

East Kimberley Impact Assessment Project

ABORIGINES AND THE ARGYLE DIAMOND
PROJECT

Submission to the Aboriginal Land
Inquiry

Prepared by: Dr W. Christensen

East Kimberley Working Paper No.3

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A Joint Project Of The:

Centre for Resource and Environmental Studies
Australian National University

Australian Institute of Aboriginal Studies

Anthropology Department
University of Western Australia

Academy of the Social Sciences in Australia



The aims of the project are as follows:

1. To compile a comprehensive profile of the contemporary social environment of the East Kimberley region utilising both existing information sources and limited fieldwork.
2. Develop and utilise appropriate methodological approaches to social impact assessment within a multi-disciplinary framework.
3. Assess the social impact of major public and private developments of the East Kimberley region's resources (physical, mineral and environmental) on resident Aboriginal communities. Attempt to identify problems/issues which, while possibly dormant at present, are likely to have implications that will affect communities at some stage in the future.
4. Establish a framework to allow the dissemination of research results to Aboriginal communities so as to enable them to develop their own strategies for dealing with social impact issues.
5. To identify in consultation with Governments and regional interests issues and problems which may be susceptible to further research.

Views expressed in the Project's publications are the views of the authors, and are not necessarily shared by the sponsoring organisations.

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1983

FOREWORD

This paper was written in 1983 as a submission to the Western Australian Aboriginal Land Inquiry. It focuses squarely on issues of concern to the present project, and although written in 1983, provides information essential to understanding both the political and policy-making developments surrounding the development of the Argyle diamond resource, and the concomitant social disruption to Aboriginal communities and groups in the region. It can thus be understood not merely as an analysis of relations between Aborigines and developer, but as a set of social data which illuminate the contemporary social environment in the region. For these reasons, we believe the paper warrants a broader dissemination notwithstanding its focus on the period 1979-83.

M.C. DILLON
Executive Officer
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PART A

INTRODUCTION

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INTRODUCTION

The Aboriginal Land Inquiry will be confronted by many difficult and challenging issues. Few will be as demanding or as consequential for the local people involved as that to do with the impact of the Argyle diamond project on Aboriginal communities of the north-east Kimberley. Fewer still will be, in their resolution, so important for establishing precedents and guidelines to apply to future resource developments on traditional Aboriginal lands.

Over the past four years much has been said and written in relation to the Argyle diamond development, especially in regard to its effects on local Aboriginal communities. Much remains to be said, for no other single issue during this period has so concerned the Aboriginal people of this region, or been seen as so threatening in its implications. Nor has any other issue over this time so highlighted the deficiencies of existing policies and legislation in relation to the safeguarding of Aboriginal interests. The need for legislative change and policy innovation is now undeniable. Appointment of the Inquiry would seem, at long last, to betoken government recognition of this point.

From the outset of the project, it has been clear that Aboriginal groups would be profoundly affected, both by the direct affects of mining and exploration activity and by the policies devised by the Company to deal with local Aboriginal communities. It has also been clear that they could expect little help from official quarters. Faced for the greater part of this period by a government apparently indifferent or hostile to their interests, Aboriginal communities and representative organizations have had little recourse against the arbitrary actions and policy decisions of the Argyle developers. Today, at a time when the project is entering its final stages of planning and approval, they still lack the means to have their views heard and considered. It is essential, therefore, that the Aboriginal Land Inquiry should carefully examine their situation, and make recommendations which will allow meaningful redress for the injuries suffered, or likely to be suffered, in consequence of the diamond project.

There can be no doubting the Aboriginal Land Inquiry's right and obligation to investigate these matters. The Argyle situation clearly falls within the brief of the Inquiry. Five of the Inquiry's present terms of reference (items 2, 3, 4, 6 and 7) relate directly to this situation, and, depending upon interpretation, item 5 is also relevant. The Inquiry, therefore, presents an unrivalled opportunity for investigating and acting upon the multi-faceted repercussions of this major developmental project. It is an opportunity that Aboriginal people can ill-afford to have frustrated.

The question arises as to the best means of inquiring into, and reporting upon, this matter. A danger exists that separate treatment of the various implications of the project might lead to a fragmented conceptualization of the problems now being experienced in this area. For this reason, a suggestion has been made to the Minister that consideration of the complex ramifications of the Argyle operation would be enhanced if the Inquiry were to examine them under a special term of reference. This is a proposal I heartily support. It would, in my view, allow a consolidated approach to the problems thrown up by the development, and would underline the importance of responding to these problems in a coordinated and principled way.

More generally the Argyle project is revealing in so far as it highlights the problems and difficulties likely to be encountered in other areas where mining and exploration work will take place. In this respect, the policies and practices required of the Argyle developers could serve as a model for Company-community relationships throughout the State. Thus, if the suggestion for a special term of reference is not endorsed by the Minister, I would respectfully urge the Commissioner acting under his existing terms, to analyze and report upon the Argyle situation as a case study of particular interest.

NOTE ON RESEARCH

This submission has been prepared on the basis of research conducted over the past ten months, five of which were spent living within the Warmun Community of Turkey Creek. I outline and summarize the major concerns and hopes expressed to me by the people with whom I worked, and I

provide documentary support for the propositions I put forward. However, the views advanced and recommendations made are my own, and should not be taken as direct or full expression of Aboriginal perspectives. Neither should this submission be taken as anything more than a preliminary statement of the major issues involved. Moreover, because of the nature of my fieldwork, the contents of this submission are unavoidably skewed toward the problems and difficulties experienced by the Turkey Creek people. A more rounded picture of the Argyle project's many ramifications would require a detailed assessment of the impacts felt by Aboriginal groups in other locations, including the townships of Kununurra and Wyndham.

BACKGROUND

The Argyle diamond project, to be further developed by Argyle Diamond Mines Pty Ltd under the terms of the Diamond (Ashton Joint Venture) Agreement Act 1981, will be one of the most significant resource developments in this State for the remainder of this decade and beyond. It is, or will be, an immensely rich operation, the full size of which is still unclear. There is little doubting, however, that returns on invested capital will be high, and will be used in part to extend Argyle Diamond Mines' intensive exploratory work in the Kimberleys. In this respect, the Argyle development is worrying to Aboriginal people on at least two major counts: first in what it entails for individual communities directly affected by this particular project; and second, in what it threatens or implies for other traditional owners and tracts of land. A brief resume of events may help explain Aboriginal concern in relation to these questions. (Appendix One provides a fuller listing of dates and events).

Corporate changes or specialization of function have seen various Company identities (including CRA, CRA Exploration, Ashton Joint Venture and now Argyle Diamond Mines Pty Ltd) involved at different times and in different ways with local Aboriginal communities. Nevertheless, for all intents and purposes in relation to this project, their interests have been the same or they have acted in concert toward Aboriginal communities. Recognizing this, it is possible to talk in the singular about Company policies over the past four years, and thus to discern the

single strand uniting the various actions of the sundry individuals and corporations passing into and out of the scene during this period. The other side of this proposition is that it is unimportant for present purposes to dwell on the identity of the particular companies or officials involved in implementing these policies. The discussion which follows is framed on this basis.

The starting point for what has now been a long and bitter affair occurred by accident in early November 1979. At this time, a small party of Aboriginal stockmen, reportedly looking for cattle thieves, stumbled upon evidence of initial development work in an area they knew to be of great religious importance. Community spokesmen were alerted and telegrams despatched to CRA Exploration (hereafter referred to as CRAE) and the Western Australian Museum. Within days, the Company had promised to cease operations and to fund an initial site survey by a research team consisting of one anthropologist from the Museum and one from the Kimberley Land Council (KLC). Agreement was also reached for a more comprehensive survey after the end of the wet season.

Fieldwork for the preliminary survey was conducted on November 16th and 17th, sites being mapped out during helicopter reconnaissance lasting three hours. The resulting report by Akerman and Randolph, *Initial Survey for Ethnographic Aboriginal Sites in the Vicinity of Argyle Project Tenements* was completed promptly and received by CRAE on December 5th. In all, details of 58 sites were recorded, of which three (Sites 10, 25 and 55) lay within the immediate area of the AJV mineral claims, with another (Site 27) on the periphery. The report emphasized the socio-religious significance of the area to local Aborigines, and asked that an Aboriginal, chosen by the Warmun Community (Turkey Creek), be employed to act as a ranger. It also noted that Site 27 (Devil Devil Springs) had been damaged by the construction of a dam across its lower section, and that the Company had agreed to repair this damage in consultation with members of the Warmun Community. No other site damage was recorded. The report underlined the Company's responsibility under Section 18 of the *Aboriginal Heritage Act* to seek Museum permission if it intended to utilise any site listed in the report. Finally, it asked the Company to commission an archaeological survey.

Over the next few months, much confusion reigned regarding CRAE intentions and actions. Despite Company assertions that all work had ceased for the duration of the wet season, evidence mounted of continuing exploration and associated activities. Evidence grew too of further site-damage, and of mining plans which would place others in jeopardy. Press reports on the 11th and 12th of January indicated that the registered site, *Kilkaynim* (No. 25; Museum reg. K 1098), would be affected by proposed Company activity. Responding to these reports, the Registrar of Sites at the Museum wrote to CRAE reminding it of the legal requirement that it should seek Museum approval if it wished to utilise this or other sites. After some delay, the Company wrote to the Museum seeking clarification of the significance of the three sites within its Lissadell tenement, and asking for permission to utilize them for mining purposes.

Apart from its initial response to expressions of Aboriginal community concern, Museum actions in regard to identifying and protecting sites were marked during this time by vacillation, procrastination and timidity. The promised Museum follow-up survey was originally set down to begin on the 20th February, was postponed until early March and then indefinitely, and in the end was abandoned in favour of a study commissioned by the Australian Institute of Aboriginal Studies. (Fieldwork for this survey was eventually undertaken between the 5th and 18th May, with the final report being released on June 6th.) Meanwhile, nothing further was done to ensure that designated sites were not infringed by Company activities. CRAE officially recommenced work in the Argyle area without further official approaches to the Museum, and without attempting to contact relevant Aboriginal communities.

Frustrated by the delays, Aboriginal people sought other avenues of redress. On the 18th March, the Warmun Community wrote to the Australian Heritage Commission seeking to have the threatened locations included in the Registrar of the National Estate. Nothing came of this request, for events quickly overtook it. On another front, the KLC commissioned its anthropologist to undertake a further survey, and the results of this, *Further Investigations of Sites Within CRA Mining Claims on Lissadell Station*, were presented on March 24th. This report reiterated major points made as a result of the initial survey, and indicated that the spread of *Kilkaynim* (or the Barramundi site) was more extensive than the notional one kilometre radius ascribed to it as a

result of the earlier Akerman/Randolph enquiries. (A two mile radius was later mapped out for CRA's Aboriginal research officer during talks at the Warmun Community on the 22nd of the next month.) The KLC report also expressed concern at ongoing CRAE activities at Devil Devil Springs. This concern was raised again at a meeting of representatives from six East Kimberley communities on the 26th of the same month. This meeting resolved to protest at continuing CRAE activity detrimental to Aboriginal places, and asked for urgent Museum action to stop it.

Further delays and protests followed, as did growing public indignation at CRAE's apparent indifference to Aboriginal beliefs and feelings. The Australian Institute of Aboriginal Studies (AIAS) report did nothing to soften these protests, for it documented quite clearly the strength of Aboriginal opposition to mining on their sites. It provided, moreover, the most up-to-date and detailed assessment yet available on the pattern of Aboriginal territoriality in this region, and of the mythological-philosophical and economic bases upon which this pattern is built. This report went beyond the earlier report in at least two other respects.

