

## Chapter Twelve

# Laws and Strategies: The Contest to Protect Aboriginal Interests at Coronation Hill<sup>1</sup>

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In recent decades, Aboriginal affairs in Australia have been punctuated by disputes over development projects proposed in the vicinity of places attributed mythological significance by local Aboriginal peoples. Noonkanbah, Coronation Hill and Hindmarsh Island have been the biggest of these, attracting intense national political attention. In such disputes, law, party policies and interest group campaigning serially interact through the sometimes prolonged stages of the associated political process. This chapter selects one theme from the management of the Coronation Hill issue, which ran its long and tortuous course from September 1985 to June 1991. It focuses on the early stages of that history, and in particular on the events of 1987, and examines the ways in which two statutory authorities charged with advancing the recognition and protection of Aboriginal interests in land adopted courses of action that in different respects complemented and competed with one another. It further traces the stages through which one of these authorities was able to transform itself from a marginal observer to principal representative of the Aboriginal interest.

The character of the relationship between these two organisations derived from the distinct but overlapping legislative charters under which each operated. There were two Acts involved, and they had a common public policy origin in the recognition of Aboriginal land rights in the Northern Territory in the 1970s. The first and principal Act was the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)*; the second and complementary Act was the Territory's own *Aboriginal Sacred Sites Act 1978 (ASSA)*. Within the overall land rights regime, jurisdiction was divided between the statutory authorities established by these Acts, the Northern Land Council (NLC) and the Aboriginal Sacred Sites Protection Authority (ASSPA) respectively. There were important differences in the way these authorities were empowered to recognise and manage

<sup>1</sup> I would like to thank the Aboriginal Areas Protection Authority and the Northern Land Council for access to their records, and those officers of both organisations, past and present, who discussed the history of Coronation Hill with me. I am grateful to David Ritchie and David Cooper for their comments on drafts, and to the editors for their help in producing a shorter and more integrated paper.

the indigenous interest in land. These concerned the extent of the land and the purposes to which it could be put, and the category of Aboriginal people which each organisation was required to consult. This chapter thus relates the contest between them over management of Coronation Hill to the different kinds of indigenous interest that were seen to be at stake.

This analysis therefore does not deal with the most contentious aspect of the interaction between indigenous testimony and organisational strategy during the Coronation Hill dispute. That was the problem of determining whether the Aboriginal custodians genuinely held religious beliefs about that place of a kind that should have precluded mining development. Rather, it is about external history, an interpretation of an aspect of the strategies of the two organisations involved, tracked through consultations, meetings, submissions, lobbying and negotiations from Coronation Hill to Canberra. Connections between these issues, however, will readily be found, as the history given here reveals sufficient incidental details to indicate just how fraught the question of the significance of Coronation Hill was, and why it became the point on which policy, in the end, pivoted (Levitus 1996). That end point ultimately came in 1991 when Prime Minister Bob Hawke, acting from a minority position in Cabinet, insisted that the religious values ascribed by Aborigines to Coronation Hill were of such importance as to preclude mining and justify its incorporation within Kakadu National Park.

Rather, my analysis points to the way the organisations' strategies during this issue flowed in part from the way their understandings of indigenous authority with respect to place were structured both by law and by their own prior histories of practice. In the case of the NLC, that prior history bore the force of precedent from a previous land claim, and in the case of the ASSPA, it took the form of an institutional policy commitment to direct and individualised consultation. Eventually, and after several years of contention, official processes of arbitration and management again called upon local indigenous people to propose their own model of landownership. The model they proposed in response differed significantly from previous representations, most importantly in bringing to salience a structural entity, the patrilineal clan, that had been de-emphasised or left out of account by that prior history of organisational practice.

In the next section, I set out the respective points of departure that grounded the orientations of the two organisations towards Coronation Hill. In later sections, I narrate and analyse the phases of tension and cooperation that developed between them. In the penultimate section I jump ahead to the early 1990s, when the Coronation Hill dispute passed through its final phase and an Aboriginal land claim proceeded over the surrounding area. Here, in an unexpected counterpoint to what had gone before, the local indigenous model

of responsibility for country just mentioned achieved recognition in the final political and legal settlements of land interests in the area.

## **The Land Council and the Sites Authority**

The NLC, one of the statutory authorities concerned, was one of two major land councils brought into existence by the *ALRA*. It is a body consisting of Aboriginal people elected from various subregions of the top half of the mainland Northern Territory, and served by a substantial professional bureaucracy divided into branches such as Law, Anthropology and Resource Management. In the period to the late 1990s, now thought of as the first generation of land rights, the NLC's major responsibility was to assist Aborigines to establish their traditional ownership of unalienated Crown land before the Aboriginal Land Commissioner, who could then recommend the granting of inalienable freehold title to an Aboriginal Land Trust (*ALRA* Section 50(1)(a)). More generally, the NLC's functions are to ascertain the wishes and represent the interests of traditional Aboriginal owners of land within the top half of the Northern Territory with respect to any issue relating to ownership or use of that land (*ibid.* Section 23(1)). Such issues have prominently included the negotiation of conditions under which mining interests will be granted.

Traditional owners are determined by reference to the mythologically sanctioned social structures, such as patrilineal clans or language groups, that mediate relationships between people and land (Keen 1984). In land claims, these structures are described from anthropological research and validated by claimant testimony in a tribunal hearing before the Aboriginal Land Commissioner. Traditional owners thus are members of a group or groups that occupy the appropriate relationship of spiritual responsibility towards sites on the land. While, in a land claim, at least some members of the group will have to show knowledge of the country concerned, those lacking such knowledge retain the status of traditional owners by reason of their membership of the relevant group. Structural entitlement is thus the principal determinant of traditional ownership, and participation in consultations on matters of land management is therefore in principle open to any competent member of the owning group. In accordance with Aboriginal custom with respect to speaking for country and making decisions about land, those with personal attributes of knowledge, relevant life experience, seniority or prestige play the largest roles in deliberations and are those to whom the NLC has most resort for its instructions.

The ASSPA was a Northern Territory Government agency established by the *ASSA*. The ASSPA existed until 1989, when it was reconstituted by new legislation as the Aboriginal Areas Protection Authority. The Authority, consisting of a majority of Aboriginal members nominated by the Land Councils and served by an office of field anthropologists and technical staff, is responsible for documenting and registering Aboriginal sacred sites throughout the Territory.

It registers sites only on a request from local Aborigines customarily responsible for those sites, referred to in its Act as the 'custodians' (ASSA Section 3). The custodians generally number between one and a few individuals, and their status derives from a combination of affiliation with the place or area, seniority in age, and knowledge.

Unauthorised trespass upon a site is subject to penalties. Under the original ASSA, in force until 1989, the ASSPA could give written consent for access to and works upon a site. It became the practice of ASSPA officers to arrange consultations between proponents of work and the site custodians, and then to seek from custodians their views as to the acceptability of the work, a matter on which they reported to the ASSPA for a formal decision. Since 1989, these procedures have been formalised in law (Ritchie 1996: 214–5).

Other points concerning these arrangements for the protection of Aboriginal land interests need to be made here. The first relates to the intended complementary relationship between the two regimes just described. The *ALRA* provided the definition of a sacred site as, in part, 'a site that is sacred to Aborigines or is otherwise of significance according to Aboriginal tradition' (Section 3), and further created the offence of unauthorised entry onto a sacred site (Section 69). The Northern Territory's own sacred sites legislation, however, had its policy genesis in a decision by the Federal Government not to provide for all relevant matters within its own land rights legislation, but to allow subsequent 'reciprocal' legislation (*ALRA* Section 73) to be passed by the Northern Territory Parliament, then approaching self-government. Administration of a sacred sites protection process was considered an appropriate area for such reciprocal legislation. This has been an object of criticism by Land Councils who resent the denial of jurisdiction over a matter they perceive as properly a part of land rights, and mistrust the placing of that jurisdiction in the hands of a Northern Territory government dominated, from self-government in 1978 until 2001, by an openly pro-development Country Liberal Party. Consequently, there has been within the NLC persistent doubt as to the ability or the willingness of the Sacred Sites Authority to stand up forthrightly for Aboriginal interests.

