

CHAPTER 7

List of World Heritage in Danger: Criteria and Benchmarks

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CHAPTER SEVEN: THE LIST OF WORLD HERITAGE IN DANGER—CRITERIA AND BENCHMARKS

This Chapter examines the need for the practices and decisions of the World Heritage Committee and Bureau to be informed, consistent and certain in order to respect the sovereignty of States Party to the Convention. By examining recent practice, it derives criteria and benchmarks for placing a property on the List of World Heritage in Danger. It examines, in summary form, the threats cited by the Mission report and considers their applicability against these benchmarks. Further information on each recommendation is also included in the annotated Mission report.

7.1 THE WORLD HERITAGE SYSTEM

A State Party's decision to nominate a property for inclusion on the World Heritage List requires a substantial commitment of resources, both physical and financial, that must be balanced with its social, cultural and economic aspirations. To make such a commitment, a State Party must be confident in the system created by the World Heritage Convention. The practices and decisions of the international bodies created within this system must be informed, consistent and certain to maintain the confidence of all States Party.

A decision by the Committee to inscribe a nominated property on the World Heritage List is an endorsement of the values, boundaries and related circumstances of the property as they are detailed in the nomination. Such a decision commits the Committee to respect the integrity of the property over time in the terms in which it is inscribed. The decision may well form the basis for long term and substantial investment decisions in areas adjacent to or within the property. Decisions on listing, whether on the List of World Heritage or the List of World Heritage in Danger, must be made on the basis of robust, objective evidence and should draw on the body of knowledge and precedent developed through previous decisions and actions. States Party rely on the consistency and reliability of decisions of the Bureau and Committee to implement effective domestic management arrangements that meet their obligations under the Convention.

7.2 CRITERIA FOR PLACING A PROPERTY ON THE WORLD HERITAGE IN DANGER LIST

In Danger Listing must not be taken lightly. A mere possibility of an impact on World Heritage values is not sufficient to justify listing by the Committee. It would be an impractical and inappropriate use of the precautionary principle to proceed in this way, as most World Heritage properties would probably be listed.

Article 11.4 of the Convention establishes a list of inscribed properties, "for the conservation of which major operations are necessary and for which assistance has been requested." Considerations for placing a World Heritage Property on the List of World Heritage in Danger are contained in the World Heritage Convention and the Convention's *Operational Guidelines* (paragraphs 76–89). The list is intended to be the means by which assistance is provided to deal with natural or human-made conditions which threaten the values for which the Property was originally inscribed on the World Heritage List. Broadly, listing results from deterioration needing remedial conservation action, or from a "serious and specific" danger, to the values of a Property. Dangers can be 'ascertained' (ie, specific and proven imminent danger) or 'potential' (threats which could have deleterious effects on its inherent characteristics).

It is necessary not only to establish that ascertained or potential dangers exist, but also that they are of such scale and likelihood of occurrence that they are a significant threat to the values. The *Operational Guidelines* at paragraph 85 (b) indicate that "physical or cultural deteriorations...should be judged according to the intensity of its effects and analysed case by case". Since the *Operational Guidelines* do

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not specify how these matters of scale and probability are to be determined, it is necessary to examine how the World Heritage Committee has previously determined these terms in practice by referring to the process and reports for properties already listed. Without explicit guidelines, the precedents established in practice provide de facto benchmarks.

7.3 BENCHMARKS

A full listing of properties placed on the List of World Heritage in Danger is at Appendix 3.

The World Heritage Convention provides for listing of a property on the 'In Danger' list only with the request and consent of the State Party. Australia has not requested, nor has it given consent to the inclusion of Kakadu National Park on the 'In Danger' list because the World Heritage values of Kakadu National Park are not threatened. Australia believes a decision to list Kakadu National Park as 'In Danger' would therefore be inconsistent with the Convention's own requirements.

Leaving aside the issue of the request and consent of the territorial State, these listings provide the benchmarks for World Heritage Committee practice since changes to the *Operational Guidelines* were made in 1992. In that year, the Committee (Australia was not a member at the time) decided sites could be inscribed on the In Danger List without a request by the State Party concerned. The *Operational Guidelines* are, however, secondary to the Convention and their correct role and sphere of operation must be recognised.

Since the changes to the *Operational Guidelines* in 1992, listings have had a high degree of consistency in terms of the intensity of threat concerned. The properties have:

- clearly ascertained and substantial threats to the values of the World Heritage area; **and**
 - either an apparent inability of the State Party to manage the threats and remedy the problem;
 - or have been the subject of a request by the State Party for support for the property.

The dangers faced by these properties have been serious and specific. They have suffered impacts such as war, armed unrest, earthquake, continuing poaching, unplanned road construction, uncontrolled mining, hurricane, ecological collapse and uncontrolled pollution.

Most properties have been located in areas where the provision of adequate management and threat abatement strategies has been severely constrained by a lack of resources or where the State party, for reasons such as civil unrest or war, has been unable to cope with the requirements of the situation. Many States have not responded to repeated requests for advice from the World Heritage Committee or Bureau.

Alternatively, some states have requested listing in order to either gain resources or to focus attention on problems and garner support for solutions.

It is noteworthy that there is no property on the List of World Heritage in Danger where the State Party:

- can demonstrate that values are not endangered;
- has effective legislative and management strategies in place; and
- has reported on those strategies in detail to the World Heritage Committee.

