



THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

**Building an Implementation Framework for Agreements with
Aboriginal Landowners: A Case Study of The Granites Mine**

Rodger Donald Barnes

BSc (Geol, Geog) Hons
James Cook University

A thesis submitted for the degree of Master of Philosophy at

The University of Queensland in 2013

School of Architecture

Abstract

This thesis addresses the issue of implementation of agreements between Aboriginal people and mining companies. The primary aim is to contribute to developing a framework for considering implementation of agreements by examining how outcomes vary according to the processes and techniques of implementation. The research explores some of the key factors affecting the outcomes of agreements through a single case study of The Granites Agreement between Newmont Mining Corporation and traditional Aboriginal landowners made under the *Aboriginal Land Rights Act (NT) 1976*. This is a fine-grained longitudinal study of the origins and operation of the mining agreement over a 28-year period from its inception in 1983 to 2011. The history of The Granites from the first European contact with Aboriginal people is compiled. This sets the study of the Agreement in the context of the continued adaption by Warlpiri people to European colonisation. A study of such depth and scope of a single mining agreement between Aboriginal people and miners has not previously been undertaken. The research on the origins and negotiations demonstrates the way the Agreement reconciled very disparate interests between Aboriginal people and the mining company. The Agreement served a range of purposes including consent of traditional owners to development of the mine on Aboriginal land and provision of benefits to Aboriginal stakeholders. Negotiations occurred at a time of strong political hostility to Aboriginal land rights. A range of political agendas intersected in the course of making the Agreement which created an extremely complex and challenging environment not only for negotiations but also for managing the agreement once it was signed. In terms of outcomes, the longevity of the mining operation, the lack of disputation, continued capital investment and corporate acquisitions of the mine were evidence of the security the Agreement provided to the mining company. Less certainty was found in relation to the beneficial outcomes for Aboriginal stakeholders. Two main areas were analysed, being Aboriginal employment and payments to Aboriginal stakeholders. In terms of long-term sustainable benefits for Aboriginal people the research found that achieving positive outcomes required highly committed and collaborative approaches to implementation. The research confirmed that a range of components identified in the literature needed to be in place, including strong corporate commitment and company leadership, positively articulated goals, effective organisational structures, and sufficient financial and human resources. The research also revealed that in addition to these components positive and effective working relationships between the parties were critical. At the centre of these relationships were highly committed personnel dedicated to achieving positive outcomes for Aboriginal stakeholders.

Declaration by author

This thesis is composed of my original work and contains no material previously published or written by another person, except where due reference has been made in the text. I have clearly stated the contribution by others to jointly-authored works that I have included in my thesis.

I have clearly stated the contribution of others to my thesis as a whole, including statistical assistance, survey design, data analysis, significant technical procedures, professional editorial advice, and any other original research work used or reported in my thesis. The content of my thesis is the result of work I have carried out since the commencement of my research higher degree candidature and does not include a substantial part of work that has been submitted to qualify for the award of any other degree or diploma in any university or other tertiary institution. I have clearly stated which parts of my thesis, if any, have been submitted to qualify for another award.

I acknowledge that an electronic copy of my thesis must be lodged with the University Library and, subject to the General Award Rules of The University of Queensland, immediately made available for research and study in accordance with the *Copyright Act 1968*.

I acknowledge that copyright of all material contained in my thesis resides with the copyright holder(s) of that material. Where appropriate I have obtained copyright permission from the copyright holder to reproduce material in this thesis.

Publications during candidature

Barnes, R, 2009. 'Mining and Land Rights in Central Australia'. *Dialogue* 28 2/2009. J of the Academy of Social Sciences, Canberra.

Publications included in this thesis

No publications included.

Contributions by others to the thesis

No contributions by others.

Statement of parts of the thesis submitted to qualify for the award of another degree

None.

Acknowledgements

This thesis has been a long time in the making. My supervisors, Professor Paul Memmott and Professor David Brereton, stuck with me and gave me consistent support. I appreciate greatly their insights and am privileged to have been associated with their respective research centres, the Aboriginal Environments Research Centre and the Centre for Social Responsibility in Mining. I thank them for access to the resources of those Centres and acknowledge colleagues and friends I made. In particular, I acknowledge Joni Parmenter, Julia Keenan, Daniel Franks and contemporaneous RHD students, Mai Vo and Mirella Gavidia for their collegial support and interest in my research during my candidature.

I acknowledge the support and assistance of Warlpiri people for allowing this project to be undertaken, including traditional owners and affected community members. Special thanks to Henry Cook Jakamarra, Rex Granites Japanangka, Warren Williams Japangardi, Bess Price Nungarrayi, all of whom taught me very much about Central Australia and facilitated this research. I acknowledge the traditional owners who have been involved in story of The Granites and who have now passed away.

Many thanks for the the assistance I received from the CLC and, in particular, thanks to David Ross, David Avery, Julie Ann Stoll and James Nugent for their backing. Important also were Newmont personnel who encouraged and enabled the project. Thanks especially to Christine Charles, Sally McMartin, Bill Hoskins, Brian Fowler, Paul Davies and Mike Slight.

Desert Knowledge CRC (now Ninti One) provided a scholarship that enabled me to undertake the project. I am grateful to Jan Ferguson from DKCRC for her enthusiasm and support for research in Central Australia.

Thanks also for the support of my family; Charles Barnes, who read drafts of my thesis, as well as Rigby Barnes, Kynan Barnes and Jonathan Barnes for their help.

I am grateful to Lu Sexton of Marginalia for copy editing my thesis. Also thanks to Audrey Nelson from Newmont and Cath Pattenden from JKTech Pty Ltd for reading final drafts of my thesis and Bianca Foggiatto for assistance with formatting.

Keywords

Aboriginal people, Indigenous people, Granites, Tanami, Mining, Agreements, Land Rights, Implementation, Central Land Council, Royalties.

Australian and New Zealand Standard Research Classifications (ANZSRC)

ANZSRC code: 160501 Aboriginal and Torres Strait Islander Policy, 50%.

ANZSRC code: 160403 Social and Cultural Geography, 40%.

ANZSRC code: 160104 Social and Cultural Anthropology, 10%.

Fields of Research (FoR) Classification

FoR code: 1605 Policy and Administration, 50%.

FoR code 1604 Human Geography, 40%.

FoR code 1601 Anthropology, 10%.

Glossary of terms

AAMC	Aboriginal Associations Management Centre
ABA	Aboriginal Benefits Account
ALP	Australian Labor Party
CLC	Central Land Council
CLP	Country Liberal Party
CMA	Consolidated Mining Agreement 2003
CSRM	Centre for Social Responsibility in Mining, University of Queensland
DBS	Dead Bullock Soak Mineral Lease (South) 154
DEWR	Australian Government Department of Employment and Work Place Relations
DME	Northern Territory Department of Mines and Energy
EL	Exploration Licence
FIFO	‘Fly-in, fly-out’ commuting to and from a mine via air charter
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GMAAAC	Granites Mine Affected Area Aboriginal Corporation
GMLs	Gold Mining Leases
ICMM	International Council for Mining and Metals
ILUA	Indigenous Land Use Agreement
ML(S) 8	Mineral Lease (South) 8
MCA	Minerals Council of Australia
MMSD	Mining, Minerals and Sustainable Development
NNTT	National Native Title Tribunal
NLC	Northern Land Council
NFM	North Flinders Mines Ltd
NT	Northern Territory
NTED	Northern Territory Department of Education
WETT	Warlpiri Education and Training Trust

Table of Contents

1. Introduction.....	1
1.1. Rise of agreement making.....	3
1.2. Research on agreement outcomes	6
1.3. Research aims.....	8
1.4. Significance of The Granites as a case study	9
1.5. Limitations.....	13
1.6. Research methods.....	14
1.6.1. Primary interviews	15
1.6.2. Secondary sources	17
1.7. Implementation issues	18
1.7.1. Developing a conceptual framework.....	24
1.8. Conclusion.....	25
2. History of The Granites.....	27
2.1. Warlpiri first contact with miners	27
2.2. The Granites ‘gold rush’	31
2.3. Warlpiri experience with historical mining.....	35
2.4. Origins of the modern-day mine	42
2.4.1. Advent of land rights.....	44
2.4.2. Warlpiri Land Claim	47
2.5. Conclusion.....	51
3. The Granites Agreement.....	54
3.1. Negotiation of the original Granites Agreement – 1983	55
3.1.1. Traditional owner consultations	57
3.1.2. Financial terms	62
3.2. The Variation Agreement – 1985	67
3.3. Dead Bullock Soak Agreement – 1990	70
3.4. Consolidated Mining Agreement – 2003	73
3.5. Changes in mine ownership	75
3.6. Conclusion.....	76
4. Aboriginal employment.....	80
4.1. Implementing Aboriginal employment, training and contracting	82
4.1.1. Stalled beginnings	84
4.1.2. Early employment initiatives	89
4.2. Establishing an influential precedent	91
4.2.1. Invoking Agreement employment terms and conditions	94
4.2.2. Employment from Aboriginal communities in the Tanami region	96
4.2.3. The Yapa maintenance crew	101

4.3. Conclusion.....	102
5. Financial disbursements.....	105
5.1. Associations in receipt of negotiated payments	106
5.1.1. Janganpa	106
5.1.2. Kurra.....	107
5.1.3. Warlpiri Education and Training Trust (WETT)	108
5.2. Statutory payments for mining on Aboriginal land.....	108
5.2.1. Statutory ‘affected areas’ payments	112
5.2.2. Profit-based royalties.....	115
5.2.3. Aboriginal Associations Management Centre.....	116
5.3. Disbursement of royalties by Aboriginal associations	118
5.3.1. Financial investment	125
5.4. Introducing a community development approach.....	128
5.4.1. Expert input.....	134
5.4.2. Implementation of programs	138
5.4.3. Community Development and GMAAAC.....	142
5.4.4. Aboriginal acceptance of community development approach	145
5.5. Conclusion.....	147
6. Thesis Conclusion	151
7. Bibliography	163
APPENDIX 1.....	175
Changes of ownership of The Granites Mine	175
NFM in control – 1983 to 1993	175
Normandy years – 1994 to 2001	181
Newmont takeover – 2002 to 2011	184

List of Tables

Table 1. Mining agreements with Aboriginal people in Australia up to 2008.	10
Table 2. Agreements made over The Granites operation and associated tenements.	54
Table 3. Company chronology.....	75
Table 4. ABA payments to GMAAAC from 2006 to 2011 inclusive.	114

List of Figures

Figure 1. Location of The Granites, Northern Territory.	2
Figure 2. The original ration buildings at Lajamanu as at 2011.	41
Figure 3. Estimates of Aboriginal employment at The Granites.	82
Figure 4. Entry signed erected 1991 in Warlpiri “no food, petrol or accommodation”.	88
Figure 5. The Granites Welcome Centre 2009.	99
Figure 6. Diagrammatic representation of payment pathways.	112
Figure 7. Framework for considering implementation of mining agreements.	153
Figure 8. Conceptualising agreement-making between Aboriginal people and miners.	161

1. Introduction

Major mining projects have enormous social, environmental and economic consequences. Resources extraction and construction of associated infrastructure alter landscapes, bring an influx of personnel and create sites of intensive economic activity often in areas where there was no pre-existing large-scale development. The impacts of such changes are most acutely felt by communities that live in the surrounding areas. In many parts of Australia those affected are Aboriginal, with an often cited figure of over 60% of mining operations neighbouring Aboriginal communities (MCA 2011:64). In northern Australia, and in particular the Northern Territory where this study is set, all of the mining operations occur on land in which Aboriginal people have an interest.

For Aboriginal people the effects of mining development are intensified as cultural aspects, such as spiritual attachment to land, introduce additional social and cultural dimensions to the mix. In settler states such as Australia, these issues can merge with latent and usually unresolved problems that persist in the aftermath of violent dispossession of Aboriginal people from their land, and subsequent marginalisation from dominant society. In this context the evidence more often suggests the impact of mining on Aboriginal people has historically been negative:

Mining's injection of capital and infrastructural resources into previously neglected areas may give better access to the benefits of national economic development, but there have been no circumstances where the Indigenous groups' development goals have been successfully linked to those of the mining corporations. On the contrary, the increased marginalization and disempowerment of local Indigenous communities as a consequence of mining developments has illustrated the difficulty in matching development aspirations, and it has focused on the frequency with which goals are in conflict (Connell & Howitt 1991:1).

It is in this zone of mismatching interaction that formal agreements are used to manage the array of legal, social, cultural, environmental and economic issues that arise from large-scale mining on Aboriginal land.¹ Indeed, agreements between Aboriginal people and miners are

¹ In this thesis the 'agreements' referred to are legal contracts between mining companies and Aboriginal groups who have an interest in the land affected by a company's exploration or mining activities. Agreements can be voluntary common law contracts, or more typically, negotiated pursuant to legislation such as the

increasingly promoted as the most favourable means of resolving competing interests, ensuring mutual understandings and delivering beneficial outcomes to Aboriginal stakeholders (ISS 2001:18; Allbrook & Jebb 2004:7; Langton et al 2006:5; Langton, Tehan & Palmer 2004:25; O'Faircheallaigh 2004:303). This thesis is concerned with how such agreements operate to manage the complexity of issues arising from mining on land in which Aboriginal people hold an interest.

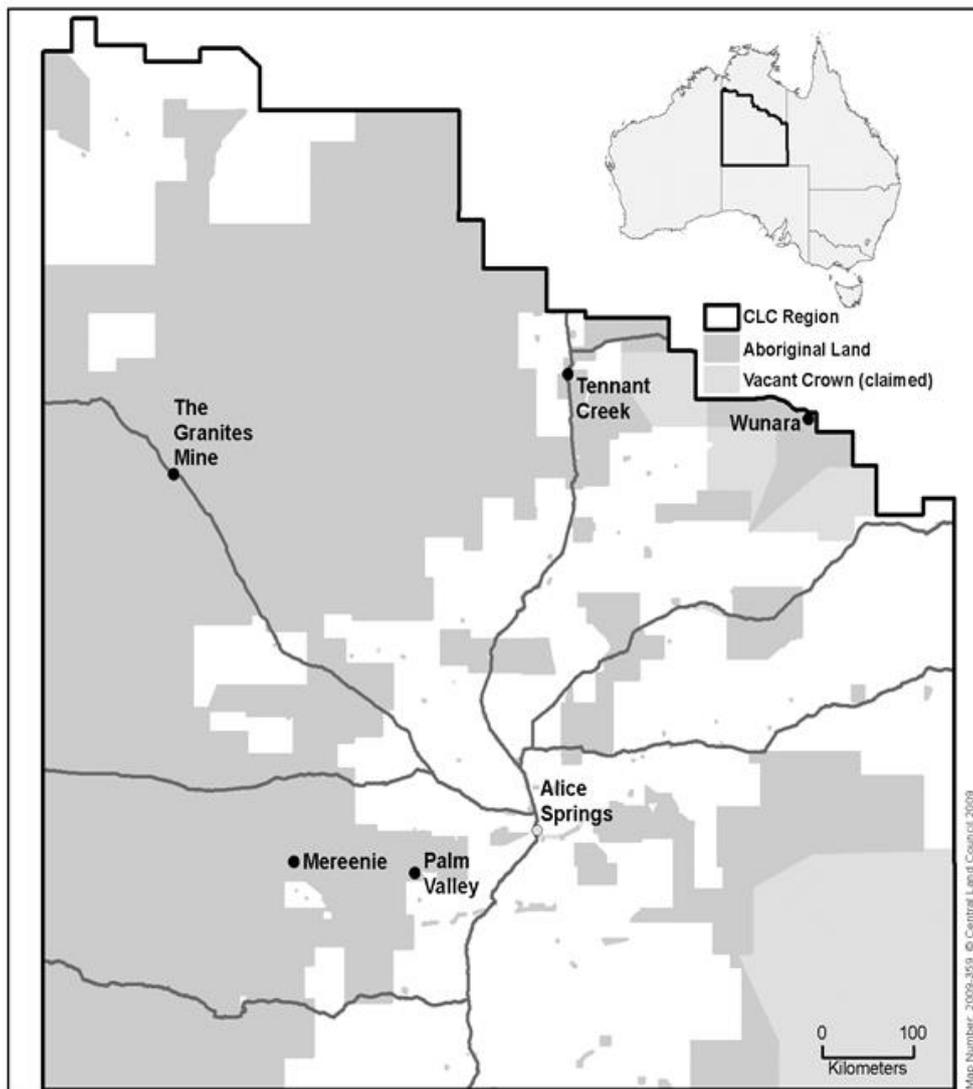


Figure 1. Location of The Granites, Northern Territory.

Native Title Act 1993 and the *Aboriginal Land Rights (NT) Act 1976*. Agreement terms and conditions define the understanding of the parties and establish processes for future dealings. Substantive matters generally include such things as: support of project and approval; recognition of Aboriginal interests; compensation and payments to Aboriginal landowners; sacred site and cultural heritage protection; cross-cultural instruction; Aboriginal employment, training and contracting; liaison and communication; and environmental protection.

The motivation driving the research is to understand how better agreement outcomes could be attained through improved practice of implementation.² The objective is to increase understanding of factors, both positive and negative, that contribute to the outcomes under agreements. This is pursued through a single longitudinal case study of The Granites Agreement made over Aboriginal land in Central Australia under the *Aboriginal Land Rights (NT) Act 1976 (Cwth)*.³ The location of The Granites is shown in Figure 1.

1.1. Rise of agreement making

Indigenous people have long sought recognition and to redress historical injustices and redefine future interactions through negotiation of agreements (Langton et al 2004:1). Major advances in Australia were realised once the assimilationist policies evident up to the late 1960s gave way to legislative frameworks that promoted negotiated outcomes with Aboriginal people. Enactment of the Land Rights Act and state legislation such as the South Australian *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* in particular conveyed significant control over access to Aboriginal land for exploration and mining (Mazel 2006:167). Agreement-making has been a significant feature in the Aboriginal policy landscape since then, with the first agreements entered into in 1978 by the Northern Land Council (NLC) over the Ranger Uranium Mine and Kakadu National Park under provisions of the Land Rights Act (Langton & Palmer 2003:2).

Statutory recognition of Aboriginal land rights was limited substantially to the Northern Territory and South Australia up until the High Court of Australia's decision in *Mabo (2)* in June 1992. The decision altered the Aboriginal policy landscape irrevocably. Australian common law now recognised that a form of 'native title' may exist where Aboriginal and Torres Strait Islander people have maintained a continuous connection with their land since the acquisition of sovereignty by the British (McIntyre 2003:8, 18). In response to the decision, the Federal Government passed the *Native Title Act 1993*, which "deliberately made negotiation and dispute resolution core features" (Tickner 1995 cited in Meyers 1996). The Native Title Act anticipated grants of future acts, such as exploration and mining titles, occur only where "every reasonable effort has been made to secure the agreement of the

² In this thesis 'implementation' refers to the management and practice applied to the working of the agreement following its signing and involves the actions and processes to enact its provisions.

³ In this thesis the *Aboriginal Land Rights (NT) Act 1976* is subsequently referred to as the 'Land Rights Act'.

native title holders through a special right to negotiate” (Neate 2003:9, 2004:14, 2006a:4, 2006b:3, 2007:15).

The National Native Title Tribunal (NNTT), established under the Native Title Act to administer native title claims and oversee negotiations, from its inception has promoted agreement-making as “the way forward” and fundamental to achieving “a positive approach to the resolution of land use issues” (French 1996:23). As such, the NNTT considers governments have a duty to facilitate negotiation over proposals to use land for economic purposes (Neate 2004:33).

A distinctive feature of the contemporary political and social setting as compared to the late 1970s and 1980s is the extent to which the government, mining and Aboriginal sectors concur that securing legal agreement over mining operations is the most efficient and responsible approach to resource development affecting Aboriginal people. Some researchers even suggest there is “politically bipartisan support for agreement-making as the preferred method by which to address conflicts or address issues surrounding the recognition of native title” (O’Faircheallaigh 2004:303). Indeed, as a policy approach, agreement-making has survived changes of governments of differing political persuasion. For example, in weighing up the recommendations of the 2005 review of the mining provisions of the Land Rights Act, the conservative Howard Coalition Government chose options that provided “mechanisms for encouraging agreement.” The objects of the amendments passed were to streamline negotiations over exploration and mining agreements and to “improve the access to Aboriginal land for these purposes for the benefit of all groups” (Brough 2006:10).

While the mining industry has not always been a great proponent for substantive engagement with Indigenous people, over the last decade it has become increasingly sophisticated in the area of Indigenous relations. Ever since 1995, when Leon Davis, Chief Executive Officer of CRA Ltd (precursor to Rio Tinto), publicly declared his company’s acceptance of Aboriginal interests, the mining industry has shifted from an oppositional stance to land rights towards seeking an “active partnership with Aboriginal people” (Harvey 2004:204).

Through the global mining industry’s Mining, Minerals and Sustainable Development (MMSD) project in 2002, the mining industry underwent a major realignment of corporate values to a point where the importance of a ‘social licence to operate’ is emphasised and a responsibility for mining to contribute to global pursuit of sustainable development was

recognised (IIED 2002:4, 62, 156, 389).⁴ The shift in the mining industry has been profound. Mitch Hooke, Chief Executive Officer, Minerals Council of Australia (MCA) spoke of agreement-making “as a collective path for both industry and Indigenous peoples.” He concluded that reaching agreement is not only good for the particular company and respective community but “also good for the country as well” (2004:4). One of the values subsequently adopted by the MCA in its Indigenous Relations Statement was to:

Promote the negotiation of mutually beneficial and sustainable agreements as an effective mechanism through which to achieve the intended outcomes of sustainable relationships and partnerships between minerals companies and Indigenous communities (MCA 2007).

At sites where rights and interests are clearly established there has been a demonstrated willingness for some mining companies to formalise relationships with affected Aboriginal groups. Rather than navigate the complex and expensive legal processes surrounding native title there has been an identifiable trend toward mining companies opting to sign Indigenous Land Use Agreements (ILUAs).⁵ John Dow, former Chief Executive Officer, Newmont and former MCA Chairman, suggested that through this approach the mining industry might “achieve what native title was setting out to do in the first place and that is to provide mutually beneficial outcomes for communities and the companies working with them” (ABC 2004).

Shifts in the miners’ attitude were greeted positively by Aboriginal groups. For instance, David Ross, Director, Central Land Council (CLC)⁶ speaking to the MCA cited outcomes of a mining agreement in Tennant Creek where local Aboriginal people had benefited through employment:

The CLC would like to devote more of its resources and efforts to achieve these types of positive outcomes – to achieve even higher rates of Aboriginal employment and keep

⁴ The world’s largest mining companies commissioned the MMSD project in 1998 as part of the Global Mining Initiative that followed the 10th anniversary of the Rio Earth Summit. It was an extensive study of the societal issues the industry had to confront in response to the global sustainable development agenda.

⁵ ILUAs are agreements available under the Native Title Act that avoid the ‘right to negotiate’ provisions with respect to future acts. ILUAs are certified by the relevant native title representative body and registered with the NNTT. All native title holders are bound by the ILUA. In this way certainty is offered to proponents, and native title holders are able to make deals without necessarily having to lodge a native title claim or make objections.

⁶ The CLC is the equivalent body to the NLC, responsible for the southern part of the NT as shown in Fig. 1.

them there. If this is part of the mining industry's sustainable development agenda, then we want to be part of it (Ross 2004:4).

Similarly the Goldfields Land and Sea Council (GLSC), based in the mining town of Kalgoorlie in Western Australia, sought to accommodate mining companies' interests and became an enthusiastic proponent for negotiations:

[The GLSC] has struck numerous agreements with mining companies that have facilitated exploration and mining throughout the region, while safeguarding Aboriginal culture. [It has] sought to increase Aboriginal participation in the regional economy by securing a range of mutually beneficial protocols and agreements with individual miners and their representative organisations (Wyatt 2005:9).

Through making agreements, mining companies recognise Aboriginal rights and interests in the project land. The broad aim is not only to minimise or avoid adverse impacts but also to maximise opportunities for Aboriginal people to engage with and benefit from mining. Through negotiated outcomes, the potential arises for Aboriginal people to benefit from development and share the wealth generated from their land. In turn, such an approach allows development to proceed without objection or disputation. The mining company thereby gains the certainty needed to secure long-term large capital investment.

It is clear from the discussion above that each of the major sectors, government, Indigenous, and mining, view agreements as integral to re-setting relationships between Aboriginal people and miners. As such, agreements have become "an unavoidable part of the Australian political and economic landscape" (Langton & Palmer 2003:10). It can be assumed that these objectives and values will persist for the foreseeable future provided that the legislation outlined herein promoting Aboriginal land rights remains in place.

1.2. Research on agreement outcomes

Despite fundamental support across the sectorial interests for agreements some academic researchers, however, remained less than enthusiastic about agreements as effective policy instruments to address Aboriginal social and economic disadvantage. A major research project, which studied the extent three major agreements (located in Western Australia, the Northern Territory and Queensland respectively) delivered improvements amongst the Aboriginal stakeholders, found that overall the outcomes were disappointing. Dependence on the state remained high and there was marginal or nil improvement in the social

wellbeing of Indigenous communities as measured by the standard social indicators (Altman 2009:4). The research concluded:

Development outcomes resulting from the agreements have been highly variable and dependent on many factors including histories of colonisation, the nature of mines, the value of negotiated benefits packages, and the forms of Indigenous engagement with the mine economy (Altman 2009:30).

Because achieving positive outcomes has been elusive, efforts to improve practice have ensued. For instance, a ‘best-practice’ review of agreements by the Australian Minerals and Energy Environment Foundation in 2001 as part of the MMSD project found that three considerations were important in reaching agreements and “attention to each is crucial to whether an agreement eventually delivers positive and sustainable outcomes” (ISS 2001:48):

- a) negotiation process;
- b) agreement content; and
- c) implementation.

The report recommended that “as much attention should be given to implementation as to the negotiation process and content” as this can dictate the success or shortfall of an agreement (ISS 2001:vii).

Ciaran O’Faircheallaigh (1995b:17, 2000:18, 2003a:6) has studied the impact of agreements for over three decades. He has consistently highlighted the importance of implementation and the fact that concluding an agreement does not automatically bring about the outcomes provided for in the written document:

reaching agreement in itself neither resolves issues raised by resource development nor ensures that development delivers substantial benefits to Indigenous people. Agreements must first be put into effect, and it is becoming increasingly apparent that successful implementation cannot be taken for granted (O’Faircheallaigh 2002a:1).

As such there is a pressing need for further analysis on the outcomes and results of agreement making (O’Faircheallaigh 2004:305). While a “substantial body of literature” has emerged on the process of agreement-making and many aspects of the agreements’ nature and content, “implementation issues receive virtually no attention in the literature on agreement-making in Australia” (O’Faircheallaigh 2002a:1); most of it deals with negotiation frameworks, native title law, negotiation processes and practices.

With large-scale mining the stakes are highest at the outset of the project when there are large investment decisions pending and crucial government approvals needed. It is understandable the parties invest much effort and many resources into the negotiation and drafting of mining agreements at this stage. There is, however, a need to turn the focus onto implementation, as a report to the NNTT found:

To date, a lack of attention to implementation and sustainability issues in agreement making literature is apparent. This may indicate a general failure to effectively monitor and implement agreements. The apparent absence of interest in agreement implementation appears illogical given the level of resources, both financial and human, that go into establishing agreements (Allbrook & Jebb 2004:3).

While the importance of implementation is recognised in the literature, research based on experiences with actual enactment of agreements is extremely limited. As a result development of good practice is hindered because:

No established models or frameworks exist in relation to implementation issues involved in agreements between indigenous peoples, developers and governments, with little writing or research in the implementation area to draw on (Allbrook & Jebb 2004:2).

1.3. Research aims

The primary aim of the research is to contribute to developing a framework for considering implementation of agreements by examining how outcomes vary according to the processes and techniques of implementation.

The research explores some of the key factors affecting the outcomes of agreements through a fine-grained case study of The Granites Agreement between Newmont Mining Corporation and traditional Aboriginal landowners. Specifically, the research:

- examines the original Granites Agreement signed in 1983 and subsequent associated agreements, including the intent and purpose and the context in which they were written and negotiated,
- investigates the implementation of the key beneficial components of the Agreement for Aboriginal people over the period from 1983 to 2011,
- documents the key outcomes of the agreements, whether positive or negative, as perceived by both the Aboriginal stakeholders and the mining company, and

- identifies the critical relationships and other factors that contributed to achieving positive outcomes for both Aboriginal people and the mining company.

A secondary aim is to document the story of The Granites Gold Mine so that its origins, development, and significant events are recorded for posterity.

Taking a cross-disciplinary approach and using a narrative style, this thesis presents research on the historical background and context to The Granites Agreement. The actions and events are traced in implementation of the Agreement over a 28 year history from its origins in 1983 to 2011. The research focuses on the two main components that form the cornerstone of the benefits for Aboriginal stakeholders: the Aboriginal employment and training provisions (Chapter 5); and the financial payments to Aboriginal groups (Chapter 6). By examining how these components were put into effect, the outcomes are analysed within the context of differing modes of implementation. Conclusions are drawn that identify the key implementation factors that determined the outcomes of The Granites Agreement. The analysis enables propositions to be made on how factors such as the organisational structures, corporate strategies, policies, and associated human relationships, affect the outcomes of the agreement, whether positive or negative.

As part of the analysis a preliminary framework is constructed, which is intended to improve understanding of implementation issues and to allow researchers to theorise more generally about what is occurring with implementation at other mine sites. The lessons learned from this case study are ultimately intended to assist mining companies and Indigenous groups to better plan and resource appropriately the implementation of agreements in order to maximise the potential of achieving mutually beneficial outcomes.

1.4. Significance of The Granites as a case study

For a number of reasons The Granites Agreement (together with associated agreements) provides a pertinent case study to research implementation. Signing of the Agreement in 1983 made it one of the earliest agreements negotiated between Aboriginal groups and mining companies in Australia. It was the first mining agreement made in Central Australia and the first non-energy agreement under the Land Rights Acts. It operated continuously since that time as at the time of writing, although it has been modified by subsequent review and renegotiation. Table 1 situates The Granites Agreement and related agreements in the

Tanami in the context of agreements made between Aboriginal groups and mining companies across Australia over major mining operations (it does not include exploration agreements or non-producing sites).

A range of agendas intersect under the auspices of the Agreement that provide an opportunity for a detailed examination on how complex social processes operate between parties with contrary views and interests. The interactions take place over nearly three decades, over which time the social and political backdrop changed, particularly with respect to the increasing emphasis on sustainable development and the elaboration of corporate social responsibility.

Table 1. Mining agreements with Aboriginal people in Australia up to 2008.

Agreement name	Date	Mining Company (and Parent)	Rep Body	State	Legislt'n	Commodity	Comments
Ranger ¹	1978	ERA (Rio Tinto)	NLC	NT	ALRA	uranium	Operating
Nabarlek ²	1979	Queensland Mines	NLC	NT	ALRA	uranium	Operations ceased
Argyle Good Neighbour ³	1980	Argyle Diamond Mine (Rio Tinto)	KLC	WA	AHA (WA)	diamonds	Incorporated into Argyle Participation Agreement
Mereenie ⁴	1981	Santos	CLC	NT	ALRA	oil, gas	Operating
Palm Valley ⁵	1982	Magellan	CLC	NT	ALRA	gas	Operating
Jabiluka ⁶	1982	ERA (Rio Tinto)	NLC	NT	ALRA	uranium	Suspended
The Granites ^{*7}	1983	Newmont	CLC	NT	ALRA	gold	Consolidated with DBS in 2003
Tanami Mine Joint Venture ^{*8}	1990	Newmont	CLC	NT	ALRA	gold	Related agreements - 1995, 1998, 2001
Dead Bullock Soak (DBS) ^{*9}	1991	Newmont	CLC	NT	ALRA	gold	Consolidated with Granites in 2003
Cape Flattery-Hope Vale ¹⁰	1992	Cape Flattery Silica Mines (Mitsubishi)	Hope Vale	Qld	ALA (Qld)	silica sand	Agreement with community
Mapoon-Skardon River ¹¹	1994	Skardon River Kaolin	Mapoon	Qld	ALA (Qld)	kaolin	Agreement with community
Yandicoogina Regional Land Use ¹²	1997	Rio Tinto Iron Ore (Rio Tinto)	Gumala Ab Corp	WA	NTA	iron ore	Rep Body not a party
Gulf Communities ¹³	1997	Zinifex (Rio Tinto)	CaLC	Qld	NTA	zinc	
West Cape Communities Coexistence ¹⁴	2001	Rio Tinto Aluminium (Rio Tinto)	CYLC	Qld	NTA	bauxite	Mature operation when signed
BHP Area 'C' ¹⁵	2001	BHP Billiton	PNTS	WA	NTA	iron ore	PNTS not a party
Chariot Mine ¹⁶	2002	Giants Reef Mining	CLC	NT	ALRA	gold	Operations ceased
Argyle Participation Agreement ¹⁷	2004	Argyle Diamond Mines (Rio Tinto)	KLC	WA	NTA	diamonds	Mature operation when signed
Bootu Creek ¹⁸	2004	OM Holdings	NLC	NT	NTA	manganese	1 st mining ILUA in NT
Coyote Mine ¹⁹	2005	Tanami Gold	KLC	WA	NTA	gold	with Tjurabalan people
Groote Eyland ²⁰	2006	GEMCO (BHPB)	ALC	NT	ALRA	manganese	Mature operation
Molyhil ²¹	2007	Thor Mining	CLC	NT	NTA	molybdenum tungsten	2 nd mining ILUA in NT, 1 st in central Australia
*Newmont Tanami Operations							
Abbreviations							
Representative Bodies				Legislation			
ALC - Anindilyakwa Land Council		KLC - Kimberly Land Council		ALRA - <i>Aboriginal Land Rights (NT) Act 1976</i> (Cwth)			
CLC - Central Land Council		NLC - Northern Land Council		NTA - <i>Native Title Act 1993</i> (Cwth)			
CaLC - Carpentaria Land Council		PNTS - Pilbara Native Title Services		ALA - <i>Aboriginal Land Act 1991</i> (Qld)			
CYLC - Cape York Land Council				AHA - <i>Aboriginal Heritage Act 1972</i> (WA)			
References							
¹ (Altman 1983:56), ² (Altman 1983:59), ³ (Doohan 2006:181), ⁴ (Altman 1983:51), ⁵ (Altman 1983:51), ⁶ (Altman 1983:64), ⁷ (Central Land Council 1998:2), ⁸ (Central Land Council 1998:2), ⁹ (Central Land Council 1998:3), ¹⁰ (O'Faircheallaigh 1995b:10), ¹¹ (O'Faircheallaigh 1995b:13), ¹² (Scambary 2007:165), ¹³ (Scambary 2007:107), ¹⁴ (Crooke, Harvey & Langton 2006:97), ¹⁵ (Indigenous Studies Program 2007), ¹⁶ (Indigenous Studies Program 2007), ¹⁷ (Doohan 2006:19), ¹⁸ (Northern Land Council 2004), ¹⁹ (Waddell 2006), ²⁰ (Gemco 2006), ²¹ (MiningNews 2007).							

As with uranium mines in the ‘Top End’, Nabarlek and Ranger, The Granites is located entirely on Aboriginal freehold land owned by traditional owners pursuant to the Land Rights Act. The Granites Agreement was negotiated under the mining provisions of the Act, which convey significant power to traditional owners to control access to their land. Aboriginal interests were actively promoted by the representative statutory agency, the CLC, which is the entity that entered the Agreement on behalf of traditional owners. Although negotiated early in the history of the Land Rights Act, there were several agreement precedents and legal and technical experts available to draw on, so in many ways The Granites Agreement represents a benchmark with respect to negotiating capacity and giving effect to Aboriginal land rights.

Of significance is the fact that mining at The Granites has occurred continuously for nearly three decades without any major disputation or disruption of operations. The mine has developed from disused historical goldfield to a world class operation entirely under agreements made with Aboriginal landowners. Newmont’s Tanami Operations based at The Granites was Australia’s fifth largest gold mine by output, producing 462,200 ounces in 2006-07. At the peak of open-cut mining, 2004 to 2005, the operation was the second largest producer of gold in Australia (Surbiton 2007). The mine has been a profitable corporate asset over this period for each of its owners.

Another important outcome for the miners was that traditional owners granted access to large areas of surrounding Aboriginal land that is highly prospective for gold and led to the development of further deposits. This situation contrasts with other mining operations with agreements in Australia, such as the Ranger Uranium Mine in the Top End and the Century Mine in the Gulf of Carpentaria region, north-west Queensland. At Ranger, traditional owners have continuously resisted uranium mining from the outset (GAC 2010). At Century, Aboriginal people have directly sought to disrupt mining activities by occupying the camp mess hall (Scambary 2007:236). Research on The Granites provides an opportunity to investigate the reasons for the apparently smooth operation and identify to what extent the implementation of the Agreement has contributed to such a situation.

Being a longitudinal study over 20 years allowed changes over time to be discerned to assist the analysis of implementation. For instance, ownership of the mine has changed three times over the period of operation as a result of company takeovers. This gives the opportunity to

explore whether different corporate styles and approaches to the operation of agreements influence outcomes.

Furthermore, the overarching political and social context in which the Agreement has operated has changed during the period of operation. Overt political hostility toward Aboriginal land rights existed in the Australian community in the 1980s when the mine commenced. The early phase was marked by a fervent oppositional stance by the mining industry against Aboriginal land rights. Over the study period, the effects of globalisation, coupled with society's increased expectations for corporate responsibility, caused the mining industry in Australia to recast its policy agenda to reflect the principles of sustainable development. An opportunity exists therefore to gauge the practical effects these political changes have had at the point of operations at The Granites.

Despite the significance of The Granites as one of Australia's largest gold mines, very little academic work has been undertaken that documents the operation. One of the few publications dealing specifically with the enactment of The Granites Agreement is cultural geographer Richard Howitt's chapter in his co-edited book on Indigenous People and Mining, entitled *Aborigines and Gold Mining in Central Australia* (1991). This was published some five years after mining commenced. Howitt (1991:135) examines the newly acquired power the Warlpiri, who are the traditional Aboriginal landowners of The Granites, gained under the Land Rights Act to "negotiate the terms on which development proceeds and to obtain some direct financial benefit from development". He found that while the Warlpiri were better off than other groups studied, the effects of mining have been both positive and negative. Income from mining and increased employment presented valuable opportunities, however, concern over the environment and country, confusion over legal processes, social disruption and disputation, confounded the positive outcomes. The Warlpiri had not escaped the "wider processes of social change." Howitt (1991:136) concluded that the primacy of legal and political processes around agreement-making makes it difficult for Aboriginal people and the CLC to manage social impact issues.

The research for this thesis offers insights into how the Warlpiri and their representative organisation, the CLC, adapted to such social change and managed social impact in the years that followed Howitt's early assessment.

From this research there are specific local and regional findings significant for Central Australia as well as much of general interest about activities in Central Australia. The

findings from the research will be available for both the CLC and Newmont to inform their respective resourcing, structures and policies in relation to on-going implementation of The Granites Agreement or any future agreements. Furthermore, using the conceptual framework proposed will allow generalisations to be drawn about what is occurring at other mine sites in relation to implementation. This will offer practitioners insight to and suggestions for improving implementation practice to achieve positive outcomes and avoid negative outcomes. Overall this research is intended to increase the general knowledge of issues around the operation of agreements. In particular the research will improve understanding of how an agreement's outcomes are affected by the processes and techniques of implementation.

1.5. Limitations

This study shows how an agreement worked in practice at a single site. Documenting the experience is intended to assist both Indigenous groups and mining companies to plan and resource appropriately the implementation of other agreements in order to maximise the likelihood of success and achievement of positive outcomes. A limitation of this research is the extent to which findings from a single case study may be generalised more widely. Some of the findings will be unique to this case study. By discerning broader trends in the findings of this research lessons can be learned which may be useful in other sites provided local conditions are carefully considered.

Another difficulty within this area of research generally is the high degree of confidentiality that surrounds particular agreements. This arises from the fact they are legal contracts, which are naturally held privately by the parties. Resultant frustrations have caused some researchers to call for greater transparency both in the process of agreement-making and in the content of an agreement (O'Faircheallaigh 2003a:15, 2003b:7). The approach taken in this research is to acknowledge and accept the legal and commercial realities that demand confidentiality. Sensitivity over maintaining confidentiality of the content of agreements has been fully respected.

A major factor enabling the research was that the researcher was known to the parties, through having worked from 1988 to 2007 in the CLC's mining unit managing consultations with Aboriginal traditional owners over exploration and mining access across the CLC region and working on negotiations of agreements. During this time the researcher developed good working relationships with the respective mining companies with whom the

CLC was dealing, including Newmont. Based on the primary aims of the research and knowledge of the experience and background of the researcher, both the CLC and Newmont formally supported the research. In addition, the researcher was known to some of the key traditional owners of The Granites. On that account he was able to inform them of the intent of the research and obtain their endorsement. This was formalised through a resolution for support from the Granites Mine Affected Areas Aboriginal Association (GMAAAC) committee.⁷ A high degree of trust has been extended via the support of these parties. Hence a great deal of care has been taken by the researcher not to infringe that trust or breach confidentiality.

The researcher was not employed by the CLC at the time of the research and adopted the stance of an objective investigator as far as possible. Only limited access to historical CLC files was utilised to document the early negotiations and origins of the agreement. Access was granted on the condition the CLC files remained confidential and no identifying file numbers were disclosed. Hence referencing in this thesis to the source material sighted on CLC files is limited to “CLC files”. Most of the other research data comes from the interviews conducted as part of this research. Participants were generally very willing to be involved based on the fact the explicit rationale for the project was to make some of the experiences under The Granites Agreement more accessible in order to increase understanding of implementation issues and to assist future engagement at this and other sites where applicable.

The research proposal was submitted to the University of Queensland’s Behavioural and Social Sciences Ethical Review Committee for ethical clearance.⁸

1.6. Research methods

Data on the development and operation of The Granites gold mine and associated operations was collected from a range of sources under two broad data-collection methods:

- a) qualitative targeted semi-structured interviews were conducted with key people involved in the negotiation and management of the Agreement including, Central Land Council officers, mining company personnel,

⁷ GMAAAC is the main Aboriginal association in receipt of statutory royalty payments from The Granites.

⁸ Ethical Approval number 2008000797 was obtained on 17 Jun 2008.

traditional owners and other Aboriginal people, for example mine employees and affected community members; and

- b) searches of written material available from existing literature and archival sources, including publicly available documents, some limited land council records and some mining company data on Aboriginal employment.

1.6.1. Primary interviews

The targeted face to face interviews were conducted with key mining personnel and CLC officers with knowledge and experience with the development, implementation and operation of the Agreement. A semi-structured interview format was used to record the participants' experiences, perspectives and views of the functioning and operation of the Agreement. Where appropriate, the interviews also recorded the participants' perceptions and experience of specific aspects or subject areas of the Agreement, for example financial, employment or environmental aspects. Of particular interest was the filling in of factual gaps in the written sources of data, as well as elucidating the nature of relationships and factors affecting those interactions.

A slightly different approach to interviews with traditional owners was used. One-on-one interviews were appropriate for some Aboriginal participants. However for the most part, with Aboriginal participants, discussions were held with small groups. In such groups certain individuals took a lead role in response to inquiries and questions; input from others varied from substantial to sporadic. Rather than viewing this negatively as someone 'capturing' the meeting, this was interpreted as the dominant individual taking a spokesman-like role and representing the common view of the group. Their technique involved taking great care to ensure that the others concurred. This occurred through a process of the others witnessing the statements given and expressing concurrence through mannerisms such as nodding or explicitly expressing their affirmation. In these circumstances silence can be taken as concurrence depending on the context.

'Standard English' is not the primary language of communication for many of the Aboriginal participants. Interpreters were not available in most interviews so other communication techniques were used to ensure effective communication. For example, in concluding interviews the researcher synthesised his understanding of explanations given and tested these with the group in order to confirm the accuracy of his understandings. The researcher was highly cognisant of the fact that a response to a direct question from a non-

Aboriginal person to an Aboriginal person in this context is likely to draw an answer in the affirmative (gratuitous affirmation), no matter what the Aboriginal respondent actually thinks. Much care was taken to either avoid direct lines of questioning or posing propositions that draw a simple 'yes'. Questions were posed either in terms of alternatives or expressed as open-ended statements that could be discussed. Most interviews with Aboriginal participants were recorded.

The Warlpiri people, who largely make up the communities affected by the mine, are collectively very experienced at engaging with academic researchers and outside agents seeking their view. This is a result of a long history of participating in university-based research, land claims and land use consultations. Nevertheless a pervasive shyness is evident when expressing views to outsiders. To stimulate discussion and focus attention on the research in this cross-cultural context, the researcher prepared a large format (A1 format) poster that was mostly photographs relevant to the research. Photos of Aboriginal people in mining-related situations were an effective way to generate interest and draw out participants' experiences and views on the research topic. Photos that included images of deceased individuals could not be used as they would invoke extreme remorse.

The data collection was framed around seeking responses to the following questions:

1. What were the most important goals and expectations of the parties in making the agreement? Hypothesised responses could be:

a) For the mining company

- legal requirements, permitting, access to land,
- establishing good relationships with Aboriginal landowners, avoiding disputation,
- reputation and corporate responsibility, and
- contributing to the social and economic well-being of host communities.

b) For Aboriginal groups

- gaining recognition and respect as landowners,
- recognition and protection of distinct culture,
- mitigating social and environmental impacts of the operation,
- monetary payments, financial independence, and

- economic participation opportunities, such as training, employment, and contracting.

2. What does each party consider to be the outcomes of the agreement? Are there any unintended or undesired outcomes? Possible hypothetical unintended or undesired outcomes might be as follows:

- inflated expectations,
- social division, increased anti-social behaviour,
- financial dependency,
- loss of human capital due to increased mobility, and
- negative cultural effects.

3. Has the nature and extent of outcomes varied during the period of the agreements and what factors contributed to the different outcomes, whether positive or negative?

4. What strategies, methods and processes were used to implement the agreement and have they changed?

5. How does each party view their relationship with each other over the period of the agreement?

Where participants consented, a hand-held digital device was used to create audio recordings of the interviews.⁹ The interview data has been de-identified so that only initials of the participants are used to reference the interviews (unless participants agreed to be identified). Interview data was analysed using qualitative analysis software called *Nvivo*. Interviews were transcribed and coded in relation to the research questions. All interview data has been kept confidential to the researcher and stored in accordance with the University of Queensland ethical requirements.

1.6.2. Secondary sources

The types of available written materials collected included:

⁹ The device was an Edirol R9 by Roland.

- published and publicly available material such as company and land council annual reports, conference papers and speeches, press releases, electronic newspaper records, archives, books,
- academic journal articles and other published papers, and
- some early internal land council and company documents, including correspondence from CLC files; policy and strategy documents; public statements and other announcements, research papers and reports.

Data from written sources and newspaper reports were compiled to develop a chronology of the developments at The Granites under the agreements, identifying major events and actions over the study period. Following O’Faircheallaigh (2002b), an analysis of actions and responses of the parties as the Agreement is implemented will aim to identify the goals and expectations of the major actors. Announcements, press releases and speeches also provided valuable qualitative data on organisational and personnel attitudes and priorities.

1.7. Implementation issues

Whereas a comparative study may enable conclusions to be drawn based on the trends or themes found across different sites, using a single case study requires alternative methods to evaluate the organisation and analysis of data. A range of implementation issues were identified through a review of the literature. The relevant literature is discussed in this section. The issues identified are collated in order to lay the initial foundation of a conceptual framework against which data from the case study can be analysed.

O’Faircheallaigh (1995b, 2002a, 2002b, 2003a) provides the most consistent and sustained analysis of issues around the implementation and enactment of mining agreements drawn primarily from research conducted on the implementation of aspects of the Ranger and Nabarlek agreements over the period 1978 to 1987. The agreements were fundamental to implementing government policy on uranium mining in the Alligator Rivers region of the Northern Territory. Interactions under these agreements are the subject for developing new approaches to policy evaluation (O’Faircheallaigh 2002b). Focusing on two components under each agreement, Aboriginal employment and payments to Aboriginal groups, his analysis explained and evaluated outcomes in terms of “the actions and responses of actors, stakeholders and institutions as policies and programs are developed and implemented over time” (O’Faircheallaigh 2002b:230).

Drawing on this early research O’Faircheallaigh (2003a) considers how to develop a comprehensive framework to address implementation issues and points to several key factors that need to be taken into account in the structuring of negotiations as well as in the framing and drafting of agreements i.e. negotiation process and agreement content. He suggests certain factors have to be addressed to “maximise the prospects that agreements will lead to achievement of the parties’ stated objectives” (2003a:6-20):

- clear and precise goals,
- sufficient resources for implementation,
- explicit lines of responsibility,
- strong commitment by the parties,
- support of main political actors,
- appropriate institutional structures,
- effective design of initiatives, and
- support of the groups which are supposed to be the beneficiaries of the initiatives.

O’Faircheallaigh’s findings are supported by other researchers who have examined specific mining agreements. Anthropologist, David Martin (1998), for instance, in discussing the economic development of the Century Mine, Gulf Communities Agreement identified the provision of on-going resources for implementation and monitoring as not only consistent with international best practice but one of the “key issues in the negotiation of both development-specific and regional agreements with Indigenous peoples” (Martin 1998:4).

Allbrook and Jebb (2004) drew extensively from O’Faircheallaigh’s work and examined the:

- a) Western Cape Cooperation Agreement between Comalco and native title holders in Cape York, Queensland; and
- b) Burrup and Maitland Industrial Estates Agreements in the Pilbara region of Western Australia.

An innovative aspect of the Burrup agreement is the inclusion of an ‘Implementation Deed’, which “operates both as an implementation monitoring document and as an agreement in itself” (Allbrook & Jebb 2004:15). Focusing on implementation and sustainability of agreements, Allbrook and Jebb (2004:19-29) compiled and summarised necessary components and approaches in agreements that ensure that outcomes envisaged by agreements are implemented. These include:

- the resources for implementation such as funding of institutional arrangement,
- mechanisms for review,
- formal implementation plans,
- dispute resolutions processes, and
- building governance capacity of both Indigenous and mining parties.

Another study (Crooke et al 2006) reported on a review conducted at the behest of the mining company of the Western Cape Communities Co-existence Agreement over Rio Tinto Alcan's Weipa bauxite mine. This study (Crooke et al 2006:105) identified three key themes related to effective implementation:

- company leadership with implementation,
- development of a robust local economy, and
- local governance and administration.

The authors emphasised special management attention was needed to nurture the ongoing relationship with local Aboriginal people along with greater awareness and resourcing (Crooke *et al* 2006:95).

