

# Reasserting Gija women's role in mine site reclamation: A perspective from the Argyle Diamond Mine

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## Abstract

The Argyle diamond mine, in the East Kimberley region of Western Australia, ceased production in late 2020 after 37 years of operations and producing 865 million carats of rough diamonds. Opening in 1983, it was the first major diamond-mining operation in Australia and brought with it a very mixed history of Traditional Owner engagement with the Company (Rio Tinto). Closure now offers an opportunity to reassert cultural authority and reclaim Traditional Owners', and specifically, women's rightful place in decision-making. But the path to get there is complex. From the perspective of Kia Dowell, a community leader and Chair of Gelganyem Limited (an Aboriginal charitable trust), and supported by her mother Ethel McLennon, this article will trace the legacies of structural injustice as this mine was developed, which includes the two negotiated agreements and state government mining regulations, all of which actively marginalize Traditional Owner rights and interests. Likewise, during the initial and subsequent agreement negotiations women's customary interests were sidelined in favor of a western governance system, which privileges the male dominated view and voice. This is despite the fact that the site of the open pit mine was known to be an important women's site for the Gija people and was subsequently destroyed. Telling this story provides not only a chance to reflect on the past, but to also stake a locally self-determined agenda in order to reclaim Aboriginal governance structures and redefine how Traditional Owners are choosing to engage with Rio Tinto (the Company) and the Western Australian State government.

**Keywords:** Indigenous women, gender equity, cultural reclamation, mine closure, customary governance, mine site reclamation, Gija, Aboriginal

## Résumé

La mine de diamants Argyle, située dans l'Est de la région du Kimberley en Australie Occidentale, a cessé sa production à la fin de l'année 2020 après 37 ans d'exploitation et une production de 865 millions de carats de diamants bruts. Ouverte en 1983, la mine de diamants Argyle a été la première grande exploitation de diamants en Australie et a apporté avec elle une histoire très mitigée de l'engagement des propriétaires traditionnels avec la société minière (Rio Tinto). La fermeture de la mine offre aujourd'hui l'occasion de réaffirmer l'autorité culturelle et de redonner aux propriétaires traditionnels, et plus particulièrement aux femmes, la place qui leur revient dans le processus décisionnel. Mais le chemin pour y parvenir est complexe. Du point de vue de Kia Dowell, dirigeante communautaire et présidente de Gelganyem Limited (une organisation caritative autochtone), soutenue par sa mère Ethel McLennon, cet article retrace l'héritage de l'injustice structurelle qui a marqué le développement de cette mine, notamment les deux accords négociés et les réglementations minières du gouvernement de l'État, qui marginalisent tous activement les droits et les intérêts des propriétaires traditionnels. De même, au cours des négociations de l'accord initial et des accords ultérieurs, les intérêts coutumiers des femmes ont été mis de côté en faveur d'un système de gouvernance occidentale, qui privilégie le point de vue et la voix de l'homme. Et ce, malgré le fait que le site

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de la mine à ciel ouvert était connu pour être un site important pour les femmes du peuple Gija et qu'il a été détruit par la suite. Raconter cette histoire permet non seulement de se pencher sur le passé, mais aussi de mettre en place un programme local autodéterminé afin de récupérer les structures de gouvernance aborigènes et de redéfinir la manière dont les propriétaires traditionnels choisissent de s'engager avec Rio Tinto (la société minière) et le gouvernement de l'État d'Australie Occidentale.

**Mots-clés:** Femmes autochtones, équité entre les sexes, réhabilitation culturelle, fermeture de mines, gouvernance coutumière, réhabilitation de sites miniers, Gija, Aborigène

## Resumen

La mina de diamantes llamada Argyle, ubicada en la región de East Kimberley, en Australia Occidental, cesó su producción a finales de 2020, después de 37 años de operaciones y una producción de 865 millones de quilates de diamantes en bruto. Inaugurada en 1983, dicha mina fue la primera operación importante de minería de diamantes en Australia y trajo consigo una historia muy variada de compromiso de los Propietarios Tradicionales con la empresa (Rio Tinto). El cierre de la mina ofrece ahora la oportunidad de reafirmar la autoridad cultural y recuperar el lugar que les corresponde a los Propietarios Tradicionales, y especialmente las mujeres, en la toma de decisiones. Pero el camino para conseguirlo es complejo. Desde la perspectiva de Kia Dowell, líder comunitaria y presidenta de Gelganyem Limited (una fundación benéfica indígena), y con el apoyo de su madre Ethel McLennon, este artículo rastreará los legados de injusticia estructural durante el desarrollo de esta mina, lo que incluye los dos acuerdos negociados y las regulaciones mineras del gobierno estatal, que marginan activamente los derechos e intereses de los Propietarios Tradicionales. Asimismo, durante las negociaciones iniciales y posteriores del acuerdo, los intereses consuetudinarios de las mujeres fueron marginados en favor de un sistema de gobernanza occidental, que privilegia la visión y la voz dominadas por los hombres. Esto a pesar de que se sabía que el sitio de la mina a cielo abierto era un lugar importante para las mujeres del pueblo Gija y que posteriormente fue destruido. Contar esta historia no sólo brinda la oportunidad de reflexionar sobre el pasado, sino también de establecer una agenda autodeterminada a nivel local con el fin de reivindicar las estructuras de gobernanzas aborígenes y redefinir el modo en que los Propietarios Tradicionales deciden relacionarse con Rio Tinto (la empresa) y el gobierno del Estado de Australia Occidental.

**Palabras clave:** Mujeres indígenas, equidad de género, recuperación cultural, cierre de minas, gobernanza consuetudinaria, recuperación de sitios mineros, Gija, aborígenes

## 1. Introduction

*A barramundi is being chased by a group of old women and swims into a cave near the area now known as Barramundi Gap. As she enters the cave the women prepare to catch her with nets made from rolled Spinifex grass (a traditional Gija fishing method known as Kilkayi). The barramundi realizes she is trapped in the shallow, muddy waters of the cave entrance and tries to escape by swimming to the other end, towards Nunbung/ Nunbunj (Wesley Spring). But she cannot find a way out and returns to the entrance of the cave, where the old women are waiting with their nets.*

*She swims towards the women and jumps over them, shedding her scales as she jumps and leaving them behind in the shallow water. The scales become the diamonds of all colours that are found there today. The barramundi then jumps through the gap in the rocks, landing in the deep, clean water of Kowinji/Gowinji (an area near Cattle Creek). As the barramundi dives, she turns into a white stone. Three of the old women who have chased the fish to Kowinji peer into the water to look for her and they too turn to stone, forever becoming a part of the landscape. Today, there are three stone formations overlooking the creek. According to the Gija people, barramundi are not found in the area today because of the presence of the Ngarranggarni barramundi in this place.*

Gija creation story: The Barramundi Ngarranggarni (Dreaming) Story (Gelganyem Trust, 2024. Gija story as told by Madigan Thomas)

This Ngarranggarni story has been used to market the now-famous pink diamonds from Argyle Diamond Mine in Australia, though there is not a formal agreement consenting to the use of the Gija version of this story. Gija women in particular, have known about the existence of this site and its "many jewels"

for generations. In fact, "in the late 1970s [women's law boss] Q. McKenzie<sup>2</sup> went into battle against the Argyle diamond mine to try and protect *Dayiwool/Tayiwul* (Barramundi Gap)."<sup>3</sup>

The following sections provide background to current activities at this site, including a brief background on the history of the agreements and the governance structures established to facilitate the development of the mine. This is important history as it provides a lens to more fully understand the legacies created by these externally-introduced agreement structures that have created confusion about Traditional Ownership; confusion that shapes our current challenges in mine closure. I (Kia Dowell) then discuss our attempts at creating a governance structure that is more aligned with our customary governance and the challenges we have faced in implementing this.

The narrative has been developed from a curated set of interviews held via Zoom in late 2022 and early 2023, and also draws from a previous collaboration in 2021 between the authors. This collaboration – known as the Indigenous Exchange Forum – entailed a two-day on-line forum connecting First Nations people from Australia, Aotearoa New Zealand and Canada. Many of the collaborations also entailed on-Country and in-community dialogues. I was part of this initial, virtual collaboration (see Holcombe *et al.*, 2022) and this article extends and builds upon this collaboration.

Much of this article is in the first person from my (Dowell's) personal and experiential perspective, with signposting, referencing and narrative flow facilitated by Sarah Holcombe. Written from the perspective of two generations of *Gija* women (Dowell with guidance from her mother McLennon), the article seeks to rectify aspects of the historical record by providing a gendered cultural lens through which to understand today's legacies. Dowell, Holcombe and McLennon have also returned to and revised drafts of the article into 2023 and early 2024. It does not purport to represent all *Gija* women's voices – but the perspective of two Traditional Owners.