First, the AIAS team consisted of male and female anthropologist, and it was therefore possible to include for the first time Aboriginal women's perspectives on the land. This added dimension is particularly important in relation to Site 25, the Barramundi site. Second, the researchers included substantial information about major ritual obligations still associated with the sites under threat. By so doing, they underlined in a most incontrovertible way the living significance of the locations identified.

Frustrated by the long delays and official indifference to their complaints, members of the Warmun Community determined to take other courses of action. On May 27th, John Toby lodged a formal complaint against CRAE, alleging that the Company had excavated the Barramundi site (K 1098) without the permission of the Museum, thus contravening Section 17 of the Aboriginal Heritage Act (1972). The hearing of this case was set down for June 26th in the Kununurra Court House.

A flurry of activity ensued in the following month. Within a few days, an East Kimberley inter-community meeting affirmed its

opposition to mining on sites, and pledged its support for Toby. The meeting also expressed its profound dissatisfaction at the presence of heavy machinery at Devil Devil Springs. A few days later, Museum officials made their own inspection of the damaged area.

On July 7th, John Toby withdrew his complaint in favour of action by the Museum. A further inter-community meeting on the 10th asserted once again its horror at the Company's disregard for Aboriginal feelings, and called upon the Museum to use the powers vested in it to prosecute CRAE. The subsequent letter to the Museum cited clear breaches of the Act in relation to both Devil Devil Springs and the Barramundi site. For its part, the Museum deferred legal action for reasons never properly explained. According to its critics, the Museum succumbed to political pressure from the responsible Minister, who was then in the process of drafting amendments to the *Aboriginal Heritage Act*, amendments which would have the effect of emasculating the original legislation. But whatever its motivation, the Museum failed to act in the manner that Aboriginal people saw as appropriate in the circumstances.

Almost immediately, rumours abounded of 'significant offers' being made to certain Aboriginal people. As it transpires, these were well-founded. Just who made the first move is open to debate. It might well have been Toby himself. Tired of carrying the burden of what seemed like an impossible struggle against superior odds, and anxious to consolidate his newly established outstation at Glen Hill (Mandangala), he had hinted in private discussion of coming to some sort of arrangement with the mining company. Once his intents were clear, events moved swiftly. A meeting was hurriedly arranged for June 22nd at Glen Hill, at which three senior CRA personnel spoke to 34 Aborigines, including 19 of the 35 traditional owners specified in the Palmer/Williams report. All four of the 'core group' of traditional owners referred to in the Akerman/Randolph were also present. The meeting discussed forms of financial assistance, but concluded without any specific understanding. This was to follow four days later when six Aborigines, five of them illiterate, were flown to Perth at CRA expense. Here they signed what has become known as the Argyle or Glen Hill Agreement.

Before turning to the consequences of this Agreement, some comment should be made on the nature of the contract and on the way in

which it was concluded. First, the Aboriginal signatories' preferred legal counsel refused to act for them in the given circumstances. With an unrivalled experience in Aboriginal legal matters in Western Australia, he knew better. In refusing, he indicated that he had not received direct instructions from his prospective Aboriginal clients, that he considered inappropriate notice of meeting had been given to all affected Aboriginal persons, and that he had serious doubts about the desirability of such a rushed agreement. Alternative counsel, arranged and paid by the Company, had no such qualms. Second, the Glen Hill Agreement remains secret. No doubt the full provisions were explained to the signatories at the time of signing. But whether unable to remember or unable to disclose the contents of that Agreement, no signatory today seems to have any sharp recollection of what he or she endorsed. Third, the Glen Hill signatories include all four 'core' custodians of the Argyle sites identified in the initial anthropological report, but only six of the 35 traditional owners listed in the follow-up document. Open to conjecture is how far these signatories were required to subscribe to Company policies which would place them at odds with the other 29. So too is the extent to which the interests of these others were compromised in the process. What is clear is that all the financial benefits offered as inducement to signing are allocated to the Mandangala Community regardless of where the signatories or the wider set of traditional owners may reside.

News of the Glen Hill Agreement was greeted in the East Kimberley with anger and dismay. To most, it seemed, as it seems today, that the signatories had been isolated from proper advice, and had been inveigled into a situation ultimately destructive of Aboriginal interests. For the principal signatory in particular the repercussions were severe, with a rupturing of relationships and an ending of the leadership role he had previously played. In time, as he has marshalled greater resources, either directly through personal accumulation, or indirectly as a broker for Argyle Diamond Mines (ADM) favours, he has regained part of his former influence but not his former authority.

The actions of the Glen Hill signatories weakened Aboriginal opposition to mining, and alienated much public support from the cause of site-protection. Without a united front, and now without an effective local spokesman, Aboriginal reaction to AJV activities was stifled, but not entirely despairing. The Museum was still seen as one avenue of

redress, though the past actions of its senior employees scarcely provided cause for confidence. It was felt, however, that somehow the Museum, through its committees and Trustees, could be made to use the powers vested in it by the *Aboriginal Heritage Act* to afford the site-protection Aboriginal people had been demanding.

Toward this end, the Warmun Community chairman wrote on 29th July to the Parliamentary Commissioner for Administrative Investigations (known more generally as the Ombudsman), asking him to inquire into 'the failure of the Museum to fulfill its statutory obligations to protect sites' and 'its apparent failure to enforce the provisions of the *Act* once it became clear that prima facie breaches of the *Act* had occurred'. After protracted investigations lasting more than a year, the Parliamentary Commissioner eventually (September 11th 1981) reported back to the Warmun Community that he was unable to sustain the complaints against the Museum. The basis of his judgement remains confidential.

For its part, the Museum seems to have been impervious to the growing criticism of its role, and incapable of responding to Aboriginal demands that it declare itself for site-protection and thus for the role which legislation had defined for it. That, of course, would have meant taking a stand against persons and companies not complying with the provisions of the *Act*, in this case CRAE. But neither spurred on by the criticism, nor subsequently by the Inquiry into its conduct, the Museum muddled along in the same dilatory fashion.

The option of legal action for breach of Section 17 of the *Heritage Act* was explored and pursued half-heartedly. On the 24th July, the Museum's Acting Director wrote to CRAE, seeking an explanation of its activities in the vicinity of the desecrated sites. The Company parried this request with the explanation that CRAE's Regional Director was on leave. On his return, the Company made known its refusal to supply information about its activities, apparently on the basis that some of it might have been incriminating. Actually, advice to this effect given informally by Museum officers to Warmun Community legal counsel conflicts with information supplied to Parliament by the Minister, Mr Grayden, on the 9th September. Answering a series of questions about the Museum's investigations, the Minister assured the Assembly that 'Conzinc Riotinto of Australia Ltd. have undertaken to provide the Museum with any relevant

documentary material'. On the face of it, this explanation would seem to be inconsistent with the facts, and, more to the point, inconsistent with continued procrastination in prosecuting offenders under the *Act*.

Confronted with the Company's refusal to divulge pertinent information regarding the timing and commissioning of the alleged offences, senior Museum decision-makers finally concluded that legal action was unlikely to succeed. This decision was made known to the Warmun Community in a telephone discussion on the 4th November. A brief explanatory letter from the Museum Director followed on the 20th of the same month. By this stage, the situation had altered drastically, and perhaps irretrievably.

The Museum's formal notification to the Warmun Community that it would not be proceeding with legal action against CRAE caught no-one by surprise. It simply confirmed what had for several months appeared almost inevitable. The time was not ripe for an assertion of Aboriginal rights or for a testing of the powers conferred on the Museum by the *Heritage Act*. Indeed, the timing could hardly have been worse. The months following the lodging of Toby's complaint against CRAE were among the most tumultuous and bitterly divided in Western Australia's political history. For months on end the so called Noonkanbah affair monopolized the headlines, as the Government of the day made known its intention to override Aboriginal objections to mining on sacred sites. The tragic culmination of the many months of bitter dispute, the para military convoy to the Noonkanbah Station, together with amendment of the *Heritage Act*, made the Government's position absolutely unequivocal; and substantially removed the limited protection previously afforded Aboriginal places of significance. Several weeks later, on the 29th September, the Minister for Cultural Affairs, Mr Grayden, advised the Chairman of the Warmun Community that, under Section 18(3) of the *Aboriginal Heritage Amendment Act* (No. 2) of 1980, he had granted consent to CRA to utilize Sites 10, 25 and 55 for mining purposes; and that 'as soon as practically possible' Sites 5, 7, 8, 9, 24, 26, 27, 40, 51 and 53 would be declared protected areas. That promise was not honoured in the lifetime of the coalition government.

Quite clearly, Museum officials and Trustees were operating in unusual and trying circumstances. But, this notwithstanding, the failure

to pursue the complaint against CRAE amounted to an abrogation of its statutory responsibility. The complicity of the Government makes this no less culpable. The fact is that, for as long as the *Heritage Act* applied in its pre-amended form, the Museum Trustees were responsible for initiating action against persons damaging sites. How then did the Museum justify its stance?

The Museum Director's letter of the 20th November dealt with Site 27 (Devil Devil Springs), making no mention of Site 25 (*Kilkaynim* or the Barramundi site). The Director acknowledged that a bore put down by the Company had infringed the one kilometre area delineated in the Akerman/Randolph report, but was 'outside the area finally determined as requiring protection', the latter having been established by Museum officers Randolph and Crawford during a brief field trip in early October. Accordingly, the Director explained, the Trustees had decided to take no further action on the complaint. In a subsequent letter to the Warmun Community (sent on the 1st March 1981), the Director reiterated his earlier point regarding Site 27, and explained that the Company had denied carrying out work on Site 25 after receipt of the Akerman/Randolph report (December 1979), and that the 'Museum had been unable to obtain any evidence to the contrary'.

Several issues emerge from the preceding account of the Museum's role in enforcing the provisions of the *Heritage Act*. Bearing as they do on issues central to the Land Inquiry's deliberations, these issues are worthy of additional examination. I am conscious here that the Commissioner, with his expert knowledge of the relevant legislation and administrative procedures, and with his own professional involvement in the early stages of the Argyle controversy, will have his personal perspective on the events surrounding this unhappy period. For the record, however, and as part of indicating the source of Aboriginal anxieties in relation to the Argyle project, the main issues need to be canvassed again.

First, the question of site damage. By its own admission, CRAE was responsible for infringing the Argyle sites 25 and 27. In its defence, CRAE officers explained that the damage occurred prior to December 1980, and that the Company was unaware of places concerned being significant to Aborigines. One Company official, however, admitted that

damage might have occurred as late as April 1981. Also acknowledged was that earth-moving operations near the Barramundi site had continued into May. An undertaking in the same month to cease operations in the vicinity of the designated sites amounted to a tacit admission by the Company that activities after December had affected the locations in dispute.

Stronger evidence of the Company's role between February and April 1980 in further damaging the two sites is contained in a major report prepared on behalf of the Kimberley Land Council and Warmun Community by community workers, Rod Dixon and Mike Dillon. Their unpublished report, *Background Briefing Notes: CRA, the WA Museum and Aboriginal Sites in the Argyle Diamond prospect*, completed in July 1980, and later made available to the Museum and other interested parties, provided substantial documentation of the extent of interference, and included a careful sifting of information relating to the timing of the alleged offences. An accompanying letter (September 15th), penned by Dillon on behalf of the Warmun Community, and sent with the *Background Briefing Notes* to the Registrar of Sites, specified further site damage, possibly as late as August of that year. Built upon inference and circumstantial evidence, the case put together by Dillon and Dixon may not have been sufficient of itself to secure a conviction against CRAE. But it did provide the basis for detailed investigatory work by others better placed to obtain direct corroborative data.

