
Gundjehmi Aboriginal Corporation

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

Information for the Twenty-Fourth Session of the Bureau of the World Heritage Committee

19 May 2000

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1. EXECUTIVE SUMMARY

The Mirrar People are the indigenous owners of land within the boundaries of the Kakadu World Heritage Area, part of which is seriously threatened by the proposed Jabiluka uranium mine.

The Mirrar People place great faith in the World Heritage Convention, including the processes of the World Heritage Committee, to help protect both the unique living culture of the Mirrar and the land to which this culture is inextricably connected.

The Mirrar People believe the Australian Government has failed to adequately acknowledge and address threats to the cultural and natural values of Kakadu identified by the World Heritage Committee at its Twenty-Second and Third Extraordinary sessions. There is not even an agreed process by which these identified threats can be assessed in a co-operative manner. The Mirrar believe Kakadu continues to qualify for inscription on the List of World Heritage In Danger.

Construction of the Jabiluka Project was suspended on 14 September, 1999 after mining company ERA accepted that it could not proceed with its plan to mill uranium from Jabiluka at its existing Ranger facilities. The disturbed construction area has not been rehabilitated and represents an imminent threat to the Kakadu World Heritage Area.

ERA has announced plans to develop a new design for milling uranium on-site at Jabiluka. The Mirrar request the World Heritage Committee and its advisory bodies fully examine this new design when it becomes available. The Mirrar believe a final mine design is required before any Cultural Heritage Management Plan can be completed.

The Mirrar submit that the World Heritage Committee should remain gravely concerned about the serious impacts to the living cultural values of Kakadu National Park posed by Jabiluka. The Australian Government has avoided meaningful dialogue with the Mirrar on sensitive cultural issues since the Committee's Third Extraordinary Session.

Recent events have highlighted the threats posed to Kakadu's natural values by further uranium mining. It has been revealed that interim facilities at the Jabiluka construction site will be unable to hold contaminated water past the next wet season (see *Attachment A2: Jabiluka Interim Water Management Pond*). It has also been revealed that the Ranger uranium mine was leaking highly contaminated water for more than three months during the 1999/2000 wet season (see *Attachment A1: Ranger Manganese Leak*).

Accordingly, the Mirrar urge the World Heritage Committee to remain vigilant in assessing Jabiluka's impact on Kakadu. While some parties may view Jabiluka as a political issue, to the Mirrar it remains a fight for cultural survival.

The Mirrar request that the Twenty-Fourth Bureau of the World Heritage Committee consider making recommendations/decisions covering three broad areas:

- i) that further consideration be given to placing Kakadu National Park on the List of World Heritage in Danger in light of continuing and escalating threats to natural and cultural values;
- ii) that mining company ERA's "new" plans for the development of Jabiluka be fully examined by the Committee and its advisory bodies;
- iii) that a high-level, expert advisory mission visit Kakadu prior to the Twenty-Fourth World Heritage Committee meeting in Cairns with a view to assessing the current status of identified threats to World Heritage values.

2. Structure of Mirrar Report

The Mirrar People place great faith in the UNESCO World Heritage Convention to help protect both the unique living culture of the Mirrar and the land to which this culture is inextricably connected. In particular, the Mirrar note Article 6(1) of the Convention which states in part that:

...the State Parties to this Convention recognize that (the listed cultural and natural) heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

To this end the Mirrar People have fully supported the processes underlying the World Heritage Committee's scrutiny of the Jabiluka proposal. While the Mirrar People believe the Jabiluka proposal constitutes a development which places the Kakadu World Heritage Area "in danger", the Mirrar support the resolution of the Third Extraordinary Session of the World Heritage Committee. The Mirrar have maintained this support despite strident criticism from some non-government organisations and misleading claims from ERA that the resolution constitutes "UNESCO approval" of the Jabiluka Project.

The Mirrar People believe that the full decision of the Third Extraordinary Session in July 1999, reached after exhaustive examination of information from all parties, represents the World Heritage Committee's current position on the Jabiluka issue. *Accordingly, this report is structured so as to address each paragraph of the Committee's decision in turn.*

The Mirrar People are disappointed that the Australian Government chose to adopt a narrow approach to its 15 April, 2000 report to the Bureau of the Committee. It is hoped that the additional information in this report is useful to Committee members in maintaining an informed understanding of the continued and escalating threats posed by the Jabiluka proposal to the world heritage values of the Kakadu region.

