AUSTRALIAN ABORIGINAL HERITAGE AND NATIVE TITLE: AN EXAMPLE OF CONTEMPORARY INDIGENOUS CONNECTION TO COUNTRY IN CENTRAL QUEENSLAND

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Australian Aboriginal Heritage and Native Title: An example of contemporary indigenous connection to country in Central Queensland

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Introduction: Australian Aboriginal Heritage, Native Title and the Law

The current shape and form of indigenous reclamation of traditional relationship to land in Australia (outside the Northern Territory for the most part) is governed by two broad legal institutions. One is the *Native Title Act (1993)*, which recognizes that certain indigenous rights and interests of a traditional character have survived the colonial process of dislocation and deculturation and have been recognized at Common Law. The other are the various State and Federal Aboriginal heritage protection acts that offering varying levels of protection to different categories of culturally significant places.

It is important to accept that for the most part, there is an uneasy and ill-defined relationship between these two areas of legislative protection for Aboriginal culture (in the broad sense). This reflects and emphasizes the discontinuity that the western society (or at least its jural institutions) recognises between the artefactual past of a community and its social-symbolic-discursive present.

Thus, for example, in the Federal Inquiry into the Hindmarsh Island Bridge Royal Commission in 1995, most of the Ngarrindjeri applicants who gave testimony to Justice Mathews attested to the central importance of middens and other remains found on the Hindmarsh Island and Goolwa foreshores. The question then arose: were the sites significant in themselves, or were they significant because Aboriginal people now accord them significance that may be unrelated to whatever activity with which they were associated in the past? Mathews thus concluded: "...it is not sufficient for the [South Australia Aboriginal Heritage Protection] Act that [the Ngarrindjeri applicants] regard midden sites as significant areas. The Act also requires that this significance be derived from Aboriginal tradition" (Mathews 1996:148).

In the *Yorta Yorta* decision¹, Olney J. discussed what he called the “main thrust of contemporary activity” by members of the native title claim group (at 122). At 128 he states:

> Preservation of Aboriginal heritage and conservation of the natural environment are worthy objectives the achievement of which may lead to a more ready understanding and recognition of the importance of the culture

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¹ *The Members of the Yorta Yorta Aboriginal Community v The State of Victoria & Ors* [1998] FCA1606.
of... indigenous people but in the context of a native title claim the absence of a continuous link back to the laws and customs of the original inhabitants deprives those activities of the character of traditional laws acknowledged and traditional customs observed in related to land and waters which is a necessary element of both the statutory and the common law concept of native title rights and interests.

These judgements appear to be made from a view of contemporary Aboriginal “tradition” in which Aboriginal people can only have an interest in artefactual remains from an exclusively “archaeological” perspective. Thus, Aboriginal people are not free to interpret and re-interpret the material record of their forebears in line with changing conditions of the present (as westerners have continuously re-interpreted Egyptian sites, the Dead Sea Scrolls, Olduvai Gorge, and so forth). Native Title rights and interests, on the other hand, must relate decisively to pre-colonial Aboriginal tradition, even though it has been accepted since the Mabo (No 2) decision that tradition does change and has changed over time. Contemporary interest by Aborigines in the archaeological record of their forebears is, therefore, by definition not part of pre-colonial tradition.

The problems of “constructing” a native title profile for people such as the Ghungalu/Kangoulu of Central Queensland have been forcefully underlined by the Yorta Yorta case. Justice Olney seemed intent on implying in a comprehensive manner that all indigenous people in so-called “settled” Australia had lost their native title by virtue of the “tide of history” washing it away. This, of course, we must accept on some level. But the current Federal government has done everything it can to separate the interests of what it perceives to be the “two” Aboriginal Australias — the remote Australia where people have retained both their land and their traditional practices, and settled Australia, where they have been dispossessed of both.

However, with the election of Beattie Labour government in Queensland, a major and important change of direction in Native Title occurred. Queensland Labour was determined to move Native Title determinations out of the Federal Court, where they consumed vast amounts of time, money, personnel and emotional energy, all of which were proving a drain on the material and social resources of the State. The Queensland government has, through its Native Title Services, announced that it is ready to consider a consent determination for any group of traditional Aboriginal land-holders that demonstrates it will be in a
position to negotiate effectively, constructively and representationally with commercial and government interests. The Queensland government has apparently concluded that there is more to be gained by granting indigenous Queenslanders their native title rights, and thereby delivering “certainty” to developers, than in doing and spending all it can to block it entirely (as has the Western Australia State government until the recent State election). What we must therefore consider is the perception of local stake-holding that occurs at a very broadly focussed level and the way in which Native Title takes it places amongst this landscape of stake-holders.