Anthropologist, Ben Scambary (2007) presented a profundity of data in his doctoral thesis on how three separate mining agreements in northern Australia have played out since their inception. These are the Ranger Agreement, Yandi Land Use Agreement in the central Pilbara region of Western Australia and the Century Gulf Communities Agreement (Scambary 2007:1). His work was a "multi-sited ethnography" on the relationships between the mining company Rio Tinto and Aboriginal people under the agreements, which are "widely promoted by the mining industry, the State, and select Indigenous leaders; as delivering substantial benefits to Indigenous people." His examination captures Aboriginal people's experiences of the initiatives in the agreements associated primarily with employment and training, business enterprises development, payment of compensation, and heritage protection, that are intended to promote "sustainability" (Scambary 2007:3).

Scambary (2007:270) finds that "positive and negative agreement outcomes are *ad hoc*, and ... that mining agreements of themselves are not creating sustainable economic futures for Indigenous people in their areas of impact". At issue is the inadequacy of structures (Indigenous organisations, trust structures, committee structures and internal corporate

structures) associated with the agreements. The way ‘community benefit’ is defined in terms of the mainstream economic development objectives is limiting the opportunities available for Aboriginal benefits. It ignores the Aboriginal customary livelihoods, such as fishing, hunting, gathering, art and craft production, ritual performances and maintenance of family and kin relations, thereby devaluing the economic and cultural benefits of supporting such activities. These issues, combined with problems over the manner in which the “community of benefit” is conceptualised, result in reduced Aboriginal autonomy over the use of funds and cause ambivalence towards mineral development. Further undermining the pursuit of sustainable communities and economies is the inadequacy of the state in provision of services in remote regions. As the state’s capacity for service provision is reduced and Indigenous services are ‘mainstreamed’, securing basic services such health, education and housing becomes a dilemma. Tensions appear as either mining companies become reluctant surrogates for state service provision, or Indigenous compensatory funds are called on to be directed at such purposes (Scamby 2007:270-280).

Against this assessment, Scamby offered a number of suggestions with respect to “the on-going management of agreements and the relationships they engender”. He suggested there was a clear role for organisations such as land councils and native title representative bodies, and “the development of specific and local expertise to represent Indigenous people in dealings with the mining industry”. Scamby identified the need for innovation in the forms of engagement between the mining industry and Indigenous people; and the need “to broaden the terms of engagement entailed in mining agreements.” Access to land for livelihood and religious pursuits by Indigenous people is important. “Central to this is the recognition of who Indigenous people are, and respect for the diverse range of knowledge and skills they possess” (Scamby 2007:277, 279).

The nature of the relationships needed between Aboriginal people and miners to achieve positive outcomes was examined by anthropologist Kim Doohan who worked for many years in the Kimberly region of Western Australia. Her doctoral thesis is an in-depth case study of Rio Tinto’s Argyle Diamond Mine in the east Kimberly region (Doohan 2006).¹⁰ Combining ethnographic and geographic approaches, she treats Argyle as a site of “co-

¹⁰ The Good Neighbour Agreement was signed on 26 July 1980 by CRA Exploration Pty Ltd, CRA’s (predecessor of Rio Tinto) exploration company, and four local Aboriginal people belonging to the Gija and Miriwoong language groups (Doohan 2006:14, 181).

location” and “co-existence” of the vastly differing world views of Aboriginal people and of the mining personnel, a place where local Aboriginal and corporate cultures meet. Engagement within this “hybrid space” is articulated at different scales including the local, regional, national and global (Doohan 2006:13, 28, 32). In this context, her research shows how the nature of the social relation between Aborigines and miners has evolved over time and how these engagements have been approached since the inception of the Good Neighbour Agreement in 1980 (Doohan 2006:12):

it is at this location, Argyle as an inter-cultural space, that the tapestry of relationships and interests between the Aboriginal people and the Argyle Miners combine to create and affect the nature and outcome of negotiated agreements as well as the effective implementation and realisation of expectations and desires (Doohan 2006:31).

She reveals that the arrangements established by the Good Neighbour Agreement had “not remained static or bound by words on paper but have been constantly renegotiated in surprising and widely misunderstood ways, ultimately culminating in the Argyle Participation Agreement” signed by Rio Tinto, local Aboriginal people and the Kimberly Land Council on 23 September 2004 (Doohan 2006:18).¹¹ Cross-cultural education of mine personnel by local Aboriginal people as well as rituals such as ‘welcoming’ and ‘increase’ ceremonies were instrumental in creating an “enlivened space” where “the agreement and the relationships it enacted have been continually modified as part of an informal process of renegotiation.” Doohan (2006:336, 348) emphasised the need “to take into account the importance of such a process of on-going renegotiation between Aborigines and Miners” and insists that “culture matters and to ignore culture precludes ‘better outcomes’ for either or both parties”.

Other research focused on specific components of agreements such as Aboriginal employment and training, which are promoted as an important means to create sustainable and positive economic outcomes for local Aboriginal communities. Studies by the Centre for Social Responsibility in Mining (CSRSM), at the University of Queensland, provide valuable insights into what are the factors contributing to various employment outcomes at Century Mine and Argyle (Barker & Brereton 2004, Barker & Brereton 2005; Sarker & Bobongie

¹¹ Doohan (2006:15, 123) uses ‘local Aboriginal people’ for those people who have connections to, and rights and interests in, the mining lease area based on Aboriginal tradition. There are at least four relevant language groups, being the Gija, Malngin, Miriwoong and Worla language groups.

2007; Brereton & Parmenter 2008; and Tiplady & Barclay 2007). Aboriginal employment “forms a cornerstone” of the Gulf Communities Agreement. In line with the company’s commitment to maximise Aboriginal employment it commissioned research into the outcomes of the Aboriginal employment provisions (Barker & Brereton 2004:1).

Analysing data on Aboriginal employment and training at Century, the research identified the need for better recruitment and retention strategies, improved information systems on employment and training, and introduction of more flexible working arrangements. Subsequent studies sharpened the focus further on employment and tested the fundamental assumption that increasing Aboriginal employment will lead to improved economic and social condition of Aboriginal communities (Barker & Brereton 2005:9). A survey of former Aboriginal employees at Century discovered that 40% of ex-employees, most of who were originally living in the Gulf region, lived elsewhere since leaving employment at the mine. This suggests that increased mobility is an outcome of Aboriginal employment initiatives. The survey also sought ex-employees’ suggestions for improving retention at Century. The three responses most frequently mentioned are: need for more culturally appropriate and family-friendly employment practices that nurtured the Aboriginal connection to family and country; on-going and targeted support, training and career strategies; and more effective means to reach out to local Aboriginal communities for recruitment (Barker & Brereton 2005:22).

Some of these findings are also evident at Argyle where the Participation Agreement also has a strong emphasis on regional sustainability and creating local employment and training opportunities. A report commissioned by the company investigates the effectiveness of its employment program and includes a survey of former Aboriginal employees (Sarker & Bobongie 2007). In comparison to Century, there are lower rates of mobility with only 25% of ex-employees moving out of the region. Another significant finding is that 73% of the ex-employees surveyed (over 100 people participated) were in regular work at the time of the survey. Enhanced employability of Aboriginal people who have worked at the mine appears to be an important outcome of the agreement (Sarker & Bobongie 2007:vi).

A comprehensive report on Indigenous employment released by the CSRSM brings together data from Century and Argyle and additional sites (total of 12 sites) including Newmont’s operations at The Granites (Tiplady & Barclay 2007). The report identifies a range of factors affecting Aboriginal employment outcomes such as recruitment practices, training for work

readiness, mentoring and support, cultural awareness and culturally sensitive work practices. The study highlights that the best outcomes are achieved where strong corporate commitment to Aboriginal employment initiatives is aligned with good planning and systems for implementation and monitoring (Tiplady & Barclay 2007:65).

Altman (2004:5) considers the role of the state to be critical to outcomes of agreements and the need to “recognise the deeply-entrenched levels of disadvantage experienced by communities adjacent to remote mines and the strain on their social fabric created historically by settler or state colonization and now, potentially by mining”. He argues that only when there is concerted action by both the miners and state, in collaboration with Indigenous interests that positive outcomes are generated (Altman 2009:5).

1.7.1. Developing a conceptual framework

Recent attempts to map the social dimension of the mining industry found “there is a wide variety of theories, methods and techniques across the social sciences disciplines. Several different approaches can, and probably should, be employed to gain insights into complex issues” (Solomon et al 2007:1). Consistent with this finding, the sources and insights into agreements have been gleaned from a range of disciplines including law, political science and policy, social science, human geography, and anthropology. These have provided multiple perspectives on agreement-making.

Synthesising diverse insights into a cohesive framework to support analysis of The Granites Agreement required settling on definitions and developing a language of common understanding. Terms such as ‘goals’ and ‘outcomes’ in particular can mean different things depending on the context and perspective. Take for instance ‘outcomes’ in the area of Aboriginal employment. In the literature, the style and nature of employment provisions in agreements are identified as outcomes with respect to process of negotiation and agreement-making (e.g. ISS 2001:33). Where those clauses led to an Aboriginal person being employed, then that is considered an outcome of the employment program (Brereton & Parmenter 2008). However a broader social outcome is whether the employment of Aboriginal people leads to improved social conditions in the community as a result.

O’Faircheallaigh’s (2004:306) discussion of outcomes provides a functional differentiation of levels of outcomes when considering agreements between Aboriginal people and miners. He distinguishes outcomes according to the three distinct but interrelated areas. Firstly, there are outcomes from partaking in the negotiation, i.e. prior to an agreement being signed,

through processes such as delineating and recording Aboriginal land owning groups, and exposure and interaction with non-Indigenous interests. A second order of outcomes relates to the content of the agreements and goes to consideration of the relative strength and effectiveness of the actual terms and conditions that are settled. The third area is outcomes with respect to implementation of agreements. Here, O’Faircheallaigh defines outcomes in terms of the result of putting into effect or application of provisions contained in agreements. In addition to these three broad levels of outcomes, O’Faircheallaigh (2004:307) also identifies another level of outcomes, which are outcomes in terms of the final impact of provisions that are implemented.

This thesis follows O’Faircheallaigh definitions of the different “dimensions of outcomes”:

- (1) From the process of seeking an agreement;
- (2) Outcomes in terms of the content or provisions of an agreement;
- (3) Outcomes in terms of the putting into effect of provisions contained;
- (4) Outcomes in terms of the final impact of provisions that are implemented (O’Faircheallaigh 2003b:3, 2004:307).

The outcomes most relevant to this research are (2) outcomes from putting into effect of provisions, and where data is available, (4) the final impact of provisions.

1.8. Conclusion

This chapter has elaborated on the role of agreements in the Aboriginal policy setting and the increasing extent to which relevant sectors of society are utilising agreements to mediate relationships between Aboriginal people and miners. High expectations surround this policy setting for mitigating impacts and delivering benefits to Aboriginal stakeholders. The literature illustrates that agreement outcomes are at best variable and the expectations are not always met.

Agreements operate in an extremely complex zone of interaction where many interests intersect. Research highlights the importance of implementation and the quality of relationships in terms of achieving agreement outcomes. There exists, however, gaps in research, hindering clearer understandings of implementation issues and developing models or frameworks to consider implementation issues. The purpose of this thesis is to help fill this gap through a fine grained study of The Granites Agreement.

The remainder of this thesis is structured as follows.

Chapter 2 considers the historical background and geographic context in which the Granites Agreement was negotiated and operated. The first European incursions occurred at the turn of the 20th Century. An Aboriginal perspective on the early interactions with miners is presented to garner insights into the Warlpiri responses to the enormous change that accompanied colonisation of Central Australia. This chapter spans the period from first contact up to the time when Aboriginal landowners gained freehold ownership of their land and the right to control access under the Land Rights Act.

Chapter 3 concentrates on the origin and negotiation of The Granites Agreement that took place in the early 1980s. Social and political changes are also considered in piecing together the events and actions of the parties in coming to agreement. The analysis allows some conclusions to be drawn over the intentions and expectations of the parties. This chapter also provides discussion on how these expectations evolved following the signing of the original Agreement in 1983 and how there were subsequent agreements made. The changes in mine ownership are identified in this chapter. These changes are drawn from research on the corporate ownership of The Granites, which is presented in Appendix 1.

Chapter 4 traces the enactment of the Aboriginal employment, training and contracting provisions. Through the study of the events, personalities, action and outcomes in relation to Aboriginal employment the significant implementation issues are identified. Employment rests largely within the domain of the mining company. As such the implementation issues relevant to the company perspective are revealed in this chapter, particularly how they influence the outcomes achieved.

Chapter 5 examines the payment provisions. In particular, it studies the way the financial disbursements were structured and how these payments were applied. There were negotiated payments made under the Agreement as well statutory payments made by federal government. The payments were intended to satisfy a range of purposes and these are considered along with the tensions that exist over alternative modes of distribution within the Aboriginal domain.

Chapter 6 is the final chapter that brings together the conclusions drawn from each of the preceding chapters into an overarching analysis of the issues. Through this analysis a conceptual framework is developed and conclusions drawn on how agreement outcomes vary according to the processes and techniques of implementation.

2. History of The Granites

This chapter presents the historical, social and geographical setting of The Granites as a place of sustained contact between traditional Aboriginal people and the European settlers of Central Australia. It is a relatively recent contact history that commenced at the turn of the 20th Century when the Europeans came looking for gold. The first part of this chapter examines the first encounters with Aboriginal people and interactions with early gold miners. The second part of this chapter describes the origins of the modern Granites Gold Mine and the historical and political events that forced the miners to negotiate with the Aboriginal landowners. From this analysis propositions are drawn on how the early interactions and subsequent political events have framed the ongoing relationships between Aboriginal and non-Aboriginal people and the extent to which this contact has informed Warlpiri attitudes to mining at The Granites. Understanding the historical, social, and political background provides a basis to understand the nature of the negotiations and motivation, purpose and intent of The Granites Agreement that is examined in the next chapter.

Being such a relatively recent contact history, the early experiences are reasonably well documented by government officials, teachers, journalists, linguists and social scientists working in the region. Many of the primary sources have been sourced by anthropologists researching Warlpiri society such as Mervyn Meggitt (1984) who worked with the Warlpiri between 1953 and 1960 and others such as Nicolas Peterson and others (1978) who prepared the Warlpiri land claim in late 1970s and Derek Elias (2001a) whose doctorate thesis examined Warlpiri traditional land tenure and mining. The historical accounts contained in these works are drawn upon and compiled with other primary sources such as geologist Cecil Madigan (1944) and journalist Eric Baume (1994) who both wrote about their experiences of mining at The Granites in the early 1930s. These primary accounts have been collated with data obtained from interviews conducted for this research to bring a particular focus on mining at The Granites and the Aboriginal experience.

2.1. Warlpiri first contact with miners

The existence of gold at The Granites was first noted by Allan Davidson, a pioneering geologist who helped develop gold mining in Australia. In 1900, Davidson led an expedition, which included Aboriginal men, on behalf of the Central Australian Exploration

Syndicate to scour the Tanami region for minerals. This was the first organised European incursion into the foreboding and vast Tanami region (Baume 1994:1; Elias 2001a:68, 2001b:208; Jones 1987:32; Meggitt 1984:20; Peterson et al 1978:10).

Aboriginal people had lived for very many generations in the Tanami region and developed intricate social and religious interconnections with the land. The land not only provided resources that sustained life but was also the source of identity of the Warlpiri traditional owners. Identification with various tracts of land and the sacred sites they contained was at the core of Aboriginal spiritual and religious beliefs. Through ceremony and songs the connections with land and their ancestors were invoked, maintained, and nurtured by the living generations. Places in the landscape were energised by the power of past generations and characters from the creation stories, who criss-crossed the land. From a spiritual as well as secular perspective, knowledge of these sites was essential to living in the desert as they often coincided with places to find water.

Davidson recorded the name ‘Tanami’ for the location of one his campsites.¹² ‘Tanami’ is clearly an Anglicisation of the Aboriginal site name Janami, located some 16 kilometres from the border with Western Australia and 100 kilometres north-west of The Granites. Janami is famous among the Warlpiri and their neighbours as a major site of religious significance and one of the few reliable places in the area to find water (Interviews HC/BB 2008). The Aboriginal guides who accompanied Davidson no doubt led the expedition to the rockhole situated in the low ranges that he described. While camped there he discovered gold reefs five kilometres to the east which were soon after to become the Tanami Mine.

Davidson then travelled 100 kilometres to the south-east to arrive at the place known to Aboriginal people as Yarturlu-yarturlu. He named it Granite Hill after the impressive outcrop of rounded granite boulders (Campbell 2006:140), which later became known as The Granites.¹³ His explorations lead him to have “a very high opinion of the possibilities contained in the Tanami country” (Davidson 1905 cited in Peterson et al 1978:10). His

¹² Tanami is also used to designate the whole region. It is common knowledge amongst local Aboriginal people that the name derives from the sacred site *Janami*. The NT Register of Place Names notes that “Tanami is believed to be an Aboriginal word but its origins are unknown.” Furthermore that it originates from Davidson who gave the name to low ranges on his map, adjacent to the rockhole where Camp 66 of his 1989/1900 expedition was located. Available <<http://www.ntlis.nt.gov.au/placenames/view.jsp?id=18795>> 13 Dec 2009.

¹³ See official Place Name Register that capitalises the ‘T’, available <<http://www.ntlis.nt.gov.au/placenames/view.jsp?id=18907>> 7 May 2008, 13 Apr 2013.

conclusion, however, was that “as the [gold] finds were in such remote and arid places, they were too small and not rich enough to warrant further work” (Baume 1994:1; Elias 2001a:68, 2001b:208; Jones 1987:132).

Despite the difficulties, mining commenced in region at Tanami in 1908. Bill Laurie was one of several prospectors who followed in the wake of Davidson’s discoveries and in that year he obtained an impressive 36 ounces of gold at the Tanami goldfield (Jones 1987:171). News of Laurie’s finds was followed by a favourable report from a visiting government geologist and the result was a short-lived minor rush. In 1910, the Mining Warden, Lionel Gee, reported there were some 60 miners (Elias 2001b:208; Gee 1911 cited in SEA 1985:9).¹⁴ Perhaps optimistically, the government sunk a well the following year. By the end of 1911, however, only Laurie remained “who worked on his reef employing Aboriginals to ‘dolly’ the quartz and sort the reef stone from jasper and other rock”. He continued to mine at Tanami until 1917 when he died (Jones 1987:172).¹⁵

During this time the search for gold deposits extended throughout the region. The Granites became the other main focus of attention and was worked briefly by a prospector, J Stewart (Elias 2001a:69, 2001b:208; Jones 1987:196). In 1910, Stewart (sometimes recorded as Stuart) while watering his horses at a soakage (an Aboriginal well) near The Granites was killed by an Aboriginal man and his food and equipment was stolen (Baume 1994:92; Elias 2001a:69).

Meggitt’s (1984) seminal anthropological work on the Warlpiri, *Desert People*, refers to the incident. In his version the Warlpiri surprised two miners prospecting at The Granites and in attempting to seize their stores, speared one to death. The policeman stationed at Tanami then led a party of miners in pursuit of the killers. They captured a number of Aboriginal people and sent them to Darwin for trial. Because of lack of evidence the alleged killers were eventually discharged and turned loose on the outskirts of the town never to be heard of again. As far as Meggitt (1984:21) could ascertain, they were not the murderers and his Warlpiri informants revealed that “although The Granites was an important ritual centre,

¹⁴ Other sources suggest there were 100 men on the field in that year (Jones 1987:17; Peterson et al 1978:11).

¹⁵ In a manner similar to using a mortar and pestle, dollying is the process of smashing ore in a ‘dolly pot’ into smaller particles to enable the recovery of gold by mechanical means such as wind blowing.

most of the tribe avoided the place for years afterward”.¹⁶ Elias cited oral histories collected by Central Australian historian, Dick Kimber that suggests “the violent reprisals in the wake of the death of Stuart were far more extensive than officially reported” (Elias 2001a:69).¹⁷

It is significant to note that this is the only account of killing in the Tanami as the colonial frontier closed in rapidly on the region. The scale and extent of violence evident in the contact history of the Tanami contrasts markedly with the pattern of occupation, conflict, and reprisal typical of other encounters across Australia. In the Tanami, the Warlpiri largely avoided extensive, systematic attacks and dispossession that was the norm on the expanding Australian frontier (for example in north-west Queensland, the frontier was referred to as the ‘No Good Time’ by Aboriginal people (Memmott & Kelleher 1995). They were also largely spared the direct impact of a very brutal episode that occurred at Coniston in 1928. Many Lander River Warlpiri and neighbouring Anmatyere and Kaytetye people were massacred along a stretch of country occupied by pastoralists some 200 kilometres south-east of The Granites.¹⁸

The geography of the Tanami is a major determinant of this pattern of incursion. The region is extremely arid and remote rendering it unviable for cattle production. In other more well-watered locales the wholesale procurement of large tracts of land for pastoral runs on the colonial frontier were affected by violence (e.g. Memmott & Kelleher 1995). Such episodes were not a feature of contact in the Tanami. The historical sources show that the Warlpiri had to contend mainly with the outsiders’ quest for mineral riches.¹⁹ The miners did not seek possession of vast tracts of land. They were only interested in accessing mineral-rich areas; only staying for as long as profits were made.

In the early years, between 1900 and 1930, there was steady activity at The Granites with some 2,000 ounces of gold mined from alluvial deposits and quartz veins (NFM 1985:17). The relatively low numbers of Europeans far from the reach of colonial authority created a

¹⁶ Historian Tim Rowse quotes a story told to an anthropologist working closely with the Warlpiri in Lajamanu in 1990. The anthropologist’s informant lamented over reprisals by police and miners in The Granites area which led to many people being killed following the murder of a white man (a cook) because he ‘stole’ the offender’s wife. No clue of the timing of this event is provided (1998:66).

¹⁷ Elias cites the Chilla Well Land Claim book prepared by anthropologist Jeff Stead in 1985 (not cited).

¹⁸ Murderous reprisals led by Police Sergeant Murray followed the murder of a dingo scalper, Fred Brookes, at Brookes Soak (Yurrkuru) east of Yuendumu (Cribben 1984).

¹⁹ Several pastoral leases were taken up on the edges of Warlpiri country including Supplejack to the north, Tanami Downs in the west (now Aboriginal land) and Mt Doreen in the south. Chilla Well existed briefly immediately north of Mt Doreen. Its demise attests to the unsuitability of the Tanami for pastoralism.

strong incentive for the miners to avoid trouble with Aboriginal people. Access to labour came at a premium in such an inhospitable region and the miners learned that they could benefit from Aboriginal people working on their mines if they maintained good relations.

2.2. The Granites ‘gold rush’

Two prospectors, Jack Atherton and Jim Escreet, were to earn national fame as rumours spread about how much gold they were finding at The Granites. While in Alice Springs in 1931, Sydney journalist Mary Ernestine Hill heard the rumours and briefly visited the field. Her sensational reporting of their finds contributed to an exaggerated impression of The Granites, which caused a minor ‘rush’ in 1932 once the news circulated through the large southern cities.²⁰

At that time Australia was suffering from a world-wide economic depression and was looking for “a new Kalgoorlie to put the country on its feet again” (Baume 1994:232). The mood was receptive to any news that could be a harbinger of fortunes to be made. Even Harold Lasseter, an enigmatic globetrotter, was able to secure backing in the midst of the depression in 1930. Based on the strength of tale of a fabulously rich gold reef he had allegedly seen in the 1890s, Lasseter managed to convince trade union officials in Sydney, using mainly labour union funds, to finance his ill-fated gold exploration expedition into Central Australian desert (Coote 1981:11-14).²¹

On news of the ‘discoveries’ at The Granites, many investors speculated on ‘options’ offered over claims staked out by prospectors hoping their ground would be worth a fortune. Many others undertook the daunting task to travel to The Granites expecting to find either work or riches. The rush occurred despite negative reports such as an evaluation by a geologist in 1932 who concluded that “for all our efforts we saw no deposits that warranted exploration” (NFM 1985:17).

²⁰ Mary Ernestine Hill was an Australian journalist and writer who travelled the outback. According to the ‘Australian Dictionary of Biography Online’, Hill’s reports in 1931 of gold discoveries at The Granites contributed to the gold rush and stock-market boom. Hill is also famous for having reputedly penned Daisy Bates’ book on Ooldea, *The Passing of the Aborigines* (1938), available < <http://www.adb.online.anu.edu.au/biogs/A140519b.htm> > 13 Dec 2008.

²¹ The Central Australian Gold Exploration Company was formed. It raised £5000 within 24 hours to fund Lasseter’s search for his lost reef that ended up costing him his life (Coote 1981:20, 22).

Concerned about the level of misinformation, rival newspaper proprietors, Robert Packer of *Associated Newspapers* and Keith Murdoch of the *Herald Sun*, combined forces to fund a mission to ascertain the realities of the field. A highly respected geologist from Adelaide University, Cecil Madigan, was contracted to inspect and report on the field. He was accompanied by Associated Newspapers journalist, Eric Baume, who recorded the journey and in 1933 published a book about his experiences, titled *Tragedy Track*.²²

In his account Baume included transcripts of Madigan's two official reports on the field. Madigan's first report, dated 7 November 1932, described the type of workings on the goldfield at one of the deposits known as the 'Burdekin Duck':²³

For the past sixteen months about a dozen prospectors working on The Granites goldfield had produced 400 ounces of gold, won mostly from a half acre of ground. Much of this gold came from dry blowing the alluvial gutter in a single gutter up a hillside for about 70 yards, when a small rich quartz vein was struck and two shafts each 30 feet deep and 25 feet apart were sunk into the leader (Baume 1994:2).²⁴

At the height of the rush there were some 150 to 200 men on the field.²⁵ Tony Lynch manned a makeshift Police Station (a tent) and patriarch of a local Alice Springs family, Joe Kilgariff, ran a store (Baume 1994:3; Madigan 1944:242).²⁶ One of the better equipped syndicates, under Charles Henry (Pop) Chapman, a well borer with no previous mining experience, had a rudimentary wireless that provided the only distance communication.

The Chapman Expedition had travelled from Queensland to take up an option at Tanami but after inspecting it turned it down and instead headed to The Granites. Chapman bought the Burdekin Duck leases from Atherton and Escreet in 1932 for £5,000 and floated the company, Chapman Gold Mines NL (Baume 1994:241; Jones 1987:197; Madigan 1944:234).

²² *Tragedy Track* was republished by NFM in 1994 to commemorate the pouring of the one millionth ounce of gold at The Granites (Baume 1994:iii).

²³ Burdekin Duck was the bushman's name for salt beef rolled in flour and fried (Madigan 1944:234).

²⁴ Similar principle to panning for gold, however, instead of precious water, air was blown to separate the gold from the other lighter material.

²⁵ Bill Braitling, who later established Mt Doreen pastoral station, worked on the field in 1932 and estimated 500 men were there. This appears exaggerated being over double both Madigan's and Baume's estimates.

²⁶ Joe Kilgariff took over the locally famous old Stuart Arms Hotel around 1927 (Madigan 1944:69). His nephew, Bernie Kilgariff, became the first Speaker of the NT Legislative Assembly in 1974. Bernie's daughter, Fran Kilgariff, was Alice Springs Mayor from 27 May 2000 to 29 Mar 2008.

Baume (1994:31) was clearly overwhelmed by the harshness of the conditions at The Granites and remarked that “every ounce of gold earned out here is earned in sweat and flies and sickness.” In addition to the generally appalling living and working conditions, the water used at The Granites contained a potent mix of salts and had a particular reputation for leaving those who drank it “prostrated by diarrhoea” (Madigan 1944:241).

Following publication of Madigan’s first report, “the bottom dropped out of The Granites market.” Most of the city-based speculators found their options “were not worth the spinifex in which the claims were situated” (Baume 1994:32). Madigan stayed on the field for a further two weeks without Baume and took some samples as well as visiting the mines at Tanami. He concluded in his final report a month later on 4 December 1932 that “nothing of value has been found at all” (Madigan 1932 cited in Baume 1994:104).

The Financial Editor of *The Sun* newspaper in Sydney, CA Preston, estimated (on meagre official data) that aggregate losses at The Granites were in the order of £300,000. There was huge turnover on the original capital during the months of September and November 1932, ahead of Madigan’s first report. In Adelaide, some £27,850 of public subscriptions was invested in five major Granites company floats. Melbourne speculators participated in seven floats worth £91,580. Preston notes “investors in one company, Chapman’s Gold Mines NL, hung on long after the boom in the hope their shares would make good” (Baume 1994:96).

The human cost was considerable also. It soon became apparent to people on the field that Chapman held the only payable ground. By January 1933 most of the disaffected miners gravitated to Alice Springs. Baume estimates 95% of the unemployed in Alice Springs at that time were men who had come to work at The Granites (1994:117). They were said to be causing trouble in town so Police Sergeant Lovegrove recommended the federal government send the unemployed back to Adelaide on a railway warrant (Baume 1994:119).²⁷

By this time corporate investment in The Granites collapsed and Chapman ended his association with Chapman Gold Mines (Jones 1987:197). He remained on the field himself when everyone else had left. In 1935, with the aid of a government subsidy, Chapman installed a large a heavy five-head crushing plant and constructed an airstrip.

²⁷ Madigan notes the federal government gave relief and free transport as far as Quorn, in Sth Aust to the many men stranded in Alice Springs (1944:242).

Chapman reputedly reaped considerable wealth mining at The Granites. Although he remained there until around 1952, his time must have been increasingly spent in Alice Springs where he set up home and established other businesses. Remnants of his concrete walled house remain on the hill at The Granites that carries his name.²⁸

The low labour costs from using local Aboriginal people to work no doubt contributed to Chapman's ability to mine profitably. The use of Aboriginal workers on the field was not recorded by Baume. It is possibly that this was a matter he took no notice of as he was only on the field briefly before returning to Alice Springs to file Madigan's first report. Accounts of Native Affairs Patrol Officer, Theodore Strehlow, who visited The Granites as part of his duties, suggest that Aboriginal people were a large proportion of the population at least by 1937 when he noted only nine 'whites' at The Granites (Rowse 1998:59). There were probably fewer non-Aboriginal people five years later when another Patrol Officer, Sweeney, reported that in October 1943 there were 47 Aboriginal people working at The Granites and 53 at Tanami (Sweeney 1943 cited in Peterson et al 1978:13).²⁹

World War II brought significant changes to the Northern Territory. The threat of Japanese invasion, air attacks in the Top End and significant Australian troop movements through Alice Springs led to an overall increase in the federal government's presence. The government's reach extended to Aboriginal Affairs and included a program to provide infrastructure and rations at government sponsored settlements.³⁰ With establishment of the Aboriginal settlement of Yuendumu in 1946, 250 kilometres to the south-east, the miner's access to cheap labour ended. Mining activity persisted only a short time after the removal of the Warlpiri from the Tanami Desert.

²⁸ Local Alice Springs historian Jose Petrick records that Charles Chapman established a home on a large block of land south of Alice Springs. He died in 1955 and his estate was turned into one of Alice Springs' first tourist attractions, Pitchi Ritchie sanctuary, by its new owner Leo Corbett (Petrick in the Alice Springs News). Chapman is also famous for founding Central Australia's first newspaper in 1947, the Alice Springs News, available <http://www.alicespringsnews.com.au/1440.html> 26 Jan 2009.

²⁹ At Tanami during this period "companies took up ground but did little of consequence" and only a small number of miners worked there intermittently (Jones 1987:198). Records of police patrols indicate that prospectors and police were present at Tanami from 1925 to 1926. By 1929 they found the diggings deserted and the police ceased to camp there (Rowse 1998:54). By 1938 the main operator at the field was Ken V. Harris and his wife. When the Harris' left the field in 1945 it was completely deserted.

³⁰ In Central Australia, these included Yuendumu, Lajamanu, Papunya, Areyonga, Warrabri (Alekareng).

In 1939, Anglo Queensland Mining Pty Ltd had taken out an option over Chapman's leases.³¹ Between 1939 and 1948, 20 exploration holes were drilled at the prospect they called Bullakitchie, three kilometres north-west of Chapman's Hill.³² An estimated resource of 250,000 tonnes at 11.5 grams per tonne (93,000 ounces) was not considered commercially feasible to mine (NFM 1985:17). Jones (1987:198), however, refers to the NT Administrator's report for 1940 to 1941, which indicates that there was an intention to mine and blames the outbreak of World War II for the development not occurring. After the war, in 1953 and 1954, Northern Mine Development NL drilled a further six holes but failed to upgrade the results.

The Granites lay undisturbed for the next 16 years until 1970 when North Broken Hill Peko Ltd drilled magnetic anomalies near the prospects of Bullakitchie, Ivy and Twin Hills. All revealed significant gold mineralisation, however, no follow-up work was attempted (NFM 1985:17). The failed gold rush and a succession of indifferent assessments did little to enhance the standing of The Granites as a promising gold prospect. The remote location, high mining costs, lack of water and the difficulty in attracting labour are factors that would have dampened the most enthusiastic speculators. Development at The Granites would require a proponent with more than a modicum of faith and a high propensity for risk to spend the substantial funds needed to test the feasibility of mining.

2.3. Warlpiri experience with historical mining

The period up to World War II profoundly impacted Warlpiri way of life and attitudes towards mining. Valuable insights into Warlpiri perspectives on the encounter with the miners were gleaned from a collection of short biographical stories by seven highly respected Warlpiri elders in a booklet, *Stories from Lajamanu* (NTED 1977). The stories were recorded and translated by the Lajamanu School in 1977. All the men were born in the bush and lived off the land in traditional lifestyles.³³ Specific dates are not mentioned but based on an estimate of the men's ages the period is the early to mid-1930s.

³¹ The exploration arm of Mt Isa Mines Ltd was established in 1935 by the then Chairman, Julius Kruttschnitt (Queensland Government 2009, JKTech 2009).

³² The name 'Bullakitchie' appears to be the Anglicised version of the Warlpiri name for The Granites, Pulakiji. It was become the site of an open-cut and subsequent underground mine.

³³ Only one man survived as at 2011.

Significantly, five of the seven accounts mention visiting The Granites as children or young men. Some 50 years after those childhood visits each of these five men were to play crucial roles in the consultations and negotiation of The Granites Agreement. Abie Jangala, for example, was “born in the bush” east of The Granites and he revealed the overwhelming curiosity that characterises Indigenous peoples’ first encounters with Europeans:

We had heard that in Granites, to the west, a strange kind of people, with white skins were staying. One day my father decided to have a look at those people, so we walked to The Granites, where we saw them working in the copper mine [sic] there. To me those white people looked strange and I couldn’t understand the way they were talking. We stayed there for a few days and then went back to the bush again (NTED 1977:4).

Similarly, Jerry Jangala recalled:

We heard there were white people staying in Granites, where they were working in the copper mine [sic]. We wondered what those people would look like and my parents decided to go there and have a look. ... it was there that I saw a white person for the first time (NTED 1977:9).

These descriptions indicate that the Warlpiri chose the time and place of their first encounters. With news of the “strangers”, curiosity combined with trepidation for the young Maurice Luther. In later life, Luther was intimately involved in mining negotiations and flew to Melbourne with the CLC lawyers to sign The Granites Agreement in 1983.

When I was about eight years old I came with my parents to a small mining place, Granites, and that is the place where I saw white people for the first time. I was frightened of white people, I thought their skin was turned inside out! Every time I saw them, I ran away from them and it took me about three years before I was used to them and their way of living in one place – my life [previously] was spent moving around from waterhole to waterhole, out in the bush (NTED 1977:17).

These first encounters were the precursors to active and sustained efforts by the miners to coerce Warlpiri people to work at their mines. Indications are that the encounters were not overly adverse as Aboriginal people responded positively when encouraged to come out of the bush and work at the mine. Ronnie Jakamarra explains how an Aboriginal man was sent out from Tanami Mine by the white miner (possibly Harris).

He brought tobacco, cigarettes, tea and flour to us and asked us if we would come to that mining place, Tanami, where there would be a lot of Europeans and Aborigines. But my

father said: 'we are not going - we will stay right here'. The man who was sent out to us said, 'no, no, the white man wants you there', and my father said, 'oh, well, we'll go' (NTED 1977:42).

These interactions suggest pragmatic relationships were established on the mine site at Tanami. "The white man looked red to me but they were good and kind to me and they gave me some tea" (NTED 1977:42). Another favourable account came from Abie Jangala who returned to The Granites to work some time after his first visit mentioned above:

One of the Europeans there asked if I wanted to have a job, and I accepted. He treated me well and taught me how to work properly. I even learned how to drive a truck! (NTED 1977:4).

The stories lack the violent portrayals that characterise many Aboriginal people's experience working or associated with white people in that era, particularly on cattle properties (e.g. Vaazon-Morel 1995). The work was very hard nevertheless and the conditions appalling; even abusive judged by contemporary standards. One of the most senior traditional owners for The Granites who participated in this research worked as a child on the mine in the 1930s, "only been just grown, no school, no whisker, only young". He described dangerously hard work mining underground:

I been work in the hole, inside, I was put down on the winch, like that, go down the well. I start dig 'em [the gold vein], take 'em, put on the bucket and take it up on the winch – two posts with a handle. They used to put that bucket down, people used to go down in that bucket and bring him back again after work ...

Underground, we had everything there inside, jackhammer, when you've dug a hole and cut it out, we put all that dynamite there and leave that engine there, that way [in a side recess], and jackhammer. Really hard one, hard one. When they finish it they get him out again, pull the winch, bring all the people from the bottom, underground, on the outside there. Then you go down now when they say. 'Bang!' whole lot hole there inside, a lot smoke coming up. When it's finished, we go down again. Shovel everything waiting there, bucket everything, and start digging him (Interview HJ 2008).

Another senior traditional owner who participated in this research, VJ, was born at The Granites, explained how his father gave up a traditional lifestyle in favour of work at the mine, obtaining a kind of supervisory status:

My old man ... was something like a 'headman'. They went looking for [other Aboriginal] people when they saw the [camp] fire, especially on the west side

somewhere near Mongrel Downs or further west. They [the miners] said we've got to go and get them, bring them in. He said [his father talking to the Aboriginal people camping in the bush], 'whitefella got tucker here and everything' – that's how they got more and more in, everyone from Mongrel Downs, got to get those people to come in for work, all that tucker here ... Telling other people he said 'No [you can't go elsewhere], we got to go, no, we got to give him a hand, we got to dig him this hole. He'll give us flour, tea, and sugar, then you can go walkabout again' (Interview VJ 2008).

VJ said they worked day and night and the only clothes were brown (hessian?) bags roughly cut for shirt and trousers. These were dangerous conditions. VJ never met his father, losing him when he was only just born. The story told is that his father wore a big long green army coat (possibly a symbol of his supervisory status). One day he was shovelling ore into the five-head mechanical battery, which was powered by a wide drive belt connected to an engine. "His coat got caught on the belt first and he couldn't get it off, threw him in. When they saw my old man he was already squashed up" (Interview VJ 2008). This must have been after 1935, when the battery was installed at The Granites. VJ remained on the field until he was around eight years old. Through these reflections, a persistent uneasiness was evident over how little the old people understood at that time and how they actually had no idea what they were digging for:

When they came in first time and digging for gold at the time of the Chapmans, they said 'what we digging for, what we going to find'. They never knew it was gold, worth money. They couldn't understand really, most of the old people were myall [ignorant of European ways]. All they wanted to do was to make-up something – flour, tea sugar and tobacco, and go walkabout and come back and work again (VJ Interview 2008).

That view explicitly offered by VJ is confirmed in the accounts of the old men, presented above, by their referring to The Granites as a 'coppermine'.³⁴

A senior traditional owner of Dead Bullock Soak (DBS) who participated in this research was a young girl at Tanami Mine around this time. She also highlighted how hard and endless the work she witnessed was:

³⁴ The confusion possibly relates to the fact that the Warlpiri were involved with mining copper deposits at Mt Doreen 70 kilometres north west of Yuendumu.

Long time [ago] people working, long, long time been working. They do that, only [Aboriginal] people do that picking [no plant machinery then], get 'im shovel and chuck 'im on outside, long time you know. That's no good hey, might get sick. When working battery, long time I been look, my uncle, P Robertson, he using shovel all the time with the battery, crusher battery. Well, all the [Aboriginal] man been do that work, all night, through the night then come back and sleep, then another one can go to work. That's a hard job (Interview PR 2008).

PR's family was staying at Tanami and worked there prior to 1945. She remembers Harris, who owned the mine:

Not allowed to come, for children, they can't come [close to the pit]. You know Mr Harris, Ken Harris, [would say] 'not allowed to go children, near that hole.' And all the young children, when we go there [although they were] not allowed to go there, all the children - the parents [would say] - you know that old lady too [her was sister sitting adjacent as part of the interview as was also] not allowed to go there - 'keep away from that hole!' (Interview PR 2008).

Together these accounts show to a large degree that the Warlpiri were able to interact with the first miners under terms of their choosing, albeit with limited knowledge or understanding of non-Aboriginal ways. Except perhaps during severe drought, it remained open to Aboriginal people to engage or disengage at their own inclination. All they needed to do was retire into the expanses of the desert, away from the narrow points of non-Aboriginal interest established around the mine sites and associated access tracks. The Warlpiri were learning, however, that the miners had interesting and readily obtainable food and possessed implements extremely useful for assisting with living off the land. Steel tools, cloths, flour, tea, sugar, and tobacco became increasingly sought after and the means to obtain them increasingly better understood (Elias 2001a:70).

A kind of symbiotic relationship developed whereby the miners traded food, tobacco and tools for Aboriginal labour, ecological and geological knowledge, and possibly access to women. This was an unfair trade by contemporary standards but nevertheless a pragmatic accommodation of the colonial encounter. It was an encounter almost unique in the Australian context such that the Warlpiri were ultimately not to suffer the unmitigated loss of their land and held on strongly to their cultural traditions and attachment to their land.

By 1943 there were 47 Aboriginal people working at The Granites and 53 in the Tanami location (Sweeney 1943 cited in Peterson et al 1978:13). Even older people, who were too frail to be employed directly on mining, were engaged to cut firewood for the stoves and furnaces (Interview PR 2008). In spite of the appalling conditions, by the time of World War II, the traditional modes of living were changing irrevocably. Elias (2001:70-71) concludes that by this time “people developed intense appetites for tobacco and tea... and it was almost impossible for people to return to their previous pattern of economic existence.”

In 1944, the government intervened and established a ration depot at Tanami. The Director of Native Affairs sent Frank McGarry to persuade the Aboriginal people to leave The Granites and go to Tanami. On arriving he wrote, “I have seen poverty, distress and anguish in my day, but nothing can touch the appalling conditions of this mob. It is a blot on Australia’s name” (cited in Rowse 1998:160).

In April 1945, the Tanami Native Settlement was established with initially with 117 Aboriginal people. The following year 160 people were living there. Conditions remained poor and people’s health suffered. The lack of reliable water caused McGarry to move the depot to The Granites (Elias 2001a:79; Peterson et al 1978:13). By the middle of 1946, a new site for the settlement was chosen on the newly-opened stock route from Alice Springs to Mt Doreen. An area of 200 square miles around Rock Hill Bore was proclaimed as the Yuendumu Aboriginal reserve some years later on 1 May 1952. The 160 people from The Granites were brought down by truck. In addition, 120 Warlpiri from Bullocky Soak moved there from a ration depot near Ti Tree, 220 kilometres north of Alice Springs on the Stuart Highway.³⁵ By the end of 1946 there were about 400 Warlpiri at Yuendumu (Meggitt 1984:28; Peterson et al 1978:13).

In 1949, some 500 kilometres to the north in the Victoria River District, the Native Affairs Branch established the nucleus of another new settlement, named Hooker Creek, destined to receive Warlpiri people ostensibly to relieve the growing population at Yuendumu. In August 1952, the few Warlpiri remaining at The Granites, and between 130 and 150 residents of Yuendumu, were sent to the new settlement, which was later renamed Lajamanu

³⁵ Probably near Bullocky Bore, an old government well on the Hanson River, 25kms north of Ti Tree.

(Meggitt 1984:29; Peterson et al 1978:14).³⁶ The original ration buildings remain at Lajamanu as at 2011 (see Figure 2).



Figure 2. The original ration buildings at Lajamanu as at 2011.

A new phase had commenced for the Warlpiri as they were forced to adapt to an institutionalised and sedentary lifestyle on the government settlements. Many different family groups were crowded together, which caused many disputes and jealousies. Official enumeration of Central Australian settlement populations in 1950 reproduced by Rowse (1998:148) indicate there were 450 people in Yuendumu and 43 in Lajamanu. These settlements were part of a network established by the government (including others such as Areyonga, Papunya, and Warrabri) and marked the transition for the Warlpiri and other Aboriginal groups to subjects of the assimilationist policy. Missions and pastoralists in other areas were subsidised and induced to coordinate their rationing with what Rowse (1998:7) calls the government's "rehabilitative" program for Aboriginal people:

Rationing, hitherto productive of dependency and demoralisation, was to become the basis of training for citizenship, a status which implied people's adherence to the norms of 'the Australian way of life' (Rowse 1998:8).

³⁶ Those picked to move did so reluctantly as interview participants recalled how their families, once in Lajamanu, walked across the desert back to Yuendumu.

2.4. Origins of the modern-day mine

The genesis of the contemporary mining at The Granites is inextricably linked to the fortunes of businessman Geoff Stewart, the founder of the company that developed the mine, North Flinders Mines Ltd (NFM). NFM's commemorative publication on the production of one million ounces of gold described him as having the "vision and courage" to develop the mine (Baume 1994:126). Without doubt, his tenacity and single-mindedness were crucial in bringing the modern mine into existence. Indeed, his enigmatic style and deep involvement in negotiations over land access influenced many facets of the mining operation that followed. These included the nature and scope of the agreement with the CLC and how the relationship was cast with Aboriginal stakeholders.

Stewart was a fitter and turner by trade and his first business was an earthmoving company in Adelaide. He sold the business in 1969 and founded North Flinders Mines NL³⁷ with the aim to bring various mineral exploration interests in the northern Flinders Ranges in South Australia together into a single corporation.³⁸ One of Stewart's valuable attributes was his aptitude for seeking out competent technical advisors and adhering to their advice. This is evidenced not only by the highly respected standing of the founding members of his team but also by later appointments to critical managerial positions in the exploration and mining divisions of his company.

NFM had some early successes with discoveries of uranium, copper, and cobalt in the Flinders Ranges. While tantalising, these discoveries coincided with a weakening economy and by 1976 NFM was short of cash. To survive, NFM contracted its geological services to bigger companies (Baume 1994:127). Minor investments in oil and gas projects, including an overriding royalty in the Silver Springs Gas Field in the Surat Basin in Queensland,

³⁷ NFM was originally incorporated as a 'no liability' (NL) company in 1969. On 18 Mar 1971 it became North Flinders Mines Ltd.

³⁸ Tenement holders included Dr Reginald Sprigg, the South Australian oil and gas industry luminary. Sprigg gained a geology degree in 1941 having studied under Cecil Madigan at the University of Adelaide. He co-founded oil and gas company Santos Ltd and another company, Beach Petroleum Ltd. He is also founding chairman of the Australian Association of Petroleum and Exploration Association. He had a strong interest in the Flinders Ranges and in 1968 purchased a pastoral property, Arkaroola, which he turned into a wildlife sanctuary. He died in 1994 (Weidenbach 2008). Alice Springs local historian, Jose Petrick, notes Sprigg was in Alice Springs often and travelled extensively with Leo Corbett who bought the property south of Alice Springs in 1955, following the death of its previous owner Charles Chapman.

generated small but consistent cash flow at a crucial stage of the company's history (NFM 1984, 1985, 1987).³⁹

At this time, NFM shifted focus from South Australia to the Central Australian outback. Two elderly prospectors, Sam Griffiths, a butcher in Alice Springs, and Frank Glastonbury, a road worker, offered Stewart a gold prospect for sale.⁴⁰ They jointly held a series of small gold mining leases at The Granites (Interview GS 2008; Interview JD; Interview TI; SEA 1985). These tenements were a series of contiguous tenements each 400 metres square covered the old workings as well as the geologically interesting outcrops along the line of strike of gold-bearing rock. The offer came with no technical data “just a dream and belief” that something was there (Interview TI 2008). Stewart was interested and called on NFM's principle geological adviser at the time, Bruce Wilson (NFM in Baume 1994:127).⁴¹ Wilson “liked the look of the Tanami” and recommended Stewart “get in there and hold on, no matter what” (Interview GS 2008). A recommendation he doggedly followed.

A deal was made between Stewart and the prospectors. The 11 Gold Mining Leases (GMLs), which were to become the core of The Granites Agreement, had lapsed. NFM would take responsibility for re-applying for the leases and once granted, ownership would be transferred to NFM. For their part, Glastonbury and Griffiths would receive \$50,000 on transfer.⁴²

Under the NT Mining Ordinances, NFM had to be the holder of an exploration licence over area of the Gold Mining Leases (GMLs) to be eligible to have them granted. Exploration Licence 862 covered an area of 80 square kilometres surrounding The Granites and was held by Griffiths and Glastonbury (40% and 60% respectively) (NT Mines and Energy personal communication 2009). According to a letter dated 31 July 1981 from the CLC to the NT

³⁹ Bridge Oil spudded oil well Silver Springs-1 in the Surat Basin on 6 Jun 1974 and discovered a significant new oil field (Petroleum Exploration Society of Australia 2004). Bridge Oil was an original signatory of the Mereenie Oil and Gas field agreement signed with the CLC in 1980.

⁴⁰ Glastonbury was a grader driver who worked in NT road construction. Between 1942 and 1943 he was a private in the Australian Army (Nash 2008).

⁴¹ Bruce Wilson was an experienced field geologist and listed as the company's geological consultant up until 1992 when he died. The extensive and gold-rich branch of the underground Callie deposit ‘Wilson Shoot’ was named after him.

⁴² The prospectors also had rights over the Tanami Mine and had these on offer. NFM's liquidity was limited so the Tanami Mine option was not taken.

Mining Minister, EL 862 had been issued in 1973 (CLC files). Following a transfer, on 24 September 1975 NFM became the registered holder of EL 862 (Granites Agreement 1983).⁴³

Some three weeks later, on 14 October 1975, NFM made an application for the GMLs 60 to 70 inclusive (NT Government Mining Title Database; Toohey 1979:62).⁴⁴ EL 862 was then allowed to lapse.⁴⁵ Almost one year later, on 27 August 1976, the Mining Warden in Alice Springs recommended the grant of GMLs 60 to 70 (Toohey 1979:6; Granites Agreement 1983).⁴⁶

2.4.1. Advent of land rights

NFM's emerging interests in The Granites occurred at a time of substantial social change in Australian society, and moreover, a massive change in administrative arrangements in the Northern Territory. With NFM almost entirely focused on The Granites, the future of the project, and the company itself, became inextricably linked to the advancement of Aboriginal land rights in the Northern Territory. Crucially important was the right of traditional Aboriginal owners to decide over development on their land and the right to negotiate terms and conditions over access. Confronting these rights was a ground-shift for the mining industry, which was not accustomed to negotiating with Aboriginal landowners. On the contrary, mining companies had actively sought to suppress Aboriginal aspirations for land rights in areas targeted for major mining developments. This caused considerable consternation at sites such as Weipa in Queensland, Gove in the Northern Territory, as well as Nookanbah and Argyle Diamond Mine in Western Australia (Hawke & Gallagher 1989; National Museum Australia 2009).