In short, the Committee needs to be consistent in the standards it applies to different properties, and consistent over time in relation to a property in the judgments it makes about matters so serious that they could lead to a property being placed on the In Danger list.



*Mt Brockman in
the wet season
(Michael Preece)*

7.4 KAKADU: INTEGRITY AND PROTECTION

In order to ascertain whether Kakadu National Park meets the threshold for listing as World Heritage in Danger, the Australian Government has carefully examined the Mission report to ascertain:

- What threats it specifically identified.
- The objective evidence for each of these threats.
- The increment of threats and any increase in their severity since its most recent World Heritage listing in 1992.
- What remedial action might be required to minimise or eliminate the threats identified by the Mission.

In the following section of this report, the threats cited by the Mission are summarised followed by a discussion of the evidence to support each threat and an analysis of the degree of change in the level of threat since 1992.

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7.5 ANALYSIS OF MISSION FINDINGS RELATING TO ASCERTAINED AND POTENTIAL THREATS

7.5.1 Changes to the 'three mines policy'

Mission's Findings: *That changes to the 'three mines policy' allows for two uranium mines to be in operation at one time and that this is in contrast to the recommendations of the Fox Inquiry for the sequential development of mines. This change will have a profound effect on values as it has opened the way for the construction of at least one new mine (ie, Jabiluka).*

The Evidence:

- The Second Fox Report (1977) stated (p 223):

'We recommend strongly that the number of people in the town [Jabiru] not exceed 3500; but the smaller the better. This is a much larger number than will be necessary to accommodate people associated with the Ranger mine but it allows for the possibility of the Pancontinental Mine [Jabiluka] getting into production during the life of the Ranger mine.'

and (op cit p 335):

'That if the Ranger proposal is allowed to proceed, no other mining, with the possible exception of that proposed by Pancontinental [ie Jabiluka] , be allowed in the [Alligator Rivers] Region west of the Arnhem Land Reserve, for the time being at least.'

- Thus the operation of Jabiluka is not in conflict with the Fox Report.
- The Fox Inquiry further referred to the (significantly larger) Pancontinental proposal and discussed it in terms of the mine proceeding in the near future, once the necessary approvals had been given. The Mission's report does not recognise this.
- By 1982, Pancontinental's proposal to develop Jabiluka had completed environmental approvals under the EPIP Act. With the change in Government in March 1983, and the institution of the 'three mines policy', Jabiluka did not proceed.

Changes in the level of threat:

- There has been no increase in threats to Kakadu, incremental or otherwise, as a result of this policy change. The World Heritage nomination documents made it clear that the three mine lease areas were not included in the nominated property and the World Heritage Committee was alerted to the possibility that mining development could proceed (see nomination documents 1980, 1986 & 1991).
- The impact of the now proposed Jabiluka mine will be much less than Ranger and much less than originally envisaged by the Fox Inquiry. To this extent, any threat from mining on World Heritage values in areas never included in the World Heritage property has diminished since the Park's listing.

Mitigation:

- The Australian Government has ensured and will continue to ensure that environmental impact assessment processes, scientific monitoring and world class park management strategies are in place to eliminate any threat to the values of the Park.
- The Australian Government will continue to openly report on this issue.

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7.5.2 Nature of the Environmental Impact Assessment process for Jabiluka

Mission's Findings: *The Mission noted that "some stakeholders" felt that the process of translating the Minister for the Environment's recommendations on safeguards into requirements made of the mining company during the EIS process may have led to the possibility of a diminution in environmental controls.*

The Evidence:

- The Mission's report did not analyse the more than 70 environmental requirements, raised no issues about their adequacy and gives no indication of any perceived shortfalls or omissions.
- The translation of recommendations into requirements provided the recommendations of the Minister for the Environment with statutory force in relation to the Government's statutory approval processes. Changes in wording relate to the recognition of existing Commonwealth and Northern Territory statutory and administrative regimes and the use of these regimes to give practical effect to the recommendations. In this sense, the requirements assume a 'force in law' in the regulation of the mine.

Changes in level of threat:

- There is no change in the level of threat to World Heritage values as a result of this process. In fact, the environmental safeguards and the scrutiny of their implementation are more stringent than those which applied to the development of Ranger and which have successfully protected Kakadu's World Heritage values for over 20 years.

Mitigation:

- The Australian Government has ensured and will continue to ensure that environmental impact assessment processes are of a standard that will eliminate any threat to the values of the Park.
- The Australian Government will continue to openly report on this issue.

7.5.3 The Jabiluka and Ranger Milling Alternatives

Mission's Finding: *The Mission noted that the government has assessed two options for the milling of the ore proposed to be extracted from Jabiluka - the Jabiluka Milling Alternative (JMA) and Ranger Milling Alternative (RMA). The mission recognises that the RMA would have less direct impact on the Jabiluka area but that this has been opposed by the senior traditional owner. Despite not being the preferred environmental option, ERA is currently intending to install a mill at Jabiluka.*

The Evidence:

- No final decision has been taken on which milling option will proceed.
- The Government has assessed both milling options, and they both comply with the Government's decision that all tailings from the Jabiluka mining proposal be stored underground and do not threaten the natural values of the World Heritage property.
- While both the RMA and JMA have received environmental clearance, subject to compliance with over 70 conditions, the Australian Government, the Northern Territory Government and ERA consider the RMA to be a superior proposal in terms of environmental considerations, project economics and logistics. ERA understands that consent for the development of the RMA has not been given by the traditional owners and it is possible that the JMA will be progressed. The JMA is consistent with the traditional owners consent in the 1982 Agreement.

