Intermittent Urgency and States of Deferral – Or, How Many Houses for a Mine?

Abstract

This paper traces the temporal tactics of continually renewed coloniality—where some impasses are made to appear insurmountable while others demand swift solutions—in relation to housing and mining at Borroloola in Australia's Northern Territory. Distinct policy and regulatory regimes encourage analyses that set housing and mining apart. Yet together they signal the settler state's simultaneous remedial and extractive orientations to remote Aboriginal communities. Mining leeches into housing, and housing is a promise extracted from late liberal recognition, for community members forced to wait for promised amenities while fighting for long-term environmental protections. We argue that the confection of intermittent urgency is a key feature of the deferrals enacted by Australian settler governance, as it rations remedial solutions and displaces harms into mortgaged futures.

Key words: deferral, urgency, policy, housing, mining, water, settler colonialism

Introduction

Time is a technology of the settler colonial state. The idea that the state deploys time to wage its ongoing project of counter-sovereignty—the mobile efforts to counter, diminish, and eradicate Indigenous refusal of settler legitimacy (Vimalassery 2014; Simpson 2016)—occurred to us as we tried to understand how on some issues, such as housing, the state so easily defers its promises, even when appearing to act urgently, while on matters such as mining, it brackets opportunities for public intervention within longer timescapes. In this

article, we examine the tempo of two significant state development projects in the same remote region of the Northern Territory (NT) of Australia. The first concerns a social housing program that commenced in 2008 at the Indigenous town of Borroloola but failed to deliver new houses for over a decade despite the availability of dedicated government funding for new construction. The second is a mine located 45 kilometres upstream from Borroloola, characterised by a litany of environmental incidents with enduring accretive impacts since it was converted to an open cut operation in 2009. While these two state projects span the same time period and are proximately located, distinct policy and regulatory framings encourage analyses that set them apart. Considered together, the development projects signal how time is enrolled into the settler state's simultaneous remedial and extractive orientations towards remote Indigenous communities.

While rarely so explicitly contractual or transactional, the provision of housing and other essential services infrastructure in remote communities is the consolation granted to people whose sovereignty is repeatedly countered by the approval and subsidisation of extraction projects (Lea 2020: 21, 78). In the NT, for example, the *National Partnership for Remote Housing Northern Territory*, through which the Australian Government provided funding for remote community housing from 2018 to 2023, was announced less than a year after the NT Government lifted its moratorium on hydraulic fracturing, paving the way to frack the Beetaloo Basin, west of Borroloola. Compromises made in the present so as to access much needed housing, employment, or revenue appear increasingly uneven as the relative afterlives of contemporary interventions come into view: housing with forty-year lifespans undermined by inadequately funded maintenance programs versus the long-term remediation of extraction sites by companies unlikely to exist beyond the profitability of extraction.

This article considers the ongoing counter-sovereignty manoeuvres of settler colonial governments through manipulations of time, where the compromise between the 'infrastructural gesture' (Weszkalnys 2017) of potential remedial provisioning and the exploitative opportunism of extraction relies on interrelated temporalisations. Following Laura Bear (2016), we consider temporalisations as the ordering and organising of time according to the demands made of the subjects being governed. As governmental process, 'time as a technique' (Bear 2016, 492) sets the terms of who can act, as eligible, agentic subjects; how, in relation to contractual and administrative regimes; and when, in terms of moments where futures are genuinely indeterminate and open to influence.

Our analysis draws on three separate week-long visits made by two of the authors from 2018 to 2021 to interview Borroloola householders and Traditional Owners, focused on acute events related to water contamination and housing non-provision. Surrounding that fieldwork, we undertook interviews with public servants, land council staff, and staff from Aboriginal community-controlled organisations in the NT's capital, Darwin. The research formed part of a wider project investigating infrastructural inequality in regional and remote Australia. We are aware that the narrative conventions for representing information shared by Indigenous people 'in the field' is to write as if this is their testimony, relayed by allied witnesses. This convention is the contemporary inverse of anthropology's allochronic habits critiqued by Johannes Fabian some 50 years ago in *Time and the Other* (1983). Fabian showed how the discipline removed its referent from present time, and cast 'the other' as fossilised in time, calling this the scandal of the 'petrified relation' (143). We thus do not attempt a rehearsal of anthropological accounts of the people of Borroloola as if this is an ethnography of town camp residents. In showing how Indigenous housing is the victim of stalling tactics and well-placed portraits of concerned attention, we are further mindful of critiques of non-Indigenous

representations swiftly becoming pathology or what Eve Tuck (2009) and Chelsea Watego (2021) have separately described as damage-centered research. Remote Indigenous housing issues are typically represented via statistics on overcrowding, homelessness, and health outcomes, or in media representations that emphasise poor living conditions. It is a tale of resistant problems which, through repeated narration, emphasises the necessity of remedial measures from government without accountability for their inadequacy.

Our chief aim is to analyse how settler colonial governance operates according to particular temporalities to direct its remedial and extractive interventions such that they assume the appearance of inevitability. However, in avoiding 'speaking for' residents, we do not feign a non-partisan analysis. One author has a long-standing relationship with Borroloola traditional owners formed through their work as a native title lawyer for the Northern Land Council. More recently, as executive director of an NT NGO, they have facilitated Borroloola residents' participation in public advocacy and strategic litigation related to the government bond for McArthur River Mine. Another author facilitated the successful application of two arts grants then curated an exhibition of Borroloola artist Miriam Charlie's work at a Sydney gallery, leading to Charlie's affiliation with another gallery and ongoing recognition of her oeuvre, parts of which are represented in this article. In addition to media advocacy regarding events at Borroloola, the researchers also held workshops with academic water scientists focused on community concerns about the impact of the mine on water quality and organised those scientists to undertake independent water testing at Borroloola, per resident desires.

