

The alienation of the Kulaluk Crown Lease in Perpetuity: a background briefing prepared for Maurice Blackburn by Dr Bill Day, Consulting Anthropologist.

The Larrakia land rights claims to land in Darwin achieved national publicity in the 1970s. As a result, in 1975 the Interim Aboriginal Land Commissioner, Mr Justice Ward, heard claims to Emery Point, Railway Dam and Kulaluk in Darwin. The Kulaluk land claim included vacant Crown land that had been revoked from the Bagot Aboriginal Reserve in 1965, in circumstances described in detail in 1974 by the Aboriginal Land Rights Commissioner Mr Justice Woodward. At the time, the proposed Aboriginal Land Rights Act was to apply in urban areas; however, by 1976 land in towns was excluded from the provisions of the Land Rights Act.

Despite the changes to the Land Rights Act, 301ha of suburban bushland and mangroves was granted in 1979 as compensation to Larrakia and associated Aboriginal people as recommended by Judge Dick Ward. The lease was handed over to the Gwalwa Daraniki Association Incorporated (GDA) by the Chief Minister of the Northern Territory, Paul Everingham, in the form of a Special Purpose Lease, to be granted at a rate of ten cents per year.

Instead of a Land Trust within the safeguards of the Land Rights Act the land-holding GDA had an off-the-shelf constitution which at the time allowed a broad membership but which could be easily amended. By 2006 the constitution of the GDA had been amended with the help of a Darwin lawyer, Michael Chin, to restrict membership to “a minimum of five, of which a majority must be Aboriginal.” Membership also included non-Aboriginal spouses. According to the constitution, members must belong to “the Dangkalaba clan” (with an undefined composition) and have lived on the lease for at least 12 months, effectively restricting membership to a few families. In the words of one member, “otherwise we’d never get anything done.”

The book, “Bunji: a history of the Gwalwa Daraniki Movement” (Aboriginal Studies Press, 1994) describes some of the earlier business dealings of the GDA. In 1993, the developer, Vysrose, in partnership with the GDA proposed a theme park-style development on the lease. In the same year, a McDonalds Restaurant was built on the lease, in what was described as “an anchor lease” arrangement. Largely because of objections by the RAAF to construction in the flight path of an international airport, nothing further happened until 1996 when 5ha aquaculture ponds were excavated on tidal flats on the lease. After the prawn farm failed, the ponds were used for an equally disastrous “Crab Farm” sponsored by Federal and Territory governments and the Charles Darwin University. These ponds have lain abandoned since 2008, although the permit for the prawn farm requires the land be restored upon the cessation of the project.

Another secret deal, since shown to be illegal, was the appearance of a huge stockpile of rubble from construction sites in Darwin, dumped by Halikos Construction on the conservation lease from 2006 to the present. In addition to excavated material, the dump contains documented concrete pours and builder’s waste, including asbestos. Belatedly, Planit and Halikos applied for an Exception Development Permit which was rejected by the Minister in 2014. According to the sign on the gate to this dump, it is the property of Halikos and Planit, although it has never been explained what authority the leaseholders gave these companies to use the lease as a dump. In addition, other companies have used the mangroves on the lease as an illegal and unsupervised dumping ground in secret “under-the-table” agreements with the leaseholders. Note: Halikos have been granted a lease adjoining the Kulaluk lease to explore the feasibility of constructing an artificial island on tidal flats.

In 2009 a caveat was signed by the GDA with Gwelo Investments over the mangroves and tidal areas of the lease for the proposed "Arafura Harbour" marina and canal housing development. Due to Aboriginal and public opposition the Gwelo proposal was rejected by the NT government, but the caveat with GDA over a large portion of the lease is still in effect. Applications to rezone the remaining areas of the lease from Conservation to Light Industry continue to be lodged by Planit Consulting, Jape and others, signed off by the GDA. In recent years, 34.5ha of the lease has been rezoned by the Minister, but due to Larrakia and public opposition the Planit, Jape and GDA application to subdivide was refused after a hearing by the Development Consent Authority in Darwin on March 7, 2014.

On March 7, 2014, the Minister surprisingly rezoned another area of the lease from Conservation to Light Industry after the previous Minister had refused the application because the area, on Dick Ward Drive opposite Totem Road, was in the storm surge zone. Although the area is also close to a documented Aboriginal burial ground with indeterminate boundaries, clearing of the land began in May by the developers, Dragon Lady P/L, with local real estate developer, Ernie Chin, as a director, operating in a secret agreement with the GDA. After loud public and Aboriginal objections to this desecration of an Aboriginal site, work has stopped until the next hearing of the Development Consent Authority which will hear objections to Planit's application to landfill the site.

Questions have been asked in the NT Parliament by Ken Vowles MLA as to how it is that a Crown Lease zoned as conservation can be rezoned and alienated from its intended Aboriginal use in, agreements made in secret by an unrepresentative body with a constitution prepared by a lawyer with family connections to the developers, on an Aboriginal site given a heritage clearance by the president of the GDA with a financial interest in the development.

Ever since the land was handed back to Aboriginal people, the leaseholders have viewed it as a "cash cow", with little concern for the amenity the land provides from other Larrakia people and the community. Their attitude is in keeping with plans for the opening up of Aboriginal lands by both Federal and Territory governments. However, alternative plans exist for the Kulaluk lease to be used as a culture, heritage, education and wilderness park, administered by, and employing Aboriginal people and providing facilities for school groups, cultural activities, sporting and recreation facilities, as well as environmental protection and management, according to the original intention of the land claim.

All the above accounts are well-documented and supported. What is required is time to allow opposition to build, as it has been in the past year, and to prevent the irreversible alienation of land won in the land rights struggle of the 1970s. Larrakia Nation representatives have applied for the whole area to be registered as heritage, but such a move takes time. Meanwhile Planit, Jape, Dragon Lady, Halikos and Gwelo will continue to further their plans, supported by the leaseholders.

It is requested that Maurice Blackburn challenge the legality of the decision-making process by the leaseholders, the Gwalwa Daraniki Association Inc and their secret deals with Gwelo, Halikos, Planit, jape, McDonalds, Dragon Lady, various illegal dumpers, NT Government and others. In the past an interlocutory injunction requesting information from the GDA was enough to stall them. The matter is urgent and any help would be appreciated. Further supporting evidence is available at www.drbilldayanthropologist.com