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- The Mission implies that the RMA option is preferred for environmental reasons, regardless of the wishes of traditional owners. This is in conflict with other threats identified and recommendations made by the Mission.

Changes in the level of threat:

- There is no change in the level of threat to World Heritage values as a result of this process. Both options have been extensively assessed to ensure that there is no damage to the World Heritage values.

Mitigation

- The Australian Government, as milling options are further considered, will ensure there is no threat to the values of the Park.
- The Australian Government will continue to openly report on progress.
- The Australian Government will continue to respect the legal rights of the traditional owners to control various aspects of the mine development, including their choices on the RMA/ JMA options.

7.5.4 Construction of the Jabiluka uranium mine

Mission's Finding: *The Mission seriously questioned the fact that the underground mine requires significant surface works and facilities and the compatibility of uranium mining and milling in such close proximity to, and upstream from, a World Heritage property .*

The Evidence:

- The Mission's report provides no evidence for a lack of compatibility between World Heritage listing and mining in areas adjacent to, but not within, the World Heritage property.
- It does not give weight to the important fact that the nearby Ranger uranium mine has been in continuous operation throughout the period that Kakadu National Park has been inscribed on the World Heritage List, with the full knowledge of the World Heritage Committee and with no reported adverse effect on or threats to World Heritage values.
- The preferred Jabiluka development will occupy less than 1.3 sq km of the surface area, significantly less than the 7.1 sq km occupied by the Ranger mine. The original Jabiluka mine proposal approved in 1982 would have been over forty times larger in surface works than the present preferred proposal.
- The separate report from the Supervising Scientist on the Mission's findings has concluded that:

“contrary to the views expressed by the Mission, the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high. There would appear, therefore, to be no justification for a decision by the World Heritage Committee that the natural World Heritage values of Kakadu National Park are in danger as a result of the proposal to mine uranium at Jabiluka.” (Executive Summary)
- There are several notable examples of mining activities occurring within and adjacent to World Heritage properties internationally.

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Changes in level of threat:

- The safe operation of the Ranger mine for 20 years and the extra safeguards put in place for the much smaller adjacent Jabiluka mine indicate that there has been no significant increase in the threat from uranium mining since 1992.

Mitigation:

- The Australian Government will continue to openly report on progress.

7.5.5 Scientific uncertainties and the need for risk assessment

Mission's Finding: The Mission identified three issues of scientific uncertainty that lead to a finding of potential danger: (i) the degree of uncertainty concerning the quality of the hydrological modelling carried out in designing the water management plan for the mine site and the implication that this may lead to the release of water from the mine site into the Swift Creek system; (ii) the degree of uncertainty concerning the effectiveness of the concrete pasting process as a means of storing the tailings in the mine void, and (iii) the possible impacts on catchment ecosystems. The Mission made general references to the concerns of some scientists, and suggested that formal risk assessment processes had not been undertaken.

The Evidence:

- The views of the Supervising Scientist on the precise proposals in the EIS and PER, supported by nearly 20 years of multidisciplinary field research in the region, do not accord with those of the scientists who have raised issues of uncertainty.
- The detailed evidence provided in the Australian Government's submission to the Mission on scientific issues was not assessed or questioned in the report.
- Risk assessments were completed as part of the Australian Government's environmental impact assessment process and were undertaken for those components of the project where the risk assessment technique is effective and can be used to determine such factors as engineering design parameters. They included formal risk assessments for hydrological impacts, water management, transport, haulage and spillage and are described in both the EIS and PER.
- The Australian Government has undertaken a comprehensive and thorough independent scientific review of all alleged threats to the Park arising from technical proposals for mining and has demonstrated in the scientific review that any necessary modifications can be made in project planning.
- The separate report from the Supervising Scientist on the Mission's findings has concluded that the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and that the degree of scientific certainty that applies to this assessment is very high.

Changes in the level of threat:

- Taking into account the 20 years of safe operation of the Ranger mine, and the even more rigorous review of the proposed Jabiluka mine, it cannot be argued that there is any increase in threat from mining since the inception of the Park.

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Mitigation:

- The Australian Government will ensure that the results of the comprehensive and thorough independent scientific review of issues of scientific uncertainty are incorporated as necessary so that there are no threats to the natural values of the Park arising from mining operations.
- The Australian Government will continue to openly report on progress.

7.5.6 Visual impact

Mission's Findings: *While recognising that the Jabiluka lease is not legally within the Park and World Heritage property, the mission found that the location of the mine site, diminishes the natural beauty of the wetlands and adjacent escarpment. The mission therefore found that the visual impact of Jabiluka is a distinct and significant additional intrusion and that the vivid visual intrusion of Jabiru on the integrity of Kakadu National Park cannot be disputed. The Mission found that this constitutes an ascertained danger for the natural World Heritage values of Kakadu in that it constitutes a deterioration of the "natural beauty or scientific value of the property" as set out in Paragraph 79 (i)(b) of the Operational Guidelines.*

The Evidence:

- As was acknowledged by the Mission, the Jabiluka mine cannot be seen from any point in the World Heritage property.
- If a development which is only visible from the air is used as a benchmark for a potential World Heritage in Danger listing then this could have major implications for the management of all World Heritage properties.
- Scenic flights, which operate from Jabiru Airfield on the Ranger lease, generally do not fly over the Jabiluka project area. Any view of the Jabiluka project area would be very minor compared to the view of the Ranger Project Area which occurs at take off and landing.
- Jabiru is a very small town in a Park the size of Wales. Much larger towns are found in other, smaller, natural World Heritage properties.
- See also Section 7.5.16.