The common policy origin of land rights and sites protection also enshrines an underlying difference in the nature of the land interest being recognised. The recognition of a sacred site has different implications depending on whether it is on land claimable by Aborigines or elsewhere. On claimable land, sacred sites are fundamental to the process of proving traditional ownership, because the members of the claimant group have to demonstrate that they have spiritual affiliations to, and exercise spiritual responsibility for, sites on the land (*ALRA* Section 3(1)). Recognition of such attachments in a successful land claim thus founds a legal property right. On land that is not available for claim, such

attachments found rights of lesser extent which, though their exact character is open to debate (Ritchie 1996: 211, 217), importantly include a right of entry and a right to deny entry to others.

The land registration regimes administered by the NLC and Sites Authority thus contrast in significant respects, including the areas of land involved, the Aborigines with whom they must consult, and the range of issues on which they are required to consult. Generally, the NLC assists in claiming and managing areas of land, while the Authority assists in the protection of particular places of religious significance, mostly of much smaller size. However, the Authority's charter extends across the entire Northern Territory, while the NLC is restricted to unalienated Crown land with respect to its land claim function, and Aboriginal land for its other functions (subject to an important exception to be mentioned later). The NLC must have regard to the wishes of those identified as traditional owners, while the Authority consults with the site custodians, again a generally more limited group. The NLC must consult regarding the full range of land use purposes bearing upon Aboriginal land, while the Authority specifically manages requests for site registration from the custodians, and requests for site access from others. In summary, then, the laws under which these two authorities operate allow the registration of indigenous land interests of different extent and according to different criteria, and require each organisation to seek instructions from different categories of Aboriginal authority. These differences underlay the divergent and sometimes competing roles of the ASSPA and the NLC with respect to Coronation Hill.

## **The Regional Context**

Coronation Hill is located in the Top End of Australia's Northern Territory. It lies in the upper South Alligator River valley in the northwestern sector of the former Gimbat pastoral lease (see Figure 12-1). In the early 1980s, this area was an object of increasing interest from several quarters, one of which was the mining industry. A previous generation of small-scale uranium mining at many locations along the valley in the 1950s and 1960s had also produced evidence of gold deposits. In the early 1980s the international price for gold rose. Broken Hill Pty Ltd (BHP), the on-site operations company for the Coronation Hill Joint Venture, began drilling at the old open-cut mine on Coronation Hill in 1984, and soon obtained very promising results.<sup>2</sup>

<sup>2</sup> See Noranda Pacific Ltd 1985 Prospectus, pp. 16–21.

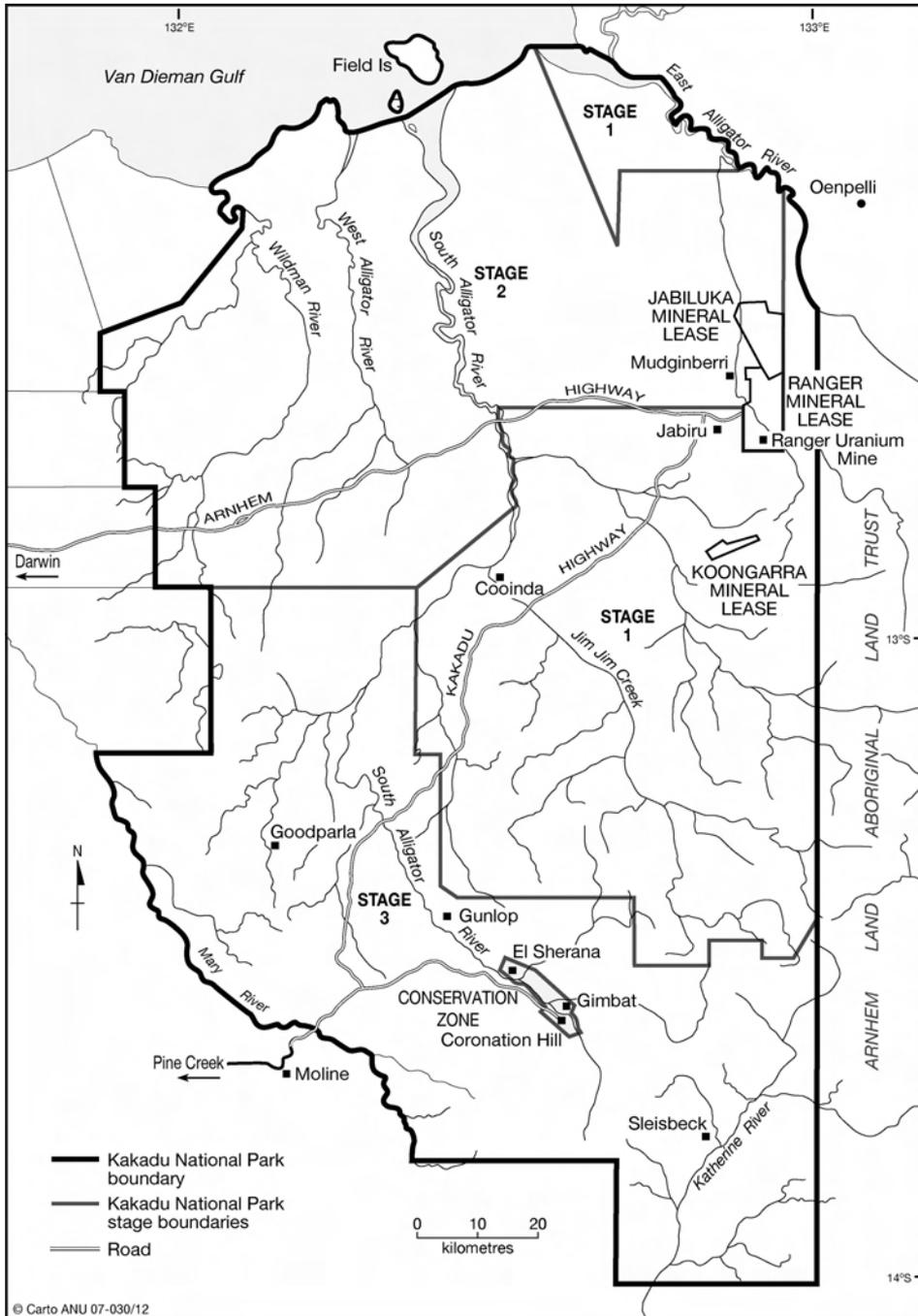
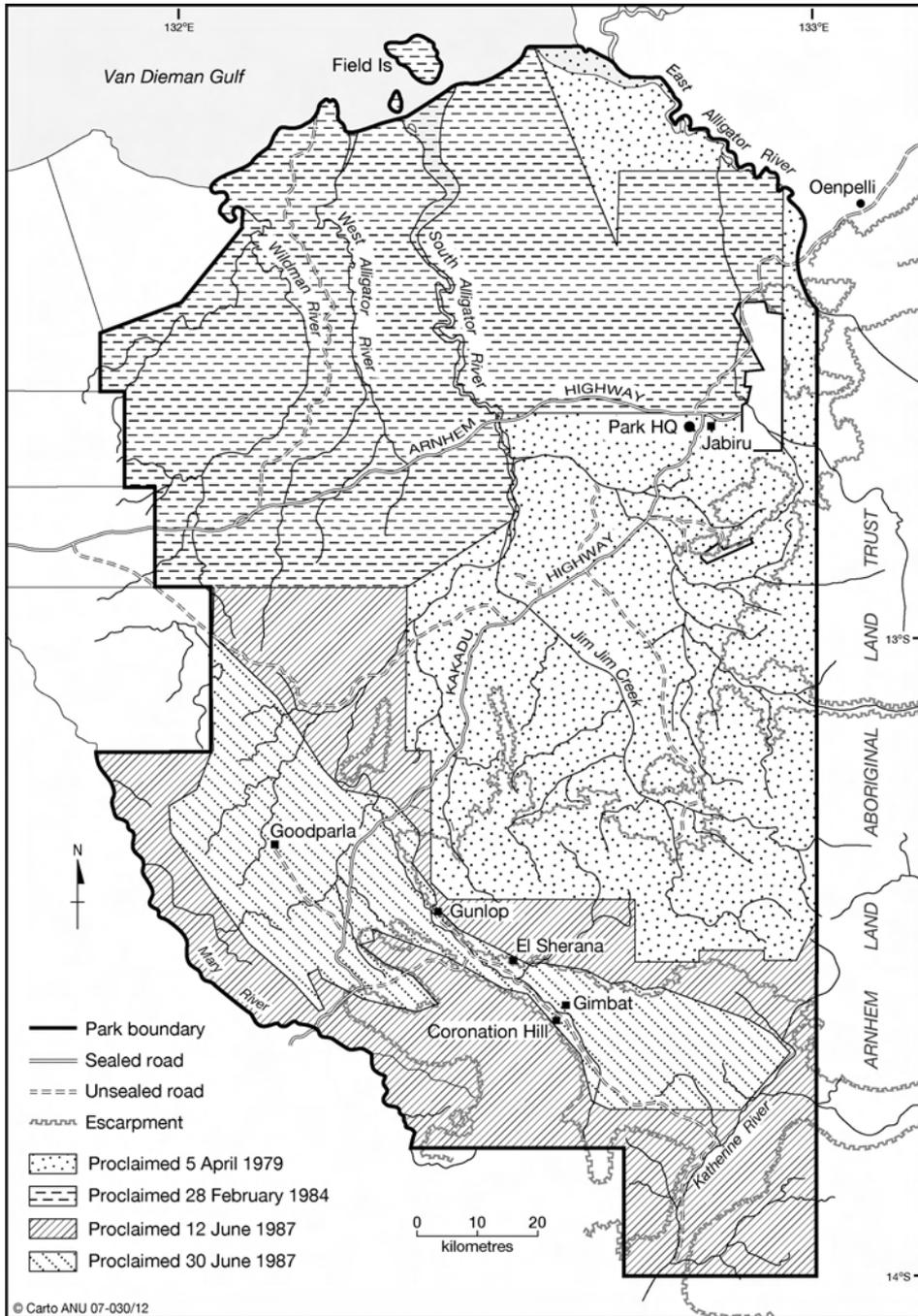