With the advent of the *Aboriginal Land Rights (NT) Act 1976* (the Land Rights Act) development of The Granites would involve legal, economic, social and cultural dimensions that were almost without precedent and not easily accommodated by the mining industry.

⁴³ Two other ELs (1060 and 1061) were applied for on 21 Aug 1974 and remained as applications at least until 1978 (Toohey 1979:59).

⁴⁴ The GMLs were applied pursuant to the Mining Ordinance clause 38M(5) (CLC files).

⁴⁵ The Mines Department's historical exploration titles maps indicate EL 862 ceased by Apr 1977, available <http://www.dme.nt.gov.au/dmemain/titles/historictenementmaps/database/browser.asp?variable=55_15041977> 19 Sep 2009.

⁴⁶ Under the mining ordinances the 'mining warden' decided on applications for mining titles and heard any objection. The 'mining warden' was a magistrate of the local court.

Since 1911, administration of the Northern Territory was the responsibility of the federal government and with much of that time effectively under the direction of the Department of External Affairs. A federally appointed Administrator controlled the affairs of government and law-making. Allocation of exploration and mining tenements was subject to the NT Mining Ordinances that were passed by the NT Legislative Council but ratified by the Federal Government.⁴⁷

At the federal elections held on 2 December 1972, Gough Whitlam led the Australian Labor Party (ALP) to victory ending 23 years of government by the conservative coalition parties. His was a reform agenda and Labor promised to deliver land rights to Aboriginal people through a major policy-shift towards Aboriginal self-determination.

Once in power, Whitlam promptly appointed Justice Edward Woodward to head the Aboriginal Land Rights Commission in February 1973.⁴⁸ The following year, in April 1974, Woodward delivered his final report, which laid the foundation for the Land Rights Act.

The federal government “in or around July 1974” issued a moratorium on grants of mining tenements on Aboriginal reserves and vacant Crown land, pending the outcome of the Woodward’s inquiry and the passage of the Land Rights Act (Toohey 1979:58). This was the time NFM was reaching agreement to acquire the GMLs from the prospectors. These were not within any of the Aboriginal Reserves that were planned to become Aboriginal land upon enactment of the Land Rights Act. The Granites, however, was on vacant Crown land, which was the class of land that would be available to traditional owners to claim. Much to Stewart’s detestation and protestation, NFM had to wait until the process for introducing Land Rights was complete.

Following the Woodward recommendations, the newly created federal Department of Aboriginal Affairs established two interim Aboriginal land councils, which together represented Aboriginal people across the Northern Territory, the NLC in the north and the

⁴⁷ A partly-elected Legislative Council was established in 1947 with the “power to make laws for the peace, order and good government of the Territory”, subject to limitations such as assent by the Administrator and provision for disallowance by the Australian Parliament. The Legislative Council comprised 6 elected members and 7 appointed official members and had no power over financial or public service matters (Legislative Assembly of the NT 1999; Horne 2007).

⁴⁸ In a parallel process the federal government established a Joint Committee to examine the matter of self-government. The Committee delivered a *Report on the Constitutional Development in the Northern Territory*, Joint Committee on the Northern Territory, Parl. Paper 49, Canberra, 1974 (not sighted) recommending self-government. In 1974 a fully elected Legislative Assembly was established with 19 members (Horne 2007).

CLC in the south. The land councils' primary task at that stage was to consult Aboriginal people over the legislative proposals being developed by Woodward. The first meeting of the CLC was held in Alice Springs in June 1974 (CLC 1994:5).

The Whitlam Government introduced the bill for Aboriginal land rights legislation in October 1975 (CLC 1994:9). However, on 11 November 1975 Whitlam was dismissed controversially by the Governor-General of Australia. Elections were held the following month resulting in Malcolm Fraser leading the Liberal-Country Party coalition back into power.

In the Northern Territory, the campaign against the Land Rights Act was bitterly fought, with the Australian Mining Industry Council, pastoralists and the NT Administration, mounting a massive media campaign (CLC 1994:9).⁴⁹ While parts of the original bill introduced by the Whitlam Labor Government were altered considerably, Fraser supported the passage of an amended bill and the Land Rights Act was assented to by Parliament on 16 December 1976. It was therefore considered bi-partisan legislation.

The Land Rights Act commenced the following Australia Day, on 26 January 1977. It encompassed a comprehensive approach to recognising Aboriginal traditional ownership of land and promoting self-determination by:

- enabling Aboriginal ownership of land by converting existing Aboriginal Reserves to Aboriginal freehold title,
- establishing a process for traditional owners to claim unalienated Crown land, which if successful would be granted as inalienable freehold title,⁵⁰
- establishing the Aboriginal Land Commissioner to hear land claims and make recommendations to the Aboriginal Affairs Minister,⁵¹
- establishing land councils with statutory functions to represent and promote Aboriginal people's interests, and
- providing a guaranteed source of funding for claims and land councils through a statutory fund.⁵²

⁴⁹ The Australian Mining Industry Council subsequently became the Minerals Council of Australia (MCA).

⁵⁰ Section 3(1) of the Land Rights Act, defines 'unalienated Crown Land' as "Crown Land in which no person (other than the Crown) has an estate or interest, but does not include land in a town".

⁵¹ Under the current legislation, the Land Commissioner must be or have been a Judge of the either the Federal Court of Australia or Supreme Court of the Northern Territory.

The land councils were given significant statutory functions including, importantly, the function to negotiate agreements. Section 23 of the Land Rights Act contains the land councils' functions, with the main functions relevant to this research being to:

- ascertain and express the wishes of Aboriginal people about the management of their land and relevant legislation,
- protect the interests of traditional owners of, and other Aborigines interested in, Aboriginal land,
- assist Aboriginal people to protect sacred sites,
- consult traditional owners and other Aborigines interested in Aboriginal land about proposals for the use of their land,
- negotiate on behalf of traditional landowners with parties interested in using Aboriginal land and land under claim, and
- conduct land claims.

For the first time in Australian history Aboriginal land rights were recognised in legislation, and exercising those rights was supported by well-resourced representative agencies. Being a newly created body, the CLC initially had limited expertise and experience. Established under socially progressive legislation, it had the daunting task of affecting a new order between Aboriginal people and wider society in the Northern Territory, with little or no precedent on how to organise or operate. Entrenched structures of power and influence in Central Australia that hitherto rested with the missionaries, pastoralists and miners, were now upset. The requirement to deal with self-determining Aboriginal interests was met with vitriol and resistance from those entrenched quarters. This hostility manifested politically in the form of the conservative Country Liberal Party (CLP), which was to gain firm control of Northern Territory for the first 24 years of self-government.

2.4.2. Warlpiri Land Claim

In the Tanami region, only the small Aboriginal reserves around Lajamanu and Yuendumu on the fringes of Warlpiri country were returned to traditional owners on commencement of the Land Rights Act. The vast majority of their land, including The Granites, was vacant Crown land. Securing Aboriginal land title became the priority for the fledgling CLC.

⁵² A number of name changes of this fund have occurred and as at the time of writing it is known as the Aboriginal Benefits Account (ABA) see Chapter 3.

Maurice Jupurrula Luther from Lajamanu said at the time the Land Rights Act was introduced:

Land Rights to me is a very good thing, one of the good things I have seen. They shouldn't muck about too much but they should give that land straight back. To the people who hold on in the Northern Territory, they should give tribal land and sacred sites back straight away instead of holding on to it (CLC 1994:14).

On 16 August 1977 the CLC lodged the *Warlpiri and Kartangarurru–Kurnitji* (the Warlpiri Land Claim) land claim pursuant to the Land Rights Act.⁵³ The land claim was in two parts, the northern part (Part 2) was very large, covering most of the Tanami Desert including The Granites and Tanami locales. This was the first land claim lodged by the CLC and the second received by the Aboriginal Land Commissioner since the commencement of the Land Rights Act (Aboriginal Land Commissioner 2005:8). It was also one of the largest claims with some 1200 claimants (Toohey 1979:2).

Justice Toohey, the Aboriginal Land Commissioner at the time, heard the land claim at Alice Springs, Lajamanu and Yuendumu between November 1977 and May 1978. NFM's interests, along with over 40 various exploration and mining titles remained in abeyance while the claim was heard and subsequent recommendations decided upon by the Minister (Toohey 1979:58).

NFM made two written submissions and appeared before Toohey to give evidence of detriment to the claim.⁵⁴ In its written final address, NFM said it might suffer detriment if the land was granted to traditional owners because it would be “obliged to endeavour to reach agreement” with the CLC or otherwise seek an arbitrated agreement, before their gold mining leases could be granted. NFM was concerned over the possibility of payments it had to make over and above the statutory rents and royalties under the existing mining ordinance:

the company may suffer detriment in that the terms of any agreement reached either by negotiations or arbitration maybe to its disadvantage as compared with the Ordinance or Regulations or, if it is unwilling to enter into the agreement settled by the arbitrator, the grant of the lease can not be made (NFM Exhibit 162 cited in Toohey 1979:62).

⁵³ A land claim pursuant to subsection 50(1) of the Land Rights Act.

⁵⁴ NFM submissions were exhibits 141 and 161 (not sighted) (Toohey 1979:87, 88).

Toohey was not convinced. On 4 August 1978, his final report recommended the grant of the claimed land to an Aboriginal land trust (Toohey 1979:iii, 1, 49). Toohey dismissed NFM's arguments of detriment along with similar arguments by other resource companies:

no detriment is likely to result to North Flinders Mines Ltd if the claim is acceded to. Any detriment will be a result of the operation of the mining provisions of the Land Rights Act. There was no evidence of any expenditure incurred on exploration or of the company's viability (Toohey 1979:78).

During the claim, on 1 July 1978, the Northern Territory became self-governing by virtue of federal legislation, the *Northern Territory (Self-Government) Act 1978*. The 19-member NT Legislative Assembly (established as an interim body to replace the Legislative Council in 1974) was given power to legislate and take responsibility for most 'state-type' functions except explicitly, matters specifically relating to Aboriginal land, mining of uranium, national parks, and most matters of industrial relations.⁵⁵

The Legislative Assembly was dominated by the CLP; with Paul Everingham as leader it held 12 of the 19 seats. Conservative and parochially based, its electoral success was sustained largely by flagrant defiance of federal government involvement in NT affairs. Generating public apprehension over land rights was an especially favoured tactic to win over voters. Consistent with their ideological view and election-winning strategies, the CLP Government was particularly diligent in fighting Aboriginal land claims under the Land Rights Act.

The NT Government's main argument against the Warlpiri land claim was the alleged detriment to the Tanami Wildlife Sanctuary, an area unilaterally designated by the NT Parks and Wildlife Commission as having particular ecological importance.⁵⁶ Parks and Wildlife was concerned that Aboriginal people would shoot-out rare species and damage the environment (CLC 1994:18). In comparison, with respect to the proposed exploration and mining in the area no similar concerns were expressed. Aboriginal people were dismayed. Jerry Jangala from Lajamanu said at the land claim hearings (CLC 1994:18):

⁵⁵ Administration of exploration and mining (other than uranium) became the responsibility of the NT Administration. In 1980, the NT Mining Act was passed. It commenced in 1982, replacing the old Mining Ordinances.

⁵⁶ The Granites was located just outside the area designated as the Tanami Wildlife Sanctuary. The Wildlife Sanctuary was more of a notion, it not being declared under any legislation or other administrative arrangement. Its legal status therefore was under conjecture at the land claim hearings.

We're the first ones and we were born there. Not only myself but my big brother and my big sisters were born before that Wildlife [Sanctuary]. They were born there and they will grow up there. Even my father was born there, my mother was born there, my grandfather. They were there while the Tanami Wildlife [Sanctuary] was coming and we're the ones, the first ones and I think they can ask us what they can do about their Wildlife [Sanctuary].

On 6 August 1980, the claim, covering over 86,000 square kilometres, was vested in the Central Desert Aboriginal Land Trust by the Commonwealth Government.⁵⁷

The grant of Aboriginal land meant access for exploration and mining at The Granites was subject to the Land Rights Act. The requirement for the consent and agreement of traditional owners over development or use of their land was a central tenet. The mining provisions contained in Part IV of the Land Rights Act codified the process to access Aboriginal land for exploration and mining. Traditional owners gained the right to consent or refuse consent to applications for exploration licences (subject to the national interest). As a result NFM was faced with having to negotiate an agreement to access their GMLs for exploration and mining.

Stewart argued vigorously that no such requirement existed, believing the Northern Territory and Commonwealth Governments acted illegally by withholding the grant of the GMLs (Interview 2008 GS). In a provocative move, Stewart wrote to the CLC in March 1980 advising that NFM had made an application under the Mining Ordinances to work on the GMLs (CLC files). The CLC objected:

As the E.L. [no. 862] was issued before 4 June 1976, the consent of the C.L.C. to the grant of the G.M.L.s is not required – section 40(3) of the Aboriginal Land Rights (Northern Territory) Act 1976.⁵⁸ However, pursuant to section 43(2) of the Land Rights Act, the G.M.L. shall not be granted ... “unless the applicant has entered into an agreement under seal with the Land Council containing such terms and conditions as are

⁵⁷ Aboriginal Land Trusts are established under section 4 of the Land Rights Act to hold title to particular land vested in it. They have no function other than being a legal entity enabling the grant of communal freehold title. As far as control over the land, traditional owners as a group decide over land use proposals.

⁵⁸ Subsection 40(3) of the principle Act (no. 191 of 1976) states: “Where the holder of an exploration licence in respect of land applied, before 4 June 1976, for another mining interest in respect of that land, subsection (1) does not apply to the grant of that other interest”. Subsection 40(1) being the requirement for the consent of the Land Council.

agreed on by the parties having regard to the effect of the grant of the mining interest on Aboriginals ...” (CLC files).⁵⁹

Because NFM held EL 862 and had also applied for the grant of the GMLs prior to the grant of Aboriginal land, these interests were defined as ‘pre-existing’ so that the rights attached to them were preserved. This meant they did not require the formal consent of the traditional owners in order to be granted by the NT Government. Under the Land Rights Act, however, it remained that an agreement with the traditional landowners had to be made through the CLC over the terms and conditions of the grant of the GMLs.

On 31 October 1980, the NT Minister for Mines, Ian Tuxworth, wrote to NFM with an offer to grant the GMLs. The letter ended the debate by confirming that NFM must first enter into an agreement with the CLC (CLC files).

2.5. Conclusion

Examining the history of The Granites provides insight into and understanding of the social, political, economic and cultural context within which the Agreement was to be negotiated. At the foundational level, the examination highlights the vastly different and contrasting world views held respectively by the Aboriginal landowners and the miners. These differences surfaced across a range of areas that would fundamentally affect the negotiating environment and relationship setting.

For Aboriginal people the land was central to their identity, sociality and spirituality. In contrast, for the miners, the Tanami was viewed as vacant, vast, inhospitable and attractive only because of the possibility of finding gold. Theirs was a profoundly secular view of the land, a place to be only because of the mineral resources that could be exploited.

The very remote location and the hostile environment slowed the advance of the colonial frontier until the turn of the 20th Century. This made for a very short contact history compared to most other parts of Australia, particularly in the south where European incursion commenced several generations earlier. As a consequence the Warlpiri never

⁵⁹ The remainder of subsection 43(2) states “...which terms may include a requirement for the payment to the Land Council by the applicant of an amount or amounts specified in, or calculated in accordance with, the agreement.”

ceded their land and maintained a strong spiritual attachment along with much of their cultural knowledge and traditions.

Not only was the timing of the European colonial advance delayed, but also the scale and scope of occupation was also restricted, being limited to relatively small areas around gold fields and along roads. Although most of the Warlpiri estate remained undisturbed, The Granites was one of the main areas of interest and the landscape there was dramatically altered by years of mining. The area was also traditionally a site of important ritual significance and despite the extent of mining activity the area retained its spiritual importance. Through this contact history Warlpiri demonstrated an adaptive quality. The response to the incursion by miners was not defined by wholesale conflict but characterised moreover by a pragmatic accommodation.

A conclusion drawn here is that this pragmatism is a defining character of the Warlpiri responses to colonising agencies, including the action of government to move Aboriginal people into government administered settlements. This pragmatism specifically framed the Warlpiri responses to renewed proposals to mine at The Granites. Elsewhere in Australia, where the experience of contact unfolded differently, such proposals could be construed as further intrusion and ongoing acts of colonial dispossession deserving of resistance.

The timing of NFM's acquisition of mineral rights at The Granites coincided with significant shifts in societal expectations over treatment of Aboriginal people by mining companies. In a historical twist of fate, NFM's mining proposals were entwined with the advance of Land Rights in the Northern Territory. The Land Rights Act was passed in 1976. It enabled traditional owners to claim vacant Crown land and obtain Aboriginal freehold title if they could prove their traditional connections. The Warlpiri land claim was successful because traditional knowledge and connections to land remained largely intact. Through the land claim process they gained the right to control access to their land.

The rights obtained under the Land Rights Act empowered the Warlpiri to engage in development of resources on their land. Having the power to negotiate, combined with the experience of the historical gold rushes meant NFM's mining proposals were considered positively, provided that traditional owners could share the wealth generated. This would be pursued through making of an agreement. From this analysis of the sequence of events leading to the point of negotiations it can be speculated that the Warlpiri would have been

marginalised and relegated as mere spectators of development on their land if NFM's applications for mining had been made some years earlier prior the Land Rights Act.

Examination of the history revealed that at the time of the initial development proposals the Australian mining industry was not normally inclined to negotiate with Indigenous people. In the immediate post-war period, the mining industry largely got its own way as resource development was considered synonymous with the development of the nation. The miners were therefore adverse to any measures that might hinder unfettered access to mineral resources across Australia. The rights assigned to Aboriginal people under the Land Rights Act were an anathema to the mining industry and the introduction of the legislation was met with a high degree of political hostility.

The stage was set for a politically charged environment for negotiation over The Granites project. At stake was not only the future of the project and NFM's corporate existence, but also the proof of the workability of the Land Rights Act as evidenced by reaching agreement. Being one of the earliest mineral developments under the Land Rights Act, The Granites would be a test of the legislation as an effective instrument for reconciling vastly competing interests of Aboriginal people and miners, as well as addressing past injustices. The foundations were thus laid for negotiations that reflected the tensions between giving traditional owners the right to control access to their land, while satisfying the mining industry's demand for reasonable access to land.

3. The Granites Agreement

This chapter outlines the complex and convoluted machinations over the negotiation of The Granites Agreement. The purpose is to examine the actions and motivation of the parties throughout the negotiations in order to identify the expectations and intent of the parties under the Agreement. The chapter also describes how, as the nature of the project changed, further agreements were made to modernise the original Agreement and allow further mining developments.

The original Granites Agreement was followed by an additional agreement over an adjacent mineral lease at Dead Bullock Soak (DBS). These agreements operated contemporaneously up until 2003, when they were superseded by the Consolidated Mining Agreement (CMA). This sequence is summarised in Table 2. The origin and nature of each agreement is examined in turn in following sections.

Table 2. Agreements made over The Granites operation and associated tenements.

Mining Title	Title type	Comments
Granites Agreement 1983 (Original)		
EL 3122	Exploration licence	Consent required ss.40(1) (pre-1987 amendments).
GMLs 50-61	pre-existing Gold Mineral Leases	No consent required. Agreement required in accordance with ss.43(2).
ML(S) 8	Mineral Lease (south)	Exploration licence (EL 3122) required prior to grant of ML(S) 8 ss.43(1).
Water, gravel and sand	permission to access Aboriginal land	Agreement under s.19 Land Rights Act to search a 70 km radius from The Granites.
Dead Bullock Soak Agreement (DBS) 1990		
ML(S) 153	Mineral lease (south)	DBS Mining Lease 45km west of The Granites. Agreement made under s.46 of amended (1987) Land Rights Act. Parent exploration licence of ML(S) 153 was EL 2197 granted under a 1988 exploration agreement.
Consolidated Mining Agreement (CMA) 2003		
ML(S) 8	Granites mineral lease	The agreements over The Granites and DBS Mining leases were consolidated pursuant to section s.48B of the Land Rights Act - variation of terms and conditions. The CMA recognised the leases constituted a single operation and established common terms and conditions. It also remedied a number of technical breaches.
ML(S) 153	DBS mineral lease	
ML(S) 134-144	pre-existing GMLs re-numbered by Mines Department	

3.1. Negotiation of the original Granites Agreement – 1983

The first meeting between the CLC and NFM to discuss making an agreement was held in Alice Springs on 19 December 1980. Earlier, in August that year, following the grant of the Central Desert Land Trust, NFM had finally acknowledged in a letter to the CLC that an agreement over The Granites project was a requirement of the Land Rights Act and it sent a draft agreement for consideration. Stewart wanted the agreement completed by April 1981. The CLC questioned this timeframe. Achieving it would be difficult judging by the magnitude of the anthropological work involved in identifying the relevant traditional owners as well as the consultations required to ascertain their views and receive instructions over the proposals (CLC files).

In addition to the pressures of the negotiation process and the hostile political environment, a further challenge for the CLC was the limited experience with developing policy and approaches to exploration and mining on Aboriginal land. At the commencement of negotiations the CLC briefed RoCastan QC⁶⁰ who had been involved in the Gove Land Rights case.⁶¹ Though he was interested other work commitments prevailed and he did not continue with the brief. In May 1981, Mr Noel Magee, legal counsel from Canberra, was retained along with a Sydney-based mining consultant, John Erskine, who was engaged to advise on technical and economic aspects of the proposed mining project (CLC files).

At that time in 1981 when NFM and the CLC met, only four examples of production agreements existed to guide the negotiations and frame the drafting of the document. The Northern Land Council (NLC) had negotiated the Nabarlek Agreement in 1980 and the Ranger Agreement in 1978 in the Top End. The CLC had two precedents, both of which were for oil and gas developments.⁶² As Geoff Stewart pointed out, The Granites was “the first non-energy” mining agreement negotiated under the Land Rights Act (Interview GS 2008; Stewart 1991).

⁶⁰ Ron Castan was a civil rights activist and leader in the Jewish community. He was instrumental in winning the *Mabo* case and had also represented the Aboriginal people in the *Wik* case. He died in 1999 (Kirby 1999).

⁶¹ Legal citation *Milirrpum v Nabalco Pty Ltd, (1971) 17 FLR 141*. The Gove land rights case was the first litigation over traditional Aboriginal rights to land in Australia. Justice Blackburn ruled against the claim.

⁶² The Mereenie Agreement signed in 1980 and the Palm Valley Agreement signed in 1981. See Fig. 1. for location.

Not only NFM was impatient. The NT Government wanted development so much so that the NT Mining Minister, Ian Tuxworth, wrote to the CLC on 24 June 1981 accusing it of failing its statutory obligation to negotiate. The CLC's response highlighted its statutory obligation to ensure traditional owners understood fully the development proposals as well as the nature and purpose of any agreement (CLC files).⁶³

The NT Government remained hostile towards the CLC. During the negotiations they continued to apply political pressure to finalise an agreement. In January 1982, Minister Tuxworth was in the media, again accusing the CLC of failing to comply with its statutory responsibilities. The CLC fended off criticism by pointing out it had returned the draft agreement to NFM and itself was awaiting comments (CLC files).

The draft had been provided to the CLC in July 1981. One of the fundamental difficulties that slowed the drafting was that the actual details of the project were not known because NFM had not undertaken any exploration drilling. Its proposals described a relatively small operation based on two open-cut pits, Bullakitchie and Shoe. At the negotiating stage, however, no one knew if there was sufficient gold to be mined. The only certainty was that there would be exploration to test whether sufficient gold existed to be commercially viable. Even though feasibility of The Granites was yet to be proved, NFM wanted the terms and conditions for mining established before proceeding with exploration. Stewart's opinion was that it would be irresponsible to invest in exploration unless the conditions applying at the mining stage were known, particularly costs such as payments to landowners. Despite the complexities of this approach he insisted on having the certainty to progress from exploration to mining without interruption (Interview GS 2008).

Stewart's position was backed by the Northern Territory's mining industry association:

The Northern Territory Chamber of Mines is explicit in its views. 'It would be an act of commercial lunacy,' it has told the federal Government, 'for any mining company to accept willingly a situation where millions of dollars could be spent on minerals exploration with absolutely no reasonable guarantee of being able to mine it at some future date should viable deposits be found' (Chapman 1984).

⁶³ Subsection 23(3) and section 48 of the Land Rights Act requires the Land Council be satisfied that traditional Aboriginal owners of the land are fully informed and consent to any agreement.

The dilemma was how to make an agreement over an uncertain, largely unspecified, and shifting project. A further complication was that the Gold Mining Leases (GMLs) obtained from the elderly prospectors (see Chapter 2) only covered a relatively small area over the historical gold deposits. The GMLs alone were too small to host the infrastructure needed for a modern mine, should exploration be successful.

The strategy was devised whereby NFM would apply for a larger mining lease that surrounded the GMLs. The proposed mine's infrastructure would be located on this larger lease. The Agreement would permit mining on the GMLs, whereas the processing plant, tailing dams, mine camp, would be permitted on the surrounding mining lease. If mining occurred outside the GMLs a further agreement over terms and conditions of the "Additional Areas" would be required (Granites Agreement).

A threshold matter concerned whether a single agreement or multiple sequential agreements would be adopted as the project developed. The CLC considered staged agreements would improve its negotiating position. NFM preferred just one agreement that gave it rights to explore and mine the GMLs and build infrastructure on a surrounding lease, incorporating rights to access surrounding Aboriginal land for water and extractive materials needed for construction. The single agreement, delivering a package of exploration, mining and access rights was pursued.⁶⁴

3.1.1. Traditional owner consultations

The CLC identified that most of the traditional owners for the project lived at Lajamanu and Yuendumu. On 17 December 1980, the CLC met with traditional owners at Lajamanu for the first time to discuss the project, including the broad terms and conditions of a possible agreement and to explain their legislative rights.

A similar meeting at Yuendumu was attempted; however, Mr Scrutton, CLC Chairman and Mark Hird, the senior lawyer, went there "only to find that community virtually deserted" with the majority of the people gone to Jigalong in Western Australia "on business" (CLC files). This was not the best time of year for consultations, not only because it was the favoured time for traditional ceremony, but also because of the intensity of summer. The

⁶⁴ A range of minor ancillary permits, licences and agreements with respect to Aboriginal land located outside the mineral lease were needed over the life of the project. These related to sand and gravel extraction civil works, the DBS haul road, two water borefield leases (Billabong and Schist Hills), a pipeline lease.

anthropologist assisting with the consultations set out on a field trip February 1981 only to become stranded and he needed to be evacuated.⁶⁵ The work had to be postponed until March 1981. These events illustrate the practical difficulties with achieving the desired timeframes. NFM nevertheless grew increasingly frustrated over the perceived delays.

Once undertaken, the initial consultations with traditional owners revealed the following matters:

- concern over protection of sacred sites,
- “extreme concern” over the danger posed by large holes left at the completion of mining,
- interest in the possibility of Aboriginal people working at the mine, including the possibility of work of a “substantial nature” for the Yuendumu Mining Company,⁶⁶
- interest in obtaining benefit from the gold mined from their country, and
- desire for support to return to live on their country at The Granites (CLC files).

The cultural importance of The Granites was documented through the consultations as well as field visits. CLC Anthropologist, Jeff Stead, reported that The Granites was “an important focus of ritual activity” and traditional owners maintained a strong spiritual attachment to the land:

The Aboriginal land owners of The Granites area still preserve a complicated and deeply religious philosophy. The orderly structure of their lives is based on traditions conceived by totemic ancestral figures in the beginning which is called ‘the Dreamtime’. The sagas of the journeys and activities when those figures walked the land, including the subject land [The Granites], are for them, the history of Creation. From the sagas have issued the laws, beliefs, rituals, behaviour patterns and attitudes that govern their entire existence. Their philosophy binds them inexorably to the whole of their tribal land and everything in it. The land is land which has been entrusted to them by the Dreamtime figures because they are directly descended from those Dreamtime figures (CLC files).

⁶⁵ The anthropologist was Bruce Reyburn (CLC files).

⁶⁶ The Yuendumu Mining Company was set up by the Department of Welfare to take advantage of minerals in the vicinity of Yuendumu. As at the time of writing, it has operated continuously since, although most of its reliable cashflow is through a shop and service station at Yuendumu (Interview FB 2008).

In Stead's opinion mining would "have great effects on Warlpiri ritual life even after all sacred areas are safeguarded." Furthermore the project would "cause considerable anxiety to Aboriginal people who have spiritual affiliation to the [sacred] sites on the land" arising from:

- damage and disturbance to the surface of the land,
- impeded right of way, particularly in relation to ceremonial travel, and
- effective loss of use and possession of the land (CLC files).

A survey to ensure the protection of sacred sites was undertaken. An area was fenced off to physically protect The Granites sacred sites, in particular a large area of granite outcrop adjacent to the historical workings. Site protection procedures were included in the Agreement that gave the CLC responsibility to ensure that future project works did not interfere with sacred sites or other areas of cultural interest. NFM was required to submit notices of proposed work. Where these required site clearances, the CLC would assemble an appropriately qualified team of traditional owners to inspect the areas and issue clearances based on their advice (Granites Agreement). Importantly, through these procedures traditional owners kept abreast of developments and maintained a degree of control over activities.

Environmental impacts were another area of major concern. NFM had attempted to shorten the consultation and negotiation process in April 1981 by approaching the federal Department of Aboriginal Affairs to waive the requirement for an environmental report (CLC files). The move was unsuccessful with NFM eventually conducting a preliminary environmental study in May 1981.

The environmental report was based on a review of available literature plus a single short site visit by the consultants. Much to the consternation of the CLC, the opening paragraph stated that "the project will not interfere with other human activity because there is none nearby" (CLC files). The environmental consultants were clearly impressed with the remoteness of The Granites. They apparently failed, however, to appreciate the nature of prior Aboriginal occupation and that, despite being relocated to distant communities, Aboriginal people continued to visit the area and held strong desires to live on their country. This highlights how Aboriginal interests were effectively invisible to wider society (c.f.

Howitt 2001). Promoting and protecting those interests was to be a major challenge for traditional owners and the CLC negotiators.⁶⁷

The social effects of a possible town became a major focus of the early consultations. ‘Fly-in fly-out’ was not then usual practice within the mining industry, with Jabiru (servicing the Ranger Mine) being one of the last purpose-built mining towns in Australia. NFM’s proposals were far more modest and envisaged a town of 200 to 300 people to house its workers. The impact of introducing a significant population of non-Aboriginal people was considered cautiously. Some of the impacts identified included, sexual interference with Aboriginal women, disenfranchisement of Aboriginal voters through increased non-Aboriginal population, problems with off-lease recreation pursuits of residents, possible abuse of alcohol. On the other hand, the proposed town was viewed by the Warlpiri as an opportunity to gain access to essential services on their country. Detailed consideration was given over how to control the social impacts whilst using the town development as the catalyst for Aboriginal people to return to country.⁶⁸

No such town, however, was to eventuate. Instead, NFM decided to construct a workers-only camp that contained no civic infrastructure. No non-workers (including family members) or private motor vehicles would be allowed. Workers would ‘fly-in and fly-out’ according to their rosters on company-chartered flights. The ‘FIFO’ era in Australia had begun.

The potential social and environmental impacts of mining were dealt with by inserting in the Agreement requirements for further impact assessment and management plans to be prepared at the time mining activities were proposed. Because the mining proposals were not fully developed, the Agreement’s environmental protection provisions established broad principles and intent, such as keeping disturbance to a minimum and adhering to best industry practice. A set of procedures was included that required the company to submit to the CLC notices of project works that would include sufficient details for the CLC to assess

⁶⁷ Harry Butler became a well-known naturalist and television identity. He was contracted by the CLC to advise on environmental conditions for exploration. Butler previously advised the CLC over environmental conditions in the Mereenie and the Palm Valley Gas Agreements. The Granites Agreement Environmental Annexure reflects this as there are references to seismic lines, which are only used in petroleum exploration.

⁶⁸ The CLC insisted there be no alcohol, that workers be restricted to the town and mine areas with a limit on the number of people in the town. Police were to be stationed at the town. There were to be no firearms or pets. Once mining was finished, the town would revert to the traditional owners. Aboriginal people wanted to be allowed to use the town’s facilities and include an area in the town to be reserved for Aboriginal houses.

the environmental efficacy and adherence to the agreed environmental principles (Stoll 1995).⁶⁹

A high degree of information sharing and Aboriginal involvement was further achieved through an Advisory Committee made up traditional owners, CLC officers, and representatives of the mining company. The Advisory Committee clauses resemble those commonly found in joint-venture agreements made between exploration companies. These typically have a committee with equal representation of the parties that votes on operational matters and is overseen by a chair, which alternates between the parties. In practice, the Advisory Committee never operated as stipulated in the Agreement because the nominated number of Aboriginal representatives was too small compared to the level of interest by traditional owners to attend the liaison meetings. The format for liaison meetings became much larger with around 15 to 25 male and female traditional owners wishing to attend (Interview JS 2008).

Aboriginal training, employment and contracting was another substantive operational area of the Agreement. The company was obligated to seek Aboriginal people interested in working at the mine and provide training and employment using their “best endeavours”. Along similar lines, the Agreement promoted the use of Aboriginal contractors by requiring notices of contracts to be issued to the CLC. With respect to deciding on tendering, where all factors are equal, it was expected preference would be extended to an Aboriginal contractor. These provisions are the subject of Chapter 5.

Traditional owner consultations culminated at a meeting on 16 June 1981 at The Granites, attended by approximately 100 Aboriginal people from various communities in the region including Yuendumu and Lajamanu. Magee and Erskine attended this meeting to explain the project and the draft agreement being prepared (CLC files). Following further consultations with traditional owners a revised draft agreement was finally delivered to NFM in November 1981 (CLC files).

⁶⁹ Once exploration proceeded and mining plans were developed the requisite environmental reports and social impact studies would be undertaken in accordance with the Agreement. Specific plans for the agreed project works would be progressively submitted for approval to the CLC, which would consult with the traditional owners over the works proposals.

3.1.2. Financial terms

The financial terms proved to be the most difficult to agree on. The CLC's legal and mining experts advised basing payments on a percentage of the 'Gross Value of Mine Production', being the value of the minerals produced. In addition, one-off payments made prior to the commencement of the mining were recommended. These payments would be over and above the statutory royalty paid to the Northern Territory.⁷⁰

Negotiations over payments to traditional landowners intensified, consuming the greater proportion of the time taken in finalising the Agreement. The initial arguments were over whether the legislative scheme allowed the CLC to negotiate a 'royalty' style payment.

NFM wrote on 24 December 1982 that "a private royalty is not justified in the legislation for mining on Aboriginal land ... [and] ... outside the intent of the Land Rights Act" and against NT Government policy (CLC files). NFM stated its position:

[T]he minimum acceptable return must be above 10% [on capital invested] in real terms. It is therefore fundamental to North Flinders' position that no additional charges be levied on the on project revenue before this return is achieved. ... It is clear from this assessment that a gold mining project at The Granites would have marginal returns at current average gold prices. It is in the interest of both North Flinders and the landowners that a project is developed. At current gold prices the claim for 7½ per cent of revenue would equate to over 30% of profits (CLC files).

The NT Mining Minister, Jim Robertson, supported the company by stating he would not issue the mining leases if the CLC asked for an extra royalty (CLC files).

This Government's view is the same as North Flinders. The CLC has no right to place demands on the company and I announce publicly that I, as Minister, will not tolerate payments in the nature of a private royalty (CLC files).

Whilst holding this position, NFM also wanted to move negotiations forward. It proposed a means of sharing benefits generated by the project, which enabled "a share of the revenue be

⁷⁰ At the time negotiations commenced the statutory royalty was calculated in accordance with the Mining Ordinances, being in most cases 2.5% of the gross revenue. In 1982 the NT Mineral Royalty Act, which adopted a profit-based royalty, was passed. It was nominally 18% net profit royalty arrived at by a complex series of allowable deductions. In practice the Mineral Royalty Act returned less than 18% profits as there are significant deductions, such as capital expenditure and exploration expenditure, available as deductions against revenue.

provided when it is above an amount specified to meet a minimum average return on the capital invested in the project”. This took the form of a payment based on a “straight line sliding scale” percentage of revenue minus costs for transport and refining of product linked to gold price.

The CLC “rejected *in toto*” NFM’s proposal for a sliding scale royalty, being at odds with instructions of traditional owners as reported from meetings in Lajamanu in December 1982.

M Luther stated that traditional owners were adamant that they wanted a scheme which allows them to get something each year. M stated that they would accept only on a fixed percentage as they wanted a guaranteed income each year (CLC files).

Disagreement over payments pushed the matter to the brink of arbitration. NFM unilaterally decided negotiations were deadlocked and without notice Stewart approached the Federal Minister for Aboriginal Affairs, Ian Wilson, to appoint an arbitrator. Announcing his actions in the media on 9 February 1983, Stewart said it was “commercial nonsense” for the CLC to demand 7.5% “revenue royalty” (NT News 1983a). To the CLC’s dismay, details of private commercial negotiations were made public; it had been actively negotiating and believed the application for arbitration was premature. In any event, the Minister was not willing to make a decision because a federal election was imminent.

Following the election of Bob Hawke’s Labor Government, Stewart met with the new Minister for Aboriginal Affairs, Clyde Holding, on 7 April 1983 to discuss the appointment of an Arbitrator.⁷¹ A letter to the CLC from NFM, dated 8 April 1983, reports that:

[T]he Minister deferred the immediate appointment of an arbitrator on the basis he wished to give the CLC the opportunity to put a new offer to NFM in time for a meeting for discussion at the meeting to be held in April 19th between the CLC and NFM. The question of such an appointment would be considered in the light of what transpires at that meeting (CLC files).

According to Stewart, at some point he met with Prime Minister Hawke and told him that the Land Rights Act was Labor legislation (sic) and that “they should bloody well make sure it works” (Interview GS 2008). There is nothing on the CLC files cited that records either

⁷¹ The first Hawke ministry was sworn-in on 11 Mar 1983 (UniSA 2009).

that meeting or how the government might have responded to Stewart's blunt message. Matters, however, did progress quite rapidly in early 1983.

With much of the form and content of the Agreement satisfactorily drafted by this time, most of the negotiating effort was directed at finalising the financial arrangements. The CLC was able to brief Ron Castan QC to assist in negotiations.⁷² Negotiations to break the 'deadlock' were held on 28 and 29 April 1983 in Melbourne. The CLC wrote to the Minister the week before the meeting to quell concerns over the need for arbitration insisting that:

Mining companies must accept Aboriginal people as a commercial reality, instead of calling for an Arbitrator, NFM ought to be seeking an accommodation which does not result in Aboriginal people being treated as second class citizens (CLC files).

Significant progress was made at the April meeting. The discussions were reported in the *Northern Territory News* on 3 May 1983:

A CLC spokesman, John Coldrey said this morning that the issue had not been resolved finally by talks held last Thursday and Friday. However the discussions had been useful and the council and North Flinders representatives would meet again on May 12 and 13 (NT News 1983b).

Following the meeting in Melbourne, the CLC reported back to traditional owners at meetings in Lajamanu and Yuendumu. Instructions were sought for a revised stance on the rate of royalty. Aboriginal representatives were chosen to attend the next negotiation round in Melbourne in May. Stewart resorted to the media again ahead of this meeting saying that Minister Holding had told him that "if agreement on financial matters was not reached next week he should be approached to discuss the appointment of an arbitrator" (CLC files).

The parties met again in Melbourne on 12 and 13 May 1983 and agreement 'in principle' was reached, subject to obtaining the group consent of traditional owners as well as approval from the Board of NFM (CLC files).

On 3 August 1983, the parties signed The Granites Agreement.⁷³ Stewart announced that a lump sum payment and "an annual rental fee had been agreed instead of a private royalty

⁷² Castan replaced Magee presumably because the latter was no longer able to continue with the matter.

⁷³ The Agreement was ratified by the CLC at its meeting on 6 Jul 1983. The Minister for Aboriginal Affairs gave his consent to the CLC entering the Agreement in Sep 1983.

based on value of production”. The rental was a fixed sum that would rise with any spiral in the price of gold. An unattributed newspaper clipping on the file reported that:

Mr Stewart said the agreement had become a model for subsequent agreements on Territory owned minerals. ... Both sides left the negotiating table thinking they could have done better, so I think that is an indication that we have a fair agreement. ... Mr Coldrey is a tough negotiator and he secured a very good agreement for the Aboriginal people. Mr Coldrey shared Mr Stewart’s view on the outcome of the negotiations (Newspaper clipping anon. n.d. CLC files).⁷⁴

The Age newspaper was far less circumspect in reporting the financial provisions of the agreement, which included an initial payment of \$110,000 to be followed by second lump sum payment of \$150,000 and “a 1.5 per cent levy on the gross revenue of any mining” (Age 1983).

The CLC Chairman, Stanley Scrutton, in announcing the signing of The Granites Agreement asserted that “the successful conclusion of the complex and detailed negotiations was further proof that land rights was working well in the Northern Territory.” CLC Legal Officer, Coldrey said that “this contract is important as mining companies had had to recognise Aboriginal people as an economic reality” (CLC 1983).

The original Granites Agreement ultimately dealt with several categories of mining titles as discussed. As such these had to satisfy several provisions of the Land Rights Act specifically:

- a) subsection 40(1) relating to consent and agreement over the grant of an exploration licence (EL 3122) surrounding the historical mining area that enabled the application for the new mineral lease (ML(S) 8);
- b) subsection 43(1) requiring an agreement over the terms and conditions of the grant of ML(S) 8; and
- c) subsection 43(2) which mirrors subsection 43(1) and requires an agreement to be made over terms and conditions of access to the pre-existing interests (the GMLs).

⁷⁴ John Coldrey was the CLC principal legal officer between 1982 and 1984. After leaving the CLC he worked as a barrister, becoming a QC and then eventually a Judge of the Supreme Court of Victoria.

Under the terms and conditions of the Agreement, NFM agreed to make a series of payments, including lump sum payments at certain milestones of the mine's development, as well as on-going payments based on the value of production.⁷⁵ Lump sum payments (indexed against 1982 value of money) were to be paid on execution of the agreement (\$100,000) and a further amount on announcement of mine construction (\$150,000).⁷⁶ Howitt cited NFM's 1985 Annual Report that mentioned an initial payment of \$350,000 (1991:124). This is a larger figure than that contained in the financial provisions of the Agreement. Possibly, the NFM Annual Report incorporated an amount spent by NFM on constructing an outstation some 70 kilometres of the mine.⁷⁷

Once production commenced, the ongoing payment was to be made every six months and calculated at 1.5% of the gross value of mine production. This was effectively an *ad valorem* private royalty as it is based on the value of production with limited deductions applicable.⁷⁸ Howitt refers to \$55,000 (also indexed) paid each six months from the commencement of production (1991:124). This provision was essentially a minimum payment paid only in circumstances where the royalty was less than this amount. A minimum was included because the royalty payment could be deferred where the gold price issued by the Perth Mint fell below \$400 (also indexed) an ounce.⁷⁹ The other effect of the minimum payment is that it guarantees a payment in the case where mining commences but is halted for some reason.

Such was the interest of the NT Government to see development proceed, the Mining Minister was convinced by the parties to accept the agreement despite his own department's policy, 'Guidelines for Negotiation Agreements for exploration and mining on Aboriginal land', which says:

⁷⁵ Inclusion of 'up-front payments' linked to development milestones was a feature of the Ranger Agreement (see Kesteven 1983:359). The effect is to generate payments to Aboriginal people at the time when the most significant changes to the land occurs and prior to any production based (royalty) payments would be received.

⁷⁶ Paid in 1986 financial year (CLC 1987:70).

⁷⁷ This commitment is found in the financial clauses of the Agreement and limited to a maximum of \$150,000. In effect is an 'in kind' payment, meaning that no money passed to the Aboriginal parties. Rather the company spent funds directly on infrastructure for the benefit of the traditional owners. For the purposes of this research, the in kind payments are not taken into account as the focus is on how disbursements of payments were implemented.

⁷⁸ In practice, determining the Gross Value of Mine Production was not straightforward, particularly in NFM's case which had made forward gold sales as a hedging strategy. Further complicating matters was a 'gold loan' that NFM took out as part of its capital raising which was paid back in gold, not dollars.

⁷⁹ Although in one period this criterion was met, NFM took the view it was not a long-term price trend and chose not to defer the royalty payment. Other than this single six-month period the value of the royalty always exceeded the minimum amount (Interview JD 2008).

Any payment proposed or made to Aboriginal people is not a royalty payment but a payment agreed between the parties to compensate for land access and loss of traditional enjoyment of land. Agreements for compensation will be scrutinized to ensure that they do not provide, in any way, for royalty-type payment for the right of access to minerals (DME 1983).

With the Agreement concluded the NT Government granted NFM EL 3122 and subsequently, the GMLs along with ML(S) 8.

3.2. The Variation Agreement - 1985

Exploration proceeded immediately following the grant of the leases, with drilling of the Bullakitchie and Shoe orebodies in the first field season. Initial underground development soon followed, with bulk sampling and metallurgical testing to enable preliminary mine design. By end of June 1985, the possibility of mining was looking increasingly feasible.⁸⁰

Such was NFM geologists' exploration success that it became apparent that gold could extend beyond the areas of the GMLs into the area of the ML(S) 8. The Agreement contained a process for dealing with proposals that were defined as expansions or modification to the originally agreed exploration and mining proposals. Beyond the agreed project works, further agreement of the parties was necessary for any variations of the Agreement and any difference or failure to agree as to any matter may be referred to arbitration.

The proposal to extend mining on the 'Additional Areas' was a variation according to the Agreement, which provided that:

The grant of the Mineral Lease is for the purpose of use for Infrastructure only that consent has not been given by the CLC for any other purpose (Granites Agreement).

Furthermore:

If the Lessee desires to carry out any activities on the Mineral Lease area other than Infrastructure ... it shall be required to obtain the consent of the CLC (Granites Agreement).

⁸⁰ By the end of June 1985, exploration drilling at the two main prospects at The Granites had discovered the East Bullakitchie high-grade shoot and the Shoe orebody, increasing total reserves to 1.9 million tonnes at overall average of 8 grams a tonnes (or 190,000 ounces of gold) worth around \$220 million at the time.

On 8 July 1985, a Variation Agreement was signed to allow mining to occur on the Additional Areas, being defined areas that were contiguous with the granted GMLs. The Variation Agreement included provision of relatively small ‘upfront’ payments for the Additional Areas. What was not agreed was the royalty rate that would apply to the Gross Value of Mine Production obtained from the Additional Areas. NFM assumed the rate of 1.5% contained in The Granites Agreement would apply. The CLC argued that mining on the Additional Areas was a “major commercial variation” and sought a higher royalty rate over those areas (CLC files).

The CLC’s position reflected its underlying dissatisfaction with the rate obtained in the original Agreement (Interview BD 2008). Whereas the negotiations over the financial provisions in the original Granites Agreement occurred at a time when the commercial feasibility of the project was uncertain, by 1985 it was becoming clear that in reality the project could support higher payments to landowners. As the parties could not agree on this matter, the Variation Agreement was written such that it acknowledged a payment based on revenue would be due at a rate between a minimum of 1.5% and a maximum of 3%, with the exact figure to be decided by Arbitration. This was a pragmatic decision by the parties as it allowed development to continue whilst the royalty rate was being arbitrated.

In September 1985, the CLC suggested an Arbitrator, Mr Lester Meares QC, former Judge of the NSW Supreme Court. NFM agreed and Meares accepted.

The agreed ‘statement of issues’ provided to Meares records the position of the parties. The CLC contended that the royalty applied to production from any new mining area should be 3%. NFM rejected that contention as too high and argued that the existing rate already agreed on of 1.5% should apply. The issue for arbitration was “whether there is any legal and economic basis for any payment under a variation to clause 4.9(b)(ii) above 1.5% but not exceeding 3% in relation to production on any new mining area and if so what that percentage figure should be” (CLC files).

Expert witnesses for the CLC included a geologist and a mining engineer.⁸¹ Advice sought from the United Nations Centre on Transnational Corporations on the financial returns to Indigenous landowners in parts of the United States of America was submitted. It stated

⁸¹ Peter Goldner BSc Hons (Geol), Sydney University and Allan Battaglione, BEng, The University of Queensland.

ranges “from 6⅔% at the lowest (in the Navajo Coal Mine) to 12½% which is now the standard rate” (CLC files). Data on private royalties in Australia was researched by another mineral economist, who found “the general range appears to be between 2.5% to 5% gross revenue” (CLC files).

The mining engineer’s assessment of the projected cashflows was that the effect of an increased royalty rate over the Additional Areas would be marginal and “commercially acceptable when offset against the potential rewards” (CLC files).⁸²

Justice Meares heard the arbitration in Adelaide. He was unswayed by the CLC’s arguments leaving their lawyers extremely disappointed. They had pushed for arbitration, convinced of the correctness of their position (Interview BD 2008). Despite the wealth of material meticulously prepared on the economics of the project, none of the expert evidence was mentioned in the seven-page judgement. Meares gave only cursory consideration to the proposition that the negotiations were of a commercial nature.

Instead, Meares looked to the Land Rights Act, particularly section 43(1), which provided that a land council may agree for the giving of consent “in consideration of the payment to the Land Council by the applicant of an amount or amounts specified in, or calculated in accordance with, the agreement”. Meares was in no doubt that the payment referred to in subsection 43(1) can be calculated on a royalty basis and however it is calculated it must be reasonable (CLC files). He found no increase was justified and decided that the percentage should be 1.5%.

In many respects it was ‘business as usual’ for NFM. Senior management believed it was a logical outcome given the existing financial arrangements and ultimately not a hugely significant issue as the amount of ore contained within the Additional Areas was not significant (Interview JD 2008).

The arbitration was, however, significant in other ways. The decision cemented the royalty rate in The Granites Agreement as a firm precedent. The CLC felt the rate was barely acceptable and it would take a protracted and circuitous course over the next 18 years to shift the percentage rate upwards (Interviews TT 2008). Another consequence was that in relation to other future negotiations it would never trust an arbitrated course. Despite the

⁸² Assumes an annual gold production of 56,650 ounces.

continuous attempts by the NT Government over the next two decades to force arbitration over other agreements under the Land Rights Act, the CLC avoided that option at all times.⁸³ The difficulty in conveying to third parties the intricacies of the Land Rights Act and how it functions to address Aboriginal rights and interests was highlighted through the arbitration process. “Meares just didn’t get it and did not accept the fundamental position that Aboriginal people could get money for use of their land” (Interview BD 2008).

By the end of 1985 NFM announced its intention to proceed with the mine. The mill was completed along with other facilities and was commissioned in July 1986.