3. **Clauses 1(a) to (c) of the Decision of the Third Extraordinary Session of the World Heritage Committee, 12 July 1999**

1. The Committee,
 - a. **Emphasizes** the importance of Articles 4,5,6,7 and 11 of the 1972 UNESCO World Heritage Convention. In particular the Committee emphasizes Article 6(1)...
 - b. **Recalls** that the twenty-second session of the World Heritage Committee in Kyoto (1998) expressed "grave concern" over the ascertained and potential dangers to the World Heritage cultural and natural values of Kakadu National Park posed by the proposal for uranium mining and milling at Jabiluka;
 - c. **Notes** the deliberations of the twenty-third session of the Bureau and the third extraordinary session of the Committee demand the continuous serious consideration of the conditions at Kakadu National Park by the Committee with reference to Section III, in particular Paragraph 86 of the Operational Guidelines for the implementation of the World Heritage Convention;

The Mirrar People submit that the Australian Government, as demonstrated in its 15 April 2000 report to the Bureau of the WHC, refuses to accept that the Jabiluka uranium mine poses any ascertained or potential dangers to the World Heritage values of Kakadu (see for example page 4 of the Australian Government Report). This would appear directly contrary to clauses 1(a)-(c) of the Committee's decision. As such, it is submitted that the Australian Government report does not provide an adequate basis for the Committee to give "continuous serious consideration" to the dangers identified by the Committee at its Twenty-Second Session and confirmed at the Third Extraordinary Session.

With the greatest respect to the Australian Government, its denial of existing dangers appears illogical. The World Heritage Committee, ICOMOS, the IUCN, the Northern Land Council and even the Australian Government's own departmental assessments have identified real and imminent dangers posed by Jabiluka. The Traditional Owners of the cultural and natural heritage at stake are opposed to the development *because* it will damage cultural values and sacred sites. Further, a large-scale mining operation unavoidably poses threats to natural heritage when, as in the case of Jabiluka, the design has not even been completed let alone independently assessed and reviewed. The Australian Government has claimed that the existing Ranger uranium mine is the most regulated in the world - yet on 3 May 2000 it was revealed that it had been leaking highly contaminated water for more than three months (see *Attachment A1: Ranger Manganese Leak.*)

While the Australian Government may believe these dangers can be managed, it cannot assert that they do not exist. Further, the Mirrar believe these dangers cannot be "managed" but rather should be averted altogether in a manner which ensures the long-term survival of Mirrar living culture and the full protection of World Heritage values.

The Mirrar People believe the World Heritage Committee, in accordance with paragraph 1(c) of the 12 July 1999 decision, should continue to consider the Jabiluka issue within the context of placing Kakadu on the List of World Heritage In Danger. Furthermore, the Mirrar People believe that a range of new factors (discussed below) provide compelling arguments for the consideration Committee to place Kakadu on the "In Danger" list.

4. **Clause 1(d) of the Decision of the Third Extraordinary Session of the World Heritage Committee, 12 July 1999**

d. Expresses its deep regret that the voluntary suspension of construction of the mine decline at Jabiluka until the twenty-third session of the Committee (requested by the twenty-second session of the Committee) has not taken place;

The Mirrar People note that construction of the Jabiluka Project has been suspended since 14 September 1999. The Australian Government and ERA refer to the suspension as a “standby and environmental monitoring mode”.

The Mirrar People seek to inform the Bureau that this suspension has occurred because ERA does not have required approval to proceed with the milling of ore from Jabiluka at the Ranger site and has not developed a viable alternative for milling Jabiluka on-site. None of the on-site milling proposals contained in the 1979 Environmental Impact Statement; the 1997 Environmental Impact Statement; or the 1998 JMA Public Environmental Report are now considered viable options.

There are serious legal barriers facing the 1997 and 1998 JMA proposals as they rely on the use of the Ranger Project Area. In addition, there are a number of contractual difficulties associated with ERA departing even further from the original 1982 mining proposal.

The Mirrar People draw to the Bureau’s attention that there has now been significant disturbance on the Jabiluka Mineral Lease, overseen by the Australian and Northern Territory Governments, yet there is a very real prospect that the Jabiluka Project will proceed no further due to economic, legislative and contractual barriers. All of these barriers existed prior to the commencement of construction, including the clear position of the Mirrar that permission to use the Ranger Project Area for milling Jabiluka uranium would be denied.

The Minister for the Environment, Senator Hill, claims that ERA undertook a “commercial risk” in proceeding with construction in all the circumstances. The Mirrar People would submit that allowing substantial mining works to take place when such uncertainty surrounds a project’s viability demonstrates scant concern for the protection of world heritage values.

Indeed, perhaps the only conclusion that can be drawn from this extraordinary situation is that ERA proceeded with construction in the hope that the Mirrar opposition to the RMA would be overcome – perhaps even by a “sense of inevitability” associated with construction of the mining decline.

The Mirrar People believe the current construction works represent a series of continual ascertained and potential dangers to the cultural and natural values of Kakadu National Park. They continue to impact on Mirrar sacred sites and it has recently been revealed that the “interim water retention pond” at the minesite (which is not common to both the RMA and JMA proposals) will be unable to contain contaminated water past the 2000/2001 monsoon wet season (see *Attachment A2: Jabiluka Interim Water Management Pond*).

