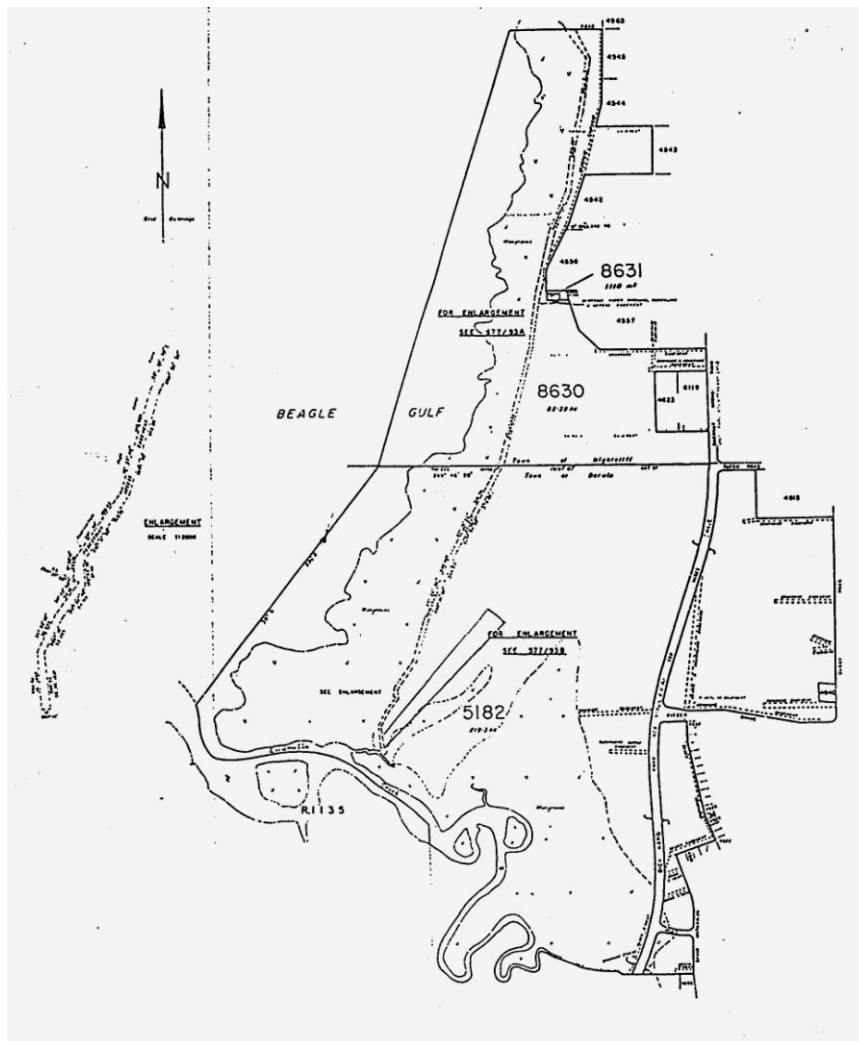


# KULALUK AND LAND RIGHTS

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



Above: Map of the Kulaluk lease.

Darwin  
January 2010

# How the spearhead of the land rights movement was appropriated: the Kulaluk lease as a blueprint for the NT Intervention

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## Introduction

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.

In 2009, the Kulaluk leaseholders signed an agreement with developers to use the urban bushland and mangroves on the lease for a huge canal housing estate known as ‘Arafura Harbour’ – a project that would obliterate the tidal Ludmilla Creek and a large proportion of the remaining bushland on the lease. The resulting groundswell of public opposition forced the Northern Territory Government to halt the project. However, the unprecedented grassroots campaign raised questions of how it could be that the Gwalwa Daraniki Association (GDA) as leaseholders could enter into a caveat with the developers in a project that would alienate the land from other interested Aboriginal groups (see Day 2009c). Even the traditional owners of the Darwin region, the Larrakia people, were notable in their powerlessness to oppose the development.

## Kulaluk land use

The *Kulaluk Lease Area Land Development Study* (Holingsworth Consultants 1985) sets a trend for future studies<sup>1</sup> 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

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<sup>1</sup> Gwalwa Daraniki Association 1995, 1997; Hewitt 2006.

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.

Although not sharing Henderson's view of the land as social and cultural asset, the materialistic Hollingsworth report makes two points extremely pertinent to the theme of this essay. Firstly, doubts were raised about allowing commercial developments on an Aboriginal town lease. However, these qualifications were not because development was contrary to Aboriginal community use, but because of the 'unfair advantage' such uses would give the leaseholders in the commercial sector to which the GDA was seen to be affiliated. Secondly, there was a concern by Northern Territory administrators that a precedent would be set for the commodification of Aboriginal land, although this concern was because commercial use might prevent using these leases as future holding areas for Aboriginal people, resulting in a demand for additional Aboriginal living areas in Darwin. However, by 2010 new government priorities meant that Kulaluk was a model for government plans under the *Northern Territory National Emergency Response Act, 2007* to 'mainstream' Aboriginal land.

