



**LEGAL ASPECTS OF
SUSTAINABLE NATURAL
RESOURCES**

**LEGAL WORKING
PAPER SERIES**

**WORKING ON WORKING
TOGETHER: EXPERIENCES IN
JOINT PROTECTED AREA
MANAGEMENT IN AUSTRALIA**

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1. Introduction

Sharing biodiversity governance is part of a broader attempt of linking social justice, natural resource management and conservation. The emergence of a new understanding of protected areas, that redefines the relationship between humans and nature, emphasises the involvement of indigenous peoples in biodiversity governance to reverse a chronic tendency of displacement that has harmed some of the world's poorest and most marginalized communities.¹

There is no consensus on the number of people that have been displaced by protected areas² but examples span across Asia, Africa and Latin America.³ The socio-economic consequences of displacement began to be acknowledged in the 1970s. Forced displacement exposes “displaced people and receiving communities to risks of impoverishment which include landlessness, joblessness, homelessness, economic marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and services and social disarticulation.”⁴ From a rights based perspective, these include loss of right to residence, loss of rights to use land and resources and loss of non consumptive values such as access to places of spiritual or religious significance.

Growingly, the ‘myth of pristine landscapes’⁵ or the ‘science fiction of wilderness’⁶ is being dispelled. Accepting that land has been long occupied and managed by indigenous peoples has prompted - by way of an increasing recognition of indigenous rights - the emergence of socially just protected areas. The 2008 World Conservation Congress welcomed the adoption of the UN 2007 Declaration on Rights of Indigenous Peoples and recalled the 2003 World Parks Durban Congress which, *inter alia*, ‘established a new paradigm of protected areas, according to which indigenous peoples and local communities’ rights are recognized, respected and upheld in the planning, establishment and management of protected areas’, called for a ‘halt to forced resettlement and involuntary sedentarization of indigenous peoples without their free, prior and informed consent’ and ‘encouraged national reviews of innovative governance for protected areas.’⁷

¹ Borrini-Feyerabend, G. Kothari, A. Oviedo, G. Phillips A. ed., *Indigenous and Local Communities and Protected Areas Towards Equity and Enhanced Conservation Guidance on policy and practice for Co-managed Protected Areas and Community Conserved Areas*. Cambridge: World Commission on Protected Areas (1994), IUCN.

² Adams, M.W. Hutton, J., ‘People, Parks and Poverty: Political Ecology and Biodiversity Conservation’, *Conservation and Society* (2007), 5 (2) pp. 147-183.

³ Stevens, S. ed., *Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas*, (1997)

⁴ Adams, *supra* note 2

⁵ Poirier, R. Ostergren D., Evicting People from Nature: Indigenous Land Rights and National Parks in Australia, Russia and the United States. *Natural Resources Journal* (2002), 42, pp. 321-351

⁶ Langton, M., *Burning Questions; Emerging Environmental Issues for Indigenous People in Northern Australia* (1998)

⁷ IUCN *Resolutions and Recommendations* World Conservation Congress, Barcelona, 5-14 October 2008.

Australia has completed three decades of joint protected area management, meaning the experience and the outcomes, are at a stage where they genuinely can and should be assessed, rethought and shared. First, it is essential to disaggregate the substantial terminology employed to describe shared governance of protected areas and introduce the meaning of joint management. A case study is conducted that includes Kakadu, the first National Park to become jointly managed, Uluru-Kata Tjuta where the terms of the arrangement boosted the rights of the indigenous party and Booderee, where joint management aims towards sole management. Three assessment criteria are used; empowerment of resident indigenous communities, conservation of biodiversity and livelihoods under joint management arrangements. Finally, findings on the successes, challenges and insights of the case study are laid out and discussed.

The breadth of the assessment is constrained by the lack of systematic research on social impacts of joint management, especially from an Aboriginal perspective. Even if pieces of evidence can be assembled to provide overall trends in the cases studies, there is a major need for further in depth assessment, and a ‘a growing recognition of the need for fresh material about what is actually happening, and for new ideas to be generated and re-interpreted.’⁸

2. Terminology: What does Joint Management mean?

There is a bewildering array of terms employed to describe collaboration in the management of natural resources (i.e. co-management, collaborative management, participatory management, joint management and so on). From the standpoint of governance types for protected areas, these belong to a greater category of ‘shared governance’, a concept that is often equated to ‘co-management’ where ‘complex institutional mechanisms and processes are used to share management authority and responsibility among a plurality of (formally or informally) entitled governmental and non-governmental actors.’⁹ A co-managed protected area is defined as a ‘government designated protected area where decision making power, responsibility and accountability are shared between governmental agencies and other stakeholders, in particular the indigenous peoples and local and mobile communities that depend on that area culturally and/or for their livelihoods.’¹⁰

⁸ Haynes *supra* note 18 at 277

⁹ IUCN, Biodiversity Governance By Indigenous Peoples and Local Communities at <http://www.iucn.org/about/union/commissions/ceesp/topics/governance/> viewed on 04/04/2011 [last updated 06/08/2008]

¹⁰ Borrini-Feyerabend *supra* note 1 at xv

In ‘collaborative management’, a subtype of co-management, ‘decision-making authority and responsibility rest with one agency but the agency is required – by law or policy – to collaborate with other stakeholders.’ In a weak form, collaboration means informing or consulting, in a stronger form, collaboration means that a multi-stakeholder body develops and approves by consensus technical proposals for protected area management to be submitted to a decision making authority.¹¹

In ‘joint management’, another subtype of co-management, ‘various actors sit on a management body *with* decision-making authority [emphasis added], responsibility and accountability.’ Joint management is stronger when decisions are reached by consensus and weaker if the composition of the decision making body de facto transforms it into a different governance type.¹²

Joint management of a protected area is defined by Kothari et al as ‘the management of a protected area and its surrounds with the objective of conserving natural ecosystems and their wildlife, as well as of ensuring the livelihood security of local traditional communities, through legal and institutional mechanisms which ensure an equal partnership between these communities and governmental agencies.’¹³

The Australian Conservation Foundation (ACF) defined joint management as ‘a formal relationship between government(s) and Aboriginal owners of protected areas in which the grant of freehold title is made contingent upon a legally binding agreement such as a leasing agreement, being reached for the management of the land.’¹⁴

Essentially, opposition to joint management is based on the arguments that Aboriginal control of national parks is not in the best interest of conservation, or alternatively that it imposes land use and management regimes that undermine Aboriginal autonomy. For Craig¹⁵ joint management comprises the sharing of control of an area by two or more different interest groups. It aims to provide for the conservation of the park and to maintain value to the traditional owners. But it is a western construct that leads to reliance and acceptance of a dominating culture. For Bauman and Smyth joint management is a ‘trade off between the rights of traditional owners and the interests of government

¹¹ IUCN *supra* note 8

¹² *Ibid*

¹³ Borrini-Feyerabend, G. et al., *Sharing Power; Learning by Doing in Co-Management of Natural Resources Throughout the World*. (2004) Ch 3 at 66

¹⁴ Lawrence, D.R., *Kakadu the Making of a National Park*. (2000) at 241

¹⁵ Craig, D., *Environmental Law and Aboriginal Rights: Legal Framework For Aboriginal Joint Management of Australian National Parks*. In: Birckhead, J. De Lacy, T. Smith L. eds., 1992. *Aboriginal Involvement in Parks and Protected Areas*.

conservation agencies and the Australian community’... ‘A key element in these arrangements is that the transfer of ownership back to Aboriginal people is conditional on their support (through leases or other legal mechanisms) for the continuation of the national park.’¹⁶ It is ‘an arrangement of convenience or coercion, rather than a partnership freely entered into.’¹⁷

However, the full meaning of co-management does not lie in its de jure denomination, but rather in its de facto condition. Whilst formal structures of joint management may support a stronger partnership, practice can and often does go ahead of policy.¹⁸ Haynes describes it as a ‘way of life for all participants.’¹⁹

The key to understanding what joint management means does not lie in static definitions. It is contingent to the particular formal and informal arrangements in a given case, and to the flexible ongoing process of ‘consultation and negotiation leading from the foundations provided by structural guarantees.’²⁰ For example, although the agreement to jointly manage a national park may be coercive as argued by Smyth²¹, in Kakadu, Press and Lawrence²² note that the proposition arose from the traditional owners themselves, and Lawrence²³ adds that it was an astute manoeuvre to gain control over non-aboriginal use of a wider area. In fact, consultation with Aboriginal people regarding the management of the Park extends to the whole area, even non Aboriginal land vested on the Director.

3. Methodology

The methodology uses a case study approach. There is a range of co-management examples across Australia – that differ according to each jurisdiction’s legal recognition of Indigenous rights – and since the last decade, also an increasing number of Indigenous Protected Areas. The case studies were selected for the most part because they are widely regarded as successful.²⁴ The definition of

¹⁶ Bauman, T. Smyth, D., *Indigenous Partnerships in Protected Area Management in Australia* (2007) at 6

¹⁷ Smyth, D., Joint Management of National Parks. In: Baker, R. Davies, J. Young, E, eds. 2001. *Working on Country – Contemporary Indigenous Management of Australia’s Lands and Coastal Regions* Ch. 5 at 76

¹⁸ Borrini-Feyerabend *supra* note 12

¹⁹ Haynes, C., *Defined by Contradiction: The Social Construction of Joint Management in Kakadu National Park* (2010) Ph.D. Charles Darwin University.