Changes in level of threat:

- The extension of the threat to visual integrity since inscription is minimal. The World Heritage Committee accepted both the exclusion of the mining leases and the existence of Jabiru on all three occasions that the Park was listed.

Mitigation:

- The Australian Government has ensured and will continue to ensure that the Jabiluka project will not be visible from the World Heritage property.
- The minimal growth of Jabiru will be closely monitored and managed.
- The Australian Government will continue to openly report on this issue.

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7.5.7 Dangers to the cultural values of the Jabiluka Mineral Lease

Mission's Findings: *The Mission claimed that the cultural integrity of the Jabiluka Mineral Lease (and in particular of the Australian Heritage Commission areas including the Jabiluka Outlier and Malakananja II) is potentially under direct threat from the proximity and scale of the mine construction. This has the potential to impact on the cultural values of the adjoining World Heritage property.*

In the view of the Mission, the existence of areas of particular spiritual significance to Aboriginal people were not fully considered in the course of establishing (1) the original boundaries of the Jabiluka Mineral Lease, (2) the mine construction site, (3) the boundaries of the areas identified as significant by the Australian Heritage Commission, or (4) the boundaries of the World Heritage area. They also claimed that there has been no recent comprehensive archaeological and anthropological survey performed as part of the Environmental Impact Assessment process.

The Evidence:

- No argument is advanced as to what the direct threats to cultural values are on the Jabiluka lease or, by extension, how they will impact on the World Heritage property.
- The Mission did not report on the range of measures designed to ensure that the cultural values of the Jabiluka Mineral Lease, including those of the Djawumbu-Madjawarna Sites Complex, would not be harmed by mining. The mine and associated facilities have been sited to avoid any archaeological or anthropological sites of significance located and recorded during the course of previous surveys in order to protect cultural heritage values.
- Australia has comprehensive legislation, both at the Federal and State and Territory level, to protect cultural heritage values including Aboriginal sacred sites. The Mission did not report on measures developed to protect cultural heritage values as part of the environmental assessment process.
- Comprehensive anthropological information on dreaming sites and trails and areas of spiritual significance, derived from anthropological work extending over many years and involving the full participation of traditional owners, has been taken into account by decision makers for each of the matters noted in the Mission's report.
- The current traditional owners have indicated that they are at present unable to participate in any anthropological or archaeological surveys undertaken as part of the assessment process. The traditional owners supplied no information on these issues to the EIS process.

Changes in level of threat:

- The delineation of the boundaries of Kakadu National Park and the management of both the Park and cultural sites on the lease areas, have taken into account current, agreed information on natural and cultural values. Further strategies for site protection and surveys will ensure that there is no damage to the cultural values of the World Heritage property.

Mitigation:

- The Australian Government has ensured and will continue to ensure that the Jabiluka project does not impact on the cultural values of the World Heritage property and is implementing the recommendations of the Mission.
- The Australian Government will continue to openly report on progress.

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7.5.8 The Boiwek Djang (Gecko Dreaming) site

(Note: The mission report is unclear in listing this specific site as a threat. The Australian Government understands that it was intended to refer to possible damage to the site through mining developments.)

Mission's Findings: *The Mission noted that while the fact that the landscape of Kakadu is spiritually imbued was used in the justification of the World Heritage nomination and inscription, the Boiwek site was not referred to specifically. It noted that some Mirrar people, and in particular their senior spokesperson were fundamentally fearful of the possible destructive impact of the Jabiluka uranium mine on the Boiwek dreaming site. The Mission claimed that this fear mirrors concerns of the late father of the senior spokesperson about the potentially destructive impacts of the Ranger mine on the indigenous religious/spiritual landscape. Given the scale and depth of the Jabiluka mine decline, and its underground proximity to the Boiwek site, such uncertainty and concern was regarded by the Mission as understandable.*

The Evidence:

- See also Section 5.6.
- The Boiwek site is not within the World Heritage property.
- The Mission relied for evidence on this issue on the advice and current views put by the current traditional owners of the Mirrar estate. The Australian Government agrees that this is the current view of the Mirrar, but it seems that the views of other traditional owners with custodial rights over the site were not considered.
- Exhaustive cultural mapping of the site of Boiwek, including any known cultural associations which the site has within both the Jabiluka Mineral Lease and the Kakadu National Park World Heritage property, had in fact been completed at the time of the Mission's visit. The work was carried out by the AAPA who comprehensively reported on this project to the Mission during its time in the Northern Territory. The reporting included an account of the decision of the Authority's 36th meeting, based on the results of the mapping work, that the site of Boiwek did not satisfy the relevant requirements for registration as a sacred site under the AAPA's Act.
- The 1982 Agreement, negotiated under relevant legislation protecting the rights of Aboriginal people to their land, includes measures to protect sacred sites within the Jabiluka Mineral Lease from any damage from the construction of the mine. The late father of the senior traditional owner was a willing party to that agreement. Recent claims relating to the extent of the Boiwek site are not consistent with the 1982 Agreement and previously available documented anthropological evidence.
- Under the base agreement there is clear provision for the identification of additional or more extensive sites. Over the first 17 years of the Agreement, including when the transfer of the lease from Pancontinental Mining to ERA was negotiated in 1991, no such proposals were made. In 1991, the traditional owners lobbied the government to allow the mine to proceed, indicating at that time that they accepted that the protection of Boiwek, pursuant to the base Agreement, was adequate.
- Traditional owners have indicated that they are unable at present to work with the mine's owners or the Australian Government to facilitate processes to avoid any possible impacts to the site.
- Claims that the extent of the ore body is now the understood definition of the sacred site are discussed in Chapter Five of this report.