The impact of this approach on the practice and progress of Native Title in Queensland has been pronounced. First of all, there is a much reduced level of documentation required and a far lower threshold of proof required for the survival and exercise of native title rights in the consent determination process, as compared with a full Federal Court case. Further, an important difference of perspective has been signalled by the State of Queensland. In a recent public address (March 2001), Colin Sheehan, Head of Native Title Services, in the Queensland Government, said (personal communication) that the strategy of native title claim groups who are seeking consent determinations is to begin with an account of the observances and practices of Aboriginal claimant groups in the present and to work backward from there to establish continuity with the past, rather than beginning with an often incompletely known and sketchily described pre-colonial cultural system and attempt to establish whether it has remained intact over two hundred years of invasion, dispossession, depopulation and forced assimilation.

These developments in Queensland provide us with an opportunity to both revisit the decisions made in Yorta Yorta and in the Hindmarsh Island Bridge Royal Commission Federal Inquiry with respect to the role of contemporary Aboriginal involvement in their own cultural heritage management as an exercise of native title rights and interests. In this paper, we will examine how this process has evolved in Central Queensland against the background of one of the State’s largest coal mining areas. In the process, we will illustrate one way in which anthropology and archaeology need to combine their perspectives in the interests of elucidating contemporary indigenous cultural attachment to land in Australia.
Ethnographic and Historical Background

Our paper focuses on an area of Central Queensland bounded by the Dawson River in the east, the Comet River in the west, the Mackenzie River in the north and the Bigge Range to the south. This area is the traditional land of the Ghungalu/Kangoulu (see Tindale 1974 for numerous alternative spellings; our orthography derives from that used by the groups themselves).2

Two organisations have been established to represent the interests of Ghungalu/Kangoulu People in this area-- Nghally Ghungulu Thoonieda Aboriginal Corporation (NGT) representing the Ghungulu People, and Central Western Gangulu Aboriginal Corporation (CWG)3 representing the Kangoulu People. In recent years these organisations have taken an active role in relation to asserting control over their traditional country and assumed responsibility for the cultural heritage values contained within. These groups have lodged several native title claims in the general study area but there are two of particular interest to us here. Both of them were lodged in response to s.29 notifications, one by Savage Togara for the Togara North coal project, and one by South Blackwater Coal for the South Blackwater coal mine in Blackwater. In both cases, the native title claims were lodged over specific areas included within the proposed Special Mining Lease [SML] areas in the respective projects. Both claims have passed registration in the Native Title Tribunal.

The Ghungalu people have included management of cultural heritage among their rights and interests as they have been registered by the National Native Title Tribunal. The first right gives the Ghungalu the prerogative to:

1. Discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to, and concerning the native title land including to:

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2 Additionally, another group of Gangulu people inhabit the area to the east of the Dawson River, in the region of the Shires of Banana and Biloela, but this latter group does not concern us here.

3 This was the case at the time this project was being undertaken – recently, there has been a change in corporate arrangements for this group.
1. preserve sites of significance to the native title holders and other Aboriginal people on the native title land;
2. determine, give effect to, pass on, and expand the knowledge and appreciation of the culture and tradition;
3. regard the native title land as part of the inalienable attachment of the native title holders to the native title land and ensure that the use of the native title land is consistent with attachment;
4. maintain the cosmological relationship, beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the native title land and special and sacred sites, to ensure the continued vitality of culture, and the well-being of the native title holders.

The Kangoulu have expressed similar interests. The wording of these rights and interests in particular is very much a product of contemporary pressures on Aboriginal identity and defence of traditional relationships to country as well as the stylistic requirements of the Native Title application process. The role of such relationships in the maintenance of this identity in future generations is especially underlined. We will explore the implications of these rights and will argue that:

1. Management of material cultural sites should be construed to be part of Ghungalu/Kangoulu Native Title on the grounds that it is an integral component of contemporary cultural activity and practice.
2. Concern for sites of this type is a legitimate contemporary manifestation of traditional concern for, and management of, cultural places.
3. There is a demonstrable history that shows the process of evolution and the maintenance of the links to the past through the protection and management of such sites, and the response to such acts as proposed by the South Blackwater Coal extention – that is, there is a consistent and ongoing body of customary practices, governed by traditional law concerning rights and obligations to manage country, in relation to such matters, and by implication, all commercial activities in the Bowen Basin area.

Over the last seven years, the Ghungalu and Kangoulu people have had opportunity to be intimately involved in a series of cultural heritage investigations in their country. The attitude towards these surveys and the materials found during them displays a direct link with traditional processes of custodianship and management of places of cultural significance. Further, the
opportunity for involvement in these activities has not been one that has simply
been used by them to extract either simple economic or political advantage as
part of the decision-making process.