²⁰ Lawrence *supra* note 13 at 242

²¹ Smyth *supra* note 16

²² Press, T. Lawrence. D., Kakadu National Park; Recognizing Competing Interests. In: Press, T. Lea, D. Webb, A. Graham, A. eds., 1995. *Kakadu Natural and Cultural Heritage Management* (1995) Ch 1

²³ Lawrence *supra* note 13

²⁴ Bauman and Smyth *supra* note 15, De Lacy, T., ‘The Uluru/Kakadu model Anangu Tjukurrpa: 50,000 years of Aboriginal law and land management changing the concept of national parks in Australia’. *Society and Natural Resources* (1994) 7 at 479-498, Borrini-Feyerabend *supra* note 12, Tehan, M., *Indigenous Peoples, Access to Land and Negotiated Agreements: Experiences and Post-Mabo Possibilities for Environmental Management*.

success of course varies greatly, and may mean different things for indigenous and non indigenous people.

Unlike the general rule in Australia where the protected area network is State responsibility, Kakadu, Uluru-KataTjuta and Booderee National Park are the only Commonwealth jointly managed protected areas. To a certain extent they belong together, even though research has not studied them in concert so far. The fact that their administration is vested on the Commonwealth also makes joint management arrangements more readily comparable to protected areas elsewhere. In most countries protected areas rest on the national rather than the sub-national government. Additionally, joint management arrangements in Australia were pioneered at the Federal level.

Kakadu is the largest and one of the most emblematic National Parks in Australia, and is widely regarded as the first to become jointly managed, in 1979 - although the establishment of the actual Board of Management was substantially delayed²⁵ and was established first in Gurig National Park in 1981.²⁶ The political establishment of Kakadu is integral to the history of joint management in Australia.

Uluru is equally iconic. It became jointly managed six years later, but the terms of the arrangement represented a remarkable step forward for traditional owners and influenced the renegotiation of the lease in Kakadu in 1991.²⁷ Both Uluru and Kakadu are World Heritage listed sites for their outstanding natural *and* cultural universal values.

Booderee, jointly managed since 1995, is less widely studied than the 'Kakadu-Uluru Model', but it introduces noteworthy features. First, it is located in south-eastern Australia, not in the Northern Territory where most of the hand-backs have occurred. Second, it includes a marine component. Third, joint management in Booderee explicitly aims towards sole management.

Environmental and Planning Law Journal, (1997) April, pp. 114-134, Woenne-Green, S. Johnston, R. Sultan, R. & Wallis, A., *Competing Interests: Aboriginal participation in national parks and conservation reserves in Australia*: Australian Conservation Foundation (1994),

²⁵ Lawrence *supra* note 13

²⁶ Smyth *supra* note 16

²⁷ De Lacy, T. Lawson, B. The Uluru/Kakadu Model: Joint Management of Aboriginal-Owned National Parks in Australia. In: Stevens, S. ed., *Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas*. Washington DC: Island press (1997) Ch 6

4. Background

Archaeological records suggest that Australia has been inhabited for at least 20,000 and more likely 40,000 to 60,000 years.²⁸ European colonization decimated Aboriginal population on account of disease and social dislocation. In the Kakadu region, Bininj²⁹ population prior to European occupation was estimated in 2000. By the early 1980s only 100 hundred Aboriginal people resided in the Park.³⁰

The first proposal for a National Park in the Alligator River region was made by the Northern Territory Reserves Board in 1965 and successive proposals were put forward thereafter. In the 1970s however, sizeable uranium deposits were discovered. The Commonwealth directed that an inquiry be conducted under the *Environment Protection (Impact of Proposals) Act 1974*. Subsequently, the first report of the Ranger Inquiry concluded that there was no reason not to develop controlled uranium mines.³¹

In 1974 the controversial National Parks and Wildlife Bill – that became the *National Parks and Wildlife Act 1975* (NPWA) was presented. It encouraged the further establishment of protected areas in exercise of the Commonwealth external powers, aligned to commitments as a party to the *World Heritage Convention*. An increasing tension between the Federal and the Northern territory government was exacerbated as protected areas were considered to be a matter of State (and therefore Territory) responsibility. The Bill awarded a wide range of attributions to the Director of National Parks and an increased role for Aboriginal people in the management of Aboriginal land and protection of wildlife.

Since the 1960s the Aboriginal land rights movement had been articulating around mining in Aboriginal reserves, ownership of land and leasing of pastoral properties.³² Justice Woodward was commissioned to report on ways to establish Aboriginal land rights in the Northern Territory. He suggested a scheme of Aboriginal freehold title combined with National Park status and joint management as it may ‘prove acceptable to all interests’ and outlined a series of principles to make it

²⁸ Press *supra* note 21

²⁹ Bininj is the term used in the Plan of Management to refer to traditional owners of Aboriginal land or of other land in the Park, and other Aboriginals entitled to access, use or occupy the Park in accordance with their respective tradition.

³⁰ *Ibid*

³¹ Lawrence *supra* note 13

³² Lawrence *supra* note 13

operational.³³ The report recommended Aboriginal people should be able to claim unalienated crown land on the basis of traditional ownership and that no new mining licences should be granted without Aboriginal consent. Justice Woodward also presented the drafting instructions for the *Aboriginal Land Rights (Northern Territory) Act 1976* which was proclaimed in 1977. The Act provided for the legal recognition of Aboriginal traditional rights to certain land in the form of inalienable freehold title, the establishment of Aboriginal Land Trusts to hold title to land for the benefit of Aboriginal people and the establishment of Land Councils to be the political voice of traditional land owners.

The Ranger Inquiry was extended to deal with the first Aboriginal land claim to the Alligators River Region. The second report of the Ranger Inquiry commission recommended a grant of title to the area claimed by the Aboriginal claimants and allowance of uranium mining at Ranger.³⁴ The Aboriginal claimants had instructed the Northern Land Council (NLC) which represented them to propose that if the claims were successful, they would lease a surface many times larger than the originally proposed to the Director of National Parks for the purpose of a National Park. Lawrence³⁵ suggests that the Aboriginal claimants realised that with the park being managed by the Australian National Parks and Wildlife Service on terms and conditions agreed with the NLC they would probably have greater control of non aboriginal use of the region than they would have been able to exercise themselves.

The Commonwealth accepted the recommendations in 1977 and embarked in legislative amendments to enable the arrangement. It marked the first time Aboriginal land was specially leased to a nature conservation agency for the purposes of joint management of the land for conservation. Stage one of Kakadu National Park was declared in 1979 under the *National Parks and Wildlife Act 1975* (NPWA). Stage two and three were declared in a piecemeal fashion, between 1984 and 1996, pending an arduous ongoing debate over whether mining should be allowed at Coronation Hill, located in the culturally significant ‘Sickness Country’.

Unlike Kakadu, the proclamation of a National Park in the Uluru region preceded the hand-back by decades. In 1958 the pressure to support tourism enterprises prompted the excise of the area that is now the Park from the Peterman Aboriginal Reserve to establish the Ayers Rock Mount Olga

³³ Press *supra* note 21

³⁴ *Ibid*

³⁵ Lawrence *supra* note 13

National Park, managed by the Northern Territory Reserve Board. Anangu³⁶ people were expected to settle in Aboriginal welfare sites and were discouraged from visiting the Park. Park management policies remained antagonistic to traditional owners but the Federal government policies shifted towards economic self sufficiency for Aboriginal people. An Aboriginal owned store was thus established under a lease within the Park offering supplies to tourists, becoming the core of a permanent Anangu community inside the protected area.

In 1977 the renamed Uluru (Ayers Rock Mount Olga) National Park was established under the NPWA. In February 1979 a claim was lodged under the Lands Right Act by the Central Land Council (CLC) on behalf of the traditional owners. The claim was disallowed in 1979 because the park was considered alienated crown land, but title to the remaining land was granted to the Katiti Land Trust. The marked hostility in the Federal-Northern Territory relations which involved Aboriginal land and Commonwealth control over protected areas was escalating. In 1983 the Federal government announced its intention of returning ownership of Uluru to traditional owners, outside the land claim process and without consultation of the Northern Territory government. Indeed, inalienable freehold title to the park was granted to the Uluru-Kata Tjuta Aboriginal Land Trust in October 1985, with the opposition of the Northern Territory government regarding the terms of the agreements that had been dramatically voiced in the media through the question ‘Uluru, a national park or for all Australians or a national tragedy?’³⁷

Events in the Northern Territory echoed throughout Australia. In the south eastern coast, the Jarvis Bay Nature Reserve had been proclaimed in 1971. It included lands historically used by the Aboriginal community. In addition, the community had to tolerate the proximity of the Royal Australian Naval College, an airfield, and even a naval bombing range at Beecroft Peninsula. Conflict build up until residents of the Wreck Bay Aboriginal Reserve blockaded the access to Summercloud Bay during Australia day, 1979. Though further extensions of the reserve occurred in the 1980s (including Bowen Island), in 1987 the *Aboriginal Land Grant (Jarvis Bay Territory) Act 1986* granted an area of 403 hectares of freehold land to the Wreck Bay Aboriginal Community Council (WBACC) that the same Act established.³⁸

³⁶ Anangu is the term that Pitjantjatjara and Yankunytjatjara Aboriginal people, from the Western Desert region of Australia, use to refer to themselves.