The Committee’s “deep regret” at construction at Jabiluka is well-founded. The Mirrar submit that the Australian Government, given its full knowledge of Mirrar opposition to Jabiluka and the resultant decision to withhold consent for the RMA, should never have allowed ERA to proceed with construction. The Jabiluka Project remains in many respects an incomplete, abstract concept. Unfortunately, the threats posed by the construction site are very real and ever present.

5. **Clauses 1(e) and (f) of the Decision of the Third Extraordinary Session of the World Heritage Committee, 12 July 1999**

- e. **Is gravely concerned** about the serious impacts to the living cultural values of Kakadu National Park posed by the proposal to mine and mill uranium at Jabiluka. The Committee is of the opinion that confidence and trust building through dialogue are crucial for there to be any resolution of issues relating to the proposal to mine and mill uranium at Jabiluka. In particular, a more substantial and continuous dialogue needs to be established between the Australian Government and the traditional owners of the Jabiluka Mineral Lease, the Mirrar Aboriginal people;
- f. **Is concerned** about the lack of progress with the preparation of a cultural heritage management plan for Jabiluka;

The Mirrar People fully endorse both clauses (e) and (f) of the Committee's decision. It is most disappointing, and directly contrary the Committee's decision, that the Australian Government claims in its 15 April 2000 report that "there are no threats to the cultural World Heritage values of Kakadu National Park" (see page 4 of the Australian Government's 15 April report).

There has been no progress on cultural mapping of the Jabiluka Mineral Lease. Nor has the required Cultural Heritage Management Plan been completed. The Mirrar note the Australian Government required a Jabiluka CHMP to be completed *before construction commenced*.

The Australian Government makes a number of assertions in its 15 April 2000 report as to why cultural protection measures have not progressed since July 1999. The Mirrar People submit that these assertions are based on avoidance of the full intent of the Committee's decision. In particular:

- *The Committee decision necessitates the Australian Government establishing "substantial and continuous dialogue" with the Mirrar.*

The Australian Government has not established meaningful dialogue with the Mirrar. For example, the Mirrar were compelled to withdraw an application under s.10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* because the Government decided not to consult with the Mirrar about the person appointed to conduct the inquiry and subsequently appointed an inappropriate person who began to conduct the inquiry, again with no direct consultation, in an unfair manner (for full details see "Gundjehmi Aboriginal Corporation: Report to the Twenty-Third Session of the World Heritage Committee").

The Mirrar have gained the impression that the Government would rather avoid the sincere efforts by the Mirrar to establish a localised process of cultural mapping than positively seek to develop such a plan. Instead of engaging with, or even responding to this initiative, the Government has proposed a working group to assist ERA in completing a Cultural Heritage Management Plan. There has been no response to Mirrar enquiries about how local Aboriginal participation in cultural mapping exercises would be funded.

Indeed, the last occasion in which there was meaningful dialogue between the Australian Government and the Mirrar was on 12 July, 2000 in UNESCO's Paris Headquarters.

- *The Committee decision is correctly based on the presumption that the Jabiluka Project poses "serious impacts to the living cultural values of Kakadu National Park".*

The Australian Government has adopted the incongruous position that "there are no threats to the cultural World Heritage values of Kakadu National Park". It states that ERA is committed to protecting the "known" cultural values of the Jabiluka Mineral Lease. (see page 4 of the Australian Government's 15 April Report).

The approach of the Government/ERA remains fundamentally at odds with the Mirrar and other Aboriginal custodians. The unavoidable fact is that this information resides only with the Aboriginal cultural custodians who are bound by strict Aboriginal law to not reveal detailed information to non-Aboriginal people. Only in exceptional circumstances and under a significant degree of duress will such information be conveyed to non-custodians. The Mirrar have informed the Government and ERA that the Jabiluka Project threatens sites of significance. It would appear from the Australian Government's report that it does not accept this information nor the Committee's decision.

- *The Committee decision is predicated on the basis that the Australian Government, in accordance with the Convention, has primary responsibility for protection of cultural values.*

The Australian Government instead refers to "ERA's development of the CHMP". The Mirrar submit that there is an acute conflict of interest in a mining company developing a plan for protection of Aboriginal cultural values.

It is the responsibility of the Australian Government, working in full co-operation with the Mirrar and other Aboriginal custodians, to ensure the conduct of cultural mapping exercises. It is then the responsibility of the Australian Government, on advice from custodians, to impartially decide whether protection of the identified cultural values is compatible with a large scale uranium mining operation. It is not practicable to expect ERA to participate in an impartial decision of this kind.

The Australian Government also appears to have avoided the practical problems associated with conducting cultural mapping exercises and developing a Cultural Heritage Management Plan when there is no information available on the final design of the Jabiluka Mill Alternative.