Figure 12-1: Kakadu National Park, showing Coronation Hill and reduced (post-1989) Conservation Zone.

At the same time, the NLC and the environmental movement anticipated that Gimbat would soon become available both for land claim and for declaration as a National Park. In the mid-1970s, the Ranger Uranium Environmental Inquiry (CoA 1977) had put forward a land use framework for the entire Alligator Rivers region. Central to the management regimes it proposed was the establishment of a major National Park to encompass at least one important river catchment. The river selected for protection was the South Alligator (ibid: 288–9), and the National Park was named Kakadu. Declaration of the Park proceeded in stages. Stage I was declared in 1979 and Stage II in 1984, both to the north of Gimbat (see Figures 12-1 and 12-2). By the mid-1980s, declaration of Stage III of the Park was on the Federal Government's agenda, and this was expected to extend Kakadu south into Gimbat and Goodparla stations to protect most of the remaining South Alligator catchment. Prior to the declarations of Stages I and II, opportunities were allowed for Aboriginal land claims to be heard over those areas, after which the successfully claimed lands were leased back by the Aboriginal owners to the Parks Service. The NLC therefore anticipated that, in the time between the stations becoming unalienated Crown land and their declaration as parts of the National Park, there would be an opportunity to claim Gimbat and Goodparla stations on behalf of the traditional owners. Supporters of that scenario were worried that the Coronation Hill development might allow a mining interest to be established before the land could be placed under a new regime that protected its Aboriginal and environmental values.

Gimbat lay within the northerly reaches of the territory of the Jawoyn language group. By the early 1980s there were no Jawoyn resident there, though small numbers had worked and lived there under previous lessees. Now they resided in many directions, but predominantly in a large arc from Pine Creek to the east, in and around the town of Katherine, to Eva Valley Station and Barunga Settlement to the south. The particular significance that Gimbat and its immediate environs retained for a number of knowledgeable senior Aborigines, however, arose from the occurrence there of a number of sites of extreme power and danger associated with the creator figure Bula, not all of which were mapped. While Aboriginal interests could not at that time be asserted through a land claim, research conducted for the ASSPA had led to the registration in 1980 of two Bula sites in Gimbat. Over the next few years, the NLC's research in adjoining or overlapping areas for the Jawoyn (Katherine Area) Land Claim (Merlan and Rumsey 1982) recorded a complex of such sites across Gimbat and into neighbouring areas, and documented the mythology of Bula as the most powerful and dangerous dreaming known to the Jawoyn. The NLC relied on this information in representations to the Federal Government made in the early 1980s, urging the priority of sacred site protection in future land use regimes for the area.



**Figure 12-2: Kakadu National Park, showing stages of declaration and the original Conservation Zone.**

Source: SSCERA 1988: 2.

During this period the Jawoyn themselves were entering a new phase of political engagement and heightened self-consciousness. A decade after introduction of the new Federal policy of indigenous self-determination, a range of community issues bearing upon some part or other of Jawoyn country demanded the constant attention of senior Jawoyn (Merlan 1998: 89). Among these matters was the preparation and presentation of the Jawoyn (Katherine Area) Land Claim over five parcels of land, the largest and most important being Katherine Gorge National Park, lying between Katherine town and Gimbat Station. The NLC presented this claim in a manner that had a particular bearing upon Jawoyn self-awareness. It argued that the claimants made up a unitary and undifferentiated group of traditional owners, the Jawoyn language group, for all of Jawoyn country (Merlan and Rumsey 1982: 40, 55–6).<sup>3</sup>

That model of traditional ownership also carried implications for the way in which the NLC could approach the policy issues emerging over Gimbat. Though evidence in the Katherine Area claim concluded in 1984, the Land Commissioner's judgment was not received by the NLC until October 1987. Two small parcels of land in northern Gimbat were included in the claim, and the NLC expected the opportunity to lodge a further land claim over Gimbat as a whole on behalf of the Jawoyn. The NLC consequently approached the representation of Jawoyn interests in Gimbat in the mid-1980s under the constraint of that model of landownership already argued before the Land Commissioner. In early 1986, shortly after development works at Coronation Hill had become a public administration issue, the NLC made clear its view of where sovereignty in the matter properly lay. It told a Senate Inquiry that mining development there was a matter for the Jawoyn people as a whole to decide, and that any statement by a site custodian that denied the sacredness of the place should be put before a full Jawoyn meeting for verification (SSCNR 1986: 2331–2).