#### *Settler creation story: the discovery that needs agreements*

Since the 1979 "discovery" of the AK1 Diamond pipe in the East Kimberley region of Western Australia (WA) (Figure 1, 2, 3), the role of Aboriginal women has largely been determined by predominantly non-Aboriginal, patriarchal governance structures, rules and stereotypes. The remoteness of the mine, coupled with the political, legal and socio-demographic changes over the past 44 years, has resulted in multiple attempts to address the relationship between Traditional Owners and the Company over that time with several agreements. The most recent agreement was in 2004 when the Argyle Participation Agreement (APA) was signed. The APA is made up of two documents: 1) the Indigenous Land Use Agreement (ILUA, see Glossary) and 2) the Management Plan Agreement<sup>4</sup> (MPA).

The term 'Traditional Owners' is used in Australia to describe those Indigenous people who have primary affiliations with, and responsibility for, areas of land and water and the cultural and spiritual sites they contain. Traditional Owners is a term variously used across Australia and derives from the legal term 'Traditional Aboriginal Owners' under the *Aboriginal Land Rights (NT) Act 1976*, which defined these Aboriginal people as those with common spiritual affiliation to sites on an area of land that hold primary spiritual responsibilities for those sites and that land (often colloquially shortened to 'TOs').

The registered ILUA was signed between Traditional Owners as defined in the Agreement, the Kimberley Land Council (KLC) and Argyle Diamond Mine (Argyle Diamonds). The ILUA area covers 797.5 square kilometers and is located 100 kilometers southwest of the town of Kununurra in the Shire of Wyndham-East Kimberley. The communities closest to the mine (by road distance) include Warmun, Doon Doon, Glen Hill, Bow River, and Crocodile Hole. The ILUA area contains a special lease for grazing purposes as well as the mining tenements (Human Rights and Equal Opportunity Commission, 2006: 125).<sup>5</sup>

<sup>2</sup> For detail on Q. McKenzie see <https://adb.anu.edu.au/biography/mckenzie-queenie-mingmarriya-nakarra-31999>

<sup>3</sup> McKenzie was a Malngin person who lived all her life among Gija people first at Texas Downs Station, then at Warmun Community where she passed away. Out of respect for the deceased, protocol forbids use of first names for a period of time, depending on the individual.

<sup>4</sup> The Mine Management Plan Agreement contains 8 plans intended to govern the day-to-day interactions, priorities, commitments and expected deliverables throughout the life of the mine.

<sup>5</sup> The ILUA was registered with the National Native Title Tribunal on 8 April 2005. It was the result of 3 years of negotiation and replaced a 'Good Neighbour Agreement' that had existed since the 1980s. The ILUA will be relevant until the closure of the Argyle Diamond Mine. An ILUA is a voluntary agreement entered in good faith by all parties. ILUAs are the product of agreements between traditional owners and governments or commercial operators or both simultaneously. Participating parties have interests in an area of land and a desire to work together outside of the courts to achieve practical certainty about rights and future acts on land.

Two trusts were established to implement these Agreements: Gelganyem Trust and Kilkayi Trust.<sup>6</sup> These Trusts were named after the traditional fishing method used in the stories: *Gelganyem* in Miriwoong and *Kilkayi* in Gija. Gelganyem is a Charitable Trust and Kilkayi was a Discretionary Trust. It is important to explain the role of both. Gelganyem Trust manages the Sustainability Fund – a "kids and grandkids" fund – for future generations. The money is invested and the return from that investment funds programs for Traditional Owners: Law and Culture, Education and Training, Social and Community programs. The Kilkayi Trust was a discretionary trust which allowed for benefits to be provided to the Traditional Owners (as defined in the APA) and maintained the distributions of the original signatories until those individuals passed away.



Figure 1: Aerial view of Barramundi Gap, location of Rio Tinto's Argyle Diamond Mine, pre-mining natural state. (Source: <https://gelganyem.com.au/argyle-diamond-mine/>)

<sup>6</sup> Gelganyem Trust was established in April 2005 and marked the end of 3 years of negotiations. The Trust was intended to show a new way forward for self-determination by Traditional Owners of the Argyle Diamond Mine area. Gelganyem Trust, through its Trustee Company, Gelganyem Limited, is governed by a Board of 11 Directors who manage the Sustainability Fund. The return on investments from the Sustainability Fund are then distributed to fund multiple programs<sup>6</sup> that deliver direct benefits to Traditional Owners to respond to their identified needs, e.g. a school-based scholarship program, a tertiary scholarship program, an education milestone rewards program, a Traditional Owner excellence and advancement program, a medical crisis program, a funeral support program, an Elders support program, and both women's and men's law and culture funds. Gelganyem also has a commercial arm, Gelganyem Investments, with a primary aim of investing in commercial businesses to generate a profit that is then reinvested into the Fund to finance future contributions to programs and employment opportunities.





Figure 2: Aerial view of Barramundi Gap, location of Rio Tinto's Argyle Diamond Mine, impact and footprint of mining operations prior to closure. (Source: <https://gelganyem.com.au/argyle-diamond-mine/>)

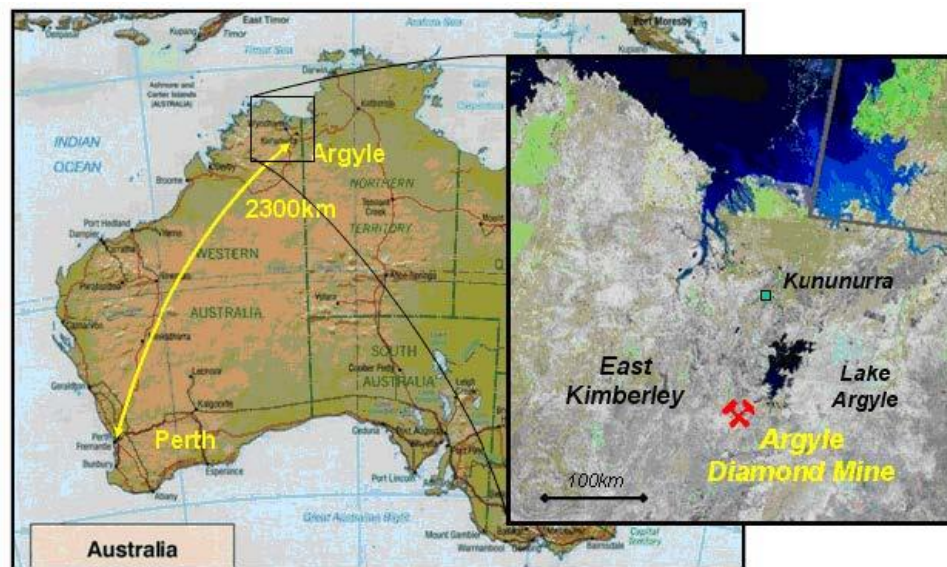


Figure 3: Regional map of the Argyle Mine. (Source Fernandez *et al.* 2011)

#### *Positionality and gender*

I have a key leadership role on the Board of Gelganyem Limited. However, it is important to establish what gives me the right to speak about these issues. I have been the female Traditional Owner Director for the *Tiltuwam/Thildoowa*<sup>7</sup> Daam (Country) and Chair of Gelganyem since 2017. I am one of 9 Traditional Owner Directors who represent the rights and interests of those groups named in the APA.

<sup>7</sup> Note the difference in spelling relates to the Argyle Agreement spelling and the *Gija* dictionary spelling.

I identify as a *Gija/Gidja* woman of the *Tiltuwam/Thildoowa Daam*. In the *Gija* language, *Daam* translates as Country; home; camp. *Tiltuwam/Thildoowa*, is the *Gija* name for the location of the Lissadell Pastoral cattle Station. The other six groups as named in the APA, have their own *Gija* or *Miriuwung* name for different areas of Country as named in the ILUA, according to where they hold rights and interests. I am the granddaughter of Madigan Thomas and the daughter of Ethel McLennon – my guide and in many ways, my teacher. My traditional *Gija* name is *Wadjbarreyal*, which was given to me by Paddy Bedford, via my mother, after his mother who is of the Nangala skin group, thereby making me his classificatory "young" mother. This practice of naming a person at birth after one's deceased family member of the same skin group, continues today. In *Gija* culture, a person's skin name and associated skin totem, follows the mother's line and is determined by their mother's skin.<sup>8</sup> In my case, my grandmother's skin group name is *Nyawurru* (totem = emu), my mother's skin name is *Nangari* (totem = crow), my skin group name is *Nangala* (totem = brolga) and my daughters' skin names are *Nyajarri* (totem = bush turkey) the same as my great-grandmother's as the skin groups in my family's moiety, repeat after four generations. On the other hand, a person's dreaming totem/s, is inherited from one's father or in my case, from my grandfather because of my father's heritage. My family's dreaming totems are the echidna, and fire. Whilst I know I have connections to many other groups through blood, marriage, and kinship, it is through my mother's line that I am guided in my decision making and my relationship with the world and people around me. This positioning is not to diminish my grandfather's country or family; I feel just as strongly connected there as I do to my *gungi* (grandmother – mother's mother).