3.3. Dead Bullock Soak Agreement – 1990

The Granites Agreement established the precedent for negotiations with NFM that followed. The basic principle of lump sum payments linked to certain development milestones plus a royalty of 1.5% was adopted into the mining terms contained in the first exploration agreement with NFM signed in March 1988, less than a year and half after mining commenced at The Granites.⁸⁴ The exploration agreement permitted NFM to explore in the surrounding region adjacent to The Granites. Although traditional owners wanted a higher royalty, the CLC was stuck with The Granites precedent after the loss in arbitration.

The effect of this precedent became particularly significant with the discovery of new gold resources at Dead Bullock Soak (DBS), 45 kilometres west of The Granites, within a year of NFM commencing regional exploration. DBS was named after a soakage located next to the low rocky rise in an otherwise vast and flat landscape that contained the newly discovered gold deposits. On the ridge prospectors dug several shallow pits which, at the time NFM was exploring, were barely discernible as shallow depressions. NFM’s geologists knew from old reports that early prospectors had scratched around this rocky rise and were keen to test whether the diggings pointed to a good gold deposit (Interview TI 2008). Aboriginal people

⁸³ At this time there was fierce anti-land rights campaign led by the Australian mining industry in W.A. over Bob Hawke’s proposals for national uniform land rights legislation. The campaign was very successful resulting in the policy being defeated in Nov 1994 following “hideous advertisements depicting land rights as a wall built by black hands across the country” (Donald 1994:78).

⁸⁴ The scheme under the Land Rights Act provides a once-only consent at the exploration application stage. As such, the parties wanted to record the fundamental mining terms in the exploration deed, especially the financial terms, should any mining occur as a result of discoveries made under the exploration deed. These became known as *conjunctive agreements* and were aimed to facilitate a smooth transition to mining. An alternate form were *disjunctive agreements*, which do not countenance mining. The mining terms are left to be negotiated once a discovery is made. At this point, however, no right to refuse consent exists.

had always been known the area as Kurra, after an important rockhole located there that had strong spiritual significance, being a site along the story line of major male dreaming character who traversed the Tanami Desert.⁸⁵

The initial gold discoveries were encouraging and served to extend projected mine life whilst an extensive regional exploration program continued to be carried out. By June 1990, approximately one fifth of the total gold resources of The Granites project were located at DBS.⁸⁶

On 28 September 1990, the DBS Mining Agreement was finalised over the new discoveries in accordance with section 46 of the Land Rights Act (as amended in 1987), which governs the procedures for gaining a mining lease on Aboriginal land. This was a comparatively smooth process because the financial terms for mining were already settled in the 1988 exploration agreement. While some doubt existed over the legally enforceability of mining terms in exploration agreements, the agreed mining terms were duly adopted (Interview JD 2008).⁸⁷ Once the DBS mining lease was granted in 1991, ore from DBS was trucked to The Granites along a specially constructed haul road joining the two mining leases.

In late 1991, a significant discovery was made at DBS. The ‘Callie’ deposit turned out to be a ‘world class’ gold resource extending to enormous depths (at the time of writing it extends more than one and half kilometres below the surface (AMR 2012)). Although the deposit was within the DBS lease, it was not found initially because it lay beneath some two to three metres of windblown sand. NFM geologists tell of how just one drill hole out of a grid pattern of multiple shallow drill holes across the area chanced to reach the uppermost expression of the orebody hidden under the layer of sand. The sample from that hole returned a mildly anomalous gold assay, which they considered worthy of follow-up. Deeper

⁸⁵ The adjoining sand flats were also renowned for the highly prized food that grew there, *yarla*, or ‘bush potato’ [*Ipomoea costata*] (Interview PR 2008).

⁸⁶ Total ‘measured’ plus ‘indicated’ resources at June 1990 were 1,177,400 ounces of which 223,500 ounces were contained in deposits at DBS (NFM 1990:3).

⁸⁷ While the parties wanted the certainty of knowing the mining terms in the case of a discovery and included these terms in exploration agreements, there existed some doubt over their legal enforceability. The effect of a NT Supreme Court decision in March 1992 on a challenge brought by the NT Government over an agreement the NLC made with diamond explorer Stockdale (see *Northern Territory v Northern Land Council (1992) 81 NTR 1*) suggested such clauses could be invalid and not legally enforceable. Specifically, in the Stockdale case, the agreement included a requirement for traditional owners consent to mining, in essence a ‘second consent’, which the court ruled contravened the Land Rights Act (CLC 1999, DISR 1999).

follow-up drilling revealed the significant areal extent of the deposit, being some 500 metres across, as well as its richness in terms of the vast quantity of gold (Interview TI 2008).

The Granites operation changed considerably with the discovery of Callie. While the milling operations, mine camp, airstrip and administration remained at The Granites, DBS became the focus of production to the point where it surpassed The Granites as the primary source of production.

Several matters turned on this sequence of events. A significant consequence was that with the focus of ore production shifting 45 kilometres to the west, a different traditional Aboriginal landowning group from the traditional owners of The Granites became the major recipients of payments. One consequence was that the Aboriginal groups originally in receipt of The Granites payments were eventually eclipsed in terms of quantum of payments by the receipts of the traditional owners of the DBS lease.

Another consequence was that because of the sheer size of the Callie deposit, the scale of the overall operation increased by an order of magnitude. The mill was initially designed and constructed in 1986 to process 300,000 tonnes of ore per annum. Once the operation was proved to be successful and further deposits were found at The Granites, the mill was upgraded to 440,000 tonnes a year. In 1990 with development of DBS, a major process plant expansion consisting of an additional grinding mill, leach tanks and plant services (power and water) was commissioned. This increased milling capacity to 900,000 tonnes (NFM 1990:2, 13). Over the subsequent decade further expansions of the mill increased annual capacity to 1,500,000 tonnes and then finally to 2,500,000 tonnes. Along with increased mill throughput there were increased mining rates, requirement for larger tailings storage facilities, more working plant and machinery, greater power demand, increased water consumption, more mine personnel and larger camp (NFM Annual Reports).

Capital expenditure on such items was initially incremental and staged over a number of years eventuating in a mining operation that was much different from that proposed to traditional owners at the outset of negotiations. The Agreement required the traditional owner's approval for development of major works, however, what started as a small to medium-sized operation with limited life and area, became a long life large-scale operation spread between two connected mine sites with plans to mine deep underground. With the increased size and scope of the mine, an issue loomed with respect to the changed nature of the operation and the extent to which it had departed from what was originally understood

by traditional owners when they made the first agreements. Traditional owner consent had been given on the basis of the original proposals. Through subsequent developments, the physical impact of the mine on the environment increased manyfold in terms of area affected, mine waste and the taking of other natural resources such as water and sand for backfill. As a result, there was increased impact on the amenity of areas directly affected. Furthermore, more mine traffic on the arterial roads used to supply the operation resulted in increased rates of deterioration of the roads that were shared with the neighbouring Aboriginal communities.

3.4. Consolidated Mining Agreement – 2003

In late 1991, as part of the process to achieve production increases identified above, the company sought CLC approvals for significant works. The proposals were to substantially upgrade ancillary facilities and establish additional works at DBS such as a batching plant which, using sand from the mining lease, would make cement to be pumped underground to backfill mined stopes. This backfilling technique increased efficiency of mining underground and meant more of the gold reserves could be mined (CLC files). These proposals eventually led to discussions between CLC and NFM on revising The Granites and DBS Agreements to take into account the changes that occurred over the years, and included protracted discussion over revising the financial terms (Interview TI 2008).

After many years of discussion and negotiation, in May 2003 a revised Agreement was finalised. The revised Agreement recognised that the two sets of mining leases constituted a single operation and consolidated the terms and conditions of the two separate agreements. The 2003 Consolidated Mining Agreement (CMA) was made pursuant to section 48B of the Land Rights Act, the agreement being a variation of an existing section 46 DBS Agreement. The process of consolidating the original 1983 Granites Agreement and the 1990 DBS agreement was also recognised as constituting a Review as provided for in each of the original Agreements.

The revised financial arrangements rectified a situation considered unfair by traditional owners that had emerged in relation to The Granites lease. Because traditional owner payments were based on the value of ore processed, once the source of ore was derived from the DBS lease the majority of the overall payments belonged to the DBS traditional owners. In comparison, traditional owners of The Granites received very small payments in spite of the fact that the production mill, tailings storage facilities, camp, and ancillary facilities,

such as airstrip and miners' camp continued to be on their land. The revised financial arrangements recognised the ongoing and cumulative impact at The Granites by including a payment linked to the volume of ore processed through the mill regardless of its source (Interview BF 2008).⁸⁸

The CMA also addressed the long held view of the CLC that the royalty rate should be higher. The royalty rate was increased from 1 January 2003, however, Newmont only acceded following agreement that half of the value of the increased royalty (which represented one-fifth of the total royalty payments) be paid into a trust which would be set up with the specific objective to improve the education and training outcomes for Warlpiri people.⁸⁹

This was a significant development that coincided with the ambitions of a group of Warlpiri women who wanted to pursue an alternative mode of payments that aimed to make royalties “contribute to a better future for their kids and grandkids through education” (CLC 2009:3). All of the women were either qualified teachers or teacher assistants at schools in the Warlpiri communities and formed an unincorporated association called Warlpiri Patu-kurlangu Jaru. For many years earlier they had held regular workshops bringing together Warlpiri education professionals to discuss experiences, they also lobbied the NT Government over education in remote schools from a community perspective. In 2001 they invited the CLC Director, David Ross, to one of their meetings and asked the CLC to help find a way royalty money could be used to improve education outcomes of their children (Interview DC 2008). This suggestion fed into the negotiations over the CMA resulting in the proposal that a higher royalty rate would apply provided that half of the extra royalties would be directed specifically to education and training (Interview JS 2008). While the traditional owners may have wished to maintain total discretion over all the payments, they accepted the proposal and the CMA contained a higher royalty with a provision that part of the royalty would be paid to the Warlpiri Education and Training Trust (WETT). Chapter 6

⁸⁸ The CMA also remedied a number of technical breaches of the prior agreements (CMA 2002).

⁸⁹ The royalty rate is subject to the confidentiality clauses of the agreement and is therefore not disclosed. In the course of the research only the financial details of the original Granites Agreement were found in public sources. Data obtained through the interviews suggested the increase in royalty was at least more than half again above the original royalty, with one fifth of the royalty payment received required to be paid to WETT (Interview DC 2008; TT 2008; JS 2008; CLC 2006).

examines the way the financial benefits under the Granites Agreement were disbursed and utilised.

3.5. Changes in mine ownership

The sequence of agreements over The Granites demonstrated how the legal arrangements were revised in response to changes in the project, which over time varied considerably from the original proposals. Not only did the parameters of project alter but an additional feature was that ownership of the mine and its operators changed several times, each bringing introducing new personalities with their own particular characteristics. The Appendix traces in detail the ownership of The Granites over the period from the commencement of the Agreement in 1983 to 2011. Three distinct corporate phases of ownership were identified. Companies that operated the mine were NFM, Normandy and Newmont. A summary of sequences of events and the central personalities is presented in this section and the chronology in Table 3.

Table 3. Company chronology.

Aug 1983	Original Granites Agreement signed
Sep 1984	The first takeover of NFM announced Paringa a subsidiary of Moonie Oil Company Ltd.
Mar 1985	Peter Mitchell, Chairman Moonie Oil and Paringa replaced Geoff Stewart as Chairman NFM.
Aug 1986	The Granites mill commissioned.
Feb 1988	Australian Gas Light Company (AGL) takeover of Moonie. AGL gained 54% of Paringa and control of NFM.
Mar 1988	NFM signed its first regional exploration agreement with the CLC.
Sep 1988	AGL sold Paringa to the Hartogen Group (through its subsidiary Genoa), owned by Sydney businessman Pat Burke.
Oct 1988	Hartogen and Stewart in the Supreme Court of South Australia over whether Hartogen was entitled to call an extraordinary meeting of shareholders, which would see Hartogen representatives elected to the NFM board. Stewart lost, NFM shareholders met, and Hartogen Chairman, Pat Burke, was elected Chairman of NFM.
Dec 1988	NFM announces discovery of gold deposits at DBS from regional exploration.
May 1989	Provisional liquidator appointed and trading of Hartogen group companies was suspended.
Jun 1989	AGL dismissed the Hartogen representatives from the NFM Board and took back control of NFM.
Jun 1989	AGL sold its stake in NFM to Australian Consolidated Minerals Ltd (ACM) through its gold subsidiary ACM Gold Pty Ltd.
Jul 1989	A mine expansion lifted annual gold production to over 100,000 ounces with the advent of production from the DBS.
Jun 1991	ACM Gold share price had fallen placing “the former glamour stock among the worst-performing gold issues”.
Jul 1991	Hugh Morgan, Managing Director, Western Mining Corporation (WMC) and Robert de Crespigny, Chairman of Normandy Poseidon collaborated over a scheme to takeover ACM.

Oct 1991	Takeover of ACM successful. De Crespigny, along with two Normandy executives replaced the incumbent ACM representatives on the NFM board. De Crespigny was elected Chairman NFM.
Apr 1992	ACM Gold merged with the Normandy subsidiary, Poseidon Gold and changed its name to Posgold.
Jan 1993	Bruce Kay, Managing Director of Normandy, appointed Chairman NFM.
July 1993	DBS in full production, including the high grade Callie deposit. The Callie open contributed some 30% of ore feed.
Aug 1993	Stewart and Wegener (the other co-founding NFM Director) were not re-elected as Directors of the Company.
Dec 1995	de Crespigny attempted to consolidate his companies through a four-way merger of Normandy (the parent), Posgold, Gold Mines of Kalgoolie Ltd (GMK) and NFM. Failed through lack of approval from NFM minority shareholders.
Jun 1996	Normandy announced a takeover offer for all of the shares in NFM it did not hold.
Aug 1996	Merger of Normandy, Posgold and GMK was secured. Full takeover of NFM failed. Normandy gained only 72.5% of NFM.
Dec 1996	Further takeover offer with Normandy finally obtaining 75% of NFM. Normandy continued to buy shares through normal trading.
June 1997	Normandy achieved 78% ownership of NFM and changed the company name to Normandy NFM Ltd. The original NFM logo discontinued with the Normandy insignia adopted in <i>toto</i> .
May 1998	Underground mine at Callie was developed.
July 2001	Record production of 420,836 ounces and a profit after tax of \$46.8 million, making The Granites operation the third largest gold mine in Australia and Callie the largest underground gold producer at 302,000 ounces.
Sep 2001	The gold price jumped US\$20 an ounce following the attacks on the World Trade Centre in New York on 11 Sept.
Sep 2001	Bobby Godsell, Chief Executive Officer of AngloGold declared a takeover of Normandy of \$3.2 billion. Normandy rejected AngloGold's bid.
Nov 2001	Newmont offered \$3.8 billion for Normandy, which was recommended by Normandy board. Anglo increased its offer on, which was in-turn matched by Newmont
Feb 2002	Newmont acquired control of Normandy having obtained over 90% of Normandy and moved to compulsorily acquire the remaining shareholding at a final cost was \$4.5 billion.
Apr 2002	Leadership of Newmont's newly acquired Australian operations was handed to John Dow, Newmont's Executive Vice-President and Group Executive for Latin America at the time, who was appointed Executive Vice-President and Managing Director of the Newmont's Australian business.
Nov 2001	A new mine at Groundrush some 40 kilometres from Tanami was commissioned.
Feb 2003	Otter suspended from trading following successful takeover by Normandy NFM.
May 2003	Normandy NFM was delisted following Newmont obtaining outstanding NFM Normandy shares to gain full ownership.

3.6. Conclusion

Research on the origins of The Granites Agreement highlighted the vastly different perspectives that the parties negotiated from. One result was that there were divergent expectations in terms of outcomes from the Agreement. These mismatching objectives partly explain the robustness of negotiations that ensued. At the outset, a level of antagonism marked the relationship as evidenced by the propensity for NFM to appeal for intervention

by government authorities to support its negotiating position, particularly via calls to appoint an arbitrator. The tendency to revert to the media as a means of pressuring the Aboriginal negotiators emphasised further the belligerent environment in which the Agreement was struck.

The negotiations also took place in a hostile political environment in which conservative political forces colluded with industry to resist Aboriginal Land Rights. Mining industry hostility manifested particularly over the requirement to negotiate with Aboriginal landowners. At that time, well-established Australian mining companies were making concerted efforts to avoid negotiations with Aboriginal interests. NFM indeed led the industry by being one of the few companies to engage substantively with Aboriginal landowners and was one of the first to desert the mantra that only governments receive royalties. That NFM was negotiating at all put it out of step with the broader Australian mining industry at the time; a position with which it was not entirely comfortable.

A major concern for NFM was it did not have the luxury of multiple mine sites or other sources of cash flow that would enable them to hold out for possible government intervention or legislative amendments. It was a fledgling company whose future rested on the single mining project at The Granites. NFM had to be pragmatic. It wanted access to explore and the security that an agreement offered. As a commercial venture the objective understandably was to limit the cost of the engagement whilst securing access the land. In its bare essence, making the agreement was part of the permitting exercise. A necessity to secure the mining titles needed for investment.

Being one of the earliest mining agreements with Aboriginal people in Australia, traditional owners were principally concerned with asserting their role as landowners with a legitimate interest to control developments on their land and concomitant impacts; social, cultural and environmental. The Agreement was a means to reconfigure the historical relationship with miners so that traditional owners could protect their cultural interests as well as share in the wealth generated. Framed by notions of fairness and social equity, the miners now recognised traditional owners as a “commercial reality” (CLC files).

The legislative scheme under the Land Rights Act gave traditional owners access to expert advice secured by the CLC, which had a statutory responsibility to represent their interests. Having a well-resourced representative organisation was critical to promoting their rights and securing the outcomes traditional owners desired from the negotiations. While

Aboriginal negotiators wanted a higher rates of payments than that ultimately agreed, the reality for Aboriginal people was that the operation had to be viable in order to deliver any benefits at all. With land rights only newly acquired, the Aboriginal parties were very sensitive to the possibility of being portrayed as inhibitors of economic development. Moreover, finalising the Agreement was evidence of the workability of the Land Rights Act and proof that it was an effective instrument in reconciling competing interests between Aboriginal landowners and miners. As a result of these factors a legally complex document was drafted that aimed to serve a range of purposes for both the mining company and Aboriginal people.

The initial conditions identified in this research were found not to be overly conducive to implementation of the Agreement. The existence of the Agreement in itself was seen a major outcome. The glow of that success had the potential to overshadow the realisation of how much effort would be needed to implement it to actually achieve the outcomes envisaged. In those early years in particular, the emphasis of agreement-making was firmly on the legal and permitting function. Once permits were obtained the attention and resources of the company could easily be drawn to being pre-occupied with establishing the viability of the project, while the Aboriginal parties were made busy responding to clearances and approvals for the staged development of the mine.

Although uneasy bedfellows at the outset, a pragmatic and workable relationship between the parties ensued. A measure of the success of the developing relationship between the Aboriginal parties and NFM was the extent of access gained to areas surrounding The Granites to explore for gold. As that relationship matured subsequent agreements were readily made that facilitated the expansion and further development of the operation. A decade or so later, as the mine transformed, further review of the Agreements resulted in a consolidation of the agreements that included, among other things, revised financial provisions.

The analysis of the corporate history (contained in Appendix 1) revealed that during the operation of the mine three different corporate entities were in control. Each had a distinct character, framed by a range of factors including their size, corporate focus and importantly the personality of their leadership. The early stages of development of the mine highlighted how uncertainty over ownership and corporate machinations can draw the attention of company leadership into its own internal machinations.

That there were three clear phases of corporate ownership further demonstrated the success of the Agreement in providing the legal and commercial security the mining companies needed. The certainty provided by the Agreement allowed the corporate machinations to unfold without fundamentally altering the Aboriginal party's position, as their rights were protected under the Agreement. It is a measure of the strength of the Agreement that it outlived several different mine owners. These changes of ownership changes provide a basis to help explain the changing outcomes achieved under the agreement such as in relation to employment and training, which is considered in the next chapter. Based on the chronology, the three main phases of ownership identified are summarised below:

1983 to 1993 – NFM, negotiated the original Granites Agreement and undertook the critical development feasibility and development phase of the mine. NFM is characterised as a small emerging mineral exploration company guided chiefly by its founder, Geoff Stewart. Stewart was a singularly determined force, strongly driven to achieve a commercial mining development from discovery at The Granites. Because NFM was a small company, Stewart's influence and demeanour very much characterised its corporate dealings. NFM remained a single project company. Due to its success at The Granites it became a significant Australian gold producer.

1994 to 2001 – Normandy Mining was established by Robert de Crespigny, an accountant and mining entrepreneur intent on growing a large mining group, mostly through acquisitions and takeovers. Coming from a non-traditional mining background, de Crespigny introduced alternative social values into the Australian mining industry and was responsive to the changing social environment that recognised Aboriginal land rights and reconciliation. Normandy acquired multiple mine sites including The Granites, which became an important asset for the group.

2001 to 2011 – Newmont was a United States-based global miner and one of the world's largest producers of gold. Newmont was committed to developing corporate structures and management systems in response to global shifts towards sustainable development. It was one of the global mining companies leading the shift in mining industry in response to sustainable development. Having experience community outrage over operations in other countries, it was heavily focussed on compliance. It not only took seriously its contractual obligations such as employment it was sensitive to the need to maintain a 'social licence to operate'.

4. Aboriginal employment

This chapter examines the implementation of the employment, training and contracting provisions of the Agreement. The proposals to mine at The Granites presented significant opportunities for local Aboriginal people to obtain jobs in a region where virtually no substantial economic activity or private sector employment had ever existed. Employment was identified by traditional owners as a major way Aboriginal people could benefit from mining. Many senior traditional owners had worked on the historical Granites goldfield for meagre rations and no wages during the mid-20th Century (see Chapter 2). With control over access under the Land Rights Act they envisaged their younger generations would receive appropriate training to be engaged in work on their land under pay and conditions comparable to mainstream Australia.

The Granites Agreement adopted the principle of preferential Aboriginal employment and also anticipated that Aboriginal businesses would get “substantial” work at the mine. Elsewhere, other Aboriginal groups had sought such outcomes. For example, the Ranger Agreement required the mine to ensure as many local Aboriginals people as possible were employed and provide training in operating plant and mining vehicles. It was a reasonable expectation that similar outcomes would occur at The Granites. The research for this thesis suggests that the potential for Aboriginal people to benefit from work and contracts on the mine was uncontentious, unlike the negotiations over royalty payments (see Chapter 2).

The analysis of employment outcomes is mostly limited to outcomes in terms of the number of Aboriginal people directly employed at the mine. Data on employee numbers and the nature of employment is compiled and analysed against the events and actions that influenced those outcomes. Examining the trends in employment over the life of the operation enables conclusions to be drawn regarding the key implementation factors affecting outcomes envisaged in the Agreement.

The literature reviewed for this thesis demonstrated that a range of individual and societal benefits arise from Aboriginal employment, particularly where employees were previously on welfare or otherwise under-employed or unemployed. Other studies have examined what was defined in Chapter 1 as ‘fourth order’ outcomes. These are outcomes arising from the fact of employment, such as skills development, career mobility and asset accumulation (see Brereton & Parmenter 2008; Barker & Brereton 2004; 2005; Sarker & Bobongie 2007).

These studies are based on detailed and extensive employee surveys and a research effort of scale over and above what was possible for this research. For the purposes of this research these benefits are assumed. The focus for this research is on the actions and events that affected the rates of Aboriginal employment at The Granites.

Determining employment numbers for purposes of this research required piecing together differing types of data from a range of sources to create a coherent data set on Aboriginal employment over the life of The Granites. Over the period of operation of the mine, with changes of management, the entire period's records, if kept at all, have been lost, archived or were otherwise unavailable for this research. The only formal company records of Aboriginal employment that were made available were from 2004 onwards, the second year of ownership by Newmont.

The early years' estimates are therefore based on interviews with participants who had good knowledge of the operation at that time and cross referenced with some limited published sources such as reports and newspapers. These participants were engaged by either NFM or the CLC in roles specifically aimed at achieving outcomes with Aboriginal employment. Some key Aboriginal people who were employed at The Granites were also interviewed. Because the numbers of Aboriginal people employed were so low in the early years and there is high degree of corroboration from a diversity of interview participants, including mining personnel, land council employees and Aboriginal community members, there is a reasonable degree of confidence in the first ten years' estimates.

In the period between 1996 and 2004, significant increases occurred in not only Aboriginal employment but also the total mine workforce. Several published sources such as newspaper articles and social responsibility documents report on the number of Aboriginal employees at The Granites. These have been used and corroborated against interview data to arrive at estimates during this period.

A compilation of these estimates plus the Newmont employment data from 2004 onwards is presented in Figure 3. Of particular interest in terms of the objectives of this research are the broad trends in Aboriginal employment at The Granites and the mapping of events, actions, and initiatives identified through the research in order to identify the factors that have contributed to those employment outcomes.

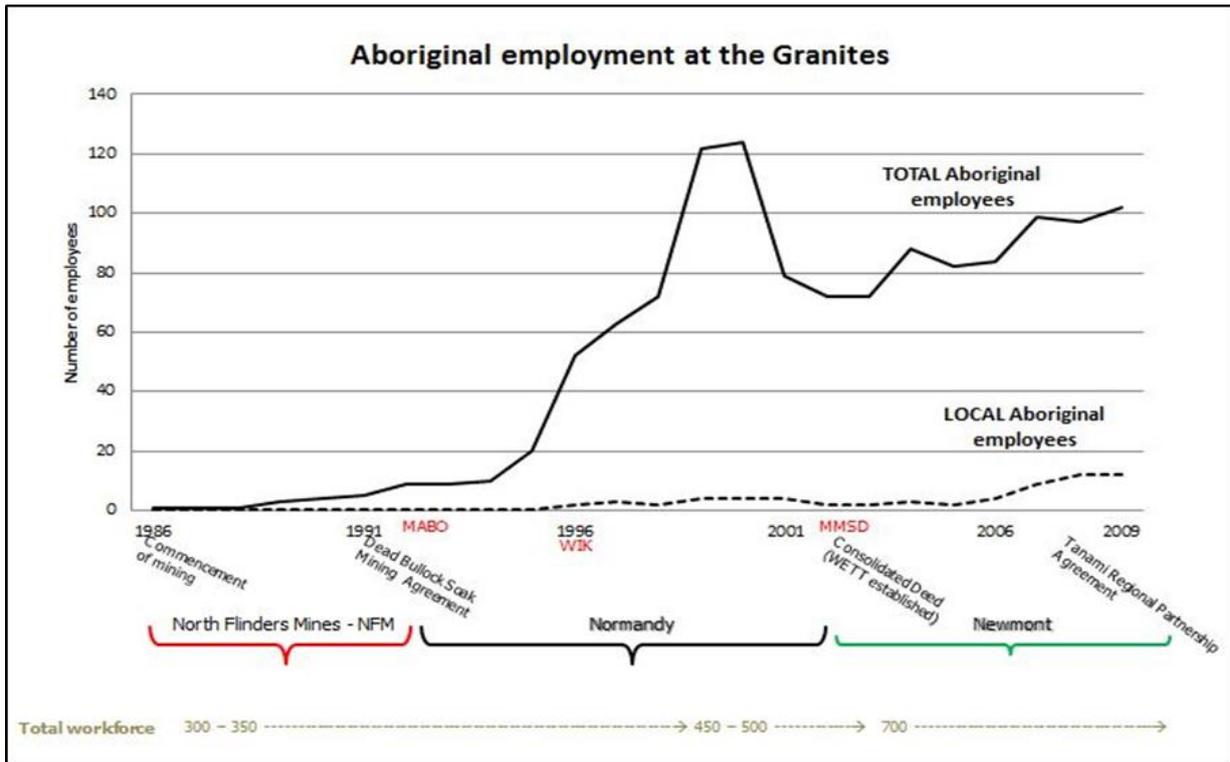


Figure 3. Estimates of Aboriginal employment at The Granites.

4.1. Implementing Aboriginal employment, training and contracting

The primary obligation under the employment and training clauses of the original Agreement was that NFM “shall employ on the Project as many local Aboriginals as is practicable of carrying out or being trained to carry out in satisfactory manner the particular work required” (Granites Agreement).

The Agreement also required NFM to take actions to facilitate this aim, including:

The Lessee [NFM] establish an appropriate training scheme for Aboriginals (which scheme may consist of or include on-the-job training) based on the employment requirements of the Project so that Aboriginals may learn to drive and maintain vehicles operate and maintain plant and equipment, become miners, and acquire skills with a view to further on-the-job training on the Project where appropriate. The scheme is to encompass not only plant and equipment used in operations but also road graders, buses and more conventional vehicles (Granites Agreement).

The training scheme was a key strategy to equipping local Aboriginal people with necessary skills to work at the mine. Driving and maintaining mobile equipment was identified specifically and it was intended that through “further on-the-job training” Aboriginal people

would become miners, presumably across a range of relevant occupations. Written details of the training scheme were to be provided to the CLC at the time the first major development works were notified i.e. once it was decided that mining would proceed. Furthermore, in consultation with the CLC, the scheme could be reviewed and modified from time to time.

Another key functional clause was that where an employment vacancy existed, that vacancy would be notified to the CLC. The relevant members of the Advisory Committee would then have three days (in normal circumstances, otherwise 24 hours if filling the position was a matter of urgency) to advise NFM of an applicant for the position. If no such advice was received in the relevant time period, or if an applicant failed to attend an interview, NFM “shall be at liberty to fill the vacancy as it sees fit” (Granites Agreement).

It was also an option for NFM “from time to time” to give written notice to the Advisory Committee “of all the classes of occupations or callings, and of minimum qualifications training and skills required therefor, for which vacancies may occur during the Project” (Granites Agreement). In turn, the Advisory Committee may give notice that “qualified Aboriginals are available for employment in any of the ‘notified occupations’” and the currency of the list would be maintained by the relevant members of the Advisory Committee (Granites Agreement).

In addition, the employment clauses also provided, through joint consultation between the company, the CLC and the appropriate trade union, that NFM “take all reasonable and practicable steps to ensure that working hours and conditions are adjusted to suit the cultural and social needs of Aboriginal employees.” Consultation with the Advisory Committee was also required before an Aboriginal employee was dismissed (Granites Agreement).⁹⁰

The principles that NFM give preference to local Aboriginal people, notify the CLC of relevant positions and participate in appropriate training schemes so local Aboriginal people could get employment on the Project, were replicated in the subsequent Agreements, including the DBS Agreement and Consolidated Mining Agreement (CMA). ‘Local Aboriginal people’ was not strictly defined but, at least at the outset, the intent was that Aboriginal people from the neighbouring communities of Yuendumu and Lajamanu would

⁹⁰ Under the Agreement NFM shall make maximum use of Aboriginal sub-contractors where their goods and services are competitive with respect to price, continuity or certainty of supply, timing, quality and standard with those obtainable from elsewhere.

be targeted. Over time a broader scope was envisaged with the CMA defining local Aboriginal people as being from Central Australia (Interviews HH 2008).

4.1.1. Stalled beginnings

Details of a potential training scheme were discussed at liaison meetings with the Advisory Committee in April 1985. Components of the scheme that were broadly outlined related to the potential for Aboriginal groups to provide materials and services to the mine, such as sand and gravel, road maintenance, casual labour, and laundry services. From the outset of the project NFM emphasised the small scale of The Granites project. Some 10% of the approximately 80 positions that were likely to be offered were said by NFM to be possibly “suitable for willing people without specialised skills or experience” i.e. eight positions (CLC files). It was agreed that further discussions would occur at subsequent liaison meetings and although the matter appears to be a regular agenda item, little or no action was taken to implement the employment provisions.

In the first ten years, only between six and ten Aboriginal people were employed at The Granites. Three or four of these were said to be from a single Alice Springs-based family (Interviews TT 2008).⁹¹ None of those employed were from the local Warlpiri communities and all had previous work experience and were employed on their existing merits, as distinct to relying on being trained by NFM to qualify for the positions. While these employees gained valuable experience and probably received higher wages than would normally be otherwise available, it was likely that these workers would have either had jobs prior to working at the mine or be sufficiently qualified for other work.

While discussions continued over the early years of operation, there is no evidence that a formal training scheme was ever implemented. Indeed, the records show a growing frustration on the part of the CLC over efforts to invoke the employment and training terms and conditions. A number of reasons are hypothesised as to why no training scheme was implemented in the first years of operation. Firstly, company management was overwhelmingly absorbed with the development of the mine, proving its viability and searching for resources. Uncertainty over leadership accompanying corporate takeovers clearly absorbed a lot of attention (see Appendix for detailed examination). Secondly, the

⁹¹ One of the longest serving employees is an Aboriginal man from Alice Springs who commenced work during construction of the mill in 1985 and continues to work in the gold room as at the time of writing.

initial mining proposals were for a relatively short ten-year mine life. Investment in a training scheme may have been seen as unwarranted given the effort and resources needed to address the low education and skill levels in the target communities.

Leadership of the company in the early years was clearly focused on building a workforce to address the immediate mine development as Stewart, NFM Managing Director, recalled:

We wanted the best person for the job. Why employ unqualified people who can't fill in a timesheet. The agreement said to let them know if there was a job. We didn't see an Aboriginal person that could fill in a timesheet, nor did they want a job (Interview GS 2008).

Getting the job done meant solving mainly technical and engineering issues and the capacity and skills of NFM's management lay in this area. The complexity of the task of devising and implementing a training scheme required a skill set not readily available to the company. The Operations Manager at the time, a highly respected and competent mining engineer, identified Aboriginal employment as the most challenging aspect of the Agreement:

We didn't realise how difficult or how much work was required to create Aboriginal employment and neither did the CLC. Getting it off took a while to get moving, causing a bit of aggravation both sides – you should be doing it, but how do you do that? Probably the most challenging thing to make work particularly for a small organisation [like NFM] (Interview JD 2008).

That the Agreement gave the responsibility for providing names of interested Aboriginal people to “members of the Advisory Committee”, which was presumably based in the communities without specified secretarial or administrative assistance, supports the proposition that the CLC had a similar lack of appreciation of the amount of effort, planning and resources required to implement the employment provisions.

The complexity of the task and absence of precedent, as well as the lack of enthusiasm from company executives, combined such that the immediate operational priorities focussed on developing and operating the mine at a profit. The Agreement provided the capacity for the CLC to request reports on Aboriginal employment and training through the “Reports and

Consultation” provisions.⁹² Indeed the available records of early Advisory Committee meetings detail discussions over the issue of advancing Aboriginal employment. Nevertheless no such training eventuated in the early years. The result was employment outcomes were modest with very small numbers of Aboriginal people being employed at the outset of the project.

Lack of progress with implementing a training scheme remained a consistent item of discussion at Advisory Committee meetings and other meeting between the CLC and NFM (CLC files). To deflect pressure over the requirements of the Agreement, barriers to employing Aboriginal people from remote communities were emphasised by company management. Educational barriers in particular were consistently highlighted; these included poor English and the low literacy and numeracy prevalent in the local communities. Of heightened concern was how these factors might impact on safety standards at the mine. Little in the way of solutions or strategies appears to have been offered. As a result, a substantial period of lost opportunity is evident in the first decade following commencement of mining.

While NFM had an impression that Aboriginal people in the communities did not want a job, or would not have the necessary skills, an Aboriginal man reflecting on those times lamented that he was not aware of the possibility of working on the mine.

The [royalty] money, it was good that Yapa was getting money back from it [The Granites] but I didn't know about these other things, all this employment, it is only recent. We were there but I wasn't involved in all this, I could have asked for a job at the mine but I wasn't told. These people started having jobs maybe two years ago, in all that time nobody asked people to work in the mine when it started. Before there wasn't people letting people in the communities know there was jobs at the mine, [like now they come and say] “we got this mining company here - people want a job - just got to sign up here.” Thirty years ago they didn't have that (Interview PR/KG 2008).

The evidence suggests employment was not a high priority for NFM but also points to negative attitudes held toward Aboriginal people. Perhaps the negotiations over the Agreement were sufficiently acrimonious such that residual resentment constrained positive

⁹² Other reportable matters under the reporting provisions included “relations between Aboriginals living in the area affected by the project”, “environment protection”, and “progress made with the implementation of the Project Works”.

attitudes. As described in Chapter 3, this was time in Australia when negative stereotypes of Aboriginal people were promulgated throughout wider society, even by the conservative political party seeking to govern in the Northern Territory.

Take for instance a confidential report on the social impact of mining prepared for the CLC in 1988 prepared by Joh Bornman (1988), a consultant anthropologist who worked for many years with the Warlpiri at the outset of The Granites project. The report (1988:18) noted an “unfriendly attitude at the Granites.” In eliciting views from his Warlpiri research participants on the progress on Warlpiri employment and training at The Granites, Bornman found “a common response was that people would not feel comfortable working in the social environment of the mine.” The most important reason being “the open hostility of NFM and contract employees.” He identified an “essentially single male nature of the workforce at the Granites” (Bornman 1998:19).

A specific incident raised by Bornman related to signposts to the Aboriginal outstation of Mt Davidson, which were graffitied with racial slurs, allegedly by workers at the mine.

The recently discovered graffiti produced by mine employees on a signboard on the *Yarrapiri* [Mt Davidson] outstation road is graphic proof of the racist attitudes that prevail (Bornman 1998:20).⁹³

It is possible the graffiti was an act of a renegade employee and not reflective of the majority of the workforce. Regardless of the actual extent of hostility harboured by the wider mine workforce, local Aboriginal people, and those working with them, found such acts indicative of a general attitude that Aboriginal people were not welcome at the mine.

This view was reinforced further by the erection of a sign by NFM at the entrance to the mine in 1991 (see Figure 4). In one of the first contracts offered to an Aboriginal person, a Warlpiri woman was engaged to translate the message that access to the mine was restricted to authorised personnel only, and no food, petrol, or accommodation was available.

Further evidence of the uneasiness that traditional owners felt towards The Granites was provided by Francine Lorimer, an anthropologist researching social impacts of The Granites from a women’s perspective in 1990. Her assessment was that “Granites personnel were

⁹³ NFM constructed Mt Davidson outstation as part of the benefits package contained in the Agreement.

willing to maintain formal relations with Aboriginal people, but were not willing to allow the development to the kind of informal relationship that exists between the Warlpiri and the Tanami mine” (Lorimer 1990:16). She referred to an event often raised with her by people in Lajamanu. An incident occurred where a small group of Warlpiri women in the company of another anthropologist, visited the mine to offer paintings for sale to the mine’s workforce. They were told to wait because the workmen were busy. After an hour or so of waiting, they decided to leave. As they were leaving they were shocked by an employee who drove up and swore at them, “saying there had been too many Aboriginals around the mine lately and that they were not allowed in without a permit” (Lorimer 1990:16). Lorimer considered that the closed nature of the mine meant that contact between miners and Warlpiri were minimal such that “no cultural understanding reached between Warlpiri and NFM employees.”

It is not surprising that, in this context, the possibility of any Aboriginal employment in the mine has not been viable. When I asked women at Yuendumu whether their sons should work at the mine one woman said, ‘Its not that easy, you know. Some people at the mine don’t like Aborigines’ (Lorimer 1990:16).

That very little diversity existed at the mine at that time was corroborated by a long-serving female CLC officer who recalled The Granites workforce almost entirely constituted of “burly men” of mainly anglo-celtic background. An aspect she recalled was a level of discomfort lunching in the mess on field visits (Interviews JS 2008).



Figure 4. Entry signed erected 1991 in Warlpiri “no food, petrol or accommodation”.

4.1.2. Early employment initiatives

Although Aboriginal employment was contained in a legally enforceable contract, the relevant clauses were replete with qualifiers in favour of the company, such as “reasonable”, “practicable”, and “appropriate”. Each provided an out for the company or at the least a point of argument over what was ‘reasonable’ or ‘practicable’. The CLC deliberated over how to enforce the employment provisions. Leigh ‘Tracker’ Tilmouth, an enigmatic Central Australian-born Aboriginal leader became Director CLC in 1991. He explained that, “talking to NFM wasn’t getting very far. To get their attention I told them my principal lawyer is feeling litigious” (Interviews TT 2008).

Prior to joining the CLC he had a career in the Department of Aboriginal Affairs. He saw education as “the key and mining the vehicle for better futures in remote areas” (Munday 2012). Tilmouth was quick-witted, street-wise and on a mission to develop regional and remote economies. It was ultimately a political not legal route he was interested in.⁹⁴

The CLC’s initial focus was simply “getting black bums on seats” (Interview TT 2008). Employment was mining company’s domain and creating a receptive work environment was unlikely to happen if Aboriginal employment was foisted upon the employer. The standard working day on a mine is long and repetitive and does not suit everyone, even within the wider population. Although Aboriginal people may have fewer employment alternatives, they would have to be actively encouraged to take opportunities. It was incumbent on the host company to ensure an appropriate work culture and environment. Tilmouth considered that “[c]reating a good atmosphere at work is important. Aboriginal people love working in teams, having a laugh and learn by working with people” (quoted in Munday 2012).

Tilmouth also learned from discussions with NFM regarding Aboriginal employment of a major issue, which was that the greater proportion of the positions available at the mine were not as employees of the mining company itself but with its contractors and sub-contractors. He also thought that people generally put a lot of store in being the truck driver:

⁹⁴ Tilmouth became Director following completion of an Environmental Science degree at Roseworthy College, South Australia. He gained an appreciation of the support needed having been sponsored by the Department of Aboriginal Affairs to undertake his studies (Munday 2012).

On every mining company poster the Aboriginal worker is a jockey on a large piece of mining equipment. With the best will in the world, it is a monotonous job, boring, going nowhere” (Interview TT 2008).

He wanted to see Aboriginal workers move from entry-level positions and gain transferrable skills. It was important for people to progress once they had put in the time driving trucks:

You can jump in a truck, do a three kilometre trip 30 times a day for 12 hours, two weeks on and two weeks off. I don’t care how many Slim Dusty or Charlie Pride tapes you have listened to, if you aren’t an axe murderer or a social misfit, you will go home with your soul destroyed (quoted in Munday 2012:33).

He was also intent on seeing Aboriginal people run their own businesses. At a meeting with traditional owners in April 1994, he led discussions about creating businesses in the Tanami region that could provide goods and services to The Granites and the Tanami Mine.⁹⁵

We have to train people to do machinery, there are the biggest mob of jobs out there... we’ll end up with big hole and f...-all else, no jobs, no jobs in the bush. We want people trained, want to set it [a company] up; drilling, roads, transport all owned by Yapa [Aboriginal people] (CLC files).

Tilmouth engaged a consultant economist, Dr Ian Manning, to investigate commercial opportunities.⁹⁶ He also turned to ACTU President and personal confidant, Martin Ferguson, as well as Liberal Government associates, Senator Robert Hill and Senator Bill Heffernan.⁹⁷ By invoking these influential connections, the concept of government support for initiative to increase Aboriginal employment in the mining industry crystallised within the federal government. A specific result was that the employment strategies in the Tanami region would be assisted by relevant government departments and through allocation of funds available under relevant education and training programs.

This push coincided with significant attitudinal change within a section of the Australian mining industry. For example in 1995, Leon Davis, Chief Executive Officer of CRA Ltd (precursor to Rio Tinto) Australia’s largest mining company, shook the industry’s anti land rights agenda in his speech to the Securities Institute where he said:

⁹⁵ Tanami mine was commissioned by the Tanami Mine Joint Venture and operated by Zapopan.

⁹⁶ One of the proposals Manning looked at was an Aboriginal company supplying fuel to the Tanami and Granites mines directly imported through Darwin.

⁹⁷ In 1995 the CLC organised a trip to the Tanami and Granites Mine for Senators Hill and Heffernan.

The Native Title Act laid the basis for better exploration access, and thus increased the probability that the next decade will see a series of CRA operations developed in active partnership with Aboriginal people (Harvey 2002).

He subsequently told his managing directors of his desire “to move away from a litigious framework ... and to establish innovative ways of sharing with/or compensating Indigenous people” (Harvey 2002).⁹⁸

While large mining companies commanded resources and capacity to engage experts on Aboriginal engagement, Tilmouth recognised the difficulties that NFM, as a smaller corporation, was having grappling with Aboriginal employment and contracting. It lacked the structures and specific dedicated personnel with relevant skills needed to solve issues. There was also a persistent lack of appreciation of the cultural and social factors influencing Aboriginal disadvantage (Interview TT 2008):

You have to understand what makes someone tick in terms of getting out of bed in the morning. Aboriginal people don't want to leave their land. Their English is not good, they may never have had a job before, their health is less than desirable. They have suffered trauma from alcohol abuse and domestic violence. The whole family bears the psychological scars. When you go to someone with a jobs program, you need to understand the social parameters you are facing (quoted in Munday 2012).

4.2. Establishing an influential precedent

The CLC's first efforts to work collaboratively with mining companies over Aboriginal employment were in fact not with NFM but Otter Mines, which in 1995 had taken over the Tanami mine and was re-commissioning the plant. Stan Padgett was Mine Manager, he had worked in the Solomon Islands where he gained experience with a local Indigenous workforce. This experience gave him confidence that Aboriginal employment was achievable. He was aware of cross cultural issues and the need to increase cultural competencies and understanding amongst his workforce (Interview FM 2008).

⁹⁸ An immediate outcome was in April that year with CRA's exploration division signing the first native title agreement in Australia for exploration over the St Vidgeons pastoral lease just south of Arnhem land. This predated the High Court's *Wik* decision, which brought pastoral leases into the Native Title regime and ultimately persuaded the industry to come to terms with the legal reality of Aboriginal interests in land over the large proportion of Australia.

Under Padgett, Otter worked to actively engage Aboriginal people. A dedicated position to manage Aboriginal relations and employment was created. Fred Murray was appointed to that role. Murray was a ‘people person’ who had a wide range of experience in the mining industry and had since moved into the health and safety area. Murray had ‘Territory credentials’ and knew Padgett from working together at Cosmo Howley near Pine Creek in the Northern Territory (Interview FM 2008).

We found it difficult to get Indigenous people especially Warlpiri people to work on country. [They were] never exposed to that size of mining. Old people had worked at Tanami historically for rations, no money; essentially existence as slaves. We said if we can find qualified people we will put them on, provided they meet minimum standards, and if not, we will train them. There was a collaboration between the CLC, Tanami Mine and DEETYA [Department Employment Education Training and Youth Affairs]. ‘Strachy’ [the Regional Manager seconded from DEETYA] was assigned to the CLC to look at developing programs through the employment agencies like Tangentyere Council to get people to come to the mine site (Interview FM 2008).

The Tanami Employment Strategy was a venture between Otter, the CLC and DEETYA began in 1995 (Hampton & Hayes 1998). One of the first successes was engagement of a significant number of Aboriginal workers and tradesmen by the construction company contracted to build accommodation units at Tanami Mine (Interview FM 2008).⁹⁹ Once Otter commenced operations Aboriginal employees represented around 15% and 20% of the workforce. Minutes of a Tanami Mining Employment Steering Committee meeting in 1998 recorded that Otter averaged between 21 and 32 Aboriginal people mainly from Alice Springs and Darwin (CLC files). Tilmouth (1998) estimated there were 34 Aboriginal people employed at the Tanami Mine in 1998 across a range of work areas.¹⁰⁰ Significantly, three Aboriginal people from local communities were employed, including a man from Lajamanu who worked on a dump truck and subsequently set up a business fabricating concrete drill hole plugs to sell to Otter’s exploration arm (CLC files).

Commenting in an interview on some of the reasons for success, Murray emphasised the fundamental need for mutual respect and understanding:

⁹⁹ They were not the demountables typically found on mine sites, but semi-prefabricated cabin-like structures that were built to high standard. As at 2011 the accommodation units continued to be in service.

¹⁰⁰ These included exploration 9; mining/geology 3; administration 2; mill/laboratory 5; mining contractor 11; catering 1; drilling 2 (Tilmouth 1998).

You have to look at yourself and the way you work, have to build the relationship [with Aboriginal people], mutual understanding, mutual trust because the ancestors are watching. In mining industry, you were struggling to have a transparent relationship because the trust wasn't there (Interview FM 2008).

Murray was personally dedicated to creating the necessary trust and respect with local Aboriginal people. During his tenure, Tanami Mine gave assistance to passing Warlpiri traffic (fixing flat tyres, providing emergency fuel and food). Otter's Tanami Mine became the benchmark for the Warlpiri who would say at mining meetings that The Granites people should be more like the Tanami (Interview JS 2008).¹⁰¹

The CLC also emphasised the importance of relationships:

Good relationships are always important but particularly so for Aboriginal people who, in general, tend to place enormous faith on their relationships with others. The mining company must be genuine and honest in its approach and firmly establish trust over time through real and tangible actions (Tilmouth 1998).

In 1997, in response to the positive developments at the Tanami Mine, the CLC secured funding from the Department of Employment, Education, Training and Youth Affairs (DEETYA), the federal government department responsible for employment and training to employ a dedicated Mining Employment Officer within its Mining Section. The officer assisted job applicants with obtaining licence, medical certificates, prepare resumes, organise life-skills training and facilitate means for Aboriginal employees to get to and from the mine.¹⁰²

The outcomes from these efforts, while modest when measured against current standards, were significant for the time and for the precedent they established. Importantly the results

¹⁰¹ Fred Murray subsequently worked at the Argyle Diamond Mine. He said that the CLC and traditional owners "were my teachers about the things that mattered most to [Aboriginal] people; country, family, language group and the responsibilities of an obligation to society as opposed to an individual society as Eurocentric people are. That held me in very good stead to feel confident that I knew that people had their groupings, families, loyalties and responsibilities that would change from day to day sometimes." Tragically, Fred died in an aeroplane crash near Perth in 2009, available <<http://www.news.com.au/news/crash-pilot-widely-loved/story-fna7dq6e-111118226078>> Jan 2013. His achievements were commemorated through a memorial at Tanami Mine that honours his contribution and relationship building with Aboriginal people.

¹⁰² As the role developed, specific functions carried out included skills audits and community equipment audits, mentoring to assist with retention in employment, conducting pre-employment checks (health, drugs, police), workplace familiarisation and orientation visits as well as training support.

at the Tanami Mine showed that where there was consistent dedication and effort, positive Aboriginal employment outcomes could be achieved.¹⁰³

To support the initiative, the Tanami Mining Employment Steering Committee was formed, bringing together the range of major stakeholders, including community members and traditional owners, Otter and NFM, the CLC, Northern Territory and federal government employment and training departments (including DEETYA).