General changes in attitude in the mid-1990s and the recognition of Native Title
has wrought a tremendous change in cultural heritage management. It was
recognised that there were both moral and legal imperatives to involve
Aboriginal people directly in the EIS process, and this had particular force in
relation to the cultural heritage component of such investigations. Aboriginal
people, and particularly the Ghungalu, took this opportunity to assert what they
saw as their traditional responsibilities in relation to the management and
custodianship of cultural places. As this happened to coincide with a flurry of
development activity in the region, particularly in the coal industry, there was
considerable scope to exercise these custodial and managerial roles. Since 1995,
they have been directly involved in cultural heritage investigations and the
ensuing management negotiations on at least ten separate developments on their
land, most of them mining-related.

The South Blackwater Archaeological Survey

Recently, South Blackwater Coal has lodged an application for an extension of
the SML into what are known as the Humboldt and South Marshmead areas. An
archaeological survey of the proposed extension area was undertaken by the
Aboriginal groups who have formal Native Title interests in the area with the
assistance of Central Queensland Cultural Heritage Management. Particular
attention was paid to the Rockland Creek area, through which major
infrastructure related to the mine extension would have to be placed. As
currently understood, these two areas are planned to be mined as independent
open cut operations. While the South Marshmead area will largely be serviced
by the existing infrastructure already put in place for these southern pits, the
Humboldt operation will require the construction of new and significant
infrastructure. This includes haul roads, a number of dams, an extensive open pit
complex (covering some 520 hectares), a major diversion of Rockland Creek and
the re-routing of Humboldt Road.

Rockland Creek represents one of the most intensive concentrations of
archaeological material, principally stone artefacts, found so far in the Bowen
The presence of place-types such as quarries, knapping floors (where all artefacts within a discrete area are of the same, usually distinctive, raw material, and appear to be related to a single flaking event), an area containing many depressions suitable for the collection and storage of water (termed Native Wells) and hearths are very uncommon within the Comet River catchment, and extremely rare within the broader regional context (see also L’Oste-Brown et. al 1998:361).

The most obvious pattern is the intensive use of the areas surrounding Rockland Creek that were preferentially selected as a location to undertake the subsistence activities of day to day life. Throughout the broader Central Queensland region, Aboriginal use and occupation is closely tied to water and the permanency thereof. In addition to this, the presence and relative abundance of essential resources such as plants, animals, stone and woods is also a factor. Generally (although not exclusively), the larger the watercourse or more permanent the water body, the more evidence of use of the area will be found. Rockland Creek is a critical place with respect to most of these considerations. The winding nature of its course and periodic flood events, provides numerous billabongs, lagoons and waterholes for substantial periods of time. These water pondage areas have conditions particularly amenable to a range of aquatic foods. There are rich and diverse populations of both terrestrial and avian fauna. Along Rockland Creek, the vegetation is likewise rich, with a variety of ecosystems converging to provide an array of plant species of use to Aboriginal people.

Rockland Creek is at places deeply incised through an extensive area of basalt capped ridges. The eroding of these caps and exposure of the underlying gravel beds provides a wide variety raw materials available for stone artefact manufacture. This has provided the Aboriginal inhabitants of these areas with a reliable and on-going supply of useable stone. The amounts of stone observed within this system are considerable. The distribution of these sources throughout the study areas have seen the establishment of large site complexes surrounding the creek where the high alluvial terraces on one side provide large suitable areas on which to establish extensive camping areas, are complemented by these sources in immediate proximity.

While no one element of the body of material cultural that has been recorded throughout the study area is unique to this area, when viewed holistically there are few other areas anywhere else in the Bowen Basin where a similar
concentration and diversity of cultural material has been recorded (see L’Oste-Brown et al. 1998 for a summary and discussion of all previous work undertaken in the Basin). One explanation of this might be that the area constitutes a focal point of Ghungalu/Kangoulu settlement and use in the Comet River catchment. Another possibility is that the patterns and concentrations seen in the study area occurred more widely in the Basin but no longer exists as a consequence of differential survival stemming from a range of natural and human impacts (particularly land-use activities such as clearing and mining).

**Theoretical Issues: How Native Title Rights and Interests are made visible**

The involvement of Aboriginal people in such long-term cultural heritage management does not merely reflect but creates the conditions under which indigenous people with traditional ties to country learn about their country and re-establish culturally appropriate ties in the present. The exploration and consultation stages in mining and other development projects stimulate interest and encourage indigenous people to learn about the particular meaning of archaeological sites of significance in their own country. Coombs (1992) argued that Aboriginal involvement in heritage management contributes to the transmission and interpretation of Aboriginal culture as Aboriginal people are given an opportunity to explain their culture to non-Aboriginal visitors. This same process is occurring all over the indigenous world. In Canada:

It is only within the last few decades that First Nations in Canada have become actively involved in archaeology. There is a growing realization among First Nations of the important role of archaeology in strengthening aboriginal cultural heritage and rebuilding vanishing cultural traditions. There is also a recognition of the potential weight of archaeological interpretations in the negotiation of aboriginal land claims. This awareness has prompted some First Nations to apply increased political pressure in their demands for greater involvement and control in the study of their ancestors. These demands are inextricably tied to a much larger struggle between aboriginal people and the provincial and federal governments for greater control over land and resources. (De Paoli 1999).