The above salient points are made in the 1985 Kulaluk study under the heading, 'Socio-Political Ramifications' (Hollingsworth Consultants 1985:40). The section states:

During the course of the investigations undertaken as part of this study, several comments were raised against the concept of commercial development of leased Aboriginal land. One comment related to a perceived unfair economic advantage such development would have over competitors if it was developed for industrial uses. This advantage would arise because there would be no land cost component in the establishment of an appropriate rental for any such development. Such a cost component would undoubtedly be included in the rentals charged by the nearby industrial developments.

One other aspect which has been commented upon is the precedent that could be set by allowing commercial development of this leasehold land. Concern was expressed by an

officer of the Department of Lands that if this development was to proceed, then the Department could expect to receive applications for commercial development from other Aboriginal communities on other lands leased for community or living purposes throughout the Territory. This was seen as being undesirable as it may, in turn, create a demand for further living areas.

Similarly, twenty years later the report, *'Our Vision to Economic Independence and Employment and Educational Opportunities for Our Community'*, (Hewitt 2006) reveals that the hard-won Aboriginal land at Kulaluk is seen as a commodity to be bought and sold, in line with the materialist values of the leaseholders and their advisors. According to Hewitt's report, the 'one valuable asset' the GDA members have is 'their land as a bargaining tool to build economic independence'. The report claims that money-making opportunities were 'somewhat limited due to some parts of the area being mainly mangrove swamp lands and also being in the flight path of the Darwin International Airport'. The report adds that today Kulaluk is 'seen as prime real estate by the wider Darwin community for commercial ventures and is **very much sought after** which may result in further economic independence for the community in the near future'.

After three decades of similar proposals (see Day 1994, 2005, 2006), public awareness of the presence of the Kulaluk lease and interest in the affairs of the Gwalwa Daraniki Association (GDA) was belatedly raised by the controversy surrounding the Arafura Harbour development. This essay looks at the history and intentions of the Kulaluk lease, how the granting of the lease was manipulated by the Federal and NT Governments and the continuing partnership between government and the leaseholders. The question is asked: 'How did the land that was once the spearhead of the land rights movement become cauterised from Aboriginal aspirations?'

## **Land Rights**

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.<sup>2</sup> 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. Incited by the threats to their land, on July 7<sup>th</sup>, the Aboriginal residents of Kulaluk marched out in single file behind their flag to confront the team of surveyors pegging out the road. After a violent clash three men from Kulaluk were arrested and the surveyor's truck was destroyed by petrol bombs.<sup>3</sup>

After the Kulaluk confrontation, Gareth Evans of the University of Melbourne, Faculty of Law, was sent to Darwin by the Federal Minister for Aboriginal Affairs to investigate the situation on the ground and present his findings to Cabinet before the Federal Government considered Woodward's final report.<sup>4</sup> In the four days Gareth Evans spent in Darwin he had 'extensive talks with officers of the Aboriginal Affairs Department ... spokesmen for the Gwalwa Daraniki ... Mrs Dawn Lawrie, and a number of other Aborigines, public servants, unionists and journalists.'<sup>5</sup> He concluded that Judge Woodward's final report was 'unlikely to produce any conclusive results to problems of this kind' and that waiting would only postpone and make any resolution more difficult for the Federal Government. 'By taking the initiative ... rather than merely waiting for events to take over – as I suggest they almost inevitably will – the Government could do much to defuse the whole land rights issue in Darwin, and by insisting on Larrakia-status as a criterion for the vesting of such land, no politically embarrassing precedent would be set for the resolution of land rights claims by fringe-dwellers in the southern states.'<sup>6</sup>

Evans's recommendations clearly reveal the Federal Government's desire to limit the 'politically embarrassing' potential of a possible national precedent if land was granted to Aboriginal people at Kulaluk. Preceding the later definitions of Aboriginality in the *Land Rights (Northern Territory) Act, 1976* and the *Native Title Act 1994*, Evans foresaw that by making land rights dependent on a Larrakia identity would divide the growing land rights movement in Darwin. In addition, Evans correctly believed that the situation would be 'defused' by defining the return of the Kulaluk land as

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<sup>2</sup> See: Transcript of discussion Kulaluk Darwin, Northern Territory-02 June 1973. National Archives of Australia, Series A4257, 2 PART 8

<sup>3</sup> The protest was reported in the *NT News* July 7, 1973; *The Bulletin* July 21, 1973; *Nation Review* July 19, 1973; *National Times* August 6, 1973;

<sup>4</sup> B. G. Dexter to J. P. M. Long, 6 August 1975.