In identifying the two key temporalities of settler state projects—the intervention and the deferral—the argument proceeds as follows. Part One explains the grinding detail of how urgent events 'punctuate' relative inaction on town camp housing (cf. Guyer 2007); while Part

Two describes the power of temporal manipulations within extraction operations, from approval to closure and beyond. Considered together, the analysis demonstrates the central significance of temporal control to settler colonial governance, including for establishing the ongoing impacts of state policies even as the state appears to withdraw from particular projects and geographies.

Part 1 Borroloola Housing

Military Interventions and Government In/attention

On the outskirts of Darwin, hundreds of houses are spread across the red dirt of an expansive lot. These houses were originally built for the Department of Defence between the early 1970s and 1993 as Royal Australian Air Force (RAAF) accommodation. When scheduled for demolition, they were instead acquired by the company Northern Transportables in 2014, trucked to the lot and left exposed to the elements. Given their dilapidated condition, it was a surprise when these houses emerged as a solution to the chronic housing shortage in Borroloola's four town camps—Garawa One, Garawa Two, Yanyula, and Mara Camps.[1]

While the housing crisis faced by Indigenous residents at Borroloola was well-known and longstanding, when former Prime Minister Tony Abbott travelled to Borroloola in September 2018, he treated town camp housing as an unknown surprise. As we detail below, drawing attention to housing conditions in Borroloola has been a ritual policy process for decades: the surprise was histrionic. Having inspected town camp housing at the demand of residents, Abbott was aghast, demanding an immediate response in front of cameras: 'The housing in

[1] Town camps is bureaucratic terminology for housing areas usually located on town peripheries and ordinarily distinguished from remote Indigenous communities.

Borroloola is appalling, the worst I've seen anywhere in remote Australia' (Gibson 2018a). The media soon reported Federal Government plans to transfer twelve ex-RAAF houses from the dusty lot in Darwin to Borroloola, to replace twelve existing town camp houses deemed 'no longer repairable' (Gibson 2018b). Then-Treasurer Scott Morrison agreed to deploy the 19th Chief Engineer Works of the Australian Army 'to immediately assess the situation on the ground,' declaring the project was such a priority it would be expedited by the Department of Prime Minister and Cabinet, at an estimated cost of $10-12 million (Gibson 2018c).

Correspondence was exchanged, and an urgent meeting was held in early November, between the NT Government, the Department of Prime Minister and Cabinet, and an Australian Army colonel. But less than one week after the priority plan to revitalise decommissioned housing was widely publicised, it was abandoned. The ex-RAAF houses were deemed materially inadequate as housing, would be considered 'old' by the community, require significant modifications, and were no longer 'a viable solution' (Gibson 2018b). It turns out they were 'not built to last' (Weiss 2021, 486) and had been scheduled for demolition decades earlier for good reason. The Federal Government persisted, proposing instead that the houses would be 'transitional accommodation', a stopgap solution for two to five years, at which point they would be 'gifted' to the NT Government. The NT Government was in turn underwhelmed by this gifting of ongoing liabilities for additional inadequate housing stock. Just as quickly as the planned Commonwealth intervention had flourished, it dissipated.

Prior to Abbott's visit in 2018, the last houses constructed in Borroloola's town camps were supplied in 2006 by the Australian Defence Force under the Army Aboriginal Community Assistance Program (AACAP). The AACAP, established in 1997 under the conservative national government of Prime Minister John Howard, effectively operates as military

subterfuge for government undersupply of housing and infrastructure: it is a lottery for high-profile humanitarian relief, undertaking short-term, media-grabbing projects in single locations. As each one-off construction event shifts annually to a new location, never to determine the post-occupancy performance of houses beyond a one-year defects liability period (ANAO 2010, 23), the spectacle of humanitarian military intervention also distracts from housing's inevitable 'disassembly' (Grealy 2021).

The scheme to truck ex-RAAF houses 1000 kilometres to Borroloola, as with the AACAP project 13 years earlier, exemplified the regular deployment of the Australian military as a service solution to civil failures, to secure greater authenticity (and media attention) to the promise phase of managed neglect (Middleton 2021). Such eruptive moments recast the harms of endemic neglect as disaster and acute need, demanding the symbolic power of a military response with its reassurance of a command-and-control deployment. Such occasional attention is set against the failure to institute cyclical and preventive maintenance programs to improve and sustain house function (Grealy et al. 2022). The spectacle thus signals a larger feature of remote housing governance: namely, the challenge of sustaining the attention required for improved outcomes beyond televised visits and military bedazzlements. If the government mediates public attention to the intractability of poor-quality remote housing, it also diverts attention from the forms of care—specifically, repair and maintenance—which would keep housing in habitable condition (Jackson 2017).