For example, one proposal that was floated by the Supervising Scientist in August 1998 was for radioactive tailings to be placed underground. The waste rock from these underground caverns would then be used to create permanent artificial landforms around the minesite area. Such artificial landforms have the potential to interfere with sites of significance in a number of ways. Yet until a final JMA proposal is developed by ERA, Aboriginal custodians will be unable to make a conclusive assessment.

It is submitted that the Mirrar and other Aboriginal custodians have already informed the Australian Government and ERA that development of Jabiluka threatens cultural values. The fact that the Australian Government has not withdrawn approval for the Jabiluka Project suggests that this information has not been accepted.

This being the case, the Mirrar are now attempting to develop a process for site assessment with Aboriginal countrymen. This is a complex, sensitive and expensive process. It involves liaison with Aboriginal people living many hundreds of kilometres from Mirrar land but who are nevertheless affected by damage to Mirrar sites. Some of these people are elderly and physically frail. None understand why the views of the Mirrar have not been accepted by the Government.

It is therefore vital as a pre-requisite that ERA present a final design model for the JMA before a site assessment process takes place. It is also vital that the Australian Government engages in meaningful dialogue with the Mirrar about progressing this site assessment process in a manner that will ensure the long- term protection of World Heritage cultural values.

6. **Clause 1(g) of the Decision of the Third Extraordinary Session of the World Heritage Committee, 12 July 1999**

g. **Continues to have significant reservations** concerning the scientific uncertainties relating to mining and milling at Jabiluka

The Mirrar submit that the scientific uncertainties associated with Jabiluka are now greater than ever.

Firstly, most of the information submitted to the Committee in the period before and during the Third Extraordinary Session was based on ERA's preferred model of milling ore from Jabiluka at the Ranger mine site.

ERA has accepted that the Mirrar will not consent to this model and the Mirrar now look forward to rehabilitation of the Ranger Project Area commencing in the next five (5) to 10 years. In light of the WHC's commitment to "continuous serious consideration" of the Jabiluka issue, it is now necessary for the Committee to examine the proposal to mine and mill uranium "on-site" at Jabiluka.

It is most disturbing to the Mirrar that the Australian Government, as stated in its 15 April 2000 report, seeks to prevent the ISP (and by implication the World Heritage Committee) from assessing ERA's new designs for Jabiluka. With respect, it seems illogical to restrict the WHC to assessing an ERA design for Jabiluka that is now partly redundant.

In particular, it appears wholly inconsistent for the Australian Government to state that ERA is still "refining" its plans for the JMA and therefore "information sought by the ISP is not available" and yet also claim that assessment of the scientific issues will be brought "to a timely and satisfactory conclusion" without this information.

Secondly, in March 2000 Mirrar learned that the Interim Water Management Pond at Jabiluka is accumulating contaminated mine water at a rate that cannot be contained in the pond. In breach of commitments given only two (2) months earlier, ERA announced that the water would be treated and then released. The adequacy of water management at Jabiluka is a key concern of the World Heritage Committee's expert advisory bodies (see *Attachment A2: Jabiluka Interim Water Management Pond*).

The Mirrar's concerns were compounded when on 28 April 2000 a three-month leak of Manganese from Ranger uranium mine was reported to authorities, nearly one month after being discovered by ERA. Given that ERA proposes to use exactly the same management practices at Jabiluka as at Ranger, the Mirrar seriously question the ability of Australian regulatory bodies to adequately monitor uranium mining within the boundaries of the Kakadu World Heritage Area (see *Attachment A1: Ranger Manganese Leak*).

The Mirrar urge the World Heritage Committee to ensure that the ISP and/or another expert advisory body:

- i) assess the environmental safety of interim construction-related facilities on the Jabiluka Mineral Lease;
- ii) assess all scientific issues associated with the design of milling and radioactive tailings facilities "on-site" at Jabiluka, upon the completion of interim and/or final designs by ERA.
- iii) re-assess the impact of the Ranger uranium mine on the natural and cultural values of Kakadu National Park

7. Parts 2, 3 and 4 of the Decision of the Third Extraordinary Session of the World Heritage Committee, 12 July 1999

The Mirrar submit that the operative aspects of Parts 2, 3 and 4 of the Committee's decision can be summarised in three areas:

Aspect 1:

A meaningful dialogue is required between the Australian Government and the Mirrar People. The Australian Government is responsible for ensuring that Jabiluka does not damage the World Heritage values of Kakadu National Park.

The Mirrar submit that the new dialogue developed during July 1999 has dissipated. The Mirrar have gained the impression that the Australian Government does not desire a bilateral relationship with the Mirrar but rather seeks to compel a relationship between the Mirrar and ERA under Australian Government guidance.

The Mirrar seek the protection and maintenance of the Mirrar living culture and the unique natural values of Mirrar land. The responsibility for protection of these World Heritage values belongs to the Australian Government. The Mirrar expect the Australian Government to commit to continuous, good-faith communication processes that focus purely on protection of World Heritage values. The Mirrar are opposed to Jabiluka and do not seek a relationship with ERA that focuses on development of Jabiluka.