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Changes in the level of threat:

- No verifiable evidence is presented by the Mission of any direct ascertained or potential threat to the defined and agreed boundaries of the Boiwek site, or for damage beyond that site to the broader cultural values of the World Heritage property.
- The World Heritage Committee accepted the boundaries of the World Heritage property, with the specific exclusion of the Jabiluka lease in 1992.

Mitigation:

- The State Party has indicated its willingness to work with the traditional owners and the proponent in defining the boundaries and ensuring the protection of the site.
- The Australian Government will continue to openly report on progress.

7.5.9 Threats to the living cultural heritage of Kakadu

Mission's Findings: *The Mission argues that the integrity of the World Heritage associative values recognised by the inclusion of Kakadu National Park on the World Heritage List on the basis of cultural criterion (vi) depends on the ability of affected Aboriginal communities to continue their traditional relationships to the land. It states that this ability, and therefore the living cultural heritage values for which Kakadu National Park was listed, are demonstrably under threat. It claims that the living traditions are being directly and indirectly impacted by mining activity at Jabiluka and by other social and economic distresses. The mission is of the opinion that threats to the living cultural traditions of Kakadu have increased since its inscription on the World Heritage List in three stages in 1981, 1987 and 1992. The nature of incursions into the Kakadu area which include mining, tourism, urbanisation and resident population growth have been thoroughly documented in the Kakadu Region Social Impact Study (KRSIS) completed in July 1997.*

The Evidence:

- The Australian Government understands that the view expressed in the Mission's report is not shared by all of the traditional owners of the land covered by the World Heritage property. The Mirrar people are the owners of 2% of Kakadu National Park. To suggest that the claims by the Mirrar justify listing lands belonging to other traditional owners as World Heritage in Danger is not sustainable. The Jawoyn and other traditional owners have conveyed their concerns on this issue to the Mission.
- The Aboriginal population of the Park since inscription has risen from about 140 to about 530 (1996 estimate) as a result of mining royalties and Park activities. This has strengthened cultural continuity in the Park and shows that traditional owners are able to continue their traditional relationships to land. It is not consistent with a view that the overall attractiveness of the area to traditional owners has decreased since the introduction of mining.
- The Australian Government has given high priority to the support of cooperative initiatives for sustaining and enhancing the living cultural traditions of Kakadu since the declaration of Kakadu National Park, especially working through the Kakadu Board of Management. A range of initiatives has been implemented including an extensive number of agreements with traditional owners for cultural heritage protection and programs for ensuring that cultural values are an essential part of Park management and the visitor experience (see Appendix 3).

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- KRSIS found that the social conditions of Aboriginal people in the Kakadu region are neither demonstrably better nor worse than other Aboriginal communities in the Northern Territory.
- The distribution of mining royalties has created many financial investment, employment and economic development opportunities for Aboriginal communities in the Park.

Changes in the level of threat:

- No evidence is presented by the Mission of a direct ascertained or potential threat to the cultural values of the World Heritage property of Kakadu National Park. Only the mine working area, a small part of the lease, cannot be accessed by traditional owners. This restriction has been agreed. The lease is not in the World Heritage property.

Mitigation:

- The Australian Government will continue to openly report on progress.
- KRSIS initiatives are being accelerated with the full cooperation of most traditional owners.

7.5.10 The 1982 Agreement

Mission's Findings: *The Mission noted that the strongly held beliefs of the traditional owners must be respected and that the implementation of the World Heritage Convention (in this case the protection of the living cultural traditions recognised through World Heritage inscription) must take into account the fundamental rights of the indigenous people and reconsider the status of the 1982 agreement and the 1991 transfer of ownership.*

The Evidence:

- The Mission relied on the views of the current traditional owners of the Mirarr estate that previous agreements by traditional owners were signed under duress or not fully understood and their view that the Park's cultural values will be irretrievably damaged if mining goes ahead. The Mirarr gave consent in 1982 and 1991. There is no evidence of duress, and no challenge to the validity of the agreements has been made.
- This is only one view of a complex situation. The Mirrar, owners of 2% of the Park, are only one of the approximately 16 Aboriginal land owning groups in the Kakadu region. Aboriginal people in the Park all have an interest in mining and their views also need to be considered on this issue. Apart from the traditional owners of the Jabiluka and Ranger areas, there is a considerable degree of support for mining by those Aboriginal people affected by the existing mine.
- The Northern Land Council as well as senior and key members of the Kakadu Aboriginal community continue to support the 1982 Agreement and the 1991 transfer of rights. Legislation dictates that the traditional owners' consent to the Jabiluka mine, as provided for by the 1982 Agreement, could only have been given if the traditional owners themselves had been fully consulted about the proposal and, as a group, consented to it.
- The previous senior Mirrar traditional owner was a party to the 1982 Agreement. None of the principals associated with the 1982 Agreement have disowned it or the process. In 1991 Bill Neidjie, one of the traditional owners who was a principal to the 1982 agreement, referred to the importance of the 1982 Agreement being kept because it was *Bininj* (Aboriginal) law that since the two old men who had agreed to the mine proceeding were now dead their word was law and must be followed.