The ASSPA, by contrast, needed to ensure that it was acting consistently with the wishes of the senior custodians. This group consisted centrally of three old men whose primary traditional attachments lay within Gimbat, though respect was also accorded to the knowledge of a small number of other senior men from other areas. While the ASSPA could accept decisions made at meetings of larger groups, it attempted to verify that the custodians in attendance were in accord with such decisions. Often that would be apparent from the role they played in discussions. The NLC and the ASSPA thus came to the Coronation Hill issue with markedly different conceptions of the locus of Aboriginal authority that should govern its management.

This was of further significance in view of continuing organisational immaturity among the Jawoyn themselves. The Jawoyn Association was

<sup>3</sup> See Rumsey (1989) for a discussion of the concept of the language group and its use in land claims.

incorporated in 1985 to manage royalty and business income from properties in the region. It remained poorly organised and staffed for some years, acting mainly as a public political front during the latter half of the Coronation Hill dispute. In the absence of independent institutional resources, Jawoyn views on Gimbat and Coronation Hill were thus articulated through the channels offered by a continuing and at times intense engagement with external agencies, especially the NLC, the ASSPA, and the BHP project team.

## **Liaison and Consultation**

At the time the new mineral discovery became publicly known in 1985, Gimbat was still a pastoral lease and so not available for land claim, and Coronation Hill itself was not subject to any other form of legal protection for environmental or Aboriginal values. In September 1985, members of the environmental movement alerted the NLC and the ASSPA that a mining company had reported very encouraging test drilling results at Coronation Hill. An ASSPA research officer brought the matter to the attention of a meeting of Jawoyn people, and suggested that the upper South Alligator valley be treated as a priority area for sacred site survey.<sup>4</sup> Following a visit to the valley with three Jawoyn men, including two senior custodians, and supplementary interviews elsewhere, the officer prepared a report for the registration of an area of about 250 km<sup>2</sup> on the southwestern side of the valley, including most of Coronation Hill (Cooper 1985). Registration of that area as a sacred site, the Upper South Alligator Bula Complex, by the ASSPA in October 1985 meant that further testing of the mineral deposit at Coronation Hill could not proceed without permission from the ASSPA.

The process of obtaining such permission involved consultation between BHP's on-site project team and the custodians, mediated by officers of the ASSPA. Those officers had the responsibility of ensuring that the custodians understood and approved of proposals put to them, before recommending to the ASSPA that site access be allowed. At this stage, sacred site registration was the only legal impediment to further mineral exploration, and the ASSPA was the only agency with the power to regulate BHP's access to the deposit according to Aboriginal wishes. Like the NLC previously, the ASSPA also tried, by its representations to Canberra, to insert the Aboriginal interest in the proposed Kakadu Stage III area into the Government policy debate and into regional land-use planning as an independent third voice alongside the mining industry and the environmental movement.<sup>5</sup> In that broader regional context, then, the

<sup>4</sup> File note referring to Jawoyn meeting at Barunga on the 11 September 1985, 13 September 1985, Aboriginal Areas Protection Authority (AAPA) files.

<sup>5</sup> Copy letters Blitner to Holding, 8 June 1983, 28 September 1983, NLC file 87/11; copy letters Ritchie to Holding, Cohen, Evans, 18 November 1985; copy letter Ritchie to Secretary, Senate Standing Committee on National Resources, 2 December 1985, AAPA file 81/208. Access conditions prevent me from providing citations from NLC records for some points in my discussion of the role of that organisation and its officers.

ASSPA shared with the NLC a common view of the extent of the general Jawoyn interest in the future of Gimbat.

Over the following months, the NLC also maintained its interest in the area. It remained satisfied that the Jawoyn opposed mining development at Coronation Hill and represented their position as such. Two NLC officers recorded statements of concern about works at Coronation Hill from a small group of Jawoyn during a visit to the area in November 1985. A Senate Inquiry into the resources of the Kakadu area had by then begun its work (SSCERA 1988), and the first NLC submission to it in December asserted Jawoyn opposition to the mining project.<sup>6</sup> In January 1986 three NLC officers heard anti-mining statements made at a Jawoyn Association meeting, after which the NLC expressed concern for the sacred significance of the area to the Federal Ministers for the Environment and for Resources and Energy. A meeting in March of NLC Regional Members passed a resolution supporting Jawoyn opposition to the project.

This marked the culmination of the first stage of the NLC response to the issue. It was a period in which its officers were able to maintain a role only as observers and informal advisors to the Jawoyn, in which they had no standing to formally oversee land use or site access, but in which their view of Jawoyn interests and wishes with respect to the area, and specifically regarding Coronation Hill, was based on a consistent record of expressed Aboriginal anti-mining sentiment. While they deferred to the ASSPA's jurisdiction, they also noted their first reservations as to its approach. In March, on a joint visit to Canberra, the senior NLC legal officer recorded his concern over hearing the ASSPA director telling government ministers and senior bureaucrats that the Jawoyn custodians might compromise over Coronation Hill.

The BHP project team spent the wet season preparing work plans for the following year, and establishing informal communication with some individual Jawoyn. When in March 1986 its development proposals were rejected by a Jawoyn meeting, it embarked on a broad campaign of informal liaison and information, including field trips, to familiarise small groups of senior Jawoyn people with its personnel and with their work at Coronation Hill, and to ascertain from the Jawoyn the location and extent of sacred places in the upper South Alligator valley. This latter aspect of the BHP team's liaison evoked objections from both the NLC and the ASSPA, both of which wanted communications contained within channels that allowed for proper consultation procedures and representation of Jawoyn interests (Dodson 1986).<sup>7</sup> The NLC during that period recorded further Jawoyn comments opposed to the mine, while the ASSPA director thought mining could be negotiated if communications were handled sensitively.

<sup>6</sup> Copy letter Ah Kit to Secretary, SSCNR, 11 December 1985, NLC file 86/36.

<sup>7</sup> Copy letters Ellis to Rush, 3 April 1986, 12 May 1986, AAPA file 85/63.

The BHP project team's initial phase of liaison culminated on 1 July when they organised a Jawoyn meeting that approved the resumption of works at Coronation Hill in those areas already disturbed by past mining. On a report from its officer in attendance at that meeting, the ASSPA gave official approval for conditional and staged development to occur.<sup>8</sup> A second meeting of 4 July, however, conducted by a Jawoyn Association officer and observed by NLC representatives and the ASSPA chairman, reversed that decision. A further ASSPA meeting in Katherine on 11 July discussed this reversal with a number of participants at the two meetings, including the senior custodians, and decided that the approval it had given was valid. The NLC regarded this as a failure by the ASSPA to act on the instructions of traditional owners.

The two decisions of early July were only the first of a long series of contradictions to emerge from Jawoyn meetings and consultations over the ensuing months. These presented a major source of indeterminacy for effective management of the issue and remain an important interpretive problem that is beyond the scope of this chapter (see Keen and Merlan 1990: 67–82; Levitus 2003; Merlan 2004: 259–66). The BHP team proceeded to develop its 'good neighbour' relationship with the Jawoyn, and introduced a Jawoyn employment program on site. In October 1986 a meeting of about 30 Jawoyn, including two site custodians and some other senior people, agreed to BHP's proposals to expand its exploration and development works, this time to areas not previously disturbed.<sup>9</sup> By the end of the year, the results of the drilling program had proven the existence of a commercial mineral deposit. Alongside good exploration results and successful dealings with the Jawoyn, the Federal policy environment was also looking favourable for mining. In September and December 1986, government ministers announced that while Stage III of Kakadu would be declared, 35 per cent of the area would be reserved for a five-year mineral exploration program. Coronation Hill was acknowledged as a project of special economic significance that would be approved subject to proper clearances.<sup>10</sup> In early 1987 the project team maintained continuous direct dealings with the Jawoyn, expanded the employment program, began preparation of an Environmental Impact Study, proceeded with feasibility studies and planned the steps towards a full mining agreement with the Jawoyn. In March the ASSPA confirmed approvals for work proposed late the previous year.