This sharing of my experiences is through many lenses and whilst, from a non-Indigenous perspective, this is typically (as I've observed) difficult to grapple with, the co-existence of multiple roles through multiple timelines is not new to *Gija* people. In fact, *Ngarranggarni* (which seems easier for many to understand as "the Dreaming"), is the co-existence of past, present and future at once. It is through this perspective and grounding that I share the following knowledge and experience in this article. I invite you to open your mind, release your self-imposed views of how to make sense of this and simply read, feel and trust your *liya-liya/liarn* (feeling in body/intuition, spirit, higher self) to better enable connection with the truth.

My parents met at what is now known as the Argyle Diamond mine. It is true, I am their daughter, but I am also a mother, a wife, a sister, a granddaughter, niece, cousin and so much more. Like those before me, I see my role as supporting the way to reclaim customary governance structures that rightfully centre Aboriginal women's voices in healing the wounds created by the mine – as these are wrapped up in social, cultural and environmental bandages. I have learnt a lot of truth is not recorded in the books written by non-Indigenous people and when I reflect on those truth-telling conversations with very knowledgeable and highly regarded people who were involved at that time, it makes my spirit restless. I am deeply grateful for those written records but behind those words on paper remain untold stories – the truth can be hard to accept, especially when it hasn't been shared by people in power. Or they're afraid of what will happen when it does. So, we have had to wait since the beginning of land disturbing activity on that Country for our truth to finally be told and for things to be made right. I hope this story and my experience helps to show that there is power in truth that current and future generations can start to learn about.<sup>9</sup>

Next, I will trace some of the history of the various Agreements and organizations set up to implement them — so that the cultural governance reclamation that I am supporting can be understood in context.

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<sup>8</sup> "The concept of kinship is complex and shapes social organization and interactions. Kinship, including moiety, totems and skin names, determine how people relate to one another, as well as their roles, responsibilities and obligations to one another, the environment and ceremony" (National Portrait Gallery 2024, and see Doohan 2008: 46-48).

<sup>9</sup> I transferred to and eventually graduated from the University of Texas, El Paso (UTEP) with my MBA. I chose UTEP for several reasons – firstly, it was an emerging women's basketball program with a proud history of social justice and secondly, it helped that I could transfer with a teammate of mine, someone I consider family, Noni Wharemate – an incredible Māori woman, human and athlete. In 2008, a year after graduating from UTEP, at the request of my grandmother Madigan Thomas, I returned to Australia. My grandmother told me it was time to come home, use my education to learn about the way the mining company (Rio Tinto) worked and what they were trying to do to our Country. Since 2008, I have tried my best to stay true to that – to always be learning as much as I can.

## 2. History of the Argyle Agreements

### *The 1980 Good Neighbour Agreement and its legacies*

During production, Argyle accounted for 99.6% of Australia's diamond output and 25% of the world's diamonds by volume (Doohan, 2008: 25), and the location became renowned for the rare Kimberley pink diamonds. After 44 years of land-disturbing activity, including 37 years of mining operations, the mine ceased production in November 2020. The politics of resource development and the early history of contestation in Australia has been well documented (see Dixon & Dillon, 1990). Importantly, at the time the first Agreement was signed, there was no legislative base to voice opposition: the KLC was only a fledgling political land rights organization and the development of the Argyle diamond mine was undertaken prior to the implementation of the *Native Title Act 1993* (Cth).<sup>10</sup> The role of *Gija* women, even at that time, was not easily distinguished, against a backdrop of early opposition from senior people of the Warmun Community about the highly contentious Glen Hill Agreement, (more commonly known as The Good Neighbour Agreement). This early Agreement was signed in 1980 between five Aboriginal people who asserted connection to the area to be mined and two company representatives (Christensen, 1990). A senior woman at that time, Q. McKenzie shared various stories as part of the East Kimberley Impact Assessment Project curated by Helen Ross. These narratives provide an explicit account of the intentional actions, behaviors and political environment in 1979, specifically that "sites had been damaged without their [Aboriginal people] knowledge by the Argyle Joint Venture [sic] acting in contravention of legislation intended to protect Aboriginal sites, but received tacit State Government support for its actions, and skillfully outmanoeuvred the Aboriginal community in its efforts to prevent mining." (Ross, 1989: 60).

The boldness of Rio Tinto (Conzinc RioTinto [CRA] at the time)<sup>11</sup> during the exploration phase in the 1970s was described as "ignorance rather than enlightenment about the location of sacred sites during 1979. This is significant because ignorance of a site's sacred significance can be used as a legal defence for certain offences under the Western Australian heritage legislation" (Howitt, 1989: 234). In 1980, Traditional Owners told CRA that "to avoid infringing the Aboriginal Heritage Act and desecrating Site K 1098, the Barramundi Gap, CRA should not carry out any work at all within two miles of the crest of the gap in the mountains." (Howitt 1989: 235).

Although agreements between extractive companies and Aboriginal communities were a relatively new phenomenon at that time, the company attracted strong criticism for the way the original agreement was negotiated (Christensen, 1990; Dixon & Dillon, 1990). Many Aboriginal people who believed they had a connection to the mining area were left out of the negotiations and those who did participate received limited assistance (Doohan, 2008). This assumption of a one-size-fits-all approach did not account for customary forms of attachment to land. As a result, the fall-out is still being managed today. Indeed, the focus of this article sits squarely at the nexus of politics, society and economics and thus the core themes of a political ecology approach to examining and unsettling the established relations of power.

The Good Neighbour Agreement allowed for mining to proceed on and adjacent to a significant number of sacred sites without further objection from Traditional Owners (see also Parmenter *et al.*, 2023). As the anthropologist Kim Doohan found, "the co-location...of a sacred place and a diamond mine has become a major challenge to the worldviews of both the local Aboriginal people and senior Argyle managers" (2008: 20). Further evidence of this challenge is confirmed in Quentin Beresford's *Rogue Corporations* wherein the author states that "from the early 1960s, Aboriginal sacred sites in remote Australia were in the cross-hairs of the mining industry as it eyed the prospects of a mining boom precipitated by the rise of Japan" (2023: 334). In response to the mining boom and the lure of foreign investment into Australia, there was some attempt by the Western Australia state government to manage this challenge between the protection of Aboriginal rights and the rights of investors. According to

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<sup>10</sup> The Native Title Act 1993 (Cth) (NTA) (see glossary at end of article) is legislation passed by the Australian Parliament that recognizes the rights and interests of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and customs. Native title was first recognized in Australian law following a claim lodged in 1982 with the High Court of Australia by a group of Meriam people from the Eastern Torres Strait. They sought recognition of their peoples' occupation and exclusive possession of Mer (Murray Island) according to their own laws and customs since before British sovereignty (PBC 2023).

<sup>11</sup> The Argyle Diamond mine was initially managed by CRA and, until late 2000, was a joint venture between Rio Tinto [56.8%], Ashton Mining Ltd. [38.2%], and the Western Australian Diamond Trust [5%] (Shigley *et al.*, 2001).

Beresford, when "the Western Australian Tonkin Labor government introduced the *Aboriginal Heritage Act 1972* [i]t promised a new era of recognition of Indigenous people's cultural rights. This was historically important legislation, the first of its kind in Australia" (2023: 334).<sup>12</sup>

The original 1980 agreement was known as the Good Neighbour Agreement and other local names, such as the Glen Hill Agreement as noted above. The five Aboriginal signatories asserted their connection to the area to be mined, and there were only two company representatives (Christensen, 1990). In tandem with the signing of the Good Neighbour Agreement, another was also signed. This second agreement was between the company and the WA State Government and multiple parties; it related, and continues to relate to, the mining, marketing and processing of diamonds.

The Good Neighbour Agreement was simple in its intent, which was for the company to be a "good neighbour" to local Aboriginal communities. The Agreement was based on a Rio Tinto policy identifying "impacted communities" as those closest to the mine, as opposed to recognizing traditional ownership. Unfortunately, just three of five Aboriginal communities where Traditional Owners also lived were included as a result. The Agreement also intended to invest in those communities by way of infrastructure, vehicles, and controversially, direct payments to individuals. Whilst the mine was permitted to proceed, consent was not unanimous by all people with traditional ownership rights and interests in the area.