This leads to the question of the Museum's power to obtain relevant details. The accepted opinion seems to be that the Company could not be obliged to divulge information harmful to itself. However, Sections 51 (1) and 54 (1) and (2) of the *Aboriginal Heritage Act* are quite explicit on this point. They read as follows:

- 51 (1) Any member of the staff of the Museum may, together with any person he may think competent to assist him, enter any premises, other than premises used exclusively as a private dwelling, and may therein or thereon -
- (a) examine any Aboriginal site or any place or object that he has reasonable grounds for believing to have been traditionally or currently of sacred, ritual or ceremonial significance to persons of Aboriginal descent; and

(b) make such examination and inquiry and tests, and ask such questions, and request such information as he considers necessary or desirable, to the extent required for the purpose of this Act.

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- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.
 - (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorized by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

If any further demonstration were required of the *Act's* intentions, Section 60 (2) is quite emphatic: 'In any proceedings under this Act the onus of proof that the provisions of this Act do not apply to any place or object lies upon the defendant'. One might also note that if CRAE had refused or failed to provide the requisite information, the contractors and subcontractors involved in the operation could have furnished evidence critical to a successful prosecution. Why this line of enquiry was not pursued by the Museum is difficult to explain.

A third question relates to the Company's knowledge of the significance of the places where work was proceeding. Much here turns on the timing of the alleged offences. The critical dates in this regard are November 7th 1979 (when the Museum and CRAE were first notified of the site disturbance), December 5th (the presentation of the Akerman/Randolph Report) and January 15th 1980, (the date of a letter to CRAE from the Museum advising it of the requirements of the *Heritage Act*). Submission of the Palmer/Williams report on June 6th 1980, is also significant in this respect, as is September 29th 1980, the date of formal ministerial approval for CRA utilization of Sites 10, 25 and 55. Beyond these dates, it would be very difficult for the Company to sustain the argument that it was ignorant of the importance of the sites in question. And yet this is precisely the explanation invoked to excuse the Company's actions. The *Heritage Act* (1972), in point of fact, does not make ignorance an appropriate defence; rather it specifies that an offence is committed unless the person charged 'did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which the Act applies' (Section 62).

Just what is or isn't 'reasonable knowledge' in this context has never been tested before the courts. It seems unlikely, however, that it would be accepted as extending to deliberate ignoring of evidence or expressions of concern. Nor, I would assume, would it be interpreted as applying only to formally commissioned anthropological or archaeological research. This point is of continuing relevance in that CRA have since pursued a policy in this part of the East Kimberley of not supporting site surveys within their tenements, apparently seeing them as the source of potential legal encumbrances on their freedom of action.

A related question focuses on definition of sites. The Commissioner would be well aware of the difficulties of interpretation and enforcement which derive from ambiguities in the *Act* regarding the defining of sites, and from lack of specified procedures for resolving conflicting evidence regarding site limits. Such difficulties, untested as they were, might have made it difficult to secure a prosecution, no matter how damning the *prime facie* evidence. CRAE, no doubt, would have cause to be grateful on this count. Unfortunately, the Museum's half-heartedness in collecting information and seeking legal advice in regard to the Argyle sites leaves the possible outcome open to speculation. Also, therefore, open to speculation is the weight which evidence relating to site definitions would carry in the courts.

Nevertheless, there would seem to be strong grounds for questioning the Museum Director's explanation that no legal action would be instituted against CRAE in regard to Devil Devil Springs because the damage was 'outside the area finally determined as requiring protection'. The fact that the Company chose to commission work within the site limits as specified in the Akerman/Randolph report must surely be seen as a gross affront to Western Australian site protection legislation and administration, even if it was not, for the reasons adumbrated above, likely to have been found an offence in law. The Museum's stance in this matter is also highly questionable. Excusing or failing to proceed against clear breaches of the *Act* on the basis of retrospective reinterpretations of site boundaries would seem to create a Pandora's box of possibilities, all ultimately prejudicial to the legal standing of site protection arrangements.

The final question to be looked at here devolves on Aboriginal agreement for mining and exploratory work to interfere with Aboriginal sites, as legislatively defined. It has been suggested that the Glen Hill Agreement removed the necessity for the Company to comply with the provisions of the *Act* in regard to the Argyle sites. The *Act*, however, makes no allowance for agreements to circumvent its requirements; and, indeed, any pact to this effect would be punishable. Given the secrecy of Agreement, no firm conclusions can be drawn as to its implications for site protection and site protection arrangements. But one can note that the Company has used the Agreement to justify its actions, and to suggest that all problems are taken care of. For example, in a public relations document released in June 1981 (*Ashton Joint Venture: Aboriginal Relations Briefing Paper*), the following assertions are made:

The Ashton Joint Venture's policy has been to make contact with the object of minimising any possibility of disturbance to Aboriginal sites or communities. Field geologists have been instrumental in the location and recording of significant Aboriginal sites and their efforts in this regard have been acknowledged by the Western Australian Museum, which has statutory responsibility in Western Australia for the recording and maintenance of significant Aboriginal mythological sites. It is against this background of consultation and on-going co-operation with Aboriginal traditional owners and the Western Australian Museum that the Ashton Joint Venture's Argyle Agreement with the Mandangala Community should be viewed.

No mention is made in the following pages of this widely circulated PR document of the allegations of site damage or of the legal action set in train against CRAE. The impression created is that no problems have been apparent in this sphere, and that relationships with local Aboriginal communities and with the Museum have been entirely harmonious. This suggestion is at odds with the facts.

Not being privy to the internal correspondence of the Museum or ADM, it is hard to describe the full relationship between these two large organizations. It is similarly difficult to be precise about the content of ADM relationships with local Aboriginal communities, and more so because ADM seems to have deliberately chosen to do without formal notices and minutes of meetings. Indeed, written correspondence of any sort has obviously been placed at a premium. A closer look at each set of relationships may reveal why.

Neither the Museum nor Company reports publicly, except in a most perfunctory manner, on its internal affairs and negotiations to do with Aboriginal sites. It is possible to say, however, that the Museum-Company relationship has been marked by mutual antagonism and strain, some hint of which is contained in the Department of Conservation and Environment Bulletin No. 139 *Argyle Diamond Project: Report and Recommendations by the Environmental Protection Authority*. It can also be said that the Company has actively resisted pressure to fund the follow-up survey envisaged in the recommendations of the earlier reports. The general thrust of Company reaction to complaints has been that all matters are safely in hand, and that further Museum involvement is unnecessary and undesirable. The unstated assumption here is that the Company has worked out a mutually satisfactory arrangement with relevant traditional custodians. That assumption is not justified.

The question of Company dealings with Aboriginal custodians is not as straightforward as made out. If relationships with Aboriginal communities were entirely amicable and free of difficulties, as the expensive public relations experts aver, there might not be any compelling case for external supervision of the sort which the Museum is intended to provide. But dangers lurk in such arrangements, not the least of which are the pressures, consciously and unconsciously exerted, toward obtaining Aboriginal compliance with non-Aboriginal wishes. A further danger, and one not acknowledged by the Company, is that of selective consultation. It is true that ADM has forged a working relationship with John Toby and other members of the Mandangala Community; and it is to them that the Company looks when some form of consultation is required. It is not true, however, that the Mandangala men (and it is only men who are consulted) are necessarily the most appropriate in the circumstances. Consequently, there is an almost constant pressure on the Mandangala men to speak for the area as a whole. Not only does this further jeopardize the position of the persons concerned, but it also increases the likelihood of unwitting site disturbance.

The site, *Kumunungka*, serves as a case in point. The top of the squat hill which comprises *Kumunungka* has been levelled to provide a platform for a large tank associated with the Argyle operation. It appears that the Mandangala leaders approved the building of this structure, and that they denied it had any special mythological

significance. By contrast, several Turkey Creek men, with whom I discussed and visited this place, say that this location is an important Tjuntakal (Rainbow Serpent) Dreaming site. They add that they were never consulted in relation to it, and that, if they had been, they would not have given their permission for the work to take place. They explain that neither John Toby nor his brother, George Dixon, are senior enough in the 'Law' to know of the site's significance.

The attitude of ADM officers is uncompromising on this matter. They deny that there is any cause for concern, dismissing the complaints as simply the product of white agitation. Their stated opinions in this respect contain no cause for confidence that they can be entrusted to act in isolation to protect Aboriginal interests. Some active external supervisory role is required. Appendix Two summarizes the past record on site disturbance. It too gives little cause for confidence.

To round off this historical sketch of the Argyle project's impact on Aboriginal communities, several recent developments should be noted. By far the most significant of these is the offer made by ADM, under the terms of its so called Good Neighbour Policy, of annual *ex gratia* allowances of \$40,000 and \$100,000 to the Woolah and Warmun Communities respectively, the amounts being indexed to compensate for the effects of inflation. In the formal offer made in a letter dated the 6th July 1981, the General Manager of the Ashton Joint Venture, Mr M O'Leary, hinted that the proposal was not unconditional: 'This assistance will be provided for so long as the Ashton Joint Venture remains free to conduct its mining operations throughout its Argyle tenements.' Letters on 31st July from the two communities indicated acceptance of the ADM allowances, but without prejudice to 'on-going discussions in order to fully resolve the basis for future economic, environmental and cultural relations between the parties'. Small *ad hoc* payments for particular Aboriginal projects in Wyndham and Kununurra have since been agreed to by ADM.

One further chapter in the Argyle saga centres upon research conducted in accordance with the State's environmental protection legislation. The key dates in this connection are December 1980, the presenting to the Environmental Protection Authority of an Environmental Statement which the Authority interpreted as a formal Notice of Intent; December 1981, the passage of the *Diamond (Ashton Joint Venture) Agreement*

Act), with its various requirements under Clauses 7, 11, and 44 for research and preparation of an appropriate environmental management programme; September 8th 1982, submission to the EPA of the *Argyle Diamond Project: Environmental Review and Management Programme*; September 13th - October 22nd 1982, public review period for the Argyle *ERMP*; January 1983, finalization of the EPA Bulletin No. 139 *Argyle Diamond Project: Report and Recommendations of the Environmental Protection Authority*); and May 17th 1983, Cabinet approval for the *ERMP*, subject to eight conditions being met by the Joint Venturers, five concerned wholly or primarily with the Company's policies toward Aboriginal communities, and two others with important implications for Aborigines. The relevant provisions are listed in Appendix Three.

The Cabinet decision of the 17th May was seen by Aborigines throughout the Kimberleys, and indeed the State, as grossly inadequate. In a press release two days later (*Statement by the Minister for Economic Development, Hon. M.J. Bryce, MLA*), the Deputy Premier indicated that approval of the *ERMP* should not be taken as endorsement of the informal and secret arrangements entered into by the Company with Aboriginal communities. The Government, he explained, was concerned about the social disruption caused by these arrangements, but, because the project developers had conformed with the conditions set down in the original development agreement, the Government could not alter Company policies in any fundamental way.

Professional social scientists were quick to add their voices to the growing criticism of the Government's decision. The following day, anthropologists meeting in a special session of the ANZAAS Conference in Perth made their views known. The text of the motion overwhelmingly passed by those present reads as follows:

This session of ANZAAS 1983 entitled 'The resources of the anthropologist as consultant' calls upon the WA Government to postpone approval for the Argyle Diamond Project until a legally binding agreement has been negotiated between Argyle Diamond Mines and relevant Aboriginal organisations and communities. This agreement should take account of Aboriginal religious, social and economic ties to the project area, and should recognise the ramifications of the project for local Aboriginal communities.

The ANZAAS statement supports the claims consistently made by Aboriginal communities of the north-east Kimberley over the past four years. Obviously, a great deal needs to be done to give substance to these claims. It is for this reason that Aborigines of this region now look to the Land Inquiry for a proper hearing of their case.

