



Kimberley Land Council

12 June 2020

Destruction of sacred sites in the East Kimberley

Sites of cultural significance in the East Kimberley are being destroyed by large-scale granite mining operations despite breaching Section 17 of the *Aboriginal Heritage Act 1972* (WA). Located 50kms north of Halls Creek and within the Malarngowem native title area, the site is under an exploration licence operated by Kimberley Granite Holdings Pty Ltd.

The company were granted the tenement in March 2019 and illegally damaged protected sites. The company did not apply for a Section 18 consent to destroy an Aboriginal site under the *Aboriginal Heritage Act* until 18 March 2020. The application was declined by the Minister for Aboriginal Affairs, Ben Wyatt on June 4.

An aerial viewing of the site on Sunday June 7 by Traditional Owners and the Kimberley Land Council uncovered ongoing operations. Kimberley Granite advised the State that they had ceased operations on June 3.

The area is part of an important cultural dreaming site called “Moon Dreaming” (*Garnkiny*) made famous by senior Traditional Owner and well-known artist, Mabel Juli, whose award-winning paintings of the area have been projected onto the Sydney Opera House and hung on the walls of the National Gallery of Australia.

The destruction of the area is causing significant distress for the Traditional Owners, the Malarngowem people and the destruction of these sites is an offence under the *Aboriginal Heritage Act*.

Rusty Peters (84 years old) along with his sister Ms Juli (88 years old) are the recognised custodians of the land and are responsible for keeping it safe.

“When I first heard about the mining I was shocked. I didn’t know about it. I didn’t give the company permission. I didn’t give anyone authority to make this decision for me,” said Mr Peters.

“I thought it had stopped. This makes me very worried as I have to give permission for such things to happen on *Darrajayn* country. I’m not going to stop worrying, white people cutting our culture up.”

In October 2019, the Kimberley Land Council, on behalf of the Malarngowem Traditional Owners, informed Kimberley Granite in writing that significant Aboriginal sites were being destroyed and they should stop works, restore the site and enter into a heritage protection agreement with the Traditional Owners to prevent further damage. Kimberley Granite declined to do so.

In March 2020 the company was informed in writing by the State that there was an Aboriginal heritage site at the location and works should stop.

Nolan Hunter, CEO of the KLC, said the Aboriginal Heritage Act is not working to prevent destruction but only to regulate the manner in which it happens.

“This is the fundamental flaw that is enabling the continued destruction of Aboriginal sacred sites,” he said.

“The combination of weak legislation, inefficient government policy and the industry knowing State and Federal laws won’t stop them doing what they want is putting enormous pressure on Traditional Owners. They continually have to prove their rights through a legal system geared toward industry and against their interests.

“Whilst we welcome the Minister declining the Section 18 application, it didn’t stop the damage being done and it can’t undo that damage now. The Malarngowem Traditional Owners should not be forced to sit back and watch their cultural sites being destroyed when the Government, who is supposed to protect our cultural heritage, has the power to act.

We are calling on the State to bring a prosecution against Kimberley Granite for their blatant and unlawful breaches of the Act.”

Ms Juli, who visited the site recently, has expressed her concern about what might happen now the mining has destroyed or damaged their sacred places

“I will have to *jarrak* (talk) to my old people, talk to my mother and my grandfathers and tell them what happened,” she said.

I’ll tell them that there was nothing I could do to stop it. I didn’t know what was happening.”

On May 29, in an attempt to obtain the support of Government for action to protect the site, the Kimberley Land Council requested that the Minister for Mines issue a stop work order to Kimberley Granite. No response to this request has been received, and as of June 7 large earthmoving machinery was still being used on the site.

In the past week, Kimberley Granite applied to the National Native Title Tribunal to approve the grant of their mining lease.

“This is a clear indication that they have no intention of stopping, and there is a 99 per cent chance that they will get it. This is yet another way industry can by-pass heritage laws to get what they want,” said Mr Hunter.

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BACKGROUND

About Ms Juli and Mr Peters: The sites of significance are famous because of their depiction in art works by the senior Traditional Owners, Mr Rusty Peters and Ms Mabel Juli.

Ms Juli is an artist of national renown, having been awarded the prestigious Kate Challis RAKA Award in 2013 and was a finalist in the Fleurieu Art Prize for landscape painting. Mabel's artworks, (*Derran – Black Cockatoo and Garnkiny doo Wardel "Moon and Star"*), were projected onto the Sydney Opera House in 2018 as part of the Badu Gili project.

Mr Peters was a finalist for the 2015 National Aboriginal and Torres Strait Islander Art Award (NATSIAA) and in 2017, his paintings were featured in the National Gallery of Australia in Canberra, as part of the National Indigenous Aboriginal Art Triennial (NIAAT).

Kimberley Granite holds the exploration Tenement and has applied for a mining lease within the boundaries of the Malarngowem native title determination area. A mining lease is yet to be granted. Malarngowem native title holders have objected to the granting of the mining lease, and want the company to enter into a heritage protection agreement.

On 4 October 2019, the KLC informed Kimberley Granite that significant Aboriginal sites were being destroyed on the site as a result of their operations and they should immediately cease those destructive activities and enter into a heritage protection agreement to prevent further damage to the Aboriginal sites. No agreement has been entered into.

On 14 February 2020, the KLC wrote to the Treasurer and Minister for Aboriginal Affairs, the Honourable Ben Wyatt, to advise that Kimberley Granite was in breach of the Aboriginal Heritage Act due to ongoing damage/destruction of the Aboriginal sites.

On 22 May 2020, KLC staff visited the site and observed what clearly appeared to be mining operations ongoing on the site. DMIRS officers also visited the site recently and confirmed that there are ongoing operations being undertaken by the Company.

On June 4, 2020, the Section 18 Application under the Aboriginal Heritage Act was declined by Minister Wyatt who stated that "the Traditional Owners do not agree with the destruction of their heritage and sacred sites of importance and special significance and Garkiny (Moon Dreaming) is considered a sacred site."

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