

Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act

Supplementary Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs

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Introduction

This document is supplementary to another submission to the Standing Committee by Dhimurru Land Management Aboriginal Corporation which focused on findings and recommendations contained in the Reeves Report.

The major aim of this supplementary submission is to provide some background on issues raised by Nabalco Pty Limited in its submission to the Standing Committee, dated 26 February 1999, in respect of the application of permit provisions in Northeast Arnhem Land. The Nabalco Pty Limited document referred to above is in the public domain, being located on the internet at:

<http://www.aph.gov.au/house/committee/atsia/reeves/Submissions.htm>

The following text reviews these issues from the perspective of Dhimurru Land Management Aboriginal Corporation and has been endorsed by the Executive Committee of Dhimurru Land Management Aboriginal Corporation at a meeting conducted 10 March 1999. The Corporation relies heavily upon the existing permit provisions to effect sustainable resource management regimes on specific areas of Aboriginal land in North-East Arnhem Land. These areas are widely acknowledged as being of high conservation value and have been available for conditional recreational use by the general public, through the existing permit provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* and the Northern Territory *Aboriginal Land Act*, for over 15 years.

Background

The conditions of the *Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968* required that Nabalco establish township infrastructure, and there was a rapid influx of staff and contractors. Subsequently, other private businesses and public sector organisations have become well established in Nhulunbuy. The township has, in effect, become a regional service centre.

As of the 17th November, 1975, and at subsequent meetings, the clan leaders of the Yirrkala area, the Gove Joint Liaison Group, community members and associations agreed upon entry permits to access specific areas in the vicinity of Nhulunbuy (Turner 1979).

At the time approximately fifteen areas were set aside by Department of Territories Welfare Branch patrol officers for recreational use by the balanda residents of the new town. After the Welfare Branch was disbanded these arrangements were carried on first by the Department of Aboriginal Affairs and then by the Northern Land Council (S. Williams 1992:1).

Upon establishing an office at Nhulunbuy, the Northern Land Council assumed responsibility for issuing Recreation Permits for access to the designated recreation areas. The NLC's capacity to effectively monitor the environmental and cultural impact of recreation area use was severely restricted by the limited human and other resources available to them undertake these functions in addition to all the other functions required at a regional level.

Environmental and Cultural Impacts of Recreation Area Use

As early as 1979, a report commissioned by the Department of the Northern Territory recommended that the Manydjarrarrnga-Nanydjaka (Cape Arnhem) area - one of approximately twenty designated recreation areas currently managed on behalf of traditional Aboriginal owners by Dhimurru Land Management Aboriginal Corporation - be designated a Coastal Reserve and that Aboriginal Rangers be appointed to manage the area under the auspices of a land use advisory council. The principal objectives of recommendations contained in the report were:

to conserve the scenery, natural and historical objects and the wildlife and to provide for the enjoyment of the same by such means as will leave them unimpaired for the enjoyment and education and inspiration of future generations (Turner quoted by Gambold et al. 1995:3).

Increasing visitor use and consequent degradation of a range of important sites in the vicinity of Nhulunbuy, including Manydjarrarrnga-Nanydjaka (Cape Arnhem), caused the land owners to seek further means of protection and control of access. As reported in an application to register Manydjarrarrnga-Nanydjaka as a Sacred Site (Lee 1983:2):

Much of the (Manydjarrarrnga) area today is a popular recreation resort for residents of Nhulunbuy who obtain permits from the N.L.C. to visit.

Concern about damage to the environment by four wheel drive vehicles resulted in the survey and report of W. J. Haylock for the Conservation Commission of the N.T. in 1980. This report stated that,

The extent of erosion varies from 'extreme' on long sandy slopes, to 'minor' where the access tracks traverse gravelly red earths. In general the tracks to Cape Arnhem can be classified as being in a 'state of severe erosion' (Haylock 1980).

Various recommendations for the improvement and repair of the access tracks to Cape Arnhem led to the grading of a track from (Gulkula) along a ridge of great significance for Yirritja Clans. This was done without permission from the owners of that area. This track, known as the 'top road', was soon closed at the direction of Galarrwuy Yunupingu representing the Gumatj Clan. Considerable pressure has since been exerted on Aboriginal people to agree to the re-opening of this road which continues to be used, albeit illegally, by Nhulunbuy residents.

The custodians have consistently expressed their desire since 1980 to close Cape Arnhem to vehicular traffic and allow access by boat only to the peninsula. This will stop overuse of the area as a recreation area, allow eroded areas to recover,

Manydjarrarrnga-Nanydjaka was one of five substantial areas in the vicinity of Nhulunbuy which were subsequently registered as Sacred Sites as a result of the work undertaken by Lee and traditional custodians during the period 1980-83.

The actions foreshadowed by Lee in the above mentioned document, to restrict access to Manydjarrarrnga-Nanydjaka, did not eventuate.