PART B

MAJOR ISSUES AND CONCERNS

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The preceding introduction has pointed to something of the Argyle development's manifold implications for Aboriginal wellbeing and for Aboriginal policy and administration. The issues involved are contentious, and undoubtedly will continue to draw comment from a variety of sources. It is to be expected that, not only will issues be contested, but they will also be defined in differing ways. In a context of such complexity, one question sometimes blurs into another, some are neglected altogether, and others promoted to unjustified levels of relative importance. The difficult task before the Inquiry is to put matters into overall perspective, by delineating issues and by indicating which matters are logically prior to others. The arrangement of the following items for discussion is intended to assist in this regard. Because the primary focus of the Inquiry - viz. traditional Aboriginal rights in land - forms the fundamental consideration in assessing the Argyle project's impact on Aboriginal communities, this issue is discussed first.

Aboriginal Land and Sites

As seen, a great deal of the controversy surrounding the Argyle diamond operation has centred on the damage caused to sites of religious significance to local Aboriginal communities. This is not surprising because no other direct result of the Argyle project has been so distressing or been felt so bitterly by the persons with traditional ties to the land in question. Appendices One and Two list the instances of site damage and Aboriginal reactions to it, and the details need not be repeated.

No other issue, one might add, has given rise to such lasting suspicion, on the part of Aboriginal people of this region, toward the policies and agencies ostensibly designed to protect or enhance Aboriginal interests. The Museum and the Company are both dimly viewed in this connection, but other agencies and arms of government are also implicated in what is seen as a sell-out of Aboriginal interests. The fact that a site of fundamental importance to the local people is being destroyed as an integral part of the Argyle development adds to this conviction.

The Palmer/Williams report (*Aboriginal Relationships to Land in the Southern Blatchford Escarpment Area of the East Kimberley*) documents the belief system upon which Aboriginal relationships to land in this region are built, and in terms of which the consequences of site disturbance can be understood. They (1980:29) have this to say:

The relationship between people and the land is conceived of as being a spiritual one and is dependent upon the inviolability of that very land which stands as a witness to the validity of the belief system itself. The destruction or modification of places of spiritual significance does not merely constitute a violation of a place that the Aborigines consider to be in some way 'sacred' ... (it is) also a threat to Aboriginal abilities to successfully order their social and cultural relationships and to achieve economic independence. (parenthesis added.)

Accepting the points made by Palmer and Williams - and there are absolutely no grounds for rejecting them - one can start to appreciate the ramifying consequences of CRAE's interference with the Argyle sites. What this damage has given rise to is a profound sense of loss, a sentiment which has not lost force over the years. Today this is manifest in various ways. It is, of course, most apparent when the subject is directly raised, but it also emerges in other contexts. For example, personal and social troubles (including the flooding which has occurred during the past two wet seasons) are attributed to desecration of the Barramundi site. The perceived complicity of some Aboriginal people in the destruction of this site is, in turn, the cause for continuing tension and ill-feeling within the Aboriginal community. More broadly and perhaps more insidiously, the damage to this site has reinforced a sense of powerlessness and alienation within the community; and has undermined the fragile movement previously in train toward increasing self-confidence and autonomy in managing community affairs. It is impossible to quantify these changes, but they are no less real for this fact.

On a different level, the fate of the Argyle sites is seen as threatening in so far as it presages more intensive pressure on traditional Aboriginal land and sites in the area. Already, this can be seen in the increasing presence of Argyle employees or facilities in areas previously the preserve of Aborigines. What this produces is pressure for Aboriginal people to relinquish areas which have hitherto been of great recreational and economic significance. The case of Sugar Bag Yard is instructive in this respect. This Site, previously a favourite swimming

hole and a place of mythological importance, became, as a result of CRAE activities, a grossly disturbed and unattractive location. It provides, moreover, a stark reminder of the rapid changes in this part of the State. Flying Fox Hole and Wesley Springs provide examples of other areas now becoming lost to Aborigines. The fear raised is that other places will soon follow suit. The almost daily signs of intensifying exploratory work in the region add to this apprehension.

The question then arises as to what sort of arrangements would preserve Aboriginal ties to the land and provide protection from future developments similar to the Argyle project. This, indeed, is the most central problem facing the Inquiry in connection with the Argyle dispute. It cannot, in my judgement, be answered properly to the satisfaction of local Aboriginal people unless a broad perspective is adopted on Aboriginal territorial ties. This means that Aboriginal land matters will need to be discussed in a wider frame than they have been in the public debate so far conducted. More than anything else, this will require a rejection of the philosophy that Aboriginal traditional ties to the land are strictly localized, in the sense of being concentrated on isolated 'sites'; it will also necessitate close scrutinization of the widely held opinion that Aboriginal territorial links are simply expressive of religious beliefs and concerns. Without in any way intending to diminish the importance Aborigines attach to places of special significance, or to question the strength of the beliefs and emotions which bind them to those locations, I would argue that such localized expressions of Aboriginal concern for the land form part, and only part, of the territorial relationships which the Inquiry needs to consider. I would argue also that the economic dimension of these relationships needs to be emphasized. I would further suggest that to ignore the broader aspects of Aboriginal relationships to the land is to distort and misrepresent the claims made by Aborigines in respect of the Argyle operations.

The central question needing to be addressed is that of Aboriginal land ownership'. This is a concept which implies both responsibilities toward the land and rights in it. It is a concept which is constantly emphasized by Aborigines of the north-east Kimberley, one of the last areas in this State formally appropriated from its traditional owners. The people of this region believe that, despite all the

legislative and administrative changes of the past century, their traditional ownership of the land is just as valid and important today as it was prior to European settlement. This theme resonates through most spheres of Aboriginal life, and forms the fundamental basis for Aboriginal objections to the way in which the Argyle operation has been, or is being, developed.

Aboriginal people recognize, of course, that much control has passed from their hands, but they regard this as something which can and should be put right. What is required, they imply, is for *Katiya* (Europeans) to realize that they have stolen Aboriginal land and need to make amends. On the other hand, Aboriginal people are increasingly conscious that unless changes are made to legislation and government policies, their remaining attachments to their 'country' will be placed under ever increasing pressure. In this respect, the Argyle development and others like it will deliver the *coup de grace* to their traditional links, and everything built upon them. The process of dispossession which commenced with the formal annexation of the colony, and has been carried forward in a series of steps and stages since, will then have been brought to its devastating conclusion.

If further evidence is required of Aboriginal traditional ownership of the Argyle area, the following sources should provide convincing proof:

- . Ethnographic accounts. The site reports compiled by Akerman, Akerman/Randolph and Palmer/Williams provide very substantial data on Aboriginal ties to this area. The preliminary reports prepared by the research consultants to ADM also give great prominence to this point. The same emphasis is submerged but not entirely edited out of the Argyle *ERM*. The early anthropological work of Kaberry is also pertinent here.
- . Government files. A substantial body of documentary information, historical and contemporary, exists which can be used to demonstrate the strength and continuity of Aboriginal ties to the project area. There is, as it were, an unbroken succession of land ownership which the government's own records can substantiate.

- . Museum actions. The actions of the Museum, though far from being effective in their stated purpose, provide recognition of the validity of Aboriginal traditional claims to land.

- . Company actions and statements. Though denying Aboriginal rights to the project area, the Company has embarked on a campaign of defusing opposition to its policies by explaining that the policies were designed in conjunction with, and in response to the needs of, the relevant traditional custodians. These public statements, along with the Glen Hill Agreement, provide a legal opening for exploring the claims for recognition being made by Aboriginal traditional owners.

- . Aboriginal evidence. Aboriginal people maintain a largely untapped pool of information substantiating their claims for ownership of this portion of the East Kimberley. This evidence cannot be ignored as unreliable or as having no legal standing, without negating the assumptions upon which various parliaments of Australia have acted in recent years in legislating for Aboriginal land rights, and upon which the Aboriginal Land Inquiry was itself appointed.

It is not the place to seek to specify the formula to be employed in defining who are or are not traditional owners of the Argyle tenements or surrounding areas; nor is it appropriate to define how compensation or royalty payments should be distributed. These are matters which must await detailed investigation and negotiation. However a few general observations may be made. First, it can be safely said that the narrow definition of 'core owners' employed by Argyle Diamond Mines is unnecessarily restrictive, and at odds with Aboriginal constructs. A broader definition would allow a more appropriate response to Aboriginal claims and needs. Secondly, it should be noted that Aboriginal people, through the Kimberley Land Council and the Balanggarri Aboriginal Association, have had preliminary discussions regarding organizational and financial frameworks which, in the wake of Aboriginal land rights

legislation in this State, could be devised to deal with the various problems the Argyle project creates. Continuing discussions along these lines should be encouraged. Finally, one might observe that Aboriginal people of the region will be affected in a variety of ways by the Argyle operation, and there may be tensions between the contrasting interests and perspectives of differing sectors of the Aboriginal population. This is to be expected, and it should not be used as an excuse for not dealing with the Argyle situation in a holistic way. At the same time, care should be taken so that the interests of groups currently the beneficiaries of arrangements with ADM should not be prejudiced by any recommendations eventually made by the Inquiry.

THE GOOD NEIGHBOUR POLICY

Despite, or perhaps because of, frequent references made to it, the so-called Good Neighbour Policy remains unclear in intent and purport. Whether the Glen Hill Agreement is considered to be part of, or apart from, the Good Neighbour Policy is one matter. Another is the extent to which non-Aborigines will also be favoured by its provisions. In some contexts, the Good Neighbour Policy is explained in terms of hand-outs to worthy causes; and in this respect a grant to an Aboriginal community is seen as directly comparable to a grant to local sporting and cultural organizations. In other contexts, the Good Neighbour Policy is explained as meeting the special needs of Aborigines.

One fact about which there is little confusion is that the financial provisions of the Good Neighbour Policy are vastly inferior to the arrangements which apply in the Northern Territory a few hundred kilometres away. For example, annual payments of 4.5 per cent of sales revenue are paid to Aborigines by the Nabarlek uranium project. Of this amount, traditional owners and those affected by the mine will receive one million dollars annually for eight years, with an additional 650,000 dollars going to the wider set of councils and communities represented by the Northern Land Council. Under the Ranger Agreement about \$4 million dollars per annum will be allocated to communities and councils in the Northern Land Council, with a further \$1.3 million earmarked for communities affected by the mine. (For further details, see I. Keen 1980). By contrast, the Good Neighbour outlays currently amount to

something in the order of \$300,000 per annum, or (allowing for subsequent inflation) less than .25 per cent of expected annual sales return by 1985 (Bulletin October 11 1982, page 73). As the project gears into full production, the relative amount allocated to Aboriginal communities will decline further.

Financial provisions are merely one aspect of Company-community relationships. Again, the models provided by the Northern Territory agreements reveal the niggardliness of the Argyle approach. For example, the Ranger and Nabarlek Agreements cover such things as environmental protection, liaison, employment and training, local business development, control of liquor, protection of sites, rights of traditional owners and safety and health regulations (see Gray 1980). The Ashton Joint Venturers ask for all these things to be accepted on trust.

The one recurring theme is a denial of any obligation of ADM's part toward the Aboriginal people of the region. As the Company sees it, all payments are *ex gratia*, neither in lieu nor discharge of any acknowledged responsibilities toward Aboriginal communities. This is not to say, however, that the Good Neighbour Policy lacks purpose. The strategy behind the Policy is revealed in a document outlining the Joint Venturers' public relations programme for 1981 (*Public Relations Programme 1981 AJV*). In this internal paper, prepared in November 1980 and subsequently leaked to the press, the first of two substantive objectives is spelled out:

Sustaining the Argyle Agreement signed with the Glen Hill Aboriginal community and isolating this agreement from the general debate on Aboriginal Land Rights, while encouraging community acceptance of the Company's policy toward its Aboriginal neighbours.

