“KULALUK AND LAND RIGHTS: How the spearhead of the land rights movement was appropriated: the Kulaluk lease as a blueprint for the NT Intervention” by Dr William B Day, Darwin, January 2010.

This essay attempts to understand how the on-going alienation of the 301 hectare Kulaluk Crown Lease in Perpetuity granted to Aboriginal people in the northern suburbs of Darwin, the capital of the Northern Territory of Australia has been able to proceed since 1979 with little outspoken opposition from Aboriginal groups and without accountability from leaseholders or government. The Kulaluk land was once described as ‘a symbol of the stand that Aborigines are now making against the past tendency to put their interests last in any consideration of land usage’ (Woodward 1974). Instead the land has become a blueprint for government intervention to incorporate Aboriginal land as a commodity within the prevailing economic rationalist paradigm.

The Kulaluk Lease Area Land Development Study (Holingsworth Consultants 1985) sets a trend for future studies to view the Kulaluk lease as terra nullius, unused and unoccupied by indigenous people, leaving the land free for commercial proposals such a golf driving course, light industry uses and tourist accommodation (see Holingsworth Consultants 1985). For example, despite a brief half-page section (p.2) on ‘Land use’, the above report fails to mention any of the Aboriginal activities and uses which motivated the original land claim. In contrast, the ‘Land use Field Study of the Kulaluk Area’ (Henderson 1983) documents Aboriginal use of the lease over a four week period. Henderson (1983:15) reported: “Apart from the obvious economic benefits of being able to supplement family diets with the variety of protein sources found at Kulaluk, the psychological benefits of shared family activity and the relief of social stress by being able to go to the creek and become involved in relaxing, absorbing and familiar activities are equally significant.”

As the Land Rights (Northern Territory) Act 1976 was not applicable in towns, the Kulaluk land was treated as a needs claim under the NT Special Purposes Lease Act. Henderson records that the purpose of the proposed lease was to be Special Community Development and ‘zoning was to be for open space (01) and special uses (S2) (Henderson 1984). The Director wrote that: ‘The purpose of the proposed lease is Special Community Development, ‘principally for the Larrakia People’.

The Land Rights Act contains safeguards against leasing out Aboriginal land, as has occurred at Kulaluk since 1979. For example, according to Section 19A(2), Aboriginal land cannot be leased out unless:

(a) the traditional Aboriginal owners (if any) of the land understand the nature and purpose of the proposed lease and, as a group, consent to it; and

(b) any Aboriginal community or group that may be affected by the proposed lease has been consulted and has had adequate opportunity to express its view to the Land Council;

In short, the eventual Kulaluk title subverted the safeguards of the Aboriginal Land Rights (Northern Territory) Act, 1976, to the benefit of future developers and the detriment of Larrakia people and other Aboriginal and non-Aboriginal community groups with an interest in the land, both historical and traditional.

When the NT Chief Minister, Paul Everingham personally presented the title to Bobby Secretary at Kulaluk, he said, ‘The land on which Darwin is situated belonged to the Larrakia before the white man first came to the Northern Territory, now Mr Bobby Secretary is to receive the title to part of this land.’ The hand-over ceremony thus consolidated the impression that the Kulaluk land was being returned to one particular family and further ensured that Kulaluk would not be a precedent for Aboriginal land rights in towns. Although Bobby Secretary had no children, his nieces and their children have continued to uphold the fallacy that they hold the land as traditional owners. In his Kenbi judgement, Judge Gray (2000:35) describes the descendants of Topsy Secretary at Kulaluk as, ‘third and fourth generation matrifiliates’. That is, the Larrakia connection for the younger generation of the Secretary family is through their mother’s, mother’s, mother’s father.

The environmental intentions for granting the Kulaluk lease are summarised in Point 7 of the background brief tabled at the 1977 Federal Cabinet meeting: “7. The Larrakia people have prepared plans to develop parts for habitation, recreational and community purposes, and to retain wilderness areas. A substantial part of the area is unsuitable for development because it lies in the flight path of the Darwin aerodrome and is low-lying and swampy. It includes burial grounds which would be preserved.”

Henderson (1984:27) quotes correspondence between the Darwin and Canberra offices of DAA:

“In October [1974] a ‘proposed land usage plan’ for the whole [Kulaluk] area being claimed was received from Bill Day. Darwin DAA told Central Office [in Canberra]: ‘This includes large areas to be retained for public access as fauna and flora sanctuaries… We believe this proposal is imaginative and is an attempt to make the area at least partly into one of Aboriginal cultural significance. The fauna and flora sanctuary proposals may of course attract interest and support from environmentalists.”

In 1979, ten lease conditions for Kulaluk land were prepared by the Department of Lands and Housing. After Kulaluk residents attended the consultations, they returned proudly proclaiming that they had managed to insert an eleventh condition which stated: ‘The leasees shall not remove or destroy any live mature trees from the land except as required within the context of a development plan approved by the Planning Branch, Department of Lands and Housing.’

Perhaps the greatest benefit to Federal and Territory Governments is that there is no accountability for costly financial disasters like the prawn farm and crab farm that would bring down a government in any other jurisdiction. Maintaining the charade that Kulaluk is Aboriginal land has prevented any media scrutiny of government spending and maladministration. The media is hesitant to enter the land and unsure where they stand. Environmentalists and even the Larrakia Nation have also hesitated to criticise the Gwalwa Daraniki Association Inc, or defend the nature wilderness won by the struggle of Aboriginal people who have since passed away. In this way, Governments and developers have the best of both worlds – appearing to respect Aboriginal ownership and being immune to public scrutiny. In confusing the Kulaluk lease with Aboriginal land that requires a permit to enter, those who might be curious dare not enter the lease.

The plans of the Gwalwa Daraniki Association (1997) for golf courses, motels and the aquaculture development at Kulaluk that will exclude Aboriginal cultural and recreational uses as well as dramatically change the environment of the area, appear to contradict Sue Jackson’s view that recognition of Aboriginal relationships to ‘town country’ will result in ‘land use outcomes which place a higher value on the protection of the environment, and respect for the richness of different cultural relationships to landscapes and places’ (Jackson 1996:101).

The question remains, do community based organisations have the right to ‘realise the economic value of their land’ when that land is granted as a lease for the welfare of the group and associated others? Are there to be no other ideals than allowing clubs and associations to use their leases ‘to the best advantage of their members’, even in the face of a groundswell of community opposition like that which occurred in Ludmilla in 2009? Gerry McCarthy wrote: “Let me begin by saying that no land within the Kulaluk lease had been zoned for light industrial purposes. The Government is generally supportive of community based organisations being able to realise the economic value of their land to the best advantage of their members. To this end the department of Lands and Planning is working with the Gwalwa Daraniki Association to review the land uses that could be undertaken within the Kulaluk lease. However, as you would be aware the lease is significantly constrained by tidal inundation and its proximity to the Darwin International Airport limits the area available and the types of activities that could be undertaken on the land. I am cognizant of the need to balance development with the ongoing enhancement of the beauty of our tropical city and thank you for your remarks.”

, ironically the Gwalwa Daraniki Association now hold unprecedented powers to apparently do whatever they wish with the land entrusted to them. No other recognition of Aboriginal land rights has given land holders such power. Unfortunately, the power given to the Kulaluk land holders to alienate Aboriginal land is exactly what the Federal Government seeks under the Northern Territory Emergency Response Act, otherwise known at the ‘Intervention’. In addition, the alienation of Aboriginal land proceeds without any right of dissention by interested Aboriginal groups, like the Larrakia Nation, while governments and developers are insulated from media scrutiny.