## **The Role of the Northern Land Council**

In the face of this steady progress towards mining, relations between the NLC and the ASSPA were a mix of cooperation and reserve. Among field staff with

<sup>8</sup> Copy letter Ellis to Rush, 4 July 1986, AAPA file 85/63.

<sup>9</sup> Ellis, Minutes of Meeting Held El Sharana 31 October 1986, 3 November 1986, AAPA file 85/63.

<sup>10</sup> Joint Statement by the Minister for Resources and Energy, Senator Evans and the Minister for Arts, Heritage and Environment, Mr Cohen, 16 December 1986.

local experience, there was a shared concern that the Jawoyn were not equipped with the internal community resources and information, nor were they being allowed the time and space, to adequately come to grips with proposals such as Coronation Hill. These officers tried to provide the personal and organisational support they felt was lacking, and were inclined to suspicion of the BHP team's liaison efforts. Formally the two organisations exchanged file materials for mutual information, and the ASSPA director supported the availability of the NLC's Katherine office legal advisor to assist the Jawoyn. Senior NLC people acknowledged that carriage of the issue lay with the ASSPA, but felt, initially, that their reservations with respect to the capacity of the ASSPA to protect Aboriginal interests were being confirmed.

By the end of 1986 a number of inconsistent Jawoyn statements, and the further development works approved at the October meeting, had created new doubts as to the Jawoyn position with respect to mining. Whatever the final position on that issue, the NLC still considered a land claim as essential to protect Jawoyn interests in the area. While such a claim could not be lodged while Gimbat remained a pastoral lease, the NLC hoped in the meantime, by way of Jawoyn requests for assistance, to manoeuvre itself into the role of protective intermediary. This it achieved in January and February 1987, with formal instructions from the Jawoyn Association to act as the Jawoyn legal representative,<sup>11</sup> and authorisation from the Association to attend all meetings between the Jawoyn and BHP.

By these steps, the NLC sought to overcome any objection to its right to be present and to advise the Jawoyn in all their dealings over Coronation Hill. Shortly thereafter, however, in March and April, NLC officers recorded statements on three occasions, largely from the same senior Jawoyn individuals, in favour, against, and in favour, of mining. The NLC, having finally achieved formal standing as the Jawoyn legal representative, could not effectively advocate its client's position, because it was unable to determine with certainty what that position was. Matters were no better clarified at a Jawoyn Association meeting in May where an NLC officer recorded that those present appeared undecided about the issue.

The NLC encountered further difficulties in having its role acknowledged by the BHP project team. In the midst of the events just described, the senior legal officer wrote to the company advising that 'the Jawoyn Association has instructed the Northern Land Council to act on its behalf on all matters relating to Coronation Hill', and requesting that all communications to the Jawoyn Association should be sent to the offices of the NLC. That letter further offered 'to discuss BHP's current involvement at Coronation Hill in a preliminary manner

<sup>11</sup> Letter McDonald to Director Bureau NLC, 21 January 1987, NLC file 86/154.

at your convenience'.<sup>12</sup> The NLC thereby attempted to consolidate its intermediary role by situating itself across the interface of contact between the Jawoyn and the company.

The BHP project team had from the outset been wary of the NLC and suspicious of its motives for intervening, perceiving its tactics as manipulative of the Jawoyn and inimical to successful development of the project. Its Aboriginal Affairs Advisor replied to the NLC that the team had to maintain direct dealings with the Jawoyn on a number of day-to-day matters, but that if the Jawoyn approved, it would deal with the NLC on formal matters.<sup>13</sup> The BHP team thereby refused to defer to the NLC's claim for the priority of its advisor-client relationship, and would allow only limited room for NLC involvement if this was authorised through the team's own communication with the Jawoyn. Approaching the next round of development consultations in June 1987, the BHP team found no support among Jawoyn leaders for NLC involvement. The team proceeded to organise a meeting of about 30 Jawoyn people, including two senior custodians, and ASSPA officers, at which further works on the project were explained and substantially approved, in disregard of the NLC's attempt to establish a formal role for itself.<sup>14</sup>

Events up to mid-1987 thus left the NLC uncertain of its client's views regarding the management of the upper South Alligator valley, lacking confidence in the ASSPA's handling of the central issue of development works at Coronation Hill, and without proper recognition from the mining company as its counterpart in negotiations. At that point, the legal basis of the NLC's participation in the affairs of the region was transformed by a raft of legislative amendments passed by the Federal Government.<sup>15</sup> The *ALRA* was amended to give Land Councils the additional function of assisting Aborigines to protect sacred sites, whether or not on Aboriginal land. Other amendments declared Gimbat and Goodparla stations to be unalienated Crown land and therefore available for land claim, and empowered Aboriginal Land Councils in the Northern Territory to negotiate mining agreements over land under claim, extending their existing power to negotiate only over land already won. In anticipation of these developments, the Jawoyn Association instructed the NLC to lodge a land claim over the area and to invite the company to enter negotiations for an agreement over exploration and mining. The NLC lodged the land claim on 26 June, and wrote to the company on 2 July.<sup>16</sup>

<sup>12</sup> Copy letter Gray to BHP Minerals Ltd, 7 April 1987, NLC file 87/104.

<sup>13</sup> Copy letter Rush to the Director NLC, 30 April 1987, BHP/Newcrest correspondence and reports.

<sup>14</sup> Copy note to file, 'Subject: G1/8-67C Aboriginal Community On-Site Meeting, 3/4 June 1987', BHP/Newcrest correspondence and reports; copy letter Ellis to Hewitt, 5 June 1987, AAPA file 85/63.

<sup>15</sup> *Aboriginal Land Rights (Northern Territory) Amendment Acts (2 and 3)*, *Lands Acquisition Amendment Act*, *Environment Protection (Alligator Rivers Region) Amendment Act*, *National Parks and Wildlife Conservation Amendment Acts (1 and 2)*; all of 1987.

<sup>16</sup> Copy letter Gray to Managing Director BHP, 2 July 1987, NLC file 87/104.

## The Contest over Aboriginal Interests

The BHP project team delayed negotiations, and instead moved to a new stage in the process of gaining Aboriginal approval for the project. Development approvals to date had covered test drillings and local road works, but there had so far been no use of explosives. The BHP team and the ASSPA arranged a consultation for 18 August 1987 at which the use of small quantities of explosives at Coronation Hill would be demonstrated for the Jawoyn.<sup>17</sup> About 18 Jawoyn were in attendance, including the three senior site custodians. The NLC seized the opportunity of this meeting to radically assert its standing in the issue.

Before the meeting began, two NLC officers arrived and handed to the Coronation Hill project manager a letter drafted the previous day by their senior legal officer. It referred to the NLC's frustration over having 'our clients complain to us about direct approaches by your company', reasserted the privileged nature of its relationship with the Jawoyn, and objected to the company's failure to advise of this meeting and the matters to be discussed.<sup>18</sup> The group then moved to Coronation Hill to observe three successively larger detonations, culminating in a line of four half-sticks of gelignite on a hill-side drilling bench. Before the meeting reassembled for discussion, an NLC officer privately explained to the Jawoyn that the NLC now had the legal power to negotiate a comprehensive agreement with BHP, including exploration works and site protection, and suggested that they should withhold a decision about blasting until after the first of these discussions in a few days time. When, after retiring to consider the matter alone, the Jawoyn announced that their decision would be delayed until the NLC reported to them on the outcome of the proposed discussions, the tensions already evident at this meeting manifested themselves as a direct challenge by the NLC to the positions of both the BHP project team and the ASSPA.