The preceding quotation is revealing of at least two facets of Company attitudes. First, it points to the existence of considerable anxiety about public perception of its dealings with Aboriginal communities; secondly, it indicates that the Company had made a cold-blooded assessment of how its long-term interests could be best served in the context of increasing public acceptance of the legitimacy of Aboriginal land rights claims. By implication, the Company itself recognizes the strength of traditional Aboriginal ties to the project.

area. The Good Neighbour Policy, therefore, is significant not so much in terms of what it grants or acknowledges, as it is in terms of what it forestalls or attempts to forestall. Aboriginal rights in this context are seen as nothing more than as threats to be headed off by the cheapest, reliable expedient.

This interpretation of Company motives is supported by analysis of the circumstances within which the Good Neighbour Policy was originally framed. Several considerations loomed large at the time. One factor was the threat of legal action against CRAE, action which if successful could have resulted in forfeiture of the Argyle tenements. Given the richness of the known diamond-bearing deposits of the region, such a penalty would have been financially catastrophic. Hence, it was something to be avoided by whatever devices were available. Another factor was the Noonkanbah dispute, which in the three years prior to September 1980 (the date of the convoy) had grown to almost unimaginable intensity. From the start the Argyle controversy threatened to assume similar proportions. A third factor was the attitude of the government of the day, a government utterly opposed to any concessions to Aboriginal communities by mining companies (or others). In the event, the Joint Venturers broke with official government thinking, but they did so not for the sake of Aboriginal interests but for their own. Given the latter, the Good Neighbour Policy should not be construed, as it is in public relations propaganda, as a progressive step toward recognition of Aboriginal needs and interests. Rather, it should be seen for what it is, namely a token response to legitimate Aboriginal claims.

The day-to-day administration of the Good Neighbour Policy is handled conscientiously by ADM employees, with what can be fairly said to be genuine regard for the perceived needs of local Aborigines. However, good intentions in implementing a policy cannot make up for fundamental deficiencies in the policy itself. Conversely, a policy should not be judged by the motives of those giving effect to it. These related points need to be made because the whole argument regarding the Good Neighbour Policy has been clouded by interpersonal acrimony and misplaced accusation.

Critics of the Policy variously portray the relevant ADM employees either as the architects and main bulwarks of the Policy, or as

self serving individuals blind or indifferent to Aboriginal needs. By contrast, ADM officers emphasize the fact that they are doing the best they can, and that their organization is doing more than any other company in Western Australia. If they were not involved, it is implied, others would be. The ADM people then turn the spotlight on to the scheme's critics, arguing that it is white community employees who are behind continuing Aboriginal opposition to the Good Neighbour Policy. They further suggest that it is these self-same individuals who are frustrating the proper application of the Policy. Once again, personal recrimination tends to overshadow the substantive issue to do with the Policy's justness.

The question of personal motives, however, is not entirely immaterial in assessing the Good Neighbour Policy and its effects. Whether or not they acknowledge it, ADM officers must work within the basic framework of interests and assumptions laid down in Company policy (of which the Good Neighbour Policy is part). This leads to the desire to avoid public controversy, to defuse actual or potential sources of opposition, and to avoid situations or forms of accountability which may provide the basis for criticising the Company or its policies. This concern bears directly on the way in which the Policy is implemented. Some expressions of this are:

- (i) Discouragement of independent research and access to information. This is discussed further in a later section.
- (ii) Avoidance of written correspondence, especially that to do with actual or implied criticism of ADM policies.
- (iii) Refusal to be drawn into specifying the basis upon which financial allocations are made. Why to some groups and not others? Why at the levels chosen?
- (iv) Informal convening of meetings, with an avoidance of formal notices and minutes. By-passing of community employees in arranging meetings. Active discouragement of independent legal advice.

Understandable as these tactics may be in terms of avoiding conflict, or of 'getting on with the job' free from unnecessary red tape and formality, they are simply not appropriate for programmes with far reaching consequences. Some system of reporting and accountability is required. But, more than this, a system needs to be devised free from the contradictions and inconsistencies inherent in the present arrangement. Do ADM officers have the required skills and training to participate in, let alone control, major social programmes? Are their roles as Company employees compatible with their involvement in community development and change schemes? Do the controls placed on Good Neighbour expenditures reflect the needs of Aboriginal communities or the convenience of the Company? In assuming functions previously the preserve of charitable organizations or welfare agencies, is the Company promoting a new form of dependence, ultimately destructive of Aboriginal interests?

So far these questions have not been answered satisfactorily. Nor have there been satisfactory answers given as to why the particular level of funding and mode of distribution was adopted. It is not good enough for Company officials to assert, as they have, that Good Neighbour allocations are 'gifts' to Aboriginal communities, given solely at the discretion of the donor and without regard to their use. Not only does this fly in the face of Aboriginal demands, it is also at odds with responsible involvement in social affairs. It breeds irresponsibility too, for surely 'gifts', no matter what their size or regularity, are not to be considered in the same light as 'income' or budgetary outlays. The dangers in this respect are especially marked where the size of financial outlays, and the conditions attached to their expenditure, preclude investment in desired community projects.

RESEARCH AND ACCESS TO INFORMATION

The Argyle dispute has highlighted several glaring deficiencies of existing legislative and administrative structures in Western Australia. The question of research and access to information also deserves critical attention. One might add 'dissemination' of information to this equation, for the controversy has involved a 'war of words' with constant reference to, and promotion of, what are deemed to be pertinent research findings. Because information management exerts such a powerful

influence over legislation and administration, not to mention the many people directly involved in particular issues, comment should be made on how well the present system provides for the collection, dissemination and use of relevant data. Two matters are especially worthy of examination in this regard.

First, the matter of Company involvement in information management. I have already indicated that ADM and its corporate predecessors have been noticeably reluctant to support research or to make information accessible which will in any way compromise its freedom of action. One example will illustrate this point. A large research document (*Background Papers to Social and Economic Impact* was prepared by ADM's research consultants. This was reported in the press at the time (October 1982), and was said to be available to 'all interested parties'. Efforts to obtain this report have failed. No explanation has been given for the Company's refusal to make it more readily available. Discouragement of further Museum site surveys and discouragement of my own research provide additional examples of this same attitude. Lack of reporting in Company activities, particularly in relation to dealings with Aboriginal communities, can also be seen in the same light.

A second and related matter concerns the information requirements of environmental protection and management authorities in this State. It was under this general heading that the Joint Venturers commissioned research into the social impact of the Argyle development, an edited version of which appeared in the Argyle *ERMP*. It is true that, in focusing on social impacts, the Company went beyond that strictly required by Western Australian legislation. Its reasons for doing so are not necessary to explore at this point. One can note, however, that the desire to meet the more embracing requirements of Federal legislation as well as to salve public disquiet about the Company's operations were clearly factors implicated in its decision to seek advice on this important area. The major available product of that research is contained in the Argyle *ERMP*; as noted, the *Background Papers* have not been made available.

Whatever its motives, the Company's entry into this area of research raises many questions relevant to the Inquiry's investigations. Some of these are highlighted in my assessment of the *ERMP* as an appropriate research document (see Appendix Four). A few points need to be underlined. These are listed below

- (i) The tenuous legal standing of social impact analysis under Western Australian environmental protection legislation. Attention needs to be given to such things as:
 - (a) the sorts of developments for which social impact assessments are required;
 - (b) devices for alerting Companies to their responsibilities in this area;
 - (c) means for notifying communities of the intended research; and
 - (d) fitting programmes of social scientific research into overall planning and liaison processes.
- (ii) Lack of appropriate guidelines regarding the nature of social impact research, the type of reporting, and independent evaluation of findings. At present *ERMPs* are as much public relations documents as they are reliable scientific statements.
- (iii) Lack of social scientific expertise within the Environmental Protection Authority and the Department of Conservation and Environment.
- (iv) Inadequacy of existing public review period. No submissions on the Argyle *ERMP* were received from, or on behalf of, Aboriginal communities during the six weeks allowed.
- (v) Independent access to research resources by affected parties. At present major developers are the only interests with the resources to fund research. That they can also control its presentation and accessibility is cause for considerable concern.

EMPLOYMENT AND BUSINESS OPPORTUNITIES

In a different form of submission, it would be possible to examine in detail the ways and means by which Aboriginal people can share in the economic benefits of the Argyle project. Here it is possible to make only a few general comments on the situation to date.

As outlined in the Argyle *ERMP*, Aborigines can expect to gain in three ways from the Argyle project : from direct employment in mining and associated activities; from economic enterprises set up to service the project; and from the employment generated by capital works undertaken under the terms of the Good Neighbour Policy. Toward this end, ADM officers have had discussions with Aboriginal communities and with State and Federal departments. Nevertheless, the record so far is poor, and shows little sign of improving. This is not due to lack of goodwill on anyone's part, but the situation can and should be improved.

The chief failing in this respect is the failure to create or provide more than short-term employment opportunities. Admittedly there are difficulties here, but a project of this scale must surely provide more opportunities, direct and indirect, than have so far been apparent. In promoting employment, however, care needs to be taken to ensure that the Company objective of employing more Aboriginal workers does not cut across community plans. Problems have already been manifest on this count, and will continue to emerge unless consultative arrangements are drastically upgraded.

A full report needs to be prepared on this issue. It should be funded by ADM but carried out by an independent researcher working in close cooperation with Aboriginal organizations and relevant government agencies.

OTHER SOCIAL IMPLICATIONS OF THE ARGYLE PROJECT

The full and varied implications of the Argyle project are not yet apparent. Time and much more extensive research will be required before a clearer picture can be drawn of the Argyle operation's many actual and potential ramifications. Nonetheless, a preliminary statement of some current trends and anxieties may be useful in drawing attention to

longer term possibilities. The Argyle *ERMP* should also be looked at in this connection; though unsatisfactory in regard to past and present Company policies, it provides a useful sketch of the Argyle operation's possible implications. Because time and space are now strictly limited, major items are merely listed in point form.

Demographic changes. Changing size and composition of non-Aboriginal population. Decline in relative importance of Aboriginal population sector. Possible pressures on Aborigines to vacate certain areas. Exclusion from town sites. Declining possibilities of Aborigines reclaiming traditional areas. Increased pressure on recreational and other resources previously enjoyed primarily by Aborigines. Greater police presence. Permanent facilities, including liquor outlets, closer to Aboriginal settlements. Greater pressure on roads. Greater pressures on sites (e.g. in vicinity of Kununurra).

Tourism. Pressure for opening up areas of traditional significance. Pressure for providing on-the-spot facilities. Anxieties about site damage. Decreased community and individual privacy. Increased sexual competition. Difficulties of enforcing regulations on access to alcohol.

Aboriginal authority and leadership. Undermining bases of traditional leadership. Increasing irrelevance to decisions facing, or being made on behalf of, communities. Increased opportunities for defiance of community standards. Growing dependence on external agencies of control and influence.

Economic organization. Increasing income and resource disparities within and between communities. Problems with resource management. Exclusion from areas or activities previously of economic importance. Relegation to even more marginal economic status. Increased competition for scarce governmental resources, including resources for education, health and welfare.

PART C

SUMMARY AND RECOMMENDATIONS

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The foregoing discussion has provided substantial evidence of the inadequacy and inappropriateness of the existing ADM approach to Aborigines and Aboriginal issues. The major points are summarized below.

What is wrong with the existing arrangement?

1. The present Argyle Diamond Mines (ADM) approach contains no provision for properly negotiated, legally-binding agreements between itself and relevant Aboriginal communities. In fact, the ADM approach represents a denial of any obligation on the Company's rights in respect of traditional lands and the management of community affairs. It also represents a denial of Company responsibility for the damage done to sites of intense religious significance to local Aboriginal people.
2. The selective and haphazard process of consultation with Aboriginal communities now being pursued by ADM does little to remove the ever-present threat that further sites will be damaged, and that traditional custodians once again will be left without legal or administrative redress. Apart from this, little information is provided about present or projected Company activities, about the likely effects of these on Aboriginal communities, or about ways in which Aboriginal people may participate more fully in the benefits which will flow from the mining operation. Partly for this reason, few Aborigines are employed in the diamond project, and the prospects for any immediate improvement are not encouraging.
3. Money currently being paid to three Aboriginal communities represents completely inadequate compensation for the enormous damage already done to sacred sites, and

for the mounting pressure on other areas of economic, recreational and mythological significance to local people. It also ignores the heavy administrative burdens on Aboriginal communities created by the Argyle diamond project. Why this particular scale of payments was chosen remains unexplained, as does the discrepancy between the financial provisions of the so-called Good Neighbour Policy and the Company-community financial arrangements applying a few hundred kilometres away in the Northern Territory.