Abbott was right to be alarmed, but he focused on the wrong scandal. The substantive undersupply of housing at Borroloola was especially egregious, given that $14.6 million (AUD) had been secured in 2009 under the *National Partnership Agreement on Remote Indigenous Housing* (*NPARIH*) and remained unspent. Official explanations for the unspent

funds consistently emphasised ‘tenure’. Until the early 2000s, infrastructure in remote Aboriginal communities was frequently constructed by governments on Aboriginal land without formal property arrangements (Terrill 2015). But from at least 2006 onwards, governments sought to clarify their muddled histories of ownership of and access to assets on Indigenous land, by amending the *Aboriginal Land Rights (Northern Territory) Act 1976* to allow for ‘township leasing’, under which the land on which a community sits is leased for 99 years to a government body, which can then sublease sections of that land to others. Then, in 2007, when the Australian Army was again highly visible to enforce new restrictions under the *Northern Territory National Emergency Response Act*, (colloquially known in capitalised form as ‘The Intervention’), the Federal Government compulsorily acquired five-year leases for 64 remote communities. Under the *NPARIH*, a Memorandum of Understanding was signed between the Federal and NT Governments establishing that federal funding for remote housing and infrastructure was conditional on secure land tenure being ‘settled’.

In theory, the NT Government obtains a lease and assumes legal responsibility for housing, including the formalisation of tenancies, rent collection, and maintenance. In reality, tying housing and infrastructure funding to longer-term leases forced the hand of communities into contractual arrangements they often did not want. Meanwhile, the NT Government argued that without town camp subleases, it was not the landlord of existing houses and was therefore not technically responsible for repairs and maintenance, especially when subterranean pipes brought lead- and manganese-contaminated water into residents’ homes (Grealy and Howey 2020). Each policy announcement demonstrated the detailed care of non-provisioning, consolidating the image of Indigenous housing provision as both a matter of concern and an impossible pursuit. For over a decade at Borroloola, the policy-induced complexity of land tenure contributed, and was used as a tactic, to delaying redress for town camp housing.

Image 1. ‘Borroloola Sheeting team on single room huts 1980’. Copyright. Coburg Collection, NT Library.

Suffice it to say, reasons for the delay in construction following the allocation of funding in 2009 are multiple and opaque, generating a series of ‘pauses’ during which the concrete outcome of houses built is displaced by the circulation of facts about why they cannot yet be (Weszkalnys 2017, 3). In Borroloola, Yanyula, Garawa 1, and Garawa 2 town camps are located on Crown leases held by local Indigenous legal entities established in the late 1970s and early 1980s. An initial delay was partly attributable to the need to re-establish those dormant entities to enter housing lease negotiations. In November 2011, major works and refurbishment were scheduled, but negotiations for land tenure arrangements remained ‘in process’ (Australian National Audit Office 2011). In February 2012, the Northern Land Council (NLC), acting for the town camp entities, wrote to the NT Government to convey that

Borroloola residents were ready to negotiate town camp leases. There was still no reply by December 2015. Then the NT Government commissioned a floodplain mapping study at Borroloola, and residents were advised that the three town camps where they preferred housing to be would be subject to complete or partial inundation in a 1-in-100-year flood event (Department of Natural Resources, Environment, The Arts and Sport 2011). Residents contested the study's modelled predictions, as not matched to their experiences of flooding, and rejected the relocation proposal, as it would split up existing culturally-aligned neighborhoods. To resolve this standoff, the Northern Territory Planning Scheme obtained separate development consent in early 2018 to construct houses in the areas of possible inundation. Across the same period, the native title application for Borroloola town was being actively pursued,[2] which the NT Government spuriously blamed for delaying construction. Yet even when this case was determined and native title was recognised inside the boundaries of Borroloola township, in August 2016, construction still did not commence. With development consent obtained, and native title issues resolved, the focus of debate over ongoing delay returned to tenure. All throughout, the houses deteriorated.

When rationalising 'The Intervention', the Howard Government had proposed a hypothetical three-stage model: stabilisation, normalisation, exit (Howey 2014). Applied to housing, it describes a situation of dispossession and temporary intrusion under which enforced leasing arrangements are instituted in exchange for infrastructural improvements. This three-phase model resembles Eve Tuck and Ruben Gaztambide-Fernández's description of settler futurity (2013) and Ann Stoler's (2013) description of imperial formations as 'states of deferral', establishing 'gradated forms of sovereignty' and offering promissory notes for future

[2] *Rrumburriya Borroloola Claim Group v Northern Territory of Australia [No 2]*

autonomy (193). In the Northern Territory, 'gradated forms of sovereignty' take the form of policies articulating local decision-making and a return of housing to community control. However, given ambiguity about timelines, strategies, or milestones—the putative arsenal of the all-seeing state—it is difficult to distinguish proposed new arrangements from what preceded them. Instead, the conditions of leases by which housing will be managed (once signed) consolidate the long-term entrenchment of government presence in and control of Indigenous lifeworlds. The state's 'exit' indicates its persistent presence, in the form of a lingering question about whether the Federal Government will even continue to provide the NT Government with funding for remote housing maintenance, as per consecutive national partnership agreements. Even if the federal government did withdraw, ruination via abandonment does not mean the state is gone (see Weiss 2021); just that its interests have shifted, and its presence diminished, for the time being.

That Waiting Business

The *Living on the Edge: Northern Territory Town Camps Review* classified 34 per cent of Borroloola houses in 'very poor' condition, and another 25 per cent in 'poor' condition (Department of Housing and Community Development 2017). It estimated that $14.4 million was required in Borroloola's town camps to upgrade stock to satisfy the standards in the *Residential Tenancies Act 1999* (NT). Residents in all four camps face overcrowding, insecure tenancy, water contamination, and failing 'health hardware' (Healthabitat 2021). Many houses were constructed in the 1980s and 1990s and were little more than single room sheds, lacking reticulated water, ablutions, or power. Each of these descriptions builds on a governmental and academic citational practice for rendering housing deficits as so significant that the futility of a comprehensive response is endorsed. The synoptic detail at once promises

attention and defers it, by suggesting the immensity of legacy problems are insurmountably expensive to remedy and somehow not the creation of government (in)attention.