³⁷ Woenne-Green supra note 23

³⁸ Booderee National Park Plan of Management 2002-2009

In 1992, the Jervis Bay Nature Reserve, additional land and the waters of the Jervis Bay Territory were proclaimed the Jervis Bay National Park under the NPWA. Title to the land was vested in the Director of the National Parks. With the land being vested in the Director further land grants pursued by the WBACC could not be granted under the Land Grants Act and the NPWA as they did not constitute ‘vacant crown land’. While the same argument was uttered in Uluru, here in accordance to the relevant statutory provisions, the ‘significance’ of the land for the Wreck Bay Aboriginal Community (WBAC) and the ‘appropriateness’ of the grant also needed to be determined according to statutory provisions. The community felt that their ‘Aboriginality’ was in question and that ‘they were not seen as Aboriginal enough to run the park like people in Uluru.’³⁹ According to Bauman and Smyth⁴⁰, along with the proclamation of the Jervis Bay National Park the WBACC was offered two places on the Board of Management. The offer was rejected in pursue of whole ownership of the National Park and majority membership in the relevant Board.

The goal was achieved by 1995, after the passing of the relevant amendments to enable the transfer of freehold title of the National Park and the Jervis Bay Botanic Gardens to the WBACC on condition that they were then leased to the Director of National Park to be jointly managed between the Director and the WBACC. Following the Uluru model, the Park was renamed Booderee National Park in 1997. The wider groups of traditional owners of the region, which included the Jerrinja people, traditional owners of Bundarwa and other areas around Jervis Bay, were excluded.⁴¹ Lowe and Davies⁴² observed that ‘Aboriginal ownership goes right through the artificial boundaries that have been set up by governments.’

5. Assessment Criteria

The assessment of the case studies was conducted under the scope of three assessment criteria. The first examines the degree and type of participation the partnership allows for, the second explores conservation under joint management arrangements and the third and last examines livelihoods under joint management arrangements.

³⁹ Woenne-Green *supra* note 23 at 123

⁴⁰ Bauman and Smyth *supra* note 15

⁴¹ Lowes, D. Davies, J., Bundarwa, Berri-werri, and the Bay: Traditional Rights and Bureaucratic Boundaries. In: Baker, R. Davies, J. Young, E, eds. *Working on Country – Contemporary Indigenous Management of Australia's Lands and Coastal Regions* (2001)

⁴² *Ibid* at 257

5.1. Criteria One: Empowerment

Equal partnerships, especially among ‘unequal constituencies’⁴³ can only be achieved through genuinely shared decision making power and devolution. Lawrence identifies degrees of power sharing. At the highest level ‘equal powers have been delegated to the community.’⁴⁴ From there, it decreases to participation in management boards or development of management plans, advisory roles in decision making, down to the lowest level where community is ‘heard but not heeded’ or it is merely informed of decisions already being implemented.⁴⁵ There is a resemblance between this scale and Arnstein’s Ladder of Citizen Participation where the term ‘token participation’ at the lowest end of the ladder is used to describe a situation where consultation mechanisms are in place but do not allow for the citizens to influence the outcome of a decision.⁴⁶

Power, in the context of natural resource use and conservation has been defined as ‘the capacity to have a meaningful (effective) input into making and implementing decisions about how natural resources are used and managed. Having a meaningful role does not mean that an actor makes all decisions, but that his/her inserts are given serious attention in negotiations. Meaningful decision-making also involves implementation. If a decision cannot be implemented or enforced, then the role in decision making does not involve effective power.’⁴⁷ To the extent that poverty can be viewed not only as limited livelihood opportunities but also as vulnerability and powerlessness to make meaningful choices about livelihoods, empowerment can contribute to poverty alleviation.⁴⁸

Determining if resident Aboriginal communities in the case study have been empowered under joint management arrangements involves evaluating the degree and type of participation in a) formal decision making structures (in this case, participation in the Board of Management) b) informal day to day park management c) difficult decisions and, ultimately, in the level of community satisfaction with the present arrangements

⁴³ Lawrence *supra* note 13 at 242

⁴⁴ *Ibid* at 312

⁴⁵ *Ibid*

⁴⁶ Arnstein, S.R., A Ladder of Citizen Participation. *Journal of the American Institute of Planners* (1969) 35 (4) pp. 216-224.

⁴⁷ Fisher, R., et al., *Conservation and Poverty Reduction; Landscapes People and Power* (2008) IUCN

⁴⁸ *Ibid* at 5

5.2. Criteria Two: Joint Management, Traditional Use and Conservation

There remain a number of sceptical observers of shared governance of natural resource management who are critical of its ability to achieve conservation outcomes. Many conservation scientists are uneasy about accommodating biodiversity and people together.⁴⁹ Brockington and Igoe⁵⁰ quote a participant at the World Parks Congress in Durban 2003 expressing what he [a critic of participatory and collaborative approaches] perceived as the ‘drowning of the discussion of themes more directly related to conserving non-human life in the planet.’

The intention is not to examine conservation from a scientific (biophysical) standpoint but rather to determine if there is evidence of conservation outcomes being thwarted by the interplay of the Aboriginal use of the Park and what is accepted as the conservation needs of the Park.

5.3 Criteria Three: Joint Management and Livelihoods

Many of the poorest in the world live in the areas of some of the richest biodiversity.⁵¹ Whether or not it is a ‘geographic coincidence’⁵² the ongoing debate linking conservation and poverty reduction suggests that there is an ‘ethical imperative for conservation to take account of poverty issues’ and that ‘there are often good practical reasons to do so.’⁵³ Conservation should not make the poor worse off by forcing them to bear its cost, and when conservation can contribute to poverty alleviation it should.⁵⁴ Brockington challenges what he calls the ‘principle of local support’⁵⁵ as vital for the success of conservation. He claims that ‘conservation can be imposed because the rural poor are weak, and resistance to conservation, though constant, may be ineffective.’ His argument is that ‘social injustices are to be addressed because they are unjust, not because they are inconvenient.’⁵⁶

The implication for the case being made here is that it should not be assumed – as it was in an early period - that environmental protection is the aim of Aboriginal people in Aboriginal land. Control of

⁴⁹ Adams *supra* at 2

⁵⁰ Brockington, D. Igoe, J., Eviction for Conservation a Global Overview. *Conservation and Society* (2006) 4(3), pp. 424-270.

⁵¹ Fisher *supra* note 47

⁵² Stevens *supra* note 3 at 2

⁵³ Fisher *supra* note 47 at 14

⁵⁴ *Ibid*

⁵⁵ Brockington, D., Injustice and Conservation – Is “Local Support” Necessary for Sustainable Protected Areas? *Policy Matters* (2003) 12, pp.22-30 at 22

⁵⁶ Brockington *supra* note 51 at 29

land has multiple drivers, the main of which appear to be community and cultural survival. Conservation is valued as a means for providing sustainable use of resources.⁵⁷

Reducing poverty for the most part means improving livelihoods which can be conceived as ‘the ways in which people make a living.’⁵⁸ The term livelihood is not used here merely as subsistence but rather in its broader contribution to human well being.⁵⁹ There is an inherent limitation in the outcome of this analysis, voiced eloquently by Igoe.⁶⁰ Igoe suggests that while community conservation is a ‘sexy idea’, little is really known about the opportunity costs of protected areas and therefore it is not possible to know whether communities are experiencing a net loss or a net gain. Too often, he argues, poverty is taken to be a baseline instead of a context and anything conservationists give is automatically considered a benefit. Certainly, there is little evidence to assess if joint management has been able to improve livelihoods of resident communities in the case study Parks. The assessment is limited to available information regarding demographics and socio economic benefits.

6. Assessment

6.1 Criteria One: Empowerment

6.1.1. Participation in the Board of Management

The case study shows that decisions are made at many levels. At the core of the partnership are the traditional owners and Parks Australia, represented by the Director of National Parks. Their interface is the Board of Management, the decision making body established under the Environmental Protection and Biodiversity Conservation Act (EPBC Act), which replaced the *National Parks and Wildlife Act 1975*. Genuine participation is ensured by the majority in the Board of Management being indigenous persons nominated by the traditional owners, appointed like other members by the Minister. In Kakadu the Board has determined that the Chairperson be nominated from amongst the Aboriginal members.⁶¹ The term of the Board of Management has expired and new nominees have been presented to the Minister.⁶² The former Board had 15 members, 10 of whom are traditional

⁵⁷ Lawrence, D., *Managing Parks/Managing 'Country': Joint Management of Aboriginal Owned Protected Areas in Australia*. Research Paper 2 1996-1997. Social Policy Group

⁵⁸ Fisher *supra* note 47 at 5

⁵⁹ Fisher *supra* note 47

⁶⁰ Igoe, J., Field Notes. Measuring the Costs and Benefits of Conservation to Local Communities. *Journal of Ecological Anthropology* (2006) 10, pp.72-77.

⁶¹ Kakadu National Park Plan of Management 2007 - 2014

⁶² Director of National Parks, *Annual Report 2009-2010*. Department of Sustainability, Environment, Water, Population and Communities, Australian Government.

owners which reflect the geographical spread and language groupings. In Uluru the Board presently consists of 12 members of whom 8 are traditional owners,⁶³ selected by tribal leadership.⁶⁴ Unlike Kakadu and Booderee, in Uluru the Aboriginal Board members cannot be at the same time employees of Parks Australia. It was felt that if Board Members were also employees, the meetings would take the appearance of staff meetings and members could feel constraint on what they said.⁶⁵ In Booderee, the Board comprises 12 members of whom seven are representatives of the WBACC. Some of them are at the same time Booderee staff.