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- The senior traditional owner came to Canberra in 1991 with a group of traditional owners, to lobby senior Australian Government Ministers that the mine should go ahead in accordance with the 1982 Agreement.

Changes in the level of threat:

- The World Heritage Committee reinscribed Kakadu National Park in 1987 and 1992, making no comment on the 1982 agreement which allowed for mining in the areas adjacent to the World Heritage Area.

Mitigation:

- The Australian Government will continue to openly report on progress and to support the traditional owners' legal and negotiated rights to control aspects of the mining proposal.

7.5.11 Lack of recognition of the Kakadu cultural landscape

Mission's Findings: *The Mission stated that the full extent of the outstanding cultural landscape of Kakadu had not been recognised and protected while acknowledging that at the time of the most recent listing, the cultural landscapes criteria had not yet been established under the Convention.*

The Evidence:

- In response to requests for its nomination on cultural landscape criteria, the Australian Government has set in motion a consultation process on the issue with relevant stakeholders.

Changes in the level of threat:

- The fact that the Kakadu World Heritage property has not yet been nominated or listed under the relatively recent cultural landscapes criteria cannot be construed as a threat to the values of the region.

Mitigation:

- The Australian Government has established a consultation process on the issue of whether Kakadu National Park should be re-nominated as a cultural landscape under the World Heritage Convention.
- The Australian Government will continue to openly report on progress.

7.5.12 Limitations to the boundaries of Kakadu National Park

Mission's Findings: *The Mission considered that, without protection by boundary extension, the ecological integrity of the existing World Heritage property is in potential danger as the possibility of additional mining projects commencing on the upper catchment has not been excluded.*

The Evidence:

- The land in question is owned by Aboriginal people. Any decision to make it part of the Park would have to be their decision.
- The Ranger mine has operated without any significant environmental impact on the World Heritage property and the World Heritage Committee has not recommended its closure. This provides evidence that mining operations adjacent to the World Heritage property, as long as they are strictly controlled and regulated, can be compatible with the protection of World Heritage values.

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- The traditional owners in the areas outside of Kakadu National Park have actively sought exploration for minerals, and have given their consent to mining related projects on their lands.

Changes in level of threat:

- Threats from mining outside the boundaries of the Park have clearly not increased since the time of listing, since the World Heritage Committee did not identify the existing Ranger mine as a threat in 1992. Under Australian legislation, any project that could possibly impact on the World Heritage property is subject to rigorous environmental assessment and control.

Mitigation:

- The Australian Government will ensure that the World Heritage property will be protected from any activities on land outside the World Heritage property, according to land tenure and the wishes of traditional owners.
- The Australian Government will consult with the traditional owners of the lands in question about the Mission proposal.
- The Australian Government will continue to openly report on these issues.

7.5.13 Threat to the continuation of the “joint management” regime at Kakadu National Park

Mission’s Findings: *The mission notes that, generally speaking, the parties involved feel the concept of “joint management” has worked well but claimed that existing and proposed management and legislative changes are fostering a deterioration of trust. The Mission expressed concern that any tensions in the exemplary joint management practice of Kakadu could threaten the management of the World Heritage property.*

The Evidence:

- The mission, while acknowledging that joint management arrangements has worked well, does not produce any objective evidence of a threat to the natural or cultural values of the Park.
- No argument is advanced as to what direct threats to natural or cultural values of the World Heritage property are posed by administrative changes to the National Parks and Wildlife Service’s head office or the addition of a Northern Territory member to the Board. Neither will impact on the day to day management of the Park or change the clear majority of traditional owners on the Park’s governing Board.
- The Australian Government agrees that the Mission’s report of traditional owner concern about these proposed arrangements is an accurate reflection of their view. The Government is responding to those concerns at the highest level, including through direct Ministerial negotiations.

Changes in level of threat:

- The implication that “any tension” in such a complex joint management arrangement could constitute a direct ascertained or potential threat to the values of the World Heritage property of Kakadu National Park is neither realistic nor a logical assertion. The presence of tensions over certain issues from time to time is to be expected.

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Mitigation:

- As is standard practice under the joint management arrangements in place for Kakadu National Park, negotiations over points of disagreement continue towards a mutually acceptable outcome.
- The Australian Government will continue to openly report on progress.

7.5.14 Overall breakdown in trust and communication

Mission's Findings: *The Mission observed a decrease in effective indigenous influence in the Park, and a breakdown in communication and trust which has the potential to jeopardise the conservation and management of the Park.*

The Evidence:

- Certain members of the Park's Board of Management expressed the view that, in general, they experienced poor communication with government authorities and had concerns about a number of proposed changes. The Fourth Plan of Management is clear evidence, however, of the influence of indigenous decision-makers on the Kakadu Board.
- The Australian Government is supporting mechanisms to ensure that indigenous involvement in the management of the Kakadu region, is continually enhanced not diminished. A range of indigenous based committees and organisational structures within the Kakadu region have been established with the Australian Government's support.
- A range of programs and initiatives aimed at strengthening indigenous involvement and cross-cultural understanding are summarised elsewhere in this report (see for instance, Appendix 3).