There are other ways to survey Borroloola housing. In her photographic series, 'My Country, No Home', Yanyuwa Garrwa artist Miriam Charlie (2016) juxtaposes portraits of community members and their homes against state inaction. Charlie's photographs reject the normalised expectation that remote community residents must wait for houses and refuse the state's temporal narratives justifying delay and neglect. Charlie narrates how she began to photograph Borroloola housing as 'evidence to show those people who fix houses' of their poor condition, following a visit to her grandmother's home in 2015, a woman who

> has lived in this tiny three-bedroom house for over 39 years. The house is overcrowded with her eldest grandson, his wife, six kids and other relatives. There is not enough room to put a lounge chair to watch TV; the kitchen is small and the shower and toilet are outside. The ceiling is being eaten by white ants and sometimes the water pipes leak. (Charlie 2016)

In Australia's National Archive, drawings for 'Shelters Borroloola' and 'Proposed wet season accommodation Borroloola' appear following the minutes of a meeting at Borroloola of the Rrumburriya Malandari Housing Association (December 10, 1974). Technical consultants recommended 'providing urgent improvements to existing conditions of the community' by 'erecting 5 simple shelters' (NAA F1 1973/6098). Text accompanying the crude hand-drawn sketches reads: 'This accommodation is only intended temporary and will be made up on the job. . . It will be built in such a way that it can be easily disassembled and moved' (NAA F1 1973/6098). In 2016, Charlie's series included portraits of Borroloola residents living in corrugated iron sheds without connections to municipal water or power supplies. The

continued presence of such improvisational structures signals the 'permanent temporariness' of solutions in remote Indigenous communities (Picker and Pasquetti 2015, 683). At the request of householders, these homes remain today despite new housing, and a shared ablutions block has been constructed nearby.

Taking a broader view of the policy ecologies that permeate remote community services, housing itself struggles to consistently demand the sustained attention required for its ongoing function. Remote Indigenous householders must respond to myriad demands of state bureaucracies—related to punitive work for welfare requirements, environmental regulation, child protection systems, mass incarceration, chronic health issues, and so on—that compete with reporting hardware dysfunction. Advocates and researchers are likewise drawn to focus on potential crises where the scale of harm is more apparent, the pressures on responding to legislative decisions more immediate, and the sides more easily distinguished by opposing moral positions. In the past few years at Borroloola, cruddy and absent housing has competed for headlines with water contamination (Grealy and Howey 2020), with government funding of private enterprise to frack the Beetaloo Basin, and with the NT Government's failure to protect the McArthur River against Glencore's zinc and lead waste disposal (below). In our fieldwork too, housing fluctuates in its relative importance for community members and thus the primary object of housing research is not always housing.

Image 2. ‘Broken stove never been fix’. Copyright Miriam Charlie.

In her exhibition ‘The Promise of Housing’, Charlie supplements portraiture of town camp residents with the intimacy of the Polaroid. Aiming ‘to show the politicians that there’s nothing happening’ (Charlie 2020), her series includes close-up photographs of dysfunctional hardware. She writes,

> The Polaroids are like a family photo album but they show the broken things in people’s houses. We have to wait to have these things fixed. Things are broken while we wait for new houses. It’s scary to live with broken things.

Charlie's images and words describe the experience of waiting for housing repairs and construction; waiting that is both existential and situational (Dwyer 2009):

> It's that waiting business. You've got to wait so long. They'll build it this year and you get it next year. Old people are getting older; they'll die soon. A lot of people are going to die waiting for houses. We have been waiting for too long.

As Michael Stasik et al. (2020) write, waiting is a heuristic for understanding both the imagination of a future (housing, or 'closing the gap'), which may or may not arrive, and the 'different forms of quotidian temporal work that characterize waiting in the present' (6). The promise of housing displaces attention from ongoing government failure to provide adequate infrastructure, but as Charlie's work shows, that is the situation in which remote community residents live 'in the meantime' (Sharma 2014).

The deferral of housing through the promise of housing, aided by depictions of large-scale and insurmountable backlogs, is unremarkable in being so commonplace. The difference in Borroloola was that for the period under consideration, allocated funding was available. When we visited Borroloola in May 2019, three new prefabricated houses had been erected at Mara camp, the first time since the 2006 AACAP project, with nine more planned across the town camps. A closer inspection revealed the 12 houses to be 'emergency' houses promised through Abbott's mediated alarm. The rhetoric of emergency—ironically caused by state failure—was finally converting promises into houses. That these houses were built prior to the establishment of leases also proved the primary rationale for decade-long bureaucratic delay (insecure tenure) could be selectively waived. The NT Government, for its part, had made promises to construct 38 new houses, including 29 replacement houses and nine new houses, within its own housing program. By 2021, new and refurbished houses were becoming evident throughout the town camps.