The decisions the Aboriginal majority Boards make are meaningful. They relate to the management of the reserve, constrained by the need to be consistent with the plan of management in operation. The Management Plan is prepared in conjunction with the Director, as is monitoring the management of the reserve and advising the Minister on all aspects of the future development of the reserve. The Board cannot make decisions in the absence of an Aboriginal majority. A meeting of a Board must not start and must not continue unless the majority of the members of the Board present are persons nominated by the traditional owners. However, NLC officers and traditional owners in Kakadu would have liked to see a Board with greater powers, especially over budget and finance matters.⁶⁶

Gaps in expert knowledge for making informed decisions have been bridged by the use of expert committees. In Kakadu these committees are the Kakadu Tourism Consultative Committee and the Kakadu Research Advisory Committee (PM). In Uluru the Tourism, Film and Photography Committee, the Cultural and Heritage Committee and the Scientific Committee, comprising Nguraritja⁶⁷ representatives, Parks Australia staff, CLC representatives and experts in relevant fields.⁶⁸

Even if there is evidence of room for meaningful input from Aboriginal Board members, the actual operation of the Boards at least in Kakadu is rather grimly described by Haynes. 'Leaving most of the talking to members of the frequent visiting delegations, the handful of white members, and one or two of their own number, most Aborigines intervened only rarely. These were the same people who, in situations away from these meetings and the park's formal workplaces generally, were capable of lively engagement, story-telling, humour, quiet confrontation, and passionate anger ... It is as if the

⁶³ *Ibid*

⁶⁴ Poirier *supra* note 5

⁶⁵ Lawrence *supra* note 13

⁶⁶ Haynes *supra* note 18

⁶⁷ Nguraritja means the traditional Aboriginal owners of the park in Uluru.

⁶⁸ Kakadu National Park Plan of Management 2007 - 2014

formalities of the Board processes on their own were enough to strangle all semblances of Aboriginal joy and vitality, and to suppress decision-making mechanisms that Aboriginal people traditionally used.⁶⁹

6.1.2. Participation in Day to Day Park Management

Lawrence asserts that in Kakadu there is ‘significant Aboriginal presence in day-to-day management of the Park and that there appears to be a genuine desire and long term commitment on the part of management to have Aboriginal people participate as equal partners.’⁷⁰ Press and Lawrence recognize that ‘while the Board provides the formal and ongoing expression of joint management, the success of joint management lies in the opportunities provided for direct involvement of aboriginal people in day to day decision making and liaison.’⁷¹ Among informal arrangements Press and Lawrence include ‘local meetings to discuss specific issues; the employment of senior traditional owners as cultural advisors; day to day working contact with the traditional owners; and the employment of increasing numbers of young Aboriginal people in all areas of Park management.’

Customary decision making occurs outside the formal ‘western’ structures. The relevance of day to day cooperation is that it reflects the underlying philosophy of joint management from an engaged Aboriginal perspective, where joint management is about ‘working together’ a translation of the Pitjantjatjara⁷² phrase Tjunguringkula Waarkaripaii, currently a formally recognized value of the National Park.⁷³ In order to ensure that customary decision making makes it through to formal decision making structures the Land Councils and the Boards of Management in Kakadu and Uluru developed guidelines to provide for consultation and shared decision making on day to day management issues. Bauman and Smyth note that in Booderee, ‘joint management and the goal of achieving sole management are catalysts that fuel and guide everyday activities of Park management.’⁷⁴

In Uluru, in accordance with the lease conditions, the Director provides funding for the position of Community Liaison Officer, whose role is to liaise between the Mutitjulu Community⁷⁵ and Parks Australia regarding management activities and to present the community’s views to the Board (Plan

⁶⁹ Haynes *supra* note 18 at 89

⁷⁰ Lawrence *supra* note 13 at 261

⁷¹ Press *supra* note 21 at 13

⁷² The language of the Anangu of Uluru- Kata Tjuta

⁷³ De Lacy *supra* 26

⁷⁴ Bauman and Smyth *supra* note 15 at 89

⁷⁵ The Anangu community living within Uluru-Kata Tjuta National Park

of Management). Breeden recounts his encounter with Liaison Officer Jon Willis, who not only had become fluent in Pitjantjatjara (like at least one other non-Aboriginal Park ranger), he had gone ‘through the Law’ and therefore was ‘entitled to know secret-sacred information.’⁷⁶ He recaps on the need for very culturally aware staff ‘the person filling the job must not just reconcile two cultures, he or she must understand both, must live both every day.’ It is not a balancing act; it is a matter of embracing them both.⁷⁷ The experience also provides us with an idea of the decisions that are being made at the bottom. In the case here, they were discussing the location of a walking track at Kata Tjuta. The elders performed a ceremony and after discussions decided it should not pass that way.

A similarly funded position was established to be the first point of contact for day-to-day consultation with the Community and also for issues that are not specifically identified. Booderee also organized a visit to Bowen Island by 15 community members some of whom had never had the opportunity to visit the island.⁷⁸

Finally, the passing on of traditional ecological knowledge (TEK) from senior to younger generations and their engagement to country is extremely relevant for all Aboriginal communities involved in joint management because TEK is a matter of practice and cannot be learnt from a book.⁷⁹ The Junior Ranger program, active in the three Parks provides a valuable opportunity to engage young Aboriginal in the Park management.

6.1.3. Participation in Difficult Decisions

The actual test of the system takes place when the position of the Park authorities and that of the Aboriginal communities is at odds - though it should not be implied that Aboriginal communities hold a single position. Scientific research in National Parks is one example. The perception, particularly in Kakadu and Uluru is that scientific interpretation of cultural practice will remove the information from Aboriginal control (as it has in the case of fire knowledge), that the purpose of research does not respond in the same way to Aboriginal demands - it is perceived as ‘one sided’⁸⁰ -

⁷⁶ Breeden, S., *Looking After Uluru – Kata Tjuta - the Anangu Way*. (1997) at 172

⁷⁷ *Ibid* at 173

⁷⁸ Bauman and Smyth *supra* note 15

⁷⁹ Wohling, M. Reciprocal Thinking in Indigenous Land Management In: Baker, R. Davies, J. Young, E, eds., *Working on Country – Contemporary Indigenous Management of Australia's Lands and Coastal Regions*. (2001) Ch.11

⁸⁰ Lawrence *supra* note 13 at 254

and that there are general assumptions that information should be given away or can be freely accessed, and that it is neutral or available for the general public.⁸¹

Tourism is equally sensitive. Visitors are bound to have an impact on local communities. These impacts include 'loss of privacy, damage to cultural sites, restrictions in hunting and gathering activities and a sense of responsibility for the welfare of guests in their country over whose activities Aboriginal people have little control.'⁸² The number of visitors in the Parks is steadily increasing. For the period 2009-2010, visitors in Booderee were estimated in 450,000; 334,240 in Uluru and 180,480 in Kakadu.⁸³

In Kakadu tourism has long been a contentious. It has left the impression that the Aboriginal people are not benefiting equally despite the fact that the marketing angle is largely Aboriginal culture or the encounter with 'the exotic other'.⁸⁴

In Uluru, tucked away from European contact longer than Kakadu or Jervis Bay, Senior members of the Anangu describe the first period of Piranpa⁸⁵ incursions in Uluru as perplexing and violent. Peter Kanari, who grew up as a nomad in Kata Tjuta recalls the first time he saw white men 'They gave us some old flourbags with holes cut in the sides and in the bottom and made as put them on as shirts. My father had just passed away. After a few days the missionaries moved on ... I stayed in the bush, a naked boy with no father, no trousers and no shirt. Just a flourbag.'⁸⁶ Most were 'terrified of police' who 'hunted and killed people as if they were kangaroos or dogs.'⁸⁷ After World War II tourists began to arrive. [T]jamiwa] describes them as 'sheep or bullocks being suddenly let out of the yard'... 'Bill Harney opened the gate, there's not a lot we can do about it, the gate is open.'⁸⁸ Bill Harney was the first ranger appointed at Uluru.

The climb of Uluru, undertaken by hundreds of tourists a day, is against Anangu Law. It is allowed only for initiated men, and even then only on very special occasions.⁸⁹ Anangu do not understand

⁸¹ Baker, R. Davies, J. Young, E, eds., *Working on Country – Contemporary Indigenous Management of Australia's Lands and Coastal Regions* (2001)

⁸² Smyth *supra* note 16

⁸³ Director of National Parks, 2010. *Annual Report 2009-2010*. Department of Sustainability, Environment, Water, Population and Communities, Australian Government.