4. The formula for distributing funds is inconsistent with traditional notions of land-ownership, with repeatedly expressed Aboriginal opinion, and with the organizational arrangements devised in conjunction with land rights legislation in the Northern Territory and South Australia.
5. The ADM method of administering Good Neighbour funds allows little scope for community discretion and little room for growing community independence in the practical management of day-to-day affairs. On occasions, communities have been locked into patterns of expenditure inconsistent with their own priorities and long-term interests. More insidiously, the method of dispensing Good Neighbour allocations amounts to a form of patronage which creates dependence, and, given the trade-offs involved, weakens traditional values and systems of authority. The net result can only be the perpetuation of a situation containing little hope for the attainment of the Government's declared aim of Aboriginal self-determination.
6. ADM policies towards Aborigines also have serious implications for governmental administration. By maintaining high profile in regard to its financial outlays, and by purporting to be free of normal bureaucratic constraints, ADM has gained an influence

over Aboriginal affairs in this region out of all proportion to its actual financial input. As its influence has grown, so has the independence and authority of government departments and agencies diminished. This has been accentuated by ADM's determination to go its own way, cooperating with government administrative branches when it suits, by-passing them when it does not.

7. Contrary to a recommendation of its own Environmental Review Management Programme, ADM has actively discouraged independent research into the social ramifications of the Argyle diamond project and of the Good Neighbour Policy itself. A major report prepared on behalf of ADM has not been made available, despite prominent press statements that it would be accessible to all 'interested parties'. For its part, ADM does not report publicly on its Aboriginal policies or their effects. Nor does it convey such information to the communities with which it deals.

What should be done?

To overcome the major problems and difficulties listed in the preceding pages, I urge the Commissioner to endorse or investigate ways of giving effect to the following recommendations:

1. That Aboriginal traditional ties to the Argyle tenements and their surrounds be given proper legal standing, this standing to serve as the basis for further recommendations in relation to the Argyle project and Aboriginal interest in it.
2. That Aboriginal traditional ties to the Argyle project area provide (i) the basis for assessing royalty payments for use of traditional lands and (ii), in conjunction with other relevant factors, the basis for calculating

compensation payments for the adverse effects on Aboriginal communities produced by this project.

3. That Aboriginal communities be allowed to decide their own priorities for expenditure free from outside interference, but that moneys be distributed to communities rather than individuals.
4. That compensation payments to Aboriginal communities not be deducted from community budgets, or be used as an excuse by funding agencies for unfavourable responses to grant applications.
5. That calculations of 'traditional ownership' be made after detailed investigations of relevant Aboriginal territorial relationships, and that the existing definition of 'core' custodians used by the ADM be rejected as arbitrary and selective.
6. That, in accordance with expressed Aboriginal wishes, appropriate Aboriginal controlled structures be devised or employed (i) to distribute and regulate payments deriving from the Argyle project and (ii) to negotiate and consult with the Company in relation to other aspects of the project's future likely to impinge on Aboriginal communities.
7. That the Company's future role in relation to Aboriginal communities be sharply circumscribed, so as not to interfere with community self-management and self-determination, and so as not to undermine or circumvent the proper functions of government departments and agencies.
8. That Aborigines be guaranteed access to areas of past and contemporary ritual, recreational, economic, historical and cultural significance.

9. That the role of the *Heritage Act*, and the statutory authority responsible for its administration, be subjected to intensive review to avoid repetition of the problems which have arisen in relation to the Argyle sites.
10. That all efforts, including an appropriate training programme, be directed at ensuring direct Aboriginal participation in the protection of places and objects of traditional importance.
11. That all research documents prepared on behalf of ADM relating to the Argyle project's impact on Aboriginal communities (including *Background Papers to Social and Economic Assessment*) be made available to relevant Aboriginal communities and representative organisations.
12. That, in the light of the Land Inquiry's recommendations, discussions take place regarding the priorities and plans of the various agencies now dealing with Aboriginal communities with the aim of producing greater policy cohesiveness and effectiveness.
13. That a regular system of reporting be devised to keep local Aboriginal communities informed of mining and exploration plans, and that funds be made available to allow Aboriginal organizations to employ an officer responsible for overseeing developments in this field.

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APPENDICES

APPENDIX ONEARGYLE SITES: MAJOR EVENTS AND DATES

- November 7, 1979 Damage to Aboriginal sites on Lissadell Station accidentally discovered by Aboriginal stockmen looking for cattle thieves. Telegrams sent to CRA (Exploration). Museum contacted.
- November 8, 1979 Company agrees to stop further work until completion of site survey.
- November 9, 1979 Museum agrees to conduct initial survey, to be followed by more comprehensive survey the next year, if CRAE will provide funds.
- November 12, 1979 CRAE agrees to fund survey. After initial hesitation, accepts team consisting of an anthropologist (Randolph) from the Museum and one (Akerman) from the Kimberley Land Council.
- November 16, 1979 Site survey undertaken by Randolph and Akerman. Fifty-eight sites listed in general vicinity of CRAE tenements, 3 within the mineral claims, and one on the periphery. So-called core group owners identified.
- December 5, 1979 Completed report, Initial Survey for Ethnographic Aboriginal Sites in the Vicinity of Argyle Project Tenements, received by CRAE.
- January 10, 1980 Newspaper articles (The Australian and The West Australian respectively) indicate proposed Company activity on the registered site, Kilkaynim (No. 25: Museum registration K1098). This is the so-called Barramundi site.
- January 15, 1980 Letter to CRAE from Museum. Notes requirement of the Company under Section 18 (2) of the Aboriginal Heritage Act (1972) to seek permission to utilize the land for any purpose likely to disturb the site.
- February 4, 1980 Kimberley (KLC) writes to CRAE regarding Company's proposed activities.
- February 8, 1980 Ashton Joint Venture (AJV) asks Museum to evaluate significance of all three sites within its Lissadell tenement.
- February 11, 1980 Press report of meeting between Company and State Government to discuss royalty payments.
- February 18, 1980 Museum telegraphs intention to commence follow-up survey on February 20.

- February 19, 1980 Museum telegraphs postponement of survey until early March.
- February 27, 1980 Museum telegraphs postponement of survey indefinitely.
- February 20, 1980 State Government indicates the possibility of a pilot processing plant being constructed before the end of the year.
- March, 1980 AJV work recommences.
- March 18, 1980 Application to Australian Heritage Commission from Warrun Community to have Argyle sites entered on Register of the National Estate. Cites weakness of Western Australian Aboriginal Act (1972).
- March 24, 1980 KLC anthropological survey notes the continuance of CRAE activities at Devil Devil Springs (No. 27; K1100). Survey indicates Barramundi site greatly exceeds one kilometre notional boundary given to it in the Akerman/Randolph Report.
- March 26, 1980 Meeting of six E. Kimberley Communities support Mandangala (Glen Hill) and Warrun (Turkey Creek) demands for protection of Argyle sites.
- April 10, 1980 Telegram from Warrun Community to Australian Institute of Aboriginal Studies regarding further survey. Notes damage to three sites.
- April 21, 1980 Press report that Minister for Cultural Affairs, Mr Grayden, asserts that East Kimberley Aborigines are detribalized, and their sites no longer important.
- April 22, 1980 Admission by senior CRA advisor that CRAE responsible for site damage. CRAE agree to stop further work. Two mile extent of Barramundi site mapped out for visiting CRA advisor at Warrun Community meeting.
- May 5 - 18, 1980 Australian Institute of Aboriginal Studies site survey conducted by Williams and Palmer.
- May 6, 1980 Sir Roderick Carnegie admits Company operations have damaged Barramundi site at Argyle.
- May 10, 1980 Letter to Aboriginal Legal Service from Warrun Community seeking legal advice on site desecration and associated matters.
- May 14, 1980 Earthmoving operations on Barramundi site cease.

- May 21, 1980 Telegram from Warmun Community to Aboriginal Legal Service regarding possible infringement of Aboriginal Heritage Act.
- May 26, 1980 Further letter to Aboriginal Legal Services from Warmun Community. Specifies damage to Barramundi site and Devil Devil Springs.
- May 27, 1980 Formal complaint against CRAE laid by J. Toby. Hearing set down for June 26, 1980, Kunurra Court House. Complaint alleges CRAE had excavated a site without the consent of the Museum Trustees. This contravenes Section 17 of the Aboriginal Heritage Act (1972).
- May 31, 1980 Inter-community meeting at Turkey Creek re-affirms opposition to site desecration. Aerial photographs indicate heavy machinery still present within Devil Devil Springs.
- June 2, 1980 Museum inspection of damaged sites.
- June 6, 1980 Palmer/Williams Report, Aboriginal Relationships to Land in the Southern Blatchford Escarpment Area of the East Kimberley, released. Report specifies traditional owners of the Argyle sites.
- June 12, 1980 Aboriginal Cultural Material Committee of the W.A. Museum discusses Palmer/Williams Report. Possible CRAE breach of Section 18 of the Heritage Act also discussed.
- July 7, 1980 John Toby withdraws complaint in favour of legal action by the Museum. CRAE does not ask for costs to be awarded against Toby.
- July 10, 1980 Inter-community meeting, Turkey Creek, re-affirms opposition to mining and site-destruction. Calls upon Museum to use its powers to prosecute offenders.
- July 15, 1980 KLC press release alleges Museum succumbed to political pressure by deferring legal action until after amendment of the Heritage Act. Release cites three separate breaches of the Barramundi site since the commencement of CRAE activities. Release accuses CRAE of seeking to stifle opposition to site-disturbance by making 'significant offers' to certain custodians.
- July 16, 1980 KLC press release attacking the Minister for Cultural Affairs, Mr Grayden, after his admission that he had asked the Museum to defer action on the Barramundi site.

- July 24, 1980 Acting Director of Museum writes to Warmun Community informing it that he had asked CRAE for an explanation of its activities in the region of the desecrated sites. Request parried on the basis that CRAE's Regional Director was on leave.
- July 22, 1980 Meeting at Glen Hill between 3 senior AJV representatives and 34 adult Aborigines.
- July 26, 1980 Six Aborigines flown to Perth. Preferred legal advisor refuses to act for them in the given circumstances, citing inter alia lack of direct instructions from Aboriginal clients, inappropriate notice of meeting to all affected Aboriginal clients, and doubts about the desirability of such a rushed agreement. CRAE engage alternative counsel. So-called Argyle or Glen Hill Agreement signed.
- July 29, 1980 Telegram from Warmun Community to Parliamentary Commissioner for Administrative Investigations seeking investigation of
(i) failure of Museum to protect site; and
(ii) inordinate delays in site-evaluation and recommendations for protection.
- August 8, 1980 Questions in W.A. Parliament from R Pearce MLA regarding sites and site report.
- September, 1980 Aboriginal Heritage Act (1972) amended.
- September 9, 1980 Further parliamentary questions from R Pearce MLA regarding Argyle sites. During parliamentary debate, Pearce mentions the possibility that AJV could have been required to forfeit their tenements under the terms of the existing Aboriginal Heritage Act. Proposed amendments to the Act remove this threat.
- September 9, 1980 Letter from Warmun Community to Registrar of Sites, Museum regarding the unrepresentativeness of the Glen Hill Agreement. Mentions that only 19 the of 35 traditional owners of sites specified in the Palmer/Williams Report were present at the meeting prior to the signing of the Agreement. Letter further states that over half of these 35 are resident at Turkey Creek, but under the terms of the Agreement all benefits go to Mandangala.
- September 24, 1980 Helicopter arrives unannounced at Turkey Creek. Takes several men to mining site to discuss location of fence around Devil Devil Springs.