This process should not be dismissed as mere opportunism, or as some inauthentic recent invention of traditions. It should rather be seen as a culturally
appropriate response to contemporary intrusions into country and challenges to
the control of access to country that are part and parcel of indigenous peoples’
contemporary status in a Euro-Australian dominated society. The result of
Ghungalu/Kangoulu people having worked for a long time with archaeologists
in various cultural heritage surveys on their country has been to add a scientific
dimension to their knowledge of artefactual remains — it has allowed them to
better picture the lives of their precolonial ancestors and to understand the details
of daily life and practice at that time. Such involvement helps to shore up and
preserve contemporary Aboriginal knowledge of culture and tradition and return
it to the realm of every-day practice. Thus, Ghungalu/Kangoulu people have
learned how to identify the evidence of humanly-made marks on stone remains
and to interpret this artefactual evidence not simply as part of the archaeological
record but as evidence of their group’s connection to and use of country.

Their interests in the South Blackwater area, however, also extend beyond the
archaeological. Ghungalu people identified in this area a range of species of
trees and plants that are culturally important. Of these, we would draw attention
to two: the False Sandalwood (*Eremophila mitchellii*), which is used to “smoke”
people. “Smoking” is a way of purifying people, to rid them of the presence of
troublesome or destructive spiritual influences. The practice of smoking people
is still very much alive today. The other rare plant is called *gumbi gumbi* or
“cattlebush” (*Pittosporum pehyllraeoides*). It is sometimes described as the
most multi-purpose bush medicine in the central Queensland region. It is rare
because it is eaten avidly by cattle. *Gumbi Gumbi* is the name of an alcohol and
drug rehabilitation centre in Rockhampton run under the auspices of Ghungalu
people. Smoking is done each morning as part of the purification of Aboriginal
persons damaged by use of alcohol and drugs. The use of these medicinal plants
is thus a very important part of the contemporary Ghungalu people’s cultural
activity.

Beyond this, they also described, for instance, the making of jelly out of wattle
gum and ‘gidji’ gum. Lancefoot was used to extract a tanning element for
kangaroo and possum skins but was otherwise poisonous to humans. Prickly
pear fruit (*Opuntia stricta*) was eaten regularly by Aboriginal people in the bush,
before the plants were systematically poisoned. Didgeridoos and *woomeras* are
made out of yellow box (*Eucalyptus melliodora*) found in this area. Boomerangs
are made out of black wattle (*Acacia leiocalyx*) wood. There are also wild limes
(*Eremocitrus glauca*) that are eaten. The *burrum* bush has edible berries, which
ripen in August-September. Wild passionfruit (*Passiflora sp.*) is also found in
the paddocks. Some of these plants and practices, it is true, have been introduced
since European contact but they have still been incorporated into the diet and
activities of Aboriginal people and gathered and used under traditional patterns.
The wholesale clearing of areas, whether through pastoral activity or large-scale
coal mining, removes these resources from the land but people know of them and
seek them out where they can.

In all cases, people’s knowledge of the land and its useful products is dependent
upon people having a reason and the means to continue to visit and make use of
the land. As one person expressed it when visiting Rockland Creek:

> Let it all grow wild and keep the cattle out of it, so people know what sort
of food is there. If they do recognize it, not all people know they can eat it.
That’s what we’re losing. It’s not that people don’t want to learn, it’s that
they don’t have the opportunity. The practicality of it is that they have to
see it and know it, and someone’s got to tell them and show them. It’s all
got to come together at once, they have to have the practical experience of
gathering it and using it for themselves. And this is what disconnection
from the land is all about and this is why we lose our culture, the
knowledge of what plants to look for, for different uses (January 22, 2001,
Rockland Creek).