⁸⁴ Haynes, C., *Realities, Simulacra and the Appropriation of Aboriginality in Kakadu's Tourism*. In: Keen, I., 2010. *Indigenous Participation in Australian Economy; Historical and Anthropological perspectives* (2010) Ch 10

⁸⁵ Piranpa is the term used to refer to non Aboriginal people (literally white)

⁸⁶ Breeden *supra* note 76 at 150

⁸⁷ *Ibid* at 140

⁸⁸ *Ibid* at 151

⁸⁹ *Ibid*

two day tourists who ‘put it all together in one bucket and shake it up.’⁹⁰ In addition, Anangu are custodians of the land and are responsible for the safety of all visitors. Over 30 people have died attempting the climb, many more have been injured and it is a genuine cause of distress for Anangu. Although according to Breeden, they have been ‘realistic’ and gave their permission to climb Uluru, they would prefer it being closed,⁹¹ not only as it is from time to time for climatic conditions, but for good. The active Plan of Management acknowledges the complexity of managing the climb, commits to promoting the ‘don’t climb’ message (although the extent to which it is achieved is arguable) and declares that Park management is working towards closing it, pending an agreement between the Board and the tourism industry that new visitor experiences have successfully been established, the proportion of visitors climbing falls below 20%, or other cultural and natural experiences on offer are the critical factors when visitors make their decision to visit the park.

In Booderee, Bauman and Smyth⁹² report an incident that was raised during several interviews regarding a request to install an underground power cable through the Park to a Defence installation. Community members of the Board expressed the view that permission should not be granted unless power was also supplied to the WBAC. The Director however authorised the request on the grounds that it was required for safety reasons and that he was operating under the parameters of the lease. The Board finally agreed, but the feeling was that the Board had been overridden by the Director.

6.1.4. Level of Community Satisfaction

There is a regrettable gap on information about the level of Aboriginal satisfaction with the present arrangements. In the case of Booderee, Bauman and Smyth conclude that there is ‘a consensus view that joint management at Booderee is operating successfully, particularly in that the Management Plan is being implemented and progress is being made towards the goal of sole management.’⁹³ Although some Aboriginal staff expressed frustration about the length of time it is taking to achieve sole management, and despite uncertainty about what sole management means, it spurs commitment from the Park management and the community.

⁹⁰ *Ibid* at 190

⁹¹ *Ibid*

⁹² Bauman and Smyth *supra* note 15

⁹³ *Ibid* at 91

De Lacy and Lawson claim that ‘Aboriginal communities who own these Parks in the Northern Territory have expressed strong satisfaction with their operation.’⁹⁴ The perception of Tony Tjamiwa - a traditional owner member (perhaps former member) of the Uluru Board of Management - of two laws coming together is often evoked,⁹⁵ and there are a number of other similar albeit less articulate examples of acquiescence. Peter Kanari, a Senior Anangu commented ‘Now white men and women and black men and women are working together looking after this place. That’s good. That’s very very good.’⁹⁶

In Kakadu however there is mixed evidence, partly as a result of the many competing interests in the equation (mining, conservation, World Heritage Status, Aboriginal rights and aspirations) and partly, as argued by Lawrence, as a consequence of the replacement of ‘informal relations of mutual trust and respect’ responsible for the success of the early period, to an ‘expanding agency bureaucracy and massive grow in the size of the Park.’⁹⁷ Haynes describes the structures of the early days as contributing to centripetality, strengthening bonds between the two groups and especially the common discourse.⁹⁸ In a later period, the commencement of which he signals as the pet shooting incident, described below, he sees the collapse of the joint discourse and other factors that contribute to a centrifugal movement where structure and practice reproduce themselves instead of creating change. Haynes observes that ‘the prevailing feeling of insiders is one of powerlessness to change anything.’

6.2. Criteria Two: Joint Management, Traditional Use and Conservation

Both the EPBC Act and each of the leases between the Aboriginal Land Trusts (and Land Council in the case of Booderee) and the Director of National Parks recognize traditional rights of use for hunting, food gathering and ceremonial and religious purposes.

The core of the debate in Kakadu and to a lesser extent in Uluru revolves around management of feral animals. Adams noted that ‘Environmentalists who are often allied with Aboriginal interests frequently want to eradicate feral species that have become an integral part of Aboriginal subsistence

⁹⁴ De Lacy *supra* 26

⁹⁵ Tjamiwa, T., Tjungurinkula Waakaripai: Joint Management of Uluru National Park. In: Birkhead, J. De Lacy, T. Smith L. eds., *Aboriginal Involvement in Parks and Protected Areas* (1992)

⁹⁶ Breeden *supra* note 76 at 151

⁹⁷ Lawrence *supra* note 13 at 260

⁹⁸ Haynes *supra* note 18 at 279

economy.⁹⁹ In Kakadu, feral animals were introduced long before the Park, and are regarded as the greatest threat to the conservation values it holds. The Management Plan for Uluru claims that in Central Australia introduced predators have been responsible for the extinction of approximately 40% of native species.

Bininj however value some of the introduced animals such as buffalo, cattle and pigs as a source of food and believe in their right to exist on country (where they were born and raised). Aboriginal people in Kakadu have agreed to the removal of wild pigs and the control of domestic animals around outstations but not with the culling of buffalo and the removal of wild horses.¹⁰⁰ Haynes describes a violent incident in Kakadu in 1989, when pet horses owned by Aboriginal residents in the Park and several buffaloes were shot dead by Park staff.¹⁰¹ Residents could hear the sound of the helicopters but ignored what was going on until they saw their dead animals. Management of feral animals in Uluru does not appear to be as controversial, but opinions regarding camel management, including culling, are divided.¹⁰²

In Kakadu hunting using modern technologies is similarly contentious. It is recognized as having been a major issue during the life of the former Management Plan, of particular concern being the use of lead shot, 'a toxic substance that can harm humans, wildlife and the environment.' Today there is an agreement not to use lead shot in the Park.

To be sure there are differing attitudes¹⁰³ when it comes to interpret what traditional means and how resources are valued. Altman and Allen maintain that hunting, fishing, foraging and commercial wildlife utilization are, or have the potential to be major contributors to the economic well being of Aboriginal people and emphasize the importance of subsistence economy in various communities. In their research, bush food production was shown to account for 50% of income in a research conducted in two different communities.¹⁰⁴ Regardless, in striking the balance, the Australian Law Reform Commission found in 1986 that the interests of conservation represented a legitimate limitation on the rights of Aboriginal people to hunt and fish- even if the House of Representatives

⁹⁹ De Lacy *supra* note 23

¹⁰⁰ Lawrence *supra* note 57

¹⁰¹ Haynes *supra* note 18

¹⁰² Kakadu National Park Plan of Management 2007 - 2014

¹⁰³ Lawrence *supra* note 57

¹⁰⁴ De Lacy *supra* note 23

Standing Committee on Environment, Recreation and the Arts had found no proof that Aboriginal practices had resulted in the extinction of native species.¹⁰⁵

Despite a predictable tension in the process of jointly managing natural resources in a cross cultural context as described above, there is no evidence to suggest that conservation outcomes are being thwarted by traditional use of the Park's resources in the case study Parks. Firstly, there are constraints to traditional use imposed by traditional law itself that accepts certain uses while excluding others and imposes restrictions on what, when and where to hunt. There are likewise limitations to traditional use agreed upon in solid Management Plans. As a matter of fact, even if a recent global assessment of management effectiveness in protected areas found that out of 3,080 protected areas, 65% have only basic management,¹⁰⁶ the case study Parks have developed Management Plans periodically and in accordance with the relevant provisions of the EPBC Act and international standards. Kakadu and Uluru are in their fifth Management Plan and Booderee is now beginning its second planning cycle.

Moreover, traditional rights are supported by many Conservation Agencies such as the ACF, the Wilderness Society, and Greenpeace.¹⁰⁷ Traditional use of both National Parks in the Northern Territory have been recognized and commended by the World Heritage reasons for listing. Uluru is declared to meet criteria v) 'outstanding example of traditional human settlement patterns representative of Aboriginal culture, directly associated with religious and cultural traditions'¹⁰⁸ and Kakadu has been acknowledged as it 'offers a privileged field of exploration and observation, as the Aborigines who continue to inhabit this site contribute to the maintenance of the balance of the ecosystem.'¹⁰⁹ Further national and international recognitions are testimony to the perceived satisfaction with the present arrangements.

Many conservation problems that the case study Parks are facing today arise from two hundred years of non-indigenous land use.¹¹⁰ The Kakadu region for example has endured decades of mining, leaving behind 'mine shafts, tailings, old tracks, and radiological contamination in some locations.'¹¹¹

¹⁰⁵ Lawrence *supra* note 57

¹⁰⁶ Global Biodiversity Outlook 3

¹⁰⁷ Lawrence *supra* note 57

¹⁰⁸ UNESCO 1995. World Heritage Committee 18th Session. 12-17 December 1994.

¹⁰⁹ ICOMOS (International Council on Monuments and Sites), 1992. World Heritage List N° 147 bis.

¹¹⁰ Baker, R. Davies, J. Young, E, eds., *Working on Country – Contemporary Indigenous Management of Australia's Lands and Coastal Regions* (2001)

¹¹¹ Kakadu National Park Plan of Management 2007 - 2014

In Booderee the long standing presence of navy facilities have left scars that are still visible today.¹¹² Even now, threats to the Park continue to be largely external. In Uluru for example, tourism is exercising immense physical albeit cultural stress i.e. erosion, souveniring, waterholes contamination.¹¹³

While there is no strong evidence to suggest that conservation is threatened by traditional use of the Park, there is abundant evidence of traditional ecological knowledge enhancing conservation outcomes.