However, Charlie no longer lives at Borroloola. Her dialysis treatment has required relocation to larger towns. And while her grandmother remained in Borroloola long enough to receive a new house, others have passed away or relocated. In our fieldwork, visiting the 'Borroloola residents' with whom we discussed housing delays in 2018 and 2019 is now either impossible or occurs far away in Darwin. The eventual construction of houses at Borroloola town camps was welcome and necessary, but after waiting for so long, their appearance was also anti-climactic; there has never been enough housing at Borroloola town camps,
nor could new housing ever be enough.

Part 2 McArthur River Mine

Approval Time

After operating for a decade underground, in 2003 the McArthur River Mine (MRM) proposed conversion to an open cut operation. The most accessible underground ore having been extracted, after creating more than 100 kilometres of underground tunnels, the major lead, zinc, and silver mining conglomerate sought to alter the course of the mine's namesake, the McArthur River, for 5.5km, to mine the riverbed instead. As Xstrata (now Glencore) initiated the government approvals process, it sharpened the attention of traditional owners toward the NT and Commonwealth environmental assessment and approval laws. There were two environmental impact assessments for MRM's open cut project. The first prompted a statement by then Environment Minister Marion Scrymgour (2006a) that the proposal could not proceed without unacceptable environmental impacts. Days later, Chief Minister Clare Martin intervened, inviting an amended proposal from MRM that included a degree of re-engineering the proposed diversion channel. This triggered a second assessment. The second report conceded an improvement in the diversion channel design, but noted

significant remaining risks, including that contaminated seepage from mining operations would enter regional groundwater. Six months after she had rejected the open cut proposal, in August 2006, Scrymgour (2006b) gave the revised project a guarded nod while noting serious concerns about its impacts. Approval by the NT Mines Minister and the Commonwealth Environment Minister swiftly followed.

In late 2006, led by Gurdanji elder Harry Lansen, native title claim groups representing Country (encompassing the mine site, along the McArthur River, and into the Gulf of Carpentaria) commenced two sets of proceedings: one in the NT Supreme Court challenging the mining approvals under the *Mining Management Act*, and the other in the Federal Court challenging the Commonwealth approval under the *Environmental Protection Biodiversity (EPBC) Act*. It was an unprecedented show of unity by Gurdanji, Yanyuwa, Garawa, and Mara people and would be a two-year battle. Traditional owners succeeded in the Supreme Court in early 2007,[3] but within three days the NT Government passed special legislation to override the court's decision, ensuring the open cut mine could proceed. Traditional owners also won in the Federal Court in December 2008 (on appeal)[4] but MRM had already diverted the river. Decades of attempts to use land rights, then native title, and then challenges to environmental and mining approvals to stop a mine that on the NT Environment Minister's own assessment would cause unacceptable environmental impacts did nothing to halt MRM's inexorable progress (see Trigger 1997). The collaboration of government and capital ripped apart the river, introducing potential seepage of acid mine drainage and other toxic contaminants into waterways, soil, and bodies.

[3] *Lansen & Ors v NT Minister for Mines and Energy & Ors* [2007] 20 NTLR 6.

[4] *Lansen & Ors v Minister for Environment and Heritage* 174 FCR 14.

Particular temporal windows are important for extractivism's progress and contrast greatly to the purported obstacles singled toward tenure. Here, despite similar involvement of various legal instruments, outcomes are not deferred but assured. Authorisation of different project stages includes: the grant of mineral titles under the *Mining Act* (now *Mineral Titles Act*); the environmental impact assessment of the relevant proposal under the *Environmental Assessment Act* and the *EPBC Act*; the grant and amendment of mining authorisations and approval of mining management plans under the *Mining Management Act*; waste discharge licences under the *Water Act*; and the grant of authority certificates regulating access to sacred sites under the *Northern Territory Sacred Sites Act*. The temporal windows of project approval are also when public access to otherwise opaque scientific data produced by developers is required by law, largely via the environmental impact assessment process. Public and legal attention is thus skewed towards project authorisation, because that is when transparency is most likely.

There is thus a cluster of arrangements that concentrate pressure on project approvals triggered by proponents. This period can vary, from a few months to the six years it took from lodgement of the notice of intent for MRM's open cut proposal in January 2003 until the final approval was 'remade' in 2009. To governments bound by election cycles and proponents captured by a capitalist conception of time as money, this period can seem lengthy (Richardson 2017). Yet, compared to other timescapes, including the latency of the mine's projected environmental impacts (over one thousand years, even on MRM's reckoning), it is brief. Politicians, bureaucrats, land council staff, environmental assessment scientists, bankers, environmental and mining lawyers, and the media, are complicit in this temporal compression, their expertise and attention front-ended via ostensibly separate yet overlapping

legal jurisdictions (see Green and Kerins 2016). The law produces the sense that these are the moments that matter, as junctures when projects with potentially devastating environmental consequences are approved, or not. But outside of these periods, the mine's impacts continue, unconstrained by the legal timetable over which the public and other players fret.

After Approval: Trespassing Toxicities and Curtailed Compliance

Following the open cut's approval, a series of contamination 'events' occurred at McArthur River Mine. In late 2013 the mine's northern waste rock dump spontaneously combusted, caused by oxygen meeting the pyritic rock in its top layers, producing plumes of sulphur dioxide. It burned for months. Regional biota on the mineral leases exhibited signs of contaminant exposure, with elevated levels of heavy metals in fish and invertebrates found in July 2014 in Surprise and Barney Creeks, both tributaries of the McArthur River (Davidson 2015). Up to 200 of 400 potentially contaminated cattle from McArthur River Station were shot in 2015 after wandering onto the mine site ('EDONT points finger', 2015).