As a corollary of this, Ghangulu people today believe that white man’s food and
alcohol are poisoning Aboriginal people. Consumption of these destroys the
ability of men and women to possess power, to be *yaraban*, to be a “magic man
(or woman)”. To attain that power, one must eat bush food and give up white
food and dietary dependencies such as coffee, tea, flour, sugar and alcohol. This
means having a continued access to and presence to resources of the land. Some
attempt to keep themselves pure in this way to attain and control this power.
Others are involved in the counselling of Aboriginal youths who have become
involved with drugs. The youths are taken back onto country and taught about
the nourishing and purifying properties of resources, food and medicines there.
Some people have also developed a comprehensive pharmacopoeia of medicines,
infusions, soaps and salves from local plant resources. Many of these are being
investigated for their commercial potential, and it is these resources that would
be destroyed and lost as a result of large-scale surface disruption through mining.
It is true that in terms of plant and animal resources utilized currently by traditional owners, South Marshmead is not distinctive and its destruction would not remove any critically important resources for present-day Aboriginal custodians — although large-scale disruption of the landscape would do just this eventually. But the area itself is unique — it is an iconic tableau of ancestral life and as such is as much a living “shrine” to the ancestors, and to a way of life being resurrected and re-invigorated. A site of such important habitation and manufacture inevitably becomes a permanent residence for ancestral spirits and imbued with sacredness according to the Ghungalu traditional owners. Thus, one claimant immediately noticed the presence of a hive of native bees — called gubba in the Ghungalu language — on Rockland Creek in the South Marshmead area when she visited it. This insect is the totemic species of her grandfather, and it indicated to her the interest and presence of her ancestors, and their watching over the area and the behaviour of those visiting it.

There is a more general point to be made from these statements by Ghungalu people. If knowledge of country is embedded in the productive practices that bind people to the land, then what we could call social memory, the collective understanding of event, custom, and tradition, is also embedded in the practices of collective life-with-others. When people are dispersed and broken up from their family and social networks as a result of being removed from country, when memory is pried apart from the co-existence and daily dialogue within which such day-to-day memories are created and socially validated, then the past as such ceases to play a role in the ongoing maintenance of custom and collectivity. Ghungalu people prefer to tell their stories in the company of their kinsmen, so that the words and memories of people can interact with each other to form a single pattern with a collective rather than an individual or subjective voice.

Getting back to country, re-siting the memories of ancestral camps and productive activities within contemporary Aboriginal rituals of re-emplacement such as has occurred on Rockland Creek and other places, is a critical component of how native title rights and interests must maintain Aboriginal identity and culture in the present.4

The survey of the South Blackwater area proceeded with six representatives of the claimants being involved. On its conclusion they reported to their elders at

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4 These points are also made in the Future Act Determination No. WF98/7 between Anaconda Nickel and the Waljan and Koara People and others (see National Native Title Tribunal Web Site).
general meetings on the results of the survey, noting the large amounts and diverse nature of the material identified. The elders then concluded that this was indeed an extremely significant area for Ghungalu/Kangoulu people. This process of identifying an area of cultural significance, and the subsequent determination made by the elders, is entirely consistent with traditional processes seen elsewhere in Aboriginal Australia (see Finlayson and Jackson-Nakano, 1996) and is consistent with the actions of the Ghungalu and Kangoulu in other cases. As has been demonstrated through the results of the archaeological survey, the area in contention possesses an exceptional range of cultural places and values. The patterns and types of cultural material present are consistent with this area being a major focus of activity in Ghungalu country. Indeed, it has been shown that the area has the greatest range of material culture at the highest densities encountered anywhere in the Bowen Basin. The Aboriginal researchers involved in the inspection of this area have duly reported on this to their elders who have given the matter considerable thought. They have determined that the area is one that is of great significance to them as Ghungalu people.

We thus wish to make the point that Ghungalu people still inhabit a sacred landscape and their contemporary behaviour manifests a consistent, thoroughgoing and patterned practice of Aboriginal spiritual occupation and experience of country. For example, the head of the Mimosa Creek on Blackdown Tablelands is the home of *munda gara* (Mundangudda), the Rainbow Serpent, who also various other occupies spots, such as Niagara Falls near Woorabinda, and the head of Planet Creek.

Another example of this relates to a man who, in his youth, was employed at Planet Downs. He was shown, by his father, two intersecting *bora* rings there near the side-by-side graves of two Aboriginal stockmen. The stones marking the *bora* rings were still in place and had not been dislodged despite the movement of cattle over the years back and forth over the site — according to him, the cattle would avoid the stones as they stepped over them. The spiritual vitality of sacred sites affects the behaviour of all beings who inhabit it — animal, white man and Aboriginal alike.

Ghungalu people can sense the presence of “old people” or ancestors on country, as did one person during another cultural heritage clearance project in 1996. The spirits of the Ghungalu’s ancestors continue to inhabit Ghungalu country. They can be encountered anywhere and at any time, and they are in and on country.
One Ghungalu man was visited by his deceased father who had taken the form of an emu (his yuri, or totemic species), for instance, when he and his Ghungalu wife were on country. The emu placed its head inside the tent to inspect the grandchildren he had never seen while alive. The ‘old people’ watch over the country to protect it. It is necessary to advise the ‘old people’ that one is on country. This is done by speaking to them, preferably in Ghungalu language.