A 1990 report on coastal degradation in the vicinity of Nhulunbuy and Cape Arnhem, undertaken by the Land Conservation Unit of the Conservation Commission of the Northern Territory, highlighted the urgent need for management strategies to effectively address erosion and other environmental impacts arising from recreational use of those areas (Kraatz and Letts 1990).

After the above report was produced, Yolngu clans with interests in the recreation areas initiated concerted action to address the evident shortcomings of existing management strategies:

With the assistance of the Northern Land Council (NLC) some of the traditional owners of the environs of Nhulunbuy ... recently inspected parts of their estates being used as recreation destinations by the residents of the mining town. A meeting of all the traditional land owning groups was subsequently held at the Dhupama look-out on 26 September 1991 to discuss an appropriate collective response to the damage to their lands caused by fifteen years of loosely controlled recreational use (S. Williams 1992:ii).

Concern about the environmental impact of recreational activities at Manydjarrarrnga-Nanydjaka provided the main impetus for these actions and resulted in the temporary closure of the area.

The Establishment of Dhimurru Land Management Aboriginal Corporation

For hundreds of generations, the management of natural and cultural resources was entirely the domain of the original inhabitants. In that context, Yolngu management achieved a balance which ensured long term, sustainable resource use for the economic and social well-being of the landowners. New factors however were impacting on Yolngu management of natural and cultural resources. These new factors were the result of the permanent presence of a large non-Yolngu population and they required a new response.

On April 8, 1992, after extensive consultations facilitated by the NLC, Dhimurru Land Management Aboriginal Corporation was formed at a meeting of traditional Yolngu owners from Northeast Arnhem Land. This organisation was formally incorporated under the *Aboriginal Councils and Associations Act 1976* on September 8, 1992.

In initiating Dhimurru, traditional Yolngu landowners recognised the urgent need for planned, sustainable and culturally appropriate management of the recreation areas as the township of Nhulunbuy developed and visitor numbers increased. They strongly asserted that access to their land would in the future be contingent upon such management. Effective management in this context, they insisted, is based on Yolngu control and a community-based approach to planning.

The primary function of Dhimurru, acting on behalf of the traditional owners of land and sea estates in Northeast Arnhem Land, is to facilitate the protection, conservation and sustainable management of natural and cultural resource values, concentrating on those areas which are subject to recreational use.

One of the areas consistently of greatest concern has been Manydjarrarrnga-Nanydjaka. The natural and cultural heritage values of this area have been highlighted in a recent report to the Australian Heritage Commission by Dhimurru Land Management and there exists the possibility that the area may in future be the subject of a nomination to the Register of the National Estate, as an integrated cultural landscape.

Many of the key recommendations contained in reports produced by Turner (1979), Kraatz and Letts (1990), Hadden and Hillen (1993) and Gambold et al. (1995) have subsequently been implemented through Dhimurru Land Management Aboriginal Corporation.

It should be noted that Nabalco Pty Limited is a major corporate sponsor of natural and cultural resource management activities undertaken by Dhimurru Land management Aboriginal Corporation, making substantial annual contributions to the Corporation's general operating costs and occasionally providing additional funding and other support for specific project activities.

Issues Raised by Nabalco Pty Limited Regarding Permits and Access

At point 5 of the Nabalco submission reference is made to the "ACCESS AND PERMIT (sic) SYSTEM".

The submission states that,

One of the life-style draw-cards for working at Gove is its proximity to an unspoilt environment

This statement is at odds with the fact that Yolngu landowners brought Dhimurru Land Management Aboriginal Corporation into existence because of compelling evidence of degradation to this environment; particularly the designated recreation areas. Dhimurru is charged with the responsibility of maintaining its "unspoilt" character to the extent it is possible to do so, while continuing to provide recreational access to those locations.

The submission goes on to state that,

Freedom of movement is part of the Australian ethos.

This is a curious assertion, ethnocentric and sociologically problematic. Non-indigenous private landholders, corporate and government organisations can and do place legitimate conditions on access to land under their control. Restrictions on access to the Nabalco mining and refining areas are an example of such control being exercised.

Furthermore, this assertion is contrary to currently understood and accepted permission and access protocols among traditional Aboriginal people in Northeast Arnhem Land who are, after all, the owners of the land in question. It is also inconsistent with observable, contemporary practice among the landowners themselves.

The submission also states that,

Nhulunbuy residents must purchase a "recreation permit" from the Dhimurru Land Management Aboriginal Corporation each year (at a cost of \$55 per family) to enter certain "recreation permit areas" (the overall area of which has been progressively reduced) surrounding the town.

The implication is that the permit system administered by Dhimurru is contrary to the purported "Australian ethos" regarding freedom of movement. The submission appears to ignore the fact that Dhimurru is, in essence, a natural and

cultural resource management agency charged with the responsibility of ensuring sustainable use of the designated recreation areas. In this context, Nabalco fails to acknowledge that a fundamental strategy adopted by organisations involved in recreation and conservation area management is to direct and control visitor use of those areas in order to minimise potentially adverse impacts on the very values that attract visitors in the first instance.