Tilmouth (1998:7) promoted the ‘Tanami Mine experience’ publicly and in an address to the industry summarised the “essential elements for success of Aboriginal employment”:

1. Established relationships of trust between mining company and Aboriginal people and their representative bodies;
2. Genuine and honest approach from senior mining management;
3. Cross-cultural awareness program;
4. Steering Committee representing interested parties;
5. Dedicated mining company employment officer;
6. Dedicated Aboriginal liaison officer;
7. Community based employment agents;
8. On-site mentoring or support system;
9. Direct employment initiatives;
10. On-site training for employees;
11. Apprenticeship and pre-vocational training;
12. On-site work experience and visits for potential groups of employees;
13. High school visits

4.2.1. Invoking Agreement employment terms and conditions

An important outcome of the early employment initiatives was to instil enthusiasm over the possibility of increasing Aboriginal employment at The Granites. Signals of an increased motivation toward Aboriginal employment at The Granites corresponded with the Normandy takeover of NFM (see Chapter 3).¹⁰⁴ In September 1998, Normandy NFM appointed a new mine manager, Terry Smith, who had worked previously for Normandy in Tennant Creek and “aimed to get things up and running again” (CLC files). One of the few contracts to an Aboriginal group was offered following his appointment.¹⁰⁵ Engagement

¹⁰³ In 1998, the CLC expanded its Mining Employment Unit and continued its focus on supporting initiatives to get Aboriginal people work at The Granites and other mines. The expansion was funded initially by the Australian Government’s Structured Training and Employment Project (STEP).

¹⁰⁴ The mine manager appointed by NFM was replaced along with the mine’s human resources manager. They were working at The Granites up until August 1997.

¹⁰⁵ An Alice Springs-based Aboriginal contractor (Arrernte Council) was engaged to fence the highway that runs through The Granites lease. In an earlier contract, NFM had contracted Yuendumu Mining Company to supply aggregate for use in the cement for the foundations of the first mill upgrade around 1989 (Interview FB 2008).

with Yirara College, a mostly Aboriginal secondary school, toward creating a program for generating interest in employment at the mine occurred at this time (but was apparently short-lived) (CLC files; Hampton and Hayes 1998).

Normandy brought its experience from Tennant Creek, a gold mining region to the east of the Tanami, where it was successful with shifting the historically poor relationship between the miners and the local Warumungu people to a more positive footing. Normandy was the “first Australian company to commit to a written policy with regard to its business and Indigenous people” (Council of Aboriginal Reconciliation 2009). It was also probably the first mining company to employ Aboriginal people in senior roles with responsibility for increasing Aboriginal participation. In 1992, Normandy had introduced a Mining Access Training Course (borrowed from Hamersley Iron) in partnership with the local Tennant Creek Aboriginal resource centre, Jularlikari Council. Through the training programs eventually 47 Aboriginal people out of a workforce of 300 were employed in Normandy mines in Tennant Creek, a significant advance from a starting point of zero.

Normandy’s Tennant Creek operations were shutting down and some of the key environment and community personnel shifted to The Granites. In 1999, a dedicated Indigenous Affairs Unit was created at The Granites. The unit included a Community Development Officer, an anthropologist who had experience working in a northern Queensland land council as well as experience gained at Normandy operations at Tennant Creek. The immediate focus was to attract Aboriginal recruits. The unit developed a good working relationship with the CLC and established protocols so that the mine could readily access Aboriginal people who had registered their interest in working at the mines with the CLC Mining Employment Unit. Around this time, rates of Aboriginal employment are said to have tripled at The Granites (Interview BF 2008).

A further improvement in numbers of Aboriginal employees at The Granites operation occurred in the period leading up to 2000, when Aboriginal employment reached 120 employees. This was a result of a number of factors. Importantly, the operation was at its most expansive stage with open-cut operations at their peak at both The Granites and DBS.

Underground mining development was also occurring at DBS with the result that record mining rates were reached. At this time the first Aboriginal contractors were introduced.¹⁰⁶

Normandy had set a corporate target to maintain 15% to 20% Aboriginal employment and subsequently also introduced corresponding requirements in issuing contracts. Major mining contractors Roche Mining (open cut) and Henry Walker Eltin (underground) and the ore haulage contractor Bulkhaul responded effectively and actively sought Aboriginal employees. As the open pits were progressively completed Aboriginal employee numbers reduced accordingly. The NFM Operations Manager reflecting on Normandy success in interviews considered:

Normandy showed the way a bit, showing it can be done. They had influence in the Australian Mining Industry saying you can achieve these high levels and was willing to devote extensive resources. They were one of the groups that changed perception, if you want to go to do it, this is how, you can't just advertise and people will knock on your door (Interview JD 2008).

4.2.2. Employment from Aboriginal communities in the Tanami region

Significant progress was made during the Normandy era up to the early 2000s. The rate of employment of Aboriginal people from the neighbouring communities remained a disappointing aspect. Increasing the level of participation from the Warlpiri communities was an overarching goal but achieving it proved very difficult. There were significant obstacles that hindered the take up of employment opportunities on offer to these neighbouring communities. The enormous disadvantage in terms of individuals' educational levels and lack of work experience was becoming increasingly recognised. As a result it was becoming clearer too that intensive pre-employment training would be needed, as well as on-going mentoring and on-the-job support. The Normandy Community Relations Manager at the time recalled that:

In 2001 we had a bit of go, had a crack at training [through the Granites Pre-vocational course] but it didn't work. It wasn't until we hit the wall twice that we realised it is not

¹⁰⁶ With the expansion of production in 1999, an Aboriginal civil contractor, S & J Contracting (Sid and Jenny Ruska) won a contract to build the new tailings dam. They had 30 or so Aboriginal people in their team (Interviews HH 2008). In addition, around Apr 2000, local Alice Springs contractor (Rhodes) through a joint venture with Yuendumu Mining Company called Exactmix won the backfill contract. Some 19 Aboriginal people were engaged by Exactmix (Interview TT 2008).

working, needed to think about it, the scheme now operational, which has been reasonable successful, come out of that (Interview BF 2008).

In 2002, global US based gold mining corporation, Newmont, bought Normandy and The Granites operation became part of the world's biggest gold mining company (see Chapter 3). The takeover was not accompanied by sweeping changes in operational personnel. Rather the existing general commitments to Aboriginal employment were "ratcheted-up" creating:

A step change [when] Newmont took over. They were absolutely driven by wanting to be compliant with the law. Some of that comes out of their experience in the US where it is a crime not to be compliant. We were in reasonable shape, but they really started to drive it [commitments to Aboriginal employment] and it really became high on the agenda, they drove it a very high level in the organisation (Interview BF 2008).

Newmont operated globally and was a member of the Global Mining Initiative, which recognised that the industry needed to work differently and instigated the MMSD process mentioned in Chapter 1. In 2000, John Dow, Managing Director of Newmont Australia, signalled that the company would be:

Supporting and promoting Indigenous economic, social and cultural rights and working toward the achievement of a positive social impact for all our operations. ... We Newmont and the Industry – need to be responsible tenants through providing employment and business development, building community capacity, governance support and education and health (Dow 2000).

At a corporate level, through its group executive for Sustainable Development the concept of the 'Social Licence to Operate' was enunciated as "a fundamental requirement of our business" that "must be earned and maintained" (Charles 2004).

Gaining community acceptance is fundamental for business development and continuity. This is particularly true of our relationship with Indigenous Australia, which is one of the highest priorities for Newmont (and many mining companies) in this region. We have made a commitment which says in part that we recognize that success in our business is integrally linked to local Indigenous communities' capacity to develop and maintain sustainable livelihoods (Charles 2004).

Relationships and partnerships were central the business. Relationships were built up with Reconciliation Australia, the federal government through its Indigenous Employment strategies and tertiary institutions such as Desert Knowledge CRC in Alice Springs (Charles

2004). These were backed by number of management and assessment systems, including its Five Star Integrated Management System, 'Now and Beyond' Report, internal and external communication standards, and capacity building (Charles 2004).¹⁰⁷ Within this systems framework Newmont invigorated a renewed understanding of the Agreement:

What has actually become more developed over the last few years, and is probably not articulated well in the Agreement, is the 'intent' of it. It is this question of how do you get sustainable benefit around building capacity in communities, taking the economic opportunity that sits there and forging some sought of future. To me that is intent of the Agreement. Some of the Agreement is implicit, for example, it wanting to know all the vacancy and the business opportunities. There was a sense of trying to put in the Agreement a way of saying 'we want a share of what's going on' (Interview CC 2008).

Looking beyond the individual clauses of the Agreement to recognise the underlying intent enabled Newmont personnel to adapt implementation approaches to address the complexities of achieving the desired outcomes under the Agreement.

One of the changes noted by mine-based personnel was that Indigenous employment became everybody's goal, "we have an Agreement between Newmont and the CLC that we must honour and we all have a part to play to do that" (Interview BF 2008). Increased Aboriginal employment became a whole-of-mine objective not just the Indigenous Affairs Unit. Financial bonuses and incentives for operational managers in relation to Aboriginal employment were introduced. Previously there was a sense that "oh, that was Indigenous Affairs, they do that, not a recognition it was a whole-of-mine issue" (Interview BF 2008). In this way Aboriginal employment was embedded in the culture of the organisation and became one of the core organisational values:

It has to be the culture. You could see the changes happen. I recall my first visit to The Granites, 1995 and I was gobsmacked, just NFM then, and when I went in end of 1999 the wet mess in its heyday with people leering at women and a few Aboriginal blokes

¹⁰⁷ 'Five Star' was introduced in 2003 to ensure effective management processes related to health and safety, community and environmental responsibilities were in place at all Newmont's operations. "A benchmark for the industry", its strengths were said to be firstly its policy, which contains an overall policy of increasing the number of Indigenous people employed in the company and a secondary policy, the 'Australian Indigenous Peoples Policy' that applied to all of Newmont's Australian operations. Secondly, guidelines are provided to explain and clarify the Indigenous employment intent of the overall policy and secondary policy. These guidelines address key operational leadership and human resource issues around Indigenous employment, such as, cultural diversity within work environments, racism in the workplace, sustainable business enterprise, employment and career development opportunities (Tiplady & Barclay 2007:59).

drinking in a little cluster. To see it today the transition is just amazing a lot of Indigenous guys, integrated (occasionally drinking as group) mostly in amongst with work colleagues, in the gym together, then that is the transition. Ten years might be a long time, but it's gone from a redneck culture out there, to a reasonable situation. It's not perfect, a few rednecks out there, they are not tolerated, that's not the behaviour that is wanted, you see people pulling people up. That is the way they turned the corner. It took longer than it should have (Interview BF 2008).

During this time Newmont revamped the entrance of the mine by building a reception centre manned by Community Relations staff to receive safely passing Aboriginal traffic in need of emergency assistance. A local Aboriginal man from Yuendumu was engaged to paint it giving the mine a much friendly impression (Figure 5).¹⁰⁸



Figure 5. The Granites Welcome Centre 2009.

Newmont continued to work with the CLC and used the experience from the initial training programs to further develop the Aboriginal employment program at The Granites. Approximately 20% of the cost of the pre-vocational course was supported by government employment programs with the balance funded by Newmont (Interview CC 2008). The content was refined, time spent on the mine increased, training wages paid and work on the mine in real jobs was guaranteed for successful participants (Interview BF 2008).

¹⁰⁸ Note the message “Don’t forget safety” with paintings of steel cap boots and hi-visibility shirt.

The pre-vocational courses were typically made up of ten weeks training followed by ten weeks on-the-job rotation. Between ten and 12 Aboriginal people at a time were enrolled in the courses, which were run once or twice a year. Participants were drawn from the CLC Mining Employment Unit's register of interested people. A range of tickets and licences for plant and machinery and first-aid certificates were gained along with first-hand experience of life on the mine. Full-time work was offered for those successfully completing the program. During the probationary period, participants rotated between the main operational departments and contractors. Probationers could take-up positions within their preferred work area as vacancies arose. The program included limited on-site Indigenous mentoring. Through a very positive collaboration and high degree of cooperation between Newmont and the CLC, The Granites became one of the largest single employers of Aboriginal people in the Central Australian region.

Following success of the pre-vocational courses, which attracted mostly Aboriginal people from Alice Springs and the wider Central Australian region, a course was designed in 2008 specifically to provide a pathway for Aboriginal people from remote communities into employment. This was the eighth Newmont pre-vocational course and drew in more participants from remote communities than any other program (Central Desert Training 2009). There had been heightened interest from the community of Yuendumu as awareness grew that Aboriginal people were being actively sought by the company. It was also the first year that training coordination and mentoring were fully funded by both the State and Commonwealth Governments, at significant cost saving to Newmont.

Significant additional barriers to employment existed amongst Aboriginal people from the local communities, including lack of consistent engagement with formal education, low English language skills, poor literacy and numeracy, lack of engagement with the vocational education and training system and absence of significant employment experience. Through the specialised prevocational training, significant efforts were made to support the graduates moving into permanent employment (Central Desert Training 2008). Furthermore the federal government funded the mentoring of Aboriginal employees for 39 weeks after the conclusion of the training phase of their program.¹⁰⁹ In terms of outcomes from that year, 15 pre-vocational employees commenced, 12 of whom graduated and were placed at the mine

¹⁰⁹ The Department of Education, Employment and Workplace Relations (DEEWR).

for workplace experience. After 13 weeks there were nine graduates employed at The Granites and after 26 weeks, seven remained. The evaluation of the course concluded that:

Given the exceptional number of participants from the local remote community of Yuendumu, this achievement should not be underestimated. In fact, an outcome like this may be setting a record in the history of Indigenous employment programs (Central Desert Training 2009:4).

Reasons for why participants ceased training or employment were categorised and quantified as follows: 12% for performance failure (breach of code of conduct rules), 25% due to family/cultural commitments (funerals and ceremonial business drawing people away from the workplace at unacceptable levels resulting in termination); 38% due to lack of job satisfaction (issues to do with inability to adjust to the workplace requirements); 12% for medical reasons (Central Desert Training 2009:4). An identified ongoing issue was that many Aboriginal people from the remote communities did not meet minimum industry entry standards such as literacy and numeracy requirements, criminal history checks, physical fitness, psychometric assessments and aptitude tests (Central Desert Training 2008).

4.2.3. The Yapa maintenance crew

The strategy of using the pre-vocational course was highly successful in bringing Aboriginal people in Central Australia into work at the mine. Despite this success, the low numbers of Aboriginal people from the local communities remained disappointing. A further strategy was devised by Newmont in collaboration with the CLC to address this issue. A ‘Yapa’ Maintenance Crew was established, which brought community based workers to work on site as a casual labour pool.¹¹⁰ The crew was managed and supervised through the Indigenous Affairs Unit and operated outside the mine’s main operational divisions. It offered a range of labouring and semi-skilled services across the mine on an ‘on-need’ basis. Work included such things as grounds maintenance, concreting and general labouring. This structure was intended to facilitate direct employment for local community-based people by providing a more flexible and supportive work environment. It allowed employees to adjust to the long shifts and regimented life on the mine whilst at the same time exposing employees to operations across the mine. At the height of this program in 2009, Newmont

¹¹⁰ *Yapa* is the Warlpiri name for Aboriginal people. Wallcon Pty Ltd based in Willowra provided the labour hire service up until Aug 2011.

had 12 to 14 local community members working on the mine, which was an all-time high (Interviews PD 2009).

The Yapa Crew was initiated and driven by the Manager of the Indigenous Affairs Department and exemplifies the corporate champions who “go the extra mile” in supporting Aboriginal employment, pressing the issue with management to ensure it remains on the corporate agenda (Tiplady & Barclay 2007:21).

Although work-place support and mentoring was provided, retention of Aboriginal recruits remained challenging, as was ongoing training and career development.

By 2009, a substantial proportion of The Granites workforce was made up of Aboriginal people. As at August 2009 there were 97 Aboriginal people employed, representing 14% of the workforce of around 700 company personnel and contractors.¹¹¹ Jobs were with both Newmont and their contractors and included a range of occupations, mainly truck drivers, mill technicians, work supervisors, trades, services and labourers. Nearly half of the Aboriginal employees worked with the underground mine contractor and the next biggest employer was the catering and camp services contractor.

The remarkable aspect is that the mine has maintained a steady level of Aboriginal employment over the last decade with numbers fluctuating between 70 and 100 Aboriginal people at any one time over the five years up to 2011. As of June 2011, the number of Aboriginal employees was 96 out of a total of 853 employees representing 11% of the workforce.

4.3. Conclusion

The examination of Aboriginal employment at The Granites demonstrates that the inclusion of employment obligations in the Agreement did not lead automatically to the outcomes envisaged in terms of numbers of Aboriginal employed, skills development or career progression. While the intent of the Agreement was clearly to promote significant Aboriginal participation in supplying labour, goods and services, the way the clauses were

¹¹¹ Employment of 90 Aboriginal people from Central Australia would mean around \$5,400,000 in wages a year, most of which would be spent in the region, along with \$1,247,400 a year in tax paid plus a saving of over \$1,000,000 a year in Centrelink payments (CLC files).

written meant that those obligations were heavily qualified. Employment rested within the mining company domain and although progress early in the life of the project was limited, the obligations were not easily enforced by legal means. Tracing the actions undertaken that ultimately resulted in improved outcomes illustrated that a range of measures that had to be trialled and implemented by successive owners of The Granites before reasonable employment rates were witnessed.

The employment figures show a very low rate of employment for the first 12 years of operation of the mine, followed by a sharp increase in the next phase, then a levelling out for the seven years up to 2011. That the three identifiable phases correspond closely with the changes of corporate ownership highlights differences in outcomes associated with the manner and nature of approaches to implementation. Specifically, the attitude of the company, as manifested through statements and actions of its leadership, were found to be fundamental to establishing clear corporate commitment to increased Aboriginal employment and instilling a culture within the ranks of the company appropriate to fulfilling that objective.

The early phase of development was carried out by NFM, which was a junior company, focused on the single project and characterised by a capacity for technical problem solving that enabled geological feasibility to be proven and mine development. Leadership of the company was focused on maintaining the viability of the company's projects and became pre-occupied with the machination over hostile corporate takeovers. Competencies in the company were directed toward securing exploration and engineering expertise. Aboriginal employment was not a priority.

This contrasts with the subsequent period of ownership by Normandy, which was a larger corporation, sensitive to changing attitudes in society and commanding greater resources and experience with Aboriginal issues gained from other sites. The conclusion that not only corporate leadership but also dedicated effort championed by certain individuals was evidenced in the turnaround instigated through experiences at other mines in the Tanami and neighbouring regions. The insights gained at other mine sites were applied at The Granites by Normandy once it was in corporate control. The determination of Normandy's leadership to increase Aboriginal participation and the targeted recruitment of managerial personnel with relevant expertise in this area had a profound effect on employment numbers at The Granites.

The important role of ‘corporate champions’ was found to be critical to generating the level of enthusiasm and innovation needed to address the complexity of issues that were creating barriers to Aboriginal employment in the rigid mine regime. Part of the enabling effect of these committed personnel was the establishment of effective relationships and collaboration with key agencies including Aboriginal organisations with a ‘grass roots’ connection to the local Aboriginal communities. Also critical was positive engagement with government through relevant employment agencies and programs.

The fundamental changes in approach to the Aboriginal employment obligations were also linked to changing societal expectations of the mining industry’s responsibilities towards affected communities. Notions of wealth sharing and delivering sustainable benefits created expectations that corporations would engage with communities to undertake social programs that aligned seamlessly with the obligations for Aboriginal employment. Normandy was an industry leader within the Australian context in terms of engaging positively with Aboriginal Australia. The societal expectations were complemented by in the increasing interest of government to promote Aboriginal engagement with the mining industry.

As a global mining company, Newmont was accustomed to working with local communities and it had a heightened focus on compliance. Senior corporate management ensured that social responsibility was embedded in the culture of the organisation and that it became one of the organisational values. Its ‘Social Licence to Operate’ was enunciated as a fundamental requirement of its business.

The outcomes achieved by Newmont highlight not only the critical need for personnel with high levels of commitment but also the need for robust structures and processes for engagement with Aboriginal groups. Newmont developed management and assessment systems for its community engagement to ensure compliance with obligations.

The implementation factors identified in this chapter are considered further in the Chapter 6, which analyses these factors in conjunction with lessons learned from the implementation of the financial disbursements examined in the next chapter.

5. Financial disbursements

This chapter examines how the financial provisions of The Granites Agreement operated and investigates some of the effects of disbursements to Aboriginal groups. The research on the payments focuses on receipts from the three mining agreements made over the life of the operation as described in Chapter 3. The payments under these agreements account for the vast majority of the payments to traditional owners.¹¹² It describes the governance structures and the relevant legislation governing payments under the agreements and examines Aboriginal responses to access to mining royalties and how these have evolved over the life of the operation.

The purpose is to explore the complex social and cultural issues that accompany mining payments and to gain an understanding of some of the broad responses of Aboriginal people in receipt of mining money and the responses of their representative organisations. Of particular interest is identifying how the organisational and governance structures established have operated to influence the way money was managed and the outcomes of distribution of both agreement moneys and statutory payments. The examination provides some insights into the factors affecting the outcomes of mining payments and allows for some propositions to be drawn in Chapter 6 in terms of implementation of the Agreement.

To understand the impact and outcomes of payments under The Granites Agreement it is necessary to also consider the statutory payments regime and take account of the impact of moneys reaching groups beyond the traditional landowning group. The Land Rights Act not only empowered Aboriginal landowners to negotiate financial consideration for granting access to Aboriginal land, but also provided for payments to be made by the Commonwealth Government in respect of mining on Aboriginal land. These 'statutory payments' are paid irrespective of any negotiated agreement and are intended to be for the benefit of affected Aboriginal communities and groups.

The actual amounts received were not obtained from the CLC or the mining company because of commercial confidentiality and the sensitivity of financial arrangements.

¹¹² The ancillary agreements mentioned in Chapter 3 provided for annual rentals or payments, however, these are relatively small amounts compared to the payments received from the mining leases.

Estimates in this thesis are based on publicly available information and reflect the order of magnitude of payments and relative changes over time rather than actual or precise payments made. Gold production in ounces of gold was found from various sources for most of the years and gaps were extrapolated. This information, combined with the historical gold price in Australian dollars, was factored by the royalty rate to give a calculation roughly representing the quantum of payments to traditional Aboriginal owners. Based on these estimates it can be seen that The Granites has generated significant negotiated payments to the traditional owners of the mining areas. How the payments have been applied and what are some of the outcomes of those payments are analysed below.

5.1. Associations in receipt of negotiated payments

5.1.1. Janganpa

The original Granites Agreement does not stipulate who the intended beneficiaries of the payments were, other than that the amounts would be paid to the CLC. Having regard to subsection 35(3) of the Land Rights Act, which stipulates payments received under mining agreements are to be paid to an incorporation of the Aboriginal people affected by the agreement, the CLC incorporated the Janganpa Association (referred herewith as Janganpa) on 22 December 1983 under the *Aboriginal Councils and Associations Act 1976*.¹¹³

Janganpa's express purpose was to receive Agreement payments for the benefit of the traditional owners of The Granites Mine (Janganpa 2010). The objects of Janganpa are:

- to promote the well-being and community development of the members,
- to obtain land, housing and other facilities for the members,
- to act to meet the social and economic needs and improve living conditions,
and
- to carry out all types of business and investment, receive, account for and distribute monies pursuant to The Granites Agreement.

¹¹³ Sub-section 35(3) Land Rights Act current at the time of writing reads “Subject to this section, within 6 months after money is paid to a Land Council under an agreement made under section 42, 43, 44, 46, 48A, 48B or 48D, it must: (a) be applied by the Land Council in accordance with the agreement; or (b) if the agreement makes no provision in relation to the application of the money—be paid to any Aboriginal and Torres Strait Islander corporations whose members are affected by the agreement, in such proportions as the Land Council determines.”

The rules of incorporation give Janganpa the power to establish trusts and carry out any business that would enhance the value of any property and rights (Janganpa 2010).

Membership is open to persons who are the traditional owners of The Granites and who are normally resident at the Aboriginal communities located in the Tanami region including Lajamanu and Yuendumu, and also other Aboriginal communities further afield including Balgo in Western Australia (SEA 1985; Janganpa 2010). The Association has a Governing Committee consisting of up to ten members drawn from the membership and determined by the members at the Annual General Meeting “in accordance with agreed traditional decision making processes or in the absence of such agreement by such process of decision-making as is agreed by two-thirds of the members present” (SEA 1985; Janganpa 2010).

5.1.2. Kurra

With commencement of production at DBS a separate royalty receiving association, Kurra Aboriginal Corporation named after the Aboriginal rockhole at DBS, was incorporated on 15 December 1993 under the *Aboriginal Councils and Associations Act 1976* (Kurra 1993).¹¹⁴ In a manner similar to Janganpa, Kurra was set up to receive and account for money received by the CLC under the DBS Agreement. Kurra’s role is to manage and distribute funds for the benefit of its members, including investment, purchasing and selling property, and “entering into any Deed of Trust ... which may be necessary or beneficial for the carrying out of the objects of the Corporation” (Kurra 2010:2). Kurra’s objects are:

- to exercise its powers for community purposes for the relief of their poverty, sickness, serious economic disadvantages and social distress,
- promoting the well-being and community development,
- obtaining land, housing and other facilities,
- assisting in alleviating the significant unemployment levels,
- providing health, education, essential services, and social services among its members,
- arresting social disintegration by undertaking appropriate programs to promote self-management by its members, and preservation of their culture, and

¹¹⁴ Care must be taken saying ‘kurra’ out loud so as to avoid embarrassment. The double ‘r’ indicates a reflexive or ‘rolling’ of the ‘rr’ sound, which is necessary because pronouncing only a single ‘r’, kura, means sex in Warlpiri.

- acting to improve the living conditions of its members”.

5.1.3. Warlpiri Education and Training Trust (WETT)

In 2003, the CLC established the Warlpiri Education and Training Trust (WETT), pursuant to the Consolidated Mining Agreement 2003, to receive a portion of the royalty payments as described in Chapter 3. Kurra agreed to act as trustee for WETT. While not technically Kurra’s money, oversight by Kurra made sense as ultimately an overwhelmingly large part (nearly all) of the royalty payments were derived from mining on their land at DBS (Interviews DC 2008). Since 2004, around \$1.2 million has been paid annually into WETT (CLC 2009:3).

Kurra functions as the trustee of WETT and makes all the funding decisions on recommendations by the WETT Advisory Group.¹¹⁵ The Advisory Group oversees the design and development of appropriate projects and is made up of community members, a CLC officer, a Newmont representative and representatives of both the Commonwealth and NT Governments.¹¹⁶

5.2. Statutory payments for mining on Aboriginal land

The scheme for payments to Aboriginal people under the Land Rights Act for mining on Aboriginal land not only allows ‘negotiated’ payments made under agreements but also provides separate payments to Aboriginal communities and groups that are affected by a mining operation on Aboriginal land. These are known as statutory ‘royalty equivalents’ (Altman 1983b:13; 1995:7; Altman & Peterson 1984:5, 14).¹¹⁷ These are payments by the federal government into an account established under the Land Rights Act for the benefit of Aboriginal people of the Northern Territory called at the time of writing, the Aboriginals Benefit Account (ABA).¹¹⁸

¹¹⁵ As at 2011, Kurra has a WETT Sub-committee that make decisions on behalf of Kurra based on recommendations of the WETT Advisory Group.

¹¹⁶ Representations from government varied. Usually the NTG was represented by a senior NTED officer. The Australian Government was usually represented by an officer from FaCHSIA or the DEWR.

¹¹⁷ The payments are referred to as statutory ‘royalty equivalents’ because it is not the actual royalty receipts that are paid in the ABA as these, in the case of royalties to the Northern Territory are held by the Territory for its use, or in case of uranium royalties to the Australian Government, are paid into Consolidated Revenue. Rather the payments into the ABA are made by annual appropriations by the Australian Government at amounts that are equal to the sum the royalties paid by mines on Aboriginal land (ABA 1996:5).

¹¹⁸ The precursor to the ABA, the Aboriginal (Benefits and Mining) Trust Fund, was established in 1960 with the first royalty receipts in 1966. When, in 1977, the trust fund was incorporated into the Land Rights Act it

The obligation for the federal government to pay royalty equivalents arises where a mine on Aboriginal land pays royalties to government, either the Australian (in the case of uranium) or the Northern Territory Government (for all other minerals). Payments into the ABA are made in accordance with section 63 of the Land Rights Act being “amounts equal to any royalties received by the Federal or the Northern Territory in respect of a mining interest in Aboriginal land.”¹¹⁹ Only royalty equivalents are paid into the ABA, as other payments related to leases (including mining leases) on Aboriginal land, such as rents received by government, are directed to the relevant land council under section 16, to be paid for the benefit to the traditional owners of the land in accordance with subsection 35(4) (c.f. Altman & Pollack 1998) whereas royalty equivalents are for the benefit of affected Aboriginal communities and groups under subsection 35(2) (see definition below).

Altman and others (Altman 1983a, Altman 1983b, 1985; Altman & Peterson 1984; Altman & Pollack 1998; Altman & Smith 1994) have researched Aboriginal economies and the effects of governments’ Aboriginal economic policy in the Northern Territory since the early 1980s. They have written extensively on the origins and the operation of the ABA and explained how the principle that the federal government direct royalties received from mining on Aboriginal land to the benefit of Aboriginal people is linked to statutory and policy precedents established in the 1950s in relation to Aboriginal Reserves in Northern Territory (Altman 1983a, 1983b, 1985; Altman & Pollack 1998:2; Altman & Smith 1994). With the introduction of the Land Rights Act in 1976, the requirement that the Federal Government pay out of consolidated revenue amounts equal to the amount of royalties received from mines on Aboriginal land into an account established for the benefit of Aboriginal people in the Northern Territory was enshrined in legislation (Altman 1983a, 1985). This has persisted as a basic tenet of the Land Rights Act and the relevant provisions have survived many amendments of the Land Rights Act to remain largely unchanged as at 2011.¹²⁰

became the Aboriginals Benefit Trust Account (ABTA) under the control of the then newly created ministerial portfolio of Aboriginal Affairs. Reorganisation of Aboriginal affairs in 1990 gave responsibility for administering the ABTA to the Aboriginal and Torres Strait Islander Commission. In Jan 1998, the ABTA became the Aboriginals Benefit Reserve (ABR). The *Financial Management Legislation Amendment Act 1999* converted the ABR to a special account under section 21 of the *Financial Management and Accountability Act 1997* and it became known as the Aboriginals Benefit Account (ONA 2008:12).

¹¹⁹ Subsection 63(1) of the Land Rights Act.

¹²⁰ The provision was originally contained in subsection 63(2) of the Land Rights Act and referred to royalties received by “the Crown”. As a result of various amendments the provision current at the time of writing is

Importantly, under the statutory scheme, the Aboriginal communities and groups affected by each of the mining operations that generate royalties on Aboriginal land receive ABA payments. These are known as ‘affected area’ moneys. The quantum available to affected Aboriginal communities are determined by subsection 64(3) of the Land Rights Act, being an amount equal to 30%¹²¹ of the royalties paid by the relevant mine.¹²² As such, the affected area moneys are paid irrespective of any agreement negotiated over the mining operation and paid whether such an agreement exists or not.¹²³

Section 35(2) of the Land Rights Act stipulates how affected area payments are to be distributed:

Subject to this section, money paid to a Land Council under subsection 64(3) must be paid, within 6 months of its receipt by the Land Council, to any Aboriginal and Torres Strait Islander corporations whose members live in, or are the traditional Aboriginal owners of, the area affected by those mining operations, in such proportions as the Land Council determines.

Much of the early research on money to Aboriginal people from mining (e.g. Altman & Peterson 1984; 1994; Kesteven 1983) focused on the mines in the Top End of the Northern Territory, on land administered by the Northern Land Council (NLC). Specifically, these mines were (1) Ranger over which an agreement was made between the NLC and the federal government;¹²⁴ and (2) Nabarlek, dated 22 March 1979 (Altman & Peterson 1984:6; 1994:8).

contained in subsection 63(1). Instead of “the Crown” it refers to “the Commonwealth and the Northern Territory”.

¹²¹ The remaining 70% of receipts are used by the ABA to pay the NT land councils’ administrative expenditure (ss.64(1); fund the Office of Executive of Town Leasing (ss.64(4A)); cover the administration cost of the account; “make payments for the benefit of Aboriginal people living in the Northern Territory”; and, maintain an investment strategy focused on preserving a significant capital base for the fund. As at 30 Jun 2011 the balance was \$412 million (FaCHSIA 2011).

¹²² A 40/30/30 percentage split between the land councils, affected communities, Aboriginals living in the NT respectively, was contained in the Land Rights Act up until amendments in 2006 altered the formula leaving only the 30% to be paid to affected communities. Concern existed over the removal of the guaranteed 40% allocation to the land councils, however, in practice land council funding had always exceeded 40% because of discretionary Ministerial allocations. As a result, payments to Aboriginals living in the NT, at least in the early years’ distributions, have been calculated to be closer to 10-14% of receipts (Altman 1983b;18; 1985).

¹²³ Such is the case of mining at Gove where bauxite mining pre-dated the Land Rights Act. Aboriginal people received only affected area moneys, as there was no agreement between the mining company and Aboriginal landowners until 2011, when Rio Tinto Aluminium entered an agreement with the NLC.

¹²⁴ The Ranger Agreement was signed on 3 Nov 1978. At the same time, leases were executed between the Kakadu Aboriginal Land Trust and the Director of National Parks to create the Kakadu National Park. The

The way those agreements evolved resulted in the Aboriginal associations that were set up to receive moneys from the mines being paid both ‘negotiated’ and ‘affected areas’ moneys (Altman 1994:8;14; Kesteven 1983:361, 363).¹²⁵ Much confusion resulted over who were the intended beneficiaries of the money and tensions were evident between the owners of the land and other Aboriginal people with community based interests (Altman 1994:13; Kesteven 1983:369). This was not the case for statutory payments related to The Granites.

Altman highlights that although the Land Rights Act expressly contemplates payments to Aboriginal people derived from mining activity, it is silent on the matter of the disbursement or distribution of the money, other than that the payments must be paid to an Aboriginal association. His analysis focuses on the lack of clarity over who should receive moneys, how the socio-geographic area in which to identify those groups is to be determined, and for what the money is intended or not intended (Altman 1983b:15, 1985:481, 1994:13, 22).¹²⁶ He found that that “many so called 'royalty associations' have neither objectives nor actions that effectively ameliorate the negative impacts of mining, nor appropriate checks and balances to their membership” (Altman 1998:7).

grant of the land trusts followed the Ranger Uranium Environment Inquiry (Fox Inquiry). Mining at Ranger commenced in May 1980 (ERA 2009).

¹²⁵ Gagudu Association for Ranger (Kesteven 1983:361) and for Nabarlek, the Kunwinjku Association, and subsequently the Nabarlek Traditional Owner Association (Altman 1994:8; 14; Kesteven 1983:363).

¹²⁶ Determining the areas that are affected was also at issue. Woodward suggested a non-discretionary spatial determination of 60km radius from a mine site. This was never included as it would have proven unworkable because discretion is needed as mining is variable (Altman 1985:482, Altman 1994:6; Altman & Smith 1994:6).

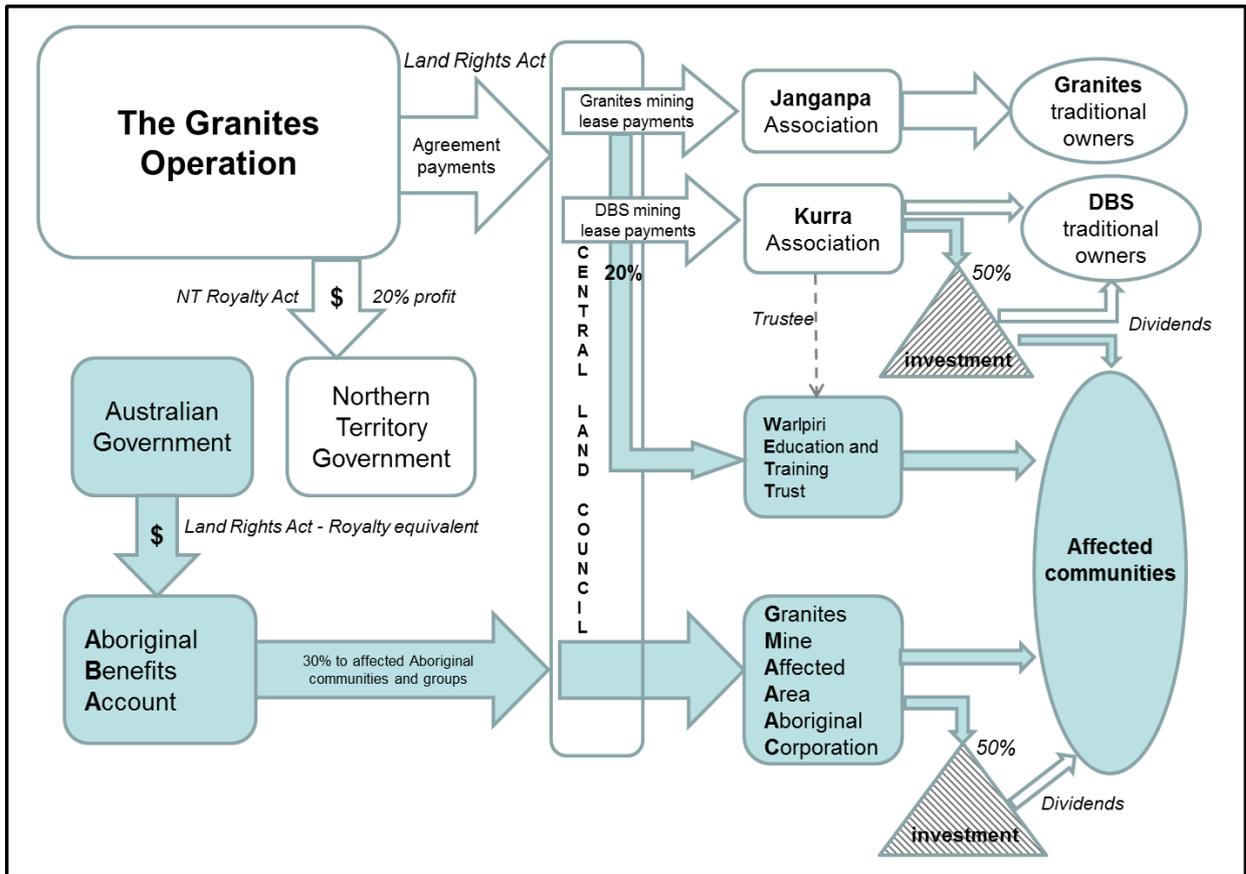


Figure 6. Diagrammatic representation of payment pathways.

One of the positive aspects of this experience is that detailed social impact studies accompanied development of the uranium mines in the Top End under the Social Impact of Mining Project managed through the Australian Institute of Aboriginal Studies. By 1984, the Consolidated Report (Tatz Report) had been delivered to Parliament and the findings were available to those implementing The Granites Agreement. Indeed some of the findings on the impacts of royalty payments were extensively quoted in The Granites social impact assessment (SEA 1985:38).¹²⁷ Presumably these studies and accompanying academic analyses informed how the CLC established the relevant associations. The details of these associations are discussed in the next sections. Figure 6 represents the pathways for mining payments at The Granites.

5.2.1. Statutory 'affected areas' payments

On 31 January 1991, the CLC incorporated The Granites Mine Affected Area Aboriginal Corporation (GMAAAC) under the *Aboriginal Councils and Associations Act 1976* (Altman

¹²⁷ The impact assessment completed in 1985 was a requirement under The Granites Agreement.

and Pollack 1998:25; GMAAAC 2010). It was established expressly to receive only the statutory royalty equivalents from The Granites. The rules of incorporation determined the objectives, power, membership and governance mechanisms, including a governing committee and chairperson, rules for meetings and voting, accounting and audit procedures. Significantly, no payments to individuals were allowed under the rules. As at 2011, the rules had remained unchanged since GMAAAC was created (Jagger 2011:71).

Altman highlights that Woodward's intention was that affected area moneys should be paid to incorporated bodies and used for community benefit by community associations (Altman 1985:481; Altman & Pollack 1998:3).¹²⁸ Consistent with this intent, the central object of GMAAAC was to use its resources:

To benefit and develop the communities so that Aboriginal community residents have the opportunity to overcome the severe social, economic and health-related disadvantages which they face (GMAAAC 2010).

In advancing the central object, three main areas were identified for assisting Aboriginal people in the communities:

- to gain access to housing, health, education, employment and essential services,
- the alleviation of the significant unemployment levels of Aboriginal people in the communities by supporting the provision of training and employment opportunities, and
- arresting social disintegration within Aboriginal society by supporting programs to develop Aboriginal self-management (GMAAAC 2010).

Furthermore clause 15.1.1(g) reads "Subject to the corporation's constitution, no portion of the funds nor property of the corporation may be applied or distributed to any individual for his or her own private benefit or expenditure" (GMAAAC 2010). Significantly, under the rules of incorporation of GMAAAC, 50% of the moneys received by the Association was to be invested and 50% to be applied as community funds.¹²⁹ The community funds also cover the costs of administering the corporation and the balance is to be divided to designated

¹²⁸ Altman and Pollack (1999:3) cite Woodward who "recommended the retention of the ABTF specifically as the provider of grants and loans for Aboriginal enterprises and community purposes" (Woodward 1974:113).

¹²⁹ The interest, dividends and returns on investments are applied as community funds (GMAAAC 2010).

communities according to a formula, with the two largest communities, Yuendumu and Lajamanu, receiving one third each.

Determining the payments made to GMAAAC over the life of the mine is difficult as the receipts are not publicly available other than financial year 2006 to 2011, which are available from the Office of the Registrar of Aboriginal Corporations website. These are summarised in Table 4.

Table 4. ABA payments to GMAAAC from 2006 to 2011 inclusive.

Financial Year	Amount \$
2006	1,048,724
2007	7,410,911
2008	5,320,043
2009	5,478,915
2010	4,580,346
2011	2,654,826
Total for 6 years	26,493,765

Altman researched receipts of a number of royalty associations, including GMAAAC, from financial years ending 1988 to 1997. He indicates that over this period GMAAAC received \$7.17 million (1998:25). Based on the data available it appears that the first payments were made to GMAAAC in 1992. The CLC annual reports show no section 64(3) payments were made in relation to The Granites prior to this date. Considering this, along with the date of incorporation of GMAAAC (January 1991), it is surmised that the first payment to affected communities and groups was in year ending June 1992.¹³⁰ It is easily conceivable that the ABA received nothing in the first six years of operation as the government royalty is profit-based. The capital expenditure on the development of the mine was therefore deductible from the profit. The implications of this are discussed in greater detail in the next section.

¹³⁰ The financial accounts in the annual reports of the CLC show that the only payments received under s.64(3) were paid to an association set up to receive these payments with respect to oil and gas production west of Alice Springs at Palm Valley and Mereenie. From the year 1992 onward the receipts are consolidated and only report total income received under 64(3) so it not possible to identify the relevant recipient associations.

The overall impact is that payments to the ABA will rise and fall depending on profitability of the mine year to year. Compared to the average the receipts of around \$1.2 million per annum for the seven years from 1992 to 1997, it is clear that years 2007 to 2009 were exceptional as these averaged closer to \$4.4 million a year. This relates to peak production rates from DBS open-cut, Callie underground and The Granites combined. Extrapolating the average of \$1.2 million per annum over the period from 1992 to 2005 and adding actual receipts for 2006 to 2011, it is estimated that GMAAAC received a total of around \$43 million over the study period.

5.2.2. Profit-based royalties

Estimating affected areas income is fraught as the statutory royalties are determined under the NT *Mineral Royalty Act 1982*. Under the Mineral Royalty Act the royalty “applies to profit derived from the saleable mineral commodity” (NT Revenue Office 2011).¹³¹ It contains a formula for establishing the applicable profit called the “gross realisation”.¹³² It is basically the gross value of mineral commodities produced, minus the operating costs associated with the production, minus other allowable deductions. The allowable deductions include certain capital costs, eligible exploration expenditure and an “additional deductions”, which can be made through agreement with the NT Mining Minister (NT Revenue Office 2011).

Royalties payable under such a profit regime are therefore highly dependent not only in variations in gross revenues and operating costs, but also on the value of deductions. Where large capital costs are incurred, such as power generation facility upgrades, sinking declines for underground mining, or haulage road construction, the royalty is reduced as these costs are deductible from the revenue earned. Similarly, extensive exploration efforts related to the mine will reduce royalties payable.¹³³

In the first few years of operation royalty payments would not be expected under a profit-based royalty regime as large capital costs are incurred in mine development. For The

¹³¹ The current royalty rate is 20% of profit, it being increased in 2011, the first rise since the introduction of the *Mineral Royalty Act 1987*. The original rate was 18% and has applied for most of the life of The Granites operation.

¹³² Section 10 of the *Mineral Royalty Act 1982* defines “gross realisation”.

¹³³ Indeed paying no royalty is possible as demonstrated by Xstrata’s McArthur Zinc mine near Boroloola in the Northern Territory, which paid no royalties for the first 13 years of operation. It made its first royalty payment the year it was seeking permits to divert the McArthur River to be able to convert from an underground mine to a large scale open-cut mine.

Granites a further complication was that NFM made forward sales contracts with various bullion dealers to deliver 213,000 ounces of gold (NFM 1990:26). This was a form of hedging whereby gold is contracted to be delivered in the future at an agreed price (normally higher than the spot price at the time) and delivered against that price irrespective of the spot price at the time of delivery.¹³⁴ NFM viewed the revenue on the margin between hedged price and spot price as an accounting profit, i.e. profit resulting from corporate investment decisions, not part of the calculation of operating profit. Furthermore, NFM also had a ‘gold loan’, whereby “no profit or loss is recorded when the price of gold at the date of repayment varies from the price of the date of drawdown” (NFM 1990:20). In calculating royalties due, NFM used the value of its production based on the spot price on international gold markets (Interviews JD 2008). The NT Revenue Office disagreed with this approach and in 1994 took the matter to the Supreme Court and lost.¹³⁵ Presumably in light of this judgement, the Revenue Office Guidelines at the time of writing state that the spot price can be used to establish the value of product when calculating the “gross realisation” for commodities such as gold, which is shipped from the mine not as a saleable product (in a gold bar called ‘dore’) and requires further refining in order to sell. As a general rule it is regarded as an amount that closely approximates the price that would be received for the mineral commodity in an “arm’s length transaction” (NT Revenue Office 2011:6).¹³⁶

5.2.3. Aboriginal Associations Management Centre

In the first instance, negotiated payments made by the mining company and the ‘affected area’ payments by the federal government are lodged with the CLC, which passes the amounts to the relevant Associations for distribution in accordance to their rules. The way the CLC is structured means its role does not stop there; it offers a high degree of support to royalty associations in managing their funds. This role was formalised in 1991 through the creation of the Aboriginal Associations Management Centre (AAMC) (CLC 1992). AAMC provides administration, accounting and consultation services, including assistance with

¹³⁴ By way of example, the company received an average price of \$580 per ounce for all gold sales in the year ending 30 Jun 1990 compared with the average spot price for the year of \$A497 per ounce (NFM 1990:16).

¹³⁵ The Judge, Justice Mildren, found it “difficult to see how the forward selling contracts have any relevance to this value [the Gross Realisation].” His view was that gold is a freely tradeable commodity and if the plaintiff (NFM) were in a position to get a better price than the spot price for gold by virtue of contractual arrangements which it had entered into, then it could take advantage of that contractual right irrespective of whether it was a gold producer or not” (Mildren 1995:12 Judgment).

¹³⁶ Specifically the gold spot prices as published by the Perth Mint on the day the product leaves the mine are acceptable for valuing gold (NT Revenue Office 2011:6).

convening association meetings and recording decisions required by the respective association rules and in accordance with the relevant corporations laws (CLC 2010). Through this service, the CLC assists with compliance with the various legislative requirements, including financial audits, taxation issues and financial reporting to the Registrar of Aboriginal Corporations.¹³⁷

The rules of Janganpa and Kurra also give the CLC a specific role in assisting the directors determining eligibility with respect to applications for membership; the criterion being a applicant must be a traditional Aboriginal owner in the meaning of the Land Rights Act (Janganpa 2010; Kurra 2010). In this way the Associations are able to draw on the anthropological expertise of the CLC and relevant anthropological research undertaken for the land claims and sacred site protection activities. The CLC also has a role in conciliating disputes and can call an extra-ordinary General Meeting of the Janganpa Association (Janganpa 2010).

The GMAAAC rules also address the concerns over achieving appropriate “checks and balances” and provide assistance with the Association’s capacity to deliver on its objects through the appointment of the CLC as an observer of the corporation (Altman 1998). As an observer of the corporation, the CLC has the right to receive notices of and attend general meetings, community meetings held by the Association, community committee meetings held to make decisions over the distribution of funds, and directors meetings. As observer the CLC also has power to call a special general meeting (GMAAAC 2010).

The business affairs and dealings of the Associations, however, are not controlled or directed by the CLC (CLC 1992:68). The Granites Social Impact Assessment noted that “all decisions relating to the disposal of income from royalties are made by the Association based on submissions from Aboriginal people in the above-mentioned communities” (SEA 1985:28).

¹³⁷ 4.55 The Office recognised that the CLC demonstrated better practice through the establishment of the AAMC for managing payments to Aboriginal Associations. The AAMC assists Aboriginal Associations to achieve legislative compliance; manages core administrative activities (e.g. completion of ATO and BAS returns); facilitates meetings to determine distribution payments; manages the income distribution process; facilitates the external audit of Aboriginal Associations; and identifies traditional owners eligible for distribution payments (using the services of the CLC Anthropology section) (ANAO 2008:51).

5.3. Disbursement of royalties by Aboriginal associations

The first distributions of The Granites negotiated payments occurred in 1984 soon after the initial up-front payments were received and following the establishment of Janganpa in December 1983. For the traditional owners, by gaining recognition as landowners legitimated in non-Aboriginal law, the payments represented a reversal of the historical experience of mining. A senior Warlpiri man who was engaged directly in negotiations ‘across the table’ reflected on the making of The Granites Agreement:

With Geoff Coldrey Jakamarra [CLC lawyer], [it was] first time we were trying to find a way to make an agreement. What we said in that time is that most of my people had been working for tucker – flour, tea, and sugar, and corned beef. What would be a better way if the mining get big? What would be the benefit to the people from the royalty? (Interview VS 2008).

Another senior Warlpiri man who was also part of the original negotiations with NFM considered the payments as one of the most significant and beneficial aspects of the agreement:

I think it was good when that Agreement was signed we knew we would be benefiting something from it later on, mainly the royalty payment, from damaging the country but not enough that’s all I can say (Interview HN 2008).

He emphasised the compensatory nature of the payments and the need to balance the concern over the damage caused to the country by the mine:

At least we benefited something from [the mine], that we are receiving royalty from it, that we are receiving compensation. The main thing is that the company is giving something for the damage for the land – compensation. They [traditional owners] see that very strongly feeling about damaging country (Interview HN 2008).

Altman and Pollack’s (1998) study on royalties in Arnhem Land also found that the most significant aspect from the traditional owners’ point of view, are the royalty payments under the agreement. Land in traditional Aboriginal society provided the resources to sustain life and significant obligations arise when negotiating access to those resources by others. In the modern context payments represent “tangible recognition and respect of Aboriginal people’s traditional ownership of the land” (Altman & Pollack 1998).