As such, the local Aboriginal communities closest to the mine were the primary beneficiaries under the Good Neighbour Agreement, along with the original signatories (specific individuals) who received individual payments. The fact that the Good Neighbour Agreement specifically dealt with these communities is not reflective of *Gija* ideas of customary rights and interests and what is now being understood collectively among the *Daam* groups. I believe the ongoing consequences of these false assumptions underlying early agreement are still part of the truth-telling that needs to occur to make things right.

In those early days, Traditional Owners had very limited support to negotiate (see also Doohan, 2008: 18) and were not as well informed as they are today. The negotiation outcome was understood by Traditional Owners as an exchange in return for the company to mine on our Country. At that time, an important exchange (*wirnan*) item was Toyotas (4-wheel drive utility vehicles) – members of Good Neighbour communities, Traditional Owners and non-Traditional Owners alike, had said, "We want new Toyotas every year." Toyotas were a symbol of freedom and means of access to Country to maintain cultural obligations, teach younger members about their country, and access to services in "town", especially medical services. It was in this context, then, that "Toyota Dreaming" became a kind of reference for agreement-making: if you want to do a deal with Blackfellas in the East Kimberley just offer them some free Toyotas (see also Mahood, 2012), a stereotype which really did tarnish agreement making.<sup>13</sup>

I was not born when the 1980 agreement was signed and therefore do not claim to understand the nuance, politics or complexity of that time, but I do question the lack of any oversight by the Western Australian (WA) State government in those early days. The women in our family held multiple leadership roles as described by Sister Veronica Ryan in her book, *From digging sticks to writing sticks* (Ryan 2001). Many of my family lived in Warmun (Turkey Creek) at that time.<sup>14</sup> As I understand it, for those communities involved in the Good Neighbour Agreement, the WA State Government wasn't overly involved or present, and the Aboriginal people who called these communities home were essentially left to self-govern, which they did by "bending" (Sullivan, 1986) the rules of the Western system in order to maintain a cultural governance structure and practices (see also Thorburn, 2008). By contrast to the Good Neighbour Agreement, the State Agreement negotiated in parallel set out the requirements and expectations between the WA Government and (now) Rio Tinto about how to manage the extraction of resources at that time, with no mention of the role or consent required from Aboriginal people and importantly, Traditional Owners.

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<sup>12</sup> It is very outdated now, as evidenced by the legal destruction of a very significant sacred site by a major mining company and subsequent national and international outrage (Storey, 2023, Kemp *et al.*, 2023).

<sup>13</sup> According to Argyle Community Relations archives 20 motor vehicles were purchased between 1980 and 1992 for personal use by the four signatories to the Good Neighbour Agreement (in Doohan 2008: 105).

<sup>14</sup> Warmun (as an organisation) was and still is, incorporated under the State Act i.e. the Associations Incorporations Act, 1895-1969 (WA).



*The 2004 Argyle Participation Agreement (APA): Resolving injustices?*

Twenty-four years later in 2004, the Good Neighbour Agreement was revised to account for the 1993 *Native Title Act* and the emerging expectations and processes for reconciliation (see Doohan 2008: 113). The Argyle Participation Agreement (APA) describes the Traditional Owners (as understood at that time) as families, or groups with a connection to the Country to the area described in the APA. The APA makes reference to *Miriuwung, Gidja, Malgnin* and *Wularr* people as the traditional custodians but sitting under each of these are sub-groups, referred to as Estate Groups for the purposes of the APA. Doohan pointed out that at the time of the APA the "negotiation of an agreement of this nature was not sanctioned by the state, and it took place outside any legislative or WA government policy framework" (2008: 19), so there was still very little guidance or support for Traditional Owners and communities. Rio Tinto notes that it was a "voluntary" agreement initiated by and for the company.<sup>15</sup>

The APA attempted to resolve a lot of the issues that became entrenched as a result of the Good Neighbour agreement; however, when I became Chairperson of the Gelganyem Group in 2017 I wanted to know the truth and hear from people myself. I undertook a pretty extensive consultation with Aboriginal people, many of whom I am related to, who were then redefined as Traditional Owners, to understand what their expectations were, asking them questions like: "what are the things that you are still feeling no good about?" A lot of it was, and still is, about the historical injustice that has not been resolved, either through formal recognition of connection or through different families being involved over time. Those issues still have implications in terms of who has decision-making rights versus cultural authority rights.

Gelganyem has advocated intensely over the past several years to get the company to recognize the shortfalls and multiple errors upon which the benefits-sharing model was established. Many of our predecessors knew at the time that the negotiations were flawed. However, off the record conversations I have had revealed that the pressure of entering an Agreement was more of a priority than entering an Agreement with the right people. I have been told that, "a door was left open for future generations of TOs to deal with them" and that "something was better than nothing." The truth is that many Aboriginal people, other than those currently named as Traditional Owners, have benefited from the mine. Now it is time for all of that to be made right. In essence, the APA recognized Traditional Owners as the landlords of the Argyle mining lease, while recognizing Argyle's right to continue its current mining operations.<sup>16</sup> In the APA, an additional two Aboriginal communities, whose members claimed connection to the Country in and around the Argyle mining lease area, were included in hopes that these unresolved issues would be addressed but they remain.

The APA formally established a long-term relationship between the two parties, including that any changes to the ILUA needed to be negotiated and any changes to the Management Plan Agreement (MPA) to be unanimously agreed to by a governance structure. To illustrate this power imbalance and lack of cultural appropriateness, 'unanimous' in this context meant that the four Argyle representatives had one vote and the 26 Traditional Owner representatives had one vote and that in the event of a disagreement, the company representatives could veto any proposed decision, even if all Traditional Owner representatives agreed. As I will discuss, this governance structure has often worked against Traditional Owners. The APA was considered necessary as a tool that could provide some form of historical resolution and established a process whereby Rio Tinto, the Traditional Owners and the KLC would work together to ensure that Traditional Owners native title rights would be recognized to their fullest extent.<sup>17</sup> The commitment was that once the ILUA was registered, the Native Title Application would be lodged for a Native Title

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<sup>15</sup> It is well known that the APA was the blueprint for many, not all, of the more recent Pilbara agreements, suggesting that the company took time to reflect on what didn't work at Argyle then made the time and dedicated the resources to improving on it. But this is simply my observation as one Traditional Owner.

<sup>16</sup> The Argyle Diamond Mine Participation Agreement (APA) consists of two parts. The first part is the ILUA, which is legally binding on the parties. It outlines and formalizes the financial and other benefits that traditional owners receive. It specifies how the benefits are to be administered. It contains a process which ensures that the traditional owner's native title rights and interests are recognized to their fullest potential. The second part is the Argyle Management Plan Agreement (AMPA). The APA contains eight Management Plans. They are: 1) Aboriginal site protection 2) Training and employment 3) Cross-cultural training 4) Land Access 5) Land Management 6) Decommissioning 7) Business development and contracting 8) D D Springs – men's site (note that this is a restricted men's place name).

<sup>17</sup> See <https://gelganyem.com.au/home/our-agreement-gelganyem.html>

determination to be made.<sup>18</sup> The fact that, as I write, this has still not been done is beyond disappointing and reflects a system that is not effective. It also brings into question the lack of support for Aboriginal people in their efforts to care for Country and establish self-governance about the use of land and water.

Gelganyem Limited was established to fulfil the Executive Office/r role in the implementation of the APA, and complied with the inclusion of the five communities and seven families in the ILUA on this basis. However, in recent times, Gelganyem has sought to revise the agreement to clarify this issue of customary ownership, as I will discuss further. However, Rio Tinto would not revisit the ILUA. Nonetheless, the APA was the first attempt to acknowledge, address and resolve tensions and contestation between some members of the Warmun and Glen Hill Communities and the mining company. The APA and its benefits also extended to other regional centers such as Kununurra and Wyndham and, whilst not legally required, significant investments were made to local infrastructure and housing supply.

In 2008, just four years after the APA was executed, the Company advised Traditional Owners of their plan to close the open pit. At the same time, the Managing Director undertook a feasibility study, the results of which supported the extension of the life of the mine by going underground. It was bittersweet given that the APA was less than five years old at that time and, though there were clauses about the possibility of extending the mine through underground operations, there was uncertainty about what this actually meant. A group of Traditional Owners had been assertive about a "no means no" agreement to moving underground, but this was not upheld within the group due to conflicting aspirations. The decision to go underground was (as told to me) something that many *Gija* women felt "no good" about because of the significance of the story of the place and what would be disturbed. We know from experiences over the last 15 years from non-Indigenous and Indigenous peoples from elsewhere that they have had spiritually-confronting encounters underground.