The essential first step in any satisfactory progression of this issue lies with the Australian Government establishing a relationship of trust and respect with the Mirrar independent of any mining company agenda.

Aspect 2:

The Australian Government is requested to submit a report by 15 April, 2000 which reflects the outcome of the Committee's Third Extraordinary Session, including the need for a relationship of trust and respect with the Mirrar People.

The Mirrar acknowledge that the Australian Government has submitted its progress report on time and has addressed the three issues outlined in Part 3 of the Committee's decision. The Mirrar join in the Government's praise for the efforts of local Aboriginal organisations in improving the basic living standards of Aboriginal people of the region. The Mirrar believe the Gundjehmi Aboriginal Corporation has played a central role in this effort.

However, the Mirrar believe that the Australian Government's report repeatedly attempts to characterise the Mirrar and the Gundjehmi Aboriginal Corporation as obstructionist.

The Mirrar submit that the Australian Government has not detailed the many positive achievements of the Mirrar in accumulating investment funds; developing cultural heritage projects; instigating economic development strategies; sourcing and distributing funds for housing, electricity and health; and resolving land use issues associated with Ranger and Jabiru. The Australian Government, for reasons unknown to the Mirrar, has engaged in highly selective reporting in relation to the work of the Gundjehmi Aboriginal Corporation. At no stage were the Mirrar People, or the Gundjehmi Aboriginal Corporation, asked to provide information for the Australian Government report.

The Mirrar also submit that key recommendations raised in the Kakadu Regional Social Impact Study have been avoided. For example, there is no information provided on the primary KRSIS recommendation that the township of Jabiru return to Aboriginal ownership.

Aspect 3:

The Supervising Scientist and the ISP seek a dialogue to resolve outstanding scientific issues associated with Jabiluka.

The ISP is requested to submit a report assessing the Supervising Scientist's response to the ISP's 1999 report by 15 April, 2000.

As stated above, the Mirrar are deeply concerned that the Australian Government is attempting to restrict the World Heritage Committee's from examining the scientific issues associated with the proposal to mine and mill uranium "on-site" at Jabiluka.

The Mirrar submit that it is within the scope of the ISP's mandate to request critical information about current mining plans that were not addressed in information provided by the Supervising Scientist. This includes ERA's design for the JMA and issues arising from the recent Manganese leak from the Ranger mine and the inadequacy of the Jabiluka Interim Water Management Pond (see *Attachments A1 and A2*).

In the alternative, the Mirrar urge the WHC to provide an expert advisory body with additional instructions to assess ERA's designs for milling and radioactive tailings disposal on the Jabiluka Mineral Lease.

8. CONCLUSION

The Mirrar people find it difficult to accept that the Australian Government is committed to protecting the cultural and natural values of the Jabiluka Mineral Lease and the surrounding Kakadu World Heritage Area.

The Australian Government refuses to treat the Mirrar peoples' unique knowledge of cultural information as conclusive or even acknowledge that there are any threats to cultural values. Non-Aboriginal people are deemed by the Australian Government as 'experts' on Mirrar culture. Cultural protection plans remain the responsibility of the mining company, ERA, which has an obvious conflict of interest. The Mirrar have been reduced to the role of 'stakeholders' on their own land.

The current uncertainty still associated with Jabiluka, including ongoing environmental threats, is having a detrimental impact on Aboriginal communities in the region. This is compounded by the mining company's aggressive Aboriginal engagement strategy.

The Mirrar people are anxious to resolve this uncertainty for the protection of Kakadu's World Heritage values. The Mirrar people will work with the Australian Government to fix the Jabiluka problem in a constructive manner.

The Mirrar people believe that the natural and cultural values of Kakadu are subject to potential and ascertained threats from the Jabiluka uranium project. These threats, as identified by the World Heritage Committee in 1998 and 1999, are continuing and escalating.

The Mirrar want to resolve these problems in a relationship with equality with the Australian Government. Until this relationship is established Kakadu will remain a World Heritage in danger.

ATTACHMENT A:

A1: Ranger Manganese Leak

On 3 May the Mirrar learned via media reports that a leak of contaminated water high in Manganese had occurred at ERA's Ranger uranium mine. Subsequently, the company revealed that it had suppressed this information for over one (1) month before releasing details to the Australian Stock Exchange. Since 3 May the Mirrar have discovered that ERA knew of extremely high levels of Manganese in the area around the mine site as early as December 1999.

The leak occurred near the Ranger tailings dam (see Figure A). The leak was in the join between a flexible section and a steel section of the 12-inch tailings water return pipe, which pipes recycled water under high pressure from the dam to the processing plant. A bolt holding the flanges and gasket together had corroded and allowed water to escape at the join. This section had been buried two (2) metres under the tailings corridor access road. Approximately 20 metres of the pipe is covered by soil and rock, making for a good corrosive situation.