A feature of the first and subsequent distributions to members in the Top End was that a large proportion of the money was spent on motor vehicles. A review of Kunwinjku Association, which received money from Nabarlek, found “vehicles constituted by far the largest single item of Aboriginal expenditure” (Altman & Smith 1994:12). One of the Nabarlek affected communities “spent three-quarters of its [Agreement] money on providing vehicles for all its outstations (Kesteven 1983:365). To understand this overwhelming drive Altman and Smith explained:

The Aboriginal need for vehicles to gain access to remote outstation communities and to service centres, to continue subsistence production activities, and for social and ceremonial reasons is apparent and considerable (1994:23).

As with the experience with distributions in the Top End, the Warlpiri placed a high priority on obtaining motor vehicles. The value placed on access to vehicular transport needs to be considered in the context of living in small and isolated remote communities. Vehicles enable access to other centres and to traditional lands but are difficult to obtain because most people have low incomes and live almost exclusively on welfare.¹³⁸ With access to The Granites negotiated payments, and later on the statutory payments, recipients gained a new found capacity to purchase vehicles. In the early years, people could legally travel in open trays of trucks and Toyotas which enabled large family groups to travel together as a senior traditional owner of The Granites recalled:¹³⁹

Money was good in the first place when they bought an old Dyna truck, one 3 tonne one, one 4 tonne one, drop side Toyota, they bought with that Janganpa money (Interview HC 2008).

One aspect of increased access to transport was that it facilitated visits to other communities for ceremonial business, particularly to perform young men’s initiation. The Social Impact Assessment on The Granites noted that:

The expenditure of the first payment on motor vehicles met a need of the Warlpiri for transport to pursue social, religious and community benefits in the region, generally, and between settlements. The outstation movement also requires adequate 4-wheel drive transport (SEA 1985:38).

¹³⁸ In 1996, only 19% (78 out of 417) of Aboriginal persons aged over 15 were employed (Musharbash 2001:16).

¹³⁹ Amendments in the early 1990’s to NT road laws prohibited passengers in the tray of trucks and utilities.

A senior woman traditional owner on Kurra also emphasised how the royalties not only helped with transport for ceremonies but was also important for buying supplies needed for ceremonies:

When we coming my way [holding initiation ceremony], another can come from business my way, everybody know that [other people can join in with us], with business ceremony, big party organised to party young fellas celebrate and man look after the boy and we pay for tucker, and pay for that. We need ceremony money. We cook them damper and everything, he [AAMC worker] writes [orders] for the shop - ceremony money, travelling money (Interview PR 2008).

Beyond the specifics of ceremony, there is an overarching desire to access motor vehicles for the freedom of mobility. This is not unlike wider Australian society where it is axiomatic that the second most valuable asset to be purchased in one's life (after a house) is a motor vehicle. Within Aboriginal society the priority of purchasing a vehicle is elevated even further in remote NT Aboriginal communities where accessing services and partaking in social events nearly always requires travelling long distances. The history of the development of the Warlpiri communities (see Chapter 2) resulted in families being split between the various communities. Access to motor vehicles provides the means to visit relatives, attend sporting and other community and ceremonial events, including funerals. Mobility is recognised by some researchers as a key characteristic of Aboriginal culture in that "it sustains relationships with places and it sustains social relationships, and in turn, social relationships sustain mobility" (Long & Memmott 2007:10). Therefore, when Aboriginal groups in Central Australia gain control over significant funds such as payments from mining, there is a strong desire to purchase vehicles to fill the pressing need for transport.

From the outset of royalty disbursements, vehicle purchases have been a major line of expenditure of The Granites royalty associations. While a four-wheel drive vehicle would typically be the vehicle of choice, the high cost of such vehicles has seen a trend toward purchases of second-hand large family sedans, particularly Ford Falcons and Holden Commodores (Interview NM 2008).

A non-Aboriginal manager of an outstations resource centre who lived on one of the main affected communities for nine years between 1993 and 2006 observed the extent vehicles were prioritised in purchases following distributions of mining money:

Years ago all the money went on cars. [Car] dealers would come to town. Two would bring cars, another one would sit under an umbrella with a folder full of photos. Every single car was sold (Interview MD 2008).

Although gaining the capacity to purchase vehicles and other items is a highly valued outcome of the agreement for Aboriginal recipients, some recipients and other observers emphasised the need to direct money to longer-term benefit. Indeed, even following the first Janganpa distribution one senior Aboriginal man who was on the Janganpa committee said “people should not just think about motor cars” (CLC files).

In terms of envisaging long-term community benefit, the problem with expenditure on vehicles is that they generally do not last a long time in communities. A range of factors contribute to the short life of many vehicles compared to wider society including, extremely harsh road conditions, intense usage, lack of regular servicing, as well as accidents. Also cars occasionally get impounded by the police for carrying alcohol in a community where alcohol is banned (Interview MD 2008).

Apart from vehicles, a large proportion of the money distributed to individuals is spent on household items particularly white goods, other consumable items and “spent at the shop” (Interview MH 2008). There is a strong imperative to spend payments quickly and “get rid of it before you have to start sharing it” as the ex-Resource Centre manager explained that:

People come into my office and ask ‘how much did so and so get’. I say, ‘I can’t tell you it is private’. They don’t push but they are interested in what everyone gets” (Interview MD 2008).

Anthropological research on the nature of sharing in contemporary Aboriginal society view the asking for and giving of money or items of material value as “demand sharing” and “testing behaviour” that establishes “the state of a relationship in social systems where relationships have to be constantly maintained and not taken for granted” (Peterson 1993:870). Through demanding, an individual is asserting a personal right, for example, as a relative to someone, but is also acknowledging and substantiating their relationship with the other person (Martin 1995:9). So-called ‘demand sharing’ is a complex behaviour that is not predicated simply on need nor arising from an individual’s desire for resources and neither is it based on “prescriptive behavioural formulas” (Peterson 1993:869, 870; Martin 1995:9). Aboriginal social organisations are fundamentally fluid and negotiable in nature and intensely egalitarian, characterised simultaneously by:

A strong emphasis on individuality and self-reliance on the one hand and on the other by the primacy accorded to the web of social relations within which individuals operate (especially those defined by kinship and family)” (Martin 1995:9).

Demand sharing reveals an underlying and unresolved tension that anthropologists have identified between autonomy and relatedness that runs throughout Aboriginal life and provides a fundamental dynamic to all social relations and interactions (Martin 1995:5; Peterson 1993:870). Autonomy is partly realised by individual control of resources, whereas relatedness demands these same resources to flow between individuals and collectives (Martin 1995:13). Martin argues an “assertive equalitarianism” operates whereby the flow of resources to and from individuals is watchfully monitored through careful observation and appraisal by others to ensure transactions between individuals and groups over time should be equivalent and balance out (Martin 1995:8). In this context the social worth of transactions are not counted on a formal economic value of cash, goods or services exchanged, but rather incorporated in an Indigenous domain through a distinctive Aboriginal “social calculation” of the worth of transactions (Martin 1995:7, 9).

One implication from this analysis on distributions in communities such as Yuendumu and Lajamanu is that any notion of wealth creation resulting from direct payments is likely to be confounded by demand sharing. As Peterson has pointed out, “demand sharing clearly makes accumulation difficult” (1993:867). In other research on payments, Peterson and Matsuyama (1991:84) concluded:

Money is used entirely for consumption. The egalitarian tendencies in Aboriginal society which detach people from property and the inequalities it produces, prevent accumulation and the conversion of cash into capital.

A senior female traditional owner of DBS provided insight from a recipient’s perspective:

I get a lot of money through royalty and all my kids always spend it. My family, another family, I always give them, helping people. ‘Buy me car!’, ‘Yeah I’ll help buy a car for you’. I don’t save money for myself, like other people, they keep big money (Interview FN 2008).

In early research on The Granites, Howitt (1991) argued that the distribution of money itself was a major source of social impact in the Warlpiri communities and noted the most negative effects related to alcohol consumption. Irrespective of payments from mining, it remains that alcohol misuse is having devastating impacts on Aboriginal people in Central

Australia (AMSANT 2008).¹⁴⁰ Data collected for this research indicates some mining payments are spent on alcohol and that there exists concerns amongst senior women about their “sons driving all day, load with grog. Not happy people get killed, we worry about people” (Interview PR 2008). Other (non-Aboriginal) research participants who lived and worked in the relevant communities indicated that there are some community members who will travel the several hundred kilometres round-trip required to purchase alcohol following royalty distributions. Driving back to the community has resulted in car accidents and fatalities on some occasions (Interviews MD 2008). The references to “sons” suggest that the issue may be more pronounced amongst younger male groups with access to vehicles. Further research focusing on alcohol consumption that compares the timing of incidents against royalty distribution would be needed to make further conclusions regarding the extent payments negatively fuel inappropriate drinking in the communities. As mentioned, alcohol misuse is endemic amongst certain populations within Aboriginal communities and the conclusions drawn in this research is that royalty payments are an added source of funds that can exacerbate an existing and complex social problem.

Another negative outcome from distribution of royalties highlighted by Howitt (1991:133) is the “considerable social disruption” that manifests as arguments over the money, debates on land ownership and entitlements, and pressure on social relations including “sophisticated politicking” over access to mining money:

When a distribution occurs there is constant discussion and disputation about entitlements, planned use of funds and so on. Many individuals seek to become beneficiaries or to use social affiliations to obtain some access to the funds.

While socially disruptive, distributions in the Warlpiri context appear not to have reached the degree whereby Altman concluded in the Top End that payments are “responsible for great social upheaval in terms of contestation over distribution of moneys” and endemic community violence (Altman 1994:13). Moreover an anthropologist working in the Warlpiri communities considers the disruption to be characterised by a “lot of arguments, ill feeling, the odd fight sometimes, but overall a lot of stress, general stress is the best word” (Interview MH 2008).

¹⁴⁰ “At 17.3 litres of pure alcohol per year, the NT has the second highest per capita consumption in the world and almost double the national average of 9.79 litres. Over-consumption is a serious problem amongst both the Indigenous and non-Indigenous populations” (AMSANT 2008:1).

The tendency for the topic of royalties to dominate general discussions between community leaders and others ahead of distributions was noted by a number of the research participants who said that in the months before royalty distribution people get together to talk about how they will divide it up (Interview MD 2008; Interview MH 2008). The effect of the politicking around distributions reportedly causes considerable disruption to the established routines of community life. The schools in the major communities, in particular, complain that attendance is affected dramatically and have suggested larger distributions should only occur during the school holidays (Interviews AH 2008).

Other disruptions were identified by employers who said that royalties can reduce incentive for recipients to attend work. The Outstations Resource Centre Coordinator complained that “we had fellas working for us, good [plant] operators, when they got paid they disappeared and went straight to Rabbit Flat” (Interview MD 2008).¹⁴¹

In summary, this research shows individual payments perform a crucial compensatory function and have resulted in some positive social outcomes accruing to certain individuals and families through greater access to transportation and increased discretionary income. Immediacy of individual and family needs, combined with the communities’ “assertive equalitarianism”, however, contrive to limit benefits to the short term. While individual distributions, either by direct payment or through purchase orders from the relevant Association, are highly valued by traditional owners and affected community members, there was also recognition that other strategies are needed to extend the benefit for future generations. Indeed, the need for investing money to maintain income for future generations was recognised from the outset even at the time the first upfront payments were distributed, particularly by officers of the CLC, as noted in the Social Impact Assessment:

Nevertheless the CLC perceives a need for the Janganpa Association to invest monies for longer-term benefits and is advising the Association accordingly. The possibility of investment in real estate, shares, etc, has been discussed with the committee of the Association and they appear to “coming around to this way of thinking (M Niblett, CLC, pers. Comm.)” (ESA 1985:38).

¹⁴¹ Rabbit Flat was a road house 300 kilometres from the community that sold take away alcohol.

5.3.1. Financial investment

One area the CLC was active in terms of its role in assisting Associations was promoting investment in recognition that:

the impact of mining operations on Aboriginal people will last well beyond the lives of the mines themselves and associations which set aside investment income ensure an ongoing source of income that will benefit their families and communities in the future” (CLC 1992:68).

From 1987, the CLC’s financial management policy for royalty recipients “required each association to invest at least half of its income”. Presumably as a result of this policy Janganpa established the Warlpiri Charitable Trust in which some \$600,000 was invested (CLC 1998). Investment through the charitable trust was intended to extend the life of the benefit as “investment money can’t be spent, only the interest can be spent, through orders for community purpose” (Janganpa 1992). Howitt (1991) noted at the time that “Janganpa’s current policies involve retention of part of receipts for investment and distribution of the rest through the CLC to traditional owners”. In March 1990, however, the CLC varied this policy so that investing association income became optional. The reason cited is that some of the associations affected by the policy, which included those from areas other than the Tanami, were not in receipt of sufficient funds to justify setting aside half for investment (CLC 1991).

All associations have their own policy on investment of income and method of distribution. However, investment is encouraged to provide on-going income where receipts from land use cease. This strategy does not suit those associations whose income is insufficient to suit meet immediate needs, let alone provide for the future (CLC 2002:66).

Janganpa was one of the associations that moved away from the investment policy, possibly in response to declining income as gold production shifted to DBS. The result was evident in Janganpa’s financial reports, publicly available from the Office of the Registrar of Indigenous Corporations (ORIC). As June 2011, Janganpa had around \$150,000 invested in term deposits (Janganpa 2011) whereas Kurra had over \$10 million invested (Kurra 2011). The annual return on the investment to Kurra is equivalent to the annual amount Janganpa received under the Agreement in years 2011 and 2010. This comparison of course reflects the much greater overall amounts paid to Kurra but also highlights the impact of Kurra’s

adherence to a 50% investment policy and the fact it is written in its rules of incorporation.¹⁴²

As Altman (1994) found in the Top End, “there are clearly tensions between directing payments to the immediate consumption against pursuing longer terms strategies aimed at creating sustainable benefits”. In Warlpiri communities that same tension is clearly evident. Developing strategies aimed at delivering long term benefit was by no means straightforward. Fortunately for Kurra, it had the benefit of lessons learned from witnessing the machinations of Janganpa, as a DBS senior traditional owner and Kurra Director explained:

Long time ago they used to talk about, when my brothers, when they were alive, they used talk about it and argue with me about getting that investment and I said ‘no’ that investment, we got to leave it, that money can grow. Every year we used to have arguments, arguing, arguing: [the brothers would say] ‘what good for you keeping that money.’ – [I said] ‘no that money we got to leave it and buy a house, might be everything from otherside with investment, then money can come in for us mob.’ – ‘No, you get idea from all the white people.’ – they used to talk to me [like that], they used to growl me. ‘No’, I said, ‘we got to still leave them, you mob listen to NM [AAMC Officer].’ – [the brothers would say] ‘no what for you mob want to keep that money’ – I said ‘you’ve seen Janganpa group, Tanami group they pinch money, don’t follow that, we got to leave the money and let it grow’ (Interview PR 2008).

The efficacy of learning through actual experience is highlighted by references to a separate royalty Association, named Wulguna. Wulguna was established to receive money from a mining lease in another part of the Tanami that had valuable but limited gold reserves. From the outset it was known that mining would not last more than ten years. In setting up the Association, the Wulguna traditional owners decided to invest 80% of their income and made this a rule of the Association. Mining on their land has since ceased yet significant income derived from dividends on investments are available each year to the members.

They were getting a lot of things out of the mistakes from Tanami Mine and good thing and bad things from The Granites, but they learnt through all that mistake. Really good

¹⁴² ii) not less than half (50%) of the balance of the funds paid to the corporation by the CLC, being payments received pursuant to the Agreements, shall be invested in an investment account or long-term assets with secure capital growth and/or secure income so as to promote and secure the future development and well being of the members (Kurra 2010:29).

thing Wulguna family did a really good job; they have their money saving up until 2011. Longer they can leave the more it will grow. Only then the family things will come alive. Money they spend will be movement for family (Interview HC 2008).

And further:

When first started big rush for motor car price especially for young people. They didn't think about putting money into the community, the outstation, putting money into family, saving up some dollars in the side, putting into investment. Now and then only a private thing buy a car, family ute or for personal use for themselves. I am really happy with the [way] Wulguna mob did it, we know that mining is going to run out, we are going to save up \$200,000 and put into an investment. And their young people said 'yeah that's good'. Some to spend on the outstation too. If Janganpa and Kurra could do that what other people had done, everything would be right (Interview HC 2008).

Although there is evidence of increasing recognition amongst some Aboriginal groups of the broader possibilities for utilising payments for the longer term there is also residual scepticism and a level of mistrust of the non-Aboriginal domain and governments in particular. For instance, the senior female traditional owner who advocated investment policy in Kurra also held reservations over whether the money is ultimately secure from being lost or even stolen.

My money might go in the bank. Someone might be stealing or government might take half money for anything, [for example a] blanket (Interview PR 2008).

Aboriginal people in Central Australia view governments as harbouring a penchant for "always changing the law", whereas Aboriginal law is said to never change. Often these changes are perceived to be to the detriment to Aboriginal people or limiting their rights in some ways.¹⁴³ It is likely that historical instances, such as where wages for pastoral work or mining were supposedly paid into a bank account but were not, have contributed to a fundamental mistrust of financial administrations of one's funds (Interview MJ 2008).¹⁴⁴ Doubts over security could also be a result of people generally holding limited knowledge of the operation of financial systems and always having to rely on 'outsiders' for advice.

¹⁴³ This was most recently and acutely felt with the 2006 Intervention by the Howard federal government.

¹⁴⁴ One participant in the research recounted how his deceased brother-in-law felt particularly aggrieved after working in the wolfram mines near Hatches Creek in the 1940s. He was told his wages were being put into a back account in Alice Springs. He finished work and made his way to the bank only to find five pounds in the account after many months work.

Learnt a lot along the way, but still confusing because we got to be able to get to a level where mining experts know everything what's happening and we haven't reached that level of understanding, how the whole organisation operates when it comes to dealing with money (Interviews HN 2008).

Investment strategies were primarily aimed at preserving or increasing the capital and securing a return on investment. Investment decisions based achieving the best financial returns tend to lead to investments interstate, particularly in commercial property markets where there is capital growth and greater security of return. Directing money away from Central Australia into interstate property and funds are removed from traditional owners' first-hand experience and adds to confusion, as such investments seem remote. By preserving capital, however, the potential benefits of mining money are available for the future and potentially future generations. As far as the federal government's stated desire for strategies for applying money in ways that "ensure benefits arising are used to improve traditional owners and Indigenous communities' economic status and social well-being" (FaHCSIA 2009), however, it is apparent from this analysis that commercial and financial investment needs to be augmented by social investment strategies.

5.4. Introducing a community development approach

The inclusion in the Consolidated Mining Agreement in 2003 of a financial entity such as WETT demonstrated the interest shared by the Aboriginal parties and Newmont in promoting long term benefits from Agreement payments. The rules of WETT limit the use of moneys to the improvement of educational and training outcomes for Warlpiri people, with the broad objective to provide learning opportunities for all Warlpiri people from young children to adults (Interview DJ 2008). Aboriginal educationalists, mainly women, through their unincorporated advocacy group, Warlpiri Patu-Kurlangu Jaru, were consulted over the development and monitoring of programs that WETT would fund. Because of their involvement there has been an emphasis on two-way learning so that Warlpiri language and cultural learning was emphasised, in addition to more mainstream vocational skills, education and training (Interview DC 2008).

In order to pursue sustainable outcomes envisaged through the establishment of WETT the CLC created a Community Development Unit in 2005.¹⁴⁵ The ultimate aim of the community development approach was that Aboriginal people be better informed and have more control over management of their rents and royalty (Jagger 2011:53).

Collaboration was one of the key principles. One of the major concerns was the risk of governments withdrawing from basic service delivery and leaving it to Aboriginal people to use their royalty money to substitute normal government expenditure. Even a Commonwealth Government-sponsored Working Group on mining agreements identified the risk of arising from governments' reticence to appropriately service remote regions:

It was noted by the Working Group that underinvestment by the market and governments in remote regions often results in non-existent or chronically under-resourced government services and a lack of infrastructure essential to the functioning of a community. As a result, the benefits from agreements may be diverted to providing services and infrastructure that is, in the ordinary course, the responsibility of one or more tiers of government (FaHCSIA 2009).

A pattern of 'government substitution' was recognised by Altman (1994) in early research on royalty distributions in Arnhem Land. He found "indications that these payments were intended to be, and have been, fiscal substitutes for legitimate government expenditure."¹⁴⁶

As such the CLC's community development efforts were expressly designed to assist governments align their objectives with Aboriginal objectives, thereby creating the possibility to lever complementary funding through relevant government programs into areas identified and supported by the Aboriginal community (Interview DC 2008).

In developing the WETT programs, the emphasis was firmly on community member participation and instilling community ownership of projects:

¹⁴⁵ The impetus for the creation of the CD Unit was also to assist associations receiving the Uluru rent money (Jagger 2011).

¹⁴⁶ This suggests that there may be no net financial benefit from mining to offset negative impacts. Altman found evidence in the Kakadu Region Social Impact Study 1997 that Aboriginal regional interests in west Arnhem Land area may have unstrategically used compensation payments to finance services that government would have provided and that governments used mining as an excuse not to meet their obligations.

Participation in decisions and ownership of the activities that follow are essential to make sure development actually leads to wide community benefit, and so the achievements continue and last (CLC 2009:1).

Through participation, a high value is placed on the Aboriginal experience and local knowledge, thereby elevating Aboriginal self-esteem and demonstrating respect. Combining local experience with ideas and experiences from other places and good governance are said to be the key to developing strong local and regional project plans (CLC 2009:1; Interview DJ 2008).

Experiences gained in the international development arena were drawn upon to inform community development practice within the CLC, particularly those versions of community development that grew out of the 1960s and 1970s social rights movements, which “emphasised collective ‘bottom-up’ processes of change and action, the rights of people to participate and the need for empowerment” (CLC 2006:2).

Such approaches had been applied in Australia since the 1970s, with the Whitlam Labor Government introducing the Community Development Employment Program (CDEP) in remote Aboriginal communities alongside a broader policy of self-determination (Jagger 2011:24). The CDEP eventually became the Commonwealth Government’s means to encourage Aboriginal people to engage in economic activities in their communities through vocational training and subsidised wages. Danielle Campbell and Diane Hunt, qualified community development practitioners who were involved fundamentally at the outset of the CLC’s community development initiatives, noted that governments have been criticised for:

Using the language of community development to co-opt Indigenous communities into government agendas, save money, avoid responsibilities to Aboriginal people and to prioritise economic development over broader community development. And despite the rhetoric of community development, governments have retained centralised control over decision-making with the result that communities are not empowered and outcomes are not sustained (2010:4).

The challenge for the CLC, therefore, was to find ways to match action with the rhetoric (Campbell & Hunt 2010:4). One way was to draw on experiences on how international aid organisations had operated in Australian contexts. Major players, such as World Vision, Fred Hollows and OXFAM had been active in Aboriginal Australia since the mid to late 1970s and gained some longitudinal experience working with Aboriginal groups (World

Vision 2009:7; Oxfam 2002, 2012). In the 1970s, World Vision's focus broadened from assisting the individual child to include community development and “since the 1980s, the ‘welfare’ approach has gradually changed to a more collaborative relationship. Poor, marginalised people and communities work with World Vision to improve their lives and take control of their futures” (2009). In this way the economic and social development of vulnerable communities can be supported in ways that empower rather than create dependencies.

One difference, unlike many developing countries, is that Australia is a welfare state and a growing concern of World Vision (2009) is that elements of the welfare system have produced unintended consequences, such as welfare dependency. As such, the community development approach adopted by World Vision required that communities must be empowered to define their development needs, their problems and their solutions.¹⁴⁷ Participatory methodologies are used to ensure local involvement in the development process and to empower communities for self-management (2009:7).¹⁴⁸

The spread of the ‘bottom-up’ community development approach, or what Jagger (2011:22) labelled the “partnership approach”, is also evident within the mining industry since around 2002, coinciding with the Minerals and Metals Sustainable Development (MMSD) project. The global mining industry’s governing board that oversaw the MMSD process transmogrified into the International Council of Mining and Metals (ICMM), and in 2003 adopted ten guiding principles representing the “first element of ICMM’s Sustainable Development Framework” (ICMM 2006). Principle 9 is to “contribute to the social, economic and institutional development of the communities in which we operate” which includes a commitment to “contribute to community development from project development through closure in collaboration with host communities and their representatives” (ICMM 2006).

Leading mining companies such as Rio Tinto, a foundational member of ICMM, had become increasingly cognisant of the need to be active in ensuring that the regions in which they operate receive a reasonable share of the economic benefits from their operations and

¹⁴⁷ World Vision (2009) promoted a “strengths-based approach to working with communities” that works within existing governance networks to repair or strengthen community engagement and local leadership capacity.

¹⁴⁸ In total, 20% of the total payments from the CMA go to WETT (Campbell & Hunt 2010:5).

that after operations cease, there remains a basis for sustainable economic activity. As Rio's Chief Economist, David Humphreys, explained in 2000:

This is not entirely altruistic behaviour by the companies. It is rooted in a recognition that communities which are convinced of the economic value of mining to them are more likely to be publicly supportive of mining and to be advocates of mining in national capitals (Humphreys 2000).¹⁴⁹

One of the key publications released in 2005 early in the life of ICMM was the *Community Development Toolkit*, which aimed to provide a means to improve opportunities for the sustainable development of communities and regions around mining operations.¹⁵⁰ The industry's version of community development similarly emphasised strengthening communities. The toolkit defines community development as "the process of increasing the strength and effectiveness of communities, improving people's quality of life and enabling people to participate in decision making to achieve greater long-term control over their lives" (ICMM 2012:2, 203).

While not explicitly linked to international developments, nor the moves by the mining industry to engage more at the community level, the coincidence of timing of the CLC's community development initiative was clearly influenced by shifts in broader societal expectations that impacts of industrial development on local communities should not just be minimised, but ways must be found for communities to benefit as well. The CLC clearly recognised the complexity of this task, particularly in the Australian context, and that the process required the support and advice of external expertise in tandem with an approach that was:

Concerned with the participation of community members in collectively addressing their needs and solving their problems; and through this process community members can bring about positive, tangible changes in their communities, as well as increase cohesion, capacity and gain greater long term control (CLC 2006:3).

In many ways the notions of participation, control, and empowerment, were already well embedded in the CLC from working under the Land Rights Act provisions that required

¹⁴⁹ The concept of sustainability within the mining sector applies not to process of extraction of resources, but rather to the conversion of the natural capital of the mineral wealth into human, economic, and social capital, "through such things as creating more sustainable livelihood opportunities and community relationships" (Environmental Resources Management 2010:8).

¹⁵⁰ The toolkit was produced in partnership with the World Bank (nb. in 2012 a revised version was released).

informed group consent to access to Aboriginal land by third parties for commercial developments. While Land Rights had successfully delivered ownership of vast areas of land and traditional owners were effectively engaged in management of the Aboriginal land estate, it became increasingly apparent that improvement in Aboriginal people's social condition required more than land rights and asserting control of the use of their land by others (Interview DJ 2008). The formalisation of a Community Development Unit gave the CLC a structure and a practical framework to operate in the complex community environment and work with communities to identify specific sustainable community based projects using royalties and rents explicitly aimed at benefitting the broader community over the long term. The stated goals and strategies of the CLC community development work were:

- a) Strengthen the CLC's capacity to support community development in Central Australia;
- b) Implement community development projects, particularly projects that maximise the benefits of payments derived from Aboriginal land;
- c) Strengthen the capacity of other Aboriginal groups and organisations, namely traditional owner/native title holder and community development project action groups, to act for the benefit of their communities;
- d) Develop external networks and relationships with individuals and organisations with expertise in community development; and
- e) Influence relevant government policies and agendas (CLC 2008).

The analysis above highlights three central concepts to community development 'community', 'participation', and 'capacity'. While on face value the concepts may appear straightforward, when applied in the context of Aboriginal Australia, each concept is not unproblematic.

Community is generally taken to mean people who live in a defined geographic locality and who share a sense of identity or have common concerns (Baum 2002 cited in CLC 2006:6). For Aboriginal people, and Warlpiri in particular, primary identification rests with family and land owning groups, which can transcend the geographic boundary of the settlement where people live. The CLC recognised that:

Common concerns, indeed common identity, may extend far beyond the remote dots on a map we think of when we think of Aboriginal communities. The dots on the map that

are nevertheless home to many Aboriginal people in the NT might now be best characterised as a shifting mix of shared values and identities, competing interests and occasional conflict” (CLC 2006:6).

In pragmatic terms, it is in these communities that Aboriginal people are likely to continue living, particularly while the government continues to resource and service them and “they are likely to face a range of issues that may be most effectively addressed collectively in or across these communities (CLC 2006:6).

Participation by community members is valued as a ‘means’ and an ‘end’. While the tangible outcome at the end is valuable, the process of participating should impart experience, skills and a sense of ownership. In practice, however, meaningful and active engagement in all steps of the process is not always possible. The CLC recognised that while broad participation is important, the reality often is that most communities reflect a range of interests and often competing purposes, which it addresses by focusing on small groups that come together around a common concern (CLC 2006:7; Baum 2002).

Building **capacity** in communities to perform functions, solve problems, identify and achieve objectives is based on a combination of elements that community members individually and collectively use to bring about improvements. Resources, knowledge, skills, leadership can be brought to bear to a project with the aim of empowering communities. This process is enhanced where the community is close knit and there is fundamental trust and cooperation (CLC 2006:8). Again the reality is that tension exists between families and groups in the target communities, which acts as a counter to capacity building. Furthermore internal capacity of communities is just one aspect, as experts increasingly highlight the influence of the broader enabling environment:

all the capacity development constraints of fragmented government, frequent, rapid policy changes, and often inflexible funding arrangements, seem present in the Australian context and are not conducive to capacity development (Hunt 2005:21).

5.4.1. Expert input

The CLC turned to external experts for assistance with grappling with the complexity of community development in the Australian context. An internal forum was held in May 2006 with researchers who have international development experience from the Australian National University’s Centre for Aboriginal Economic Policy Research (CAEPR). One of the key differences to the international experience identified through the forum was that

Aboriginal people were still living with the coloniser and the way the power relationships work was very different to that overseas. Also in Australia, the social welfare net operates, whereas in other countries people have to find a livelihood or perish (CLC 2006b:1). Having gathered a sound understanding of community development concepts and practice as well as features of the target communities, the CLC drew upon further expertise from CAEPR through the engagement of Jerry Schwab, an anthropologist with research experience with Indigenous education and training, to make recommendations for options for investment in education and training by WETT. The Schwab Report is significant as it laid the foundation for the programs ultimately decided upon by Kurra as trustee of WETT (see Schwab 2006).

Initial community consultations were conducted by the CLC in 2005 on options for use of WETT funds. The resultant Price and Harrison report suggested the WETT funds should be used to compensate for the lack of government willingness to fund programs related to Warlpiri culture and language (Schwab 2006:14).¹⁵¹ Schwab was commissioned to draw up these findings in addition to the follow-up consultations conducted in 2006, which included the views of the women from Warlpiri Patu-Kurlangu Jaru (Interview DC 2008). Issues highlighted were the social challenges that the Warlpiri communities encountered with the education of their children and the need to focus on particular segments of the community such as youth (including young mothers and young men); boarding school students and adults who, it was said, needed practical skills for jobs but also life skills such as leadership (Schwab 2006:6). While these issues provided background, Schwab's research was entirely desktop and focused on examining and documenting education and training options with reference to the academic literature within the context of relevant government policy, but without being dictated by that policy. Schwab's report examined the broader government policy context for remote Indigenous education and training, including consideration of 13 of the most significant government policies, strategies and reports. His report laid the foundation for the CLC to progress education and training programs strategically (Schwab 2006:6).

Schwab's research showed unequivocally that early childhood growth and development are critical for health and later learning. In communities that have suffered disadvantage, poverty and high levels of social stress, "the pathways of growth and development are

¹⁵¹ The Price and Harrison report was not sighted as it was a confidential report to the CLC and not made available to the Researcher.

particularly fragile” (Schwab 2006:46). He concluded that programs to ensure and support the health of young children are vital for the Warlpiri communities. Ensuring young Warlpiri women understand the ways in which their children may be affected by their actions is vitally important for the future generations (Schwab 2006:42).

A number of consistent and prominent themes emerged from the various government policy and strategy documents. One report in particular, the Australian Government’s Productivity Commission 2005 report *Overcoming Indigenous Disadvantage*, was cited as perhaps the most significant document in terms of future relations with Australian governments. It identified three priority areas: early childhood intervention, safer communities and building Indigenous wealth, which has become the dominant framework for Indigenous policy both nationally and in the Northern Territory (Schwab 2006:28). The policies and programs that flow from the Productivity Commission report were expected to influence and shape life in remote communities for decades to come. Of importance to WETT was understanding the particular types of investments that government was willing to make in education and training. “Government is signally [sic] a philosophical shift toward broad social change, not as in the past simply targeted programs” (Schwab 2006:28). Early childhood was a clear focus, both in terms of childhood health as well as readiness and engagement with school:

It is widely accepted that the health of a child affects that child’s ability to learn and there is increasing research to suggest that ability to learn is also affected by biological processes occurring before birth (Schwab 2006:42).

Another prominent theme related to youth; early school leavers comprise the majority of young people in remote Aboriginal communities. Typically, they have low levels of literacy and numeracy and either avoid or struggle with conventional adult education and training opportunities:

The social cost to Indigenous communities of the decision by young people to leave school is high, with mental health, criminal activity, drug abuse and other social problems increasing among this group in the Northern Territory and the rest of the nation (Schwab 2006:47).

The other themes identified were enterprise development and training, as well as the notion of a ‘learning community’ that views “learning as a life-long process, linking families, schools and communities (including business and government) to work together to identify and deploy resources to address community needs” (Schwab 2006:55).

Schwab (2006:17) made recommendations in five main areas based on his scan of government policy and trends as well as research on programs that have worked elsewhere:

- a) Early Childhood Education where early childhood services are provided and childhood courses are taught and child health other services are provided;
- b) Parent Education and Parent Support through community courses and individual support to increase parents' knowledge about antenatal health, nutrition, and child development;
- c) Youth New Media to re-engage disaffected youth through youth arts and media programs;
- d) Training through Enterprise where 'hands on' training in businesses would give skills and experience to enter the workforce. A "Good Food Kitchen" (take-away and catering facility) was specifically identified as an example of an relevant community based business; and
- e) A Warlpiri Learning Community whereby a hub would be in place in each Warlpiri community where community and adult education courses and activities could be offered.

The Schwab Report also recognised that there are many very positive programs and activities related to education and training in the Central Australian region and highlighted the importance for options that did not duplicate current or future efforts but complemented them. The recommendations were clearly crafted to not intrude on the core educational activity, the local school, as this was the traditional area of government and one area actively resourced by the NT Government (Schwab 2006; Interview DC 2008). Aspirations for a Warlpiri-run school exist, as a Kurra committee member said: "we want everybody to be involved in WETT, we want everyone involved, like someone, to build a high school for every Warlpiri people" (Interview PR 2008). The research, however, showed that this is a daunting and often unproductive route for Indigenous communities (Schwab 2006; Interview DC 2008). Teaching Warlpiri language and culture appears to be one of the key drivers for such aspirations and this priority has been effected by WETT through the Language and Culture Support program which funds the creation and provision of Warlpiri language resources to schools as well as one-off round of funds for dedicated school vehicles to enable 'on country' visits by schools (Interview PR 2008; Interview DC 2008). Country visits by schools involved knowledgeable Aboriginal elders whose role was to

elucidate and explain the cultural significance of country through traditional stories and sacred sites. Funding country visits and Warlpiri language resources in schools were the first priorities enacted by WETT. At the time of writing, funds to schools continued to be allocated although these were relatively small compared to the four main program areas designed in response to the recommendations of the Schwab Report. The programs that emerged from his recommendations essentially ‘book end’ the learning experience at school, being preparatory pre-school programs on one hand, and on the other, programs to try and draw in post-school youth.

The Schwab Report encouraged Aboriginal people to view the use of the WETT money as an investment, not a ‘one-off’ fix for a problem, requiring a mix of investments in education and training, some visionary and others more immediately practical. The CLC consulted communities toward the end of 2006 over Schwab’s recommendations and all the areas of the recommendations were enthusiastically endorsed, other than those relating to training through enterprise development (Interview DC 2008).

5.4.2. Implementation of programs

Overall, the WETT programs aimed to provide learning opportunities for all Warlpiri, from young children to adults, with an emphasis on “two-way learning so that Warlpiri people stay strong in their own language and culture, as well as getting the skills need (sic) to get jobs” (CLC 2009:3).

Between \$1.2 million and \$1.5 million annually was paid into an education and training trust (Jagger 2011:67). By June 2009, Warlpiri had invested around \$7 million from WETT to support education and training programs in the Tanami region (CLC 2009:3). A staged approach was adopted toward developing the four main projects for investment of WETT funds:

- Early Childhood Care and Development Program,
- Youth and Media Program,
- Secondary School Support Program, and
- Learning Community Centre Program.

Each of these will be described in turn. Evaluation was another key component of the community development program and the evaluation reports (Kelly 2011; 2012) are drawn upon to describe the projects and their impact.

The Early Childhood Care and Development Program focused on early childhood education activities and supporting and involving parents. The initial allocation to the program from WETT was \$2.8 million over three years. The program was implemented in collaboration with World Vision, which manages the program. World Vision brought its own money and in-kind contributions and also attracted federal funding for a project position in World Vision (CLC 2009:4; Interview DC 2008). The program operated on two levels. It provided educational and developmental opportunities for young children so that they are better prepared to move into primary school and also provided support and development of parents so that they in turn could work more effectively with their children to support the move to mainstream education.

Playgroups were established alongside nutrition programs promoting good food and health. Families were supported to look after children and there were plans for a men's positive parenting project. A flexible approach was taken. For instance, in Yuendumu there was a child care facility operating, so the WETT funding augmented the existing operation and focused on facilitating Warlpiri workers (mostly women) to obtain formal child care qualifications (Interview DC 2008). Whereas in Willowra, no facility existed so funds were used to initiate a playgroup. At the time this research was undertaken there were around 10 children attending the Willowra playgroup.

An additional benefit is that local people were employed as childcare workers and had the opportunity to undertake training and career development. The Early Childhood program provided training and employment to Aboriginal childcare workers such that the workers could do all their training on the job in their own community and training was configured to meet their specific needs. The project aimed to have 30 Aboriginal workers complete Certificate II or III in Children's Services whilst being employed to run these services in their own communities (CLC 2009:4). The CLC's 2010 evaluation reported 12 people had graduated with a Certificate Two in Children's Services (Kelly 2011:15).¹⁵²

The Warlpiri Youth and Media Program started as a three-year program with \$1.2 million a year of WETT funding to the Warlpiri Youth Development Aboriginal Corporation (WYDAC, previously known as the Mt Theo Program) which managed the

¹⁵² The 2006 census recorded 271 people living at Willowra and a head count in May 2008 found 290.

program out of Yuendumu.¹⁵³ The initiative aimed to support young people to develop their “sense of self, family and culture”, initially through a diversionary program with a special emphasis upon media (CLC 2009:5). Young people were encouraged to get involved and the program supported them to be strong in themselves, family, and culture through youth activities with a special focus on media such as video. The program provided media training, dance and music for young people along with media and other equipment for all four communities. Three young men in Yuendumu went on from the WETT Youth and Media Program to jobs at a community-based Aboriginal media organisation, PAW Media (Interview DC 2008).

The success of the program has resulted in a contribution from the Commonwealth Government of \$733,500, which enabled the program to hire youth workers in Nyirrpi and Willowra and purchase some equipment. As at 2009, Nyirrpi, which previously had no youth services, had two youth workers, a Youth Committee and activities for young people running five days a week with young people being trained in video and photography (CLC 2009:5).

The WETT funding enabled WYDAC to roll out their successful Yuendumu based youth program in three other communities, Lajamanu, Willowra, and Nyirrpi. Activities operated by these programs are reported to attract high numbers of young people from the ages of four up to 25 years. Activities were wide ranging and included arts and crafts, sport, multimedia, music, bush excursions and culture and a range of workshops. In later years the activities were broadened and where possible given a developmental focus (Kelly 2011:47).¹⁵⁴ The 2010 evaluation report indicated the benefits of the program were identified by community members in all three communities. The program was attributed as a major reason why crime and other negative behaviour among young people was decreasing:

Mt Theo [program] is good—discos, music—and they take all the kids to rock holes, to Rurrarrki—there is water running there. Proper good one, Mt Theo, because they are

¹⁵³ Mt Theo is an outstation three hours travel into the Tanami Desert from Yuendumu. Originally part of the ‘homeland movement’, Mt Theo became the site of a youth diversionary program to combat petrol sniffing.

¹⁵⁴ From the CLC’s 2010 Community Development Monitoring Report: “For example in Lajamanu which has a population of 1200 people and a school enrolment of 171 young people with an attendance rate of 49%, 128 young people between the ages of four and 25 attend the WETT program on average at least once each week. In Nyirrpi, with a population of 320 people, where 40 children are enrolled at school, with an attendance rate of 47%, 42 young people attend the youth programme at least once every week. Finally in Willowra, with a population of 300 people, where 50 children are enrolled in school with an attendance rate of 50%, 43 young people attend the programme at least once every week” (Kelly 2011:17).

there all the time, right up from 3.00 to 9.00—at night they come back late. They do dancing and all. Otherwise they [the kids] just sit down bored in the school making trouble, or at the tin house. No petrol sniffing here now—only at one time before” (Community member quoted in Kelly 2011:17).

The Warlpiri Secondary Student Support Program provided support for young people to appreciate and learn about their own culture as well learning how to operate within the mainstream culture. Under this project there were interstate and other excursions organised for the students. For example, in 2010 school excursions were undertaken from the schools at Nyirripi, Lajamanu and Yuendumu to Melbourne and the snowfields, with children visiting sporting and educational sites as well as learning how to manage within big city environments (Kelly 2011:18). The program was aimed at supporting children in school to develop their capabilities to bridging both worlds as well as providing “an incentive to engage more with their schools and broaden their learning horizons” (Interview DC 2008; CLC 2011:1). The CLC publication promoting its community development initiatives quotes the Yuendumu secondary school teacher who took the children to Melbourne:

We worked a lot on the kids’ oral English before we left. A lot of them started with their heads hung down, mumbling a lot. At the end of the trip you saw them with their head (sic) held high, confidently using their English skills (CLC 2011:1).

The program also provided funds to community schools and boarding schools where young Warlpiri attend secondary schooling, to assist with their specific needs.

The Warlpiri Learning Community Centre Program aimed to create a learning hub in each of the Warlpiri communities where people can engage in a range of formal and informal learning opportunities, such as accessing libraries and computers, and exploring their culture through language, cultural and history projects. In some cases education and training offered at the Learning Centres was intended to lead to employment opportunities. Learning Centres were said to contribute to community cohesion, provide social opportunities for people and simply make accessible practical resources such as access to Internet banking (Kelly 2011:12).

In 2007, WETT had allocated over \$500,000 in the program and managed to attract an additional \$1.2 million of federal government grants. At Lajamanu in 2007, WETT provided \$100,000 toward renovation of a community building to become the Learning Centre. Local training took place as part of the renovations (Interview DC 2008). At Nyirripi, prior to

WETT involvement, there were no formal training or learning facilities. A training centre was funded by WETT and opened in 2010 and indications are that the facility has been well used:

10 months after it opened the Nyirripi Learning Centre has seen some great training outcomes. 15 men and women have started a Certificate 2 in Construction with 8 of them [already] gaining industry white cards in Occupational, Health and Safety for their efforts (CLC 2011:4).

The Batchelor Institute of Indigenous Tertiary Education (BIITE)¹⁵⁵ was the partner that managed the Nyirripi centre, which in turn had collaborated with an Alice Springs based Aboriginal organisation, the Centre for Appropriate Technology, to offer construction training alongside BIITE teaching literacy and numeracy. The training also offered help for participants with life skills, filling in forms, signing names and writing their own resumes (CLC 2011:4). As a result some shade structures had been built in the community as well as some repairs and maintenance at the school. Conservation and Land Management training was planned in 2011 (CLC 2011:4).¹⁵⁶

At Willowra as early as 2004, community members identified the need for an education centre. Using an initial grant from WETT of \$600,000 in 2007, the Community Development Unit pursued plans for the design and construction of a purpose built Learning Centre at Willowra. As at 2010, the CLC secured a major contribution from the federal government (from the ABA) of \$2.6 million to bring the plan into fruition. An intended priority was to use Aboriginal contractors and labour in the construction of the Willowra Learning Centre (Interview DC 2008).

5.4.3. Community Development and GMAAAC

The community development framework was also applied to the distribution of The Granites Mine Affected Area Aboriginal Corporation (GMAAAC) moneys, which, as discussed above, was spread across eight affected communities. From the outset GMAAAC was established for community purpose, however, as Jagger (2011:71) explains the tendency to

¹⁵⁵ An Aboriginal tertiary education provider, website available <<http://www.batchelor.edu.au/>> Jan 2013.

¹⁵⁶ From a population around 320 at Nyirripi, the CLC evaluation report indicates that as of the last quarter of 2010, 34 people were enrolled in accredited training courses, a further 34 were engaged in non-accredited training (including 10 young people studying maths subjects) and 15 people were making regular use of the Centre for informal contacts and training (Kelly 2011:19).

privilege individual decision-making meant that community investments were not always strategic. Over the life of GMAAAC a sizeable proportion of the money was spent on vehicles for various community-based Aboriginal associations, which were established ostensibly to manage outstations. Although registered to an association, over time a pattern of use of the vehicles was discernible such that it could be construed as personal use (Interview DJ 2008). From 2008, the CLC worked with the GMAAAC to encourage more sophisticated application of affected areas money, thereby not only creating long-term benefit but also ensuring moneys were applied in accordance with the Association rules as well as legislation (CLC 2009:9; Jagger 2011:72). Newmont was integral at the outset as it funded a position in the CLC Community Development Unit to work specifically with GMAAAC using the CLC's community development framework (Interview DC 2008; CLC 2009:9).

Decisions over use of GMAAAC are made by the respective committees representing each of the affected communities.¹⁵⁷ Under the community development approach, the CLC entered into funding agreements with each of the community-based organisations seeking funding, which must record and report on the use of the funds to the CLC and GMAAAC. The steps include each of the community committees working with the CLC Community Development Officer for GMAAAC and with eligible community organisations to establish project plans (Kelly 2011:12).

One of the first and significant outcomes from GMAAAC adopting this approach was an investment of \$400,000 into a proposal to build a swimming pool at Yuendumu. Early work, in which Newmont personnel were involved, had secured partial government funding through the Pools in Remote Areas (PIRA) scheme, but this had to be matched by the NT Government and community.¹⁵⁸ The injection of GMAAAC money demonstrated that the pool was a “top priority for the community.” Eventually the Yuendumu community was able to secure a total of \$800,000 towards the cost and ongoing maintenance “from a range of philanthropic groups and businesses, including Newmont” (Hampton & Snowdon).¹⁵⁹ The

¹⁵⁷ Number of applications to GMAAAC for each of the following years are in brackets: 2008 (52), 2009 (74), 2010 (100) with an average of 32% of the applications being funded (Kelly 2011:12).

¹⁵⁸ Research by the Telethon Institute of Child Health research showed a decline in infections following the opening of community swimming pools with decreases in the incidence of school sores, ear and chest infections when children swim regularly in properly maintained swimming pools (Hampton & Snowdon 2008).

¹⁵⁹ Philanthropic sources were the Poola Foundation and the Ian Potter Foundation (WYDAC 2012).

Commonwealth and NT Governments ended up providing \$1.8 million towards construction, clearly driven by a desire to be seen to be part of a beneficial community project.¹⁶⁰ WYDAC operates the pool and reports a range of benefits, not only health benefits, but also significant social and vocational training benefits.¹⁶¹ As part of obtaining government funding, the community adopted a "yes school, yes pool" policy aimed at boosting school attendance rates. As well, over the two years leading up to the pool opening, 10 local people trained with the Royal Lifesaving Society (NT) to qualify to work at the pool and obtained their Bronze Medallions (Hampton & Snowdon 2008). Recurrent operational funding and funds for ongoing maintenance have been major issues threatening closure of the pool. Allocations of \$100,000 a year since 2009 by GMAAAC have kept the pool open at the time of writing (WYDAC 2012).

The GMAAAC project workload has increased dramatically since 2008 such that 105 projects across the Tanami were funded in 2010 (CLC 2011:6); and in 2011 GMAAAC allocated \$2.1 million (Kelly 2012:15) including \$194,767 to education initiatives, \$444,740 to cultural initiatives,¹⁶² \$424,157 to infrastructure initiative, \$535,151 to health initiatives, across the Tanami (CLC 2012). Some of the examples of funded programs cited in these publications were, youth activities, cultural recording and performance (including additional funding to the WYDAC youth media program), health services, including an old people's bus in Yuendumu that can lift wheel chairs, aged care services, outstation infrastructure

¹⁶⁰ NT Minister for Regional Development Karl Hampton, the Minister for Indigenous Affairs, Jenny Macklin and local MLA Warren Snowdon presided over the official opening of the Yuendumu pool on 27 Oct 2008.

¹⁶¹ WYDAC report that the benefits of the pool "have exceeded our expectations. Clinic staff report less skin, eye and ear infections in our children. Our *Yes School, Yes Pool* policy ensures strong encouragement for school attendance. School and preschool students have swimming lessons all through the week by individual classes. Swim certificates are handed out at the school assembly. Young mums and babies enjoy the toddlers' pool and the playground. We employ up to 6 young people as qualified lifeguards at any time. Those staff have access to a LLN teacher as they study pool management skills. Gym equipment brings in the young men. The BBQ under shade is always in use. As a diversionary program there is no equivalent. In hot weather we know where all our at-risk youth are. Many youth activities are held at the pool. Residents of neighbouring communities, Nyirripi, Mt Allen and Willowra regularly come to Yuendumu to use the pool. And in the past troubled days in Yuendumu, the pool has been a safe haven for all community members. Despite what is going on outside the gates, there has never been a fight in the pool grounds. This in itself places the pool in a unique situation that has been of significant benefit to the community" (WYDAC 2012).

¹⁶² Tracks Dance Company is reported to have received funding for the Milpirri culture and dance festival in Lajamanu in 2010 and 2011 from Newmont Mine and GMAAAC. "The history of funding for the festival reflects strengthening local support and ownership" (Alice Springs News 2012, *Winds to stoke the fire of who you are*, available <http://www.alicespringsnews.com.au/2012/04/05/winds-to-stoke-the-fire-of-who-you-are/>> Jan 2012. Youth performers at Milpirri have been invited to perform at events in Melbourne, which will provide them with experience within a professional dance world, as well as raising the profile of the community of Lajamanu (Kelly 2011:19).

through the resource centre in Lajamanu and community infrastructure such as Lajamanu oval resurfacing. A community business, Lajamanu Air, received funds for an airport waiting lounge and pilot accommodation, allowing for additional pilots to be hired (Kelly 2012:16). The Lajamanu Arts Centre received \$88,000 toward operation and staffing costs. This not only relieved financial stress, it “gave confidence to members and the board because they knew we were using Aboriginal money, as opposed to being entirely reliant on government funding ... instilling a sense of pride, inner strength and confidence in the community members working and painting at the centre” (CLC 2011:6).