Changes in level of threat:

- Since the Park's first listing for World Heritage values, the Park's returning Aboriginal population has increased dramatically and the Board has introduced a wide range of measures which protect and promote cultural values.
- Some issues are under negotiation between the Aboriginal owners and government authorities. Traditional owners have clear rights in these matters which they are freely exercising. This is a clear indication of the ongoing strength of cultural life in Kakadu.

Mitigation:

- The Australian Government is giving close attention to both increasing and improving its dialogue and discussion with Aboriginal people over issues of concern and common interest.
- The Australian Government will continue to openly report on progress.

7.5.15 The Koongarra Mineral Lease

Mission's Findings: *The mission noted that the Koongarra Mineral Lease excised from Kakadu National Park was located near the highly culturally significant Nourlangie outlier with its outstanding galleries of rock art. It was acknowledged that the legal rights of traditional owners under Australian law include the opportunity to oppose this view.*

List of World Heritage in Danger: Criteria and Benchmarks

The Evidence:

- The agreement of both the traditional owners and the Australian Government would be required for mining to proceed at Koongarra. At present, no approval by Government has been given or is under consideration.
- The World Heritage Committee has been advised regularly on the status of the Koongarra Mineral Lease and has not previously expressed concern.
- Any potential threat to the World Heritage values of the Park, including the Nourlangie outlier, will be identified in a comprehensive environmental assessment that would be required under Australian law if the project was to be considered. The project would not proceed if it would damage the World Heritage values.

Changes in level of threat:

- There is little evidence to support the view that any direct ascertained or potential threat to the values of the World Heritage Area of Kakadu National Park exists as a result of the presence of the Koongarra lease.

Mitigation:

- The Australian Government has formally sought the views of traditional owners, the leaseholder and the Northern Territory government over the future of the Koongarra lease area.
- The Australian Government will continue to openly report on progress.

7.5.16 The town of Jabiru

Mission's Findings: *The Mission is concerned that the town of Jabiru will continue to grow beyond a level consistent with the management objectives of a World Heritage property.*

The Evidence:

- The linkage made between the opening of a new mine at Jabiluka and a concordant expansion of urban and infrastructural development is based on a false assumption and does not account for the history of population change in Jabiru.
- Much of Jabiru's infrastructure was constructed to cater for a population of up to 6000, and will not require expansion. It is estimated that existing housing stock in Jabiru will accommodate any net increase in population as a result of the Jabiluka development. The number of mine workers who will require accommodation in Jabiru from the Ranger and Jabiluka operations combined is less than the number previously accommodated at the peak of operations at Ranger alone.
- The development of Jabiru is strictly planned under a legal framework which protects the World Heritage values of the Park. It is the administrative centre for the management of the Park and also functions as an important service centre for Kakadu's traditional owners. Traditional owners support the maintenance of Jabiru as a focus for tourism activity.

Changes in level of threat:

- There is no evidence that Jabiru poses or will pose a greater threat to the World Heritage values of the Park than it did in 1992 when the Park was listed. The town will not grow as a result of the Jabiluka development. Its present and estimated future population figures (1480 and 1700 respectively) are well below the maximum population of 3500 recommended by the Fox Inquiry.

List of World Heritage in Danger: Criteria and Benchmarks

Mitigation:

- The Australian Government will continue to openly report on this issue.

7.5.17 Fire and feral animal management

Mission's Findings: *The Mission recommended greater attention to risks associated with fire and feral animal management within and between the mining leases and between these areas and the Park.*

The Evidence:

- The best practice management of fire and feral animals are priorities in the Kakadu Plan of Management.
- Management regimes in the Park and on the lease areas account for these risks with good results to date.

Changes in level of threat:

- There is no evidence to suggest that threats posed to the World Heritage values of the Park by feral animals and fire events within the lease areas have increased since 1992.

Mitigation:

- Parks Australia and ERA will enhance cooperative arrangements for the identification and management of any potential threats posed by feral animals or fire within the lease areas.
- The Australian Government will continue to openly report on progress.

7.5.18 Weeds

Mission's Findings: *The Mission was impressed by efforts to control outbreaks of weeds in the Park and the remarkable success achieved. The Mission emphasised the need for this intensive effort to continue.*



*Fire management
in Kakadu
National Park
(Mark Hallam)*

List of World Heritage in Danger: Criteria and Benchmarks

The Evidence:

- The threats posed by weeds in the Park, especially *Mimosa* and *Salvinia*, are recognised and reflected in the resources and attention devoted to their control by the Board of Management and all levels of government.

Changes in level of threat:

- There is no evidence that this threat has increased. In some cases, the intensive efforts underway to control and reverse the effects of weeds in the Park have effectively reduced the threat since listing.

Mitigation:

- The Board of Management and respective governments remain strongly committed to maintaining and enhancing these efforts in line with best practice and employing the best available scientific knowledge.
- The Australian Government will continue to openly report on progress.

7.5.19 Cane toads

Mission's Findings: *Recognising the existence of some uncertainty about the potential effects of cane toads on the Park, the Mission warned of the need to account for the possibility that these effects may be severe by ensuring protective regimes were based on the Precautionary Principle.*

The Evidence:

- Control of invasive species is recognised as a priority in the Plan of Management approved by the Board, the Director and the Minister.
- Invasive species are a significant conservation concern across Australia and cane toads need to be considered seriously but strategically within the national context. Whilst there is clear recognition of the threats posed by feral cats, foxes and rabbits, there is no consensus that cane toads are a significant threat to biodiversity.
- Management of cane toads is a regional issue, and several government agencies have an interest in assessing the potential and actual impacts.