The contaminated water then travelled underground, entering a culvert some 300 metres from the tailings dam and then moved over several months into a series of constructed wetland filter systems. With the commencement of the monsoonal wet season in November/December, this water was eventually forced through the artificial wetland filter system and into the Magela Creek system.

In early December 1999 ERA scientists recorded a Manganese level of 180 parts per billion (normal levels vary from 7 to 10ppb) at Georgetown Lagoon, two (2) kilometres from the mine site. On the same day ERA recorded a Manganese level of 32ppb at Station 009 near the Mudginberri Aboriginal community, five (5) kilometres downstream from Georgetown Lagoon. In early February 2000 ERA noticed elevated Manganese levels (approximately 6,000ppb) in the Corridor Creek artificial wetland system as part of monitoring so-called DW3A trial releases of water from the de-watering bore for Pit number three (3).

As of today, ERA publicly claims it only discovered the leak on 4 April 2000. The leak was repaired on 5 April 2000. It is estimated that some 2,000 cubic metres of contaminated water was released, approximately 17 cubic metres per day over four months.

The Federal Minister for Industry, Science and Resources was informed of the leak on 28 April 2000. The Traditional Owners of the land in question, the Mirrar, only learned of the leak after ERA issued a statement to the Australian Stock Exchange on the evening of 2 May 2000.

In failing to report this accident, ERA is in breach of the Environmental Requirements and the working Arrangements outlined the Memorandum Of Understanding between the Commonwealth Government and the Northern Territory Government. In addition, the Australian Conservation Foundation (ACF) alleges ERA breached the reporting requirements of the Australian Stock Exchange. The ACF has called on the Australian Securities Commission to investigate whether by suppressing share price-sensitive information ERA is in breach of Australian Corporations Law.

The Mirrar are seriously concerned at this accident, not only because of the threat to the environment and human health but also because of the disregard by ERA for due process and the total inadequacy of the Office of the Supervising Scientist (OSS).

The OSS was established by the Federal Government to monitor the Ranger mine. In this case, it has clearly failed in its responsibility to monitor Ranger and protect the world heritage values of Kakadu National Park. The fact the Manganese leak occurred, the subsequent cover-up by the company and the inadequacy of the OSS vindicate concerns raised by the Mirrar to the World Heritage Committee in relation to ERA's proposal to mine the Jabiluka

uranium deposit. Of particular concern is ERA's preferred option of milling Jabiluka ore at Ranger, exacerbating existing water management problems at Ranger.

The announcement of an inquiry by the mining company and the Commonwealth and Northern Territory governments (both strong advocates of uranium mining in Kakadu) offers no peace of mind to the Mirrar. The Mirrar submit that only a truly independent inquiry will reveal the full details surrounding this accident.