Another example of the social outcomes was at Nyirripi School, which used a GMAAAC grant to fund an excursion to Sydney. The trip was designed as an incentive for children to attend school. Attendance rose from 25% to 61%, and the level of attendance was maintained over a period following the excursion. The principal reported:

Improvements in self-confidence, self-awareness, ability to share with others, ability to respect others, appropriate behaviours, ability to listen to instruction and personal hygiene among those children who attended the excursion. These benefits have been maintained since the trip (Kelly 2012:22).

5.4.4. Aboriginal acceptance of community development approach

Whilst community development was offered by the CLC as an effective response to calls for longer-term sustainable benefits from royalties, at the outset not all association members were comfortable with the increasing emphasis on community benefit.

A research participant who was on the Kurra Committee revealed some of the confusion over the move to an alternate way to view and disburse mining payments:

Do you know why it confusing...? There are people in different communities who receive that WETT money which they shouldn't be and they are not traditional owners. Someone brought that idea up, [putting money into WETT] we didn't know (Interview PR/KG 2008).

These comments revealed the reality of the tensions, illuminated earlier in the chapter, between immediate needs and longer-term community based outcomes but also the primacy with which traditional ownership is held over community based interests. What is evident from the research is that the rigor imposed by the community development methodology (designing programs, applying strict criteria for broad based and strategic community

investment, avoidance of government substitution, development of systems for recording and reporting outcomes) took time to gain total acceptance:

If education was in top list for the government then why are they getting money from the traditional owners, then why are they robbing the people they are supposed to be helping? How much does the government put in? So what's the rest of the other money, WETT money, where is that going to? (Interview PR/KG 2008).

According to Jagger (2011:102) the community development project struggled initially for legitimacy:

Indeed it has experienced something of an identity crisis such that the association [Kurra] has seen itself as so separate from project arrangements and other participants that it has considered relinquishing its role as trustee and dispense of the project funds. Key association members have expressed strong alienation from the project, saying it has nothing to do with them. Some of them have voiced bemusement as to why they were ever given the trusteeship.

The disaffected group, however, did reconsider and retained trusteeship (Jagger 2011:102). The CLC's external evaluation reported that "there are signs in every community of some people taking the initiative to support a community benefit approach" (Kelly 2011). Aboriginal people "are increasingly engaged in the process and are starting to change their attitudes towards community versus personal benefit as a valued outcome of projects" and that "understanding and sense of ownership and control of decision-making processes certainly seem to have been improving and growing over the last two years" (Kelly 2012:10, 43).

The evaluation found that positive reporting was coming from all projects such that people were able to identify the benefits available to them:

In particular, for the projects in which there have been long-standing processes of engagement with the community, such as those funded through WETT, URM [Uluru Rent Money, a non-mining related project] and GMAAAC people are able to identify the nature of the benefit and how it is of value to them (Kelly 2011:8).

This trend is further evidenced by the fact that in late 2007 Kurra made an allocation of \$30,000 to an existing organisation providing dialysis support in remote communities, the Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation (WDNWPT) to investigate the feasibility for similar services in the Warlpiri

communities.¹⁶³ During 2008, WDNWPT worked directly with the Kurra steering committee to develop a dialysis service plan. Kurra subsequently approved \$1.6 million to set up a Yuendumu regional dialysis service (CLC 2009:11).¹⁶⁴ This is significant because Kurra had decided to use its own money (return on investment) that would be otherwise available for individual distribution. The Tanami Dialysis Support Service project has since enabled Warlpiri dialysis patients who must live in Alice Springs for regular treatment to have extended visits to their community. In this way renal patients have a chance to return home to visit families and partake in cultural activities safely because dialysis is available at the community. In August 2010, the first Warlpiri patients received dialysis in a new purpose-built facility in Yuendumu (CLC 2011:8). In the six months of operation up to March 2011, 27 clients have used the service in either Alice Springs or Yuendumu (Kelly 2011:2).¹⁶⁵

The positive outcomes witnessed in the community by the Kurra committee members clearly had an impact on Aboriginal people's ability to envisage long-term social benefits using royalty payments. As community members experienced the outcomes of community investments there was clearly a greater appreciation and increased confidence in applying money to long-term projects. In a follow-up interview, the Community Development Manager explained that the worried individual who was on Kurra Committee, quoted above, had since then told her that the community development initiatives "are really good" (Interview DC 2009).

5.5. Conclusion

The Granites Mine has generated substantial amounts of money for Aboriginal stakeholders throughout the life of the project. The Agreement has proved very effective in delivering traditional owners a share in the wealth generated from use of their land. Statutory payments have extended the benefits to Aboriginal communities and groups affected by the operation of the Land Rights Act.

¹⁶³ WDNWPT was established in the non-Warlpiri community of Kintore through sales of paintings by famous Western Desert artists (WDNWPT n.d.).

¹⁶⁴ Initial funding was for a renal nurse and nurse's accommodation in Yuendumu, as well as a project manager and patient support worker based in Alice Springs. Funds also go towards paying for patients to go to Yuendumu for regular overnight visits and longer holidays (CLC 2009:11).

¹⁶⁵ Ten Warlpiri patients returned to Yuendumu for a total of 164 dialysis sessions. Kurra has allocated \$1.5 million in the last four years and attracted \$2.36 million from the ABA for the Lajamanu Dialysis project and \$250,000 from the Lajamanu Progress Association \$250,000 (CLC 2012:7).

Elaborate legislative structures control the allocation and distribution of the money to the traditional owners and the affected communities. In the first instance, the Land Rights Act requires payments to be made to incorporated associations. In accordance with the Act, the CLC established a number of relevant associations under the Aboriginal Councils and Associations Act. Each of the associations has explicit objects to provide benefits for their members. Being established under legislation the corporate administration of the associations is overseen by a federal statutory office, the Office of the Registrar of Indigenous Corporations. The legislative framework combined with the administrative support offered by the CLC's AAMC has brought about robust governance structures for handling the substantial payments. The propriety around the dealings with the mining payments is evidenced by the favourable reports of the Federal Audit Office and equally by the absence of any data suggesting otherwise.

Distribution of the payments has brought about a range of benefits. Foremost, in terms of the longevity of the project, is the extent payments have contributed to the lack of disputation or disruption to the project. Traditional owners and affected Aboriginal communities place a high regard on the fact that payments are made, not just in terms of monetary value but also in terms of the recognition and respect conveyed. The payments satisfy a critical compensatory aspect as well as a sense of sharing in the wealth generated from their land. Recognition, respect, wealth sharing, compensation for damage and disturbance that is conveyed on receiving payments is reciprocated through traditional owners sense of shared interest in the health of project and its continuing viability. At the blunt end of this interest is that traditional owners' fortunes are very much linked to the fortunes of the mining company and of the project. The support of traditional owners for the company's regional exploration efforts to secure further resources for the operation is tangible evidence of that shared interest.

How moneys are applied for the benefit of traditional owners was shown to be an extremely complex setting for analysis. Depending on decisions made at the individual level, monetary distributions to traditional owners can have both positive and negative effects. The payments are beneficial as far as the economic freedom they provide. Where income levels are almost universally low and cost of living extremely high, the payments deliver welcome relief to families and enable the purchase of items not normally possible. These include toys, food and household goods. Where poor decisions are made, such as purchase of large quantities of alcohol, payments can have a negative impact. In a comparable way, distributions enable

people to purchase vehicles, which can have a range of positive benefits such as the ability to visit family and conduct ceremonies, visit homelands, hunt and participate in other cultural activities. Engaging in such activities also counters the debilitating effect of inactivity arising from a sedentary lifestyle. Conversely, increased mobility also enables travel to alcohol outlets or disrupts community life via extended trips away or getting stuck in town or other communities. The generally short life of vehicles severely detracts from the measure of positive benefit provided.

The analysis has avoided making value judgements on purchases from royalty distributions. Rather the overall impact is considered, particularly in terms of increasing expectations for increased community well-being and sustainable, healthy communities. The conclusion against this frame is that direct disbursements perform a significant compensatory function and are considered by Aboriginal recipients to be extremely important. They are used to satisfy immediate needs and the nature of Aboriginal sociality means there are effective mechanisms for spreading the benefits through family and community. The conclusion here agrees with Peterson (1993) that demand sharing makes accumulation difficult. Where the goal is to create medium or long-term benefits, then individual payments are unlikely to achieve substantial outcomes. Tensions were found to be evident between the desire for immediate consumption and pursuing longer-term strategies such as investment.

Satisfying immediate demands through individual disbursements, however, was also shown to enable situations whereby traditional owners can be positively engaged over other modes disbursement with longer-term outlook. These include commercial investments that preserve capital for future generations as well as social investment using a community development approach. In a socio-economic setting where immediate demands are so great, shifting focus to the medium or long-term required a considerable external input. This has come from the CLC working actively with committees and members to develop trust, seeking expert advice and respecting Aboriginal people's right to make decisions over their money. While some decisions have led to less than optimal investment levels, Aboriginal recipients have demonstrated learning from experience such that certain associations have chosen to invest higher proportions of their income than normally recommended. Gradual realisation of the value of investment can be discerned from the decisions Kurra committee made to use investment dividends for community benefit. A range of implementation factors has operated in achieving positive outcomes from investment and community development initiatives:

- leadership demonstrated in establishing the WETT,
- appropriate structures and resourcing, such as the CLC's Community Development Unit,
- support for good governance and decision-making,
- securing expert advice and input,
- clear strategies for improving long-term outcomes such as commercial investment and the community development approach, and
- the role of dedicated individuals who have persisted with pursuing the strategies.

Application of these factors has led to identifiable positive social outcomes across a range of areas including early childhood education, secondary schooling, engagement of young people, health and provision of community infrastructure. Underpinning these initiatives are effective external networks established with a range of relevant agencies that either have program delivery capacity or have available complementary funds. Collaborative approaches and relationship building, particularly with government, avoided government substitution. There are even examples where access to government controlled funds has been facilitated through the collaborative approaches and strategic alignment of community development programs with larger government initiatives such as early childhood education. In this way the impact value of royalty receipts effectively increased.

Impetus for implementing more strategic sustainable approaches to financial disbursement has also come from overarching societal expectations over use by Aboriginal groups of money derived from mining. Through these approaches, signs were found of an increasing capacity amongst Aboriginal decision-makers to envision longer-term outcomes and growing recognition of what can be achieved from strategic program investment.

6. Thesis Conclusion

This thesis is concerned with the issue of implementation of agreements between Aboriginal people and mining companies. This is a critical area to address given the extent that agreements are promoted as the most favourable way to resolve competing interests, ensure mutual understandings and deliver beneficial outcomes to Aboriginal people. Aboriginal people are important community stakeholders in the Australian mining industry, with over 60% of mines neighbouring Aboriginal communities. Furthermore, any mining development in northern Australia will be almost certainly on land in which Aboriginal people have an interest. Through effective agreement-making significant opportunity exists for Aboriginal groups affected by mining to benefit from resource development.

The research highlighted how governments, miners and Aboriginal people concur on the importance of agreement-making and how they promote agreements as an effective mechanism to achieve mutually beneficial outcomes. A shared purpose presently exists to enhance the long term contribution agreements can make to improve the social and economic position of Aboriginal people. While a substantial body of research exists in relation to negotiation frameworks and agreement content, little research exists on the actual implementation of agreements. Indeed, eminent researchers in the field of agreements with Indigenous people have highlighted the pressing need for further analysis on the outcomes and results of agreement making.

Following the research findings of O’Faircheallaigh, in particular, the foundational proposition for this research was that reaching agreement in itself does not necessarily resolve issues raised by resource development. While significant effort and resources are directed at negotiating agreement, less consideration is typically given to enacting the agreement provisions. This research confirms that successful implementation cannot be taken for granted. Effective management is crucial to whether an agreement delivers sustainable and positive outcomes.

The research presented here contributes significantly to understanding how outcomes vary according to the processes and techniques of implementation. Through a case study of The Granites Agreement, the first non-energy mining agreement signed under the Land Rights Act, rich insights into issues of implementation are provided. The case study is in essence a biography of the mining agreement. The research covers the historical background and

genesis of the Agreement, its maturation over 26 years and the achievements up unto 2011. No such in-depth study of a mining agreement in Australia has been previously undertaken. The project is a result of unique situation where access to the Agreement was made available by the parties and the parties willingly participated in the research on the machinations under the Agreement. One reason for the interest and support was that the motivation of the research was to understand how better outcomes under agreements can be achieved through improved practice of implementation.

The research set out to build a framework to consider implementation of agreements. The implementation factors identified through this research are contained in Figure 7. The framework assembles the range of implementation factors found in the research that need to be taken into account in designing management of a mining agreement once it is signed. While some of these factors have been previously identified in the literature, the framework is drawn from the experiences identified in the research on implementation of The Granites Agreement. Some of the key experiences are summarised in the ensuing discussion and illustrate how the issues contained in the framework were identified.

Although based on The Granites experience, the framework has been generalised and is intended to be applicable other sites. Further research is required to test its applicability at other sites and build further on the framework. A comparative approach involving two or more sites would reveal the extent to which the factors compiled here affect outcomes more universally under such agreements.

In researching the origins of The Granites Agreement it was found that enthusiasm for agreement-making evident in the contemporary era did not always exist. Being negotiated under the provisions of the Land Rights Act, the Agreement at a fundamental level granted access to Aboriginal land and consent to the company to mine. Agreement-making had become a significant feature in the Aboriginal policy landscape in the late 1970s and from that time to the mid-1990s the mining industry strongly resisted the rights of Aboriginal people to control access to land. In the Northern Territory in particular, the mining industry and conservative governments acted in concert to limit Aboriginal control over access for exploration and mining. These same political forces successfully thwarted federal Labor Government plans for national uniform land rights legislation in the early 1980s.

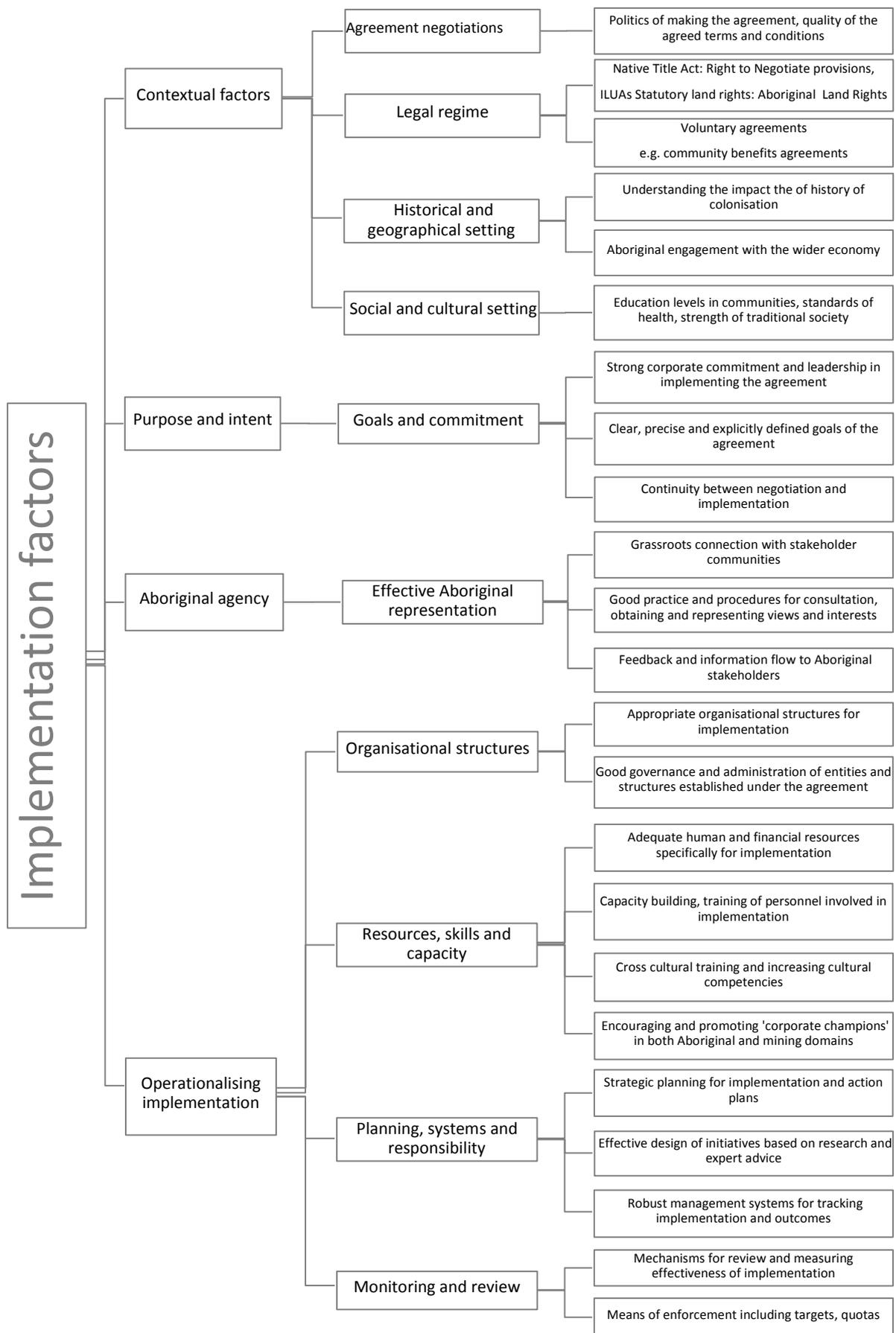


Figure 7. Framework for considering implementation of mining agreements.

As one of the earliest agreements between Aboriginal people and miners, the Granites Agreement was forged in a politically hostile environment where a range of competing agendas intersected, such as:

- the mining company's desire to secure access to mineral resources and obtain certainty over investment. Its focus was on reducing financial risk by seeking to minimise the cost of securing access and the cost of on-going commitments under the Agreement.
- Aboriginal landowners wanted to redress historical injustices through substantial participation in the development, including maximising a sharing in the wealth generated from their land. Traditional owners wanted recognition and respect of their attachment to land. Sacred sites had to be protected and environmental impacts minimised.
- a wider mining industry agenda to limit Aboriginal people gaining rights to control access to land for exploration and mining. The facts that NFM was negotiating put the company out of step with the wider industry.
- parochial provincial-level interests sought to limit Aboriginal land rights in the Northern Territory but at the same time wanted economic development through mining.
- the national reformist government was pursuing a policy of Aboriginal self-determination, with Land Rights legislation in the Northern Territory as its centrepiece. Through empowerment of Aboriginal landowners it was intended they would have sufficient incentive to conclude beneficial agreements over resource development on their land.

This created an extremely complex economic and social setting in which the Agreement was to operate. The negotiations were strongly politicised such that the act of concluding The Granites Agreement was a major outcome in itself. As a consequence of so much time, effort and resources being invested in negotiations, less attention was given as to how to best implement the Agreement. A generalised conclusion from this analysis is that where any animosity or even ambivalence exists toward entering an agreement then achieving positive outcomes becomes more difficult.

The research also provided significant insights into how the politics of agreement-making has altered as a result of societal change. Over the period of the case study, the adversarial politics that surrounded agreement-making more generally diminished dramatically. This

largely followed the *Mabo* decision and the introduction of the Native Title in the early 1990s. Leading Australian mining companies encouraged the industry to shift toward a more sophisticated and nuanced view of social issues and community engagement. The national shift was propelled by international initiatives particularly through the MMSD project, which led to the global mining industry embracing the concepts of sustainable development.

Certainty and security of investment remained the main driver for industry. However, not only did mining companies acknowledge the need for a regulatory licence but it was recognised that in addition there was a requirement for a ‘social licence to operate’. Within this framework the mining industry was able to articulate positively the advantages of agreement-making with Indigenous people. Rather than viewing agreements as a hurdle to surmount, in the sustainability discourse agreements provided a mechanism to establish the relationships, structures and processes necessary to engender sustainable outcomes. While much has been written regarding the mining industry’s pursuit of sustainable development, there is less research that shows how it actually made a difference. A significant aspect of this research is that the philosophical shift in industry is discernible in the outcomes documented under The Granites Agreement.

A significant aspect of this research is that it spans a period of over two decades during which these changes occurred. Over this period the fundamental terms and conditions of the Agreement remained constant. Improved outcomes, such as Aboriginal employment and contracting, were shown to coincide with the mining industry’s shift to a sustainability agenda. Moreover a close examination of corporate history of The Granites mine revealed three distinct phases of ownership of the mine. The research illustrated how each of the mining companies which owned the mine brought a distinctive style and approach to implementation, which directly affected outcomes under the Agreement.

NFM negotiated The Granites Agreement and developed the mine. It was overwhelmingly focussing on the ‘permitting’ purpose of agreement-making; a hurdle that needed to be overcome. This attitude existed within executive levels of the company with the result that the company was not able to engender an appropriate corporate culture responsive to achieving the obligations under the Agreement, such as preferential employment of Aboriginal people.

Discernible shifts in corporate culture accompanied the incremental takeover of NFM by Normandy. Much of this cultural shift can be attributed to Normandy’s leadership which

recognised that the mining industry had a wider responsibility to contribute to society and particularly Aboriginal communities on whose land they wished to mine. Normandy Chairman Robert de Crespigny was a founding member of the Council for Aboriginal Reconciliation. He not only pressed for a positive dialogue between the mining industry and the national Aboriginal leadership, he also acted in tangible ways such as employing qualified Aboriginal people in senior corporate positions. A direct effect was that Normandy viewed the components of the Agreement that were intended to benefit Aboriginal stakeholders, not as a kind of pseudo-philanthropy, but as key responsibilities and ways the business could make an important social contribution.

The evidence presented in this research showed that the clearly expressed objectives and intent of the Normandy leadership to increasing Aboriginal employment led directly to higher Aboriginal employment rates at The Granites. Although greater numbers of Aboriginal employees related to the scale of production, there is clear evidence of the positive impact of strong corporate commitment.

At the time of the Newmont takeover of Normandy, Corporate Social Responsibility was an explicitly acknowledged value adopted by the global mining industry. As a global operator, Newmont was accustomed to working with local communities and understood the value of the social licence. Newmont was also compliance focussed and the Agreement obligations were brought into its regular management systems. The business was sufficiently large to operate a Corporate Sustainability Responsibility Division that was able to assist site-based initiatives through strategic support and funding. Newmont's sustainability discourse became increasingly nuanced, for example, a clear articulation of the business case for community engagement, as well as recognising capacity building in communities as a social contribution. Senior personnel were able to look beyond the written clauses of The Granites Agreement and acknowledge the underlying intent. During this period Aboriginal employment became embedded in the culture of the company and became a whole-of-organisation value. This enabled innovative approaches such as the Yapa crew, which tackled the enduring issue of engaging local community people.

The analysis so far relates to how outcomes varied in response to shifts in the mining industry and also changes in mine ownership. This is largely measured by the evidence presented on Aboriginal employment. In this case study Aboriginal employment was viewed as sitting within the mining company domain. A significant aspect of this research is that the

detailed examination of receipt and distribution of mining payments, which occurred in this case study, sits wholly within the Aboriginal domain. As such the research also illustrated how implementation in the Aboriginal domain affected outcomes of the Agreement. This is a unique insight as typically the literature positions implementation of agreements generally at the behest of the mining company.

Evidence of the important role of leadership and clarity of goals was also found in the Aboriginal domain particularly around the introduction of effective strategies for long term sustainable benefit for Aboriginal people from mining royalties. For instance the senior Warlpiri women of the Warlpiri Triangle pushed for royalties to be used to assist in education and training. This call was taken up by the Director of the CLC and implemented through the Consolidated Mining Agreement with Newmont with the creation of WETT. While the CLC had previously worked with associations over creating long term investment portfolios, WETT signalled explicitly a focus, for a portion of the royalties at least, toward pursuing long-term education and training outcomes for Warlpiri people. That Newmont was party to the establishment of WETT is also significant as it added impetus because respective leadership aspirations aligned and had a common intent.

Leadership and clear objectives were found to be important high level implementation factors required for achieving outcomes under the Agreement. The research also found a range of managerial and functional factors were equally important in achieving outcomes under the Agreement. Whereas a range of implementation issues have been identified in literature on agreement-making and implementation, the value brought by this case study is the way in which the research illustrated how effectively operationalising the implementation issues improved outcomes under the Agreement.

Establishment of appropriate organisational structures for implementation, including internal corporate structures, was found to be very important in both the mining company and Aboriginal domains. It was found to be critical that the organisational structures interacted effectively between the mining company and Aboriginal stakeholders. For instance, the establishment of the Indigenous Affairs Unit by Normandy was a significant initiative to address barriers to Aboriginal employment that existed at The Granites. At around the same time the CLC established the Mining Employment Unit. These structures worked effectively with each other as they were able to facilitate collaboration and cooperation between the

parties. The result of working cooperatively was increased Aboriginal employment outcomes.

Another key organisational structure was the AAMC established by the CLC, which ensured the Aboriginal royalty associations maintained good governance and corporate compliance required by legislation. The legislative framework around Aboriginal corporations combined with the administrative support offered by AAMC resulted in robust governance structures for managing mining payments. In terms of long-term outcomes leading to social improvements in the communities, however, more than financial compliance was needed.

The development of the CLC's Community Development Unit provided good evidence of the effectiveness of appropriate organisational structures in promoting positive agreement outcomes. The Community Development Unit developed clear strategies for pursuing sustainable outcomes from royalty payments through a community development framework. The research found a range of positive outcomes as a result of this approach.

Resourcing of appropriate organisational structures was also found to be critical. For instance, the CLC directed significant human and financial resources into its Community Development Unit. This enabled the Unit to attract appropriately qualified and experienced personnel who could contribute to finding innovative and strategic approaches to achieve long-term benefits. In a similar vein, innovative approaches to pre-employment training with the mining company domain occurred once the company invested in positions within their Indigenous Affairs Unit and sought personnel with the appropriate skills and capacity. This is in contrast with early stages of the Agreement where a lack of available skills and capacity to implement an Aboriginal training scheme led to poor Aboriginal employment outcomes.

While structures, resourcing, and appropriately skilled personnel were found to be essential to achieving positive outcomes, the research highlighted that where there were significant outcomes there were highly motivated people driving the initiatives. The 'people factor' was identified by Tiplady and Barclay (2007), in particular, the critical role certain individuals who 'go the extra mile'. The evidence from the research confirmed the important role 'corporate champions' had on creating positive outcomes under The Granites Agreement. The key personnel who were able to make in-roads into complex situation were characteristically highly committed operators who were dedicated to seeking solutions and

typically sought to overcome barriers. At each juncture in this case study where positive outcomes were achieved there were found such personnel.

An important aspect of the role of these commitment personnel was the ability to establish effective relationships and collaborative partnerships. It was through these relationships and partnerships that sufficient expertise and capacity were brought to bear on otherwise intractable issues. The two clear examples were (1) the outcomes achieved by Newmont with respect to the pre-vocational training and establishment of the Yapa crew. The outcomes from this effort were employment of relatively high numbers of Aboriginal people from the local communities; (2) the demonstrable long term outcomes from community development resulting from sustained engagement with traditional owners and affected communities through the CLC's Community Development Unit. A measure of the success of the community development was that some of the established programs attracted complementary funding from government. A compelling trend also identified was the use by Kurra Association to direct discretionary funds, i.e. money that could be dispersed to individuals, into a highly valued community based dialysis support program.

In the case study government played mainly an enabling role. While it did not feature greatly in the day to day management of the Agreement, the legislative and administrative structures instituted and supported by the federal government are clearly critical to the outcomes under the Agreement. At a fundamental level for instance the operation of the Land Rights Act caused the mining company to negotiate the agreement. The federal government also funded the CLC and enabled it to perform an important representation function. The federal government also provided statutory payments to affected communities under the Land Rights Act. The affected community payments were vital to extending the financial benefit from mining beyond Agreement payments which belonged to the traditional owners. The research did not extend into investigating in-depth as to how government's policies in Aboriginal affairs might ultimately impact on the outcomes under the Agreement. Clearly government priorities have a significant impact as can be identified in the examination of community development programs which sought to align WETT initiative with the government emphasis on early childhood programs. The Howard Government's Northern Territory Emergency Response, commonly known as the 'Intervention', occurred in 2007 during the case study. The following year, the Northern Territory Government abolished longstanding community government councils and incorporated their assets into cumbersome mega-shires. From the Aboriginal perspective

these policies simultaneously removed Aboriginal control over their communities and also reduced control at the individual level. The impact of government policy such as these on the ability to achieve long term beneficial outcomes from agreements is an area worthy of further research.

A significant finding of this research is the importance of Aboriginal people to be able to effectively organise and engage with the mining company. In this case study the agency of Aboriginal agency was facilitated through the CLC, a statutory body that was established to represent the interests of traditional owners and Aboriginal people in the southern Northern Territory under the Land Rights Act. The CLC acted as legal representative of traditional owners through the negotiation of The Granites Agreement. During the implementation phase it was responsible for receiving and distributing payments to the relevant traditional owner associations as well as monitoring functional parts of the Agreement such as Aboriginal employment, Aboriginal liaison and approval of project works. At an operational level the CLC provided a number of services that were found to be critical to implementation, including:

- ensuring traditional owners were fully informed and providing legal advice,
- consulting traditional owners to obtain their views and act on their instructions,
- assessment of technical proposals and provision of relevant technical advice,
- assisting with the corporate governance of Aboriginal associations set up to receive financial benefits,
- pursuing Agreement objectives such as employment outcomes and long term sustainable benefits from mining payments.

The significance of this role needs to be considered in the context of vastly divergent positions in terms of values, knowledge systems and capacity to organise and function in a corporate-like manner. Whereas in the mainstream, parties to a contract would typically possess a high degree of common understanding of each other's intent and purpose, this is not the case with Aboriginal groups negotiating with mining companies.

This research highlighted the vast gulf evident between the mining company and traditional owner groups. This was exemplified by the way the parties viewed the project area. For traditional owners, land is at the core their social and cultural identity. Indeed, the location known as The Granites held strong spiritual and cultural significance. In contrast, the miners

viewed the land as vacant, vast and inhospitable. Theirs was a profoundly secular view; The Granites was of interest only because of the mineral resources that could be exploited.

The Aboriginal world view emphasises ‘looking after’ the land, both physically as well as spiritually through song and ceremony. Protection of sacred sites was of vital importance, as was minimising environmental damage. The miner’s stance was strictly utilitarian; land was to be subjected to surveys and marked off according to the resources identified and areas appropriate for infrastructure, with little or no regard for esoteric or aesthetic considerations.

A range of other characteristics starkly distinguish Aboriginal communities and mining companies more generally. These are represented diagrammatically in Figure 8. It shows among other things the socio-economic status of the Aboriginal communities contrasted markedly with the mining company, which epitomised the power of corporations and capital. Social problems and poor educational levels characterise Aboriginal communities. Issues such as low literacy and numeracy levels, lack of work readiness affected not only the capacity of Aboriginal people to comprehend and respond to negotiations over the Agreement but also the capacity of Aboriginal people to turn opportunities contained in the Agreements into long-term benefit.

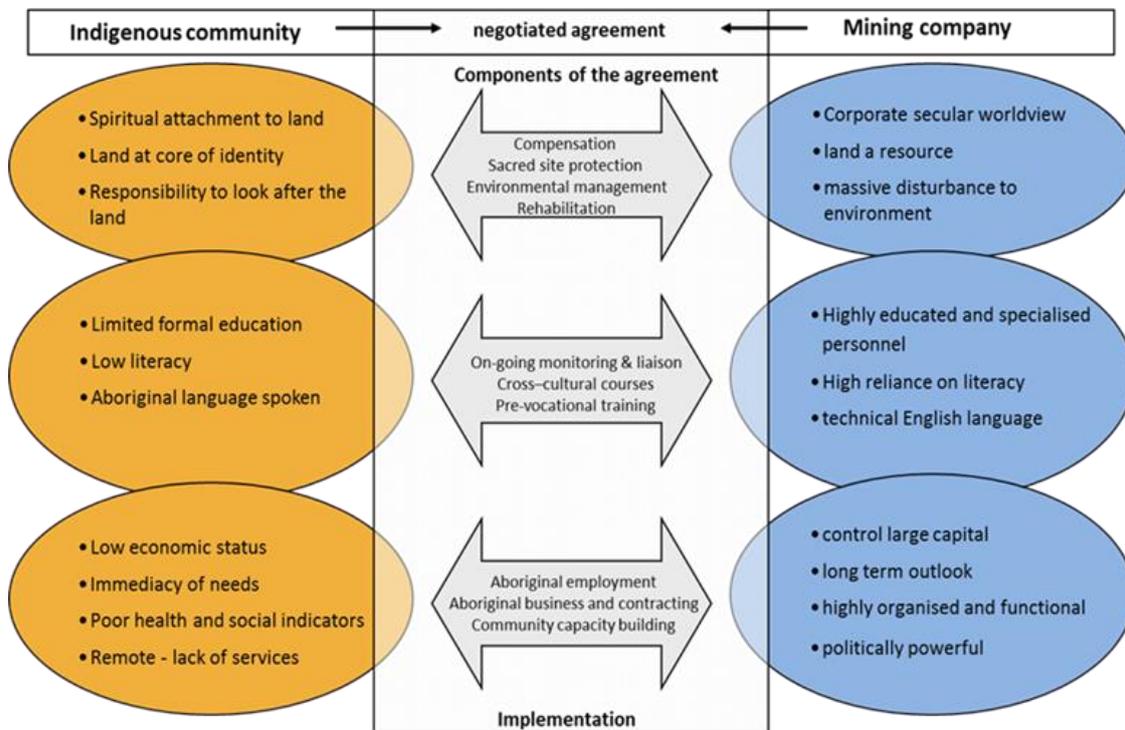


Figure 8. Conceptualising agreement-making between Aboriginal people and miners.

The case study revealed the critical role played by the CLC in mediating the social, cultural and economic disparities between the Aboriginal stakeholders and the mining company. Generalising this finding suggests that a critical implementation factor is the ability for Aboriginal stakeholders to have access to well-resourced and effective representation that can coalesce diffuse views and interests into a clear and coherent position. This is necessary in order to create a functional interface that the mining company can engage with effectively in a commercial or corporate-like manner.

Other researchers such as Altman (1995), O’Faircheallaigh (2004) and Scambary (2007) have pointed to the importance of the role of representative bodies, such as land councils or native title prescribed bodies. The evidence from this research supports the argument that these bodies play a crucial role, not just in agreement-making but also with implementation.

Ultimately, the arena in which agreements between Aboriginal people and mining companies operate has been shown to be enormously complex. A range of political, social, cultural and economic issues intersect through the agreement-making process. Recognising these complexities is the starting point to understanding ways for the improvement of implementation practice. The implementation issues collated in this research on The Granites Agreement are a first step in building a framework to conceptualise implementation more broadly.

oOo

7. Bibliography

- ABA, 1996. Aboriginal Benefits Account, *Annual Report 1995-1996*. Canberra: Aust Govt.
- ABC, 2004. Australian Broadcasting Corporation [news on-line], *Mine industry looks to Indigenous Reconciliation*. Available <<http://www.abc.net.au/news/stories/2004/06/08/1126806.htm>> 10 Nov 2007.
- Allbrook, M & Jebb, MA, 2004. National Native Title Tribunal, *Implementation and Resourcing of Native Title and Related Agreements*, Final Report. Perth: Aust Gov't. Available <<http://www.nntt.gov.au/research/files/Implementation%20and%20resourcing%20of%20native%20title%20and%20related%20agreements.pdf>> 17 Nov 2007.
- Altman, J, 1983a. *Aborigines and Mining Royalties in the Northern Territory* (Aust Inst of Ab Studies: Canberra).
- , 1983b. *The Payment of Mining Royalties to Aborigines in the Northern Territory*. Discussion Paper 77, Oct 1983. Canberra: Centre for Economic Policy Research, ANU.
- , 1985. *The Payment of Mining Royalties to Aborigines: Compensation or Revenue?* Anthropological Forum 1985, pp. 474 – 488.
- , 1994. *Implementing Native Title: Economic Lessons from the Northern Territory*. Discussion Paper 64, 1994. Canberra: Centre for Economic Policy Research, ANU.
- , 1995. *Native Title Act: Implementation Issues for Resource Developers*. Discussion Paper 88, 1995. Canberra: Centre for Economic Policy Research, ANU.
- , 1998. 'Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime'. *Land, Rights, Laws: Issues of Native Title*. Issues paper 20, Native Title Research Unit, Canberra: AIATSIS.
- , 2004. Economic Development and Indigenous Australia: Contestations over Property, Institutions and Ideology. *Aust. J of Agriculture and Resource Economics*, 48:3, pp. 513-534.
- , 2009. 'Contestations over Development' in Altman, J & Martin, D (eds) *Power, Culture, Economy: Indigenous Australians and Mining* (ANU Press: Canberra) pp. 1-15.
- Altman, J & Martin, D (eds) 2009. *Power, Culture, Economy: Indigenous Australians and Mining* (ANU Press: Canberra).
- Altman, J & Peterson, N, 1984, *The Case for Aboriginal Access to Mining Royalties Under Land Rights Legislation*. Discussion Paper 89, Feb 1984. Canberra: Centre for Economic Policy Research, ANU.

- Altman, J & Pollack, D, 1998. *Reforming the NT Land Rights Act's Financial Framework into a More Logical and More Workable Model*. Working Paper 5. Nov 1999, Canberra: Centre for Economic Policy Research, ANU.
- Altman, J & Smith, 1994. *The Economic Impact of Mining Moneys: the Nabarlek Case, Western Arnhem Land*. Discussion Paper 63, Jun 1994. Canberra: Centre for Economic Policy Research, ANU.
- AMR, 2012, Australian Mining Review, *Gold Giant Looks Closer to Home*, 27 Jul, Available <<http://australianminingreview.com.au/gold-giant-looks-closer-to-home/>> 11 Sep 2012.
- AMSANT, 2008. Aboriginal Medical Services Alliance of the Northern Territory, *Options for Alcohol Control in the Northern Territory*, AMSANT Jan 2008. Available <[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/consult.nsf/4EFFF7572B9A39B9CA2577F8000FD40A/\\$FILE/Appendix%201%20AMSANT%20Policy%20Alcohol%20Control%20Final%20Jan08.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/consult.nsf/4EFFF7572B9A39B9CA2577F8000FD40A/$FILE/Appendix%201%20AMSANT%20Policy%20Alcohol%20Control%20Final%20Jan08.pdf)> 20 Jan08.pdf
- Barker, T & Brereton, D, 2004. Centre for Social Responsibility in Mining, *Aboriginal Employment at Century Mine*. Research Paper 3. Brisbane: Sustainable Mining Institute, Uni of Queensland. Available <http://www.csrn.uq.edu.au/docs/Public_Century_Report.pdf> 11 Feb 2008.
- , 2005. Centre for Social Responsibility in Mining, *Survey of local Aboriginal people formerly employed at Century Mine: Identifying factors that contribute to voluntary turnover*, Research Paper 4. Brisbane: Sustainable Mining Institute, Uni of Queensland. Available <<http://www.csrn.uq.edu.au/docs/CSRM%20Research%20Paper%204.pdf>> 28 Feb 2008.
- Barnes, R, 2009. 'Mining and Land Rights in Central Australia'. *Dialogue* 28 2/2009. J of the Academy of Social Sciences of Aust, Canberra.
- Baume, E, 1994. *Tragedy Track: the Story of The Granites*. Reprint by NFM Ltd.
- Baum, F, 2002. *The New Public Health: An Australian Perspective* (Oxford University Press: Melbourne).
- Bornman, J, 1988. *Tanami Region – Preliminary Report on Aspects of the Social Impact of Exploration and Mining Activities in the Area*, Confidential report to the CLC.
- Brereton, D & Parmenter, J, 2008. 'Indigenous Employment in the Australian Mining Industry', *J of Energy and Natural Resources Law*, 26 1: 66-90.
- Brough, M, 2006. 'House of Representatives Explanatory Memorandum: *Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*'. Canberra: Cwth of Aust.
- Campbell, L, 2006. *Darby: One Hundred Years of Life in a Changing Culture* (ABC Books: Sydney).
- Campbell, D & Hunt, J, 2010. *Community Development in Central Australia: Broadening the Benefits from Land Use Agreements*. Topical Issue 7, Oct 2010, Canberra: Centre for Economic Policy Research, ANU.

- Charles, C, 2004. 'Newmont corporate powerpoint'. Presentation by Christine Charles Regional Director Environment and Social Responsibility Australia & NZ, Jul 2004.
- CLC, 1983. Central Land Council, 'Press release'. Alice Springs.
- , 1987. *Annual Report 1986-1987*, Alice Springs.
- , 1992. *Annual Report 1991-1992*, Alice Springs.
- , 1994. *Annual Report 1993-1994*, Alice Springs.
- , 1998a. *Annual Report 1997-1998*, Alice Springs.
- , 2002. *Annual Report 2001-2002*, Alice Springs.
- , 2006. 'The CLC and Community Development', Internal Paper by the CLC Community Development Unit, Alice Springs.
- , 2007. *Annual Report 2006-2007*, Alice Springs.
- , 2008 'A New Way of Working: The CLC Community Development Framework', Internal paper by the CLC Community Development Unit, Jun 2008, Alice Springs.
- , 2009. *Annual Report 2008-2009*, Alice Springs.
- , 2010. *Annual Report 2009-2010*, Alice Springs.
- , 2011. *Community Development News*, Broadsheet, Alice Springs.
- CMA, 2002. 'Consolidated Mining Agreement', An Agreement between the Central Land Council and Newmont Mining Corporation made pursuant to the Land Rights Act.
- Chapman, C, 1984. 'Aboriginal Land Rights Issue Forces Mining Groups to Vote with their Feet', *Financial Times*, London, 8 Jun 1984, 8.
- Coombes, HC & Stanner, WEH, 1974. *Program for Yuendumu and Hooker Creek*, Report on visit to Yuendumu and Hooker Creek Mar 1974. Canberra: Aust Govt Pub Serv.
- Coote, E, 1981. *Hell's Airport: the Key to Lasseter's Gold Reef* (3rd edn) (Investigator Press: Sth Aust).
- Connell, R & Howitt, R (eds) 1991. *Mining and Indigenous Peoples in Australasia* (Sydney Uni Press: Sydney).
- Council of Aboriginal Reconciliation, 2009. Website. Available <<http://www.austlii.edu.au/au/orgs/car/walktalk/normandy.html>> 16 Jun 2012.
- Cribben, J, 1984. *The Killing Times: the Coniston Massacre 1928* (Fontana/Collins: Sydney).
- Crooke, P, Harvey, B, & Langton, M 2006. 'Implementing and monitoring Indigenous land use agreements in the minerals industry: the Western Cape Communities Co-existence Agreement', in Langton, M, Mazel, O, Palmer, L. Shain, K and Tehan, M

- (eds), *Settling with Indigenous People: Modern Treaty and Agreement-making*, pp. 94-112 (Federation Press: Annandale).
- DBS Agreement, 1991. 'Dead Bullock Soak ML(S) 163, Agreement between the CLC and Newmont'. Agreement made under the Land Rights Act.
- DME, 1983. NT Department of Mines and Energy, Press release. Darwin.
- Donald, B, 1994. In *The Land is Always Alive: The Story of the Central Land Council*, (Central Land Council: Alice Springs).
- Doohan, K, 2006. *Making Things Come Good: Aborigines and Miners at Argyle*. PhD thesis. Sydney: Macquarie Uni.
- Elias, D, 2001a. *Golden Dreams: People, Place and Mining in the Tanami Desert*. PhD thesis. Canberra: ANU.
- , 2001b. 'Jukurrpa – Golden Dreams', in McCalman, I, Cook, A & Reeves, A, (eds) *Gold: Forgotten Histories and Lost Objects of Australia*, pp. 207-224 (Cambridge Uni Press: Cambridge).
- , 2007. 'The Measure of Dreams', in Weiner, J & Glaskin, K (eds), *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*, Asia-Pacific Environment Monograph 3 (ANU Press: Canberra). Available <<http://epress.anu.edu.au/?p=99961>> 27 Jun 2008, 13 Apr 2013.
- ERA, 2009. Energy Resources of Australia, *Timeline of the development of ERA's Ranger and Jabiluka deposits*. Available <<http://www.energyres.com.au/whoweare/2312.asp>> 26 Sep 2009.
- Environmental Resources Management, 2010. *Mining Community Development Agreements – Practical Experiences and Field Studies*, Report to the World Bank, Washington. Available <http://siteresources.worldbank.org/INTEXTINDWOM/Resources/CDA_Report_FINAL.pdf> Oct 2012.
- FaHCSIA, 2009. Department of Families, Housing, Communities Services and Indigenous Affairs, *Optimising Benefits from Native Title Agreements*, Native Title Discussion Paper. Available <<http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/publications-articles/land-native-title/native-title-discussion-paper-publication?HTML>> 27 Jun 2012.
- , 2011. *Annual Report 2010-2011, Part 4: Financial Statements of the Aboriginal Benefits Account for the Year Ended 30 June 2011*. Canberra: Australian Government. Available <<http://resources.fahcsia.gov.au/annualreport/2011/docs/ABA-Financials.pdf>> 10 Apr 2012.
- French, RS, 1996. 'Pathways to Agreements', in Meyers, GD (ed), *The Way Forward: Collaboration and Cooperation 'in country': Proceedings of the Indigenous Land Use Agreements Conference, Darwin, 26-29 Sep 1995*. 2nd edn (NNTT: Perth).
- GAC, 2009. Gundjeihmi Aboriginal Corporation, *A History of Duress*, A GAC Research Project. Available <<http://www.mirarr.net/duress1.htm>> 13 Dec 2010.

- Gemco, 2006. 'Renewal Mining Agreement signed', Press release. Available <<http://www.gemco.com.au/content/view/128/99/>> 11 Nov 2007.
- Granites Agreement, 1983. 'Agreement between the Central Land Council and North Flinders Mines Ltd over The Granites project'. Confidential agreement made under the Land Rights Act.
- GMAAAC, 2010. Granites Mine Affected Area Aboriginal Corporation Rule Book. Available <<http://www.oric.gov.au/document.aspx?concernID=101195>> 11 Sept 2011.
- Hampton, K & Hayes, R, 1998, *Challenging Pathways*. Paper presented to '2nd National Indigenous People's Training Conference', 9-12 Mar 1998. Surfers Paradise, Queensland.
- Hampton, K & Snowdon, W, 2008. 'Yuendumu Pool Officially Opened', Joint Ministerial Press Release, 27 Oct 2008.
- Harvey, B, 2002. 'Mining-Indigenous Agreement Making: A Global Context'. Speech to Institute of Postcolonial Studies.
- , 2004. 'Rio Tinto's agreement making in Australia in a context of globalisation', in Langton, M, Palmer, L, Tehan, M & Shain, K (eds) *Honour Among Nations?: Treaties and Agreements with Indigenous People*, pp. 237-247 (Melbourne Uni Press: Melbourne).
- Hawke, S & Gallagher, M. 1989. *Noonkanbah: Whose Land, Whose Law?* (Fremantle Arts Centre Press: Fremantle).
- Hooke, M, 2004. *Concluding Remarks*. 'Inaugural Global Sustainable Development Conference: Partnerships and Pathways to Implementation', Minerals Council of Australia, Melbourne, 25-29 Oct 2004. Available <http://www.minerals.org.au/_data/assets/pdf_file/0010/5977/10-ConcludingComments.pdf> 10 Nov 2007.
- Horne, N, 2007. 'A chronology of Northern Territory constitutional and statehood milestones 1825–2007', Parliament of Australia Chronologies Online Politics and Public Administration Section, Available <<http://www.aph.gov.au/library/Pubs/online/index.htm>> 27 Apr 2009.
- Howitt, R, 1991. 'Aborigines and Gold Mining in Central Australia', in Connell, J & Howitt, R (eds) *Mining and Indigenous Peoples in Australasia*, pp. 119-137 (Sydney Uni Press: Sydney).
- , 2001. *Rethinking Resource Management: Justice, Sustainability and Indigenous Peoples* (Routledge: London).
- Humphreys, D, 2000. Rio Tinto, *Mining as a Sustainable Economic Activity*, Paper presented to an informal seminar on the mining and metals industry, OECD, 9 Feb 2000, Paris.
- Hunt, 2005. *Capacity Development in the International Development Context: Implications for Indigenous Australia*, Discussion Paper. 278, Canberra: Centre for Economic

- Policy Research, ANU. Available <<http://caepr.anu.edu.au/publications/discussion.php>> 4 Jun 2012.
- ICMM, 2006. International Council of Mining and Metallurgy, 'Draft Position Statement: Mining and Indigenous Peoples'. London: ICMM.
- IIED, 2002. International Institute for Environment and Development, *Breaking New Ground*. Report of the Mining, Minerals, and Sustainable Development Project, May 2002, London: Earthscan Publications.
- Indigenous Studies Program [on-line database], 'Agreements Treaties and Negotiated Settlements Agreements'. Melbourne: Melbourne Uni. Available <<http://www.atns.net.au/default.asp>> Nov 2007.
- Ireland, T, 1996. *Exploring for Gold on Aboriginal Land in the Northern Territory*, Paper presented at 'MCA 3rd International and 21st Annual Environmental Workshop: Building International Partnerships in Environmental Management for the Minerals Industry', 14-18 Oct 1996, Newcastle.
- ISS, 2001. Indigenous Support Services & ACIL Consulting Pty Ltd, *Agreements between Mining Companies and Indigenous Communities*, Report to the Australian Minerals and Energy Environment Foundation, Dec 2001. Available <www.icmm.com/document/1131> 17 Mar 2008.
- Jagger, D. 2011. *The Capacity for Community Development to Improve Conditions in Australian Aboriginal Communities: An Anthropological Analysis*. MPhil thesis. Canberra: Australian National University.
- Janganpa, 1992. *Newsletter of Janganpa Association*, 2, Feb 1992. Alice Springs.
- 2010. Rule Book. Available <<http://www.oric.gov.au/document.aspx?concernID=100246>> 11 Sep 2011.
- 2011. Annual Report. Available <<http://www.oric.gov.au/document.aspx?concernID=100246>> 11 Sep 2011.
- JKTech 2009. The University of Queensland website. Available <<http://www.jktech.com.au/The-Company/JuliusKruttschnitt.pdf>> 26 Jan 2009.
- Jones, TG, 1987. *Pegging the Northern Territory: The History of Mining in the Northern Territory of Australia, 1873-1946* (Northern Territory Government: Darwin).
- Kelly, L, 2011. '2010 Report on the CLC Community Development Program', Jul 2011.
- , 2012. '2011 Report on the CLC Community Development Program', Jul 2012.
- Kesteven, S, 1983. 'The Effects on Aboriginal Communities of Moneys paid out under the Ranger and Naborlek Agreements', in Peterson, N & Langton, M (eds) *Aborigines, Land and Land Rights*. Canberra: Aust. Inst of Ab Studies.
- Kirby, R. 1999. 'Speech by Justice Kirby'. Available <http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_castan.htm> 18 Mar 2010.