Figure 1: MRM site in 2016 showing the TSF, NOEF, and the open pit. The McArthur River flows towards the north-east, bypassing the open pit via the McArthur River diversion. Barney Creek has been diverted to the north of the open pit, incorporating the flows of Surprise Creek and entering the old channel of the McArthur River before joining with the active McArthur River channel. Source: Ecological Australia (2017)

Image 3. Map of mine site in 2016 showing flow of the McArthur River to the north-east and the location of the McArthur River diversion. TSF refers to the tailings dam, and NOEF to the northern waste rock dump. Copyright NTEPA 2018.

It was revealed shortly afterwards by the mine's Independent Monitor that MRM had staggeringly under-estimated the characteristics of its waste rock during assessment of the open cut proposal a decade earlier. Only 11 per cent of the waste rock was projected to be potentially acid-forming: the figure was actually 91 per cent (ERIAS Group 2015). Far from an isolated and containable 'event', the smoke signalled more serious and slow-acting problems, as high temperatures within waste dumps are closely associated with the generation of acid mine drainage (Mudd 2016). According to the Independent Monitor, by 2015 acid

mine drainage associated with management of overburden in the waste rock dump had become MRM's most significant environmental issue (ERIAS Group 2015, ES-2).

In March 2017, the mine submitted a mammoth environmental impact statement (EIS) for what it named the 'Overburden Management Project', responding to the potential for acid mine drainage from the waste rock dump, open pit, and tailings storage facility. While the EIS took nearly three years to produce and filled two boxes with dense analysis, in a process of 'institutional gaslighting' the public had a mere six weeks to respond (Legacy et al. 2023). Only three public submissions were received, but at least the mine's plans were partially disclosed—the only moment this happens. The mine's answer to visible toxicities was expansion. MRM proposed redesigning the northern waste rock dump to almost double its height (from 80m to 140m) to minimise its horizontal footprint. At the end of mining, MRM suggested changing the waste dump's cover from clay to a geosynthetic liner to reduce rainfall infiltration rates that cause acid mine drainage. Mining would be extended for tailings reprocessing, tailings would be put into the open pit upon closure, and the tailing dam completely rehabilitated. Like deferred housing, these techno-promises relied on the appeasement of infrastructural gestures for their effect. MRM's preferred option for closure anticipated that the open cut would progressively fill with water, and the natural McArthur River course would be reconnected with the pit. That is, the river would flow through an open pit 'lake'. MRM conceded that monitoring of the mine site would be required until 3037, some 1020 years into the future, when no one need bear responsibility.

Reasoning that the 'annual loads of lead and zinc discharged to the McArthur River in future years must not exceed the loads discharged in 2017-18' (NTEPA 2018), MRM received a renewed go-ahead. According to the NTEPA, the river was in 'good' condition, and impacts

to water, air, terrestrial and aquatic habitats and biota were restricted to the mine site. Thirty recommendations were made, but the contentious issues of mine closure, rehabilitation, and monitoring were sidestepped, with the NTEPA deferring any decision on the final mine closure option until technologies improve and 'more appropriate solutions' emerge (NTEPA 2018, 102). Government approvals followed based on this unspecified and entirely speculative protection plan.

Superficially, it appeared that the mine identified a problem, scientifically assessed its risks according to relevant laws, and gained appropriate regulatory approvals to minimise and contain further damage; receiving approval from the Environment Protection Authority provided the 'overarching environmental objective' be adopted that the McArthur River be always maintained in a healthy condition. But consider the laws tasked with ensuring compliance, the unpredictable materialities of the surface and groundwater systems interacting with the mine, and the unenforceability of the objective of 'maintaining the health of the McArthur River' via limiting loads of lead and zinc to volumes previously discharged to it. The laws regulating environmental pollution allow a mine with a waste discharge licence to discharge mine-derived contaminants into rivers at times of high flow, while on-site contamination can occur provided the mine has an authorisation and it conforms with an approved mining management plan. In turn, mining management plans must protect the environment only 'as far as practicable' (s36[5]). Essentially, compliance with mining management plans protects mining operators against polluting activities that might otherwise constitute offences, and a legislative obligation to ensure that the environmental impact of mining activities is limited to 'what is necessary' (s16) to operate the mine is also likely satisfied if the endorsed mining management plan is followed. Thus, and crucially for regulatory responses to incidents of biota contamination, the mine site is a jurisdiction of

discretion, where whatever the government department decides is acceptable for doing 'what is necessary', based on mining company advice, becomes what is legally enforceable.

The approvals process accepts that environmental contamination is a necessary consequence of extraction. While mining management plans are deemed confidential by the government, MRM's plan clearly permits, and indeed sanctions, extensive contamination on the mine site. As one example, on the NTEPA's own assessment, acid mine drainage will be generated for the duration of mining 'and is likely to percolate through the base into groundwater' via 'permeable pathways' (NTEPA 2018, 37-38). Once approvals have been granted, there is little regulatory recourse to curtail environmental contamination, which is liable to emerge beyond the mine site and well into the future.

Deferring Environmental Damage

While there is clearly significant mining contamination occurring upstream from Borroloola, the point repeatedly laboured by MRM and regulators is that these impacts are temporally contained (that is, *for now*) and spatially confined to the mine site. MRM proposes various containment technologies to stop off-site impacts in the future, including liners to stop seepage, covers to stop rain infiltration, storage to contain contaminated water, interception trenches, hundreds of dewatering bores, and evaporation basins. Mine management involves intensive, constant supervision of the inflow and outflow of water to the mine site. Crucially, so long as known impacts are contained to the mine site, they are legally sanctioned.