In Kakadu and Uluru an increasing recognition of the contributions of traditional fire management in protecting from damaging late season fires and providing optimum conditions for maintaining species abundance and diversity has prompted ongoing active management of the landscape by the use of prescribed fire. Incidentally, the Plan of Management suggests that the Park's approach to fire management (through low intensity controlled fires) may also reduce greenhouse gas emissions resulting from burning savannah. In Uluru fire management is described as 'the key management tool used to deliver landscape scale ecosystem management in the Park.'¹¹⁴

The Cooperative Cross Cultural Biological Survey conducted by Nesbitt et al and the Anangu Pitjantjatjara Land Management, similarly illustrates the case in point. Though not devoid of challenges, it reveals significant positive outcomes. For example 'TEK, local knowledge and precision tracking skills allowed the survey to greatly extend the quantity and quality of ecological information collected.' For some species, 'information on diet, shelter, response to fire and flood events, predator response, and current and historic distribution was made available ... Anangu local knowledge also assisted in locating survey sites that would maximize the number and variety of habitats that could be studied' particularly 'sites that supported rare and endangered flora and fauna.' Even more, a bird species (the Mallee Fowl) regarded as extinct, whose habitat was not considered to include Central Australia was discovered to continue to exist in the area.¹¹⁵ Conversely, the survey also challenged Anangu's perception about how feral animals are changing the landscape, the density and distribution of species, and the need for increasing physical management. The survey reinforced

¹¹² Booderee National Park Management Plan 2002-2009

¹¹³ Uluru-Kata Tjuta Management Plan 2010-2020

¹¹⁴ Uluru-Kata Tjuta Management Plan 2010-2020

¹¹⁵ Nesbitt, B. Baker, L. Copley, P. Young, F. Anangu Pitjantjatjara Land Management., Cooperative Cross-cultural Biological Surveys in Resource Management: Experiences in the Anangu Pitjantjatjara Lands. In: Baker, R. Davies, J. Young, E, eds. 2001. *Working on Country – Contemporary Indigenous Management of Australia's Lands and Coastal Regions*. Oxford: Oxford University Press. Ch. 13 at 191

the status of senior Anangu as role models and renewed interest in young people. One of the local schools even incorporated surveys and TEK to their curriculum.

A final example is provided by Booderee's Botanic gardens, the only Aboriginal owned in Australia. The Plan of Management reports 'most households from Wreck Bay have had members who worked in the gardens between the late 60s and the present. Community members have made a major contribution to the development of the Gardens through an era where most things were achieved, not with high cost machinery, but with individual and team based effort.'¹¹⁶ The gardens are increasingly involved in conservation of threatened species providing a source of plants for reintroduction into their natural habitats and an insurance against total extinction.

6.3. Criteria Three: Joint Management and Livelihoods

6.3.1 Demographics

The gap in demographics for the populations of the case studies is partly explained by the high mobility of indigenous population.¹¹⁷ However, Baker et al suggest that since the 70s there has been a trend of return to rural localities, or 'homelands' movement resulting from changes in transportation, land rights and self determining policies, although it still represents a relatively small proportion of total indigenous population.¹¹⁸ 'Homelands', or 'outstations', are small communities usually consisting of one or two family groups built on land of particular traditional significance to that family.¹¹⁹ Lawrence, in regards to Kakadu suggests that the current management arrangements facilitated a return of Aboriginal people and that the outstation movement has strengthened.¹²⁰ The hand back of Aboriginal land to traditional owners enables the development of permanent living areas and the opportunity to continue a spiritual relationship in caring for country.¹²¹ Residence in traditional land has 'promoted stronger family and community ties, limits access to alcohol and increases access to hunting and fishing.'¹²²

¹¹⁶ Booderee National Park Management Plan 2002-2009

¹¹⁷ Baker *supra* note 110

¹¹⁸ *Ibid*

¹¹⁹ Uluru-Kata Tjuta Management Plan 2010-2020

¹²⁰ Lawrence *supra* note 13

¹²¹ Lawrence *supra* note 57

¹²² *Ibid*

There are many different clan groups with associations to country in Kakadu. Each clan group is responsible for looking after and speaking of particular areas of country.¹²³ It is estimated that in the early 1980s only one hundred Aboriginal people resided in the Park.¹²⁴ The first year of the Park's life was marked by an increase of approximately one hundred and fifty Aboriginal people who returned to live in country.¹²⁵ By 1992 it had reached approximately 300 people residing in Jabiru and a number of small communities, based on extended family groups located throughout the Park.¹²⁶ In 1997 Taylor's estimate of local Aboriginal population was 533.¹²⁷ Many of the Aboriginal residents are traditional owners and others that have recognized social and/or historical affiliation to the area. Permanent Aboriginal living areas are established at ten or more locations throughout the Park and are serviced and maintained by the Gagudju Association.¹²⁸

In Uluru, the population of the Mutitjulu community in 1985 has been estimated in one hundred and forty, and it had increased to three hundred and eighty five by the year 2000. It was projected to go beyond four hundred by the year 2010.¹²⁹ Taylor explains that while conditions for sustained population growth exist, there is an observed pattern of growth in central Australia 'suggestive of a limit to unfettered expansion with most places levelling off in size at around 300 to 500 people. Population growth beyond that has been accommodated by the formation of new settlements, initially as satellite outstations.'¹³⁰

'Anangu see the existence of a well-functioning community as being important for successful ongoing joint management arrangements for the park.'¹³¹ Support for the 'day-to-day functioning of the community is the responsibility of a range of other Australian Government and Northern Territory agencies for matters including residents' health and welfare, policing, day-to-day community services, infrastructure, employment, training and education.'¹³² Though not legally required to, the Director provides all essential services (power, water and sewerage) which diverts resources from Park management activities. With that exception, the Mutitjulu Community Aboriginal Corporation has for many years managed and serviced the Community area.

¹²³ Kakadu National Park Plan of Management 2007 - 2014

¹²⁴ Press *supra* note 21

¹²⁵ Craig, D., *Indigenous Joint Management of National Parks*. Australian, *Indigenous Law Reporter* (1999) 73

¹²⁶ Press *supra* note 21

¹²⁷ Study Advisory Group, 1997. Kakadu Region Social Impact Study Community Action Plan: Report of the Study Advisory Group. Northern Territory: Environmental Research Institute of the Supervising Scientist.

¹²⁸ Lawrence *supra* note 13

¹²⁹ Taylor, J., *Anangu Population Dynamics and Future Growth in Uluru -Kata Tjuta National Park* (2001)

¹³⁰ *Ibid* at 26

¹³¹ *Ibid*

¹³² *Ibid*

According to Woenne-Green et al, by 1992 there were two hundred Aboriginal residents at Wreck Bay, today Booderee National Park, with numbers steadily increasing.¹³³ The WBACC is responsible for management and servicing of the WBAC.¹³⁴ It also performs several of the functions of a local government authority, as it concerns with housing, social welfare, education, training and health needs of the members of the Community. It is also in charge of protection and conservation of natural and cultural sites on aboriginal land, engaging in land use planning and managing aboriginal land, conducting business enterprises for the economic and or social benefit of the community, and any other functions conferred on it by the legislation.

6.3.2. Socio-Economic Benefits

The Kakadu Region Social Impact Study¹³⁵ broadly confirms that the socio-economic status of Aboriginal people in the Kakadu region is unacceptably low (although perhaps not lower than the broader area). According to the same report the development of Jabiru provided access to primary and high school but continuing problems include enrolment, attendance (which is lower than average for remote community schools), literacy levels and education qualifications. Housing and infrastructure appear to have improved but concerns of overcrowding and the physical conditions of the houses persist. High levels of alcohol consumption are also apparent in the broader region. Health similarly appears to be relatively low despite the provision of health services by the Gagudju Association.

The Mutitjulu community in Uluru too lives in poor social and environmental health conditions.¹³⁶ However, in 1997 the Nyangatjatjara College – a non government secondary school - was established at Yulara by the Nyangatjatjara Corporation, meaning secondary school age children do not need to leave the region to attend school in Alice Springs.¹³⁷

In Booderee, the community's focus on Park issues generally relates to outcomes that enhance their economic development. Improved health, housing and living standards, continue to be a concern¹³⁸ but the housing program is considered successful.¹³⁹

¹³³ Woenne-Green *supra* note 23

¹³⁴ Bauman and Smyth *supra* note 15

¹³⁵ *Supra* note 126

¹³⁶ Wohling *supra* note 79 at 162

¹³⁷ Taylor *supra* note 128

¹³⁸ Booderee National Park Management Plan 2002-2009

¹³⁹ Woenne-Green *supra* note 23

6.3.3 Direct Socio Economic Benefits (Employment and Training)

According to the Director of National Parks indigenous employment in Kakadu, Uluru and Booderee did not meet expectations and remained steady, although indirect employment outcomes have improved. Actions are focusing on replacing inflexible Australian Public Service positions with more flexible arrangements (i.e. traditional knowledge consultancies). Overall the number of indigenous staff (including intermittent and irregular employees) and contractors indirectly engaged to provide services at Kakadu and Uluru increased by 33%.¹⁴⁰

In Kakadu Aboriginal employment has been steadily increasing. In 1994 approximately one third of the staff was Aboriginal¹⁴¹ but by 2001 Smyth¹⁴² reports an increase of 50% of the full time staff and 60% of casual employees. The Indigenous Ranger Program provided salaried job opportunities for Aboriginal rangers in the Park and the opportunity to go on to Australian Public Service roles. Indigenous school apprentices are employed to complete secondary school through participation in paid internships resulting in accredited training in conservation and park management.¹⁴³

However, according to Smyth, ‘most Aboriginal employees remain at the lower employment levels (rangers and administrative assistants). Low literacy levels, limited educational opportunities and the restriction of public service employment conditions all contribute to maintaining the current situation.’¹⁴⁴ He further asserts that the major economic benefits derived from the park are ‘flowing to non-indigenous park management staff and non-indigenous business enterprises associated with the parks.’ The KRSIS confirms the statement, highlighting the fact that regional economic development (towards which Kakadu contributes tens of millions of dollars every year) is not greatly benefiting Aboriginal people in the region.¹⁴⁵ Finally Smyth is unoptimistic. ‘Even if Aboriginal employment levels increase significantly with the park management structure, the majority of Aboriginal people associated with jointly managed parks are likely to remain unemployed and welfare dependent. Aboriginal ownership of national parks has not, and will not in the foreseeable future,

¹⁴⁰ Director of National Parks, 2010. *Annual Report 2009-2010*. Department of Sustainability, Environment, Water, Population and Communities, Australian Government.