The decision to delay had two implications for the management of the issue. It meant that the progress of the mining project was now contingent upon the BHP team's dealings with the NLC instead of its dealings with the Jawoyn. The project manager attempted to reassert the priority of his team's direct relationship with the Jawoyn, describing it as one of trust that should not be undermined by the imposition of outsiders. He tried to re-establish what he had previously understood to be a separation between the questions of blasting and of dealings with the NLC, arguing that any negotiations with the latter would be directed only towards a final terms-and-conditions agreement for mining and would not cover the exploration stages. Finally, he pronounced a caveat upon any

<sup>17</sup> Memo, 'Coronation Hill Joint Venture Fortnightly Site Report to 28 August 1987', BHP Fortnightly Site Report.

<sup>18</sup> Copy letter Gray to BHP Co Ltd, 17 August 1987, NLC file 87/104.

negotiations at all, that they would only happen if the BHP team could be satisfied that the Jawoyn genuinely wished to be represented by the NLC.

Maintaining a separation between the immediate question of whether blasting at the scale demonstrated was an acceptable level of disturbance within the registered site, and the later question of the conditions under which a mining project might eventuate, was equally urgent for the director of the ASSPA. He attempted to impress upon the Jawoyn the legal and functional distinction between what he needed to know — whether the custodians of the site would authorise further exploration works involving explosives — and the larger matter that the NLC wanted to argue out — the material relationship that might finally emerge between the mining company and the prospective Aboriginal landowners. A Jawoyn spokesperson replied that the senior custodians of the site would accept blasting at the level demonstrated but no greater. An NLC officer again tried to dissolve that separation, explaining that the NLC could negotiate everything with BHP, and protect the site better than the ASSPA. When the tenor of the discussion then shifted to adverse reflections on the NLC's past record in local Jawoyn affairs, the ASSPA director concluded the meeting by stating that he would issue a permit for works involving blasting, but would delay it until after the proposed initial discussions between the NLC and the BHP team.<sup>19</sup>

Over the following weeks there ensued a contest between the NLC and the ASSPA over the issuing of the authorisation to the company. The contest turned ultimately on yet another distinction, discussed earlier, that was fundamental to the legitimacy of the ASSPA's claim to an independent role in the issue. That is, whereas the NLC claimed to represent the interests of the Jawoyn people as a whole, the ASSPA was responsible only to the custodians of the sacred site. This distinction between the Jawoyn collectivity and the small group of senior custodians of Bula sites in Gimbat reflected both the contrasting statutory charters of the NLC and the ASSPA, and also the recent land claim history in which the NLC had argued that the entire Jawoyn language group was a single local descent group that satisfied the definition of traditional owners.

In the wake of the consultation of 18 August 1987, this disagreement came to a head in a remarkable scuffle between the two organisations. The ASSPA director began by attempting to re-institute a clear demarcation between their respective roles and responsibilities. He wrote a conciliatory letter to the NLC a few days after the meeting at Coronation Hill in which he offered to discuss a cooperative and coordinated approach to the representation of Aboriginal interests, but also made plain that the ASSPA could receive instructions only from the custodians of the site, not from the Jawoyn Association or from the

<sup>19</sup> File Note, 11 September 1987, AAPA file 85/63.

NLC acting as the Association's representative.<sup>20</sup> The NLC responded by having the three senior custodians of the site sign a letter instructing the ASSPA not to issue a permit for blasting pending the outcome of discussions, now postponed, between the NLC and the BHP team.<sup>21</sup> This was an attempt to rescue the position which the NLC had advocated at the blasting consultation, to make progress of development works dependent on progress towards an overall negotiated package. It furthermore positioned the NLC as the channel through which custodians' instructions were communicated to the ASSPA. The ASSPA director advised the NLC that he considered himself bound by the decision of the custodians at the time of the consultation that the blasting was acceptable, and proceeded to issue an authorisation to the project team.

The NLC considered that the ASSPA had again failed to act in accordance with Jawoyn wishes. A meeting of the Jawoyn Association on 1 September was told that the NLC now had the same power as the ASSPA to protect sacred sites. NLC officers took the three senior custodians to one side to explain and have them sign another letter to the ASSPA, this time advising that the Jawoyn Association should henceforth be the source of the ASSPA's instructions. It said in part:

We want future permit applications to be directed to the Jawoyn Association ... The Jawoyn Association will be expressing our wishes in decisions about permit applications. We would like you ... to accept our instructions in this way from now on.<sup>22</sup>

In response the ASSPA at its next meeting formally noted 'the request of the Jawoyn custodians that future consultation be conducted with the assistance of the Jawoyn Association'.<sup>23</sup>

The ASSPA's legitimacy as a manager of the Coronation Hill issue rested then on its specific responsibility for approving works on a registered sacred site and its obligation to seek instructions from the site custodians. In August and September 1987 the NLC sought to subvert the ASSPA's independence, firstly by trying to subsume sacred site approvals within a general package to be negotiated over all development works at Coronation Hill, and then by trying to subsume the source of the ASSPA's instructions, the site custodians, within the source of its own instructions, the Jawoyn Association. This attempt to assert hegemonic representation of Aboriginal interests was based on a number of perceptions within the NLC: that proper protection of Aboriginal interests in the upper South Alligator valley required comprehensive negotiations over all

<sup>20</sup> Copy letter Ellis to Director Bureau NLC, 21 August 1987, AAPA file 85/63.

<sup>21</sup> Copy letter Brown, Barraway and Jatbula to Ellis, 26 August 1987, AAPA file 85/63.

<sup>22</sup> Copy letter Jatbula, Barraway and Brown to Chairman, Aboriginal Sacred Sites Authority, undated, AAPA file 85/63.

<sup>23</sup> ASSPA minutes, 14–15 October 1987.

aspects of BHP's activities, and that removing exploration from the purview of those negotiations constrained real Aboriginal options; that the ASSPA was neither competent nor authorised to handle such negotiations; and that the ASSPA's effectiveness was in any event subject to a political calculus that balanced the protection of Aboriginal interests against the need to demonstrate to its political masters that protection of those interests could be managed in a manner consistent with economic development of the Northern Territory. These perceptions underlay a tactical imperative for the NLC to neutralise the independent role of the ASSPA in the Coronation Hill project. For its part, the ASSPA maintained its concern, first expressed during the contradictory episodes of July 1986, that approvals for works on a registered site should be decided according to the views of the site custodians as bearers of the relevant tradition, and were not properly treated as a negotiating instrument.

## **The Contest over Policy**

While the NLC's intervention on 18 August had failed to achieve its immediate objectives, it had directly challenged the primacy of those relationships that had governed conduct of the Coronation Hill issue up to that point, and had served notice that a new player, strategically aggressive and with a much broader mandate to represent Aboriginal interests, was now in the field. Moreover, that field itself was now much larger than Coronation Hill. Prior to the July 1987 elections, the Federal Government had declared Stage III of Kakadu National Park over the area of Gimbat and Goodparla stations, subject to about one third being reserved as a 'Conservation Zone' in which mineral exploration would be allowed for 5 years. The Australian National Parks and Wildlife Service began preparations to take over management of the other two thirds of the area. The boundaries of the Conservation Zone were drawn tentatively (Figure 12-2), to be refined later in the year, and the Coronation Hill Joint Venture was one of many mining interests expected to compete for exploration rights over the zone. What was immediately clear, however, was that the southern half of the zone intruded into the region of the Bula Dreaming, and included, or lay very close to, a number of powerful sites.