I cannot imagine how Traditional Owners, especially our women, were feeling about the Company, each other and that Country throughout the first twenty years. How they found the courage and resilience to face what they did, I feel was out of the obligation to find some form of "good" for their families and communities. To approach a site as significant as *Dayiwool/Tayiwul* (Barramundi Gap) and ask for safety on one hand and continued production on the other is something I hope I never have to face (see Doohan 2008: 110).

### 3. Ongoing contestations in Argyle governance

The 2004 Agreement established another governing body, the Relationship Committee (RC), made up of 26 Traditional Owner representatives and four Argyle representatives. The Traditional Owner representatives were appointed by the seven *Daam (Gija) Dawang (Miriwoong)* family groups. As set out in the APA, the committee, meeting quarterly, was the primary mechanism to monitor interactions between the company and Traditional Owners, along with delivery against the eight management plans.

However, what is now understood by many Traditional Owners is that a new model for decision-making is needed that is more culturally appropriate and accurate, as well as one that puts our senior people in their rightful positions as cultural authority figures, constituting the decision-making body, rather than an advisory body. An important distinction must be made here: a cultural law boss and Traditional Owner are not the same thing. And yet there are records, such as those from Ciaran O'Faircheallaigh, who stated that "women played a direct and major role in the negotiation of the agreement between Argyle Diamonds Ltd (ADM) and the Traditional Owners of the Argyle diamond mine in 2002-5" (2013:1797), an indication that even then there was not a clear appreciation for who had cultural authority and who claimed affiliation. Further, Aboriginal communities may have Traditional Owners who live there but not all people who live in communities are Traditional Owners. The preferred approach taken by CRA was to deal with historic sites of settlement, e.g. a government ration depot or cattle stations which became Aboriginal communities, rather than with people with proven traditional rights and obligations, let alone cultural authority. These distinctions may appear to be anthropological nuances in customary governance structures, but not understanding and respecting them has had both material and relational impacts, locally and regionally and up to and including mine closure processes.

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<sup>18</sup> A successful determination of Native Title – a court process for Indigenous groups to prove their connection to their Country – is usually required before ILUAs are negotiated, and also provides certainty as to the native title holders or in other words the Traditional Owner group.

In mid-2022, because of ongoing tensions, we, as Traditional Owners, felt that we had no choice other than to implement a "cultural freeze" on the activity of the Relationship Committee and Traditional Owners more generally. "The freeze", as we are calling it, refers to a stoppage on Traditional Owner participation in the activities of the Committees. The rationale was clear: Traditional Owners were being harmed in different ways and ultimately the relationship was no longer effective. From Gelganyem's perspective, the RC had become a forum to push ahead with "approvals" without what we consider free, prior and informed consent (FPIC). In October 2023, a group of our leaders met to consider whether the Company had done enough to warrant the freeze being lifted. I can share that whilst much effort went into simply doing what should have been done all along, there were a number of caveats that needed to be met.

The company has been provided with years of feedback, guidance, and advice from Gelganyem in the hope that the spirit and intent of the APA would be upheld. Between 2018-2019 as the newly elected Chair of the Gelganyem Trust, one of the very first things I worked on with the Gelganyem Trust Board and management was establishing culturally appropriate forums for the Women's Underground Advisory Group (WUAG) and Cultural Heritage Advisory Group (CHAG). These forums were established where gender-based decision-making was necessary without negatively impacting the ability to influence, challenge, or resolve issues. The purpose of establishing these forums was to also ensure that the right people with the right level of cultural authority were involved to ensure they could exercise their rights as Traditional Owners, whilst teaching the next generation.

The WUAG and the CHAG were established to highlight and manage the key risks from our women's perspective and although these groups are currently inactive due to implementation of the "cultural freeze", they remain vital because they need to ensure that the company engages groups with cultural authority for decision making. In my experience and through my observations, the company has misused the RC by expecting them to make decisions which are not appropriate for them to make, including in relation to mine closure. This seemingly disingenuous practice has thereby placed these groups in a position of compromising their cultural principles and protocols – leading to "the freeze."

Whilst we have implemented our own Cultural Heritage Advisory Group and Women's Underground Advisory Group to give us safety and certainty from a cultural point of view, there was no work progressed by the company to clarify the relationship between these groups and the primary APA decision-making body, the Relationship Committee. The company itself confirmed there are no clear terms of reference for this Committee and agrees the governance structure is outdated and not fit for purpose. The lack of clarity regarding the role of the Relationship Committee and its relationship with Traditional Owner established Advisory Groups referred to above, as well as lack of certainty regarding its decision-making authority due to the lack of finalization of the native title process, has resulted in Traditional Owners feeling increasingly compromised.

We feel that despite all of their statements and intent, the company continues to ignore what are considered Traditional Owner priorities and urgent critical matters within these shared governance structures. The Country of the mine, of my family and family generations to come, deserves the best chance at being returned to us in the healthiest way possible so that future generations do not have to clean up this mess which is collectively attributable to all parties to the Agreements and to the major beneficiary, the WA state government.

Ideally, out of this freeze we will have a governance model that is more fit for mine closure and cultural governance. Our goal is to have something permanent in place so the power shifts can take place. I wanted to start making things right in the best way I could and in the most respectful way I could. It has also been a journey to empower other women. It's not just about me because I happen to be in this role of Chairperson, this is about transitioning to a structure that should have been in place from the beginning.

#### **4. The role of Gelganyem in "culturally informed" closure**

Beginning in 2018, Gelganyem sought confirmation from the seven member groups (*daam*) about the future of the organization and what role they wanted it to play during mine closure and beyond the life of the mine. Gelganyem received confirmation from the seven groups that it should do what it can to get the most opportunity out of what was left. Many felt it was too little, too late. Nevertheless, the community we served made it clear that the Gelganyem Trust Board and management needed to manage a very complex transition period in the absence of a native title determination and a Prescribed Body Corporate (PBC, see

Glossary).<sup>19</sup> Gelganyem recognizes that Traditional Owners will decide what to do once Native Title has been determined but until then, we will keep holding the company, the WA Government and others accountable to deliver on promises that were made decades ago (see also Mangan, 2022). We have had a challenging multi-year restructure to simplify the organization, protect the assets of the Trusts and ensure ongoing delivery of the obligations and commitments made by Rio Tinto.

At the time of writing in mid-2024, Gelganyem continues to support Traditional Owners through closure and to participate in the Native Title claim process being managed by the KLC. We do not know what the future governance structure will look like. As a Trust, we have taken a very prudent approach to managing the funds, with difficult conversations about risks and outdated practices that some Traditional Owners had grown used to. The Board also found it necessary to educate and prepare Traditional Owners for the cessation of payments and distributions from the relationship with Rio Tinto, which led to an unhealthy dependency in various forms over the previous 30 years.

Gelganyem will continue to help Traditional Owners navigate mine closure and strengthen ties with the WA Government to ensure our rights and interests are not only recognized and protected, but are included throughout closure and beyond. The early governance structures, such as the RC, were established by the Company and which, by necessity not choice, Traditional Owners have had to adjust to. The issue of these "imposed" governance structures is a legacy issue brought into focus through the mine closure work; and remains, for me, an important one. The behaviors I personally observed and experienced in addition to what I was told about by company representatives did not align with the spirit or intent of the Agreement.

Culturally informed closure involves recognizing that when we are called upon to guide and support our community, we focus on how we not only bring other people on the journey with us, but also work to establish safe and culturally appropriate spaces for as many people as possible to feel able and empowered to then participate in the required work. The necessary participation of many people filling the many required roles in this type of work also means that decision-making is not the job or responsibility of one person or a small group of people. Culturally informed closure requires understanding and accepting that our role as Directors will be tested and challenged because this type of decision-making body is a construct of the Western system of governance, as opposed to what is required when making decisions about Country. Culturally informed closure ensures that the work of closure, including the remit of the various roles, is designed under the construct of our laws, complemented by Western notions of good governance.