¹⁴¹ Wellings, P., Management Considerations. In: Press, T. Lea, D. Webb, A. Graham, A. eds., 1995. *Kakadu Natural and Cultural Heritage Management*. (1995) Ch 8

¹⁴² Smyth *supra* note 16

¹⁴³ Director of National Parks, 2010. *Annual Report 2009-2010*. Department of Sustainability, Environment, Water, Population and Communities, Australian Government.

¹⁴⁴ Smyth *supra* note 16 at 11

¹⁴⁵ Kakadu National Park Plan of Management 2007 - 2014

fundamentally alter chronic levels of Aboriginal poverty, and associated social consequences such as poor health, housing and education.¹⁴⁶

In Uluru, during the life of the former Plan of Management an average of 20% of the Australian Public Service positions in the Park was held by Aboriginal people, (some on a part-time basis). Considerably more were engaged in Park employment on a casual basis, or in services supporting the Park such as commercial tours and the broader tourism industry including work at the Yulara resort. The Park also supported a number of traineeships for Anangu entering the park and Australian Public Service employment through a structured on-the-job learning program in conservation and land management, and provided additional learning and development opportunities to Anangu workers through the staff training program.¹⁴⁷

In Booderee, 18 Aboriginal people are employed as Park staff out of a total of 38, while 35 are employed by the Wreck Bay Enterprises Limited (WBEL) delivering contract services to the Park. Employment of WBAC members has a long history at Booderee, extending back well before the hand back. Some current employees are the second or third generation engaged in managing the protected area.¹⁴⁸ Training and staff development are recognized as important elements of joint management arrangements at Booderee and as essential for the goal of achieving sole management.¹⁴⁹ Training is coordinated by a full time Parks Australia Training Manager based at Park Headquarters, advised and supported by a Training Committee which has developed an integrated training strategy for BNP, WBEL and WBACC. Target groups for the training strategy are WBAC not currently employed and current workforce as well as primary, secondary and tertiary students from the community.¹⁵⁰

Emphasis is given to delivering training that leads to recognized accreditation that will directly assist with furthering employment opportunities within and outside the Park. Some successful training activities include exchange work experience with other Parks Australia protected areas, particularly Uluru. Training of members outside the community, undertaking tertiary studies proved difficult for

¹⁴⁶ Smyth *supra* note 16

¹⁴⁷ Uluru-Kata Tjuta Management Plan 2010-2020

¹⁴⁸ Bauman and Smyth *supra* note 15

¹⁴⁹ *Ibid*

¹⁵⁰ *Ibid*

young community people to adapt to, whereas onsite training or attending day courses appears to have been more successful.¹⁵¹

6.3.4. Indirect Socio Economic Benefits (Aboriginal Commercial Enterprises)

In accordance with the lease provisions, the Director must encourage relevant Aboriginal business and commercial activities and enterprises within the Park. In Kakadu, the Gagudju Association¹⁵² created in 1978 to receive mining royalty equivalent payments operates a variety of commercial enterprises throughout the Park, including the Gagudju Crocodile Hotel in Jabiru, the Gagudju lodge Cooinda Hotel-Motel and the Yellow Water boat tours. The Gagudju Association runs the commercial operation of Warradjan Cultural Centre and is under contract to make and maintain local roads, manage and service the ten park outstations. It has cash investments in a children's fund and operates the women's resource centre. It is considered to be the richest Aboriginal owned association in the Northern Territory but Lawrence points out its problems due to lack of management training, reliance on external management agencies and high staff turnover.¹⁵³ The Gagudju is not the only Association in the Park, the Djabulukgu Association owns and operates the Marrawuddi Gallery at the Bowali Visitor Centre and the East Alligator River Cruise and the smaller Gundjehmi and Minitja Corporation represent other clans in the region.¹⁵⁴

The Wreck Bay Enterprises Limited, a private company wholly owned by the WBACC aims to undertake contract work to generate income for the WBAC and provide employment, training and capacity development to residents of the WBAC. It employs members of the WBACC and is led by an Executive Officer with renowned corporate experience. Business activities currently focus on delivering services for the Booderee National Park, operating park entrances and collecting fees, cleaning in all park buildings, maintaining roads and tracks, and ground maintenance at the Botanic gardens. Additionally it performs ground maintenance of the Naval Air Base on the Jervis Bay Primary School and provides administrative, land management, road maintenance and cleaning services to WBAC.¹⁵⁵

¹⁵¹ Bauman and Smyth *supra* note 15

¹⁵² The name Kakadu actually comes from the way Baldwin Spencer heard the word Gagudju (Haynes 2010a)

¹⁵³ Lawrence *supra* note 13

¹⁵⁴ *Ibid*

¹⁵⁵ Bauman and Smyth *supra* note 15

7. Findings

7.1 Empowerment

The case study Parks are not perfectly equal partnerships. But they do lay out the basis for meaningful participation for which an Aboriginal majority board that acts as a counterbalance of the Director's function is critical and the increasing recognition of the role of negotiation is a positive indicator. The need for building consensus – especially when making conflictive decisions – requires understanding that non-indigenous decision making structures are not representative of the customary decision making process and frequently Aboriginal members need time to take the matters back to their communities in order to decide, even more considering that in Aboriginal tradition, different people can speak of and have responsibilities for certain areas. The operations of the meetings need to be as cross cultural, as transparent and engaging as possible, to ensure the legitimacy of the process is not disproportionately contingent upon the individuals involved (a concern that was visible in Kakadu, particularly in the earlier period), and to avoid strangling the Aboriginal voice.

Along with the policy decision making body, day to day decision making occurs at the Park management level. Woenne-Green et al point out that a 'vital dimension in giving effect to traditional owner's rights in management is participation in the routine day to day operations of the Park', which in turn makes it necessary to 'identify and routinise' the role of Aboriginal communities in joint management and ideally 'expanding the concept of routine to incorporate both conventional and Aboriginal perceptions of land management.'¹⁵⁶ For day to day decision making to be meaningfully influenced by Aboriginal people cross culturally aware staff are essential. One of the key elements identified by the ATSIC Policy Report on success of indigenous organizations (a study that included joint management arrangements) is excellent working relationships between Indigenous and non indigenous staff.¹⁵⁷ The examples provided in Uluru of non Aboriginal staff learning not only the language but undertaking initiations under traditional law are truly remarkable. They represent a shift from expecting Aboriginal people to learn non-aboriginal ways, to engagement with Aboriginal customs.

¹⁵⁶ Woenne-Green supra note 23 at 286

¹⁵⁷ Australian Collaboration and Australian Institute of Aboriginal and Torres Strait Islander Studies, 2007. *Organising for Success Policy Report Successful Strategies in Indigenous Organisations* at 13

Although we examine empowerment in the broader context of decision making, the ‘transition from good will to empowerment’¹⁵⁸ can only be achieved by the detachment of assumptions that become evident at a more subtle level, as it does for example in the meaning and generality endorsed to certain terms which can be easily manipulated, such as ‘traditional’, or ‘indigenous land management’, or in expecting Aboriginal people to respond in a certain way or at a certain time and manner.

Indigenous ownership of the land is the foundation of genuinely participative joint management arrangements because it provides leverage for negotiation and enables Aboriginal people to participate as equal partners. In fact, Bauman and Smyth suggests that ‘typically where legal recognition of aboriginal rights to traditional land is strong, protected area joint management arrangements provide for significant aboriginal involvement in decision-making, accompanied by rights to live within and use resources of protected areas, albeit subject to provisions of plans of management. Where such legal recognition is weak or unresolved, Aboriginal input into decision-making tends to be advisory only and rights to living areas and resource use are often constrained.’¹⁵⁹

De Lacy and Lawson (1997) argue that the importance of clearly establishing territorial and tribal rights of local aboriginal communities cannot be overemphasized.¹⁶⁰ The broader political claim of regaining ownership of land involves securing a place to live, access natural resources and reassert spiritual responsibilities.