Having established its prominence with respect to Coronation Hill, the NLC in September moved to engage comprehensively with the new complexities of policy in the region. The first requirement was to consolidate its relationship with the Jawoyn. In his report on the blasting consultations of 18 August, one of the NLC officers had noted ruefully that the BHP project team had succeeded in establishing good personal relations with the important Jawoyn decision makers, and that the NLC had now itself to carefully win their confidence. The first step, he suggested, should be to consult with them again to confirm their instructions and clarify their relationship.

The NLC's meeting with the Jawoyn Association on 1 September ranged widely over the problems and possibilities facing the Aboriginal claimants of the area. As most of the Conservation Zone was not protected by sacred site registrations, and as Federal policy at that time appeared to be moving strongly towards allowing at least some exploitation of what was known to be a highly prospective mineral province, the NLC's program had to be broadly concerned with advancing the Jawoyn position within the emerging mix of competing interests. The NLC director pointed out that continued contradictions from the Jawoyn over the Coronation Hill project could ultimately be used against them, and assured them that the NLC would support whatever their final position turned out to be. Following the meeting, the NLC renewed communication with the BHP team to arrange discussions aimed at a mining agreement.

Most importantly, however, the NLC, in concert with the ASSPA and the Australian Conservation Foundation, lobbied the Federal Government to delay any decision on the final boundaries of the Conservation Zone and the allocation of mining tenements until a survey of cultural and natural resources, and the ASSPA's sacred site documentation program, were completed, and the Aboriginal claimants of the area were properly consulted.<sup>24</sup> This renewed lobbying effort showed that the NLC and the ASSPA, even at the height of inter-agency tensions over their respective mandates with respect to Coronation Hill, were still able to act in concert to advocate recognition of Aboriginal interests in the Stage III area at senior policy level. Notably, senior opinion in both organisations regarded Aboriginal acceptance of mining at Coronation Hill as a possibility. The NLC at this point acknowledged both the ASSPA's role in establishing the extent of Aboriginal interests in the Conservation Zone and their joint effort in lobbying the government. However, the request for the government to delay its decision set the stage for a further elevation of the NLC's strategic position in the region.

Five Federal Ministers met on 24 September in Canberra to discuss Conservation Zone policy. Among them, the Minister for the Environment, Graham Richardson, had had previous exposure to Aboriginal disagreements over Coronation Hill, and the Minister for Aboriginal Affairs, Gerry Hand, was also aware that Aboriginal opinion had been unsettled. The Ministers decided that final determination of the Conservation Zone boundaries would be delayed until there had been further consultation regarding Aboriginal concerns. In a policy debate that to this point had been dominated by environmentalists and miners, and in which Aboriginal issues had been seen as a secondary complication, a high-level decision now turned on the Aboriginal interest in the area. More significantly for the strategic disposition of the players, the Minister for Aboriginal Affairs charged the NLC with responsibility for determining

<sup>24</sup> Copy letters Ah Kit to Morris, Richardson, Hand, Kerin and Brown, 2 September 1987, NLC file 87/391; copy letter Ellis to Richardson, 9 September 1987, AAPA file 80/25.

Aboriginal views and removing confusion over the Jawoyn position.<sup>25</sup> The NLC thereby became primary advisor to the Federal Government concerning Aboriginal interests in the Conservation Zone. The NLC took this as legitimisation of its claim to sole running of the Aboriginal issues in the region. Its senior officers determined that both the Jawoyn and the ASSPA were to be apprised of the NLC's position as representative of Jawoyn interests in the Kakadu Stage III area, and that the Jawoyn should provide the NLC with relevant instructions.

The NLC's position on Coronation Hill, however, was affected dramatically a few days later. After some dilatory communications, the NLC and the BHP team agreed to meet on site on 5 November to inspect the project and begin substantive discussions aimed at a mining agreement. A small Jawoyn group were present to observe and later receive advice from the NLC. This meeting marked the high-water mark of the BHP team's campaign to achieve Aboriginal approval for the project. The following day, 15 members of the newly convened Jawoyn Working Group (established by the NLC to manage Katherine Gorge and Kakadu Stage III issues for the Jawoyn), including two of the senior custodians, met with 10 NLC officers at Barunga and told the NLC that they did not want any mining in the area of influence of the Bula sites, including at Coronation Hill. This declaration sparked significant criticism of the NLC decision to negotiate with BHP, including from within the organisation. The NLC advised BHP that it was withdrawing from the process until the Federal Government had arrived at a final decision concerning mining development in the area.<sup>26</sup> In other words, the NLC would not now discuss development of the Coronation Hill project unless the government decided that the project would proceed.

As had happened previously, there remained the possibility that the ASSPA might authorise further works. The NLC was therefore explicit in again identifying the Aboriginal constituency to whose interests the government should attend. In his letter to the Minister for the Environment, the NLC director argued that the NLC's presentation of a collective Jawoyn position should be preferred over any inconsistent statements made by the ASSPA on behalf of the site custodians.<sup>27</sup> The ASSPA director had long believed that the custodians' concerns over Coronation Hill did not amount to a total opposition to development, and that the project could be negotiated if carefully presented for approval in incremental stages. By December 1987, however, he perceived a shift in the views of the senior custodians against mining. In February 1988, the ASSPA deferred to the larger processes in train and agreed not to issue any further development approvals to BHP until the NLC-Jawoyn submission to Government was finalised.

<sup>25</sup> Copy telex Hand to Ah Kit, 8 October 1987, NLC file 87/391.

<sup>26</sup> Copy letter Ah Kit to Rush, 26 November 1987, NLC file 87/391.

<sup>27</sup> Copy letter Ah Kit to Richardson, 12 February 1988, NLC file 87/391.

Pursuant to its new expanded brief, the NLC set about the task of ascertaining the extent and nature of Jawoyn concerns in the area, and of formulating political submissions to advance those interests. Over the following months, it became convinced that most Jawoyn were absolutely opposed to exploration or mining at Coronation Hill or anywhere else in the Conservation Zone. A consultancy project for the NLC canvassed Jawoyn opinion widely, and not only concluded that most Jawoyn were opposed to mining, but argued that development activities in the Bula region were responsible for major social stresses within the Jawoyn community (Josif 1988). This was the formal Jawoyn position that the NLC passed to the Federal Government, and continued to insist upon as the dispute intensified. Development work at Coronation Hill was able to proceed for another dry season on the basis of existing approvals, but came to an end early in 1989.

1987 thus proved to be a deceptive year for BHP. On the surface of things it appeared to be a period of steady progress at every level. Development approvals had extended to the use of explosives, and by November the BHP team had embarked on the initial stages of negotiating a mining agreement with Aboriginal interests and the company was able to mount strong arguments for favoured treatment for the joint venture in the allocation of exploration rights in the Conservation Zone. At the same time, however, its fortunes were being undermined by the major transformation of that year, in the role of the NLC. From its early position as occasional advisor, the NLC had succeeded, through a combination of enabling legal change and evolving political strategy, in inserting itself as the mining company's counterpart in negotiations, and had been recognised by the Federal Government as its chief source of policy advice regarding Aboriginal interests in the area. From that position it supported and advanced a case both against mining and in favour of Aboriginal ownership of the Conservation Zone.