- September 25, 1980 Minister for Cultural Affairs publicly announces permission for CRAE to utilize sites 10 (Barramundi Hole), 25 (Kilkaynim or Barramundi site) and 55 (Canteen Hole). Promises to declare as prohibited areas sites 5, 7, 8, 9, 24, 26, 27, 40, 51 and 53.
- September 30, 1980 Museum officers visit Turkey Creek. Hear complaints of violations of Devil Devil Springs. Unrepresentativeness of Glen Hill Agreement emphasized. Officers inform Community that CRAE refuses to provide information regarding desecration of sites K 1098/1100.
- November 1980 Leaked document spells out the principal objective of the AJV public relations programme for 1981 to be: "Sustaining the Argyle Agreement signed with the Glen Hill Aborigine Community, isolating the Agreement from the general debate on Aboriginal land rights while encouraging Community acceptance of the Company's policies towards its Aboriginal neighbours".
- November 11, 1980 Woolah Community (Dunham River) telexes CRA and CRAE advising that all future discussions regarding use of Woolah land (including the Glen Hill sector) should be conducted through the Community's solicitors.
- November 20, 1980 Director of Museum advises Warmun Community that no legal action would be taken against CRAE because:
- (i). Site-disturbance took place outside area later determined to be part of site 27; and
 - (ii) insufficient evidence exists to secure a conviction
- December 10 1980 Warmun Community writes to Director of Museum challenging his decision not to take legal action against CRAE. The letter emphasizes that CRAE had proceeded with its activities damaging sites in spite of earlier anthropological reports, and without applying through Section 18 of the Heritage Act for permission to utilise the site. This, the letter suggests, constitutes prima facie evidence of breach of Section 17 of the Act. The letter also cites evidence throwing doubt on CRAE explanations of damage to Site 25.
- January 7, 1981 KLC complains to Chairman of CRA regarding the unrepresentativeness of the Glen Hill Agreement, and about the circumstances within which it was signed.
- January 1981 AJV report delineation of major alluvial deposits at Upper Smoke Creek, to be developed in conjunction with the Kimberlite pipe, AK-1. Yearly revenue from

- January, 1981 cont'd. Upper Smoke Creek expected to be sufficient to meet the 22 million dollars spent annually on further evaluation and exploration costs within AJV tenements.
- January 30, 1981 Inter-Community meeting in relation to recent CRAE approaches to Crocodile Hole Community regarding Company work in adjoining areas. Meeting affirms the importance of properly negotiated Agreements.
- March 6, 1981 Abortive attempt to arrange at short notice a meeting at Glen Hill between AJV and members of Communities not at the time covered by the provisions of the Glen Hill Agreement or the so-called Good Neighbour Policy. Evidence of continuing AJV efforts to include Warmun and Woolah Communities in a Good Neighbour Policy.
- March 10, 1981 Meeting of Warmun, Woolah and Guda Guda Communities. Formation of a negotiating Committee.
- June 5, 1981 KLC press release attacking the Glen Hill Agreement and AJV policies toward Aborigines.
- July 6, 1981 Letters to Woolah and Warmun Communities from AJV with offers under the so-called Good Neighbour Policy of on-going capital works to the extent of \$40,000 and \$100,000 respectively, the amounts being indexed for inflation.
- July 7, 1981 Further inter-Community meeting at Crocodile Hole to discuss CRA activities around Crocodile Hile.
- July 31, 1981 Woolah and Warmun Communities accept AJV as an interim measure, without prejudice to "on-going discussions in order to fully resolve the basis for future economic environmental and cultural relations between the parties".
- September 11, 1981 Parliamentary Commissioner of Administrative Investigations dismisses Warmun Community complaint against Museum.
- November, 1981 Warmun Community worries about CRA camp at Sugar Bag Yard.
- November 19, 1981 Community-AJV meeting. AJV pressed to negotiate a formal Agreement with Communities. Request parried and eventually denied.
- February, 19, 1982 Community-AJV meeting. AJV officials defend Company's refusal to allow Good Neighbour money to be used for purchase of pastoral stations; reject Community demands for a properly negotiated settlement.

- February 23, 1982 Press release from Warrun Community attacks terms of existing relationship between Company and Aboriginal communities.
- March, 1982 Exceptionally heavy and destructive rains linked to desecration of Barramundi site.
- May, 11, 1982 Meeting between ADM and Aboriginal Communities to discuss Environmental Impact Statement being assembled. Proposed procedure for discussion rejected by ADM. Aboriginal people again call for a properly negotiated agreement.
- July 2, 1982 Letter from ADM to Warrun Chairman contains thinly veiled threat to end the Good Neighbour Policy disbursements if agitation for a formal agreement continues.
- July, 1982 Further Community concern expressed regarding water being pumped from Mt Pitt. Arrangement now considered to be satisfactory as long as site is not disturbed. Apparently Museum approval not sought for this arrangement.
- August 8, 1982 Inter-Community meeting regarding ADM letter. Meeting insists once again on the need for a negotiated agreement.
- November 12, 1982 Museum official visits some Argyle sites. Notes signs of use and despoilation of Flying Fox Hole. Devil Devil Springs shows some signs of use, while Museum marking pegs are missing from Flying Fox Hole and Wesley Spring.
- December 5, 1982 Concern expressed at Warrun Community meeting of damage to Kumunangka, a site associated with the mythical snake, Tjuntakal. Concern also expressed about Devil Devil Springs and Sugar Bag Yard. Complaint forwarded to Museum and relayed to ADM. Dismissed by ADM official who insists that no further survey is necessary, and no museum involvement required because the existing system of consultation is adequate. His explanation subsequently rejected by Warrun men who question the knowledge of the person(s) probably consulted by ADM in relation to Kumunangka.
- January, 1983 Minister continues to stall on granting protected area status to Argyle sites. (See Ministerial announcement of September 25, 1980.)

- March, 1983 Considerable confusion and anxiety about continued Community access to Flying Fox Hole and Billy Goat Yard Hole. Eventually resolved amicably. Further concern expressed about damage to the Barramundi site, and about the negative consequence of this.
- April 8, 1983 Meeting of Balanggarri Aboriginal Association to discuss CRA activities and environmental impact. Discussion of similar problems in related areas. Role of KLC emphasized.
- April 29, 1983 Meeting of Balanggarri Aboriginal Association at McPhee Creek affirms opposition to site damage and to existing terms of Good Neighbour Policy. Authorizes preparation of a report to be tendered to the Government outlining Aboriginal opposition to the present arrangement. Affirms the importance of KLC involvement in negotiations.

APPENDIX TWO

SITE DAMAGE AND INTERFERENCE IN THE VICINITY OF THE ARGYLE MINING TENEMENTS

Site Name & Number	Type of Disturbance	Date Disturbance First Noted	Museum Permission for utilization
Kilkaynim (Barramundi site); No 25, K1098	Excavation of road to crest of hill, with associated bulldozing and blasting.	March, 1980	Sought February 1980. Granted 25/9/80.
	Drilling.	May, 1980	
	Trenching.	May, 1980	
	Construction of heli-pad.	June, 1980	
Tjanuntung (Devil Devil Springs); No 27, K1100	Construction of dam.	November, 1979	Not sought.
	Road graded over bottom portion.	May 18, 1980	
	Presence of drilling rig.	May 31, 1980	
	Excavation and drilling of drums.	August 30, 1980	
	Bore.	August 30, 1980	
Canteen Hole; No.55, K1128			Sought February 1980. Granted 25/9/80.
Barramundi Hole; No.10, K1083	Submerged by flooding of Lake Argyle.		Sought February 1980. Granted 25/9/80.
Sugar Bay Yard	Mining camp adjacent, water being pumped from spring.	November, 1981	No.
	Earthmoving.	November, 1981	
	Littering.	November, 1982	
Kultjing/ Tunglung (Flying Fox Yard); No39	Littering; evidence of extensive use for picnicking	November, 1982	No.
Kurumungka; Not registered.	Tank constructed on hill that has been cut away.	December, 1982	No.

APPENDIX THREEARGYLE DIAMOND PROJECT IMPACT ON ABORIGINAL COMMUNITIES :PROVISIONS REQUIRED BY STATE CABINET FOR APPROVAL OF THEARGYLE ERMP (MAY 17TH 1983)

1. Detailed environmental management plans be submitted to the State for consideration in association with the development proposals required in the Diamond (Ashton Joint Venture) Agreement Act, 1981.
2. Should a town development be considered necessary in the future a separate and comprehensive environmental evaluation will be required for EPA consideration.
3. The Company have further discussions with the W.A. Museum on all aspects of Aboriginal site protection and management in areas influenced by the development. Local Aboriginal groups should also be involved in any such discussions.
4. The Company closely monitor the social impacts of its development on the town of Kununurra and nearby communities, especially during the construction phase. It should cooperate with private and government agencies as well as other possible developers to control or overcome any adverse impacts which may occur.
6. The Company consults with the Government and local Aboriginal groups with a view to changing the management of funds contributed under the Good Neighbour Policy.
7. The Company enters into further discussions and possible modification of the Aboriginal employment programme as part of the review of detailed proposals under Clause 7(1) (H) of the Diamond (Ashton Joint Venture) Agreement.
8. An impact assessment group be established comprising representatives of Government, Company and local communities, including Aboriginal groups, to monitor, review and recommend to Government on the social impact of the project with a view to further development of the Government and Company's social programme.

APPENDIX FOUR

NOTES ON THE ARGYLE DIAMOND PROJECT ENVIRONMENTAL

REVIEW AND MANAGEMENT PROGRAMME (PRESENTED TO

WA GOVERNMENT, MAY 1983)

The Western Australian Government carries a heavy responsibility in assessing the environmental impact of the Argyle Diamond Mines (ADM) Project, and in framing appropriate guidelines for the Company's future operations. Decisions made now will be far-reaching in their implications, both for the Government itself and for the many thousand individuals directly and indirectly affected by diamond mining in the East Kimberley. It is a matter for deep concern, therefore, that input into the environmental review has been so narrow and unrepresentative. It is more so because Aborigines of this region, the people with most to lose and least to gain from the project, have been given so little opportunity to have their views heard and their interests considered.

At present the Government has before it the Argyle Diamond Project Environmental Review and Management Programme (hereafter referred to as the ERMP) and the Environmental Protection Authority (EPA) review of the ERMP. Unfortunately, the latter is inaccessible to the public, and no clue has been given as to its likely contents. It is reasonable to assume, however, that the EPA recommendations focus on physical environmental problems and management. The present submission will focus on social environmental problems created by the Argyle Diamond Mines operation, and will critically analyze the social environmental management plan mapped out in the ERMP. More specifically, it will concentrate on the Project's consequences for East Kimberley Aborigines, and on the appropriateness of the policies and practices now being pursued by ADM in relation to selected Communities affected by the mining development.

Before embarking on a detailed assessment of the Dames and Moore ERMP, a few general comments may be made regarding this document's purpose

and its relevance to the decisions now confronting the State Government. For one thing, it is clear that the ERMP is as much a public relations document as it is a serious appraisal of environmental problems and solutions. No information is provided about publication costs or about the size of the research budget, but it is obvious that money has not been a limiting factor in what has been produced. It is evident, moreover, that much care has been taken in the presentation of material. What is especially worrying in this is that the reader is invited to accept at face-value the information presented, and to take on trust the environmental undertakings made by Argyle Diamond Mines without being given the opportunity to consider alternative perspectives and approaches.