<sup>5</sup> G. J. Evans to Minister for Aboriginal Affairs, 8 October 1973.

<sup>6</sup> Evans, 8 October 1973.

a special case, granted as an act of goodwill to a narrowly defined group of people. His report encouraged the government to take the initiative from Aboriginal people by being proactive and granting land at Kulaluk, in a bold step that has placed Kulaluk in a unique position while leaving many issues unresolved. In the following paragraphs, this essay discusses how Evans's reasoning remains a valid explanation for the actions of the NT Government towards the granting and administration of the Kulaluk land from 1979 to 2010.

From a government point of view, Evans was also correct in his belief that the final report of the Aboriginal Land Rights Commissioner would be 'unlikely to produce any conclusive results', although the Kulaluk protests did lead to a dramatic change of attitude by Woodward between writing the first report in 1973 and the final report in April, 1974. 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'.

The firebombing at Kulaluk aroused media and international interest in the Larrakia case. One response was the publication of a booklet, *We have bugger all: the Kulaluk Story* by Cheryl Buchanan (1974) of the Australian Union of Students.<sup>7</sup> Cheryl's booklet is a valuable primary reference suggesting that the 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

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<sup>7</sup> An introduction was added to the reprinted booklet in 2009. The media often incorrectly credits land rights to leaders of a North East Arnhem Land clan. However, *We Have Bugger All* suggests that if it was not for a ragged band of Aboriginal people camped on vacant land around Darwin land rights might not be a reality in the Northern Territory today.

white man, has achieved remarkable results in obtaining press coverage and other forms of publicity for the claims of this group.<sup>8</sup> 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

As Evans predicted, the final report of the Aboriginal Land rights Commissioner did not resolve the issue for the Federal Government. Instead, the report described Kulaluk as 'a symbol', and recommended that the Kulaluk land be returned to Aboriginal people. From a government point of view the issue was further complicated by the Commissioner's comment that return of the land would 'demonstrate clearly the Government's willingness to give effect to reasonable Aboriginal aspirations for land' (Woodward 1974:53). Eventually it came to be that Kulaluk was a symbol of a kindly government's 'willingness' and of 'reasonable Aboriginal aspirations' rather than a precedent for Larrakia or national land rights.

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.'<sup>9</sup>

### **Granting the lease**

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

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<sup>8</sup> 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'.

<sup>9</sup> T. C. Lovegrove to J. P. M. Long, 25 October 1974.

process. This was confirmed in October, 1977, when a confidential briefing document on Kulaluk was tabled in the Federal Cabinet.<sup>10</sup> 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...<sup>11</sup> 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.'<sup>12</sup>

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:

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)

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<sup>10</sup> 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.

<sup>11</sup> F V Reintano to secretary, Department of the Northern Territory, 24 January 1977).

<sup>12</sup> E Aderman to R I Viner, 11 July 1977.



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.'<sup>13</sup>

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. In fact, in Henderson's opinion (Henderson 1984) the Woodward Report itself was used as a justification for turning the recommendation on end. In 1976, the Secretary of the NLC, John Wilders, reported:

In following the direction of the Woodward Report, the Northern Land Council appoints trustees on advice from the traditional owners of the area. This now has been finalised and the names of the persons thus appointed are: Bobby Secretary, Topsy Secretary, Albert Mariga [Albert Marigo, a Tiwi man living at Kulaluk]. We understand that these persons will be at the same time the official leaseholders on behalf of all people connected with Kulaluk. If the Government sees fit to change the original interpretation of the Woodward Report you will be immediately informed.<sup>14</sup>

According to Krimhilde Henderson, the method of choosing the trustees was based more on chance than on thoughtful deliberation. Finding that answers were needed to Lands Branch correspondence the NLC sent an officer to Kulaluk early on a Tuesday morning 'to bring the trustees ... to the Northern Land Council office.' Henderson believes that an objective was to find Johnny Fejo, who was unavailable - it was explained that he did not often sleep at the camp. The NLC officer later reported that 'Topsy Secretary suggested that it would be better if all the trustees were people living permanently at Kulaluk.' Henderson's research reveals that those brought to the NLC office for the 8.00 a.m. meeting were 'Bobby Secretary, Topsy Secretary and David Secretary [sic].'<sup>15</sup> The first

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<sup>13</sup> FV Reitano to Secretary, Department of the Northern Territory, 17 June 1977.

<sup>14</sup> J H A Wilders to T R Lawler, 14 January 1976.