- Kurra, 2010. Kurra Aboriginal Association, Book of Rules.
- , 2011. Financial Report.
- Langton, M, Mazel, O, Palmer, L, Shain, K & Tehan, K (eds) 2006. *Settling with Indigenous People: Modern Treaty and Agreement-Making* (Federation Press: Annandale).
- Langton, M & Palmer, L, 2003, 'Modern Agreement Making and Indigenous People in Australia: Issues and Trends', 8/1 *Australian Indigenous Law Reporter* 1-31. Available <<http://www.austlii.edu.au/au/journals/AILR/2003/1.html#Heading25>> 10 Feb 2008.
- Langton, M, Tehan, M & Palmer, L, 2004. 'Introduction', in Langton, M, Palmer, L, Tehan, M & Shain, K (eds) *Honour Among Nations?: Treaties and Agreements with Indigenous People*, pp. 1-26 (Melbourne Uni Press: Melbourne).
- Legislative Assembly of the Northern Territory, 1999. 'History of the Northern Territory Parliament'. Available <<http://www.nt.gov.au/lant/about-parliament/history-of-nt-parliament.shtml>> 19 Aug 2012.
- Long, S & Memmott, P, 2007. *Aboriginal mobility and the sustainability of communities: Case studies from north-west Queensland and eastern Northern Territory*. Working Paper Series 5, Desert Knowledge, CRC, Alice Springs.
- Madigan, C, 1944. *Central Australia* (Oxford Uni Press: Melbourne).
- Martin, D, 1995. *Money, Business and Culture: Issues for Aboriginal Economic Policy*. Discussion Paper 101, Jun 2006. Canberra: Centre for Economic Policy Research, ANU. Available <http://www.anu.edu.au/caepr/Publications/DP/1991_DP101.pdf> 4 Jun 2012.
- , 1998. 'Deal of the Century? A Case Study from the Pasminco Century Project', 4/11 *Indigenous Law Bulletin*. Available <<http://www.austlii.edu.au/au/journals/ILB/1998/34.html>> 11 Nov 2007.
- , 2005. 'Governance, Cultural Appropriateness and Accountability' in Austin-Broos, D & Macdonald, G (eds) *Culture, Economy and Governance in Aboriginal Australia* (Uni of Sydney Press: Sydney).
- Mazel, O, 2006. 'Returning parna wiru: Restitution of the Maralinga Lands to traditional owners in South Australia', in Langton, M, Mazel, O, Palmer, L, Shain, K & Tehan, M (eds) *Settling with Indigenous people: Modern Treaty and Agreement-making*, (pp.159-181 Federation Press: Annandale, NSW).
- MCA, 2011. Minerals Council of Australia, *2011-2012 Pre-Budget Submission*, Feb 2011. Available <http://www.mineralscouncil.com.au/file_upload/files/submissions/MCA_Pre%20Budget_FINAL.pdf> 20 Nov 2011.
- MCA, 2007. Minerals Council of Australia, *Australian Minerals Industry Indigenous Relations Statement*, Available <<http://www.minerals.org.au/environment/Indigenousengagement>> 10 Feb 2008.

- McIntyre, G, 2003. *Native title rights after Yorta Yorta*, 'Paper presented at the National Native Title Conference 2003', AIATSIS, Canberra. Available <<http://www.aiatsis.gov.au/ntru/nativetitleconference/conf2003/papers/mcintyre.pdf>> 21 Oct 2012.
- Meggitt, MJ, 1984. *Desert People*. 3rd edn (Angus and Robertson Publishers: Melbourne).
- Memmott, P, & Kelleher, P, 1995. *Social Impact of the proposed Century Project on the Aboriginal People of Normanton and surrounds*. A Study carried out for the Bynoe Community Advancement Co-operative Society Ltd, Normanton, commissioned by Century Zince Ltd through Kinhill Cameron McNamara Pty Ltd, Brisbane.
- Meyers, GD (ed) 1996. *The Way Forward: Collaboration and Cooperation 'in country': Proceedings of the Indigenous Land Use Agreements Conference 26-29 Sep 1995 Darwin*. 2nd edn (NNTT: Perth).
- MiningNews, 2007. *Thor Inks key Mining Agreement*, MiningNews Premium, <<http://www.miningnewspremium.net/storyview.asp?StoryID=120901>> 17 Nov 2007.
- Munday, 2012. *Interview with Tracker Tilmouth*. Available <<http://walshmedia.realviewtechnologies.com/?iid=63197&startpage=page0000031>> 26 Jan 2013.
- Musharbash, Y, 2001. 'Yuendumu CDEP: The Warlpiri work ethic and Kardiya staff turnover' in Morphy, F & Sanders, WG (eds) *The Indigenous Welfare Economy and the CDEP Scheme*, Research Monograph, Centre for Aboriginal Economic Policy Research (ANU: Canberra).
- Nash, D, 2008. Website, *Whitlock tracks 1941-42*. Available <<http://www.anu.edu.au/linguistics/nash/kt/Whitlock.html>> 7 Apr 2009 and <<http://www.wv2roll.gov.au/script/veteran.asp?ServiceID=A&VeteranID=717615>> 7 Apr 2009.
- National Museum Australia, 2009. 'Collaborating for Indigenous Rights', website available <<http://indigenousrights.net.au/section.asp?sID=8>> 3 Mar 2009.
- Neate, G, 2003. *Negotiating Native Title: Making Enduring Agreements for a Sustainable Industry*, Paper presented at 'MCA Conference on Value through Sustainable Development', Brisbane, 10-14 Nov 2003. Available <<http://www.nntt.gov.au/metacard/files/negotiating/making%20enduring%20agreements.pdf>> 10 Nov 2007.
- , 2004. *Partnerships for the pathways ahead: Negotiating native title agreements for a sustainable industry*, Paper presented to 'MCA Inaugural Global Sustainable Development Conference: Partnerships and Pathways to Implementation', Melbourne, 25-29 Oct 2004. Available <http://www.minerals.org.au/_data/assets/pdf_file/0011/5987/2B-2NeateGraeme.pdf> 10 Nov 2007.
- , 2006a. *Native Title Agreement Making: Law and Practice and Learning from Experience*, Paper presented to '13th Annual Conference', AMPLA, Melbourne, 18-21 Oct 2006. Available <<http://www.nntt.gov.au/metacard/files/AMPLA/AMPLA%202006.pdf>> 6 Feb 2008.
- , 2006b. *Sustainable Agreement Making: Options, Obstacles and Opportunities*, Paper presented to 'Sustainable Development Conference: Operating for Enduring

Value', MCA, Perth, 23-27 Oct 2006. Available <http://www.nntt.gov.au/metacard/files/mca_conf/MCA%20Sustainability%20conference.pdf> 6 Feb 2008.

———, 2007. *Native Title and Beyond: Balancing Land Access and Socio Economic Outcomes*, Paper presented to 'Sustainable Development Conference: Climate for Change', MCA, Cairns, 29 Oct-2 Nov 2007, Available <http://www.nntt.gov.au/metacard/files/mca_conf/MCA%20Sustainable%20Development%202007.pdf> 6 Feb 2008.

NFM, 1984. North Flinders Mines Ltd *Annual Report to Shareholders 1983-1984*, Adelaide.

———, 1985. *Annual Report to Shareholders 1984-1985*, Adelaide.

———, 1987. *Annual Report to Shareholders 1986-1987*, Adelaide.

———, 1988. *Annual Report to Shareholders 1987-1988*, Adelaide.

———, 1990. *Annual Report to Shareholders 1989-1990*, Adelaide.

NLC, 2006. Northern Land Council, *Annual Report 2005-2006*, (Aust Govt Pub Serv: Canberra).

NTED, 1977. Northern Territory Education Department, *Stories from Lajamanu*. Darwin: Dept of Ed, NT Division.

NT News 1983, Northern Territory News, *CLC Wants to Negotiate: Stalemate May End*. 25 Feb 1983, Darwin.

NT Revenue Office, 2011. Mineral Royalty Act Overview. Available <<http://www.treasury.nt.gov.au/TaxesRoyaltiesAndGrants/Royalties/Pages/Mineral-Royalty.aspx>> 27 Aug 2009.

O'Faircheallaigh, C, 1995a. *Mineral Development Agreements Negotiated by Aboriginal Communities in the 1990s*, Discussion Paper 85. Canberra: Centre for Economic Policy Research, ANU.

———, 1995b. *Negotiating between Mining Companies and Aboriginal Communities: Process and Structure*, Discussion Paper 86. Canberra: Centre for Economic Policy Research, ANU.

———, 2000. 'Negotiating major project agreements: the 'Cape York Model'', AIATSIS Research Discussion Paper 11, Canberra: Ab Studies Press.

———, 2002a. 'Implementation: The Forgotten Dimension of Agreement-Making in Australia and Canada', *5/20 Indigenous Law Bulletin*, 14-18. Available <<http://www.austlii.edu.au/cgi-in/sinodisp/au/journals/ILB/2002/60.html?query=o'faircheallaigh%20and%202002>> 13 Oct 2007.

———, 2002b. *A New Approach to Policy Evaluation: Mining and Indigenous People*, (Ashgate: Burlington).

———, 2003a. *Implementing agreements between Indigenous peoples and resource developers in Australia and Canada*, Ab Politics and Public Sector Managt Research

- Paper 13, Griffith Uni: Brisbane, Available <<http://www.griffith.edu.au/school/gbs/ppp/research/paper13.pdf>> 12 Feb 2008.
- , 2003b. *Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples*, Paper presented to 'Native Title Conference: Native title on the Ground', Alice Springs 3-5 Jun 2003, <<http://ntru.aiatsis.gov.au/conf2003/papers/ciaran.pdf>> 27 Dec 2007.
- , 2004. 'Evaluating Agreements between Indigenous Peoples and Resource Developers', in Langton, M, Palmer, L, Tehan, M & Shain, K (eds), *Honour Among Nations?: Treaties and Agreements with Indigenous People*, pp. 303-328 (Melbourne Uni Press: Melbourne).
- OEA, 2008. Office of Evaluation and Audit, *Performance Audit of the Aboriginal Benefits Account*, An Audit of the Office of Evaluation and Audit, Indigenous Programs, Nov 2008, Canberra: Aust Govt.
- Oxfam 2002. 'Submission by Oxfam Community Aid Abroad to HORSCATSIA Inquiry into Capacity Building in Indigenous Communities'.
- , 2012. Website. Available <<https://www.oxfam.org.au/explore/indigenous-australia/our-aboriginal-and-torres-strait-islander-peoples-program/>> 25 Dec 2012.
- Peterson, N, 1993. 'Demand Sharing: Reciprocity and the Pressure for Generosity Among Foragers', *American Anthropologist*, Dec 1993, 95, 4, pp. 860-874.
- Peterson, N & Matsuyama, T, 1991. *Cash Commoditisation Authenticity*, National Museum of Ethnology, Osaka.
- Peterson, N, McConvell, P, Wild, S & Hagen, R, 1978. *A Claim to Areas of Traditional Land by Warlpiri and Kartangarurru-Kurintji*. Report to the CLC: Alice Springs.
- Petroleum Exploration Society of Australia, 2004. 'National Newsletter of the Petroleum Association' 70 Jun/Jul 2004. Available <http://www.pesa.com.au/publications/pesa_news/june_04/pesanews_7022.html> 23 Oct 2012.
- Posgold, 1993. *Annual Report to Shareholders 1992-1993*. Adelaide.
- Queensland Government, 2009. 'Archives Companies Index 1863 – 1959'. Available <http://www.archives.qld.gov.au/downloads/Indexes/companies/Companies%201_A.pdf> 26 Jan 2009.
- Ross, D, 2004. *Beyond the Partnership Rhetoric: Aboriginal Rights and Realities*, Paper presented to 'Inaugural Global Sustainable Development Conference: Partnerships and Pathways to Implementation', MCA, Melbourne, 25-29 Oct 2004. Available <<http://www.clc.org.au/media/speeches/Beyond%20the%20Partnership%20Rhetoric%20.pdf>> 17 Nov 2007.
- Rowse, T, 1998. *White flour, White Power: From Rations to Citizenship in Central Australia* (Cambridge Uni Press: Cambridge).

- Sarker, T & Bobongie, G, 2007. *Survey of Aboriginal Former Employees and Trainees of Argyle Diamond Mine*, Report to Argyle Diamond Mine. Centre for Social Responsibility in Mining, Brisbane: Uni of Queensland.
- Scambray, B, 2007. *My Country, Mine Country: Indigenous People, Mining and Development Contestation in Remote Australia*, PhD thesis, Canberra: ANU.
- Schwab, J, 2006. *Final Report to the Warlpiri Education and Training Trust Advisory Committee: Options for Education and Training*, Report to the CLC. Available <http://caepr.anu.edu.au/sites/default/files/Publications/topical/Schwab_WETT.pdf> 7 Jun 2012.
- SEA, 1985. Social and Ecological Assessment Pty Ltd, *Assessment of the Potential Social Impacts of The Granites Goldmine Proposal*, Report to NFM, Jul 1985, Kent Town, Sth Aust.
- Solomon, F, Katz, E & Lovel, R, 2007. *The Social Dimensions of Mining in Australia: Understanding the Minerals Industry as a Social Landscape*, Report, CSIRO Minerals Division. Available <<http://www.csiro.au/resources/MiningSocialDimensions.html>> 14 Feb 2008.
- Stead, J, 1981. *Some effects NFM's operations will have on Aborigines: Working paper for negotiations*, Report to CLC, Alice Springs.
- Stewart, G, 1991. 'Speech by Geoff Stewart, Chairman NFM Ltd', Sep 1991.
- Stoll, J, 1995. 'Traditional Aboriginal Owner input into Rehabilitation and Mine-site Closures in the Tanami Desert'. Paper presented to 20th Annual Environmental Workshop Managing Environmental Impacts, Policy & Practice: Darwin, NT: 2-6 Oct 1995.
- Stoll, J, Barnes, R, & Fowler, B, 2004, *The Tanami Biodiversity Strategy - Aboriginal and Industry Partnership in Biodiversity and Conservation*, Paper presented to 'MCA Sustainable Development Conference 2005: People, Place, Prosperity'.
- Surbiton Associates 2007, *Australian Gold Production (troy ounces) of Primary Producers Ranked 2001-02 to 2006-07*, Australian Quarterly Gold Review.
- Tilmouth, LB, 1998. *Aboriginal Employment in the Mining Industry: The Tanami Experience*, Speech by the Director CLC, Sep 1998.
- Tiplady, T & Barclay, MA, 2007. *Indigenous Employment: Report on the Minerals Industry Indigenous Employment Research Project*, Centre for Social Responsibility in Mining, University of Queensland, Brisbane, Available <http://www.csr.uq.edu.au/docs/CSRM%20Report_FINAL%20TO%20PRINT_singles.pdf> 28 Feb 2008.
- Toohy, 1979. *Report on the Warlpiri Land Claim*. Aboriginal Land Commissioner, Aust Gov't Pub Serv: Canberra.

- UniSA, 2009. University of South Australia, 'Bob Hawke Prime Ministerial Library', Available <<http://www.library.unisa.edu.au/bhpm/anniversary/introduction.asp>> 10 Apr 2009.
- Vaazon-Morel, P (ed) 1995. *Warlpiri Women's Voices* (IAD Press: Alice Springs).
- Waddell, D, 2006. *Governor General to Officially Opens Tanami's Coyote Gold Mine*, media release, Tanami Gold Ltd. <Available <http://www.tanami.com.au/images/documents/MediaReleaseUpdateGovernorGeneral150506.pdf>> 17 Nov 2007.
- WDNWPT, n.d. Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation. *Sharing Our Story*, Alice Springs.
- Weidenbach, K, 2008. *Rock Star: The Story of Reg Sprigg – an Outback Legend* (East St Publications: Adelaide).
- Woodward, AE, 1974. *Aboriginal Land Rights Commission: Second Report*, Apr 1974 (Aust Govt Pub Serv: Canberra).
- World Vision, 2009. 'Australian Program Strategic Plan'. World Vision Australia 2009-2011. Available <http://www.worldvision.com.au/Libraries/Australia_Program_Strategic_Plan/Australia_Program_Strategic_Plan_2009-2011.pdf> 20 July 2012.
- Wyatt, B, 2005. *Agreement – the Key to Sharing Australia's Wealth*, Paper presented to 'Native Title Conference - The Human Face of Native Title', AIATSIS, Coffs Harbour, 1-3 Jun 2005. Available <<http://ntru.aiatsis.gov.au/conf2005/papers/WyattB.pdf>> 4 Feb 2008.
- WYDAC, 2012. Warlpiri Youth Development Aboriginal Corporation, Website. Available <<http://mttheo.org/home/>> Jan 2013.

APPENDIX 1

Changes of ownership of The Granites Mine

This appendix traces the ownership of The Granites over the period from the commencement of the Agreement in 1983 to 2011.

The research identified three distinct corporate phases of ownership that operated the mine including NFM, Normandy and Newmont. The change in ownership from NFM to Normandy, was incremental rather than occurring at a neatly defined point in time. A close examination of the convoluted dealings and sequences of events was necessary in order to identify the timing of the changes in ownership and effective operational control. The results of this examination are presented in this Appendix.

The actions and actions described here were used to create the Chronology that is found in Chapter 4. The three phases of mine ownership provided a fundamental framework for examining differing company responses to implementation particularly with respect to Aboriginal Employment.

NFM in control – 1983 to 1993

North Flinders Mines NL was founded in 1969 by Adelaide businessman, Geoff Stewart, to undertake mineral exploration in the North Flinders Ranges in South Australia. In the mid-70s its focus shifted from South Australia to the Northern Territory where mining tenements over the historical Granites goldfields were obtained from elderly prospectors. The Granites Agreement signed in 1983 permitted access to these tenements for exploration and mineral development.

As part of its survival strategy in the late seventies, the nascent NFM issued a large package of options, which as the company became more valuable, were converted to shares. This created a situation whereby that single package of shares represented a substantial portion of NFM's issued capital and ownership of this share package brought control of the company. The parcel of shares was to change hands five times between 1984 and 1990 (Interview TI 2008).

The first takeover of NFM occurred only one year following the signing The Granites Agreement in 1983. With the encouraging results from the initial exploration, Moonie Oil

Company Ltd (Moonie), a major corporate shareholder of NFM which held 37% of NFM, wanted full acquisition. Moonie wanted a stronger interest in “one of Australia's most promising gold prospects, known as The Granites” (Financial Times 1984:22).¹⁶⁶ Moonie used a British registered subsidiary, Paringa Mining and Exploration Company PLC (Paringa), as the corporate vehicle for the bid.

Following the successful takeover in March 1985, Peter Mitchell, Chairman of both Moonie Oil and Paringa, became a NFM director and replaced Geoff Stewart as Chairman. An uneasy but workable leadership of the company ensued over the next three years, up until February 1988 (Interview JD 2008).

When The Granites mill was commissioned in August 1986 and it operated substantially above design capacity.¹⁶⁷ Good financial results were recorded in the financial year ending of June 1988, with NFM reporting sales of 87,000 ounces of gold and an increased profit of \$24 million (NFM 1988:1, 23).

In 1988, the Australian Gas Light Company (AGL), a NSW-based electricity and gas retailer gained control of NFM more by default than design. AGL was targeting strategic petroleum assets such as those held by Moonie. Through a takeover of Moonie, AGL gained 54% of Paringa and control of NFM (SMH 1988).¹⁶⁸ Despite the good exploration results and progress with mining AGL did not like owning NFM and NFM did not like being owned by AGL (Interview JD 2008). The Granites did not fit neatly with AGL's strategic objectives that were firmly focused in the petroleum sector.

On 9 September 1988, AGL sold Paringa to the Hartogen Group, owned by Sydney businessman Pat Burke, (through its subsidiary Genoa). Hartogen was the highest bidder offering more than twice that of other contenders (Smith 1988; SMH 1988).

¹⁶⁶ Based on the drilling results to the end 1984, NFM announced reserves at the Bullakitchie and Shoe, including open cut reserves to a depth of 60 metres, of 718,000 tonnes at a grade of 5.4 grams a tonne and underground reserves of 1.19 million tonnes at 9.6 grams a tonne – a very promising result. Further exploration drilling at the two main prospects discovered the East Bullakitchie high grade shoot, increasing total reserves to 1.9 million tonnes at overall average of 8 grams a tonnes (or 190,000 troy ounces of gold) worth around \$220 million dollars at the time (NFM 1994).

¹⁶⁷ In its first 44 weeks, to the end of Jun 1987, the mine performed above expectations with output reaching 70,769 ounces of gold from the treatment of only 329,486 tonnes of underground and open cut ore. A strong profit was reported, \$18 million, from gross revenue of \$41.87 million, an average realised gold price for the group of \$591 an ounce or average grade of 6.6 grams per tonne (NFM 1987).

¹⁶⁸ This was through an 11.7% direct holding in Paringa plus the 42.3% gained through its new subsidiary Moonie.

Questions were raised immediately over the sale. There was uncertainty over the bid arising from Paringa's British registration, specifically, whether the offer was subject to the Australian takeover code. A remarkable feature of the deal was that effective ownership of NFM was obtained through a 10% deposit, with the remainder to be paid on the completion of the sale (Reuters 1988). This gave Hartogen the opportunity to use cash flow from The Granites to fund the remainder of the purchase (Howitt 1991:134). Paringa's British registration apparently enabled such an approach that would otherwise be contrary to the Australian takeover code.

Stewart, still Managing Director, was clearly not impressed with the prospect of Hartogen ownership and was desperate to regain corporate control of NFM. He challenged the validity of the sale of the Paringa shares and fought Hartogen's attempts to gain seats on NFM's board. In October 1988, disagreements were heard by the Supreme Court of South Australia where NFM and Hartogen argued over whether Hartogen was entitled to call an extraordinary meeting of shareholders, which would see Hartogen representatives elected to the NFM board and gain effective control. Stewart lost, NFM shareholders met, and Pat Burke was elected Chairman of NFM. Although Stewart remained on the NFM Board he was no longer Deputy Chairman nor Managing Director. John den Dryver who had joined the company in 1984 as Manager Operations was appointed Managing Director.¹⁶⁹

One of Burke's first announcements as NFM Chairman was the discovery of the DBS deposits:

We [Hartogen] bought into the company [NFM] on the basis that 5,000 square kilometres of exploration area had been allocated to it [and] it defied logic that they had lucked on the only deposit of gold in that area (Deans 1988).

The comments must have peeved Stewart. His perspective of the gold discoveries was nothing to do with luck but rather a triumph of logic and soundly based assessments undertaken by the geological team he had assembled. The 'greenfields' discoveries at DBS followed the signing of NFM's first exploration agreement with the CLC in March 1988, a deal Stewart took much credit in securing (Stewart 1991). It was the first exploration agreement under the amended mining provisions of the Land Rights Act. Stewart and his

¹⁶⁹ John den Dryver remained Operations Manager for many years. He survived the takeover by Normandy progressing through the ranks into senior management positions. At the time of writing he was a Director of Adelaide Resources, a junior explorer active in Tennant Creek region of the Northern Territory.

team felt they had worked hard to make it happen (Interview GS 2008).¹⁷⁰ Exploration under this Agreement discovered the prospective ground west of The Granites that Burke was spruiking. Eighteen months on from signing the exploration agreement, as the exploration successes was being realised, Stewart's control of the company he created was slipping.¹⁷¹

Hartogen's reign was turbulent but ultimately short lived. The price of gold dropped dramatically at the end of 1988.¹⁷² Hartogen was having difficulties meeting the sale price and even struggled with raising the \$13.7 million deposit to secure the purchase (Howitt 1991:132). Despite extensions by AGL to the settlement deadline, Hartogen was unable to pay the remaining part of the purchase price. On 26 May 1989 a provisional liquidator was appointed and trading of Hartogen group companies was suspended (Reuter 1989).

The default on the purchase meant AGL retained its stake in Paringa. In June 1989, AGL dismissed the Hartogen representatives from the NFM Board to take back control of NFM but it still wanted sell its stake (Hextall 1989a). The financial reports for NFM in 1989 showed a \$15.75 million net annual profit, down from the \$23.33 million earned in 1987-1988. The decline to the lowest level in three years reflected a year of corporate upheaval that came at substantial cost and left the company's future ownership in doubt (Hextall 1989b).¹⁷³

Despite the corporate upheavals, the exploration and mining operations at The Granites were progressing well and NFM was able to sustain the losses. A mine expansion lifted annual gold production in 1989 to over 100,000 ounces with the advent of production from the DBS (Hextall 1989c).

¹⁷⁰ The Part IV mining provisions of the Land Rights Act were amended in 1987. The amendments removed the consent to mining and codified the consultation and negotiating process for exploration. Time limits on negotiations for exploration were introduced. Consent was deemed to be given if no decision was made within the negotiating period, which was an initial 12-month period. The negotiating period could be extended by the federal Minister for Aboriginal Affairs on application by the land council.

¹⁷¹ It was also the CLC's first exploration agreement under the Land Rights Act. At the signing ceremony on small hill called *Wirla* five kms north of The Granites, Stewart pointed toward the west and told the CLC Chairman, Wenten Rubunja (deceased) "my geologists tell me there is gold out there in those hills" (Interview GS 2008).

¹⁷² Gold peaked at \$690 during 1988 and during the year to \$500 by beginning of 1989.

¹⁷³ A \$12.16 million extraordinary loss reported for the year was made up of over \$2 million for the court case and the remaining \$10 million from losses from the write-down value of NFM's 21% holding in Paringa and its 17% interest in ADL.

With such promising results, more than 20 companies expressed interest in the purchase of AGL's Paringa shares (Howitt 1991:134). The successful bid ultimately came from Australian Consolidated Minerals Ltd (ACM) through its gold subsidiary ACM Gold Pty Ltd.¹⁷⁴ This was seen as a "triumph for North Flinders, because ACM was committed to continued exploration and expanded production" (Howitt 1991:135). Analysts also pinned ACM Gold's future on its 49.6% of NFM which was said to be vital to ACM Gold's long-term reserves.

By June 1991, however, the ACM Gold share price had fallen placing "the former glamour stock among the worst-performing gold issues" (The Age 1991). A result was that ACM became an attractive takeover target, although its complex structure and diverse commodity portfolio made it a "rather odd looking entity, with a variety of direct and indirect interests in a number of quite attractive assets" (Burge 1991). As such it was a complex proposition for any single corporation to absorb ACM.

In July 1991, Hugh Morgan, Managing Director, Western Mining Corporation (WMC), one of Australia's largest mining companies, and Robert de Crespigny, Chairman of Normandy Poseidon, collaborated over a scheme to takeover ACM. Once WMC and Normandy (together through a special company set up for this purpose) acquired the requisite number of shares to gain ownership of ACM, its assets would be divided between the two buyers. WMC wanted to enhance its position as one of the world's largest nickel producers through ACM's 50% stake in the Mt Keith nickel project in Western Australia. Normandy wanted exposure to base metals through ACM's 45% interest in the Scuddles project and, moreover, was particularly interested in ACM's gold assets, particularly its stake in NFM (Bartholomeusz 1991).

Although ACM resisted the offer, by 11 October 1991 the collaborators gained effective ownership by acquiring over 90% of its shares. As a result, in that month, de Crespigny, along with two of his Normandy executives replaced the incumbent ACM representatives on the six-member NFM board. De Crespigny was duly elected Chairman (NFM 1992:41).

De Crespigny was a rising mining entrepreneur. He was a chartered accountant by profession, not a background typically leading a large mining group. His prominence arose

¹⁷⁴ ACM Gold was 45.6% owned by ACM, a diversified miner based in Western Australia. It paid \$67.7 million (\$1.53 a share) for AGL's parcel of Paringa shares (Howitt 1991:134).

mainly from corporate acquisitions and takeovers, as some in mining companies built on exploration discoveries and development would disparagingly point out. He was, however, very successful and became influential, introducing a level of social refinement not previously associated with the Australian mining industry. For instance he received the Order of the Companion of Australia in 2002 “for service to the mining industry, to business, and to the community in the areas of cultural preservation and education.” This related to his service to the National Gallery of Australia and the South Australian Museum. As well, de Crespigny was recognised for improving relations between Aboriginal people and miners. In 1991, he became a founding member of the Council for Aboriginal Reconciliation and chaired its Mining Committee, which included a previous Chairman of the CLC, the late Wenten Rubunja, and the then NLC Chair, the late Galarrwuy Yunupingu, another highly respected and influential Aboriginal leader. The committee was aimed at “improving consultation and understanding between the mining industry and Aboriginal people” (Council for Aboriginal Reconciliation 1992).

De Crespigny promised independence for NFM (Hextall 1991). At least at the initial phase following taking control, Normandy’s influence was exerted incrementally. Having survived the Hartogen takeover, Stewart had resumed his Deputy Chairman role and regained his role as Managing Director (NFM 1992:41). In April 1992, ACM Gold had merged with the Normandy subsidiary, Poseidon Gold and changed its name to Posgold. NFM became an increasingly important asset to Normandy such that in 1993 it accounted for nearly 20% of Posgold’s profit (Posgold 1993:58). In a sign of increasing control, the 1992 NFM Annual Report sported the NFM logo altered slightly to incorporate Normandy’s insignia.¹⁷⁵

If it was ever de Crespigny’s intention to work collaboratively with an independent NFM, then the clash of personalities and approaches was never going to allow this to happen. De Crespigny and Stewart did not get on well (Interviews JD 2008). De Crespigny was NFM Chairman until January 1993, when he passed the role to Bruce Kay Managing Director of Normandy (NFM 1993:42). By that time NFM had brought DBS into full production, including the high grade Callie deposit, which resulted in a 42% increase in gold production from the previous year (170,674 ounces) and gold sales worth \$83 million. The Callie open pit, in particular, contributed some 30% of the treatment plant ore feed for the year and was

¹⁷⁵ Normandy in France was where de Crespigny’s family heralded. The logo was a mounted medieval knight.

responsible for this substantial improvement in gold production for 1992-1993 (Posgold 1993:8).¹⁷⁶

At the 1993 NFM Annual General meeting, Stewart and the other co-founding Director (Wegener) were not re-elected as Directors of the Company. The 1994 Annual Report notes their “retirement” on 20 October 1993 and acknowledges their contribution to the company though 24 years of service (NFM 1994:42). Given Stewart’s personal and financial stake in the company and his continuity at its helm, the timing of his retirement was clearly not of his choosing. One report said “[h]e never made a secret of his unhappiness at being dumped from control of North Flinders Mines, the company he founded” (Australian 2002).¹⁷⁷

From this point onwards NFM Annual Reports adopted a Normandy mien and NFM was referred to as “a member of the Posgold Group”. The NFM registered office shifted to 100 Hutt St, Adelaide, which was Normandy’s head office (NFM 1995:34). At the same time NFM’s shareholder register was taken over by Normandy’s shareholder registry service provider (NFM 1995:33).

It is clear the influence of Stewart at the corporate level came to an end at this point. The total ‘Normandisation’ of NFM, however, was to always remain just out of reach because of an effective spoiling role by Stewart. As a substantial shareholder, Stewart remained diligent in reminding the Normandy-appointed NFM board of their legal responsibility to act in the best interests of NFM shareholders and that NFM’s best interests did not align automatically with Normandy’s interests.

Normandy years – 1994 to 2001

In December 1995, de Crespigny tried to consolidate his corporate empire through a four-way merger of the Normandy controlled companies. These included Normandy (the parent), Posgold, Gold Mines of Kalgoolie Ltd (GMK), which had a large share of the ‘super pit’ in Kalgoolie, and NFM. Such a merger would make Normandy the world's eighth largest gold producer (Grant Samuel 1995; Reuters 1995).

¹⁷⁶ There was an increase of 42% in year ending Jun 1993 over the previous year.

¹⁷⁷ With Stewart removed from the Board and management, de Crespigny may have felt he had garnered clear control of NFM. The reality was that Stewart became a belligerent shareholder and rallied a loyal band of shareholders to his cause. Together they influenced between 5% or 6% of the company’s shareholding and frustrated moves to consolidate NFM into the Normandy group.

The merger failed despite the recommendations of the Boards of all four companies based on their own and independent expert analysis to support the merger, as well as recommendations from stockbrokers and other consultants. One of the debilitating factors was a belligerent media campaign by Stewart. Contrary to the recommendations of the experts, in his opinion the offer drastically undervalued NFM (Interview GS 2008).

On 14 June 1996, Normandy, Posgold and GMK recommenced the merger process. Rather than pursue NFM through a scheme that required shareholder approval, Normandy announced a takeover offer for all of the shares in NFM it did not hold (Reuters 1996).

On 16 August 1996, the merger of Normandy, Posgold and GMK was secured with shareholders passing resolutions for the merger schemes to proceed (Normandy Mining 1997:2). The takeover of NFM, however, was not so smooth. The offer was extended three times but Normandy gained only 72.5% of NFM, insufficient for a full takeover (NFM 1996:2).

Stewart fought the takeover in every way he could. He accused Normandy of “using scare tactics” to gain acceptances. In an open letter he appealed to fellow shareholders to reject the Normandy offer saying “dividends will fall more than 36 per cent and holders will lose a direct exposure to the highly prospective Tanami Desert gold province in the Northern Territory” (Stewart 1996).

There was argument over whether large capital investment proposed for the Callie underground would reduce future operating profits.¹⁷⁸ Stewart criticised the NFM Board’s recommendation. He believed new developments would be funded through internally generated cash flow and a short-term bridging loan. Furthermore, “exploration of identified prospects in the Tanami will result in the discovery of additional mineable reserves at a rate greater than double the rate of mining” (Stewart 1996). On his estimates, Callie would lift annual gold output to 320,000 ounces from 1997 onwards (Askew 1996; Australian 1996).¹⁷⁹

¹⁷⁸ At NFM’s annual general meeting on 18 Oct 1996 the Chairman, Tony Palmer, told shareholders that NFM would need to spend \$40 million on a vertical hoisting shaft in order to mine the deeper parts of the Callie orebody and evaluation studies were underway (AP 1996).

¹⁷⁹ The other blockage to Normandy’s takeover came from French institutional investor Societe Generale. It was the next largest shareholder of NFM after Normandy with 12% of NFM shares and was holding out for a better offer (Australian 1996).

Normandy did receive further acceptances and gained 73.7% of NFM shares but turnover diminished. Over half of the outstanding shares were held by just three parties, Stewart, Societe Generale, and Bankers Trust (AP 1996). The NFM Board wrote to shareholders on 15 October 1996 with the message that holding on to such a small proportion of shares was not wise as they would be difficult to trade:

There have been articles in the press about the views of Mr Geoff Stewart, a former Director, who may have also written directly to you. Mr Stewart has not been involved as a Director or in the management of North Flinders for almost three years. During this three year period, in which North Flinders has been under Normandy's management, production has increased by 30 per cent, profits by 70 per cent and dividends by 60 per cent. Whilst Mr Stewart's contribution to the formation and development of North Flinders is unquestionable, we consider his somewhat simplistic development concepts unrealistic in that they overlook the requirement to establish ore reserves and to carry out proper evaluation, all of which involve considerable time and capital. Whilst the Directors have been actively promoting ongoing development of The Granites project, as demonstrated by recent results, they are also mindful that the ultimate objective is to optimise profit and value to shareholders, rather than merely maximise the short-term ounces produced (NFM 1996).

De Crespigny was more blunt when he said the value of NFM shares would drop and "people will be sitting on a wallowing investment", referring to those who refused to sell. Stewart's response was that "those shareholders who sold are absolute losers; NFM is still the jewel in the Normandy crown" (West Australian 1996). The offer closed on 18 December 1996 with Normandy finally obtaining 75% of NFM.

Over the next few years Normandy continued to buy shares through normal trading. By 1998 it had 78% and changed the company name to Normandy NFM Ltd (NFM 1998:18). The NFM logo disappeared with the name change, with the Normandy insignia adopted in *toto*. Profits were down over this period as the underground Callie mine was developed. The first stoping ore was produced in May 1998 (NFM 1998:6). Reliance on underground production reflected "a much higher capital expenditure environment and higher unit mining and millings costs" (NFM 1998:3).

In the year 2000-2001, The Granites reached a further record production of 420,836 ounces and a profit after tax of \$46.8 million, making The Granites operation the third largest gold

mine in Australia and Callie the largest underground gold producer at 302,000 ounces. The NFM share price rose to \$9.30 from the previous years' \$4.58 (NFM 2001).

Newmont takeover – 2002 to 2011

The gold price following the Normandy takeover was at historical lows as central banking institution sold down their gold stocks. Towards the end of 2001 that trend started to reverse. The gold price jumped US\$20 an ounce immediately following the attacks on the World Trade Centre in New York on 11 September 2001. With rising gold prices large global mining companies revived their interest in mergers and acquisitions (Reuters 2001).

Denver based gold mining company, Newmont, which was then the worlds' fifth largest, and South African global mining company, AngloGold, were two such companies interested in increasing their share of the world's gold production. AngloGold and Newmont competed for control of Normandy, which by that stage was Australia's largest gold producer, rated seventh in the world.

Bobby Godsell, Chief Executive Officer of AngloGold was the first to declare a takeover of Normandy at a presentation to fund managers in Sydney on 6 September 2001. Even though the offer was worth \$3.2 billion, Normandy rejected AngloGold's bid in November 2001 (AFT 2001).

Normandy executives were busy canvassing other bidders and rumours of a bid from Newmont pushed Normandy shares up. On 14 November 2001 Newmont delivered that offer, valuing Normandy at \$3.8 billion (AFT 2001).¹⁸⁰ Normandy recommended Newmont's offer, which was part of a larger merger with Canadian company Franco-Nevada Mining Corporation.¹⁸¹

The Australian newspaper reported that Godsell was "fuming ... and in no mood to talk to reporters". Anglo had spent almost two years negotiating with de Crespigny and had offered him a place on the board even possibly the role of Deputy Chairman (Australian 2001).

¹⁸⁰ Newmont offered 3.85 shares for every 100 Normandy, plus a five-cent bonus per share if it won acceptances for 90% of the stock. Its offer was valued at \$1.70 per share at its launch but then dropped to \$1.51 due to its declining share price (AFT 2001). Newmont's intention was the combined company would produce 8 million ounces of gold a year and have 97 million ounces of gold in reserve. The new Newmont would replace AngloGold as the world's largest gold producer (AP 2001).

¹⁸¹ Franco-Nevada already held 20% stake in Normandy which put Newmont's offer ahead of Anglo in terms of obtaining the majority of shares required for a takeover (AP 2001).

Desperate, Anglo increased its offer on 29 November 2001, which was in-turn matched by Newmont.¹⁸²

On 20 February 2002, Newmont announced it had acquired control of Normandy having finalised the purchased of a total of 79% of shares that evening. By the end of the month it had obtained over 90% of Normandy and moved to compulsorily acquire the remaining shareholding. The final cost was \$4.5 billion (ASX 2002; PR Newswire 2002). Normandy ceased trading on Australian Stock Exchange on 7 March 2002 (AP 2001; Australian Chronicle 2001; Reuters 2002; Gold Gazette 2002).¹⁸³

The takeover of Franco-Nevada was finalised and combined with the acquisition of Normandy, Newmont attained the position of the world's largest gold producer, controlling around eight million ounces of annual gold production (Centralian Advocate 2002).¹⁸⁴ The new Newmont had 22 mines on five continents and interests or participations in another eight gold operations.

De Crespigny had mixed emotions over selling and told reporters after the Normandy Annual General Meeting in November 2001 that:

I'm saddened because I started this company on my own...this is my baby, it's what my family have all grown up with. ... I've also an enormous sense of pride that something I started 16 years ago has come to this (AP 2001).

He ended up with \$160 million in cash and shares for his stake of Normandy but declined the offer of a seat on the Board. He told the Mining Club at a luncheon in Melbourne on 22 February 2002 this was no reflection on Newmont and that he intended to take time out to decide his future. That he might start another mining company “from scratch again”, he said this was unlikely as “soufflés don’t rise twice” (Advertiser 2002).

Leadership of Newmont’s newly acquired Australian operations was handed to John Dow, Newmont's Executive Vice-President and Group Executive for Latin America at the time, who was appointed Executive Vice-President and Managing Director of the Newmont’s

¹⁸² A further bid and counter-bid ultimately led Anglo to concede to Newmont on 18 Jan 2002 after only receiving 7.2% of acceptances for its offer.

¹⁸³ Trading in Newmont shares on the Australian Stock Exchange, under the symbol NEM, began on 25 Feb 2002 (Centralian Advocate 2002).

¹⁸⁴ The Granites gold mine produced 480,314 ounces in year ending 2001, which made it Australia's third largest gold operation (Centralian Advocate 2002).

Australian business on 20 April 2002 (Business Wire 2002; NTN 2002). Two former executives of Normandy were appointed to key positions in Newmont. Normandy group executives Paul Dowd (operations) and Bruce Kay (exploration) were appointed as Newmont's Vice President of Operational Development, Health and Safety and Vice President of Worldwide Exploration, respectively (AP 2002). Kay was also appointed as a Normandy NFM Director in October 2001. This made considerable sense given the extent of Newmont's newly purchased assets and need for continuity of knowledge of operations.

Takeover of Otter NL

One of the pressing matters for Newmont was completing the acquisition of Otter Gold Mines NL, a New Zealand based company commenced by Normandy NFM. Otter's principal assets were of interest were the Tanami Mine, 100km north of The Granites, and 33% of the Martha Hill Mine in New Zealand, in which Normandy was already a joint-venture partner.¹⁸⁵ At end of February 2002, Normandy NFM had gained 80% of Otter (Gold Gazette 2002).

Normandy NFM had commission a new mine at Groundrush some 40 kilometres from Tanami "ahead of schedule, under budget", which commenced mining in November 2001 (CSW 2002). A deal had been made with the Tanami Mine owners (60% Otter, 40% Anglo) to mill the ore at Tanami Mine at a per tonne fee.¹⁸⁶ Production at Callie and Groundrush resulted in further increases in annual gold production of 420,836 ounces for the year ending June 2001 (ASX 2001; AP 2002). Otter was in a "precarious financial situation" having suffered losses the previous two years (ASX 2002).¹⁸⁷ The Otter bid was a strategic move to significantly increase Normandy NFM's dominance in the Tanami, including ownership of the only two treatment plants in the region. Ownership would also enable Normandy NFM to recoup 60% of the cost of leasing the Tanami Mine processing plant that was being use to process Normandy NFM's Groundrush ore (ASX 2001).¹⁸⁸

¹⁸⁵ On 11 Oct 2001 Normandy NFM had announced a takeover of Otter Gold Mines offering 1.9 shares for every 100 Otter shares (ASX 2001; Australian 2001).

¹⁸⁶ The Tanami plant was leased by the Tanami Mine Joint Venture to Normandy NFM for 3 years commencing 17 Nov 2001, with an option to extend for a further year (ASX 2002).

¹⁸⁷ The loss for the year ending 30 Jun 2002 was \$24.85 million, compared with \$41.9m a year earlier (Christchurch Press 2002).

¹⁸⁸ The end Dec 2001 half yearly report records the Groundrush pit produced 19,858 ounces at a total cash cost of \$248 per ounce (\$320 per ounce including start-up costs), with grade averaging 4.41 grams per tonne (CSW 2002).

The takeover bid for Otter was extended through April 2002 giving Normandy NFM 88.87%, just short of the 90% needed for compulsory acquisition (AP 2002). A further offer in January 2003 acquired the outstanding shares and Otter was suspended from trading on 26 February 2003 following the successful takeover.¹⁸⁹

Mopping up minority holders

By May 2002 the gold price had increased to US\$327.05 per troy ounce, the highest price over the previous five years.¹⁹⁰ For the year ending June 2002, Normandy NFM reported a net profit of \$63.9 million (up from \$46.8 million the previous year).¹⁹¹ Normandy NFM shares were at their highest ever at \$17.70 (Daily Telegraph 2002). This was the peak of annual production over the history of the mine and includes production from Groundrush.

An outstanding matter for Newmont was to resolve the minority holding of Normandy NFM. It was cumbersome and inefficient corporate structure. To obtain full ownership Newmont knew it needed Stewart “onside”. Newmont formally announced the takeover scheme on 28 November 2002 with a vote of shareholders planned for 2 April 2003 (Australian 2003; ASX 2002). The offer was made at the peak of Normandy NFM’s share price, a price that Stewart felt matched what he considered the company was worth (Interview GS 2008). Newmont was obviously relieved. A spokesman said on 29 November 2002 that “[t]here is a large number of shareholders who have had their shares since the 1970s and have been through various takeovers, and having his [Stewart’s] backing is a huge bonus for us” (Smith 2002). With the change of management following the Newmont takeover Stewart had conceded that “[s]ome of the baggage is still there – but the chief baggage has changed” (Australian 2002). With Stewart in favour, Newmont requested he write to the shareholders to make his views known. Newmont obtained full ownership and Normandy NFM was delisted on 29 May 2003.¹⁹²

oOo

¹⁸⁹ On 9 Jan 2003 Normandy NFM (trading as Newmont NFM) made an offer to acquire all of the outstanding Otter shares at a consideration of \$0.28 cash each. By Feb 2003 it had 96.5% of the shares. Having acquired over 90% Newmont NFM was entitled, under the New Zealand Takeovers Code to invoke the compulsory acquisition. Otter’s shares were trading at \$0.27 at the time (ASX 2003).

¹⁹⁰ Gold was seen by investors as a “safe-haven asset amid fears of a possible India-Pakistan war, a slumping dollar, violence in the Middle East and worries of another attack on the United States” (Reuters 2002).

¹⁹¹ Normandy NFM traded as Newmont NFM, pending a name change. The 36% profit rise was achieved on gold sales of 631,426 ounces, up 52%.

¹⁹² ASX website, available <<http://www.delisted.com.au/Company/5972>> 10 Apr 2009.

Appendix 1 References

- Advertiser, 2002. *De Crespigny*, Feb 2002.
- AFT, 2001. Australian Financial Times, *Anglo*, Nov 2001.
- Age, 1983. 'Aborigines Sign Gold Compact', *The Age*, Melbourne.
- , 1991. 3 Jun.
- AP, 1996. Asia Pulse, *Aust's North Flinders Needs to Spend on Mining Shaft*, 18 Oct.
- , 2001. *Normandy Offer Accepted*, Nov.
- , 2002. *Newmont Takeover of Otter*, Apr.
- , 2002. *Newmont May*.
- Askew, K, 1996, 'Normandy accused of scare tactics', *The Telegraph*, 24 Aug 1996, 114.
- ASX, 2001. Chairman's Address Australian Stock Exchange. Nov.
- , 2002. *Normandy Acquires Shares*, Dec 2002.
- Australian Chronicle, 2001. Dec
- Bartholomeusz, S, 1991. 'ACM Gets Upper Hand After Deal With Outokumpu', *The Age*, 2 Aug, 17.
- Bell, S, 1998. 'SOG pulls out of Tanami Search', *Australia's Mining Monthly*, Dec 1998-Jan 1999.
- Burge, G, 1991. 'Mining Giants Bid \$210 for ACM', *Sydney Morning Herald*, Sydney, 25 Jul, 29.
- Business Wire, 2002. March, *New Boss*.
- The Australian, 1996. *Newmont back: Normandy Offer Extended a Month*, 10 Sep, 21.
- , 1996. *Callie Undermines Normandy Bid*, 18 Sep, 41.
- , 2001. 01
- , 2001. *De Crespigny*, Nov 2001.
- , 2003. *NFM Spices up Vote*, Mar 2003.
- , 2002. *Newmont Offers Stewart*, Nov 2002.
- Centralian Advocate, 2002 Feb 2002.
- Chron, 2002. Jan
- Christchurch Press, 2002. *Otter Loss*, August 2002.

- CSW, 2002. Feb Half year report).
- DAITEL, 2002. Aug.
- Deans, A, 1988. 'As Gold Find Justifies Flinders Play', *Sydney Morning Herald*, 22 Dec 1988, 23.
- Financial Review, 2010. *Mining Royalties up in NT Deficit Budget*. 5 May 2010, 41, 43.
- Financial Times, 1984. *Paringa bids for N. Flinders*, 21 Sep 1984, 22.
- Gold Gazette, 2002. *End of Normandy*, March 2002.
- Grant Samuel & Associates Pty Ltd, 1995. *Booklet 3 of the Schemes Document in relation to proposed terms for the merger of Normandy Mining Ltd, Posgold Ltd, Gold Mines of Kalgoorlie Ltd & North Flinders Mines Ltd*, 7 December 1995.
- HEXTALL, B, 1989a. 'Funding Costs, Lower Gold Prices see North Flinders Take 33PC Cut', *Sydney Morning Herald*, 26 Aug 1989, 35.
- , 1989b. 'AGL Tells Hartogen to Quit Paringa', *Sydney Morning Herald*, 28 Jun 1989, 46.
- , 1991, 'Flinders to Remain Independent', *Sydney Morning Herald*, 11 Oct 1991, 27.
- Howitt, R, 1991. 'Aborigines and Gold Mining in Central Australia', in Connell, J & Howitt, R (eds) *Mining and Indigenous Peoples in Australasia*, pp. 119-137 (Sydney Uni Press: Sydney). NFM, 1984. *North Flinders Mines Ltd Annual Report to Shareholders 1983-1984*, Adelaide.
- , 1996. 'Letter to Shareholders regarding Normandy Offer', 15 Oct 1996. Australian Stock Exchange Company Announcements, Adelaide.
- , 2001. North Flinders Mines Ltd. 'Chairman's Address', 11 October 2001.
- Liew, KL, 1989. 'Destiny of Company's Affairs-In Whose Control?', Bond University Law Report 1. NTN 2002 04 new boss).
- PR Newswire 2002 Feb
- Reuters, 1988.
- , 1989. *Hartogen Group Applies for Provisional Liquidator*, 26 May 1989.
- , 1995 *Normandy announces merger terms*, 14 Dec.
- , 1996 *Normandy revives merger, bids for NFM*, 13 Jun.
- , 2001. *10 Top Mining companies*.
- , 2002 May
- Smith, R, 1988. 'AGL Plans Paringa Sale', *Sydney Morning Herald*, 10 Aug 1988, 41.

Smith, S, 2002. 'Newmont lures NFM Stayers'. *Herald-Sun Newspaper*, 29 Nov 2002, 91.

Stewart, G, 1996. 'Letter to NFM's shareholders', 1996.———, 1996. 'Genoa at the Helm of Paringa', *Sydney Morning Herald*, 10 Sep 1988, 39.

West Australian, 1996. *North Flinders Stock to Drift – de Crespigny*, 13 Dec 1996, 40.

———, 2002. *De Crespigny*. Feb 2002.