Closer inspection of the ERMP reveals the vagueness of many undertakings, and the thinness of evidence regarding ADM's past performance. These weaknesses are especially apparent in relation to the social environmental problems discussed within the ERMP, but they are by no means confined to this area alone. Though less strikingly, a similar tenuousness of argument can be found in the analysis of physical environmental problems and solutions. For both physical and social environment, ERMP proposals are for the most part cautiously and ambiguously worded, and framed in a way which leaves little room for subsequent governmental scrutinization and policing of standards. No mention is made, for example, of devices by which the Company could be held to the various promises made or implied, let alone forced to tackle unforeseen problems. Further, no provision is made for a regular and strict monitoring of environmental consequences. Whether in relation to physical or social environment, this barely disguised tendency to deny the value of external supervision and responsibility would seem to be quite at odds with

prevailing Community standards.

In the following pages, more will be said about gaps and inconsistencies in the ERMP data base, and about the soundness of recommended courses of action. Together these should raise very serious doubts regarding this report's adequacy as a planning document. They should also pose the question as to whether or not the ADM approach to environmental problems is consistent with the new Government's overall policy and administrative aims. The fact that the ERMP was originally prepared for a different Government, with different objectives and commitments, should be a warning here. If it uncritically endorses the ERMP, and particularly if it endorses the policies toward Aborigines as set down in this document, the new Government will be seen as bound by the unwholesome values of its predecessor. What is essential, therefore, is a balanced and thorough appreciation of the whole range of problems and opportunities which the Argyle Project will bring. The starting point here should be a careful dissection of what the ERMP contains and implies.

COVERAGE OF ABORIGINAL ISSUES

In addition to the general weaknesses noted above, several major criticisms may be made of the ERMP examination of Aboriginal issues. Objections to this particular section of the Report devolve on the following:-

- (i) the selectivity of the investigation commissioned;
- (ii) the nature and timing of research;
- (iii) the relationship between findings presented and conclusions reached;

and

- (iv) the inconsistency between ERMP image and the reality of the ADM approach.

Each of these points warrants separate attention.

SELECTIVITY OF RESEARCH. ERMP treatment of Aboriginal issues is as notable for what it excludes as for what it includes. Several matters of central importance from the viewpoint of environmental management are not dealt with at all, or are treated quite off-handedly. For example, the topic of Aboriginal sites was not investigated and, consequently, is not reported upon. Neither is the question of site-damage and site-protection given any meaningful attention. It is true that sites are mentioned on a number of occasions, but never much more than in passing reference; and never in a way which invites any appreciation of the continuing difficulties on this count. To suggest, as is done on page 129, that the Ashton Joint Venturers have been mindful of their responsibilities toward site-protection is not consistent with the facts. CRA (as the then senior party in what is now Argyle Diamond Mines) did commission one survey (not two or more as implied), a survey involving no more than three hours site location by helicopter. Then and since, CRA have actively resisted attempts to mount a more comprehensive survey. This negative outlook is not reported in the ERMP.

Another significant omission from detailed assessment is CRA (subsequently Argyle Diamond Mines) policy and practice towards matters of general concern to Aborigines. The Good Neighbour Policy, now the most conspicuous facet of Company dealings with selected Aboriginal Communities, is briefly referred to on pages 214-15 and 234-35, and again in summary on the

Report's final page. Tensions deriving from signing of the so-called Argyle or Glen Hill Agreement (about which more will be said later) are mentioned on two occasions, on each the suggestion being that past problems are today close to resolution. What is disturbing in this is that the strength of Aboriginal opposition to the mechanics and underlying assumptions of the Good Neighbour Policy is nowhere indicated. Nor is there any account of continuing Aboriginal efforts to alter the terms of this policy and its administration. Neglect of these important facts raises the suspicion that Argyle Diamond Mines have a vested interest in preventing proper governmental and public scrutiny of Company policies and their effects.

NATURE AND TIMING OF RESEARCH. Few assertions in the ERMP are in outright opposition to the evidence as recorded by independent investigation. Indeed, the original researchers can be commended for their attempt to consider and to measure a wide range of real and potential consequences of the Argyle diamond operation, and for information presented in relation to actual and possible impacts. Even given the very significant exclusions already discussed, there is in the ERMP much useful data, which, if properly assessed, could contribute to a fuller understanding of the environmental problems being experienced by Aborigines as a result of diamond mining and associated activities. In order to provide such an assessment, account needs to be taken not merely of the public relations nature of the ERMP and of the research brief given to the relevant consultants, but also of the nature of research undertaken with the limitations so imposed.

Two major criticisms may be made of the Dames and Moore research into

Aboriginal issues. First, the pertinent field survey was conducted almost two years ago; and some information contained in the ERMP is, therefore, dated and incomplete. Fuller and more up-to-date data would provide a better basis for identifying trends and for devising appropriate policy guidelines. Such data would also require a serious re-appraisal of key elements of the Dames and Moore analysis. For example, in the ERMP, Aboriginal concern expressed in relation to site-damage and the Glen Hill Agreement is treated as evanescent, as nothing more than a temporary reaction to an initial disturbance. Subsequent events belie that interpretation. Quite simply, these and other problems created by Argyle Diamond Mines show no sign of fading into insignificance.

Secondly, the research methods and techniques used are not consistent with the collection of some data central to social environmental analysis. This, in itself, may be a product of the brief given to the researchers, but choices regarding modes of inquiry also seem to be factors here. One might ask, for instance, how it is possible, without spending any substantial time resident in affected Communities, to obtain more than a superficial grasp of emerging problems and of Aboriginal reactions to them. It might be observed that many aspects of Aboriginal modes of living are not amenable to observation and measurement by standard survey and interview techniques. Nor are they necessarily given to delineation on the basis of the comments of white residents, whatever their official capacity.

Some specific examples might help make these points a little clearer. The subject of Aboriginal leadership and authority is raised on a number of occasions in the ERMP, each time with approval and with the

implied undertaking on the part of Argyle Diamond Mines to recognize the traditional pattern. Just how this facet of traditional life was observed in the circumstances and time available is not recorded. In the event, the pattern briefly portrayed would seem to be more in keeping with the clan-based politics of the Northern Territory than the kindred-based arrangements characteristic of the north-east Kimberley. The suspicion raised is that the Joint Venturers have no real understanding of the contemporary scene, and no real way of gauging any adverse effects which their activities might have on the established pattern. The same might be said of the emergent forms of leadership associated with the changing socio-economic and administrative situation of Aboriginal communities.

Another area of concern precluded from adequate exposition by the chosen methods of investigation is the general question of Aboriginal territorial relationships. Neither in terms of land-usage nor land-ownership is this topic given its due, though there are some helpful hints in what is recorded. Without collecting detailed genealogical and social data, and without observing economic and recreational patterns over a lengthy period, there would seem to be little hope of obtaining an adequate overview of relationships to land or of changes in these consequent upon further mining development. That, of course, might well suit ADM's purpose.

EVIDENCE AND CONCLUSIONS. Another question to be considered in evaluating the ERMP is the relationship between evidence presented and conclusions reached. It could be suggested with some justification that the findings of the ERMP were predetermined by the brief given to Dames

and Moore, and in turn to the contracted research specialists. Given what has already been said about problem areas not the subject of worthwhile analysis, it is quite obvious that some issues could not be put into proper perspective in the tentatively defined management plan. As it turns out, the matters excluded from adequate analysis - including relationships to land, site-damage and processes of site-protection, and financial/administrative arrangements between ADM and selected Communities - happen to be the key areas of Aboriginal concern, and the areas where the environmental consequences of the Diamond Project remain the most threatening.

Further queries could be posed in relation to what has been extrapolated from facts already included in the ERMP. One case in point is the background history of Aboriginal-European interaction on the East Kimberley. In this section, substantial evidence is provided of Aboriginal endeavour, past and present, to preserve socio-cultural integrity in the face of threatening and often cataclysmic changes. Evidence is supplied, too, of Aboriginal efforts to improve material conditions of living by building communities on, or close to, traditional lands. What seems to have escaped the attention of the authors (or perhaps failed to escape the attention of the editor) is the perceived relationship between these efforts and the alienation of traditional lands for non-Aboriginal purposes.

Much is also said about Aboriginal desires for co-existence with mining companies. This is a fact which cannot be denied. However, from the Aboriginal viewpoint, the terms of that co-existence are the all-important consideration. It should be remembered that Aboriginal people in this

area have never lost sight of their traditional associations to the land, nor do they see their associated rights and responsibilities as having been diminished by any or all of the legislative-administrative changes of the past century. To depict ADM as just one among many external agencies impinging on Aboriginal Communities is to miss this crucial point. The fact that ADM is extracting wealth from, and causing damage to traditional lands is no less real or threatening in Aboriginal eyes because others have trampled on Aboriginal interests in the past. If this is to be acknowledged, earnest attention needs to be given to working out an appropriate relationship between ADM and relevant communities. As a logical sequel to points already made in the ERMP, it is beyond charitable explanation why this question should be so completely overlooked.

ERMP IMAGE AND ADM PERFORMANCE

Previous observations regarding selectivity of research and analysis raise very serious doubts about the soundness of the ERMP recommendations. Though by no means can all of this Report's failings be put down to a single factor, it would seem that a desire for speedy Government approval for the Argyle Diamond Project has at times overridden scientific holism and freedom. This may be a general problem in documents of this sort, for companies obviously have no wish to be embarrassed by the findings of research that they themselves commission. Yet, general as this problem may be, the Government has a responsibility in each case to assess the justifiability of claims made and conclusions reached. That being so, it must be prepared in each instance not only to separate obvious fact from obvious falsehood, but also to see through the subtly conveyed images of Company performance and intentions to the underlying reality. This is

why support for Community input into environmental review processes is so essential, and why, in the present case, ADM monopolization of research input into Government is so disturbing.

As will be shown later, ADM control of information actually extends well beyond the facts and images brought before public view in the ERMP. While this situation remains, no-one can be confident that decisions reached in relation to ADM activities will be made on a properly constituted basis. Social environmental questions are particularly worrying in this respect. Enough has already been said in preceding pages to demonstrate beyond any doubt that the findings now embodied in the ERMP in regard to social impact are incomplete and selective. Vital issues are side-stepped, and almost no concern demonstrated for evaluating alternative perspectives. The end result is a document extremely flattering to Argyle Diamond Mines, and insulting to the many individuals, primarily Aboriginal, who have struggled for a different appreciation of Company activities and their consequences.

One further point may be made in connection with the image of ADM promoted in the ERMP. Much of the discussion is predicated on the basis that the Joint Venturers have a legitimate right to act as change agents, and to formulate independently social policies with respect to people affected by Company activities. For example, on page 230, the reader is told "social planning by AJV is made more difficult because it is faced with diverse aspirations and demands from Aboriginal and European residents of the region and beyond". And again, on the concluding page, the reader is informed of the need for "sensitivity, persistence, and some long term flexibility in pursuing AJV's social policy aims".

Taken together with the playing down of the negative consequences of the Joint Venturers' past actions, this emphasis on social policy aims would seem to be designed to reassure anyone sceptical of ADM intentions that all remaining problems have been recognized and are under control. The fact is that the Joint Venturers have no competence in the field of social policy and administration, and no monitoring system whereby they could gauge and respond to problems as they arise. When those policies are pursued, as they are, in defiance of Community wishes, and without detailed discussions with relevant Government agencies, the Company's real motives become more transparent. It is to a consideration of actual motives and actual consequences that we should now turn.

EAST KIMBERLEY PROJECT WORKING PAPERS 1985

- 1985/1 East Kimberley Impact Assessment Project: Project Description and Feasibility Study.
- 1985/2 Dillon, M.C.
The East Kimberley Region: Research Guide and Select References.