<sup>15</sup> Note: This could be either David Daniels from Ngukurr or Gabriel Secretary. There was no David Secretary at Kulaluk.

item of business was to agree to the trustees, and then most of the proposals made in the Lands Branch letter were ratified by the two trustees present.<sup>16</sup> By 1979, when the lease was granted, the issue of trustees was forgotten, although the hasty manner of appointing trustees in 1976 further ensured that no ‘embarrassing precedent’ for Larrakia land rights would be set at Kulaluk by enshrining a concept of traditional ownership tightly controlled by NT bureaucrats and the NLC.



**Above: Signing the Kulaluk Special Purpose Lease in 1979. Back row: Bobby Secretary, Albert Treeves, Fred Fogarty; Front row: Kathy Secretary, Topsy Secretary.**

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’.<sup>17</sup>

In addition to the debate over who would hold the title to the proposed Special Purpose Lease, the form of tenure caused heated discussion at Kulaluk. There was a strong feeling that title should be either similar to the Aboriginal title in the Aboriginal Land Rights Act or else outright freehold (Henderson 1984:52). According to NT Government records, the defunct Gwalwa Daraniki Association formed by the protestors in 1971 was to be revived to temporarily hold the title ‘until a

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<sup>16</sup> R L Collins to Secretary, Northern Land Council, 13 January 1976.

<sup>17</sup> T R Lawler to Secretary, Aboriginal Development Foundation, 8 February 1979.

Larrakia Association could be formed'. The booklet, 'History of the Kulaluk Lease' (Henderson 1984:52) states:<sup>18</sup>

The NLC itself could not be involved because Kulaluk was an urban land claim, while the Aboriginal Development Foundation (which was to hold title to the other Aboriginal leases in Darwin) had been involved in continuous quarrels with the community and its advisors. An internal memorandum from the DAA field officer liaising with the Kulaluk people summarised the situation: '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.'<sup>19</sup>

If the title had been 'similar to the Aboriginal title in the Aboriginal Land Rights Act', as demanded by the Kulaluk residents in 1979, ironically the Gwalwa Daraniki would have less control over the land than they appear to have in 2010. This is because 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:

- (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;

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<sup>18</sup> Gwalwa Daraniki' means 'our land' in the Larrakia language. The name was originally chosen because it was thought to be suitably inclusive.

<sup>19</sup> G K Castine to J L Wauchope, 23 March 1979.

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.

### **Bagot Reserve**

One group with a proven interest in the Kulaluk land is the neighbouring Bagot Aboriginal Community established on an Aboriginal Reserve that once extended from Ludmilla Creek to Totem Road, encompassing amongst other sacred sites an Aboriginal burial ground containing over 200 graves (see Day 2008a, 2009a, 2009c). The original Kulaluk land claim had been the camp on a small coastal strip in Coconut Grove, but when the Bagot Aboriginal Council failed to make a claim in 1973 to the Woodward Commission to recognise the old boundaries of the Aboriginal Reserve revoked in 1964, the Gwalwa Daraniki included the old Reserve land in an extended Kulaluk claim. Aboriginal Land Rights Commissioner Woodward (1974:55-64) documented the history of Bagot Reserve in nine pages of his final report. In 1977, Federal Cabinet papers cite this historical fact as a reason for granting the Kulaluk lease:

6. The immediate group of Larrakia people and their close relations is small, numbering only some 20 people, but Aboriginal visitors to Darwin camp in the area. In 1962 the then Government reduced the only Aboriginal reserve in Darwin – Bagot – from 640 to 57 acres to provide for urban development. The Aboriginal Land Rights Commissioner noted that the Kulaluk claim would partly compensate for this...<sup>20</sup>

At the Kulaluk meeting with Aboriginal Land Rights Commissioner Woodward on June 2, 1973, the names of Larrakia people were displayed on the wall of a hut at the camp;<sup>21</sup> however, after his meeting with the elders, Tommy Lyons, Bobby Secretary and Captain Bishop, Woodward asked for a copy of a Larrakia genealogy, if one was available.<sup>22</sup> As a result, Bill Day wrote to Justice Woodward on July 1, 1973 enclosing a genealogical diagram made with the assistance of Larrakia

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<sup>20</sup> 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

<sup>21</sup><sup>21</sup> A photograph of the hut and names appears in Cheryl Buchanan's book (1974).

<sup>22</sup> See: Transcript of discussion Kulaluk Darwin, Northern Territory-02 June 1973. National Archives of Australia, Series A4257, 2 PART 8. A photograph of the hut and names painted on it appears in *We have bugger all: the Kulaluk story* by Cheryl Buchanan, AUS, 1974.

elder Topsy Secretary who was then living at Kulaluk.<sup>23</sup> The letter commented: ‘In the light of this family tree it seems there are far more Larrakias than I realised’.<sup>24</sup> Even if the Larrakia people in 1973 were limited to the 20 mentioned in the Cabinet papers or the 14 listed by Welfare Officers in 1972, the incomplete genealogical chart drawn up by Bill Day and Topsy Secretary in 1973 lists more than 100 descendants of those apical ancestors. Twenty-seven years later, when the Kenbi Land Claim Report was released in the year 2000, the number of Larrakia descendants had grown to over 1,600.