The materiality of groundwater and surface water systems undermine the fantasy of this legal, spatial, and temporal partitioning. Acid mine drainage's impacts are often hidden or delayed. Surface water systems in the monsoon season and groundwater systems year-round are

potential pathways for contaminants, and neither are comprehensively understood. According to MRM, groundwater aquifers beneath the mine site flow towards shallow tributaries to the McArthur River and into the river itself—the 'major regional sink for groundwater' (NTEPA 2018, 34). This understanding is presumably the rationale for using a point in the river downstream of the mine site as the key water quality monitoring point. This representation emphasises hydraulic isolation, with aquifers supposedly reporting to the McArthur River, rather than dispersing water to other aquifers or surface water systems.

However, aquifers are not closed tanks or containers, but can be more akin to sponges, collapsing rock, water and air, facilitating water flows and seeping migrations (Ballestero 2019). The technical definition of aquifer is, quite literally, a saturated rock or sediment that is also sufficiently permeable to transmit water elsewhere (ERIAS Group 2018, 8-4). There are recognised knowledge gaps about potential and actual connections between groundwater aquifers and surface water in this region. The uncertainties relating to groundwater and surface water connectivity affect pit lake modelling, including the existence of as-yet unknown faults and fault zones that might affect the mine's hydrogeology (ERIAS Group 2018, 4-112). MRM assumes that potentially toxic metals in groundwater will be inhibited by natural attenuation, yet the 'groundwater system is not well enough understood to presume that this attenuation will always occur' (NTEPA 2018, 34). Data on groundwater and surface water connectivity is deficient. The existence of other subterranean connections providing pathways for contaminants far from the current monitoring points and into the future is likely. Acidic and metalliferous seepages over the last 25 years of the mine's life may be performing this stealthy migration already, undetected.

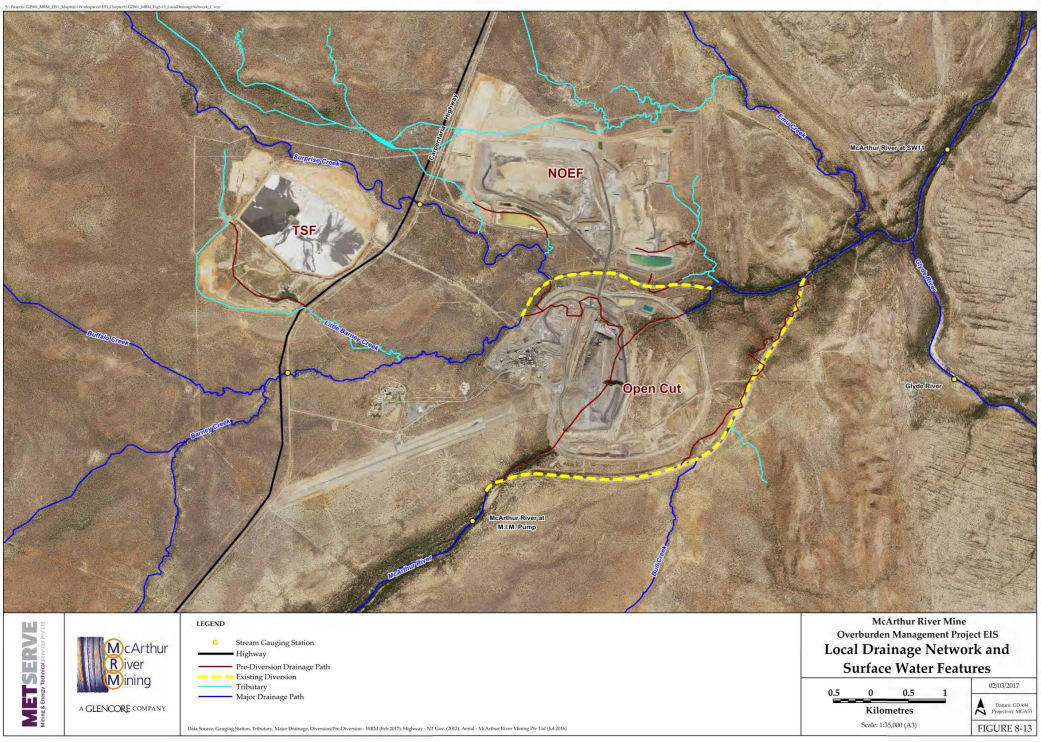

Image 4. The key downstream surface water quality monitoring point, SW11, is marked by a yellow dot to the north-east of the open pit. Copyright McArthur River Mine 2017, 8-26.

The proposed containment of toxicities to the mine site is fanciful. Core design elements of the approved project carry significant uncertainty and are simply ‘conceptual’ (NTEPA 2018, 96). The integrity of the proposed geosynthetic cover for the waste rock dump, the primary measure to limit acid mine drainage from the waste rock dump post-closure, is untested at this scale (ERIAS Group 2018, 4-143). The Independent Monitor recently identified another major risk not yet assessed by the NTEPA or the mine: the McArthur River may reconnect with the old channel, causing failure of the mine wall and the discharge of contaminated water into the river (ERIAS Group 2018, ES-2), impacting groundwater, terrestrial, and aquatic ecosystems in perpetuity.