Gelganyem has advocated and lobbied hard to enforce the incorporation of our cultural protocols and principles into the Western legalistic governance structure. In practice, this has meant ensuring that the right people are speaking for Country; in, the case of the Argyle Diamond mine and in reference to the *Dayiwool/Tayiwul* (Barramundi) site, I, as a *Gija* woman, am specifically referring to gender-based decision-making. Most people would not know that the historical injustice concerning the *Dayiwool/Tayiwul* (Barramundi) site, which is, for *Gija* people, a women's site. This is a site known of by *Gija* people long before the mine started, particularly women like Q. McKenzie, my grandmother, her cousins-sisters, mum (aunty in the *Gardiya*, non-Aboriginal way), P. Patrick, and other senior *Gija* women. They knew they were culturally responsible for this site. However, as it happened from the beginning of interactions with the company, it was men who spoke about and made decisions which although concerned with mining activity, were and still are, in essence directly related to the sacred *Ngarrangkarni* Barramundi. This reference to men speaking and making decisions is exemplified in this comment by one of the women, made during the period of negotiating for the Good Neighbour funds: "when they talk about that million dollars; those men are always in the lead" (in Ryan 2001: 140). Furthermore, it was recorded at the time that:

For the women responsible for keeping the Barramundi Dreaming site safe, there is a sense of spiritual loss. They see themselves as having failed in their duty of custodianship. Looking back to *Ngarrangkarni* times, they realize they are the only *Kija* [*Gija*] women who have not been able to pass on the guardianship of the sacred site to their daughters. (Ryan 2001: 143).

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19 PBCs manage native title rights and interests on behalf of their native title holders. After a positive native title determination, the PBC will become the main contact point for people wanting to engage with the native title holders or do business on their Country, including local and state or territory governments, mining companies and other individuals or entities.

While I understand revelations about the role played by men has resulted in their defensiveness, this site has never stopped being a site of significance for *Gija* women, not while it was being physically destroyed, nor since it has been destroyed, and neither will it ever lose its significance for *Gija* women.

Twenty years on from the signing of the APA and inclusive of the ILUA and MPA, there is still no mention of the importance of the women's *Ngarrangkarni* Barramundi site and of the ongoing impact of the loss. Yet, the eighth Management Plan in the MPA makes special mention of a site which on the WA Heritage Record is not a gender-specific site but in the MPA is described as a man's site.<sup>20</sup> The physical impact on the women's site is the open pit and underground mine and to the spiritual impact on women in particular and how this affects our wellbeing: how we continue to grapple with knowing that the giant hole, we have been told, will remain forever. I know that in the beginning our women would have spoken up, stood up and voiced their concern about the damage to and in time, loss of the women's site. I know they would have spoken directly to the KLC and to others, but whether the KLC took their concerns seriously remains to be told.

*Good governance: having the right people speak for right Country in decision-making*

At the time of writing, the ongoing lack of certainty in customary land tenure issue is playing out in a number of ways. For example, the unintended consequence of Native Title remaining undetermined is the unease and discomfort being felt by members of the various groups knowing that from a cultural perspective, they cannot talk for and make decisions about someone else's Country and yet, they are required to do so under the rules of the Western governance system and structures they must operate by. Bluntly speaking, the Agreement has forced all seven family groups to take an "all or nothing" approach, which has created increasing tension and growing division in recent times, and no-one is prepared to explain how it came to this from when the APA was executed back in 2004. While O'Faircheallaigh asserts that "negotiations were conducted by a 'coordinating committee' drawn from all of the traditional landowner groups with an interest in the land covered by Argyle's tenements" what is not set out is the difference between someone with an interest in the land and someone having cultural authority. He further explains that a "majority of coordinating committee members from the key traditional owner groups were women and women played a central role in presenting negotiating positions to the company and in pushing for their acceptance" (2013: 1797).<sup>21</sup> Although this position may reflect the role of women at a point in time, it excludes the fact that the coordinating committee approach and efforts in the context of "getting it right" in terms of the "right people" speaking for the Argyle tenement area, were futile.

Until Native Title is determined, these governance structures as prescribed in the APA, have been established by the company and the KLC based on criteria that calls for representation of and by all seven groups, and once Native Title is determined it will change this 'right to speak' landscape. While a Native Title determination cannot change or reverse what preceded it, it would start to ease the decades-long feelings of injustice, loss of rightful authority, of opportunity and rightful benefits as well as pain and suffering from the damaging impacts of consistently having to stand firm and challenge decisions and actions which conflicted with and compromised the exercise of cultural authority. This therefore means that stepping into the breach to ensure that the legitimate Traditional Owners are engaged with as the decision makers for future decisions including post-mining land use, is a key focus of current operations, and necessary to avoid repeating past mistakes.

This ongoing legacy issue is also illustrated by the company asking for decisions about post mining land use which cannot rightfully be made without the right people with the right authority, involved in the right forums. This will continue to be a challenge until Native Title is determined and a prescribed body corporate (PBC) established as the new organization to manage these issues, which could be years away.

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<sup>20</sup> Because of gender protocols, culturally I can't say the name of this place and shouldn't read or write it, though it was named at the time in the MPA.

<sup>21</sup> I also query the veracity of a non-Indigenous man speaking for Aboriginal women and asserting his observations as their truth.



## 5. Rectifying the gender imbalance: Re-asserting gender authority and gender justice

My current role as Chairperson of Gelganyem as governed by Western rules and processes, and its interactions with my role as a Traditional Owner Director representing my *Daam*, a younger *Gija* woman and mother with obligations to my two young daughters and my (now deceased) grandmother, is one of the most uncomfortable positions I have been in. This discomfort comes from my strong sense of obligation to continually work in a way that demonstrates the value and legitimacy of incorporating cultural governance principles and practices that the Western governance model. My strong sense of cultural obligation has required me to think very deeply and trust in my *liarn* (intuition and spirit). It has made me take my time, ask lots of questions, and ultimately caused me to pursue a process aimed at trying to balance the issue of gender justice, as this is fundamentally what I am talking about in this article

For as long as this Agreement has been in place, there has been no public recognition that women were and continue to be the most impacted by the mine. I don't deny that women have been involved but there is much to unpack about the opportunity cost for the women who have cultural obligations to that site and what we are now left with, in perpetuity. In the book, *From digging sticks to writing sticks* old aunty Q. McKenzie states "Right back from the *Ngarrangkarni* all those old women looked after that place and kept it safe. Now it was our turn and we failed. It makes me strange and sad inside" (Ryan, 2001: 139). Having had the privilege of growing up around women like this old aunty, having been taught law and culture by them, and personally knowing the women who were involved at that time, there is no way that they would not have spoken up. Those women were not only advocating for Country, but they were also lobbying various levels of government, holding them to account to ensure that their families were treated as equals, to access safe drinking water, housing, and education. The mining and pastoral booms did little to help, if anything, it demonstrated how effective the old 'divide and conquer' method could be and as a result, how the approach and exclusion of women was normalized by this new way of decision making (Ryan, 2001).

A really powerful starting point for redressing these wrongs was when we started talking about setting up the WUAG to reset the principles and protocols for interacting with the company which lead to a shift, a rebalancing if you will, which entailed a recognition and a reclaiming of cultural principles and practices that relate to our *Ngarrangkarni* Barramundi women's site and a reclaiming of our role as it relates to that Country, on our terms. Though in *Gija* culture under traditional law, the family unit was under the leadership of an appropriate senior male family member, when it came to issues concerning women's sites and places, men did not interfere.<sup>22</sup>

We also set up the CHAG in recognition that a very disjointed approach had been established to manage our heritage. The previous governance structure – the RC as prescribed in the Agreement – met the company's needs, but not those of Traditional Owners and resulted in inequities particularly a power imbalance; in a lack of clarity, understanding and consequently, fulfilment of its role and responsibilities, as well as in a lack of quality information. It was a situation Gelganyem felt compelled to intervene in to establish the necessary culturally and financially-based equity, and that we achieved this is a credit to our management and staff in the way they conduct themselves and continue to learn and find ways to respectfully elevate the voices of Traditional Owners in upholding their rights and interests. The WUAG and CHAG were specifically put in place because we knew that in the context of the mine ceasing production, there needed to be genuine truth-telling and acknowledgement of the desecration of the *Ngarrangkarni* Barramundi women's site.

I see my role as a Traditional Owner Director as one that continues to reinforce the unwavering belief and assertion that we are inextricably linked to our Country. The pre-exploration photos of the *Ngarrangkarni* Barramundi women's site show it in its majestic pristine condition and compared to what it has now been reduced to, not only makes for a confronting conversation, but a heart-wrenching one. Since the establishment of the WUAG and CHAG I have also seen the rise of Traditional Owner women taking back responsibility for the site, setting right in their own way what should have been there all along, and taking their rightful place again. To reiterate, this is not about reducing the role or importance of Traditional

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<sup>22</sup> Kaberry observed that, after marriage, most women lived in their husband's country (patrilocal residence) which meant that decision-making authority for matters concerning the family group as a whole, was "vested in the headman, *noera:ny* and the elders, *bulga:*." (1939: 178)

Owner men who are also our family members. Rather, it is about resolving long-standing issues and recognizing that only good things can come from our collective work in this space.