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.’<sup>25</sup> 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.<sup>26</sup> In his Kenbi judgement, Judge Gray (2000:35) describes the descendants of Topsy Secretary at Kulaluk as, ‘third and fourth generation matrifiates’. That is, the Larrakia connection for the younger generation of the Secretary family is through their mother’s, mother’s, mother’s father.<sup>27</sup>

Mr Justice Gray (2000:35) lists the five grandchildren of the late Topsy Secretary as Lynette Shields, Helen Secretary, Anna Secretary, Jacqueline Treeves and Kathleen Tina Secretary. Their 13 children are David, Martina and Setiona (twins), Helen, Nicole and Gabriella Shields; and Michele, Raylene, Lynette, Leeanne, Anthony, Christopher and Lawrence Secretary.<sup>28</sup> Judge Gray notes that: ‘There is no evidence that [they] have activated any entitlements to membership of the Tommy Lyons group, or have been accepted as members of the group’ (Gray 2000:28).<sup>29</sup>

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<sup>23</sup> See: Gwalwa Daraniki [Association] series of correspondence, National Archives of Australia, Series A4252, Control 33. The genealogical chart has been digitalised and can be viewed on the National Archives web site, pages 77-83.

<sup>24</sup> As above.

<sup>25</sup> *NT News*, 27 August 1979.

<sup>26</sup> Under the amended *Land Rights Act 1976*, there was no process to recognise traditional owners in Northern Territory towns.

<sup>27</sup> 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).

<sup>28</sup> According to the murder trial transcripts, Helen Secretary had six children to Darren Nelson. In 2009 Michelle signed the Gwelo caveat over Kulaluk as ‘Michelle Nelson’, the secretary of the GDA.

<sup>29</sup> Gray found in favour of the Tommy Lyons group as traditional owners of Kenbi.

## **The environment**

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.<sup>30</sup>

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:

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.'<sup>31</sup>

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.'<sup>32</sup> 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'.<sup>33</sup>

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<sup>30</sup> 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

<sup>31</sup> T. C. Lovegrove to J. P. M. Long, 25 October 1974

<sup>32</sup> 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.

<sup>33</sup> Search certificate 11/07/2008: Crown Lease in Perpetuity 00671, Volume 727, Folio 022..

## **Who are the GDA?**

With the connivance of various NT Governments and Northern Territory land developers, the constitution of the GDA has been amended since 1979 to restrict membership of the association to a 'minimum of 5' who are 'residents of Kulaluk Community', a small group living in the shadows of high rise apartments in Coconut Grove at the site of Bobby Secretary's old camp. An amended constitution of the GDA was lodged in September 2006 by Michael Chin, Barrister and Solicitor, to ensure that decisions on the future of the Kulaluk 'Crown Lease in Perpetuity 671' will be made by people who have lived in the Kulaluk Community on 'Lot 5182 Town of Darwin or Lot 8630 Town of Nightcliff ... for a continuous period of at least twelve months'. In addition, the constitution states that the members should be descendants of the Danggalaba Clan of the Larrakia People or their spouses, provided at least half of the members (out of a minimum membership of 5) are 'Aboriginal persons'.

An exposé of the Gwalwa Daraniki Association entitled: 'The carve up of Aboriginal land in Darwin', (Day 2009:3) documents how non-Aboriginal spouses have used their entitlement to be members of the lease-holding Association to influence the administration of the Kulaluk lease. One particularly tragic case has been documented in the transcript of a murder trial:

Helen stated in her evidence [during her trial] that when she was President of the Kulaluk Community from August 1991 to August 1995 the deceased would 'come to the [Kulaluk] office and advise me about things,' and if she disagreed with him 'when I went home I used to get a flogging' ... He was injecting himself with speed at Kulaluk and Helen says, 'We were his property'. If anyone interfered when he beat her, he said he 'would kill them'. What is of concern is that people like the late Darren Nelson and the New Zealander, Albert Treeves, by being a spouse or in Treeves's case, a widower and father [of Helen's sisters], are eligible to be members of the GDA and decide the future of the Kulaluk lease.<sup>34</sup>

## **The Larrakia**

The connection between Kulaluk and the Larrakia people has become so tenuous that the 301 hectare lease was excluded from the 1996 Larrakia native title claim over Darwin. Again this shows how far Kulaluk has been separated from the land claim described by Woodward (1974:53): as

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<sup>34</sup>See *NT News*, May 19<sup>th</sup>, 1998, p.1 and Day (2009a) - quotes are from the transcript of the trial. The influence of Albert Treeves since 1979 at Kulaluk is described in detail in Day (1994). See also Henderson (1984).