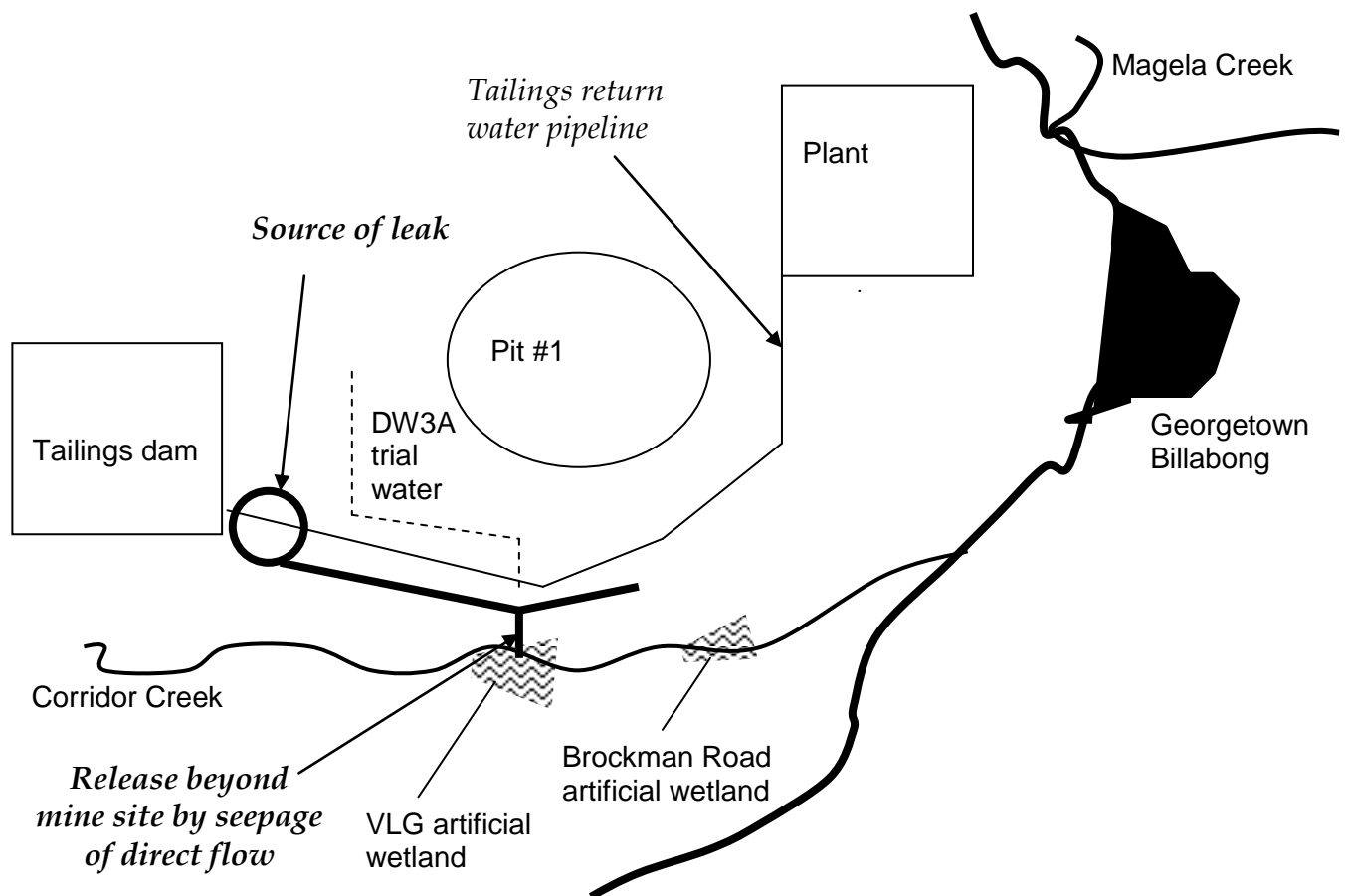
ERA has already pre-empted the result of any inquiry, with its so-called Community Development Unit visiting Mudginberri in the week the leak was made public assuring Aboriginal people fish were safe to eat. ERA's parent company, North Limited, has given similar assurances, even before all relevant information has been collected and an investigation commenced.

During a meeting to discuss the Manganese leak on 11 May 2000 comprising ERA, OSS, NT Department of Mines and Energy and the Northern Land Council it was revealed that another leak had been discovered that very day at the mine.

From the information available to Traditional Owners it appears a "pinhole" formed in a pipe 10 metres from the tailings corridor sump. The pipe pumps water from the processing plant to Pit Number 1. Approximately 50 to 100 litres of contaminated water sprayed into a culvert in the mine area. This did not breach any regulations. The NLC has advised Gundjehmi Aboriginal Corporation that if the leak had formed on the other side of the pipe and water had sprayed in the opposite direction it would have constituted a breach.

The Mirrar are informed that ERA-appointed consultants are currently preparing a report on the integrity of various pipelines at Ranger.

Figure A: Ranger Manganese leak (not to scale)



A2: Jabiluka Interim Water Management Pond

On 31 March 2000 the Mirrar were informed of a serious design fault in the so-called Interim Water Management Pond (IWMP) at Jabiluka. In correspondence from the Northern Land Council to Gundjehmi Aboriginal Corporation it was revealed that contaminated water was "accumulating at a rate that cannot be contained within the IWMP". It was stated that works were required to contain rainfall during the 2000/2001 wet season.

In the same letter the Mirrar were told of a meeting (to which they were not invited) at which Energy Resources of Australia had presented a series of scenarios to alleviate the water management problem. Eight suggestions were made, including a Reverse Osmosis treatment of contaminated water prior to its release into the surrounding environment.

The Traditional Owners of the land in question were given no opportunity for input into this process. The Mirrar were presented with a *fait accompli* – that the company would soon apply to the Northern Territory Department of Mines and Energy for the installation of a pilot Reverse Osmosis plant at the Jabiluka site, to "test the suitability of the method in this application".

This totally excluded Mirrar concerns and was in clear breach of commitments given by ERA only two months earlier that it was "committed to a program of 'zero-release' of any mine water at the Jabiluka mine"¹.

In correspondence dated 4 April 2000 the NLC informed Gundjehmi that the then depth of the IWMP was 4.80 metres, with the maximum operating level being 5.70 metres and the total capacity 6.20 metres. It was also revealed that the uranium level in the IWMP was 206 parts per billion (ppb), some 10 times the Australian drinking water standard and 2,000 times the level of uranium in the surrounding wetlands of Kakadu.

The Mirrar are especially concerned that a pond designed to contain runoff from the mine "to a maximum rainfall of a one (1) in 10,000 year extreme wet season rainfall" has encountered problems just two years after construction. The Independent Scientific Panel of ICSU in its 1999 review identified similar concerns at the pond design.

