Larrakia protests caused the Aboriginal Land Rights Commissioner A E Woodward to strengthen the section on the Larrakia and the Kulaluk Gwalwa Daraniki Association in his 1974 final report

Darwin Town camp leases: Kulaluk

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In 1973, Aboriginal expectations of land rights were raised following the Whitlam Federal Government appointment of Mr Justice A E Woodward as head of an Aboriginal Land Rights Commission. On a tour of Aboriginal communities in June 1973, Woodward visited the Aboriginal camp on the beachfront at Kulaluk behind the Drive in Cinema, to listen to the views of the Gwalwa Daraniki Association that since 1971 had become the spearhead of the Larrakia tribe's claims to land in Darwin.[1] Despite Woodward's consultations, surveying of Ostermann Street in the nearby Coconut Grove subdivision soon resumed within sight of the Aboriginal people living at Kulaluk who had laid claim to the two-kilometre coastal strip of land from their camp to the tidal Ludmilla Creek.

Originally, Woodward (1973:26).had cast doubt on the Larrakia claims:

> I was told that there are some 18 members of the [Larrakia] tribe now left. Later information suggests that fewer than this number can trace paternal descent from the Larrakia, but there are more who identify themselves as Larrakia because of maternal links.

However, in his first report, Woodward (1973:26) left his findings open by welcoming further submissions on 'the question of principles involved'.

Larrakia protests caused Judge Woodward to substantially strengthen the section on town dwellers in his 1974 final report, a document on which the *Land Rights Act, 1976* is based. In his final report Woodward (1974:53) wrote:

> I have no doubt that the Larrakia people were the traditional owners of what is now the whole Darwin area. Some of the survivors, together with a few other Aborigines have formed an organization calling itself Gwalwa Daraniki. The secretary of this organization, a white man, has achieved remarkable results in obtaining press coverage and other forms of publicity for the claims of this group.[2] In the result, Kulaluk has become something of a symbol of the stand which Aborigines, with help and guidance from many sources, are now making against the past tendency to put their interests last in any consideration of land usage

[1] See: Transcript of discussion Kulaluk Darwin, Northern Territory-02 June 1973. National Archives of Australia, Series A4257, 2 PART 8

[2] According to *Land Rights News* September 27, 1979, p.5: 'If it weren't for the courage of the Larrakia, particularly their leader, Mr Bobby Secretary, and his able supporters, such as Bill Day, Fred Fogarty and Cheryl Buchanan, there might not be an NT Land Rights Act today'.

Not without reason, Woodward (1974) expressed strong doubts about the ability of the Gwalwa Daraniki to manage the land because 'its numbers are too small and its dependence on its white advisor too great'. Recommending in his final report that for the time being at least the title should be held by trustees nominated by the Northern Land Council, Woodward commented: 'No doubt the special interests of the Larrakia people would be remembered when such trustees were appointed.' He envisaged that with the development of the area and a greater number of Aboriginal residents, the title could be transferred to the local community. In Darwin when decisions on land usage were later being made, the Department of Aboriginal Affairs (DAA) contended that 'the spirit of the Woodward Report on urban areas needs to be borne in mind'. Bureaucrats reported that if only the two small pieces of land near the waterhole were to be granted, then there was a danger that 'the area of town land in the Darwin area including Bagot [Reserve] for Aboriginal use will be quite small.' [3]

Following Whitlam's dismissal, an amended version of the Aboriginal Land Rights Act was passed by Malcolm Fraser's government in 1976, excluding land in towns from the land rights claims process. This was confirmed in October, 1977, when a confidential briefing document on Kulaluk was tabled in the Federal Cabinet.[4] On a page headed, 'Issues for Consideration', the paper remarked: 'The Aboriginal Land Rights (Northern Territory) Act does not provide for claims to traditional areas within towns. The Kulaluk claim is, therefore, outside the scope of that legislation.' As the Land Rights Act was not applicable, Kulaluk was to be treated as a needs claim under the Special Purposes Lease Act. However, as the historian Krimhilde Henderson (1984:40-41) notes, there was opposition in Darwin to the acquisition of privately held land to create the proposed greater Kulaluk lease. Henderson continues:

> The Department of the Northern Territory, which had never been enthusiastic about the claim, seized upon the passage of the *Aboriginal Land Rights (NT) Act, 1976* to elicit two key opinions from the Crown Law Office. In the first, the view was held that since the Act excluded alienated crown land in a town from Aboriginal land claims, 'it is not appropriate to acquire privately owned land in order to make a grant of such land to Aboriginals who originally made a claim under proposed legislation which never became law.' However, the vacant crown land could still be issued under a special purposed lease...[5] As the Minister for the Northern Territory pointed out there was also a 'competing public interest for use of the land including the connector road.'[6]

In 1975 the Whitlam-appointed Interim Aboriginal Land Commissioner, Mr Justice Ward conducted hearings in Darwin for the Kulaluk claim and recommended that the land be granted to Aborigines:

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[3] T. C. Lovegrove to J. P. M. Long, 25 October 1974.
[4] National Archives of Australia, Submission No. 1828: Kulaluk Land Claim, Darwin – Decision 4367 (GA) and 4367 (GA) Amended, Series A12909, Control symbol 1828, Barcode 8911869, page 7.
[5] F V Reintano to secretary, Department of the Northern Territory, 24 January 1977).
[6] E Aderman to R I Viner, 11 July 1977.

> for the purpose of establishing, developing and maintaining a communal settlement for the use of Larrakia and other associated Aboriginal people and ancillary purposes. The Larrakia themselves have indicated their agreement with other compatible people having use of the land, which, in area (some 847 acres) would appear to require a use more extensive than that of the Larrakia alone (Ward 1975:15)

However, Ward's recommendations were not considered by federal parliament before Whitlam was sacked on November 11, 1975. Later the Department of the NT (DONT) advised that the Federal and Territory Governments were not legally committed to Justice Ward's recommendations because the 1975 Land Rights Bill under which they were made had never become law. The Crown Law Office did warn, however, that 'the political aspect may be very different as the Kulaluk people may think that the Government has bound itself legally. I cannot advise on this aspect of course.'[7]

Judge Dick Ward had also recommended that the lease be granted to trustees nominated by the Northern Land Council (NLC). However, the NLC completely ignored Woodward's reservations about the suitability of the Gwalwa Daraniki Association to hold and manage the lease in its own right.

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'. [8]

> 'The people desire that the title in the first instance be given to the Gwalwa Daraniki Association, an incorporated body, and later handed over to the Larrakeah Lands Association once it is officially incorporated. The group were still adamant that the ADF should not be involved with the handling of the land title issue.[9].

The *Aboriginal Land Rights (Northern Territory) Act, 1976* has safeguards protecting the interests of Aboriginal people who by tradition have an interest in the land (see Appendix to this essay, p. 23). For example, Section 4(1) of the Act states that the Minister shall 'establish Aboriginal Land Trusts to hold title to land in the Northern Territory for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned'.

In addition, 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:

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[7] FV Reitano to Secretary, Department of the Northern Territory, 17 June 1977.
[8] T R Lawler to Secretary, Aboriginal Development Foundation, 8 February 1979.
[9] G K Castine to J L Wauchope, 23 March 1979.

(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.'[10] 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.[11] 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.[12]

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.[13]

Before any consideration could be given to a hand back of the Kulaluk land, bureaucrats in the Department of Aboriginal Affairs (DAA) requested that the Gwalwa Daraniki Association submit future concept plans. Henderson (1984:27) quotes correspondence between the Darwin and Canberra offices of DAA:

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[10] *NT News*, 27 August 1979.

[11] Under the amended *Land Rights Act 1976*, there was no process to recognise traditional owners in Northern Territory towns.

[12] See Day (2009a). Compare the ancestry of Dominic and Titus Bishop, who are excluded by the Gwalwa Daraniki Association. The Bishop brothers are Larrakia through their father's, father's, father, (patrilineal) a man listed on the 1973 genealogy as Willy Dial (see Gray 2000:38).