The permit fees applied by Dhimurru raise less than 15% of the annual operating costs of the Corporation and compare favourably with fees levied on entry to other recreation/conservation areas around Australia.

The contention by Nabalco that the designated recreation areas “have been progressively reduced” under the management of Dhimurru is unquantified and may be misleading. The list of approved recreation areas and associated conditions for access and use were decided by the relevant traditional owners at the time Dhimurru was established and covered 20 specified destinations, as opposed to the 15 apparently agreed to in the 1970s (S. Williams 1992:1).

Subsequently, only one authorised destination has been removed from the list of recreation areas covered by the recreation permit. This location, Butjumurru (Catalina Boat Ramp), was accessible for the sole purpose of launching and retrieving small boats. Marn Garr Community Government Council, the local government body responsible for that particular location, instructed Dhimurru to remove the boat ramp from the list of designated recreation areas because of persistent non-compliance with the conditions of access to that location, i.e. recreation permit holders were apparently deviating from direct access to the boat ramp to go sightseeing around the nearby community living area at Gunyangara (Ski Beach).

One recreation destination, Daliwuy Bay, was temporarily closed at the direction of a senior custodian residing there following several thefts of personal property.

Most other restrictions which have been applied by Dhimurru to activities in the recreation areas are directly related to minimising the damage caused by 4WD vehicles and accord with the recommendations contained in a range of environmental impact studies of the area conducted under the auspices of credible conservation agencies.

Discussions that have taken place from time to time regarding the possibility of further recreation area closures have been in the context of uncertainty regarding the financial capacity of Dhimurru Land Management to manage all of the recreation areas on a sustainable basis at current levels of use and impact.

The Participants submit that an established set of rules regarding access that are not flexible depending on the relevant political and quasi-political issues which erupt from time to time would be preferable.

To suggest that all, or even most, decisions regarding access onto Aboriginal land in the vicinity of Nhulunbuy, including the designated recreation areas, are founded on “political and quasi-political issues” is to ignore the sound natural and cultural resource management principles which underpin these decisions.

Nabalco seeks certainty regarding access and appears to mistrust “flexibility”.

Traditional owners also want the certainty that comes from being able to assess and respond to circumstances on an almost daily basis. Existing permit arrangements enable the Aboriginal landowners, through representative organisations such as the NLC and Dhimurru, to respond at relatively short notice to unforeseen circumstances that may lead them to temporarily or permanently amend conditions of access and use in relation to particular areas. The effect of implementing an inflexible set of rules would be to diminish their capacity to exercise effective control over activities on their land and would therefore appear to be in direct conflict with one of the acknowledged purposes of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

The Nabalco submission further suggests that access to areas outside the existing leases is a ‘fringe benefit’ which enables the company to attract quality employees. The implication is that an onus rests on the traditional owners of these areas to guarantee the availability of these ‘fringe benefits’ for Nabalco employees.

To suggest that a “flexible” approach to access issues “will also impact negatively on the Aboriginal people themselves” is to ignore the negative impact of instituting a system of guaranteed access that bears almost no resemblance to traditional protocols.

Traditional Aboriginal owners in the vicinity of Nhulunbuy are well aware of the potential negative impacts on themselves arising from decisions relating to access and permits. It seems reasonable to suggest that these negative impacts largely arise from a demonstrated inability of a significant proportion of the non-indigenous population in Nhulunbuy to acknowledge the property rights of the traditional Aboriginal owners and their consequent legal right to make access onto their country subject to such legal conditions as they deem fair and appropriate.

Some pertinent facts not elucidated in the Nabalco submission are listed below:

- The option for traditional owners to close some or all of the recreation areas clearly existed prior to the establishment of Dhimurru Land Management Aboriginal Corporation. This course of action was not chosen, and in fact local Associations which receive statutory royalty equivalents from Nabalco mining operations initially committed their organisations to substantial annual contributions toward the establishment and operating costs of Dhimurru. While the level of these annual contributions has been much reduced in recent years, the Associations in question have provided Dhimurru with a total of \$ 504,875 in funding support since 1992. Recreation area users have therefore benefited indirectly from the statutory royalty equivalents received by local Aboriginal Associations, and more directly through the demonstrated willingness of the traditional owners to accommodate the recreational needs of Nhulunbuy residents and visitors to the township.
- The activities of Dhimurru Land Management Aboriginal Corporation are highly regarded by Environment Australia as an example of indigenous natural and cultural resource management. Traditional owners of the recreation areas have recently given in-principle approval for the declaration of these areas as Indigenous Protected Areas. This action would see these areas formally included in the National Reserve System of protected conservation areas, under the management of the Corporation.
- The volunteer program established by Dhimurru Land Management in 1998 has attracted considerable support from non-indigenous members of the Nhulunbuy community, indicating significant support for existing management arrangements.
- Nabalco itself issues permits for recreation access to an area of Aboriginal land. These permits are subject to a range of conditions agreed to by the relevant traditional owners, as is the case in relation to the recreation area permit system administered by Dhimurru Land Management Aboriginal Corporation.

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