A precondition for the legal recognition of traditional owners is identifying them - a task that social impact and demographic attempts in Uluru and Kakadu have revealed remains largely unresolved. In the Northern Territory the establishment of Land Trusts to hold title on behalf of traditional owners provides a legal solution, but to for the most part the actual impacted population, whether traditional owners, residents, Aboriginal people connected with the region through blood ties, intermarriage, clan relationships, shared dreaming, and so on, remains somewhat uncertain. The problem is particularly relevant when claims are lodged by multiple clan groups. In Booderee only one group of relevant traditional owners was recognized, thus the reference to the WBACC is taken to mean traditional owners, while the other (the Jerrinja people) was excluded. Special attention needs to be given to each context, to offer a solution which reflects the indigenous rather than the government boundaries, promotes cooperation, is local, immediate and flexible.

¹⁵⁸ Woenne-Green *supra* note 23 at 286

¹⁵⁹ Bauman and Smyth *supra* note 15 at 5

¹⁶⁰ De Lacy and Lawson *supra* note 26

7.2 Joint Management and Conservation

Objections against joint management based on the fear that Aboriginal control of land will result in lack of protection of endangered populations within the National Parks are not well founded at least as far as the case studies go, not because indigenous people 'are 'at one' with the land walking gently through it, singing and dancing in a loincloth'¹⁶¹ – an image that is patronising and fails to account for the pragmatic dimension of indigenous relation to land - but because they have accumulated thousands of year of ecological knowledge. However, indigenous knowledge alone is not enough to address the current level of degradation of the environment.¹⁶² The potential lies in the reciprocation of knowledge. In order to make that happen, humbleness and sensitivity are of the essence. Research cannot be one-sided, and general assumptions about indigenous knowledge – the most basic of which is the expectation that it should be freely available - need to be overcome. Wohling refers to the 'I'm the boss syndrome'¹⁶³ as a source of conflict and mistrust. He suggests that it is important to remember that they are the bosses, surrendering to their control, listening, observing and letting go of cultural paradigms.

7.3. Joint Management and Livelihoods

Perhaps the weakest link in the case studies is the socio-economic benefits related to joint management. They are understudied as far as the case studies go and poverty largely lingers on as do associated social consequences.¹⁶⁴ Joint management is not the cure for poverty, but there are significant benefits it can provide (and significant harm it can avoid). Land ownership means living in and caring for the land, and the prospective of economic self sufficiency and self determination. Aboriginal people who are connected to that land are returning to it, and communities are invigorating. Arrangements should be made to accommodate and provide for incoming population. Progressively, they are participating in decision making and land management (including cultural heritage management). Some are employed in the Park management. Though Aboriginal numbers in Park staff are increasing, positions are held at the lowest levels. The situation can only hope to improve when educational opportunities and literacy and numeracy levels are advanced. The mere proximity of schools is commendable but not enough on its own. Training programs that allow for

¹⁶¹ Wohling *supra* note 79 at 160

¹⁶² Baker *supra* note 110

¹⁶³ Wohling *supra* note 79 at 158

¹⁶⁴ Smyth *supra* note 16

completion of secondary school degrees or provide accreditation are useful. But because ‘institution-favouring factors such as literacy and relevant life experience’¹⁶⁵ are a persistent obstacle to the promotion of Aboriginal staff, it is necessary to introduce a certain degree of flexibility in public positions to value not only western, but indigenous knowledge and to cater for Aboriginal people (i.e. appropriate roles and flexible hours). It is also indispensable to encourage Park staff and traditional owners working together ‘out there’ as opposed to non-aboriginal staff doing exclusively office or computer work. Aboriginal owned enterprises are functioning – in Booderee apparently with some success - but they need support that does not create dependency, and mechanisms should be in place to ensure that they are accountable to the community(s). Sharing the land has inevitable downsides as well. A significant intrusion comes from the arrangement, not only from tourism, social and scientific research, film and photography, but also from a baffling bureaucracy.

Although joint management is conceived as a two way partnership, in order to ‘close the gap’ many other actors are involved. The way in which these other actors interact with Park management and the community should become part of the dialogue to enhance positive outcomes and mitigate negative impacts. The tourism industry is one example. Attempts have been made to ensure that tourism operators undergo cross-cultural training and to promote Aboriginal employment in the industry (in jobs that may or may not be suitable). The negative impacts of tourism should be of major concern and dealt along with the industry. Haynes (2010b p.180) suggests that in Kakadu, ‘perhaps the real dollar increases are less important than traditional owners and other Aboriginal people reappropriating ways in which their culture is represented, as a means of decoupling themselves from the mimesis in which they have become unwittingly involved.’¹⁶⁶ He claims that Aboriginal people have been ‘short-changed in their contributions to the Tourism of Australia’s North.’ Other organisations include neighbour associations, such as those that represent major land tenures in the area, whether industries - particularly extractive industries - , military or social, and other government agencies involved in welfare, education, health and infrastructure.

8. Conclusions

Joint management is not an outcome. It is as a process that begins – as demonstrated in Kakadu - before it has even been established, with negotiations over appropriate structural guarantees to

¹⁶⁵ Haynes *supra* note 18 at 128

¹⁶⁶ Haynes, C., Realities, Simulacra and the Appropriation of Aboriginality in Kakadu’s Tourism. In: Keen, I., 2010. *Indigenous Participation in Australian Economy; Historical and Anthropological perspectives*. ANU E Press. Ch 10 <t 181

institute a framework for the arrangement.¹⁶⁷ At the outset, identifiable goals and objectives of conservation of natural and cultural heritage and needs and aspirations of traditional owners need to be stated.¹⁶⁸ These must be continuously reassessed to identify what has worked, what has not and why and to see how indigenous aspirations are being met, or how these aspirations have evolved. Equally essential is that the formal structures of the arrangement are flexible enough to adapt. In his ten year review of Gurig National Park, Foster describes how, because joint management was established by an Act of Parliament, many details are left to be worked out through the Plan of Management, a document that is designed for a different purpose.¹⁶⁹ Instead, the leases in the case studies seem to fit the purpose as they are conceived as cyclical documents where renegotiation is explicitly provisioned.

In many ways joint management is a process of building trust. The impact of colonialism and exclusionary conservationism in indigenous peoples across the world has left profound scars and the mentality of dominant culture persists. Essentially, as parties at both ends feel more comfortable and confident with each other, joint management moves forward. Lawrence notes for example that the more recent Plans of Management of Kakadu have increasingly focused on Aboriginal input. Similarly, every lease renegotiation has led to better outcomes for indigenous people. In Uluru, Wohling reflects about the importance of developing relations and becoming “non strangers”.¹⁷⁰ He observed that ‘if a different person arrives to do the job the Anangu involved in the project may decline to work with them.’ Gibson in fact observes that Aboriginals ‘define people through relationships rather than roles.’¹⁷¹

Adjustments take time, but if Parties are able to engage, it is the only way to make real progress. The process can be boosted by sharing successful experiences across Protected Areas. The ATSIC policy report on Success on Aboriginal Organisations suggests that there is too much emphasis in the literature on failure in reporting of indigenous circumstances which has the adverse effects of masking important successes, dispiriting aboriginal people and reinforcing stereotypical views of indigenous people in the general population.¹⁷² There is no guarantee that what is successful in one place will be successful somewhere else, but the experience of sharing the Junior Ranger Program

¹⁶⁷ Lawrence *supra* note 13

¹⁶⁸ *Ibid*

¹⁶⁹ Foster, David., *Gurig National Park The First Ten Years of Joint Management* (1997)

¹⁷⁰ Wohling *supra* note 79 at 161

¹⁷¹ Gibson, L. 'Who you is? Work and Identity in Aboriginal New South Wales' in Keen, I. (ed). *Indigenous Participation in Australian Economies; Historical and Anthropological Perspectives* 2010 at 129

¹⁷² *Supra* note 158

suggests it as an option. Exchange of experiences also occurs through training in other jointly managed National Parks.

The sincerity of the commitment is crucial because it is not a onetime thing. Resources, energy, compromise and compassion need to be exercised by partners over time. In that sense, the goal of sole management in Booderee appears to give a new meaning to the process which prompts engagement. Then again, joint management is not so much about what is declared but about what gets done on the ground.

An aftermath of three decades of joint protected area management in Australia reveals a ‘colonial thread’¹⁷³ because it is predominantly dominated by the non-Indigenous mentality. But if practice and agency can reproduce old patterns of inequity, they can also move it towards a more equal balance. Even if, save noteworthy exceptions, limited updated evidence is available, it would appear that joint management has been able to foster acceptable conservation outcomes and participatory decision making mechanisms. Power sharing is stronger in the act of working together in the Park. Joint management is the action of working together, rather than the formal, single, discourse. Joint management has not been as effective in providing socio-economic benefits. Certainly it has provided for a homeland return to land that is now legally owned, where communities become active and can access natural resources and sometimes direct or indirect employment. But poverty and inequality persist. The prevailing question then is what joint management is expected to deliver. Is the powerlessness reported by Haynes in Kakadu entirely related to joint management or is it also related to the way society at large distributes its inequality? The question does not intend to let joint management off the hook – on the contrary, we suggest that social impacts of joint management are largely understudied and that this in itself is symptomatic- but to force the recognition that joint management is the result of a ‘contradiction’,¹⁷⁴ it is a space for many values that define many uses, for which the previous alternative was exclusion.

¹⁷³ Haynes *supra* note 18 at 278

¹⁷⁴ *Ibid*

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