[13] National Archives of Australia, Submission No. 1828: Kulaluk Land Claim, Darwin – Decision 4367 (GA) and 4367 (GA) Amended, Series A12909, Control symbol 1828, Barcode 8911869, page 7

> 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.[14]

The plan was approved by the Planning Branch, Department of Lands and Housing.'[15] As it turned out, the concern the residents expressed for the Kulaluk environment was meaningless. By 1987, in keeping with an age of economic rationalism all idealism was gone and the purpose of the lease was briefly defined as 'for purposes consistent with the zoning of the land'.[16]

In November, 2005, Dr Chris Burns, the Minister for Planning and Lands, gave an explanation for the exclusion of the Kulaluk land from the Larrakia native title claim. Dr Burns wrote:

> I would first point out that the purpose of the Kulaluk lease, Crown Lease Perpetual No.671, is for the purpose consistent with the zoning of the land. The land within the lease is covered by several zones and most development requires consent under the *Planning Act* (the Act).
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> With regard to the lease being excluded from the Larrakia Native Title claim, the issue of Crown Lease Perpetual No.671 predates the application for a determination of native title. As such it is considered a previous exclusive possession act which has extinguished native title.

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).
Similarly, Kirrily Chambers, the Director of Land Administration, wrote on 12th August 2009:

> Kulaluk (Lot 8630 Town of Nightcliff) is held as a Crown Lease in Perpetuity by Gwalwa Daraniki Association Inc and any proposals for future development will be required to be negotiated and agreed to by the Minister for Planning and Lands.

[14] T. C. Lovegrove to J. P. M. Long, 25 October 1974
[15] Letter from T R Lawler, Director, Department of Lands and Housing, Serviced Land Administration Branch, to Secretary, Aboriginal Development Foundation (ADF), Darwin, 8 February 1979.
[16] Search certificate 11/07/2008: Crown Lease in Perpetuity 00671, Volume 727, Folio 022.

> Should you wish to discuss your concerns with the Association directly, you should contact Mrs Helen Secretary who is the Registered Public Officer of Gwalwa Daraniki Association. [17]

A letter signed by the Senior Advisor of the Office of Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs on 11th September 2009 states that 'the Northern Territory Government has overall responsibility for the future of the lease'. Ms Macklin's reply continues:

> [The Department] has a strong relationship with the Kulaluk community and it has provided significant support to the community around securing more jobs and better transport. The Minister wants that relationship to continue and to also make sure that any further developments on the Kulaluk lease occur after proper consultation with the residents and on the basis that they benefit.[18]

> There is therefore limited scope only for any further or wider Aboriginal involvement beyond the present Gwalwa Daraniki Association. However, you can rest assured that from a Commonwealth viewpoint any future developments on the lease will only occur after proper consultation with the residents and will depend on them delivering sound benefits to the people.[19]

in early 2009, Gwelo Investments Pty Ltd registered a caveat over the Kulaluk lease, signed by Gwelo Director, Even Lynne, on March 9. The document notes that the caveat is lodged by Gwelo Investments Pty Ltd, PO Box 2816, Darwin, NT 0801, 'as the grantee of exclusive rights pursuant to an agreement between the Caveator [Gwelo] and the Registered Proprietor [Gwalwa Daraniki Association Inc, PO Box 746, Nightcliff, NT 0814] dated 15 December 2008. The 'non lapsing caveat' document states:

> The caveator claims the estate or interest specified in the land described on the grounds set out and forbids the registration of any dealing affecting that estate or interest to the extent of the prohibition as specified during the period in which the caveat remains in force.

A map accompanying the caveat document shows that Gwelo's 'equitable interest in the land' applies to almost all the vacant land on the Kulaluk lease. Kulaluk is now Aboriginal land in name only.

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[17] Letter from Kirrily Chambers, Director Land Administration to Bill Day, 12 August 2009.
[18] Letter from M C Dillon, Senior Adviser, Office of Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, to Bill Day, 11 September, 2009.
[19] Letter from Senator Trish Crossin, to Bill Day, 6 November, 2009.