This pattern of elevating men's voices and perspectives (Indigenous and non-Indigenous) at the expense of women's inclusion, has a deep history within the mining industry both in Australia and internationally (see, for instance, Hall, 2022; Mayes, 2020; Dorow & Mandizadza, 2018; Jenkins, 2014; Pauktutit Inuit Women of Canada, 2014, Dalseg *et al.*, 2018; Mazer *et al.*, 2022). This issue of gender inequality recently came to a head in WA with the 2022 State Parliamentary inquiry into workplace sexual harassment. Though sexual harassment per se is not a focus of my concerns, one of the lines of inquiry was to understand how the workplace characteristics and practices in the mining and resources industry contributed to this issue of gender inequality and a power imbalance. According to the Executive summary:

The resounding lesson we learned was that the resources industry in general, and the fly-in-fly-out part of the industry in particular...has identified poor culture, gender inequality, and power imbalance in the workplace as the major risks...in the sector...Most problematic, perhaps, was the question of power imbalance. (WA Government, 2022; exec summary).

After this state-led parliamentary inquiry, the company undertook their own internal review entitled "Report into Workplace Culture" which they subsequently made publicly available (Broderick, 2022). Echoing the early history of engagement at Argyle and the preference for men's voices and experiences over women's, this report confirmed that the workforce is largely male-dominated, comprising approximately 79% men. Historically, this percentage would have been higher. Similarly, the report found that the workplace culture needs to significantly improve to be more inclusive and respectful of women (see also Butler 2022). The State Parliamentary Inquiry and the company's subsequent review helps paint the bigger picture about the systemic culture of the industry, steeped in deep-rooted gender-based bias. Perhaps then, it should not come as a complete surprise, that the dominant society's patriarchal norms and values have been mirrored in the governance system operating at Argyle over the years, especially as they relate to the APA and interactions with Traditional Owners.

## 6. Bring back sacred Country (*biriwoorrg doomoorrinyil daam*)

We are now thinking about how the Traditional Owners who belong to that Country and have obligations to it can reinstate the sacredness of that place, and in what ways the place can be reimaged. Considering the *Ngarrangkarni* Barramundi site being physically transformed from pristine, virgin Country<sup>23</sup> to an open pit running over 600 meters deep and 1.6 kilometers wide, a tailings dam and a series of terraced waste rock dumps, not only indicates the scale of damage above ground but serves as a reminder that there is also the underground mine and associated infrastructure that remains or is intended to remain in situ.

As previously mentioned, Native Title is yet to be determined for the Argyle lease area – which means that connection to the Country and therefore cultural authority are also to be confirmed. But conversations about restoring that Country have started. In closure, too, there is still a lot of work to be done by the company in terms of understanding the role of gender. To illustrate this, several years ago the company engaged a well-known male architect to design a sculpture that would speak to the issue of closure. However, neither the company nor the architect spoke with us about the project scope. The result was supposed to incorporate a design of a barramundi sculpture to be made from scrap metal or similar material. When an image was presented at a Gelganyem Board meeting and a RC meeting, referred to as the "Barramundi Memorial", for us it looked like a headstone, which not only felt disrespectful, but rather than reinvigorating the site as intended, it felt as though the *Ngarrangkarni* Barramundi was being buried again.

Traditional Owners, had been saying the same things again and again: we need to restore Country and heal Country (cf. Cohen, 2017). We have never said Country is dead. The view from the resources sector definition of value might declare it as dead – as the 'resource' has been depleted – but it is not dead to us. It has been affected and it has been damaged, but we believe that given time we can conduct the

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<sup>23</sup> I don't use this term lightly. The aerial image of that site in 1983 clearly shows the pristine nature of the site which for us is the resting place of our women ancestors, female spirits.

ceremonies we need to and give back to Country, where Country has given to us, and practice the principles of reciprocity. It's going to take decades to genuinely see whether we've got it right: change takes time and healing takes time, neither can be rushed.

It is at this point that the conversation about post mining land-use starts to come in. Reimagining how Traditional Owners and other people coming to the *Ngarrangkarni* Barramundi site could use and interact with restored and replenished places is an incredible opportunity. This would require taking into account different perspectives on how Country is to be returned, as some areas may be placed off limits, while others may be available for more interaction. The company has said there are roughly 16 kilometers of underground tunnels. The question of what will happen to these is a big and important one for us. Currently, the company's view is that those tunnels will remain due to safety issues, as they are full of water, in line with their mine closure plan – but this is not what Traditional Owners want. There have been many discussions, requests and demands about how to treat Country in the process of closure but we are a long way from getting it right with no guarantee of an outcome that would be acceptable to Traditional Owners. We have made clear that what left Country should be returned to Country.

Until our Native Title is resolved, we progress what we can but we remain in limbo. The next couple of years will be an interesting and challenging transition period for everyone. The determination (court findings) is going to be a huge line in the sand, because not only will there be certainty about who the right people are to speak for Country culturally and in the eyes of the law, but it would also mean that our focus can shift from the native title claim to focus on discussions about post-mining land use, about how restoration and re-vegetation will be done, in other words, all of the big, important legacy issues. Although we now have a Traditional Owner Cultural Heritage Management Plan (CHMP), we want a higher order of management that includes a clear and measurable way to care for our tangible and intangible cultural heritage items and matters for closure. Gelganyem is seeking this CHMP to work in with the Argyle Mine Closure Plan (MCP) as we want visibility and transparency. We are still awaiting a response from the company about the inclusion of a specific CHMP within the Argyle MCP.

In terms of safe-keeping and good management of cultural materials, we do not have a cultural heritage museum or a living museum to store our cultural materials which were relocated from Country during the establishment and operations of the mine.<sup>24</sup> Such a safe place is needed for storage and appropriate viewing of the materials and may be established within an eco-tourism context which would be consistent with our overall aim of reclamation and restoration of Country and Culture, designed and managed by Traditional Owners.

## 7. Mine closure and post-mining land use

When I first joined the Gelganyem Board I really wanted to understand what Traditional Owners remembered about what was promised during the negotiations by the Company, especially what the women's collective memory was regarding the *Ngarrangkarni* Barramundi women's site. What I found was a strong understanding by so many of our women who said, "I remember sitting at this meeting where we said: "whatever goes into Country has to be taken out of Country", and this continues to be the premise for our conversations with the company.

The company, however, has stood firm in their definition of what constitutes "safe, stable, and non-polluting" as the WA regulatory standard for mine closure. The company and Traditional Owners will not agree on everything which should not be surprising in the context of our respective differences in relation to Country and land in general, but we need to, at a minimum, come up with a shared vision about what we are aiming for including our cultural values. There is no point in the company saying, "great all the boxes have been ticked", while on the other hand Traditional Owners are saying "oh, hang on what about this landfill site or this giant hole in the ground" or "we are not willing to take on the residual risk of your decisions." This is just one example of what we continue to battle with and is a pattern which, apart from the efforts of some rare and brave individuals, defines the company and Traditional Owner relationship concerning the Argyle Diamond mine. So, we either set our differences aside and agree to work together towards common ground that is the "shared vision," or we fail together.

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<sup>24</sup> Such material culture includes archaeological materials; especially *jimbirlany* (stone spearhead), tools and evidence of our ancestors' early occupation.

Other ways to plan and manage closure are demonstrated by the Inuit with the Raglan mine in Canada (in this Special Section) who established a mine closure committee early in the life of the mine. In relation to the Argyle mine, although a Closure Working Group comprising Traditional Owner and company representatives operated in the recent past, this group was not able to address the issues or challenges highlighted in this article. Other than allowing closure work in its budget, it appears that the company did not contemplate involving Traditional Owners in mine closure in any meaningful way. This is despite the fact that there is a requirement within the APA to review the Management Plan Agreement in its entirety at least every 3 to 5 years, which has not happened to date since 2004. So, it seems to me that it's not surprising that we are dealing with these issues now and it's also unpalatable to continually feel compelled to be saying, "Hey, we should probably make sure we know what we signed up for."

The mine closure plan is bringing tensions and pressure to bear on Traditional Owners when the state government requires us to put forward "business cases" as to our aspirations for the retention of infrastructure. The difficulty is not in relation to infrastructure that has no usefulness to Traditional Owners, such as the processing plant which has been removed, it is in relation to potential post-mining repurposing of important, some would say critical infrastructure (Keenan & Holcombe 2021). This includes access roads, electricity infrastructure previously used to generate and distribute power by the (former) Pacific Hydro and the airport, which seem destined to be removed or razed to the ground and, which in the minds of Traditional Owners, amounts to extravagant disregard for things which can and should be reused or repurposed. Further discussions will be required to address matters of who maintains any infrastructure that remains, who is responsible and in turn who manages the risks. At present, the mine closure plan indicates removal of all infrastructure.