The ‘old people’ can sense when non-Ghungalu people are on country, and it is necessary, for instance, for such people to receive permission to take off their shoes from Ghungalu people or risk problems with the ‘old people’. The cultural sites found in Ghungalu country are, according to Ghungalu people, a physical demonstration that the ‘old people’ have been there, and continue to be there. Contemporary Ghungalu people take extremely seriously the responsibilities they have to the ‘old people’ and to manage and protect cultural sites they have inherited from them. Others have expressed a view that the ‘old people’ are now revealing their sites to modern Ghungalu people because there is now a chance to protect such sites. The presence of ‘old people’ in the country, and the assumption of responsibility for country from them by their descendants in this way is something that is also well documented ethnographically across Australia.

To give another example, in late 1990 an unregistered burial was disturbed during the construction of a road on a housing estate in Emerald. The remains were exhumed by the Police and removed to Brisbane for forensic examination. When it was determined that they were those of an Aboriginal woman buried at the turn of the century, it was decided to repatriate them. It proved impossible to place them back on the housing estate and plans were made to inter them in a burial plot supplied by the Emerald Shire Council in the local cemetery. The bones were placed in a coffin and transported to the cemetery. At this point, the Ghungalu person who organised the ceremony insisted that there should be a ritual smoking. The necessary arrangements for this had been made, including collection of leaves from the sandalwood tree. The smoking was to cleanse the area, to prevent participants from being disturbed by any spiritual entities, and to allow the person being buried to have peace. In a series of skeletal repatriations from museums, and in burials of respected Aboriginal people over the last 10 years in Central Queensland, the smoking ritual has been a significant part of the ceremony of interment and this is a normal activity that has a direct link to past cultural practices associated with handling of the dead in this region.
Finally, the use of the site for education of the young should be emphasized at this point. The Ghungalu affirmed the importance of Rockland Creek as a site where they can bring their children and show them the presence of their ancestral way of life and the evidence of the ‘old peoples’ continuing presence and interest in the living. Rockland Creek and its remains thus promises to be a critical resource for the transmission and re-invigoration of Ghungalu culture and religious affiliation to place for the coming generations of traditional indigenous custodians.

We continue by posing two questions:

1. Are the manifestations of a determination to assert a managerial role in relation to cultural heritage described above merely a recent invention?

2. Is the interest in these cultural places and values, and the method of management, part of a corpus of customary practices that is consistent with the maintenance of Native Title?

In our estimation the answer to these questions are: no and yes, respectively. We contend that the interest and involvement in the management of cultural heritage places and values, while undertaken within current legal and technical parameters, must be seen as a contemporary manifestation of tradition practices and conventions of cultural custodianship. Despite their exclusion from legally-sanctioned processes until the relatively recent past, the Ghungalu sought to exercise a role in cultural heritage management where they could. For instance, they took a major role in the development of the Dreamtime Cultural Centre in Rockhampton, and the research programs associated with this enterprise. In particular, one Ghungalu woman was extremely active in recording cultural places and the Aboriginal history of Central Queensland. She and others also enthusiastically embraced any opportunity that came their way to play a direct advisory and managerial role with respect to the resolution of cultural heritage issues. Similarly, another senior Ghungalu person has been directly involved in teaching children about Ghungalu heritage for many years through his involvement in school programs.

There are earlier examples where Ghungalu were requested to use their knowledge in relation to cultural matters. For instance, during the 1930s one
senior Ghungalu man was requested by some people to visit the camp of another
Ghungalu person and perform appropriate rituals to cleanse the area. In another
case a non-Ghungalu person who took a piece of stone from Ghungalu country
became ill and then died. It is apparent then that there are examples that can be
cited indicating that Ghungalu interest in cultural heritage matters is not a recent
one. It is also generally understood within Aboriginal Australia that traditional
owners of country have a right and responsibility to exercise a custodial role in
relation to the management of cultural places and property. The next question,
however, that must be confronted is whether their interest in the range of things
that are now considered to be elements of that cultural heritage is consistent with
traditional interests and roles.

To suggest that the management of material cultural sites is only a recent interest
that has no links to traditional practice is erroneous and ill-informed. For
instance, no one denies that certain types of material cultural sites such as rock
art sites, carved trees and burial sites are deeply imbued with significance, being
directly associated with ritual and ceremony. There are sites containing art and
artefacts that have been found by Ghungalu people themselves outside of the
framework of any official site clearance. These finds are evidence of Ghungalu
people’s continuing presence on, interest in, and care of country — they assert a
proprietary interest in such sites and keep them concealed from others, seeing it
as evidence of their own special and exclusive connection to their country.

