social and Environmental Impacts of the Ranger Development
RMA	Ranger Milling Alternative
SSG	Supervising Scientist Group
UNESCO	United Nations Educational, Scientific and Cultural Organisation
Woodward Inquiry	1973 Commonwealth Commission of Inquiry into Aboriginal land rights in the Northern Territory