## **The Jawoyn and the Custodians**

As the political dispute over Coronation Hill intensified during the next two years, public statements from the Jawoyn Association, the Jawoyn Working Group and the NLC repeatedly represented the Jawoyn collectively as the group responsible for the Conservation Zone area in Gimbat (for example, JWP 1989). The Josif Report of June 1988 established the terms of their argument against development: that it was the Jawoyn community that bore the stress and social detriment attendant upon any inappropriate interference in the vicinity of the Bula sites. The three senior custodians were accorded distinctive status for their special knowledge of Jawoyn traditions and sites in the area.

When in 1990 the Federal Government referred the issue to the Resource Assessment Commission for inquiry and advice, it created a space for a return to ethnography and analysis. A large, predominantly Jawoyn meeting at Gunlom in Kakadu Stage III told the commissioners that the three senior men had the

primary right to speak about Bula sites and mining in the Conservation Zone (RAC 1991a: 176). The Commission accepted anthropological findings that this status was a function not only of age and knowledge, but of clan membership, and that both their Wurrkbarbar clan and another, Jawoyn Bolmo, maintained primary responsibility for sites in the Gimbat area (Keen and Merlan 1990: 12, 35, 41–3; Levitus 1990: 21–3; RAC 1991b: 285–6). These clan identifications marked a reversion to a more discrete level of structural affiliation between people and country within the Jawoyn language group. During the Katherine Area Land Claim hearings, with respect to the Gimbat sections of the claim, the clan level of social organisation had been argued as a modification of the unitary language group model of traditional ownership, but had disappeared from currency in the lobbying over Jawoyn interests in the intervening years.

In 1989 the Federal Government had radically reduced the Conservation Zone to a remnant 47 km<sup>2</sup> area around Coronation Hill and a neighbouring prospect as a pre-election appeal to the environmental vote. In June 1991, following the Resource Assessment Commission inquiry, the government ended the Coronation Hill dispute by prohibiting mining and incorporating the remnant Conservation Zone into Kakadu National Park. An endogenous discourse of traditional ownership with respect to Gimbat soon reasserted itself during the subsequent preparation of the Jawoyn (Gimbat Area) Land Claim. As anthropologist for the claim, Merlan initially advised the NLC that, consistent with the position recognised by the Resource Assessment Commission inquiry, the strongest model of traditional ownership would be clan-based. This occasioned some concern within the NLC over the task of satisfying the Aboriginal Land Commissioner that the single language group model presented during the Katherine Area Claim was not appropriate for this section of Jawoyn country, and over the political implications of abandoning that model at a time when feelings about Coronation Hill were still strong.

The question of which of these models of landownership should be used was put to a meeting of prospective claimants, including the three seniors, other Wurrkbarbar and Bolmo and other Jawoyn, in April 1992 at Barunga. The meeting told the advisors that the claim should be run primarily on a clan model, and that other Jawoyn would provide evidence as people interested in the land with separate representation. The meeting further instructed that the claim should be extended in two ways, firstly with respect to area, by applying for a repeat claim over the northeastern corner of Gimbat that had been lost in the Katherine Area claim, and secondly with respect to claimants, by including Matjpa as a third clan with localised attachments to Gimbat. The lawyers for the claim had misgivings about the first and were taken unawares by the second.

Merlan thus argued to the Aboriginal Land Commissioner that Aboriginal identification with Gimbat operates simultaneously at two structural levels. The

Jawoyn as a collective language group are affiliated with Gimbat because it is Jawoyn country and recognised to be so by other Aboriginal groups, while the members of three particular clans — Wurrkbarbar, Jawoyn Bolmo, Matjba — ‘have historically special and continuous relationships to this area’ (Merlan 1992: 7). She ascribed to Wurrkbarbar a general attachment across all of Gimbat, recorded a close attachment of Jawoyn Bolmo to north-eastern Gimbat as well as responsibility for the more dispersed Bula sites, and, on the basis of recent research findings (ibid: 65), reported a particular attachment of Matjba to the Katherine River around where it enters Gimbat from the east. These two levels of affiliation, of language group and clan, produced respectively larger and smaller claimant groups, the latter a subset of the former, and these two groups were argued in the alternative to satisfy the statutory definition of traditional ownership, with the clan group model given the primary running (ibid: 62–9). The claim was accepted by the Land Commissioner on that latter basis (ALC 1996: 16–21, 38–9). The three senior custodians played a leading role in both preparing and proving the claim during site visits on Gimbat, and by their success reasserted a local-level agency for discriminating relevant dimensions of attachment between subgroups within the Jawoyn.

## Conclusion

Conflicts between indigenous and non-indigenous claimants to land, and between competing groups of indigenous claimants, are both common scenarios in Australia. The Coronation Hill issue demonstrated another dimension of conflict. There, the registration of indigenous land interests under Federal and Territorial laws recognised different dimensions of land interest exercised by differently conceived groups of interest holders, one a subset of the other within the same language group and group territory. By vesting representation of each interest in different bureaucratic agencies, the registration process created one of the conditions for contest over how indigenous interests were to be represented and advanced when land management became a political question.

My exegesis of that theme in the external history of the Coronation Hill dispute has demonstrated a level of complexity in its management that arose from competing strategic imperatives at the organisational level. I examined the way political agency took advantage, or wrestled with the limits, of law, in a context of persistent uncertainty often arising from the difficulty in interpreting Jawoyn wishes. There were disagreements over how to proceed within both the ASSPA and the NLC, overlapping personal commitments to Aboriginal and environmental values, and competing assessments of attainable political outcomes. Finally, from above, there were the contingencies of Federal policy making: arbitrating between competing land-use values, shifting the legal ground on which the players stood, widening or narrowing the terms of debate, and playing for electoral advantage. In other words, no actor in this story was a simple

reflection of any other actor, and the rules they played by were not fixed. In discussions of sacred site protection issues the roles of organisations representing Aboriginal interests are usually left opaque, with the implication that their actions are to be understood simply as directly guided by the instructions of their local-level Aboriginal constituents, or as the discharge of administrative obligations prescribed by their governing statutes. The roles of such organisations need to be made transparent in order that we invest them in our analyses with the significance they are widely understood to have, as separate loci of active political agency.

Significantly, the NLC operated throughout from a position of weakness relative to that which it usually occupied in mining issues under the *ALRA*, as the representative of traditional owners of freehold Aboriginal land. As early as 1986, NLC legal officers had pointed out the strategic importance of finalising a land claim and thereby fixing an Aboriginal property right over the area before decisions about mining were made. Throughout the Coronation Hill dispute, Gimbat was not, in a legal sense, Aboriginal land, and the NLC intervened in the affairs of the area more as an act of political volition to assert an Aboriginal stake than as an act of administration of an existing legal right.

That intervention was predicated upon a conception of the indigenous interest that was broad both structurally, residing in the Jawoyn language group, and politically, encompassing future land-use regimes. As the dispute intensified during 1988 and 1989, the NLC also emphasised Aboriginal concerns from beyond the Jawoyn, among neighbouring Arnhem Land groups. The ASSPA had similarly tried when possible to promote the legitimacy of a general Aboriginal interest in the area, but its management responsibilities required it to have resort to a more particularised niche of Aboriginal authority, in the individual senior custodians. As politics gave way to ethnography, analysis and modelling, first during the Resource Assessment Commission inquiry and then in the Gimbat Land Claim, the more discrete structural level of the clan was elevated to attention, and the Aboriginal interest, conceived in terms of the formal entitlements of traditional attachment, became vested in those more narrowly defined entities. As part of that process, local claimants took charge of the elucidation of the clan-based model of attachments to sites, revealing again an endogenous discourse of land interests that had been submerged beneath the imperatives of political lobbying about local rights carried out at a supra-local level.

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