‘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’. The land which was once the spearhead for Larrakia rights has been effectively appropriated from that ongoing struggle, separating from the Larrakia people what could have been their strongest evidence in defence of their claims.<sup>35</sup>

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). 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 current application for an Exceptional Development Permit under the Act has been made on behalf of the Gwalwa Daraniki Association Inc as opposed to a private developer. The mud crab farm proposal involves the rehabilitation and upgrade of the existing ponds that were constructed as part of the now abandoned prawn farming venture.

The applicant is receiving assistance from government agencies, the Charles Darwin University and the Darwin Aquaculture Centre in addressing the environmental and industry standards required for an aquaculture development.<sup>36</sup>

Ironically, after two Aboriginal Land Commissioners accepted the Larrakia claims to Kulaluk, the land is alienated from the increasingly influential Larrakia Nation whose headquarters now adjoin the lease. Instead, the Kulaluk controlling body, the Gwalwa Daraniki Association, is an incorporated group that has no affiliation with the Larrakia representative organisation.

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<sup>35</sup> Note: In preparing the Larrakia claims, the NLC did not consult Bill Day or refer to Topsy Secretary’s genealogy prepared in 1973.

<sup>36</sup> Letter from NT Minister for Planning and Lands, Chris Burns to Bill Day, 15 November 2005. There has been no accountability by the NT Government for the financial failure of Federal and Territory Government sponsored prawn and crab farms at Kulaluk (see Day 2005, 2006, 2009b)



That Kulaluk remains outside the representative bodies has not deterred the NT Government. In fact, Kulaluk is undoubtedly a model of the relationship the NT and Federal Governments would like to have with all Aboriginal land holders, without the need for intervention. Similarly, for 30 years an ‘umbrella organisation’, the Aboriginal Development Foundation, has held the leases to land at Knuckeyes Lagoon and One Mile Dam to the detriment of those for whom the land grant was intended. As stated, because the leases are ‘needs claims’ outside the Land Rights Act there is no requirement to consult with other Aboriginal people who might have traditional or historical rights to country.<sup>37</sup>

### **Land usage: ‘the itinerants’**

From 1979 to the 1990s, Kulaluk was seen as convenient dumping ground for homeless people, known variously as ‘transients’, ‘itinerants’ or ‘long grassers’. For example, in the 1980s the Kulaluk leaseholders were pressured to accept ‘transient camps’ on the lease (see Wells 1995:75; *NT News* October 13, 14, 1981). Government policy had been to reject applications for land by Aboriginal groups ‘until adequate and rational use is made by Aboriginals of existing land grants’ (NT Government 1981: 2168). In addition, the policy stated:

The residents of Kulaluk will be encouraged to identify areas within their leases for the establishment of additional separate camping areas (to this end, discussions have been held with the Kulaluk people and areas have been so identified) (p.2168).

Several of these sites were opposed by dissidents in the Gwalwa Daraniki group (*Bunji* June 1982); however, homeless campers are still told by NT Government and Darwin City Council officials to go to Bagot, Kulaluk or other Aboriginal leases.

### **The alienation of the Kulaluk land**

Developers also have a green light from a laissez faire NT Government to trial any madcap scheme at Kulaluk (see Day 2009a). At Kulaluk they are not burdened by prohibitions on alienating land from Aboriginal people – for example McDonalds have a 99-year lease without any requirements to employ Aborigines and the Gwelo Arafura Harbour proposal will destroy an entire tidal creek

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<sup>37</sup> Even the term ‘needs claim’ is a fallacy that was never supported by legislation.

system used by Aboriginal people for subsistence hunting.

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.<sup>38</sup>

When excavations for a five-hectare aquaculture project began on the lease, a critic wrote: ‘Gradually the lease is being alienated from its intended purpose of community use. Aborigines who fish, crab and live in the area will be affected by the large ponds and access roads’ (*NT News* July 19, 1997). The prawn farm contractor replied:

I would suggest [Mr Day] spend less time condemning Aboriginal and Islander people trying to pursue sustainable economic and social progress and more time doing something useful himself. Now if Mr Day had a problem with Aboriginal development for community benefit he should say so and leave out all the nonsense’ (*NT News* July 26, 1997).<sup>39</sup>

The letter is interesting in its concept of the common aspirations of Aboriginal people. The ‘community benefit’ appears to be for the interests of an exclusive group of landowners while the development appeared to be to the detriment of most other Aborigines who use the area. Quite apart from the doubtful sustainability of the aquaculture ponds, the alleged ‘economic and social progress’ led to the disruption of both a prolific hunting and gathering environment and a popular Aboriginal recreational area. The sizeable Aboriginal community at the nearby Bagot Community is excluded from a landscape that is ironically seen, in the Aboriginal landholders’ eyes, as an empty landscape available for development (in contrast, see Henderson 1983).