The state has a poor track record for implementing the checks and balances to assess, monitor, and prevent these eventualities. For instance, the Independent Monitor identified the waste rock classification system used by the mine as inadequate and requiring 'immediate action' in 2010, but regulatory action only occurred in 2014 after spontaneous combustion of the dump. In its 2018 report, the Independent Monitor noted 117 ongoing recommendations 'that have either been partially addressed or not advanced at all' (ERIAS Group 2018, 5-6). 106 of the mine's groundwater monitoring bores showed sulphate exceedances greater than the trigger value, which were not reported despite a legislative requirement to do so (ERIAS Group 2018, 4-133 and 4-393). The latitude granted to MRM is assisted by the mining management plan—a 'plan' comprising at least 13 separate documents including miscellaneous letters, 'additional information', and information provided to the government at 'presentations' and 'meetings' (ERIAS Group 2018, 4-393). Previous requests by the Independent Monitor for MRM to collate a single consolidated list of commitments in the mining management plan are 'ongoing'—that is, they have been deferred.

If the core regulatory document does not contain 'specific, measurable, attainable, relevant and time-based' commitments, then the identification and prosecution of non-compliance is next to impossible. This slippage between environmental 'regulatory standards and the actual conduct of regulated parties is far from being a peripheral element of the legal regime' (Farber 1999, 298), nor is this specific to the Northern Territory (Ahammed and Nixon 2006). Inadequate environmental monitoring, compliance, and enforcement post-approval are core features of extractivism's governance in Australia. It allows mining to be a lawful pollution machine. While the scrutiny of multiple laws and stakeholders applies during the temporal window of project approvals, the legal screws are removed for the duration of a project's operations. The law is present but has little purchase, in colonial temporalities.

Oversight mechanisms to manage the mine's impacts have their own bounded temporality: the project's operating phase. The legal situation is worse post-closure, after the mine is technically closed and rehabilitated. The geosynthetic cover to the waste rock dump, essential to reducing acid mine drainage, may fail. Subterranean water connections beneath the 'pit lake' may cause undetected contaminated seepage into ground- and surface water. The McArthur River may redivert, collapsing the mine levee wall and sending toxic tailings down the river. Then again, acid mine drainage may not manifest for centuries, far from the mine site. What happens then? At present, regulators lack convincing answers. They are not even sure how the mine will be closed, deferring that decision too. By the Independent Monitor and the NTEPA's own reckoning, the security bond is inadequate to remediate the site should owner Glencore abandon MRM or become insolvent, even without the task of provisioning for 1000 years of monitoring. This in a context where extraction companies commonly dispose environmental liabilities by placing them in subordinate company structures which they later spin off (Bainton and Holcombe 2018). Post-closure, and post-abandonment, the law dissipates, while the mine's impact remains.

How many houses for a mine?

This question implicitly put to Aboriginal residents at Borroloola by the settler colonial state indicates the simultaneous remedial and extractive orientations of late liberal governance in remote Australia. It is contradictory but not inconsistent. Even if the quiet part were stated out loud—that remedial strategies to 'close the gap' of Indigenous disadvantage are tightly imbricated with the ongoing production of extractive sacrifice zones—it is not a proposition that could be reasonably answered, including for any implied false equivalence between

parties. ‘As many houses as are necessary, for as long as these are required, and no mine’, is a discursively illegible response.

Arundhati Roy (2001) suggests that the state has all the time in the world: ‘apart from its apparent benevolence, its other weapon is to wait’ (90-91). One of the spacetime configurations to which Aboriginal people at and around Borroloola are held captive is the land claim or native title claim, prosecuted in fits and starts across various parcels of land by generations of land council lawyers, anthropologists, and consultants. Mara camp is on Aboriginal land while Yanyula, Garawa One, and Garawa Two camps are on native title land, while the land on which MRM’s mine’s mineral leases are located was recognised by the Federal Court as being subject to native title rights and interests in 2015. These recognitions have done little to establish Indigenous control of housing; instead, the pursuit of native title was employed by governments as an excuse to delay building town camp houses. The absence of town camp leases continues to preclude access to adequate maintenance funding and, as such, even new houses are ruins in waiting.

At the same time, differential tenure has not stopped the toxic exceedances of McArthur River Mine. Instead, at certain moments the state has sprung into action with a prefabricated set of legal jurisdictions and confected urgency, to facilitate the appearance of genuine regulatory scrutiny and risk assessment. If acid mine drainage takes hold, it will continue to seep onto recognised lands and waters, threatening the drinking water of town camps upriver, with Aboriginal peoples’ legal recourse limited to litigating for monetary compensation for the mine’s impact on their recognised property interests at some later date (presuming the company hasn’t dissolved). The absence of leases, and a subsidiary regime of tenancy

arrangements, would also preclude legal recourse by ‘tenants’ to the state as remote housing landlord if contaminated water were to appear via the taps of town camp housing.

The stunted delivery of social housing at Borroloola signals the state’s transactions, compromises, and affordances in its putatively benevolent guise. The unfolding saga of McArthur River Mine signals the state’s converse willingness to aid capital’s accumulation through dispossession. Considering these two state development projects together, across a shared period and region, we have sought to show the legal, policy, and political means by which Australian governments control the tempo of its counter-sovereignty technologies. Urgent interventions punctuate consecutive, lengthy, deferrals for infrastructural delivery, while opportunities to disrupt extractive development are confined to brief temporal windows, with success more likely deferral than extinguishment. How many houses, how many programs, what reparations, what sovereignty, for the out-of-time operations of a mine?

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