There is also conjecture as to whether the IWMP received sufficient approvals from the Australian Government, as it is not mentioned in either the Jabiluka Environmental Impact Statement or the Jabiluka Mill Alternative Public Environment Report.

In raising the valid and serious concerns of the Mirrar the Executive Officer of Gundjehmi Aboriginal Corporation was vilified in the Australian media by the Northern Territory Minister for Resources as being 'a liar'²

¹ ERA Internet site www.energyres.com.au/jabiluka/overview.html 20 January 2000

² Transcript of ABC Radio Darwin interview with Daryl Manzie MP, 7 April 2000

ATTACHMENT B:

History of Uranium Mining on Mirrar Country – At a Glance

- 1977 Australian Government judicial inquiry finds that Mirrar People are Traditional Owners of the land for which the Ranger and Jabiluka mines and the mining township of Jabiru are proposed. Finds that Mirrar people are opposed to mining. Recommends that mining proceed despite Mirrar opposition.
- 1978 Mirrar people gain formal legal recognition as Traditional Owners of the Ranger Project Area and other land that becomes part of Kakadu National Park Stage One, however *Aboriginal Land Rights (Northern Territory) Act* amended to remove Mirrar right to veto the Ranger mine. Township of Jabiru excluded from land grant to facilitate mining.
- 1979 Construction of Ranger uranium mine and township of Jabiru commences.
- 1980-2 Australian Government judicial inquiry finds Mirrar people are Traditional Owners for the Jabiluka Mineral Lease. Simultaneously, Northern Land Council agrees to enter into negotiations for Jabiluka uranium mine in return for mining company not opposing land grant.
- 1982 Under extreme duress, Mirrar people do not oppose NLC entering into an agreement to develop a “stand alone” Jabiluka uranium mine. Mirrar people gain formal legal recognition as Traditional Owners of Jabiluka Mineral Lease and other land that becomes part of Kakadu National Park Stage Two.
- 1983 Australian Government prevents development of Jabiluka uranium mine as part of “Three Uranium Mines” policy.
- 1984 Australian Government social impact study finds the Aboriginal community affected by the Ranger mine to be a “society in crisis”.
- 1991 Ranger mining company, ERA, buys Jabiluka Mineral Lease and the 1982 Mining Agreement. Mirrar have no right to veto the purchase. NLC negotiates agreement with ERA to give Mirrar the right to veto any proposal to use Ranger Project Area to mill uranium from Jabiluka.
- 1992 NLC and ERA informed by senior Aboriginal custodian that important sacred sites near the proposed Jabiluka mine site were not adequately recorded in period leading to 1982 Agreement. Kakadu Stage 3 inscribed on List of World Heritage under natural and cultural criteria (following Stage 1 in 1981 and Stage Two in 1987.)
- 1996 Australian Government abandons “Three Uranium Mines” policy. ERA applies to develop Jabiluka on basis of 1982 Agreement. Mirrar people declare unequivocal opposition to Jabiluka proceeding.
- 1997 Australian Government approves Jabiluka uranium mine on basis of milling Jabiluka uranium at Ranger (the Ranger Milling Alternative or “RMA”). Mirrar people exercise veto of RMA based on 1991 agreement.

- 1998 ERA develops proposal to mill uranium on-site at Jabiluka (the Jabiluka Milling Alternative or "JMA"). Australian Government gives approval for construction to begin "on elements common" to both RMA and JMA. Mirrar effectively exhaust domestic legal remedies to prevent construction proceeding. Construction commences in June without required cultural mapping having taken place. Bureau of WHC resolves to send a mission to Kakadu. JMA given conditional Australian Government approval in August, despite ERA's tailings management proposal being rejected. World Heritage Committee mission visits Mirrar country in October. Twenty-Second World Heritage Committee in Kyoto considers mission report in early December..
- 1998 (cont.)
- 1999 Australian Government and ERA reject Mirrar pleas to halt construction until sacred site assessment undertaken. WHC considers Jabiluka at Third Extraordinary Session. Construction suspended in September as ERA decides on interim basis not to proceed with JMA. Mirrar halt Australian Government sacred site assessment process after unsuitable person nominated by Australian Government without consultation. Mirrar advise NLC that no negotiations to take place on RMA for a minimum period of five years. WHC briefly considers Jabiluka at Twenty-Third session in Marrakech.
- 2000 Mining company announces intention to develop "new" JMA proposal. NLC reveals that interim water retention pond at Jabiluka unable to contain contaminated water past 1999/2000 monsoon wet season (see *Attachment A2: Jabiluka Interim Water Management Pond*). Australian Government reports to Bureau of WHC on 15 April. On 28 April 2000 a three-month leak of Manganese from Ranger uranium mine was reported to authorities, nearly one month after being discovered by ERA (see *Attachment A1: Ranger Manganese Leak*.)