Ironically, what the company previously saw as a Traditional Owner "problem" in relation to defining native title is now a shared problem. It was contemplated that at some point during the life of the mine, before closure, native title would be determined, and a Prescribed Body Corporate (PBC) set up to carry forward the rights and interests of native title holders. Until this occurs, the Company and WA State Government's expectation is that Traditional Owners provide "guidance" and an "indication" of post-mining land use. However, Traditional Owners maintain our position that until native title is determined this is not feasible.

In 2022, I was interviewed by ABC journalist Sinead Mangan which resulted in the article *Once a diamond mine, forever a sacred site* (Mangan, 2022) in which I share experiences regarding the disappointing absence of the WA government in mine closure discussions. Traditional Owners are aware the MCP was due for resubmission in 2024. There are so many lessons from the Argyle experience especially over the past six years of having had to consistently insist on our involvement in closure of the mine, including a seat at the table of discussions between the company and state government, that go to the heart of why legislation with respect to mine closure in WA needs to change.

It became apparent to us very quickly that the company was happy to go a hundred miles an hour with their own experts – hydrologists geologists, environmental scientists – every kind of scientist that you would assume to be involved in assessing and de-risking closure. Meanwhile, over in Gelganyem we were expected to respond to queries and manage negotiations and deliver community programs with five staff. This did not stop the company asking Traditional Owners: "Tell us about this. What do you want here? What about this? What about that?" This approach was unacceptable so through Gelganyem, we intervened quickly to say, you need to stop because first of all, you have had no meaningful conversations with Traditional Owners to inform them about what closure actually is, while at the same time saying there was no need for Traditional Owner involvement, which basically felt like being told to trust the company while being engaged with what felt like and were perceived to be tokenistic intentions in order to be able to tick the "consultation" box.

We are now in a position whereby we have reached an agreement with the company in terms of better resourcing to enable Traditional Owners to meaningfully participate in the closure of the mine and we are close to addressing some of the longer term, intangible issues that for too long considered a "Traditional Owner issue" as opposed to a "deliver on the Agreement issue." We are holding the company accountable for what they should have been doing all along.

### *Traditional Owner businesses in mine closure*

One success story, which is to be credited to Traditional Owner efforts, is that of Traditional Owner businesses taking on contracts related to mine closure. This success, however, has not been without enormous effort to secure contract work. When I was appointed to the role of Chair, contracting with Traditional Owner businesses was considered a priority and a "quick win," for all the obvious reasons, by Traditional Owners. However, we have been fighting hard for the company to do what it is required through the APA, especially Management Plan Agreement (MPA) 7 (Business Development and Contracting) regarding supporting Traditional Owner businesses. To illustrate this, Gelganyem called out the Company's attempt at "best endeavors" before any contracts were issued, let alone put to market as part of decommissioning. We advocated and insisted that a Traditional Owner business and contracting strategy be in place with clear financial penalties for not having clear and measurable outcomes that delivered on MPA 7. We continue to be told by the company that they will not "break" head contracts with non-Traditional Owner businesses, when it is our clear understanding that the terms of these contracts state that the company is able to do so. The positive outcome to date is a direct result of the tenacity and determination of Traditional Owner businesses, supported by Gelganyem. Traditional Owner businesses have proven they are more than capable and to date, I am aware that at least A\$65 million (US\$41.3m) worth of contracts has been awarded in delivering contracts related to closure. Ideally, our businesses should be the head contractors, especially having proven their capability and commitment, sub-contracting the non-Aboriginal companies. This is an ongoing conversation aimed at ensuring the company delivers on a Traditional Owner contracting strategy that was agreed to but has since been withdrawn for reasons that remain to be shared by the company.

I am also aware that the company is at least two years behind their closure work schedule, so I suggest taking this as an opportunity to acknowledge and reward the added value Traditional Owner businesses bring to the table beyond their technical capabilities. We acknowledge that the intention when the APA was signed was to develop and grow successful Traditional Owner businesses, and despite the often-dispiriting challenges over the years, we have done so. The real opportunity in terms of successful mine closure and a positive encouraging legacy, is for the company to demonstrate that with the remaining scope of work, they are willing to change, willing to flip the procurement model on its head and not only deliver what was always intended but demonstrate to their shareholders and Board that they are a company that is willing to learn and adapt as well as walk their talk of "closing with pride." It seems to me that Traditional Owner businesses are the company's growth strategy in the future of mine closure.

## **8. The Future: Mine closure as the new beginning**

In terms of what we dream of: we really dream of having our Country back in a way that is as close as possible to its pristine condition, which is a long way from being achieved. Current work continues on a tailings dam that will remain, infrastructure that is in situ which our women never consented to, and an open pit that is essentially going to become a huge lake of considerable and dangerous depth. These are some of the challenges and opportunities that we are concerned with. The various forms of royalty payments within the APA have stopped, but we feel that this is also in the best interest of Traditional Owners because an adverse effect was the creation of an unhealthy dependency on them (see also Holcombe *et al.*, 2022: 36).

We are now trying to support and enable Traditional Owner families and communities to look at different ways of benefiting from mine closure. This is through employment or contracting, rather than falling into a habit of reliance on meeting attendance fees for showing up, but not actually exercising their voices because perhaps for some, protocol has dictated in the last 20 years that they didn't need to. There is a lot of work ahead of us and we will continue to do our best because we care about and respect our Country from which so much has been taken, while also being aware that we are not going to get it exactly right and that there will be people who will feel as though we didn't do enough.

This shows up for us in the ongoing disconnect and misunderstanding by the company of the link between the health of Country and our health. The two cannot be separated and this is something that is only starting to be explored in the context of the mine closure. This is because the company and the resources sector define it as "the end", when in fact, for us, it is the beginning (again), actually more like a return to the beginning. Again, in thinking about *Ngarrarnrkarni*, it is the co-existence of the past, present, the end *and* the beginning, an interconnectedness.



When we have imagined what the future of the Argyle mine site could look like post-closure completion, it hasn't been about restoring a piece of land and waving it "goodbye". Rather, it is about trying to find ways for people to come and interact with our Country and acknowledge its ongoing beauty and worth. And for those who directly benefitted through 1) training, leading to an incredible and diverse number of qualified tradespeople; 2) through employment including career development; and 3) contracts which were sure to have contributed to their business growth and success; to acknowledge and give thanks to Country for the opportunity. This way of thinking about Country, restoration and healing, strengthens the connection between Country and people. The more spaces for physical connection and spiritual interaction that can be created, the more opportunities should follow for people to visit, experience and pay respect to our sacred site.

### Orthography and glossary of terms

Name	Definition
Noera:ny/Nawarrany (pronounced Nawarrunj)	Big, meant as in relation to 'the boss leader' or 'important leader'. Nawarrunj refers to male, Nawarrul, refers to female. (Gija Dictionary, p. 218)
<i>Bulga:/Boolga</i>	Grey hair, Elders (Gija Dictionary, p. 104)
<i>Ngarrangkarni / Ngarranggarnin</i>	Dreamtime, creation time, long ago, time when the landscape took its present form and the rules for living came into being.
Skin	An Aboriginal English term for a social category or "sub-section" system divided into two moieties – with 4 'skins' in each. Inherited categories that direct ideal marriage partners and appropriate behaviors among the group.
<i>Daam (Gidja)</i>	Country, home, camp
<i>Daawam (Gidja)</i> <i>Dawang (Miriuwung)</i>	Country owner, one who belongs the country, one who has been taken to the country previously and properly introduced
Prescribed Body Corporate (PBC)	PBCs manage native title rights and interests on behalf of their native title holders. After a positive native title determination, the PBC will become the main contact point for people wanting to engage with the native title holders or do business on their Country, including local and state or territory governments, mining companies and other individuals or entities.
Indigenous Land Use Agreement (ILUA)	An ILUA is a voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters. An ILUA can be made over areas where: <ul style="list-style-type: none"> <li>• native title has been determined to exist in at least part of the area</li> <li>• a native title claim has been made</li> <li>• no native title claim has been made.</li> </ul> While registered, ILUAs bind all native title holders to the terms of the agreement. ILUAs also operate as a contract between the parties. (see <a href="https://www.nntt.gov.au/ILUAs/Pages/default.aspx">https://www.nntt.gov.au/ILUAs/Pages/default.aspx</a> )

Native Title Act 1993 (Cth) (NTA)	Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs as set out in Australian Law. Native Title is governed by the Native Title Act 1993 (Cth).
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