It is also true that other kinds of sites, such as quarries from which lithic material
used in the manufacture of various types of stone artefacts, required a deep
knowledge and application of ritual to be used safely (i.e. without bringing down
on oneself the wrath of spirits associated with such places). Further, there were
particular types of stone artefacts that had a distinct role in ceremony (such as
tjuringa play in central Australia). Beyond this, however, there also were places
that were used as camping areas, where the imprint of the inhabitants were left in
the form of material culture such as hearths and grinding equipment, but which
were abandoned and avoided because of the death of a person at the site. There
were also general locations that were associated with major ceremonial
gatherings in the course of which large numbers of people regularly congregated,
and where there were designated areas for camping (which resulted in the
creation of large concentrations of material culture). It is our contention,
therefore, that it is extremely difficult to categorise concentrations of material
culture as being simple discard that had little or no significance or as places that
in various ways were the subject of, or important to, ritual and ceremonial behaviour.

It is also important to note that, in traditional Aboriginal society, there was no exhaustive, static list of places that were deemed to be culturally important — if significant events occur in a place, then that place becomes apprehended as a site of ancestral power (cf. Merlan 1998). It should also be noted that in a strict sense the entire landscape was a cultural entity in which some places required a greater level of response but in which people had to be continually aware that the ‘old people’ or spirit entities could manifest themselves. People regularly had experiences in the course of the daily round, or dreamed about places and things, that were then submitted to older, knowledgeable people for their consideration. Dependent on the outcome of that adjudication, places and events were then added to a corpus of places that were seen as important, demanding special attention and response from people: in other words, those places had to be managed. By management here we mean the continuous exertion of human effort and attention towards the task of interpreting the landscape. The goal of this is to maintain a flow of information that allows people to inhabit and make their way through terrain in culturally and morally appropriate ways.

Ghungalu and other Aboriginal peoples in Central Queensland have continued to approach the management of cultural places in traditional ways. Numerous examples of this could be cited. In one instance, people were inspecting a site containing a range of material culture. A non-Ghungalu person found a ground-edge axe and proceeded to dance around with it. This was deemed as disrespectful to the ‘old people’ who had left the material there, and were considered to still be present in the area as spirits. There was demand that this person should cease this behaviour immediately and should smoke himself as a disciplinary measure and to ensure he would not later be bothered by the ‘old people’. He duly submitted to this ceremony. Clearly, then, there is a widely shared view that these material objects are a tangible link to the past, and that they must be handled within a distinctly traditional cultural context. It has also been noted earlier that various people, including in a recent case a Ghungalu person, who had taken items deemed of cultural significance to Ghungalu people, or who had simply interfered in Ghungalu cultural ‘business’, without appropriate authorisation had become sick. This is generally considered to be a result of the actions of the ‘old people’ as has been described earlier.
Conclusion

To sum up our arguments:

1. Ghungalu and Kangoulu people have, for the last seven years, actively and consistently involved themselves in cultural heritage management associated with the EIS process;

2. They have set in place a series of procedures and protocols that are entirely consistent with their asserted Native Title rights in the area of cultural heritage management;

3. They have adopted a graduated response towards the impact of developments on these cultural places, ranging from agreement with mitigation through to total opposition to a development, and such responses have not been conditioned by the availability or scale of compensation but to their perceptions of the cultural significance of the place;

4. Their interest in this area is a continuation of a process of cultural heritage management that has links with traditionally-sanctioned responsibilities for country;

5. The concern for cultural places that are primarily concentrations of material culture is not a recent invention and is consistent with a general pattern of belief and practice of Ghungalu and Kangoulu people;

6. The manner in which they manage such sites is entirely consistent with processes of cultural place management seen in other parts of Australia and that have been documented in detail by anthropologists throughout Australia.

Consequently, we think it entirely appropriate that, beyond noting that such sites should be managed in line with existing State legislation, the impact of the proposed development on these sites should be construed as an impact on an asserted Native Title right. To damage or destroy these sites would seriously
diminish the opportunity for Ghungalu and Kangoulu people to exercise their right to manage them in accordance with their tradition.

But in the Yorta Yorta appeal\(^5\), Black CJ in his Reasons said the following: (at 27)

> How should the evidence be approached in a case in which a determination of native title is sought and it is said that the rights and interests that are claimed to be enjoyed currently are not traditionally based but, rather, to the extent that they exist at all, are really no more than a revival in a modern form of customs or rights lost long ago when the ancestors of the Aboriginal people asserting those rights were dispossessed of their traditional lands and when their traditional lives on those lands came to an end?

Black CJ went on to say (at 37):

> It may be, however, that… the asserted “traditional” law or custom may nevertheless provide indirect support for rights founded upon what are truly “traditional” laws and customs. Practices that are not “traditionally based”, in the sense that they are not rooted in the past, may still illuminate and support other practices that are “traditional” in the sense used in s.223 [of the *Native Title Act (1993)*].\(^6\)

In a case in New South Wales, Mr Blackshield\(^7\) refers to his oral submissions at the Inquiry and attached extracts from the Report of the Land Tribunal established under the Aboriginal Land Act 1991 (Qld) on Aboriginal land claims to Cape Melville National park, Flinders Group National Park, Clack Island National park and Nearby Islands, dated May 1994. He said in the written

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5 *Members of the Yorta Yorta Aboriginal Community v State of Victoria* (2001)110 FCR 244.