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<sup>38</sup> Few people are aware that the beach stretching from Nightcliff to Ludmilla Creek is a public right-of-way, as recommended by Mr Justice Ward in 1975.

<sup>39</sup> See Day (2005, 2006) for more background on this correspondent.

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).

### **Government responses**

Letters in reply to correspondence with Government Departments and Politicians give some insight into the present attitudes to the Kulaluk land. These letters invariably support the right of the Gwalwa Daraniki Association to exploit their lease under free-market principles. For example, in 2006 Dr Chris Burns wrote 'regarding the application by the Gwalwa Daraniki Association for an exceptional development permit (EDP) to develop part Lot 5182, Town of Darwin, for aquaculture (mud crab farm) within existing ponds'. Dr Burns's letter continued:

On 9 March 2006, I approved the application by signing Exceptional Development Permit EDP05/0011, which was published in the NT Government Gazette on 22 March 2006.

While I respect your views, I can assure you that due process was followed in the approval of the application and that environmental issues were carefully considered. Notwithstanding your concerns, the project is an appropriate use of existing ponds which will contribute to the economic development of the local community. I wish the Gwalwa Daraniki Association every success in this venture.<sup>40</sup>

In response to criticism, Dr Chris Burns echoed statements used to defend the since failed prawn ponds - 'The business venture for the mud crab farm is an initiative of the Kulaluk community and a progressive step towards establishing a potentially long term sustainable enterprise that could bring real opportunities for cross-cultural education, training and employment to the Kulaluk community.'

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<sup>40</sup> Letter from Minister for Planning and Lands, Chris Burns to Bill Day, 4 May, 2006.

When a proposed plan for the Kulaluk lease in keeping with the vision of the founders<sup>41</sup> was sent to the NT Minister for Planning and Lands, Delia Lawrie, she did not personally reply. Instead, a reply from the Director, Land Administration, Department of Planning and Infrastructure, Nicky D'Antoine, briefly stated:

Kulaluk (Lot 8630 Town of Nightcliff), is held as a Crown Lease in Perpetuity by Gwalwa Daraniki Association Inc and therefore any proposals for future development will be required to be negotiated and agreed by the Lessee. For this purpose you should contact Ms Helen Secretary who is the registered Public Officer of Gwalwa Daraniki Association.

Similarly, Kirrily Chambers, the Director of Land Administration, wrote on 12<sup>th</sup> 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.

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.

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A letter signed by the Senior Advisor of the Office of Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs on 11<sup>th</sup> 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

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<sup>41</sup> W B Day, *A Kulaluk Wilderness, Heritage and Education Park: A last opportunity to be true to the vision of its founders? A report to the Larrakia Nation Aboriginal Corporation*, 2008.

<sup>42</sup> Letter from Kirrily Chambers, Director Land Administration to Bill Day, 12 August 2009.

developments on the Kulaluk lease occur after proper consultation with the residents and on the basis that they benefit.<sup>43</sup>

After complaints that construction companies had been dumping loads of wet concrete over the edge of the earth stock pile on the lease, the Minister for Natural Resources, Environment and Heritage, Karl Hampton, replied:

The stockpile is the result of a commercial arrangement between the developer and the Minmarama Park community for the stockpiling of inert waste material from residential and commercial (hotel) development sites in the Darwin CBD.<sup>44</sup>

In fact the Minmarama residents have complained bitterly about safety and health issues associated with the earth stockpile next to their community. They cite the passage of heavy vehicles, the damage to the access roads and the dust from the dumping of building waste. Although the Minmarama residents pay rent to their landlord, the Gwalwa Daraniki Association, their complaints appear to go unheard.

While the Leader of the Opposition, Terry Mills, expressed concern at the dumping of concrete on the Kulaluk lease, he defended the right of the leaseholders to exploit the land for revenue, albeit from operating a dump. Mr Mills wrote:

The onus is on the leaseholders to maintain this area; however, it isn't unreasonable to assume that land such as this won't be used as an unsightly dumping ground.

I also note that you point out the dump is designed to earn extra income for the leaseholders, which in my view is not a bad thing. While I would like to know precisely what will happen to the dump in the long term, I have no problem with the leaseholders exercising their right to earn revenue from their land within the terms of the lease...

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<sup>43</sup> 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.

<sup>44</sup> Letter from Minister for Natural Resources, Environment and Heritage, Karl Hampton to Bill Day, 18 November, 2009.