Changes in level of threat:

- Cane toads have not yet arrived in Kakadu, and pose no greater threat than in 1992. The potential of the threat posed by their arrival is being carefully assessed and planned for as part of an integrated approach.

Mitigation:

- The Park will promote a coordinated research program, in conjunction with other land management agencies in the region, aimed at predicting and minimising the effects of toads on regional ecosystems.
- The Australian Government will continue to openly report on progress.

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7.6 DELINEATION OF THE WORLD HERITAGE BOUNDARY—HISTORY AND REASONING

Australia carefully considered the appropriate delineation of boundaries prior to creating Kakadu National Park and nominating it for inclusion on the World Heritage List. In creating a protected area of this size and significance, it was rightly judged that the inclusion of the pre-existing mining area as part of the World Heritage property would be inappropriate. Extensive management arrangements were established to ensure that this pre-existing use did not conflict with the values or the management objectives of the new protected area.

Each of the three World Heritage nomination documents for Kakadu National Park clearly noted and mapped the uranium mining activities outside the proposed World Heritage property boundaries. The World Heritage Committee was aware of these mining activities when it recommended that each successive stage of Kakadu National Park should be inscribed on the World Heritage List. The Committee in its decisions on inscription did not comment adversely on the boundaries, the operation of the Ranger Uranium Mine, the town of Jabiru, the impact on cultural values of mining, or the integrity of the Park. These were not considered to be ascertained or potential threats.

7.7 THE BURDEN OF PROOF IN CONSIDERING A WORLD HERITAGE IN DANGER LISTING

Australia has a strong record of excellence in management of its World Heritage properties. Every year, Australian governments allocate very significant financial resources to ensuring these areas are managed to the highest standard. It has also demonstrated international leadership in implementing joint management measures with indigenous owners of World Heritage properties in Australia (Kakadu and Uluru Kata-Tjuta National Parks).

The strength of Australia's World Heritage management arrangements for Kakadu ensure that the natural and cultural heritage values are safe, protected and will be maintained into the future.

To place Kakadu National Park on the List of World Heritage in Danger, the World Heritage Committee is required to identify actual or potential threats (identified as ascertained dangers or potential dangers in the *Operational Guidelines*) to the World Heritage values of the Park. It is not sufficient to point to dangers to values outside the property which might be of World Heritage interest. It is necessary to demonstrate an impact or a potential impact on the values of the property itself.

There is no ascertained danger to the World Heritage values of Kakadu National Park.

There are a number of issues which require proper management to ensure protection of World Heritage values. For the Park itself, potential issues relating to natural and cultural values have been identified in the Kakadu Plan of Management, while those arising from activities on the Jabiluka Mining lease are managed in accordance with stringent environmental requirements built upon nearly twenty years of experience at the Ranger mine.

The comprehensive and transparent assessment process for the mine proposal identified all potential impacts, including impacts that could affect the World Heritage values of the Park. The government legislative requirements on ERA, and commitments by the proponent, are more than adequate to ensure that there is no impact on the World Heritage values of the Park.

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The measures which give confidence that the potential threats will not become adverse real impacts are as follows:

- scientific research, management plans and structures in place to allow potential threats to World Heritage values to be identified and addressed;
- well-resourced government authorities with responsibility to implement measures designed to maintain the integrity of the property;
- comprehensive action being taken to preclude or mitigate any of the identified potential impacts;
- accountable structures either being developed or are already in place for the continuous monitoring of natural and cultural values and for subsequent remedial action, when required; and
- a powerful framework of legislation to ensure the property is conserved and protected.

7.8 CONSISTENCY AND EQUITY ISSUES

While Australia accepts that the ability of States Parties to implement management and legislative regimes protecting World Heritage values is dependent on its economic and social environment, it seriously questions the lack of a more standardised procedure in which the Committee seeks to identify properties as being In Danger.

In terms of the need for listing, previous listings In Danger without consent of States Parties have been strongly justified by an irretrievable loss of or serious damage to World Heritage values or in the integrity of a World Heritage property. It is clear that listing In Danger is primarily undertaken when there is a real and serious threat to the site, for example in cases of civil unrest, poaching or illegal occupations, or unmanaged development within a property. It appears that in the majority of these cases, the World Heritage properties concerned lacked appropriate management plans and adequate legislation protection for their World Heritage values. These examples cannot be equated with the present situation in Kakadu National Park.

CONCLUSION

This Australian report demonstrates that there is no basis, in terms of either ascertained or potential dangers, or inadequate legal and administrative protection, for placing Kakadu National Park on the List of World Heritage in Danger. To do so against the informed views of the State Party would be to create a new and greatly elevated benchmark that would be need to be applied consistently, over time, to all World Heritage properties and across all States Party. It would have a powerful impact on the spirit of consensus and common purpose which has been a fundamental feature of the World Heritage Convention's implementation and administration to date.

Australia knows of no case where a property has been placed on the World Heritage List in Danger where the country concerned has clearly and unequivocally rejected the assertion of danger, and has provided substantial and credible evidence that this is not the case. Australia also knows of no case where the World Heritage Committee has accepted a nomination based on clear presentation of facts, notably current mining, and exclusions for future mining, and then listed the property on the World Heritage List in Danger when there are no changed circumstances.

The choice before the World Heritage Committee is one of the utmost gravity and one which, in the interests of the future functioning and credibility of the Convention, should be taken only after careful and objective consideration of the evidence and issues of consistency and precedence.