6 In the foreword to the 1985 edition of *The World of the First Australians*, Professor R.M. Berndt and Dr. C.H. Berndt referred to "traditional elements within a changing frame" which elements are regarded "not as something that has been 'frozen' at a particular point in time, but as a configuration that is essentially dynamic, sensitive to varying pressures, receptive to outside views, and sufficiently adaptive to permit them to survive and to make their impact on the wider Australian society."

7 National Native Title Tribunal, application: NN94/44 (NN94/36), non-claimant native title application: interim findings (Greater Lithgow City Council [non-claimant party]).
submission: “(1) The "traditional connection" to land required by the common law of native title is not synonymous with the "classical" connection to land which the relevant Aboriginal society possessed prior to colonisation (paras 227 - 228; 239 - 240); and “(2) The rights and responsibilities of an Aboriginal society towards land (which give content to that society's "traditional connection" to that land) may be framed in a way which acknowledges the post-colonial context in which that society is now situated (paras 388 - 391”).

He goes on to make a useful distinction between the “classical” and “traditional”, as has Peter Sutton (1998):

228. In these land claim proceedings, for example, it was apparent that the dispersal of the ancestors of the claimants from the claim areas led to the breakdown and possible disappearance of important aspects of the traditional ceremonial life of the group, such as initiation ceremonies. That is a matter of profound regret to those who remain. The claimants submitted, however, that such things as the retention of languages which have, or have almost, disappeared, and the detailed knowledge of clan names and place names are not the only traditional elements in the culture of how the body of claimants relates to the claimed land. Indeed, it was submitted, those elements should be described as "classical" in preference to "traditional".

Current tradition among the claimants is made up of elements of the classical culture that have come down to the present more or less unchanged (eg. many claimants operate within an Aboriginal kinship-system) together with many elements of contemporary culture. The traditional is not that which was practised in the past but that which is transmitted as part of Aboriginal culture - it has continuity, but may have been transformed through time so that it is no longer exactly the same in outward form as its predecessor.

The argument put forth here is more in line with the Mabo (No 2) judgement and with subsequent interpretations concerning the changing nature of tradition. Aboriginal people are not obliged to maintain their pre-colonial traditions in exactly the same form as they were observed at the time of Cook’s arrival, any more than Euro-Australians are obliged to keep producing buggy whips and installing gas lights in their homes. In each case, both economic and religious
activities serve a function, and culturally-defined and communally-held notions of spirituality alter with the nature of people’s material and practical engagement in a present-day world.

It could be argued against this position that the resilience of, for example, Jewish laws of *kashrut* and other biblical injunctions observed by Orthodox Jews have long outlived whatever political or practical origin and significance they had in the age of the Old Testament, and that their continuing observance according to the strict letter of the Jewish scripture is definitive proof of the maintenance of tradition *qua* tradition. But the conflict between Orthodox and secular Jews in Israel, and throughout the world, on just this issue as well as many others, is proof of the need for any religious or cultural tradition to provide a satisfactorily pragmatic framework for survival and well-being in the present, under present-day conditions. Many Jews who practice their religion in some form do not observe the laws of *kashrut*, menstrual prohibitions, and so forth, yet their identity as Jewish persons is not in doubt.

Peter Sutton (personal communication) has said the following:

> a concrete productive/stewardship relation of a kind is in fact restored by the very processes of site protection, the opportunity to conduct land claims, the engagement in management of 'heritage', ordinary land management on property held by collectivities of traditional owners, the distribution of royalties to traditional owners, the politics of incorporated landowner bodies, the taking of responsibility for nature conservation liaison with NPWS on such estates, and so on. The religious superstructure is no longer free-floating or detached from the reproduction of certain kinds of social groups, nor from the material conditions in which such groups evolve and are maintained, or even displaced by others like themselves. In essence, the same factor of political economy is also the contextual matrix for unrationalised religion.8

We must therefore consider the involvement of Ghungalu and Kangoulu people in cultural heritage management over their traditional country to be a contemporary manifestation of protection of proprietary rights in that country,

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8 Peter Sutton, personal communication.
and to be a concern with the maintenance of that country’s ability to support a life that is recognizably and distinctively Aboriginal, both now and in the future.
References


National Native Title Tribunal, Application No. WF98/7: Future Act Determination: State of WA, the Waljan and Koara Peoples and others, and Anaconda Nickel Ltd.