You mention the Arafura harbour project; I note there are some involved with the Gwalwa Daraniki Association who supported that development.

The Country Liberals gave conditional support to the project provided the proposal is subject to a wide rigorous assessment process.<sup>45</sup>

At first glance, the economic laissez faire views of Terry Mills coincide with the views of the NT Government, recently expressed by the then newly-appointed Minister for Lands and Housing, Gerry McCarthy. However, a closer analysis of Mr McCarthy's letter on 17 December, 2009, reveals a NT Government belated acceptance of the environmental and zoning limitations on the type of developments at Kulaluk previously proposed by the Gwalwa Daraniki Association. The letter also suggests a review is being conducted into the administration of the Kulaluk lease.

Hopefully, the Minister is also cognizant of the meaning of 'community based organisations', in light of the amended constitution of the GDA severely limiting membership. 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:

Thank you for the copy of your letter of 7 October 2009 to the editor of the NT News [not published]. 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.

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<sup>45</sup> Letter from Terry Mills MLA, Leader of the Opposition, to Bill Day, 4 November, 2009.

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.<sup>46</sup>

Senator Trish Crossin commented on ‘statutory restrictions’ that constrain the Kulaluk leaseholders and revealed how the Gwalwa Daraniki Association, alias ‘the residents’, acts as a convenient firewall against true Aboriginal participation in the land won for the Larrakia and associated Aboriginal people by the 1970s land rights struggle. Ms Crossin writes:

Advice from the NT Government is that the lease ‘...is a strong title which gives exclusive perpetual rights, but it is constrained by the fact that it is a Crown lease, and there is statutory restriction and other caveats on any dealings; its status as a town camp and Commonwealth management further limit autonomy.

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.<sup>47</sup>

### **The Gwelo Caveat**

A letter in reply to Senator Crossin points out that the only known caveats over the Kulaluk lease have been granted to commercial developers. For example, 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:

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<sup>46</sup> Letter from Gerry McCarthy to Bill Day, 17 December 2009.

<sup>47</sup> Letter from Senator Trish Crossin, to Bill Day, 6 November, 2009.

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.

## **Conclusion**

Governments prefer to deal with predictable, compliant and like-minded Aboriginal bodies.<sup>48</sup> Legislation reflects this preference. Wolfe (1994:129) maintains the Native Title Act 'recruits a minority of Aboriginal people to the continuing invasion of the rest'. He maintains that government legislation 'constitutes a state strategy for containing Aboriginal resistance' (Wolfe 1994:130). Povinelli (1997:20) refers to the Act as a 'double gesture' where 'the state has relied on a representation of Aboriginal social organization to consolidate and legitimate its power'. However, at Kulaluk there is only the pretence of 'Aboriginal social organisation' legitimised by Government actions insulated from any of the above legislation recognising Aboriginal rights, while maintaining the pretence of recognition of traditional ownership through a process of 'smoke and mirrors'.

The anthropologist who worked with the NLC on the Larrakia native title claim to Darwin, Peter Sutton (1995:10), suggests a move away from 'the relative indeterminacy of indigenous people's land relationships, as compared with the tenure systems of nation states'. Sutton (1999) states that the codification of Aboriginal practice might be beneficial for all in the articulations of [land title] systems. He adds that it would be unjust to 'deny people the right to move away from an inherently conflict-prone system towards the greater certainty and stability they might hope to achieve from engagement with the western legal system' (Sutton 1995:10) (See Day 2001).

The above tendencies are all seen in the establishment of the Kulaluk lease. However, 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

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<sup>48</sup> See 'The man who was named after a butcher shop' (Day 2009b).



Aboriginal land is exactly what the Federal Government seeks under the Northern Territory Emergency Response Act, otherwise known as 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.

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## **APPENDIX.**

Sections of the *Aboriginal Land Rights (Northern Territory) Act, 1976*

S. 4(1) The Minister may, by notice published in the *Gazette* , establish 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, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission, and, subject to subsections 10(1) and (2), shall so establish Land Trusts to hold the Crown land described in Schedule 1.

S.7(6) All members of a Land Trust shall be Aboriginals living in the area of the Land Council in the area of which the land of the Land Trust is situated or whose names are set out in the register maintained by that Land Council in accordance with section 24.

S.19A(2) A Land Council must not give a direction under subsection (1) for the grant of a lease unless it is satisfied that:

- (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; and
  - (c) the terms and conditions of the proposed lease (except those relating to matters covered by this section) are reasonable.
- (3) If a Land Council, in giving a direction for a grant of a lease, fails to comply with subsection (2), that failure does not invalidate that grant unless the approved entity to whom the grant was made procured the direction of the Land Council by fraud.